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

The joint claims provision for Jobseeker's Allowance (JSA) is introduced by section 59 which brings Schedule 7 into effect.

Schedule 7 amends the Jobseekers Act to provide for joint claims.

> Paragraphs 1 to 16 of the Schedule amend existing provisions of the Jobseekers Act and insert new provisions.
>
> Paragraph 17 makes a necessary change to the rules for social security appeal tribunals set out in the Social Security Act 1998.

Paragraph 2: Entitlement to a Jobseeker's Allowance

This paragraph amends section 1 of the Jobseekers Act which provides for entitlement to JSA. Provisions for entitlement to contribution-based JSA are unchanged.

Sub-paragraph (3) inserts a *new section 1(2A)* into the Jobseekers Act, which states when income-based JSA can be claimed by a claimant who is not a member of a joint-claim couple. New subsection (2B) provides for the conditions of entitlement for a joint-claim couple.

The conditions of entitlement to JSA that joint-claim couples will have to meet are that the couple must claim jointly for the allowance and that they must each satisfy the conditions set out in paragraphs (a) to (c) and (e) to (i) of section 1(2) of the Jobseekers Act (for example, to be available for and to actively seek employment). They must also meet the conditions set out in the new section 3A, inserted by paragraph 3 of the Schedule (see below).

The couple will be covered by these requirements for so long as they claim JSA and their relevant circumstances remain unchanged. Examples of a relevant change for this purpose would be that the couple have a child or separate.

Paragraph 2(3) also inserts into section 1 two *new subsections, (2C)* and *(2D)*. *Subsection (2C)* provides a power to prescribe circumstances in which a claimant who is a member of a joint-claim couple can claim JSA as a single person, under subsection (2A).

It is intended that this should apply where one of the joint claimants fails to satisfy the conditions of entitlement for the joint-claim set out in new section 1(2B) of the Jobseekers Act. The other joint claimant, who is prepared to meet the conditions of entitlement, would then be able to claim contribution-based JSA under section 2 of the Jobseekers Act if he could satisfy the contribution-based conditions. If he could not satisfy the contribution-based conditions, he would be able to claim income-based JSA on his own behalf, by virtue of subsection (2A). However, the couple's income and capital will be taken into account in determining the amount of income-based JSA

which is paid. The award of JSA would thus be at the applicable single person's rate with no additional allowance for the partner who had failed to satisfy the conditions of entitlement for joint-claim JSA.

New subsection (2D) provides a power to prescribe in regulations how the provision for joint claims will be applied to the members of a polygamous marriage.

The intention is that where one or more members of a polygamous marriage are born on or after the date set in regulations and there are no dependent children, two members of the marriage will be required to make a joint claim. One of the claimants will always be the male partner, but the members of the marriage will be able to choose which of the wives will be the other joint claimant.

Currently, polygamous marriages are recognised under the benefit system provided they took place in a country where such marriages are legal. The husband may make a claim for himself and for his dependants and receives an addition in respect of each of his wives.

Sub-paragraph (4)(b) (in effect) defines a joint-claim couple as a married or unmarried couple who do not have dependent children.

Regulations will further specify which couples will be covered by the requirement to make a joint claim. It is intended that this will be done by reference to the date of birth of members of the couple. The intention is that couples where at least one partner is born on or after the specified date will be covered by the requirement to make a joint claim. The date will be set so that, at introduction, a couple where at least one partner is aged under 25 and has reached the age of 18 will be covered. The provision would therefore extend, over time, to a couple of any age, so long as they do not have children and one of them was born after the prescribed date.

Paragraph 4: The conditions for claims by joint-claim couples

Paragraph 4 inserts *sections 3A* and *3B* into the Jobseekers Act. These new sections set out the conditions which a joint-claim couple must meet to receive income-based JSA.

Section 3A adapts the provisions of the current section 3 to deal with the circumstances of a joint-claim couple. The section also provides that at least one member of the couple must have reached the age of 18.

If the other member of the couple is 16 or 17 years old, he must have a direction from the Secretary of State under section 16 of the Jobseekers Act that (to prevent severe hardship) JSA may be paid to him or he must be in prescribed circumstances so that JSA can be paid, to satisfy the conditions in new section 1(2B)(c) for a joint-claim couple to receive JSA. (These are the same situations in which, currently, a 16 or 17 year old may be named as a dependant on the JSA claim made by a person aged 18 or over.)

Section 3B deals with the new circumstance of payment of JSA to a joint claim couple. The joint claim couple have to decide which one of them will receive payment of JSA.

If the couple express no preference or cannot agree to whom the payment should be made, the Secretary of State (i.e. a departmental official) will decide who receives the payment. Whether the decision is made by the couple or by the Secretary of State, the payee will be known as the "nominated member". Provision is also made for the circumstances where the nominated member attracts a sanction under new section 20A introduced by paragraph 13. In these cases the other member of the couple, who has not attracted a sanction, will become the nominated member.

