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LEGISLATIVE SUMMARY



Bill C-31: An Act to amend the Old Age Security Act

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Legislative Summary of Bill C-31

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Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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LEGISLATIVE SUMMARY OF BILL C-31: AN ACT TO AMEND THE OLD AGE SECURITY ACT

1 BACKGROUND

Bill C-31, An Act to amend the Old Age Security Act (short title: Eliminating Entitlements for Prisoners Act), was introduced in the House of Commons on 1 June 2010 by the Minister of Human Resources and Skills Development, the Honourable Diane Finley, and passed second reading on 24 September 2010. **The House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities studied Bill C-31 and reported it to the House of Commons with amendments on 3 November 2010. The bill passed third reading in the House of Commons on 18 November 2010.**

The *Old Age Security Act* (OASA)¹ provides that a low-income Canadian resident who has retired may receive the old age security pension and the guaranteed income supplement. At present, under the OASA, the pension and other benefits are granted to any person who meets the eligibility criteria. The fact that a pensioner is serving a sentence of imprisonment does not affect the eligibility criteria for the pension.

Bill C-31 provides that the old age security pension, the guaranteed income supplement and the allowance provided for in the OASA will not be paid to anyone incarcerated in a federal institution (where inmates are generally serving a sentence of at least two years) or in a provincial or territorial institution if the sentence of imprisonment is more than 90 days. Payment of the pension or other benefit will not resume until the pensioner informs the Minister of Human Resources and Skills Development (the Minister) in writing of his or her release (**before or after the release**). However, the allowance to the spouse or common-law partner will continue to be paid based on the individual income of the spouse or common-law partner, rather than on the couple's income.

2 DESCRIPTION AND ANALYSIS

2.1 ADDITION OF THE TERM "RELEASE" TO THE DEFINITIONS (CLAUSE 2)

Section 2 of the OASA is amended by adding the following definition of the word "release": "in relation to a person who has been incarcerated, means release from custody on earned remission, at the expiry of a sentence, or on parole or statutory release that has not been terminated or revoked."

2.2 ADDITION OF A RESTRICTION IN SECTION 5 (CLAUSE 3)

Section 5 of the OASA lists the restrictions on obtaining an old age security pension, such as the fact that the person must submit an application and that the application must be approved in order for the person to receive the pension.

Clause 3 of the bill adds subsection 5(3) to the OASA; this subsection provides that a person who is incarcerated and subject to one of the sentences of imprisonment mentioned in the subsection will not receive the old age security pension, except during the first month of incarceration. No pension will be paid to a person who is incarcerated in a federal institution or who is serving a sentence of more than 90 days in a province or territory with which the federal government has concluded a relevant agreement.

New paragraph 5(3)(b) of the OASA refers to section 33.1 of the Act, which states that the Minister may conclude agreements with federal institutions, provincial governments and public bodies in order to obtain information for the purposes of administering the OASA. Presumably, the Minister will have to conclude certain agreements under section 33.1 of the OASA in order to be informed of the incarceration of a pensioner in a federal, provincial or territorial institution.

2.3 FIRST PAYMENT OF THE PENSION FOR AN INCARCERATED PERSON (CLAUSE 4)

Current section 8 of the OASA provides that the first payment of the pension occurs during the month following approval of the pension application.

Section 4 of the bill adds subsection 8(2.1) to the OASA; this subsection provides that the first payment of the pension of an incarcerated person whose application is approved during the period of incarceration will be made only once the person is released. The incarcerated person will also have to advise the Minister in writing, **before or after** his or her release, in order to receive this first payment.

2.4 RESUMPTION OF PENSION (CLAUSE 5)

New section 9.2 of the OASA proposed by the bill provides that payment of the pension suspended as a result of a person's incarceration will resume once the person is released. This clause also says that the payment will not resume until the person advises the Minister in writing of his or her release.

2.5 THE SPOUSE OR COMMON-LAW PARTNER OF THE INCARCERATED PERSON (CLAUSE 6)

Current section 15 of the OASA lists the information about a spouse or common-law partner that must be supplied when applying for the guaranteed income supplement.

Clause 6 of the bill adds new subsection 15(3.2), which provides that, after investigation, the Minister may direct that the application for the guaranteed income supplement from the spouse or common-law partner of an incarcerated low-income person will be considered as if the spouse or common-law partner was single and not part of a couple. The spouse or common-law partner of an incarcerated person will then be able to receive the guaranteed income supplement at a higher rate, because the couple's income will not be considered.

