

CURRENT LAW STATUTES

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1989

VOLUME TWO

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SOCIAL SECURITY ACT 1989*

(1989 c. 24)

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* Annotations by N. J. Wikeley, Lecturer in Law, University of Birmingham; of Gray's Inn, Barrister.

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An Act to amend the law relating to social security and occupational and personal pension schemes; to make provision with respect to certain employment-related benefit schemes; to provide for the recovery, out of certain compensation payments, of amounts determined by reference to payments of benefit; to make fresh provision with respect to the constitution and functions of war pensions committees; and for connected purposes. [21st July 1989]

PARLIAMENTARY DEBATES

Hansard, H.C. Vol. 143, col. 1110; Vol. 144, col. 714; Vol. 151, cols. 668, 973; Vol. 157, col. 436; H.L. Vol. 506, col. 1402; Vol. 508, col. 507; Vol. 509, cols. 311, 847; Vol. 510, cols. 342, 573, 917.

The Bill was considered by Standing Committee F from January 1, 1989 to March 9, 1989.

INTRODUCTION AND GENERAL NOTE

This is a hotchpotch of measures, like the Social Security Act 1988. The most important and most controversial measures in the Act concern the recoupment of benefits from compensation payments in tort (s.22 and Sched. 4) and the changes to the legislation governing unemployment benefit (ss.10–12).

Recoupment of benefit

S.22 and Sched. 4 introduce a new scheme for the recovery of sums equivalent to benefit from compensation payments paid in respect of accidents, injuries or diseases. This scheme supersedes the 50 per cent. offset of benefits listed in s.2 of the Law Reform (Personal Injuries) Act 1948 for all bar the least serious personal injuries claims. It requires 100 per cent. deduction of prescribed benefits from both awards and settlements of such claims. The deduction is to be made against the totality of such a payment, and not just against damages in respect of loss of earnings as under s.2. No account is to be taken of any contributory negligence, unlike under s.2. Compensators must then pay over such sums to the Secretary of State, rather than offset them against any payment. The deduction is to be made in respect of benefits received up until the time of the payment, or for five years, whichever is

the less. Small payments below a prescribed threshold will be excluded from the new scheme, but will remain subject to the 50 per cent. offset under s.2, as amended by Sched. 4. The recoupment provisions apply to accidents or injuries which occur after January 1, 1989, or to diseases where a claim for benefit is made after that date. The implementation date for the provisions is likely to be September 1990.

Unemployment benefit

S.9 extends the abatement rule for the purpose of unemployment benefit (Social Security (No. 2) Act 1980, s.5) to personal pensions as well as occupational pensions. S.10 establishes a new requirement for entitlement to unemployment benefit. Claimants must now show that in addition to being available for work they are also "actively seeking employment." Regulations under s.10 specify the types of steps which are required to satisfy this new condition. S.11 tightens up the requalification rules for unemployment benefit once a person's right to benefit has been exhausted. S.12 makes a number of important changes to the legislation concerning disqualification from benefit because of voluntary unemployment. A claimant is no longer able to decline a job on the ground that it is not "suitable employment." Claimants may still rely on the concept of "good cause," but this is subject to regulations made by the Secretary of State. The simple fact that a claimant is accustomed to receiving a higher wage than that on offer does not in itself constitute "good cause," although claimants may turn down such jobs for a "permitted period," again as defined in regulations. This period may be as little as a week. The disqualification rule itself is relaxed slightly by a new provision enabling some unemployed people to try out a new job on a trial basis without fear of disqualification. Claimants can only avail themselves of this exception if they try out the new job for a "trial period" of between six and 12 weeks. Finally, Sched. 8, para. 3 provides for new regulations governing the treatment of termination payments in relation to unemployment benefit.

The remaining measures fall into the following disparate categories:

Benefits under the Social Security Act 1975

S.6 is a welcome measure which restores widows' benefits to widows whose entitlement had been withdrawn or reduced by the Social Security Act 1986. S.7 (together with Sched. 1) implements the Government's long-standing commitment to abolish the earnings rule for state retirement pensions. S.8 increases the age limit for the *payment* of mobility allowance from 75 to 80. *Claims* must still be made by the age of 66 at the latest, and in respect of disability existing at the age of 65. Ss.9–12 have been mentioned above under "unemployment benefit." Sched. 8, para. 2, provides for the disregard of councillors' local government attendance allowances in connection with entitlement to incapacity benefits.