The legislation does not prevent direct payments to persons besides the nominated member (see section 3B(5)). Like other JSA claimants, joint-claim couples may have a proportion of their JSA deducted and paid direct to a third party. This is usually applied where JSA claimants have part of their benefit paid direct to a fuel company or mortgage provider. In exceptional circumstances, for example where a claimant has budgeting

problems due to alcoholism or gambling, the Secretary of State may use his discretion to pay all or part of a JSA award to the claimant's partner. This is extended to joint-claim couples so that the Secretary of State may make direct payment to the member of the couple who is not the nominated member.

Paragraph 5: Amount payable by way of a Jobseeker's Allowance

This amends section 4 of the Jobseekers Act, which sets out how the amount of JSA payable to an individual claimant is calculated.

It provides a method for calculating JSA where a joint claim has been made. Subsections (6) to (11) of section 4 will not apply to joint claimants but corresponding provisions are included in new section 4A (see note on paragraph 6, below).

Paragraph 6: Amount payable by way of a joint-claim Jobseeker's Allowance

Paragraph 6 inserts *new section 4A* into the Jobseekers Act. It sets out how the amount of JSA payable to a joint-claim couple is calculated and paid where a joint claim has been made and where one or both members of the couple are also entitled to contribution-based JSA.

In effect, this corresponds to subsections (6) to (11) of section 4, which make similar provision for individual claimants. The effect is that where claimants are entitled to both contribution-based JSA and income-based JSA they will receive whichever gives them the greatest amount of benefit. This ensures that members of a couple may receive individual awards of contribution-based JSA where this is in their best interests, even though they have initially made a joint claim. Where contribution-based JSA is paid to an individual, instead of joint-claim JSA, the joint claim rules will not apply.

Paragraph 7: Attendance, information and evidence

This paragraph amends section 8 of the Jobseekers Act in order to adapt the provisions on attendance, information and evidence for joint claims.

The intention is that joint claimants will be able to choose to attend the New Jobseeker Interview either with their partner or separately. They will both have a responsibility to provide information in connection with the furtherance of the joint claim.

Paragraph 8: The Jobseeker's Agreement

This amends section 9(12) of the Jobseekers Act, which provides that a Jobseeker's Agreement ceases to have effect when the claimant's award of JSA comes to an end, to adapt it for joint-claim couples.

Regulations will provide for circumstances in which the Agreement will continue; for example, where the joint-claim couple start a family, the JSA claim will change to a single claim for the whole family. The Agreement may continue and be reviewed.

Paragraph 9: Income and capital

Paragraph 9 inserts *new subsections (2A)* and *(2B)* into section 13 of the Jobseekers Act to adapt it for the purposes of joint-claim couples. Section 13 deals with the treatment of income and capital on a claim for income-based JSA.

Paragraph 10: Trade disputes and joint-claim couples

This paragraph inserts a *new section 15A* into the Jobseekers Act. Sections 14 and 15 of the Jobseekers Act will have effect in relation to joint-claim couples in accordance with the new section 15A.

Currently a person involved in a trade dispute is not entitled to either contribution-based or income-based JSA. However, the partner of the person involved in the trade dispute

may make a claim for income-based JSA for herself and any dependants, but no part of the allowance is payable for the person involved in the trade dispute.

The intention of new section 15A is to preserve the current situation with respect to joint-claim couples. Where both members of the couple are involved in a trade dispute and therefore prevented by section 14 from being entitled to JSA, the couple will not be entitled to joint-claim JSA. But where only one member is prevented from being entitled to JSA as a result of section 14, this alone will not prevent the couple from being entitled to a joint-claim JSA.

Currently where the partner of someone who is prevented from claiming JSA by virtue of section 14 makes a claim, the couple receives 50% of the appropriate applicable amount and premiums for the couple. A joint-claim couple who made a claim relying on section 15A would also receive an equivalent amount of JSA.

Paragraph 11: Reduced payments

This paragraph inserts *new section 17(1A)* into the Jobseekers Act. This provision mirrors *section 17(1)* of the Act. It provides a power for the amount of JSA payable to a joint-claim couple to be reduced where a member of the couple is a young person aged 16/17 years old and incurs a sanction.

Regulation 63 of the Jobseeker's Allowance Regulations (S.I. 1996/207) sets out the provisions for reducing payments in respect of a 16/17 year old who incurs a sanction and it is intended that similar provisions will apply to a 16/17 year old member of a joint claim couple.

Paragraphs 12-13: Circumstances in which Jobseeker's Allowance is not payable

Paragraph 13 inserts two *new sections, 20A* and *20B*, into the Jobseekers Act. These parallel the existing sections 19 and 20, but apply to joint claims. *Paragraph 12* inserts a reference to the new sections.

Section 19 of the Jobseekers Act provides circumstances in which JSA is not payable (sanctions). It provides for JSA not to be payable where, for example, the claimant has failed to apply for employment notified to him or has voluntarily left employment without good cause. Section 20 provides for exemptions to section 19.

