

## **EQUITABLE LIFE (PAYMENTS) BILL**

### **DELEGATED POWERS MEMORANDUM**

1. This memorandum concerns the Equitable Life (Payments) Bill.
2. The Bill confers statutory authority on the Treasury to incur expenditure for or in connection with the making of payments in cases where persons have been adversely affected by maladministration in the regulation of Equitable Life Assurance Society before December 2001. The Bill will enable the establishment of an Equitable Life payment scheme, which will make ex gratia payments to such persons. The Bill confers one power on the Treasury to make delegated legislation.

#### **Clause 1(3)**

*Power: to disregard payments to any extent for the purposes of tax, entitlement to tax credits, and goods and services; and any connected requirement to provide documents or information*

*Body: Treasury*

*Parliamentary scrutiny: affirmative procedure*

3. This clause enables the Treasury to make provision, by way of order, for payments to be disregarded to any extent for the purposes of tax, entitlement to tax credits, liability to pay for goods and services (e.g. social care), and reporting requirements connected with any of these things. The clause also allows the Treasury to make connected provision in relation to requirements to provide information. The Treasury considers it appropriate that such an order should be subject to the affirmative procedure.

#### **Reasons for taking the power**

4. The details of the payment scheme have not yet been decided. Sir John Chadwick has been asked to advise the Treasury on matters arising from the Government's response to the Parliamentary Ombudsman's investigation into the prudential regulation the Society. Sir John has now reported. The Treasury will not make any decisions as to the design of the payment scheme until it has considered the advice of Sir John Chadwick and representations from interested parties alongside other priorities. In addition, an independent commission will advise on the design of the payment scheme, including who will be eligible for what size of payments.
5. In light of this, it is not possible to provide in the Bill how payments under the scheme should be treated for the purposes of liability to tax, tax credits, or entitlement to goods or services. It is not yet clear who will receive a payment, the quantum of any payment, how the payment will be made and whether the calculation of the payment will take into account the fact that

many recipients would (had maladministration not occurred) have paid additional levels of tax.

6. So as to be able to make appropriate provision for the treatment of payments under the ELPS for these purposes once the details of the ELPS have been determined, the Treasury propose to take a power to make such provision by order. As a result of the status of work on the design of the ELPS, the Bill is broad enough to ensure that the Treasury are able to implement all reasonable scheme design options. Clause 1(3) has been included with this objective in mind.
7. The Treasury considered whether it was appropriate to wait until it was clear how payments under the scheme should be treated for these purpose before bringing forward this Bill. However, the Treasury considered that this would be inappropriate as this would delay the passage of the Bill and so delay the making of payments under the ELPS.

### **Scope of the power**

8. The power enables the Treasury to make provision for a payment to be disregarded for the following purposes –
  - Liability to tax;
  - Entitlement to a tax credit;
  - Payment for goods or services; and
  - Reporting requirements connected with any of these.
9. The power enables the Treasury to make provision to disregard a payment under the scheme to any extent when considering liability to tax. The Treasury could exercise this power to provide for the payments to be tax free in the hands of recipients.
10. Under the power the Treasury could also disregard a payment under the ELPS to any extent when considering entitlement to tax credits and liability to payment for certain goods and services. For example, section 7(1) of the Tax Credit Act 2002 provides that entitlement to a tax credit is dependent on a claimant's income not exceeding the prescribed limit. Section 22 of the National Assistance Act 1948 provides that income and capital is taken into account when assessing a person's ability to pay for the provision of residential care. The Treasury could exercise this power to ensure that payments would not affect recipients' access to tax credits or goods and services provided by public authorities.
11. The last element is to ensure that where provision is made to disregard a payment under the ELPS for substantive eligibility/liability, provision can also be made to ensure that the recipient of the payment is not required to make a report or otherwise to provide information as a result of the payment. In such cases, the provision of information/a report is unlikely to serve any purpose. Thus this provision will ensure that there is no disconnect between substantive eligibility/liability and duties to provide information. For example, reporting

obligations may arise under section 552(1) of the Income Tax (Trading and Other Income) Act 2005. Under this power, the Treasury could make provision to ensure that a recipient of a payment under the ELPS is not required to notify HMRC of a payment in relation to tax. This would ensure that recipients are not brought into the self assessment regime as a result of a payment. This would reduce the administrative burden on HMRC and recipients.

12. The Treasury may make provision for payments to be disregarded in full or to any extent. They may also make different provisions for different cases. This reflects the fact that it may be appropriate to make different provision for, for example, different classes of policyholder. It may also be appropriate to make provision as to how a payment is treated for the purposes of calculating a person's income which differs to how a payment is treated for the purposes of calculating a person's assets.
13. The power will enable the Treasury to disapply the effect of an enactment. However, the Treasury note that the power is limited in scope: the provision enables a payment is to be disregarded for certain limited purposes and there is no general power to modify legislation.
14. The power will extend to goods and services that are provided pursuant to an enactment made by the devolved administrations (see the definition of "enactment" at clause 1(6)).

### **Parliamentary scrutiny**

15. The Treasury consider that it appropriate that an order made under clause 1(3) be subject to the affirmative procedure. The Treasury appreciates that the order-making power is drafted widely, and that it covers a range of diverse subject matters. The power will also enable the Treasury to make provision which has the effect of disapplying an enactment (including an enactment relating to taxation). Therefore the Treasury consider that it is right that Parliament is given the opportunity to fully scrutinise such an order.