Contributions

S.1 introduces the new structure of employed earners' primary Class 1 National Insurance contributions announced by the Chancellor of the Exchequer in the Spring 1989 Budget. S.2 extends the power of the Secretary of State to repay contributions to employed earners in prescribed circumstances. S.3 abolishes the Treasury supplement to the National Insurance Fund. S.4 makes various amendments to the legislation governing the calculation of earnings factors.

Disclosure of information and adjudication

S.19 creates a new offence of disclosing confidential information, consequential upon the repeal of s.2 of the Official Secrets Act 1911. The offence can only be committed by those persons specified in s.19 and Sched. 2. S.20 extends the scope of information which may be disclosed by the Inland Revenue for social security purposes. S.21 and Sched. 3 introduce miscellaneous amendments relating to the adjudication of social security benefits.

Income-related benefits

S.5 extends the liability of parents to maintain children from those aged under 16 to those aged under 19 for the purposes of income support and the social fund. S.13 imposes the "actively seeking employment" condition on those income support claimants who are already required to be available for work. S.14 is a technical amendment concerning the methods of paying housing benefit. S.15 deals with the Secretary of State's powers to calculate, withhold and estimate amounts of housing benefit subsidy due to local authorities. S.16 is consequential upon the scheme of transitional protection which was introduced in April 1988 to alleviate the harshest effects of the Social Security Act 1986. Sched. 8, para. 17, inserts a new s.27A

into that Act which requires personal representatives of deceased persons who were in receipt of supplementary benefit or income support to provide information to the DSS.

Occupational and personal pensions

S.23 and Sched. 5 seek to implement Council Directive 86/378/EEC on equal treatment for men and women in occupational social security schemes. S.24 and Sched. 6 make miscellaneous amendments to the law governing occupational and personal pensions.

Uprating

S.17 allows the Secretary of State to employ secondary legislation to correct errors which come to light in benefit uprating orders. S.18 provides for the automatic uprating of income support cases.

War Pensions Committees

S.25 supersedes ss.1 and 2 of the War Pensions Act 1921 and concerns the constitution and functions of war pensions committees.

The Act is also significant for its omissions, as the House of Lords inserted two clauses in the Bill which were subsequently overturned by the Government in the House of Commons. The first would have tied increases in child benefit to increases in the rate of family credit (*Hansard*, H.L. Vol. 509, cols. 319–42). The second would have extended entitlement to mobility allowance to the deaf-blind and to those suffering from severe mental handicap (*Hansard*, H.L. Vol. 510, cols. 264–87). The Government did, however, signal two concessions which will be introduced through changes in regulations or subsequent legislation. The statutory disregard in relation to housing benefit for war pensioners will be doubled from £5 to £10, and the six months' qualifying period for attendance allowance will be removed for the terminally ill (*per* Lord Skelmersdale, *Hansard*, H.L. Vol. 510, col. 616).

ABBREVIATIONS

1986 Act	: Social Security Act 1986
CBI	: Confederation of British Industry
CPAG	: Child Poverty Action Group
DHSS	: Department of Health and Social Security
DSS	: Department of Social Security
SERPS	: State Earnings Related Pension Scheme
TUC	: Trades Union Congress

COMMENCEMENT

See s.33(2) and (3) and the Social Security Act 1989 (Commencement No. 1) Order 1989 (S.I. 1989, No. 1238) and subsequent Orders.

Contributions

Amendments relating to primary Class 1 contributions

1.—(1) In section 4 of the principal Act, for subsections (6) to (6B) (computation of primary Class 1 contributions) there shall be substituted—

“(6) Where a primary Class 1 contribution is payable, the amount of that contribution shall be the aggregate of—

- (a) the initial primary percentage of so much of the earnings paid in the tax week, in respect of the employment in question, as does not exceed the current lower earnings limit; and
- (b) the main primary percentage of so much of those earnings as exceeds that limit but does not exceed the upper earnings limit; but this subsection is subject to regulations under subsection (7) below or sections 128 to 132 below and to section 27 of the Pensions Act (contracted-out rates).

