

CHANGES TO THE TREATMENT OF POLYGAMOUS MARRIAGES IN THE BENEFITS SYSTEM

Issue:

You have agreed that the benefits system should not recognise polygamous marriages in any way. You have asked us to develop an option which will no longer treat second wives differently because they are in a polygamous marriage.

This submission sets out the option in more detail, notes other Government areas where polygamous marriages are recognised (e.g. inheritance tax, war pensions), provides a timeline for implementation, a handling strategy for engaging with Treasury colleagues and other relevant ministers, and lines to take.

Timing: To meet your deadline of close on Friday 18 January.

The option

1. You have agreed that we should change the current arrangements for polygamous marriages in the benefits system by treating the polygamous husband and first wife as a couple and require second and subsequent spouses to make separate claims in their own right. This already happens where the polygamous marriage is not recognised in UK law. The husband claims for himself and the first wife. Other wives make claims as single people and are subject to the standard conditionality requirements and rules for the particular benefit. Details of how this change will work in practice are at Annex A.
2. We have not been able to construct a fully worked up proposal in the short time available but we have not identified any issues, legal or operational, that would prevent us from implementing the change. Further work is also needed on estimating DEL costs, and then sourcing the necessary funding, possibly by stopping a different project. There is currently no money set aside in the centre to make these changes. Only a more detailed impact analysis will uncover all of the financial implications, such as the need to amend the various IT systems, and we will write to you later with further advice.

The treatment of polygamous marriages across Government

3. A note on the treatment of polygamous marriages in other parts of the system is at Annex B.

Timetable

4. To allow time for drafting and laying regulations, the IT changes and the development of guidance and staff training we believe the earliest we could implement the new rule would be April 2008.

February 2007	Obtain agreement from other Government Departments, and produce fully worked up procedures for the new rules.
March - May	Informal consultation with representative groups. Obtain costs and provisional sign off of the IT deliverables from the businesses.
June	Ministerial Statement and Press release.
June – August	Instruct lawyers, draft guidance, take change through Project Gateways, set up small project team.
September	Submit regulations to Social Security Advisory Committee (SSAC) for their approval.
September – November	Allow three months for likely SSAC consultation. Exercise to identify current cases.
December	Consider and reply to SSAC consultation.
January 2008	Issue letter to current cases advising them of the changes and the action they should take.
March	Lay regulations to take effect from 6 April 2008

Handling Strategy:

Other Government Departments

5. Officials in both the Home Office and the Department for Constitutional Affairs have confirmed that any change to our rules would not impinge on theirs. Treasury officials were concerned that our proposal would mean that the benefits system would be out of kilter with the tax credits system but have not sought views from their Ministers until they were certain you wished to pursue. We also need to get HMT agreement to the additional AME costs of just under a million pounds.

6. We have drafted a letter for PSC to send to Dawn Primarolo copied to Lord Falconer and John Reid to give them an opportunity to consider and confirm that they are content with your proposal (Annex C).

Consultation

7. Once agreement has been obtained from HMT, HMRC, Home Office and DCA, officials will consult informally with representative groups to test the

waters before an official announcement and assess the likely public reaction to the change. This will enable us to assess the risk of unwelcome publicity and address any negative responses when presenting the change publicly. This will help when discussing the regulations with the Social Security Advisory Committee who will be unhappy with these changes and will be disposed to refer them for a wider consultation.

Lines to take

8. We have put together lines to take and initial Q&A at Annex D.

Clearance

9. This submission has been cleared with solicitors, finance colleagues and the benefit simplification unit.

Recommendation

9. That you write to PMG for her agreement and note that officials are continuing to work up the proposal and estimate costs.

Annex A – the new rules

Definition of Polygamous Marriage

1. For a polygamous marriage to be recognised in UK law the following conditions must be fulfilled:

- the marriage ceremony must be recognised as a valid form of marriage by the law of the country in which the marriage takes place; and
- Each of the parties to the marriage has the capacity, under the law of the country in which he or she is domiciled, to marry the other person in the manner proposed.

For example, Mr A marries Mrs B in Pakistan. Each was domiciled in Pakistan at the time of the marriage and the ceremony took place in a country where polygamy is permitted. Mr A subsequently marries Mrs C without divorcing Mrs B. The marriage is recognised as valid in UK law.

