

CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000

EXPLANATORY NOTES

Part II: Pensions

Commentary on Sections

Chapter I: State Pensions

State second pension

Section 30: Earnings from which pension is derived

367. *Subsection (1)* inserts a new subsection (2A) into section 22 of the Social Security Contributions and Benefits Act 1992* (the “Contributions and Benefits Act”) which sets out the earnings on which Additional Pension (in the State Earnings-Related Pension Scheme or SERPS) is calculated. Under State Second Pension, Additional Pension is to be calculated on those earnings on which Class 1 employee National Insurance contributions have been paid or treated as paid.
368. From April 2000 employees earning below a new Primary Threshold no longer pay National Insurance contributions. Those employees with earnings between the prevailing Lower Earnings Limit (LEL) (£66 a week in 1999/00) and the new Primary Threshold* will be treated as if they had paid National Insurance contributions on those earnings. Provided their annual earnings are at least 52 times the weekly LEL (£3,432 in 1999/00), the year will qualify for contributory benefits such as basic Retirement Pension. If their earnings exceed this amount, employees will accrue entitlement to Additional Pension on the amount by which their earnings exceed 52 times the LEL.
369. The self-employed do not accrue entitlement to Additional Pension. Their flat-rate Class 2 National Insurance contributions entitle them to flat-rate contributory benefits, such as basic Retirement Pension. However, someone may be both an employed earner and a self-employed earner in the course of a year. In such a case, if they are a member of SERPS as an employed earner, their Class 2 contributions are currently taken into account when calculating the amount of surplus Class 1 contributions on which their entitlement to Additional Pension is based. But if they are contracted-out of SERPS into an occupational pension or personal pension scheme, they receive a rebate of National Insurance contributions which is based solely on their Class 1 employee contributions. This section has the effect of treating members of State Second Pension in a similar way as those contracted-out. Only Class 1 earnings will be taken into account when calculating the amount of their State Second Pension entitlement.

Subsection (2)(a) inserts new paragraph (za) into section 44(6) which sets out how earnings factors are to be determined for State Second Pension purposes. For State Second Pension the earnings factor will be the total of the earnings on which Class 1 employee National Insurance contributions have been paid or treated as paid, unless the person concerned is treated as having an earnings factor for one of the reasons set

out in section 44A of the Contributions and Benefits Act (inserted by subsection (3), see below).

Subsection 2(b) amends section 44(6)(a) to limit the current method of determining earnings factors for Additional Pension under SERPS to the period before “the first appointed year”, which is the year from which State Second Pension will take effect.

370. *Subsection (3)* inserts new section 44A into the Contributions and Benefits Act.

New section 44A: Deemed earnings factors

371. *New section 44A(1)* provides for a person to be deemed to have an earnings factor equal to the Low Earnings Threshold when calculating entitlement to Additional Pension under the State Second Pension if they qualify in any of the ways set out in *new section 44A(2)*. In 1999/00 terms the Low Earnings Threshold will be £9,500 (see *new section 44A(5)* below).

New section 44A(2)(a) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year when they had earnings at or above the level needed to make the year a qualifying one for basic pension (earnings at or above the annual LEL of £3,432 in 1999/00, which is 52 times the weekly LEL of £66 a week in 1999/00) but less than the Low Earnings Threshold (£9,500).

New section 44A(2)(b) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year if Invalid Care Allowance was paid to them throughout the year. A person can also qualify if they would have been entitled to receive Invalid Care Allowance were it not for the fact that they received another (higher) benefit, such as widows’ benefits* or Incapacity Benefit.

New section 44A(2)(c) provides for a person with no earnings, or earnings below the LEL, to be treated as if they had an earnings factor of £9,500 in a qualifying year when they were paid Child Benefit for a child under 6, or if they satisfied certain other conditions to be specified in regulations. It is intended that these other conditions will be the same as those specified in regulations 2(2)(b), 3 and 4 of the Social Security Pensions (Home Responsibilities) Regulations 1994 (S.I. 1994/704). These regulations provide for a person to be treated as being precluded from regular employment by responsibilities at home if:

- (i) they receive Income Support*, because they are caring for a sick or disabled person (and therefore are not required to be available for work); or
- (ii) they spend at least 35 hours a week caring for a person who receives Attendance Allowance* or the care component in Disability Living Allowance* at the middle or highest rate.

New section 44A(2)(d) provides for a person to be treated as if they had an earnings factor of £9,500 in a qualifying year if long-term Incapacity Benefit was paid to them throughout the tax year. A person can also qualify if they would have been entitled to receive long-term Incapacity Benefit but failed to satisfy the necessary contribution conditions for that benefit, or received another (higher) benefit, such as widows’ benefits*, or received an occupational or personal pension which reduced the amount of Incapacity Benefit to nil. Such a person would also need to satisfy the labour market attachment test set out in *new section 44A(3) and (4)* below.

372. *New section 44A(3) and (4)* detail the labour market attachment conditions for those who could qualify for State Second Pension on grounds of entitlement to long-term Incapacity Benefit. Such a person must have paid, or be treated as having paid, Class 1 employee National Insurance contributions for at least one tenth of their working life since 1978, when Additional Pension was introduced. (A full working life for state pension purposes is counted from the start of the tax year in which a person reaches 16 to the end of the tax year before the one in which they reach state pension age).

For instance, someone reaching state pension age in 2005/06 would have a working life of 27 years and would need to have worked and to have paid National Insurance contributions for 3 years ($1/10^{\text{th}}$ of 27 years rounded to the nearest whole year) in order to receive entitlement to State Second Pension on grounds of incapacity for work. Anyone reaching state pension age after April 2024 would need 5 years (working life of 46 years, up to a maximum working life of 49 years, $1/10^{\text{th}}$ rounded to the nearest whole year being 5 years). National Insurance credits* will not satisfy this condition. However, any year in which the person has worked but not actually paid Class 1 National Insurance contributions because their earnings, although above the annual LEL, were below the new Primary Threshold on which such contributions are paid, will be treated as if they had paid contributions on those earnings.

373. Any year when the disabled person has been a carer and qualifies for State Second Pension by virtue of subsections (2)(b) or (c) above will be excluded from the number of years in the working life when calculating whether they have met the labour market attachment condition. For instance, someone retiring on 6 April 2024 would have a working life of 46 years and would need 5 years ($1/10^{\text{th}}$ of 46 years rounded to nearest whole number) in which they had worked and paid Class 1 National Insurance contributions. But if they had received Child Benefit for a child under 6, and were treated as precluded from regular employment by responsibilities at home for those 5 years whilst the child was under that age, or if they were entitled to Invalid Care Allowance for 5 years, their working life would be reduced to 41 years and they will only need 4 years ($1/10^{\text{th}}$ of 41 years rounded to nearest whole number).
374. *New section 44A(5)* sets the Low Earnings Threshold in State Second Pension at £9,500. This is subject to new section 148A of the Social Security Administration Act 1992* (the “Administration Act”) which provides for the Low Earnings Threshold to be increased in line with rises in national average earnings (see the note to subsection (1) of section 33 below).
375. *New section 44A(6)* defines “occupational pension scheme” and “personal pension scheme” as used in the inserted new section 44A(2)(d)(ii).
376. *Subsection (4)* of section 30 provides for someone to be treated as if they had an earnings factor of £9,500 in a qualifying year if they are paid Severe Disablement Allowance (SDA) throughout the year and they meet the labour market attachment test set out in new section 44A(3) and (4). SDA is being withdrawn for new claimants from April 2001 but those already receiving the benefit will continue to do so.

Section 31: Calculation

377. *Subsections (1) and (2)* amend subsection (2) of, and insert subsection (3A) into, section 45 of the Contributions and Benefits Act, which sets out the way Additional Pension is calculated. They provide for Additional Pension to be the sum of entitlement accrued under SERPS and entitlement accrued under State Second Pension.
378. *Subsection (3)* introduces Schedule 4 which sets out a new Schedule 4A which is to be inserted into the Contributions and Benefits Act. It sets out the way in which State Second Pension is to be calculated for those contracted-in and those contracted-out.

New Schedule 4A: Additional pension

379. This Schedule sets out the way in which Additional Pension will be calculated under State Second Pension (“the final amount”). There are four Parts to the Schedule:
- Part I sets out the calculation of the final amount;
 - Part II sets out the calculation of the yearly amount for someone who is not contracted-out for any part of the year;

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

- Part III sets out the calculation of the yearly amount (if any) for someone in contracted-out employment for the whole of the year;
- Part IV provides for regulations to be made in particular to provide for the calculations where someone moves between contracted-in and contracted-out employment in the course of a year, and between different types of contracted-out provision within a year.

Part I: The amount

Paragraph 1(1) provides for the amount of Additional Pension under State Second Pension to be calculated by adding together the amounts (if any) for each year since the introduction of State Second Pension, and then dividing by the number of relevant years (that is, the number of years in the working life since 1978, when Additional Pension was introduced).

Sub-paragraphs (2) to (7) set out the method of calculating the number of years in the working life to be used in the calculation of any Additional Pension payable under State Second Pension to widows and widowers, based on their late spouse's contributions. This method is the same as that used under SERPS for those widowed from 6 April 1999 onwards.

Sub-paragraph (8) defines "relevant year" as the number of years in the working life since 1978 by reference to section 44(7) of the Contributions and Benefits Act.

Part II: Surplus earnings factors

Paragraph 2(1) provides for Part II of the Schedule to apply to any year in which a person has a surplus in his earnings factor for the year. There is a surplus where the earnings factor for the year exceeds the Qualifying Earnings Factor (QEF), which is 52 times the weekly Lower Earnings Limit for the year.

Sub-paragraphs (2), (3) and (4) set out how State Second Pension will be calculated for someone who is not contracted-out of the state scheme at any time during the year in question.

First, the surplus earnings factors for the years in question are to be divided into the bands shown in the appropriate table in sub-paragraph (3) or (4). Secondly, the surpluses in each of the bands are to be revalued for each year to ensure that they maintain their value in earnings terms. This revaluation is in line with the increase in national average earnings up to the year before the year in which state pension age is reached (under section 148 of the Administration Act). Thirdly, the revalued surpluses in each band are to be multiplied by the relevant percentage in the tables in sub-paragraphs (3) or (4). Finally, the totals for each band are added together to give the total for the year.

This calculation differs from that used for SERPS by the application of different accrual rates to the surplus in the earnings factor falling within different bands of surplus earnings factors. Under SERPS anyone retiring from 6 April 2009 onwards (Table 2) would have had one accrual rate of 20% on their surplus earnings factor. Under State Second Pension the same person will have an accrual rate of 40% on the surplus in their earnings factor falling within Band 1. Band 1 covers surpluses in the earnings factor which correspond to the amount of earnings between the Qualifying Earnings Factor and the Low Earnings Threshold of £9,500. This band will include those low earners, carers and disabled people with broken work records who are treated as if they had an earnings factor of £9,500 in a qualifying year under section 44A(2) of the Contributions and Benefits Act as inserted by subsection (3) of section 30 above.

Surpluses in a person's earnings factor falling within Band 2 will have an accrual rate of 10%. Band 2 covers twice the amount of surplus falling within Band 1, rounded to the nearest £100. So, if the Qualifying Earnings Factor is £3,432 (52 times the 1999/00 weekly Lower Earnings Limit) and the Low Earnings Threshold is £9,500, the amount of surplus falling within Band 1 will be £6,068. This means that the amount of surplus

falling within Band 2 will be £12,136 and the upper limit of Band 2 will be £9,500 + £12,136, rounded to the nearest £100, which is £21,600. Someone earning £21,600 will receive the same amount from State Second Pension as they would have done under SERPS, because the higher accrual rate on the surplus in their earnings factor falling within Band 1 will be entirely offset by the lower accrual rate on the surplus in their earnings factor falling within Band 2. Those earning less than £21,600 will receive more from State Second Pension than they would have done under SERPS.

Surpluses in a person's earnings factor falling within Band 3 will have an accrual rate of 20%, that is the same as under SERPS. Band 3 covers surpluses in the earnings factor which correspond to earnings which are above the surplus falling within Band 2 but not exceeding the Upper Earnings Limit.

Someone reaching state pension age before 6 April 2009 would have had an accrual rate higher than 20% under SERPS. This is because of the changes made in the Social Security Act 1986, which reduced the accrual rate in SERPS in stages from 25% to 20% for those retiring between 2000/01 and 2009/10 (in respect of accruals from 1988/89). There will be similar transitional arrangements in the State Second Pension and Table 1 shows the accrual rate for those retiring before 6 April 2009. Someone reaching state pension age before then will have accrual rates which give an extra 1% on the surplus in their earnings factor falling within Band 1, 0.25% on the surplus in their earnings factor falling within Band 2, and 0.5% on the surplus in their earnings factor falling within Band 3 for each year by which the year in which they reach state pension age is earlier than 2009/10. For instance, someone reaching state pension age in the year beginning 6 April 2008 would have accrual rates of: 41% on the surplus in their earnings factor falling within Band 1 (twice what it would have been under SERPS); 10.25% on any surplus falling within Band 2 (half what it would have been under SERPS); and 20.5% on any surplus falling within Band 3 (the same as it would have been under SERPS).

