are "habitually resident", who might now be caught by the residence test. The Committee is particularly critical of the timescale of reform: "To embark on a major overhaul of the kind envisaged in the regulations, requiring changes to all aspects of the decision making, claims handling, administration and public information and advice, with just a few weeks notice, seems to us to be both disproportionate and strewn with risk" (para.49). It recommends that, in the form proposed, the changes should not be proceeded with (para.52). In its response to the report the Government defends the changes (including the lack of definition) and says that it would have failed to act responsibly if it had not responded to the risk of abuse merely because its precise extent could not be quantified.

Annex Q to the SSAC report contains figures on the number of habitual residence test decisions over the past six years. In the most recent complete 12-month period for which there is data (2002–2003), there were 78,811 applications of the test.

Child Trust Funds—Asset-based Welfare or a Recipe for Increased Inequality?

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In this article Nick Wikeley sets out the background to the introduction of child trust fund accounts, a new type of universal savings policy for all children in the United Kingdom who were born on or after September 1, 2002. The article analyses the rules governing children's eligibility for such accounts, the opening and management of accounts, the nature of Treasury and private contributions to such accounts and the circumstances in which withdrawals can be made. The interaction of child trust funds with the benefits system and the penalties and appeals procedures under the new scheme are also examined. The discussion concludes with a consideration of the issues facing the development of child trust funds in the future.

Introduction

The Child Trust Funds Act 2004 establishes a new type of universal long-term investment account for children, the child trust fund account. In principle all children born after September 1, 2002 will qualify for an account, which parents can open with any approved financial institution. In the event of parents not acting, or being unable to act, the Inland Revenue will open accounts for children. The Revenue will also credit each account with an initial Treasury endowment of £250, together with an additional contribution of £250 for children in families on low incomes. The Government has also indicated its intention to make a further contribution to each account as children reach the age of seven. Children's families and friends will also be able to make contributions to child trust fund accounts.

* I am indebted to Neville Harris for his comments on an earlier draft of this article, and to Takis Tridimas for discussing the potential impact of EU law. The usual disclaimers apply.

The child trust funds scheme is an example of "asset-based welfare", a relatively new addition to the lexicon of the Welfare State, coined by the American scholar Professor Michael Sherraden.[1] In summary, asset-based welfare means welfare policies which involve encouraging (or indeed compelling) individuals to hold assets—both for their own good and for the wider good of society.[2] Sherraden argues that Western governments have traditionally operated a dual policy, heavily subsidising asset-building by the well-to-do (*e.g.* through tax relief measures) whilst simultaneously engaging in income transfers for the poor, which fail to address underlying wealth inequalities.[3] In the United States these ideas have led to local initiatives in creating Individual Development Accounts (IDAs), whereby individuals on low incomes are encouraged to save through matched state funding.[4] The child trust fund scheme is much more ambitious in scope than the American IDAs, in that it is a universal savings regime, designed to provide all children with a financial asset on attaining the age of 18. Sherraden argues that the British scheme "will reduce class divisions, increase opportunity, spark individual engagement and initiative, and increase both economic growth and active citizenship."[5]

Asset-based welfare policies have also been advocated by Mark Latham, now federal leader of the opposition Australian Labor Party (ALP), who has argued that disparities in the distribution of *wealth* pose a far more serious problem than the distribution of *income*. In his view, the role of government is to "facilitate asset accumulation among the victims of poverty and economic insecurity. It needs to develop a stakeholder welfare state, in which all citizens have access to various forms of capital."[6] In the United Kingdom, proposals for asset-based welfare have been pioneered by the Institute of Public Policy Research (IPPR). Just as in the 1980s and early 1990s neo-conservative policy analysts in the United States, the United Kingdom and Australia exchanged ideas for reform of the Welfare State,[7] so too their social democratic counterparts are now sharing ideas about asset-based welfare strategies. The globalisation of the market in

[1] M. Sherraden, *Assets and the Poor: A New American Welfare Policy* (1991).

[2] C. Emmerson and M. Wakefield, *The Saving Gateway and the Child Trust Fund: Is Asset-Based Welfare "Well Fair"?* (Institute for Fiscal Studies, Commentary 85, 2001), p.4.

[3] M. Sherraden, "From a Social Welfare State to a Social Investment State" in C. Kober and W. Paxton, *Asset-Based Welfare and Poverty* (IPPR/End Child Poverty, 2002), p.5.

[4] Typically the US Government contributes $2 for every $1 saved in an IDA; the UK Government's Saving Gateway pilot for low income savers (a companion scheme to the child trust fund) is modelled on the IDA concept and provides £1 for £1 in matched funding.

[5] Sherradan, n.3 above, p.8.

[6] M. Latham, "Economic Ownership—expanding the winners' circle" in Kober and Paxton, n.3 above, p.2.

[7] See further D.S. King, *Actively Seeking Work?: The Politics Of Unemployment and Welfare Policy in the United States and Great Britain* (1995).

asset-based welfare policies is illustrated by IPPR's recent policy development work for Nest-Egg Accounts, an ALP proposal along similar lines to the British child trust funds scheme.[8]

The Child Trust Funds Act 2004 itself represents the culmination of a process of consultation which started in earnest with the Treasury report *Saving and Assets for All*,[9] issued in the run-up to the 2001 General Election.[10] Drawing on work undertaken by IPPR,[11] that report declared that the Government's intention was that more young people should "reach the age of eighteen with a financial asset that will provide them with financial opportunities and security."[12] The responses to that document were summarised in a further consultation paper published in November 2001, which provided more information on the proposed child trust fund scheme whilst also setting out further issues for comment.[13] The main thrust of this paper was to seek views on which delivery model should be adopted for the child trust fund scheme, namely open market competition or an approach based on licensed providers. In November 2002 the Government announced that it had decided on the former mechanism for delivery.[14] This was followed by a joint HM Treasury and Inland Revenue report, detailing the Government's proposals,[15] and the publication of the Bill itself.

What then are the objectives of the Child Trust Funds Act 2004? The Act itself tells us next to nothing about the aims of the legislation. The long title merely relates that it is "An Act to make provision about child trust funds and for connected purposes". Section 1(1) of the Act is no more illuminating.[16] In fairness, however, in the course of the various consultation papers and Parliamentary debates the Government has

[8] IPPR, *Nest-Egg Accounts: Key Questions and Policy Options* (Chifley Research Centre, November 2003).

[9] HM Treasury, *Saving and Assets for All*, The Modernisation of Britain's Tax and Benefit System, Number Eight (April 2001). See also HM Treasury, *Helping People to Save*, The Modernisation of Britain's Tax and Benefit System, Number Seven (November 2000).

[10] A commitment to create a new child trust fund system appeared in the Labour Party *General Election Manifesto* (2001), p.10.

[11] G. Kelly and R. Lissauer, *Ownership for All* (IPPR, 2000), recommending payment of a £1,000 capital grant for all new children born. See also D. Nissan and J. Le Grand, *A Capital Idea: Start-up Grants for Young People* (Fabian Society, 2000), proposing that each 18-year-old receive a £10,000 grant for the purposes of education, capital development, etc.

[12] HM Treasury, *Saving and Assets for All*, n.9 above, para.1.5.

[13] HM Treasury, *Delivering Saving and Assets*, The Modernisation of Britain's Tax and Benefit System, Number Nine (November 2001).

[14] HM Treasury, *Pre-Budget Report: Steering a steady course: delivering stability, enterprise and fairness in an uncertain world* (Cm 5664, 2002), pp.98–99.

[15] HM Treasury and Inland Revenue, *Detailed Proposals for the Child Trust Fund* (October 2003).

[16] "This Act makes provision about child trust funds and related matters."

clearly and consistently stated four objectives for child trust fund accounts. These are "to help people understand the benefits of saving and investing; to encourage parents and children to develop the savings habit; to ensure that all children have a financial asset at the start of their adult life; and to build on financial education and help people make better financial choices throughout their lives".[17] Perhaps tellingly, these goals do not include the elimination of child poverty.[18]

The definition of a child trust fund account

There are three fundamental requirements for a child trust fund account.[19] First, the account must be held by a child "who is or has been an eligible child".[20] Secondly, the account must comply with the requirements of the 2004 Act and the subsidiary regulations.[21] Thirdly, the account must have been opened in the proper manner, typically by the child's parent but in default by the Inland Revenue.[22] The following sections examine each of these three requirements in turn, before analysing the provisions governing the management of child trust fund accounts, payments into and out of accounts and the position on the maturity of such accounts. The discussion then examines the inter-action between child trust funds and the benefits system, as well as the penalties and appeals provisions under the 2004 Act. Finally, the conclusion explores broader issues relating to the place of child trust funds in the context of the Government's wider programme of reform for the Welfare State.

Eligible children

The basic rule is that children are only "eligible children" if they were born after August 31, 2002 and *either* someone is entitled to child benefit for them *or* child benefit entitlement is excluded because they are being looked after by a local authority.[23] There are, inevitably, some modifications to these

[17] Lord McIntosh of Haringey, Parliamentary Under-Secretary of State, *Hansard*, HL Debates, Vol. 658, col.351 (February 26, 2004).
[18] Indeed, as the House of Commons Work and Pensions Committee has noted, the benefits of the 2004 Act will not materialise until around the target date for the Government's commitment to eradicate child poverty: *Child Poverty in the UK, Second Report of Session 2003–04* (HC 85-I), para.122.
[19] Child Trust Funds Act (CTFA) 2004, s.1(2).
[20] *ibid.*, s.1(2)(a).
[21] *ibid.*, ss.1(2)(b) and 3; see also SI 2004/1450.
[22] CTFA 2004, s.1(2)(c); see further *ibid.*, ss.5 and 6.
[23] CTFA 2004, s.2(1).

rules at the margins, as discussed below. The Government's reasons for linking child trust fund accounts to child benefit entitlement were that new parents were familiar with child benefit, which was effectively a universal benefit, and that such a linkage would avoid any need for parents to make a separate claim for a child trust fund account.[24] It follows, however, that if the parent does not make a claim for child benefit, there can be no entitlement to a child trust fund account (leaving aside the special case of children in local authority care). It should be noted that a child only needs to be an eligible child at the point when the account is opened. Some children will move permanently abroad, with a consequential loss of child benefit entitlement; in such cases no steps will be taken to close their accounts, and they will continue to accrue interest.[25]

Children born after August 31, 2002

According to s.2(1) of the 2004 Act, an eligible child must have been born after August 31, 2002—or, to put the point another way, on or after September 1, 2002. This date was chosen as it is the start of a school year in England and Wales,[26] and so ensures parity of treatment, or at least equality of opportunity, in the context of child trust funds for children in the same school year.[27] Whilst this solution achieves a degree of horizontal equity in terms of children of the same age, this is necessarily at the price of vertical equity. In the extreme case there may be twins who were born either side of midnight on August 31, 2002. The effect of s.2(1) is that the younger of the twins will be eligible for a child trust fund account and so will receive a handsome Treasury endowment of £277 (or £543 if he or she belongs to a low income family).[28] The elder twin will not be an eligible child and so will not qualify for such a welcome birthday present.