Definition of *Potentially* Polygamous Marriage

2. A *potentially* polygamous marriage exists where the husband has only one wife but, under the law of the country in which the marriage was celebrated, has the capacity to take another wife (or wives) without divorcing the other(s) first.

A *potentially* polygamous, but de facto monogamous, marriage is valid in UK law if:

- either the man or the woman is domiciled here; and
- the marriage was entered into in a country that allows polygamy

For example, Mr A is domiciled in the Yemen, where he meets and marries Mrs B, who is domiciled in the UK. He does not take another wife therefore the marriage is monogamous, but because he has the capacity to enter into a second marriage should he choose to, the marriage has the *potential* to be polygamous.

Definition of a Multiple Relationship

3. A person has a relationship similar to marriage with more than one partner but is married to none of them. In these circumstances none of them can form an unmarried couple.

For example, Mr A, Miss B and Miss C live in the same household but are not married to each other. Mr A claims JSA and states he is in a multiple relationship with Miss B and Miss C. He is treated as a single claimant and is awarded a personal allowance. Miss B and Miss C are also treated as single.

How the new arrangements would work

4. Income Related Benefits

- The husband (usually the claimant) would claim for himself and his first wife and be paid at the couple rate. Subsequent wives would need to claim as single people, or lone parents as appropriate, and would be subject to normal conditionality for receipt of the benefit concerned.
- The first wife must be resident in the UK in order to receive benefit. There are exceptions to this rule. For example, she may have left the country temporarily and is expected to return within 52 weeks or she may be accompanying a child who is receiving medical treatment abroad. In such circumstances normal rules for temporary absence will apply and the wife would not be precluded from the benefit claim.
- Where, however, the wife is not expected to return within 52 weeks, or she is resident permanently in, for example, Pakistan, benefit will not be payable to her, although she will be named on the benefit claim.
- Should the first wife (who was formerly resident in the UK) subsequently leave the UK permanently she will remain as the claimant's spouse on the benefit claim form for the life of the claim.
- Where the first wife dies, which has the effect of turning the polygamous marriage into a *potentially* polygamous marriage which is de facto monogamous, the husband will be able to claim for his remaining wife and they will be treated as any other monogamous couple.
- Should a *potentially* polygamous marriage subsequently become an actual polygamous marriage then the second spouse would be required to claim as a single person, or lone parent as appropriate.
- Where there are more than two wives in the marriage, upon the death of the first wife, the husband would be able to claim for the second spouse. Recognising second or even third wives is still recognising the polygamous aspect of the marriage, ie, when the first wife dies, if the husband then claims for his second spouse (while there is a further wife) that relationship is not monogamous and the second wife is the 'polygamous' wife. We would justify this approach by arguing that the second wife has become the first wife by virtue of the actual first wife's death.
- Where only one spouse survives her husband, she will be entitled to derived benefits subject to the normal conditionality being met. Where both spouses survive their husband, the position is as now and neither will be entitled.

5. Contributory Benefits

- The position remains as now. Where two or more spouses survive their husband, none are entitled to receive derived benefits from his national

insurance contributions, eg, Bereavement Benefit. However, as the law recognises the monogamous state of marriage, where only one spouse survives her husband she has entitlement.

- There will be cases where the first wife dies before the second wife. We would have not recognised the second wife for benefit purposes while the first wife was alive and she might have had to claim as a single person. When the husband subsequently dies, she might be entitled to derived benefits. This is because at the time of death the marriage was actually monogamous and she can no longer be considered as a 'polygamous' wife.

For example, Mr A has two wives, Mrs B and Mrs C. From May to September 2008 he claims income based Jobseekers Allowance. We treat Mr A and Mrs B, his first wife, as a couple and Mrs C has to make a separate claim as a single person or a lone parent.

Mrs B dies in June 2009 and the marriage becomes a monogamous one. Mr A dies in April 2011. Mrs C as the sole remaining wife will be entitled to derived benefits, even though in May 2008 she had not been accepted as Mr A's wife.