(6A) For the purposes of this Act the primary percentages shall be as follows—

- (a) the initial primary percentage shall be 2 per cent.; and

(b) the main primary percentage shall be 9 per cent.; but the rates of those primary percentages are subject to alteration under sections 122 and 123A below.

(6B) In the case of earners paid otherwise than weekly, any reference in subsection (6) above to the current upper, or (as the case may be) lower, earnings limit shall be taken as a reference to the prescribed equivalent of that limit."

(2) In subsection (6F) of that section (alteration of number of primary or secondary brackets) the words "primary or" shall be omitted.

(3) In section 122 of that Act (additional power to alter contributions) for paragraph (a) of subsection (1) there shall be substituted—

"(a) the percentage rate specified—

(i) as the initial primary percentage in section 4(6A)(a);

(ii) as the main primary percentage in section 4(6A)(b);"

(4) In subsection (4) of that section (variation of rates for purpose of adjusting Redundancy Fund) for paragraph (a) there shall be substituted—

"(a) the percentage rate specified—

(i) as the initial primary percentage in section 4(6A)(a);

(ii) as the main primary percentage in section 4(6A)(b);"

(5) In subsection (6) of that section, for paragraph (a) (maximum variation in Class 1 rates of 0.25 percentage points) there shall be substituted—

"(a) to increase for any tax year—

(i) the percentage rate of the initial or main primary percentage, or

(ii) the percentage rate for secondary Class 1 contributions, to a percentage rate more than 0.25 per cent. higher than the percentage rate applicable at the end of the preceding tax year for the primary percentage or secondary Class 1 contribution in question; or"

(6) In section 123A of that Act (further power to alter certain contributions) for subsection (1) there shall be substituted—

"(1) For the purpose of adjusting amounts payable by way of primary Class 1 contributions, the Secretary of State may at any time make an order altering—

(a) the percentage rate specified as the initial primary percentage in section 4(6A)(a);

(b) the percentage rate specified as the main primary percentage in section 4(6A)(b)."

(7) In subsection (3) of that section, for paragraph (a) (limit on increase of primary Class 1 rates) there shall be substituted—

"(a) to alter the percentage rate of the initial or main primary percentage to a percentage rate more than 0.25 per cent. higher than the percentage rate applicable at the end of the preceding tax year for the primary percentage in question; or"

(8) In section 134 of that Act (destination of contributions) in paragraphs (a) and (i) of subsection (4) ("appropriate national health service allocation" and "appropriate employment protection allocation", when in force, to include specified percentage of earnings in respect of which primary Class 1 contributions were paid) after the word "paid" there shall be inserted the words "at the main primary percentage rate".

(9) In Schedule 20 to that Act (glossary of expressions) there shall be inserted at the appropriate places—

“ “Initial primary percentage”;
 “main primary percentage”;
 “primary percentage”

See section 4(6) and (6A).
 Construe “initial primary percentage rate” and “main primary percentage rate” as references to the percentage rates from time to time specified in section 4(6A)(a) or (b) as the initial or, as the case may be, main primary percentage.”

“ “Main primary percentage”

See “initial primary percentage”;
 “main primary percentage”;
 “primary percentage” above.”

“ “Primary percentage”

See “initial primary percentage”;
 “main primary percentage”;
 “primary percentage” above.”

DEFINITIONS

“initial primary percentage”: ss.1(1) and 1(9).

“main primary percentage”: ss.1(1) and 1(9).

“prescribe”: s.30(1).

“primary percentage”: s.1(9).

“the principal Act”: s.30(1).

“regulations”: s.30(1).

GENERAL NOTE

This section makes important changes to the structure of primary Class 1 National Insurance contributions paid by employed earners. In 1985, the nine per cent. contribution rate was reduced to five per cent. and seven per cent. for two bands of lower paid workers. Contrary to the Government's original intention, these graduated steps in contribution rates arguably acted as a disincentive for such employees to increase their hours of work. The Chancellor of the Exchequer therefore announced their abolition in the Spring 1989 Budget.

