

State Earnings-Related Pension Scheme: The failure to inform the public of reduced pension rights for widows and widowers



Report by the
Comptroller and Auditor General

Department of Social Security

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This report has been prepared under Section 6 of the National Audit Act 1983 for presentation to the House of Commons in accordance with Section 9 of the Act.

John Bourn
Comptroller and Auditor General

National Audit Office
8 March 2000

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Executive summary

1 Citizens should be able to rely on the accuracy and completeness of information provided by Government departments. This is particularly true in the case of pensions, where citizens need to plan ahead, and where, without reliable information, they may make personal decisions that are not in their best interests. Providing misleading information may also have very serious financial consequences for the Government. This report examines how the Department of Social Security's failure to provide correct and timely information about a single provision in the Social Security Act 1986 will result in the loss to the National Insurance Fund of billions of pounds of anticipated savings over the coming years. The key events are summarised in Figure 1.

2 This is an extraordinary case, the resolution of which has required the diversion of much ministerial and senior management time. On its own, it is a very worrying lapse of normal administrative standards, and underlines the importance of the Government's commitments in the Modernising Government White Paper to deliver public services that are high quality and efficient. It also raises a number of wider questions about important aspects of the way in which the Department of Social Security deal with the citizen.

What went wrong?

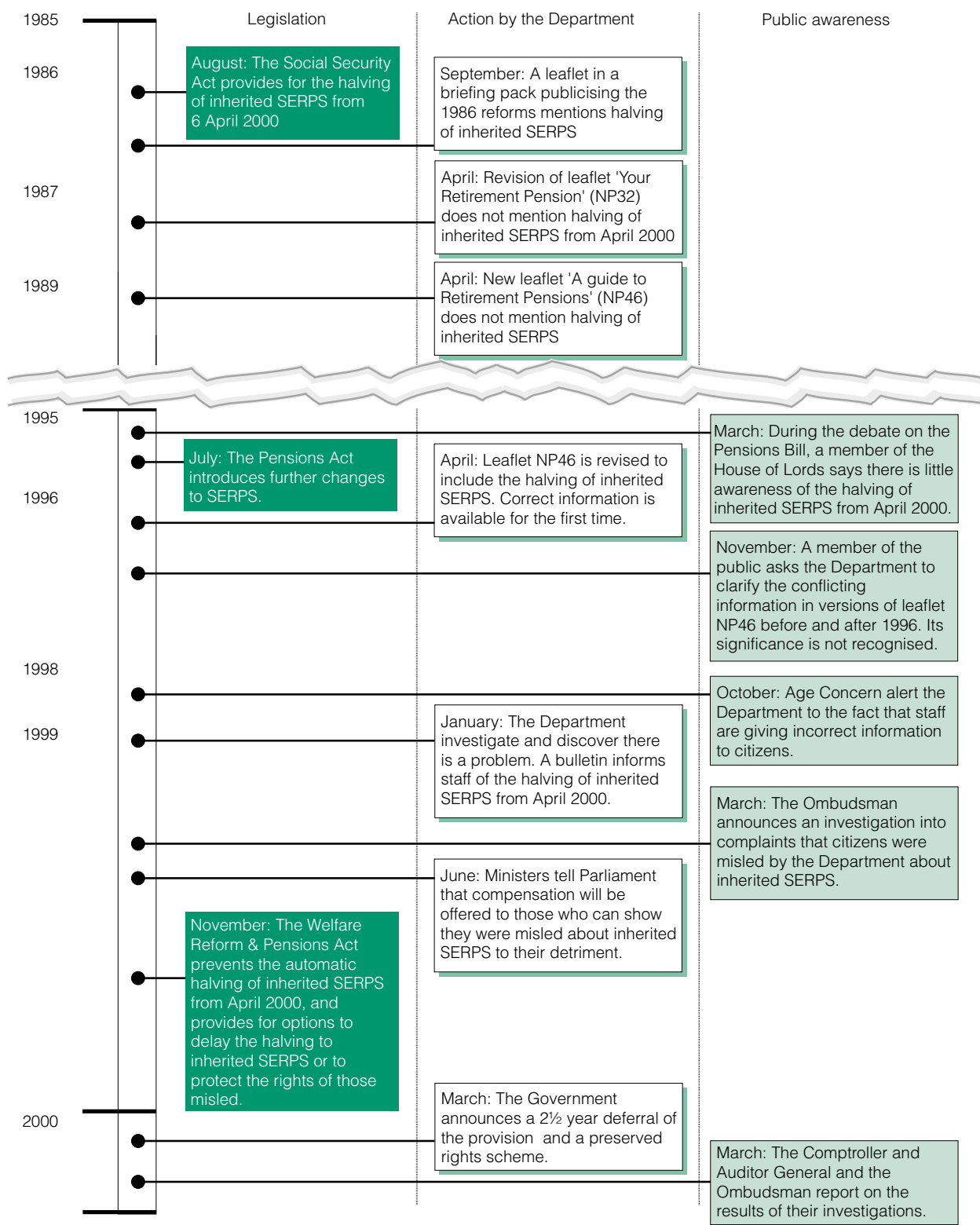
The Department failed to publicise a change in the law and gave misleading information to the public for more than a decade

3 A key objective of the Social Security Act 1986 was to reduce the future burden of the State Earnings-Related Pension Scheme (SERPS) - the current state second pension - on the National Insurance Fund. This was to be done by providing greater flexibility for people to contract out of the Scheme. The benefits obtained from SERPS were to be gradually reduced to what were considered more affordable proportions through a series of measures taking effect from towards the end of the twentieth century. Latest estimates (at 2000 prices) show the cost of SERPS reducing from £48 billion to £21.9 billion in 2030-31 as a result of the Social Security Act 1986. Provisions contained in the Pensions Act 1995 further reduce it to £14.1 billion in that year.

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Figure 1

Key events 1985-2000



4 As part of the 1986 changes, the Government legislated to bring SERPS into line with requirements for contracted-out occupational pension schemes to pay a 50 per cent survivors' pension, rather than the more generous state arrangements whereby survivors could inherit 100 per cent of their partner's SERPS pension. This change was deferred for fourteen years so that it would not take effect until April 2000. The delay was to give those affected the opportunity to make alternative financial provision to compensate for the effect of the reduction. If implemented, this change would have had the effect of reducing by an average of £20 a week the amount of pension a surviving spouse could inherit should their partner die after 5 April 2000, rather than before.

5 Government departments do not have a duty to provide information on changes in the law, but where they do issue such material, they have a legal responsibility to ensure that it is accurate and complete. However, for nearly ten years from 1986, the change in the arrangements for the inheritance of SERPS was not publicised adequately and, in particular, information was not included in relevant leaflets until 1996. In addition, an unknown number of people were given incorrect information about the provision by the Department in letters from, and conversations with, staff between 1986 and April 1999. As a result, several thousand people who have already retired, or are due to do so soon, believe that they made decisions about their future pension provision based on incorrect information about the statutory position after 5 April 2000.

How did it happen?

Details of a change in the law were not incorporated into a leaflet in 1987 and the omission was not noticed until 1995

6 The problem described in this report arose from a series of omissions and misunderstandings about the nature of the change in the arrangements for inherited SERPS. In particular:

- details of the change to the arrangements for the inheritance of SERPS after April 2000 were omitted from a departmental leaflet when it was published in 1987, even though the absence was noted when a draft was circulated within the then Department of Health and Social Security. The only explanations offered to us for the omission are that the provision was overlooked altogether, or that staff finalising the leaflet considered it more appropriate to place it in publicity material about widow's benefits. Ultimately, it appeared in neither at this time;

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- pensions leaflets were updated in the late 1980s and early 1990s, but the overall accuracy and completeness of the whole documents do not appear to have been considered, or the absence of the provision was not considered significant. As a result, the inherited SERPS provision was not publicised in official leaflets between 1987 and 1996, and the omission gave a misleading impression of the size of the pension that a surviving spouse would inherit, if their partner died after 5 April 2000;
- the Department (and later the Benefits Agency) did not appreciate the implications of not informing the public about the change from the time it became law, even though it was not due to come into effect until 2000. For more than a decade, many of the local office staff provided incorrect information to the public because they were unaware of the position after April 2000. Several thousand people believe they would have made different choices about their pension provision had they known about the halving of inherited SERPS;
- the absence of publicity for the inherited SERPS provision was raised in the House of Lords in 1995, during consideration of the Pensions Bill. Although the Benefits Agency updated their pensions leaflets as a result of this, they do not appear to have appreciated the implications of the change for citizens' forward financial planning, and thus the necessity for staff to explain the position after April 2000 as well as the current arrangements. As a result, the Agency did not check that staff were aware of the provision or consider whether the omission in the leaflet might have consequences in the future; and
- warnings in correspondence to the Department from two members of the public (forwarded by their Members of Parliament) about the absence of publicity prior to 1996 and the misleading effect of the information provided by local offices, were not picked up by the Department, even though these letters received ministerial replies in 1997 and 1998. Only after the charity, Age Concern, wrote to the Department in October 1998 was action taken to assess the scale of the problem and rectify the situation.

What action have the Government taken since discovering the error?

The Department took powers to prevent the provision taking effect and have announced a redress package

7 The Department's initial investigations confirmed that there was a problem, and in January 1999 the Benefits Agency issued a bulletin to staff, informing them of the correct position after 5 April 2000. Subsequently, the Agency have issued seven further bulletins, designed to help staff handle enquiries from the public. In addition, staff from the Department's headquarters and the Agency reviewed all current benefits leaflets for accuracy and completeness, and in August 1999, advised ministers that, as far as could be identified, all leaflets were up to date and contained no incorrect or misleading information.

8 During much of 1999 and early 2000 officials from the Department and the Treasury examined options for a suitable redress package. In November 1999, an amendment to the Welfare Reform and Pensions Bill, provided for the Secretary of State for Social Security to postpone, modify, or dis-apply in certain cases, the provision to halve the inheritance of SERPS. It also enabled the Secretary of State to set up a scheme to determine who had been misled by incorrect or incomplete information about the 50 per cent reduction, so as to ensure that the reduction will not be applied in their, or their widow(er)'s case.

9 In March 2000, the Government stated that the provision would now be delayed for a further 2½ years and come into effect in October 2002. In addition, they announced that they would set up a preserved rights scheme (to be known as the Inherited SERPS Scheme) in 2001 to exempt for life those people able to satisfy the Department that they have been misled about the rules for the inheritance of SERPS, and took inappropriate action on the basis of wrong information. The scheme will involve a national publicity campaign designed to draw attention to the problem, and will invite applications from those who consider they may be eligible. It will be operated by a private sector contractor.

Who has been affected?

Several thousand contributors to SERPS and their families have suffered distress since finding out about the problem

10 The exact number of people given incorrect information will never be known, but is likely to be many thousands. During 1999, members of both Houses of Parliament raised their concerns about the distress caused to citizens as a result

of finding out about the problem (because of the uncertainty as to whether they could prove they had been misled, given the absence of any written record of contact with the Department in many cases), and at the delay in resolving the matter. Figure 2 summarises various ways in which people claim to have acted or not acted as a result of the incorrect information that was provided.

**Many thousands of people
may have been affected**



Source: Department of
Social Security

Figure 2

These include those:

- who purchased an annuity with no or reduced survivor's benefits on the understanding that their spouse would inherit 100 per cent of their SERPS pension;
- whose wife would have made their own additional pension arrangements, such as taking out a personal pension, but decided this was not necessary;
- who would have contracted out of SERPS, but chose to stay in because they believed, on the basis of mis-advice after 1986, that it had more generous survivor's benefits than other arrangements;
- retired people who have taken financial decisions based on the assumption of full survivor's benefits;
- who would have otherwise taken out additional life assurance and who are no longer able to because of health and cost; and
- who would have saved more as a 'nest egg' for their surviving spouse had they known about the provision, but are now retired.

How much will it cost to put right?

The full cost of resolving this problem will be at least £2.5 billion and probably considerably more

11 The decision to defer the provision and establish a preserved rights scheme comes after much consideration throughout 1999 and early 2000 by the Department of Social Security, in consultation with the Treasury and other interested parties. The aim was to design a means of redress best suited to meeting the needs of those genuinely affected and one which avoided disproportionate cost.

12 At this stage it is not possible to establish how much the package of measures will cost, but it will be made up of three main elements (see Figure 3). The first relates to the cost of providing 100 per cent inheritance for those who become eligible (through the death of their spouse) during the two and a half year deferral period. The subsequent cost of the scheme will depend on the number of successful applicants. And the cost of administering the scheme may also vary a little depending on the number of applicants.

The full cost of resolving the matter will be made up of the following elements and will depend on the number of successful applicants to the scheme

Figure 3

- The direct cost in terms of anticipated savings not realised due to the deferral of the legislation until October 2002 (estimated at a gross figure of £2,500 million⁽¹⁾ between 2000 and 2050). This is based on assumptions of how many people will become eligible before the end of the deferral period.
- The cost of payments to those eligible for preserved rights. This will vary depending on the number of successful applicants. On one set of assumptions it is estimated at £5,700 million⁽¹⁾⁽²⁾ over 50 years, although it could be significantly more or less than this.
- The costs of administering a preserved rights scheme (estimated at £60 million over two years)

Notes: 1. Discounted present value of all costs
2. This assumes successful claims covering 30 per cent of potential total expenditure. The actual figure will depend on how many people are successful in their application to the preserved rights scheme.

Source: Department of
Social Security

Have the Department taken the necessary steps to avoid such mistakes in the future?

13 We examined whether the Department have arrangements in place now to ensure that a similar problem can not occur again. On the basis of our work we consider:

- the Department are now more aware of the risks associated with provisions that do not come into effect for a number of years, and in the case of another recent piece of legislation, have taken measures to ensure that staff are aware of the legislation and publicity is given to the time lag;
- there are systems in place for disseminating information throughout the organisation, but there remain practical obstacles to clear communications, in particular, as a result of the limited availability of IT, and the archaic nature of much of what exists;
- the new arrangements for ensuring that leaflets are accurate and complete should help to clarify roles and responsibilities, and enhance accountabilities, but have not yet been tested;
- developments are taking place within the Department to extend the use of systematic approaches to the project management for the development and implementation of policy, which promise greater clarity of purpose in planning and execution of legislation, and greater transparency in accountability. These should help to ensure that everything that must be done is identified and carried out; and

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- the use of risk management and assessment techniques in policy areas has been inconsistent, although there are examples of effective use. This area is also currently being developed by the Department, but more needs to be done.

What have we looked at ?

We have examined the details of this case and the wider lessons for the Department

14 Against this background, this report examines:

- the events leading up to the decision to defer the legislation and to establish a preserved rights scheme (Part 1);
- what action the Department of Social Security have taken since October 1998 to deal with the problem (Part 2); and
- whether the Department now have effective arrangements in place to prevent a repetition of these events (Part 3).

Full details of our research, which took place mainly between October and December 1999, are at Appendix 1.

15 In undertaking the examination, we worked closely with the Office of the Parliamentary Commissioner for Administration (the Ombudsman). The Ombudsman has received 344 complaints on this matter and has investigated four sample cases of alleged maladministration. The Ombudsman reported his findings to Parliament in March 2000. We worked together in preparing the agreed chronology of events in Appendix 2, and in doing so, have undertaken the most extensive liaison between our two organisations to date. This is in line with the recent statement of the Public Audit Forum that there should be greater co-ordination between public auditors and other inspectorates. Our reports have been published together to provide Parliament with a complete picture across the range of issues arising from this case. A summary of the main conclusions in the Ombudsman's report is at Appendix 3.

16 In addition, at the request of the Permanent Secretary of the Department of Social Security, we have extended our work to look in more detail at the processes and procedures in place within the Department to avoid a repetition of the problems described in this report. In doing this, we have worked closely with the Department's Internal Audit Service.

In undertaking our examination we have taken account of Modernising Government principles

17 In undertaking our examination and making recommendations, we have borne in mind the thinking set out in the Government's White Paper 'Modernising Government' (Cm 4310). Of relevance to this examination are the chapters on 'Responsive public services' and 'Quality public services'. In particular, we note the Government's intention that:

- central government should provide clear and straightforward information about its services and those of related providers;
- public services should be responsive to citizens' needs and sensitive to specific groups, of which an important one is older people; and
- administrative barriers and rules and regulations should not prevent departments providing services, or get in the way of sensible co-operation.

Conclusions and recommendations

18 In the light of the events described in this report, we have identified a number of areas where action should be taken, or where existing developments within the Department should be completed as soon as possible. Making effective improvements in these areas should help to ensure that similar events do not occur again.