There will, presumably, be relatively few cases of such twins. But the effect of the "born after August 31, 2002" rule will inevitably result in widespread differential treatment of children in the population as a whole. There will be many thousands of siblings within families who fall either side of the cut-off date. Similarly, very many grandparents will have one or more older grandchildren who are not "eligible children" and one or more younger ones who enjoy that status. True, the legislation reserves to the Government the option of substituting in s.2(1) an earlier date for August

[24] HM Treasury and Inland Revenue, n.15 above, para.2.2.
[25] *ibid.*, para.2.16.
[26] In Scotland, however, the school year starts in mid-August, with school admissions determined by the child's age on the preceding March 1.
[27] *Hansard*, HC Debates, Vol. 403, col.286 (April 9, 2003). Strictly this solution at least achieves parity for *virtually* all children in the same school year, excluding the handful who are accelerated for academic reasons.
[28] See further below for an explanation of the different levels of Treasury contributions.

31, 2002,[29] but there has been little official enthusiasm for such an extension of the scheme. There would obviously be significant implications for public expenditure, both in terms of the potential Treasury contributions and the scale of the IT system needed to administer the scheme. Accordingly, the House of Commons Treasury Committee recommended that the Government consider extending the scope of the scheme to include older children, but without the bonus of Government endowments.[30] The ministerial response was that "the administrative burden on providers of allowing all children from previous cohorts to benefit from an identical tax-free vehicle is disproportionate to the benefits that would be offered".[31] The Government's view is that this is a matter best left to the marketplace to develop new "look-alike" products, taking advantage of existing tax concessions.[32] There has, however, been a Government undertaking to keep the scheme under review and then, "should the research back us up in making further provision and should the funds become available from Exchequer resources, we will be able to decide whether to bring in another cohort of children."[33] The implicit message is plain: parents and grandparents who wish to make equal provision for children born either side of the cut-off date will have to make their own arrangements for any "non-eligible children". There is the risk that this failure to accommodate older children may impact upon the long-term political viability of the scheme.[34]

"A person is entitled to child benefit in respect of the child"

Assuming that the child was born on or after September 1, 2002, the second condition of eligibility is usually satisfied by there being a person "entitled to child benefit in respect of the child".[35] The use of this criterion neatly sidesteps the need for any "claim", at least in the conventional social security sense of that term, for a child trust fund account. Instead, entitlement to child benefit acts as an automatic trigger for eligibility to a

[29] CTFA 2004, s.2(7). This is a "Henry VIII power" which is subject to the affirmative procedure (*ibid.*, s.28(5), (6)(a)), following a recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee: *7th Report of Session 2003–04* (HL Paper 41), para.11. See further *12th Report of Session 2003–04* (HL Paper 62).

[30] House of Commons (HC) Treasury Committee, *Child Trust Funds— Second Report of Session 2003–04* (HC 86), para.34.

[31] Ruth Kelly MP, Financial Secretary to the Treasury, *Hansard*, HC Debates, Vol. 415, col.1394 (December 15, 2003).

[32] House of Commons (HC) Treasury Committee, *First Special Report of Session 2003–04* (HC 387), p.3.

[33] Ruth Kelly MP, Financial Secretary to the Treasury, Standing Committee A, col.29 (January 6, 2004).

[34] IPPR has argued that "quick winners" are needed to ensure continuing public support for the scheme: see further the Conclusion to this article.

[35] CTFA 2004, s.2(1)(a).

child trust fund account. Entitlement to child benefit itself is governed by Pt IX of the Social Security Contributions and Benefits Act 1992,[36] and decisions on child benefit entitlement as determined by the decision making machinery under the Social Security Act 1998 are conclusive for child trust fund purposes.[37]

There are, however, some refinements to the rule that a person must be entitled to child benefit for the child (leaving aside the special alternative qualifying route of being a child being looked after by a local authority, considered further below). These modifications deal with the international dimension to child benefit and will be especially significant in the EU context. European social security law operates two interlocking principles in determining a migrant worker's social security status. The first is the "single state" rule, namely that a migrant worker should be subject to the social security legislation of only one member state. The second is the "*lex laboris*" principle, which (subject to certain exceptions) defines that state as being the member state in which the migrant worker is employed, rather than where he or she lives.[38] Even in today's labour market, the United Kingdom's relative geographical isolation means that these provisions are much less significant on this side of the Channel than on the mainland of continental Europe, where cross-border working is far more common. In the domestic context the paradigm example concerns the flow of workers between Northern Ireland and the Republic of Ireland, although the rules apply equally to workers who commute between, say, England and France. In this context it must also be observed that the child trust fund regime applies to the whole of the United Kingdom.[39]

The effect of these EU provisions is that, leaving aside special cases, child benefit entitlement is determined by where the migrant worker actually works. It follows that a worker who lives with his or her family in Northern Ireland but works in the Republic of Ireland is entitled to Irish child benefit. On the face of it, such a person's children could not qualify as eligible children for the child trust fund purposes as there is no entitlement to (United Kingdom) child benefit. This problem is solved by s.2(3), which has the effect of disapplying the requirement for child benefit entitlement

[36] SSCBA 1992, ss.141–147 and Schs 9 and 10; see also Child Benefit (General) Regulations 2003 (SI 2003/493).

[37] CTFA 2004, s.2(6), which refers to any child benefit entitlement decision not having been "overturned", a term left undefined by the Act but presumably a new portmanteau expression for benefit being withdrawn as a result of a revision, supersession or appeal.

[38] EU Reg.1408/71, Art.13; see further N. Wikeley and A. Ogus, *The Law of Social Security* (5th edn, 2002), pp.73–75 and, for a more detailed account (notwithstanding its title), F Pennings *Introduction to European Social Security Law* (3rd ed., 2001), ch.8.

[39] CTFA 2004, s.30 deals with territorial extent and s.25 stipulates that child trusts funds constitute an excepted matter under the Northern Ireland Act 1998.

where the individual's right to benefit is excluded "because of a directly applicable Community provision or an international agreement". Consequently the children of a resident of Northern Ireland who works in the Republic will be "eligible children".

But the converse does not apply. Section 2(4) of the 2004 Act provides that:

> "(4) Where a person is entitled to child benefit in respect of a child only because of a directly applicable Community provision or an international agreement, subsection (1) applies as if the person were not so entitled."

This exclusion will not affect the special position of the children of Crown servants, such as army personnel, who are entitled to child benefit when stationed overseas by virtue of domestic law.[40] It will, however, prevent the children of a resident of the Republic of Ireland who works in the North from being "eligible children" under the 2004 Act. The Government's view is that "there is no case for the UK Government to pay endowments to encourage saving for and by children whose ties are not within the UK."[41] The position is perhaps not quite as straightforward as this might suggest, as the family living in the Republic may well be British nationals. Certainly, if the family were to move to Northern Ireland, then United Kingdom child benefit would become payable, triggering entitlement to a child trust fund account at that point.

There was very little discussion of this point in the debates on the Bill, but the exclusion of these cases may yet result in legal challenges. Article 7(2) of EU Regulation 1612/68 requires that migrant workers "enjoy the same social and tax advantages as national workers". The European Court of Justice (ECJ) initially interpreted the concept of a social or tax advantage rather narrowly, requiring a close link with the individual's employment.[42] Subsequent cases have relaxed this requirement somewhat; for example, in *Reina*[43] the ECJ held that an interest-free childbirth loan granted only to German nationals was a social advantage within Art.7(2), and so could not be denied to an Italian couple resident in Germany. There must still be some direct or indirect benefit to the worker, and not just to a family member.[44] Although one of the fundamental objectives of the child trust

[40] Child Benefit (General) Regulations 2003 (SI 2003/493), reg.30.
[41] Ruth Kelly MP, Financial Secretary to the Treasury, Standing Committee A, col.37 (January 6, 2004). Fewer than 500 children are thought to be affected.
[42] Case 76/72 *Michel S.* [1973] E.C.R. 457. See further the discussion in A. P. van der Mei, *Free Movement of Persons within the European Community* (Hart Publishing, 2003), pp.31–34.
[43] Case 65/81 *Reina v Landeskredit Bank Baden-Württemberg* [1982] E.C.R. 33.
[44] Case 316/85 *Centre Public d'Aide Sociale de Courcelles v Lebon* [1987] E.C.R. 3261.

fund scheme is to benefit children by providing them with a valuable asset on attaining their majority, it does not require too much imagination to see that the scheme might be construed as being of indirect benefit to the parent-worker. Yet the other purposes of the 2004 Act are framed in terms of domestic policy imperatives, such as encouraging savings, which have no obvious linkage with the free movement of labour. Moreover, the ECJ jurisprudence on Art.7(2) has typically concerned the migrant worker who goes both to work and *live* in another Member State, and not merely to work there. On that basis, therefore, it may be that s.2(4) is not inconsistent with Art.7(2) of Regulation 1612/68.

Even if this is the case, it does not necessarily follow that s.2(4) is EU-compliant. There remains the broader argument that this provision in the 2004 Act is in breach of Art.12 of the Treaty itself, which prohibits "within the scope of the application" of the Treaty "any discrimination on grounds of nationality". Section 2(4) makes no express reference to parents' nationality, but may be viewed as indirectly discriminatory in that it is more likely to affect (for example) Irish nationals. In recent years the ECJ has demonstrated greater willingness to invoke Art.12 for the benefit of non-residents. As Van der Mei observes, "Equality of treatment is ensured as regards rights or benefits which may be regarded as a corollary, or which may enhance the exercise of, the right to move to other Member States."[45]

Children being looked after by a local authority

For the great majority of children the two statutory conditions of eligibility—being born after August 31, 2002 and having an adult who receives child benefit for them—are straightforward and easy to fulfil. However, the use of child benefit entitlement as a trigger for access to the child trust fund scheme is problematic for those children where there is no right to child benefit. These exceptional cases are set out in Sch.9 to the Social Security Contributions and Benefits Act 1992. Most of these exclusions are concerned with older children (those who are married, employed trainees or in detention). However, children of any age may be in local authority care, in which case there is no entitlement to child benefit after eight weeks.[46] Moreover a local authority itself cannot be entitled to child benefit for children in its care.[47] For child benefit purposes a child is in local authority care when being looked after by the local authority under Pt

[45] Van der Mei, n.42 above, p.53, citing Case 186/87 *Cowan* [1989] E.C.R. 195; Case C–85/96 *Martínez Sala* [1998] E.C.R. I–2691 and Case C–184/99 *Grzelcyk* [2001] E.C.R. I–6193.
[46] SSCBA 1992, Sch.9, para.1(c) and SI 2003/493, reg.16.
[47] SSCBA 1992, s.147(6), but note the exception for voluntary organisations: see further SI 2003/493, reg.36.

