

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

# **CHILD SUPPORT, PENSIONS AND SOCIAL SECURITY ACT 2000**

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## **EXPLANATORY NOTES**

### **PART III: SOCIAL SECURITY ADMINISTRATION**

#### ***Housing Benefit and Council Tax Benefit***

#### ***Revisions and Appeals***

#### ***Current position***

790. Housing benefit and council tax benefit (HB/CTB) are income-related social security benefits which are administered by local authorities (unlike other social security benefits, which are administered by the Secretary of State). Under current legislation, a local authority may review a decision they have made in relation to a HB/CTB claim at any time if there has been a change of circumstances, or the authority considers that the decision was made on the basis of an error of fact or law. Where a person wishes to dispute a decision of a local authority on a HB/CTB claim, regulations provide for an initial, internal, review by the authority, with a right to a further review by a Review Board comprised of councillors from that local authority. A Review Board's decision may be challenged only by way of judicial review.

#### ***The measures in the Act***

791. The measures in the Act align the arrangements for decision-making in HB/CTB with those recently introduced in other social security benefits under the Social Security Act 1998\*. They provide clearly defined procedures for changing decisions on benefit entitlement and other matters, and place greater emphasis on claimants' own responsibilities for exercising their rights promptly and ensuring that information held on their claims is accurate. They also introduce a right of appeal from local authorities' decisions on HB/CTB claims to an appeal tribunal administered by the Appeals Service agency. HB and CTB Review Boards will be abolished.

#### ***Commentary on Sections***

#### ***Section 68: Housing benefit and council tax benefit: revisions and appeals***

792. [Section 68](#) gives effect to Schedule 7. The Schedule sets out the detail of the new provisions for decision-making and appeals in relation to local authority decisions on HB/CTB claims. The provisions of the Schedule are in the main self-contained, but the majority mirror provisions of the Social Security Act 1998 applying to decisions and appeals in the other social security benefits. The Schedule also amends the Social Security Administration Act 1992\* (the "Administration Act") so that powers concerning the requirement to provide evidence and information in relation to revising or superseding decisions are extended to HB/CTB, and makes minor amendments to Schedules 1 and 4 to the Social Security Act 1998 to include HB/CTB in provisions under those Schedules.

793. In particular, the Schedule:
- makes provision for the revision and supersession of local authority decisions;
  - introduces a right of appeal from the local authority decision to an appeal tribunal (as constituted under the Social Security Act 1998);
  - provides a right of appeal from a decision of the tribunal, on a point of law, to a Social Security Commissioner.
794. It is intended that regulations made under the powers in this Schedule would closely mirror decision-making provisions for other social security benefits which are contained in the Social Security and Child Support (Decisions and Appeals) Regulations 1999, made under powers in the Social Security Act 1998. The regulations would also amend, where appropriate, the Social Security Commissioners (Procedure) Regulations 1999 to take account of HB/CTB.

## **Schedule 7**

### **Paragraph 1: Introductory**

795. This paragraph defines “relevant authority” and “relevant decision” for the purposes of the Schedule. The paragraph also provides that references to a relevant decision do not include a decision under paragraph 3 to revise a relevant decision.

*Sub-paragraph (1)* provides that “relevant authority” for the purpose of this Schedule means an authority administering HB or CTB.

*Sub-paragraph (2)* provides that “relevant decision” for the purposes of this Schedule means:

- a) a decision of a relevant authority on a claim for HB/CTB;
- b) decisions under paragraph 4 which supersede a decision falling within (a) above within this paragraph, or within sub-paragraph (1)(b) of that paragraph (decision of an appeal tribunal or Commissioner).

### **Paragraph 2: Decisions on claims for benefit**

796. This paragraph provides that, once a decision has been made on a HB/CTB claim, that claim ceases to exist. This means that if a person’s claim fails, but his circumstances subsequently change and he wishes to apply again for benefit, he must make a fresh claim.

### **Paragraph 3: Revision of decisions**

797. This paragraph provides powers for local authorities to revise a HB/CTB decision (whether as originally made, or superseded under paragraph 4), either on application or on their own initiative. Regulations would prescribe the cases, circumstances and period in which a decision could be revised. The paragraph also provides for the date from which the decision takes effect (a revised decision would normally take effect from the same date as the decision being revised) and regulation-making powers to vary that date in certain circumstances. It further provides for the lapsing of appeals where the decision appealed against is revised.

*Sub-paragraph (1)* provides for the local authority to revise any HB/CTB decision, either on application by a person affected, or on their own initiative. It enables regulations to prescribe the period within which, and the cases or circumstances in which, a decision can be revised. In line with the regulations applying in other social security benefits, it is intended that a person will normally have one month to apply for revision of a HB/CTB decision. The regulations would provide for an extension of the time limit for special circumstances, with an overall time limit of 13 months.

*Sub-paragraph (2)* provides that when revising a decision the local authority need only consider the particular issue (or issues) raised by the application for revision, or (if acting on their own initiative) which caused them to consider revising the decision.