On overall organisational issues

19 This case raises a number of questions about important aspects of the way in which the Department of Social Security is administered. The handling of state pensions requires the co-ordination of Benefits Agency staff in Leeds, Newcastle, and within local offices, as well as staff in the departmental headquarters in London. The problem that arose with inherited SERPS was able to happen because of the absence of end-to-end responsibility and shortcomings in accountability for

the management of pensions work. The case illustrates the potential for misunderstanding and delay that can arise when a variety of different parts of the organisation need to work together.

20 Against this background, we consider that:

- a) the Department should examine whether the current arrangements, in which responsibility for pensions is spread between the departmental headquarters and several parts of the Benefits Agency, are the most suitable, and whether the handling of state pensions work is not so significantly different to the administration of other benefits as to require more unified management;
- b) the Department should recognise the risks associated with administering complex pensions legislation, into which have been incorporated many changes in the last fifty years. This should be taken into account when considering the administration and resourcing of a system which impacts on the lives of many millions of people; and
- c) the Department must ensure that there is clear accountability for all their operations, and that everyone involved is clear who has end-to-end responsibility. This is particularly important where projects require co-ordination between a number of parts of the Department, or with other organisations. The Department should develop further the use of 'Senior Accountable Officers', who are given responsibility for specific initiatives and projects.

On providing the citizen with clear and accurate written information

21 The problem described in this report arose because the Department's leaflets were incorrect between 1986 and 1996. The Department estimate that around 3 million misleading leaflets were issued during this period and were available to the public in Benefits Agency offices, post offices and other public places. There is no way of telling how many people read the leaflets, although it should be noted that the misleading information would not have been relevant to all readers. Following discovery of the problem, the Department reviewed all their benefits leaflets in 1999, and have developed new procedures for ensuring that they remain up to date.

22 Where the Department provide publicity about legislative changes, they have a responsibility to ensure that the information is correct and not misleading. We consider, therefore, that:

- a) the Department's new procedures for ensuring the contents of leaflets are complete and accurate should in the future be applied systematically to all publicity material, including electronic sources. Although the Department are responsible for the quality of their publicity, they should also consider how they can engage pressure groups and other interested parties more in consultation on the text of new leaflets and other publicity material. They should also ensure that the new arrangements allow for the handling of ad hoc corrections notified to the Department outside the regular review process (paragraphs 3.13-3.15);
- b) particular attention should be paid to ensuring that information about changes to legislation that do not come into effect for some years is included in publicity material (paragraph 3.4);
- c) given the potential consequences of incorrect and incomplete leaflets, this area remains high risk, and we suggest that the Department's Internal Audit Service undertake a regular review to ensure that the new arrangements for ensuring complete and accurate leaflets are being implemented effectively (paragraph 3.14); and
- d) the current work to develop the information provided in state pension forecasts (the means by which citizens are able to obtain a projection of what pension they will receive at state retirement age, based on a series of assumptions), and the amount of explanatory material accompanying it, should be progressed as soon as possible as part of the wider improvements to the information about pensions available to citizens (paragraph 3.37).

On ensuring staff are kept up to date with changes in legislation

23 As well as the absence of information on inherited SERPS in departmental leaflets, many Benefits Agency staff were unaware of the change to the law after April 2000. Most service organisations now take it for granted that staff will be able to rely on IT systems as the basis for providing the public with information. The Department's responsibility to provide accurate and complete information to their customers underlines the importance of staff having access to up to date information about benefits which are, by their nature, complex. However, the limited IT systems within the Agency's local office network present considerable obstacles to meeting the growing expectations of citizens.

24 In particular, we consider that:

- a) any piece of legislation with long lead times for the implementation of specific provisions should be treated with caution and suitable planning undertaken to ensure that the implications are understood. This may include a communications strategy for the period prior to implementation, and arrangements for bringing the matter to the attention of staff in a timely manner (paragraph 3.4);
- b) the Benefits Agency should review the adequacy of guidance about all benefits available to their local office network to ensure that they are meeting the needs of staff. As part of this, they should consider whether, in the current climate of considerable change, they are overloading staff with too many individual bulletins, and whether key manuals, on which staff rely, are updated frequently enough. They should also examine whether the legitimate needs of the end-users of guidance are taken into account sufficiently when considering the content and form of communication (paragraph 3.8);
- c) the Agency should examine whether arrangements for producing and disseminating bulletins are sufficiently responsive to the needs of staff and the demands placed on them by customers, particularly where the issues involved are sensitive (paragraphs 3.8-3.9);
- d) the very limited availability of IT within the Agency's local office network (discussed in more detail in the Comptroller and Auditor General's report on 'Government on the Web'), and the archaic nature of much of what exists, ensure that much of their work remains paper based, and that staff do not have direct access to information in electronic form, including basic material such as procedural guidance. The Agency should consider urgently how they can develop their on-line information systems to ensure that information available to staff is easy to access and up to date. One element of future arrangements should be an intranet, which would provide, for example, the opportunity for fast and consistent dissemination of information, and for discussion groups for particular benefits, through which offices could exchange experiences and warn of problems. This is currently being developed, but full roll-out will take a number of years (paragraph 3.8);
- e) the Agency should ensure that appropriate arrangements exist within local offices so that when staff return to work after a period of absence, or from other duties, they are updated on all key developments in their area of work. Where necessary, this may require appropriate training to ensure that staff have the skills and knowledge to pass on accurate and complete information to the public (paragraphs 3.8-3.9); and

- f) the Agency must have ways of monitoring the technical accuracy of information provided to the public, and should re-examine the adequacy of their quality assurance work, including for example, whether benefit could be derived from well focused 'mystery shopping' arrangements or the taping of a sample of calls, both of which are used by many other organisations to monitor the adequacy of information given to the public (paragraphs 3.10-3.11).

On responding to the needs of the public

25 The Department of Social Security receive more than 11 million letters a year from the public. In dealing with them, the Department must reconcile the expectations of customers for a personalised service, with their organisational capacity to do this. In the case of inherited SERPS, the Department have received more than 3,500 letters during 1999, often from customers who were distressed and concerned about the adequacy of the provision they have made for their partner. Although these people received a standard holding reply, they have not been advised subsequently of developments. This is despite the fact that in November 1999 the Government took powers in the Welfare Reform and Pensions Act 1999 to ensure the halving of inherited SERPS provision did not come into force in April 2000. The Department advised us that a follow-up letter was considered in November, but the decision was taken to wait for the ministerial announcement on the redress package, which at that time was expected before Christmas.

26 We consider improvements could be made to the handling of contact with customers, especially in cases where people believe they have been misled by the Department. In particular, we consider that:

- a) where large numbers of complainants contact the Department, and the matter cannot be resolved quickly, the Department should provide them with updated information where significant developments have occurred towards resolving the matter. While there may be issues around not pre-empting final decisions, there should be a presumption in favour of satisfying legitimate concerns within a specified timescale (paragraph 2.16);
- b) practices for dealing with letters from the public vary greatly within the Department, and many letters require co-ordination between several different parts of the organisation. The way in which correspondence at all levels is handled, and the procedures for ensuring the quality and accuracy of responses, should be reviewed with a view to streamlining arrangements (paragraphs 1.24-1.26);

- c) the Department should give serious consideration to the implications for resources, training and public expectations of any shifts towards an advisory, rather than purely information providing, role. Where the Department consider they have a more limited role, they should ensure that this is made explicit. This issue is particularly important as the Department are being encouraged now, as part of the Modernising Government initiative, to be more proactive in their dealings with the public, and, in some aspects of their work, have appointed personal advisers (paragraphs 2.13-2.16, 3.10-3.11);
- d) the Department should continue to develop the ways in which they provide information about their services, ensuring that they take account of reasonable expectations and needs of the public in the ways that they design and issue information products, whether paper-based or electronic (paragraphs 3.16-3.17); and
- e) the Agency should make full use of new complaints handling software, to be introduced nationally in April 2000, which will enable local offices to record complaints in a standard format, and allow them to be analysed in predetermined categories and client groups (paragraph 3.18).

On the importance of having a systematic approach to implementing legislation

27 This case underlines the importance of having a systematic approach to implementing Government legislation to ensure that everything that needs to be done is done in a timely and accurate manner. Given the complexity of legislation, the many internal and external stakeholders involved, and the need to ensure proper accountability and end-to-end responsibility, it is important that there is intelligent application of agreed project management approaches and techniques. In particular, we consider that:

- a) existing initiatives within the Department to develop the use of project management approaches and thinking for the development and implementation of policy should be pursued to a conclusion, and extended where currently not in use. This work should be carried forward in a flexible and non-bureaucratic manner, with a view to developing a common and integrated approach to projects throughout the Department (paragraphs 3.20-3.22);
- b) good practice from the past use of project management approaches to policy development and implementation should be collected together and circulated so that others can draw on the experiences of those who have successfully applied particular techniques and practices (paragraphs 3.20-3.25);

- c) the Department's Internal Audit Service should give increased attention to reviewing procedures and practices in the field of policy development and implementation, given the high risks attached to much of this work (paragraphs 3.20-3.25);
- d) the use of project management and risk management approaches for policy development and implementation may be areas suitable for examination under the peer review process being organised by the Cabinet Office, as outlined in the Modernising Government White Paper (paragraph 3.25); and
- e) at the end of the main phase of implementation of any policy initiative, a depository of information on outstanding issues should be drawn up, formally handed over to the relevant branch, and included in their work programme to avoid tasks being forgotten. Responsibility for progressing outstanding work should be assigned to named individuals. A consolidated record of outstanding legislation and action needed should be maintained and reviewed regularly at departmental board level (paragraphs 3.20-3.25).

On identifying and managing risks to the successful implementation of departmental initiatives

28 The example described in this report is an extreme case of what can happen when a Department fails to carry out certain apparently routine actions. This emphasises that risks to successful achievement of objectives can take many forms, and that identifying and managing them is essential throughout the implementation phase of a policy initiative. The Department have been developing their risk assessment work, but need to push it further. In particular:

- a) current initiatives within the Department to develop a rigorous approach to risk management should be pursued and arrangements put in place to ensure that risk assessment and management becomes a routine element of all policy development and implementation (paragraphs 3.27-3.34);
- b) at a project level, risk assessment and management should encompass a range of features, including that (paragraph 3.33):
 - the risks to achievement in the timescale and budget available be clearly identified from the start of the project;
 - risks be treated as the responsibility of the top level board given the potential impact on the project or on the use of resources;

- the likelihood and impact of risks be analysed separately, and named individuals be made responsible for mitigating them and reviewing mitigation plans on a regular basis; and
 - when mitigation plans are altered, this fact is reported to the Senior Accountable Officer for the project, and recorded on a simple risk/control matrix so that the impact of multiple, apparently minor, changes in different areas can be seen and understood, and their combined impact assessed and dealt with.
- c) the recommendation of the Department's Internal Audit Service that policy option appraisals include a section on risks should be implemented (paragraph 3.29).

On the redress package

29 The Government have decided on a two and a half year deferral of the inherited SERPS provision and the establishment of a preserved rights scheme. We will monitor progress of the scheme in the future as part of our on-going work on the accounts of the Department of Social Security. In designing the scheme, we consider it is essential that the Department carry forward their plans to:

- publicise the existence of the scheme as widely as possible in a range of appropriate ways;
- consult as widely as possible with relevant stakeholders on the details of the scheme and its operation;
- build in suitable checks to offer a strong chance of identifying fraudulent applications;
- monitor thoroughly the risks to the successful implementation of the scheme and manage them rigorously; and
- defer processing applications from the public until they are convinced that the arrangements are ready.

They should also take account of the findings and recommendations contained in the Parliamentary Ombudsman report (see Appendix 3).

Part 1: How the problem arose

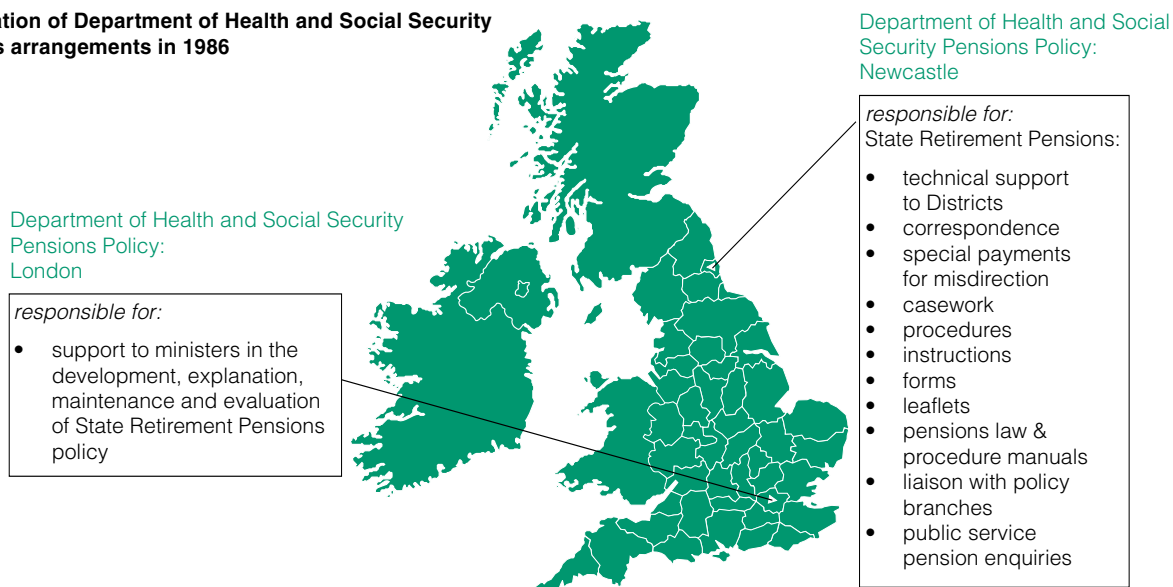
1.1 This report examines how the Department of Social Security's failure to provide correct and timely information on a single provision of the Social Security Act 1986 will result in the loss to the National Insurance Fund of billions of pounds of anticipated savings over the coming years. It considers why the problem arose and how the Department have dealt with it. This part considers the events that led up to the Government's decision to defer the provision (covered in Part 2), which would have halved the amount of State Earnings-Related Pension that could be inherited. It covers the period from 1986 to 1999. Inevitably, given the passage of time, many files relating to this case have been destroyed in line with guidance from the Public Record Office. In addition, staff interviewed have, not surprisingly, found it hard to recollect actions which did or did not take place up to fourteen years ago. This chapter is, therefore, based on the best evidence available at the time our examination was undertaken.

The Department of Social Security are responsible for state pensions arrangements

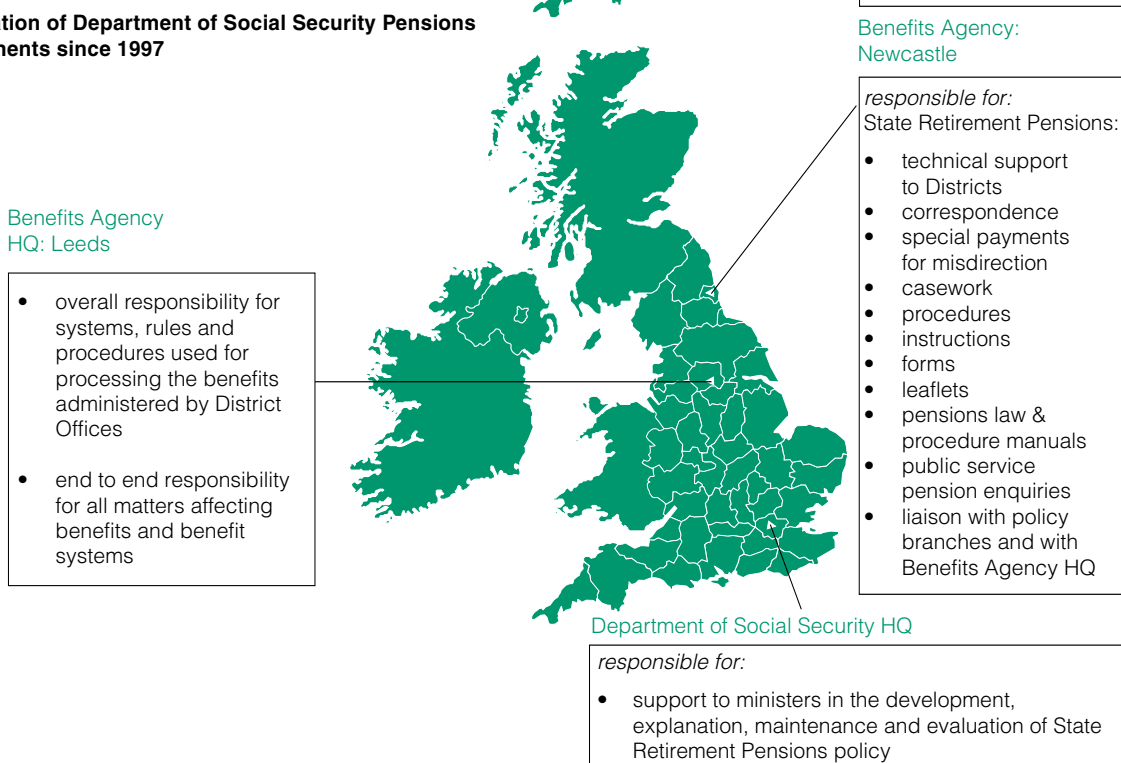
1.2 The Department of Social Security are responsible for the development, maintenance and delivery of the social security programme. As part of this, they administer state pensions throughout Great Britain, including the State Earnings-Related Pension Scheme (SERPS). Their role includes providing information to citizens about pensions; calculating and awarding retirement pensions; making payments to over 10 million pension accounts annually, and arranging new pension payments for some 600,000 people each year; and responding to enquiries from citizens about state pensions. In 1998-99 the Department's expenditure on retirement pensions and widows benefits totalled £37 billion. Responsibility for the administration of pensions - which has changed over the years - is shared between a number of parts of the Department of Social Security situated in London, Leeds and Newcastle (Figures 4a and 4b).

