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**Passive voice and its meaning in legal
English**

Master's Diploma Thesis

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*I declare that I have worked on this thesis independently,
using only the primary and secondary sources listed in the bibliography.*

.....
Author's signature

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Introduction

As Maley (1994: 11) states, “In all societies, law is formulated, interpreted and enforced: there are codes, courts and constables. And the greater part of these different legal processes is realised primarily through language.” Because of the fact that there is a law which is produced by the government of a particular country, there must be a medium, through which the law is being communicated to the people of that particular country. And this medium is primarily language. Such a language must be very precise, as the consequences of misunderstanding the message of ‘law givers’ might have serious consequences. Yet, the natural language is not perfect, and therefore it is often impossible “to communicate one set of meanings while excluding many others” (Crystal, 1969: 193). Consequently, it is a very difficult task to compose a legal document, and the drafters rely on forms which have already been proved in the past rather than taking “risks by adopting new and untested modes of expression” (Crystal, 1969: 194). Thus, the language of the law is considered to be a different variety of language, and, as Crystal (1969: 194) points out, “as far removed as possible from informal spontaneous conversation.”

The focus of the present thesis is the relationship between legal language and society. The first part examines linguistic aspects of this specific variety of English; it looks into the history of legal language, investigates the influence the past had on its today's form, and takes a closer look at the layout, grammar, morphology and vocabulary of legal documents.

The second chapter introduces the ‘Plain English Movement’ and points to the arguments of those claiming that the language of the law should be more accessible to plain people; they say that “(...) clearer documents can improve people’s access to benefits and services, justice and a fair deal” (Cutts, 1995: 8). In their opinion, legal English should be ‘simplified’ to meet the needs of the wider public. Yet, there is a question whether such ‘simplification’ would not lead to ambiguity and lack of precision, as Hunt (2002: 112) points out: “I am moderately in favour of the use of

plain language in legislative drafting, but only in so far as it does not alter the meaning and does not give rise to ambiguity in the legislation.”

Hunt (2002: 24) specifies that the advocates of plain English require not only “simple language, shorter sentences,” etc., but also “the use of the active rather than the passive voice.” They claim that “over-use of the passive can lead to lack of clarity” and that it also “leads to less effective and less forceful communication with the reader” (Haigh, 2004: 37). From the linguistic point of view, in contrast, “it is clear that the active and passive have some distinctive functions of their own” (Hiltunen, 1990: 80).

In the present thesis, I am going to analyse two extracts from recently published legislative texts, namely “The Social Security Benefits Up-rating Order 2008” and “Adoption and Children (Scotland) Act 2007”, to find out the way and frequency of the passive voice being used throughout these documents. The analysis is based on the functional sentence perspective theory; it investigates the way communicative dynamism is distributed within the particular passive sentences and clauses, and compares its distribution in the possible parallel active variants of the utterances. The aim of the thesis is to consider the suggestion of the advocates of the Plain English Movement to ‘simplify’ legal language by replacing the passive with the active.

1. Linguistic aspects of legal English

1.1 The legal language

As already mentioned earlier, legal language is a very specific kind of language which is sometimes very hard to understand by those who do not use it every day. According to Crystal (1969: 194), it is the least communicative of all uses of language and far removed from “informal spontaneous conversation.” Whereas in legal English, the sequences are in the “form of very complex sentences capable of standing alone”, informal conversation is characterised by “a series of short sentences capable of standing alone” (Crystal, 1969: 201). Because of complicated grammatical relationships, it is very difficult to produce a spoken version of the legal writing. One of the main reasons for such a huge difference is the fact noted by Hiltunen (1990: 17): “Language changes continually, but the language of the law is conservative, tending to resist change and changing (...).” Crystal (1969: 194) points out that this is because there has been developed a ‘linguistic formula’ for each kind of a legal document, and the lawyers tend to stick to the formulae and use words they already know the meaning of, rather than creating something new which could be subject to ambiguity.

Precision is one of the most important aspects of legal English, and, as underlined by Crystal (1969: 193), everyone who composes a legal document must “ensure that it says exactly what he wants it to say and at the same time gives no opportunities for misinterpretation.” Hence, it is not so easy to compose a legal document without thinking carefully beforehand what words and structures to use in order to grasp the exact and intended meaning. According to Crystal (1969: 193), a drafter “has failed his job” if he does not communicate the precise meaning.

1.1.1 The history of legal language

Haigh (2004: ix, x) mentions two languages which influenced the legal language, namely Latin and French. Latin came into English after 597 AD, when St Augustine arrived in England to spread Christianity; French language became part of

legal proceedings after the Norman Conquest in 1066. As Crystal (1969: 195) points out, legal English has acquired a number of distinctive characteristics as a result of contacts with French and Latin.

According to Maley (1994: 12), English law as a distinct profession started its development only after the Norman invasion, when justice became centralised. Yet, it was first Latin and English which were the written languages of the legal profession. The influence of Latin can still be seen in legal English of today, “Latin phrases like *inter alia* (amongst others) and *per se* (in itself) remain in current use” (Haigh, 2004: ix). However, the Latin “was not classical or medieval (...), but a variety of Latin, law Latin, that included many latinised English and Old French words” (Maley, 1994: 12).

Haigh (2004: x) notes that although “Latin remained the language of formal records and statutes” after the year 1006, French became the official language in England as well as ‘the language of legal proceedings’. Haigh (2004: x) mentions several of the many current legal words which have their ‘roots in this period’: ‘*property, estate, chattel, lease, executor and tenant*’. French as a language of written documents took over from Latin in the fourteenth century, as Maley (1994: 12) points out, “strangely enough when French as a language for communication was dying out and the English language was rapidly replacing it.” One of the reasons for the use of French instead of English, as Maley (1994: 12) suggests, was “the urge to have a secret language and to preserve a professional monopoly”, the ‘elite’ was “reserving for themselves a special language which serves both to set them apart socially and to reinforce and perpetuate power by depriving the less powerful classes of access to its mysteries.” This way, as Haigh (2004: x) states, for several centuries, “three languages were used in England: English remained the spoken language of the majority of the population, but almost all writing was done in French or Latin.”

The call for English in legal proceedings started in the middle of the fourteenth century, when the ‘Statute of Pleading’ was enacted, oddly enough, in French (Haigh, 2004: x). Haigh (2004: x) explains that the Statute urged all legal proceedings to be in English, but recorded in Latin. However, as Maley (1994: 12)

underlines, “It was not until 1650, by *An Act for Turning the Books of the Law, and all Processes and Proceedings in Courts of Justice into English* (...) that English became the official language of the law.” What helped in the spreading of the English language in different areas of the law was the development of “new branches of, in particular, commercial law”, which “began to develop entirely in English” and thus remained “relatively free of French-based terminology” (Haigh, 2004: x).

1.1.2 Legal language of today

Legal language of today includes many different legal discourses. Maley (1994: 13) mentions ‘judicial discourse’, which is a language of judicial decisions that are collected in ‘reports’; ‘courtroom discourse’ used by ‘judges, counsel, court officials, witnesses and other participants’; language of legal documents: contracts, regulations, deeds, wills, Acts of Parliaments, or statutes; and discourse of ‘legal consultation’, ‘between lawyer and lawyer, lawyer and client’. As pointed out by Maley (1994: 13), each discourse “has a characteristic flavour” and each “differs according to the situation in which it is used.” Yet, there are some common features which can be claimed about legal language in general. The following section is focused at the general features of the written form of legal language. Its aim is to depict the main characteristic marks of legal documents, in such areas as layout, grammar, morphology and vocabulary.

1.2 Legal documents

1.2.1 Layout

The layout of legal documents, as presented by Crystal (1969: 197, 198), is mainly characterised by ‘long, thinly punctuated sentences’. The tradition of long sentences with hardly any punctuation goes back to the early legal documents, which were not printed yet, but written on a ‘parchment’. Because of “economy in the use of parchment”, long sentences were often “extended from margin to margin” with “no

patterns of spacing or indentation” (Crystal, 1969: 197). Moreover, the lack of spare space in the documents prevented “fraudulent deletions (by providing no tradition for spaces) and additions (by leaving no space into which they might be squeezed)” (Crystal, 1969: 197). The lack of punctuation was also meant to exclude the possibility of forgery, especially when the use of a single comma can change the meaning of the whole sentence. Nowadays, there is a “tendency to recognise the usefulness of punctuation as a guide to grammatical structure – provided, of course, that it is used systematically.” However, “only a limited range of punctuation marks is allowable in legal English” (Crystal, 1969: 201).

Crystal (1969: 198) reveals another distinctive feature of the layout of legal documents, which is the use of ‘graphetic and graphological devices’, in particular, the use of capital letters or a ‘different style of script’ to stress important words and ‘appropriate lettering and numbering of sections and subsections’. Nowadays, the division of a text into various numbered paragraphs, sections and subsections is the most widely spread way of structuring the document in a clear and precise manner.

1.2.2 Morphology

One of the morphological peculiarities of legal English worth mentioning is characteristic compound words consisting of “an adverbial word of place to which a preposition-like word has been suffixed: hereto, hereon, hereunder, hereunto...” (Crystal, 1969: 207). According to Haigh (2004: 163), the use of such words is unnecessary; he claims that “*Here-*, *there-* and *where-* words persist in modern legal usage largely as a consequence of legal tradition rather than usefulness.” However, Crystal (1969: 208) stresses that they have a special function in the documents: “All of these are useful for the kind of precise references – especially to the document or its parts...”

In some legal texts, “the preservation of an –eth ending for the third person singular present tense” can be found, says Crystal (1969: 207) and provides an

example: ‘*witnesseth*’. He adds, however, that it is only a matter of tradition, and ‘*witnesses*’ is a “perfectly acceptable alternative.” Moreover, this feature is slowly disappearing from legal English altogether.

1.2.3 Vocabulary

Crystal (1969: 207) points out to the fact that the vocabulary of legal English is “extremely wide, since almost anything – whether a collection of objects, a set of circumstances or a network of personal relationships – may become the subject of legislation.” Yet, there are some words which are preferred among lawyers. As Crystal (1969: 208) notes, some of them add to the formality of the documents, such as archaic words like ‘*deemed, expiration...*’ or archaic collocations, ‘*term of years, upon the death of*’. During the time when both native English and borrowed French terms coexisted together, near synonyms were used together because of “doubt as to whether such ‘synonyms’ meant exactly the same thing”: ‘*made and signed, terms and conditions*’ (Crystal, 1969: 208).

Because of its contacts with Latin and French, the legal terminology is of various origin. Crystal (1969: 209) shows examples of terms coming directly from Latin, such as ‘*basis, table, declaration*’ and mentions some of those which survived from Old English: ‘*life, named, said*’. These words have been adopted to the English language, and are in ‘general use’ nowadays. However, there are some terms which can only be found in the language of the law, thus forming a ‘highly distinctive part of the legal vocabulary’ (Crystal, 1969: 209). Such words and phrases are described with the terms ‘Law French’ and ‘Law Latin’. Crystal (1969: 209) gives examples:

Law French: ‘*estoppel, fee simple (...)*’

Law Latin: ‘*alias, amicus curiae, res judicata (...)*’

1.2.3.1 Legal terms of art

As Haigh (2004: xvi) states, legal terms of art are “technical words and phrases which have precise and fixed legal meanings and which cannot usually be

replaced by other words.” Crystal (1969: 210) adds that there are two kinds of terms of art: first, they are words which appear only in legal language, such as ‘*tort*’, and second, they are expressions appearing also in everyday usage, but having a precise meaning in legal English: ‘*alibi*, *appeal*, *landlord*’.

The opposite of the terms of art, as Crystal (1969: 211) notes, is formed by words which are vague in their meaning, and hence useful in law “simply because they are so general.” For instance, ‘*damage*’ can mean any kind of damage and a ‘hostile interpreter’ can find a different meaning than is understood by the others.

1.2.3.2 Legal jargon

Legal jargon should be differentiated from the terms of art. Haigh (2004: xvi) gives a clear definition: “words used by lawyers which are difficult for non-lawyers to understand.” Such terms “range from near-slang to almost technically precise words.” Examples provided by Haigh (2004: xvi) include terms such as ‘*boilerplate clause*, *corporate veil*’ and archaic jargon words which are “no longer used in ordinary English”: ‘*annul*, *bequest*’. In Haigh’s opinion (2004: xvi), such terms “should be replaced by plain language equivalents wherever possible.”

1.2.4 Grammar

Looking into the grammar of legal English, it can be recognized that especially at the syntax level, it differs a lot from that of the other registers. The syntactic structure shows that the sentences are long and complicated and clauses are joined “by means of an array of subordinating devices, sections of language which would elsewhere be much more likely to appear as separate sentences” (Crystal, 1969: 201). Crystal (1969: 201) compares it to the syntactic structure of informal conversation, which is right the opposite – the sentences are short, linked together by ‘linking devices’ to show their continuity. The long complex sentences of legal English, in contrast to the short ones of informal conversation, are ‘capable of standing alone’, which is an advantage when precision and clarity are the aims of the message.

