

**REPORT OF THE SOCIAL SECURITY
ADVISORY COMMITTEE ON THE
PROPOSED SCHEME FOR PROVIDING
REDRESS TO THOSE MISLED ABOUT THE
1986 CHANGES TO THE STATE EARNINGS
RELATED PENSION SCHEME (SERPS)**

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REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE ON THE PROPOSED SCHEME FOR PROVIDING REDRESS TO THOSE MISLED ABOUT THE 1986 CHANGES TO THE STATE EARNINGS RELATED PENSION SCHEME (SERPS)

1. INTRODUCTION – THE CONSULTATION

1.1 In July 2000 the Secretary of State asked for our views on the outlines of scheme for the provision of redress to those misled about the 1986 changes to the State Earnings Related Pension Scheme (SERPS). This consultation differs from the normal pattern, in that it does not represent a formal referral of draft regulations in discharge of our statutory role, but rather an opportunity at an earlier stage in the development of policy to advise on issues that would need to be addressed in regulations. Given the complexity of the issue, we welcomed this opportunity. A copy of the consultation paper and our accompanying press notice is at Annex A.

1.2 We would like to thank the 472 individuals and organisations that wrote to us. Their contributions greatly assisted us, both in our consideration of the proposed scheme, and of the wider issues it has raised.

1.3 The responses convey a striking strength of feeling about the inherited SERPS issue. Whilst the individuals who wrote to us may not be representative of the whole population of SERPS contributors, the details of their personal circumstances and concerns present a vivid picture of the consequences for some individuals of a reduction in the expected rate of inherited entitlement.

1.4 In addition, many respondents looked beyond the likely impact of the proposed scheme, raising questions about the Government's provision of information to contributors generally, the conduct of consultations on the Government's plans, and the handling of their previous enquiries and complaints about the SERPS issue. Some of these responses clearly lay beyond the scope of this consultation, or the role of SSAC, but we have taken note of the content of all the letters we have received. All have been sent acknowledgements, and our Secretariat has replied to some, with others copied to the Department for a reply.

1.5 Other responses lay outside the precise issue on which we were consulting – the effectiveness and practicality of the proposed scheme to provide redress to those misled by inaccurate or incomplete information – in that they raised wider issues relating to the adequacy of such an approach. As will be seen from this report, we have, after discussion with the Secretary of State, widened its scope to address this issue. We are grateful to respondents for the points that they have drawn to our attention, and we have borne them in mind in the preparation of this report.

2. SUMMARY

2.1 We approached our task recognising that the proposed scheme is one element in a package of measures to address the wide-ranging consequences of the DSS's failure to provide accurate and accessible information about the 1986 changes to rules governing inherited SERPS.

2.2 Whilst we have not lost sight of the other components of the Government's plans – in particular, the welcome deferral of the change to the SERPS inheritance rule to 2002, which addresses the most immediate problems facing those affected – the focus of our scrutiny has been the scheme. Our main objective has been to answer the question of the Secretary of State put to us: does the scheme proposed represent an appropriate and effective means for providing redress to those who were misinformed about their pension rights and entitlements. We have concluded that it does not, and in this report we examine those elements in your proposals that to us most seriously undermine the Government's policy objectives.

2.3 Whilst we welcome the Government's commitment to the provision of redress, we have concluded that the scheme as presented is not operationally viable. It would be virtually impossible to bring in all those in the target group; and it could not exclude those not in the target group who may be tempted to abuse its provisions. Furthermore, it will not be perceived as reasonable because it leaves out people who, until recently, were unaware of and unprepared for the change because they had received no information whatsoever.

2.4 Our main recommendation is that the Government does not proceed with the scheme proposed. We further recommend that the Government revisits the 1986 decision and considers a restoration of the 100% inheritance rule until such time as the State Second Pension is introduced in 2002, when the 50% rate could be introduced. We believe that this approach represents the only way of ensuring that Government delivers to SERPS contributors a level of service that they should reasonably expect to receive.