Figure 4a The organisation of the administration of state pensions has changed since the 1980s

Organisation of Department of Health and Social Security Pensions arrangements in 1986



Organisation of Department of Social Security Pensions arrangements since 1997

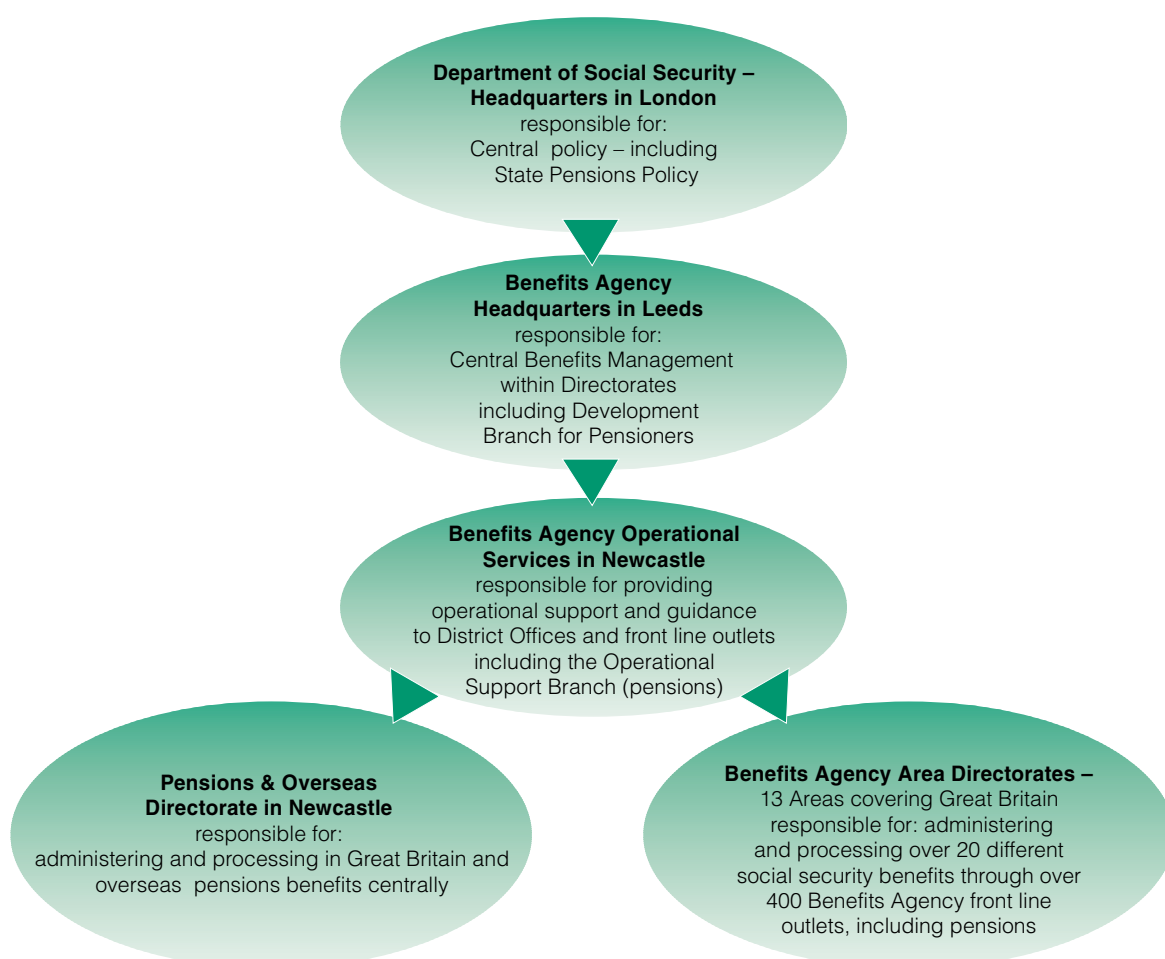


Over the period covered by this report the organisation of pensions management has changed. Until 1991, responsibility was shared between the Department of Health and Social Security headquarters in London and a branch in Newcastle. In 1991 the Benefits Agency was established, and set up Benefits Support Branch, with a number of sections. The section responsible for pensions remained in Newcastle. At the same time, the Contributions Agency was established with responsibility for collecting National Insurance contributions, (the Contributions Agency was subsequently transferred to the Inland Revenue in 1999). In 1997 Benefits Support Branch was divided into two separate units, now known as Development Branch for Pensioners, based in Leeds, and the Operational Support Branch, which encompassed pensions activities in Newcastle.

Source: National Audit Office

Figure 4b

Organisation of pensions work in the Department of Social Security during 1999

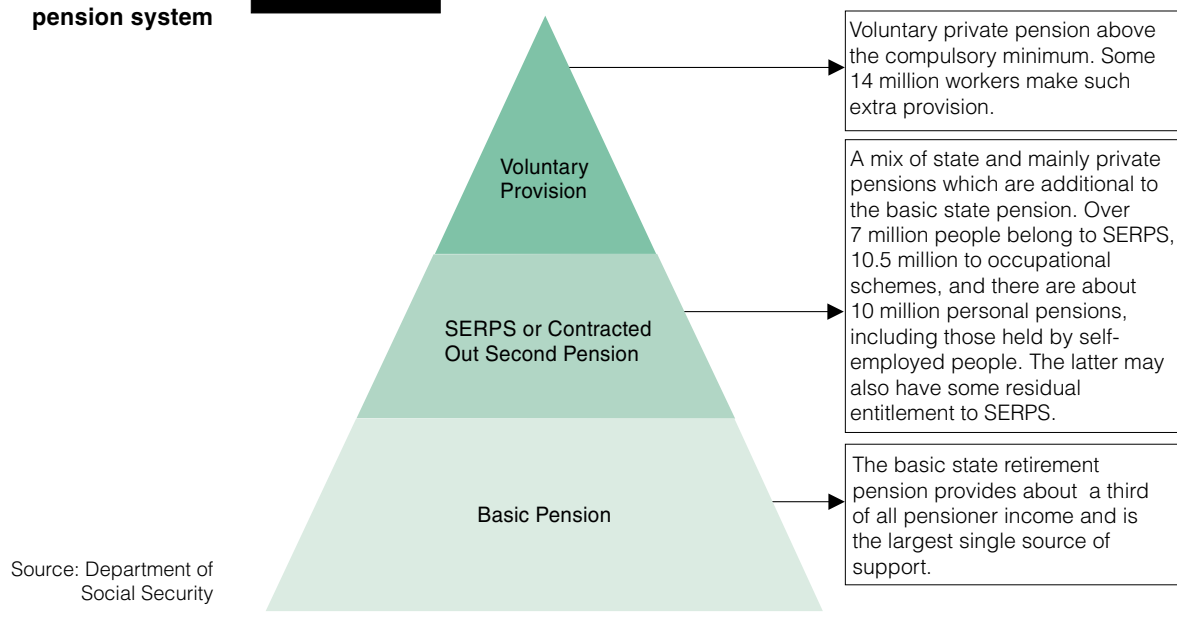


Source: Department of Social Security

1.3 The current pension system in Great Britain has been described as a partnership between the state, employees and private pension providers. Figure 5 summarises the three tiers in the system. The Department's role with regard to state pensions differs in a number of respects from that when overseeing other state benefits. Citizens can make choices about their pension arrangements, whereas, for the most part, they receive specific benefits dependent on their circumstances. The time scales are also different. Pensions require planning for the future, whereas entitlement to benefits usually takes immediate effect. In the field of pensions there are more explicit private sector comparators, whereas in administering other benefits the Department have a monopoly role. Finally, whereas means-tested beneficiaries do not have protected rights, SERPS beneficiaries do.

The three tiers of the pension system

Figure 5



1.4 The basic State Retirement pension is available to anyone who has reached state pension age - currently 60 for a woman, 65 for a man - and has paid a minimum amount of National Insurance contributions. The amount of Basic Pension also depends on the number of qualifying years for which those contributions were paid. Since 1978, employees who pay sufficient National Insurance contributions have also earned entitlement to an additional pension under SERPS.

1.5 The State Earnings-Related Pension Scheme was established in 1978. Unless a person contracts out into another pension scheme, it is a compulsory second tier scheme for employees with earnings above a minimum threshold. It is paid with the basic state pension from state pension age. In 1998-99 around 7.5 million people accrued some SERPS entitlements, and a further 5.5 million people are in receipt of a SERPS pension. The average SERPS pension for people retiring in recent years is £49 a week for men and £23 a week for women. At present, the maximum is approximately £125 a week. In addition, many people who contracted out of SERPS have some SERPS entitlement, earned prior to changes in contracting-out arrangements in 1997. Amounts thus accrued are held in SERPS accounts. On this basis, the number of people with some SERPS entitlements is around 20 million, although for many this will be a small sum. The Government are currently legislating to reform SERPS through the State Second Pension.

The Social Security Act 1986 made changes to SERPS but delayed their introduction until 2000



1.6 One objective of the Social Security Act 1986 was to reduce the future burden of SERPS on the National Insurance Fund. This was to be done by providing greater flexibility in contracting out into Money Purchase Schemes, and by additional incentives to contract out into a Personal Pension Scheme. The benefits obtained from SERPS were to be gradually reduced to what were considered more affordable proportions through a series of measures taking effect from 6 April 1999. The Department estimated that these measures would reduce the cost of SERPS in 2030-31 from £48 billion to £21.9 billion (in 2000 prices). An additional objective was to bring SERPS into line with requirements for contracted-out occupational pension schemes to pay a 50 per cent survivors' pension.

1.7 In particular, the Social Security Act 1986:

- removed the 'best 20 years' provision, so that SERPS would be assessed over an individual's entire working life, rather than just their period of highest earnings. This change is taking place gradually for people retiring from 6 April 1999;
- reduced the accrual rate, so that SERPS would give a pension worth 20 per cent of relevant earnings, rather than 25 per cent. This reduction is also being phased in, beginning for people reaching pension age in 2000-01; and (most significantly for this report)
- reduced, after 5 April 2000, the amount of SERPS that could be inherited by a surviving spouse from 100 per cent to 50 per cent of the deceased person's entitlement.

1.8 The changes to the arrangements for the inheritance of SERPS were deferred so that they would not take effect for deaths and retirements until the turn of the century. A delay to legislation of fourteen years was unprecedented at the time. The purpose of this was to allow those affected the opportunity to make financial provision for the impact of the reduction. The design of the first two elements involved a degree of phasing-in. In contrast, the provision on SERPS inheritance included a clear cut off date.

The provision to halve inherited SERPS in the future was not publicised adequately

1.9 Government departments do not have a duty to provide information on changes in the law. However, where they do decide to provide such information, they must take reasonable care to ensure that the information is complete and accurate (Figure 6).

1.10 The intention to make changes to SERPS was publicised in the White Paper 'Reform of Social Security - Programme for Action' (Cm 9691), published in December 1985. This was followed by the Social Security Act 1986, which was debated in Parliament, and then published, following Royal Assent. During consideration in the Standing Committee in the House of Commons the subject of publicity for the changes to SERPS was raised. In response to questions, in February 1986, the then Minister of State gave a commitment to publicise the changes, stating that 'We have every intention of mounting a major publicity campaign to herald the pension changes contained in the present Bill, should it become an Act.....'

Figure 6

The Department have a responsibility to provide complete and accurate information



The Department do not have a duty to provide information on benefits or changes in the law. However, when they decide to provide such information, they have a common law duty of care to those likely to read the information that they publish in their leaflets and other literature, and an obligation to take reasonable care to ensure that information is complete and correct. They can expect members of the public to rely on it.



The Government recently emphasised the importance of providing accurate information for those considering their pension arrangements. The 1999 Green Paper 'Partnership in Pensions' (Cm 4179) stated that, in making decisions about what is adequate provision for their future 'People need better and more accessible information about state and non-state pensions. They need to know where to get information and advice from sources they can trust.'



This has also been reinforced by the Benefits Agency's Customer Charter, published in November 1999. This Charter covers all benefits, and states that 'When you deal with us by phone, in person or by letter, you can expect to receive advice and information that is accurate, clear, full and helpful.'

1.11 Initially, reference to the provision was made in published material. In September 1986 the then Department of Health and Social Security leaflet 'Reforming social security: Saving for Retirement Pensions' was issued as part of an information pack on the 1986 reforms. This explained correctly that 'Widows, and widowers over 65, will be able to inherit up to half their partner's SERPS pension, instead of up to the full amount. This particular change will not happen until the year 2000 and so will not affect anybody widowed this century.' We have not been able to establish how widely this was circulated.

1.12 In addition, some unofficial sources accurately recorded the change. In November 1986, the consumer magazine 'Which' published a supplement which explained it. Pensions professionals also knew about it. For example, the Legal and General Pensions Manual, published in 1991, explained the implications of the provision, and would have informed the advice given by this firm.

1.13 In contrast, official leaflets covering pensions issued by the Department between 1987 and 1996 failed to mention the change in arrangements for inherited SERPS, although the two other SERPS provisions referred to in paragraph 1.7 were included. At this time departmental guidance on pension arrangements was provided in a leaflet known as NP32 ('Your Retirement Pension'), which was routinely included in claim packs issued to people reaching state pension age. A draft insert to update this leaflet was circulated in November 1986 by the section in Newcastle responsible for procedures and instructions on long term benefits to seven sections within the then Department of Health and Social Security for comment, in line with the then standard quality assurance procedures. A number of suggestions for changes and additions were put forward by the section in London, including that reference be made to the SERPS inheritance provision.

1.14 Despite this suggestion, when the leaflet was reprinted in April 1987, it did not refer to the arrangements for inheritance of SERPS after April 2000. The only explanations put to us for this omission are that it was overlooked altogether, or that staff concerned with finalising the leaflet considered it more appropriate to include details in publicity material relating to widow's benefits. If this was the case, in the event, this was not done either. We have not found any documentary evidence that enables us to conclude one way or the other about the cause of the omission. The split responsibility for state pensions work between London and Newcastle may have created communication difficulties, and increased the possibility of errors occurring.

The omission was not picked up during subsequent updating of leaflets

1.15 The Department of Social Security update their publicity material periodically, in particular, in the light of statutory changes. On several occasions after 1986 the Department's pensions leaflets were revised. In April 1989, another leaflet, known as NP46 ('A Guide to State Retirement Pensions') was introduced. Again, the inherited SERPS provision was not mentioned. It was revised several times in the following years, for example, to reflect the abolition of the earnings rule, and to take account of the consolidation of pensions legislation in the Contributions and Benefits Act 1992 and the Administration Act 1992, but no mention was made of inherited SERPS.

1.16 The Department have estimated that some three million pensions leaflets issued during this period failed to refer to the provision and were available to the public in Benefits Agency offices, post offices and other public places. There is no way of telling how many people read the leaflets, although for many the information would not have been relevant. However, it is reasonable to assume that even if only half of the leaflets were read, a great many people would have been given an incorrect impression of the position on the inheritance of SERPS after 5 April 2000.