In other words, such complex sentences, even if taken out of context, should not lose their meaning, but be clearly understandable. Context, therefore, is not so important in the legal language, as it is the case in other, more informal registers.

Hiltunen (1990: 69) claims that “the syntax of legal English is quite simple.” What makes the sentences appear so complex is the ‘heavy nominal constituents’. Their heaviness is caused by the fact that “most of the information of the sentence is packed into them” (Hiltunen, 1990: 69). Crystal (1969: 205) gives an example of such a long nominal group and points out to the fact that postmodification is preferred: “*the payment to the Owner of the total amount of any instalments (...)*.” Also, adverbials are used in unusual positions in favour of the exactness of meaning: “*a proposal to effect with the Society an assurance*” instead of “*a proposal to effect an assurance with the Society*” (Crystal, 1969: 204). Hiltunen (1990: 76) states that they are often inserted ‘between the auxiliary and the verb’, which is very often in the passive: “*(...) the City of London shall not by virtue of any such order be included in a London commission area.*”

Another distinctive feature of legal grammar is the ‘repetition of lexical items’, as Crystal (1969: 202) notes. Instead of using anaphoras (personal pronouns), the whole lexical items are being repeated. This is, again, to avoid ambiguity. Crystal (1969: 202) indicates that the pronoun *it* is used in legal documents, however, “only in constructions such as *It is agreed as follows*” – as a “filler of the subject position rather than (...) a substitute for anything that might be identified as an antecedent.”

1.2.4.1 Change of grammar, change in meaning

In the legal language, more than in any other register, considerable emphasis is placed on precision, and therefore, the drafters of legal documents must be well aware of the fact that a small change in the grammatical structure can lead to a relevant change in meaning. Haigh (2004: 4) gives an example of two very similar prepositions, of which the difference in meaning is of very little importance for instance in an

informal conversation, but in a legal situation can lead to unpleasant misunderstandings. These prepositions are ‘within’ and ‘in’ in the following sentence:

The goods must be delivered **within** 7 days. The goods must be delivered **in** 7 days.

(Haigh, 2004:4)

Whereas the first sentence says that the goods can be delivered at any time during the week, in the second sentence, “the word *in* might imply that the goods should only be delivered on the seventh day” (Haigh, 2004: 5).

The strong past belief that legal language should be freed of punctuation, as it was considered only a ‘burden’, is overturned when the difference in meaning in regard to presence or absence of only two commas is investigated:

This man said the judge is a fool.

This man, said the judge, is a fool.

(Haigh, 2004:12)

On the basis of these facts, it can be concluded in advance that the grammatical meaning of different utterances should not be underestimated when it comes to precision, especially in legal language.

2. Social aspects of legal English

2.1 Plain English – a possible alternative to legal English or only an illusion?

According to an online dictionary, the term ‘Plain English’ denotes “a communication style that focuses on considering the audience’s needs when writing” and “recommends avoiding unnecessary words and avoiding jargon, technical terms, and long and ambiguous sentences” (Wikipedia). Martin Cutts, a supporter of Plain English (Cutts, 1995: 3) adds that such a plain writing puts also emphasis on appropriate structure and layout, which should be used to help the readers in orientation through the document. Yet, despite the call for ‘simplification’ of difficult texts in order to satisfy the readers concerned, Cutts (1995: 3) admits that “It does not mean always using simple words at the expense of the most accurate words or writing whole document in kindergarten language (...).” However, sadly enough, some people do require such a thorough simplification, as about ‘seven million adults in the UK’ and ‘70 million adults in the US’ are not able to ‘read and write competently’ (Cutts, 1995: 3). Therefore, as Cutts (1995: 4) states, the term ‘Plain English’ is relative: what is plain to one group of people, may be ‘obscure’ to another group of people. It all depends on the background, knowledge and experience of a particular group.

2.1.1 The relationship between plain English and legal English as seen from the ‘Saussure’s’ and ‘Whorphan’ perspective

Ferdinand de Saussure, a Swiss linguist (Wikipedia), points out to the fact that there are different signs used by different groups of people. He talks about ‘arbitrariness’ and ‘conventionality’ of the ‘connection between signifier and signified’: “Though native speakers of any language are likely to feel that their native categories are ‘natural,’ comparison between languages makes clear how common diversity is” (Blair, 1978: 266). One can thus assume that one ‘signified’ can have various signifiers, and that all depends on convention and understanding of a particular group of people. However, even if there may be two different signifiers referring to one

signified, it is more likely to happen between two different languages than within one single language, as one group of people does not need two different signs to denote one object. Some people go so far as to claim that there are even ‘no synonyms’: “On the level of meanings each sign is distinguishable from its near synonyms on the basis of some divergence or opposition of sense. Strictly speaking, there are no synonyms (...)” (Blair, 1978: 266). Therefore, if legal English and plain English are only two varieties of the same language, it is unlikely that there will be found two different ways of saying one thing. Even if legal English may be ‘obscure’ to some people, there may be no way of translating it into their language without changing the meaning to a certain extent.

In case legal English is to be regarded as a different language than the plain English, it may be possible to translate the former into the latter without changing the meaning. However, this would not be as easy as it appears, as the ‘Whorfian Hypothesis’ (Wardhaugh, 1992: 218), originated by Edward Sapir and Benjamin Lee Whorf, says that there is a close relationship between the language and the culture in which it is used: “the structure of a language influences how its speakers view the world.” In other words, there is a ‘relationship between language and culture’, they influence each other, which means that different cultures view world differently, and hence the meanings of particular signifiers are also different. According to Wardhaugh (1992: 220), because of the fact that one’s language controls one’s ‘world view’, “speakers of different languages (...) have different world-views.” It can also happen that “speakers of one language have certain words to describe things and speakers of another language lack similar words,” hence it is much more difficult for the speakers of the first language to discuss and understand such things. Moreover, Wardhaugh (1992: 220) continues, speakers of a language which makes particular distinctions are more likely to perceive the distinctions than speakers of a language without any signifiers for such distinctions. Eskymos perceiving various kinds of snow in comparison to our culture can be a good example. If plain English is in some aspects a different language than legal English, and thus one can assume that it would be

possible to translate one into the other, there may be difficulties with finding the right equivalents. In other words, it can happen that plain English simply does not have the means of expressing or distinguishing certain things which are expressed and distinguished in legal English.

Having considered the Saussure's theory and the Whorfian hypothesis, it can be concluded that such a translation of legal English into the plain English is not so easy as it could appear at first sight. There comes a question whether it is possible to find plain equivalents to legal terms and structures or at least such synonyms and similar structures which would not change the meaning of the message communicated. This question is of crucial importance especially in legal English, where a change in meaning can lead to serious consequences. According to Saussure's theory, there are hardly any synonyms to be found in one language, and the Whorfian hypothesis says that one language can distinguish things for which the other language does not have means of expression.

2.1.2 The origins of plain English

Whether it is or not possible to translate legal English into the plain language without in some way changing the meaning, there have always been calls from people to simplify a language they did not understand. Cutts (1995: 4) mentions for example Geoffrey Chaucer, who wrote in the 16th century:

Speketh so pleyne at this time, I yow preye

That we may understonde what ye seye.

Edward VI remarked about legal English: "I would wish that the superfluous and tedious statutes were made more plain and short, to the intent that men might better understand them" (Cutts, 1995: 4).

2.1.3 The Plain English Movement

A genuine 'plain English revolution' began in England and US in the 1970s, as Cutts (1995: 6) remarks: "(...) consumer groups used the mass media to publicize

and ridicule examples of obscurity in legal documents and government forms, calling for plain language or plain English.” Hiltunen (1990: 103) mentions a document which came into effect in 1978 in New York, and which stated that “official agreements should be written in ‘a clear and coherent manner using words with common and everyday meanings’ (...).” In the 1980s in the UK, “Some town halls have set up plain English committees of elected members and officials who vet forms and leaflets for clarity before they are printed” (Cutts, 1995: 6).

However, as Hiltunen (1990: 104) states, “the reform movement has by no means been unanimously welcomed within the legal profession.” It has been claimed that “it is not really possible to write simplified legal documents that would be as precise, comprehensive and unambiguous as those written in the traditional legal language” (Hiltunen, 1990: 104).

2.2 The advocates of plain English

As Hunt (2002: 24) points out, there has been “a great debate (...) on the subject of plain language.” The call for plain language concerns not only the ‘legal world’, but also all the other areas of communication, such as different companies, services, banks, etc. Yet, Hunt (2002: 24) stresses, “considerable emphasis has been placed on the need for legislation to be drafted in plain language.” The law has been demanded to be ‘more accessible to the public’. The advocates of plain English request changes in ‘language, structure, and style’, says Hunt (2002: 24). In the area of language, there are, among others, calls for ‘simple language, shorter sentences, shorter words’ and ‘the use of the active rather than the passive voice’. Structure of the legal documents should be ‘more visually accessible and reader friendly’ and the ‘traditional style of drafting’ is to be abandoned (Hunt, 2002: 24,25).

One of the advocates of plain English is Martin Cutts, who states (Cutts, 1995: 7) that plain English does work: “Research shows that documents carefully crafted in plain English can improve readers’ comprehension.” For example, when the ‘Clearer Timeshare Act’ was tested by Plain Language Commission in the UK, 90% of

the senior law students preferred the plain version. They also did get much better results when working with the rewritten version. According to Cutts (1995: 8), documents written in plain English can “improve people’s access to benefits and services, justice and a fair deal.” The ordinary people will be not only able to “understand what they are asked to read and sign”, but they will also “see more clearly what business and government are up to.”

Also Rupert Haigh (2004: 24) is in favour of plain English: “(...) all legal writing should aim at achieving three goals – clarity, consistency and effectiveness.” He argues that “Writing of all kinds should be as easy to understand as possible.” In his opinion, there are many ways of improving a piece of writing which is difficult to understand, yet he admits that there are certain limits to what can be simplified. For example, he distinguishes between ‘legal jargon’ and ‘legal terms of art’, and says that even if legal jargon should be replaced by simplified terminology, the terms of art are “technical words and phrases which have precise and fixed legal meanings and which cannot usually be replaced by other words” (Haigh, 2004: xvi).

2.2.1 Suggestions of simplification of the legal documents

There are many suggestions concerning simplifications in different areas of grammar and vocabulary. For instance, Cutts (1995: 142) is strictly against the traditional legal expressions, such as ‘hereof’, ‘whereof’, ‘herein’, etc.: “Such legal flavouring has virtually gone from modern UK laws, which proves how redundant it is elsewhere.” Haigh (2004: 162) provides examples of such compounds made of adverbials mixed with prepositions, and shows a way of replacing them: ‘the parties hereto’ can be replaced by ‘the parties to this contract’, ‘the provisions contained hereinafter’ shall be changed into ‘the provisions referred to later on in this contract’. He adds (2004: 163) that it is unnecessary to use such specifications at all, and suggests that the words can be specified in definitions: “For example, (...) ‘the parties’ can be defined, in a definitions section, as ‘the parties to this contract’.”

Another suggestion for simplification concerns the long sentences. According to Cutts (1995: 145), the use of such long sentences can easily be avoided by splitting the sentence into several parts “where one part of the story finishes and another begins.” In case there are complex constructions that would lose their meanings when split into shorter sentences, a ‘simple construction and plain words’ should be used instead.

Still other recommendation concerns the use of long names of the people involved. Cutts (1995: 147) suggests replacing long names by short ones, or simply by pronouns. Thus, for instance, ‘John Fustian of 97 Sackcloth Court, Berwick’ could be replaced simply by ‘Fustian’. The references to ‘Fustian’ later on in the document can easily be made by the use of pronouns ‘he’, ‘him’, etc.

It has also been suggested that the passive voice should be replaced by the active, as the “passive permits an indirect and formal tone with which lawyers instinctively feel comfortable” (Haigh, 2004: 37). For instance, instead of ‘A meeting is to be called.’, ‘John Smith will call the meeting.’ shall be used (Haigh, 2004: 37). Haigh (2004: 37) claims that the active voice is more communicative with the readers and eliminates the possibility of hiding the agent.

There comes a question whether such ‘simplifications’ would really make the legal documents easier. For example, the use of ‘here-’ and ‘there-’ expressions seems perfectly right when one understands what they mean; turning them into longer phrases (‘the parties to this contract’ instead of only ‘the parties hereto’) or complicating the document by referring to definitions instead of simply modifying the noun with one short word seems as if it was ‘complication’ instead of ‘simplification’. The use of short sentences may also not be completely right, because, as Hunt (2002: 113) states, “Drafting legislation is not a literary exercise.” This contrasts with Cutts’s (1995: 145) statement that legal documents are like stories: “one part of the story finishes and another begins.” In other words, there may be a reason for the use of long sentences, as well as for the use of passives instead of actives, which will be investigated in the present thesis.