6. Treatment of Income and Capital

- Regulation 23 of the Income Support (General) Regulations deals with the calculation of income and capital of members of a claimant's family and of a polygamous marriage. Under current arrangements income and capital of each member of the polygamous unit is taken into account for the benefit claim.

For example, Mr D, Mrs E and Mrs F each have £3,000 in savings. The total - £9,000 – is taken into account when assessing entitlement for the family unit.

- Amendments to the regulation will therefore be needed; for example, to ensure savings held either by the couple or by the single claimant are not taken into account for each other's benefit claims.

7. Transitional Protection (TP)

We need to consider how we handle current cases at the point of change. There are three options:

a) The current rules would continue to apply to existing claimants, with the new rules applying only to new claimants from the date of implementation.

- Allowing existing customers to continue under the present arrangements would undermine the policy rationale for the change;
- Adds a further complexity to the benefit rules.

Not recommended

b) All polygamous marriage cases would be reassessed from the date of implementation.

- May not allow time for existing customers to be advised of the changes and for their circumstances to be assessed. The businesses will have to put in place a special trawl to identify them as we do not hold information centrally.

c) Transitional Protection would apply for a limited time, say 12 months, after which existing claimants would need to re-apply under the new rules.

- Polygamous couples may have made financial arrangements on the basis of the current rules and this period of transition would give them time to make other arrangements.
- Would give the businesses more time to implement the new rules by staggering the changeover for existing customers.

We are still assessing how quickly we would be able to identify current cases and will advise further in a subsequent submission.

Annex B - Treatment of polygamous marriage in other parts of the system

Inheritance Tax

- Not everyone pays Inheritance Tax on death. It only applies if the taxable value of the estate on death is above £285,000 (2006-2007 tax year) and is only payable on the excess above this threshold.
- There are exemptions; for example, if the estate passes to a husband, wife or civil partner and both spouses/civil partners were domiciled in the UK there is no Inheritance Tax to pay, even if it's above the £285,000 threshold. This exemption also applies to wives in polygamous marriages.
- However, where one (or all) of the wives is not domiciled in the UK the threshold at which tax is levied is set at £55,000. For example, two wives each have equal share in a property worth £600,000. The UK domiciled wife will not be liable to pay Inheritance Tax on her share, but the other wife (who is domiciled in Pakistan) will have to pay tax on the property value in excess of £55,000.

War Pensions

The Armed Forces Pension Scheme, introduced in April 2005, enables a war widow's payment to be divided between all surviving spouses.

Immigration

- Section 2 of the Immigration Act 1988 is designed to restrict the establishment of polygamous households in the UK by limiting the number of woman who can claim the right of abode or seek entry here on the basis of a polygamous marriage, ie, it applies to those wishing to enter the UK on the basis of having a right of abode through marriage.
- However, it is possible for some women to qualify for right of abode in another category, eg, by being British citizens or by being a Commonwealth citizen with a UK born parent, who could contract a polygamous marriage overseas if they were domiciled in a country that allows polygamy.
- There is nothing preventing a woman entering as a polygamous wife of a man if she has previously been here as his only wife (s. 2(4), 1988 Act). For example, Mr A and Mrs B were married in Pakistan and moved to the UK in 1995. In 1997 they both returned to Pakistan and in 1998 Mr A married Mrs C. In 2000 he returns to the UK and brings Mrs C with him as his wife. In 2002 Mrs B returns to the UK and because she has lived here previously as his only wife she has the right of abode.
- Neither is there anything to prevent a woman from re-entering the UK if she had been here before section 2 came into force, ie, prior to 1988.

- Second wives can also qualify for entry to the UK if they are coming here to work or study. However, their entry visa would be restricted so if the wife gave up work for example, it seems likely that she would become subject to further enquiry.

Council Housing

Sections 87 and 88 of The Housing Act 1985 deal with the succession rights of tenants. There can only be one succession within the family. For example, one spouse dies and the tenancy transfers to the remaining spouse. In polygamous households the rules appear to be the same. So where the male spouse dies, tenancy can be transferred to one of the remaining spouses but if she subsequently dies there is no right of succession for the second spouse. It will be for the local authority to decide in the particular circumstances of the case but it is possible for a brand new tenancy agreement to be offered or she will be required to leave (although an alternative property might be offered). There do not appear to be any rules specific to polygamous marriages and each case is judged on its merits.

