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EXECUTIVE SUMMARY

INTRODUCTION (CHAPTER 1)

This is a review of the Orphan's Contributory Allowance (OCA) and Orphan's Non-Contributory Pension (ONCP) which was undertaken as part of the Department's Expenditure Review Programme. The focus of the Review is to examine three fundamental issues as a means of analysing the operation of the schemes, namely

(a) What are the objectives of the payments?

(b) Have those objectives been achieved?

(c) What is their future direction?

The terms of reference for the Review are set out at section 1.5

HISTORY AND ADMINISTRATION OF THE SCHEMES (CHAPTER 2)

The Widows' and Orphans' Pensions Act 1935 introduced separate contributory and non-contributory schemes for both widows and orphans. Since then (and particularly in recent years) the definition of 'an orphan' as laid down in the governing legislation has been expanded quite considerably. This has led to more children becoming eligible for the payments as it is now possible for a child to qualify when both of his/her parents are alive and known (sections 2.1 to 2.4).

Between 1990 and 2002 the numbers in receipt of OCA increased by 134 per cent and expenditure on the scheme increased by 573 per cent. The numbers in receipt of ONCP increased by 822 per cent over the same period. Expenditure on ONCP increased by 1,086 per cent between 1995 and 2002 (sections 2.5 to 2.8).

EFFICIENCY AND EFFECTIVENESS (CHAPTER 3)

The administration of the OCA and ONCP schemes is combined with the section dealing with Widow/er's Contributory Pension and Widow/er's Non-Contributory Pension in the Pension Services Office. The Review puts forward a number of proposals to improve the efficiency of claim processing procedures (sections 3.2 to 3.5). Some of these proposals have already been implemented.

The scheme effectiveness is judged in relation to the adequacy of payment and targeting of the schemes. The rates of OCA and ONCP are substantially higher than other social welfare payments in respect of children and also exceed the weekly cost of raising a child as estimated by the Combat Poverty Agency. Therefore, it is considered that the objective of providing income support has been fully met and even exceeded and that OCA and ONCP contribute to reducing the risk of a child in the target population living in poverty (section 3.6.1).

It is difficult to assess the number of children who may have a n entitlement to OCA or ONCP. If one takes the number of children in the care of Health Boards (4,510 at end of December 2001), as an element of the target population, it would appear that the scheme is not being availed of by all who are entitled to it. In view of the scheme objective to provide income support for children who have no other means of support, it is doubtful if children in care should form part of the target population (section 3.6.2).

A comparison of OCA and ONCP with equivalent schemes in other countries suggests that our schemes are far broader in scope. Similarly, the rate of payment, particularly compared with that of the UK, is significantly higher (section 3.7 and Appendix B).

POLICY ISSUES (CHAPTER 4)

The primary objective of OCA and ONCP is to provide income support in respect of children whose parents are unable to provide for them. The payments are not intended to provide compensation for the loss of parental care. This objective is compatible with the Department's Mission Statement and Statement of Strategy as well as the broader context of Government policy (sections 4.2 and 4.3).

The original purpose of OCA and ONCP was to provide for children whose parents were deceased. Subsequent scheme expansion is intended to cover situations whereby parents abandoned or were unable to care for their children in circumstances which are not severe enough to warrant Health Board intervention (section 4.4). In situations where a child is placed in foster care a Foster Care Allowance (FCA) is paid to the foster carer in respect of the child.

Since, the widening of the legislative definition of "orphan" in 1995 there has been an increasing number of claims in respect of children in foster or residential care. This has resulted in the payment of OCA or ONCP to many foster parents who are also in receipt of FCA in respect of the child. Continued payment under both schemes raises serious equity concerns and contributes to the perception of a two-tier caring system. The Group considers that the existing legislation should be amended to provide that neither OCA nor ONCP is payable in respect of children who are in the care of another State agency (section 4.4).

Administrative complexities in the treatment of applications have arisen due to the lack of definition of certain terms within the legislation governing the schemes (section 4.5). The Group proposes changes to the legislation to address these issues. It is also proposed that OCA and ONCP payments be made only to the guardian, even where the child is aged over 18, except in exceptional circumstances (section 4.6).

In addition, the Group proposes that the Liable Relative Provisions should be extended to include circumstances in which OCA or ONCP is in payment but at least one of the child's parents is alive and known (section 4.7). It is recognised that children who are not being cared for by their parents are a particularly vulnerable group (section 4.8).

The appropriate rate of payment is examined and the objective of the scheme is compared with Child Dependent Allowance, which is a payment made in respect of children of social welfare recipients. In addition, administrative inconsistencies between the schemes were examined and it is proposed that the practice of paying CDA with OCA and ONCP should cease but that OCA and ONCP should be considered as analogous to CDA for the purpose of receiving Back to School Clothing and Footwear Allowance (sections 4.9 to 4.11).

The current situation where a recipient of OCA or ONCP is entitled to receive overlapping payments is an exception to the general rules applied to social welfare recipients and it is proposed that it be discontinued (section 4.12).

It is considered that OCA and ONCP should not be included in any assessment of the guardian's income for Fuel Allowance. However, OCA and ONCP should not be qualifying payments for any other social welfare allowances in their own right (section 4.13).

Adoptive parents are currently prohibited from receiving OCA or ONCP in respect of their adopted children. It is proposed that OCA and ONCP should continue in payment to adoptive parents if either of the payments had been in place prior to the adoption (section 4.14).

Options for alternative scheme titles were examined in view of the negative connotations of the term 'orphan'. The most suitable names proposed were Child (Contributory) Pension and Child (Non-Contributory) Allowance (section 4.15). However, the Group recognised that any such title may contribute to the confusion as to the purpose of the payments.

Following extensive discussions with the Department of Health and Children and Department of Finance in relation to the administrative and operational arrangements for the payment of Orphans payments and Foster Care Allowance, the report has been updated, to reflect the outcome of these discussions, and finalised in March 2003[1].

[1] *Undertaken by Elaine Soffe, Planning Unit and Don Watts, PSO.*

Current Position – March 2003

Following the publication of the 'Report of the Working Group on Foster Care' by the Department of Health and Children in May 2001, the Government approved proposals to provide for significant increases in the total amount payable in respect of children in foster care, in line with the recommendations made in the Report. Under the new arrangements foster parents receive a much higher single payment from the Health Board and no longer have to apply for discretionary payments from the Health Boards.

Orphan payments are currently made directly to the health board in respect of, and for the benefit of, the foster children. The Health Board then combines the orphan payment with the Foster Care Allowance to make a total payment of €281.50 per week for children aged under 12 and €308.50 for children aged 12 and over. This is in line with the recommendation of both Working Groups that 'orphan's allowances and pensions should not be paid for children in respect of whom foster care allowances are being paid' and that children in foster care should be the responsibility of one State agency.

As these arrangements have proved to be somewhat cumbersome and have given rise to issues for all those concerned, it is now proposed formally to exclude children in respect of whom Foster Care Allowance is being paid, from eligibility for an Orphan's payment from the Department of Social and Family Affairs. This means that the health boards will no longer make an application to the Department for an orphans payment in respect of a child in foster care. Foster parents, however, will continue to receive the same level of allowance which will be entirely funded by the health board.

The revised arrangements will be considered in the context of the Social Welfare Bill, 2003.

CONCLUSIONS AND FUTURE DIRECTION (CHAPTER 5)

The Group considers that the objective of the scheme is to provide income support for children whose parents have died or are unable to provide for them. Therefore, this objective is used as the basis for developing the future policy and direction of these schemes. The policy and administrative proposals made in the Review are summarised below:

Future Policy Direction

- where a child is being wholly maintained directly or indirectly by another State agency, such as foster care or residential care, OCA or ONCP should not be payable. It is proposed that the condition "*or in the care of another State Agency*" should be added (after "step parent") to the residency condition[2];
- the administrative practice whereby a CDA is paid in respect of a child for whom an OCA or ONCP is in payment should cease[3];
- OCA and OCNP should be regarded as analogous to CDA for the purpose of BSCFA;
- standard overlapping provisions should apply to recipients of OCA and ONCP;
- the issue as to whether OCA and OCNP should be regarded as means in the assessment of family income for social welfare purposes requires further examination;
- Liable Relatives provisions should apply to OCA and ONCP;
- legislative definitions should be prescribed for 'guardian' and 'abandoned';
- the word "refused" should be removed from the definition of an orphan for the purpose of these schemes and the phrase "has failed to provide" be replaced with "is unable to provide";

- payment of OCA or ONCP should continue on adoption of the child; and
- the titles of the schemes should be changed.

Organisational Issues

- Widows and Orphans Section, PSO, should be re-organised, to enable some staff to deal exclusively with OCA and ONCP cases[4];
- options to establish a link with Child Benefit Section should be explored;
- claim registration procedures should be reviewed; and
- new sets of guidelines have been drawn up for Deciding Officers and Social Welfare Inspectors.

Control Issues

- OCA and ONCP should be paid only to a guardian, except in exceptional circumstances;
- claims from children 16 years and from 18-22 year olds in full time education should be afforded very close examination; and
- enhanced review procedures should be implemented.

[2] *The Social Welfare Bill, 2003 includes a proposal to ensure that the health boards will have complete responsibility for children in foster care. The situation of children in residential\community homes will be considered at a later stage.*
[3] *This proposal has already been implemented.*
[4] *This proposal has already been implemented.*

Efficiency - Performance Indicators

- targets should be set for claim processing times and monitored regularly;
- targets for the review of claims should also be set and monitored regularly;
- the adequacy of the payment should be reviewed at regular intervals; and
- the allocation of dedicated staff will be a more effective use of human resources.

It is considered that the proposals put forward in this Review will improve the efficiency of the schemes and ensure that the schemes are administered in a more consistent fashion, thereby providing an improved service to DSFA customers.

CHAPTER 1

Introduction

1.1 Background to the Expenditure Review Programme

The Coordinating Group of Secretaries established under the Strategic Management Initiative identified a:

"need for a systematic analysis of what is actually being achieved by the €15.24 billion (£12 billion) in Government resources spent annually"

and recommended that:

"agreements between the Department of Finance and individual Departments on delegated authority for programme expenditures (should) provide for a schedule of reviews of expenditure to be carried out during the currency of the agreement, with the aim of ensuring that each programme of expenditure is subject to a thorough review at least once every three years."[5]

The Government accepted this recommendation and approved a programme of reviews with the twin aims of providing:

1) a systematic analysis of what is actually being achieved by expenditure in each spending programme; and

2) a basis on which more informed decisions can be made on priorities within and between expenditure programmes.

1.2 Structure of the Programme

A Steering Committee chaired by the Secretary-General of the Department of Finance has been established to oversee the Civil Service wide series of Programme Evaluations. A joint Steering Group from the Departments of Finance and Social and Family Affairs has been established to oversee this Department's reviews.

In general, reviews in this Department are undertaken by Working Groups comprising representatives from the policy and executive sections of the Department of Social and Family Affairs, the Department of Finance and other Departments as appropriate.

[5] *Delivering Better Government - A Programme of Change for the Irish Civil Service,* (1996), p. 60.

These Working Groups report to the Steering Group which is chaired by the Secretary-General and is composed of the Working Group Chairs and other officers at Assistant Secretary, Principal and Assistant Principal levels from both this Department and the Department of Finance.

The Working Group to review social welfare payments in respect of orphans was established and held its first meeting in July 2000. The Group met on four occasions and submitted its report to the Steering Group on 29 January 2001. The members of the Working Group[6] were:

Orlaigh Quinn (Chair)	Planning Unit
Dearbháil Nic Giolla Mhicíl (Secretary)	Planning Unit
Mary O'Gorman	Legislation Unit
Seamus O'Fearghail	Pension Services Office
Martin Keville	Pension Services Office
Christine McKenzie	Pension Services Office

Following extensive discussions with the Department of Health and Children and Department of Finance in relation to the administrative and operational arrangements for the payment of Orphans payments and Foster Care Allowance, the report has been updated, to reflect the outcome of these discussions, and finalised in March 2003[7].

1.3 Background of this Review

Payments in respect of orphans were chosen by the Department of Social and Family Affairs for evaluation under this expenditure review programme in view of the disproportionate growth and expansion in these schemes. This is in keeping with the Department's first formal Statement of Strategy under the Strategic Management Initiative. The Statement of Strategy stated that policy development and review will cover the preparation of a strategic framework for the future development of social protection schemes, which includes a prioritised review of the effectiveness of existing support programmes as well as addressing policy issues which demand urgent attention.[8]

In addition, these schemes were selected in the acknowledgement that changes in the statutory definition of 'orphan' have resulted in scheme growth that may be inappropriate, leading to a perception that the schemes are no longer targeted in the most effective manner.

This Review considers the purpose and development of the schemes, both in terms of their current operation and in the wider context of child care provision by other State agencies.

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[6] *While the Department of Finance was not represented on the Working Group, it provided observations on an earlier draft. The Department of Health and Children were also provided with an opportunity to present their views.*

[7] *Undertaken by Elaine Soffe, Planning Unit and Don Watts, PSO.*

[8] *Open, Fair and Caring - The Strategic Management Initiative of the Department of Social Welfare (1996) p.3*

A fundamental issue which the Review examines is the role of payments to orphans as income maintenance as opposed to a compensation for parental loss or abandonment.

1.4 Focus of Review

This Review focuses on the Orphan's Contributory Allowance (OCA) and Orphan's Non-Contributory Pension (ONCP), which are paid to a guardian for the benefit of a child in the following circumstances:

a) *where both parents are dead, or*
b) *where one of the parents is dead, unknown, has abandoned or has refused or failed to provide for the child and the other parent is unknown, or has abandoned or has refused or failed to provide for the child.* [9]

The vast majority of studies in relation to orphans and abandoned children focus on their emotional and care needs in the wider context of childcare policy. This broad context comes within the remit of the Department of Health and Children which has overall responsibility for child care policy. In this regard, it is considered that it is not appropriate for this Working Group to examine policy in this area but to focus on the social welfare and income needs of these children. However, it is recognised that liaison with the Department of Health and Children is essential in addressing many of the issues discussed in this Review.

Therefore, the focus of this Review is to examine three fundamental issues as a means of analysing the operation of OCA and ONCP:

(a) What are the objectives of the payments?

