

## Submission to DWP Minister – 13 December 2006

### POLYGAMOUS MARRIAGES AND THE BENEFITS SYSTEM

#### Issue:

This submission sets out options for changing the treatment of people who are, or were, polygamously married in the benefits system following Secretary of State's earlier request that officials examine whether the current position is the best possible.

We have worked on the basis that you wish to remove special recognition for polygamous marriages in the benefits system. The proposals you have asked us to consider could be achieved without significant costs but it could be difficult to justify a robust policy rationale if the change was challenged in the Courts. It would also mean that the Department would be out of step with the treatment of polygamous marriages across Government.

We believe, and this is the view of the other Government Departments we have consulted, that the current position is the best possible. The options we have considered are more expensive and would have a weak policy justification if subject to legal challenge.

**Timing:** To meet the revised deadline of today.

#### The options

1. We have looked at the scope for removing the current rules for polygamous marriages in the benefits system. As set out in our update note of 23 November, the **main option** for change would mean that the benefits system would not recognise in any way polygamous marriages even when they had been legally entered into in another country.
2. We have not looked at applying the change to couples married in a country where polygamous marriage is allowed. Such couples would form a **potentially** polygamous marriage but would in practice be monogamous. It would be immensely cumbersome, not to say ludicrous, to treat couples as if they were polygamously married simply because they had married in a country where polygamous marriage was allowed.

#### **Effect of the main option on benefits**

3. The tables at Annex C (i) and (ii) set out the differences between the current position for polygamous marriages (column one), the current treatment of polygamous relationships (column two) and how the main

option (treating all those in an actually polygamous marriage as individual claimants) would differ (column three).

### **Income-related benefits**

4. Currently a single person receiving Income Support (IS) or income based Jobseekers Allowance (JSA [IB]) gets £57.45 per week. A monogamous couple gets £90.10 per week. A man in a polygamous marriage with two wives recognised by UK law gets £122.75 per week (couple rate of £90.10 + £32.65 for the second wife).

5. Under the main proposal for change each member of the polygamous marriage would be treated as a single claimant or, if appropriate, lone parent. This means that a man and two wives in a polygamous marriage would be treated as three single people and would receive a total of £172.35. If one of the wives dies the existing marriage, which is now monogamous, remains under the main proposal as two single people each with an individual claim. They would get £114.90 per week. Each individual would also all be subject to benefit conditionality.

### **Contributory benefits**

6. Under the main option we would remove the existing provisions which recognise those **formerly polygamous marriages** which have become monogamous ie where only one wife survived at the date of a benefit claim. So the only wife in a previously polygamous marriage would no longer be eligible for bereavement benefits on her husband's death or a pension based on her husband's national insurance contributions. In addition the husband would have to claim SP as a single person and his wife would have to claim SP or Pension Credit in her own right.

### **Housing Benefit (HB) and Council Tax Benefit (CTB)**

7. The current HB/CTB system makes an allowance for the second and subsequent wives in a polygamous marriage based on the same rules as for IS and JSA (IB). Under our main option for change a polygamous wife would be treated as a non dependant for HB/CTB purposes. A non-dependant means any one over 18 who normally resides with the claimant. Currently a person is not treated as a non-dependant where she is polygamously married to the claimant. Whether any subsequent partners are treated as non dependants will depend on whether they have any rent liability themselves. The "size criteria" for the main "couple" should be unaffected as it provides for a bedroom for a couple and a bedroom for each adult. There are no variations for polygamous marriages. This would be the same whether the extra

partners are treated as partners, non dependants, boarders or sub tenants. Under the main proposal the non dependant wife would receive IS or JSA (IB) in her own right from which she would be expected to pay a contribution towards her housing costs.

### **Fall back option**

8. We could consider **modifying** the main proposal by treating the polygamous husband and first wife as a couple and insist that the second and subsequent spouse made a separate claim in their own right. This was option one of my original submission of 9 November.

9. This process 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. Of course, having separate claims for a couple and for other members of the valid marriage would normally result in more benefit being paid. It would also increase the unemployment count in respect of those wives who claimed JSA in their own right.