Payment where one member of the joint-claim couple has breached new section 20A

Where one of the joint claimants breaches subsection (2)(a)-(g) of new section 20A, the claimant who has not contravened JSA rules will receive the same amount of JSA payment as if he had claimed JSA on his own behalf.

It is intended that regulations under the power provided in *subsection (6)* of new section 20A will provide that where the claimant who has not breached the rules meets JSA contribution conditions, he will be paid an amount of income-based JSA equivalent to the rate of contribution-based JSA for the duration of the period of the sanction, provided he continues to meet JSA entitlement conditions.

If he does not meet the JSA contribution conditions, he will be paid an amount equivalent to the amount of income-based JSA that he would receive were he to make a claim for income-based JSA on behalf of himself only (taking into account the couple's income and capital in determining the amount), provided he continues to meet JSA entitlement conditions.

New section 20A(7) provides that, if the claimant who normally receives the payment of JSA is the person who has breached new section 20A, payment of the single rate of JSA for the duration of the sanction will be made directly to the other claimant member of the couple.

Where both claimants breach JSA rules, new section 20A(5)(a) provides that no JSA will be paid for the period during which both are subject to sanctions.

It is intended that regulations will also provide that, where certain breaches of JSA rules attract a stoppage of JSA for two weeks for the first breach and a stoppage of JSA for four weeks for the second breach, the four week stoppage of JSA will apply only where the same partner on a joint claim contravenes the JSA rules more than once.

Paragraph 14: Termination of awards where another entitlement exists

This paragraph amends section 31 of the Jobseekers Act 1995 to extend it to joint-claim couples. It is a general rule that Income Support and JSA are mutually exclusive. In order to be entitled to JSA a person's award of Income Support must come to an end and in order to be entitled to Income Support a person's award of JSA must come to an end. Section 31 permits termination of awards for this purpose.

Paragraph 15: Interpretation

This paragraph amends the definition of "claimant" as contained in section 35 of the Jobseekers Act to include a joint-claim couple claiming a joint-claim JSA or each member of such a couple as the context requires. It also inserts definitions for "joint-claim couple", "joint-claim Jobseeker's Allowance" and "the nominated member".

Paragraph 16: Entitlement without satisfying conditions

This paragraph amends Schedule 1 to the Jobseekers Act (Jobseeker's Allowance: supplementary provisions).

Sub-paragraph (2) inserts a *new paragraph 8A* which allows the Secretary of State to prescribe circumstances in which a joint-claim couple will be entitled to joint-claim JSA even though only one member of the couple satisfies the JSA conditions referred to in new section 1(2B)(b).

Exemptions are necessary to cater for those who are unable to meet the JSA conditions, for example, those who do not meet the capability condition (in section 1(2)(f)) because of illness or disability. Others who have extensive caring responsibilities or are studying full-time will not be able to meet the availability condition (in section 1(2)(a)).

The intention is not to disentitle such joint-claim couples where one member of the couple cannot meet the conditions either at the outset of the joint claim or during the claim. (Currently, the partner is treated as a dependant on the JSA claim and is not required to meet the JSA conditions.)

Regulations will specify the persons to whom the provision applies, but it is intended that the categories will include persons caring for another person, persons incapable of work and those studying full-time in certain circumstances.

Transition to a joint claim

New paragraph 8A(2) of Schedule 1 to the Jobseekers Act provides for regulations to prescribe circumstances in which a couple is entitled to income-based JSA, without having made a joint claim for it. Such a couple will be called a transitional couple (defined as one where a member is entitled to income-based JSA on the coming into force of Schedule 7 to the Act).

The intention is that the couple will be treated as meeting JSA conditions of entitlement until the new claimant member of the couple is required to attend and provide information in connection with the joint claim.

Continuity of claims and awards

This paragraph inserts new paragraphs 9A, 9B, 9C and 9D into Schedule 1 to the Jobseekers Act 1995. These paragraphs contain powers to prescribe circumstances in which an award of joint-claim JSA should be treated as continuing in the form of an award of income-based JSA or contribution-based JSA; an award of joint-claim JSA should lapse; and in which an award of joint-claim JSA may be revived without the need for the claimants to make a new claim. Provision is also made to cater for cases where a claim has not yet been determined.

The various powers cater for JSA claimants who have a change of circumstance, which means they either cease to be a joint-claim couple or become a joint-claim couple. The underlying aim is to avoid unnecessary bureaucracy and ensure that joint-claim couples are treated in the same way as other JSA claimants, whilst at the same time being able to require a fresh claim where this is necessary.

It intended, for example, to use the power to continue an award where a couple in receipt of joint-claim JSA have a baby and so cease to be a joint-claim couple but still need to claim JSA.

Claims yet to be determined and suspended payments

Sub-paragraphs (5), (6) and *(7)* of paragraph 15 amend paragraph 10 of Schedule 1 to the Jobseekers Act (claims yet to be determined and suspended payments) to allow regulations to prescribe when a joint-claim couple or a member of such a couple may be treated as entitled to income-based JSA before the claim has been decided. It is intended that regulations will specify the same circumstances as are currently provided for JSA claimants in regulations.