Sub-paragraph (5) will enable regulations to be made to bring in Stage 2 of the State Second Pension for people with a significant part of their working life ahead of them. All those coming within the scope of Stage 2 will earn entitlement to State Second Pension as if they had an earnings factor of £9,500, regardless of their actual earnings. This means that low earners, carers and long-term disabled people with broken work records will continue to be deemed to have an earnings factor of £9,500. However, those earning more than £9,500 will only earn entitlement to State Second Pension on the surplus in their earnings factor falling within Band 1, that is the amount between the prevailing annual Lower Earnings Limit (the Qualifying Earnings Factor) and the Low Earnings Threshold (the deemed earnings factor under new section 44A, which is £9,500 or the prevailing level at the time Stage 2 is introduced). This will only apply to entitlement accrued after the "second appointed year", which will be the year in which Stage 2 is introduced. Any entitlement accrued under Stage 1 will be preserved. It is intended that Stage 2 will not be brought in until stakeholder pension schemes have established themselves.

Sub-paragraphs (6), (7) and (8) define "the value of N", "LET", "QEF" and "2QEF", and also the "final relevant year".

Part III: Contracted-out employment etc

Paragraph 3: Introduction

380. *Paragraph 3* provides for Part III, and not Part II, of the Schedule to apply to any year throughout which the person is contracted-out of the state scheme and in an occupational or personal pension scheme.

Paragraph 4: The amount

381. This paragraph provides for calculation of the amount for that year (for the purposes of the calculation in paragraph 1) under State Second Pension for someone in contracted-

out employment (amount C) to be the amount of additional pension they would have received if they had not been contracted-out of State Second Pension (amount A) less the amount of pension they are deemed to receive in respect of their contracted-out National Insurance rebate (amount B).

Paragraph 5: Amount A

382. Amount A is the amount a person would have received from State Second Pension if they had not been contracted-out. The calculation is the same as that in Part II with one exception - there is no provision to move to a flat-rate scheme as in the second stage of State Second Pension. This is because those who are contracted-out will continue to receive earnings-related rebates, and their top-up (if any) will be based on the earnings-related first stage of State Second Pension.

Paragraph 6: Amount B (first case)

383. Amount B (first case) applies to those who are contracted-out by an occupational salary-related, or money purchase scheme, including an employer's occupational-based stakeholder pension scheme. It is the amount of contracted-out second pension which a person is treated as receiving in respect of their National Insurance rebate.
384. A person in a contracted-out occupational scheme receives a rebate which is calculated to reflect the cost of providing benefits of an actuarial value equivalent to that of the state benefit given up. Currently, under SERPS, the benefit given up is 20% of their lifetime earnings for someone who reaches state pension age on or after 6 April 2009. (Those reaching state pension age before 6 April 2009 have a higher accrual rate as described above, which is reflected in the amount of their rebate.)
385. Under State Second Pension a person in a contracted-out occupational scheme will continue to receive a rebate calculated on this basis.
386. Therefore, amount B (the amount to be deducted from what the person would have got if they had not been contracted-out of the state scheme) is 20% (or 20+N% for someone retiring before 6 April 2009) of the "assumed surplus" in their earnings factor for the year. The "assumed surplus" is defined in *sub-paragraph (2)* of paragraph 8 as the surplus there would have been if the person had not been contracted-out. In effect, this is their earnings between the Lower and Upper Earnings Limits for the year. The assumed surplus is then revalued in the same way as the surplus in amount A, to ensure that the amount B for each year also maintains its value relative to average earnings up to state pension age.
387. As *paragraph 8(3)* makes clear, there is to be no boost to the amount of the Low Earnings Threshold when calculating amount B. So where actual earnings are between the annual Lower Earnings Limit and the Low Earnings Threshold, the rebate will be calculated on the basis of the actual earnings.
388. For all those earning less than the upper limit of Band 2 (£21,600 in 1999/00 terms) there will be a surplus when amount B (first case) is deducted from amount A. This is because State Second Pension is more generous than SERPS for those earning less than the upper limit of Band 2. Those earning below the Low Earnings Threshold benefit from the boost to that threshold, and moderate earners continue to benefit from the increased accrual rate on their Band 1 earnings until earnings reach the upper limit of Band 2. The surplus of amount A over amount B represents the extra a person would have received if they had remained in an earnings-related State Second Pension scheme. The surplus will be paid as a top-up to the state pension when the person reaches state pension age.

Paragraph 7: Amount B (second case)

389. Amount B (second case) applies to those who are contracted-out by an appropriate personal pension, including a non-occupational stakeholder pension scheme. It is the amount of contracted-out second pension which a person is treated as receiving in respect of their National Insurance rebate.
390. For those contracted-out into appropriate personal pension schemes, including stakeholder personal pension schemes, the amount of rebate paid to their scheme will be increased when State Second Pension is introduced to reflect the 3 part accrual rate in State Second Pension itself. This is reflected in Table 5 (for those reaching state pension age before 6 April 2009) and in Table 6 (for those reaching state pension age on or after 6 April 2009).
391. This means that for all those earning at or above the Low Earnings Threshold, amount B (the revalued assumed surplus) will be the same as amount A (the revalued surplus calculated as if the person had been contracted-in). Where earnings are above the annual Lower Earnings Limit, but below the Low Earnings Threshold, for the year there will be a surplus when amount B (second case) is deducted from amount A. This surplus represents the extra a person would have received in State Second Pension from the low earner's boost. The surplus will be paid as a top-up to the state pension when the person reaches state pension age.

Paragraph 8: Interpretation

392. This paragraph defines “salary related contracted-out scheme”, “money purchase contracted-out scheme”, “appropriate personal pension scheme”, “assumed surplus”, “N”, “LET”, “QEF”, “2QEF” and “final relevant year”.

Part IV: Other cases

393. **Paragraph 9** provides for regulations to be made for calculating the amount of any State Second Pension in a year for those cases not covered by Parts II or III. In the main these will be cases where the person's circumstances change during the course of the year. For instance, a person may move between contracted-in and contracted-out employment during the year. Or they may move between different categories of contracted-out employment, such as from employment with a personal pension scheme to one with an occupational pension scheme.
394. In such cases it will be necessary to apportion the amounts calculated according to amounts of employment in each circumstance. The guiding principle for these regulations will be to provide a top-up from the state scheme if the person contracted-out would have received more from State Second Pension rebate than the amount they are treated as receiving in respect of their National Insurance rebate.
395. **Paragraph 9** also provides for regulations to be made in “such other cases as the Secretary of State thinks fit”. This provision will be used to prescribe how the provisions regarding the Contribution Equivalent Premium and the restoration of state scheme rights will operate under, and interact with, the State Second Pension provisions. These are the provisions which deal with the necessary calculations for those who are contracted back into the State scheme because, for instance, their contracted-out employment terminates after less than 2 years. As above, this power is to be used to ensure that no one loses out because they had a period in contracted-out, rather than contracted-in, employment.

Section 32: Calculation of Category B retirement pension

396. *Subsection (1)* inserts new section 46(3) in the Contributions and Benefits Act. It corrects the method of calculating SERPS Additional Pension which someone, who (at some point in the past) had received Widowed Parent's Allowance or Bereavement Allowance, can inherit from their deceased spouse when they reach state pension

age. The correction is necessary to restore the policy intention that no-one will receive less Additional Pension with their Category B pension (based on their late spouse's contributions) than they would have done before the introduction of the new Bereavement Benefits, which are due to come into effect in April 2001. There is a similar provision for State Second Pension in paragraph 1(5) – (7) of new Schedule 4A of the Contributions and Benefits Act as inserted by Schedule 4 of this Act.

397. *Subsections (2) and (3)* make consequential amendments to section 48BB(5) of the Contributions and Benefits Act and paragraph 5 of Schedule 8 to the Welfare Reform and Pensions Act 1999.

Section 33: Revaluation

398. *Subsection (1)* inserts new section 148A after section 148 of the Administration Act.

New section 148A: Revaluation of low earnings threshold

399. *New section 148A(1) to (8)* provides for the Secretary of State to make orders to increase the amount of the Low Earnings Threshold. The figure of £9,500 is in 1999/00 terms. It will be increased to take account of rises in national average earnings both before the beginning of the first appointed year and annually thereafter. This will be done by making an order in the year before State Second Pension is introduced which takes account of increases in average earnings. In order to ensure that full years are taken into account the increase will be measured over the period from 1 October 1998 to 30 September in the year before State Second Pension is introduced. This will allow time for the order to be made to take effect from the start of the first appointed year. Subsequently, orders will be made each year to take account of increases in national average earnings. The review period will normally begin from the end of the previous period unless a change of circumstances requires a different period to be used. In all cases amounts are to be rounded to the nearest £100.
400. *Subsection (2)* of section 32 sets out how section 148 of the Administration Act is to be applied to the revaluation of surpluses in a person's earnings factors under State Second Pension. Section 148 of the Administration Act provides for earnings factors to be revalued in line with increases in national average earnings. This is done to ensure that the value of a person's earnings over their working life is maintained in earnings terms up to state pension age when the amount of the Additional Pension is calculated. An annual order under section 148 of the Administration Act sets out the percentages to be used for this revaluation. In State Second Pension these percentages will be applied to the surpluses in a person's earnings factors falling into each of the three Bands as set out in the new Schedule 4A to the Contributions and Benefits Act.
401. *Subsections (3) and (4)* clarify how section 148 of the Administration Act applies where the surplus in earnings factors is to be revalued for SERPS. The way in which earnings factors are revalued for calculating the amount of Additional Pension (where the date of death of a spouse, or of reaching state pension age falls on or after 6 April 2000) was changed by section 128 of the Pensions Act 1995 which inserted section 44(5A) into the Contributions and Benefits Act. The purpose of this change was to require the surpluses in a person's earnings factors to be revalued rather than the earnings factors themselves. Subsections (3) and (4) make clear that where there is a requirement under section 44(5A) of the Contributions and Benefits Act to revalue the surplus in a person's earnings factors in order to calculate the amount of their Additional Pension under section 45 of that Act, there is no requirement also to revalue the earnings factors themselves.

Section 34: Report of Government Actuary: rebates etc.

402. This section amends the sections in the Pension Schemes Act dealing with the Government Actuary's report on National Insurance Contribution rebates and reduced contribution rates. The Government Actuary sets out what, in his opinion, is the cost

of providing benefits of an actuarial value equivalent to that of the State benefits given up. The Report is used when the Secretary of State decides what is the appropriate level of rebate or rate reduction. Unlike SERPS, not all of the State Second Pension will necessarily be given up, and the rebate calculations and the reduced contribution rates calculation need to reflect this fact. Section 34 therefore amends the sections to include a reference to the fact that, in some cases, only part of the State benefit will be given up.

Section 35: Supplementary

403. *Subsection (2)* extends to State Second Pension the provision in section 21(5A) of the Contributions and Benefits Act whereby National Insurance contributions paid or treated as paid have effect as if they had been paid on the whole of earnings up to the Upper Earnings Limit.
404. *Subsections (3) and (4)* insert references to the new Schedule 4A in sections 39 and 39C of the Contributions and Benefits Act, which concern the rate of widowed mother's allowance, widow's pension, widowed parent's allowance and bereavement allowance.
405. *Subsections (5), (6) and (8)* clarify the provisions in sections 44(5A) and 45 of the Contributions and Benefits Act on calculating Additional Pension entitlement, where the date of death or reaching state pension age falls on or after 6 April 2000. The calculation is to be based on the "adjusted", that is, revalued, amount of the surplus in the earnings factor. This has an effect on the calculations under new Schedule 4A. (See also the note to subsections (3) and (4) of section 33).
406. *Subsections (9), (10), (11), (12) and (13)* insert references to the new Schedule 4A in sections 48A, 48B, 48BB, 48C and 51 of the Contributions and Benefits Act, which deal with Category B retirement pensions.
407. *Subsection (14)* inserts definitions of "first appointed year" and "second appointed year" in section 122(1) of the Contributions and Benefits Act. State Second Pension is to begin from a date ("the first appointed year") to be appointed by order. The precise date will depend upon the necessary operational systems to deliver State Second Pension being in place. The earliest date for implementation will be April 2002. Additional Pension is accrued up to and including the year before the year in which state pension age is reached. So those reaching state pension age in the year beginning 6 April 2003 will be the first to have accrued any entitlement to State Second Pension.
408. The "second appointed year" will also be appointed by order. This will be the date from which the flat-rate Stage 2 of State Second Pension will be introduced for those with a significant part of their working life ahead of them. It is intended that Stage 2 will not be introduced until stakeholder pension schemes have become established.
409. *Subsection (15)* provides for the orders appointing the first or second appointed years to be made without being subject to Parliamentary control.