### **Numbers affected and estimated costs**

10. Anecdotal evidence suggests that there are fewer than 1,000 valid polygamous marriages in the UK, not all of whom are claiming a state benefit. For the purpose of the costing a 'worst case scenario' was assumed in terms of applicable caseloads across all of the relevant benefits. The total AME costs of the main option have been estimated as around £1m (2007/08). The fallback option has been estimated at just under £1m. Full details of how these costs have been estimated are at annex A. There will also be additional administration costs (DEL) particularly if all additional wives are claiming in their own right. It has not been possible to produce reliable estimates in the time available and more work will be done on them if you decide to proceed. Some IT changes will be needed. Along with changes to regulations and the development of guidance and staff training the earliest a change could be made would be October 2007.

### **Benefit simplification**

11. From the point of view of benefit simplification the change has the prospect of being simpler. However, in practice we suspect the disruption caused by the need for fresh guidance, learning and development, and the delivery of the new rules for both customers and staff would be disproportionate.

**[Paragraphs 12 to 15 withheld under s42(1) FoI Act]**

## **Other Government Departments**

16. In considering this change we do not wish to compromise the current rules in other departments. Both the Home Office and the Department for Constitutional Affairs have confirmed that any change to our rules would not impinge on theirs. However, both were concerned that a change to the benefit rules would send out mixed messages about the cross Government approach to polygamous marriages. Treasury officials were concerned about potential additional AME costs of a change. However, there were no objections in principle to making a change, although HMT Ministers may not wish to follow suit in respect of tax credits. A note on the tax credits position is at annex B. The Armed Forces Pension Scheme, introduced in April 2005, enables a war widow's payment to be divided between any surviving spouses. Altering the present treatment of polygamous marriages in the benefits system could, therefore, highlight this difference in treatment, too. If you wish to pursue a change it would be wise to seek the views of Cabinet colleagues before proceeding further.

## **Presentation**

17. Both the main option and the fallback option need a robust policy rationale to justify making changes and to diminish the potential for legal challenge. The main thrust of the press article which raised the issue of polygamous marriages was about the cost to the taxpayer of supporting this religious lifestyle. However, you cannot argue that by not recognising polygamous marriages in the benefits system you would save costs.

18. On the one hand, it is possible that requiring wives in a polygamous marriage to claim benefit in their own right could result in polygamous households being worse off. There is some anecdotal evidence that many polygamous households will be from backgrounds where wives would not be expected to engage with the labour market or the benefits system and may actually be discouraged (possibly even prevented) from doing so. On the other, the data from the Labour Force Survey 4 quarters to Spring 2006 shows that Muslims in general are less inclined to be in employment than the rest of the population. In terms of inactivity, while many women from some predominantly Muslim countries are inactive factors such as participation in post-16 education, child bearing and poor English seem to be the most important reasons. We are trying to address the latter through programmes such as Partners Outreach, Narrowing the Gap & Building Futures and expect that DFA & the Cities pathfinders will target inactive women too. Nonetheless the intricacies of the benefit

system might dissuade women from making claims in their own right.

19. There are also presentational considerations if you make changes to the State Pension rules:

- customers of pension age are perceived to be in a vulnerable group;
- to recognise no longer the monogamous status of a formerly polygamous marriage would affect only certain religious/ethnic groups;
- in the current climate this might be viewed as insensitive and/or provocative; and
- could lead to increased appeals and legal challenges.

20. Evidence of the possible behavioural effects is slim so it would be worth consulting on a change in policy in this area. This could include the TUC, the Commission for Racial Equality, the Muslim Council of Britain, the Poverty Alliance and the Child Poverty Action Group as well as other Government Departments.

## **Conclusion**

21. On balance we believe the present treatment of polygamous marriages is the best one. It is the cheaper than the two options you have asked us to consider and is consistent with the approach to polygamous marriages in the rest of Government. There does not seem to be a strong policy justification for the main option for change and lawyers advise that a judicial review of it would be likely to succeed. Making a change also risks complaints that the Government is discriminating against certain religious/ethnic groups. We therefore recommend that you make no change to the current arrangements.