They also allow for income-based JSA to be paid to the joint-claim couple or a member of such a couple where payment has been suspended. It is intended that regulations will specify the same circumstances as are currently provided for JSA claimants in regulations.

Paragraph 17: Interpretation of Chapter II of Part I of the Social Security Act 1998

Paragraph 17 amends section 39(1) of the Social Security Act 1998 so that members of joint claim couples have a right of appeal jointly or separately.

Schedule 8: Paragraph 28

This paragraph amends section 124(1)(f) of the Contributions and Benefits Act which provides that a person is only entitled to Income Support if he is not entitled to Jobseeker's Allowance. Income Support and JSA are mutually exclusive benefits. As with the provision at paragraph 14 of Schedule 7, it ensures that this general rule is extended to joint claim couples.

Schedule 8: Paragraph 29

Sub-paragraphs (2) and (3) amend sections 4 and 17 respectively of the Jobseekers Act, to ensure consistency of wording with provisions in Schedule 7 to this Act, which introduces joint claims for Jobseeker's Allowance.

Section 60: Special schemes for claimants of Jobseeker's Allowance

Background

This section enables the establishment of Employment Zones. Employment Zones are defined geographical areas where the Secretary of State for Education and Employment contracts with external organisations, either public or private, to try to help long-term unemployed claimants of Jobseeker's Allowance (JSA) to find sustainable employment.

Plans for Employment Zones were announced by David Blunkett, the Secretary of State for Education and Employment, on 2 February 1999, and consultation over the detailed elements of the proposals finished on 30 April 1999. Five prototype Employment Zones and three further, smaller-scale development projects were set up during 1998, under existing legislation. But in order fully to implement Employment Zones, primary legislation was needed in the following areas:

> First, Employment Zones are concentrated on specific areas of high long-term unemployment; yet existing legislation limited the Secretary of State's powers to alter the conditions of entitlement to JSA for different areas of the country;
>
> Second, a key feature of Employment Zones not available in the prototypes is the "Personal Job Account". This will be an account set up for individual participants in the Zone– with the aim of getting them back to work more quickly. It will enable them to anticipate up to 6 months of the funding for training and jobsearch, combined with funds equal to the payments that they would normally receive from JSA.
>
> Third, legislation was required so that, for example, when people do not conform to the requirements of the Employment Zone (e.g. fail to complete and agree an Action Plan with their personal adviser), without good cause, their JSA payments could be withheld.

Commentary

Subsection (1) enables regulations to provide for special arrangements to be made for JSA claimants in geographically defined areas to assist them to find sustainable employment. This subsection enables Employment Zone delivery agents to undertake schemes which may not be available elsewhere in the country. Schemes may also cover the whole of Great Britain.

Subsection (2) provides examples of provisions which can be included in regulations made under this section.

One such provision (set out in subsection (2)(a)) would involve imposing further conditions upon recipients of JSA within an Employment Zone for receiving the benefit. Thus, they could be required to complete and agree an Action Plan with their personal adviser as a precondition for receiving JSA. Regulations made under this section could also suspend the normal labour market conditions, namely, actively seeking and being available for work, for those participating in a prescribed scheme. This is necessary because activities on an EZ may not be consistent with the usual JSA conditions.

Subsection (3) gives a power to apply the provisions of the Jobseekers Act with modifications.

Subsection (4) ensures that the provisions from the Act that may be applied in this way include the rules for when claimants do not meet the conditions of JSA, and the benefit is not paid.

Section 19 of the Jobseekers Act sets out the circumstances when sanctions may be applied to JSA claimants, and the benefit not paid. Examples are when someone has refused to accept a place on an employment programme, or lost that place through misconduct. Section 20A contains the parallel provision for joint-claim JSA introduced by Schedule 7 to this Act (see commentary on section 59 for details). *Subsection (4)(a)* provides that this sanctions regime may be modified for participants in an Employment Zone. The modified details (for example, the length of the sanction) would be set out in regulations (in the same way that the current details are set out in the JSA Regulations).

Section 20 of the Jobseekers Act (and the new section 20B for joint-claim JSA) provides for exemptions to the circumstances when JSA is not payable under section 19 (or 20A). Examples might be where a person is ill, or on jury service. It also gives the power to define when hardship payments may be made to claimants, even though JSA is not

in payment. *Subsection (4)(b)* ensures that these provisions may also be modified for participants in Employment Zones.

Subsection (5) enables the Secretary of State to associate himself, financially or otherwise, with arrangements to assist people into sustainable employment.

In Employment Zones this may include contracting out and providing funding to Employment Zone delivery agents for the provision of the necessary services to assist people to find work.

Subsection (6) ensures that the National Assembly for Wales can make payments to those running Employment Zones in Wales without changing the devolution arrangements for training for work, jobsearch and social security, and without restricting the use of such payments to the provision of training.

It is not intended that this change should broaden the Assembly's role in relation to jobsearch or other non-transferred matters.

