

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

EXPLANATORY NOTES

PART III: SOCIAL SECURITY ADMINISTRATION

Loss of Benefit

Background

The current position

672. A person who is found guilty of certain criminal offences may be the subject of a community sentence* imposed by the court. Community sentences include probation orders, community service orders and combination orders.
673. If the terms of the sentence are not met, the Probation Service (or, in Scotland, the Procurator Fiscal) will refer the matter back to court. The court will decide whether the offender has breached the order, and, if so, what further penalty should be imposed for the breach, or if the order should be revoked and the offender re-sentenced for the original offence.
674. About 130,000 offenders are sentenced to probation orders, community service orders and combination orders each year in England and Wales, of whom currently about 30,000 are returned to court as a result of breach proceedings. In Scotland, in 1998, about 12,400 people were sentenced to community service orders or probation orders, and around 4,000 of these were subject to proceedings for breach.

The measures in the Act

675. The measures in this Part of the Act will allow the Secretary of State for Social Security to withdraw or reduce benefit where a person fails to comply with a designated community sentence. The sanction will be for a fixed period (to be prescribed in regulations) and will commence after a court has determined that a community sentence has been breached.
676. The measures in respect of Social Security benefits, which are a matter reserved to Westminster, cover Great Britain. The payment of training allowances is a devolved matter for Scotland. The provisions in this part of the Act relating to the loss of Training Allowances apply in England and Wales only, and this part of the Act provides that such allowances paid by Scottish Ministers will not be withdrawn under these measures.
677. In the first instance, the measure will be piloted in separate areas in England and Wales to test the links between Social Security offices and the Probation Service within a single criminal justice system and to assess the behavioural impact on offenders. For the duration of the pilots, the sanction period will be set at four weeks and will apply in respect of probation orders, community service orders and combination orders.

678. During the pilot phase, the scheme will cover people aged between 18 and 59. The benefits that will be affected are Jobseeker's Allowance* (JSA), Income Support* (IS) and also the JSA-equivalent element of certain training allowances* (TAs).
679. For recipients of both contributory and income-based JSA, the benefit will not be payable for the period of the sanction. Housing Benefit, and any other "passport" benefit entitlements, will not be affected. For example, a JSA recipient aged 25, with no dependants or housing costs, would normally be entitled to £52.20 per week (the April 2000 rate of personal allowance for a single adult aged over 25). If the court decided he had breached a community sentence, the full amount – £52.20 – would be withdrawn for four weeks. Circumstances will be prescribed in which, after two weeks, he could be entitled to a reduced payment of JSA (a "hardship payment") of £31.30 per week. Entitlement to a hardship payment would depend on his personal circumstances, taking into account any income or capital which he may possess.
680. If a JSA claimant falls into a vulnerable group, he could apply for hardship payments from the first day of the 4-week period. This is in line with the current provisions for hardship payments arising from employment condition sanctions. The term "vulnerable group" refers to the group of people specified in regulation 140(1) of the Jobseeker's Allowance Regulations 1996 and includes, among others, those responsible for a child or young person and those where either the claimant or partner would be entitled to a disability-related premium.
681. There will be slightly different arrangements in place to deal with JSA claims made under the "joint claim" arrangements. If either of the couple are found to be in breach of a community sentence, benefit will not be payable in respect of that member of the couple. This is referred to in more detail in the commentary on sections (section 63).
682. For IS claimants, the effect of the sanction will be to reduce the amount of benefit in payment, rather than to withdraw payment of the benefit in its entirety. The effect of this measure on a lone parent with one child aged under 11, receiving IS, would be to reduce benefit entitlement by 40% of the single adult rate – a reduction of £20.88 per week at April 2000 rates. This means that for a period of 4 weeks, weekly benefit of £73.82 would be payable, instead of the full rate of £94.70.
683. The Secretary of State will not be able to extend the measure to other benefits or to other types of community sentence without making regulations which would be required to be passed by resolution of both Houses of Parliament (the affirmative procedure).

Commentary on Sections

684. These sections contain provisions to remove or reduce the benefit or, in England and Wales, the training allowance of offenders who have not fulfilled their responsibilities in relation to specified community sentences.

Section 62: Loss of benefit for breach of community order.