Report on pensions uprating

Section 36: Report on cost of pension uprating in line with general earnings level

410. **Section 36** provides that the Government Actuary (or his deputy) shall submit a report to the Secretary of State, giving his opinion as to the effect:
- on the balance in the National Insurance Fund, and
 - the rate of National Insurance contributions needed to keep the Fund in balance, if the basic state pension were to be increased each year in line with average earnings.
411. The report will provide figures for each year up to and including 2005/06, and the Secretary of State shall lay a copy of the report before Parliament.

412. The section does not stipulate when the report shall be published, but the Government's intention is that it shall be a sister document to the next uprating report which is expected to be produced in January 2001.

Earnings Factors

Section 37: Revaluation of earnings factors

413. Additional pension is the earnings-related benefit element of the state retirement pension. Contributions are made via the State Earnings-Related Pension Scheme (SERPS). It is calculated on the basis of earnings factors, which are those earnings between the Lower and Upper Earnings Limits on which a person pays National Insurance contributions.
414. Section 148 of the Social Security Administration Act 1992 requires the Secretary of State to ensure that the earnings factors, used for calculating additional pension under SERPS and Guaranteed Minimum Pensions in contracted-out schemes, maintain their value in relation to the general level of earnings. The annual "Revaluation of Earnings Factors Order" gives the amount by which earnings factors for each year will need to be uprated to keep them in line with increases in average earnings.
415. The annual revaluation of earnings factors currently covers movements in earnings over each twelve-month period from December to December. The data underlying the order comes from the Office of National Statistics' Average Earnings Index which is often not available in time for the start of the financial year. The intended purpose of this section, which follows consultation with representatives of the pensions industry, is to allow the Department to move the period covered by the order to September to September. This will give employers and pensions administrators access to revaluation figures at an earlier and more convenient time of year. It will also provide consistency with the annual revaluation of the low earnings threshold proposed in the State Second Pension.
416. [Section 37](#) amends section 148(2) to enable flexibility to be used in determining the period to be considered for the purposes of the revaluation of earnings factors.

Section 38: Modification of earnings factors

417. Section 48A of the Pension Schemes Act 1993 covers the situation of people who have earnings in a single tax year both from contracted-out employment and from contracted-in employment. Only their earnings from contracted-in employment in that year will count towards the State Earnings-Related Pension Scheme (SERPS). Section 48A(5) allows regulations to be made which modify the calculation of additional pension under SERPS (that is, the calculation under section 44(5) of the Social Security Contributions and Benefits Act 1992) to take account of the relevant employment taking up only part of the year. The present regulations are the Social Security (Contracting-out and Qualifying Earnings Factors) Regulations 1996 which came into force on 6 April 1997.
418. However, section 128 of the Pensions Act 1995 replaced section 44(5) with a new section 44(5A) which applies to people who reach pensionable age after 5 April 2000 (or, in the case of widows or widowers, whose spouse dies after that date). But the regulation-making power in section 48A(5) was not amended at the same time. As a result, there is no power at present to make an updated version of the 1996 regulations, which would refer to the new section 44(5A). The existing regulations will not be effective after 5 April 2000. This new section amends section 48A(5) so as to provide the power to make a new set of regulations that will enable the calculation of additional pension using the same part-years provision to continue. However, as these regulations cannot be made until after the Act receives Royal Assent it also authorises the continuing use of the existing regulations in the meantime (subsection (3)).

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

419. *Subsection (1)* provides the power to make regulations modifying the provisions of section 44(5A) of the Contributions and Benefits Act so that the SERPS calculation takes account of part-year earnings from employment which is not contracted-out.
420. *Subsection (2)* applies the modification to the calculation of additional pension payable in relation to Widowed Parent's Allowance, Category A Retirement Pension where the pensioner reaches pension age after 5 April 2000, and Category B Retirement Pension where the claimant has previously received Widowed Parent's Allowance or Bereavement Allowance or where the spouse dies after 5 April 2000.
421. *Subsection (3)* provides for the existing regulations to continue to have effect from 6 April 2000 until new regulations are made. To make subsection (3) workable, *subsection (4)* provides for references to section 44(5A) of the Contributions and Benefits Act to be treated as references to section 44(5).
422. *Subsection (5)* enables the new regulations to include provision for reviewing the calculations made under the old method and recalculating and paying pension in accordance with the new method.
423. *Subsection (6)* describes the circumstances in which persons will be affected because their pensions will be calculated using the old method after 5 April 2000.

Preservation of rights in respect of additional pensions

Section 39: Preservation of rights in respect of additional pensions

424. Currently, widows and, in certain circumstances, widowers, may receive the full amount of their deceased spouse's SERPS. However, changes originally enacted in the Social Security Act 1986 (but now consolidated in the Contributions and Benefits Act 1992) halved the amount of SERPS the surviving spouse could receive. The change was due to take effect in respect of married persons who died after 5 April 2000. This change was not fully publicised, and some people were incorrectly told that they, or their widow(er) could expect to "inherit" the full amount of SERPS.
425. The Government has now decided to postpone the reduction to 6 October 2002, and to set up an Inherited SERPS Scheme.
426. Section 52 of the Welfare Reform and Pensions Act 1999 enables the Secretary of State to make affirmative regulations to do one or more of the following:
- to provide for specified categories of widows and widowers to receive more than 50% of their spouse's SERPS;
 - to postpone the 50% reduction due to come into effect from 6 April 2000 to a later year;
 - to set up a scheme to determine who has been misled by incorrect or incomplete information about the 50% reduction and who, or whose spouses may, as a result, suffer financial loss in the future, so as to ensure that the reduction is not applied in their case.
427. Until provision for one of these options is in force, the section also ensures that widow(ers) continue to "inherit" the full amount of their spouse's SERPS.
428. **Section 39** amends section 52 of the Welfare Reform and Pensions Act to provide for the 50% reduction in inherited SERPS to come into effect in respect of deaths occurring on or after 6 October 2002, but also to provide that regulations may postpone the change to a later date. It clarifies the eligibility criteria for the Inherited SERPS Scheme to ensure that people who were denied the opportunity of considering taking relevant steps to protect their spouse's position because they received incorrect or incomplete information, can seek redress. It also allows for the regulations to make further specific provisions relating to the manner in which decisions under the scheme may be taken.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

429. *Subsections (1) and (2)* change the implementation date for the 50% reduction in SERPS from 6 April 2000 to 6 October 2002 where entitlement to additional pension in SERPS arises in Widowed Mother's Allowance, Widowed Parent's Allowance and Category B retirement pension, including where this is increased because of deferred retirement.
430. *Subsection (3)* provides that regulations may defer the implementation date of 6 October 2002 to a later date.
431. *Subsection (4)* allows for the regulations to provide that a person can be eligible for the scheme if, as a consequence of receiving incorrect or incomplete information, he did not consider either taking a step to safeguard the future financial position of his spouse that he might have taken, or refraining from taking such a step which he took but might not have taken had he received the right information.
432. *Subsection (5)* allows for the regulations to prescribe matters that may be relied on, or presumptions that may be made, in the making of decisions under the preserved rights scheme.

Other provisions

Section 40: Home responsibilities protection

433. **Section 40** inserts sub-paragraph (7A) into paragraph 5 of Schedule 3 to the Contributions and Benefits Act. It provides for regulations to be made for those precluded from regular employment by responsibilities at home to supply the necessary information for this to be taken into account when assessing their pension entitlement. This happens automatically for a person who receives Child Benefit for a child under 16 in any year in which they do not meet the Qualifying Earnings Factor. Those meeting the prescribed conditions for caring for a sick or disabled person have to supply the necessary information. Currently such notifications can be made at any time up to state pension age, and awards can be backdated to 1978.
434. The Government intends to bring in regulations which will require notifications to be made by the end of the third year following the year in which the qualifying caring activity took place. This requirement will only apply to qualifying periods following the introduction of State Second Pension. It is to ensure that entitlement to State Second Pension on the grounds of caring activity is established and recorded timeously. It will also determine any years to be excluded from the requisite number of years in the calculation of the basic Retirement Pension.

Section 41: Sharing of state scheme rights

435. Although the value of a pension can currently be taken into account by the courts in reaching a financial settlement on divorce or nullity of marriage, the pension itself can only be offset against other assets or "earmarked", ie the court can order part of a pension to be paid direct to a former spouse by a pension scheme when it comes into payment. "Earmarking" has been little used because it does not facilitate a clean break and the former spouse loses her or his intended retirement income if the ex-spouse whose pension has been "earmarked" dies first.
436. By contrast, pension sharing provides a former spouse with a pension in her own right, security of income throughout retirement, and a clean break. It will also enable more couples to reach a fair settlement where the pension to be shared is the most significant asset in the marriage.
437. However, pension sharing will not be compulsory: it will be an additional option for couples to consider alongside offsetting and earmarking and the Government expects that most couples will, as now, continue to offset their pension rights against other assets.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

438. The Government consulted on a draft Pension Sharing Bill in June 1998. The Social Security Select Committee conducted a detailed inquiry into the draft Bill. Many of the recommendations in the Committee's Report, published in October 1998, were subsequently adopted by the Government when legislation on pension sharing was included in the Welfare Reform and Pensions Act 1999.
439. The pension sharing provisions in the Act broadly provide for all second-tier pensions to be shared ie private and occupational pensions and SERPS (and, in due course, the State Second Pension).
440. **Section 41** contains sub-delegation powers to enable the Secretary of State to set out in regulations how the cash equivalent of SERPS rights is to be calculated. The regulations will give the Secretary of State the power to require that the cash equivalent shall be calculated and verified in such a manner as may be approved by the Government Actuary or by an actuary authorised by the Government Actuary to act on his behalf for that purpose. The Secretary of State will also have the power to require cash equivalents to be calculated and verified by adopting methods and making assumptions which are consistent with guidance published by the Institute of Actuaries and Faculty of Actuaries.
441. *Subsection (1)* substitutes Section 49(4) of the Welfare Reform and Pensions Act 1999 to include the sub-delegation power. For consistency, *subsections (2) - (4)* of this section make equivalent changes to related provisions in sections 45B, 55A and 55B of the Social Security Contributions and Benefits Act 1992. Section 45B of that Act is concerned with the reduction in the additional pension of the member whose pension has been shared; section 55A deals with the calculation of the additional pension acquired by the former spouse who was the beneficiary of the pension share (who receives a "shared additional pension"); and section 55B makes provision for the reduction of a shared additional pension which has itself been the subject of a pension sharing order or agreement.
442. Similar provisions are already in place for other pension sharing provisions in the Welfare Reform and Pensions Act 1999 where a valuation of non-state pension rights is needed.

Section 42: Disclosure of state pension information

443. The Government indicated in the Pensions Green Paper (*A new contract for welfare: PARTNERSHIP IN PENSIONS* Cm 4179 December 1998) that it wished to work with employers and pension providers to develop integrated personal pension statements, combining state and private pension rights. The Government's aim is to include details of current and projected state pension rights in annual pension or financial statements provided by employers and pension providers. The intention is to provide individuals with better information on the sort of future income they might expect to help them plan for their retirement.
444. In order to comply with existing legal requirements, the Department of Social Security can only pass state pension details to employers and pension providers with the express consent of employees and scheme members.
445. Employers and pension scheme providers have expressed concern that continued adherence to an express consent process would lead to a low take-up by individuals and would impose a significant administrative burden which would discourage them from providing combined forecasts.
446. The measures in the Act are intended to address these concerns and the Government's wish to ensure that individual state pension details can be made available to other third parties such as organisations which provide financial planning services if an individual wishes this to be done.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

447. *Section 42* provides that state pension information can be passed to employers and pension scheme providers unless individuals have indicated that they do not want such information disclosed by “opting-out”. The intention is to improve significantly the take-up of combined pension statements by employees and reduce substantially the administrative burdens on employers and pension providers.
448. It also provides that state pension details can be passed to third parties such as organisations which provide financial information services to help individuals identify the most appropriate pension or other saving arrangements provided their express consent has been obtained. In due course, this will enable individuals to access their state pension details electronically through the comparative financial databases which are currently being developed.
449. *Subsection (1)* provides that the section is to apply to state pension information held by the Secretary of State or by those providing services to the Secretary of State which are concerned with his social security functions. State pension information is defined in *subsection (7)*.
450. *Subsection (2)* provides that regulations may allow the Secretary of State to disclose or permit the disclosure of state pension information to those specified in *subsection (3)* who have made an application for disclosure in the manner prescribed in regulations and in accordance with prescribed conditions.
451. *Subsection (3)* sets out the persons who can receive state pension information. These are the trustees and managers of occupational or personal pension schemes, employers, and appropriate third parties engaged in the provision of financial information services.
452. *Subsection (4)* sets out some of the conditions which must be included in regulations permitting the disclosure of state pension information. These conditions are that appropriate third parties engaged in the provision of financial information services obtain the consent to the disclosure of his state pension information by the individual concerned and in the case of the other persons referred to in subsection (3) (the trustees and managers of occupational or personal pension schemes and employers) that either the condition as to consent or the alternative condition referred in *subsection (5)* applies.
453. *Subsection (5)* sets out the alternative condition referred to in subsection (4) in relation to the trustees and managers of occupational or personal pension schemes and employers. It provides that steps are to be taken to ensure that individuals are made aware of their right to opt out of the procedures for the provision of state pension details. It also provides prescribed minimum times to ensure that individuals have adequate time to consider what is intended, and opt out if they wish to do so.
454. *Subsection (6)* provides that for the purpose of making an application for state pension information, the applicant may disclose to the Secretary of State such information relating to an individual as is prescribed in regulations.
455. *Subsection (7)* sets out what constitutes state pension information relating to an individual for the purposes of the section – namely, date of birth and age at which state pension age is reached; amounts of basic and additional state pension entitlement already accrued; and projected basic and additional state pension entitlement.
456. *Subsection (8)* provides that regulations made under this section shall be subject to the negative Parliamentary procedure.
457. *Subsection (9)* provides that section 189(4) - (6) of the Social Security Administration Act 1992 apply to regulations made under this section. The application of section 189(4) - (6) is in accordance with the general rules governing subordinate legislation made under powers in that Act and will thereby enable the regulations made under the section to, for example, make different provision for different groups covered by the regulations and to make provision for incidental, supplemental and consequential matters relating to the disclosure of state pension information.