Subsection (7) enables the Secretary of State to use the existing powers in section 26 of the Employment Act 1988 with respect to schemes operating under this section.

Section 26 gives the power to make an order covering details of the employment status of those participating in training schemes within an Employment Zone; and details on how income gained while on the scheme should be treated for the purposes of other relevant legislation (e.g. legislation relating to tax or National Insurance contributions).

Section 61: Incapacity for Work

Background

Entitlement to incapacity benefits is dependent on satisfying one of two tests of incapacity for work set out in legislation.

> The 'Own Occupation Test' normally applies for the first 28 weeks of incapacity, for those with a recent work record. The test assesses the claimant's ability to do their usual job, based on medical evidence from their GP.
>
> The 'All Work Test' applies after 28 weeks of incapacity for those with a recent work record and from the start of the claim in all other cases. It is a functional test which assesses the claimant's ability to perform a wide range of activities.

The benefits which depend on satisfying the test of incapacity for work are Incapacity Benefit (IB); Severe Disablement Allowance (which is abolished for new claimants by section 65); Income Support; the disability premiums in Income Support, Housing Benefit and Council Tax Benefit; and, in addition to these benefits, National Insurance credits awarded on grounds of incapacity.

The consultation paper *A new contract for welfare: SUPPORT FOR DISABLED PEOPLE* (Cm 4103) gave a commitment to reform the All Work Test, by changing it so that, as well as establishing the level of people's incapacity for work for benefit purposes, it provides information which will be potentially helpful to claimants and their personal advisers, in combination with a wider assessment of employability, to decide what might be done to assist a return to work.

Summary of changes

Section 61 and Part II of Schedule 8 work together to achieve this reform. Section 61:

> renames the All Work Test the "Personal Capability Assessment". This reflects the additional elements added by the section and Part II of Schedule 8, which provide that, as well as producing information for benefit purposes, about people's incapacity,

the assessment process should produce information about people's capabilities; and that

both kinds of information may be used for the purposes of helping people enhance their employment prospects.

retains the existing powers for determining whether a person is "incapable of work" for the purposes of receiving incapacity benefits. The threshold of incapacity at which it would be unreasonable to require a person to work, or seek work, will be unchanged;

enables the Personal Capability Assessment process to be started earlier, with the intention of identifying people's needs as quickly as possible;

makes clear that the Personal Capability Assessment may be repeated at any time throughout the duration of entitlement to benefit.

Section 61: Incapacity for work: Personal Capability Assessments

The section replaces section 171C of the Contributions and Benefits Act, which provides for the All Work Test. *New section 171C* for the most part mirrors the existing provision for the All Work Test, but renames it the Personal Capability Assessment. It also enables the Personal Capability Assessment to be carried out before a person technically becomes subject to the assessment. The intention is to speed up the process and secure a proper assessment of people's needs at an early opportunity. The section also ensures that the Personal Capability Assessment may be repeated, to determine whether a person continues to be incapable of work.

New subsections (1) to *(3)* mirror the existing provision for the All Work Test.

Subsection (1) provides for the "Personal Capability Assessment" to apply in the same way as the All Work Test.

Subsection (2): allows the details of the Personal Capability Assessment to be set out in regulations.

This follows the existing provision for the All Work Test, but deals with capacity as well as incapacity. The existing regulations for the All Work Test set out measures of the extent of a person's incapacity in specified activities which relate to the ability to work. They cover physical, sensory and mental functions (e.g. walking; sitting; bending and kneeling; hearing; vision; concentration and mood). Assessment is based on a scoring system: claimants who reach a set points threshold are entitled to incapacity benefits, subject to meeting entitlement conditions.

Subsection (3) gives the power to provide for treating people as incapable of work until they have had a Personal Capability Assessment, or have been classed as capable of work for other reasons (for instance, if they fail to respond to a request for information or evidence). It ensures that incapacity benefits can remain in payment pending a decision on whether a person satisfies the test of incapacity.

New subsections (4) and *(5)* make new provisions for the Personal Capability Assessment.

Subsection (4) enables a Personal Capability Assessment to be carried out during the first 28 weeks of incapacity (i.e. while the Own Occupation Test still applies for benefit entitlement purposes).

Currently the process of assessment cannot begin until the date when the All Work Test applies (usually after 28 weeks of incapacity), and can typically take many weeks to complete. This can mean that decisions on benefit entitlement are delayed, and that, following the introduction of the new capability element, information which would be helpful in preparing for a return to work would not be available when it would be of most

value – before people have become detached from the labour market. Enabling the process to begin *before* week 29 is intended to address these problems.

Subsection (5) ensures that "the Secretary of State" (normally a Benefits Agency official, acting on the Secretary of State's behalf) may require people who have been found incapable of work in accordance with a Personal Capability Assessment (and who are therefore entitled to incapacity benefits) to undergo a reassessment for the purposes of determining whether they are still incapable of work.