685. This section provides for benefit to be reduced (in respect of IS) or withdrawn (in respect of JSA or TAs) where an offender is in breach of a community sentence.
686. The provisions are triggered after a court has determined that a community sentence has been breached.
687. *Subsection (1)* states that these provisions apply when a court has determined that that an offender has failed to comply with the terms of his community sentence without reasonable excuse. The Secretary of State will be notified by the Probation Service of a determination where the offender is, or becomes entitled to, a relevant benefit.
688. *Subsection (2)* provides that a relevant benefit shall not be payable for a "prescribed period", which is the period for which the benefit will be withdrawn. Initially,

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regulations will provide for the prescribed period to be 4 weeks. *Subsection (7)* (below) sets an overriding maximum period of 26 weeks.

689. *Subsection (3)* provides for IS to be paid at a reduced rate for the prescribed period rather than withdrawn completely. Details of the reduction will be prescribed in regulations. The broad aim is that the reduction regime will be similar to that which will apply in JSA cases where hardship is established.
690. *Subsection (4)* enables regulations to prescribe that JSA recipients may be eligible for a reduced rate of benefit during the prescribed period, providing they satisfy certain conditions. These conditions will be similar to the hardship provisions which currently apply in JSA. If hardship is established and the claimant satisfies the other conditions of entitlement, the claimant will be awarded a reduced payment of income-based JSA. The reduction is normally a sum equivalent to 40% of the appropriate single person's allowance, whether or not the claimant is a single person. However, if someone in the claimant's family is seriously ill or pregnant the reduction is 20%.
691. *Subsection (5)* provides that payments made under section 2 of the Employment and Training Act 1973 (TAs) to participants on certain training schemes and employment programmes shall not be payable for the prescribed period except to the prescribed extent. It is intended that the element of any TA which equates with the participant's underlying JSA entitlement will be withdrawn. Any additional premium, top-up or payment of expenses will remain payable, subject to continued participation in the scheme or programme.
692. The basic element of a TA is equal to the amount of JSA which the participant would be entitled to if he were not engaged in the training scheme or employment programme. In addition, he may receive a training premium or top-up (the amount of which depends on the scheme concerned) plus payment of certain expenses. It is intended that the sanction will apply only to the basic element. For example, a young single person participating in the Voluntary Sector option of the New Deal for Young People receives an allowance consisting of a basic element of £41.35 a week (at 2000 rates), plus a weekly top-up of £15.38. The sanction would mean that the £41.35 would not be paid for 4 weeks, but the £15.38 would remain in payment (provided the young person continued to participate in New Deal). Some types of payments under section 2 of the Employment and Training Act 1973 – such as those payable in Employment Zones – will be excluded from these provisions.
693. *Subsection (6)* provides for the payment of arrears in the event that a decision that an offender has breached the terms of his sentence is subsequently quashed or set aside by a Court.
694. *Subsection (7)* prescribes a maximum length of 26 weeks for the “prescribed period”. The intention for the pilot exercises is that this period will be for 4 weeks only. Regulations will specify the date from which the restriction will commence (Section 65(2)). This will usually be the first full benefit week after the decision to impose a restriction is made. This avoids the need to calculate part-week payments.
695. Definitions of the terms used in this provision are set out in *subsection (8)*.
696. *Subsection (9)* provides that where the “relevant benefit” is a TA, then references in this section to “entitlement to benefit” also refer to cases where a TA is in payment. TAs are payable at the discretion of the Secretary of State under section 2 of the Employment and Training Act 1973: technically there is no entitlement to an allowance.
697. *Subsection (11)* modifies the provisions of section 62 so as to make them applicable to Scotland.