2.2.2 'Language and disadvantage before the law'

When talking about the advocates of plain English and the idea of simplifying a language which is hard to understand, it should not be omitted that there will always be groups of people who do need some kind of simplification, either to a lesser or higher degree. Gibbons (1994: 197) mentions people disadvantaged in many social spheres, such as “ethnic minorities, children, the deaf, the working class, women and the traumatised.” However, it is not about changing the language of ‘complicated’ documents to meet the needs of those who do not understand them, rather it is providing means to explain that language to those affected. Therefore, as Gibbons (1994: 197) suggests, “there is a need for much more education of legal professionals and police, and the much more frequent use of interpreters (...).”

2.3 The need for precision in the legal language

Hunt (2002: 114) states that “ambiguity [is] ‘the most serious disease of language’, and nowhere is the absence of this disease more important than in legislation.” To put it differently, language can and often is ambiguous. This ambiguity is of little importance in, for example, informal conversation (even if it can have negative effects there as well), but in legal language, it is highly undesirable, as it can lead to unpleasant consequences. Therefore, it is not so easy to change a ‘well-established’ language, the meaning of which has been proved through ages of practice, without thoroughly studying the impact on meaning of such a change.

Further, it is worth noting that precision goes hand in hand with clarity. Hunt (2002: 116) describes ‘clear language’ as “that which is unambiguous and (...) capable of only bearing the meaning intended by its author.” However, he continues, “Plain language is not necessarily clear language.” It does not automatically mean that if a piece of language is understood by someone, the exact and intended meaning is being communicated. This fact is related to the already mentioned ‘Whorfian hypothesis’ which claims that “speakers of different languages (...) have different world-views” Wardhaugh (1992: 220). Supposed plain English and legal English are two different

languages, the meanings of particular messages may vary as well. Should the relationship of legal and plain English be compared to that of the Eskymo language and English, it would be concluded that some expressions of the Eskymo language would not find their equivalents in English. For example, the various Eskymo terms for 'snow' could be translated into English as 'snow', however, the exact meaning would be lost. And the same can apply to legal English being translated into plain English: the exact meaning and precision may be lost.

2.3.1 A verbal formulation versus interpretation

The Whorphan hypothesis has shown that a language can be restricted in terms of lacking means to express a particular meaning, which is not very wanted when it comes to precision. And not only plain English, but also legal language itself can lack such means. Waldron (1992: 181) talks about a clash between verbal formulation and interpretation: "A verbal formulation will usually focus our attention on a very small number of the characteristics that an action or situation may possess." He gives an example – a rule concerning vehicles in a particular park: "Anyone driving a vehicle in the park is liable to a fine not exceeding £100." The expression 'driving a vehicle' is too general, and one can be not sure whether it includes also 'riding a skateboard' or 'bicycle'. Therefore, it is very difficult to formulate "what is acceptable or unacceptable, desirable or undesirable, in verbal terms." Waldron claims that even if there was a 'more complicated rule' referring to the situation, "there would always be room for complaints about other omissions."

Lawyers have taken steps to minimize the degree of misunderstandings arising from the clash between the verbal formulation and interpretation by 'narrowing' and 'broadening' of the meaning of some terms specially in legal English, as Crystal (1969: 210) shows: some of the terms "keep only one of a range of meanings they may have elsewhere", e.g.: "*proposal, life, provided (...)*"; by others, such as '*liable*', the meaning becomes general. Crystal (1969: 210) says that "(...) the degree of exactness is the subject of a kind of tacit agreement between lawyers."

2.3.2 Justice, morality and the desire for predictability

According to Waldron (1990: 177), people often blame law for ‘obscurity’ of its language, ‘the technicality of legal forms’ or ‘delays’. Most of all, they accuse law of not always bringing ‘justice’. In their opinion, it is language which brings injustice; they claim that because of the fact that they do not understand their rights and restrictions, they are easy to be manipulated and falsely accused. This is one of the reasons why people argue that the legal language should be simplified.

Justice, as explained by Waldron (1990: 178), is: in the narrower meaning, “(...) when the rules of law (whatever they happen to be) are applied fairly, impartially, and correctly to the cases that arise.” In the wider meaning, Waldron (1990: 179) continues, justice can be understood as some kind of “moralistic standard which judges and lawyers (...) are supposed to emulate.” Sometimes, there is a clash between law and justice. But this is not caused by the fact that the language is too complicated or ‘obscure’, but because it is hard to capture in words all that is moral. To put it differently, it is very difficult, if not impossible, to provide an ideal definition which would apply for each and every situation and thus always bring justice.

Waldron (1990: 182) suggests that “(...) our sense of right and wrong (...) operates as an unarticulated disposition rather than as a formulated body of principle.” He mentions parables that were told by Jesus Christ. Firstly, Jesus provides a general rule, such as: ‘Love your neighbour as yourself’, and then gives an example – in this case, it is ‘The parable of the good Samaritan’ (*The Holy Bible, TNIV*. 2004. Luke 10.25 – 37). Such a law giving can be compared to drafting in ‘general style’ (Turnbull, 1997: 21 – 22), where only the general rules are stated, so that each case can be handled separately, according to the ‘unarticulated disposition’. However, there are two problems with stating law by means of such general rules in today’s world. First, the judges would have too much freedom in handling particular cases, and they would not always be able to apply the general rules impartially, according to the moral disposition. Second, people “want to know, in advance, the basis on which their actions will be judged and dealt with by the state (...).” (Waldron, 1990: 182). Waldron (1990:

182) points out to the fact that there is a ‘desire for predictability’ in people’s minds, and hence, “there is a constant pressure to formulate things verbally – to lay down rules and make principles explicit (...).”

Even if it is very difficult to create such precise definitions which would capture what is moral and bring justice in all possible cases, the language can be used in such a way as to minimize the opportunities for misinterpretations of the rules. If the law is to be as objective as possible, the means of a language should be used to full extent.

2.3.3 The difficult task of a draftsman

It is a very difficult task to compose a legal document. According to Neumann (2001: 51), “The constant question for a lawyer is how to use words to cause a result.” Therefore, drafting of a legal document is not as easy as it could seem at first sight. Driedger (1976: xv – xxix) describes the complicated steps in the drafting process. First, the draftsman “must consider the statute in its relation to other statutes and the law generally.” It is vital that the new law is ‘in harmony with existing law’. Then, a ‘Preparatory Work’ follows: the ‘sponsors’ have to provide the draftsman with a ‘complete proposal’. Sometimes, the draftsman must ‘pilot the sponsors through their policy discussions’. Only after the ‘Legislative Plan’ has been prepared, ‘Drafting’ can begin. However, this involves ‘endless discussions over trivialities’, testing, making changes, etc.: “Even if the department had been fully prepared, it would have taken from six to twelve months to prepare the bill” (Driedger, 1976: xix). When the bill has already been finished and carried into the law, “anyone can attack it”, says Driedger (1976: xx) and points out to the fact that “the opposing parties may submit the statute (...) to microscopic examination for months or even years (...).”

Driedger (1976: xx) admits that the task of a draftsman is “in a sense, impossible of fulfilment”: “The perfect bill has never been written, and never will be. The most a draftsman can do is try to reduce doubt, ambiguity and foreseeable problems to workable minimum.” All this can be done by using ‘clear and unequivocal

language'. Yet, Driedger does not by any means suggest that clear language is plain language. On the contrary, he says that "Every word in a statute is intended to have a definite purpose and no unnecessary words are intentionally used. (...) Anyone who wishes to understand a statute must be willing to spend a little time with it, reading it through, slowly and carefully, from beginning to end, and then re-reading it several times" (Driedger, 1976: xxiii). According to Driedger (1976: xxiii), an 'ordinary reader' must simply accept the fact that he will be not able to grasp the 'full implications' of a bill, as it is a 'serious document' meant to be precise, not to be read 'like the morning newspaper'. Neumann (2001: 51) compares the 'words' to 'surgeons' tools': "Words are the principal tools of lawyers and judges, whether we like it or not. They are to us what the scalpel and insulin are to the doctor." In other words, even if we do not understand the precise structure of the scalpel and insulin, we can be healed only because the structure is so precise.

2.4 Criticism of plain English

Because of the fact that legal documents need to be precise, the Plain English Movement has been strongly criticised. The opponents of plain English claim that "The conversion of legislative passages into plain language has the unintended effect of changing the meaning of legislation" (Hunt, 2002: 34). Therefore, the aim of the following analysis is to have a closer look at the problem of the change of meaning by investigating a particular grammatical aspect that has been proposed for 'simplification'.

3. Passive voice and its meaning in legal English

3.1 On the use of passive voice in legal English

As Hiltunen (1990: 80) points out, the passive is the predominant voice in legal English. He says that “it is preferred to generic subjects such as *one*, *we* or *they*” and that “the passive is more in line with such functions of legal language as impersonality, objectivity and non-involvement” (Hiltunen, 1990: 81). Also the corpus findings (Biber et al, 1999: 476) show that “Passives are most common by far in academic prose, occurring about 18,500 times per million words.”

The advocates of the Plain English Movement claim that the drafters of legal documents should avoid using passives. For instance, Haigh (2004: 37) claims that “over-use of the passive can lead to lack of clarity” and that it “also leads to less effective and less forceful communication with the reader.” Haigh (2004: 37) gives an example: A meeting is to be called. X John Smith will call the meeting. In the passive variant, Haigh (2004: 37) continues, it is not clear “as to who is going to call the meeting.” According to Haigh, the passive allows to hide some information, and this is the reason why it should be avoided.

Those who criticise plain English being used in legal texts, in contrast, defend the passive voice and argue that it should definitely not be avoided. In Hiltunen’s (1990: 80) opinion, for instance, “the active and passive have some distinctive functions of their own.” Driedger (1976: 7) stresses that “There are many situations where the passive is not only proper, but preferable.” It is used for example where ‘the subject is universal’ (‘This Act may be cited as the *Criminal Code*.’) or in ‘modifying clauses’ (‘Every person who has been summoned shall appear.’) (Driedger, 1976: 7). Hiltunen (1990: 81) remarks that also the active voice has its place in legal English: “the active is always used in the definitions (‘*In this Schedule “the Act of 1949” means the Justices of the Peace Act 1949*’), and in cases denoting application or limitation (‘*The entry of a person’s name in the supplemental list shall also not preclude him*’). In the other instances, as Hiltunen (1990: 81) points out, the passive is preferred due to

several factors. First, it is the possibility of ‘thematization’ of the object, which would otherwise be rhematic. Second, it is the ‘generic character of the law’, which means that the fact that there should be lots of generic subjects used in legal texts leads to avoidance of them and using the passive instead. And finally, the passive voice is considered to be impersonal and objective. For these reasons, the excessive use of the passive voice in legal documents seems to be rightful.

As is evident, there are people who are for the ‘simplification’ of the legal documents; they claim that for instance the passive voice should be replaced by the active, which in their opinion would make the legal texts more accessible to the readers, more communicative and easier to understand. On the other hand, there are linguists who argue that the passive has its place in the legal language, and hence it shall not be replaced by the active. Still others, such as Hunt (2002: 112) are only partly in favour of the ‘simplified’ documents: “I am moderately in favour of the use of plain language in legislative drafting, but only in so far as it does not alter the meaning and does not give rise to ambiguity in the legislation.”

In the following analysis, I am going to investigate concrete passives found in the British Acts of Parliament and the grammatical and functional meanings of the sentences in which they are found. The analysis is based on the grammatical and functional aspects determining the use of voice. Instances in which the passives and actives are used will be examined, the frequency at which they occur in the texts, and the possible suggestions of the ‘simplification’ of the passive by the active and its influence on the meaning of the sentence.

3.2 Voice as a grammatical category

According to Quirk et al (1985: 159), voice is one of the main categories of the verb. There are two kinds of voice, active and passive. Biber et al (1999: 475) refers to the active as ‘the unmarked voice’, which “is called active because (...) the subject, (...), is aligned with an active role, with the role of agent” (Huddleston and Pullum, 2002: 1427). In other words, the subject performs the action. The passive

subject, in contrast, “is associated with a passive role, the role of patient”, as pointed out by Huddleston and Pullum (2002: 1427). Quirk et al (1985: 159) mentions three characteristic features accompanying the active becoming the passive:

(a) The active subject becomes the passive AGENT; (b) the active object becomes the passive subject; and (c) the preposition *by* is introduced before the agent. The prepositional phrase (AGENT *BY*-phrase) of passive sentences is generally an optional element.

3.2.1 Form of the passive voice

As Quirk et al (1985: 159) demonstrates, the passive is formed by the use of an auxiliary verb *be* + the past participle (*-ed* participle) of the main verb. The parallel active and passive sentences look as follows (examples taken from Quirk et al, 1985: 160):

ACTIVE: John admired Mary.
 S V O

PASSIVE: Mary was admired by John.
 S Passive verb A

Huddleston and Pullum (2002: 1428) uses the term ‘internalised complement’ when referring to the *by-phrase*. The internalised complement is often the agent and subject in the corresponding active sentence, where it is external to the verb phrase.

