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

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Commentary

Part III

Chapter III: Other Welfare Provisions

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

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

The scheme to be made under this section will encourage tenants who are "under-occupying" accommodation in the public or social rented sector (that is, living in accommodation that is considered large in relation to their number and needs) to move to smaller and cheaper accommodation. On completion of the move, HB claimants will be rewarded with a lump-sum payment equivalent to half the difference between their old and new weekly rent, multiplied by 156. Since HB usually meets 100% of rental costs in the social rented sector, this is roughly half of the benefit savings expected over three years. It is intended that the lump sum will be disregarded as capital in the calculation of entitlement to income-related benefits, such as Income Support or the Working Families Tax Credit.

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

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

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

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

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

The section would allow the under-occupation scheme to be applied nationwide, though *subsection (7)* makes clear that no local authority would be obliged to take part in the scheme. However, the intention is to pilot the scheme in three local authorities; therefore *subsection (6)* allows the power to be used for a limited time and in certain areas only,

and for any necessary transitional arrangements to be made. Section 83(8) would allow different provision in different areas.

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

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

Section 80: Supply of information for child support purposes

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

The CSA is required by law to assess maintenance liability when a valid application is received. To make this assessment, it needs details of the non-resident parent's earnings. This information is sometimes difficult to obtain directly from the non-resident parent, who may deliberately withhold information with a view to delaying a demand for maintenance or may simply be unable to locate the relevant documentation. Whilst this is less significant for employed earners, where the CSA can approach the employer direct, non-resident parents who are self-employed, and who refuse to supply details of their profits, are extremely difficult to assess.

The Agency therefore needs to be in a position to build up a financial picture of a non-resident parent who does not provide details of his income, using as wide as possible a range of alternative sources of information. Tax information held by the Inland Revenue may offer the only alternative source of such information for the self-employed. However, the intention is that this will be a last resort measure, where the CSA has asked the non-resident parent for information, and issued a reminder, but there is still inadequate detail to make an assessment.

Access to tax information relating to self-employed non-resident parents is necessary to ensure that more non-resident parents pay the maintenance they owe. Given the Revenue's confidentiality provisions, the CSA can only gain access to this information if there is a specific statutory gateway. This provision provides this gateway and allows direct access, at the Revenue's discretion, to any tax information about self-employed non-resident parents held by the Inland Revenue.

Schedule 2 to the Child Support Act 1991 already allows the Secretary of State to request the Inland Revenue to provide information for the purposes of tracing non-resident parents. This information is restricted to the current address of the non-resident parent and his current employer. The CSA has access, via the Contributions Agency, to earnings information recorded on end-of-year tax returns that employers currently submit to the Inland Revenue. There is currently no provision, however, for other tax information to be used in assessing child support liability.

Commentary

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

Sub-paragraph (1) limits the power to obtaining tax information about *self-employed* non-resident parents, not all non-resident parents. It allows access to information for any tax year in which the non-resident parent was or is self-employed.

Sub-paragraph (2) exempts the Revenue from its confidentiality rules when providing this particular information.

Sub-paragraph (3) ensures that the paragraph only applies to disclosures made to the CSA by, or under the authority of, the Commissioners of the Inland Revenue.

Sub-paragraph (4) prevents, as a general rule, any tax information disclosed to the CSA under this power from being disclosed further.

For example, this overrides the power in section 3 of the Social Security Act 1998, which allows child support information to be used for the purposes of administering social security benefits. The exception in *sub-paragraph (4)(b)* allows the information to be used in civil and criminal court cases brought under the Child Support Act. For example, if a non-resident parent is served with a liability order, it may be possible to use information covered by this provision to satisfy the court that there is income to meet the liability.