Annex C – Draft letter for HMT

Rt Hon Dawn Primarolo MP
Postmaster General
1 Horse Guards Parade
London
SW1 2HQ

XX January 2007

Dear

Polygamous Marriages and the Benefits System

I am writing to let you know that we are proposing to remove specific provision for the treatment of polygamous marriages in the benefits system. However, as this proposal will mean that we will be treating polygamous marriages differently in the tax credits and benefits systems I am seeking your views before we proceed.

In Great Britain, polygamy is recognised only where the marriages have been performed in accordance with all necessary requirements of the law of the country where the marriage ceremony was celebrated, and the parties to it are domiciled in that country. It is not possible for a person domiciled in Great Britain to enter into a polygamous marriage that will be recognised in British law.

Following a Parliamentary Question from Baroness Cox on 7th November 2006 and a subsequent article in The Sunday People on 12 November, we asked officials to review the current arrangements to see if they were the best possible.

The position, briefly, is that for contributory benefits no dependents increases are payable for any wives where a polygamous household exists, whilst in the income related benefits, benefit can be paid for more than one wife in a polygamous marriage only where British law recognises the marriage and where the general conditions of entitlement for those benefits are met. (Set out in the reply to Baroness Cox at Annex 1).

Whilst the law recognises valid polygamous marriages it nevertheless remains that such marriages are illegal in this country. It has long been government policy to prevent the formation of polygamous households in this country so it seems somewhat ill-judged therefore to make special provision for these marriages in our benefit system. We accept that under current arrangements these households receive less in benefit than under the proposal but we are of the firm view that for current arrangements to be maintained we risk, as demonstrated by the article in the Sunday People, being seen as giving tacit government support for such arrangements.

It is our intention that the husband would only be able to claim for himself and his first wife. They would be paid the couple rate of benefit, whilst other wives would be required to claim as individuals in their own right, and be subject to the

standard conditionality requirements for the particular benefit (Annex 2). This already happens where the polygamous marriage is not recognised in law.

It is estimated there are fewer than 1,000 valid polygamous marriages in the UK, not all of whom are claiming a state benefit. A 'worst case scenario' has been assumed in terms of applicable caseloads across all of the relevant benefits. Total AME costs have been estimated at just under £1m (2007/08).

Our lawyers advise that we have respectable arguments with which to defend the policy rationale for changing the current arrangements as we would be treating polygamous marriages in the same way we treat people in multiple relationships. In previous litigation defending current social security legislation governing the treatment of those in polygamous marriages the Government has successfully described its legitimate aim by reference to the wide discretion that a State has in social matters and to the strong tradition in the UK of monogamous marriage.

We wish to make an announcement as soon as possible following informal consultation with representative groups. The plan is to introduce this change from 6 April 2008 which allows sufficient time for delivering the IT changes, referring the new regulations to the Social Security Advisory Committee, drafting guidance and communicating the changes to customers and staff.

My officials have consulted with other Government Departments who have confirmed that any change to this Department's rules would not impinge directly on theirs. However, the proposed change would introduce some inconsistency between the treatment of polygamous couples in the tax credit system and the benefits system. There may also be a question about the treatment of polygamous marriages in inheritance tax. You may wish to consider a similar approach to polygamous marriages in both these areas so that the Government is seen to speak with one voice on this matter.

Before we go further with this reform to the benefits system, I would be grateful if you would confirm that you are content with our approach and the small AME costs. A reply by [2 weeks from date of letter] would be helpful.

I am copying this letter to John Reid and Lord Falconer

James Plaskitt

Current position as set out in reply to a Parliamentary Question on 17th November 2006

Baroness Cox asked Her Majesty's Government:

Whether welfare benefits are paid in respect of more than one wife in a polygamous marriage in the case of (a) wives in this country; and (b) wives abroad; and, if so, how many recipients there are in each category.

The Parliamentary Under-Secretary of State, Department for Work and Pensions (Lord Hunt of Kings Heath): Regulations to address claimants who are in a polygamous marriage have been in force for some time. For instance, in relation to income support, current regulations were introduced in 1987.