22. If you are content with our recommendation, we can provide you with a draft letter to send to Secretary of State.

## Annex A

### AME Costings

1. This note sets out the AME cost for the proposal to change the treatment of polygamous marriages within IS/JSA, HB/CTB, State Pension (SP), State Pension Credit (SPC) and Bereavement Benefit (BB) to either of the following two options.

- (I) Treat polygamous marriages as polygamous relationships (i.e. treat the parties to the marriage as single people).
- (II) Allow the husband and first wife to claim as a couple but insist on the second and subsequent spouses making a separate claim in their own right. Under this scenario the status quo will be maintained with regard to BB and SP.

No official data exists on the number of polygamous marriages in the UK, or on the number of these families claiming benefit.<sup>1</sup> In the absence of more accurate claimant numbers these costings can only be for illustrative purposes.

2. Anecdotal evidence suggests that there are less than 1,000 polygamous marriages in the UK, not all of whom are claiming a state benefit. For the purpose of the costing a 'worst case scenario' was assumed in terms of applicable caseloads across all of the relevant benefits (see Table 1).

3. The number of claimants is falling due to changes in immigration rules made 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.

*Table 1: Assumed number of claimant polygamous marriages claiming each benefit, 2006/07*

IS/JSA	HB/CTB	SP	SPC	BB
400 families	420+ families	100 families	20 families	10 families

4. For the purpose of the costings in table 2 the polygamous family is assumed to consist of one husband and two wives. For IS/JSA it is assumed that there are at least two children, and that each woman has a minimum of one child<sup>2</sup>. This adds an additional family premium to the

<sup>1</sup> This is with the exception of SPC where we believe there are between 8 and 15 actual and potential polygamous families.

<sup>2</sup> The Pension Service Relationship Validation Unit say that in reality there would probably be more than one child per wife which would increase costs.

IS/JSA paid, as an additional family unit is established under the main option and the fallback option.<sup>3</sup>

*Table 2: Applicable amounts for a husband and two wives without children for IS/JSA and HB/CTB, 2006/07*

Current position	Main option	Fallback option
£122.75	£172.35	£147.55

5. In the case of **HB/CTB** there are a number of complexities around costing either of the two options due to the tenancy agreements requirement,<sup>4</sup> e.g. whether the wives would be treated as dependents or non-dependents under the new scenarios. Furthermore, we have no estimate of the number of polygamous families who receive HB/CTB as an in-work benefit. It is possible that benefit paid may increase, decrease or remain unchanged, and because of this ambiguity, HB/CTB has not been included in the final costings.

6. Presently for **bereavement benefit** a wife in a polygamous marriage may claim BB on the death of her husband *if she is the only surviving wife*. Under the main option, no wife (including those currently claiming) would be able to claim bereavement benefit under any circumstance which implies a cost saving. Under the fallback option the current situation would apply and there would be no change in benefit.

7. For the purpose of the costing it has been assumed that for those 10 cases which were previously claiming BB, they received the £2,000 lump-sum payment and the average amount of BB<sup>5</sup> for all claimants for 52 weeks.

8. Presently for **state pensions** a wife in a polygamous marriage may claim category B pension *if she is the only surviving wife* at the relevant time. Under the main option those who are currently claiming would be unable to do so which implies a cost saving. Again, under the fallback option there will be no change in benefit paid as the status quo will remain.

9. For the purpose of the costing it has been assumed that in the 100 cases which are currently claiming they receive the average amount of category B state pension.

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<sup>3</sup> For the purpose of this costing it is assumed that all relevant families are in the claimant group which has not yet been migrated on to CTC.

<sup>4</sup> A HB/CTB claimant must have a rent liability (or a tenancy agreement) in order to claim. However, when a couple or family claim HB/CTB there is usually only one tenancy agreement for the unit rather than one for each individual.