*Sub-paragraph (3)* provides that a revision would take effect from the day on which the original decision took effect, unless regulations under sub-paragraph (4) provided otherwise, or if the revision was made after a decision in another case had held that an authority's decision was wrong in law (in which case paragraph 18 would apply).

*Sub-paragraph (4)* allows for regulations to prescribe cases or circumstances in which the revision shall take effect other than from the date of the original decision. An example would be where the original decision took effect from the wrong date.

*Sub-paragraph (5)* provides that the period within which an application for appeal may be made (provided for in regulations made under paragraph 6(8)) runs from the date on which the revision was made.

*Sub-paragraph (6)* provides that, where an appeal has been lodged against a decision which is subsequently revised, the appeal will lapse, except in the circumstances prescribed in regulations. It is the intention that regulations would provide that an appeal continues where the revised decision is not advantageous to the claimant.

#### ***Paragraph 4: Decisions superseding earlier decisions***

798. This paragraph will allow the local authority to supersede their decision (whether as originally made or as revised under paragraph 3), or, in prescribed circumstances, a decision made by an appeal tribunal or a Commissioner. A decision which supersedes an earlier decision would not normally take effect from the date of the decision being superseded. The local authority would supersede a decision in cases where a revision under paragraph 3 was inappropriate (for example, because there had been a change of circumstances, or in a case where a person did not apply for a revision within one month of the disputed decision). A new decision could be made either in response to an application or on the local authority's own initiative.

*Sub-paragraph (1)* provides for a local authority to supersede their own decisions, and those of appeal tribunals or Commissioners, both on application or on their own initiative.

*Sub-paragraph (2)* defines the term "appropriate relevant authority" for the purposes of this paragraph as the authority which made the decision being superseded or appealed.

*Sub-paragraph (3)* provides that in superseding a decision the local authority need only consider the particular issue (or issues) raised by the application for superseding, or (if acting on their own initiative) which caused them to consider superseding the decision.

*Sub-paragraph (4)* allows regulations to prescribe cases, circumstances and procedures to enable decisions to be superseded. In line with regulations applying to other social security benefits, it is proposed that, unless a decision falls to be revised, it will be superseded where it is wrong in fact or law. A decision will also be superseded where there has been a relevant change of circumstances.

*Sub-paragraph (5)* provides that, generally, a supersession will take effect on the day on which it was made or, where applicable, the day on which the application was made, unless regulations under sub-paragraph (6) provide otherwise, or if the revision was made after a decision in another case had held that an authority's decision was wrong in law (in which case paragraph 18 applies).

*Sub-paragraph (6)* allows for regulations to be made for cases or circumstances in which a decision to supersede an earlier decision would take effect from a different date from the date it is made or the date an application is made. In line with other social security benefits, where a decision is superseded with a decision which is to

the claimant's advantage because of a change of circumstances, it is intended that regulations would provide that the new decision may take effect from the date of change, where the change is notified within one month. Otherwise, the new decision would take effect from the date the change is notified, or the date the decision is made where there is no notification. Where a new decision was disadvantageous, it would always take effect from the date of change.

It is also intended that regulations under sub-paragraphs (4) and (6) would include provision for the local authority to supersede a decision of an appeal tribunal or Commissioner where that decision was made in ignorance of, or based on a mistake as to, a material fact, and where the decision of the tribunal was based on a determination of a Commissioner or court in another case which has subsequently been overturned by a (higher) court.

### ***Paragraph 5: Use of experts by authorities***

799. This paragraph provides that a local authority may have the assistance of one or more experts, where it appears to them that a question of fact in relation to a decision requires special expertise. This provision enables the local authority to seek advice from, for example, an accountant where there was an issue surrounding income from self-employment.

### ***Paragraph 6: Appeal to appeal tribunal***

800. **Paragraph 6** sets out which decisions may be appealed, by whom, when and how. It requires that a person who has a right of appeal shall be notified of that fact, and provides relevant regulation-making powers.

*Sub-paragraph (1)* sets out those decisions which may be appealed, namely local authority decisions (whether as originally made, or as revised under paragraph (3) or superseded under paragraph (4)), on claims for, or awards of, HB/CTB and other prescribed decisions (subject to the provisions of sub-paragraph 2).

*Sub-paragraph (2)* provides that no appeal lies against:

- (a) a decision terminating or reducing an award of HB/CTB made in consequence of a decision made under regulations under section 2A of the Administration Act (work-focused interviews);
- (b) a local authority decision on any modification of the HB/CTB schemes under section 134(8)(a) or 139(6)(a) of the Administration Act (disregard of war disablement and war widows' pensions);
- (c) so much of any decision as adopts a decision of a rent officer under an order made by virtue of section 122 of the Housing Act 1996 (decisions of rent officers for the purpose of housing benefit);
- (d) a decision determined by the rate of benefit provided for by law (for example, the rate of personal allowance used in the calculation of benefit entitlement, which is set annually by the Secretary of State and approved by Parliament);
- (e) any other decision prescribed in regulations.