Section 63: Loss of joint-claim Jobseekers Allowance

698. This section sets out how the Community Sentence provisions will apply to a couple claiming JSA under the “joint claim” provisions.
699. Schedule 7 to the Welfare Reform and Pensions Act 1999* introduced the requirement on certain couples to make joint claims for JSA. These provisions are to be commenced on 19 March 2001. The requirement to make a joint claim for JSA will impact on couples without children, where one or both partners is in the 18-24 years age range on the date when the measure is introduced. Coverage will apply to those born on or after a certain date, so older couples without children will be included as time passes. Under joint claims, both members of the couple will have to claim JSA and both will have to meet JSA labour market conditions.
700. *Subsection (1)* provides for subsections (2) and (3) to apply where the conditions of entitlement to joint-claim JSA are or become satisfied in relation to a couple and the community sentence sanction would have applied to at least one of the couple.
701. *Subsection (2)* provides that no joint claim JSA will be payable where both members of the couple are subject to community sentence sanctions, or where one member is subject to a community sentence sanction and the other is already subject to a sanction pursuant to section 20A of the Jobseekers Act 1995*. Section 20A provides for sanctions to apply to members of joint claim couples where they have unreasonably caused or prolonged their own unemployment.
702. *Subsection (3)* provides that where only one member of the couple is subject to a community sentence sanction and the other member is not subject to certain other sanctions, the amount of JSA payable will be reduced to an amount calculated in a prescribed way and will be paid to the member of the couple who is not subject to that sanction.
703. *Subsection (4)* provides for hardship payments to be made in cases where both members of a joint-claim couple for JSA are sanctioned for a breach of a community sentence, or where one member is sanctioned for such a breach and the other is sanctioned for employment-related reasons imposed under section 19 of the Jobseekers Act 1995. Regulations will prescribe the rate of payment, what information the couple need to provide and the circumstances in which such payments will be made.
704. *Subsection (5)* provides that the reduced amount referred to in subsection (3) will be calculated in the same way as described in section 20A of the Jobseekers Act 1995. The normal couple rate is £81.95 (April 2000 rates), plus any premiums or housing costs where applicable. If both members of the couple receive a community sentence sanction the amount will be reduced to nil. If one member of the couple is subject to a sanction, the other member will be paid the equivalent of the appropriate single person’s rate (ie £41.35 if aged 18 to 24, £52.20 aged 25 and over).
705. *Subsection (6)* provides for the payment of arrears in the event that a decision that an offender has breached the terms of his sentence is subsequently quashed or set aside by a Court.
706. *Subsection (7)* sets a maximum length of 26 weeks for the “prescribed period”. The intention for the pilot exercises is that the period will be for 4 weeks only. Regulations will be made specifying when the period of the restriction will commence. This will usually be the first full benefit week after the decision to impose a restriction is made. This avoids the need to calculate part-time week payments.

Section 64: Information provision

707. This section concerns the provision of information. It enables regulations to be made which will allow information to be exchanged between the Probation Service (in England and Wales) and local authorities (who control probation functions in Scotland)

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on the one hand, and officers of the Department of Social Security and the Department for Education and Employment on the other.

708. *Subsection (1)* provides that a court will be required to explain to an offender that a benefit sanction will arise as a consequence of failing to comply with a community sentence.
709. *Subsection (2)* enables the Secretary of State to make regulations requiring the probation service to notify the DSS or DfEE, at the prescribed time and in the prescribed manner, of the following:
- that an information has been laid at court relating to a breach of a community sentence;
 - that a Court has made a determination that the offender has failed without reasonable excuse to comply with his community sentence;
 - prescribed information about the offender;
 - any circumstances, whereby any adjustment or repayment may need to be made, as specified in sections 62(6) and 63(6).
710. *Subsection (3)* enables the High Court of Justiciary in Scotland to make Rules of Court requiring the Clerk of Court to notify the Secretary of State of the commencement and determination of court proceedings, such information about the offender as the court may specify and of any circumstances whereby any adjustment or repayment may need to be made. *Subsection (11)* specifies when such proceedings are commenced.
711. *Subsection (4)* imposes an obligation on the Secretary of State (in practice the Benefits Agency), to notify the offender, when an information is laid or proceedings commenced, that he will suffer a loss of benefit if the court determines that he has breached his order. *Subsection (5)* requires that the offender should be notified as soon as is reasonably practicable.
712. *Subsection (6)* allows regulations to be made relating to:
- (a) how a person, listed in *subsection (7)*, uses information relating to community orders or social security benefits;
 - (b) how people exchange information; and
 - (c) the purposes for which a person may use the information supplied.
713. Regulations under this subsection will prescribe the manner in which the Probation Services and the Benefits Agency will exchange information and the uses to which the information can be put. The intention is to allow exchange of information on, for example, benefit receipt, identity and address, the laying of information (or the commencement of Scottish court proceedings) and the outcome of the court proceedings, between the Probation Service (or in Scotland, local authorities controlling probation functions), the Benefits Agency, the Employment Service and private sector service providers. The information exchanged will need to be sufficient to identify the offender and to ensure these provisions are properly implemented. This information will not include details of the original offence in respect of which the original Order was made. However, information for evaluation, statistical and research purposes will also be included, which may go wider than that required for pure implementation of the benefit sanction regime.
714. *Subsection (7)* lists those persons authorised under subsection (6) above.
715. *Subsection (8)* allows regulations to be made covering how exchanged information can be used and passed on.