<sup>5</sup> The average BB includes an average across WPA (which is applicable if there are dependent children) and BA (which is applicable if there are no dependent children). Since this cohort may span those of working and pension age an average has been taken across both, rather than assuming there are dependent children in all cases as with IS/JSA.

10. In the case of **state pension credit**, benefit entitlement will change in a similar manner to that for IS/JSA. Where the second and subsequent wives now receive an additional payment of £60 each (on top of the couple rate), under the main option the family would receive three times the single person rate and under the fallback option they would receive the couple rate added to the single person rate.<sup>6</sup> In both cases the benefit paid would increase. For the purpose of these costings we have assumed that all claimants are entitled to the guarantee pension credit rate.

*Table 3: Applicable amounts for a husband and two wives without dependent children for Pension Credit, 2006/07*

Current scenario	Scenario I	Scenario II
£234.05	£342.15	£288.10

## Results

11. The results for costing scenario (I) are presented in Table 4. Benefit amounts are all up-rated for 2007/08.

*Table 4: Costing I ~ 2007/08*

IS/JSA – <i>additional cost</i>	£1.40m
HB/CTB – <i>ambiguous</i>	-
SP – <i>reduced cost</i>	- £0.50m
SPC – <i>additional cost</i>	£0.12m
BB – <i>reduced cost</i>	- £0.07m
<b>Total cost</b>	<b>£0.95m</b>

12. The results for costing scenario (II) are presented in Table 5. Benefit amounts are all up-rated for 2007/08.

*Table 5: Costing II ~ 2007/08*

IS/JSA – <i>additional cost</i>	£0.87m
HB/CTB – <i>ambiguous</i>	-
SP – <i>no change</i>	-
SPC – <i>additional cost</i>	£0.06m
BB – <i>no change</i>	-
<b>Total cost</b>	<b>£0.93m</b>

<sup>6</sup> It is assumed that they are all individually entitled to receive pension credit under the new scenarios.

## **Annex B**

### **Note on Tax Credits and polygamy**

#### **Working Tax Credit**

1. HMRC believe that at present there may be only three or four families claiming WTC who have additional entitlements by virtue of being polygamous units<sup>7</sup> (though they cannot say whether these families are receiving more or less than they otherwise would).

2. A polygamous unit with children where two parents work is entitled to the same WTC as a couple with children or lone parent on the same income, working the same hours. In a family where two spouses are already working, for each additional spouse who works 16 hours or more, the family is entitled to a further basic element (currently £1665) of WTC. In calculating total family income, all spouses' gross income is included.

3. HMRC believe that it would only be at the lower incomes, and within a relatively narrow range, that families are better off under the current system than they would be under our proposed alternative options, and even then, the difference is not large (around £20 per annum).

#### **Child Tax Credit**

4. Maximum entitlement to Child Tax Credit (CTC) is dependent on the number of children and income only. There could be implications for HMRC if we were to make changes to the benefits system because the tax credit thresholds are dependent on the definition of total family income. This is because under our proposed main option there may be families that become entitled to help with child-care costs despite having one or more parents not in work (as well as one or more in work) but this would need further investigating by HMRC if we decide to proceed with a change.

#### **Example of current system and fallback option**

5. For a polygamous family under the present system, who have four children, where three spouses are working at minimum wage for 16 hours each, entitlements would look like this:

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<sup>7</sup> For tax credit purposes the polygamous unit consists of a "polygamous couple" (a man and a woman married under a law which permits polygamy, who are not separated and where either has an additional spouse) plus any person who is married to either member of that polygamous couple and is not separated from that member.