New subsection 15(3.3) provides that the measure forest out in subsection 15(3.2) will apply for the duration of the period of the spouse's incarceration until his or her release, unless the Minister decides, after investigation, to no longer consider the spouse or common-law partner as a single person for the calculation of the guaranteed income supplement.

New subsection 15(4) provides that the spouse or common-law partner of an incarcerated person must inform the Minister without delay of that person's release.

2.6 THE ALLOWANCE (CLAUSE 7)

The allowance under the OASA is an amount that the married or common-law partner of the pensioner receives if he or she is between 60 and 65 years of age.

The bill allows the spouse of a low-income pensioner to continue to receive the allowance even if the pensioner is incarcerated. However, if the person entitled to the allowance is incarcerated, he or she will not receive the allowance while incarcerated, but only upon release.

The following specific amendments are made to the allowance.

Current subsection 19(1) of the OASA sets out the conditions for paying the allowance to the spouse or common-law partner of a low-income pensioner. Section 19 provides that, under certain conditions, the allowance may be paid to a former common-law partner separated from the pensioner.

Under new subsection 19(1.1), the fact that spouses live separately because one of them is incarcerated does not mean that they are former common-law partners for the purposes of subsection 19(1).

Similarly, under new subsection 19(1.2), the fact that spouses live separately because one of them is incarcerated does not mean that they are separated for the purposes of paragraph 19(1)(a).

Current subsection 19(4) of the OASA provides that the allowance will be paid only if both of the spouses or common-law partners have applied for it. The bill adds the new subsection 19(4.01), which provides that the spouse or common-law partner of an incarcerated person may present an application individually in order to receive the allowance and that the application will be considered to be an application presented jointly by both spouses or common-law partners.

The bill adds new paragraph 19(6)(f), which provides an additional circumstance leading to the non-payment of the allowance. The allowance will not be paid if the spouse or common-law partner is incarcerated in a federal institution or is serving a sentence of more than 90 days in a province or territory with which the federal government has concluded a relevant agreement.

The bill also replaces subsection 19(6.1) of the OASA in order to allow the spouse or common-law partner of the incarcerated person to continue to receive the allowance during the period that the pensioner is not receiving the pension because of his or her incarceration.

New subsection 19(6.3) of the OASA makes it possible to re-establish payment of the allowance to the incarcerated person when he or she is released, but only if he or she advises the Minister in writing **before or after** his or her release and is still eligible for the allowance.

2.7 THE ALLOWANCE FOR THE SURVIVOR (CLAUSE 8)

Clause 8 of the bill adds paragraph 21(9)(d) to the OASA; that paragraph provides that an incarcerated survivor will not receive the allowance for the survivor. This allowance will therefore not be paid to a person who is incarcerated in a federal institution or who is serving a sentence of more than 90 days in a province or territory with which the federal government has concluded a relevant agreement.

New subsection 21(9.2) does, however, provide that payment of the allowance will resume once the survivor is released if he or she advises the Minister in writing **before or after** his or her release and is still eligible for the allowance.

2.8 CALCULATION OF THE ALLOWANCE FOR THE SPOUSE OR COMMON-LAW PARTNER OF THE INCARCERATED PERSON, AND THE GUARANTEED INCOME SUPPLEMENT (CLAUSE 9)

New subsection 22(1) defines “monthly joint income,” for the purposes of calculating the amount of the allowance of the spouse or common-law partner of the incarcerated person, based on the individual income of that person and not on the couple’s income, as was mentioned previously.

New subsection 22(2.1) provides that the guaranteed income supplement will not be paid to a person who is otherwise eligible if he or she is incarcerated, even if the spouse or common-law partner receives the allowance.

2.9 FIRST PAYMENT OF THE ALLOWANCE (CLAUSE 10)

Current section 23 of the OASA sets out when the allowance is first paid. New subsection 23(3) provides that the first payment of the allowance will be made in the month when the person is released; as was mentioned previously, the person must advise the Minister in writing **before or after** his or her release and must still be eligible for the allowance.

2.10 ACCESS TO INFORMATION UNDER THE CONTROL
OF THE CORRECTIONAL SERVICE OF CANADA (CLAUSE 11)

Current section 33.11 of the OASA provides for the exchange of personal information for the purposes of administering the OASA. New paragraph 33.11(*b.1*) allows Correctional Service Canada to release information concerning incarcerated persons if that information is needed for the purposes of administering the OASA.

NOTES

1. [*Old Age Security Act*](#), R.S. 1985, c. O-9.