3 of the Children Act 1989,[48] as well when subject to a formal care order. These children qualify as "eligible children" under the 2004 Act, notwithstanding the absence of any adult who is entitled to child benefit on their behalf.[49] In practice, most children in care will have had an account opened in their name at birth by one of their parents. However, there will be some cases where children are in care from or shortly after birth, or soon after arrival in the United Kingdom, and in such cases the Inland Revenue has the duty of opening accounts.[50]

Children who cannot be eligible children
We have seen that children born before September 1, 2002 cannot be eligible children, at least as matters stand. A child whose parent or other carer declines to claim child benefit also cannot be an eligible child. This exclusion is unlikely to present significant problems, given the almost universal reach of child benefit. Children whose parents receive child benefit solely by virtue of EU law or any international agreement are also outside the scope of the scheme. Finally, the 2004 Act provides that children with an irregular immigration status cannot be eligible children.[51] Thus a child who has no right of abode under the Immigration Act 1971, or is not settled in the United Kingdom within the meaning of the 1971 Act, cannot be an eligible child. Similarly, a child who is not a "qualifying person", or a family member of such a person, within the meaning of the immigration provisions governing EEA nationals, cannot be an eligible child.[52]

The statutory requirements

The second defining feature of a child trust fund account is that it meets the statutory requirements. In this context it should be observed that the child trust funds scheme is "under the care and management of the Inland Revenue."[53] This reflects a standard principle of revenue law, which has recently been imported into the tax credits regime.[54] This principle is the basis upon which the Revenue has traditionally promulgated extra-

[48] *ibid.*, reg.18. Thus, to use the pre-1989 Act terminology, the exclusion covers both compulsory and voluntary care. In this article references to a child being in local authority care should be read in this wider sense.
[49] CTFA 2004, s.2(1)(b) and (2).
[50] *ibid.*, s.6; see further below.
[51] *ibid.*, s.2(5).
[52] See further Immigration (European Economic Area) Regulations 2000 (SI 2000/2326).
[53] CTFA 2004, s.1(3).
[54] See, *e.g.* Taxes Management Act 1970, s.1(1) and Tax Credits Act 2002, s.2(1). The only difference—and I am grateful to Arnie James for drawing my attention to this—is that the 2004 Act specifically refers to the "Inland Revenue" rather than the traditional statutory formula of "the Board". Perhaps this is a victory for plain English in legislative drafting.

statutory concessions and reached settlements in disputes with taxpayers. In social security law, on the other hand, decisions are made on behalf of the Secretary of State and departmental officers have minimal discretion in applying the letter of the legislation.[55] In contrast the "care and management" doctrine enables the Revenue to apply the law with a degree of administrative flexibility in appropriate cases. The discussion below needs to be seen in that context.

Account providers and qualifying accounts
Although the Government has opted for open market delivery, rather than a system of a limited number of licensed providers, only authorised financial institutions, known as "account providers", can offer child trust fund accounts.[56] The decision on whether to approve a particular account provider is one for the Revenue, applying the criteria set out in the Child Trust Funds Regulations 2004,[57] which are modelled on those for authorising institutions to offer ISAs (Individual Savings Accounts). The Board has the power to impose conditions on its grant of approval to an account provider[58] and has the power to withdraw approval in the event that the provider in question no longer qualifies for that status or fails to observe the statutory requirements.[59] An account provider, whether aspirant or actual, has the right of appeal against the Board's decision to refuse or withdraw approval.[60]

Child trust fund accounts themselves must also satisfy various requirements laid down in the 2004 Regulations.[61] Such accounts may either be "stakeholder accounts" or "non-stakeholder accounts".[62] A "stakeholder account" is one that meets the characteristics and conditions set out in the Schedule to the 2004 Regulations; inevitably a "non-stakeholder account" is one which does not. One of the principal features of a stakeholder account is that it involves investing in equities.[63] The Government's argument is that in the long term this is likely to provide the best returns on the assets invested in the child trust fund. Stakeholder accounts must have regard to the need for diversifying investments.[64] They

[55] By analogy, it is no function of the tribunal to "bargain" with an appellant: see *CSDLA/606/2003*.
[56] CTFA 2004, s.3(1).
[57] SI 2004/1450, reg.14.
[58] *ibid.*, reg.14(4).
[59] *ibid.*, reg.16.
[60] CTFA 2004, s.22(1) and SI 2004/1450, reg.17.
[61] CTFA 2004, s.3(2).
[62] SI 2004/1450, reg.4(1).
[63] *ibid.*, Sch., para.2(2)((b).
[64] *ibid.*, Sch.., para.2(2)(c).

must also be subject to "lifestyling", namely that as the account reaches maturity the account provider must adopt an investment strategy which "aims progressively to minimise the variation or potential variation in capital value of the account caused by market conditions from time to time."[65] The Schedule also sets out rules relating to minimum subscriptions and charge capping, which are explained further below.

As a general rule all account providers are expected to offer stakeholder accounts to the general public as a vehicle for child trust fund accounts.[66] Indeed, the Government's original intention was that the facility to provide stakeholder accounts would be an essential precondition for approval as an account provider. Such a requirement would have caused problems for a number of smaller building societies which have not regarded it as being cost-effective to apply for the necessary regulatory approval to offer stakeholder accounts.[67] This difficulty has been avoided by enabling such institutions to market child trust fund accounts so long as they can offer stakeholder accounts through a partner institution.[68]

So long as stakeholder accounts are offered as one option, any approved account provider can offer other alternative vehicles for opening a child trust fund account. Thus financial institutions may offer ordinary cash savings accounts, which would count as "non-stakeholder accounts". The decision on whether to open a child trust fund account in the form of a stakeholder account or a non-stakeholder account is ultimately one for the individual opening the account on behalf of the child,[69] putting a premium on the level of individuals' financial education and access to information about investments.

The terms of child trust fund accounts

In principle the terms of child trust fund accounts are ultimately a matter for individual providers, but within the detailed regulatory framework imposed by the 2004 Act and the 2004 Regulations.[70] The Act itself stipulates that the terms of any child trust fund must include the following five specific matters, which may be elaborated upon or added to by regulations.[71] First, the account must be held in the name of the child.[72] Secondly, that child must be beneficially entitled to the investments held under the account.[73] Thirdly, all income and gains generated by assets held under the account must constitute investments in the account—so interest accumulates in the account.[74] Fourthly—a matter which is discussed in more detail below—the general rule is that no withdrawals may be made from a child trust fund account.[75] Finally, only the individual with authority to manage the account can give the account provider instructions as to its management.[76]

Opening a child trust fund account

A child trust fund account, as well as being held by an eligible child and meeting the statutory requirements, must be opened in the appropriate manner. There are essentially two routes by which a child trust fund account may be opened, namely either by the "responsible person" (or, indeed, albeit exceptionally, by children themselves) or by the Inland Revenue. The working assumption is that in the great majority of cases the child's parent will open the account, with the Revenue having a fall-back role in the event that no account is opened.

Account opened by a responsible person

There is no claim as such for a child trust fund account. Instead, the starting point is that the Revenue must issue a voucher in respect of every child born after August 31, 2002 who is an eligible child by virtue of child benefit entitlement being in place.[77] The voucher must be issued to the person who is entitled to child benefit for that child.[78] The voucher must include certain details such as the full name of the child, the child's date of birth, a unique reference number[79] and the expiry date, which is 12 months from the date

[65] *ibid.*, Sch.., para.2(2)(d) and (6). These reflect the proposed risk controls for the stakeholder accounts set out in the Sandler Report, *Medium and long-term retail savings in the UK* (July 2002); see further HM Treasury and Inland Revenue, n.15 above, paras 3.15–3.18.
[66] SI 2004/1450, reg.14(2)(b)(i), made under the authority of CTFA 2004, s.2(3).
[67] *i.e.* under the Financial Services and Markets Act 2000.
[68] SI 2004/1450, reg.14(2)(b)(i) and (3).
[69] But note that where the Revenue open an account for a child under CTFA 2004, s.6, it *must* be a stakeholder account: SI 2004/1450, reg.4(2).
[70] As indicated above, this regulatory framework follows that already adopted for ISAs.

[71] CTFA 2004, s.3(4) and (5).
[72] *ibid.*, s.3(4)(a). Accounts must be for a single child, who is or has been an eligible child, and no child may hold more than one child trust fund account: SI 2004/1450, reg.8(1).
[73] CTFA 2004, s.3(4)(b); see also SI 2004/1450, reg.8(2)(a).
[74] CTFA 2004, s.3(4)(c). All gains in child trust fund accounts are free of income and capital taxes: ibid, s.13 and SI 2004/1450, regs. 24 and 36.
[75] CTFA 2004, s.3(4)(d).
[76] *ibid.*, s.3(4)(e) and SI 2004/1450, reg.8(1)(d)-(f).
[77] CTFA 2004, s.5(1).
[78] *ibid.*, s.5(2). For the exceptional cases under s.2(3)—*e.g.* the Northern Ireland resident who works in the Republic and so who receives Irish child benefit—the voucher is issued to a "responsible person".
[79] This may be the NINo: HM Treasury and Inland Revenue, n.15 above, para.6.2.

of issue.[80] The voucher must also specify the amount of the initial Treasury contribution[81] and include a statement to the effect that the voucher cannot be exchanged for money. The voucher must then be sent by post to the child benefit recipient or other "responsible person".[82]

The next step is for a "responsible person" to apply to open a child trust fund account. Thus there is a degree of disjuncture in the statutory scheme at this stage—the voucher is sent to "the person who is entitled to child benefit in respect of the child" but then a "responsible person" may apply to open an account, rather than the child benefit recipient per se. Are they one and the same person? The short answer is that they may well be but need not necessarily be. The long answer requires an examination of who may be a "responsible person" for the purposes of the 2004 Act.