2.5 We are, however, conscious that to do this would be expensive – although, against the background of the Government's commitment to raising the Minimum-Income Guarantee, and the fact that total costs of changes to the proposals will be spread over 50 years, the net annual costs of change should not be over-stated. We have therefore explored whether, by supplementing a redress scheme with more generous arrangements for transitional relief, in accordance with the principles that we recommended in an earlier report, it would be possible to mitigate the worst effects of the proposals. We have concluded that such an approach would not provide a universal safety net in all cases where individuals will have been disadvantaged. Our primary recommendation therefore stands. However, it would be possible to address the needs of large groups of those adversely affected, and to amend the scheme so that it offered less of an incitement to abuse, by introducing forms of relief that we believe would be significantly less costly than our main recommendation.

3. THE PROPOSED SCHEME

3.1 The proposed scheme is intended to compensate those SERPS contributors who, as a result of some incorrect or misleading information, failed to take the action (likely to be in the form of providing for additional or alternative income to make good the drop in inherited SERPS) that they would have taken, if they had been in possession of correct and complete information. The scheme would require individuals who believed that they met these conditions, and who are married, to complete a claim form in which they assert that they received incorrect or incomplete information and that they relied on this when considering what provision they should make for their surviving spouse. While they might be required to provide material to substantiate such an assertion; the burden of proof that a claim did not meet these conditions would rest with the DSS.

3.2 For such a scheme to deliver the policy intention, it must:

- Be structured reliably to reach the potential beneficiaries, so that they are aware of the scheme and their need to claim.
- Include a claim form that is accessible and effective.
- Have definitions of entitlement that match the policy intention, can be understood by the claimant and be fairly administered by the Department.
- Not be susceptible to fraud or abuse.
- Be capable of introduction within a reasonable timescale.
- Be capable of efficient administration.

Some of the answers to these questions would only become clear when the draft regulations were prepared. However, in the light of responses to the consultation, we have doubts over the ability of the Department to introduce a scheme that satisfied these criteria.

The Potential Beneficiaries

3.3 As we understand it, the SERPS scheme was essentially a residual additional pension programme for those who would generally be outside the pensions market. Many of the individuals who are potential candidates for redress are likely to be elderly, disabled or confused; some may be living abroad. It is likely to be very difficult to establish sufficient contact with such individuals reliably to establish whether they made decisions, possibly more than ten years ago, that would now qualify them for redress.

3.4 However, the target group also includes a minority who were sufficiently well educated and aware as to be able to make alternative plans. This is evident in the responses to the consultation. A good number of those who wrote to us demonstrated an extensive – and in some cases a professional – knowledge of pensions and investments. It is likely, therefore, that the scheme as proposed will mostly benefit those already advantaged.

Advertising the scheme and advising potential claimants

3.5 We have welcomed the Government's commitment to making a scheme as visible and accessible as possible. This will be a huge undertaking, taking in advertising and awareness campaigns, new information and guidance materials for claimants and staff alike, staff training and so on. The provision of information to the public is one of our ongoing concerns and we look forward to contributing to the process in this case.

3.6 Many respondents have suggested that a mail shot to all contributors would be the most appropriate way of alerting potential claimants. We are aware of the likely costs of such an initiative (in excess of £6 million) and the practical constraints on its likely effectiveness (incomplete and inaccurate records of addresses, in particular). However, this is what most respondents want and expect from the Government as a demonstration of its commitment to the provision of redress.

3.7 From what we have been told about its likely limitations, we are not convinced that a mail shot would be the most effective way of alerting people to the scheme. Nonetheless, real creativity and enterprise will be called for if everyone with an interest is to have an opportunity to find out whether the scheme applies to them. If the scheme goes forward as currently proposed we look forward to being consulted on the Department's plans.