Schedule 8: Part II – Incapacity

Paragraph 23

This paragraph makes amendments to section 171A of the Contributions and Benefits Act, relating to the Personal Capability Assessment provided for in section 61. The intention of the new assessment process is to produce information about people's capabilities, as well as a decision on their incapacity for work for benefit purposes, and for this information to be used to help them enhance their employment prospects.

Sub-paragraph (2) inserts a *new subsection (2A)* into section 171A of the Contributions and Benefits Act, to widen the scope of the information or evidence that may be requested from claimants.

Subsection (2) of section 171A of the Act currently provides the power to obtain information and evidence in order to determine whether a person satisfies the test of incapacity for work for purposes of entitlement to benefit. The new Personal Capability Assessment will have a dual function: to determine whether a person satisfies the test for benefit entitlement, *and* to use information about a person's capabilities gathered during the assessment process to draw up a "capability report" on what they might nevertheless be able to do with appropriate help and support. New subsection (2A) provides for the collection of "information or evidence capable of being used for assisting the person in question to obtain work or improve his prospects of obtaining it" – i.e. information about people's work-related capabilities.

In practice, much of the information generated during the Personal Capability Assessment process will be equally relevant to the advice whether a person should be treated as incapable of work for benefit purposes, and to the "capability report". However there may be additional areas that may usefully be explored – such as what work-related activities the person might be able to do, and what sort of help they might need to do them.

Sub-paragraph (3) deals with the power to require claimants to attend a medical examination.

It amends subsection (3) of section 171A of the Contributions and Benefits Act. Subsection (3) at present provides that a person may be called to attend a medical examination where "a question arises as to" whether a person is capable of work. This is now replaced with "where it falls to be determined" whether a person is capable of work, to make it clear that it is not necessary for a medical examination to be preceded by a particular event which has raised a question in the mind of the decision-maker. This amendment supports the provision in section 61 of this Act to clarify the Secretary of State's power to require a reassessment.

Sub-paragraph (4) inserts a new subsection (5) into section 171A which ensures that all information supplied under section 171A is treated as social security information, so that powers relating to the exchange and disclosure of social security information apply to it.

This ensures that information collected during the Personal Capability Assessment which relates to a person's work-related capabilities, as well as information that relates strictly to the question of whether they are technically incapable of work for benefit

purposes, can be passed on to personal advisers. It may also be used more generally, for the purpose of enhancing a person's employment prospects and rehabilitation. The relevant powers dealing with information are section 3 of the Social Security Act 1998 and section 72 of this Act (see later commentary).

Paragraph 24 makes a minor change of wording, consequential on the renaming of the All Work Test.

Sections 62-65: Incapacity Benefits

Incapacity Benefit (IB) is a contributory benefit which provides an income for people who are unable to work because of illness or disability, and have paid a specified amount of National Insurance contributions.

These sections make a number of changes to the IB legislation. They:

amend the National Insurance contribution conditions for new claims;

allow income from occupational and personal pensions to be taken into account when assessing what amount of IB people receive;

extend entitlement to IB to long-term incapacitated people who claim while aged 16-19 (or, in prescribed cases, before age 25) and who would currently receive Severe Disablement Allowance.

They also:

abolish Severe Disablement Allowance for new claimants (section 85 provides powers to protect the benefit for existing recipients.)

The Government's proposals were published in the consultation document *A New Contract for Welfare: SUPPORT FOR DISABLED PEOPLE* (Cm 4103) in October 1998.

Section 62: Incapacity Benefit: restriction to recent contributors

Previously, in order to qualify for Incapacity Benefit (IB), people had to satisfy the two National Insurance contribution conditions set out in paragraph 2 of Schedule 3 to the Contributions and Benefits Act:

First, they must have *paid* either Class 1 (employed) or Class 2 (self-employed) National Insurance contributions, or a combination of both, on earnings equal to at least 25 times the Lower Earnings Limit (currently £66.00 a week) in *any* one tax year prior to the benefit claim; and

Second, they must have paid, or been credited with, either Class 1 or Class 2 National Insurance contributions, or a combination of both, equal to at least 50 times the Lower Earnings Limit in each of the two tax years prior to the benefit year in which they claim IB. A benefit year begins on the first Sunday in January; the tax year starts on 6 April.

Under the Social Security (Credits) Regulations 1975, people can be given credits in a number of circumstances, to help maintain their contribution record. The main effect of credits is to help people qualify for retirement pensions, but they can also count for other benefits. Credits which can count for the purpose of the second contribution condition in IB include credits for weeks of unemployment, incapacity or training, and credits for weeks receiving Invalid Care Allowance or Disabled Person's Tax Credit.

Commentary

Subsection (2) amends the entitlement rules for IB, so that benefit is payable only to those who have worked and paid National Insurance contributions in one of the *last three* tax years.

It replaces the first National Insurance contribution condition, by replacing paragraph 2(2)(a) of Schedule 3 to the Contributions and Benefits Act.

To qualify for benefit in future, claimants, in addition to satisfying the second contribution condition, must actually have *paid* either Class 1 or Class 2 National Insurance contributions, or a combination of both, on earnings equal to at least 25 times the Lower Earnings Limit in one of the last three tax years before the benefit year to which the claim is made, rather than in any one tax year. This brings IB more into line with contribution-based Jobseeker's Allowance (JSA). The second contribution condition will remain unchanged.