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716. *Subsection (9)* provides that the explanation which the court is to give under subsection (1) (about the consequences of failure to comply with a community order) will be treated as part of the explanation which the court is required to give to an offender under the relevant Scottish legislation, before it makes a community service order or a probation order.

Section 65: Loss of benefit regulations

717. This section contains provisions about the making of regulations by the Secretary of State.
718. *Subsection (1)* defines the term “prescribed” to mean prescribed by, or in accordance with, regulations made by Secretary of State.
719. *Subsection (2)* enables regulations made by the Secretary of State for the purpose of these provisions to determine the time from which any period prescribed in regulations is to run.
720. *Subsection (3)* provides for all regulations under these provisions, other than regulations referred to in subsection (4), to be made by the negative resolution procedure.
721. *Subsection (4)* lists which regulations will require the affirmative resolution procedure. These are:
- a) regulations to prescribe a reduced amount of Income Support to be paid to a claimant who is subject to a sanction for breach of a community sentence;
 - b) regulations prescribing a reduced amount of a joint-claim Jobseeker’s Allowance where one member of a couple is subject to a sanction;
 - c) regulations prescribing the circumstances in which hardship payments are to be made , and the amount, where the sanction applies to a single claimant or where both members of a joint claim couple are subject to a sanction;
 - d) any regulations specifying additional benefits to be covered by these provisions;
 - e) regulations adding to the list of community orders, breach of which will result in loss of benefit.
722. *Subsection (5)* allows the regulation-making powers in sections 62 to 64 to be used in such a way as to make different provisions for different classes of cases, imposing conditions or creating exceptions. It also enables the regulations to include incidental, consequential and transitional provisions.
723. *Subsection (6)* provides that regulations under these measures can include different provision for different areas.
724. *Subsection (7)* gives the Secretary of State power to make consequential modifications to the Scottish criminal procedure legislation where he makes an order prescribing further descriptions of relevant community orders.

Section 66: Appeals relating to loss of benefit

725. This section amends the Social Security Act 1998 to provide that an appeal to a Social Security decision maker lies against a decision to withdraw or reduce benefit under section 62 or 63.

Investigation Powers

Background

The current position

726. Section 110 of the Social Security Administration Act 1992* (the “Administration Act”) sets out provisions concerning the appointment and powers of social security fraud inspectors. Sections 110A and 110B of that Act set out provisions concerning the appointment and powers of local authority fraud inspectors in relation to Housing Benefit and Council Tax Benefit. Section 33 of the Jobseekers Act 1995* set out provisions regarding the powers of social security fraud inspectors in relation to Jobseeker’s Allowance*.
727. These powers allow inspectors to elicit and inspect information. For example, the inspector may ask an employer about his employees in order to establish whether benefit fraud is occurring. The information inspector’s request could include information on earnings, tax and National Insurance and pensions, and in the case of the self-employed or landlords, their business records. Inspectors may visit those from whom they require information, or they may write to them.
728. The legislation governing inspectors’ powers was introduced with the National Insurance system. It has been added to and amended over many years and has now become somewhat piecemeal and inconsistent. This has led to employers, employees and the Data Protection Registrar being unclear as to what inspectors are and are not allowed to do under these powers.

Recent developments

729. On 23 March 1999, the Government published its strategy and plans for reducing fraud and error *A new contract for welfare: Safeguarding Social Security* (CM 4276). The need to make effective use of inspectors’ powers is an important part of successfully investigating, detecting and punishing fraud. Fraud officers’ effectiveness could be jeopardised by employers and the Data Protection Registrar continuing to express uncertainty about what the powers allow, as their uncertainties are resulting in some employers refusing to comply with this legislation.
730. Discussions on the broad thrust of these measures have been held with business organisations, the TUC, local authority associations, the Office of the Data Protection Registrar and Liberty. All agreed that there was a need for clearer powers and business organisations in particular supported moves to modernise the legislation – for example, allowing more use of information technology such as e-mail.