The choice of a claim-based scheme

3.8 The proposed scheme requires active initiation of a claim by the individual who believes he has grounds for seeking redress. A number of conditions have to be met, and the claimant will have to complete a claim form. The likely drawback of this approach is that those who are less well informed, confident and skilled when dealing with bureaucracy, perhaps without English as their first language, or generally "hard to reach", are at risk of missing out. Previous efforts by Government to understand and address the traditionally low take-up of benefits by older people have had mixed results. Particular attention will have to be paid in this case to ensuring that those who may be entitled to redress are enabled and encouraged to claim. This will be made particularly challenging by the fact that the SERPS scheme is not well understood by a large proportion of potential beneficiaries. Whatever arrangements are eventually put in place, we would ask for the opportunity to scrutinise the accompanying publicity and marketing proposals.

Designing a claim form

3.9 Everything we have already noted about the likely operational difficulties posed by a claims-based scheme of this type applies equally to the design of a claim form. Formulating the relevant questions, and incorporating the information claimants will need in order to respond to them will be a sensitive and demanding task. In the event of the scheme going ahead, we would appreciate the opportunity to see the design as it advances.

Who can claim – providing for claims from spouses, and claims on behalf of those who are unable to make claims themselves

3.10 A detailed commentary of the conditions of entitlement of a claims-based scheme would require sight of draft regulations. However, we recognise that the Welfare Reform and Pensions Act (The Act) would permit such a scheme to make provision for claims from a spouse (rather than the contributor him/herself), where he/she may have been the recipient of incorrect information. Likewise, provision would be needed for claims from third parties on behalf of those who, by reason of incapacity, could not be expected to be able to pursue a claim, or given an account of action they may have taken in the past. We understand that Baroness Hollis accepted that provisions for the latter group will be necessary.

Application to those who were misinformed by a third party

3.11 We believe that it is particularly important that those who received incorrect or misleading information, but not direct from the DSS, should have access to redress. However, we can see that such an approach is problematic. It might seem wrong for the State to step in to make good a situation created, for example, by a professional financial adviser who had failed to work from primary legal sources. However, it would be inequitable to require individuals who had prudently taken steps to obtain professional advice to pursue individual actions through the courts against such advisers, even supposing that they were still in business, particularly as they would need to provide a far higher standard of proof than would be the case if the Department were the source of advice.

3.12 We have also given some thought to the circumstances of those who acquired information by “informal” routes – from friends, colleagues and so on. We suspect that these potential claimants are the ones least likely to be skilled at hunting down information and dealing with bureaucracy. If access to redress includes the condition that some account must be given of the “who, how, when and where”, we can foresee some unusual chains of causation being presented.

The conditions of entitlement – the “married” test

3.13 The primary “married” test as proposed seems to us to be inappropriately and un-helpfully restrictive. We accept that a direct “linkage” to marriage is required but, as it stands, the test has the potential to exclude individuals who may have sought and relied upon information in a range of different, everyday circumstances (about to divorce, contemplating marriage etc) that would likely change over the years. As it stands, the test adds nothing to the scheme and would serve to exclude some people who should be entitled to redress.

The conditions of entitlement – the “reliance” test

3.14 As with the problem of defining what actually constitutes “incorrect” or “misleading” advice for the purposes of making a claim (which we consider in more detail in paragraphs 3.19-3.25 below), a fair and transparent application of the reliance test seems to us to pose some difficulty. However, in asking claimants to make a statement confirming reliance there seems to us to be a risk that many will give an honest “don’t know” or “I don’t remember” in reply. We were rather surprised

that, in practice, the Act permits the Secretary of State to accept reliance in such circumstances. Whilst we can understand the wish for provisions for redress to be inclusive in such circumstances, the risk of abuse, which we consider in more detail below, is evident.

The risk of abuse of the scheme

3.15 We understand the logic that led to the Government's acceptance that the burden of proof in all claims for redress should rest with the DSS. However, we have grave reservations about the provision that the simple assertion, unsupported by any additional evidence, that an individual had – for example – read the appropriate leaflet and, as a result, decided not to consider additional or alternative provision, would be sufficient for the burden of proving that an individual had not suffered a loss to be cast on to the Department.