3.2.2 Different types of passives

3.2.2.1 Central passives, semi-passives and pseudo-passives

There are three main types of passives: **central passives**, **semi-passives** and **pseudo-passives** (the division can be found in Quirk et al, 1985: 167). The **central passives** are also referred to as ‘verbal passives’ and pseudo-passives as ‘adjectival passives’ (Huddleston and Pullum, 2002: 1431). The central or verbal passives are those carrying a clear connection to their active counterparts: “*The violin was made by my father.*” (Quirk et al, 1985: 167) ← *My father made the violin.* The word “made” is

clearly a verb here, hence the name ‘verbal passive’. According to Quirk et al (1985: 171), the central passives can occur with or without the expressed agents.

In the case of an **adjectival passive**, the past participle is no longer a verb, but an adjective functioning as a complement in the following sentence: “They were very worried.” (Huddleston and Pullum, 2002: 1436). There is no clear active counterpart to this sentence, therefore it is classified as a ‘pseudo-passive’. As Quirk et al (1985: 169) puts it, they “have neither an active transform nor a possibility of agent addition (...) it is chiefly only their superficial form of verb + *-ed* participle that recommends them for consideration as passives.” Quirk et al (1985: 170) also uses the term ‘statal passive’ which underlines the ‘resultant state’. According to Huddleston and Pullum (2002: 1436), the adjectival passives are not to be considered as passive sentences: “The term adjectival passive applies only to the predicative complement, (...). Thus the clause *They were very worried* is not itself an adjectival passive – it merely contains one” (Huddleston and Pullum, 2002: 1436). In the result, the verb *be* is no longer considered the ‘passive auxiliary’, but merely the ‘copula’, as Quirk et al (1985: 170) remarks. One of the characteristic marks of such adjectives is the fact that the copula *be* to which they are connected in a sentence can be replaced by “other copular verbs such as *become, feel, seem, remain*” (Quirk et al, 1985: 170).

An example of a **semi-passive** can be found in Huddleston and Pullum (2002: 1436): “They were married.” The sentence can be referred to as either verbal or adjectival. Huddleston and Pullum (2002: 1436) explains that “in the verbal interpretation it is dynamic, describing an event, while in the adjectival interpretation it is static, describing the state resulting from some prior event.” The first structure contains the past participle form of the verb, the second one presents the same form being an adjective:

They were married last week in London. (verbal)

Hardly anyone knew that they were married – that they had been for over ten years.

(adjectival)

(Huddleston and Pullum, 2002: 1436)

3.2.2.2 Long and short passives

Huddleston and Pullum (2002: 1428) distinguishes between another two types of passives, namely **long** and **short passives**. Long passives contain the *by-phrase* (by Huddleston referred to as an ‘internalised complement’), whereas the short passives occur without any expressed agent, hence the name ‘agentless passive’ (Biber et al, 1999: 475). Huddleston and Pullum (2002: 1428) gives the following examples:

LONG PASSIVE: My surfboard was stolen *by Pat*.

SHORT PASSIVE: My surfboard was stolen.

Because of the fact that there is no internalised complement in the short passive, there is no active counterpart to the short passive neither. In other words, short passives cannot be inverted into actives, because the agent is unknown. It shall also be noted that the internalised complement is not to be confused with a *by-phrase* “functioning as a means adjunct” (Huddleston and Pullum, 2002: 1428). Such means adjunct does not denote the agent of the activity expressed through the verb, but only the means by which the activity was done, e.g.: “They achieved this result by dubious means.” (Huddleston and Pullum, 2002: 1428).

3.2.2.3 Be-passives, get-passives and bare passives

Further, Huddleston and Pullum (2002: 1429 – 1430) investigates **be-passives**, **get-passives** and **bare passives** and introduces the following examples:

Kim was mauled by our neighbour’s dog. [be-passive]

Kim got mauled by our neighbour’s dog. [get-passive]

He saw Kim mauled by our neighbour’s dog. [bare passive]

Quirk et al (1985: 161) claims that *get* “tends to be limited to constructions without an expressed animate agent” and that the “*get*-passive is avoided in formal style, and even in informal English it is far less frequent than the *be*-passive” (Quirk et al, 1985: 161). The *be*- and *get*-clauses are also referred to as **expanded passives**, because they

include the ‘dummy verbs’ *be* and *get* “in addition to the bare passive” (Huddleston and Pullum, 2002: 1443).

3.2.2.4 First passive and second passive

In ditransitive clauses (verbs taking two objects), either an indirect or a direct object can be externalised. Huddleston and Pullum (2002: 1432) talks about the **first passive** and the **second passive**. The first passive occurs when an indirect object is externalised:

ACTIVE: My father gave me this watch. PASSIVE: I was given this watch by my father.

In the second passive, the direct object is externalised:

ACTIVE: My father gave me this watch. PASSIVE: This watch was given to me by my father.

(examples taken from Huddleston and Pullum, 2002: 1433)

However, Huddleston and Pullum (2002: 1432) argues that the second passive is not very common.

3.2.2.5 Prepositional passives

Prepositional passives are those of which a preposition is transitive in the active, but intransitive in the passive. An example can be found in Huddleston and Pullum (2002: 1433):

ACTIVE: The committee didn’t face up to these problems.

PASSIVE: These problems weren’t faced up to by the committee.

Biber (Biber et al, 1999: 475) mentions passive constructions with “two-object prepositional verbs”, e.g.: Dormancy is associated with short duration. ← Researchers associate dormancy with short duration. (examples taken from Biber et al, 1999: 475).

3.2.2.6 Passive voice with modals

As Biber et al (1999: 499) points out, passives can occur with the modal verbs. Although they are very rare in an informal conversation, such constructions are commonly found in academic prose: “*To produce the best results, the plant **should be***

supplied with water which carries no contamination” (Biber et al, 1999: 497).

Especially *must* and *should* are often used to mark a “kind of collective (personal) obligation, but the passive voice is used to avoid explicit identification of the person who is obliged to act” (Biber et al, 1999: 500).

3.3 On the distribution of active and passive voice according to register

According to Biber et al (1999: 476), passives are mostly found in academic prose, for instance in the news, where they occur “about 12,000 times per million words”. Moreover, “passives account for c. 25% of all finite verbs in academic prose” and they “can be extremely frequent, with whole passages being written in the passive voice” (Biber et al, 1999: 476). There are several reasons favouring the use of passives in the academic prose. Biber et al (1999: 477) states that it gives the possibility of the agent being demoted, “while giving topic status to the affected patient.” It is most evident in the case of short passives, where the agent is completely omitted. As noted by Biber et al (1999: 477), the use of the short passive “conveys an objective detachment from what is being described” and enables “to omit mention of the specific researcher(s).” The short passive is used especially when “the focus of a story is an event involving an affected person or institution, and the agent of this event may be easy to infer, uninteresting, or already mentioned” (Biber et al, 1999: 477). Biber et al (1999: 477) points out that in journalism, for instance, there is a “desire to save space and maximize what is novel.” This contrasts with informal conversation which has “a human-centered concern,” and hence the agents are not so easily to be omitted. Another reason for using the short passive instead of the active is mentioned by Huddleston and Pullum (2002: 1446) – the passive denotes “human knowledge in general.” For instance, in the sentence “*Very little is known about the cause of the disease*” (Huddleston and Pullum, 2002: 1445). Passive constructions in “material from government and similar institutions” are used “to give the writing a more objective flavour” (Huddleston and Pullum, 2002: 1446). The research carried out by Biber et al (1999: 479) reveals some verbs in the passive which are most common in particular

registers. His research shows that constructions such as *be + achieved, associated* or *performed* occur over '100 times per million words' in academic prose, structures as *be + applied, calculated* or *chosen* appear around '40 times per million words' in the news, whereas in conversation, there is only one passive phrase occurring 40 times per million words: *be bothered*. Moreover, "many verbs occur most of the time in the passive voice" in academic prose (Biber et al, 1999: 479).

3.4 Active and passive voice as seen from the functional sentence perspective

3.4.1 The basic principles of the FSP theory

One of the main reasons for the use of passive voice in legal English is the functional sentence perspective (later referred to as FSP). According to the FSP theory (Chamonikolasová, 2004: 2), "The grammatical and the linearity principles are most influential in determining the syntactic structure of a sentence." Because of the fact that the grammatical principle is the leading word order principle in English, it is not always easy to satisfy the FSP-linearity principle. Whereas the grammatical principle enforces the arrangement of the sentence elements according to their grammatical categories (subject – verb – object), the FSP-linearity principle determines the position of the syntactic units according to their communicative value. The communicative value of a sentence unit, or its 'communicative dynamism' (Firbas, 1992: 14) is determined by several factors: "the linear modification factor, the semantic factor, and the contextual factor" (Chamonikolasová, 2002: 1). In spoken language, it is also the 'prosodic factor'. These factors influence the communicative value of the sentence units so that they dynamically develop from the least to the most important information (Firbas, 1992: 6).

3.4.1.1 The linear modification factor

In Halliday's (1985: 38) conception, the linear modification factor has the main function in determining the communicative dynamism (later referred to as CD) of

an element. To put it differently, the position of a unit in a sentence decides about its thematic or rhematic character: “(...) the theme is indicated by position in the clause. In speaking or writing English we signal that an item has thematic status by putting it first” (Halliday, 1985: 38). In Halliday’s words, “Theme is the starting-point for the message” (Halliday, 1985: 39). Firbas (1992: 72), on the contrary, claims that “none of the concepts ‘theme’, ‘non-theme’ (...) are position bound. (...) thematicity, transitionality and rhematicity are not invariably linked with the beginning, middle and end of a distributional field, respectively.” This means that the linear modification factor can be overruled by other factors or rules, one of them being the grammatical principle. It is most clearly seen when translating Czech sentences into English – because of the fact that the Czech word order is much more flexible than the English one, Czech language can afford placing thematic elements at the beginning of the sentence in most cases. In English, word order is fixed, and therefore, as Chamonikolasová (2002: 1) puts it, “Under certain conditions, observation of the grammatical principle is impossible without the violation of the FSP-linearity principle.”

3.4.1.2 The semantic factor

The semantic character of a sentence unit is another factor influencing the CD of the unit. According to its semantic role in the sentence, a sentence unit can become either a bearer of quality or a phenomenon. Two types of ‘dynamic semantic scales’ can be distinguished (Chamonikolasová, 2002: 5): in the ‘presentation scale’, a particular phenomenon is being presented. The phenomenon carries the highest degree of CD and is thus the most important information towards which the communication is oriented. In the ‘quality scale’, the quality of a phenomenon carries the most important information. The phenomenon is being referred to as ‘bearer of quality’.

Chamonikolasová (2002: 5) introduces the two scales which represent the semantic factor ordering elements from the least to the most dynamic one:

The presentation scale:

Setting (Set) – Presentation of Phenomenon (Pr) – Phenomenon Presented (Ph)

The quality scale:

Setting (Set) – Bearer of Quality (B) – [Ascription of Quality] ([AofQ]) – Quality (Q) –

Specification (Sp) – Further Specification (FSp)

3.4.1.3 The contextual factor

And finally, the contextual factor is according to Chamonikolasová (2002: 2) “superior to both the linear modification factor and the semantic factor.” Context determines whether the information carried by a sentence unit is old or new. The old or ‘given’ information is ‘retrievable’ from context, whereas the new information is ‘irretrievable’ (Chamonikolasová, 2002: 2). Therefore, as Firbas (1992: 6) puts it, retrievable elements are ‘less dynamic’ than the irretrievable ones which “contribute more (...) to the further development of the communication.”

3.4.1.4 Communicative units

Based on the interplay of the above mentioned factors, the sentence units gain each a certain degree of communicative dynamism, and thus become communicative units. Communicative units with the lowest degree of CD are referred to as thematic, whereas units with the highest degree of CD are rhematic. Vachek (1994: 8) and other linguists use the terms ‘theme’ (or basis of the statement) and ‘rheme’ (nucleus). Between the thematic and rhematic units, there is ‘transition’ which, as noted by Vachek (1994: 8), already forms the non-thematic part of the sentence. Transition is usually expressed by verb and its categorical exponents. Transition is marked as ‘Tr’, the categorical exponents of the verb as ‘+’ or ‘TrPr’ (transition proper) (Chamonikolasová, 2002: 8; Firbas, 1992: 74). The hierarchy of communicative units ordered from the least to the most dynamic element looks as follows:

Theme Proper (ThPr) – Diatheme (DTh) – Transition Proper (TrPr) – Transition (Tr) – Rheme (Rh) – Rheme Proper (RhPr)

3.4.1.5 The objective and subjective word orders

As already stated earlier, the linear modification factor enforces the elements with low CD to stand at the beginning of a sentence, leaving the most important information at the end. However, in the English language, unlike in the inflected languages such as Czech, the grammatical principle rules over the linear modification factor. In consequence, rhematic elements occur at the beginning of a sentence in English. According to Mathesius (1975: 83), such an arrangement has a subjective flavour: “First the speaker impatiently states the new element of the intended statement and only afterwards adds the known elements from which he actually starts.” Mathesius refers to such an arrangement as ‘subjective order’ or ‘R – T arrangement’, which contrasts with the normal, ‘objective order’ or ‘T – R arrangement’.