The new system introduced by this section comes into operation on October 5, 1989. Employed earners earning less than the lower earnings limit (£43 per week for 1989/90) will still not be liable for contributions. Those earning more than the lower earnings limit will pay an “initial primary percentage” of two per cent. on earnings up to the lower earnings limit, and thereafter the “main primary percentage” of nine per cent. on earnings up to the upper earnings limit (£325 per week for 1989/90). The system of employers' secondary Class 1 National Insurance contributions remains unchanged.

The overall effect of this reform will be to reduce the yield from primary Class 1 contributions by £960 million in 1989/90 and £2,750 million in 1990/91. The finances of the National Insurance Fund are comfortably in surplus and so this shortfall will not present any difficulty: see *National Insurance Fund Account 1987–88* (Session 88/89, H.C. 272). So far as individuals are concerned, it has been claimed that the new rules “will entirely remove the disincentives . . . to increase their weekly earnings above those earnings limits” (per Mr. J. Moore, *Hansard*, H.C. Vol. 151, col. 670). Such confidence may not be entirely justified, as the reform will merely reduce the effect of the poverty trap, rather than eliminate it. Commentators have argued that more radical measures to overhaul the contributions system are needed, such as converting the lower threshold into an allowance (A. Dilnot and S. Webb, *Reforming National Insurance Contributions* (1988) 9 *Fiscal Studies*, no. 4, pp. 1–24, and (1989) 10 *Fiscal Studies*, no. 2, pp. 38–47).

Subs. (1)

This subsection makes the necessary substantive amendments to s.4 of the Social Security Act 1975, which deals with the incidence of Class 1 National Insurance contributions. The three bands of existing contributions rates (five per cent., seven per cent., and nine per cent.) are now replaced by the initial primary percentage of two per cent. and the main primary percentage of nine per cent. The new structure is subject to the Secretary of State's power to make regulations to govern special cases (such as members of Her Majesty's forces, etc.; see Social Security Act 1975, ss.128–132) and those in contracted-out employment for the purpose of SERPS (Social Security Pensions Act 1975, s.27). The new rates are also

subject to the Secretary of State's power to make orders adjusting the contributions rates or limits (Social Security Act 1975, ss.122 and 123A).

Subs. (2)

The system of *secondary* Class 1 National Insurance contributions paid by employers remains unchanged (Social Security Act 1975, s.4(6C)-(6F)).

Subss. (3)-(7)

These subsections make the necessary consequential amendments to the relevant provisions in the Social Security Act 1975 which allow the rates of National Insurance contributions to be altered by secondary legislation.

Repayment of contributions where earnings become repayable

2. In Schedule 1 to the principal Act (contributions: supplementary provisions) in paragraph 6(1) (matters for which regulations may provide) after paragraph (g) there shall be inserted—

“(gg) for the repayment, in prescribed cases, of the whole or a prescribed part of any contributions paid by reference to earnings which have become repayable;”.

DEFINITIONS

“prescribe”: s.30(1).

“principal Act”: s.30(1).

“regulations”: s.30(1).

GENERAL NOTE

This section makes a modest extension to the Secretary of State's powers to make regulations in connection with National Insurance contributions. Para. 6(h) of Sched. 1 to the Social Security Act 1975 already gives the Secretary of State the power to make regulations governing the return of contributions which have been paid in error. See, *e.g.* Social Security (Contributions) Regulations 1979 (S.I. 1979, No. 591), reg. 32 and *Morecombe v. Secretary of State for Social Services*, *The Times*, December 12, 1987. Regulations made under this new power will enable refunds to be made in appropriate cases even though at the time in question the contributions were correctly paid. The principal situation in which this is likely to arise is where a woman has accepted maternity pay but subsequently decides not to return to work. She will have paid contributions on her maternity pay, and regulations may now be made enabling such contributions to be refunded when she repays the money to her employer. The general nature of the power enables regulations to be made governing similar situations in the future without the need for recourse to primary legislation.

Abolition of Treasury supplement to contributions

3. No payments by way of supplement, or adjustment of supplement, under section 1(5) of the principal Act shall be made after 31st March 1989 in respect of any contributions whether paid before, on or after that date.