3.16 In practice, of course, in most cases it would be impossible to rebut the presumption, and there would be an open invitation to pretend that there had been reliance. Although we understand that the Act provides for the burden of proof to be assumed by the Department, it seems to us wrong that the individual is required to produce no evidence – over and above the simple assertion – that he had actively considered the issue, for example by pursuing a personalised inquiry. However, we also appreciate that, followed literally, this would serve to exclude from the scheme many people who have no evidence other than a general recollection of events. In practice, in other areas of social security, a decision-maker considers all relevant facts and the law. If the assertion is the only evidence, and the decision-maker has no evidence to the contrary, the claim will always succeed.

3.17 We have noted that the Public Accounts Committee and others have expressed similar concerns. They have gone on to point out that many of those who would have no recourse to the scheme will be those who have declared honestly that they had no knowledge of the changes, and had made no enquiries, because they saw no need to do so (we return to this issue below).

3.18 We believe that it is wrong in principle for the Government to establish a scheme that has, in effect, a spurious legality. The potential – perhaps the near-temptation – to abuse which is implicit in the scheme's design, and its scope to encourage and reward dishonesty, cause us particular concern.

What constitutes incorrect/incomplete information?

3.19 Our reservations about possible abuse of the scheme notwithstanding, this issue must be addressed and put beyond doubt. A scheme such as this would need its limits explained clearly and concisely in both the claim form and accompanying information and publicity.

3.20 An assertion that information was incorrect may be much simpler to address than an allegation that information was incomplete. In the latter case, further enquiries might well be called for and a judgement would have to be made about the significance of any alleged omissions and their bearing on the action – or otherwise – taken by the claimant.

3.21 We have also considered the situation of someone who has asked for a pension forecast. Where a contributor to SERPS requested a forecast knowing that his/her pension includes provision for inheritance, would the omission of information in this document about forthcoming changes to the inheritance provision constitute the provision of “incomplete” information? We believe that, in the perception of many contributors, it may do so.

3.22 However, we appreciate that it could be argued that the absence of specific information should act as a prompt to those who enquired with inheritance questions in mind. We have also observed that, strictly speaking, any information could be deemed to be incomplete where it is supplied without the relevant legislation and guidance. In our role vetting the Department’s information products, we shall be looking very closely at the issues of accuracy *and* completeness.

3.23 We have given some thought to whether, in cases such as the ones involving SERPS forecasts, where a claim for redress fails, an individual might successfully pursue a case for damages in the courts, irrespective of the general principle that “ignorance of the law is no excuse”. We reached no firm conclusions, and can identify no precedent for such an action. However, we think it likely that the unusual nature of this situation may throw up such a challenge.

3.24 We know of no similar situations where a government department’s error had the potential so seriously to affect the personal finances and plans of so many individuals. In fact, few central government departments have any direct dealings whatsoever with the public and none quite like those of the DSS, whose “customers” include the majority of the population. We would be interested to know whether, in formulating the proposed scheme, this issue was specifically addressed.

3.25 As the scheme stands, however, we believe that more complicated enquiries, and more complex decision-making processes than those envisaged, may be inevitable. These would be at odds with the Government’s stated objective that the claim-based scheme should be simple to access and operate. We have already noted that the looked-for simplicity carries with it a strong risk of abuse, and sends the wrong messages about how an individual should go about seeking redress from government. If the scheme goes ahead, we shall be looking further at how the incorrect/incomplete information test is to be managed.

The timescale for the scheme

3.26 We believe that getting an adequately publicised and fully accessible scheme of the type proposed up and running by the second half of 2001 presents significant challenges. Accordingly, whilst we would not wish to see the provision of redress delayed further, we are of the view that proper preparation for a scheme is vital to its success. We therefore welcome the Government’s commitment to researching how best to publicise and market the scheme and ensure the fullest possible take-up. However, we shall monitor developments carefully as any “go live” date approaches in order to satisfy ourselves that everything necessary has been done by way of preparation.