458. *Subsection (10)* provides that information can be supplied to the Secretary of State by the Inland Revenue in relation to functions which are conferred on him by regulations under this section.
459. *Subsection (11)* provides definitions of terms used in this section.

Chapter II: Occupational and Personal Pension Schemes

Selection of trustees and of directors of corporate trustees

460. **Sections 43 to 46** amend sections 16, 18 and 21 of the Pensions Act 1995* (member-nominated trustees and directors); they further provide that sections 17, 19 and 20 shall cease to have effect and introduce a new section 18A. Under the current legislation, trustees are required to implement arrangements for at least one third of the scheme trustees to be member-nominated trustees, or where the trustee is a company, for one-third of the directors to be member-nominated directors. However, the employer has the right to implement alternative arrangements that do not include any member trustees, or directors, provided the members agree. Under the new provisions, all schemes will be required to have at least one third member-nominated trustees or directors, but there will be two ways to determine the nomination and selection arrangements: a flexible nomination and selection procedure laid out in regulations, or, alternatively, by the employer proposing nomination and selection arrangements which are subsequently approved by scheme members.
461. **Section 16**, as amended, will require trustees to ensure that arrangements are put in place for at least one-third of the trustees to be nominated and selected by scheme members. There will be two routes under which member-nominated trustees can be nominated and selected: a statutory route, the nature of which will be determined by reference to section 16 and regulations under section 16, where the trustees are responsible for the precise details of the arrangements and for their implementation; and an alternative route under section 18A (see section 45) where arrangements for the nomination and selection of the scheme trustees are proposed by the employer and implemented by the trustees. Section 16 and regulations made under section 16(9) will apply to both routes (but section 18A(3) allows provision different from that made by regulations under section 16(9) for the scheme specific route). Equivalent provisions apply in relation to trustee companies.

Section 43: Member-nominated trustees

462. This section amends section 16 to provide a revised statutory framework for appointing member-nominated trustees.
463. The revised provisions make no distinction between “arrangements” and “appropriate rules” so *subsections (2) to (4)* remove references to “appropriate rules” from section 16 of the Pensions Act.
464. *Subsection (5)* incorporates the substance of section 20(3) of the Pensions Act into section 16. Member-nominated trustees must serve a term of office of between three and six years and be eligible for reselection. The existing section 16(6), which provides for the determination of the minimum number of member-nominated trustees, and for this number to be exceeded only if the employer agrees, remains unchanged.
465. *Subsection (6)* incorporates the substance of section 20(5) of the Pensions Act by inserting a new subsection (6A) into section 16. An employer may require that a non-member can only stand for nomination as a member-nominated trustee if the employer approves.
466. **Section 16(7)**, which provides for all member-nominated trustees to have the same powers remains unchanged.

467. *Subsection (7)* amends section 16(8) to enable arrangements under section 16 to provide for a trustee who changes category of membership (for example, from active to deferred) to cease to be a trustee. The requirement for a member-nominated trustee to stand down if they cease to be a member remains unchanged.
468. *Subsection (8)* introduces two new subsections to section 16. The new section 16(9) is a regulation-making power that will be used to prescribe what is meant by “nominated and selected by members”, and to further stipulate details of the arrangements the trustees are required to make for nominating and selecting member-nominated trustees. The intention is to give trustees flexibility to adopt arrangements that best suit the circumstances of the scheme, for example by dividing the membership into separate constituencies. Regulations will provide that all active and pensioner members must be given the opportunity to make nominations. The new section 16(10) incorporates the provisions of section 17(4) of the Pensions Act into section 16. As now, the regulations will provide for exemptions for certain types of scheme. Schemes that are currently exempt will continue to be so.
469. *Subsection (9)* repeals section 17 of the Pensions Act (employer’s right to propose alternative arrangements).

Section 44: Corporate trustees

470. This section makes changes to section 18 of the Pensions Act for member-nominated directors in schemes where the trustee is a company similar to the changes in section 16 for individual trustees.
471. In addition, *subsection (2)(a)* extends the scope of section 18 to include all schemes where there is a trustee company and there is no trustee of the scheme who is not a company.
472. *Subsection (8)* modifies section 18(8) to ensure that the membership of different schemes will be aggregated where the trustee company is trustee for more than one scheme, unless the trustee company decides otherwise.
473. *Subsection (10)* repeals section 19 and 20 of the Pensions Act (employer’s right to propose alternative arrangements and meaning of appropriate rules).

Section 45: Employer's proposals for selection of trustees or directors

474. This section introduces a new section 18A. The new section makes provision for the employer to propose arrangements for nominating and selecting trustees of the scheme or directors of a corporate trustee of the scheme.

New section 18A: Employer’s proposals for selection of trustees or directors

475. *New section 18A(1)(a)* gives employers the right to propose arrangements for nominating and selecting trustees. *Subsection (1)(b)* ensures the arrangements provide for at least one third of the trustees to be member-nominated trustees, and that the other requirements of section 16(3) to (7) apply. *Subsection (1)(d)* requires that the proposal is approved by scheme members. *Subsection (1)(d)* also incorporates the regulation-making power similar to that contained in section 21(7) which will enable a statutory consultation procedure for seeking member approval for the proposal to be prescribed. This will be largely the same as the current procedure that is provided in Schedule 1 to the Occupational Pension Schemes (Member-nominated Trustees and Directors) Regulations 1996, although the procedure may be tightened to reduce any opportunity for abuse. Regulations made under *subsection (1)(e)* will impose additional conditions on employers, for example to give notice to the trustees of the intention to propose arrangements. *Section 18A(2)* makes the equivalent provision for trustee companies. Once approved, the trustees are charged with implementing the arrangements.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

476. *New section 18A(3)* allows regulations governing arrangements under an employer's proposal to provide for different nomination and selection arrangements from those made under the statutory route. For example, the employer will be able to propose that nominations for trustees are made by organisations representing members (such as Trades Unions and pensioner organisations) as well as members themselves.
477. *New section 18A(4)(a)* provides the power to make regulations governing the manner and time in which trustees must implement approved arrangements. This is similar to the current power under section 21(4)(a). Trustees will be given six months following approval to ensure that the arrangements are made, and trustees appointed. Regulations under *subsection 18A(4)(b)* will determine when approval of section 18A arrangements cease to have effect. As now, approval will last for six years. They will also determine what happens when approval of arrangements ceases to have effect without the existing arrangements having been re-approved or fresh arrangements approved.
478. *New section 18A(5)* enables regulations to be made about approval of arrangements for the purpose of section 18A. Regulations under *subsection 18A(5)(a)* will give the Occupational Pensions Regulatory Authority (Opra) the discretion to treat proposals as approved in certain circumstances where there is a breach of the requirements of the approval process. Regulations under *subsection 18A(5)(b)* will provide for proposals to be treated as approved by persons who do not object. The existing section 21(8)(b) allows the approval process to operate in this way. Regulations will, as now, provide for proposals to be approved if not more than 10% of those consulted object.
479. *New section 18A(6)* permits nominations for a member-nominated trustee or director to be made by an organisation of a prescribed description that represents the interests of members of the scheme. It also permits nominations by such organisations to be the only nominations. It is intended that regulations will prescribe that recognised Trades Unions and pensioner organisations, for example, can make such nominations.
480. *New section 18A(7)* disapplies the section as far as it applies to member-nominated trustees in cases where all the trustees comprise all the members, or where there is only a corporate trustee (or trustees).
481. *New section 18A(8)* is a regulation-making power to disapply the section for schemes of a prescribed description. This provision is required in addition to the exemptions from sections 16 and 18 because those sections impose a mandatory requirement on all trustees, whereas this section only applies if the employer chooses to propose scheme-specific arrangements. In practice, section 18A will be disapplied for the same classes of scheme that are exempt from sections 16 and 18.
482. *Subsections (2) and (3)* of section 45 are consequential amendments to, respectively, sections 68(2) and 117(2)(c) of the Pensions Act.

Section 46: Non-compliance in relation to arrangements or proposals

483. This section contains various consequential amendments to section 21 of the Pensions Act 1995.
484. All references to appropriate rules are removed, as are references to sections 17 and 19 (which are repealed).
485. A new subsection (2A) has been added to section 21 to enable Opra to impose sanctions on an employer who fails to carry out the statutory consultation procedure properly. The equivalent provision is currently in sections 17(5) and 19(5). Opra already has the power under section 21 to impose sanctions on trustees who fail (without reasonable cause, in the case of individual trustees) to comply with the requirements. Opra can prohibit a trustee, or impose a financial penalty.

Winding-up of schemes

486. These measures aim to speed the process of winding-up by introducing accountability into the winding-up process and by giving Opra a more active role in the process than at present. A consultation paper setting out proposals for speeding up the winding-up process was issued on 27 May 1999. The comments received were taken into account.
487. Scheme rules or the trust deed setting up the scheme set out the events which may trigger the cessation and winding-up of an occupational pension scheme. These generally are the employer's insolvency, notice from the employer that he no longer wishes to sponsor the scheme, or failure by the employer to pay contributions within a specified period. It is the trustees or managers who are required to carry out the winding-up.
488. Winding-up can be a time-consuming task, sometimes taking many years, particularly where the scheme records have not been well kept. During this time members may feel particularly vulnerable.
489. The measures aim to ensure that a trustee is in place following the insolvency of the employer so that decisions can be made about the future of the scheme. Where winding-up has started, trustees or managers will be required to make reports to Opra if winding-up is not completed within a specified period of time and Opra will be able to direct action to speed the process along. Opra will also be able to modify scheme rules where they need to be changed to allow winding-up to proceed.

Section 47: Information to be given to the Authority

490. This section inserts three new sections into the Pensions Act 1995. It also amends section 118 of that Act to allow these new sections to be modified by regulations to impose the duties on other people (see *subsection (4)*). Sections 26A, 26B and 26C set out circumstances in which trustees or managers of schemes or scheme administrators are required to notify Opra during the insolvency of the employer.
491. *Subsection (1)* amends references in section 22 of the Pensions Act 1995 to include the new inserted section 26A. *Subsection (2)* inserts sections 26A, 26B and 26C.

New section 26A: Information to be given to the Authority in a s. 22 case

492. New section 26A sets out the circumstances in which the trustees or persons involved in the administration of a scheme must make a report to Opra, where the scheme has to have an independent trustee during the insolvency of the employer (sections 22 and 23 of the Pensions Act 1995).
493. *New section 26A(1)* requires the trustees of a scheme, where the scheme has to have an independent person in place as trustee during the insolvency of the employer, to notify Opra that there appears to be no independent trustee unless they have been told by the insolvency practitioner or official receiver that he is satisfied that one of them satisfies the independence test, or they have reasonable grounds to believe that the practitioner or official receiver is satisfied that one of them does so. The notification must be made as soon as reasonably practicable.
494. *New section 26A(2)* places on those involved with the administration of the scheme a requirement similar to that in subsection (1) where there are no trustees.
495. *New section 26A(3)* sets out the circumstances where no notification to Opra is required. These are where it appears that the insolvency practitioner or official receiver intends to appoint an independent trustee and that he will do so within a specified period.
496. *New section 26A(4)* removes the requirement for a report to be made under subsection (2) by those involved with the administration of the scheme where it appears that Opra are already aware that the scheme has no trustees.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

497. *New section 26A(5)* ensures that the requirement in subsection (1) covers later situations where the practitioner or receiver is no longer satisfied that the independence test is met, even though he may previously have told the trustees that it was met.
498. *New section 26A(6)* defines whether the practitioner or receiver is satisfied as to a person's independent status by reference to the independence test in section 23.
499. *New section 26A(7)* provides that section 10 of the Pensions Act 1995 applies to trustees who fail to take reasonable steps to ensure compliance with the requirements to notify Opra regarding the independent trustee. Section 10 allows Opra to impose financial penalties.
500. *New section 26A(8)* provides that section 10 of the Pensions Act 1995 applies to anyone who fails to comply with the subsection (2) requirement to notify Opra that there are no trustees.