Many Benefits Agency staff were not aware of the provision and gave incorrect information to the public

1.17 As well as a lack of external publicity for the provision, it is clear that, during the 1990s, many staff within the Department of Social Security were not aware of it when they provided information to members of the public, either by telephone, in writing, or face to face. This was despite the fact that the Department's leaflets advise customers to check with their local office if they require more detail or up-to-date information about individual cases. Consequently, when asked, an unknown number of staff in offices throughout the country informed customers that they would inherit 100 per cent of SERPS from their partner should they die from 6 April 2000.

1.18 In January 1988 background circulars were issued to all sections covering retirement pensions and widow's benefits. These gave information on the major changes arising from the Social Security Act 1986, and included reference to the SERPS inheritance arrangements. They also stated that amendments would be made in due course to pensions standing instructions and the legislative manual (the Pensions Law Code). Whilst the Pensions Law Code was correctly updated and

circulated in August 1988, there is no evidence that the pensions instructions and procedures were updated to assist in the processing of cases. They were then replaced in 1989 by operational guidelines, which gave instructions only on how current cases were to be processed.

1.19 It is impossible to know from when incorrect information was given out because in most cases the records of contact between the public and the Department are routinely destroyed in a fairly short period of time¹. However, documentary and anecdotal evidence suggests that it occurred in the late 1980s and continued until 1999. The last known case of incorrect information on inherited SERPS occurred in the middle of April 1999, when the Pensions and Overseas Directorate wrote to a member of the public, advising that 100 per cent inheritance would continue. This was three months after staff were given updated guidance on the correct legal position.

1.20 It is also impossible to know how many offices gave out incorrect information, although it does not appear to have been all of them. In March 1999 the Benefits Agency reviewed what information a sample of 23 offices across the country had provided. This found that in 14 offices staff would have provided incorrect advice, and in one other, some, but not all, staff would have done so. In another office, staff provided incorrect information until early 1998, when a customer advised them of the change. Figure 7 illustrates a number of sources of mis-information.

**Incorrect information was
provided in a number of
ways**

Figure 7

These included where a customer:

- wrote asking for their survivor's position. The Department of Social Security's reply did not mention the change from April 2000;
- obtained a pension forecast and another source of information, such as a pre-1996 leaflet. Because no mention was made to the position after 5 April 2000, the expectation of the customer was that their spouse would receive 100 per cent inherited SERPS; and
- made a telephone call to a Benefits Agency local office or to Pensions and Overseas Benefits Directorate and was given incorrect information.

1. Written inquiries to the Benefits Agency's Retirement Pension Forecast Advice Unit and local offices are retained for a minimum of 20 weeks. Telephone inquiries of a general nature are not recorded. Where specific information is given in a telephone call that affects a benefits claim, this is recorded and kept for the same period as written inquiries.

Discussion about delaying the provision in the debate on the Pensions Act 1995 led to relevant leaflets being amended in 1996

1.21 In 1995 the Pensions Bill was considered in Parliament. This made further changes to state, occupational and personal pensions, including to SERPS. During consideration in the House of Lords in March 1995, an Opposition amendment was moved to phase in the reduction to inherited SERPS over a ten year period between 2000 and 2010. The amendment was moved by Baroness Gould of Potternewton, who stated that ‘My understanding is that there is little awareness [of the provision] and that this measure is still going to come as a great shock to many people when it happens.’ In response, the Minister of State explained that the ‘reduction and alignment in the amount of additional SERPS pension which can be inherited will not come as a surprise. As I said earlier, it was announced and legislated for in 1986. I am sure that noble Lords will agree that 14 years is a more than adequate lead-in period.’ Subsequently, the amendment was withdrawn.

1.22 The absence of publicity was thus drawn to the attention of the Department in 1995 in the course of this debate. Departmental officials who dealt with the Bill advised us that they informed the Benefits Agency of the problem. Subsequently, in April 1996, the Benefits Agency amended their leaflets on retirement pensions and widow’s benefit to reflect the correct position. For the first time since 1986, official literature (in the form of the NP46 - ‘A Guide to Retirement Pensions’ - which was very detailed and primarily for use by benefits advisers) made correct reference to the change to the inheritance of SERPS after 2000. However, another leaflet (PEC 3 - for use by the public), issued to publicise the 1995 reforms, was not as clear about SERPS. Whilst it correctly reported the changes to SERPS to be introduced after 5 April 2000 under the 1995 Act, the statement ‘if you are already getting a SERPS pension, you will not be affected [by April 2000 changes]’ was misleading unless the reader was clear that this did not refer to the changes arising from the 1986 Act. To add to this uncertainty, a response to a parliamentary question in November 1998 stated incorrectly that the PEC 3 leaflet did refer to inherited SERPS.

1.23 At this stage, although the relevant pensions leaflet had been updated, no new guidance was issued to staff about the provision. It appears that no one within the Department appreciated the significance of ensuring that staff were aware of the provision, and the implications of the changes for citizens’ forward financial planning. As a result staff continued to give out the wrong information. In 1999, in giving her understanding of events, the Parliamentary Under-Secretary of State commented that she understood that ‘[the comments in the debate in the House of Lords in 1995 had] set alarm bells ringing in the Box; the officials noted it, but

again nothing was done. The situation again failed to filter down to local offices for reasons that we do not understand.’ The Department failed to take action at this stage which might have mitigated the consequences.

Concerns about incorrect information on inherited SERPS were raised in correspondence from the public

1.24 The Department of Social Security received over 11 million letters in 1998, the most recent year for which there is full information. These may be handled by the Department’s Policy Correspondence Unit, by the Benefits Agency’s Parliamentary branch, by local offices, and central offices in Leeds and Newcastle, or by a combination of these. Much of the value of correspondence to the Department is that it can alert them to problems, although the volume of letters received means that it may take a number on the same subject to do this. The Department are not able to identify how many letters were received on the subject of SERPS before they began to monitor the subject separately after the problem with the inheritance provision was identified in 1998.

1.25 However, two letters in particular referred to problems with incorrect information, and received ministerial responses. Despite this, they did not alert the Department to the problem. In Case 1 overleaf, a correspondent alerted the Agency in 1996 to differences between two sources of information he had received from the Benefits Agency. His original letter received a response (see below), which offered a very limited view of the Department’s ability to advise contributors to SERPS of changes. Some 18 months after the correspondent first wrote, the Agency recognised that had leaflets been updated earlier, the correspondent might have acted differently, but concluded that they did not believe they had misled him. No action was taken as a result of this case to establish whether there was a wider problem.

1.26 In a second case, in May 1998 a second Member of Parliament wrote to the Parliamentary Under-Secretary of State for Social Security about a constituent who had been given incorrect information by the Benefits Agency in 1996. The reply stated that the change to the arrangements for inherited SERPS had been announced as far back as 1986. The letter also acknowledged that an experienced member of staff at his local Benefits Agency office had dealt with the constituent’s query, and had been unaware of the implications of the change in legislation. When he had enquired at his local office again in 1998, the constituent was advised of the correct position. Despite the warnings in this letter that even experienced staff had no knowledge of the 1986 provision, no action appears to have been taken, and no-one recognised the significance of the mistake.

Case 1



In November 1996 a member of the public, Mr X, wrote to the Department seeking clarification after receiving conflicting information from the Agency in conversations and in published leaflets. He explained that he had taken out a single annuity for his wife based on the information in the Department's literature in 1990. In 1996 he discovered that his wife could now only inherit half his SERPS pension. Mr X took the matter up with his Member of Parliament, who wrote to the Department.

In April 1997 the Minister of State for Social Security responded to the Member of Parliament. The letter stated 'Mr X is concerned that he was not given advance warning of the changes to SERPS. However, the circumstances which can affect entitlement to benefit are many and can occur immediately or at some considerable time in the future.

It is not possible, therefore, at any given time to cover all eventualities which may result in a change of an individual's potential benefit entitlement. The variety of possible circumstances and the time factor are such that it would be administratively both impractical and expensive to periodically offer advice which would be genuinely helpful to the individual. We do, however, make every effort to publicise significant legislative changes and, of course, we give advice on individual circumstances when asked to do so.'

In August 1997 the same correspondent wrote again, pointing out that the change to SERPS had been legislated for well before he retired in 1990, but that the old arrangements were still referred to in pensions literature until 1996. The matter was brought to the attention of the Benefits Agency. In June 1998 the Benefits Agency's Benefit Management Branch acknowledged that if the leaflet NP46 had been updated earlier the correspondent might have made different pension arrangements. They concluded that they did not think they had misled the correspondent, but that it 'could be argued we could have updated the leaflet earlier than we did.'

A letter from Age Concern alerted the Department to the problem

1.27 With the publication of revised leaflets in 1996, correct information was now in the public domain. As a result, more people became aware of the provision. In late October 1998, the charity Age Concern wrote to the Minister of State, advising him that increasing numbers of people were contacting them, having recently discovered that the amount of SERPS a widow or widower would inherit depended on the date of death of their partner. Age Concern commented on the lack of publicity given to the matter, and advised that, in addition, some Benefits Agency offices were giving wrong information. Age Concern suggested that 'although the Department of Social Security guide NP46... now points out that SERPS for widows will be reduced from April 2000, it appears that most people who are likely to be affected are unaware of the change.' It was as a result of this letter that the Department took action to examine whether a problem existed.

Consequently many citizens were very concerned about the adequacy of their pension arrangements

1.28 When citizens became aware of the change to the arrangements for the inheritance of SERPS, often as a result of newspaper articles in the spring of 1999, many were very concerned about the adequacy of their pensions arrangements, as evidenced in letters to Members of Parliament, and in letters and telephone calls to the Department. Between April and December 1999 Benefits Agency local offices received nearly 3,500 letters and more than one thousand telephone calls on the subject. The Department also received nearly 1,400 letters from Members of Parliament after October 1998, and over 800 letters from organisations and members of the public after November 1998. In addition, Age Concern received several hundred letters, and the Ombudsman received 344 individual complaints.

1.29 Many of these letters were from people who had believed they had made adequate provision for their spouse, but now feared that this would no longer be the case. Some were able to provide written evidence of the advice they were given. Others recognised that they might be unable to prove that they had been given incorrect advice, because it had been provided by telephone or during a visit to a Benefits Agency office. This heightened their concerns. Many people past, or close to, retirement age recognised that they had little or no time to make alternative provision. Figure 8 includes comments from five of the many letters sent to the Benefits Agency by SERPS contributors. Details of six cases are in Appendix 4.

Figure 8

Comments from five of the many letters sent to the Benefits Agency by SERPS contributors

- "If I had known of this swingeing reduction that would occur, my decision to continue to remain within the "Not Contracted Out" system would most certainly have changed...I strongly feel that this situation is significantly worse than the mis-selling of personal pensions by Life Assurers which has attracted so much adverse publicity and resulted in the payment of massive fines and hopefully compensation to the sufferers."
- "I understand the necessity for cuts to be made to prevent the cost of state pensions getting out of hand - but it is wrong, when the goalposts were moved in this instance, that this was not clearly signalled from the time the decision was taken. My own experience certainly bears out press comment that the Benefits Agency has been extremely evasive about this major change in widows entitlements."
- "Had it been made clear in the forecasts from your agency that my SERPS pension would not be wholly transferred to my wife, I would have made alternative arrangements for her. I appreciate that the Benefits Agency are not responsible for the legislation, but they are responsible for clarity and honesty in their communications."
- "In my opinion both governments have been deceitful in keeping this 'bombshell' from the public. Had SERPS been operated by a private provider, they would have been accused by the politicians of mis-selling pensions. The purpose of this letter is to make you aware of my extreme concern on this matter, and gain justice not only for ourselves, but for all the thousands of other married couples whose state pension rights will be sharply curtailed from April 2000."
- "Had I been properly advised in 1992 I would have made compensatory financial arrangements to cover the loss of £1,822.60 per annum my widow should receive.....I find this most upsetting."

Around the same time the Agency realised that the required notification for changes to computer systems had not been made

1.30 New pensions legislation usually requires accompanying changes to the Department of Social Security computer systems. The Pensions Act 1995 introduced a number of legislative provisions that would not take effect for some years, and the Benefits Agency recognised the risk that computer changes needed to support these provisions might not be introduced without some central co-ordination. Many of the changes affected not only the Agency's pensions computer but also the Department's new National Insurance Recording System (NIRS2, which is now the responsibility of the Inland Revenue). The system records all payments of National Insurance contributions, and produces individual contribution records which form the basis of the calculation of state pension awards, as well as awards of other contributory benefits such as Incapacity Benefit, Maternity Benefit and Statutory Sick Pay.

1.31 The Agency drew up a summary of all outstanding computer changes that would be needed in future years, and provided it to the contractors who operate the National Insurance Recording System computer. Some changes were made immediately, but the Agency also gave advance notice of further work to be commissioned in future to cover later changes. These included changes related to inherited SERPS, which required further requests by Agency officials responsible for state pensions before implementation.

1.32 In October 1998 the Benefits Agency's Long Term Benefits Business Management team noted that no requests had been received from the relevant sections for five pensions-related changes to NIRS2, and sought confirmation of the need for them. The outstanding items included the inherited SERPS changes. Two of the computer changes were to be introduced from April 1999, and two more in April 2000. Such changes can take up to a year to process, and consequently, emergency measures had to be taken to ensure that the relevant changes were made to the NIRS2 system to reflect the halving of inherited SERPS.

Conclusions about the causes of the problem and its implications

1.33 We believe that this case raises a number of important issues of considerable significance to the work of the Department. These relate to how the Department:



ensure that their staff provide correct information to the public both verbally and in correspondence;



ensure that publicity material is accurate and complete;



handle members of the public who consider they have been misinformed;



manage the development and implementation of legislation to ensure that everything that should be done, is done;



identify and manage risks to the successful implementation of legislation; and



are developing the information they provide to citizens about pensions.

These issues are examined in Parts 2 and 3 of this report. Part 2 considers the immediate action taken in these areas after the inherited SERPS problem was identified in late 1998. Part 3 examines the longer term action to ensure arrangements are in place to prevent a repetition of such problems.

Part 2: Action taken to deal with the problem

2.1 In Part 1 we described the problem that arose from the failure to inform the public about the change in the arrangements for the inheritance of SERPS. This part considers what direct action the Department of Social Security have taken since the end of 1998 to deal with the problem. In particular, we consider the steps taken to:

- ensure that staff were aware of the inherited SERPS provision;
- check the accuracy of all departmental publicity material;
- heighten awareness of the inherited SERPS provision amongst the public; and
- provide redress for those affected.

On ensuring staff were aware of the inherited SERPS provision



2.2 This section examines the action taken to ensure that local office staff in the Benefits Agency provided correct information to members of the public.

In early 1999 the Department provided staff with details of the correct legal position

2.3 In late 1998, following receipt of the letter from Age Concern (paragraph 1.27), the Department investigated the state of knowledge amongst local Benefits Agency offices about the arrangements for the inheritance of SERPS. This confirmed that many staff did not know about the provision and were, therefore, giving information based on knowledge of the current position alone. In his reply of 30 November 1998 to Age Concern, the Minister of State advised that 'I share your concern about the apparent lack of awareness of these changes and steps are being taken by the Benefits Agency to ensure that all staff receive comprehensive briefing on this issue by the end of the year.'

2.4 Despite the initial aim of producing a briefing for staff before Christmas, the Benefits Agency did not do this until 12 January 1999, when Pensions Bulletin 2/99 was sent out to District Office staff and to staff manning the Pensions Direct helpline (which deals with many calls from pensioners). This was ten weeks after the Department had received the letter from Age Concern. The Bulletin outlined briefly the background to the legislative change and its effects, and recommended that the contents be relayed to staff by supervisors during the weekly half hour training session in local offices.

2.5 Subsequently, the Benefits Agency issued seven further Pensions Bulletins to update staff on the situation. A bulletin in February provided a line for staff to take when questioned by the public, and another, issued shortly after, advised staff to send a brief holding reply to any letters received on the subject and stockpile all enquiries so that the appropriate follow up action could be taken. In mid-March a question and answer brief was circulated to assist in dealing with enquiries, and staff were advised to treat customer enquiries with 'extreme sensitivity'. At the end of March a standard letter was issued for use by staff, which explained that the matter was being examined by the Department, and that customers would receive a fuller response in due course.

