

## Submission to DWP Secretary of State – 9 November 2006

### BENEFIT ENTITLEMENT FOR PEOPLE IN POLYGAMOUS MARRIAGES

#### Issue:

Following a written PQ from Baroness Cox you have asked for a note setting out:-

- the current position on benefit entitlement for multiple wives;
- an explanation of how these regulations came into being;
- potential options for changing the current position; and
- the implications of any potential changes e.g. on human rights.

**Timing:** To meet your revised deadline.

#### The current position

##### *General*

1. The term “polygamy” covers polyandry where a woman has multiple husbands; and polygyny, by far more common, where a man has multiple wives. This submission concentrates on the latter cases, but the benefit rules apply equally in both cases.
2. There are three main areas where polygamy is an issue:
  - polygamous relationships;
  - polygamous marriages that are recognised in the UK; and
  - polygamous marriages that are not recognised in the UK.

##### *Polygamous relationships*

3. A polygamous relationship is where three or more people are living together in a polygamous household in a close relationship. Such relationships have no status in law, and any member of the relationship could claim a contributory or non-contributory social security benefit in their own right.
4. Where a claim is made for an income-related benefit (an IRB), ie, Income Support (IS), Income-based Jobseeker's Allowance (JSA(IB)), Housing Benefit (HB), Council Tax Benefit (CTB) or State Pension Credit (SPC), each member of the relationship would be treated as a single claimant unless, exceptionally, it could be shown that two members of the relationship were living together as man and wife - in which case, they would be treated as a couple for benefit purposes, with the remaining members treated as single claimants.

##### *Polygamous marriages that are recognised in the UK*

5. A polygamous marriage is one where the relationship has been solemnised by a marriage ceremony in a country where polygamous marriages are permitted, and where the parties were domiciled at the time of the marriage.

#### *Polygamous marriages that are not recognised in the UK*

6. It is not possible for a person domiciled in Great Britain to enter into a polygamous marriage that will be recognised in British law. If there is an earlier marriage which is valid, the claimant and the first wife would be a couple for benefit purposes.
7. Other wives would have to make claims as single people and, of course, be subject to the standard conditionality requirements for the particular benefit, eg, they would have to be available for work in the case of JSA. If the family continued to live together in the same household, these wives would be treated as non-dependants and a non-dependant deduction might apply where housing costs are met by benefit.

#### *Claims for an income-related benefit*

8. Where a person in a valid polygamous marriage claims one of the IRBs, then (except for claims to SPC) the amount of benefit will be based on an allowance for the spouse and one of the partners at the highest applicable couple rate, depending on the partners' ages.
9. For each other partner, a separate personal allowance applies, which is based on the difference between the couple and single person rates. However, these partners are not treated as non-dependants, and therefore a deduction will not be made from any housing costs met by benefit.
10. The amount payable for each other partner is presently £32.65, the difference between the highest couple rate (£90.10) and the highest rate for a single person (£57.45). It is rare, however, for there to be more than two partners in a polygamous marriage. These rules are also being carried forward into income-related Employment and Support Allowance.
11. In SPC, the same principle applies, but the rates are based on a standard minimum guarantee of £174.05 for a couple and £60.00 for each additional spouse. (This compares with a standard minimum guarantee of £114.05 for a single person.)
12. The joint claims rules in JSA (both income-based and contributory) also apply to polygamous marriages. In such claims second and subsequent wives who do not fall into one of the exemption categories are also required to be available for work.

#### *Contributory and non-contributory benefits*

13. Any member of a polygamous marriage may be entitled to a contributory or non-contributory social security benefit in their own right where they satisfy the relevant conditions of entitlement.
14. People in polygamous marriages are not entitled to contributory or non-contributory Social Security benefits in respect of their marital partners although it is possible in rare cases for an increase to be awarded for an adult dependant who is one of the spouses and looking after children.
15. Wives in polygamous marriages have no rights to benefit derived from their husband's contributions. Only those people in legally recognised unions may inherit state pension rights, receive bereavement benefits and acquire a Category B State pension from the spouse's contributions.
16. So if a man dies leaving two (valid) wives/widows, neither wife can receive widow's benefit. But if, for example, one of the marriages was not valid in some way, then there would be only one wife and we could pay widow's benefit.

