

SOCIAL SECURITY (AMENDMENT) BILL 2008

EXPLANATORY NOTES

Summary

- 1.1 This Bill is promoted by the Department of Health and Social Security (“the DHSS”). Its main purpose is to regularise the legal position with respect to certain schemes of social security provision which have effect in the Isle of Man but which have no direct comparison in the United Kingdom and to provide any similar future provision with a firm legal basis.
- 1.2 The Bill also makes a number of minor amendments to existing legislation which reflect the transfer of responsibility in Great Britain for certain social security provision, in particular to the Commissioners of Her Majesty’s Revenue and Customs (HMRC).

Background

- 2.1 The Social Security Act 2000 (of Tynwald) (“the 2000 Act”) enables the DHSS, by order, to apply to the Isle of Man, as part of the law of the Isle of Man, any legislation of the United Kingdom Parliament to which section 1 of that Act applies. The form in which that legislation is applied to the Isle of Man is subject to any exceptions, adaptations and modifications specified in such an order.
- 2.2 Section 1 of the 2000 Act applies to the Acts of the United Kingdom Parliament set out in Schedule 1 to it, which relate to social security (directly or indirectly). The Department may, by order, amend Schedule 1 by adding to it any Act of the United Kingdom Parliament relating to social security passed during or after the 1998-1999 Session of Parliament.

Commentary on clauses

3. **Clause 1 – Amendment of the 2000 Act**
- 3.1 Clause 1(1) of the Bill introduces the amendments it makes to the 2000 Act.
- 3.2 Clause 1(2) of the Bill inserts new section 1A into the 2000 Act.

New section 1A of the 2000 Act

- 3.2.1 Under new section 1A, the DHSS will be able to make orders making social security provision in the Isle of Man which does not correspond to social security provision in Great Britain, provided for under the legislation mentioned in section 1 of the 2000 Act (new section 1A(1)).
- 3.2.2 Such an order may provide for the application to the Isle of Man of any legislation to which section 1 of the 2000 Act applies subject to such exceptions, adaptations and modifications as may be specified. By virtue of those exceptions, adaptations and modifications, social security provision in the Isle of Man may exist in a different form to that having effect in Great Britain (new section 1A(2)(a)).
- 3.2.3 Provision by order is also made for the repeal or amendment of any legislation (other than the 2000 Act) which is inconsistent with, or is unnecessary or requires modification in consequence of, provision made under new section 1A(1) (new section 1A(2)(b)).
- 3.2.4 New section 1A(3) is concerned with the form in which provision made under new section 1A(2) may take.

Tynwald procedure for orders made under new section 1A

- 3.3 Clause 1(3) makes consequential amendment to section 2 of the 2000 Act so as to make orders under new section 1A subject to the same procedure in Tynwald as orders made under section 1 of that Act

Minor amendments

- 3.4 Clause 1(4) makes minor amendments to section 3 of the 2000 Act, as follows.
 - 3.4.1 The 2000 Act allows the DHSS to apply to the Isle of Man legislation of the United Kingdom Parliament relating to social security. For these purposes, "social security" is defined in the 2000 Act as meaning (in particular) any benefit payable by the Secretary of State for Work and Pensions out of the National Insurance Fund or out of moneys provided by Parliament.
 - 3.4.2 Not all social security provision in Great Britain is now the responsibility of the Secretary of State. In particular, responsibility for child benefit and guardian's allowance has been transferred to the Commissioners for Her Majesty's Revenue and Customs (previously the Board of Inland Revenue). Tax credits are also administered and paid by the Commissioners for Her Majesty's Revenue and Customs.

3.4.3 Clause 1(4) therefore amends the definition of “social security” appearing in section 3 of the 2000 Act so as to include benefits which the Commissioners for Her Majesty’s Revenue and Customs are now responsible for, as well as the Secretary of State for Work and Pensions. It also inserts a definition into section 3 of “the Commissioners for Her Majesty’s Revenue and Customs” consequentially.

Clause 2 – Transitional provision

3.5.1 *Clause 2* makes transitional provision in respect of seven social security schemes made by the DHSS and approved by Tynwald, but which are not currently within the scope of section 1 of the 2000 Act. Those Schemes are –

- the T.V. Licence (Refunds) Scheme 1990;
- the Pension Supplement Scheme 2001;
- the Retirement Pension (Premium) Scheme 2002;
- the Jobseeker’s Enhanced Allowance Scheme 2002 (insofar as it continues to exist);
- the Family Income Supplement and Disability Working Allowance (Child Care Charge Adjustment) Scheme 2004;
- the Carer’s Bereavement Payment Scheme 2008; and
- the Nursing Care Contribution Scheme 2008.

3.5.2 Under clause 2 each of the Schemes mentioned above–

- is deemed to have been made under an Act of Tynwald (clause 2(1)(a));
- shall continue in force after the Act receives Royal Assent (clause 2(1)(b)); and
- shall have the same effect as if they had been made by an order made under new section 1A of the 2000 Act (clause 2(1)(c)).

3.5.3 Anything previously done under such a scheme shall be deemed to have been done under an Act of Tynwald once the Social Security (Amendment) Act comes into operation, but not so as to create a criminal offence in relation to anything done or not done beforehand (clause 2(1) also).

Clause 3 – Short title

- 3.6 Clause 3 provides that the Act's short title will be the *Social Security (Amendment) Act 2008*.

Commencement of the Act

4. The Act comes into on operation when it receives Royal Assent (see section 10(2) of the Interpretation Act 1976).

Finance

5. The Bill will not give rise to any additional public expenditure or public revenue, as it simply clarifies the basis on which social security provision which has no parallel in Great Britain may be made in the Isle of Man.

Convention Rights

6. The Bill's provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.