It is proposed that regulations made under (e) above will, in line with other benefits, cover decisions which may broadly be termed "administrative", for example, the method of paying benefit. These regulations would be subject to affirmative resolution.

*Sub-paragraph (3)* provides that a person affected by a local authority decision to which this paragraph applies has a right of appeal to an appeal tribunal (defined in paragraph 23 as an appeal tribunal constituted under Chapter 1 of Part I of the Social Security Act 1998).

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*Sub-paragraph (4)* provides that sub-paragraph (3) shall not confer a right of appeal against a prescribed decision, nor against determinations which are embodied in or necessary to the final decision.

*Sub-paragraph (5)* clarifies the nature and limitations of the regulation-making power in subsection (4). It is explicit that the regulations shall not include any decision which relates to the conditions of entitlement to HB/CTB for which a claim has been validly made.

*Sub-paragraph (6)* provides that, where there is a decision that there is an overpayment of HB or CTB which is recoverable, any person from whom the local authority decides the overpayment is recoverable shall have a right of appeal to an appeal tribunal.

*Sub-paragraph (7)* provides for a person with a right of appeal to be given notice of a decision and right of appeal, as prescribed in regulations.

*Sub-paragraph (8)* provides for regulations setting out the manner and time for making appeals. It is intended that the regulations would provide for a time limit of one month from the date of the decision within which to ask for a revision of a decision (under paragraph 3) or lodge an appeal. If a person asks for a revision, he would have a further month from the date on which the local authority notifies him of the result of their reconsideration of the disputed decision in which to lodge an appeal. These time limits would bring HB/CTB into line with other social security benefits.

*Sub-paragraph (9)* provides that an appeal tribunal need not consider issues which are not raised on the appeal, and shall not take account of any changes of circumstances that have occurred since the appealed decision was made.

***Paragraph 7: Redetermination etc. of appeals by a tribunal***

801. This paragraph provides for cases to be re-heard by an appeal tribunal where the tribunal has made an error of law or where the parties to an appeal agree that the tribunal has made an error of law.

*Sub-paragraph (1)* provides for cases in which an appeal tribunal can redetermine an appeal as being those where an application for leave to appeal from a decision of an appeal tribunal has been made to the person who constituted, or was the chairman of, the tribunal when the decision under appeal was given (or, in prescribed cases, such other person (apart from the Commissioner) as may be prescribed). Sub paragraph (3) allows that person to set aside the decision under appeal, if he considers that there was an error of law, and to refer the case for redetermination by the same, or a differently constituted, tribunal.

*Sub-paragraph (3)* requires that a decision be set aside and redetermined by a differently constituted tribunal where each of the principal parties to the appeal express the view that there was an error of law.

*Sub-paragraph (4)* defines who the principal parties to appeals are for the purpose of subsection (3) above and for paragraph 8, namely:

- (a) the Secretary of State, where he is the applicant for leave to appeal or in circumstances prescribed by regulations;
- (b) the local authority against whose decision the appeal to the appeal tribunal was brought;
- (c) the person affected by that decision, or by the tribunal's decision on that appeal.

It is intended that regulations under sub-paragraph 4(a) may provide, for example, that where a case is drawn to Secretary of State's attention in which he believes there has

been an error of law, he may draw that fact to the appeal tribunal's attention, even though he is not an applicant for leave to appeal.

Regulations made under paragraph 23 would define who is a person "affected" for the purposes of this Schedule.

***Paragraph 8: Appeal from tribunal to Commissioner***

802. **Paragraph 8** sets out the powers of the Commissioner and who may appeal to the Commissioner, on what grounds, when and how. This paragraph mirrors provisions of section 14 of the Social Security Act 1998. It is intended that the regulations made under that section, which are contained in the Social Security Commissioners (Procedure) Regulations 1999, would be amended where necessary to take account of HB/CTB.

*Sub-paragraph (1)* provides a right of appeal from any decision of an appeal tribunal to a Commissioner on the ground that the decision of the tribunal was erroneous in point of law.

*Sub-paragraph (2)* specifies that the persons who have a right of appeal to a Commissioner are the Secretary of State, the local authority against whose decision the appeal to the appeal tribunal was brought and a person affected by that decision.

*Sub-paragraph (3)* provides that a Commissioner may set aside a decision of an appeal tribunal and refer the case to another tribunal for a fresh determination, provided all the principal parties to the appeal express the view that the original decision was erroneous in point of law.

*Sub-paragraph (4)* provides for a Commissioner to set aside a decision of an appeal tribunal where he holds that the decision appealed against was erroneous in point of law.

*Sub-paragraph (5)* enables the Commissioner, where he has set aside an appeal tribunal's decision under sub-paragraph (4): (a) to give the decision he considers the tribunal should have given, if he can do so without making fresh or further findings of fact; (b) to make such findings of fact and, in the light of them, to give the decision he considers appropriate; or (c) to refer the case to a tribunal with directions for its determination.

*Sub-paragraph (6)* provides that references made under sub-paragraphs (3) or (5) shall be to an appeal tribunal differently constituted from the tribunal which gave the original decision, unless otherwise directed by the Commissioner.