The basic rule is that a "responsible person" is anyone with parental responsibility in relation to the child,[83] subject to two exceptions considered below. Parental responsibility is defined by reference to the Children Act 1989 (or the parallel legislation for Scotland and Northern Ireland respectively).[84] Thus the married parents of a child both have parental responsibility by operation of law, as does the mother of a child who is not married to the child's father.[85] An "unmarried father"[86] may acquire parental responsibility through agreement or court order,[87] and other individuals may acquire parental responsibility by becoming the child's guardian or by obtaining a residence order.[88] If there is only one person with parental responsibility (*e.g.* an "unmarried mother") and so only one "responsible person", then that individual may apply to open the account and has the authority to manage the account on the child's behalf.[89] If there are two or more responsible persons—for example, in the case of a married couple—then the Act ducks the issue, providing that regulations are to determine who has the authority to manage the account. The 2004 Regulations do little to resolve this conundrum. They simply provide that the applicant must, in normal circumstances, be a responsible person and

[80] SI 2004/1450, reg.3(1)(a)–(d) and (3), unless the child is already aged 17 (for example, in 2019, a recent arrival in the country aged 17), in which case the voucher expires on the child's 18th birthday.
[81] *ibid.*, reg.3(1)(e).
[82] *ibid.*, reg.3(2).
[83] CTFA 2004, s.3(8).
[84] *ibid.*, s.3(9).
[85] Children Act 1989, s.2(1) and (2).
[86] The terminology is somewhat loose, as he may of course be married to someone other than the child's mother.
[87] Or, since the Adoption and Children Act 2002, by registration as the father on the child's birth certificate; see Children Act 1989, s.4 as amended.
[88] *ibid.*, ss.5 and 12.
[89] CTFA 2004, s.3(7).

that "only a single responsible person" may be the "registered contact" for the purposes of managing the account.[90]

It follows from all this that where two adults share parental responsibility for a child, whether or not they are married, then typically the voucher will be sent to the mother, as she will almost invariably be the child benefit recipient. However, she need not open the account for the child. Her husband or partner (assuming he has parental responsibility) is a responsible person and so he may apply to open the account.[91] It must therefore be a matter for the parents to choose; but it should be noted that there is no facility for them to apply jointly to open an account for their child.[92] In many cases this may not matter, although the absence of any power to make joint applications sits ill with governmental emphasis on the importance of shared parenting. But there is the potential here for difficulty where the parents' relationship breaks down. Estranged couples not infrequently argue over who should be entitled to child benefit; in future it may be that separated parents will try to wrest control of the child trust fund account(s) from their ex-partner.[93] It must also be noted that the basic rule under the 2004 Act, equating a "responsible person" with a person who has parental responsibility, is subject to two exceptions.

First, a local authority cannot under any circumstances be a responsible person,[94] even if it shares parental responsibility for the child as a result of a care order.[95] In practice this provision will not usually present any problem, as the mere fact that children are taken into local authority care does not mean that the parents lose parental responsibility.[96] Thus for most children in local authority care, there will still be an individual "responsible person", typically one of the child's parents.[97] However, there

[90] SI 2004/1450, regs 5(1) and 8(1)(d)(i).
[91] HM Treasury and Inland Revenue, n.15 above, para.3.6. There is no statutory requirement that the voucher name either the child benefit recipient or the responsible person; the regulations provide merely that the applicant presents a voucher "relating to the named child": SI 2004/1450, reg.5(1), Condition 1.
[92] Perhaps the argument is that it is administratively too complex to have two adults involved, although this has not seemed to be a problem for building societies which typically allow couples to act as joint trustees of their children's savings accounts.
[93] Subject to certain exceptions, any change in the identity of the registered contact must be confirmed by the current registered contact: SI 2004/1450, reg.13(7).
[94] CTFA 2004, s.3(8)(a).
[95] Children Act 1989, s.33(3).
[96] *ibid.*, s.2(5) declares that more than one person can have parental responsibility for a child at the same time and ibid, s.2(6) specifically states that the fact that a person acquires parental responsibility does not mean that any existing responsibility necessarily ceases.
[97] Of course, if the child is simply being accommodated by the authority, the authority does not acquire parental responsibility as such.

will be some children in care who either have no adult fulfilling this role (*e.g.* some orphans) or for whom it is inappropriate for a parent to undertake this function (*e.g.* where contact has been terminated because of serious abuse).[98] The Act provides for the Official Solicitor (in Scotland, the Accountant of Court) to undertake this function.[99]

Secondly, a person aged under 16 cannot be a responsible person.[100] Thus a 15-year-old mother cannot open a child trust fund account on behalf of her baby. One solution in such cases would have been that the adult responsible for the young mother's account (*e.g.* the young mother's own parent and the baby's grandparent) might be made responsible for opening the baby's account. However, the approach that has been adopted is for the Revenue to open an account for the child, with management responsibility passing to the mother when she reaches 16.[101]

So far as the actual procedure is concerned, any application to open a child trust fund account must be made within the period specified on the voucher, *i.e.* 12 months.[102] The regulations specify four further conditions which must also be satisfied.[103] First, the applicant must give the account provider the voucher relating to the child. Thus, as the regulations currently stand, the process of opening a child trust fund account has a distinctly old-fashioned feel to it.[104] The voucher is issued and sent by post and must then be presented to the account provider when opening the account. The Government's argument is that paper vouchers, as a physical reminder of the Treasury endowment, serve a valuable role in terms of financial education, as well as helping to minimise processing errors and fraud.[105] Yet this paper-based element to the voucher process may well

[98] See further House of Lords Delegated Powers and Regulatory Reform Committee, *12th Report of Session 2003–04* (HL Paper 62), Annex 4, Supplementary Memorandum, para.6.
[99] CTFA 2004, s.3(10) and (11). At the time of writing the relevant regulations have not been laid, but it is anticipated they will appear after the summer: *Hansard*, HL Debates, Vol. 661, col.WS62 (May 27, 2004).
[100] CTFA 2004, s.3(8)(b).
[101] HM Treasury and Inland Revenue, n.15 above, para.3.30 (this refers to a transfer at 18, but this was before the Government amendment to the Bill permitting 16-year-olds to manage their own accounts).
[102] CTFA 2004, s.5(4) and SI 2004/1450, reg.3(3).
[103] *ibid.*, reg.5(1); these four conditions can be satisfied in any order, with the account being deemed to have been opened on the date that the last condition is met.
[104] Or, as Mr George Osborne MP (Conservative) described it, a "truly prehistoric" paper-based system: Standing Committee A, col.87 (January 13, 2004).
[105] Lord McIntosh of Haringey, *Hansard*, HL Debates, Vol. 659, col.GC269 (March 23, 2004).

increase account providers' administrative costs.[106] In partial acknowledgement of such concerns, the legislation was redrafted during its passage through Parliament so that in future provision may be made to substitute an electronic version for the paper voucher.[107] Secondly, the applicant must enter into a "management agreement" for the account.[108] Thirdly, where the application is not in writing, the applicant must have agreed to the contents of the appropriate statutory declaration (*i.e.* that he or she is a "responsible person" and will be the registered contact for the account).[109] Finally, any period within which the management agreement may be cancelled (*e.g.* a "cooling off period") must have expired.

Once a valid application is made, then the account provider must open a child trust fund account for the child in question and inform the Revenue accordingly.[110] Thus financial institutions will not be able to decline to open an account on the basis of credit ratings or postcodes. However, although account providers *must* open accounts, parents or other responsible persons themselves are under no statutory duty to apply to open a child trust fund account for their children; the legislation merely provides that an application *may* be made by such a person.[111] If they fail to do so, then the Revenue steps in.

Account opened by the Inland Revenue

The legislation includes a "back-up" provision under which the Revenue must open accounts for children who fall into any one of three categories.[112] The first is where a voucher has been issued but no account has been opened within the 12-month period of its validity[113]—in other words, typically where through inertia, ignorance or otherwise the parents have simply not got round to opening the account.[114] The second situation is where a voucher has been issued but "it appears to the Inland Revenue that

[106] See the ABI's evidence: HC Treasury Committee, *Second Report*, n.30 above, Ev 22, para.16. Note also the experience of the Children's Mutual (formerly the Tunbridge Wells Equitable Friendly Society, which markets its own "Baby Bond"): "when we get an application on line and send out a piece of paper for signature, we lose about half the people who originally applied on line because they cannot be fagged to go through the second stage" (Lord Naseby, *Hansard*, HL Debates, Vol. 658, col.367 (February 26, 2004)).
[107] CTFA 2004, s.5(1) now refers to "a voucher in such form as is so prescribed".
[108] See further SI 2004/1450, regs 8 and 13.
[109] See further *ibid.*, reg.13(3).
[110] CTFA 2004, s.5(5).
[111] *ibid.*, s.5(3).
[112] *ibid.*, s.6(1).
[113] *ibid.*, s.6(4)(a) and (5)(a).
[114] Twelve months was selected as a compromise between allowing parents time to choose an account and protecting the value of the child's endowment: Standing Committee A, col.89 (January 13, 2004).

there is no-one who is a responsible person in relation to the child".[115] There is no time limit attached to this category; thus this would apply where the voucher is issued to a lone parent child benefit recipient who then dies before she can open the child trust fund account, and there is no other adult with parental responsibility for the child (*e.g.* a guardian). The third type of case is where no voucher has been issued precisely because the child was first an eligible child by virtue of the special rule relating to children in local authority care.[116] To assist the Revenue in this latter function, local authorities are under a duty periodically to notify the Revenue with details of children in their care.[117]

The Regulations describe all such accounts as "Revenue allocated accounts".[118] Such an account is opened by the Revenue forwarding to an account provider the details which would in the normal type of case appear on the child's voucher (omitting any reference to an expiry date).[119] The question then is how an account provider is to be selected. The solution that has been adopted is that the Revenue will keep a list of account providers who have agreed to accept Revenue allocated accounts, and that account providers will be selected in rotation from that list.[120] Thus account providers are not required to accept any default Revenue allocated accounts; they may simply decline to provide this facility. But, if they agree to enter into such an arrangement, they must then accept any Revenue application to open such an account.[121] Any Revenue allocated account must be a stakeholder account.[122] Statute specifically relieves the Revenue of any liability in respect of the selection both of account providers and of particular accounts.[123] It should be emphasised that in these default cases the Revenue's duty is limited to *opening* the account; it has no responsibility for *managing* the account.[124]

Account opened by a child

We have seen that the child trust fund account will be opened either by "a responsible person" or, in default, by the Inland Revenue. The legislation also makes provision for children aged 16 or over both to open accounts

[115] CTFA 2004, s.6(4)(a) and (5)(b).
[116] *ibid.*, s.6(4)(b).
[117] CTFA 2004, s.16 and SI 2004/1450, reg.33.
[118] *ibid.*, reg.6.
[119] *ibid.*, reg.6(1).
[120] *ibid.*, reg.6(3).
[121] CTFA 2004, s.6(3) and SI 2004/1450, reg.6(2).
[122] *ibid.*, reg.4(2); if the account provider offers different types of stakeholder accounts, the accounts must be chosen in rotation for each Revenue allocated account which is opened.
[123] CTFA 2004, s.6(6).
[124] On account management, see further below.

and to manage them.[125] Indeed, the legislation is framed in such a way that where a child is 16 or more only the child has such capacity and authority—the account cannot be opened or managed on the child's behalf by an adult. Given that an "eligible child" must be born after August 31, 2002, the provision enabling a 16-year-old child to open an account will not become relevant in practice until September 2018. Even then, the point will rarely arise, as the great majority of children will have had accounts opened for them at birth or shortly afterwards, either by their parents or by the Revenue. However, if, after August 2018, an eligible child comes to live in the United Kingdom at the age of 16, having never resided here before, then the facility for the 16 year old to open his or her own account will become relevant.