DEFINITION

“principal Act”: s.30(1).

GENERAL NOTE

This section abolishes the Treasury supplement to the National Insurance Fund with effect from March 31, 1989. The decision to abolish the Treasury supplement was actually announced by the Chancellor of the Exchequer in the 1988 Autumn Statement (*per* Mr N. Lawson, *Hansard*, H.C. Vol. 139, col. 825). The origins of the Treasury supplement can be traced back to the National Insurance Act 1911, which implemented Lloyd George's promise of “nine pence for four pence”. Individual contributors to the new state insurance scheme paid four pence, and a further fivepence was made up by employers and the state combined. This tripartite system survived the Beveridge reforms of 1946. Section 1(5) of the Social Security Act 1975, as originally enacted, fixed the Treasury supplement at 18 per cent., the cost being met from general taxation. Since 1979 the supplement has been gradually reduced to five per cent. for the 1988/89 tax year.

The Secretary of State argued that there was no longer any need for a supplement as expenditure from the Fund is fully covered by contributory income, and he described the tripartite principle as "effectively a dead letter" (*per* Mr. J. Moore, *Hansard*, H.C. Vol. 144, col. 719). The Fund's surplus is due to the fact that contributions are earnings-related whilst benefit levels are linked only to inflation (see further T. Lynes, *Maintaining the Value of Benefits*, Policy Studies Institute Report, No. 638, 1985). Abolition of the supplement will reduce income to the Fund by £1.75 billion in a full year, although overall government finances will be unaffected.

Earnings factors

4.—(1) Section 13 of the principal Act (contribution conditions and earnings factors) shall be amended in accordance with subsections (2) to (4) below.

(2) In subsection (5) (manner in which tables and rules are to be drawn up) after the words "so that in general" there shall be inserted—

"(a) for any tax year beginning on or after 6th April 1987, the amount of earnings on which primary Class 1 contributions have been paid or treated as paid gives rise, subject to subsection (5A) below, to an earnings factor for that year equal or approximating to the amount of those earnings; and".

(3) After subsection (5A) there shall be inserted—

"(5AA) Regulations may impose limits with respect to the earnings factors which a person may have or be treated as having in respect of any one tax year."

(4) After subsection (5B) (duty to maintain and retain records) there shall be inserted—

"(5C) Where the Secretary of State is satisfied that records of earnings relevant for the purpose of calculating a person's earnings factors for a tax year beginning on or after 6th April 1987 have not been maintained or retained or are otherwise unobtainable then, for the purpose of determining those earnings factors, he may—

(a) compute, in such manner as he thinks fit, an amount which shall be regarded as the amount of that person's earnings on which primary Class 1 contributions have been paid or treated as paid, or

(b) take the amount of those earnings to be such sum as he may specify in the particular case."

(5) The Earnings Factor Regulations, as in force for the purpose of determining earnings factors for the tax years beginning with 6th April 1985 and 6th April 1986, shall have effect, and be taken always to have had effect, with the substitution in paragraph 3 of Schedule 1 (which, as amended by regulation 2(3) of the Amending Regulations, provided in certain cases for the aggregation of separate contributions) for the words from "where the values" to "those sums" of the words—

"where, in the case of any two or more separate sums—

(a) the values to be accorded to F (apart from this paragraph) would fall to be ascertained under the same paragraph of paragraph 2(e) above, and

(b) the values to be so accorded to G would fall to be ascertained under the same paragraph of paragraph 2(f) above,

those sums".

(6) In subsection (5) above—

"the Earnings Factor Regulations" means the Social Security (Earnings Factor) Regulations 1979; and

"the Amending Regulations" means the Social Security (Earnings Factor) Amendment Regulations 1985.

(7) The amendment by subsection (5) above of a provision contained in regulations shall not be taken to have prejudiced any power to make further regulations revoking or amending that provision, whether in relation to the tax years there mentioned or otherwise.

(8) The Social Security (Earnings Factor) Amendment Regulations 1988 shall have effect, and be deemed always to have had effect, as if the amendment made by subsection (3) above had come into force before the making of those regulations.