(b) Have those objectives been achieved?

(c) What is their future direction?

This Review makes a number of proposals and lists possible options, to provide a basis for more informed decisions and to improve the efficiency and effectiveness of OCA and ONCP.

1.5 Terms of Reference

The terms of reference of the Review are to examine OCA and ONCP with a view to:

a) identifying the scheme objectives;

b) considering the extent to which the objectives remain valid and compatible with the mission and current strategy of the Department;

c) evaluating the extent to which the objectives have been achieved;

[9] *The Social Welfare Act 1995 defines the qualifying child.*

d) establishing the level and trend of
   i) the cost, and
   ii) the staffing resources associated with the schemes;

e) commenting on how efficiently and effectively the schemes have achieved their objectives;

f) assessing the impact of the schemes on poverty;

g) evaluating the degree to which the objectives warrant the allocation of public resources on a current and on-going basis, and if so, whether the current allocation is appropriate;

h) examining the scope for alternative policy and/or organisational approaches to achieving the objectives on a more efficient and effective basis;

i) examining the current qualifying criteria and controls to ensure the schemes are operating effectively;

j) specifying suitable performance indicators which can be used to monitor and evaluate the schemes in the future, and

k) the report should be poverty proofed.

1.6 Methodology

In order to identify and examine the objectives of OCA and ONCP and to assess their future role, the following methods were utilised:

- An historical analysis of the schemes based on the *Department's files, Dáil Debates and Parliamentary Questions (PQs)* was carried out. These sources describe the initial objectives of the schemes and their development over time, since being established in 1935. The major changes in the schemes were charted and changes in the original objectives were examined.

- *Meetings* were held with the Child Care Policy Section, Department of Health and Children to establish the policy in relation to children in care and the operation of the Foster Care Allowance.[10] *Meetings* were also held with the Foster Care Association and the Combat Poverty Agency to obtain their views on the schemes.

- *Submissions* were invited and received from relevant parties, including Comhairle, the Health Boards and other interested people.

- *Statistical sources* were used to add a quantitative element to the Review and to highlight changes over time, i.e.

[10] *A Foster Care Allowance is paid by the Health Boards in respect of children in foster care.*

- Department of Social and Family Affairs *(Statistical Information on Social Welfare Services*, *Statistics compiled by the Pension Services Office)*
- Department of Health and Children (*Survey of Children in Care)*.

- A review of *international social welfare provision* in this area was also carried out.

- Relevant *literature* was reviewed in order to study current policy.

1.7 Review Content

Chapter 2 briefly outlines the legislative history of the schemes and examines the development of the current schemes. Chapter 3 deals with issues relating to efficiency and effectiveness. Chapter 4 examines the overall purpose of the schemes and relevant policy issues. Chapter 5 summarises the main issues of this Review and presents the conclusions and proposals of the Group as well as options for the future.

CHAPTER 2

History and Administration of the Schemes

2.1 Introduction

The Widows' and Orphans' Pensions Act 1935 introduced separate contributory and non-contributory schemes for both widows and orphans. Prior to that, the sole source of financial support available to widows and orphans was the Home Assistance Scheme.

Since the inception of the orphan schemes there have been increases in rates of payment on foot of budgetary initiatives. The main legislative change has been in the definition of 'orphan' at various stages.

This chapter presents a brief outline of the legislative changes through the development of the schemes over the last ten years. The current schemes and their administration are also presented. The following issues are examined

- History of the Schemes
- Legislative Changes
- Current Schemes
- Applications and Awards
- Number of Recipients
- Rate of Payment
- Scheme Expenditure

2.2 History of the Schemes

In 1935, the Oireachtas introduced the Widows' and Orphans' Pensions Bill to provide for contributory and non-contributory pensions. The stated purpose of the Bill was to:

"cover the risk of death by assisting widows and orphans who on the death of the breadwinner have been left without means of subsistence and who in the nature of things are frequently not in a position to secure their own livelihood."[11]

In the course of the Dáil Debate on the Bill, the Minister stated that:

"The one great value [I see] in this Bill is that when the House finally passes the measure we shall have got the principle of widows' and orphans' pensions inserted in the State scheme of social services..."[12]

[11] *Dáil Debate, 4 June 1935, column 2234*
[12] *It was the then Minister for Local Government and Public Health, Mr. O'Ceallaigh TD who introduced the Bill.*

Therefore, the purpose of the Act was to provide a benefit for women and children who were deemed to have limited means of support following the death of the principal earner. For the purposes of the Act, an 'orphan' was defined as "*a child both of whose parents are dead"* while a child was defined to include:

"a step-child, and in relation to a man, an illegitimate child, either of himself or his wife, who was living with him at the time of his death and, in relation to a woman, includes an illegitimate child of such woman who was living with her at the time of her death."[13]

The Act provided for an Orphan's Contributory Allowance and an Orphan's Non-Contributory Pension, which would be payable to the guardian or

"to some other person appointed by the Minister for the benefit of the child."[14]

Prior to the 1935 Act, provision for widows, their children and orphans was made under the Home Assistance Scheme. The Report of the Poor Law Commission in 1927 raised public awareness in relation to the inadequacy of poor relief and the fact that a widow was:

"compelled to parade her poverty every week at the office of the Assistance Officer." [15]

The Commission favoured the introduction of a Mothers' Pension payable by the State:

"We received a considerable amount of evidence in favour of removing destitute widows with children from the purview of the Poor Law. We are in favour of a scheme of Mothers' Pension payable by the State."[16]

The first scheme of widows' and orphans' pensions in Britain was introduced in an Act of 1925. This development led to attention being focused on the issue in Ireland. The British scheme was contributory based and closely interlocked with the older scheme of National Health Insurance. This type of scheme was found to be the most suitable in Britain (i.e. rather than a means-tested scheme). This was:

"due in the main to the large proportion of the population which was already compulsorily insured for health purposes."[17]

The Minister for Local Government and Public Health appointed a Committee of Inquiry into Widows' and Orphans' Pensions to examine these issues in Ireland. In 1933 the Commission completed its report as to a suitable scheme of Widows' and Orphans' Pensions and its possible cost to the State. The result was as follows:

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[13] *Widows and Orphans Pension Act (1935) Section 3(1)*
[14] *The term 'guardian' was not defined in the Act.*
[15] *Farley, D. (1964) Social Insurance and Social Assistance in Ireland, p.60*
[16] *Report of the Commission on the Relief of the Sick and Destitute Poor (1927) in Farley, D. (1964)*
[17] *First Report of the Department of Social Welfare 1947-1949 (1950), p.34*

"The majority reported in favour of a non-contributory scheme to be financed entirely out of central funds; a minority report favoured a contributory scheme confined to wage-earners and a second minority report was against the establishment of a separate scheme altogether and favoured the distribution of any State relief for widows by augmenting the home assistance administered by Public Assistance Authorities."[18]

The distinguishing feature of the scheme introduced in the Widows' and Orphans' Pensions Act of 1935 was that it:

"embodied both the contributory and the non-contributory principles."[19]

The Minister (on introducing the Bill) described the introduction of a contributory scheme as being:

"In conformity with the principle which is now generally accepted that the extension of social services is best pursued along the lines of compulsory contributory insurance…"[20]

The contributory scheme was designed to cover those people already insured for health insurance as follows:

"Every person who is at present insured for health insurance will become insured for widows' and orphans' pensions and the beneficiaries will be the future widows and orphans left by these persons." [21]

Although, the scheme was framed primarily as one of contributory insurance, it was:

"found desirable……to include a system of non-contributory pensions, so that the coverage would be as extensive as possible."[22]

In that regard, the scheme of non-contributory pensions subject to a means test, was introduced to provide for the following categories

- the survivors of persons who would have been insurable under the contributory scheme if it had been in force earlier;
- the survivors of persons who, though insured, had not a sufficient number of contributions paid to qualify for the payment of a contributory pension; and
- the survivors of certain small holders.

[18] *Farley, D. (1964) Social Insurance and Social Assistance in Ireland, p.61*
[19] *First Report of the Department of Social Welfare 1947-1949 (1950), p.34*
[20] *Dáil Debate, 4th June 1935 column 2234*
[21] *Dáil Debate, 4th June 1935 column 2237*
[22] *Department of Social Welfare (1949) White Paper Containing Government Proposals for Social Security, p.6*

2.3 Legislative Changes

Since 1935 the most significant change to the legislation governing OCA and ONCP has been in the broadening definition of the term 'orphan'. These changes are briefly outlined in Table 2.1 and are described in more detail in Appendix A.

Table 2.1 Summary of Legislative Changes, 1935 – 1995

Legislation	Feature
Widows' and Orphans' Pensions Act, 1935	Contributory and Non-Contributory Pension Schemes introduced for Widows and Orphans. Qualified child up to age 14*.
Social Welfare (Insurance) Act, 1952	Definition of 'orphan' expanded to include children both of whose parents had died and illegitimate** children whose mother had died and whose father is dead or unknown." Qualified child up to age 16.
Social Welfare Act, 1978	Definition of 'orphan' expanded to include children whose mother died while in receipt of Deserted Wife's Benefit or Deserted Wife's Allowance and whose father does not wholly or mainly maintain him. Qualified child up to age 16.
Social Welfare (Consolidation) Act, 1981	The 1978 inclusion was replaced with 'a child one of whose parents are dead and whose surviving parent has abandoned him/refused/failed to provide for him.' Qualified child aged up to 18 or aged up to 21 if in full-time education for WCP, WNCP, and ONCP.
Social Welfare Act, 1992	Definition of 'orphan' expanded: one parent dead or unknown and the other parent unknown or having abandoned or refused or failed to provide for the child.
Social Welfare Act, 1995	Definition of 'orphan' expanded: one parent dead or unknown or has abandoned or refused or failed to provide for the child and the other parent unknown or having abandoned or refused or failed to provide for the child.

* The age of payment was set at the then minimum age-limit for school attendance and extended to age 16 if the child continued in further education.

** The Status of Children Act (1987) provided for the abolition of the concept of legitimacy and illegitimacy.

It is clear from Table 2.1 that the definition of 'orphan' has broadened considerably, particularly in recent years. Before 1992 one of the child's parents had to be dead or unknown in order for that child to be eligible for a payment. In 1995 this definition was extended to allow a claim on behalf of a child with both parents alive and known.

It should be noted also that while the term 'orphan' is defined in detail, terms such as 'abandoned or refused or failed to provide' are not so defined, thereby leading to complexities in processing and deciding entitlement.

2.4 Current Schemes

A brief description of the current schemes is as follows:

For the purposes of OCA and ONCP a qualified child is one[23] -

(a) both of whose parents are dead, or

(b) one of whose parents is dead, unknown, has abandoned or has refused or failed to provide for the child and whose other parent -

(i) is unknown, or
(ii) has abandoned or has refused or has failed to provide for the child,

where that child is not normally residing with a step-parent or with a person who is married to and living with that step-parent.

In order for a child to qualify for OCA the PSRI contribution condition must be satisfied, i.e. there must have been 26 weeks PSRI paid at any time by a parent or step parent.

To qualify for ONCP the child must be living in the State and satisfy a means test. There is no means test of the guardian. The means assessed are any income the child has, or property or an asset, which could provide an income. The actual income from investments and money in a savings account is not taken as the child's means. Instead the following investment items are added together

- Cash value of investments and property
- Money in a savings account
- Cash-in-hand or in a current bank account

and assessed as follows

- first €12,697.38 of savings and investments is disregarded
- the next €12,697.38 is assessed at €1.27 per week per €1,269.74
- the next €12,697.38 is assessed at €2.54 per week per €1,269.74

and

- amounts over €38,092.14 are assessed at €5.08 per week per €1,269.74.

[23] *Social Welfare Act, 1995 Section 20(1)*

A claim for OCA/ONCP cannot be made for a child living with a step-parent. Both OCA and ONCP are payable until the child reaches age 18 or until age 22 if s/he is in full-time education.

The current rate of OCA and maximum rate ONCP is €97.00 per week (January 2003). Payment is made directly to the guardian by means of a personalised payable order or electronic fund transfer, according to their wishes. The money is paid on behalf of the child and is not regarded as taxable income for the guardian.

Occupational Injuries Benefits are special payments for people who are injured in the course of their work or who contract an occupational disease. There are also payments available to the survivors of people who die as a result of an accident at work or due to a disease contracted at work. One of these payments is an Orphan's Pension which may be paid for a child where the parent, step-parent or person who supported the child (ren) dies as a result of an accident at work or an occupational disease or if s/he was getting a Disablement Pension assessed at 50% or more at the time of his/her death. The orphan's guardian should claim the pension. The current rate of payment is €99.90 per week (January 2003).

2.5 Applications and Awards

The number of applications for OCA and ONCP has been increasing over the past number of years. The number of applications received each year since 1990 is presented in Table 2.2.

Table 2.2 Number of Applications Received and Claims Awarded, 1990 – 2002

Year	Applications for OCA & ONCP	% Change on Previous Year	No. of Claims Awarded	Awards as a % of Applications
1990	206		151	73.3
1991	226	9.7	180	79.6
1992*	251	11.1	224	89.2
1993	259	3.2	210	81.1
1994	285	10.0	228	80.0
1995**	327	14.7	276	84.4
1996	324	-0.9	271	83.6
1997	371	14.5	291	78.4
1998	428	15.4	364	85.0
1999	592	38.3	362	61.1
2000	1,082	82.8	545	50.4
2001	894	-17.4	915	102.3
2002	967	8.2	604	62.5

* Change in legislation. Only one parent had to be dead or unknown, with the other having abandoned or failed to provide for the child.

** Further change in legislation. No requirement for either parent to be dead, both parents can be alive, and have abandoned or refused or failed to provide for the child.

Overall there has been an increase of approximately 369 per cent in the numbers of applications received for OCA and ONCP since 1990. The number of claims awarded has increased by 300 per cent over the same period.

As part of this Review, applications for OCA and ONCP on hand at 3 different points in time were sampled in order to determine the status of the guardians.[24] The results are presented in Table 2.3.