*Sub-paragraph (7)* provides for leave to appeal to be given by the person who constituted, or was the chairman of, the tribunal when the decision was given, or, in prescribed cases, by another person prescribed in regulations or by a Commissioner.

*Sub-paragraph (8)* provides for regulations to make provision as to the manner and time in which appeals and applications for leave to appeal should be made.

***Paragraph 9: Appeal from Commissioner on a point of law***

803. **Paragraph 9** sets out provisions in respect of appeals from the decision of the Commissioner, what may be appealed, when and how. Appeals may be made to the appropriate court in England and Wales or Scotland. This paragraph mirrors provisions of section 15 of the Social Security Act 1998. It is intended that the regulations made under that section, which are contained in the Social Security Commissioners (Procedure) Regulations 1999, would be amended where necessary to take account of HB/CTB.

*Sub-paragraph (1)* allows an appeal on a point of law to the appropriate court from any decision of a Commissioner.

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*Sub-paragraph (2)* provides that appeals can only be made with the leave of a Commissioner (either the Commissioner who gave the decision or, in prescribed cases, by another Commissioner selected in accordance with regulations) or, if the Commissioner refuses leave, with the leave of the appropriate court.

*Sub-paragraph (3)* specifies the persons who may apply for leave to appeal; namely, (a) a person who was entitled to appeal to the Commissioner, (b) any other person who was a party to the proceedings, and (c) any other person authorised by regulations to apply for leave. It also allows for regulations to make provision in relation to manner, time limit and procedure as to applications for leave to appeal.

*Sub-paragraph (4)* requires the Commissioner to specify, on an application for leave to appeal, the appropriate appeal court by reference to the dwelling in respect of which HB/CTB was awarded, namely, the Court of Appeal, where the dwelling is in England and Wales, and the Court of Session where the dwelling is in Scotland. A different appeal court will be specified, irrespective of where the dwelling is situated, if necessary, having regard to the circumstances of the case and the convenience of the parties.

*Sub-paragraph (5)* defines terms used in this paragraph.

### **Paragraph 10: Procedure**

804. This paragraph provides for regulations to set out such procedures relevant for the purposes of this Schedule as are specified in Schedule 5 to the Social Security Act 1998. It also provides for Commissioners to have the assistance of experts in cases of special difficulty, and for tribunals of three or more Commissioners where there is a question of law of special difficulty. This paragraph mirrors provisions of section 16 of the Social Security Act. It is intended that regulations made under that section which are contained in the Social Security Commissioners (Procedure) Regulations 1999 would be amended where necessary to take account of HB/CTB.

*Sub-paragraph (1)* enables provision to be made in regulations as to procedural matters for HB/CTB decision-making and appeals. These would reproduce the effect of provisions in regulations made under Schedule 5 to the Social Security Act 1998 in respect of other social security benefits.

*Sub-paragraph (2)* provides that regulations specifying procedure to be followed in cases before a Commissioner shall provide for the hearing to be heard in public, unless the Commissioner, for special reasons, otherwise directs.

*Sub-paragraph (3)* provides that the power to prescribe procedure includes the power to make provision (a) for appellants to be represented at hearings by another person (regardless of whether that representative has professional qualifications); and (b) to confer on the Secretary of State the right to be heard in any proceedings before a Commissioner to which he is not already a party.

*Sub-paragraph (4)* provides that, if a matter before a Commissioner involves an especially difficult question of fact, he may direct that he should have expert assistance from one or more persons with relevant knowledge or experience.

*Sub-paragraph (5)* provides that the Chief Commissioner (or, if he is unable to act, any other Commissioner who has been nominated to act in his place) can direct that an appeal, or an application for leave to appeal, which involves a question of law of special difficulty be heard by a tribunal of three or more Commissioners.

*Sub-paragraph (6)* provides that, if the decision of the tribunal of Commissioners is not unanimous, the decision of the majority shall be the decision of the tribunal. In a case where votes are equally divided, the presiding Commissioner shall have a casting vote.

*Sub-paragraph (7)* ensures that the reference in paragraph 8(7)(b) to applications for leave to appeal being determined by a Commissioner may be construed as a reference to a tribunal of Commissioners when appropriate.

*Sub-paragraph (8)* provides that Part I of the Arbitration Act 1996 (which relates to arbitration pursuant to arbitration agreements) shall not apply to any proceedings under this Schedule, unless regulations provide otherwise in relation to England and Wales.

### ***Paragraph 11: Finality of decisions***

805. This paragraph provides that any decision made under the preceding provisions of this Schedule is final unless it is revised, superseded or appealed.

### ***Paragraph 12: Matters arising as respects decisions***

806. **Paragraph 12** provides for regulations in respect of matters arising whilst a decision is pending, and those arising out of a revision of, or an appeal from, a decision. The intention is that regulations are to be made to allow an interim decision pending a decision by the local authority, an appeal tribunal or Commissioner which relates to a claim for or entitlement to HB/CTB. It would also enable provision to be made in regulations for matters arising out of the revision or appeal of such a decision.