3.4.2 Means of satisfying both the grammatical and FSP-linearity principles

To avoid using the subjective order, English language has developed some means through which none of the principles (FSP or grammatical) is violated. One of them is a substitute subject ‘there’ or ‘it’:

“There was a tabby cat standing on the corner of Privet Drive.” (Rowling, 1997: 8)

“It was Filch speaking to Mrs Norris.” (Rowling, 1997: 117)

This way, the rhematic elements ‘a tabby cat’ and ‘Filch’ are able to be positioned after transitional units, in the rhematic sphere. Instead of being rhematic subjects having to occupy the first positions in the sentences, they become complements able to stand after transitions because of the substitute subjects.

Another means of satisfying both the principles is the use of passive voice:

“But on the edge of town, drills were driven out of his mind by something else.”

(Rowling, 1997: 8)

When the passive voice is used, the object (‘drills’) which would normally occupy the last position in this sentence, becomes the subject standing right after the setting, in the thematic sphere. However, passive voice is usually avoided in fiction, as it is less

dynamic than the active voice, and, in Haigh's words (2004: 37) "It also leads to less effective and less forceful communication with the reader." This is one of the main reasons why the defenders of the Plain English Movement call for avoiding the passive voice in legal English.

4. Analysis

In the following analysis, I am going to investigate concrete examples of passives found in legal documents. The analysis is based on two extracts from the recently published British Acts of Parliament, namely “The Social Security Benefits Up-rating Order 2008” and “Adoption and Children (Scotland) Act 2007”. The texts, which are placed in the appendices, are divided into 139 units. These units are closer being examined in the particular tables, also found in the appendices. The tables contain each the earlier discussed types of passives, the last table shows the active voice distributed throughout the texts. Both the passives and actives are marked in bold. I would like to draw attention especially to the functional sentence perspective influencing the use of passives in the legal documents and consider the suggestions of their ‘simplification’ through the use of the active voice, what impact such a ‘passive – active conversion’ would have on the dynamics of a sentence.

4.1 On the use of central, semi and pseudo passives in the material analysed

The main division of the passives is the division between central, semi and pseudo passives, as it sets a boundary between the ‘real’ verbal passives and passives which can already be classified as adjectives. The analysis shows that there are 130 central, 60 semi, and 29 pseudo passives in the texts, which means that more than a half of the passives is central. The following three subsections provide examples of the above mentioned passives and lead into the problem of the possibility of their ‘simplification’ by means of turning them into the actives. The central and semi passives can be divided further into the long, short, be-, bare, modal and prepositional passives. Because of the fact that the group of the central passives is the largest, it will be much closer discussed in the following, separate sections aimed at the particular long, short, etc. passives.

4.1.1 Central passives

Central passives, also referred to as ‘verbal passives’ are those carrying a clear connection to their active counterparts. The verb ‘be’ is a passive auxiliary, the passive itself is a verb (not an adjective):

The Bill for this Act of the Scottish Parliament **was passed** by the Parliament on 7th December 2006 (...). (A60¹)

‘The Parliament’ is the agent, who performed some action. Thus, the passive ‘was passed’ is clearly a verb. The subject of this passive sentence, ‘The Bill for this Act of the Scottish Parliament’, is the starting point of the message – it is the theme of the sentence. The agent, in contrast, is one of those elements towards which the message is aimed – it is a rhematic unit. The conversion of the passive into the active and its impact on the dynamism of the sentence will be closer examined in the ‘Long passives’ section.

Central passives can also be ‘bare’, where the passive auxiliary is implied:

(...) the powers **conferred** by sections 150 , 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 (...). (A5)

In this sentence, the bare central passive ‘conferred’ functions as an attributive clause to the word ‘powers’. The passive is clearly a verb here, as there are two active counterparts (according to whether the by-phrase is considered as the agent or a means adjunct²):

1. (...) powers which the sections 150 , 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 **conferred** (...).
2. (...) powers which we/they **conferred** by the sections 150 , 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 (...).

However, the active variants do not seem better than the passive one. In the first clause, the verb is in final position, functioning as rheme. It leaves the long agent, full of new

¹A = the unit in the analysed texts; 60 = number of the unit which can be found in the appendices

²This aspect will be investigated in the ‘long passives’ section.

and important information, at the beginning of the clause, in the thematic sphere. The semantic scales of the passive and active variants are different. In the passive, there is Q – Sp arrangement, in the active the scale changes into B – Q. Hence, the meaning is changed as well. The passive variant talks about the quality of the word ‘powers’, which is ‘conferred’, and it specifies the quality, i.e. provides some new information about it: ‘by sections 150, (...)’. The active variant, in contrast, puts forward a bearer, ‘the sections 150, (...)’, and then mentions the quality of it: ‘conferred’. The second active variant is semantically very similar to the passive one: B – Q – Sp. Yet, the general subject seems to be redundant – it does not provide any necessary information and makes the already long sentence longer.

And finally, there are central passives with modals:

- (4) The sums which are the additions under section 37(1) of the National Insurance Act 1965 (additions for widows and widowers) **shall be increased** by 3.9 per cent.
(A38)

The theme of the sentence is ‘the sums’ specified in the attributive clause, it is followed by + transition (the central modal passive), and rheme (the specification). The modal verb expresses an order. The active variants of sentences with modal passives will be investigated in the ‘Passives with modals’ section.

4.1.2 Semi passives

The semi passives are those of which the structure can be interpreted as either verbal or adjectival. Out of the 60 semi passives found in the texts analysed, there are 23 identical passives, containing past participle of the verb ‘specify’, which is a bit more than one third. It seems that this word is one of the favourite ones in legal English: The sums **specified** in paragraph (2) shall be increased (...). (A9)

If the passive is considered as verbal, the active variant would look as follows:

The sums which we/they **specified** in paragraph (2) shall be increased (...).

The passive is clearly verbal here, as there is an active counterpart – someone specified the sums, and thus they are specified. The passive variant is clearly better, as it makes

the already long sentence shorter, and there is no need to use the general subject. The adjectival interpretation of the passive says that the word 'specified' is an adjective describing the noun 'sums'. It can be modified by the word 'more' for instance and the copula verb 'be' can be replaced by the verb 'become', as pointed out by Quirk et al (1985: 168):

The sums which **became more specified** in paragraph (2) shall be increased (...). Even if the sentence is a bit clumsy and there is redundant information, it is possible to modify the passive this way, and therefore it can be concluded that the passive can have both the verbal and adjectival interpretation.

There are some semi passives in the texts, where the verb 'be' is explicit:

(...) where entitlement to retirement pension **is deferred** (...) (A14)

The verb 'be' can be interpreted either as a passive auxiliary in the case of a verbal passive, or as a copula verb, in case the passive is adjectival. Again, there is an active variant to this clause as well as the possibility to modify the verb with the words already mentioned. The use of the passive here enables thematization of the object, the passive itself being the rheme.

And finally, there is one semi passive combined with modal verb:

(...) children who **may be adopted** (...). (A65)

The following example shows the verbal interpretation of this semi passive:

(...) children whom somebody **might have adopted** (...).

In this active subordinate clause, the subject 'somebody' becomes the theme, the starting point of a message which is being developed further through the modal verb combined with the present perfect of the verb 'adopt'. When the subject becomes explicit, it gains importance and pushes the thematic element 'children' backwards. Even if the subordinate clause functions as an attribute to the noun 'children' and it can be understood as some kind of 'adjective', the passive is much more suitable in briefly providing information needed, without any redundant elements.

4.1.3 Pseudo passives

Pseudo passives are those by which the connection to their active counterparts has already disappeared. They are regarded as adjectives:

graduated retirement benefit (A21); (...) to which he was previously **entitled** (...) (A25)

It is not worth discussing them more, as there is no possibility of ‘simplifying’ them into the active forms. They are also not included in the following types of passives because they are not ‘real’ passives.

4.2 On the use of long and short passives in the material analysed

There are 151 short and only 39 long passives in the texts, which means that the agent is very rarely mentioned. This is mainly caused by the fact that the agent is mostly unknown or general. As pointed out by Hiltunen (1990: 81), the passive is “preferred to generic subjects such as *one*, *we* or *they*.”

4.2.1 Short passives

In the following sentence, the communicative value of the units is marked by the use of symbols explained earlier. This way, it will be easier to examine the functional differences between the original and simplified variants.

A draft of this Order **was laid** before Parliament in accordance with sections 150(2),
Th +Tr Rh RhPr

150A(2) and 190(1)(a) of that Act, and **approved** by a resolution of each House. (A3)
Tr RhPr

As can be seen, the subject of this sentence, ‘A draft of this Order’, functions as theme, carrying the lowest degree of CD. It is followed by transition, the passive ‘was laid’, (‘approved’ in the following coordinative clause). Each clause ends with the most important information, rheme (rheme proper being the most dynamic). None of the principles (grammatical or FSP) is violated and the sentence elements are ordered according to their communicative value, from the unit carrying the lowest degree of

CD to the one with the highest degree, thus conforming to the FSP-linearity principle. Each element in this sentence is important, there is nothing redundant.

Should the active variants of the clauses be considered, the communicative value of the units would look as follows:

<u>I (we, somebody)</u>	<u>laid</u>	<u>a draft of this Order</u>	<u>before Parliament</u>	<u>in accordance with</u>
Th	+Tr	DTh	Rh	RhPr
<u>sections 150(2), 150A(2) and 190(1)(a) of that Act, and a resolution of each House</u>				
RhPr				
<u>approved it.</u>				
+Tr	Th			

In this, ‘simplified’ variant, the dynamics of the sentence is slightly confusing. In the first clause, there is a redundant theme. It is redundant because of several reasons. First, the name of the person or persons who laid the draft is not important for the message of the document. It is generally known that some draftsman must have created the draft, and somebody must have laid it before Parliament. The fact that the draft was laid before Parliament is more important than the person who did it. The document is signed and legally confirmed, and there is no doubt that a competent person did it. From the functional sentence perspective, the subject is redundant because it shifts the direct object ‘a draft of this Order’ into the rhematic sphere, thus giving it more importance and attention than it should have. Though, it remains thematic and thus violates the FSP-linearity principle. Also, there are more sentence units than in the passive, which takes longer for the mind to process. Therefore, it can be clear that the reader has more difficulty in deciphering the meaning of the active voice than he should have with the passive. In the second clause, the FSP-linearity principle is evidently broken, the clause begins with the new element, the context given information comes only at the end, after transition.

An interesting structure can be seen in the following sentence:

- (4) It **is directed** that the sums which are—
- | | | |
|----|-----|------|
| Th | +Tr | RhPr |
|----|-----|------|
- (a) (...);
- (b) (...);

(c) (...); and

(d) (...), shall in each case be increased by 3.9 per cent. (A14)

Instead of the real subject, there is a 'preparatory subject' (Alexander, 78). According to Alexander (78), the true subject in such a sentence is "the infinite, gerund or noun clause" which follows the verb. It does not necessarily have to be the semantic subject or the agent, as it is in this case, where the true subject of the passive voice (the patient) is a noun clause functioning as a complement. Were it not for the preparatory subject 'it', the noun clause would have to be placed in the first position, as the subject of the sentence. However, as a subject of the sentence, it would be a very heavy element because of its length. If the passive voice should be translated into the active, the true subject of the passive sentence, the long noun clause would become the object of a sentence with some general subject. It would probably look like this:

(4) We/they direct that the sums which are—
Th +Tr RhPr

(a) (...);

(b) (...);

(c) (...); and

(d) (...), shall in each case be increased by 3.9 per cent. (A14)

As can be seen, not much has been changed. Both the grammatical and the FSP principles are satisfied, the active voice indeed appears to be more dynamic. However, the general subject seems to be redundant, and again, it is generally known that only competent persons are able to increase the sums. The general subject makes the already long sentence heavier and it may appear a bit confusing in the reader's mind as to who 'they' are.

The next example shows that the sentence structure in legal texts can be quite complicated:

In any case where a person's weekly rate of Category A or Category B retirement pension **falls to be increased** under the provisions of section 47(1) or 48C(2) of the Contributions and Benefits Act by reference to the weekly rate of invalidity

allowance or age addition to long-term incapacity benefit to which he was previously entitled, any increase in such sum **shall take effect** on 7th April 2008. (A25)

It is not clear whether there is one sentence or two independent clauses. The whole unit beginning with ‘In any case’ and ending with ‘entitled’ is a thematic adverbial in the following, main clause. Were the sentence shortened and simplified, it would probably look like this:

If we/they should increase the retirement pension, it shall take effect on 7th April 2008.
Th ThPr +Tr RhPr

Even if there is no serious violation of the FSP-linearity principle in the main sentence, the meaning of the subordinate clause is slightly different than it would be in the passive. The ‘retirement pension’ becomes the most important element in the clause. However, there is more important information in the original variant which is to be placed in the rhematic sphere. The information is concerned with the source of the increase: ‘the provisions of section 47(1) or 48C(2) of the Contributions and Benefits Act (...)’. Through the use of the passive voice, it can not only satisfy the FSP-linearity principle, but it can also come right after the verb to which it is connected, thus avoiding any kind of ambiguity. The general subject we/they, which is redundant, disappears in the passive voice.