Managing a child trust fund account

The rules governing the responsibility for managing child trust fund accounts broadly reflect those that determine who may open such an account (except that the Revenue has no role in account management). Thus, for children aged under 16, the responsible person has that authority.[126] As we have seen in the context of couples, only a single responsible person may be the registered contact for the purposes of account management.[127] Children aged 16 or over enjoy the sole right to manage their own accounts.[128] This represents a change from the original Bill, which accorded this right to children in Scotland but not elsewhere in the United Kingdom, reflecting the different ages for contractual capacity in the various jurisdictions.

In practice, and notwithstanding the Government's aspirations for individuals to take greater personal responsibility for decisions on financial investments, the role of the individual responsible for managing a child trust fund account is likely to be a passive one. To some extent this is reflected in the statutory terminology of a "registered contact". In many cases this person's role will amount to little more than receiving the annual account statement.[129] However, there is the potential for the individual managing the account to adopt a more proactive function.A registered contact is entitled to transfer a child trust fund account to an alternative account provider, without giving any reason and without charge (save for

[125] CTFA 2004, ss.3(6)(a) and 5(3)(a).
[126] *ibid.*, s.3(6)(b) (this is subject to the special provision empowering the Official Solicitor to act in certain cases: *ibid.*, s.3(10)).
[127] SI 2004/1450, reg.8(1)(d)(i).
[128] CTFA 2004, s.3(6)(a) and SI 2004/1450, reg.8(1)(d)(ii). See also CTFA 2004, s.3(12), effectively deeming them to have contractual capacity for such purposes.
[129] SI 2004/1450, reg.10.

incidental expenses).[130] There is no restriction on the number of such transfers that can be made. This enables registered contacts to move an account in order to obtain a better rate of interest, but much will depend on whether rates are sufficiently competitive to overcome people's natural inertia. There are limits to the account manager's powers—the investments held under a child trust fund are inalienable, and so cannot be assigned or used as a security for a loan.[131]

Payments into a child trust fund account

The 2004 Act and the 2004 Regulations envisage four types of contribution to child trust fund accounts. First, all children will receive an "initial contribution" from the Treasury when the account is opened; secondly, at the same time or shortly afterwards, children in low income households will receive a top-up or "supplementary contribution". These types of payments are described in the Regulations as "Government contributions".[132] The combination of the "initial" and "supplementary" contributions may be seen as an example of the new Labour mantra of "progressive universalism"—"creating a policy that will benefit all children, while also making sure that greater resources go to those who need most help."[133] Thirdly, there is the prospect of a further Treasury contribution at some later date. Finally, child trust funds reinforce another new Labour maxim, "mutual responsibility"—the expectation is that family and friends will also wish to make their own contributions to child trust fund accounts (described below as "private contributions").[134]

The initial contribution

All eligible children will receive an initial contribution to their child trust fund account.[135] For children for whom child benefit is payable and who are born on or after the "appointed day" (when the Act comes fully into force), which it is anticipated will be April 6, 2005, this contribution will be £250,[136] with a supplementary contribution of a further £250 for those on low incomes. A member of the Prime Minister's Strategy Unit[137] rather disarmingly conceded that "there was no science behind these figures,

[130] CTFA 2004, s.7 and SI 2004/1450, regs 8(2)(h) and 21. On "incidental expenses" see *ibid*, reg.8(5).
[131] CTFA 2004, s.4.
[132] SI 2004/1450, reg.7.
[133] Ruth Kelly MP, Financial Secretary to the Treasury, *Hansard*, HC Debates, Vol. 415, col.1395 (December 15, 2003).
[134] See the Prime Minister's *Speech on Welfare Reform* (IPPR, June 10, 2002), p.7.
[135] CTFA 2004, s.8.
[136] SI 2004/1450, reg.7(4)(a).
[137] And former IPPR "policy wonk".

they simply felt intuitively correct".[138] Indeed, the original IPPR proposal was that the Treasury endowment might be as much as £1,000 per child.[139] Slightly higher rates than £250 are payable for children born after August 31, 2002 but before the appointed day, to reflect the fact that, as the scheme was not operational when they were born, their endowments have not to date had the opportunity to earn any interest.[140] Children in local authority care born on or after the appointed day receive a double initial contribution in the sum of £500.[141] Again, this figure is increased for those born since August 31, 2002 but before the appointed day.[142] As they receive a double initial contribution at the outset, children in local authority care do not qualify for the supplementary contribution payable to children in low income households.[143]

There is no need for parents to make a claim for the payment of the initial contribution. Account providers are required to keep detailed records[144] and to make both fortnightly and annual financial returns.[145] The fortnightly returns must list all new accounts which have been opened and act as a claim for the initial contribution payable for each child in question.[146] Once the account provider has lodged such a claim, the Revenue is required to pay the account provider the relevant sum which the latter must then credit to the individual child trust fund accounts in question.[147] If any Treasury contributions are paid in error, the Revenue has the power to recoup such payments.[148]

The supplementary contribution

The supplementary contribution is worth £250 for children born after the appointed day;[149] as with the initial contribution, there are slightly higher

[138] Gavin Kelly, quoted in IPPR *Opportunity and Assets: The Role of the Child Trust Fund* (IPPR/No. 10 Seminar, September 19, 2002), p.5.
[139] "US style 'baby bonds' planned", *The Times*, January 12, 2001.
[140] The enhanced sums are £277 (children born after August 31, 2002 but before April 6, 2003), £268 (children born in the 2003–2004 tax year) and £256 (children born between April 6, 2004 and the appointed day): SI 2004/1450, reg.7(2).
[141] *ibid.*, reg.7(4)(b).
[142] The enhanced rates are £554 (children born after August 31, 2002 but before April 6, 2003), £536 (children born in the 2003–2004 tax year) and £512 (children born between April 6, 2004 and the appointed day): ibid, reg.7(3).
[143] CTFA 2004, s.9(4)(b) (confining eligibility to children for whom child benefit is payable).
[144] *ibid.*, s.15 and SI 2004/1450, reg.31.
[145] *ibid.*, regs 30 and 32.
[146] *ibid.*, reg.32(4)-(6)(a). These returns are to be in electronic format: *ibid.*, reg.32(3).
[147] CTFA 2004, s.8(1) and (2). This indirect process explains why the voucher itself cannot be exchanged for money.
[148] *ibid.*, s.11 and SI 2004/1450, reg.22. Note that the Revenue can recover from the account provider, the registered contact, the named child and any person in whom such contributions have been vested, and that such parties are jointly and severally liable: *ibid.*, reg.22(3).
[149] *ibid.*, reg.7(7).

amounts for children born after August 31, 2002 but before that date.[150] The Government estimates that about a third of all children will receive this additional endowment.[151] There are three conditions which must be met for payment of the supplementary Treasury contribution,[152] of which only the last merits any discussion. First, the child must have a child trust fund account. Secondly, someone must receive child benefit for the child.[153] Thirdly, and crucially, the special income test must be satisfied. The income test itself imposes a two-fold requirement.[154] First, it stipulates that an adult must be entitled to child tax credit for the child in question on the first day for which child benefit was paid for that child. Secondly, either that person (or their partner) must have been entitled to income support, income-based jobseeker's allowance or pension credit,[155] or the household income must not have exceeded the income threshold for child tax credit (£13,480 for the 2004–2005 tax year).[156] Thus entitlement to maximum child tax credit effectively acts as a passport to the child trust fund account supplementary contribution. It should be noted that this income test is not performed independently for child trust fund purposes. The 2004 Act expressly states that the test is governed by any determination made under ss.18 to 21 of the Tax Credits Act 2002, assuming that any such determination "has not been overturned".[157] It must follow that potentially there will be some delay in resolving entitlement to the supplementary contribution where there are problems in finalising entitlement to child tax credit.[158]

There are further complications in establishing entitlement to the supplementary contribution which have been created by the fact that eligibility for the child trust fund scheme predates the coming into force of

150 These amounts are £266 (children born after August 31, 2002 but before April 6, 2003), £258 (children born in the 2003–2004 tax year) but the standard £250 for those born between April 6, 2004 and the appointed day: *ibid*, reg.7(6).

151 HM Treasury and Inland Revenue, n.15 above, para.2.21.

152 CTFA 2004, s.9(4).

153 Thus excluding children in local authority care, but they qualify for the double initial contribution.

154 CTFA 2004, s.9(5).

155 These are known as "relevant social security benefits": *ibid*, s.9(5)(b) and (6); see further Tax Credits Act 2002, s.7(2) and Tax Credits (Income Threshold and Determination of Rates) Regulations 2002 (SI 2002/2008), reg.4, as amended by Tax Credits (Miscellaneous Amendments No.2) Regulations 2003 (SI 2003/2815), reg.18.

156 See CTFA 2004, s.9(5)(b) and (6), Tax Credits Act 2002, s.7(1)(a) and Tax Credits (Income Threshold and Determination of Rates) Regulations 2002 (SI 2002/2008), reg.3(3), as amended by Tax Credits Up-rating Regulations 2004 (SI 2004/941), reg.4.

157 CTFA 2004, s.9(5). On the concept of "overturned", see n.37 above.

158 HM Treasury and Inland Revenue, n.15 above, para.2.20; this may be a particular problem for children with self-employed parents.

the child tax credit scheme. Thus the statutory income test requires some modification so that it operates in the desired fashion for eligible children born in the transitional period between September 1, 2002 and April 5, 2005.