DEFINITIONS

“earnings factor”: Social Security Act 1975, s.13(2) and (6)(c).

“principal Act”: s.30(1).

“regulations”: s.30(1).

GENERAL NOTE

This section amends the method of calculating earnings factors as set out in the Social Security Act 1975. The earnings factor is a figure derived in a manner specified in regulations from the total of contributions paid or credited in any given tax year (see further D.W. Williams, *Social Security Taxation* (1982)). Earnings factors are used to assess entitlement to contributory benefits, and in particular to the state retirement pension.

Subs. (1)

This introduces the amendments to s.13 of the Social Security Act 1975 set out in subss. (2)–(4) below. S.13 of the Social Security Act 1975 deals with contributions and earnings factors. Earnings factors in respect of Class 1 National Insurance contributions for 1987/88 and subsequent years are derived in a different manner from before, as a result of amendments to s.13 made by s.75 of and Sched. 8 to the Social Security Act 1986. Class 2 and Class 3 National Insurance contributions are not affected by these changes.

Subs. (2)

The original s.13(5)(a) of the Social Security Act 1975 was repealed by the Social Security Act 1986 (Sched. 8, para. 2(4)(b)). This amendment inserts a new s.13(5)(a) with effect from April 6, 1987. The new provision sets out the derivation of earnings factors based on Class 1 National Insurance contributions.

Subs. (3)

This inserts a new enabling provision, s.13(SAA), into the Social Security Act 1975 which allows the imposition of a ceiling on aggregated earnings factors. Prior to this amendment it was possible for a person with two or more concurrent employments, with contributions at lower rates, to have higher earnings factors than a person with one employment but with the same total earnings. This result was not intended and was seen as inequitable. Accordingly the new power is retroactive, to provide legislative authority for reg.2(2) of the Social Security (Earnings Factor) Regulations 1979 (S.I. 1979, No. 676), as amended by the Social Security (Earnings Factor) Amendment Regulations 1988 (S.I. 1988, No. 429).

Subs. (4)

This inserts a new s.13(5C) into the Social Security Act 1975. It empowers the Secretary of State to assess the amount of earnings upon which employees' Class 1 National Insurance contributions have been paid since April 6, 1987. S.13(5B) of the Social Security Act 1975 has since April 1987 required employers to keep a record of such earnings. Some employers have either failed to keep such records, or have maintained such records incorrectly, and so this amendment has been introduced in order to ensure that employees receive their proper benefit entitlement in due course.

Subs. (5)

This provides for the retrospective amendment of the Social Security (Earnings Factor) Amendment Regulations 1985 (S.I. 1985, No. 1417) for 1985/86 and 1986/87. Before 1985 earnings factors were calculated directly from total National Insurance contributions. The introduction of differential rates of contributions for the low paid in October 1985 (see General Note to s.1) meant that this was no longer possible. The 1985 Amendment Regulations introduced a set of complicated formulae for calculating earnings factors for the two years in question. These formulae had the unintended effect of inflating earnings factors

where individuals had multiple employments in any given year. In such cases the DSS applied a process known as “conflation,” which brought the aggregated earnings factor back down to a level which represented more fairly the total earnings on which contributions had been paid. This amendment is designed to reflect more closely the original policy intention.

Subs. (7)

This is intended as a clarifying amendment. Thus regulation making powers may be exercised in relation to the same or other tax years notwithstanding the amendment made by subs. (5).

Subs. (8)

This gives retrospective legal authority to the ceiling provision inserted by reg.2 of the Social Security (Earnings Factor) Amendment Regulations 1988 (S.I. 1989, No. 429).

Liability to maintain children

Liability of parents to maintain children under the age of nineteen in respect of whom income support is paid

5.—(1) In section 20(11) of the 1986 Act (definitions for Part II) for the definition of “child” there shall be substituted—

““child”, subject to section 26(3)(d) below, means a person under the age of 16”.

(2) In section 26(3) of that Act (person liable to maintain spouse and children etc)—

- (a) in paragraph (a), for the words “his children” there shall be substituted the words “any children of whom he is the father”;
- (b) in paragraph (b), for the words “her children” there shall be substituted the words “any children of whom she is the mother”;
- and
- (c) after paragraph (c) there shall be added the words “and
- (d) “child” includes a person who has attained the age of 16 but not the age of 19 and in respect of whom either parent, or some person acting in the place of either parent, is receiving income support.”

