

These Notes refer to the Savings Accounts and Health in Pregnancy Grant Bill as brought from the House of Commons on 23rd November 2010 [HL Bill 30]

SAVINGS ACCOUNTS AND HEALTH IN PREGNANCY GRANT BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Savings Accounts and Health in Pregnancy Grant Bill as brought from the House of Commons on 23rd November 2010. They have been prepared by HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

Child Trust Funds

3. This Bill removes eligibility to Child Trust Funds for children born from January 2011 onwards.

4. The Child Trust Fund (CTF) was introduced in 2005. All children born on or after 1st September 2002 who are in a Child Benefit award or in local authority care, live in the UK and are not subject to immigration control, are currently entitled to a CTF. Between the introduction of the CTF and August 2010, the Government contributed £250 to the CTF account at birth, with an additional payment of £250 for children from lower income families. Children in the care of local authorities got a total of £500. Payments of the same amounts were again contributed to CTFs by the Government when the child attained the age of seven, and additional annual payments into CTFs have been made for disabled children who are entitled to Disability Living Allowance on or after 6th April 2009.

5. On 24th May 2010, the Government announced that it would pass legislation to end CTF payments, to help reduce the United Kingdom's budget deficit. The Government announced that:

- from August 2010 government payments at birth would be reduced and payments at age seven would stop, and

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- from January 2011, all payments would stop.

6. The reason for this two-phase approach is that some government payments to CTFs (the starting payments to all, and the additional payments to children in lower income families) can only be stopped through primary legislation, although secondary legislation can reduce the amount of such payments. However, other government payments to CTF accounts, such as that made when a child attains the age of seven or the disability payments, can be stopped altogether through secondary legislation.

7. Regulations made on 22nd July 2010 implemented the first phase. They reduced all the starting payments from August 2010: the universal payment of £250 was reduced to £50, the additional payment to lower income families was reduced from £250 to £50 and the special payment to children in care was reduced from £500 to £100. They stopped age seven payments altogether from August 2010. They also stopped the extra payments made to disabled children's CTF accounts with effect from April 2011.

8. This Bill implements the second phase: stopping all government payments altogether. It does this by making provision for the removal of eligibility to a CTF from children born after 2nd January 2011 and from certain children who would otherwise become eligible on or after that date. Children no longer eligible because of the Bill's provisions, once they come into effect, will not receive a CTF voucher from Her Majesty's Revenue and Customs (HMRC) to start a CTF account. They will not be entitled to a CTF account and will not be eligible for any government payments.

Saving Gateway

9. The Bill also repeals the legislation providing for the establishment of a Saving Gateway scheme. The Saving Gateway was to be a tax-free cash saving account available to people in receipt of qualifying social security or tax credit awards. At the end of the two year maturity period for a Saving Gateway account, the Government would have made a contribution for each pound that had been saved. Saving Gateway accounts were due to have been available from July 2010.

10. In the Budget on 22nd June 2010, the Government announced that the Saving Gateway was not affordable given the need to reduce the Budget deficit, and would therefore not be introduced. This Bill therefore repeals the relevant primary legislation.

11. In most respects, the Saving Gateway legislation has not been commenced. No Saving Gateway accounts have been opened; no individuals have been advised that they are eligible for an account and no account providers have been approved to offer Saving Gateway accounts.

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Health in Pregnancy Grant

12. The Bill also removes entitlement to the health in pregnancy grant where a woman reaches the 25th week of her pregnancy on or after 1st January 2011.

13. The health in pregnancy grant was introduced in April 2009; it is a lump sum payment to almost all expectant women, made once they satisfy prescribed conditions as to the stage of their pregnancy, having received appropriate maternal health advice from health professionals. Entitlement also relies upon a woman being in the United Kingdom at the time of her claim to the grant. The conditions in which a person is to be treated as being, or not being, in the United Kingdom are prescribed in regulations. The health in pregnancy grant is not a taxable benefit.

14. The Government announced as part of the Budget, on 22nd June 2010, that the health in pregnancy grant would be abolished.