(No income tax or national insurance contributions would be payable at this level of income)

Yearly gross income 1	4451.2
Yearly gross income 2	4451.2
Yearly gross income 3	4451.2
Total gross income	13353.6
Total WTC entitlement possible	5650
Total CTC entitlement possible	7605
Total net entitlement	10245.57
Total net income	23599.17
Total for household as a whole	<b>£23,599.17</b>

Should two spouses claim as a couple and one as a lone parent (Two children per unit) we would have:

Couple	
Yearly gross income 1	4451.2
Yearly gross income 2	4451.2
Total gross income	8902.4
Total WTC entitlement possible	3985
Total CTC entitlement possible	4075
Total net entitlement	6697.512
Total net income	15599.91
Lone parent	
Yearly gross income 1	4451.2
Total gross income	4451.2
Total WTC entitlement possible	3305
Total CTC entitlement possible	4075
Total net entitlement	7664.456
Total net income	12115.66
Total for household as a whole	<b>£27,715.57</b>

Annex C (i)

<b><i>Current Position Polygamous Marriage</i></b>	<b><i>Current Position Polygamous Relationship</i></b>	<b><i>Main option Polygamous marriage not recognised</i></b>
<p><b>Derived rights to State Pension</b></p> <p>“<b>substitution</b>” – a person who is widowed or divorced can in certain circumstances use their late spouse’s contributions to help them qualify for basic pension</p> <p><b>Category B pension for survivors</b> – a person who has been “widowed” can in certain circumstances be entitled to a Category B pension – both basic and additional pension based on his or her late spouse’s contributions</p> <p><b>Category B pension for married women</b> – a married woman can in certain circumstances be entitled to a basic Category B pension (paid at 60% of the standard rate) based on her husband’s contributions – from</p>	<p>Derived rights to State Pension only arise where there is a valid marriage. Therefore members of a polygamous relationship are unable to claim pensions based on their partner’s contributions</p>	<p>Derived rights to State Pension arise primarily where the polygamous marriage was in fact monogamous at the relevant time. <b>If</b> we were to no longer recognise the monogamous status of the marriage, State Pension (and any associated ADI) would not be payable. Although no data is held on the number of polygamous marriages claiming SP it is thought numbers are low (see annex A).</p>

2010 such pensions will start to become available to men.

All the above are contingent on the existence of a “valid marriage” at the relevant time – that being either:

- a) the point at which the marriage ended or;
- b) in the case of the married woman’s pension, at the point she reaches pension age (currently 60 for women). In order for a potentially polygamous marriage to be “valid” it must be monogamous (ie there is not another wife or husband)

**ADIs**

If there are no children, an ADI is not payable if the marriage is actually polygamous, ie, there is more than one wife. Where there is more than one wife and there are children in the marriage an ADI is payable for one wife only, as determined by the decision maker.

<p><b>Bereavement Benefit</b></p> <p>In order for benefit to be paid there must be a valid marriage at the time of death. Polygamous marriages are not valid marriages therefore if, at the time of death, there is more than one surviving spouse, neither spouse can receive BB.</p> <p>However, if at the time of death the marriage was in fact monogamous, ie, only one (surviving) wife then benefit can be paid.</p>	<p>Members of a polygamous relationship cannot receive the benefit.</p>	<p>If we were to no longer recognise the now monogamous status of these polygamous marriages, the surviving spouse would not receive BB.</p> <p>This could, however, introduce further presentational problems, as on the one hand we would not be paying BB while on the other hand the Ministry of Defence would be paying a war widows pension. This is because the Armed Forces Pension Scheme, introduced in April 2005, also enables a war widow's payment to be divided between any surviving spouses.</p>
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<p><b>Income Support</b></p> <p>Where the claimant has more than one wife, personal allowances are calculated in the following way:</p> <ul style="list-style-type: none"> <li>the personal allowance for couples (the claimant and eldest partner);</li> <li><b>and</b> the difference between the higher rate for a couple</li> </ul>	<p>When a claimant has a relationship similar to marriage with two or more people, none of them can form an unmarried couple. Each member of the relationship is treated as a single claimant or, if appropriate, lone parent.</p> <p>When a claimant has a polygamous relationship, none of the members of</p>	<p>If polygamous marriage units were to be treated the same as the equivalent polygamous relationship unit the members of the family unit would receive more benefit than they can now (see example at para 4 of the submission).</p> <p>Where the polygamous marriage is in fact monogamous they would continue to be</p>
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<p>spouse (whether of the claimant's or of a spouse of the claimant's) are members of the same household.</p> <p>The standard minimum guarantee is made up of a set amount for the claimant and any one spouse (£174.05) of the claimant <b>and</b> an extra amount (£60.00) for any additional spouse (whether of the claimant or that spouse).</p> <p>Additional amounts may also be payable, eg, for severe disability, carers and housing costs dependent on certain conditions being met.</p> <p><i>Savings Credit (SC)</i></p> <p>An SPC claimant can get a SC if at least one member of the polygamous marriage is at least 65 and certain other criteria are met.</p> <p><b>Housing Benefit/Council Tax</b></p>		<p>benefit, but would be subject to work conditionality.</p> <p>Latest information on the numbers of those in a polygamous marriage who are entitled to claim SPC is between 8 and 20. For costing purposes we have assumed a worst case scenario of 20. Claiming as individuals would result in more money being paid in benefit (assuming those within the polygamous marriage satisfy conditionality), although the amount involved overall would be small.</p>
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**Benefit**