[24] *The samples were quite small and as such the figures should only be considered as an approximation of the actual situation.*

Table 2.3 Status of Guardian at Time of Application for OCA and ONCP*

Guardian	1994 %	1999 %	2000 %
Foster Parent	2.7	3.0	57.1
Aunt	29.7	33.3	11.4
Sibling	13.5	33.3	17.1
Grand Parent	37.8	24.2	8.6
Self	0.0	0.0	2.9
Step-Parent	2.7	0.0	0.0
Other (inc. not specified)	13.5	6.0	2.9

*This table deals with applications for OCA and ONCP.
Not all of the applicants would have been awarded a payment.

The most significant change has been in the number of foster parents making applications for OCA and ONCP which has increased dramatically since 1999.[25] In contrast to this the number of grandparents making applications has decreased significantly. It is estimated that approximately 7 per cent of the applications received in 2000 were made on the basis of both of the child's parents being deceased.

2.6 Number of Recipients

The numbers in receipt of OCA and ONCP have increased substantially since 1990 as shown in Table 2.4.

[25] This increase is primarily due to the fact that the 1995 change in legislation means that many children in foster care meet the statutory definition of an 'orphan' and awareness of this situation has been raised over the past couple of years.

Table 2.4 Number of Recipients of OCA and ONCP, 1990 - 2002

Year	OCA	% change on previous year	ONCP	% change on previous year	Total	% change on previous year
1990	723		144		867	
1991	697	-3.60	143	-0.69	840	-3.11
1992	698	0.14	172	20.28	870	3.57
1993	675	-3.30	223	29.65	898	3.22
1994	709	5.04	237	6.28	946	5.35
1995	765	7.90	299	26.16	1,064	12.47
1996	808	5.62	340	13.71	1,148	7.89
1997	821	1.61	393	15.59	1,214	5.75
1998	886	7.92	531	35.11	1,417	16.72
1999	956	7.90	617	16.20	1,573	11.01
2000	1,148	20.08	749	21.39	1,897	20.59
2001	1,528	33.10	1,189	58.74	2,717	43.23
2002	1,690	10.60	1,328	11.69	3,008	10.71

Between 1990 and 2002 the numbers in receipt of OCA and ONCP increased by 134 per cent and 822 per cent respectively. Overall the number in receipt of OCA and ONCP has increased by almost 247 per cent since 1990. This is a dramatic increase when compared with the number of children in respect of whom Child Benefit is paid, which actually decreased by 11 per cent over the same period.

The increase may be explained by several factors, namely, legislative change to the definition of an 'orphan' for the purpose of these schemes, increasing awareness of the availability of the schemes and social changes such as increased family breakdown. In addition, the policy of the Health Boards in relation to placing children in care has changed significantly so that a more family-oriented approach now prevails. This means that parents and children receive greater supports within the family setting. Children who cannot/do not live with their parents are often placed with other family members (where this is possible and in the best interest of the child) rather than taken into the care of the State. This shift in policy explains the huge reduction in the number of children in the care of the Health Boards (from approximately 10,000 children in 1970 to 4,510 in 2001). It may also be one of the factors contributing to the increasing numbers in receipt of OCA and ONCP, as many of these children may have been placed in State care in the past.

The annual percentage increase in the number of ONCP recipients is generally significantly higher than that for OCA. Although it is necessary for one of the parents to have paid 26 PRSI contributions in order to qualify for the contributory payment, insufficient contributions have been paid in many of the applications received. In cases where the father is unknown and/or his name does not appear on the child's Birth

Certificate, only the mother's contribution record can be considered. All claims for OCA, which are rejected because there are insufficient contributions paid, are automatically considered for entitlement to ONCP. However, in spite of this increase in the number of recipients of OCA and ONCP the schemes are still relatively small when viewed in the context of the entire social welfare system.

2.7 Rate of Payment

Payment rates have increased in line with other social welfare payments and are detailed in Table 2.5.

Table 2.5 OCA and ONCP Weekly Payment Rates, 1990 - 2003

Year	OCA Rate €	% change on previous year	maximum ONCP rate €	% change on previous year
1990	44.44		38.09	
1991	46.22	4.00	39.62	4.00
1992	48.12	4.12	41.27	4.17
1993	49.77	3.43	49.77	20.62
1994	51.30	3.06	*	*
1995	52.57	2.48	*	*
1996	54.09	2.90	*	*
1997	57.90	7.04	*	*
1998	61.71	6.58	*	*
1999	65.52	6.17	*	*
2000	70.60	7.75	*	*
2001	80.80	14.45	*	*
2002	91.00	12.60	*	*
2003	97.00	6.59	*	*

* In 1993 the maximum rate of ONCP was increased to the rate of OCA.

Overall the rate of payment for OCA has increased by 118 per cent since 1990 and the maximum rate of ONCP has increased by 155 per cent over that period.[26] In contrast, the rate of Child Benefit has increased by approximately 526 per cent since 1990 [from €20.06 per month in 1990 to €125.60 per month in 2003]. This reflects Government

[26] *The difference in the level of increase between the two schemes is due to the fact that prior to 1993 the maximum rate of ONCP was set at a lower rate than the OCA rate but in that year the maximum rate of ONCP was increased to the OCA level.*

Policy, which is to concentrate resources for child income support on increasing Child Benefit.

2.8 Scheme Expenditure

Expenditure on OCA and ONCP has increased substantially due to increased numbers of recipients and increases in the rates of payments (Tables 2.4 and 2.5) and this is illustrated in Table 2.6.

Table 2.6 Scheme Expenditure, 1990 - 2002

Year	OCA €000	% change on previous year	ONCP €000	% change on previous year	Total €000	% change on previous year
1990	1,721	6.86	*	*	*	*
1991	1,765	2.58	*	*	*	*
1992	1,795	1.73	*	*	*	*
1993	1,875	4.46	*	*	*	*
1994	1,931	2.98	*	*	*	*
1995*	2,203	14.07	759	*	2,962	*
1996	2,367	7.44	924	21.74	3,291	11.10
1997	2,630	11.11	1,087	17.58	3,717	12.92
1998	2,983	13.42	1,347	23.95	4,330	16.50
1999	3,705	24.22	1,804	33.93	5,509	27.24
2000	5,617	51.61	2,896	33.00	8,017	45.12
2001	9,451	68.26	4,421	52.66	13,872	73.03
2002	11,590	22.13	9,000**	103.57	20,590	48.43

* Prior to 1995 Orphan's (Non-Contributory) Pension was included in expenditure on Widow's (Non-Contributory) Pension.

** This is an estimated outturn for 2002.

Expenditure on OCA increased by 573 per cent between 1990 and 2002. Over the period 1995 to 2002 expenditure on ONCP increased by 1,086 per cent. The combined expenditure on the two schemes has increased by almost 595 per cent, from €2.96 million in 1995 to €20.59 million in 2002. This is in contrast to the trend in expenditure on Child Benefit, which increased by almost 283 per cent over the same period and involved much higher increases in the rate of payment.

Again, it is notable that the major increase in expenditure has occurred since 1995 reflecting in part the legislative change of that year which broadened the definition of the term ‘orphan’, thereby conferring entitlement to OCA or ONCP to a broader group of children.

CHAPTER 3

Efficiency and Effectiveness

3.1 Introduction

Issues pertaining to administrative efficiency and scheme effectiveness are discussed below. However, scheme effectiveness is examined further in Chapter 4 in the context of the overall purpose and future direction of the payment. This chapter examines the following issues:

- Scheme Administration
- Information Requirements
- Service Delivery
- Control Issues and Scheme Review
- Current Effectiveness
- International Comparison

3.2 Scheme Administration

The administration of OCA and ONCP claims is combined in the section dealing with Widow/er's Contributory Pension and Widow/er's Non-Contributory Pension. The section is located in the Pension Services Office (PSO) in Sligo. The work on OCA and ONCP claims is absorbed into the Widow/er's Pensions workload and therefore, there are no specific claim processing targets set in relation to OCA and ONCP.

When a claim is received in the PSO there are four phases in the process, i.e., registration, pre-decision checks, decision and payment. Although the current number of applicants for OCA and ONCP payments is comparatively small, the amount of worker-hours expended upon the schemes is disproportionately large. This is due to the complexities and difficulties involved in interpreting and applying the current terms 'abandoned or refused or failed to provide'. The variety and complexity of family situations requires that very detailed and subjective examinations of each claim be carried out. In addition, each claim is referred to a Social Welfare Inspector for investigation prior to a decision being made.

Staff working in a particular area develop a level of expertise and skills based on case histories, thereby leading to greater efficiencies and effectiveness in claim processing.
In order to maximise this potential, it is proposed that a core group of staff[27] deal exclusively with OCA and ONCP payments. This would achieve greater efficiency and a higher skill-set.

[27] *This arrangement is now in place.*

3.3 Information Requirements

In the past, many claims for OCA and ONCP have been received where the claimant has not supplied all relevant information (e.g. Birth Certificate) with the application form. This has led to considerable delays in claim processing, as current practice requires the Deciding Officers to expend considerable time in obtaining all the necessary outstanding information prior to making a decision. Two measures[28] are proposed to overcome this problem and increase the efficiency of claim processing as follows:

- claimants will be advised that their claims cannot be processed until all relevant information has been supplied; and

- a checklist of the information required will be included on the application form.

3.4 Service Delivery

It would be doing a disservice to potential claimants of OCA and ONCP if genuine cases were allowed to pass by without being acted upon at the earliest possible opportunity. In this regard, it is noted that most, if not all, potential claimants are also claiming Child Benefit for the child. Child Benefit is often taken as evidence that the child is indeed residing with the guardian. Therefore, it would be appropriate to utilise this information as a 'pick-up point' for potential claims.

One of the questions on the Child Benefit application form asks:

"*if any of the children living with you are Adopted? Fostered? Not your own?*"

In the interests of customer service, measures are being examined, in consultation with Child Benefit Section, to facilitate claim take up at the earliest possible stage. For example, one option would be to devise administrative procedures whereby a person who applies for Child Benefit in respect of a child who is "not his/her own" would be notified that s/he may be entitled to claim OCA or ONCP for that child and to contact PSO for more information. The numbers of such children could be monitored in order to indicate the effectiveness of the OCA and ONCP schemes in reaching their target group.

[28] *Both of these measures have now been implemented.*

3.5 Control Issues and Scheme Review

One of the Department's strategic high-level goals is:

"*to provide effective systems for the prevention and detection of fraud and abuse and to promote an awareness of the shared responsibility that exists between customer and provider in the accurate delivery of social security payment.*"[29]

Control of fraud and abuse is a high priority area for the Department and there is a wide-ranging control programme in place to ensure that, alongside the provision of a quality service to customers, the risks of fraud, abuse and incorrect payments are minimised. There are two main control issues relevant to the OCA and ONCP schemes. The first is to ensure that only those applicants who are entitled to the payment receive it and the second is to ensure that once a claim has gone into payment any subsequent changes in family circumstances are reviewed by the Department.

The claim processing procedures have been reviewed by the scheme managers and a new template has been drawn up to assist Social Welfare Inspectors by detailing the guidelines and qualifying conditions for OCA and ONCP, and specifying the information required to process claims. New guidelines have also been drawn up for Deciding Officers in order to clarify the factors affecting the decision-making process.

Although there is no formal review process in relation to OCA and ONCP there is a practice of reviewing cases on an individual basis, at the discretion of the Deciding Officers. The following categories have been identified by the Working Group as some which should be prioritised for review:

(a) First time claims from those over the age of 16

It has been suggested to the Working Group that the existence of the schemes may act as an incentive to young people to leave home early, citing parental failure to provide as the basis for their claim. In this regard, it is noted that the Child Care Act (1991) places a statutory duty on health boards to promote the welfare of children who are not receiving adequate care and attention.[30] Therefore, any first-time claims from individuals aged over 16 should be reviewed more frequently, particularly if there is no record of Health Board involvement or no apparent history of problems in the family home prior to the date of application.

(b) Parental Circumstances

Many claims for OCA and ONCP are awarded on the basis of one or both of the child's parents having "abandoned, or refused or failed to provide for" the child. It is considered

[29] *Inclusion, Innovation and Partnership, Strategy Statement 1998-2001, p. 8*

[30] *The Child Care Act, 1991 defines a child as a person under the age of 18 years other than a person who is or has been married.*

that such cases be reviewed on a regular basis as family situations may be subject to change over time.

3.6 Current Effectiveness

The current objective of the OCA and ONCP schemes is to provide income support to maintain a child whose parents have died or abandoned him/her. The scheme effectiveness is judged on two fronts. The first relates to the adequacy of payment and whether it is sufficient to support the child. The adequacy of the payment is determined by examining relevant research and the payment levels of other income supports for children. The second relates to the targeting of the schemes and may be gauged by examining who the beneficiaries of the schemes are.

3.6.1 Adequacy of Payment

The Combat Poverty Agency carried out research using a budget standards methodology to estimate the costs associated with raising a child. The research estimated that the cost of raising a child with a basic minimum standard of living ranges from €30.36 per week for babies to €50.96 per week for 17-18 year olds.[31] When a modest-but-adequate standard of living was examined the corresponding costs were found to be €33.93 and €66.77 per week. These costs are based on spending which can be directly attributed to the child (e.g. food and clothing) and do not include costs, such as heating, which are shared with parents.

In addition to OCA and ONCP there are a number of other social welfare payments available in respect of children:[32]

- Child Dependant Allowance (CDA) is payable to families in receipt of social welfare payments who have dependent children.[33] The rates of CDA are currently[34] set at €16.80, €19.30 and €21.60 per week depending on the social welfare payment of the parent.

- Parents who are working in low-paid employment may be paid an additional supplement via Family Income Supplement (FIS). The rate of this payment is linked to the number of dependent children, with an average FIS payment amounting to €66.20 per week per family.

- In addition, a universal Child Benefit (CB) is payable in respect of all children. The current[35] rates of CB are €125.60 per month [€28.98 per week] for the first and second child and €157.30 per month [€36.30 per week] for the third and subsequent children.

[31] *Carney et. al (1994) The Cost of a Child p.12-14 … (Costs are based on 1992 data and have been updated to 2003 for inflation in this Review).*
[32] *Rates of payment are as at August 2001.*
[33] *CDA is discussed in more detail in section 4.10.*
[34] *January 2002.*
[35] *April 2003.*

- The Back to School Clothing and Footwear Allowance (BSCFA) is intended to assist with the cost of children's school clothes and footwear at the beginning of the school year.[36] The scheme is funded by the DSCFA but administered by the Health Boards. The rate of payment for children aged 2 to 11 is €80 while that for children aged 12 to 17 (and those aged 18-22 if in full time education for whom a CDA is payable) is €150.