New section 26B: Information to be given in cases where s. 22 disapplied

501. The new section 26B sets out the circumstances in which reports must be made to Opra on the insolvency of the employer where the scheme is not required to have an independent trustee (section 22 of the Pensions Act 1995).
502. *New section 26B(1)* requires the persons involved (if any) in the administration of a trust scheme, where there is no requirement for an independent trustee, to notify Opra where the employer of the scheme is the sole trustee and he becomes insolvent, unless they have an assurance from the employer. For multi-employer schemes this will apply only where *all* the employers are insolvent.
503. *New section 26B(2)* provides that for the purposes of this section an employer's assurance has been received if the employer has told the persons involved in the administration of the scheme that there is no reason why the employer should not continue to act as a trustee of the scheme, he does not withdraw that statement, and the trustees of the scheme have not changed since the employer has made that statement.
504. *New section 26B(3)* removes the requirement for a report to be made under subsection (2) where it appears that Opra are already aware of the situation or where the prescribed period has not elapsed, or at any other time which is prescribed.
505. *New section 26B(4)* provides that section 10 of the Pensions Act 1995 applies to anyone who fails to comply with the requirements in this section.

New section 26C: Construction of ss. 26A and 26B

506. The new section 26C sets out further details relating to the requirements in new sections 26A and 26B.
507. *New section 26C(1)* sets out who is considered to be involved in the administration of the scheme for the purpose of the requirements in sections 26A and 26B. For example, those persons who are involved in the administration of the scheme in their professional capacity, such as actuaries and auditor, the fund manager, the employer of the scheme, their employees, agents or contractors who carry out administration tasks, are not considered to be involved in the administration of the scheme.
508. *New section 26C(2)* provides that regulations may add to the list of those who are not considered to be involved in the administration of the scheme.
509. *New section 26C(3)* provides that wherever there is a requirement in section 26A or 26B to do something "as soon as reasonably practicable", that may be replaced by time limits specified in regulations.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

510. *Subsection (3)* of section 46 makes a consequential amendment to section 118(2) of the Pensions Act 1995 to allow for regulations to exempt schemes from the new requirements in sections 26A to 26C.
511. *Subsection (4)* inserts a new section 118(3) into that Act to allow for regulations to modify sections 26A and 26B so as to impose the notification duty on persons other than trustees and other than those involved in the administration of the scheme.
512. *Subsection (5)* amends the provisions in the Pension Schemes Act 1993 so that regulations may prescribe who is to be treated as a trustee for the purposes of sections 22 to 26 of the Pensions Act 1995 and the new sections inserted by this section.

Section 48: Modification of scheme to secure winding-up

513. This section inserts a new section 71A into the Pensions Act. This is to extend Opra's existing powers to modify scheme rules, to enable winding-up to continue.

New section 71A: Modification by Authority to secure winding-up

514. *New section 71A(1)* enables Opra to modify scheme rules to ensure that the scheme is properly wound up but only where the scheme is being wound up and the employer is insolvent.
515. *New section 71A(2)* only allows Opra to modify scheme rules where they have been asked by the trustees or managers to do so. The request cannot be made in advance. As with the modification itself, the request may be made only while the scheme is being wound up and the employer is insolvent.
516. *New section 71A(3)* requires that unless regulations provide otherwise, the application to Opra must be in writing.
517. *New section 71A(4)* allows regulations to set out the detail of the information which is contained in, or documents which must accompany, the application. The regulations may also provide for certain people to be told about the request for a modification; what the notification must contain; for the time limit in which they will have to contact Opra to make representations; and how Opra must deal with the request for modification.
518. *New section 71A(5)* limits Opra's powers to modify scheme rules to the minimum necessary to enable the scheme to be wound up properly and for any modification to be restricted to those which would not have a significant adverse effect on accrued rights or benefit entitlements under the scheme.
519. *New section 71A(6)* makes it clear that any modification made by Opra will be as effective in law as if it had been made under scheme rules and without any requirement to obtain consent before any modification can be made.
520. *New section 71A(7)* allows regulations to exempt certain types of schemes in particular circumstances or for the requirements in the section to apply with modifications in particular circumstances.
521. *New section 71A(8)* sets out the circumstances in which an employer is to be treated as insolvent for the purpose of this section. The circumstances are those which trigger the application of section 22 of the Pensions Act 1995 (or would trigger it if that section applied to the scheme) ie. where an insolvency practitioner or official receiver takes up office. These terms are defined in section 22(3) by reference to the Insolvency Act 1986.
522. *New section 71A(9)* excludes public service pension schemes from this section.

Section 49: Reports about winding-up

523. This section introduces a number of provisions including a requirement for trustees or managers to make reports to Opra, a definition of when a scheme begins to wind up and a requirement for records to be kept of a decision to wind up a scheme.

New section 72A: Reports to Authority about winding-up

524. *New section 72A(1)* introduces a requirement for trustees or managers of a scheme which began to wind up after a specified date to make regular reports to Opra about the progress of winding-up.
525. *New section 72A(2)* allows regulations to specify when the first report should be made to Opra. That period will be within a specified period of the date on which winding-up began, or the date on which the winding-up was brought within the section (if later).
526. *New section 72A (3)* sets out the timing of subsequent reports to Opra which must be made at no more than twelve-monthly intervals after the date of the previous report. If the last report was made late, the next one must still be made no later than twelve months after the last one was due.
527. *New section 72A(4)* allows Opra to extend the deadline for making any follow-up reports. Opra can only extend the interval by up to twelve months (under *new section 72A(5)*), and can only grant the extension within the time limit, not after it. There is no similar power to extend time for the first report.
528. *New section 72A(6)* allows more than one extension of the deadline for the follow-up report, but the total extensions for that report must not exceed the twelve-month limit mentioned in subsection (5).
529. *New section 72A(7)* provides that regulations may make requirements as to the reports to Opra, including how the reports should be made, and what they must contain.
530. *New section 72A(8)* provides that regulations may provide for circumstances in which reports need not be made to Opra, and may vary the twelve-monthly period in which further reports must be made. It also provides that regulations may alter the periods in which follow-up reports must be made, and the period over which Opra can extend the time limit for those reports.
531. *New section 72A(9)* applies sections 3 and 10 of the Pensions Act 1995, so that Opra may prohibit from being a trustee someone who fails to take reasonable steps to ensure compliance, and may impose a financial penalty on a trustee or manager who fails to comply with the requirements.
532. *Subsection (2)* of section 49 inserts into section 124 of the Pensions Act 1995 a definition of when winding-up begins for the purposes of Part I of that Act.
533. *Subsection (3)* adds to the requirements in section 49 regarding records, by inserting a new section 49A. The new section 49A requires trustees or managers of an occupational pension scheme to keep written records of their decision to wind up the scheme, of decisions about when steps should start to be taken for the purposes of winding-up the scheme, and of any decision to defer winding-up. It provides that regulations may extend the requirements to any person, who although not a trustee or manager, can nevertheless make a decision to wind the scheme up. It also allows regulations to make requirements about the form and content of the record. Sanctions under sections 3 and 10 of the 1995 Act can be imposed for non-compliance. Where regulations extend the requirements to other persons, sanctions may be provided for in regulations (under section 10(3) of that Act).

Section 50: Directions for facilitating winding-up

534. This section inserts new section 72B which allows Opra to direct that specific information should be provided, or action taken within a prescribed timescale, where a scheme has begun winding-up. It also inserts new section 72C which imposes sanctions on those not complying with Opra's directions.

New section 72B: Directions by Authority for facilitating winding-up

535. *New section 72B(1)* provides that where a scheme has begun winding-up, Opra will have power to give directions if they feel it is appropriate to do so on any of the grounds in subsection (2).
536. *New section 72B(2)* sets out the grounds Opra may take into account. It also allows regulations to prescribe further circumstances in which Opra may give directions.
537. *New section 72B(3)* limits Opra's powers to direct to where the first report has been made, or should have been made, to Opra under new section 72A, unless regulations prescribe otherwise.
538. *New section 72B(4)* allows regulations to provide that in certain circumstances Opra may only give directions when asked to do so by the trustees or managers of schemes.
539. *New section 72B(5)* provides that a direction from Opra must be given in writing, and can be given to trustees or managers, persons involved in the administration of the scheme or persons prescribed in regulations.
540. *New section 72B(6)* sets out requirements that can be imposed by a direction. They include providing information to the trustees, or managers, or persons involved in the administration of the scheme, or persons prescribed in regulations (which may include Opra), and requiring other steps to be taken.
541. *New section 72B(7)* allows Opra to extend the time limit for persons to comply with the direction, on more than one occasion if necessary, where Opra consider it appropriate to do so.
542. *New section 72B(8)* allows for regulations to limit what Opra may require in their directions and sets out requirements as to when and how applications must be made for an extension to the period for complying with the direction.
543. *New section 72B(9)* sets out who is considered to be involved in the administration of the scheme for the purposes of these requirements. It is almost identical to new section 26C(1) (see section 47).
544. *New section 72B(10)* provides that regulations may add to the list of those who are not considered to be involved in the administration of the scheme. It is identical to new section 26C(2) (see section 47).

New section 72C: duty to comply with directions under 72B

545. *New section 72C(2)* provides that section 3 of the Pensions Act 1995 (Opra may prohibit a person from being a trustee) applies to any trustee who fails to take reasonable steps to ensure compliance, and has no reasonable excuse.
546. *New section 72C(3)* applies section 10 of the 1995 Act (financial penalties) to any trustee or manager who fails to take reasonable steps to ensure compliance, and has no reasonable excuse.
547. *New section 72C(4)* applies section 10 to anyone else who fails to comply with a direction, and has no reasonable excuse.
548. *New section 72C(5)* provides that any duty of non-disclosure is not a reasonable excuse for failure to supply information in accordance with directions from Opra. The statutory

duty to comply with directions will mean that a person complying with a direction will not be in breach of the non-disclosure duty.

Other provisions

Section 51: Restriction on index-linking where annuity tied to investments

549. Rights which accrue from 5 April 1988 in respect of Guaranteed Minimum Pension and protected rights have to be indexed by RPI, capped at 3%. If inflation is above 3% SERPS is fully indexed.
550. All rights accrued from 6 April 1997 in salary-related and money purchase occupational schemes have to be indexed at RPI, capped at 5%. Protected rights in appropriate personal pensions are also subject to the same level of indexation. Additional voluntary contributions and personal pensions are not subject to an indexation requirement.
551. The Department of Social Security issued a public consultation document on 31 January 2000 seeking views on whether greater flexibility should be allowed so that members of money purchase schemes could choose to buy either an investment-linked annuity or a traditional index-linked annuity to satisfy the indexation requirements. The document was circulated widely within the pensions industry, employers and was available on the internet for other interested groups and members of the public.
552. The consultation ended on 29 February. 40 responses were received, of which 34 supported the proposal for change and generally welcomed the Government's willingness to recognise innovative annuity products which are being developed by annuity providers.
553. Investment linked-annuities enable the annuitant to benefit from growth in a range of underlying investments after retirement, though this goes hand in hand with a risk of possible falls in pension income if investment performance is poor. Although an investment-linked annuity will not guarantee to produce an increase in the pension each year, such annuities have performed better overall than the traditional index-linked annuity in recent years.
554. The measure in the Act allows money purchase occupational pension schemes to offer their members the option of using the non-protected rights element of their accumulated pension fund accrued from April 1997 to buy an investment-linked annuity instead of an index-linked annuity. They would continue to be able to choose a traditional index-linked annuity if they wished. The section also provides for a power to prescribe the conditions which investment-based annuity products must satisfy (sub-paragraph (1) (c)), although it is not envisaged that this power would be used in the short term. Regulations may be considered necessary in the future, however, if investment-based products were to be designed in such a way that they provided a high starting income with little prospect for future increases.
555. This section sets out the circumstances when an investment-linked annuity can be used to satisfy the indexation requirements which are currently contained in section 51(2) of the Pensions Act 1995.
556. *Subsection (1)* provides for a new section 51A to the Pensions Act 1995 to supersede the requirement to increase a pension in payment annually by the published RPI figure, capped at 5%.
557. *Subsection (2)* provides for the insertion of a new section 51A in the Pensions Act 1995.