The current provision, in paragraph 2(7) of Schedule 3 to the Contributions and Benefits Act, allows people who do not satisfy the second condition at the time they first claim to make a repeat claim at a later date when they will satisfy it (usually the following January, when the start of a new benefit year triggers a different pair of tax years). *Subsection (3)* extends this to cover the new first contribution condition. This will ensure that people who have paid sufficient contributions to satisfy the contribution conditions from a future date at the point they fall ill or become disabled, are not permanently prevented from qualifying for IB.

For example: a student who works only for a few months after leaving university and then has a serious accident, would have paid contributions in too recent a tax year to qualify for IB—and would not be able to claim the benefit without this provision.

Subsection (4) provides a regulation-making power to modify the new first contribution condition for people in a specified class.

It is intended to use this power to protect people who have paid contributions at some stage but who have not had the opportunity to do so recently because, for example, they have been carrying out caring responsibilities for which they receive Invalid Care Allowance. People on DPTC who have earnings below the LEL for more than two years will also be protected by this sub-paragraph. Without it they would be unable to re-qualify for IB as they would not have paid any contributions and would also be beyond the 2 year linking rule. It will also be used to protect people who were in receipt of IB in the tax year before a new claim; without this protection, they may be unable to re-qualify for benefit after short breaks in entitlement.

Section 63: Incapacity Benefit: reduction for pension payments

This section provides for Incapacity Benefit (IB) to be reduced by 50 pence for every pound of income above £85 that a claimant has from an occupational or personal pension.

IB is usually paid only to people of working age. However, where a person under state pension age (60 for women and 65 for men) has an occupational or personal pension, this previously did not affect entitlement to IB.

Commentary

The section makes these provisions by inserting a new section 30DD into the part of the Contributions and Benefits Act that contains the rules for IB.

The *new section 30DD(1)* provides that where someone who is entitled to IB has income from a pension payment, which is defined by section 30DD(5) to include occupational pensions, personal pensions, and public service pensions, and that pension payment is in excess of a threshold amount of £85, provided by subsection (2), 50 per cent of the excess will be deducted when assessing IB. The *new section 30DD(2)* defines the amount of the threshold as £85 a week, or if the period in question is not a week the appropriate proportion as prescribed in regulations.

The *new section 30DD(3)* gives power to prescribe in regulations people who may not have their benefit reduced. It is intended to use this power to prescribe that people on IB who are entitled to the highest rate care component of Disability Living Allowance will not have their IB reduced.

The *new section 30DD(4)(a)* allows exemptions to be made. For example, the intention is to use this power to disregard payments where the pension payments are in connection with the death of a member of a scheme, or where an occupational pension scheme is in deficit or has insufficient resources to pay the full pension.

The *new section 30DD(4)(b)* gives the power to make regulations to assume a notional income in cases where claimants deliberately choose not to take a pension payment in order to increase or maximise their benefit.

The intention is to make similar regulations to those already in place for other benefits, including Income Support and Jobseeker's Allowance. In the case of personal pensions, the regulations prevent any notional income being taken into account before the person is aged 60. They also provide for notional income to be assessed on the basis of information supplied by the pension provider, using tables supplied by the Government Actuary's Department. It will allow the DSS to take into account the amount of pension income which the claimant deferred. But the amount would have to be greater than £85 a week before it would affect IB.

The *new section 30DD(4)(c)* enables regulations to provide that it is the aggregate amount of pension payments that will be deducted from IB if they exceed the threshold.

The *new section 30DD(4)(d)* provides the power to apportion pension payments into weekly payments.

For example, this will enable monthly pension payments to be converted into weekly amounts so that they can be deducted from IB on a weekly basis.

The *new section 30DD(5)* defines what is meant by "pension payment". This includes payment from personal pension, occupational pension and public service schemes.

The *new section 30DD(5)(b)* provides the power to prescribe other types of pension, or similar, income for which a deduction may be made (as is the case for JSA).

It is intended to use the power to prescribe that permanent health insurance payments should be deducted from future IB claims. This would apply to those permanent health insurance schemes that are arranged by employers to provide for employees, where the contract of employment has ended. It would not apply to schemes used to fund normal occupational sick pay. In the same way as for occupational and personal pensions, the first £85 a week would be totally disregarded and 50% of the remainder deducted from future IB.

The power in *new section 30DD(5)(c)* to specify other payments would enable income to be taken into account if new products are developed which provide similar income to occupational and personal pensions or permanent health insurance.

The *new section 30DD(6)* provides the definition of the occupational pensions, personal pensions and public service pensions to be taken into account when assessing IB. These pensions are defined in the Pension Schemes Act 1993 and are already used for JSA purposes.

The Act provides (at *Part II of Schedule 8*) for any regulations concerning the definition of pension payments to be subject to affirmative resolution by both Houses of Parliament. That is to say, the regulations must be approved in draft by Parliament before being made. This is in line with the procedures for JSA.