These figures indicate that the maximum weekly amount that a family dependent on social welfare will receive in respect of both their first and second child is €50.58 [CB plus CDA of €21.60. The minimum weekly amount they will receive is €45.78 [CB plus CDA of €16.80. The corresponding rates in respect of third and subsequent children are €57.90 per week and €53.10 per week respectively.[37] The issue of child poverty is one which must be considered in this discussion. According to the National Anti-Poverty people are living in poverty if:

"…….their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources, people may be excluded from participating in activities which are considered the norm for other people in society."[38]

One of the National Goals outlined in the National Children's Strategy is that:

"Children will receive quality supports and services to promote all aspects of their development."[39]

In that regard, one of the objectives of the strategy is that:

"Children will be provided with the financial supports necessary to eliminate child poverty."[40]

There is a lack of information in relation to the level and risk of poverty faced by 'orphaned' children although it is recognised that such children represent a particularly vulnerable group in society. The rate of OCA and maximum rate of ONCP [€97.00 per week] is substantially higher than other social welfare payments in respect of children and also exceeds the weekly cost of raising a child as estimated by the Combat Poverty Agency. Therefore, it is considered that the objective of providing income support has

[36] *BSCFA is discussed in more detail in section 4.11.*
[37] *These figures refer to cases where the children are under 19 years of age and in full-time education. Child Benefit ceases to be payable when a child reaches 19 years of age (payment ceases at 16 years of age if the child is no longer in full-time education) whereas CDA is payable until the child reaches 22 years of age provided s/he is in full time education. BSCFA is not included in the calculation.*
[38] *National Anti-Poverty Strategy (1997) Sharing in Progress: National Anti-Poverty Strategy, p. 3*
[39] *Department of Health and Children (2000) The National Children's Strategy, p.44*
[40] *Department of Health and Children (2000) The National Children's Strategy, p.47*

been fully met and even exceeded and that OCA and ONCP contribute to reducing the risk of a child in the target population living in poverty. The Group also considered the appropriate rate of payment for orphans and this is discussed in section 4.9.

3.6.2 Targeting of the scheme

It is difficult to determine whether or not the schemes are being targeted effectively as there is a lack of statistical information in relation to the number of children who may be classified as 'orphans'. As the size of the target population is unknown, it is not possible to determine what proportion is benefiting from these schemes. However, as the schemes have broadened over the years a greater number of children have qualified for the payments. In this regard, if one takes the number of children in the care of Health Boards (4,216 at end of December 1999) as an element of the target population, it would appear, the scheme is not being availed of by all who are entitled to it.[41]

Section 3.4 proposes that a procedure be put in place linking Child Benefit claims with claims for OCA or ONCP in order to ensure that possible claims for OCA and ONCP are detected at the earliest possible stage. Such a procedure would also make it possible to estimate the size of the target group more accurately using the number of children described as "not the claimant's own" as an indicator.

The legislation governing OCA and ONCP does not prevent a payment being made in respect of a child who is in the care of the Health Boards. As such, children in foster care and even children in State funded residential care could be regarded as part of the target population of the schemes. Whether this represents appropriate targeting of the schemes is a very significant issue. If the objective of the OCA and ONCP schemes is to provide income support for children who have no other means of support, then it is doubtful if these groups should form part of the target population. These issues are discussed in more detail in Chapter 4.

3.7 International Comparison

Social Welfare provision for orphaned children varies considerably across the EU (see Appendix B for details). Some Member States have specific allowances for orphaned children where the rate of payment is dependent on whether one or both of the child's parents are deceased. In other countries there is no special provision and orphaned children receive normal family allowances. In some cases increases are paid on, for example, widow/er's pension in respect of a child who has lost one parent.

The MISSOC[42] tables do not detail exactly how the term "orphan" is defined in the different countries. However, the terms "motherless" and "fatherless" are used to

[41] *The number of children in the care of the Health Boards can be broken down as follows: 3,248 in Foster Care (713 of these are with relatives), 595 in Residential Care, 149 At Home Under Supervision, 41 in Pre Adoptive Placement and 183 in other types of Care. Source: Department of Health and Children (2001).*

[42] *Mutual information system on social protection.*

describe the children and this suggests that payments (where they do exist) are only made when at least one of the child's parents is deceased. That being the case, it would appear that OCA and ONCP are far broader in scope than the schemes in many other countries.

Similarly, the rate of payment, particularly compared with that of the UK is significantly higher. The rate of payment of Guardian's Allowance in the U.K at the end of 2002 was £11.35stg per week for the eldest child and £9.65stg per week for each other child. These rates are lower than the UK rates of Child Benefit which are £15.75stg per week for the eldest child who qualifies and £10.55stg per week for each other child who qualifies.[43]

[43] *Source: www.dss.gov.uk/lifeevent/benefits*

CHAPTER 4

Policy Issues

4.1 Introduction

There are several complex policy issues relating to OCA and ONCP. These issues have a major impact on the focus and administration of the schemes and are discussed in this chapter under the following headings

- Purpose of the Payment
- Validity of the Current Objective
- Scheme Targeting
- Definitions
- Payment of OCA and ONCP
- Responsibility for Maintenance
- Quality of Care and Child Protection
- Appropriate Rate of Payment
- Child Dependent Allowance (CDA)
- Back to School Clothing and Footwear Allowance (BSCFA)
- Overlapping of Payments
- Assessment in Other Social Welfare Payments
- Adoption
- Titles of the Schemes

4.2 Purpose of Payment

In analysing the objectives of the schemes, the suggestion that OCA was intended to provide monetary compensation for the loss of parental care (as distinct from basic income maintenance) was considered. The theory put forward was that OCA, as an insurance-based scheme, purported to cater for the contingency of orphanhood, and that this was reflected in the rate of payment and the fact that other social welfare payments may be paid concurrently with OCA. However, the fact that the provision covering simultaneous entitlement to certain social welfare payments also extends to ONCP, undermines the validity of this theory.

The Group considers that, as there is no difference between the rate of OCA and the maximum rate of ONCP and no difference in the overlapping provisions between the two payments, no element of compensation was intended for those children whose parents

had contributed to the PRSI system.[44] Therefore, the Group concluded that the payments are intended to provide income maintenance rather than compensation.

If it were accepted that a portion of the payment is for compensation, and not for income support, the question then arises as to how that money should be used to benefit the orphan. The Group considered making payment to a trust fund or paying a portion to an agent for the child to access on reaching majority. However, this would mean that the payment would not be available to the guardian to cover the costs of raising the child and would therefore, contradict the purpose of the schemes.[45]

4.3 Validity of the Current Objective

As outlined in section 2.2 the original intention of the Widows' and Orphans' Pension Act, (1935) was to cover the risk of death by assisting widows and orphans who on the death of the breadwinner had been left without means of subsistence.

It is recognised that families incur additional expenses when they take a child into their home. The objective of OCA and ONCP is to provide income support in respect of children whose parents are unable to provide for them. (The phrase "*unable to provide*" is discussed in more detail in section 4.5.4.) This is clearly compatible with the Department's Mission Statement which states that:

"*Our mission is to promote social well-being through income and other supports which enable people to participate in society in a positive way.*"[46]

It is also compatible with the Policy Framework aims contained in the Department's Statement of Strategy (1998-2001) which include:

"To promote an inclusive society in which people can participate in a positive way, by understanding the underlying causes of poverty and exclusion and addressing the needs of those people affected."[47]

"To promote policies which protect and support families."

The schemes are also compatible within the broader context of Government policy which seeks to support all children in the State. In its Review of the Action Programme for the Millennium, the Government stated that:

"The Government is committed to putting families at the centre of all our policies" [48]

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[44] *With effect from 1993 the maximum rate of ONCP has been equal to the OCA rate, prior to that OCA was paid at a higher rate. The rates were equalised in order to simplify the system given the relatively small numbers involved.*

[45] *A guardian may decide to set up a trust fund securing the payment for the future benefit of the child. This would however, be a private arrangement and s/he would be perfectly entitled to do so.*

[46] *Inclusion, Innovation & Partnership, Strategy Statement 1998-2001*

[47] *Inclusion, Innovation & Partnership, Strategy Statement 1998-2001*

In this regard, one of the key priorities is

"to address the child support needs of all families."

4.4 Scheme Targeting

Legislative changes in the definition of 'orphan' have extended the scheme to include children with one or both parents still alive. The Group considered this to be an appropriate response to changing societal and family circumstances. However, this raises concerns about the involvement of other State agencies and the appropriate targeting of OCA and ONCP in the context of State supports for children whose parents have died, abandoned or refused or failed to provide for them. In this regard, it is necessary to consider the circumstances of children who are in the care of, and being maintained by, other State agencies.

4.4.1 Children in State Care

There are three main groups of children in State care, i.e., those who are in foster care (with a relative or non-relative), those who are in residential care and those who are in special schools for young offenders. The Department of Health and Children, through the Health Boards, is responsible for children placed in residential or foster care while the Department of Education and Science has responsibility for children in special schools for young offenders.[49] At the end of 2001, there were 563 children in Health Board residential care and 3,646 children in foster care. At the end of June 2000 there were 118 children in special schools for young offenders.[50] Children may be in care for short or long periods. Children in special schools for young offenders are disqualified from claiming OCA or ONCP and as such this group will not be considered further in this Review.

The Health Boards have a statutory duty to promote the welfare of children, up to the age of 18, who are not receiving adequate care and attention.[51] They are guided by principles that state that:

'*it is generally in the best interests of the child to be brought up in his/her home.'*

In this regard, the Health Boards are obliged:

"to provide child care and family support services with the aim of helping parents to care for their children and to avoid the need for such children to be taken into care."

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[48] *Government of Ireland (1999) Review of the Action Programme for the Millennium, p.15*
[49] *The Department of Education and Science is responsible for children placed into care directly by the courts under the Children Acts, 1908 to 1957.*
[50] *Department of Education and Science Annual Statistical Report 1999/2000, p.113*
[51] *Child Care Act, 1991*

The Department of Health and Children regard the maintenance of the child in the family home, in as far as possible, as extremely important. It is only in the most extreme and necessary circumstances that a child should be taken into State care. Underpinning this is the principle that:

"Children should only be brought into the care of the health boards if they meet the criteria regarding the need for care and protection set out in the Child Care Act."[52]

This policy has reduced the number of children in care from approximately 10,000 in 1970 to 4,510 in 2001. The National Children's Strategy reinforces the need to make families central to policy making and states that:

"All children need the support of family and community."[53]

When a child is taken into care, the Health Board acts as the child's legal guardian in all foster care and residential care situations and a social worker is nominated to act for the child on behalf of the Health Board. A detailed Care Plan is formulated by the social worker and arrangements are monitored on a regular basis.

In situations where a child is placed into foster care a Foster Care Allowance (FCA) is paid to the foster carer in respect of the child. Prior to August 2001, this allowance, which is not means-tested, was paid at a rate of €90.85 (£71.55) per week for children under the age of 12 and €108.63 (£85.55) per week for those aged 12 and over. In addition, certain other expenses were payable in respect of the child such as school, travel and holiday expenses. However, with effect from August 2001, these rates were increased to €254 (£200) and €279 (£220) per week and discretionary payments (with the exception of medical and educational expenses) were abolished.

As stated previously, the widening of the legislative definition of 'orphan' in 1995 provides for many children in State care to be regarded as 'orphans' for the purposes of OCA and ONCP, mainly on the grounds that their parents had 'abandoned or refused or failed to provide' for them. This has led to an increasing number of claims in respect of children in foster or residential care which in turn has resulted in the payment of OCA or ONCP to many foster parents who are also in receipt of FCA in respect of the child. There is no provision in current legislation to preclude this situation from arising. However, it was never intended that FCA would be paid in association with OCA or ONCP in respect of the same child. The view of the Commission on Social Welfare was that:

"Since the vast majority of guardians (for the purposes of orphan's pension) are relatives of the child, or children such a case [i.e. where an orphaned child is placed with foster

[52] *Department of Health and Children (2001) Report of the Working Group on Foster Care: Foster Care – A Child Centred Partnership, p.74*
[53] *Department of Health and Children (2000) The National Children's Strategy, p.47*

parents] is rare and a foster care allowance would not usually be paid in addition to an orphan's pension."[54]

This view is supported in the recent review of foster care allowances where the Report notes that in recommending major increases in the foster care allowances scheme, it is

'seeking to ensure that the costs of looking after a foster child are adequately covered. It therefore does not consider it appropriate that both orphans and fosters care allowances be made in respect of the same child."[55]

If it were proposed to continue payment under both schemes then serious equity concerns arise that would increase the perception of a two-tier caring system, whereby foster carers receive substantially higher levels of State support than other guardians.

4.4.2 Differing Policy Objectives

When a child is placed into care, the nominated social worker makes every effort to maintain contact between the child and his/her family. This policy of maintaining contact is clearly in the best interests of the child. However, this could be deemed to be contrary to the qualification criteria for OCA and ONCP that requires a parent to have 'abandoned or refused or failed to provide for' the child. In assessing this condition for OCA and ONCP claims, one of the main tests is that the parent does not maintain contact with the child. This represents a fundamental difference from foster care situations.

A child may be placed into care voluntarily by the parent. In such cases, it could be argued that the parent did not 'abandon or fail to provide' for the child as s/he agreed to the care arrangements. Therefore, the foster carer may not be entitled to receive OCA or ONCP on behalf of the child, as in theory, in order to be entitled to OCA or ONCP the child's parent could not have agreed voluntarily to the care arrangement.

There are other situations whereby parents cannot/will not/do not look after their children but the circumstances are such that a family member takes care of the child and the situation does not require Health Board intervention. These are the types of situations which the D/SCFA payments (OCA and ONCP) are intended to cater for (provided the child satisfies the qualification conditions of the schemes).

The Group considers that, in some cases, OCA and ONCP are inappropriate payments and may not serve the best interests of the child by being perceived as a disincentive to parents to maintain contact with their children. It is also important that there are no incentives in the system to encourage parents to separate from their children.