3.27 We would also suggest that, if the scheme proceeds, consideration be given to making provision for keeping the scheme running beyond the three year period currently planned. It is evident that there is considerable uncertainty around the

estimates of numbers of claims, and speed of take-up. Experience has shown that take-up amongst the target group may be low. There is also a risk that administration of the scheme may be more complex than has been envisaged. Whilst it could be argued that the longer the scheme runs, the greater the risk of abuse, as people learn the best ways of playing the system, it would seem prudent to allow some flexibility to meet contingencies such as unexpectedly low take-up.

Administering the scheme

3.28 We have noted that consideration may be given to contracting out the administration of the scheme. We are familiar with the poor record of some of the contractors providing Housing Benefit and it would seem to us that the most powerful of contracts would be called for if any of the supposed benefits of contracting out are to be achieved in this present situation.

3.29 Even the handling of requests for information and advice, provision of assistance with the completion of the form, and the gathering of information for decision-makers is potentially complex and demanding. We believe that the skills and expertise required are best found from within the Department, with the risks associated with a scheme managed "in house".

3.30 We are aware that the Department is going through a period of profound and far-reaching change as the Focus on Delivery initiative re-shapes the way that social security business is carried out. It will be important to ensure that a scheme is run in a manner compatible with the way that service delivery for pensioners more generally is being developed. The quality of service provided to potential claimants through the various outlets (Pensions Direct, local offices etc) that claimants will be using is critical to the success of the scheme. We believe that the administration of this sort of scheme offers the opportunity to learn about the sorts of services that the new dedicated Pensions Organisation will need to deliver, and the best ways of delivering them.

Summary

3.31 While clearly much will depend on the precise details of the regulations, and such matters as the design of the claim form, we have grave doubts whether the scheme as currently conceived will meet the policy intention. It will provide access for the articulate and informed, but it is far less likely to reach many of the older poorer potential beneficiaries. The precise boundaries of entitlement risk creating anomalies and hard cases. Moreover, the provisions in respect of the burden of proof provide, in effect, an incitement to claimants to distort their recollection of events which in any case may be difficult to recall over a period of many years. The unfortunate precedent that this might set would in our view of itself constitute a powerful argument for looking for an alternative approach.

4. LIMITATIONS IN THE COVERAGE OF THE SCHEME

4.1 A theme in the PAC report, and in many of the several hundred letters we have received from individual contributors to the SERPS scheme, is the perceived duty of Government to inform contributors about changes that would materially affect the benefits for which they would eventually qualify. Many of those who will lose out

were not misled or misinformed. Rather, they simply did not know that the changes had taken place.

4.2 The Public Accounts Committee noted that private pensions providers, with whose schemes SERPS was effectively aligned with the reduction to 50% for inherited rights, must notify their customers of such changes. Many of those who wrote to us also pointed to the special nature of the SERPS scheme. They point out that they were required to enter into what was effectively a long-term contract to secure additional income in retirement, for both the contributor and a surviving spouse, whether as part of a state scheme, or an “opt-out” occupational alternative. In the latter case, the scheme provider would have been obliged to notify changes to the terms and conditions of the scheme.

4.3 When legislation introduced the SERPS scheme, the new provisions were publicised, and contributors made aware of how to make the best use of the options available to them. This is also the case today, when Government is stepping up its efforts to increase knowledge and awareness of pensions, including the new State Second Pension, and promote responsible pension planning. However, no such information and awareness initiative accompanied the changes to the inheritance rules in 1986, rules that govern a most significant element in many contributors’ plans for the future. Several of our respondents point to the pensions forecasts they obtained from the Department in the years after the 1986, and subsequently used to plan for the future, as making no mention of the forthcoming change in the SERPS inheritance rules.

4.4 We understand the argument that Government has no general responsibility to explain changes in the law to individual members of the public. We also appreciate the practical and financial constraints on even selective promulgation of information to particular groups. However, this was not a general change to the law. It was directed at one particular group of contributors, who were required to make contributions to a state pension scheme that represented a long-term investment in the expectation of receiving a predictable level of benefits – both for themselves and for their spouses. The responses to our consultation indicate that many of those who are directly affected by the 1986 changes started their working lives around the time that the Beveridge social security system was introduced. They feel very strongly that they have paid into the system in expectation of a fair return, and that the state is not honouring its side of the compact.