New section 51A: Restriction on increase where annuity tied to investments

558. *New section 51A(1)* provides that an annual increase under section 51 is not required in respect of the element of money purchase scheme funds as described in *sub-paragraphs 1(a), (b) and (c)*.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

Sub-paragraph 1(a) stipulates that the alternative pension is payable from an investment-linked annuity.

Sub-paragraph 1(b) prevents the inclusion of benefits in respect of protected rights.

Sub-paragraph 1(c) provides that regulations may prescribe conditions to be satisfied for investment-linked annuity products.

559. *New section 51A(2)* provides for the option of an investment-linked annuity whether provided under an annuity contract or payable from the funds of money purchase schemes.
560. *New section 51A(3)* provides for the new rule to apply to increases after the date appointed for the new section 51A to come into force.

Section 52: Information for members of schemes

561. The Government intends to introduce amendments to existing regulations that require annual benefit statements to be sent to members of occupational and personal pension schemes with money purchase benefits.
562. In addition to the existing information about contributions paid and the current value of the “pot”, they will be required to include an illustration of the likely value of the “pot” at retirement age, and the benefits it might provide, expressed in today’s prices.
563. This section makes changes to section 113 of the Pension Schemes Act 1993.
564. *Subsection (1)* adds a new sub-paragraph (ca) to section 113(1) of the Pension Schemes Act to permit regulations to require an annual benefit statement in a money purchase scheme to include an illustration of the future benefits that might become payable under the scheme.
565. *Subsection (2)* adds a new subsection (3A) to section 113 of the Pension Schemes Act to allow the basis for calculating any forecast of future benefits to be calculated by reference to guidance notes. This will allow the Secretary of State for Social Security to delegate responsibility for deciding the method of calculation to a suitable professional body such as the Institute and Faculty of Actuaries.
566. Subsection (2) also inserts a new subsection (3B) into section 113 to provide for regulations made under that section to allow Opra to extend time limits for compliance with requirements set out in regulations, in relation to cases where schemes are being wound up.

Section 53: Jurisdiction of the Pensions Ombudsman

567. The Social Security Act 1990 created the office of Pensions Ombudsman by inserting new provisions in the Social Security Act 1975. The functions of the Pensions Ombudsman are now contained in sections 145 to 152 of the Pension Schemes Act 1993. His jurisdiction was extended under amendments to that Act introduced by section 157 of the Pensions Act 1995. The Pensions Ombudsman can investigate complaints of injustice caused by maladministration and disputes of fact and law brought by members of occupational and personal pension schemes, and their spouses and dependants, against trustees, managers or employers of those schemes. Complaints can also be brought by the same people against the administrators of schemes. The Ombudsman is also able to investigate complaints and disputes from employers against trustees or managers in relation to the same scheme and vice versa for complaints (but not disputes), and investigate complaints from trustees or managers of one scheme against trustees or managers of another.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

568. This section extends the Pensions Ombudsman's jurisdiction by making amendments to section 146 of the Pension Schemes Act 1993. This section will allow a greater range of people to refer complaints or disputes to the Pensions Ombudsman.
569. *Subsection (1)* indicates that this section makes amendments to section 146 of the Pensions Schemes Act 1993.
570. *Subsection (2)* extends the application of section 146(1) to another type of complaint which the Pensions Ombudsman can investigate. The new section 146(1)(ba) allows the Pensions Ombudsman to investigate complaints made by the independent trustee (the trustee who is required under the Pensions Act 1995 to be in place when the sponsoring employer of a final salary occupational scheme is insolvent) alleging maladministration by the other trustees, or the former trustees, of a scheme. This will enable an independent trustee, if he believes that the actions of other trustees, or former trustees, constitute maladministration which would have a detrimental effect on the scheme members, to refer the matter to the Pensions Ombudsman.
571. *Subsection (3)* inserts into section 146(1), by way of new subsections (1)(e) to (g), additional types of disputes or complaints that the Pensions Ombudsman can investigate.

New section 146(1)(e) allows trustees of the same scheme to refer disputes between themselves to the Pensions Ombudsman. This will include "friendly" disputes where the trustees are seeking a direction as to how they should act.

New section 146(1)(f) allows the Pensions Ombudsman to investigate a dispute between the independent trustee and other trustees, or former trustees, of the scheme. This will mean that an independent trustee, who has concerns about the actions of the trustees or former trustees prior to his appointment, will be able to refer the matter to the Pensions Ombudsman. At present, the independent trustee and the other trustees of the scheme are barred from referring such matters to the Pensions Ombudsman.

New section 146(1)(g) allows a sole trustee to raise a question with the Pensions Ombudsman about the carrying out of his functions. This will enable sole trustees to obtain a direction from the Pensions Ombudsman regarding how they should act, in the same way as trustees in "friendly" disputes can.

572. *Subsection (4)* inserts new subsections (1A) and (1B) into section 146.
573. *New section 146(1A)* prevents the Pensions Ombudsman from investigating the complaints or disputes listed in section 146(1)(c) to (g) unless they are referred to him by particular people, as provided for in the new subsection (1A)(a) to (e).

New section 146(1A)(a) reproduces the effect of existing section 146(1)(c). It prevents the Pensions Ombudsman from investigating a dispute between a scheme member or another beneficiary of the scheme and the trustees or employer unless it is referred to him by the member or beneficiary. This prevents employers or trustees referring disputes with members to the Pensions Ombudsman.

New section 146(1A)(b) prevents the Pensions Ombudsman from investigating a dispute between employers and trustees or the trustees of different schemes unless the dispute is referred to him by one of the employers or the trustees. This removes the bar on trustees referring disputes with the scheme's sponsoring employer to the Pensions Ombudsman, which is the unintentional effect of the current wording of section 146(d).

New section 146(1A)(c) limits the Pensions Ombudsman to only investigating a dispute between the trustees of the same scheme in circumstances where half or more of the trustee board has agreed to refer it to him. Having half or more of the trustee board agree to refer the matter will prevent a minority in the board delaying the actions of the majority. This will also allow trustees to seek clarification of scheme rules without

having to go to court. This will be particularly useful when a scheme is winding up, as it will reduce costs on the scheme at a time when it needs to conserve its resources.

New section 146(1A)(d) allows only the independent trustee of a scheme subject to insolvency procedures to refer a dispute to the Pensions Ombudsman and not the other trustees of the scheme.

New section 146(1A)(e) ensures that the Pensions Ombudsman will not accept a question referred to him about the functions of the sole trustee unless it is referred to him by that sole trustee.

New section 146(1B) ensures that the Pensions Ombudsman can treat a question referred to him by a sole trustee as if it were a reference to him, or determination by him, of a dispute.

574. *Subsection (5)* will allow members of a personal pension scheme to make complaints about actions of the employer. At present, if an employer is involved in the running of a personal pension scheme, particularly a group personal pension scheme, members of the scheme cannot refer complaints about the employer's actions to the Pensions Ombudsman.
575. *Subsection (6)* makes replacement provision in respect of one of the circumstances where the Pensions Ombudsman cannot investigate. At present, if a case has gone to an employment tribunal or a court, even in error, the issue cannot then be referred to the Pensions Ombudsman. The new provision will allow the Pensions Ombudsman to accept a complaint or a dispute for investigation where the subject matter has previously gone before an employment tribunal or a court, and the case has been discontinued (unless this was on the basis of a settlement or compromise). *Subsection (10)* ensures that the changes made by subsection (6) to the Pensions Ombudsman's jurisdiction will not apply to any cases that were referred to him before the provisions come into force.
576. *Subsection (7)* provides that a person entitled to a pension credit as against the trustees or managers of a scheme can be considered an actual or potential beneficiary within the meaning of section 146(7), for the purposes of making a complaint or referring a dispute to the Pensions Ombudsman. This will allow those who have an entitlement to a pension credit, but who will not become a member of the scheme awarding the credit, to make a complaint or refer a dispute to the Pensions Ombudsman.
577. *Subsection (8)* inserts a definition of "independent trustee" into section 146(8). The independent trustee will be the trustee appointed as such by the insolvency practitioner under section 23(3)(b) of the Pensions Act 1995.
578. *Subsection (9)* replaces the words "complaints and disputes" in 146(1) with the word "matters". This ensures that the Pensions Ombudsman can consider questions from sole trustees which could not be regarded as a dispute. It also replaces the latter part of section 146(1)(b) of the Pension Schemes Act 1993. This clarifies the position regarding the identity of the scheme to which the complaint relates in cases where complaints of maladministration are made by the trustees of one scheme against the trustees of another scheme. This subsection also removes the words "which arises" from sections 146(1)(c) and 146(1)(d). This will allow disputes between current and former trustees to be considered by the Pensions Ombudsman.

Section 54: Investigations by the Pensions Ombudsman

579. As a result of a Court of Appeal judgement, under the current legislation, the Pensions Ombudsman should not accept a case if the investigation of it would impact upon the interests, particularly the financial interests, of those not directly involved in the case. This is because those not directly involved in the case are currently not able to make representations to the Ombudsman and are not, therefore, bound by his determinations. This section amends sections 148, 149 and 151 of the Pension Schemes Act 1993 as amended by the Pensions Act 1995.

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Act 2000 (c.19) which received Royal Assent on 28th July 2000*

580. *Subsection (2)* inserts new paragraphs (ba) and (bb) into section 148(5). They extend the meaning of who is a party to an investigation for the purposes of staying court proceedings. These new paragraphs allow the Pensions Ombudsman to link to a case those whose interests may be affected by the complaint or dispute or its outcome.
581. *Subsection (3)* replaces subsection (1) of section 149 with a new section 149(1) which lists the person to whom the Pensions Ombudsman is obliged to give the opportunity to comment, with regard to matters being investigated by him. The replacement subsection obliges the Pensions Ombudsman to give those who are being complained against, those who are responsible for the management of schemes to which the dispute relates, and those whose interests are, or may be, affected, the opportunity to put their point of view to him.
582. *Subsection (3)* also inserts two new subsections (1A) and (1B) into section 149. Inserted subsection (1A) ensures the Pensions Ombudsman is not required to give an opportunity to make representations from someone who (as the person making the complaint or reference) has had adequate opportunity to comment or whose interests are being represented by a person appointed to do so. Inserted subsection (1B) makes clear that if a person has been appointed to represent a group, after making initial representations on his own behalf, that person should also be given the opportunity to make comments as a representative of that group.
583. *Subsection (4)* inserts new paragraph (ba) in section 149(3), which lists those matters that can be covered in the Pensions Ombudsman's procedure rules. New paragraph (ba) allows rules to be made permitting the Pensions Ombudsman to appoint a person to represent a group of those who have the same interest in a complaint, for instance, such a group as all the pensioner members. It will then be this appointed person who will make representations on behalf of that group. The precise manner in which these representative persons will be appointed will be laid out in the Personal and Occupational Pension Schemes (Pensions Ombudsman) (Procedure) Rules. The procedure for selection will ensure that those nominated as representing a particular group can satisfy the Pensions Ombudsman that they are truly representative of that group and do not have a conflict of interest in the particular case.
584. *Subsection (5)* inserts new paragraph (d) which adds an additional item in the list of items that can be included in the rules. This will enable the procedure rules to include provisions to allow the Pensions Ombudsman to order that the cost of legal expenses in a particular case can be met from the funds of the scheme. It is envisaged that such orders will be made when the case is particularly complex and involves the interests of several groups. The procedure rules may state that the order should cover only certain expenses up to a certain limit.
585. *Subsection (6)* inserts subsection (8) into section 149. This is intended to ensure that those whose interests may be affected by any determination, or any directions the Pensions Ombudsman may give in relation to the dispute, will also have the opportunity to make representations rather than only giving the opportunity to those with a direct interest in the complaint or dispute itself.
586. *Subsection (7)* inserts new paragraph (c) into subsection (1) of section 151. Section 151(1) specifies who should be given notice of the Pensions Ombudsman's determination in a particular case. The additional provision requires the Pensions Ombudsman to issue a copy of his determination in a particular case to all those who could have commented on the allegations. Therefore, determinations will be sent to those against whom the allegations are made and to those who could have made representations to the Pensions Ombudsman. These would be either those identified by the Pensions Ombudsman as able to make representations directly to him on their own behalf, or those who are representing groups of individuals who have the same interest.
587. *Subsection (8)* replaces part of subsection (3) of section 151. Subsection (3) specifies who will be bound by the Pensions Ombudsman's determination. This ensures that

those who have had the opportunity to comment or make representations – either individually or via an appointed person – will be bound by the Pensions Ombudsman’s determination. Those who are bound by the determination can appeal against it on a point of law to the High Court (see section 151(4)).

588. *Subsection (9)* ensures that these changes to the Pensions Ombudsman’s remit will not apply to any cases that are referred to him before the provisions come into force.