4.4.3 Options for Change

The objective of OCA and ONCP is to provide income support for children who have no other means of support. A child in foster care or in residential care is already provided

[54] *Commission on Social Welfare (1986), p. 302*
[55] *Report of the Working Group on Foster Care: Foster Care - A Child Centered Partnership, 2001, p.68*

for by another State agency and could not be regarded to be in need of additional income support. In addition, it is important that equity in similar care situations should be maintained. Therefore, the Group considers that the existing legislation should be amended to ensure that OCA and ONCP are no longer payable in respect of children in the care of another State agency, namely:

i) a child for whom a FCA is in payment or
ii) a child who is being wholly maintained in a State residential care home or a special school for young offenders[56].

This would ensure that OCA and ONCP would be targeted at children in the care of guardians other than their natural, adoptive or step parents and excluding those who are being cared for by another State agency. In proposing this measure, the Group considered existing situations where foster carers are already in receipt of two State payments, thereby enjoying significant advantages over future foster carers. As the rate of payment of FCA was increased significantly (with effect from August 2001) there is a justifiable case for ceasing payment of OCA and ONCP in respect of existing cases, as there would be no overall income loss to the foster parent.

4.4.4 Proposed Target Group

Section 4.5 outlines several proposals for legislative change to the definition of 'orphan' as provided for in the legislation governing OCA and ONCP. In this regard, it is envisaged that for the purposes of OCA and ONCP a qualified child would be one

a) Both of whose parents are dead

b) One of whose parents is dead and
whose other parent is unknown or has abandoned or is unable to provide for the child

c) One of whose parents is unknown and
whose other parent has abandoned or is unable to provide for the child

d) One of whose parents has abandoned the child and
whose other parent is unable to provide for the child,

where the child is not residing with a step-parent or in the care of another State Agency[57], or adopted (unless the payment was in place prior to the adoption)[58].

[56] *This proposed amendment is discussed in more detail in section 4.5.1.*
[57] *The proposal in the Social Welfare Bill, 2003 deals solely with children in respect of whom a Foster Care Allowance is being paid. Children in other circumstances eg. in community homes will be considered at a later date.*
[58] *Section 4.14 outlines a proposal to allow an OCA or ONCP to remain in payment on adoption of a child where the payment was in place prior to the adoption.*

In order to qualify for ONCP the child would have to satisfy the means test. One of the child's parents would have to satisfy the social insurance contribution conditions in order for the child to qualify for OCA.

4.5 Definitions

There are clear difficulties in applying the current legislation because certain terminology (abandoned, refused to provide, failed to provide and guardian) is not defined. This lack of clarity has caused administrative complexities, with consequential delays in claim processing. The Group examined the relevant terminology and proposes various amendments as follows:

4.5.1 Orphan

Currently, for the purposes of OCA and ONCP the term 'orphan' is defined as:

"'orphan' means a qualified child:

(a) both of whose parents are dead, or
(b) one of whose parents is dead, unknown, has abandoned or has refused or failed to provide for the child and whose other parent:

(i) is unknown, or
(ii) has abandoned or has refused or failed to provide for the child,

where that child is not normally residing with a step-parent or with a person who is married to and living with that step-parent."[59]

While this definition appears quite clear, it is the meaning of the term "refused or failed to provide" which is difficult to determine and causes administrative complexities.

It is proposed that the condition *"or in the care of another State Agency"* be added after *"step-parent",* to the residency condition. This is to ensure that where a child is being wholly maintained directly or indirectly by another State Agency (i.e. in foster care or residential care) neither OCA nor ONCP will be payable.[60]

The Group proposes to change the scheme titles to remove the term 'orphan'. It would require legislative amendment to remove this term from the definition and replace it with the proposed term[61].

[59] *Social Welfare Act 1995 Section 20*
[60] *It was decided to deal only with children in foster care in the Social Welfare Bill, 2003.*
[61] *The proposed new titles are outlined in Section 4.15*

4.5.2 Abandonment

In defining the word "abandonment", the following condition applies:

"A child is not regarded as abandoned if the parent knows and approves that someone else is taking to look after it."[62]

The Group proposes that this condition be applied in cases where OCA or ONCP is being claimed on the grounds of one or both parents having abandoned the child, and that this should be prescribed in legislation.

4.5.3 Refused to Provide

The term 'refused to provide' raises questions about the responsibility of parents for their children. Parents are required, under the Common Law, to provide for their children and while it is recognised that they may experience difficulties in doing this and may require suitable supports, it is considered inappropriate to enshrine in legislation the notion of a refusal to provide. This issue is discussed further in section 4.7, concerning the responsibilities of liable relatives.

The Group considers that the legislation should be amended to remove the word 'refused'. In this regard, it was noted that the Constitution Review Group recommended that an express guarantee of certain rights of the child related to family life be included in a revised Article 41 of the Constitution. One of these specified rights is:

"the right of every child, as far as practicable, to be cared for by his or her parents."[63]

4.5.4 Failed to Provide

The term "failed to provide" has been the subject of much confusion and claims for OCA and ONCP quoting this situation as the qualification for payment prove difficult to process.

Different scenarios were examined by the Group in order to determine whether or not they would fall into the category of the parent/s having "failed to provide" for the child. These included situations where a parent moves in with a new partner and leaves his/her child/ren living with grandparents or where a parent moves abroad knowing that the children will be maintained by other members of their family. The Group considers that these situations could not be regarded as parents 'failing to provide' as they are aware of the child's whereabouts and approve of the arrangements. Therefore, in such cases, it is considered that neither OCA nor ONCP should be payable.

It is considered that replacing the term "failed to provide" with the term *"unable to provide"* may make the situation more straightforward. For example, a person may be unable to provide for their child/ren due to illness or addiction (this is distinct from failing to provide).

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[62] *The Oxford Reference Dictionary of Law (3rd edition)*
[63] *Report of the Constitution Review Group (1996) Recommendation 4 (vi)*

A case by case approach will continue to be used to determine the validity of a claim, taking into account any medical evidence and the circumstances of the other spouse/partner, if applicable.

While the Group recognised that any wording is open to interpretation, it proposes that the legislation should be amended to remove the term 'failed to provide' and replace it with '*unable to provide'*.

4.5.5 Guardian

Guardianship of children involves the duty to have regard for their welfare, e.g. in relation to education and religion. The concept of guardianship is described by Shatter (1986) as follows:

"Parents have both rights and duties in respect of the upbringing of their children, e.g. a duty to maintain and rights to make decisions as to education. This whole relationship, both rights and duties, is one of "guardianship". Persons other than parents can be a child's guardian." [64]

The Commission on Social Welfare in discussing the Orphan's Payments states that:

"The guardian is normally deemed to be the person with whom the child is living or the person looking after the child's finances." [65]

Current practice allows, in certain cases, that a child may become his/her own guardian and receive the payment in his/her own right. This occurs typically in cases where the child is over the age of 18, in full time education and has moved away from the guardian's home. The Group proposes that in order to limit the incentive to move from the family home, the payment should continue to be made to the guardian. However, it is accepted that this may not be always possible and the scheme should continue to allow payment to be made directly to the child in exceptional situations.

Therefore, the Group proposes that the legislation should be amended to define the term "guardian" as:

"the person with whom the child is living or the person looking after his/her finances or the child may be deemed to be his/her own guardian if the Minister so directs."

[64] *Shatter A. J (1986) Family Law in the Republic of Ireland, p.343*
[65] *Commission on Social Welfare (1986), p. 302*

4.6 Payment of OCA and ONCP

OCA and ONCP are paid to the guardian for the benefit of the child until s/he reaches 18 years of age or until age 22 if s/he is in full-time education. As outlined in section 4.5 OCA and ONCP can be paid directly to the person concerned, i.e. rather than to a guardian in some situations. In exceptional circumstances, this practice has been extended to children reaching age 16 where they are no longer residing with a guardian. However, concerns have been expressed that this practice may encourage children to move away from home and claim their parents have 'failed to provide' in order to establish entitlement. All claims of this nature should receive close examination before payment is put in place and be reviewed on a regular basis.

It is proposed that in order to ensure that the payment is effectively targeted and to prevent fraudulent claims, future practice should direct all OCA and ONCP payments to the guardian only, even where the child is aged over 18, except in exceptional circumstances, as discussed above.

Health Boards have raised concerns over the fact that they have no authority to supervise the expenditure of OCA or ONCP (either arrears or regular payments) to ensure that the payments are used for the child's benefit. The Irish Foster Care Association has also expressed concerns in this regard. However, the Group was of the view that guardians are required to act in the best interests of the child and this principle is reinforced as part of the application stage for OCA and ONCP when the child's guardian is requested to sign a "Form of Undertaking" which states that:

"I agree to manage the pension(s) (if paid to me) for the benefit of the child/ren."

Therefore, recipients of OCA and ONCP should not be required to produce evidence of how the payment was used which, in any event would be extremely difficult if not impossible to monitor or supervise.

4.7 Responsibility for Maintenance

Under social welfare legislation a liable relative is[66]

- a man who is liable to maintain his wife and/or his former wife (while either is in receipt of an allowance or benefit) and any qualified child of his in respect of whom an increase in allowance or benefit is payable; or
- a woman who is liable to maintain her husband and/or her former husband (while either is in receipt of an allowance of benefit) and any qualified child of hers in respect of whom an increase in allowance or benefit is payable.

[66] *Social Welfare Act (1998) Section 24(1)*

Provision is also made that where a social welfare allowance, or an increase in a social welfare allowance, is paid in respect of a person's family s/he is liable to contribute towards that payment.[67] The relevant social welfare payments for the purposes of these provisions are One-Parent Family Payment, Deserted Wife's Benefit/Allowance and Supplementary Welfare Allowance.

It is a fundamental principle of our legal, social and cultural system that parents are responsible for their children. This is particularly relevant to this Review where cases arise in which one parent has died or abandoned a child and the remaining parent is known and refuses to support the child. The Group proposes that the Liable Relative Provisions should be extended to include circumstances in which OCA or ONCP is claimed on the basis that one parent has died, abandoned or is unable to provide for the child and the other parent is alive and known. Such a proposal is in line with the UN Convention on Child Rights, which states that:

"States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."[68]

4.8 Quality of Care and Child Protection

It is recognised that children who are not being cared for by their parents are a particularly vulnerable group in society:

"Certain children are more vulnerable to abuse than others. These include children with disabilities and children who for one reason or another, are separated from their parents or other family members and who depend on others for their care and protection."[69]

In this regard, concerns have been raised in relation to the fact there is no system to ensure that the person receiving OCA or ONCP on behalf of a child is a suitable guardian. Therefore, it is considered that it would be very beneficial to have a mechanism for exchange of information between this Department and the Health Boards. This would facilitate measures to ensure that any children for whom there is an OCA or ONCP payment in place are being cared for in a suitable environment.

Regional Child Protection Committees have been established in 3 health board areas to facilitate coordination on a regional basis. These committees will develop policies to improve inter-agency and inter-professional co-operation. Membership consists of representatives of health board management and professional staff, educational interests, An Garda Síochána, the probation and welfare service, the Department of Social and

[67] *Social Welfare Act (1998) Section 286(1)*
[68] *UN Convention on the Rights of the Child (1989) Article 3.2*
[69] *Department of Health and Children (1999) Children First - National Guidelines for the Protection and Welfare of Children p.33*

Family Affairs, general practitioners and the voluntary childcare sector. Local Child Protection Committees are being established in each community care area to foster cooperation locally and to provide a forum for the sharing of knowledge and experience on the protection for children. Membership will mirror the membership of the Regional Committees to ensure local implementation of co-ordinated initiatives.

It is considered that these structures may be a suitable mechanism for exchange of information and should be explored further by the Department. In this regard it is important to note that:

"Giving information to others for the protection of a child does not constitute a breach of confidentiality."[70]

4.9 Appropriate Rate of Payment

In order to determine whether the rate of payment of OCA and ONCP [i.e. €97.00 per week] is appropriate, the Group examined other payments made in respect of children, possible changes to the structure of the payment and research on the living costs of a child.[71]

4.9.1 Foster Care Allowance (FCA)

Prior to August 2001 FCA was paid (by the Health Boards) at a higher rate than OCA and ONCP and this differential increased significantly when new FCA rates came into effect in August 2001. The Group examined the recommendation of the Commission on Social Welfare that the rate of OCA and OCNP be set at the same rate as FCA.[72] It is estimated that to implement this measure would cost an additional €28.86 - €33.08 million per annum.[73]

It may seem inequitable that foster carers receive a higher level of financial support from the State than do other guardians of children who are not their own. However, foster carers operate within a very specific framework and the FCA is intended, not to provide income support, but to recompense foster carers for the expense incurred in relation to looking after a child who would otherwise be in State institutional care.
Foster carers operate in the context of

"General child care policy, the legislative framework, the board's child protection policies and procedures and information on support arrangements."[74]

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[70] *Department of Health and Children (1999) Children First (Summary) National Guidelines for the Protection and Welfare of Children p.16*
[71] *This research (carried out by the Combat Poverty Agency) is discussed in more detail in section 3.6.1*
[72] *Commission on Social Welfare (1986) p. 302*
[73] *Based on 3,008 OCA and ONCP claims in payment (end December 2002) at €97.00 per week and a FCA rate of €281.50 or €308.50 per week.*
[74] *Report of the Working Group on Foster Care (2001) p. 63*

As such they are subject to rigorous scrutiny and ongoing monitoring by the Health Boards and the children in their care are subject to a Care Plan. These factors mean that foster carers have additional responsibilities and duties in respect of those children, such as working with the children's families and health board personnel. They must also be willing to participate in training and reviews of themselves and the children. In addition, foster carers are dealing with children:

"with complex backgrounds, many of whom exhibit their problems through challenging behaviour."[75]

The Working Group on Foster Care noted that foster carers require additional financial support, as there are additional costs involved in looking after foster children.