Let us consider this sentence:

An Act of the Scottish Parliament **to restate** and amend the law relating to adoption; **to make** other provision in relation to the care of children; **to enable** provision **to be made** in relation to allowances in respect of certain children; and for connected purposes. (A61)

The theme of the sentence is clearly ‘An Act of the Scottish Parliament’. The verbs in the infinitives describe closer the theme. They state what the Act is doing. The third infinitive, which is in passive, tells something more about provision – that the Act enables it to be made. There are several reasons for the use of the passive here. First, it enables the rhematic elements, ‘to be made’ and ‘in relation to (...)’ to occupy the third position. Second, these two elements, which are connected with each other, are not

separated by the word ‘provision’. And finally, the general subjects, which are not needed, can be avoided. The active variant would look like this:

An Act of the Scottish Parliament (...) which enables that they can make provision in relation to allowances in respect of certain children.

In the simplified sentence, it is not clear what the pronoun ‘they’ stands for, moreover, it is redundant and makes the sentence heavier. The word ‘provision’ is shifted into the rhematic sphere and connected with the phrase ‘in relation to the allowances (...)’.

The reader’s attention is drawn to ‘provision which is in relation to allowances (...)’ instead of the fact that it is going to be ‘made in relation to the allowances (...)’.

The following sentence consists of many complements listed as items concerning those people who are affected by the ‘adoption service’:

- (3) Those persons are—
- (a) children who **may be adopted**
- (b) persons who **have been adopted**,
- (c) parents and guardians of children mentioned in paragraph (a),
- (...) (A65)

The active variants of the two subordinate clauses ‘who may be adopted’ and ‘who have been adopted’ would be: ‘whom somebody might have adopted’ and ‘whom somebody has adopted’. Even if the FSP-linearity principle would not be violated, the subject ‘somebody’ makes the clause longer – the reader’s mind has to process this redundant subject as well, instead of processing only the most important information. In fact, the passive voice makes the sentence clear, and it is easy for the reader to pick up the important information.

There is one passive in gerund found in a comment in the brackets:
(the reference in subsection (5) of that section to a local authority **being taken**, for the purposes of this paragraph, **to be** a reference to a person other than a local authority) (A89)

At first sight, there is no reason why the participle passive construction should not be replaced by an active verb. Someone could for example suggest the verb ‘to mean’. The agent could easily be ‘the reference in subsection (5)’:

(the reference in subsection (5) of that section to a local authority **means**, for the purposes of this paragraph, a reference to a person other than a local authority)

Even if it looks easier, and would probably be easier understood by wider readership, the meaning is slightly changed. Whereas ‘mean’ suggests that something has ‘a particular meaning’ (Macmillan, 884), ‘take something to be something’ suggests that something is only understood ‘in a particular way’ (Macmillan, 1462). Even if some other synonyms would be used, they would always have different meanings to some degree. Therefore, only the active variant of the present passive construction, ‘being taken to be’, shall be tried:

(we **take** the reference in subsection (5) of that section to a local authority, for the purposes of this paragraph, **to be** a reference to a person other than a local authority)

As already proved in the above investigated clauses, the general pronoun ‘we’ is redundant, ‘the reference in subsection (5)’ is shifted into the rhematic sphere, which makes the rhematic sphere full of elements with different degrees of communicative dynamism. The passive is well suited here, as it provides a balance between the thematic and rhematic units. And the last thing which should be taken into consideration here is the use of the progressive form of the passive. The stative form ‘is taken to be’, however, has also a different meaning than the progressive ‘being taken to be’. Whereas the stative suggests a longer duration of the fact provided through it, the progressive shows temporality: it is only for the ‘purposes of this paragraph’.

The short passive is mainly being used to make clear the things which shall or shall not be done. Through omitting the redundant agents, the reader’s attention is drawn to these orders imposed by the document, as it is in the following case:

(1) Where—

(a) subsection (2) applies, an adoption order **may not be made** in relation to a child unless the conditions in subsection (3) **are met**, (...) (A123)

The document orders that first there are certain conditions which must be satisfied before making the adoption order. The rules are clearly stated in the passive voice. However, also the active variant should be considered:

(1) Where—

(a) subsection (2) applies, **you cannot make/ nobody can make** an adoption order in relation to a child unless **you/he/she meets** the conditions in subsection (3), (...)

The advocates of the Plain English Movement would probably say that this variant is more communicative with the reader and more personal, hence more suitable than the passive original. Yet, there are several problems which lead to the conclusion that the passive is more suitable. First, there is a question as to what kind of pronoun shall be used. The pronoun *you* seems to be very personal, the general ‘nobody’ rises the problem of ‘he/she’ in the subordinate clause. Moreover, they become themes of the sentences, shifting the other elements, ‘an adoption order’ and ‘the conditions in subsection (3)’, into the rhematic sphere. The orders (‘may not make’ and ‘to meet’) are changed into transitional units thus losing their high degree of CD. To sum up, the passives are clearly more suitable, as they allow thematization of the objects and put more emphasis on the verbs.

4.2.2 Long passives

As already stated above, there are 39 long passives in the texts, which is a very small number compared to the number of short passives. This points out to the fact that one of the main reasons of using the passive voice in legal texts is to avoid mentioning the agents. As investigated earlier, this does not necessarily mean that the explicit agents are avoided because of some ‘hidden purpose’ or because of making

legal English more formal and objective. The following analysis shows the cases in which the agents are mentioned, and examines the reasons for their being mentioned.

First, there are long passives with explicit agents which are not agents in reality, yet, in the active variants they function as subjects. Sometimes, one could argue that they are short passives with a ‘by-phrase’ functioning as means adjunct:

Those sums which **are not increased by this Order** are the sums set out in Schedule 4 to this Order. (A48)

The active variant of the subordinate clause could be:

(...) which this Order **has not increased** (...).

If ‘by this Order’ were a means adjunct, the active clause would look like this:

(...) which we/they **have increased** by this Order (...).

In the first instance, ‘this Order’ becomes the theme of the clause, and it gives an impression that the evaluation of the information (realised in the rheme ‘has not increased’) concerns the subject ‘this Order’. In other words, the ‘story’ of the subordinate clause is about ‘this Order’. Similarly, in the second variant, the ‘story’ evaluated is about the general subject ‘we’ or ‘they’. Moreover, these subjects are redundant, they do not add any important information to the sentence and hence make it unnecessarily heavy. The subject and theme of the active clause is the word ‘which’ referring to the subject of the whole sentence. The clause feels more like an adjective to the noun ‘sums’. There is no redundant information, as it is vital in this case to state the source of the increase – ‘this Order’.

Also the following sentence enables thematization of the object:

A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act, and **approved by a resolution of each House**. (A3)

‘A draft of this Order’ is a thematic subject in both coordinative clauses. The rest of the sentence units reveals more information about the subject, the FSP-linearity principle is

not broken, there is no redundant information. The active variant of the second clause would violate the FSP-linearity principle:

(...) and a resolution of each House approved it.
Rh +Tr Th

There is one instance in the texts where the explicit agent of the passive is a thematic pronoun:

2) Each local authority—

(a) must from time to time review the plan **published by it** under subsection (1),

(b) (...) (A74)

Also in this case there is a good reason for using the passive structure. The theme of the whole sentence is ‘Each local authority’. The two remaining parts of the sentence (they can be referred to as two independent sentences), which are in the form of entries, are part of the rhematic sphere. The passive phrase ‘published by it under subsection (1)’ relates to the word ‘plan’ and forms a kind of attribute to this word. The necessary information about the plan is that the thematic ‘local authority’ published it. The attributive passive could be translated into a relative active clause, which would also have the function of an attribute:

2) Each local authority—

(a) must from time to time review the plan which **the local authority published** under subsection (1),

As can be clearly seen, the thematic element is much longer now, making the whole attribute longer, and the unnecessary information is repeated. The long passive with the pronoun ‘it’ is the best solution here.

Finally, there are some ‘proper’ long passives, where the explicit agent is the real agent and there is no doubt as to whether it should be classified as a means adjunct:

(...) regulations **made by the Scottish Ministers**. (A75)
Q/Tr Sp/RhPr

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th
B/Th Q/ +Tr Sp/Rh FSp/RhPr

December 2006 (...). (A60)

The passives enable the agents, ‘the Scottish Ministers’ and ‘the Parliament’, to be shifted into the rhematic sphere. If the active was used, the dynamics of the sentences would be completely different, because the linearity and semantic factors would change as well:

(...) regulations which the Scottish Ministers made.
B/Th Q/RhPr

The Parliament passed the Bill for this Act of the Scottish Parliament on 7th
B/DTh Q/ +Tr Set/Th Sp/RhPr

December 2006 (...).

In the first clause, ‘the Scottish Ministers’ are the starting point of the message, they are bearers of quality, and hence thematic. In the second case, it is ‘the Parliament’ which becomes the bearer of quality, leaving the thematic object in the rhematic sphere of the sentence, thus violating the FSP-linearity principle. Having compared the active and passive variants, it can be concluded that the passive is the best option in both cases, as it does not violate the FSP-linearity principle and enables the new and more dynamic elements to be placed in the rhematic sphere.

An interesting issue arises when one has a closer look at these sentences which stand very close to each other. It can be said that they are in the same ‘immediately relevant context’³:

(1) Subsection (2) applies where an application for an adoption order relates to a child **placed** for adoption **by an adoption agency**. (A133)

(1) Subsection (2) applies where a child **was not placed** for adoption with the applicants **by an adoption agency**. (A135)

³Immediately relevant context = a term introduced by Firbas (1992: 21); it is related to the contextual factor, it decides whether the information is context given or new

According to the contextual factor, the information ‘an adoption agency’ is already known in the immediately relevant context, hence retrievable and should carry a low degree of CD. In other words, the agent seems to be thematic and one could argue that there is no need to use the passive here because of the FSP-linearity principle. However, it can be noticed that the whole phrase, ‘child placed by agency’, becomes the theme of the following section. Therefore, it cannot be claimed that the object of the active variant, ‘child’, is a new element, and hence should be placed at the end of the clause. Rather, ‘agency’ is a rhematic element in the title, repeated in the clauses as rhematic. Legal English is known for repetition of items ‘in order to avoid ambiguity’. Because of this fact, the contextual factor is not so influential in legal English as it is in other registers, or, better said, it is not always taken into consideration. There is one more thing worth mentioning here. When these particular sentences are investigated more in depth and compared, it can be concluded that the element with the highest degree of CD in each clause is the verb. The first sentence is aimed at children who ‘are placed’, the second one at those who ‘are not’. This information (‘are’ or ‘are not’) is irretrievable and most important. However, because of the grammatical principle, the verb cannot be in final position, and hence occupies the middle. The subject ‘child’ is always the element with the lowest degree of CD, the agent ‘agency’ has to be repeated because of the reasons already mentioned, and therefore the long passive is evidently the best option.

As can be noticed, the long passive is used only in case when it is necessary to make the agent explicit. In most cases, the short passive is used to make the already long sentence shorter, to avoid using the redundant general subjects, and to balance the thematic and rhematic elements.

4.3 On the use of be- and bare passives in the material analysed

There are 83 be-passives and 107 bare verbal or semi passives in the analysed texts, which leads to a conclusion that bare passives are more common in legal English. Particular instances will be examined in the following subsections.

4.3.1 Be-passives

Apart from the be-passives connected with modal verbs, which will be closer looked into in one of the following sections, there are some ‘proper’ be-passives without any modal verbs added, where the passive auxiliary ‘be’ is explicit:

(...) if payment of his occupational pension **is postponed** (...) (A17)
Th +RhPr

The be-passive ‘is postponed’ is clearly a rhematic element, the clause conforms both to the FSP-linearity and grammatical principles. Consider now the active variant:

(...) if we/they postpone payment of his occupational pension (...) (A18)
Th +Tr RhPr

In the parallel active clause, the communicative units have completely different degrees of CD than in the passive. One could argue that neither theme, nor rheme are positionally bound (Firbas, 1992: 72), and hence ‘postpone’ can function as rheme and ‘payment of his occupational pension’ as theme in this sentence. This is true because of the fact that there are also other factors than the linear one which influence the degree of CD of an element. Also these factors shall be taken into consideration. According to Chamonikolasová (2002:2), the ‘contextual factor’ is “The most powerful factor of FSP, superior to both the linear modification factor and the semantic factor (...).” In this particular case, there is an already known concept in the phrase ‘payment of his occupational pension’. Looking into the preceding clauses, even into the title of the section, it can be concluded that ‘pension’ is definitely thematic. However, the rest of the elements in the phrase is new and context-independent⁴, therefore also the degree of CD of the whole phrase is higher than it would be the case in ‘pension’ only. The verb ‘postpone’ is completely new, yet, it can be stated that there is no substantial difference between the verb and object concerning the contextual factor. It is interesting to look at the semantic factor in both the passive and active variant:

⁴context-independent = a term used by Chamonikolasová (2002:2); another expression for new information

ACTIVE: (...) if we/they postpone payment of his occupational pension (...)