### ***Paragraph 13: Suspension in prescribed circumstances***

807. This paragraph provides for regulations to be made for suspending payments of HB/CTB and the subsequent making of any payments so suspended in prescribed circumstances. It replaces sections 5(1)(n) and (o) and 6(1)(n) and (o) of the Administration Act.

*Sub-paragraph (1)* gives a power for regulations to: (a) set out the circumstances in which payments of HB/CTB may be wholly or partially suspended; (b) prescribe circumstances in which any reduction by way of CTB in a person's council tax liability may be partly or wholly suspended; and (c) prescribe the circumstances in which any or all the suspended payments are to be restored.

*Sub-paragraph (2)* provides that regulations under sub-paragraph (1) above may, in particular, cover cases where (a) there is a doubt as to whether the conditions of entitlement to benefit are met; (b) there is a question as to whether a decision may need to be revised or superseded; (c) an appeal against a decision of an appeal tribunal, a Commissioner or a Court is pending; or (d) the local authority considers that an award of HB/CTB might need to be revised or superseded after a decision is given on appeal in a different case by a Commissioner or a court. *Sub-paragraph (3)* defines "pending" for the purposes of this sub-paragraph.

*Sub-paragraph (4)* clarifies that the reference in sub-paragraph (2)(d) to a different case includes a case involving a different local authority, but does not include a case relating to a benefit other than HB or CB.

### ***Paragraph 14: Suspension for failure to furnish information etc***

808. This paragraph provides a regulation-making power so that payments of benefit may be suspended where a person fails to provide information needed to determine whether a decision on an award of benefit should be revised or superseded.

*Sub-paragraph (1)* provides that the power to suspend in this paragraph applies to failure to comply with information requirements (defined in sub-paragraph (3)).

*Sub-paragraph (2)* enables regulations to: (a) set out the circumstances in which payments of HB/CTB may be wholly or partially suspended; (b) prescribe circumstances in which any reduction by way of CTB in a person's council tax liability



may be partly or wholly suspended; and (c) prescribe the circumstances in which any or all the suspended payments are to be restored.

In line with other social security benefits, it is proposed that regulations will provide that, as a general rule, payment of benefit may be suspended, in whole or in part, if the person fails to provide the requested information within one month of being asked.

*Sub-paragraph (3)* defines an information requirement, for the purposes of this paragraph and paragraph 15, as being a requirement under regulations made under section 5(1)(hh) or 6(1)(hh) of the Administration Act, as amended by paragraphs 21(2) and 21(3) of the Schedule, with respect to the provision of information and evidence needed to determine whether a decision on an award of HB/CTB should be revised or superseded.

### ***Paragraph 15: Termination in cases of failure to furnish information***

809. **Paragraph 15** provides for regulations enabling a person's entitlement to benefit to be terminated where payment has been suspended in accordance with regulations under paragraph 13 above and the person has subsequently failed to comply with an information requirement or, in the case of paragraph 14 above, the person has persisted in their failure to comply with an information requirement.

810. In line with other social security benefits, in the case of suspension under paragraph 14, it is proposed that regulations would provide that benefit would be suspended until the claimant provides the requested information, up to a maximum period of one month. If at the end of a month the information is not provided then entitlement to benefit would be terminated from the date suspension commenced. In the case of a suspension under paragraph 13, it is proposed that regulations would provide a maximum period of one month following the notification of the information requirement. The one-month period may be extended if special reasons apply.

### ***Paragraph 16: Decisions involving issues that arise on appeal in other cases***

811. This paragraph makes provision for cases which turn on a point of law which is to be considered by a court on appeal in another case. The local authority may defer making a decision in such cases, or make it in prescribed cases on such basis as may be prescribed.

*Sub-paragraph (1)* provides that this paragraph applies where a decision falls to be made (including one revising or superseding an earlier decision) which turns on an issue of law which is being challenged in another case (the "lead case"), through the Courts.

*Sub-paragraph (2)* provides that the local authority need not make a decision where they consider that the outcome of the lead case might mean there would be no entitlement to benefit.

*Sub-paragraph (3)* provides that if the local authority considers it possible that the outcome of the lead case might affect the decision in the case in some other way, they (a) need not make the decision while the appeal is pending, except in prescribed cases or circumstances; or (b) may make the decision on such basis as may be prescribed.

*Sub-paragraph (4)* requires the local authority, where they have made a decision on the prescribed basis, to revise that decision where appropriate, once the lead case is finally decided.

*Sub-paragraph (5)* defines when an appeal is pending in a lead case for the purposes of this paragraph. Regulations made under this sub-paragraph would cover cases where an appeal has not been brought, or an application for appeal has not been made, but the time limit for doing so has not expired. This would cover the situation where the local authority has received a decision of an appeal tribunal or a Commissioner and is considering whether they should seek leave to appeal against it.

*Sub-paragraph (6)* provides that the reference to an appeal, or application for leave to appeal, in sub-paragraph (5) includes an application for judicial review to the High Court or its equivalent in the Court of Session.