For contributory benefits, no dependants' increases are payable for any wives where a polygamous household exists, and British law recognises those marriages. Where we recognise one of the marriages, any dependants' increases in contributory benefits would be paid only in respect of that one marriage.

Income-related benefits can be paid for more than one wife in a polygamous marriage where British law recognises the marriage and where the general conditions of entitlement for those benefits are met. This would apply where the marriages were conducted in a country that recognises polygamy and in which the parties to each marriage were domiciled at the time of their marriage. The amount of benefit payable includes personal allowances for the male spouse and one partner at the appropriate couple rate. For each other partner, benefit is payable at the difference between the couple rate and the higher rate for a single person. In general, therefore, there is no financial advantage to claiming for those in polygamous marriages.

Increases in income-related benefits are not payable for wives who do not reside in Great Britain.

Any member of a polygamous marriage can claim a contributory or non-contributory social security benefit in his or her own right where he or she satisfies the relevant conditions of entitlement.

No figures are available for the number of claimants in polygamous marriages where income-related benefits are in payment.

Change to the treatment of Polygamous Marriage within the social security benefits system

We propose to 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.

For those polygamous marriages which are in fact monogamous at the time of death of the husband, the sole surviving spouse will continue to be treated as now and will, subject to conditionality, be able to gain derived benefits from his National Insurance contributions.

This proposal promotes the long held aim of government to promote monogamous marriages and prevent the formation of polygamous households. It aligns the treatment of those in polygamous marriages with those in monogamous marriages who have relationships with multiple partners.

Annex D - Lines to take

- Our society values equality between men and women and our laws support this equality in relationships between the sexes. That is why people are not allowed to contract polygamous marriages in this country. Nor do we recognise such marriages when people living here go abroad to contract them.
- In particular, in the context of the cultural and social history of the UK, it is legitimate to favour monogamous marriage over polygamous marriage.
- There is an anomaly in the benefits system that recognises polygamous marriages contracted in another country while the parties concerned were living there. We propose to end this anomaly.
- We believe that a polygamous claimant should not be entitled to receive benefit for more than one wife.
- It no longer makes sense to make special provision for these marriages in our benefit system.
- Our proposed change aligns the treatment of those in polygamous marriages with those in monogamous marriages who have relationships with multiple partners
- I accept that under current arrangements these households receive less in benefit than under my proposal but I am of the firm view that for current arrangements to be maintained we risk being seen as giving tacit Government support for such arrangements.
- In Great Britain polygamy is recognised in law only where the marriages have been performed in accordance with all necessary requirements of the law of the country where the marriage ceremony was celebrated, and the parties to it have the capacity under the laws of their respective domiciles to contract that marriage.
- It is not possible for a person domiciled in Great Britain to enter into a polygamous marriage that will be recognised in British law.
- The Immigration Act 1988 generally prevents a polygamous wife settling in Great Britain with her husband if another wife is already in this country.

Q&A

Why are you making this change?

It has long been government policy to prevent the formation of polygamous households in this country and it not consistent with this policy to continue to make special provision for these marriages in our benefit system.

Why have we got special arrangements for polygamous marriages when they are not recognised as such by UK law?

Where the marriages were conducted in a country which recognises polygamy and in which the parties to each marriage were domiciled at the time of their marriage, they are recognised by UK Law. However, it is not possible for a person domiciled in Great Britain to enter into a polygamous marriage that will be recognised in British law.

Why have second wives been able to receive a special benefit rate?

This is a long standing anomaly which can no longer be justified in the context of the Government's welfare to work initiatives.

How many polygamous marriages will be affected?

It is estimated there are fewer than 1,000 valid polygamous marriages in the UK, not all of whom are claiming a state benefit. The number claiming benefits is small and is decreasing because of changes in the immigration rules from August 1988.

If they are living with a partner why are they able to claim as a single person instead of the top up?

This would occur in the contributory benefits in cases where the polygamous marriage was not recognised in UK law. The husband would claim for the first wife on his claim. Other wives would have to make claims as single people. The top-up only applies to the income-related benefits.

Isn't this change discriminatory?

The Government is not against polygamous marriages but believes the State should not get involved or recognise these arrangements.