The measures in the Act

731. The measures in the Act clarify and align inspectors’ powers in order to remove the uncertainty that currently exists and allow inspectors to operate effectively.
732. The measures are contained in section 67 and Schedule 6. They replace the current legislation.
733. In the new legislation, the term “inspector” is replaced by “authorised officer”. The new powers enable the Secretary of State and Local Authorities to authorise officers to use the powers set out in new sections 109B and 109C. Section 109B sets out the powers that authorised officers have to require information by issuing a “written notice”. The powers at section 109C set out an authorised officer’s powers to enter premises in order to obtain information. The powers do not allow authorised officers to force entry to premises, forcibly search premises or compulsorily detain persons for questioning. The purposes for which the powers can be used are also set out clearly in the legislation in section 109A(2) and 110A(2).

734. If those from whom information has been requested fail to comply with authorised officers' requests they may be prosecuted under the current section 111 of the Administration Act.

Commentary on Sections

Section 67: Investigation powers

735. This section gives effect to Schedule 6 (social security investigation powers).

Schedule 6

736. This Schedule contains provisions to replace certain enforcement provisions in Part VI of the Administration Act.

737. Sections 110, 110A and 110B of the Administration Act provide powers for social security fraud "inspectors" to obtain information by either writing to or visiting persons. Typically, the powers would be used to ask an employer for details of his employees in order to obtain information about people who may be committing benefit fraud by working whilst claiming benefit, or to obtain information from a self-employed person who may be working whilst claiming benefit. The powers set out in Paragraphs 2 and 3 of this Schedule replace these provisions. In the new sections, the term "inspector" has been replaced by "authorised officer".

Paragraph 2: Replacement for inspectors' powers

738. This paragraph replaces section 110 of the Administration Act with new sections 109A, 109B and 109C. Section 110 sets out the powers of inspectors who are appointed by the Secretary of State – this means those investigating fraud in all social security benefits.
739. The powers in new sections 109A, 109B and 109C can be used in relation to "relevant social security legislation". This is set out in new section 121DA inserted by paragraph 8 of this Schedule. The change to the term "relevant social security legislation" does not expand the scope of inspectors' powers except in so far as Jobseeker's Allowance inspections are now subject only to the new powers. Sections 33 and 34 of the Jobseekers Act 1995 are being repealed.

New section 109A: Authorisation for investigators

740. This section provides for the Secretary of State to authorise officers to exercise the powers set out in new sections 109B and 109C. It sets out who may be authorised, the purposes for which authorised officers may use the powers in new sections 109B and 109C and other particulars concerning the authorisations.
741. *New section 109A(1)* provides that a person who has the Secretary of State's authorisation under section 109A may exercise any of the powers set out in new sections 109B and 109C for the purposes set out in subsection (2).
742. *New section 109A(2)* sets out the purposes for which authorised officers may exercise the powers in new sections 109B and 109C. The purposes are:
- (a) ascertaining whether a social security benefit is or was payable in an individual case;
 - (b) investigating the circumstances of accidents, injuries or diseases giving rise to claims for Industrial Injuries Benefit and other benefits;
 - (c) ascertaining whether the provisions of the relevant social security legislation have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);