2.6 In April, the Benefits Agency Chief Executive wrote to the Agency's Directors of Field Operations seeking assurance that all staff were now giving correct advice on the subject of inheritable SERPS. This was provided later in the month, when the Directors of Field Operations confirmed that staff were aware of the contents of Pensions Bulletins, and were giving advice in line with them. We are not aware of any cases of staff providing incorrect information after April 1999. In November a further bulletin was issued to local offices advising them that the Welfare Reform and Pensions Act 1999, which had received Royal Assent on 11 November, had included provision to postpone the change to inherited SERPS and/or establish a scheme to protect for life those misdirected.

Some uncertainty about the inherited SERPS provision remained after guidance was circulated

2.7 Despite these efforts to ensure that staff understood the correct position, some uncertainty remained within some Benefits Agency local offices about what action to take (Figure 9). Extensive press coverage about the issue during the spring of 1999 resulted in Benefits Agency offices receiving a large number of enquiries from members of the public. Some offices considered that they had insufficient information to provide adequate answers to people on what the

Agency accepted was an emotive issue. Staff we spoke to commented that initial briefing did not explain what line to take. Other offices appeared to be unsure as to how queries should be handled.

Despite the efforts made by the Benefits Agency there was still uncertainty about the issue amongst some staff

Figure 9

- Staff to whom we spoke to in two of the offices we visited considered that they had insufficient information on the problem with which to handle questions from members of the public during the spring of 1999. The first bulletin on the inherited SERPS issue did not include a line to take and later ones did not explain about the financial implications for advance planning so that some staff did not understand the problem.
- In March 1999 an office advised a member of the public that 'You state in your letter that you were given the wrong information by this office in October 1993. I can assure you that the information given to you then was correct at the time. We were only informed of the changes to the inheritance rules with regard to SERPS for Widows and Widowers in January 1999.' This was not correct, but was perhaps understandable given the lack of information in the guidance provided to staff about how the problem had arisen.
- In early March 1999 it appeared that in some offices Benefits Agency staff were referring customers to the contracting out section of the Contributions Agency, despite an expectation that they should help customers with their queries themselves.
- On 14 April 1999 a letter was sent to a member of the public from the Pensions and Overseas Directorate in Newcastle. This advised that 100 per cent inheritance would continue. This was three months after the guidance was issued to staff. This was not correct.
- At the end of April 1999 there were some differing views within the Agency about how to deal with correspondence about inherited SERPS. The Agency's Pensions and Overseas Directorate forwarded on correspondence to the Operational Support Division in Newcastle because they considered they were responsible for policy matters. The Development Branch for Pensioners in Leeds disagreed, taking the view that cases should be stockpiled locally.

On ensuring the accuracy of departmental publicity material



2.8 This section examines what the Department did to review all of their benefits leaflets in the light of the inherited SERPS problem.

The Benefits Agency reviewed all their leaflets to ensure they were accurate and complete

2.9 In paragraph 1.22 we reported that the Benefits Agency had updated their pensions leaflets in 1996 to reflect the inherited SERPS change. From that time onwards, correct information with regard to the inheritance of SERPS was included in published material, generally available to the public, and to advisers in

Citizens Advice Bureaux. As a result, when the problem was identified in October 1998, there was no requirement to change specific references to inherited SERPS in any leaflets.

2.10 However, the fact that problems had existed with one leaflet raised concerns about the accuracy and completeness of the full range of Benefits Agency leaflets. Consequently, in the light of the inherited SERPS problems, and in response to ministerial and senior management requests for assurance that no other problem cases could arise from inaccurate leaflets, staff from the Benefits Agency and departmental headquarters policy managers reviewed all leaflets in a systematic way.

2.11 The review, which took place in the summer of 1999, was designed to identify any erroneous information that needed to be removed, and check whether there was anything missing that needed to be added to leaflets. Departmental solicitors carried out an audit of legislative changes already in place, but not yet in operation, which would have an impact from 1999 onwards. Policy managers reviewed all leaflets relevant to their area of responsibility to ensure that anything arising from the Welfare Reform and Pensions Bill was taken into account, and to identify any further sources of public information that might also need to be reviewed.

2.12 As a result of this work, the Agency identified a number of minor omissions and clarifications that were required, although none of the type that had led to the inherited SERPS problem. They included the absence of cross referencing to Disability Living Allowance in retirement leaflets, and two revisions relating to Jobseeker's Allowance to be incorporated later in the year. All changes necessary are now being incorporated into relevant literature. In August 1999 senior officials were able to advise ministers that, as far as could be identified, leaflets were up to date and contained no incorrect or misleading information.



On heightening awareness of the inherited SERPS provision amongst the public

2.13 This section examines what action the Department have taken to fulfil ministerial promises made in early 1999 to heighten awareness of the change to the arrangements for the inheritance of SERPS.

The Department have been slow to raise awareness of developments amongst those affected

2.14 In paragraphs 1.28-1.29 we referred to the distress that had been caused to members of the public by the confusion over the inheritance of SERPS. In response to concerns raised by Members of Parliament, in February and March 1999, ministers told Parliament that the Department were considering ways of heightening general awareness of the SERPS provision. We asked the Department what actions had been taken since then to advise the 3,500 people who had written to the Agency since the end of 1998, of the powers taken in November 1999 to stop the provision coming into effect in April 2000, as well as to heighten awareness more generally.

2.15 The Department told us that they had sent holding responses to correspondents explaining that the matter was being considered, but that in their view it had not been appropriate to publicise the case further without having decided upon a solution. In addition, work had been carried out to increase the information about inherited SERPS available to the public by preparing an explanatory leaflet to accompany the pension forecast (which is the means by which citizens are able to obtain a projection of what pension they will receive at state retirement age). However, this has not yet been issued, pending a resolution of the inherited SERPS issue.

2.16 We recognise that there are difficulties for the Department in providing assurance to the public before they were able to announce a solution, and that this is an exceptional case. We also acknowledge that there has been considerable press coverage of the general issue, although only limited newspaper coverage, in October 1999, of ministerial agreement to include a legislative change in the Welfare Reform and Pensions Act. However, the Department have not yet advised the 3,500 people who had written of the current position, and in December 1999 were still compiling a database of their details. An updating letter was considered in November, but the Department decided to await a formal announcement of the redress package which, at the time, was expected before Christmas. In our view, greater effort could have been made to inform these correspondents that steps had been taken to ensure the provision would not take effect in April 2000, especially given the history of delay in resolving the matter.

2.17 In addition, we are concerned that, for some time, there remained inconsistency between the line taken in letters sent out from the offices of the Benefits Agency Chief Executive and the Minister of State in December 1999 in response to correspondence from Members of Parliament, and that taken in other information issued on the subject of inherited SERPS. Although consideration was

given to altering the letters, they continued, until 10 January 2000, to state that the provision would still come into force in April 2000. This was two months after the Welfare Reform and Pensions Act had received Royal Assent, ensuring that this would not be the case, and six weeks after a bulletin to staff had emphasised that, until one or other of the provisions of the Act had been implemented, widows and widowers would continue to inherit 100 per cent of their late spouse's SERPS entitlement. The old line taken in these letters also contradicted the correct information provided on television by the Minister of State in early December.

On redress for those affected



The Department have announced a redress package for those affected

2.18 In November 1999 the Welfare Reform and Pensions Act received Royal Assent. Section 52 provided for the Secretary of State for Social Security to postpone, modify or dis-apply in certain cases, the provision to halve the inheritance of SERPS. It also enabled the Secretary of State to make regulations, subject to the affirmative resolution procedure, to do one or more of the following:

- to provide for specified categories of widows or widowers to receive more than 50 per cent of their spouse's SERPS;
- to postpone the 50 per cent reduction from 6 April 2000 to a later year;
- to set up a scheme to determine who had been misled by incorrect or incomplete information about the 50 per cent reduction, so as to ensure that the reduction is not applied in their, or their widow(er)'s case.

This ensured that the provision to halve inherited SERPS would not come into effect until one of these options came into force.

2.19 In March 2000 the Secretary of State for Social Security announced the Government's decision to set up a preserved rights scheme (to be known as the Inherited SERPS Scheme) for individuals who had taken inappropriate action as a result of being misled by the Department. He also announced that the implementation of the inherited SERPS provision would be deferred for two and a half years – until October 2002. This is to allow time for applications under the scheme to be considered and processed before the change of the inheritance arrangements. The scheme will require regulations to be introduced under section 52 of the Welfare Reform and Pensions Act 1999, which will be debated in both

Houses of Parliament. The Department have stated that details of the scheme and its operation will be subject to consultation with interested parties, both internal and external. They intend that a private sector contractor will operate the scheme, in the absence of spare resources within the Benefits Agency. This will be the Department's first experience of using a private sector partner to administer and decide on entitlement.

2.20 The Department have announced that the scheme will have the following key features:

-
- It will be brought to the attention of those affected through a national publicity campaign.
 - A helpline will be open immediately to provide information about the scheme.
 - Eligibility criteria will include people who:
 - are married
 - have paid National Insurance contributions since 1978
 - were misinformed after 1986
 - can demonstrate they acted on incorrect or incomplete information received from a government department to their detriment
 - Individuals will apply to have their rights to full inheritance of SERPS preserved, rather than receive any payment.
 - Those seeking preservation of their rights will complete an application form, which will ask for information about how they received advice or information about inherited SERPS, when and from whom. The form will also ask for details of what action they took.
 - Decisions will be made on the basis of information given on the application form. The lack of supporting documentary evidence will not mean that the application will fail.
 - Applicants will be able to seek a review of the original decision, and appeal to an independent tribunal in the same way as benefit claimants.
-

2.21 The Government decided on a two and a half year deferral and a preserved rights scheme on the grounds that it best met the objectives of being fair to those misled. In coming to their decision, the Government considered other options, allowed for under section 52 of the Welfare Reform and Pensions Act 1999. They considered long term deferral of the provision for up to 14 years on its own, although this was judged to incur disproportionate cost – estimated at more than £13 billion between 2000 and 2050. Having opted for a preserved rights scheme, the Department examined a number of variations on the combined deferral/preserved rights scheme, with different start dates and periods during which claims would be taken, as well as different lengths of the deferral period. The table below shows illustrative costings for a number of these options (Figure 10) based on particular assumptions.

Various options have
been costed

Figure 10

Option	Direct cost of deferral £m	Subsequent compensation ⁽²⁾ £m	Total cost ⁽¹⁾ between 2000 and 2050 £m
7 year policy deferral	7,200	700	7,900
10 year policy deferral	9,900	600	10,500
14 year policy deferral	13,000	400	13,400
Option	Direct cost of deferral £m	Preserved rights scheme ⁽³⁾ £m	Total cost ⁽¹⁾ between 2000 and 2050 £m
1 year deferral and preserved rights scheme	1,100	6,100	7,200
2½ year deferral and preserved rights scheme	2,500	5,700	8,200

- Note
- 1 Total discounted present value of all costs.
 - 2 Policy deferral option includes the cost of compensation to those who survive beyond the period of deferral (assumed to be 5 per cent of the total SERPS accruals at stake from this group) and claim under other arrangements.
 - 3 For illustrative purposes, assumes successful claims covering 30 per cent of potential total expenditure. A variation of 10 per cent in successful claims, for example, would increase or decrease the costs by £1,900 million for the 2½ years deferral and preserved rights scheme option.

Source: Department of
Social Security

2.22 The Department consider that a preserved rights scheme is feasible, subject to the volume of applications that must be processed. They believe that it should provide a close match between those who were given incorrect or incomplete information, and those who will receive redress. However, they also believe that it carries considerable operational risks, which will need to be managed carefully. These include uncertainty about the number of applications they may need to handle, the need to protect against fraud and abuse of the scheme, and the absence of suitable IT systems for the transfer of information, which will require re-keying of details of all successful claims into the NIRS2 computer system. There will also be the need to manage the private sector contractor, brought in to operate the scheme.

2.23 We will monitor progress of the scheme in the future as part of our on-going work on the accounts of the Department of Social Security. In designing the scheme, we consider that it is essential that the Department carry forward their plans to:

- publicise the existence of the scheme as widely as possible in a wide range of appropriate ways;
- consult as widely as possible with relevant stakeholders on the details of the scheme and its operation;
- build in suitable checks to offer a strong chance of identifying fraudulent applications;
- monitor thoroughly and manage the risks to the successful implementation of the scheme; and
- defer processing applications from the public until they are convinced that the arrangements are ready.

2.24 In his report on the inherited SERPS problem (see Appendix 3), the Ombudsman has stated that

‘it will naturally be for Parliament to decide whether whatever measures of redress are proposed by the Government are adequate. It seems to me that the contribution which I can most usefully make will be to offer my advice to Parliament on whether the proposed measures, once their details are known, are in principle capable of remedying the various categories of injustice consequent upon maladministration which my investigations have identified.’

He also expresses the hope that any proposals will take account of:

- his advice on where the burden of proof about whether or not a person had been misled rested;
- the fact that most of those misled by the Department or the Agency are likely as a result to have decided that no action on their part was needed, because they had been led to believe that a surviving spouse was secure in an entitlement to full inheritable SERPS. Thus it would be wrong to exclude those who took no action;
- the fact that it will be difficult, and in some cases, impossible, for claimants to demonstrate that they would have taken a particular course of action had they been correctly advised; and
- the fact that many people will have been misled solely by reading inaccurate leaflets, and will have received no further wrong advice, written or otherwise.

Part 3: Whether the Department have arrangements to prevent a repetition of the problem

3.1 In this Part we consider whether the Department now have effective arrangements in place to prevent a repetition of the problems described in Part 1. In particular, we consider whether arrangements exist to:

- ensure that similar problems do not occur with other legislation with long lead times;
- communicate effectively with the Benefits Agency local office network about changes in legislation and other important information;
- ensure that leaflets remain accurate and up to date;
- ensure that the Department respond to the needs of the public;
- manage the development and implementation of legislation;
- identify and manage risks to the successful implementation of legislation; and
- provide information about pensions to the public.

On dealing with legislation with long lead times



3.2 A major contributory factor to the problem with the inherited SERPS provision was the long lead time between the passage of the legislation and the time the provision was due to come into effect. This section considers what action the Department have taken with a similar provision contained in the Pensions Act 1995.

Steps have been taken to ensure staff are aware of other legislative changes with long lead times

3.3 Recent pensions legislation has also included provisions that do not come into effect for some time. Figure 11 below outlines the action taken by the Department in the case of changes to the state pension age under the Pensions Act 1995, which will not come into effect until 2010. The arrangements provide for guidance to staff and publicity over the coming decade. Steps will also be taken to check whether staff provide the correct information to the public. Implemented rigorously, such measures should help to avoid a repetition of the problems experienced in the SERPS case.

The Department of Social Security have taken measures to ensure that staff are aware of other legislation with a similar time lag between the passing of the legislation and implementation

Figure 11

The Pensions Act 1995 made changes to state pension age. There is a similar period of time between the passing of the legislation and it coming into force as with inherited SERPS, with changes not due to take effect until 2010. To ensure that staff are aware of the future changes now, the following action has been taken:

- Bulletins have been issued with comprehensive guidance for staff.
- A project team has been set up to oversee the publicity over the next 10 years, including major stakeholders from the Department's Policy Group and the Benefits Agency.
- A communications strategy is being planned with a media campaign taking place in 2000.
- A 'mystery shopping' exercise to test local offices' understanding of the guidance has been undertaken. A further bulletin has been issued to give local offices immediate follow-up information based on the results of this exercise.
- The Benefits Agency are considering the best means for maintaining staff awareness over the next 10 years.

3.4 We consider all provisions with long lead times should be treated with particular care, and plans put in place, covering the implications of the delayed implementation; future publicity requirements and timings; reminder bulletins for staff; and arrangements for monitoring awareness of the provision amongst staff. Such arrangements should be considered and agreed upon when the work for a particular piece of legislation is finalised.

On communicating information to the local office network



3.5 This section considers the arrangements in place to communicate key information within the Department. It is based on work carried out with Internal Audit staff at the Department and the Benefits Agency.

There are some practical obstacles to staff having easy access to key information

3.6 The Benefits Agency administer more than twenty different social security benefits through a network of over 400 local offices (and have a presence in some of the Employment Service's 1,000 Jobcentres). These offices are supported by central services, mainly based in Leeds, Newcastle and Blackpool. Additionally, there are three Central Benefits Directorates based in Blackpool, Newcastle and Washington, dealing with Disability Living Allowance, Retirement Pensions and Child Benefit.