TERRITORIAL EXTENT AND APPLICATION

15. Clause 1 of the Bill extends to the whole of the United Kingdom. Clauses 2(2) and 3(1) of the Bill extend to England and Wales and Scotland only, and clauses 2(3) and 3(2) extend to Northern Ireland only. Clause 2(3) has a notional effect on the functions of Northern Ireland Ministers.

16. The repeal of the Saving Gateway Accounts Act requires the consent of the Northern Ireland Assembly in accordance with the principles set out in the Memorandum of Understanding between the Government and the Assembly. A Legislative Consent Motion is being sought for this.

17. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

18. The Bill has no effect on the functions of Welsh Ministers or the competence of the National Assembly for Wales and so no Legislative Consent Motion is being sought.

COMMENTARY

Clause 1 Removal of eligibility for child trust fund

19. Clause 1 provides for amendments to section 2 of the Child Trust Funds Act 2004 (“CTFA”) with the effect that children born on or after 3rd January 2011 will not be eligible

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for a CTF. Section 2 of the CTFA makes provision for who is an ‘eligible child’ for the purposes of that Act and provides that for a child to be eligible for a CTF the following conditions must be satisfied:

- the child must be born after 31st August 2002; and
- either a person is entitled to Child Benefit in respect of that child (“a Child Benefit child”) or the child is a child in local authority care (“a looked-after child”); and
- the child must not be subject to immigration control.

20. *Subsection (2)* of clause 1 of the Bill amends section 2(1) of the CTFA so as to require all eligible children to be born before 3rd January 2011. *Subsection (3)* of the clause inserts into section 2 of the CTFA new subsections (5A), (5B) and (5C). New section 2(5A) CTFA will provide that a child born before 3rd January 2011 who would otherwise become eligible to a CTF on or after that date may not be an eligible child unless either new subsection (5B) or (5C) applies.

21. New subsection (5B) provides that a child born before 3 January 2011 will still be an eligible Child Benefit child, even when eligibility under the provisions in section 2 CTFA does not arise until after that date, provided:

- entitlement to Child Benefit in relation to that child commences on or before 3rd January 2011; and
- the child is not subject to immigration control at the beginning of 3rd January 2011 or is so subject at that time but immigration control is subsequently lifted before 3rd April 2011.

22. The first bullet point in paragraph 21 above reflects the processes involved in the claiming of Child Benefit and the fact that Child Benefit entitlement can only commence on a Monday and can only be backdated for up to three months. Thus, for example, a child born on 31st December 2010 (or indeed any date in the week up to and including 2nd January 2011) can only become entitled to Child Benefit from the week commencing Monday 3rd January 2011, being the first Monday after birth. (This can only happen if a claim is made within 3 months of the Monday following birth). Similarly, if a child is born outside the UK and comes to the UK before 3rd January 2011 (say on 2nd January 2011) and Child Benefit is claimed for that child within 3 months, Child Benefit entitlement will commence on or before 3rd January 2011.

23. The second bullet point in paragraph 21 above reflects the fact that a child who is subject to immigration control is not an eligible child for CTF purposes, even though Child Benefit may be being received in respect of that child. To provide parity with the Child

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Benefit regime, which allows a claim for Child Benefit to be backdated three months, the same window of three months will apply to such children born before 3rd January 2011. This means that where immigration control is lifted within three months of 3rd January 2011, i.e. before 3rd April 2011 (and thus a child becomes an eligible Child Benefit child by that date) they will still be entitled to a CTF so long as they are born before 3rd January 2011.

24. Subsection (5C) provides that a looked-after child born before 3rd January 2011 will still be an eligible looked-after child if:

- the child is in the UK at the beginning of 3rd January 2011;
- the child becomes a looked-after child before 3rd April 2011; and
- the child is not subject to immigration control at the beginning of 3rd January 2011 or is so subject but immigration control is lifted (and so would otherwise be eligible) by 3rd April 2011.

