

# **WELFARE REFORM AND PENSIONS ACT 1999**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### *Commentary*

#### ***Section 68: Certain overpayments of benefit not to be recoverable***

This section provides that certain overpayments of benefits made before 1 June 1999 cannot be recovered from the recipient.

As a condition of receiving benefits, claimants are expected to tell the Benefits Agency about any relevant facts, or later changes in their circumstances, that might affect their benefit entitlement. If they do not, and it is later judged that they have received more benefit than they should have as a result, they are liable to repay the full amount of overpaid benefit. In most cases, it is clear what changes of circumstances need to be reported (for example, getting a higher level of income while receiving an income-related benefit).

However, with disability and incapacity related benefits, there are certain cases where disabled people cannot reasonably be expected to know how their benefit entitlement relates to their physical or mental condition or its effects — or that there is something they have to tell the Agency about. But when their benefit is reviewed, it may be discovered that they have, in fact, been overpaid. Examples of where this might happen are where the purchase of equipment has reduced the level of help needed from another person, or where rehabilitation following a disabling accident has gradually lowered the level of need and increased the capacity for work.

The section ensures that no overpayments of this kind arising from benefit reviews carried out up to 1 June 1999 can be recovered. The proposal to make these overpayments non-recoverable was announced in the answer to a Parliamentary Question on 26 February 1999, and was also discussed with organisations representing disabled people.

The provision will not apply to any overpayment in connection with which a person has been convicted of an offence, or in respect of which a person has agreed to pay a penalty as an alternative to prosecution.

Regulations have already been made, under existing powers, to deal with this kind of case from 1 June 1999. Where it is judged that claimants could not reasonably have known that their benefit entitlement could be affected, the regulations will provide that the relevant date for the change in entitlement to benefit was the date of the review -. Therefore no overpayment will arise.

#### **Commentary**

Currently, the rules for recovering overpayments of benefit are set out in Part III of the Social Security Administration Act 1992. They specify that money can be recovered when the overpayment arises because people:

*These notes refer to the Welfare Reform and Pensions Act 1999  
(c.30) which received Royal Assent on 11 November 1999*

have failed to declare a relevant change in their circumstances, or

have misrepresented a material fact. (Misrepresentation for this purpose can be wholly innocent.)

Section 68 provides that, despite the current provisions in that Act, certain overpayments relating to the effects of disability, or to a decision on incapacity for work, will not be recoverable.

*Subsection (1)* contains the general rule that overpayments covered by this section will not be recoverable.

*Subsection (2)* indicates that the section applies to reviews of qualifying benefits relating to a change in a person's condition at some point in the past; that the review decision was given before 1 June 1999; and that the overpayment is not one excluded by subsection (6) (see below).

*Subsections (3) and (4)* indicate that the section applies only to disability and incapacity related benefits – and only where benefit entitlement has changed because of a change in the disabled person's care or mobility needs (for Disability Living Allowance or Attendance Allowance) or capacity for work.

So, for example, the power will not apply to overpayments that arise in situations unconnected with the application of the care and mobility tests or the All Work Test, such as entering hospital or leaving the country.

*Subsection (5)* gives the meaning of “review”, “the relevant person” and “the original decision” for the purposes of the section.

*Subsection (6)* excludes from the scope of the section any overpayment where a person has been convicted of an offence in connection with the overpayment or, in accordance with section 115A of the Administration Act, has agreed to pay a penalty as an alternative to prosecution.

*Subsection (7)* states that the section does not apply to any overpaid amount recovered from a person before 26 February 1999, the date of the announcement that certain overpayments would not be recovered.