(3) In section 26(4) of that Act (reference to a person’s children to be construed in accordance with the Family Law Reform Act 1987) for the words “a person’s children” there shall be substituted the words “children of whom the man or the woman is the father or the mother”.

(4) In section 26(5) of that Act (adaptation for Scotland)—

- (a) after the word “children” where first occurring there shall be inserted the words “of whom the man or the woman is the father or the mother”; and
- (b) for that word where next occurring there shall be substituted the words “any such children”.

(5) In section 17(2)(a) of the Merchant Shipping Act 1970 (seaman’s dependants to consist of his spouse and certain persons under the age of sixteen) for the word “sixteen” there shall be substituted the word “nineteen”.

DEFINITION

“the 1986 Act”: s.30(1).

GENERAL NOTE

This section extends parents’ liability to maintain their children for the purposes of income support and the social fund from those under the age of 16 to those under 19. Such liability will arise where a parent (or someone acting in that capacity) receives income support in respect of a child aged 16, 17 or 18. The Secretary of State will consequently be able to recover from a non-custodial parent either income support or social fund payments paid for

such a child. It is anticipated that savings will amount to £0.6 million in 1989/90, rising to £2.4 million by 1991/92.

Subs. (1)

This substitutes a new definition of child in s.20(11) of the Social Security Act 1986 to reflect the amendment made by subs. (2).

Subs. (2)

S.26(3) of the Social Security Act 1986 defines the extent of an individual's liability to maintain other persons for the purposes of ss.24 and 26 of that Act (dealing with recovery of expenditure on benefit from persons liable for maintenance, and the criminal offence of failure to maintain respectively). In particular, a man is liable to maintain his wife and his children (s.26(3)(a)), and a woman is liable to maintain her husband and her children (s.26(3)(b)). The amendments made by s.5(2)(a) and (b) appear to be purely for the purposes of clarification. S.5(2)(c), however, adds a new s.26(3)(d) to the Social Security Act 1986, extending the definition of a child to include a person aged 16, 17 or 18 for whom a parent (or a person acting as a parent) receives income support.

Subs. (3)

S.26(4) of the Social Security Act 1986, as originally enacted, was later substituted with a new provision by the Family Law Reform Act 1987 (s.33(1) and Sched. 2, para. 93) to ensure that the new rule of construction in s.1 of the latter Act applied. This requires that relationships between individuals should be construed without regard to whether or not any person's mother or father have ever been married to each other at any particular time, and is designed to remove most of the last vestiges of discrimination against illegitimate children. This amendment makes a consequential technical change to s.26(4) of the Social Security Act 1986.

Subs. (5)

This amendment makes consequential technical amendments to s.26(5) of the Social Security Act 1986 in so far as the provisions relate to Scotland.

Subs. (6)

The Merchant Shipping Act 1970 allows claims against a seaman's wages for the maintenance of his dependants. This amendment ensures that a seaman's dependants are also to include children up to the age of 19.

Benefits under the principal Act

Benefits for women widowed before 11th April 1988

6.—(1) In the case of a widow whose late husband died before 11th April 1988 and who either—

(a) was over the age of 40 but under the age of 55 at the time of her husband's death, or

(b) is over the age of 40 but under the age of 55 at the time when she ceases to be entitled to a widowed mother's allowance,

section 26 of the principal Act (widow's pension) shall have effect, and be taken always to have had effect, as if section 36(3) of the 1986 Act (which substituted "45" for "40", and "55" for "50", in subsections (1) and (2)) had never been enacted.

(2) The Social Security (Widow's Benefit and Retirement Pensions) Amendment Regulations 1987 shall have effect, and be taken always to have had effect, with the addition at the end of regulation 3 (transitional provision for widowed mother's allowance where husband died before 11th April 1988) of the following—

"(3) In determining whether a widow—

(a) whose late husband died on or after 7th October 1987 and before 11th April 1988, and

(b) who became entitled to a widow's allowance on his death,