Section 55: Prohibition on different rules for overseas residents

589. The Council of the European Union adopted Council Directive [98/49/EC](#) on 29 June 1998. Its purpose is to safeguard the occupational pension rights of employed and self-employed workers who move within the European Community, and thereby promote the free movement of workers. Occupational pension schemes in the UK already operate within the spirit of the Directive, but existing legislation does not currently oblige schemes to comply with two specific requirements of the Directive. This section is intended to ensure compliance with the Directive by:

- preventing occupational pension schemes from having scheme rules which allow the accrued pension entitlement of members or beneficiaries to be altered because the member or beneficiary wants payment to be made anywhere outside the UK; and
- allowing workers who work outside the UK to continue membership of their employer’s UK occupational pension scheme. Any such scheme members, and the sponsoring employer, will be able to continue to make contributions to the scheme, subject only to limitations imposed by the Inland Revenue.

590. There will be two regulation-making powers to enable specific exceptions to the rules on payment of pension and the right to remain a member of a UK scheme, provided such exceptions do not contravene the terms of the Directive.

591. [Section 55](#) inserts a new section 66A in the Pensions Act 1995. The provisions in this new section will be brought into force from a date to be established by order made by statutory instrument.

New section 66A: Prohibition on different rules for overseas residents etc

592. *New section 66A(1)* provides that this section applies to an occupational pension scheme which has any rule that contravenes the requirements in *subsections (2) and (3)* in respect of scheme membership, payment of scheme benefits and the payment of contributions.

593. *New section 66A(2)* prevents discrimination in respect of the entitlement to pension benefits of a member or beneficiary, and prevents any discrimination in respect of the payment of those benefits according to whether or not a country outside of the United Kingdom is to be the destination of that payment. Exceptions to the application of the provisions of this subsection may be made by regulations. *New subsection (4)* provides that the date from which schemes will be in contravention in respect of subsection (2) will be from the day section 55 of the Child Support Pensions and Social Security Act 2000 is brought into force.

594. *New section 66A(3)* stops occupational pension schemes having a rule to prevent workers who are posted to work in a country outside of the United Kingdom from continuing to remain eligible to be members of that occupational pension scheme. Members may not be prevented from making contributions to their occupational pension scheme. That occupational pension scheme must not have a rule which prevents the scheme accepting contributions from the sponsoring employer in respect of members who are posted to work wholly or partly outside of the United Kingdom. Exceptions to the application of the provisions of this subsection may be made by regulations. *New subsection (5)* provides that the date from which schemes will be in

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

contravention in respect of subsection (2) will be from the day section 55 of the Child Support Pensions and Social Security Act 2000 is brought into force.

595. *New section 66A(6)* allows for deductions such as income tax to be made from pension benefits due to members and beneficiaries, notwithstanding any discriminatory effect. Similarly, it is made clear that schemes continue to comply with the conditions for approval, exemption or tax relief given or available under the Tax Acts.

Section 56: Miscellaneous amendments and alternative to anti-franking rules

596. This section brings into force Schedule 5 which makes various amendments to the Pension Schemes Act 1993 and the Pensions Act 1995.

Schedule 5

Part I: Miscellaneous Amendments

Paragraph 1: Guaranteed minimum for widows and widowers

597. These provisions amend section 17 of the Pension Schemes Act 1993 and are consequential upon the introduction of new bereavement benefits under the Welfare Reform and Pensions Act 1999*. The relevant provisions in the 1999 Act are expected to be brought into force from 5 April 2001. Sub-paragraph (1) inserts new subsection (4A) in section 17.

New subsection (4A)(a) provides that the scheme must provide a Guaranteed Minimum Pension (GMP) for the widow or widower for any period for which a Category B pension is payable by virtue of the earner's contributions, or would have been payable but for the overlapping benefit provisions in section 43(1) of the Social Security Contributions and Benefits Act 1992. This restates the existing law.

New subsection (4A)(b) ensures that a GMP is payable for any period for which Widowed Parents Allowance (WPA) or Bereavement Allowance (BA) is payable to the widow or widower by virtue of the earner's contributions.

New subsection (4A)(c) ensures that where a person ceases to be entitled to WPA or BA when over 45, that person will still continue to receive a GMP, provided that he or she is not cohabiting with a person of the opposite sex and provided that he or she has not remarried. Currently, a person entitled to bereavement benefits (widowed mother's allowance or widow's pension) when over the age of 45 continues to receive those benefits, and accordingly a GMP, until state pension age, unless he or she remarries or cohabits with a person of the opposite sex. New subsection (4A)(c) thus preserves the current position as regards GMPs despite the fact that the position as regards entitlement to bereavement benefits is to change.

598. *Sub-paragraphs (2) and (3)* make minor amendments designed to ensure that people whose entitlement to bereavement benefits continues under the existing law also continue to be entitled to GMPs under the existing law.

Paragraph 2: Transfer of rights to overseas personal pension schemes

599. Section 1 of the Pension Schemes Act 1993 provides a definition of a personal pension scheme, the scope of which is limited to schemes providing benefits to, or in respect of, persons employed in Great Britain. The effect of this is to prevent the transfer of protected rights or Guaranteed Minimum Pension rights to a personal pension scheme set up and administered wholly or primarily overseas. This paragraph amends sections 20 and 28 of the Pension Schemes Act 1993 in order to permit such rights to be transferred to overseas arrangements.

Paragraph 3: Protected rights

600. Protected rights are (subject to rare exceptions) that part of a member's fund within a personal pension or occupational money purchase scheme that is derived from the National Insurance contribution rebate.
601. Section 28 of the Pension Schemes Act 1993 provides that effect may only be given to protected rights in the way specified in that section. Section 28 permits effect to be given to protected rights by way of a lump sum only in limited circumstances and, in particular, not before the member has reached age 60.
602. **Paragraph 3** amends section 28 to insert a new subsection (4A) and (4B).

New section 28(4A) provides for effect to be given to a member's protected rights in an occupational pension scheme by way of a lump sum where the trustees or managers of the scheme are satisfied that the member, whatever his age, is terminally ill and likely to die within a year.

New section 28(4B) restricts the amount payable under subsection (4A) where the member is a married person on the date on which the lump sum becomes payable. The balance of the protected rights will then go to provide for survivors' benefits. The amount payable under this subsection is restricted to no more than a half of the member's protected rights.

Paragraph 4: Review and alteration of rates of contribution

603. This paragraph amends sections 42(1)(a)(i) and (3) of the Pension Schemes Act 1993 so that the cross-references to section 41 in these sections take account of the changes made to that section by paragraph 127 of Schedule 7 to the Social Security Act 1998.

Paragraph 5: Contributions equivalent premiums

604. **Paragraph 5(1)** substitutes subsection (4) and introduces a new subsection (4A) in section 58 in the Pension Schemes Act 1993 to ensure that Contributions Equivalent Premiums (CEPs) continue to be equivalent to the National Insurance contribution (NIC) rebate. The CEP is the amount that a contracted-out salary related scheme is required to pay in order for someone with less than two years' qualifying service in the scheme to be reinstated into the State Earnings Related Pension Scheme (SERPS).
605. At present, section 58(4) provides for the CEP to be the difference between the amount of Class 1 contributions payable in respect of the earner's contracted-out employment and the amount of those contributions that would have been payable had the employment not been contracted-out. This method of calculation ensures that CEPs relating to periods prior to April 1999 are equivalent to the contracted-out rebate. Following the introduction of a new Earnings Threshold (the level of earnings at which an employer becomes liable to pay Class 1 contributions) on 6 April 1999, the existing method of calculation no longer ensures that the CEP is equivalent to the rebate. All CEPs in respect of periods after 6 April 1999 would be lower than the rebate.

New section 58(4) and 58(4A) ensure that the CEP will be equal to the amount of the NIC rebate payable in respect of contracting-out for periods after 6 April 1999 (as it is already for periods before 6 April 1999).

New section 58(4A) provides that where trivial or fractional amounts were not included in the calculation of the rebate they are not included in the calculation of the CEP.

606. **Paragraph 5(2)** amends subsection (2) of section 61 of the Pensions Schemes Act 1993 to ensure that the employee's share of the CEP continues to be equal to the actual reduction in his primary Class 1 contributions paid throughout the period of contracting-out.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

607. At present, section 61(2) provides for the employee's share of the CEP to be based on the contracted-out rebate, which is currently equal to the actual reduction in the primary Class 1 contribution. When a new Primary Threshold (the level of earnings at which an employee will become liable to pay Class 1 contributions) is introduced on 6 April 2000, section 61(2) will permit schemes to recover from employees more than that actual reduction in certain cases.
608. [Paragraph 5\(3\)](#) substitutes a new paragraph (b) in section 63(1) of the Pensions Schemes Act 1993 so that the reference to section 58 in that paragraph takes account of the changes being made by paragraph 5(1).
609. [Paragraph 5\(4\)](#) ensures that the amendments made by paragraphs 5(1), 5(2) and 5(3) have effect in relation to any CEP payable on or after 6 April 1999.

Paragraph 6: Contribution equivalent premiums: Northern Ireland

610. This paragraph makes corresponding provision relating to the CEP for Northern Ireland.

Paragraph 7: Use of cash equivalent for annuity

611. Where a member of a contracted-out money purchase occupational pension scheme exercises his right to take a cash equivalent transfer value of his accrued rights, section 95(4) of the Pension Schemes Act 1993 prohibits the purchase of an annuity. A member may ask for the cash equivalent transfer value to be transferred to another suitable occupational pension scheme or an appropriate personal pension. This paragraph removes the prohibition on annuity purchase and gives the member a further option for the use of his cash equivalent transfer value.

Paragraph 8: Transfer values where pension in payment

612. Subject to limited exemptions, members of occupational pension schemes are prohibited from taking their pension before they actually retire or leave service. Inland Revenue has proposed to use their discretion so that occupational pension scheme members may receive all or part of their accrued pension while still continuing in pensionable employment. Scheme members taking up this option would lose their right to a cash equivalent transfer value, since section 98(7) of the Pension Schemes Act 1993 removes this right if any part of a pension is in payment.
613. This paragraph amends section 98(7) so that a member will be able to take a transfer of his rights which have not come into payment. It also amends section 97(2) to allow regulations to take account of the amount of pension already in payment when calculating a cash equivalent transfer value. The definition of pensioner member in section 124(1) of the Pensions Act 1995 is amended so as to exclude a person with pension rights accruing as an active member of a scheme.

Paragraph 9: Information about contracting-out

614. This paragraph substitutes a new section 156 in the Pension Schemes Act 1993 to make further provision for the information which may be supplied to pension scheme administrators in the light of changes made to contracting-out arrangements by the Pensions Act 1995. At present, section 156 allows the Secretary of State or the Inland Revenue to provide information to pension scheme administrators in connection with any Guaranteed Minimum Pension (GMP) or its calculation. As currently in force, section 156 does not apply to appropriate personal pension schemes (APPS) and specifically excludes occupational money purchase schemes (COMPS).

New section 156: Information for purposes of contracting-out

New section 156(1) enables the Secretary of State or the Inland Revenue to provide trustees or managers of any occupational pension scheme or APPS with the information

they are likely to need to enable them to discharge their obligations under the contracting-out arrangements in Part III of the Pension Schemes Act 1993. This will include, for instance, the information which scheme administrators need to help them determine the correct level of contracting-out benefit.

New section 156(2) enables the Secretary of State or the Inland Revenue to provide the same information to other persons in categories specified in regulations and is currently provided for by section 156(b).

Paragraph 10: Register of disqualified trustees

615. Section 29(3) and (4) of the Pensions Act 1995 specify the circumstances in which Opra may disqualify a person from being a trustee of an occupational pension scheme. Section 30(7) of the Act requires Opra to keep a register of all persons it disqualifies (the register does not cover automatic disqualifications under section 29(1)). Opra must, where it receives a request to do so, disclose whether a person named in the request is included in the register as being disqualified in respect of the particular scheme named in the request. This means that Opra may only answer “yes” or “no” to the enquiry and cannot volunteer other information which may be relevant. There is also no requirement for the register to be open to public inspection.
616. This paragraph inserts a requirement for Opra to make the register available for inspection in person by the public. It expands on the requirement for Opra to respond to requests. Opra still cannot volunteer information, but, if requested to do so, it must disclose whether a person named in the request is disqualified in respect of a scheme specified in the request or in respect of *all* schemes. It also allows Opra to publish, in a medium of its choosing, lists of those who appear on the register, and the fact that they are disqualified from being a trustee of all schemes, some schemes or a single scheme. The full name (including initials and titles) and date of birth must be listed if the Authority has a record of them, even if those matters are not recorded in the register itself. The schemes themselves will not be named.
617. This will provide easier access to the register for those responsible for appointing trustees and will thus reduce the risk of disqualified people being appointed as trustees. A person’s name will not be published in respect of any particular disqualification until either time limits for appeals and for applications to review that disqualification decision are passed, or (where the time limit has not passed) it is unlikely that there will be an appeal or application for review, or where an appeal or review is pending.