4.5 Accordingly, we have much sympathy with those who are calling for the redress to be available to those contributors who would have considered making other provisions for the future had they known about the 1986 changes, as well as those who received incorrect information, and in consequence, failed to act. Although we have been given to understand by officials that the 1986 changes do not contravene Article 1, Protocol 1, of the ECHR, some respondents have suggested otherwise, and we have heard that some contributors are about to pursue legal action. We would suggest that this issue might be explored further before the Government’s plans are advanced.

5. ALTERNATIVE OPTIONS

5.1 As the previous two sections of this report have illustrated, the core problem can be summarised as follows:

- The Government did not inform *generally* that a change in the inheritance rules was in the offing;
- The Government *negligently mis-informed* some people about the change; and
- The point of change is now so close that there is *inadequate opportunity* for those affected to make alternative provision.

The proposed scheme seeks to address the second of these issues, although we doubt whether it does so effectively, but does not touch the other two points. Almost without exception, those who have written to us have expressed disappointment that other options that might have been available under the terms of the Welfare Reform and Pensions Act have been little explored.

5.2 A majority of respondents have argued for all SERPS contributors to receive full inheritance rights, and for the 50% inheritance provision to be incorporated into the new State Second Pension scheme when it is introduced in 2002. This might cause minor injustice to those who had been made aware of the legislation and had taken action that would thus be rendered nugatory; however, we suspect that such individuals will be few in number and the adverse consequences are likely to be limited.

5.3 The argument against such a step is the potential cost, and therefore the opportunity cost of such a major reversal of policy. We have only seen indicative numbers, and the figures in them are undoubtedly large. However, this concern should be treated with a degree of caution. First, the calculations represent potential expenditure over a very long period of time; while the sums may be large, the percentage of total welfare expenditure that they represent is not. Secondly, while the potential beneficiaries of such a change would include some with substantial earnings, in numerical terms the majority of those to whom SERPS represents a significant proportion of their retirement income are not well off. Many of their partners, were they not to receive a 100% inheritance, would benefit from the Government's future plans for the Minimum Income Guarantee. There is therefore a substantial saving from the Income Support budget to be netted off against this expenditure. We believe that such an approach represents the only sure method of addressing the problem, and it therefore represents our primary recommendation.

5.4 We have, however, explored other lesser alternatives. The problem set out above, and particularly its third element, falls squarely within the circumstances which in an earlier paper¹ we identified as being appropriate for transitional protection – the change has *significant consequences* for those affected, and they *relied on* the original provision. By delaying the introduction of the change until 2002

¹ "Transitional Protection in Social Security", published in "Social Security Advisory Committee, Twelfth Report 1999", Corporate Document Services 1999.

the Government has gone some way towards addressing this, but we do not consider that it has gone far enough. This view is shared by the respondents to our consultation. They have advocated, as a minimum, the retention of full inherited rights for people who are at, or close to, pension age, and for those who have taken early retirement, particularly those who retire early on health grounds, or as part of a planned “early exit” scheme. They point out that this group has the least chance to make alternative provisions. Individuals who acted upon the best information available to them at the time should not be penalised.

5.5 To provide an adequate form of transitional protection, the following categories of individuals would need, as a minimum, to be provided for:

- **Those over 60 when the new scheme becomes effective in 2002.** Whether or not they are currently in receipt of pension, it would be unrealistic to expect such individuals to make arrangements within their residual working life to replace the lost entitlement. This group should therefore be totally exempted from the reduction in the 100% inheritance.
- **Those who in 2002 have only a limited opportunity to provide an alternative solution.** Clearly those approaching retirement may be able to make additional provision for their spouse’s pension, to compensate for the loss of the 100% inheritance, but their capacity to do so will be limited by the length of their residual working life. We would recommend a sliding scale approach, which might run either for age 50, or 46 – the latter replicating the 14 year period for implementation envisaged in the 1986 legislation. For example those over 55 but under 60 in 2002 might retain an entitlement to say, an 80% inheritance, with lesser figures for those under 55 but under 60 in 2002 might retain an entitlement to, say, an 80% inheritance, with lesser figures for those under 55.
- **Those of whatever age whose partners die before 2012.** Even for younger earners it would take time to replace the loss of inheritance rights.