25. The requirement that the child becomes a looked-after child before 3rd April 2011 provides parity with the Child Benefit child (who will not become entitled to a CTF until an award of Child Benefit is made which, as explained above and because of the way the Child Benefit regime operates, may not be until 2nd April 2011) and also with children who become Child Benefit children if immigration control is lifted before 3rd April 2011 (as discussed in paragraph 23 above). A child who first becomes entitled to CTF by virtue of being a looked-after child becomes an eligible looked-after child at the date that he or she is taken into care.

Clause 2 Repeal of Saving Gateway Accounts Act 2009

26. Clause 2 of the Bill repeals the legislation that provides for Saving Gateway accounts.

27. *Subsection (1)* of clause 2 repeals the Saving Gateway Accounts Act 2009, which received Royal Assent on 2nd July 2009. This Act set out conditions of eligibility for the Saving Gateway and imposed a duty on HMRC to issue notices to people who are eligible for the Saving Gateway, and to pay any government contribution due under the scheme. The Act also included additional provisions covering such matters as tax relief, the use of information, a requirement for review of the effect of the Saving Gateway, penalties, and arrangements for appeals against decisions taken by HMRC.

28. This Act also conferred regulation-making powers on HM Treasury. The Saving Gateway Accounts Regulations 2009 (SI 2009/2997) and the Saving Gateway Accounts (No.2) Regulations 2009 (SI 2009/2998) were made under these powers. These Regulations have not been brought into force.

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29. The only parts of the Saving Gateway Accounts Act 2009 that have been brought into force are:

- *Sections 4(1) and 5(1) – concerning formal approval of Saving Gateway account providers.* Despite being brought into force from January 2010, these provisions have not been used. No applications for approval as a Saving Gateway account provider have been approved or rejected by HMRC under powers granted by these sections.
- *Section 18 – concerning the Disclosure of Information by the Department for Work and Pensions (DWP) and the Department for Social Development (DSD) in Northern Ireland.* This provision was used by HMRC as the basis for pre-launch testing of data and information processes with DWP and DSD.
- *Section 23(1)(a) and sections 24 and 25 in so far as those sections concern appeals in relation to the formal approval (or non-approval) of Saving Gateway account providers.* Despite being brought into force from January 2010, these provisions have not been used. No applications for approval as a Saving Gateway account provider have been approved or rejected by HMRC. Therefore no appeal against an HMRC decision could have taken place under these sections.

30. *Subsections (2) and (3)* remove the effect of section 18 of the Saving Gateway Accounts Act 2009 on the Social Security Administration Act 1992 and the Social Security Administration (Northern Ireland) Act 1992. Section 18 enables information held by DWP and DSD to be supplied to HMRC for the purposes of the Saving Gateway. The supply of this information was necessary for the operation of the Saving Gateway, as eligibility for an account was to be conferred on people entitled to certain social security benefits administered by DWP and DSD.

31. *Subsection (4)* anticipates what would have been the effect of section 27 of the Saving Gateway Accounts Act 2009 on the Northern Ireland Act 1998. Section 27 would have inserted a reference to Saving Gateway into Schedule 2 of the 1998 Act, making this an excepted matter for the purposes of the devolution settlement in Northern Ireland, and therefore outside the competence of the Northern Ireland Assembly. This subsection will ensure that no reference to Saving Gateway will be inserted in the 1998 Act.

32. *Subsection (5)* removes a reference to the Saving Gateway from the Corporation Tax Act 2010. Paragraph 705 of Schedule 1 to this Act had amended section 9(2) of the Saving Gateway Accounts Act 2009 (concerning Saving Gateway account statements) to replace the reference to the Income and Corporation Taxes Act 1988 with a reference to the Corporation Tax Act 2010. As the Saving Gateway is not proceeding, this update to the Act is no longer required.

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Clause 3 Removal of entitlement to health in pregnancy grant

33. Clause 3 of the Bill amends section 140A of the Social Security Contributions and Benefits Act 1992 and section 136A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 so as to remove entitlement to a health in pregnancy grant from women UK-wide who reach the 25th week of their pregnancy on or after 1st January 2011.