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- (d) preventing, detecting and securing evidence of the commission of criminal offences in relation to the relevant social security legislation (either by particular individuals or more generally).
743. In paragraph 741 above, (a) and (b) are linked to claims made by particular individuals; (c) and (d) include wider purposes where social security investigators may wish to investigate concerns more generally. They may, for instance, wish to investigate whether there is widespread contravention of the legislation in a particular workplace. In such cases, the investigator may wish to ask for lists of people. For example, they may ask for a list of all employees where an employer has a history of colluding with his staff in order that they can commit benefit fraud. The list would then be cross-referenced against benefit records.
744. *New section 109A(3)* sets out the requirements relating to an authorisation. The Secretary of State must have granted the authorisation for the purposes set out in subsection (2). The person given the authorisation must also fall into one of the categories set out in this subsection. The Secretary of State may authorise persons other than those in his own Department – those working for other Departments and for local authorities and their contractors. This means that the Secretary of State is able to make use of personnel and expertise in other organisations and helps promote closer working across Government and local authorities in anti-fraud work.
745. *New section 109A(4)* sets out further requirements regarding authorisations.
- (a) provides that an individual's authorisation must be contained in a certificate that is given to him as evidence of his entitlement to exercise the powers contained in new sections 109B and 109C.
 - (b) provides that the authorisation may contain provisions regarding the duration for which it may have effect.
 - (c) allows the Secretary of State to restrict the powers exercisable by virtue of the authorisation. He can prohibit the use of the powers except for particular purposes in particular circumstances or in relation to particular benefits or provisions of relevant social security legislation.
- (b) and (c) are discretionary powers.
746. The combination of this subsection and subsection (3) has the effect that the Secretary of State has a range of options open to him when authorising officers. For example, the Secretary of State could authorise a local authority's officers to conduct social security investigations in an area where he wished to promote closer working (subsection (3)). However, he may equally (by using subsection (4)) authorise the local authority's investigators for the duration of only one investigation, or limit the authorisation he grants so that local authority investigators may investigate all benefits except for benefits where they may have less expertise.
747. *New section 109A(5)* allows the Secretary of State to withdraw an authorisation at any time.
748. *New section 109A(6)* concerns circumstances where an individual working for a local authority, or a person administering Housing Benefit and/or Council Tax Benefit on behalf of a local authority, is granted an authorisation under this section.
- (a) provides that the Secretary of State and the local authority may enter into such arrangements as they see fit with regard to the exercise of these powers.
 - (b) allows the Secretary of State to make payments to the local authority if he considers it appropriate to do so.
749. *New section 109A(7)* provides that the matters on which an individual is authorised to report under section 139A of the Administration Act shall include work under this

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section carried out by an individual working for a local authority or for a person administering Housing Benefit and/or Council Tax Benefit on behalf of a local authority – for example, a contractor. This subsection would allow the Secretary of State to authorise the Benefit Fraud Inspectorate to inspect this work as it currently inspects local authority fraud work.

750. *New section 109A(8)* provides that authorised officers may exercise their powers in relation to persons employed by the Crown and conduct enquiries about persons employed by the Crown and in premises owned or occupied by the Crown.

New section 109B: Power to require information

751. Section 109B sets out powers to allow authorised officers to request information by a written notice for the purposes set out in section 109A(2). A notice shall be taken to be in writing in cases where the notice is transmitted by electronic means (such as fax or e-mail) provided that the notice is received by the recipient in a form which is legible and capable of being recorded for future reference. In this section, the term “document” includes anything in which information is recorded in electronic or any other format (see paragraph 8 of this Schedule).
752. *New section 109B(1)* provides that an authorised officer may request information by written notice. The authorised officer may request information from a person if he has reasonable grounds for suspecting that:
- (a) the person falls into one or more of the categories set out in subsection (2); and
 - (b) the person has, or may have, access to, or possession of, information about a matter which is relevant to at least one of the purposes set out in section 109A(2).
753. The authorised officer may require the person to provide all the information that is set out in the notice which is in the person’s possession or to which the person has access. It must also be reasonable for the officer to require the information for the pursuit of at least one of the purposes outlined in section 109A(2).
754. *New section 109B(2)* sets out the persons who may be required to provide information under this section. These are listed at subsections (a) to (j).
755. *New section 109B(3)* provides that a person has complied with a request when he has provided the required information within the time and in the format specified in the notice. However, the person will not be deemed to have failed to comply if he does not provide information to which he does not have access or which he does not possess (see subsection (1)).
756. *New section 109B(4)* makes it clear that authorised officers may require the persons in subsection (2) to produce and hand over the information requested, including copies or extracts of it – for example, if an employer of casual labour claims not to keep a record of his staff, the authorised officer could require him to compile one. Authorised officers’ requests must be reasonable (see subsection (1)).
757. *New section 109B(5)* protects people from being required to provide information which may incriminate themselves or their spouse.

New section 109C: Powers of entry

758. Section 109C provides an authorised officer’s power to enter premises in order to obtain information for the purposes set out in section 109A(2). As in section 109B, the term “document” should be taken to include anything in which information is stored in electronic or other format (see paragraph 8).
759. *New section 109C(1)* provides that the authorised officer may enter premises if they are liable to inspection under this section and where it is reasonable for him to do so to exercise his powers under the new section 109C. The premises liable to inspection

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under this section are set out in subsection (4). What is meant by the term “premises” is set out in paragraph 8 of this Schedule. The authorised officer may be accompanied by anyone else he considers it necessary to take with him. He may enter premises only at a reasonable time.