The first transitional problem concerns children born in the eight months between September 1, 2002 and April 5, 2003. The standard income test requires that a person was entitled to child tax credit in respect of the child in question when child benefit was first paid.[159] However, child tax credit did not come into operation until April 6, 2003, and so this rule cannot be satisfied if child benefit was payable *before* that date. There are also knock-on problems in terms of complying with the rest of the income test in such cases. This problem is resolved by deeming the child benefit commencement date (and hence the entitlement to child tax credit) as having been in the 2003–2004 tax year.[160]

The second transitional problem relates to the phasing in of child tax credit for families in receipt of income support or income-based jobseeker's allowance. Although child tax credit came into force on April 6, 2003, at least so far as new claimants and those claiming working tax credit were concerned, it was originally anticipated that families already in receipt of income support or income-based jobseeker's allowance would not move over to child tax credit system until a year later on April 6, 2004. In fact, only new claimants of these benefits have received child tax credit from that date, with the process of "migration" for existing benefit claimants now starting in October 2004, with a view to such transfers being completed by the end of the 2004–2005 tax year.[161] Some families will therefore not meet the strict terms of the income test because, although they were getting income support or income-based jobseeker's allowance at the material time, they were not yet, as a result of this phasing process, actually receiving child tax credit. The legislation deals with this by disapplying the income test based on entitlement to child tax credit. Instead, it is sufficient that a child born before April 6, 2005 was in a household which received one of the prescribed means-tested benefits or tax credits listed in respect of that child.[162]

In the same way as with the initial contribution, there is no need (indeed, there is no facility) for parents to claim the supplementary contribution. Instead, the Revenue is required to inform account providers if a child

159 CTFA 2004, s.9(5)(a) and (10).

160 *ibid.*, s.9(9).

161 *Hansard*, HC Debates, Vol. 418, col.1645W (March 11, 2004). In the meantime all such families will receive the cash equivalent of child tax credit through their existing benefits.

162 CTFA 2004, s.9(7) and (8).

satisfies the conditions for the supplementary contribution.[163] The account provider then makes a claim for the payment of the appropriate sum as part of its fortnightly return to the Revenue,[164] which is required to make the relevant payment.[165] The account provider in turn must then credit that sum to the individual child trust fund account.[166] Assuming the IT systems work smoothly, this is an elegant way of circumventing all the difficulties traditionally associated with the take-up of means-tested benefits, such as the perceived stigma of claiming, problems with understanding official forms, inertia, etc.[167]

Further Treasury contributions

The detailed statutory rules governing the initial and supplementary Treasury contributions to child trust fund accounts are not reflected in the provisions dealing with further Treasury contributions. The Government's original thinking was that the State might provide further endowments, on an income-related basis, to top-up child trust fund accounts when children reached the ages of 5, 11 and 16.[168] The rationale for this was that such contributions would "add a further degree of progressivity" whilst simultaneously reminding all parents and children of the continued existence and growth of such funds.[169] By the time the legislation came to be debated in Parliament, this somewhat grandiose ambition had been moderated. The current official position is that there will be one further Treasury contribution to child trust fund accounts, to be made when children reach the age of seven; as with the initial endowment, a higher rate will be paid to children in low income families.[170]

The legislation, however, does not even commit the Government (or indeed any successor administration) to a further endowment at age seven. The Act merely enables regulations to make provision for further contributions either to eligible children or to a sub-set of eligible

[163] *ibid.*, s.9(1).
[164] SI 2004/1450, reg.30(4)–(6)(b).
[165] CTFA 2004, s.9(2).
[166] *ibid.*, s.9(3).
[167] Payments to pensioners under the Age-Related Payments Act 2004 are also triggered automatically without the need for a claim.
[168] HM Treasury, *Saving and Assets for All*, n.9 above, para.5.5. The illustrative example *ibid.*, p.22, suggested that these top-ups might be £50 at each milestone (or £100 for children in low income families). See also HM Treasury, *Delivering Saving and Assets*, n.13 above, para.3.6.
[169] HM Treasury, *Saving and Assets for All*, n.9 above, para.5.5
[170] HM Treasury and Inland Revenue, n.15 above, paras 2.23 and 6.23. The National Consumer Council has argued for a further Treasury top-up at age 14, when children begin to have part-time jobs: HC Treasury Committee, *Second Report*, n.30 above, Ev 67.

children.[171] Such payments may be made by reference to a child's age or any other circumstances that may be prescribed.[172] Furthermore, as currently drafted, the 2004 Regulations make no reference to any further Treasury contributions.[173] It follows that we must "wait and see"; assuming that the current official thinking holds good, any such further payments will not be made until 2009, and so the position is unlikely to be clarified until the 2008 Budget.

Private contributions

There are four straightforward rules which govern private contributions to child trust fund accounts. First, anyone, including the child, can make contributions to a child trust fund account.[174] Secondly, contributions may only be made "by way of a monetary payment";[175] thus a parent or grandparent cannot transfer stocks and shares into such an account. Thirdly, individual deposits on any one occasion must be at least £10, unless the account provider permits smaller amounts.[176] This is designed to encourage "over the counter" payments of modest sums, for example "birthday money".[177] It remains to be seen whether this minimum amount acts as a disincentive for low income families, or indeed for older children themselves, to save. Furthermore, there is no statutory obligation upon account providers to accept cash subscriptions to accounts; the only forms of payment which providers are required to accept are cheques, direct debits, standing orders and other direct credits.[178] Finally, there is an annual maximum on private contributions from all sources to any one account.[179] This limit has been set initially at £1,200,[180] but there is no

[171] CTFA 2004, s.10(1). The mere fact that the child is in custody at the relevant date (which might be a consideration if top-ups at age 12 were to be introduced) does not debar him or her: *ibid.*, s.10(4).
[172] *ibid.*, s.10(2). Any such regulations will be subject to the affirmative procedure: *ibid.*, s.28(5)(6)(a), following a recommendation of the House of Lords Delegated Powers and Regulatory Reform Committee: *7th Report of Session 2003–04* (HL Paper 41), paras 13 and 14. See further *12th Report of Session 2003–04* (HL Paper 62).
[173] However, consistent with the stated policy intention, SI 2004/1450, reg.33(5) requires local authorities, as from August 31, 2009, to report details of any child in care on his or her seventh birthday.
[174] SI 2004/1450, reg.9(1).
[175] CTFA 2004, s.12(1).
[176] SI 2004/1450, Sch., para.2(4).
[177] HM Treasury, *Delivering Saving and Assets*, n.13 above, para.3.8.
[178] SI 2004/1450, Sch., para.2(3); in contrast, the draft regulations additionally required providers to accept payments by cash, credit card and debit card: Draft Child Trust Funds Regulations 2004 (published February 2, 2004).
[179] SI 2004/1450, reg.9(2). A year, in this context, means a year from the child's birthday, not a calendar year or a tax year: CTFA 2004, s.12(3) and SI 2004/1450, reg.9(2). There is no provision for carrying forward unused allowances: *ibid.*, reg.9(3).
[180] The ABI argued this limit should be £3,000, as for cash ISAs: HC Treasury Committee, *Second Report*, n.30 above, Ev 23.

provision in the Act for automatic indexation of the limit, so any changes will depend on the Chancellor's Budget plans at any one time. In addition to these four readily understandable provisions, there are inevitably some complex provisions governing the tax position for both private contributions and for assets held in child trust fund accounts themselves.[181]

Payments out of a child trust fund account

Child trust fund accounts are designed to be long-term investments, and so the general rule is that no withdrawals may be made while the child is still aged under 18. The "no withdrawals" principle applies both to the Treasury contributions and to any private contributions to the account.[182] Thus the 2004 Act specifies that the terms of any account must "prevent withdrawals from it except as permitted by regulations".[183] The 2004 Regulations in turn provide for withdrawals before the child reaches 18 in only two types of case.[184] The first is in order to meet management charges or other incidental costs covered by the management agreement for the account. There is a cap of 1.5 per cent on charges levied by account providers in respect of stakeholder accounts.[185] The Government had initially intimated that there was "a high threshold of persuasion for any move from a 1% charge cap for stakeholder products",[186] but appears to have responded to concerns that a 1 per cent cap would deter potential providers from entering the market.[187] The second type of permissible withdrawal is where the account provider is satisfied that the child in question has died, and so the account is closed.[188]

The regulations currently permit no other circumstances in which withdrawals may be made from child trust fund accounts before the child

[181] The basic rule is that gains are free of tax: see further CTFA 2004, s.13 and SI 2004/1450, regs 24 and 36.

[182] HM Treasury, *Saving and Assets for All*, n.9 above, para.5.12 suggested that parents might be able to access their own contributions, but acknowledged that such a facility would increase administrative costs. Most respondents opposed allowing parents access to "rainy day" funds, for reasons both of maximising returns and ensuring ease of administration, arguments accepted by the Government: HM Treasury, *Delivering Saving and Assets*, n.13 above, paras 2.21 and 3.12–3.14.

[183] CTFA 2004, s.3(4)(d).

[184] SI 2004/1450, reg.18.

[185] *ibid.*, Sch., para.3(2), defined therein in terms of the higher of 3/730 of the value of child's rights in the account or 3/730 of the value of the investments in the account.

[186] HM Treasury and Inland Revenue, n.15 above, para.4.1.

[187] The controversy over the level of the cap was one of the major issues of debate in Parliament: see further House of Commons Library, *Research Paper 03/90* (2003) pp.21ff.

[188] SI 2004/1450, reg.18(b); see also CTFA 2004, s.19 governing Treasury contributions due after the death of a child.

reaches 18. Indeed, in the interests of ease of administration the Government resisted an Opposition amendment which would have enabled disabled children to make withdrawals from their accounts for certain approved purposes.[189] However, ministers have now recognised that a case could be made for early withdrawals where a child is terminally ill,[190] for example to pay for medical treatment or for a special holiday. The Government has accordingly undertaken to bring forward amendments to the regulations which will allow withdrawals in such cases. The proposed amendments will use qualification for disability living allowance (DLA) under the "special rules" for the terminally ill as a means of identifying cases in which withdrawals will be permitted.[191] Whilst a convenient proxy, there remains the risk that this test will mean that in some meritorious cases withdrawals will not be allowed (or not allowed until it is too late) simply because no special rules claim has been made for DLA.[192]

The maturing of child trust fund accounts

In contrast to the very tight controls over withdrawals from child trust fund accounts *before* children reach the age of 18, there are no restrictions at all on how such funds are used *after* the child reaches that age. In the original consultation paper, the Government canvassed the idea that the accounts should not mature until a young person attained the age of 21, rather than 18.[193] Most respondents opposed this, on the basis that 18 is the legal age of majority, a view subsequently accepted by the Government.[194] The original consultation paper also invited views on whether there should be restrictions on the purposes for which account holders could use their matured funds, whilst recognising that "regulatory and implementation issues may prove difficult".[195] The views of those responding were evenly balanced—some took the view that the uses of child trust funds should be confined to socially desirable outcomes,[196] whilst others argued that the scheme should make no such provision, thus

[189] *Hansard*, HC Debates, Vol. 417, cols 649–667 (February 3, 2004).