Clause 4 Short title, commencement and extent

34. Clause 4 of the Bill provides for the short title to the Bill, commencement and extent.

FINANCIAL EFFECTS

Child Trust Fund

35. As set out above, the Government intends to stop government payments to CTFs in two phases (see paragraphs 5-8 above). Together, these changes are expected to save £320 million in Exchequer costs in 2010-11 and over £500 million per year thereafter. HMRC will incur some administrative costs in the short term in amending its IT systems to deliver the changes, but there will be further administrative savings to be made in the longer term from HMRC's marketing, postage and printing, human resources and IT budgets. The latest data shows that HMRC spent £4.8 million on CTF administration in the year to April 2009. These administrative costs will start to reduce in 2010-11.

Saving Gateway

36. The major Exchequer cost of the Saving Gateway would have been the government contributions, payable after the two year maturity period of accounts. This cost would have been incurred from 2012-13, when the first Saving Gateway accounts were expected to mature. Therefore, not proceeding with the Saving Gateway is expected to result in Exchequer savings of £75m in 2012-13, £110m in 2013-4, £115m in 2014-15 and £90m in 2015-16. The Exchequer saving per year thereafter is estimated at around £60m. The previous Government had also intended to provide £10m of funding to Post Office Limited in 2010-11, to meet their set up costs in providing Saving Gateway accounts. This money will also be saved by not introducing the Saving Gateway.

37. HMRC will incur some administrative costs associated with the decommissioning of the IT system and certain printing and marketing costs. However, not proceeding with the Saving Gateway will lead to estimated administrative savings of around £15 million between 2010 and 2015 - resulting from savings on IT, marketing, postage, printing, evaluation and other non-manpower costs.

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Health in Pregnancy Grant

38. The abolition of the health in pregnancy grant from 1st January 2011 will save £40 million in Exchequer costs in 2010-11 and £150 million in each succeeding year. HMRC will incur some administrative costs in the short term associated with the decommissioning of the IT system processing claims to health in pregnancy grant, but again there will be savings made in the longer term from the reduction in non-manpower administrative costs.

PUBLIC SECTOR MANPOWER

Child Trust Fund

39. HMRC expect to save manpower costs from 2011-12 onwards. There are just under 100 staff involved in administering the CTF and in maintaining CTF policy. These costs will largely disappear over the next two years. HMRC expects savings to be negligible in 2010-11, around £0.5m in 2011-12 and around £1m in 2012-13.

40. Local authorities' costs will also be reduced. Once the scheme is wound down, the Government's intention is that local authorities will no longer need to submit monthly returns informing HMRC of all the children newly coming into their care so that HMRC can ensure all such children have a CTF account set up for them. Secondary legislation using the negative procedure will need to be introduced, separately from this Bill, to make the necessary changes to the Child Trust Funds Regulations 2004 (S.I. 2004/1450) to adjust local authorities' reporting requirements.

41. None of these cost savings are immediate because although eligibility to CTFs will cease from January 2011, CTF vouchers, which are valid for a year, will be in circulation until early 2012 and work will need to be done in 2010-11 and 2011-12 on winding the scheme up and ensuring that existing CTF accounts (some of which will run until 2029) are properly maintained and serviced. A small manpower cost will be incurred up to 2029 for these cases.

Saving Gateway

42. An estimated 40 HMRC staff were to be involved in the administration of the Saving Gateway from July 2010 onwards. These staff have been redeployed.

Health in Pregnancy Grant

43. There are approximately 40 HMRC staff involved in the administration and payment of the health in pregnancy grant and in the maintenance of health in pregnancy grant policy. These members of staff will be redeployed.

SUMMARY OF THE IMPACT ASSESSMENT

44. No impact assessment has been prepared for these proposals. This is a spending proposal for which an impact assessment is not normally prepared.

45. An Equality Impact Assessment has been prepared and is published alongside these notes. The Government does not believe any significant impact on equality arises from these proposals.

COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS (“CONVENTION”)

46. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement before Second Reading about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act). The Commercial Secretary to the Treasury has made a statement pursuant to section 19 of the Human Rights Act 1998 to the effect that in his view the provisions in the Bill are compatible with Convention rights.

47. Consideration has been given to whether the effective removal of a right to a CTF for children born after 2nd January 2011, the decision not to make Saving Gateway accounts available, and the removal of the right to a health in pregnancy grant for women who reach the 25th week of their pregnancy after 1st January 2011 engage Article 1 Protocol 1 (“A1P1”) of the Convention (right to property) - either when considered alone or in conjunction with Article 14 of the Convention (right not to be discriminated against). There have been a number of cases which have considered the extent to which the right to receive a payment of some kind will engage A1P1 for the purposes of Article 14 and the leading case in this area is the recent House of Lords decision in *RJM v Secretary of State for Work and Pensions* ([2008] UKHL 63), in which the House of Lords considered the leading Strasbourg case of *Stec and Others v the United Kingdom* ((2005) 41 EHRR).

48. The Government considers that:

- Whilst the health in pregnancy grant may be considered a social welfare benefit, the right to acquire a health in pregnancy grant is not a possession for the purposes of A1P1 when considered alone given that Strasbourg jurisprudence makes clear that the Convention does not confer on individuals the right to acquire property (see for example para 54 of the admissibility decision of the ECtHR in *Stec*);
- Even if the health in pregnancy grant is considered a possession for the purposes of A1P1 when read in conjunction with Article 14, it is considered that the provisions in this Bill fall within the wide margin of appreciation allowed to the State under the Convention when it comes to general measures of economic or social strategy;

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- The CTF is not a social security benefit nor analogous to one and thus is not a possession for Convention purposes. The stated policy objectives of CTFs are to provide children a financial asset as they enter adulthood, to help foster a savings culture and as a tool to assist in children's financial education. These objectives, and the fact that funds are locked-in for 18 years, give weight to the argument that CTFs are not designed to give or supplement income in times of particular specified need, as many welfare benefits do. Accordingly, the Government considers a CTF is not a social welfare benefit nor analogous to one in the sense understood in the ECtHR case law and it is best characterised as a financial or saving product or incentive. In any event, even if the right to a CTF were considered a 'possession' for A1P1/Article 14 purposes, it is considered that the provisions in this Bill fall within the wide margin of appreciation allowed to the State under the Convention when it comes to general measures of economic or social strategy;
- Because the Saving Gateway was cancelled prior to its launch, no Saving Gateway accounts have been opened, no individuals have been notified of their eligibility for the Saving Gateway, and no financial institutions have been formally approved as Saving Gateway account providers. Therefore, the Government considers that neither A1P1, Article 14 nor Article 8 of the Convention are engaged, there being no 'possession' for A1P1 purposes and no impact on family life.

COMMENCEMENT DATES

49. *Subsections (2) and (3)* of clause 4 provides for commencement of the Bill. It will have effect as follows.

Child Trust Fund

50. On 3rd January 2011 the removal of CTF eligibility comes into effect. However, a period of three months, until 2nd April 2011, is provided for children born and in the United Kingdom before 3rd January 2011 to become eligible to a CTF. So, to be eligible to CTF a child must be born and in the United Kingdom before 3rd January and additionally:

- a claim for Child Benefit must be made, or the child must go into the care of a local authority, on or before 2nd April 2011, and
- if the child is subject to immigration control on 3rd January 2011, that immigration control must be lifted on or before 2nd April 2011.

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Saving Gateway

51. Clause 2 of the Bill, concerning the Saving Gateway, is due to come into effect 2 months after Royal Assent.

Health in Pregnancy Grant

52. The health in pregnancy grant will not be payable to any woman who reaches the 25th week of her pregnancy on or after 1st January 2011.

53. However, any woman who satisfies the conditions of entitlement before 1st January 2011 will continue to be eligible to claim providing she makes her claim, in accordance with the prescribed conditions, before her baby is born.

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