*Sub-paragraph (7)* clarifies that the reference to another case in sub-paragraph (1) includes a case involving a decision made by a different local authority, but does not include a case relating to a benefit other than HB or CTB.

***Paragraph 17: Appeals involving issues that arise on appeal in other cases***

812. **Paragraph 17** deals with appeals which turn on an issue of law which is being challenged in another case (the “lead case”) through the courts. It allows the local authority to require an appeal tribunal or Commissioner: to refer an appeal case to them instead of deciding it, to stay an appeal case, or to make a decision in an appeal case as if the lead case was decided in the way most unfavourable to the appellant.

*Sub-paragraph (1)* provides that this paragraph applies where an appeal is made to an appeal tribunal or Commissioner, and that appeal turns on an issue of law which is being challenged in the lead case through the courts.

*Sub-paragraph (2)* provides that the local authority may serve notice requiring the appeal tribunal or, as the case may be, the Commissioner, to refer the appeal to them, or to deal with the appeal in accordance with *sub-paragraph (4)* below.

*Sub-paragraph (3)* provides that the local authority shall, if and as appropriate, revise or supersede the decision in a case referred to them under sub-paragraph (2)(a), in accordance with the decision in the lead case, once that case is finally decided.

*Sub-paragraph (4)* provides that where the local authority issues a notice under sub-paragraph (2)(b) above, the appeal tribunal or Commissioner shall either (a) stay the appeal or (b) if they consider it to be in the interests of the appellant to do so, decide it as if the lead case were decided in the way most unfavourable to the appellant. A decision in the latter instance would allow any benefit, which would not be affected by the decision in the lead case, to be paid.

*Sub-paragraph (5)* requires the local authority, if appropriate, to supersede any decision of the appeal tribunal or Commissioner under sub-paragraph (4)(b) above once the lead case is finally decided.

*Sub-paragraph (6)* sets out where an appeal is pending in a lead case for the purposes of this paragraph. Regulations to be made under this sub-paragraph would cover cases where an appeal has not been brought, or an application for leave to appeal has not been made, but the time limit for doing so has not expired. Regulations would cover the situation where the local authority has received a decision of a Commissioner or court and is considering whether there appears to be an error of law in the decision and whether they should seek leave to appeal against it.

*Sub-paragraph (7)* provides that the reference to an appeal to a Commissioner in sub-paragraph (1)(a) includes a reference to an application for leave to appeal to a Commissioner. It also clarifies that the reference in sub-paragraph (1)(b) to a different case includes a reference to a case involving a different local authority, but does not include a case relating to a benefit other than HB or CTB. It further provides that the reference to an appeal or an application for leave to appeal in sub-paragraph (6) includes an application for judicial review to the High Court or its equivalent in the Court of Session.

*Sub-paragraph (8)* defines “appellant” for the purposes of sub-paragraph (4).

*Sub-paragraph (9)* enables regulations to be made to supplement provision in this paragraph.

**Paragraph 18: Restrictions on entitlement to benefit in certain cases of error**

813. Paragraph 18 provides that, where the outcome of an appeal overturns an understanding of the law previously applied, with the effect that decisions in other cases are wrong, restrictions may be imposed on arrears which would otherwise fall to be paid. It also defines the terms used.

*Sub-paragraph (1)* identifies those cases where entitlement to benefit is restricted because an understanding of the law has been overturned by a decision on appeal (a “relevant determination”). *Sub-paragraph (2)* identifies cases to which subsection (1) does not apply.

*Sub-paragraph (3)* provides that cases identified in accordance with sub-paragraph (1) above, are to be decided, as far as the period before the appeal decision is concerned, as though that relevant determination had not overturned the earlier understanding of the law.

*Sub-paragraph (4)* makes clear that appeal decisions of the courts, which determine that provisions in statutory instruments are themselves unlawful, are relevant determinations for the purpose of sub-paragraph (1)(a). That is to say that, even though a provision in a statutory instrument is found to be ineffective by a decision on appeal, cases will be determined on the basis that it is effective so far as the period before that determination is concerned.

*Sub-paragraph (5)* provides that the restriction on the payment of arrears applies regardless of whether a claim or application for revision or supersession is made before or after the date of the determination of the appeal in the lead case.

*Sub-paragraph (6)* defines “the court” for purposes of this paragraph.

*Sub-paragraph (7)* clarifies that references to entitlement to benefit also covers (a) entitlement to any increase in the rate of benefit and (b) also that entitlement includes a benefit (or increase) at a particular rate.

*Sub-paragraphs (8) and (9)* allow regulations to be made to prescribe how the date of the relevant determination is to be determined.

**Paragraph 19: Correction of errors and setting aside of decisions**

814. This paragraph permits regulations to be made defining circumstances in which accidental errors in decisions may be corrected, and provides for setting aside decisions in specified cases where there is procedural irregularity.

*Sub-paragraph (1)(a)* provides for regulations to be made for the correction of accidental errors in a decision or record of decision given by the local authority, an appeal tribunal or a Commissioner. Thus “slips of the pen” (such as mis-written dates) can be corrected. *Sub-paragraph (1)(b)* provides for regulations to be made for the appeal tribunal or Commissioner to set aside a decision and re-hear a case in the interests of justice if a procedural error has occurred in the service or receipt of documents, or if a party to the proceedings was not present at the hearing.