Providing for these groups would not cover all potential cases – for example those who become physically or mentally incapacitated and are therefore unable to take steps to replace the loss of inheritance rights. For this reason we do not regard an approach of this nature as a preferable alternative to rescinding the entire change in the scheme. That said, it would mitigate effects for a large proportion of those likely to be worst hit by the proposals.

5.6 A further category remains – those who sought and were given inaccurate or incomplete advice. Many of these, but not all, would be picked up by a transitional relief scheme of the sort we have proposed. We consider that they should be entitled to redress. However, given the more effective safety net that we have advocated, we believe that it would be appropriate for a slightly more stringent approach to be adopted by the Department in demanding from claimants some substantiation of their basis of claim. This should not go so far as insisting on a level of proof appropriate in a legal context – and for this reason the position in respect of advice given by independent financial advisers, set out in paragraph 3.11, should stand – but it should be sufficient to deter blatant abuse of the system.

5.7 In the time available the Department has not been able to cost these proposals for us. However, we are clear that, should our primary recommendation be deemed unaffordable, they would represent a significant mitigation of the problem and an affordable cost.

6. CONCLUSION

6.1 We sought to assess the Department's proposals against their potential to operate fairly and properly in respect of claims from the Government's target group. We have concluded that, not only will it be very hard to make the scheme full inclusive for this group, but it will also be almost impossible to screen the scheme from abuse. More seriously, it sets a most dangerous precedent, especially at a time when Government is working to eliminate abuse and remove the scope for "playing the system" from the full range of social security provisions.

6.2 At the same time it will raise and dash expectations amongst the numbers of people who have only recently discovered that they stand to lose out under the changed inheritance rules, but do not come within the scope of the scheme because they had received no information whatsoever. This is most unlikely to satisfy the public at large. It is also notably at odds with what Government rightly requires from private sector providers.

6.3 The provision of inadequate or incorrect information, which the proposals are intended to address, represents only part of the problem. The other elements are the failure of Government to provide an adequate level of information to all those potentially affected, and now that this information is being made available, a lack of time for them to make alternative provision. In our view this can only be fully and fairly addressed by rescinding the 1986 legislation; and we think it important that the net annual costs of such a solution are not over-stated. If this is, nevertheless, deemed too expensive a solution, it would be possible, by following the principles in our earlier report on transitional protection, to mitigate the worst effects for a large section of the population.

7. RECOMMENDATIONS

7.1 The Government should not proceed with the scheme as conceived. Instead it should revisit the 1986 decision and reconsider a restoration of the 100% inheritance rules, with a 50% rule to be introduced as part of the State Second Pension.

7.2 If these recommendations are not accepted, transitional protection on the lines set out should be afforded to those who are unable to make alternative arrangements: but this could be combined with a requirement for those still making a claim for redress to substantiate the basis of their claim.

7.3 If the Government still wishes to persist with the proposed scheme a number of aspects should be reconsidered, with a view to making modifications. In particular:

- the "onus of proof" and "reliance" arrangements should be re-examined with a view to reducing the scope for abuse;

- the restrictive effect of the proposed “married” test should be re-examined with a view to catering for the wide variety of circumstances to be addressed;
- the test of what constitutes “incomplete” information should be re-examined with a view to addressing the operational consequences of the difficulties of practical operation that we have identified;
- comprehensive arrangements for alerting contributors to the scheme’s introduction and its conditions should be put in place as quickly as possible, to allow the maximum time to reach the target group and inform those who would not be entitled of their exclusion from the scheme. Plans should be made to extend the life of the scheme if take-up is slower than expected.

7.4 Finally, we have indicated that we would wish to have the opportunity to comment on a number of operational aspects of a developing scheme. We hope that we shall be consulted further on whatever scheme is taken forward.