PASSIVE: (...) if payment of his occupational pension **is postponed** (...)

As can be seen, the semantic factor is different in these two variants. Whereas in the active, the general subject ‘we/they’ is the bearer of quality, in the passive, the object becomes subject of the clause and functions as bearer. This example leads to one of the main reasons which stand in favour of the use of the passive in legal English. In the active voice, the agent, mostly a person, is the bearer of some quality. The agent is the theme of the message which is being evaluated later on in the sentence. Therefore the advocates of the Plain English Movement are for the use of the active – the active voice is personal, it talks about people doing something, having some qualities. People are themes, they form the basis, whereas things they do form the core of the message. Such a use of the active is very often found in informal conversation or fiction stories. The situation is different in legal English, where the focus is on things and what is being done to them, even if it concerns the people and the things done are performed by them. In most cases, it is not important to state explicitly who performs something, as it is evident and redundant in the already ‘stuffed’ with information legal text. This leads to the conclusion that, whereas in the other registers, the contextual factor is the most powerful of the FSP factors determining CD of a unit, in legal English, the semantic factor gains power through its ability to lower the degree of CD of specification by changing it into bearer in the passive. The change is neither due to the linearity factor (there is a gradual rise in CD in both variants), nor due to the contextual factor (even if it could have some influence in this case because of the known element ‘pension’). The change is caused by the semantic factor; the meaning of the message which the legal drafters want to communicate is not ‘somebody does something’, but ‘something is done’, in this case – ‘payment (...) is postponed’.

There are also other cases of be-passives where the agent cannot be omitted, such as in the following title of a section:

Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act **are increased** by this Order. (A18)

The topic of the paragraph is ‘Dates’, which are characterised closer in the attributive clause. At first sight, the active counterpart of this clause can seem acceptable:

Dates on which this Order **increases** sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act⁵.

The subject ‘this Order’ seems to be a good starting point from which the further, much longer information should develop. Yet, if one looks closer at the immediately relevant context, it is clear that most of the information conveyed by the long phrase has already been present in the preceeding paragraphs, and hence it can easily be regarded as thematic and placed at the beginning of the sentence without violating the FSP-linearity principle. The unit ‘this Order’, even if implicitly present throughout the whole document, has not been mentioned so far as an important ‘doer’ which has the competence to change something. In this case, it increases particular sums. Therefore, the unit ‘this Order’ is regarded as the most dynamic in the clause, conforming to the FSP-linearity principle by occupying the final position. Moreover, the statement feels more authoritative when the emphasis is put on these words: ‘are increased by this Order’.

There are several cases where the be-passive is in infinitive, often preceded by a verb in active:

(3) In the case of a person over pensionable age–

(...)

(b) for whom the rate of short-term incapacity benefit **falls to be calculated** in

accordance with section 30B(3) of the Contributions and Benefits Act, (...). (A21)

⁵The active variant where the general agent ‘we/they’ becomes subject with ‘by this Order’ as a means adjunct shall not be considered here, as it has already been stated earlier that it would unnecessarily add a redundant element into the clause.

The verb, which is joined with the passive in infinitive, has its function in this particular sentence – it indicates that the benefit shall be calculated in accordance with the particular section. The modal ‘shall’ is not used because of the fact that it is not a command; it states the way in which the benefit is to be calculated.

Concerning the functional interpretation of the passive, the theme of the whole sentence is ‘a person over pensionable age’. As already known from context, another thematic element is ‘the rates of benefits’. Thus, the thematic subject ‘benefit’, even if specified by some new information, does not violate the FSP-linearity principle. The most important information is the fact that it is calculated in accordance with a particular section. Yet, there are still other factors contributing to the use of passive here. First, it is the absence of the redundant general subject and change of the bearer of quality. Second, when the passive is used, the verb ‘calculated’ comes right before the adverbial ‘in accordance with (...)’, which makes the sentence more clear than it would be the case when these two elements were separated by the long object.

Also a participle combined with a passive in infinitive can appear and function as a subordinate clause:

The increases in the sums **falling to be calculated** in accordance with paragraph 13(4) of Schedule 7 (...). (A27).

This construction saves space (there is no redundant general subject or conjunction needed) and it conforms to both the grammatical and FSP principles, leaving the message precise and brief.

The next clause contains a passive preceded by the active verb ‘be’:

(...) whether the rate of any benefit **is not to be increased** in respect of an adult dependant (...). (A28)

The third person of the verb ‘be’ in negative is used to denote a ban on a particular kind of an increase. It is used instead of the modal ‘shall not’.

The following is an example of a passive in infinitive without a preceding verb in active or participle:

(...) except in a case where the Secretary of State has made arrangements for it **to be paid** on a Wednesday (...). (A23).

The infinitive is clearly used to mark the future tense in this clause – it specifies a case in which something is going to be paid on a Wednesday. As already stated in the other cases, there is no doubt that the passive should not be replaced by its active counterpart.

Finally, there is one case in which two be-passives are joined together, one of them being in infinitive:

(...) an adoption of a child habitually resident outwith the British Islands which **is proposed to be effected** by an adoption order (...). (A127)

There are two active variants of these passives:

I (...) which they/we **proposed** that an adoption order would **effect** (...).

II (...) which they/we **proposed** that they would **effect** it by means of an adoption order (...).

Both variants, however, make the sentence much longer, there are redundant elements, the FSP-linearity principle is totally ignored. Whatsoever, the active clauses are very clumsy.

Apart from the already mentioned kinds of be-passives found in the texts analysed, there is also a gerund form of the be-passive, ‘being taken’ (A89), and a be-passive with a preparatory subject ‘it’ (A50), both of them have been closer examined in the ‘short passives’ section.

4.3.2 Bare passives

As already stated earlier, there are many more bare passives in the analysed texts. It seems that the verb ‘be’ is omitted whenever it is possible and does not violate the grammatical structure:

The Secretary of State for Work and Pensions has made a review as **required** by section 150(1) of the Social Security Administration Act 1992. (A1)

The subordinate clause contains an implied formal subject ‘it’ and a bare passive ‘required’. The passive functions as transition, the by-phrase as rheme, theme is implied. If the active variants were to be considered, there would either be the redundant general subject ‘we/they’ or the long phrase ‘section (...)’ would become the theme of the clause with ‘requires’ as rheme. This would also not be very welcomed by the functional sentence perspective, as it is the specification towards which the message is directed, not the quality. To put it differently, let me give an opposite example, which could be found for instance in some informal conversation where the quality would be the element towards which the conversation is aimed. In a situation where somebody buys a new mobile phone but it does not work:

‘I don’t know what’s wrong, I have done everything as the manual **requires**.’

In this case, the core of the message is the quality ‘requires’. What the person wants to say is that he has done everything the producers of the mobile phone require, the manual itself being not so much important. In the legal sentence, in contrast, the particular section is the most important fact.

The rest of the bare passives are either semi passives, which were already discussed, or prepositional passives, which will be closer examined in the following section.

4.4 On the use of passive voice with modal verbs in the material analysed

In the analysed texts, 29 passives combined with modal verbs can be found, which is not a lot compared to the number of all the other passives. There are 4 kinds of modals occurring in these legal texts: *may*, *might*, *shall*, *should*.

The most frequent is the modal *may* (occurring 14 times):

This Order **may be cited** as the Social Security Benefits Up-rating Order 2008. (A6)

(...) Those persons are— (a) children who **may be adopted** (...) (A65)

(...) such other persons as **may be prescribed** by regulations (...) (A75)

The power conferred by subsection (1) **may be exercised** (...) (A112)

(...) an adoption order **may not be made** (...) (A123)

According to Macmillan Dictionary (2002: 882), the modal verb *may* is “used for showing possibility”. Thus, also the intention of the clauses above is to show that the things stated in them are possible. In the first clause, for instance, an example of the possible citation of the document is given, in the second clause the modal with the passive describes closer the complement ‘children’ – it says that it is possible that they are adopted. As can be clearly seen, the modal combined with the passive always expresses some possible things concerning the object or person they are referring to. The object or person functions as a theme, a starting point and a bearer of a possible quality being gradually revealed in the sentence. If the active variants should be considered, again, they would completely change the semantic scales of the sentence or clause and thus the dynamics of the whole sentence, sometimes violating the FSP-linearity principle or making the sentence unnecessarily heavier through the use of redundant general subjects:

We/you may cite this Order as the Social Security Benefits Up-rating Order 2008. (A6)
 B/ThPr Q/+Tr Set/Th Sp/Rh

Also the other modal verbs combined with passives show similar results when compared to their active counterparts. *Shall* is used for “emphasizing that you are determined that something will definitely happen” (occurring 11 times), *should* for “stating a decision or order” or “talking about what is right (...) or correct” (used 3 times). *Might* is sometimes regarded as a past form of *may*; it is used only once, with passive in the present perfect (Macmillan, 2002: 1304, 1318, 89):

PASSIVE:

The sums which are the additions under section 37(1) **shall be increased** by 3.9 per cent.
 B/Th Q/+Tr Sp/Rh
 (A38)

(...) in relation to whom that power **should be exercised** (...) (A83)
 B/Th Q/+Rh

(...) when the service **might have been provided** to the person by the authority (...) (A108)
 B/Th Q/+Tr Set/Th Sp/Rh

ACTIVE:

We/you **shall increase** the sums which are the additions under section 37(1) by 3.9 per cent.
 B/Th Q/+Tr Sp/Rh FSp/RhPr

(...) in relation to whom they shall exercise that power (...) (A108)
 B/Th Q/+Rh Set/Th

(...) when the authority **might have provided** the service to the person (...) (A108)
 B/DTh Q/+Rh Set1/Th1 Set2/Th2

4.5 On the use of prepositional passives in the material analysed

There are only two prepositional passives occurring in the texts, namely ‘referred to’ and ‘called for’. The passive ‘referred to’ is a bare passive, and can be found 5 times in the material analysed, ‘called for’ is a be-passive found only once:

(...) for the purposes **referred to** in article 6(10) (...) (A8)
 B/Th Q/Tr Sp/Rh

(...) that the provision of adoption support services **is called for** in respect of (...) (A102)
 B/Th Q/+Tr Sp/Rh

In the active variants, the bearers would be different, which would change the starting points of the messages:

(...) for the purposes, to which we **referred** in article 6(10) (...) (A8)
 B/Th Q/+Tr Sp/Rh

(...) that we **called for** the provision of adoption support services in respect of (...) (A102)
 B/Th Q/+Tr Set/DTh FSp/Rh

In the second clause, not only the bearers change, but also the FSP-linearity principle is violated when a thematic element is placed after a transitional unit.

The advocates of the Plain English Movement could argue that the active variants are better, not only because they feel more personal, but also because the

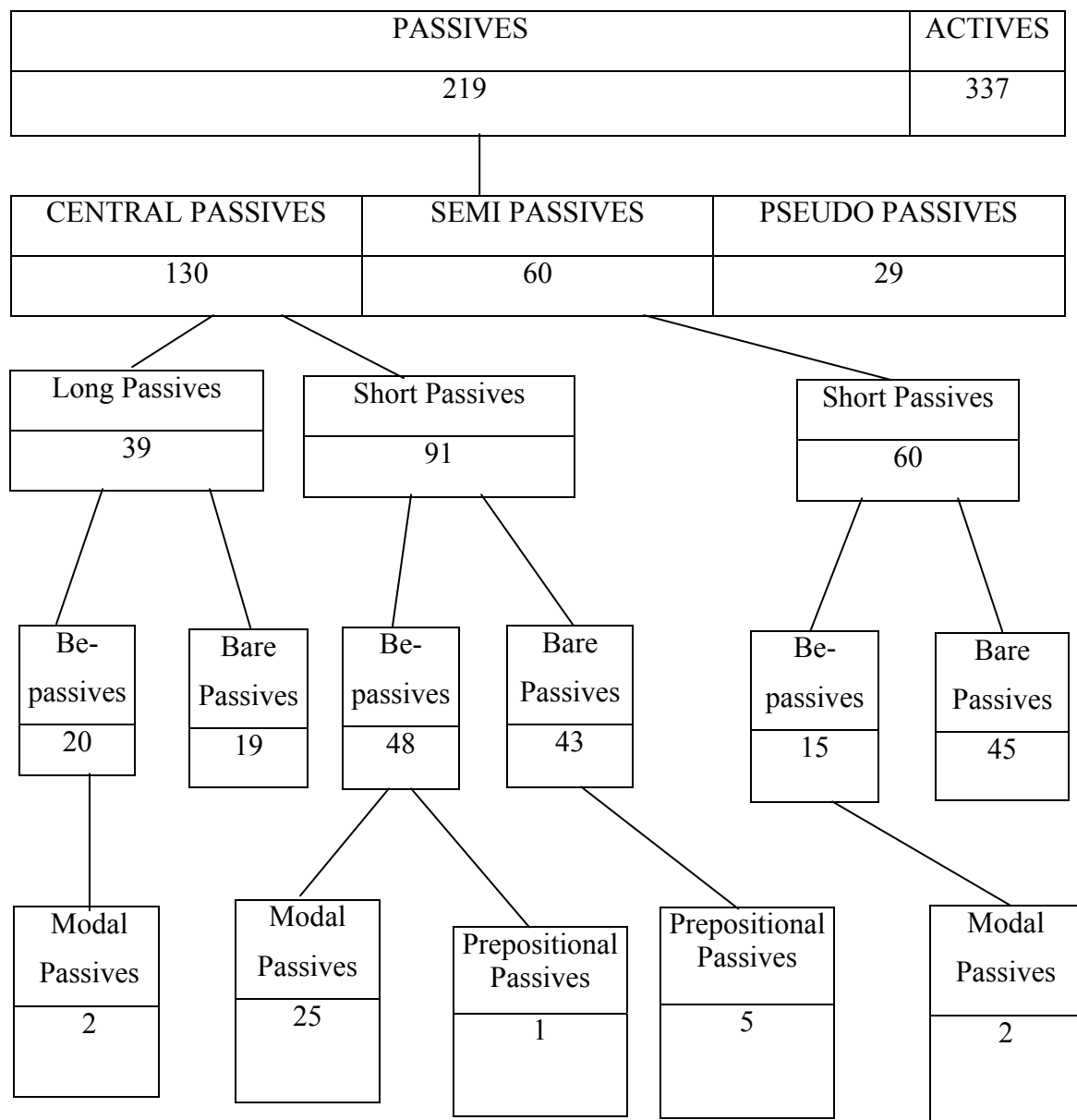
preposition is joined together with the noun before which it normally should come: ‘to which’ and ‘for the provision (...)’. However, from the view of the functional sentence perspective, it is not so important that the preposition should be joined with a noun, as the fact that the clause is clearly ordered according to the communicative value of the its elements. Moreover, unnecessary information makes the sentence heavier and weakens the importance of the other units. In other words, it is more important to state that the ‘purposes were referred to in the particular article’ and that ‘the provision is called for in respect of the particular persons’ than weakening these facts by adding that ‘somebody referred to the purposes’ and ‘somebody called for the provision’.