Part II of Schedule 8 makes some minor amendments to existing legislation as a result of the Act's provisions for IB.

Section 64: Incapacity benefit: persons incapacitated in youth

This section allows a new category of people to claim Incapacity Benefit (IB). They are those people aged between 16 and 19 (or, in prescribed cases, age 25 – see below) who would currently claim and receive Severe Disablement Allowance (SDA). Section 65 of this Act abolishes SDA for new claimants.

Subsection (1) amends the entitlement conditions for IB set out in section 30A of the Contributions and Benefits Act, and provides that this group may receive IB without meeting the contribution conditions.

Subsections (2) and *(4)* make consequential amendments.

Subsection (3) inserts a *new subsection (2A)* into section 30A of the Contributions and Benefits Act.

To be entitled to IB without having satisfied the contribution conditions, a person must have become incapable of work before the age of 20 (or 25 in certain circumstances), must satisfy the conditions of residence or presence in Great Britain, and must not be in full-time education. *Subsection (2A)(c)* provides that these people must also have been continuously incapable of work for at least 196 days (28 weeks) before benefit can be paid. This is intended to ensure that the benefit is correctly targeted at long-term incapacity for work.

Subsection (2A)(b) gives a regulation-making power to extend the cut-off age from 20 to 25 in certain circumstances.

It is intended to use this power to extend the age cut-off from 20 to 25 for people in education, or vocational or occupational training. The intended qualifying conditions for extending the age cut-off will be that:

> they must have started the course before their 20th birthday; and
>
> they must have finished their course no earlier than in one of the last two complete tax years before the year in which they claim benefit (the tax year starts on 6 April and the benefit year begins in the next January). So, for example, if their course finishes in June 2005, they will be able to claim IB until December 2008 (so long as they are still under 25).

The inserted subsection (2A)(d) gives regulation-making powers to define the residence and presence conditions. It is intended to use this power to require claimants to have been ordinarily resident or present in Great Britain for a total of at least 26 weeks in the year up to the date of entitlement.

Once a person has qualified for IB under these new rules they may re-claim benefit after the age of 20, following a break in claiming, if the new claim "links" with the previous period of entitlement to IB. For claims to link, the break between benefit claims must not exceed 8 weeks. For those who leave benefit because of starting work the linking period is extended to 52 weeks under the Welfare to Work Regulations 1998. And, for those who leave benefit and claim Disabled Persons` Tax Credit or start a Training for Work course, the linking period is extended to two years.

Subsection (5) inserts *new subsections (6) and (7)*into section 30A of the Contributions and Benefits Act. It is intended to use the power in subsection (6) to allow people to re-qualify for short-term benefit even though they may be over the age limit, if they were awarded IB under the new conditions in subsection (2A) and left benefit to work but earned below the lower earnings limit, or went abroad, and did not re-qualify for benefit through the linking rules.

The intention is to use the power in subsection (7) to define "full-time education" to apply only to people aged 16-18, and to provide that, in order to qualify for benefit, they must spend less than 21 hours a week in education (excluding any time spent on a course not normally taken by a non-disabled student).

Section 65: Abolition of Severe Disablement Allowance;

This section, and*Part IV of Schedule 13*, abolishes Severe Disablement Allowance (SDA), by repealing sections 68 and 69 of the Contributions and Benefits Act.

SDA is a non-contributory, non means-tested benefit, paid to people who cannot work because of illness or disability, and who have not paid sufficient National Insurance contributions to qualify for Incapacity Benefit (IB). For people who become incapable of work before the age of 20, the qualifying test of "incapacity" is the same for SDA as for IB—but those aged 20 and over must additionally be assessed by a doctor as "80% disabled".

Approximately 70% of SDA recipients also claim Income Support to top up their income, and therefore see no financial gain from claiming the benefit. This is because SDA is paid at a lower rate, and is always deducted pound for pound when calculating the amount of Income Support payable.

Part IV of Schedule 13 makes the necessary consequential repeals for the abolition of SDA.

Section 85 provides a regulation-making power to make transitional and saving provisions which will allow the Government to protect existing recipients. In *A new contract for welfare: SUPPORT FOR DISABLED PEOPLE* (Cm 4103), the Government said that those recipients aged 20 or above at the point of change would continue to get the benefit.

The Government intends to make regulations that will automatically transfer, a year after the changes are introduced, those under 20s who were entitled to SDA at the point of change, onto long-term Incapacity Benefit. This will give this group of people access to long-term IB at the same time as those who bocame entitled to short-term IB under the new entitlement conditions introduced by section 64 of this Act.

Sections 66-67: Disability Benefits

Sections 66 and 67 make three changes to disability benefits. They:

introduce regulation-making powers as to entitlement to Attendance Allowance;

amend the terminology relating to awards made for an indefinite period; and

extend entitlement to the higher rate mobility component of Disability Living Allowance to 3-and 4-year-old severely disabled children with serious mobility problems.