"Foster Care involves additional costs over and above those incurred in the normal day to day costs of maintaining children in their own home. Research and experience indicate that for a number of reasons, mainly to do with the difficulties that foster children may have experienced, there is additional expenditure on food, clothing, heating, electricity, household goods and services. Additional expenditure is also often incurred in relation to transport costs, particularly in rural areas, as a result of access visits, meetings involving professionals providing services for the child, support group meetings and training."[76]

In view of these considerations the Group considers that the orphans scheme and foster care scheme are fundamentally different in their purpose and, in view of the adequacy of the rate of OCA and ONCP generally, the Group does not consider that the rate of OCA or ONCP should be increased to the FCA rate.[77]

On the other hand, if one compares the rate of orphans payments with other child income support payments, such as Child Dependant Allowance (CDA), it could be argued that orphans payments are substantially in excess of CDA and, unlike CDA, are now automatically adjusted in line with other budgetary rate improvements. It could be considered, in view of the substantially higher rates of orphan payments compared to other child income support payments, that orphans rates should be decoupled from the annual budgetary increases. However, this argument also disregards the fundamental differences between the orphan's payments and other child income support payments whereby orphans payments reflect the additional costs of taking a child, who may have additional needs, into a household.

4.9.2 Options for Changing the Payment Structure

The Group also considered whether there should be a higher rate of payment for the contributory payment in line with the recommendation of the Commission on Social

[75] *Report of the Working Group on Foster Care (2001) p. 62*
[76] *Report of the Working Group on Foster Care (2001) p. 65*
[77] *Section 3.6.1 presents a more detailed discussion on the adequacy of the payments.*

Welfare that a 10 per cent differential should apply.[78] Since 1993, the rate of OCA has been equal to the maximum rate ONCP [€97.00 (£76.40) per week from January 2003]. Prior to that year the rate of OCA was set at a higher level than maximum rate ONCP. In this regard, the Group considers that the same rate should apply in view of the income maintenance objectives of the schemes and to ensure equity among children in similar circumstances, thus reinforcing State policy of supporting all children. The Group would view any proposal to reverse the current position as a regressive step.

In addition, the Group examined whether the rate of payment should be age-related as recommended by the Combat Poverty Agency and Comhairle in their submission to the Group. However, in view of the high rate of payment, which should adequately cater for the older child, this measure is not proposed. It is also the case that neither CDA nor CB rates are age-related. The Group considers that it would be inappropriate to introduce age-related rates into OCA and ONCP as this would only serve to introduce unnecessary complexities into the system.

4.10 Child Dependant Allowance (CDA)

The fact that OCA and ONCP are paid at a significantly higher rate than other social welfare payments in respect of children (in particular CDA) was raised during the course of the Review.[79]

There is a fundamental difference between CDA and OCA and ONCP. CDA is paid in respect of dependent children of social welfare recipients. CDA is an increase on a basic social welfare payment rather than a payment in its own right. Its purpose is to augment the income of those in receipt of a social welfare payment who have dependent children.

The rate of CDA payments on schemes has generally not been increased in recent years because the policy direction being followed has been to concentrate resources for child income support on increasing Child Benefit. However, the rate of payment for OCA and ONCP has increased over the years in line with increases in other social welfare payments.

Primary legislation provides that a CDA is not payable in addition to OCA or ONCP. However, there are administrative inconsistencies between and across schemes as to how OCA and ONCP payments are viewed for the purposes of determining entitlement to CDA. Consequently, CDA is paid in addition to OCA or ONCP in certain instances, but not in others.

For example, a person in receipt of Widow (er)'s Pension in his/her own right receives a CDA for a child in respect of whom OCA or ONCP is also payable, whereas a person in receipt of Old Age Pension (either contributory or non-contributory) does not.

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[78] *Commission on Social Welfare (1986) p. 302*

[79] *The rates of payment are outlined in section 3.6.1*

The Group considers that a standard approach relating to CDA should apply across all child income support schemes. While it is recognised that a CDA payment represents an important contribution for guardians who are social welfare recipients, it is also the case that the OCA and ONCP rate of payment is considerably in excess of other social welfare income supports in respect of children.

It is also considered that CDA is implicit in OCA and ONCP and therefore CDA and OCA or ONCP should not be payable in respect of the same child. In order to maintain consistency and equity, the Group also considers that CDA should not be payable in respect of a child who is in the care of foster parents and on whose behalf, a Foster Care Allowance is payable.

As payment of a CDA in association with an OCA or ONCP payment is not provided for in law, neither should it be in practice. The Group considers that anyone who has benefited from previous administrative inconsistencies should not be penalised as a result of this proposed streamlining of the arrangements, i.e. existing cases where guardians are in receipt of both payments, should continue as is the present position.

4.11 Back to School Clothing and Footwear Allowance (BSCFA)

The BSCFA is intended to provide assistance with the additional cost of children's school clothes and footwear at the beginning of the school year. The scheme is administered by the Health Boards (on behalf of D/SFA) and operates from the beginning of June to the end of September each year. One of the qualifying conditions of the scheme is that a CDA is in payment in respect of the child for whom the allowance is being claimed. The current rate of payment is €80 for each child aged 2 to 11 and €150 for each child aged 12 to 17 (also aged 18-22 if in full time education).

OCA and ONCP have not been regarded as qualifying payments under this scheme due to the fact that CDA was not payable in such cases. This is reflected in the view that the higher rate of OCA and ONCP is intended to cover the child's cost of living in full, including food, clothing and footwear. This has also applied where a child is in foster care as the guardians of these children receive annual financial support from the Health Boards to assist with clothing and footwear and additional assistance when the child returns to school. However, due to the inconsistencies arising in the payment of CDA with OCA and ONCP, similar inconsistencies have occurred in the payment of BSCFA.

The Group considers that, despite the higher level of payment, there are additional expenses incurred by guardians at the beginning of the school year. Therefore, the Group proposes that OCA and ONCP should be considered as analogous to CDA for the purpose of receiving BSCFA. At present, the FCA includes an additional Back-to-School allowance paid by the Health Boards.

The review of the FCA proposed that this allowance be amalgamated with the principal payment. In either case the FCA includes a component to cover the additional costs

associated with children returning to school in September. Therefore, the Group does not propose that BSCFA be paid in respect of a child for whom there is a FCA in payment.

However, the issue arises as to whether the OCA and OCNP should be assessed as part of family income when deciding entitlement or whether the child should be assessed separately as an individual on his/her own income. The BSCFA is currently being reviewed under the expenditure review process and therefore, the BSCFA Working Group is regarded as the appropriate forum to consider this issue.

4.12 Overlapping of Payments

In general, the social welfare code provides that where a person satisfies the qualifying conditions for receipt of more than one social welfare payment, only one payment is awarded. There are however, a number of exceptions to this rule, one of which provides that where a person for whom there is an OCA or ONCP in payment also has entitlement to one of a number of specified payments in his or her own right, s/he may receive both payments simultaneously.[80] In view of the income support function of OCA and ONCP, and in the interests of applying entitlement equitably, it is proposed that the practice of making two payments simultaneously should cease, and that the general rules should apply.

4.13 Assessment in Other Social Welfare Payments

The Group also examined whether OCA and ONCP should be included in any assessment of the guardian's income for Fuel Allowance. It considered that OCA and ONCP should not be included in any such assessments as these payments are paid solely for the benefit of the child. However, they should not be qualifying payments in their own right for any other social welfare allowances.

4.14 Adoption

Adoption is occasionally a natural progression from fostering and informal guardianship. The reasons behind the decision to adopt a child are complex and vary from situation to situation. Adoptive parents are currently prohibited from receiving OCA or ONCP in respect of their adopted children. The Group agreed that in some circumstances the loss of income, which would arise from the transition to adoption, may act as a financial barrier to adoption.

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[80] *These specified payments are Widow(er)'s (Contributory) Pension, Widow(er)'s (Non-Contributory) Pensions, Death Benefit, One Parent Family Payment, Deserted Wife's Benefit/Allowance, Prisoner's Wife's Allowance, Adoptive Benefit, Disability Benefit, Health and Safety Benefit, Injury Benefit, Maternity Benefit, Unemployability Supplement and Unemployment Benefit.*

Therefore, the Group proposes that where OCA or ONCP was in payment prior to adoption, the payment should continue after the adoption subject to continuing to satisfy the other qualifying conditions. In making this proposal, the Group recognises that such a move would introduces a discrepancy between the treatment of some adopted children and other adopted and natural children. However, the small number of cases arising, and the social value to children in enabling them to achieve a permanent family situation, justifies a certain element of divergence.

4.15 Titles of the Schemes

At present the title "Orphan's Contributory Allowance" refers to the social insurance based scheme and "Orphan's Non-Contributory Pension" refers to the means tested scheme. This is in contrast to the standard social welfare terminology as in general the terms "pension" and "allowance" refer to social insurance-based and means tested schemes respectively. It is proposed that the terminology in the titles of the orphan's payments be brought into line with that used in other social welfare schemes.

The appropriateness of the scheme titles “Orphan’s Contributory Allowance” and “Orphan’s Non-Contributory Pension” has recently been called into question. Social workers and representative organisations have expressed concerns in relation to the use of the term “orphan”, particularly where one or both of the child’s parents are still alive. It is considered that this term militates against the guardians giving the children a positive image of their natural parents and that it could cause problems of identity for children. It can also be a cause of hurt to the natural parents to discover that their child is being referred to as an orphan.

On the basis of these considerations the Group considers that the term “orphan” be removed and replaced with a more suitable name. In this regard, it is important that any new name reflects the purpose of the payment and associates ownership of the payment with the child. It must also remove the negative connotations inherent in the current titles. The Group had great difficulty in devising a suitable name that would fit all of these requirements and formed the view that the most suitable scheme names suggested are Child (Contributory) Pension and Child (Non-Contributory) Allowance.

Introduction of these proposals would mean that Orphan’s (Contributory) Allowance (OCA) would become Child Contributory Pension (CCP) and Orphan’s (Non-Contributory) Pension (ONCP) would become Child (Non-Contributory) Allowance (CNCA).

It is recognised that changes to the title of OCA and ONCP which include the word "child" would be likely to cause some public confusion with other child related payments. Any change to the title of the schemes would also require legislative change throughout the Social Welfare Code to amend all references to “Widows and Orphans Pensions”.

Another alternative would be to merge the two schemes and allow qualification on the basis of either the social insurance record or the means test. This would mean that only

one new title would be necessary. However, there are accounting issues associated with this option as payments based on social insurance contributions are financed by the Social Insurance Fund whereas payments based on means assessment are financed by the Exchequer.

The option of leaving the titles unchanged in the legislation governing the schemes and using a different working title was examined. However, this would not be a feasible approach, as it would cause confusion in terms of the public perception of the schemes.

4.16 Current Position

As outlined in section 1.2, there were discussions regarding the operation of the Orphans and FCA arrangements, which took place after the Review had effectively been completed in early 2001. For completeness and to assist the reader, the current position is summarised in the following section.

Current Position – March 2003

Following the publication of the Report of the Working Group on Foster Care by the Department of Health and Children (in May 2001), the Government approved proposals to provide for significant increases in the total amount payable in respect of children in foster care, in line with the recommendations made in the Report. Under the new arrangements a foster parent receives a much higher single payment from the health board and no longer has to apply for discretionary payments from the health boards or for orphan payments from this Department.

Orphan payments are currently being made directly to the health board in respect of, and for the benefit of, foster children. The Health Board then combines the orphan payment with the Foster Care Allowance to make a total payment of €270.50 per week for children aged under 12 and €296.50 for children aged 12 and over to the foster parents. This is in line with the recommendation of both working groups that 'orphan's allowances and pensions should not be paid for children in respect of whom foster care allowances are being paid.'

As these arrangements have proved to be somewhat cumbersome and have given rise to issues for all those concerned, it is now proposed formally to exclude children in respect of whom Foster Care Allowance is being paid, from eligibility for an Orphan's payment from the Department of Social and Family Affairs. This means that the health boards will no longer make an application to the Department for an orphans payment in respect of a child in foster care. Foster parents, however, will continue to receive the same level of allowance, which will be entirely funded by the health board.

These changes improve the arrangements for children in foster care and their foster parents as follows:

- They ensure that responsibility for the well being of the child is clearly located with the appropriate State agency, i.e. the health boards.
- One single payment and one assessment will ensure that two State agencies are not assessing the same group of children, using different criteria and policy objectives.
- Assessments of complex family difficulties will be more properly carried out by professionals of the Health Boards.
- These changes are in line with the expressed wishes of the Foster Care Association that only one payment should be made, by the health boards, in respect of each child in foster care.

The revised arrangements will be considered in the context of the Social Welfare Bill, 2003.

CHAPTER 5

Conclusions and Future Direction

5.1 Introduction

This Review examines a broad range of issues such as the objective of the OCA and ONCP schemes, the terminology used in the legislation governing the schemes, as well as wider policy and administrative issues.

The Group considers that the objective of the schemes is to provide income support for children whose parents have died or are unable to provide for them. Therefore, this primary objective is used as the basis for developing the future policy and direction of these schemes.

Issues relating to child welfare are quite sensitive and can be emotive and the Group was fully cognisant of this when undertaking this Review. The Group was also mindful of the fact that any proposals put forward should not conflict with general child care policy. The Group formulated a number of proposals relating to the schemes and these are outlined in this chapter. The proposals are grouped together as follows

- Future Policy Direction
- Organisational Issues
- Control Issues
- Efficiency - Performance Indicators

5.2 Future Policy Direction[81]

Options for alternative and future policy were examined in detail and it was considered that:

- where a child is being wholly maintained directly or indirectly by another State agency, such as foster care or residential care, OCA or ONCP should not be payable. It is proposed that the condition "*or in the care of another State Agency*" should be added (after "step parent") to the residency condition[82];
- the administrative practice whereby a CDA is paid in respect of a child for whom an OCA or ONCP is in payment must cease[83];
- OCA and OCNP should be regarded as analogous to CDA for the purpose of BSCFA;

[81] *The current position in this regard is outlined in Chapter 4.*
[82] *The Social Welfare Bill, 2003 includes a proposal to ensure that the health boards will have complete responsibility for children in foster care. The situation of children in residential\community homes will be dealt with at a later stage.*
[83] *This proposal has already been implemented.*

- standard overlapping provisions should apply to recipients of OCA and ONCP;
- the issue as to whether OCA and OCNP should be regarded as means in assessment of family income for social welfare purposes requires further examination;
- Liable Relatives provisions should apply to OCA and ONCP;
- legislative definitions should be prescribed for 'guardian' and 'abandoned';
- the word "refused" should be removed from the definition of an orphan for the purposes of these schemes and the phrase "has failed to provided" be replaced with "is unable to provide";
- where a person adopts a child whom they had been caring for and for whom there was an OCA or ONCP in payment, that payment should continue on adoption of the child; and
- the titles of the schemes should be changed and the term "orphan" removed from all Social Welfare legislation.