3.7 Staff throughout the Agency are kept up to date with key developments affecting their work through procedural guidance such as benefit codes, circulars and bulletins, as well as through training. Responsibility for preparing guidance material and internal communications is shared between:

- the Communications and Customer Liaison Branch (part of the Benefits Agency headquarters) - which has overall responsibility for internal communication strategies;
- the relevant customer group within the Agency's Directorates (in the case of SERPS, the Development Branch for Pensioners), which is responsible for providing detailed specifications for information 'products' such as a bulletin for staff; and
- the Operational Support Branch - which is responsible for producing the 'product', co-ordinating delivery of procedural guidance, IT requirements, training, accompanying forms, leaflets and draft letters.

3.8 Along with the Department's Internal Audit Service, we examined the arrangements for ensuring that staff are kept informed of legislative and other developments. On the basis of this work, we consider that, although there are systems in place to disseminate information throughout the organisation, a number of practical obstacles exist to clear communications within the Agency. In particular:

- the very limited availability of IT within the Agency's local office network (discussed in more detail in the Comptroller and Auditor General's report 'Government on the Web'), and the archaic nature of much of what exists, ensure that much of the work remains paper-based. Many staff do not have access to computer terminals, and many who do are only able to use 'dumb terminals', which simply allow them to raise and update customer accounts on specific benefit computer systems. Most do not have direct access to information in electronic form, including basic material such as procedural guidance;
- staff receive a large number of bulletins on technical and work-related developments, which they must digest. In the pensions area, for example, there were seventy bulletins during 1999. Many staff do not receive bulletins direct as they are sent to managers and nominated information points, and many receive the information only verbally; and
- pensions staff make full and regular reference to their procedures guide, but this is only updated annually, despite the number of changes contained in the bulletins mentioned above. The pensions procedures guide is not available on-line.

3.9 Staff to whom we spoke stated that they would welcome greater warning about announcements and other developments affecting their work. Although we recognise there are issues around safeguarding confidentiality and informing Parliament first, in the case of inherited SERPS, information had appeared in newspaper articles and on television, resulting in queries from customers. Some staff commented that when this happened they often knew less than the public, although in December 1999 a briefing was issued at the time of a ministerial appearance on television.

3.10 This case has also indicated the importance of the Benefits Agency monitoring the accuracy of information provided to the public. In general, business measurement systems within the Agency focus on measuring volumes of applications processed and clearance times, rather than assessing the technical accuracy of information. In the past the Benefits Agency made use of a 'mystery shopping' assessment process, but dropped this in 1996 on the grounds of cost. Work is currently under way to develop systems for the assessment of performance against Customer Charter standards, which will include the technical accuracy of advice.

3.11 In our view, the Agency should re-examine the adequacy of their arrangements for ensuring the accuracy and completeness of information given to the public. Many service organisations make use of well targeted ‘mystery shopping’ or recording a sample of telephone calls for this purpose. Without these or other arrangements, we do not believe that the Department can have assurance that information has been cascaded successfully to front line staff.

On keeping leaflets accurate and up to date



3.12 Paragraphs 2.9-2.12 examined the immediate action that was taken to ensure that other Benefits Agency leaflets did not contain errors of the kind identified in the pensions leaflets. This section considers what arrangements the Department have put in place to ensure that leaflets remain correct in the future.

The Benefits Agency have devised new arrangements for ensuring leaflets are kept up to date

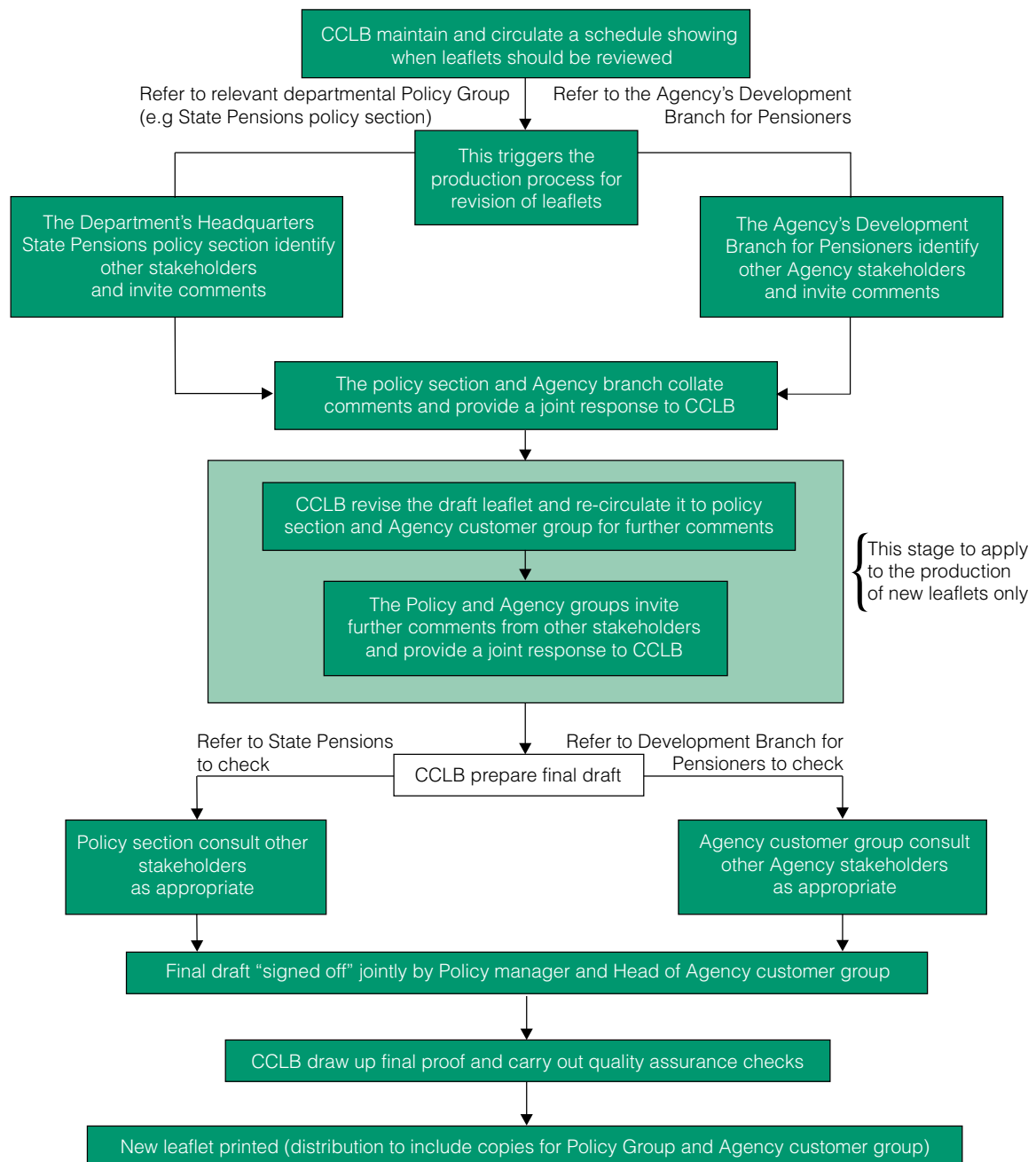
3.13 Having established that the existing stock of benefit leaflets were accurate, the Benefits Agency also considered how they could ensure that ongoing processes for updating and revising leaflets were sufficiently robust to provide confidence that information in them remained accurate. In the autumn of 1999 the Department introduced improvements to the existing arrangements, which officials considered had previously been implemented in only a ‘patchy’ way. These are summarised in Figure 12.

3.14 The aim of the new arrangements is to re-affirm and clarify roles and responsibilities for leaflets. Although they are not radically different from previous arrangements, the Department believe that they should ensure that further problems with leaflets do not occur. We consider the new system should enhance accountability for publicity material, and will formalise further the process of seeking comments from stakeholders, which should help to identify omissions or inaccuracies. However, the accuracy and completeness of leaflets and other publicity material remains a high risk area. The new system has not been tested yet, and only time will tell whether the system helps to eradicate all problems. In view of the importance of this matter, we consider that leaflets should be reviewed regularly in future. In addition, we recommend that the Department’s Internal Audit Service review regularly whether the new arrangements are being adhered to.

Figure 12

The Department have revised their procedures for reviewing the content of leaflets

Key: CCLB - Communications and Customer Liaison Branch



Source: Department of Social Security

On responding to the needs of the public



3.15 The inherited SERPS case stems from the Department's failure to communicate effectively and accurately with the public. This section examines how they are developing the provision of benefit information to the public, and how they are developing complaints handling.

The Department are examining new ways of providing information on their services

3.16 In 1997 the Benefits Agency announced they would work to transform the ways in which they offer benefit information to the public. Since then there have been many initiatives including:

- the use of helplines, for example for Winter Fuel Payments and the New Deal;
- revision of many of the Agency's leaflets under 'Project Access' in order to make the information more accessible;
- the development of the Agency's website to include some commonly used leaflets and over 1,000 pages of information on benefits;
- a national advertising campaign to encourage take up of working age benefits, including advertising on television, radio and in women's magazines;
- more proactive approaches to communication with the public. For example, from October 1998 all lone parents in receipt of Income Support with children aged over 5 years 3 months were sent the leaflet "New Deal for Lone Parents", and invited to attend an interview with a personal adviser; and
- the establishment from June 1999 of a series of pilot 'one-stop shop' projects providing help, advice and support for clients to overcome barriers to independence, such as lack of childcare or training. Known as 'ONE', this help is delivered by a partnership of the Benefits Agency, Employment Service and local authorities.

3.17 Despite these developments, the accessibility of information on benefits remains an area of concern for many people, not least those wanting to find out about pensions. For example, a number of campaigning bodies remain unhappy at the ending of the national free helpline service for information on any benefit-related matter, and at the quality of service provided by telephone by Benefits Agency local offices. Research for the Department has shown that older people would welcome a more personalised and customer focused information service. In addition, the Comptroller and Auditor General's recent report on 'Government on the Web' concluded that the Department's websites 'provided information within conservative and unimaginative designs which are rarely refreshed or overhauled, and designed from the organisation's viewpoint rather than starting with users' needs.'

The Department are introducing new complaints handling software

3.18 During the course of our work, we asked how the Agency recorded and monitored feedback from customers, and what use was made of this valuable resource. Currently, each Area maintains its own database, and customer feedback is recorded under a number of general headings. Analysis is undertaken, but results are not pooled centrally to enable senior management to take a strategic view. As a result, the Agency are unable to capitalise on this resource, and potential early warnings of problems may be missed. The Agency are developing a central database to record customer feedback, but there is still a long way to go. In April 2000 they will introduce new complaints handling software nationally, which will enable local offices to record complaints in a standard format, and allow them to be analysed in predetermined categories and client groups. We believe full use should be made of this facility as quickly as possible.

On managing future policy initiatives in a systematic way



3.19 The problems outlined in Part 1 of this report highlight the importance of having ways of ensuring that all necessary actions and risks are identified and prioritised, and that they happen to an agreed timetable. This section considers the wider developments within the Department to make use of project management approaches for the development and implementation of policy initiatives.

The Department should build on the existing use of project management approaches

3.20 All Government departments are responsible for developing and implementing legislation. By its very nature legislation is often complex and impacts on a great many people, both within the department and outside. Pensions legislation is particularly complex, involving a great many external stakeholders. As we have seen, there may also be additional risks, including the fact that provisions may not come into force for many years.

3.21 Departmental staff informed us that various approaches to managing the implementation of policy work have been used over the years. Indeed, staff who had been involved with the Social Security Act 1986 - the legislation at the centre of this case - stated that a basic project management approach had been used on that occasion, although they recognised that it had not been comprehensive and had not included tasks for action after 1988. More generally, we were told that the use of more formalised project management approaches for policy development and implementation work within the Department has been patchy and inconsistent, with the approach taken dependent on individual policy managers. In addition, staff considered that there was some cultural resistance to the use of the language and thought processes of 'project management'.



3.22 Despite this, a systematic approach to managing legislation has been applied to specific pieces of legislation. Figure 13 summarises the Department's work on the Pensions Act 1995, which was the largest piece of legislation that they have ever had to implement. In February 1999 the Department's Internal Audit Service reported favourably on project management of this piece of legislation. Figure 13 overleaf also summarises the approach currently being implemented on Bereavement Benefits, introduced by the Welfare Reform and Pensions Act 1999.

The management of some recent legislation has been undertaken along project management lines

Figure 13

The work on the Pensions Act 1995 was run using a relatively formalised project management approach. This encompassed:

- A high level Project Initiation Document to cover all aspects of the initiation and ongoing management of the legislation. This was designed to:
 - ensure that all strands of activity were co-ordinated.
 - all involved understood the objectives of the project and worked to the same overall goal.
 - timely consultation took place.
 - correct lines of communication between the responsible bodies were in place and working.
 - control measures such as change control mechanisms, were implemented.
 - assurance could be provided that the project would be delivered.
 - there was an audit trail of accountability.
- Project objectives outlined at each level from Government as a whole to individual agencies.
- Clear responsibilities for all parties and explicit success factors.
- Identified milestones, critical path and key dependencies.

Legislation was passed in 1999 to introduce bereavement benefits, which, amongst other things, provide payments for widowers. To handle this work:

- A project board has been established, chaired by the Department's Policy Group, with all major internal stakeholders as members, including communications and publicity experts. The project board will oversee all issues in connection with policy, legal issues, communications, and implementation.
- The Benefits Agency have set up a complementary Implementation Working Group to deal with the operational issues.
- Implementation is supported with standard project tools and documentation, such as a Project Initiation Document, risk register, and issues log. The change will be tracked through to implementation to ensure all aspects are covered.

Source: Department of
Social Security

3.23 As well as specific initiatives such as these, the Department have been investigating how the intelligent application of systematic project management approaches can be used for the development and implementation of policy. And different parts of the Department have been involved in promoting project management skills and capacity. In particular:

- in 1997 a senior official was appointed to examine the project management approaches that could be developed within the Department. Comprehensive guidance on project management has been produced, and training developed and delivered widely;

- in October 1999 the Department initiated an intensive review of project management arrangements in order to make recommendations for improving the control and accountability of projects. The review was completed, as planned, by the end of 1999. A report was presented to the Departmental Board in January 2000, and a set of actions to sharpen control and promote good practice is being taken forward;
- in 1999 the Department's Internal Audit Service reported on project management and control with reference to policy areas. It stated that action was continuing to improve systems of project management and control within the Department's Headquarters, although it noted that 'sufficient time needs to be allowed to confirm the effectiveness of this process in terms of improved practices, performance and outcomes within HQ'; and
- in 1999 a policy support group for project management was formed. Its proposed terms of reference include raising awareness of project management issues amongst policy staff, and the commissioning of specific guidance for policy makers.

3.24 In the light of the inherited SERPS case, the current initiatives to develop and extend the use of project management approaches and thinking within policy areas in the Department are particularly important. We consider that they should be pursued to a conclusion, and then evaluated. In our view, such approaches promise enhanced clarity of purpose in planning and execution of legislation, greater transparency in accountability, and the likelihood that potential risks to successful implementation are recognised. There remains much work to do, but we support the efforts being made to pursue these developments in a flexible and non-bureaucratic manner.

3.25 These developments reduce the risk of a repetition of the inherited SERPS problem. They also tie in with a number of recommendations in the Report to the Prime Minister from the Cabinet Secretary, arising from the meeting of Permanent Heads of the main civil service departments, published in December 1999. In particular, this report stated that departments had agreed to develop their business planning processes, and ensure ownership of targets and accountability for delivery of initiatives. The report also stated that departments will carry out independent review of their business planning through peer groups or with outside organisations. The management of legislation may be an area suitable for examination in this way.

On the use of risk assessment and management approaches



3.26 This section examines the wider work being undertaken within the Department to develop the use of risk assessment and management techniques to ensure that threats to the successful implementation of legislation are identified and managed.

This case illustrates the importance of identifying and managing risks to successful implementation of departmental initiatives

3.27 Risk can be seen as the possibility of something happening that may have an impact on the achievement of a particular objective. Risks that may jeopardise the success of policy initiatives inevitably arise in the work of Government departments. They take many forms, including, for example, that a policy will not be implemented on time, or that information technology will not be available to provide support. Risks cannot be avoided altogether, and indeed, the Modernising Government White Paper states that 'Much Government activity is concerned with managing risks'. It is, therefore, essential that they are identified and managed to mitigate their effects.

3.28 In hindsight, in the case described in this report, it is possible to see that there were risks that threatened the successful implementation of the legislation. In particular, there was a risk that few people would be aware of the provision if it was not publicised adequately. There was also the risk that staff would not be aware of it if the guidance was not updated and their attention drawn to it.