A polygamous marriage means any marriage where the ceremony of marriage took place under the law of a country which permits polygamy. Currently the polygamous marriage provisions in the regulations can only apply to such marriages.

A marriage that takes place in a country which permits polygamy would still be classed as a monogamous marriage up until the time the husband takes a second wife.

The family would consist of the claimant, any person to whom the claimant is married and who normally lives in the household and any dependant children for whom the claimant and any partner are responsible

The rules for HB/CTB are broadly the same as IS. The amount paid

HB/CTB legislation/regulations make no provision for “polygamous relationships”.

Members of a “polygamous relationship” would need to decide:

- (a) who the claimant will be;
- (b) who is (or whether there will be) the partner;
- (c) who is the member of the family
- (d) who would be regarded as a non-dependant and be required to make a contribution towards the household expenses.

It will be for the local authority to make the decision.

A non-dependant means any one over 18 who normally resides with the claimant. A person is not treated as a non-dependant where the claimant is polygamously married, any partner of his and any child or young person who is a member of the household and for whom her or one of his partners are responsible.

It will depend how the family unit is defined as to whether any subsequent partners are treated either as non-dependants or have any rent liability themselves.

The “size criteria” for the main couple should be unaffected as it provides for a bedroom for a couple and a bedroom for each adult. There are no variations for polygamous marriages. This would be the same whether the extra partners are treated as partners, non dependents, boarders or sub tenants

Therefore there could be issues around rent liabilities should the wives who are not the one in the couple with the husband claim HB

<p>as a personal allowance and for each spouse is dependent on age. For example (in HB), where none of the partners are aged over 60 the personal allowance is (currently) £90.10, whereas where at least one of the members of the polygamous marriage is aged 65 or over the personal allowance is (currently) £197.65.</p> <p>The claimant and one wife would receive the normal applicable rate for a couple, applicable amounts for children and any family premiums, or other premiums as appropriate. An element would be payable for the other “wives”. This would be the difference between the couple rate (£90.10) and single rate (£57.45), currently £32.65 per week. (working age rates).</p> <p>The equivalent pension age rates for each additional spouse of a polygamous marriage currently would be £60.00 (under 65) and</p>		<p>in their own right as sub-tenants or boarders. It might be very unlikely that benefit in this situation would be paid but it is not impossible and may have cost implications.</p>
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£65.70 (for those over 65).  Polygamously married spouses cannot be regarded as non-dependants.		
<b>Income-based Jobseekers Allowance</b> As Income Support above	As Income Support above	As Income Support above

### Annex C (ii)

<b>Benefit Position</b>	<b>Co-habiting couple</b>	<b>Monogamous marriage</b>	<b>Polygamous marriage</b>	<b>Polygamous relationship including a married couple</b>	<b>Polygamous relationship</b>
<b>Income related</b>	Couple rate	Couple rate	Couple rate plus addition for extra spouse	Couple rate plus single rate for each other person.	Three or more single people
<b>Contributory</b>	Two single people	Couple rights	Two single people unless actually monogamous when couple rights apply	Couple rights + single for each other person	Three or more single people