5.3 Organisational Issues

Having examined organisational issues associated with the schemes, the Group proposes that

- Widows and Orphans Section in the PSO should be re-organised, to enable some staff to deal exclusively with OCA and ONCP cases, thereby developing greater expertise in this area[84];
- administrative arrangement options should be explored to establish a link with Child Benefit Section to ensure all non-parental guardians are notified of potential entitlements; and
- claim registration procedures should be reviewed in order to expedite claim processing.

In addition:

- a new set of guidelines has been drawn up for Deciding Officers in order to standardise the decision making process and ensure that consistent criteria are applied to all applicants; and
- new guidelines have been drawn up for Social Welfare Inspectors detailing the qualifying conditions for payment and specifying the information required to determine entitlement.

These guidelines are intended to clarify the present position and will be updated if proposed changes to the scheme are implemented.

[84] *This proposal has already been implemented.*

5.4 Control Issues

With regard to control issues it was considered that:

- OCA and ONCP should only be paid to a guardian and the practice of paying OCA and ONCP directly to children over the age of 16 should cease, except in exceptional circumstances;
- claims from children 16 years and over should be reviewed more frequently, particularly if OCA or ONCP was not in payment prior to the person attaining that age (this should also apply to claims from 18-22 year olds in full time education); and
- enhanced review procedures should be implemented.

5.5 Efficiency - Performance Indicators

It was agreed that the following performance indicators would be useful:

- targets should be set for claim processing times and monitored regularly;
- targets for the review of claims should also be set and monitored regularly;
- the adequacy of the payment should be reviewed at regular intervals; and
- the allocation of dedicated staff will be a more effective use of human resources.

5.6 Conclusion

The Group considers that the schemes are an effective measure in supporting children and are highly successful in the prevention of child poverty. Scheme managers will examine the proposals in relation to the administration and operation of the schemes put forward by this Review. Proposals in relation to policy issues will be considered in a Budgetary/legislative context. It is considered that the proposals put forward in this Review will improve the efficiency of the schemes and ensure that the schemes are administered in a more consistent fashion, thereby providing an improved service to D/SFA customers.

APPENDICES

APPENDIX A

Legislative Changes to the Schemes

1.1 Introduction

The Widows' and Orphans' Pensions Act 1935 introduced both a contributory and non-contributory scheme. Prior to that, the sole source of financial support available to widows and orphans was the Home Assistance Scheme. Apart from the periodic increases in rates (on foot of budgetary initiatives), the principal legislative change has been the definition of 'orphan' at various stages. These amendments are detailed in this appendix.

1.2 Widows' and Orphans' Pensions Act 1935

In 1935, the Government introduced the Widows' and Orphans' Pensions Bill to facilitate the legislative provision of contributory and non-contributory pensions. The stated purpose of the Bill was to:

"cover the risk of death by assisting widows and orphans who on the death of the breadwinner have been left without means of subsistence and who in the nature of things are frequently not in a position to secure their own livelihood."

In the course of the Dáil Debate on the Bill, the Minister stated that, in his view:

".....The one great value [I see] in this Bill is that when the House finally passes the measure we shall have got the principle of widows' and orphans' pensions inserted in the State scheme of social services..."

For the purposes of the Act, 'child' is defined as including "a step-child, and in relation to a man, an illegitimate child, either of himself or his wife, who was living with him at the time of his death and, in relation to a woman, includes an illegitimate child of such woman who was living with her at the time of her death;" and "orphan means a child both of whose parents are dead."

The Act provided for contributory and non-contributory pensions, which would be payable to the guardian or "to some other person appointed by the Minister for the benefit of the child". It contained provision for payment in respect of children up to the age of fourteen years (the then minimum age-limit for school attendance) or sixteen if s/he continued attendance at a course of education. The term 'guardian' is not defined in the Act.

Clear distinction was made between the child of a widow and an orphan. The Act contained provision for a contributory pension payment of 10s per week to be made in respect of the widow, together with additional payments or "allowances" in respect of her children - 5s in respect of the oldest child, and 3s in respect of the subsequent children.

The Act provided that, in the event of the widow remarrying, the personal rate of pension would be withdrawn, but the allowances in respect of the qualified children would continue in payment until they reached the statutory age.

Provision was made for "Orphans pension at the rate of 7s/6p per week under the contributory scheme for each orphan of a man or a widow who was insured under the scheme. For orphans of agricultural workers, the weekly rate would be 6s per week (the "allowances" payable to the worker's widow in respect of the children were 4s for the first and 2s/6p for each other child").

Non-Contributory rates varied, not only contingent on the claimant's means but also according to whether the child was resident in a county borough, an urban area or a rural area, with a further reduction if the child was resident in an institution or boarded out by the local authority.

It was intended that where a widow was imprisoned or maintained at public expense in a mental asylum, contributory and non-contributory widow's pension would cease. However, her children would be deemed to be orphans and Orphan's Pension (contributory or non-contributory as appropriate) would become payable to the guardian of the orphan. The Act also provided that where the child of a widow was removed from her custody or sentenced to a reformatory or industrial school, or deserted or abandoned by her that child would be deemed to be an orphan. In such circumstances, Orphan's Pension would be payable to the guardian or some other person for the benefit of the child.

The scheme was to be administered by the Minister for Local Government and Public Health, and it was intended that the full cost of Widows and Orphans pensions would be met by the sum of £250,000 provided for in the Estimates. (This money was to be invested in a Pensions Investment Account established under the Act for that purpose.) Responsibility for the scheme transferred to the Department of Social Welfare on its establishment in 1947.

Social Welfare (Insurance) Act, 1952

The Social Welfare (Insurance) Act, 1952 provided for the integration of the existing social insurance schemes and the establishment of the Social Insurance Fund. The definition of 'orphan' contained in that Act is as follows:

"orphan" means -

(a) a qualified child, being a legitimate child, both of whose parents are dead and who, where he has a stepparent, does not normally reside with the stepparent or a person married to and living with the step parent, or
(b) a qualified child, being an illegitimate child, whose mother is dead and whose father is dead or unknown and who, if there is a surviving husband of his mother does not normally reside with that husband or a woman married to and living with that husband;"

"qualified child means a person who -

(a) is under the age of sixteen,

(b) is ordinarily resident in the State, and

(c) is not detained in a reformatory or an industrial school;"

That Act provides that an Orphan's (Contributory) Allowance "shall be payable in respect of an orphan if the relevant contribution condition is satisfied". Further provision is made for payment of the allowance to the Guardian, or, if the Minister thinks fit, some other person for the benefit of the orphan.

Orphans (Contributory) Allowance and (Non-Contributory) Pensions were at that time 10s per week (reducing in accordance with the orphan's means in the case of non-contributory pension).

The Social Welfare Act, 1978

This Act provided for the definition of 'orphan' to be expanded to include

> (c) a qualified child whose mother died while deserted wife's allowance or deserted wife's benefit under the Social Welfare Acts, 1952 to 1978, was payable to her and whose father does not wholly or mainly maintain him;"

Social Welfare (Consolidation) Act, 1981

The Consolidation Act reproduced the conditions for receipt of Orphan's (Contributory) Allowance and Non-Contributory Pension as they appear in the Social Welfare Act, 1952. The definition of 'orphan' contained in the Act follows:

"orphan" means, subject to sections 52(4) and 97(3)-

(a) a qualified child, being a legitimate child, both of whose parents are dead and who, where he has a step-parent, does not normally reside with the step-parent or a person married to and living with the step-parent, or

(b) a qualified child, being an illegitimate child, whose mother is dead and whose father is dead or unknown and who, if there is a surviving husband of his mother, does not normally reside with that husband or a woman married to and living with that husband, or

(c) a qualified child one of whose parents is dead and whose surviving parent has abandoned him or refused or failed to provide for him;"

'qualified child' means a person who -

(a) is under the age of 18 years,

(b) is ordinarily resident in the State, and

(c) is not detained in a reformatory or an industrial school;"

However, for the purposes of Widow's (Contributory), Widow's (Non-Contributory) and Orphan's (Non-Contributory) Pension purposes 'qualified child' included a child between the ages of 18 and 21 years in full-time education.

The Social Welfare Act, 1992

This Act represented a significant expansion of the definition of the term “orphan”. The concept of one of the parents having “abandoned or refused of failed to provide” for the child where the other parent is dead or unknown was introduced under this Act. The definition of orphan was amended as follows:

"'orphan' means a qualified child -

(a) both of whose parents are dead, or

(b) one of whose parents is dead or unknown, as the case may be, and whose other parent -
(i) is unknown
(ii) has abandoned him, or
(iii) has refused or failed to provide for him,
where that child is not normally residing with a step-parent or with a person who is married to and living with that step-parent;"

This meant that both parents could be alive and the child could qualify for a payment if the one of the parents was unknown. This allowed for an increased number of people to qualify for the payments.

The Status of Children Act (1987) had provided for the abrogation of the concept of legitimacy/illegitimacy.

The Social Welfare (Consolidation) Act, 1993

This Act brought together the existing legislation governing the operation of the Orphan's (Contributory) Allowance and Orphan's (Non-Contributory) Pension (as per 1981 Consolidation Act). The definition of Orphan contained in the Act is as in the 1992 Act.

Social Welfare Act, 1995

Under the previous definition it was not possible to pay an orphans payment if (for example) the father was known but had abandoned the child. There is no material difference from an income maintenance perspective between the financial needs of a child whose father is known and has abandoned him/her and one whose father is unknown. In that regard, the definition of "orphan" was amended by the Social Welfare Act, 1995 to mean -

" ... a qualified child -

(a) both of whose parents are dead, or

(b) one of whose parents is dead, unknown, has abandoned or has refused or failed to provide for the child and whose other parent -

(i) is unknown, or
(ii) has abandoned or has refused or failed to provide for the child,

where that child is not normally residing with a step-parent or with a person who is married to and living with that step-parent;"

This represented another very significant change as it extends the definition of an orphan to include a child where one of the parents has abandoned, or failed or refused to provide for him/her and the other parent is unknown or has effectively abandoned him/her. This amendment enables a child to be regarded as an orphan where, for example, both parents, although known, have abandoned the child or have failed to provide for him or her.

APPENDIX B

Schemes in other EU Member States[85]

1.3 Introduction

This appendix provides a brief outline of the social welfare provision for orphaned children in some other EU Member States.

UK-Guardian's Allowance[86]

The UK Department of Social Security pays a Guardian's Allowance. Guardian's Allowance is an allowance for people bringing up a child because one or both of their parents has died. A person must be in receipt of Child Benefit for a child in order to be eligible for Guardian's Allowance in respect of that child. However, it is not necessary for the applicant to be the child's legal guardian in order to qualify for the payment.

For the purposes of the scheme a qualified child is one

- both of whose parents have died
  or
- one of whose parents has died and his/her parents were divorced
  or
- one of whose parents has died and the surviving parent cannot be traced or is in prison.

As such, Guardian's Allowance may be regarded as having:

"……the character of compromise – some where between a benefit for orphans and a benefit for children who lack parental support."[87]

Guardian's Allowance is payable until the child reaches 16 years of age or 19 if in full time education. The weekly rate of payment is

- £11.35stg for the eldest child who qualifies
- £9.65stg for each other child who qualifies. [88]

[85] *Unless otherwise stated, the source of the information used to compile this information is MISSOC (Mutual information on social protection) (1998).*
[86] *www.dss.gov.uk*
[87] *Ogus A. I & Barendt E. M. (1988) The Law of Social Security, p. 244*

Guardian's Allowance is paid at the same weekly rate as the child dependency addition paid to pensioners and may be aggregated with Child Benefit.

The allowance is payable to foster parents if the child qualifies and will continue to be payable to adoptive parents if they were in receipt of the allowance prior to adoption. New claims from adoptive parents are rejected.

The Netherlands

Normal family allowances are paid in respect of children who have lost one parent. A survivor who cares for a child under 18 (who has lost one parent) is entitled to a dependent child allowance which is set at 20 per cent of national minimum wage. Children who have lost both their parents are catered for under the general insurance scheme for widows and orphans. Payment in respect of such children is age related with those aged under 10, between 10 and 16 and between 16 and 27 (if a student or child at home) receiving increasingly higher rates. There is no restriction on combination with family allowances and a holiday allowance is also paid.

Greece

A person who has the care of one or more dependent orphans receives a monthly increase on their own payment (presumably this refer to a widow/er's type pension). If a parent who was insured prior to 3/12/92 dies, 20 per cent of the pension of the deceased parent is paid in respect of each child up to age 18 (except if invalid) or age 24 (in the case of a student). If both parents are deceased this increases to 60 per cent (max. of 80 per cent if there are several orphans). If deceased parent only entered insurance since 1/1/93 then 25 per cent of the pension of the deceased parent is paid in respect of each child, if both parents are deceased this increases to 50 per cent. The total income from pensions must not exceed the amount received by the deceased parent.

Belgium

The is no orphan's pension in Belgium but a special family allowance (an orphan's allowance) is paid in respect of each orphaned child and there is a supplement according to age.

[88] *These amounts are only guides. The rules for benefits mean that individual circumstances may affect the amount payable.*

Denmark

There is a special additional allowance per quarter for each "motherless" or "fatherless" child. This allowance is doubled where a child is both "motherless and fatherless". In the case of death (of one or both parents) after 1/7/00 a single payment is made to children under 18 years of age.

France

A scheme of allowance of family support (allocation de soutien familial) is available in France. The allowance is paid monthly in respect of children who have lost both parents and those being raised by a single parent with payment to the latter set at a lower rate.

In cases where one parent is deceased the survivor's pension, invalid widow/er's pension and widow/er's old age pension are increased when the surviving spouse has the charge of at least one child aged under 16. There is no orphan's pension where both parents are deceased.