3.29 Given the importance of managing risks to successful implementation of policy initiatives, we examined to what extent risk assessment and management are undertaken as part of policy development and implementation. Our overall conclusion is that this area is currently being developed within the Department, and that more needs to be done. To date, the use of risk assessment techniques in policy areas within the Department has been inconsistent, although there are examples that demonstrate effective use.



3.30 Policy managers are encouraged to consider risk issues as part of their annual planning process, and they are also expected to outline in submissions to ministers the main risks to policy and programme objectives. Within the Benefits Agency, risks to projects are considered by project boards as a standing item on their agendas. More specifically, the Pensions Act 1995 provides an example of where a systematic approach to the consideration of risk was undertaken. As part

of the planning work for this legislation, the Department sought to identify areas where the successful implementation of the project might be at risk and possible actions to reduce or remove such risks. Figure 14 summarises the work undertaken.

**The work for the Pensions
Act 1995 provides an
example of the systematic
identification of risk**

Figure 14

In January 1995 the project team issued a paper identifying areas where the successful implementation of the project might be at risk and possible actions to reduce or remove such risks. The risks considered related to:

- the timing of the bill and its content.
- the timing of implementation.
- conflicts with policy initiatives of other departments.
- understanding of existing law changes.
- problems with the National Insurance Recording System computer.
- insufficient funding available.
- staff and accommodation.
- operational problems in Department of Social Security Headquarters.
- change of Government.
- action by those outside Government.
- insufficient public awareness.
- other risks, including failure to identify all the risks.

The project support team maintained a risk register which was updated for each Policy Steering Committee meeting and which rated risks and showed contingency plans for each of them. Work on contingency continued throughout the project, and from early 1996 a separate group dealing with risks and contingency met after each Pensions Policy Implementation Board.

Source: Department of
Social Security

3.31 At a higher level, the Department are developing their work on risk management, and a member of the Departmental Board has been appointed as the official accountable for taking this work forward. It will include consideration of the risks associated with the development and implementation of policy, and ensuring that the various risk management activities across the Department are co-ordinated effectively.

3.32 We organised a workshop (see Appendix 1) in which experienced members of staff from the Department of Social Security discussed the use of risk assessment in policy work. In general, participants from the Department's policy making area believed that serious efforts were made to identify risks, assess their impact and the likelihood of them arising. However, they considered that a systematic approach was not always applied to documenting risks and that, although risk registers were prepared, on occasions they were not always used as extensively as they could be. In our discussions, staff from the Benefits Agency stated there was a strong culture of risk-awareness within their part of the Department.

3.33 As with the work currently under way to develop the use of project management, we consider that the inherited SERPS case reinforces the need for more systematic assessment of risks within the planning and management of all policy initiatives, and for well developed means of managing and mitigating them. We would expect to see the Department's risk assessment and management encompass a range of features including that:

- the risks to achievement in the timescale and budget available be clearly identified from the start of the project;
- risks be treated as the responsibility of the top level board, given the potential impact on the project or on the use of resources;
- the likelihood and impact of risks be analysed separately, and named individuals be made responsible for mitigating them and reviewing mitigation plans on a regular basis; and
- when mitigation plans are altered, this fact is reported to the Senior Accountable Officer for the project, and recorded on a simple risk/control matrix so that the impact of multiple, apparently minor, changes in different areas can be seen and understood, and their combined impact assessed and dealt with.

3.34 The management of risk is a key aspect of ensuring that projects provide value for money, and the Government have emphasised the importance of departments improving the way risk is assessed, managed and communicated. We consider that risk management within the Department of Social Security may be another area suitable for the kind of 'peer review', currently being developed by the Cabinet Office. This would complement work that the National Audit Office are currently undertaking on risk management. In particular, we expect to report on the Department of Social Security's approach to the management of risk throughout the handling of the Benefits Payment Card project. This major initiative to automate post offices and introduce a system to pay benefits by plastic 'swipe card' was cancelled in 1999. In a separate examination, we are looking more generally at existing practice within Government with a view to drawing out good practice in the management of risk.

On developing information about pensions



3.35 At the heart of the inherited SERPS problem is the availability of clear and accurate information about SERPS to contributors to the scheme. This information is required so that people can make decisions about their future pension arrangements. In undertaking our work, we examined what information is available from the Department about SERPS.

The Government is committed to increasing public understanding of pensions

3.36 At present, the State Earnings-Related Pension Scheme offers relatively few customer services. Although it is a pension scheme, there are no leaflets or booklets dedicated specifically to informing contributors about its provisions, and no annual statement of account, as might be expected from a private sector scheme. This may have contributed to a very low level of public awareness of SERPS, even amongst contributors. The Department do provide information on request about individuals' future pension entitlement through the state pension forecast. This informs individuals how much retirement pension, including the SERPS element, they have earned so far, and how much to expect when they reach state pension age. But it does not provide information on spouses' pensions or survivor's benefits.

3.37 The Government have promised to increase the amount of information available about pensions in order that people have 'good information to help them make informed decisions about the adequacy of their pension.' The Green Paper 'A new contract for welfare: Partnership in Pensions' (Cm 4179) states that, to improve individual pensions information, the Government will:

- produce a clearer version of the state pension forecast, with a supporting leaflet and an improved follow-up service for people who have queries by spring 1999;
- determine the best ways to provide people with an automatic forecast of their state pension entitlements and contributions record; and
- work in partnership with public and private pensions providers to produce a combined forecast of an individual's pension position - state, occupational, personal and stakeholder.

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3.38 The revised version of the pension forecast and the supporting leaflet have yet to be issued, pending resolution of the inherited SERPS issue. The Department have confirmed that appropriate wording on this matter will be included in the leaflet. The Department are piloting a combined state and occupational/personal pension forecast, with employers and the pensions industry.

Appendix 1: Methodology

1 In preparing this report we undertook a number of pieces of work. These were designed to enable us to prepare a coherent chronology of events from 1986 to 1999; understand what actions had been taken in response to the identification of the problem in 1998; and obtain the views of as many participants and interested parties as we could in the time available.

2 Our work was undertaken between October and December 1999. In particular, we:

- undertook an extensive examination of files held by the Department of Social Security and the Benefits Agency, relating to the Social Security Act 1986, the Pensions Act 1995, publicity arrangements, and related pensions matters. Under existing legislation, Government departments are not required to keep documents for unlimited periods. As a result, much material relating to the early years covered by this examination has been destroyed;
- interviewed staff responsible for pensions matters between 1986 and 1999. In some cases the interviews were conducted jointly with a member of staff from the Office of the Parliamentary Commissioner for Administration.
- visited two Benefits Agency local offices (in Kingston, Surrey and Stratford, East London), as well as the Pensions and Overseas Directorate in Newcastle, to discuss with staff how they receive information about key changes affecting their work, and ensure that it is understood and accurately communicated to customers;
- held a workshop of experienced policy makers and operations staff from the Department of Social Security and the Benefits Agency to discuss how project management and risk assessment and management approaches are used, and could be developed further for policy work to reduce the risk of problems such as occurred in this case;
- interviewed senior officials at the Department of Social Security to discuss the wider issues arising from this case;

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- worked with the Internal Audit Service of the Department of Social Security and the Benefits Agency to draw on their knowledge of the practices and procedures of the Department; and
- met with staff from Age Concern and the Association of Retired Persons to discuss the effect that this problem had on the many hundreds of people who have contacted them about incorrect information, and to seek their views on the wider issue of the adequacy of information provided to pensioners by the Department of Social Security.

3 In undertaking the examination, we worked closely with the Office of the Parliamentary Commissioner for Administration (the Ombudsman). The Ombudsman has investigated four sample cases of alleged maladministration. We worked together in preparing the agreed chronology of events in Appendix 2, and in doing so, have undertaken the most extensive liaison between our two organisations to date.

Appendix 2: Chronology of events

July 1986	The Social Security Act provides for halving of inherited SERPS from 6 April 2000.
September 1986	The Department of Health and Social Security issue a general leaflet “Reforming Social Security: Saving for Retirement Pensions” which mentions the halving of inherited SERPS from 2000.
November 1986	The Department of Health and Social Security in Newcastle prepare draft revisions to pensions leaflet NP32 ‘Your Retirement Pension’ and circulate it for comments. One suggested revision is that the halving of inherited SERPS should be mentioned.
December 1986	The Department of Health and Social Security in Newcastle send the final draft revisions of NP32 for inclusion in the next issue of the leaflet. The halving of inherited SERPS is not included amongst them.
April 1987	Leaflet NP32 is published but does not mention the halving of inherited SERPS from 6 April 2000.
1987	The Department of Health and Social Security issue leaflet NP34 “Your Benefit as a Widow” which does not mention the halving of inherited SERPS from 6 April 2000.
January 1988	Background circulars about changes arising from the 1986 Social Security Act are issued to pension sections, including details of the halving of inherited SERPS. These state that amendments to guidance manuals on pensions, widow’s benefits and pensions law will be issued in due course.
August 1988	The Pensions Law manual is correctly updated, including changes to inherited SERPS, and circulated to local offices.
April 1989	The new leaflet NP46 “A guide to Retirement Pensions” is issued. The absence of the inherited SERPS changes is not picked up during preparation despite circulation for comment.
November 1989	The Department of Health and Social Security prepare a revision to leaflet NP46 to reflect the abolition of the ‘earnings rule’ for pensioners, and circulate it to relevant officials for comments. The absence of the inherited SERPS changes is not picked up.
April 1991	The Benefits Agency is established.

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July 1992	The Benefits Agency prepare revisions to leaflet NP46 to take account of the consolidation of all pensions legislation in the Contributions and Benefits Act 1992 and the Administration Act 1992. The draft is circulated widely within the Department for comment. The absence of the inherited SERPS changes is not picked up.
March 1995	In the House of Lords debate on the Pensions Bill, Baroness Gould of Potternewton moves an amendment to phase in the reduction in inherited SERPS over a 10-year period. She adds that there is little awareness of the change.
June 1995	Departmental headquarters advise the Benefits Agency that leaflet NP46 needs amending to mention the halving of inherited SERPS from April 2000.
July 1995	The Pensions Act introduces further changes to SERPS.
January 1996	The Department of Social Security issue leaflet PEC3 'The 1995 Pensions Act' which refers to some changes to SERPS from 6 April 2000, but does not mention the change to inherited SERPS. The section on "Changes to SERPS" states that the way SERPS pensions are worked out will change and that SERPS will be reduced as a result. It adds "But if you are already getting a SERPS pension, you will not be affected".
April 1996	Leaflets NP46 'A Guide To Retirement', and NP45 'A Guide To Widows' Benefit', are re-issued. They give brief information about the halving of inherited SERPS from 6 April 2000.
March 1997	A Member of Parliament writes to the Department of Social Security on behalf of a constituent, who claims that he has been misled by the Department, to his detriment, about making financial provision for his wife, should he predecease her.
April 1997	The Minister of State replies that " We ... make very effort to publicise significant legislative changes and, of course, we give advice on individual circumstances when asked to do so".
May 1998	Another Member of Parliament writes to the Parliamentary Under Secretary of State about a constituent, who was given incorrect information on inherited SERPS by the Benefits Agency.
July 1998	The Parliamentary Under Secretary of State replies, acknowledging that an experienced member of staff dealt with the query, but was unaware of the implications of the change in the legislation.
28 October 1998	Age Concern write to the Minister of State saying that people are still being given incorrect advice by Benefits Agency local offices.

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3 November 1998	David Rendel MP asks the Secretary of State “ what measures have been taken to publicise the halving of SERPS for widowers and widows whose spouse dies on or after 6 April 2000; and when his Department’s (a) leaflets and (b) other literature first referred to this change.” The Minister of State replies “The Department arranged publicity about the Pensions Act 1995 with an advertising and direct mailing campaign in the Autumn of that year. Information on the halving of the Additional Pension from the State Earnings-Related Pension Scheme (SERPS) featured in leaflet PEC3, “The 1995 Pensions Act”, which was part of this campaign and available to the public until August 1997. The Benefits Agency supported this campaign in Spring 1996 by issuing leaflet EQP 201, “Changes To Your Future”, to answer simple inquiries about changes arising from the Pensions Act 1995. More detailed information featured in leaflets NP46, “A Guide To Retirement”, and NP45, “A Guide To Widows’ Benefit”, from Spring 1996 and remains there to date. Where appropriate, other more general publicity and information on pensions and widows’ benefit also refers customers to these more detailed leaflets. The Benefits Agency leaflets always advise customers to check with their local Social Security office if they require more detail or up-to-date information about individual cases.”
30 November 1998	The Minister of State replies to Age Concern that “steps are being taken by the Benefits Agency to ensure that all staff receive comprehensive briefing on this issue by the end of the year”.
12 January 1999	Pensions Bulletin 2/99 tells Department of Social Security staff about the halving of inherited SERPS in four paragraphs. It suggests that the contents are relayed to staff by supervisors during the weekly half-hour closure.
16 February 1999	The Sun newspaper features an article entitled “The Government gave out bad advice for TEN years”, and invites readers who may have been given incorrect pensions advice to complete a questionnaire.
22 February 1999	In response to a question from David Rendel MP, the Minister of State states “We are considering ways to heighten general awareness of the reduction from 100 per cent to 50 per cent in the amount of SERPS which can be inherited by a surviving spouse from 6 April 2000.”
26 February 1999	Pensions Bulletin 13/99 tells Department of Social Security staff to send brief holding replies to enquiries from the public, and stockpile details.
February 1999 - February 2000	Newspaper articles describing the inherited SERPS problem appear in a number of newspapers, including The Sun, Financial Times, The Times, The Daily Telegraph, Sunday Telegraph and Daily Mail.

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11 March 1999	In response to a question from David Drew MP, the Parliamentary Under Secretary of State states "We recognise that there is concern regarding the level of public awareness about the reduction, from 100 per cent to 50 per cent, in the amount of SERPS which a surviving spouse can inherit on or after 6 April 2000. We are actively looking at ways of raising public awareness of this change."
15 March 1999	Pensions Bulletin 16/99 gives Department of Social Security staff a question and answer brief which states that "Cases where it is alleged that a customer has been given wrong information are considered under a Special Payments Scheme which we have. However, a financial loss has to have occurred before we are able to consider such a complaint".
24 March 1999	The Benefits Agency Chief Executive is advised by officials that, on the basis of a survey, most local offices were unaware of the halving of inherited SERPS from 6 April 2000.
26 March 1999	In response to a question about inherited SERPS from Rt Hon Frank Field MP, the Minister of State replies "This issue is currently being given careful consideration. We shall make an announcement in due course."
29 March 1999	Pensions Bulletin 18/99 tells Department of Social Security staff what to write in brief holding replies.
29 March 1999	The Parliamentary Ombudsman announces that he will investigate four sample complaints that the Department of Social Security gave out misleading advice about inherited SERPS.
30 March 1999	David Rendel MP tables an amendment to the Welfare Reform and Pensions Bill to reverse the halving of inherited SERPS from 6 April 2000.
13 April 1999	Lord Rix asks an oral question in the House of Lords about halving of inherited SERPS. The Parliamentary Under Secretary of State says that Baroness Gould proposed an amendment in the committee stage on the 1995 Pensions Act, adding "the officials noted it, but again nothing was done. The situation failed to filter down to local offices". Earl Russell says that Mr Rendel had an example of wrong information given on 3 March 1999.
13 April 1999	In response to a parliamentary question from David Rendel MP, the Minister of State replies "We are making further inquiries and will make an announcement in due course."
13 April 1999	Pensions Bulletin 20/99 tells staff not to use the question and answer brief in 16/99, and issues a revised one, which says that the Department of Social Security hope to resolve the issues as soon as they can.