*Sub-paragraph (2)* provides that any power exercised under this provision shall not derogate from any other power to correct or set aside decisions.

*Sub-paragraph (3)* defines “relevant provision”.

**Paragraph 20: Regulations**

815. This paragraph makes provision in respect of subordinate legislation. It provides, in particular, that regulations made under paragraph 6(2)(e) or (4) in respect of decisions against which no appeal lies shall be subject to affirmative resolution.

***Paragraph 21: Consequential amendments of the Administration Act***

816. **Paragraph 21** amends sections 5 and 6 of the Administration Act to provide for regulations with respect to the provision of information and evidence needed to determine whether a decision on an award of HB/CTB should be revised or superseded.

***Paragraph 22: Consequential amendments of the Social Security Act 1998***

817. This paragraph provides for the repeal of sub-sections 34(4) and (5) (reviews of HB/CTB determinations) and section 35 (suspension of benefit in prescribed circumstances) of the Social Security Act 1998, which are replaced by the provisions of this Schedule. The paragraph also amends Schedules 1 and 4 to that Act to extend the payment of travelling and other expenses to people attending appeal tribunals and hearings before a Commissioner under the provisions of this Schedule.

***Paragraph 23: Interpretation***

818. This paragraph defines terms used in this Schedule, and provides for regulations to specify the circumstances in which a person is, or is not, to be considered as a person who is affected by any decision of a local authority. It also clarifies that decisions of persons authorised to carry out functions of, or providing services to, a local authority, are to be treated as decisions of that local authority for the purposes of this Schedule.

***Discretionary Payments***

***Section 69: Discretionary financial assistance with housing***

819. Under these provisions local authorities will have discretion to provide people entitled to Housing Benefit or Council Tax Benefit (HB/CTB), or both, with additional financial assistance with their rent or Council Tax. These payments will help alleviate exceptional hardship people may incur where their rent is above that met by Housing Benefit, and to cater for unforeseen exceptional circumstances, such as non-payment of wages.
820. The provisions will provide for discretionary housing payments made by the local authorities to be paid in addition to benefit entitlement. The decision to make payments will be discretionary. The local authority will decide whether to make payment and the level of each payment based on the circumstances of each individual case. The total amount a local authority will be able to spend on the discretionary scheme in any one year will be part of the framework of the scheme determined by the Secretary of State but the decision to pay on any particular case will be for the local authority. People requesting help from the discretionary scheme will be able to ask local authorities to review their decision if for whatever reason they are dissatisfied.
821. *Subsection (1)* provides for regulations which will enable local authorities to make discretionary payments to people in receipt of HB/CTB.

*Subsection (1)(a) and (b)* provide for regulations to be made conferring powers on local authorities to consider making payments to people entitled to HB/CTB who appear, to the local authority, to need further financial assistance to meet their housing costs. It is also intended that the regulations will set out the information that will be required by local authorities to make decisions, and the provision for people to ask for decisions to be reviewed. Decisions about the people to help, the financial amount, and the period for which such help shall be given, will be for the local authorities to determine.

822. *Subsection (2)* provides for the regulation-making powers which will set out the conditions and circumstances under which these payments may be considered.

*Subsection (2)(a)* provides for regulations to be made for the circumstances under which discretionary housing payments may be made. It is intended that the regulations made under this power will enable local authorities to consider making payments to tenants (other than local authority tenants) entitled to HB, for example to alleviate exceptional

hardship, and to claimants entitled to HB or CTB, for example, to cater for unforeseen exceptional circumstances.

*Subsection (2)(b)* enables regulations to be made to provide that decisions about whether to help any particular persons, the amount of the payments and the period for which the help should be given, will be (subject to what follows) for local authorities.

*Subsection (2)(c)* enables regulations to be made imposing a limit on the amount of the discretionary housing payment that may be made in any particular case. It is intended that the regulations will specify that the additional financial help given to any person should not exceed the eligible rent (contractual rent less ineligible charges) as prescribed by the HB scheme, or where the help is for the paying of council tax, not higher than the amount a person would otherwise be entitled to under the rules of the CTB scheme.

*Subsection (2)(d)* enables regulations to be made to restrict the period for which discretionary housing payments are made.

*Subsection (2)(e)* enables regulations to be made to set out the way in which people should apply for discretionary payments and the way in which local authorities should deal with those claims. The regulations may, for example, require local authorities to deal with the claims timeously and to notify their decisions within a set time.

*Subsection (2)(f)* enables regulations to be made to enable local authorities to gather such relevant information from the people as is reasonably required to enable them to make a decision.

*Subsection (2)(g)* enables regulations to be made in respect of the circumstances in which discretionary housing payments could cease, for example, where the person is no longer entitled to housing benefit or council tax benefit, and will enable the recovery of overpayments.

*Subsection (2)(h)* enables regulations to be made to provide for local authorities to review their decisions in particular circumstances.