[190] Originally the Government opposed this proposal, referring to the attendant administrative complications and the risk of fraud: HM Treasury and Inland Revenue, n.15 above, paras 4.26–4.28.

[191] *Hansard*, HL Debates, Vol. 661, col.WS61 (May 27, 2004).

[192] On the extent of underclaiming generally under the special rules, see B. Tunnage, R. Tudor Edwards and P. Linck *Uptake of Benefits in People with Cancer: A step forward in understanding* (Macmillan Cancer Relief, March 2004).

[193] HM Treasury, *Saving and Assets for All*, n.9 above, para.5.11.

[194] HM Treasury, *Delivering Saving and Assets*, n.13 above, paras 2.20 and 3.15.

[195] HM Treasury, *Saving and Assets for All*, n.9 above, para.5.11.

[196] Matching state funds in the American IDAs can only be used for purposes such as expenditure on education, housing or business development: Emmerson and Wakefield, n.2 above, p.39.

acknowledging the twin goals of principle (individual responsibility) and pragmatism (ease of administration).[197] In the end the latter arguments prevailed, with the Government concluding that it would be impracticable to try to "police" the ways in which child trust funds were spent.[198] During the Parliamentary debates ministers also justified this decision by reference to the young person's right to property within the meaning of the European Convention on Human Rights.[199]

It follows that when young people reach 18 they can do what they like with the funds in their child trust fund account. They might decide to "roll over" their child trust fund into another type of tax-free savings account. They might decide to apply the funds to some worthwhile purpose (*e.g.* paying for higher education, a mortgage or tenancy deposit, or business start-up costs). They might decide to use the money to fund a gap year travelling around the world. Or they may simply withdraw the money and spend it on some form of instant gratification. The first withdrawals on maturity will not be possible until September 1, 2020, and so there is a considerable lead-in time for the national curriculum to emphasise both the personal and wider social benefits of financial prudence.

Child trust funds and social security benefits

There are four ways in which the child trust funds regime might intersect with the benefits system. First, the Government has confirmed that funds held under a child trust fund "do not impact on family benefits and tax credits before the account reaches maturity".[200] Indeed, under the Tax Credits Act 2002 the child's capital is irrelevant for the purposes of calculating the parent's entitlement to tax credits. Similarly, a child's capital is disregarded for the purposes of calculating the parent's entitlement to means-tested benefits.[201]

Secondly, however, in the event that the child dies before reaching 18, then the normal intestacy rules will apply. The assets in the child trust fund will become part of the child's estate and will in the typical case be vested in the parents. At this point such capital may have an effect on the parent's entitlement to means-tested benefits.[202] The potential impact of this rule

[197] HM Treasury, *Delivering Saving and Assets*, n.13 above, para.2.23.
[198] *ibid.*, paras 3.16–3.19.
[199] Lord McIntosh of Haringey, *Hansard*, HL Debates, Vol. 659, col.GC173 (March 18, 2004).
[200] *ibid.*, col.GC188 (March 18, 2004).
[201] See, *e.g.* Income Support (General) Regulations 1987 (SI 1987/1967), reg.47. The special rule reg.17(b) , *ibid.*, will presumably fall into desuetude (or be repealed) as benefit cases migrate over to child tax credit.
[202] The Government's view is that there is no case in principle for special treatment of the child trust fund assets in such a case: Lord McIntosh of Haringey, n.199 above, col.GC189.

will be reduced by the Government's decision to raise the lower capital threshold for means-tested benefits from £3,000 to £6,000 with effect from April 2006.[203]

Thirdly, there is the issue of the young person's own potential entitlement to means-tested benefits on reaching the age of 18. If the rules remain as they currently are, there is clearly the possibility that some 18-year-olds will not be eligible for means-tested benefits because they have "too much" capital. It is, of course, impossible at this stage to anticipate whether income support and income-based jobseeker's allowance will still be part of the landscape of the welfare state in 2020, let alone the details of how the rules will operate. In any event, there is "a real possibility"[204] that the capital threshold rules will have been further reviewed by that time.

Finally, and of immediate relevance, there is the question of how the notional capital rules for means-tested benefits will operate as from April 2005 when a family member, for example a doting grandparent, makes a contribution to a child's account. Will this be regarded as a deprivation of capital "for the purpose of securing entitlement to income support or increasing the amount of that benefit"?[205] The minister's response was that "it would be completely reasonable to assume that it is unlikely that modest contributions to a child trust fund would be treated as a deprivation of capital."[206] This fell short of a categorical assurance, given that the issue will be a matter for judgment by a decision maker in the light of the facts of any given case. It might have been simpler, if only for the avoidance of doubt, had contributions to child trust funds been added to the statutory list of exceptions from the notional capital rule for the purposes of the various means-tested benefits.

Penalties under the 2004 Act

The 2004 Act adopts the Inland Revenue sanctions model for ensuring compliance with the child trust funds scheme. Accordingly, there are no new criminal offences created by the legislation. Instead, s.20 of the Act makes provision for a range of penalties to be imposed in connection with child trust fund applications and related matters. Individuals who fraudulently apply to open or secure the opening of an account, or make an

[203] Ruth Kelly MP, Financial Secretary to the Treasury, *Hansard*, HC Debates, Vol. 415, col.1344 (December 15, 2003).
[204] Lord McIntosh of Haringey, n.199 above, col.GC189.
[205] SI 1987/1967, reg.51(1).
[206] Ruth Kelly MP, Financial Secretary to the Treasury, Standing Committee A, col.183 (January 15, 2004).

account withdrawal, are subject to a penalty of £300.[207] Account providers and others who make fraudulent or negligent statements or declarations are liable to a penalty not exceeding £3,000.[208] Account providers and others are also liable to a £300 penalty for failing to make claims in respect of reimbursements or for failing to provide information or produce documentation.[209] This latter type of penalty can be increased by £60 per day for every day of continued default.[210] There are also further penalties which may be imposed on account providers in respect of non-compliance with various other statutory requirements.[211] The decision on whether to impose any such penalties is a matter for the Inland Revenue, subject to certain procedural requirements.[212]

Child trust fund appeals

The legislation makes provision for five categories of person who may appeal against a decision under the child trust fund scheme. First, a "relevant person"[213] (typically a parent) can appeal against an Inland Revenue decision not to issue a voucher, not to open a Revenue-allocated account, or not to make a Treasury contribution to the child's account. One of the peculiarities of the 2004 Act is that it is only in the context of appeals that the legislation refers to "decisions"; there is no provision in either the primary or secondary legislation (as yet) for the actual making or notification of decisions, as the process is designed to be automatic.[214] Secondly, a child's personal representatives can appeal a decision not to make a payment which had been due before the child's death but was unpaid.[215] Thirdly, anyone required to repay a Treasury contribution has a right of appeal, as does anyone subject to a Revenue penalty (against both the decision to levy the penalty and the amount).[216] Finally, companies which are refused permission by the Inland Revenue to act as account providers have a right of appeal.[217]

In principle the 2004 Act provides that all such appeals should go to the

[207] CTFA 2004, s.20(1).
[208] *ibid.*, s.20(2).
[209] *ibid.*, s.20(3) and (4)(a); see further s.20(5) and (6).
[210] *ibid.*, s.20(4)(b).
[211] *ibid.*, s.20(7)–(9).
[212] *ibid.*, s.21.
[213] See further *ibid.*, s.22(3).
[214] I am indebted to Arnie James for drawing this drafting oddity to my attention; there is an exception inasmuch as there is specific provision for making decisions on penalties: *ibid.*, s.21.
[215] *ibid.*, ss.19 and 22(5).
[216] *ibid.*, s.22(4) and (6). The tribunal's powers on hearing penalty appeals are set out in s.21(9).
[217] *ibid.*, s.22(1).

General or Special Commissioners, who deal with tax appeals.[218] But, in the short to medium term at least, the legislation diverts child trust fund appeals for hearing by (social security) appeal tribunals and, on further appeal, by the Social Security Commissioners.[219] At the time of writing the relevant procedural regulations had not appeared but they have been promised for "after the summer".[220] This type of "temporary modification" currently also operates for tax credit appeals,[221] and there appears to be no immediate prospect of that arrangement being terminated. Indeed, the plan that the General or Special Commissioners should have jurisdiction for all such appeals may be overtaken by events, depending on the Government's plans to reform the tribunals system following the Leggatt Report.[222]

The linkage between entitlement to child benefit and eligibility for child trust fund accounts means that there is some sense in Appeals Service tribunals hearing appeals under the 2004 Act. Those tribunals, however, have no experience in handling what are, in essence, appeals concerning the regulation of financial services (for example, about the refusal or withdrawal of approval of account providers or in respect of penalties imposed on such institutions). Yet it seems unlikely that the 2004 Act will generate many appeals at all, especially given the Revenue's statutory power and cultural proclivity for settling rather than litigating appeals.

Conclusion

New Labour's approach to welfare reform has placed considerable emphasis on the value of saving by individuals, in order to provide themselves and their families with added financial independence and security.[223] Thus the Government has declared its commitment to "an active welfare strategy that is founded on the principles of security, opportunity and responsibility".[224] Traditionally governments have sought to encourage saving through providing tax relief, but such an approach inevitably provides the greatest incentives to those on higher incomes.[225] The challenge has been to identify a means of improving incentives for those on low or middle incomes. The Government's answer,

[218] *ibid.*, s.23.
[219] *ibid.*, s.24.
[220] *Hansard*, HL Debates, Vol. 661, col.WS62 (May 27, 2004).
[221] Tax Credits Act 2002, s.63.
[222] *Tribunals for Users—One System, One Service* (LCD, March 2001); see also p.179 above.
[223] HM Treasury, *Helping People to Save*, The Modernisation of Britain's Tax and Benefit System, Number Seven (November 2000), paras 3.1–3.5. This emphasis is also reflected in other recent policy developments, *e.g.* the introduction of state pension credit.
[224] HM Treasury and Inland Revenue, n.15 above, para.1.1.
[225] HM Treasury *Helping People to Save*, n.9 above, para.4.9

drawing on the principles of asset-based welfare, is the child trust fund scheme which, according to the Chancellor of the Exchequer, "symbolises the difference between those who believe in modernising the welfare state and those who wish it to wither away."[226]

There can be no doubt but that the 2004 Act constitutes an ambitious and innovative development in social policy. Approximately 700,000 children a year stand to benefit from having a child trust fund account.[227] The cost of the scheme is expected to be relatively modest at the outset (some £235 million for 2005/06[228]), but programme expenditure could exceed £4 billion over the 18-year maturity period.[229] But is this a worthwhile investment? Outside Parliament, the financial services industry has been uniformly positive about the child trust fund scheme. For example, the Association of British Insurers (ABI) commended the Government for "its willingness to embrace radical thinking in an effort to extend a savings culture to those that until now have been unable to save."[230] Such enthusiasm is perhaps to be expected, given that the scheme presents the industry with the prospect of a considerable volume of new business allied with the possibility of cross-selling other financial services products.