760. *New section 109C(2)* provides that, once an authorised officer has entered any premises liable to inspection under this section, he may look around those premises and conduct any enquiry there that he considers appropriate in his investigation for any of the purposes set out in section 109A(2).
761. *New section 109C(3)* provides that, once an authorised officer has entered any premises liable to inspection under this section, he may question anyone whom he finds on the premises, require them to provide documents that he may reasonably require for the purposes set out in section 109A(2) and take possession of, and remove, these documents. As with section 109B(4), the authorised officer may require the person to produce, hand over and create documents or copies and extracts of documents. Under this section, authorised officers also have the power to make their own copies of documents. What authorised officers do once they have entered the premises must be reasonable.
762. *New section 109C(4)* sets out the premises liable to inspection under this section.
763. *New section 109C(5)* states that where the authorised officer seeks to enter any premises under this section, he must, if requested to do so, produce the certificate containing his authorisation.
764. *New section 109C(6)* protects people from being required to provide information which may incriminate themselves or their spouse.

Paragraph 3: Exercise of powers on behalf of local authorities

765. This paragraph replaces sections 110A and 110B of the Administration Act with a new section 110A. Sections 110A and 110B of the Administration Act concern local authority benefit fraud inspectors’ powers. The powers relate to Housing Benefit and Council Tax Benefit only.

New section 110A: Authorisation by local authorities

766. *New section 110A(1)* provides that a person who has the authorisation of a local authority administering Housing Benefit and Council Tax Benefit may, subject to subsection (8), exercise any of the powers set out in new sections 109B and 109C for the purposes set out in subsection (2).
767. *New section 110A(2)* sets out the purposes for which a person authorised by a local authority may use the powers set out in new sections 109B and 109C. The purposes are:
- (a) ascertaining whether housing benefit or council tax benefit is or was payable in an individual case;
 - (b) ascertaining whether the provisions of the relevant social security legislation regarding Housing Benefit and Council Tax Benefit have been, are being or are likely to be contravened (in cases involving particular individuals as well as more generally);
 - (c) preventing, detecting and securing evidence of the commission of criminal offences in relation to Housing Benefit and Council Tax Benefit (either by particular individuals or more generally).
768. In paragraph 766 above, (a) is linked to claims made by particular individuals; (b) and (c) include wider purposes where investigators may wish to investigate concerns more generally. They may, for instance, wish to investigate whether there is widespread contravention of the legislation in a particular workplace. In such cases, the investigator

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may wish to ask for lists of people. For example, they may ask for a list of all employees where an employer has a history of colluding with his staff in order that they can commit benefit fraud. The list would then be cross-referenced against benefit records.

769. *New section 110A(3)* sets out the requirements for the local authority's authorisation. The local authority must have granted the individual an authorisation for the purposes set out in subsection (2). The person given the authorisation must also fall into one of the categories set out in this subsection.
770. *New section 110A(4)* provides that the provisions in section 109A(4) also apply to local authority authorisations. An authorisation must be contained in a certificate and a local authority may restrict the extent of an authorisation (see section 109A(4)).
771. *New section 110A(5)* allows the Secretary of State to withdraw the authorisation at any time.
772. *New section 110A(6)* provides that certificates of authorisation, and withdrawals of authorisations by local authorities, must be signed by the head of paid services or the chief finance officer.
773. *New section 110A(7)* provides that local authorities have a duty to comply with directions given by the Secretary of State. These directions may relate to:
- (a) whether or not the local authority may make any authorisations for the purposes of subsection (2);
 - (b) the period for which authorisations granted by the local authority shall have effect;
 - (c) the number of authorisations a local authority may make;
 - (d) how they should use the power to restrict authorisations in section 109A(4)(c) (applied by subsection (4)).
774. *New section 110A(8)* provides that officers authorised under this section may use the powers set out in sections 109B and 109C, with the following differences:
- (a) provides that the purposes for which these powers may be used are those set out in subsection (2) of this section, not section 109A(2), and
 - (b) provides that the powers may be used in relation to the relevant social security legislation only in so far as it relates to Housing Benefit and Council Tax Benefit.
775. *New section 110A(9)* provides that an authorised officer is not restricted to enquiring about benefits administered by the local authority who has appointed him. Thus, one local authority can conduct an inspection on behalf of another – for example, if one has greater expertise or was visiting the employer anyway.