823. *Subsection (3)* provides that regulations made under this section should be subject to negative procedure. *Subsection (4)* provides supplementary incidental powers to be used when making regulations under the provisions of this section. *Subsection (5)* enables regulations to be made for different areas or different local authorities should the need arise.

824. *Subsection (6)* amends section 176(1) of the Social Security Administration Act 1992 to require consultation with representative organisations, for example, the Local Authority Associations, prior to the making of regulations under the above provisions.

825. *Subsection (7)* defines the terms used.

### ***Section 70: Grants towards the cost of discretionary housing payments***

826. Under these provisions, local authorities will have the power to make discretionary payments in certain circumstances. These payments will be cash-limited in order to ensure that the discretion is used prudently. Powers will allow Central Government to provide authorities with financial assistance with the scheme both in terms of the scheme's administration and the payments made under it.

827. This section makes financial provision in respect of the housing discretionary payment scheme. It provides for the receipt and distribution of money by the Secretary of State to authorities in order to enable them to make discretionary housing payments, but with a ceiling on the total which they can spend.

828. *Subsection (1)* makes provisions for each authority to be given central Government funding towards their discretionary housing payments, and administrative expenditure.

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

829. *Subsection (2)* makes provision in respect of the calculation and payment of the amount of housing discretionary payments by applying certain provisions of section 140B and 140C of the Administration Act.
830. *Subsection (3)* enables the Secretary of State, by order, to make provision for an upper limit to be set, or to impose subsidiary limits, on the amount which authorities can spend on discretionary payments in any financial year. *Subsection (4)* provides that the order may specify those limits or provide for the way in which the limit should be determined. *Subsection (5)* provides for the Parliamentary control of the order made under this section, by providing for the negative procedure to be followed.
831. *Subsection (6)* provides supplementary incidental powers to be used when making Orders under the provisions of this section. *Subsection (7)* enables regulations to be made for different areas or different local authorities should the need arise.
832. *Subsection (8)* defines the terms used.

### ***Recovery of Housing Benefit***

#### ***Current position***

833. For tenants in the private rented sector, Housing Benefit may be paid direct to the landlord or his managing agent in prescribed circumstances. Currently approximately 56% of private sector tenants and 86% of registered social landlord tenants have their benefit paid direct to their landlord or agent.
834. Tenants in receipt of Housing Benefit are required to notify the local authority of any change in their circumstances that could affect their entitlement, for example, a change of address or change in income. Landlords and agents receiving benefit direct are also required to notify the local authority of any change in their tenants' circumstances that they might reasonably be expected to know could affect the tenants' entitlement to Housing Benefit.
835. Local authorities often face problems recovering Housing Benefit debts if tenants simply disappear. Housing Benefit legislation, therefore, allows local authorities, where benefit is paid direct, the discretion to recover an overpayment from either the tenant or the landlord or agent (as the person to whom benefit was paid). The result of this is that, in cases of tenant fraud, local authorities may, and often do, recover the debt from the landlord or his agent. Although such a recovery re-opens the tenant's rental liability to the landlord, creating rent arrears, in practice it means that the fraudulent tenant often suffers no consequence for their action. This can act as a disincentive to landlords and their agents to report suspected fraud, when they know that they could find themselves repaying any subsequent overpayment.

#### ***The measure in the Act***

836. **Section 71** makes provision to amend section 75(3) of the Social Security Administration Act 1992\* (the "Administration Act"). Section 75(3) currently provides for recovery to be made in all cases from the person to whom it was paid or such other person as may be prescribed. Landlords and agents fall under the first category as the person to whom benefit is paid. The measure will allow for exceptions to be made in regulations to the provision that overpayments are recoverable from the person to whom benefit was paid. Regulations will prescribe that where the landlord or agent has reported suspected tenant fraud, the local authority cannot recover from the landlord/agent to whom it was paid but can recover from the tenant. However, in cases where the landlord is shown to have acted maliciously or is in collusion with the tenant, local authorities will retain their discretion to recover the overpayment from either party.

**Section 71: Recovery of housing benefit**

837. This section replaces subsection (3) of section 75 of the Administration Act, which provides the powers which specify from whom an overpayment of Housing Benefit may be recovered.

*New subsection (3)(a)* provides that an overpayment is recoverable from the person to whom the benefit was paid, but allows for exceptions to this to be prescribed in regulations. This will allow for regulations to provide for an exception in the case where a landlord or agent has reported suspected tenant fraud, and subsequent investigations have found no evidence to indicate the landlord had acted maliciously or had been in collusion with the fraudulent tenant.

*New subsection (3)(b)* provides that in addition to the overpayment being recovered from the person to whom the benefit was paid, it may also be recovered from such other person as prescribed in regulations. This replicates the existing power in the current subsection (3). Regulations currently prescribe that, in addition to the person to whom benefit was paid, recovery can also be sought from the claimant, or such other person who misrepresented or failed to disclose a material fact that resulted in the overpayment of benefit. The intention is to continue with these provisions in the new regulations.