#### **Numbers in receipt of benefit**

17. No figures are available for the number of claimants in polygamous marriages where an IRB is in payment and we do not collect information on the number of households where there is more than one wife. However, from anecdotal evidence we know the number is small and is decreasing because of the changes in immigration rules in August 1988. Since then, where the 1988 Immigration Act applies, a man is prevented from bringing a second or subsequent wife into this country if another woman is already living as his wife in the UK.
18. DWP has a Relationship Validation Unit (RVU), which provides expert guidance for decision makers on, amongst other things, polygamous marriages. Between April 2005 and March 2006 RVU received 361 enquiries which related to polygynous marriages (where the husband had more than one wife) although this does not mean that benefit was paid in all these cases. They are not aware of any queries concerning polyandrous marriages (where the wife had more than one husband).

#### **Rationale for the current benefits policy**

19. Before 1988, benefit was paid to people who could establish they were in polygamous relationships. This was narrowed to polygamous marriage following press interest in people in hippie communes living off the state.
20. The current rules for the IRBs date from the introduction of IS in 1988. The policy acknowledges the existence of polygamous marriages but ensures that, in general, there is no financial advantage to claiming for those in such marriages. This is achieved by paying the difference between the single and couple rates for each additional wife.

## Options for change

21. We have looked at two options for change:-

Option One: *Treat the polygamous family in the same way as any other monogamous family and insist that the second and subsequent spouse makes a separate claim in their own right.*

- This already happens where the polygamous marriage is not recognised in UK law. The claimant claims for himself and the first wife. Other wives make claims as single people and are subject to the standard conditionality requirements for the particular benefit.
- But there are some downsides to this proposal:-
  - Having separate claims for a couple and for other members of the valid marriage would normally result in more benefit being paid.
  - It would increase the unemployment count in respect of those wives who claimed JSA in their own right.
  - This also assumes that we could justify legislating for the *first* wife to be treated as the member of the couple in all cases. The usual issues of fairness, justification etc would apply, and we would need to be able to justify this in any court case. This option can probably be achieved by secondary legislation (depending on the details). Allowing any of the wives to be treated as a member of the couple could, however, encourage perverse behaviour whereby different wives could claim in their own right, or as part of the couple, at different times, in order to maximise the family's benefit entitlement where the family's circumstances change.

Option two: *Only pay benefit for the husband and first wife and do not allow additional wives to make a separate claim.*

- We could argue that members of a polygamous marriage could be expected to be part of a more extensive familial and social network than their monogamously-married counterparts.
- However the IRBs look at the maintenance needs of the family as it stands, where clearly two or more adult dependants cost more to keep than one. This is different from establishing entitlement from a contributory fund where contributions, and not need, are the criterion.
- It would be hard to justify refusing benefits to someone who was doing nothing unlawful and treating them less favourably than a member of a polygamous relationship.

- There could also be additional claims for Social Fund hardship payments where the additional wives have no or insufficient income to maintain themselves for any period.
- As in option one, deciding claims between rival wives could put the Department in an invidious situation where there was family conflict; although it already falls to HMRC to decide priority of title in child benefit cases and we apply rules to decide whether individuals are validly married or whether they are living as husband and wife.
- This option is also likely to be vulnerable to legal challenge, in that there could be a group of people for whom no state support is provided (except via the social fund). This may be difficult to justify in court and if the second wife meets the entitlement conditions for an IRB, eg, IS, then we *may* need primary legislation to stop her claiming (although this may be achievable through secondary legislation).

## **22. [Paragraph 22 withheld under s42(1) FoI Act]**

### **Recommendation**

23. We recommend that the status quo should be maintained for the reasons given above, not least the fact that numbers are diminishing because of the 1988 Immigration Act provisions.
24. If you wanted to move from the status quo, then option one would be the way to go, but we would recommend proceeding cautiously because of the sensitivity of the issue and that it would apply only to members of certain religious communities. We could provide further advice on handling if wished.