Responses to the child trust fund from the voluntary sector have been more mixed.[231] The National Consumer Council followed the ABI in welcoming the scheme as "an excellent far-sighted policy, of particular benefit to low-income families".[232] Others have been more cautious. For example, the Child Poverty Action Group (CPAG) has supported the objectives of the scheme but has expressed concern that the scheme will benefit better off families more than those on low incomes. Independent analysts at the Institute of Fiscal Studies have also questioned whether the scheme is an effective mechanism for targeting help.[233] Indeed, CPAG has identified reform of the social fund as a more pressing social policy priority,[234] a view echoed by the House of Commons Work and Pensions Committee.[235] CPAG's former Director has warned that "asset-based

[226] *Hansard*, HC Debates, Vol. 403, col.286 (April 9, 2003).
[227] HM Treasury and Inland Revenue, n.15 above, Annex A, para.A13.
[228] *ibid.*, Annex A, para.A25.
[229] HC Treasury Committee, *Second Report*, n.30 above, para.8.
[230] ABI submission, para.1, *ibid.*, Ev 20.
[231] It is notable that nearly all submissions to the Treasury Committee were from the financial services industry. The only voluntary sector responses were from the National Consumer Council and Consumers' Association; no submissions from CPAG, NACAB or other "poverty lobby" organisations were published.
[232] HC Treasury Committee, *Second Report*, n.30 above, Ev 65.
[233] House of Commons Library, n.187 above, p.18.
[234] CPAG Press Release, October 28, 2003.
[235] HC Work and Pensions Committee, n.18 above, para.122.

welfare could become a Trojan horse for undermining existing welfare provision."[236] The Government, on the other hand, has insisted that the child trust fund scheme is complementary to, rather than in substitution for, existing benefits (and now tax credits) provision.[237]

The fundamental question is whether the child trust fund scheme will "work". This can be understood at two levels—will it work in terms of its operational delivery, and will it work in terms of its broader policy objectives? At the operational level, inevitably some problems will appear once the new system is up and running. The Inland Revenue's difficulties in administering tax credits may not inspire the greatest confidence in its capacity to deliver the new child trust funds scheme.[238] But this legislative scheme is much less complex and is built on the back of the tried and tested child benefit system. In the much longer term, other operational problems may begin to emerge. For example, in some cases parents will be either unable or unwilling to make even irregular contributions to their children's accounts, so generating a proportion of accounts that will become dormant, which may drive up account providers' administrative costs. Similarly, families may move, or children move their place of residence within families that have separated, without the account provider being informed of their new address.

In terms of its broader long-term objectives, the success of the Act will depend, as one Labour backbencher observed, "on its ability to attract low-income families into the habit of saving for their children."[239] At present only about one in three of the population save regularly for the future.[240] Critics have argued that families on low incomes cannot afford to forego current consumption in order to make contributions to their children's child trust fund accounts. The Government itself has acknowledged that repayment of debts and saving for a "rainy day" will normally be higher order priorities for parents in poorer households.[241] However, it also points to the early evidence from the Saving Gateway pilot, which appears to have succeeded in encouraging more people on low incomes to save money.[242]

[236] M. Barnes, "Reaching the socially excluded?" in Kober and Paxton, n.3 above, p.14.
[237] DWP, *Report on Child Poverty in the UK: Reply by the Government* (Cm.6200, 2004), paras 29–30.
[238] See HC Committee of Public Accounts, *Inland Revenue: Tax Credits, Fourteenth Report of Session 2003–04* (HC 89).
[239] Mr Adrian Bailey MP, *Hansard*, HC Debates, Vol. 417, col.706 (February 3, 2004).
[240] Lord McIntosh of Haringey, Parliamentary Under-Secretary of State, *Hansard*, HL Debates, Vol. 658, col.352 (February 26, 2004).
[241] HC Treasury Committee, *Second Report*, n.30 above, para.14.
[242] E. Kempson, S. McKay and S. Collard, *Evaluation of the CFLI and Saving Gateway Pilot Projects* (Personal Finance Research Centre, University of Bristol, 2003), Chap.5.

Yet the Government faces a considerable challenge in ensuring both that the child trust fund scheme is well publicised and that account providers provide clear information on the options available to those opening accounts. Parents will need to choose both a particular account provider and then a particular type of account. At one level, the decision to opt for an open market system should facilitate competition—but, as the Consumers' Association has noted, "it is important not to confuse the illusion of choice with quality of choice".[243] Furthermore, not all parents will be well placed to exercise such choice as exists in the market, given the proportion of the population that experience literacy and numeracy problems.[244] It is possible that parents with greater experience of the financial services industry will predominantly opt for stakeholder child trust fund accounts, whereas parents with less financial expertise, who may be more risk averse, will subscribe to non-stakeholder accounts, akin to the traditional passbook-based building society cash account.

If this trend develops, it will highlight the tension between the progressive and regressive elements in the child trust funds scheme. The imaginative deployment of means-tested Treasury contributions without the need for parents to make a claim has the potential to be a progressive and redistributive feature of the scheme. On the other hand, the fact remains that better off families are more likely to be in a position to take advantage of the scheme, by making private contributions, maximising the tax advantages as they do so. One reading of the Government's own projections of the possible value of child trust funds on maturity is that the scheme will only serve to widen inequalities in wealth (see Table 1). A child born into a low income household will see his or her £500 endowment grow to just £911 after 18 years, assuming no further private or Treasury contributions are made. In contrast, a child from a better off family, with the standard initial contribution of £250 but whose relatives contribute £40 a month to the account, will have an asset worth over £14,000 on maturity.[245] The ultimate differential between the value of the two funds may be even greater if the former has a cash account and the latter a stakeholder child trust fund.

[243] HC Treasury Committee, *Second Report*, n.30 above, Ev 72.
[244] The Consumers' Association cite the Moser Report, concluding that 20 per cent of adults are not functionally literate and 48 per cent have poor or very poor numeracy: *ibid.*, Ev 73 (see further The report of the working group on post-school basic skills chaired by Sir Claus Moser, *A Fresh Start: Improving literacy and numeracy*, DfEE, 1999).
[245] If the full annual allowance of £1,200 is used (*i.e.* £100 per month on average), the differential will be that much greater.

Table 1: Illustrative projections for fund growth—value of fund at year 18 in real terms*

Monthly savings from private sources	£250 initial endowment	£500 initial endowment
No additional savings	456	911
£5 savings per month	2,198	2,654
£10 savings per month	3,941	4,397
£15 savings per month	5,684	6,140
£20 savings per month	7,427	7,883
£40 savings per month	14,399	14,854

* The Table assumes (i) inflation of 2.5 per cent; (ii) nominal rate of return 7 per cent; (iii) no further Treasury contributions (*e.g.* at age seven): HM Treasury and Inland Revenue, *Detailed Proposals for the Child Trust Fund* (2003), Table 3.1, p.11.

What then is the future for child trust funds? This will depend ultimately on the commitment to the scheme demonstrated by individual citizens and successive administrations alike over the next 20 years. Although a child trust fund is by definition a long-term investment, the level of non-Treasury contributions being made as the scheme unfolds will enable a preliminary evaluation to be made of the extent of public support for the concept. In this context advocates of child trust funds would have preferred that the Government had heeded the advice of IPPR that there should be some "quick winners". Pointing out that the first beneficiaries will not realise their assets until 2020, IPPR argued that child trust funds should be available on a voluntary basis, perhaps with a modest Treasury endowment, for children born before September 1, 2002.[246] The Government, at least for the time being, has left this as a matter for the market to resolve.

As far as official policy is concerned, the scheme created by the 2004 Act appears to enjoy a sufficient degree of political consensus to survive for some time to come. It may therefore not suffer the fate of repeated legislative changes, as with the regulation of pension provision over recent decades. The Act was supported by the Conservative Party, subject to reservations about several matters of detail, as it was seen as consistent

[246] IPPR, *Response to Delivering Saving and Assets for All* (March 2002), p.4. IPPR has made detailed proposals for "quick winners" to be a feature of the proposed Australian Nest-Egg Accounts: IPPR, *Nest-Egg Accounts: Key Questions and Policy Options* (Chifley Research Centre, November 2003), Appendix 3.

with traditional Tory values.[247] Of the main political parties, only the Liberal Democrats opposed the measure, echoing concerns about the potential of the scheme to increase rather than diminish wealth inequalities within society. The decision of whichever administration is in office in 2009 as to the size and nature of the further Treasury contribution (assuming it takes place at age 7) may provide the best indication of the likely commitment of future governments to the child trust funds scheme. It will therefore be some time yet before asset-based welfare comes of age.

[247] Mr George Osborne MP, *Hansard*, HC Debates, Vol. 417, col.723 (February 3, 2004).

Case Analysis

Child Support—Enforcement of Child Support Obligation—ECHR, Art.6—whether parent with care has a "civil right" for purposes of Art.6

Secretary of State for Work and Pensions v Kehoe
[2004] EWCA Civ 225

Introduction
Though few would claim that the new child maintenance scheme established by the Child Support Act 1991 (CSA 1991) has escaped unscathed by criticism or controversy, the courts continue to be satisfied of its compatibility with human rights. Munby J. has declared[1] that CSA 1991 is compliant with the rights of the non-resident parent[2] under the European Convention on Human Rights (ECHR). Now the Court of Appeal's judgment in *Secretary of State for Work and Pensions v Kehoe* establishes that the Act does not contravene Art.6 of the ECHR by preventing a person with care of a child from enforcing the payment of child maintenance by the non-resident parent.

The decision, though unanimous in the result, was split on the controversial point as to whether Mrs Kehoe, the person with care, had a "civil right" within the meaning of Art.6, which provides that:

> "In the determination of his civil rights and obligations..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."

Latham and Keene L.JJ. considered that the CSA 1991 was structured in such a way that Mrs Kehoe had no right to unpaid maintenance payments, meaning that Art.6 was inapplicable. Ward L.J., on the other hand, concluded that the Act imposed only a procedural bar, preventing Mrs Kehoe from accessing an independent and impartial tribunal to enforce her

[1] Para.[22] of *R. (on the application of Denson) v Child Support Agency* [2002] 1 F.L.R. 938.
[2] To use the current terminology: Munby J. in *Denson* and the Court of Appeal in *Kehoe* used the old term "absent parent", which was still in force at the material times.