APPENDIX C

Poverty Proofing of Proposals considered by the Group

1. Introduction

Following the Government decision of 23rd July 1998, it is now a requirement that *significant* policy proposals show clearly the impact of the proposals on groups in poverty or at risk of falling into poverty. This decision was in line with a Partnership 2000 commitment to strengthen administrative procedures for equality proofing in the context of the National Anti-Poverty Strategy (NAPS).

Poverty is defined in the National Anti-Poverty Strategy as follows:

"People are living in poverty if their income and resources (material, cultural and social) are so inadequate as to preclude them from having a standard of living which is regarded as acceptable by Irish society generally. As a result of inadequate income and resources, people may be excluded and marginalised from participating in activities which are considered the norm for other people in society."[89]

2. Main Proposals

The main proposals contained in this Review are considered below:

(a) Dual Payment of OCA or ONCP and Foster Care Allowance

Where a child is being wholly maintained, directly or indirectly by another State agency (such as in Foster Care or State Residential Care) neither Orphan's (Contributory) Allowance nor Orphan's (Non-Contributory) Pension will be payable in respect of that child.

What is the primary objective of this policy/programme/expenditure proposal?

There are two principal objectives of this proposal. Firstly, it is intended to ensure correct targeting of OCA and ONCP by focusing on children who are in need of income support which is not being provided elsewhere (i.e. by their parents or another State Agency). Secondly, it will remove the inequalities in the present system whereby a foster carer may receive both OCA and ONCP and Foster Care Allowance whereas other non-parental guardians receive only one payment.

[89] *National Anti-Poverty Strategy, 1997, Sharing in Progress: National Anti-Poverty Strategy*

Does it …

i) help to prevent people falling into poverty?

The proposal does not help to prevent people falling into poverty.

ii) reduce the level (in terms of numbers and depth) of poverty?

This proposal does not improve the position of those at risk of falling into poverty or the position of those currently in poverty.

iii) ameliorate the effects of poverty?

The proposal does not ameliorate the effects of poverty.

iv) have no effect on poverty?

The proposal neither increases nor decreases the numbers in poverty and it has no effect on the depth of poverty experienced by those already in poverty.

v) increase poverty?

The rate of payment of the Foster Care Allowance was increased significantly with effect from August 2001. Foster carers do not suffer a financial loss under the new arrangements as the OCA or ONCP in respect of the children in their care is paid to them through the health board. The proposed change to be considered in the context of the Social Welfare Bill, 2003 does not increase poverty as foster carers will continue to receive the same amount of money.

vi) contribute to the achievement of the NAPS targets?

As the proposal has no effect on poverty, it does not contribute to the achievement of the NAPS targets.

vii) address inequalities which might lead to poverty?

The proposal removes the current inequality whereby foster carers receive dual payment for their caring role while guardians of children who are not in foster care but for whom there is an OCA or ONCP payment in place receive only one payment.

viii) as proposed, reach the target groups?

One of the objectives of the proposal is to ensure that the schemes are correctly targeted.

What is the Rationale and Basis of Assessment (data/information) behind each of these replies?

The Report of the Working Group on Foster Care, published by the Department of Health and Children, recommended that the rate of payment of FCA be increased to €254 per week for children under 12 and €279 for children over age 12. This increase came into effect in August 2001 on foot of Budget 2001 provisions. This rate has since increased to €281.50 per week for children under 12 and €308.50 for children over age 12

The statistical information available to the Department in relation to orphans payments has shown that foster carers represent an increasing proportion of applicants for and recipients of OCA and ONCP.

If the proposal has the effect of increasing the level of poverty, what options might be identified to ameliorate this effect?

The proposal does not increase poverty. See (iv) and (v) above.

If the proposal has no effect on the level of poverty, what options might be identified to produce a positive effect?

This proposal, in association with others made in this review, should ensure that OCA are ONCP are targeted more effectively and this may reduce that level of poverty in the target population.

(b) Definition of abandoned

It is proposed to introduce a definition of the term "abandoned" into the legislation governing OCA and ONCP to the effect that *"a child is not regarded as abandoned if the parent knows and approves of the steps that someone else is taking to look after him/her."*

What is the primary objective of this policy/programme/expenditure proposal?

At present there is no definition of the term "abandoned" in the legislation governing OCA and ONCP. Therefore, it is very difficult to determine whether or not a child has been abandoned and can qualify for the payments.

It is considered that inserting this definition into the legislation makes the claim processing procedure more straightforward and ensures that the same standard is applied to all cases.

Does it….

i) *help to prevent people falling into poverty?*

This proposal is intended to make the claim processing procedure more efficient and does not serve to prevent people falling into poverty.

ii) reduce the level (in terms of numbers and depth) of poverty?

This proposal does not reduce the numbers falling into poverty or the level of poverty experienced.

iii) ameliorate the effects of poverty?

This proposal does not ameliorate the effects of poverty.

iv) have no effect on poverty?

It is not considered that this proposal will have any effect on poverty.

v) increase poverty?

The proposal does not increase the level of poverty.

vi) *contribute to the achievement of NAPS targets?*

As the proposal has no effect on the level of poverty or the numbers falling into poverty it does not contribute to the achievement of the NAPS targets.

vii) address inequalities which might lead to poverty?

The proposal addresses inequalities, which may have arisen in the claim processing procedure, whereby different definitions of the term "abandoned" have been applied to applications for OCA and ONCP.

viii) as proposed, reach the target groups?

As the proposal applies to all applications for OCA and ONCP it reaches the target group.

What is the Rationale and Basis of Assessment (data/information) behind each of these replies?

The experience of the Deciding Officers of the Department indicates that different standards may have been applied in deciding whether or not applicants for OCA and ONCP are entitled to the payments.

If the proposal has the effect of increasing the level of poverty, what options might be identified to ameliorate this effect?

Not applicable - see (v) above

If the proposal has no effect on the level of poverty, what options might be identified to produce a positive effect?

This proposal, in association with others made in this review should ensure that OCA and ONCP are targeted more effectively and this may reduce that level of poverty in the target population.

(c) Back to School Clothing and Footwear Allowance (BSCFA)

One of the qualifying conditions for BSCFA is that there be a CDA in payment in respect of the child. At present BSCFA is not payable in respect of children for whom there is an OCA or ONCP in payment as there should be no CDA in payment in respect such children. It is proposed that this situation be altered so that OCA and ONCP will be treated as analogous to CDA for the purposes of BSCFA.

What is the primary objective of this policy/programme/expenditure proposal?

To assist the guardians of children for whom there is an OCA or ONCP in payment (and who are not in receipt of FCA) with the additional expenses they incur at the beginning of the school year.

Does it….

i) help to prevent people falling into poverty?

The measure provides additional income to families (currently in receipt of OCA and ONCP) at the beginning of the school year to assist with the additional expenses incurred at that time. Therefore, it may prevent some families from falling into poverty.

ii) reduce the level (in terms of numbers and depth) of poverty?

For the reason as outlined in (i) above, it is considered that this measure may reduce the level of poverty experienced by some families.

iii) ameliorate the effects of poverty?

See (i) and (ii) above.

iv) have no effect on poverty?

The proposal reduces the numbers in poverty and the level of poverty experienced. See (i) and (ii) above.

v) increase poverty?

No, the proposal does not increase poverty.

vii) *contribute to the achievement of NAPS targets?*

The proposal contributes towards the income adequacy and educational disadvantage targets by contributing towards the reduction of child poverty. However, as the numbers in receipt of OCA and ONCP are relatively small, it is recognised that the effect on the global NAPS target is minimal.

vii) address inequalities which might lead to poverty?

The proposal reduces inequalities by bringing about similar treatment of children of social welfare recipients and children in respect of whom there is an OCA or ONCP in payment (but who are not in foster care).

viii) as proposed, reach the target groups?

The proposal reaches the entire target group, i.e. children in receipt of OCA or ONCP.

What is the Rationale and Basis of Assessment (data/information) behind each of these replies?

It is known that many families experience financial difficulties at the beginning of the school year. The Combat Poverty Agency have identified clothing (particularly school clothing) as an area where low-income families experience shortfalls.

If the proposal has the effect of increasing the level of poverty, what options might be identified to ameliorate this effect?

The proposal will not increase the level of poverty.

If the proposal has no effect on the level of poverty, what options might be identified to produce a positive effect?

Not applicable - the proposal should have a positive effect on poverty reduction. See (i) and (ii) above.

(d) Other Proposals

The following paragraphs outline other proposals made in this review

1. Replace the phrase "has refused or has failed to provide" with the phrase *"is unable to provide due to a mental or psychological condition"*. It is considered that situations where parents have refused to provide for their children should not be covered by the scheme and that this proposal would lead to more effective targeting of the scheme.

2. Apply Liable Relative Provisions to OCA and ONCP in cases where one or both of the child's parents are alive. It is not considered that this proposal increases the poverty risk of such parents. Under Liable Relative legislation, social welfare recipients are not required to contribute. There are also safeguards in place to protect the position of the lower paid.

3. Apply standard overlapping provisions to recipients of OCA and ONCP. The present arrangements are inequitable in that they go against the general principle that only one social welfare payment be payable at any given time.

4. Allow adoptive parents to retain payment of OCA or ONCP on adoption of children for whom these payments had already been in payment. This proposal should have an impact on reducing poverty in that, at present adoptive parents suffer a financial loss when they adopt children for whom there had been an OCA or ONCP in payment. It is recognised that this proposal will only effect a very small number of people.

5. The review also proposes several measures which have neither a positive or negative effect on poverty. These are as follows

- to introduce definitions of the terms "guardian" and "abandonment" into the statutory definition of an "orphan" for the purposes of these schemes;

- the titles of the schemes be changed in order to remove the term orphan (no suitable alternatives were arrived at).

APPENDIX D

Bibliography

Beveridge, W. (1942) *Social Insurance and Allied Services,* Her Majesty's Stationary Office, London.

Bunreacht na hEireann (1937) The Stationary Office, Dublin.

Callan T., et al (1999) *Monitoring Poverty Trends - Data from the 1997 Living in Ireland Survey*, (commissioned by the Department of Social, Community and Family Affairs & the Combat Poverty Agency, undertaken by the ESRI), Stationary Office, Dublin.

Carney, C., Fitzgerald, E., Kiely, G., & Quinn, P. (1994) *The Cost of a Child – A report on the financial cost of child-rearing in Ireland*, Research Report Series No. 17, Combat Poverty Agency, Dublin.

Commission on the Family (1998) *Strengthening Families for Life*, Final Report to the Minister for Social, Community and Family Affairs, Stationary Office, Dublin.

Commission on Social Welfare (1986) *Report of the Commission on Social Welfare*, The Stationary Office, Dublin.

Constitution Review Group (1996) *Report of the Constitution Review Group*, Stationary Office, Dublin.

Co-ordinating Group of Secretaries (1996) Second Report to Government, *Delivering Better Government - A Programme for Change in the Irish Civil Service, Stationary Office*, Stationary Office, Dublin.

Curry, J. (1993, 2nd edition) *Irish Social Services*, Institute of Public Administration, Dublin.

Department of Education and Science (2000) *Annual Statistical Report 1998/99*, Stationary Office, Dublin.

Department of Health and Children (1999) *Survey of Children in Care,* Stationary Office, Dublin.

Department of Health and Children (1999) *Children First – National Guidelines for the Protection and Welfare of Children,* Stationary Office, Dublin

Department of Health and Children (2000) *The National Children's Strategy Our Children – Their Lives,* Stationary Office, Dublin.

Department of Health and Children (2001) *Report on the Working Group on Foster Care: Foster Care - A Child Centered Partnership,* Stationary Office, Dublin.
Department of Social, Community and Family Affairs (1990-2000) *Statistical Information on Social Welfare Services*, Stationary Office, Dublin.

Department of Social, Community and Family Affairs (1998) *Inclusion, Innovation and Partnership: Strategy Statement 1998-2001*, Stationary Office, Dublin.

Department of Social Welfare (1949) *White Paper Containing Government Proposals for Social Security*, Stationary Office, Dublin.

Department of Social Welfare (1950) *First Report of the Department of Social Welfare 1947-1949*, Stationary Office, Dublin.

Department of Social Welfare (1996) *Open, Fair and Caring*: *The Strategic Management Initiative of the Department of Social Welfare*, Stationary Office, Dublin.

Farley, D. (1964) *Social Insurance and Social Assistance in Ireland*, Institute of Public Administration, Dublin.

Government of Ireland (1999) *Action Programme for the Millennium - As Reviewed by Fianna Fáil and the Progressive Democrats in Government.*

Government of Ireland (2000) *Programme for Prosperity and Fairness*

Grode, J, Callendar, C. & Lister, R. (1998) *Purse or Wallet - Gender Inequalities and Income Distribution within Families on Benefits*, Policy Studies Institute, London.

Hensey, B. (1979) *The Health Services of Ireland*, Institute of Public Administration, Dublin.

International Labour Office (1984) *Introduction to Social Security*, International Labour Office, Geneva.

MISSOC (1998) *Social Protection in the Member States of the EU*, European Commission, Luxembourg.

National Anti-Poverty Strategy, (1997) *Sharing in Progress: National Anti-Poverty Strategy,* Stationary Office, Dublin.

National Anti-Poverty Strategy, (2000) *Social Inclusion Strategy: Annual Report of the Inter-Departmental Policy Committee 1999/2000,* Stationary Office, Dublin.

Nolan, B. (2000) *Child Poverty in Ireland,* Oak Tree Press in association with the Combat Poverty Agency, Dublin.

Ogus, A. I. & Barendt, E. M. (1988, 3rd Edition.) *The Law of Social Security*, Butterworth & Co. (Publishers) Ltd., London.

Oxford Reference Dictionary of Law (3rd Edition), London.
Richardson, V (1999) *Children and Social Policy*, Chapter 8 in Quin S et. al (editors) Contemporary Irish Social Policy, UCD Press, Dublin.

Shatter, A. J. (1986) *Family Law in the Republic of Ireland*, Wolfhound Press, Dublin.

United Nations (1989) *Convention on the Rights of the Child,* Office of the United Nations High Commissioner for Human Rights, Geneva.

UNICEF (2000) *A League Table of Child Poverty in Rich Nations*, Innocenti Report Card Issue No. 1, Florence.