Paragraphs 4 to 9: Consequential amendments

776. These paragraphs make consequential amendments to the Administration Act.
777. **Paragraph 4** provides for consequential amendments to section 111 of the Administration Act to ensure it applies to the relevant new sections as it currently applies to section 110.
778. **Paragraph 5** ensures consistency in references to the legislation to which new sections 109A, 109B, 109C and 100A apply and to which section 111A applies.
779. **Paragraph 6** ensures consistency in references to the legislation to which new sections 109A, 109B, 109C and 100A apply and to which section 112 applies.
780. **Paragraph 7** provides for section 113 of the Administration Act to apply in relation to the relevant social security legislation covered in the new sections, and to

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legislation concerning National Insurance contributions, Statutory Sick Pay and Statutory Maternity Pay.

781. **Paragraph 8** inserts a new interpretation section 121DA in Part VI of the Administration Act.

New section 121DA: Interpretation of Part VI

782. *New section 121DA(1)* sets out what is meant by the term “relevant social security legislation”.
783. *New section 121DA(2)* sets out the definition of an “authorised officer”.
784. *New section 121DA(3)* sets out what is meant by references to “document” and what is meant by notices being given in writing (see explanation of section 109B above).
785. *New section 121DA(4)* sets out the meaning of “premises”. Premises liable to inspection under section 109C must fall within the new section 109C(4) and this section. This makes clear that premises include moveable structures, vehicles, offshore installations and places of any other description whether or not they are occupied as land and anyone present there is regarded as an occupier. This provision is similar to the definition of premises in the current section 33 of the Jobseekers Act 1995.
786. *New section 121DA(5)* sets out what is meant by the terms “benefit”, “benefit offence” and “compensation payment”.
787. *New section 121DA(6)* makes clear that where a local authority has contracted out some of its Housing Benefit and Council Tax Benefit work, those working for the contractor or a sub-contractor can be authorised to act in accordance with the provisions in Part VI of the Administration Act.
788. *New section 121DA(7)* sets out that “subordinate legislation” has the same meaning in this section as the Interpretation Act 1978 (which means Orders in Council, orders, rules, regulations, schemes, warrants, bylaws and any other instruments made under an Act, see section 21).
789. **Paragraph 9** makes a consequential amendment to Schedule 10 to the Administration Act.

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.

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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:

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- (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).

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.

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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.

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.

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

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.

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

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.
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.

Child Benefit

Section 72: Child benefit disregards

838. Child Benefit is only payable to a person who is responsible for a child in any given week. Section 143 of the Social Security Contributions and Benefits Act 1992 sets out the meaning of "person responsible for a child". One of the necessary conditions is that the child is living with that person in that week. Various days of absence can be disregarded in determining whether the child is living with that person. Subsection (3) (c) prescribes that such days shall include days in which, in prescribed circumstances,

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the child is in residential accommodation following arrangements made under statutes specified in the current legislation, one being the Social Work (Scotland) Act 1968.

839. The intended effect of section 143(3)(c) and the regulation made under that power is to provide for Child Benefit to be payable in respect of children who live away from home, in residential accommodation, solely on account of a physical or mental illness or disability. The introduction of the Children (Scotland) Act 1995, which repealed parts of the Social Work (Scotland) Act 1968, had the unintended effect of excluding payment of Child Benefit in respect of a small group of disabled children in Scotland. This section restores the legislative basis for payments of Child Benefit in respect of this group, which are currently being made on an extra statutory basis.

Social Security Advisory Committee

Section 73: Social Security Advisory Committee

840. The Social Security Advisory Committee (SSAC) gives advice and assistance to the Secretary of State in connection with his duties under the “relevant enactments”. This section amends section 170 of the Social Security Act 1992 and inserts additional provisions to be treated as relevant enactments for the purposes of scrutiny by SSAC. The same applies in Northern Ireland under provisions relating to “relevant Northern Ireland enactments”.
841. *Subsection (1)* lists those provisions in the Act that shall now be inserted into the Social Security Administration Act 1992 and treated as “relevant enactments” for the purposes of scrutiny by SSAC.
842. *Subsection (2)* provides for those provisions to be replicated in Northern Ireland, and therefore treated as relevant Northern Ireland enactments for the purposes of SSAC scrutiny.