Paragraph 11: Conditions of payment of surplus to an employee

618. This paragraph makes technical changes to section 37(4)(d) of the Pensions Act 1995 and will allow occupational pension schemes that are making payments from surplus funds to an employer to use their own scheme rules to make increases to pensioner members from the surplus. Occupational pension schemes which have pension funds which are surplus to liabilities are required to take steps to reduce the surplus. If the employer wants to take a refund, the scheme must first award increases to pensioner members’ pensions. These amendments will allow schemes to avoid recalculating increases which have already been granted, under scheme rules. Pensioner members will not suffer any financial loss as a result of the proposed changes.

Paragraph 12: Duties relating to statements of contributions

619. The trustees or managers of every occupational pension scheme are required to appoint an auditor to obtain audited accounts and a statement about the prompt payment of contributions under the scheme during the preceding scheme year. In an “earmarked scheme” (which is a money purchase occupational scheme under which all the benefits provided are secured by one or more contracts of insurance, or by annuity contracts which are specifically allocated to the provision of benefits to, or in respect of,

individual members) the auditor is only under a statutory obligation to produce a statement about contributions.

620. This paragraph replaces section 41(5) of the Pensions Act 1995 to enable regulations to be made permitting earmarked schemes to obtain a statement about contributions from a prescribed person or body as an alternative to the scheme appointing an auditor for this purpose. The existing section 41(5)(a) provides for regulations to prescribe the persons who may act as auditors or actuaries. The substituted paragraph will have the same effect. The *new subsection (5A)* enables regulations to be made which impose a duty on the trustees or managers of earmarked schemes to provide the person making the statement about contributions with sufficient information to enable them to do so. The *new subsection (5B)* allows for the imposition of civil penalties by Opra on any trustee or manager of an earmarked scheme who fails to provide the information which they are required to provide by regulations made under subsection (5A).
621. The paragraph also amends section 88 of the Pensions Act 1995. The *new subsection (5)* places a duty on the person providing the statement to report to Opra if contributions have not been paid on time during the course of the scheme year. The *new subsection (6)* provides that Opra may impose a civil sanction on any person who fails to make such a report within the time limit set out in regulations.

Part II Alternative to anti-franking rules

622. Paragraphs 14 to 17 of Schedule 5 introduce a new minimum benefits test which replaces the anti-franking provisions set out in sections 87 to 92 of the Pension Schemes Act (PSA) 1993. The existing anti-franking legislation prohibits occupational pension schemes from funding increases to Guaranteed Minimum Pensions (GMPs) from other scheme benefits. This principle is reflected in the alternative rules in paragraphs 14 to 17 and the protection is extended to rights built up on after 6 April 1997 (which replaced GMPs). Rights accrued after the end of a period of contracted-out service and late retirement enhancements will no longer be protected. The new provisions prevent schemes from offsetting their pre-6 April 1997 pensions against their post-6 April 1997 pensions, however schemes will be allowed, as at present, to fund the first increase to the GMP, required in the tax year after the one in which it comes into payment, from the scheme pension.

Paragraph 14: Cases in which alternative applies

623. The new provisions apply to all occupational pension schemes that hold GMP rights, subject to exceptions to be prescribed in regulations. All members who left pensionable service (or died) after the legislation comes into force and whose pensions (or survivors' pensions) become payable after that date will have their benefits calculated under the new arrangements. However, the scheme managers or trustees will be able to elect, in a manner to be prescribed, to operate the new rules for members who left pensionable service before these provisions come into force. Where a scheme elects to calculate early leavers' preserved pensions by reference to the new arrangements, that election must apply to all such deferred members and is a once and for all choice.

Paragraph 15: Alternative rules

624. The minimum benefit rules underpin a scheme's own benefit formula. To check whether the level of pension payable to a scheme member meets the statutory minimum, the scheme administrator will undertake a notional calculation as follows:

Step 1: Calculate the member's GMP entitlement. For the purpose of this calculation, the amount of GMP would include increases in deferment required under section 15 of the PSA, statutory revaluation under section 16 of the PSA and increases in payment under section 109 of the PSA.

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

Step 2: Calculate the amount of GMP at the termination of salary-related pensionable service, exclude any increases required under sections 15 or 109 of the PSA, or early leaver revaluation required under 16(3), but include any revaluation under section 16(1) of the PSA (section 148 revaluation). The revaluation on the GMP, for the purpose of this step, is to be calculated up to the tax year before the one in which the member left salary-related pensionable service in the scheme, or the tax year before the one in which s/he reached State Pension Age, whichever is the earlier. State Pension Age in this context means 60 for a woman and 65 for a man.

Step 3: Determine whether there are any benefits in excess of the GMP which derive from pre-April 1997 rights. This can be done by deducting the amount in step 2 from the benefits that are attributable to all the pre-April 1997 rights.

Step 4: Calculate the amount of any such benefits in excess of the GMP. The level of earnings used must not be lower than that those used to calculate the post-April 1997 benefits under step 6.

Step 5: Revalue the pre-April 1997 excess over the GMP, in accordance with the rules in chapter II of Part IV of the PSA (Revaluation of Accrued Benefits (excluding Guaranteed Minimum Pensions)).

Step 6: Calculate any benefits accruing in the scheme after 6 April 1997.

Step 7: Revalue post-6 April 1997 benefits, in accordance with the rules on revaluation set out in chapter II of Part IV of the PSA (Revaluation of Accrued Benefits (excluding GMPs)) and index them as required by section 51 (Indexation) of the Pensions Act 1995.

Step 8: Add together the GMP in step 1 plus the revalued excess over the GMP calculated under step 5 and the post-April 1997 rights as calculated under step 7. This is the minimum pension payable.

Paragraph 16: Relationship between alternative rules and other rules

625. The minimum benefits rule does not directly apply to the calculation of alternatives to Short Service Benefits provided under section 73(2)(b) of the PSA. However, the Short Service Benefit on which the alternative is based must itself be calculated in compliance with the minimum benefits test. The new test overrides scheme rules, where the two conflict. For the purposes of calculating transfer values, schemes will be treated as having these provisions within their rules. The test must be undertaken before the level of a member's pension is adjusted to take account of commutation, forfeiture, suspension, charges, liens or set-offs. The remainder of the paragraph sets out the definitions of phrases used.

Paragraph 17: Supplemental

626. [Paragraph 17](#) gives the Secretary of State a power to modify in regulations the provisions in paragraphs 14 to 16. The exercise of this power is subject to negative procedures, ie subject to annulment in pursuance of a resolution in either House of Parliament.

Chapter III: War Pensions

Background

The Current Position

627. The war pensions scheme is long established, with most provisions originating from around the time of the First and Second World Wars. The legislation and procedures governing decision-making and appeals have not significantly changed since then. War Pensions legislation permits awards to be made in respect of any disablement (physical

or mental) or death due to service. Awards vary according to the assessed level of disablement.

Appeals

628. Where a claim to a war pension is rejected, there is a right of appeal to the independent Pensions Appeal Tribunals (PAT). Most decisions about entitlement to a war pension or assessment of the level of disability are appealable. But certain decisions, such as entitlement to supplementary allowances (which can be paid in addition to a basic war pension) do not carry a statutory right of appeal. There are also groups of people, such as those who served in the inter-war years, that do not have appeal rights. Instead, War Pensions Committees (a countrywide network of statutory bodies comprised of volunteers appointed by the Secretary of State) hear these cases and can make non-binding recommendations to the Secretary of State.

The Pensions Appeal Tribunals

629. The PATs are completely separate from the appeals arrangements that apply to Social Security benefits. They are administered by the Lord Chancellor’s Department, the Scottish Courts Administration and the Northern Ireland Court Service. The current system of appeals is slow, in part due to the complexity of the schemes, with waiting times averaging two years (a year for the War Pensions Agency to prepare the papers, and a year for the PATs to list and hear the appeal) although recently performance has improved.

630. The existing legislation provides for varying time limits for different types of appeal. It envisaged a 12-month time limit for some parts of the scheme and a 3-month time limit for others. For a variety of reasons, the envisaged time limits are not, however, always applied in practice. In part this is due to the fact that the PAT can hear late appeals when the appellant demonstrates that there is “reasonable excuse” for the delay in submitting the appeal. “Reasonable excuse” is not defined in the legislation and there are no PAT guidelines on its interpretation. In practice, most late applications are heard and so the time limits are not applied.

Composition of the Pensions Appeals Tribunals

631. Currently the Tribunals are composed of –

Entitlement Appeals	a legally qualified member
	a medically qualified member
	a “service” member
Assessment Appeals	two medically qualified members
	a “service” member.

632. Currently the “service” member must be of the same gender, have held similar rank and had a similar service history to the appellant.

The Central Advisory Committee on War Pensions

633. This Committee, which is a statutory advisory body, was established in 1921 to “consider such matters as may be put before them by the Minister for their advice”. It has been required, since 1970, to include at least 12 War Pensions Committee chairmen amongst its membership. However, War Pensions Committees have reduced from 149 in 1970 to just 29 now, and are again due for reconstitution on 1st January 2001.

Recent Developments

634. In April 1999, independent consultants working with the War Pensions Agency (WPA) published a report *A Review of Decision Making and Appeals Process*. The report recommended a variety of measures including the extension of appeal rights and changes to appeal time limits. The Social Security Select Committee welcomed the review. Representatives of ex-service organisations have received the report and

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members of the Central Advisory Committee on War Pensions were able to address this matter at their meetings, with the Parliamentary under Secretary, in June and December 1999. The WPA has since completed a feasibility study that concluded that almost all of the proposals identified in the report were both desirable and achievable.

The Measures in the Act

Extension of Appeal Rights

- 635. This provision will enable the Secretary of State to increase the scope of appeal rights through a power to permit the creation of new appeal rights, by affirmative regulations, and the repeal of a provision that prohibits appeals related to service before 3 September 1939.
- 636. The intention is to use this provision to provide appeal rights that are similar to those provided in the Social Security scheme. For example, certain war pensions supplementary allowances do not have appeal rights whereas similar social security benefits already carry a right of appeal.
- 637. Appeals relating to the new appeal rights will be heard by the PATs. There is also a provision for these decisions to be set aside or to be appealed beyond the PAT to the High Court, as with certain other types of appeal.

Appeal Time Limits

- 638. All appeals will now be subject to a statutory 6-month appeal time limit, except for interim assessment appeals where the existing statutory 3-month time limit will be retained. There is also a power to make regulations providing for the grounds upon which a PAT may hear a late appeal, which is defined in section 57(2) of this Act as being an appeal received in the 12 month period after the relevant statutory appeal time limit has expired. Transitional protection is provided in those areas where the appeal time limit is to be reduced. This will have the effect demonstrated in the example below.

<i>TYPE OF DECISION</i>	<i>EFFECT</i>
<i>(Made before the provisions come into force)</i>	
Entitlement decision	All decisions, regardless of the date on which they were made and notified, will have one year from 1 July 2001 in which to submit an appeal. The time within which an appeal must be brought will therefore expire on 30 June 2002 although a "late" appeal may be brought up to 30 June 2003.
Final Assessment	Will retain the current 12-month appeal time limit from date of notification. So, if notification takes place on 30 June 2001 (the last available day prior to commencement) the time within which an appeal must be brought will therefore expire on 29 June 2002, although a late appeal may be brought up to 29 June 2003.
<p>Note: Interim assessments will not be affected. They will retain their current 3-month appeal time limit. Assume for this example only that the commencement date of new provisions is 1 July 2001, and that regulations may have been made bringing in the "late" appeal time limit.</p>	

Jurisdiction of Tribunals

These notes refer to the Child Support, Pensions and Social Security Act 2000 (c.19) which received Royal Assent on 28th July 2000

639. The tribunal will not be required to consider issues that have not been raised by the appellant or the Secretary of State. Additionally the tribunal will only take into account matters that occurred up to the date the decision that is under appeal was made. Any changes in circumstances that occur after a decision is made should be notified to the Secretary of State who may review the original decision and issue a further notification which may provide a further appeal right. These provisions are similar to those in the Social Security Act 1998*.

Composition of Tribunals

640. This section provides for a President and a Deputy President to be appointed for each part of the United Kingdom. The President will be able to issue directions and will be responsible for deciding the appropriate composition of appeal tribunals either on a case-by-case basis or according to the type of case. All tribunals will be required to include a legally qualified member. But, because of the reducing pool of people with relevant expertise, eg Civilian Defence Volunteers, the requirement for them to include a “service” member of the same gender and rank as the appellant will be removed. Instead, the Lord Chancellor will have a duty to appoint persons with knowledge or experience of service life to the pool of tribunal members and in addition the power also to appoint suitably experienced lay members to the tribunal pool.

Composition of the Central Advisory Committee on War Pensions

641. The number of War Pensions Committees continues to reduce. The Secretary of State will no longer be required to appoint twelve war pensions committee chairmen to the CAC, but may select an appropriate number provided at least one chairman is appointed.