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14 April 1999	The Benefits Agency's Pensions and Overseas Directorate in Newcastle send out a letter providing incorrect advice on the inheritance of SERPS – the last known example.
20 April 1999	The Sun newspaper prints a petition form for people to complete and return. It asks the Prime Minister to contact all people who may have been misled by Department of Social Security about SERPS, to offer them compensation.
28 April 1999	The Parliamentary Under Secretary of State in the Lords asks officials why nothing was done in 1995 to inform staff when the lack of publicity about the halving of inherited SERPS came to light during an amendment to the Pensions Bill. Officials are unable to provide an explanation.
3 May 1999	Liberal Democrat Members of Parliament table an amendment to the Welfare Reform Bill calling for SERPS changes to be postponed for a decade.
10 May 1999	The Department of Social Security's Permanent Secretary replies to the Parliamentary Ombudsman regarding the four sample cases, enclosing a copy of the Department's history of events.
19 May 1999	Pensions bulletin 28/99 reminds staff of the sensitivity of the changes to inherited SERPS and its current high profile in the media, and issues a revised question and answer brief which state that "the Government will be making an announcement in due course".
24 June 1999	David Rendel MP tables an amendment about widows, including inherited SERPS. The Minister of State tells MPs that 'anyone who can show that they were mis-advised and, as a consequence, have taken action to their own financial detriment, will be entitled to compensation.'
5 July 1999	Age Concern write to the Minister of State setting out legal advice which suggests that the halving of inherited SERPS may breach Article 1 Protocol 1 of the European Convention on Human Rights.
5 July 1999	In response to a question from David Willetts MP, the Minister of State replies "We are considering how best to resolve this matter and will make an announcement in due course."
6 July 1999	Lord Higgins moves an amendment to the Welfare Reform and Pensions Bill about compensation for widows and widowers not informed of the prospective halving of inherited SERPS.
13 July 1999	Lord Rix moves an amendment to the Welfare Reform and Pensions Bill to give spouses of people whose contributions span the period 1978-1986 full inherited pension rights.

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22 July 1999	The Minister of State replies to Age Concern that the Department of Social Security have taken legal advice and do not think that halving inherited SERPS breaches the Article 1 Protocol 1 of the European Convention on Human Rights.
16 September 1999	Age Concern write to the Minister of State to clarify that they consider that it is the lack of publicity about the halving of inherited SERPS which is central to the Convention violation.
11 October 1999	Lord Rix moves an amendment to the Welfare Reform and Pensions Bill which is accepted by the Government. The amendment enables the Secretary of State to provide for SERPS widow(er)s to receive more than half their spouse's pension, to postpone the halving of inherited SERPS to a later date than 6 April 2000 or to set up a scheme to protect the rights of those misled about the halving of inherited SERPS.
25 October 1999	In response to a question from Paul Burstow MP, the Minister of State states "We will make an announcement about SERPS inheritance provisions shortly."
11 November 1999	The Welfare Reform and Pensions Act 1999 contains a section (Section 52) which provides for postponement of the halving of inherited SERPS to a specified later date and/or the running of a scheme, where those able to prove misdirection or misinformation will be protected for life from the new legislation.
23 November 1999	Pensions Bulletin 63/99 tells staff about the effect of the Welfare Reform and Pensions Act 1999 on changes to inherited SERPS and states that until one or both of the possible options are implemented "widows/widowers will continue to inherit 100 per cent of their late spouse's SERPS entitlement."
2 December 1999	The BBC1 Watchdog programme features an interview with the Minister of State in which he confirms that as a result of the Welfare Reform and Pensions Act 1999, the halving of inherited SERPS will not now take effect from 6 April 2000.
2 December 1999	The Minister of State replies to a letter from a Member of Parliament regarding a constituent's enquiries about changes to inherited SERPS. The reply states "After 6 April 2000, widows and widowers would have been able to inherit only half of their spouse's SERPS entitlement." The reply does not reflect the effect of the Welfare Reform and Pensions Act 1999 on the halving of inherited SERPS.
3 December 1999	Pensions Bulletin 66/99 gives staff a question and answer brief that states that "Postponement means that the change will no longer take place on 6 April 2000. It would come into effect at a later date, but this has not yet been set".
8 December 1999	The Chief Executive of the Benefits Agency replies to a letter from a Member of Parliament regarding a constituent's enquiries about changes to inherited SERPS. The reply states "As you will know, after 6 April 2000, widows and widowers will be able to inherit only half of their spouse's SERPS entitlement". This is nearly a month after the passing of the Welfare Reform and Pensions Act 1999.

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20 December 1999	In response to a question from Paul Burstow MP “to ask the Secretary of State for Social Security when he will establish the consultation group on inherited rights to SERPS for widows and widowers after 6 April 2000; and if this group will be established before regulations made under the Welfare Reform and Pension Act 1999 are published”, the Minister of State replies “We will be making further announcements on inherited SERPS shortly.”
22 December 1999	Age Concern write to the Minister of State commenting on the options contained in section 52 of the Welfare Reform and Pensions Act 1999, and seeking assurance that the principle of preserving accrued rights will be adhered to in drawing up regulations. They state that if such an assurance is not forthcoming they will consider taking legal proceedings under Article 1 Protocol 1 of the European Convention on Human Rights as a result of the continuing uncertainty.
10 January 2000	The Department issue a revised letter to people enquiring about inherited SERPS which states “I can confirm that our new legislation means that the reduction in the amount of SERPS which can be inherited will not come into effect in April 2000. It will be delayed until new legislative arrangements are put in place as part of our solution. I hope that postponing the change will provide reassurance to those who may otherwise have been affected.”
27 January 2000	A research report published by the Department of Social Security finds that “people are often unclear about the difference between the state basic pension and the State Earnings-Related Pension Scheme (SERPS).
1 February 2000	Two Members of Parliament propose an amendment to the Child Support, Pensions and Social Security Bill stating that “The Secretary of State shall in regulations make provision for the notification of additional pensions contributors of any changes to the additional pension that will materially affect their entitlement”.

Appendix 3: Summary of the findings of the Parliamentary Ombudsman

1 The Parliamentary Ombudsman deals with complaints from members of the public that they have suffered injustice because of poor administration by government departments and agencies, and other named public bodies. Complaints must be referred to him by a Member of Parliament. If he decides that a case warrants full investigation, he has access to all documents concerned. His service is completely independent, as well as confidential and free of charge. The Ombudsman is not a civil servant. He is appointed by the Crown and is responsible to Parliament, reporting to the Parliamentary Select Committee on Public Administration.

2 In March 1999 the Ombudsman announced that he would investigate a sample of complaints that the Department of Social Security gave out misleading advice about legislative changes in the State Earnings-Related Pension Scheme. He said that, through investigating a representative sample of cases, he would establish the facts and, if he found that maladministration had led to injustice, he would determine whether whatever action the Department might propose will stand to remedy that injustice. In March 2000 the Ombudsman reported to Parliament on 'State earnings-related pension scheme (SERPS) inheritance provisions'.

3 The chronology of events described in the Ombudsman's report mirrors that outlined in this report. In addition, the Ombudsman stated that:

■ In her comments to me on the individual complaints I proposed to investigate, the Permanent Secretary of DSS accepted that it was clear that departmental leaflets produced in 1987 had contained incorrect information about the changes to SERPS and had not been corrected until 1996. She readily accepted that that should not have happened (paragraph 25).

■ On 14 September 1999 I wrote to the Permanent Secretary, among other matters outlining my preliminary thinking about redress for the maladministration that on behalf of the Department of Social Security she had already acknowledged. I said that individuals who claim to have been misled or misdirected by information given by a department are normally expected to provide some evidence that they have been misled into acting, or failing to act, in a way that has been to their disadvantage. Only then is

compensation considered. However, I questioned whether that approach was tenable in the circumstances of the complaints being referred to me. As I saw it, anyone who had read the relevant Department of Social Security leaflets might reasonably claim to have been misled by them. Whatever such a person then did or did not do, it seemed to me that the burden of proof that he or she would not have acted differently had he or she not been misinformed rested on the department. I therefore considered that, whatever the approach the department decided upon in order to make good the effects of their maladministration, it would need to be capable of providing due redress on a global, rather than an individual, basis. I also felt that any evidential hurdles pertaining to eligibility for compensation should have regard to the principles concerning the burden of proof which I had set out (paragraph 32).

- DSS have not been able to give any satisfactory explanation of why that situation [the existence of incorrect leaflets and staff giving incomplete information] went unrectified for so long. I consider the absence of any reference to the forthcoming change to the SERPS inheritance rules in the leaflets produced by DSS and then BA between September 1986 and April 1996 was a serious omission...In a key respect the statements in the leaflets were incomplete, incorrect, and misleading. I strongly criticise DSS for failing to make their leaflets on retirement pensions and surviving spouses' benefits sufficiently comprehensive and up to date in this important respect following the enactment of the 1986 Act, and for their repeated failure to do so until spring 1996 (paragraph 34).

- My staff's scrutiny of departmental papers and interviews with relevant DSS officials have produced no evidence that the fact that misleading information was given to the public stemmed from an attempt on DSS's part to conceal relevant facts or to mislead. What was involved was a simple oversight which has had very far-reaching consequences. That oversight was not picked up, because adequate management arrangements of a coherent and systematic kind were not in place to make sure that all necessary administrative actions had been taken to secure the full and timely dissemination of the provisions in the highly complex 1986 Act. Nor have I found evidence of any mechanism which would provide such independent quality assurance of the legal, technical and presentational aspects of departmental publicity as was necessary to give effect to undertakings given by Ministers at the time about publicity for the legislation (paragraph 35).

- It is also a matter of concern that even after the need to amend the leaflets was belatedly recognised in 1996, there was no immediate corresponding recognition that the fact that the leaflets up to that point had been wrong and misleading had widespread implications (paragraph 36).
- DSS's maladministration over the leaflets was compounded by their failure to make sure that staff in local BA offices and at the pensions and overseas benefits directorate in Newcastle were properly informed of the forthcoming change and given appropriate guidance on how to deal with enquiries from the general public. That too was a serious error. Worse than that, the failure continued after the DSS leaflets had been put right in the spring of 1996, so that some staff were still giving inadequate and misleading responses to enquiries from the public up until April 1999. Even after the issue had been raised by Age Concern in late October 1998 and in Parliament the following month, it was not until mid-January 1999 that BA issued a bulletin to all staff drawing their attention to the forthcoming change in the SERPS inheritance provisions; and only in late February were staff briefed on the line to take when dealing with enquiries (paragraph 37).
- It seems to me that the contribution which I can most usefully make will be to offer my advice to Parliament on whether the proposed measures, once their details are known, are in principle capable of remedying the various categories of injustice consequent upon maladministration which my investigations have identified. It will still, of course, be open to Members to refer to me individual complaints to the effect that the scheme or its application has not provided an adequate remedy for the complaint (paragraph 40).
- At this stage, I shall therefore do no more than express the hope that any proposals will take account of what I told the Permanent Secretary about the onus of proof. They will also need to take account of the fact that most of those misled by DSS or BA are likely as a result to have decided that no action on their part was needed, because they had been led to believe that a surviving spouse was secure in an entitlement to full inheritable SERPS. In view of that, it would be wrong to exclude from redress those who took no action; and the proposals will need to recognise that it will be difficult, and in some cases impossible, for claimants to demonstrate that they would have taken a particular course of action had they been correctly advised. The scheme should also, in my view, recognise that many people

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will have been misled solely by reading inaccurate leaflets, and will have received no further wrong advice, written or otherwise, from DSS or BA. They will need to be catered for in any proposals (paragraph 41).

Appendix 4: Illustrative cases

Case A

- Mr A is 66. He paid into SERPS from 1978 to 1997. He receives about £100 a week. In 1998 he telephoned the Benefits Agency in Newcastle to check the position for his wife if she were to be widowed. He was told that she would inherit all his SERPS. On the basis of this information he bought an annuity which only provided a 50 per cent pension for his wife on his death. After reading about the changes in the media he decided to continue to work as he is concerned about his wife's future financial position.

Case B

- Mr C joined SERPS in 1978 and contributed until his retirement in 1989. Knowing his wife would inherit the full SERPS he felt confident that he was paying enough to ensure she would have a reasonable income if widowed. He checked the position in 1992 and has a letter from the Benefits Agency confirming that his wife would inherit 100 per cent of his SERPS if she were to be widowed. He learnt about the planned change to SERPS in 1999. He points out that even if he had been informed of the change in 1986 there was insufficient time for him to make alternative arrangements that would compensate for the changes.

Case C

- Mr K worked in the financial industry, and his experience and knowledge of pensions led him to believe that being contracted into SERPS was the best option for him and his wife. On retirement he took the maximum lump sum, which reduced the amount of his pension and any widows pension, but he did so in the knowledge that his wife would be able to inherit 100 per cent of his SERPS. Having read about the changes in the papers he is now concerned that his wife might have to rely on benefits if she gets a reduced SERPS.

Case D

- Mr P's wife worked for around 20 years in part-time jobs with no occupational pension schemes, so he was keen to maximise her future pension provision. When the 1978 pension changes came in he made sure that his wife started to pay the full National Insurance contributions so that she could build up a small amount of SERPS in her own right. In addition, he knew from the Department's guides NP45 and NP46 that she would inherit all his SERPS if she was widowed. He had a pensions forecast and correspondence with the Benefits Agency about his own SERPS which did not refer to widows' pensions so he had no reason to believe that any changes were expected.

Case E

- Mr G knew the terms of the original SERPS scheme that he had joined in 1978 and just before retirement in 1995 rang the Benefits Agency to check that his wife would inherit the full amount. He planned his and his wife's finances on this basis and when he received a lump sum payment from a private pension, used this for home improvements. Had he known his wife could potentially lose £2,000 a year, he states that he would have used the lump sum to buy her an annuity.

Case F

- Mr H was made redundant in his fifties. He found work again but was unable to join the occupational pension scheme because of his age. Making adequate pension provision for himself and his wife was a major concern and between 1987 and 1997 he checked the position with the Benefits Agency four times by telephone and letter, and each time was reassured that his wife would inherit the full SERPS. He had carried on working after the age of 65 but stopped in 1998, confident that his pension arrangements were satisfactory.

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Glossary

Accrual rate	This term may be used in relation to a scheme where the benefits payable are related to previous earnings, such as SERPS, or a final salary occupational scheme. It means the rate at which pension benefits build up for the member.
Annuity	This is purchased, usually from an insurance company, to provide a regular income from a lump sum. It is the method by which the fund from a money purchase scheme is converted into a pension.
Appropriate Personal Pension	A personal pension scheme that an individual may join as a means of contracting out of SERPS.
Basic State Pension	Flat-rate state pension payable at state pension age to people who have met the minimum National Insurance contribution requirements over an appropriate number of qualifying years.
Benefits Agency	An executive agency of the Department of Social Security with responsibility for the assessment, delivery and administration of all benefits except war pensions.
Contracting out	An arrangement under which members of a pension scheme which meets certain conditions, obtain rights in that scheme in place of their SERPS entitlement. National Insurance Contributions for those employees are reduced or, in the case of an appropriate personal pension, partly repaid to the scheme.
Contributory Benefits	A term used to describe benefits paid from the National Insurance Fund, which broadly are dependent on the claimant having an adequate record of payment of National Insurance Contributions. The main contributory benefits are Retirement Pension, Widow's Benefits, the contributory element of Jobseeker's Allowance, Statutory Sick Pay, Incapacity Benefit and Statutory Maternity Pay.
Lower Earnings Limit	The weekly level of earnings (roughly equivalent to the basic state retirement pension), below which there is no liability to pay National Insurance Contributions.
Maladministration	The term used to describe the actions that lead to a failure in the processes of government.
Misdirection	Incorrect or incomplete information given by officials to the public, leading them to take action or to fail to take action, to their detriment.
Money Purchase Schemes	Private pension schemes that pay benefits according to the level of the pension fund on retirement.

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National Insurance Contributions	Contributions payable by those in work and their employer into the National Insurance Fund, which are used to pay contributory social security benefits to qualifying individuals. Self-employed people pay a lower rate but have more limited rights to benefits.
National Insurance Fund	A statutory fund established in 1948 and reconstituted in April 1975, into which all National Insurance contributions payable by employers, employees and self-employed people are deposited, and from which contributory benefits and their administration costs are paid out.
National Insurance Recording System	A central database of individual National Insurance Contribution records.
Occupational Pension	Arrangement organised by an employer or on behalf of a group of employers to provide pensions and/or other benefits for one or more employees on leaving service, death or retirement.
Personal Pension	An arrangement between an individual who is self-employed, in non-pensionable employment, or who is not a member of an employer's scheme and a pension provider (such as an insurance company) which enables the individual to make provision for a pension.
Retirement Pension	A contributory benefit payable to men and women who have reached State Pension Age (currently age 60 for women and age 65 for men).
State Earnings Related Pension Scheme (SERPS)	The scheme introduced in 1978 which provides an additional state pension, calculated on the basis of the employee's earnings, on top of the basic state pension.
Upper Earnings Limit	Level of earnings (equal to approximately seven and a half times the Lower Earnings limit) above which there is no liability for employee National Insurance Contributions, and above which SERPS does not accrue.