4.6 Notes on the use of active voice

The texts analysed contain 337 actives (the cases where the active verb becomes a noun in the sentence are not counted), which is many more than the number of passives. This can lead to a conclusion that the active voice is being used to a high degree in legal English and the passive is not overused. It adds credibility to the claim that the passive is used only when it contributes to a clear functional sentence order. However, the active voice will not be investigated any further here, as the focus of the thesis is the use of passive voice in legal documents.

4.7 Conclusions drawn on the basis of the analysis

The following tables display particular numbers of the different kinds of voice distributed throughout the analysed legal texts:



As the tables show, the most numerous groups among the passives are central, short and bare passives. This leads to a conclusion that most of the passives used in the analysed texts have a clear connection to their active counterparts, which provides an opportunity for the advocates of ‘simplification’ of the legal documents to convert the passives into the actives. However, the fact that there are many more short passives

than the long ones indicates that the agent is in most cases only implied, which suggests that there must be some reason for not mentioning the agent. The use of the passive voice enables the agent to be hidden. And finally, the substantial number of bare passives points out to the fact that even the verb 'be' is omitted a lot of times. Even if it is most evident by semi passives, which can have adjectival meanings and do not need the passive auxiliary, the number of bare central passives is almost even with the number of central be-passives. On the basis of these facts it can be stated that one of the reasons favouring the use of passives in legal documents is to make the sentences shorter and eliminate those elements which are redundant and unwanted. Yet, it is not simply 'hiding some important facts' or 'making the language unnecessarily formal and complicated', as many of the plain English advocates would claim. The main reasons are rooted in the functional sentence perspective, and, surprisingly for the supporters of 'simplification', the long legal sentences are simplified just by the use of passives, and their 'active conversion' would make them more difficult to understand.

The following subsections briefly summarize the main functional aims of the passives in the particular analysed cases.

4.7.1 Conforming to the FSP-linearity principle

The passive voice changes the arrangement of the units in a sentence in order to show a gradual rise in communicative dynamism, which would be hardly possible because of the strict grammatical rules in the English language. The sentence elements can therefore be arranged from the least to the most important information – this makes it easier for the reader to absorb the message. The utterance is clear and more intelligible. Example:

PASSIVE: A draft of this Order **was laid** before Parliament in accordance with sections.

150(2), 150A(2) and 190(1)(a) of that Act, and **approved** by a resolution of each House. (A3)

ACTIVE:

We **laid** a draft of this Order before Parliament in accordance with sections 150(2), 150A(2)
 Th +Tr DTh Rh RhPr

and 190(1)(a) of that Act, and a resolution of each House **approved** it. (A3)
 RhPr Tr Th

The hierarchy of communicative units in the passive:

I clause: Th – +Tr – Rh – RhPr

II clause: Tr – RhPr

The hierarchy of communicative units in the active:

I clause: Th – +Tr – DTh – Rh – RhPr

II clause: RhPr – Tr – Th

It can be clearly seen that the passive conforms to the FSP-linearity principle, whereas the active violates it.

4.7.2 Avoidance of redundant general subjects

When the passive is used, the agent does not have to be mentioned. It is very advantageous when the subject is general or else redundant, which occurs especially in legal English, as it is a language often concerned not so much with people doing things, but rather with things happening to people or things done by people. Moreover, legal language has to be very precise, and therefore it is frequently full of information appearing in long sentences. It welcomes any possibility of eliminating elements which are not necessarily needed, in this case they are the general subjects. The passive enables thematization of the object, which this way becomes the starting point of the message.

(...) an adoption order **may not be made** in relation to a child unless the conditions
 Th +Rh Th

in subsection (3) **are met**, (...) (A123)
 +Rh

In both the main and the subordinate clause, the object of the active variant has become the starting point – the message concerns the object, unlike in the active variant, where the starting point is the real subject:

The passive enables thematization of the rhematic object, the redundant agent disappears and shortens the sentence:

The sums which are the additions under section 37(1) **shall be increased** by 3.9 per cent.
B/Th Q/+Tr Sp/Rh
(A38)

The sentence is more balanced now, there is a clear linear arrangement: Th – +Tr – Rh.

5. Solving the problem of ‘simplicity versus precision’

The analysis has shown that in fact, the ‘simplification’ of passive, for instance, would make the document more difficult to understand, as it would not only change the intended meaning, but it would also complicate the structure of the already long sentences. The passive voice has definitely its place in legal English. The problem that some people do not understand passive sentences should be solved in a different way than by making the legal English ‘plain’ and turning the passives into actives. The following subsections provide an insight into the ways through which people are trying to solve the problem concerning simplicity and precision.

5.1 The plain and general principles and their relation to precision

According to Turnbull (1997: 21 – 22), there are three main styles of drafting to be distinguished, namely the ‘traditional’, ‘plain’ and ‘general’ (or ‘European’) style. Turnbull (1997: 22) claims that the traditional style is the most precise, yet the most difficult in terms of ‘readability’, whereas the general style stands on the other side of the ‘spectrum’, being the least precise, but at the same time the most simple of all the three styles.

At first sight, the general style could seem a good option, as it is so simple that precision is not expected to be found in it, and hence the arguments on what was exactly meant by the document could be eliminated. However, it gives opportunity for manipulation, as the courts are free to fill in the details in the particular cases (Turnbull, 1997: 26), and thus the law can become highly subjective and depending on the interpretation of the courts. Moreover, there is a need for precision – people desire to know in advance the consequences of their deeds, and they want to know that law is being applied impartially.

Drafting in plain English could be acceptable only in case it would not suppress precision, nor change the intended meaning. Hunt (2002: 34) cites the opinion of the Law Reform Commission of Victoria (‘Plain English and the Law’, 1987) which stresses the fact that the main problem is not so much in plain English itself, as in

translating legal English into the plain variant: “Any errors in the plain English version are the result of difficulties in translation, particularly difficulties in understanding the original version.” They say that if plain English should be used, then “It should be written from the beginning.” This way, misinterpretations of the intended original version can be eliminated. However, there comes a question as to whether plain English has the means to express a specific meaning and fulfill the required intention. Hunt (2002: 35) is highly sceptical about it: “One of the great difficulties with the appropriateness of plain language in a drafting context is that the legislative intent can only be achieved by using special language.”

5.2 Explanatory materials – the best solution?

The best solution for satisfying both the need for precision and people’s right to understand the documents concerning them seems to be the use of some ‘explanatory notes’: “The real answer to inaccessible legislation is good quality, plain language explanatory materials, and this makes plain language in legislative drafting just a laudable ideal” (Hunt, 2002: 124). Plain language can be used, of course, but only in so far as it does not alter the meaning or makes the documents less precise than they should be. Language has wonderful means of stating different things in different ways; why should they not be used if they can help making the law more precise and objective? It is always better to provide explanatory materials for those who do not understand than bringing ambiguity, especially when it comes to law.

Conclusion

The main aim of the present thesis was to approach legal language from both the social and linguistic point of view. The language of the law can be understood as a variety of English, which serves highly specific purposes. It is not a language meant to be used for everyday, rather, it is a language having a very important function in determining social behaviour and bringing justice to all people in an objective way. However, it has been said, it is very difficult, if not impossible to find a perfect legal document which would be completely precise, applicable to each and every situation and bringing always justice to everyone. Yet, the drafters of legal documents can minimize the degree of ambiguity by using the language in a proper way.

Because of the fact that the legal language serves completely different purposes than those of a plain user who needs to communicate only in everyday situations where the language does not need to be so precise, it comes to a clash between these two varieties. There is a gap between plain language and legal language. Plain users blame the drafters for using an unintelligible code. They are concerned because they need to understand their rights and restrictions. Yet, if they did understand, it would probably be at the expense of precision and objectivity, which would lead to misunderstandings and misinterpretations.

In the present thesis, it has been investigated whether a ‘simplification’ of legal language in order to meet the people’s needs for understanding could be a good solution to the problem of a clash between the two distinctive varieties of one language. One of the linguistic aspects proposed to be ‘simplified’ is the ‘overuse’ of the passive voice in legislative. On the basis of the functional sentence perspective, it has been concluded that both the passive and active voice have distinctive functions, and such a conversion of the passive into the active would alter the meaning. In fact, the passive makes the documents more clear and easy to understand. Unlike everyday situations or fiction stories, where the agents and contexts are of high importance, legal texts are meant to establish rules, rights and restrictions. The legal sentences should be capable of standing alone and they should provide only the necessary and precise

information. The passive enables to eliminate the redundant agent, thus shortening the already long sentence, and focusing the reader's attention on what is really important.

The call for 'simplification' and 'plain writing' should not be ignored. If there is a possibility to state something in a more accessible language without changing the meaning, the 'plainer' version is more than welcomed. However, precision and clarity should not be overruled by simplicity, especially in legal English. There is always a possibility of explanatory materials and interpreters who can translate the language to those who do not understand.

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Appendix 1

Tables showing the distribution of passives throughout the texts analysed

Number of the unit	Central passives	Semi passives	Pseudo passives
1	The Secretary of State for Work and Pensions has made a review as required by section 150(1) of the Social Security Administration Act 1992.		
1	The Secretary of State for Work and Pensions has also made a review as required by section 150A(1) of that Act		
3	A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act,		
3	and approved by a resolution of each House.		
5	Accordingly, the Secretary of State for Work and Pensions in exercise of the powers conferred by sections 150 , 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 makes the following Order		
6	This Order may be cited as the Social Security Benefits Up- rating Order 2008.		
8	The increases made—		
8		in the sums specified for rates or amounts of benefit	
8	for the purposes referred to in article 6(10)		
8		on the date specified in relation to the case in article 6	
9	The sums specified in paragraph (2) shall be increased	The sums specified in paragraph (2) shall be increased	
9		from and including the respective dates specified in article 6	
10	The sums mentioned in paragraph (1) are the sums specified in Parts I, III, IV and V		
10		the sums specified for age addition	
10		the sums specified in column (2)	
10		the sums specified for the increase in disablement pension	

12	The sums falling to be calculated under paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (calculation of weekly rate of a beneficiary's retirement allowance) shall be increased by 3.9 per cent.		
14	It is directed that the sums which are		
14	additional pensions in long-term benefits calculated by reference to any final relevant year earlier than the tax year 2007-2008;		
14		where entitlement to retirement pension is deferred	
14			lump sums to which surviving spouses or civil partners will become entitled under paragraph 7A of that Schedule on becoming entitled to a Category A or Category B retirement pension
14	by virtue of an order made under section 126A		
14	shall in each case be increased by 3.9 per cent.		
15			shared additional pensions
15	paragraph 2 of Schedule 5A to the Contributions and Benefits Act are increases in the rates of such pensions, shall in each case be increased by 3.9 per cent.		
16	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.	
17			a person's guaranteed minimum pension
17	if payment of his occupational pension is postponed		
17			to a person who is also entitled to a Category A
17	Sums shall be increased by—		
18	Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act are increased by this Order.	Dates on which sums specified for rates or amounts of benefits	
19	date on which the increases made by this Order		

19		in the sums specified for rates or amounts of benefit	
20	any increases in the sums mentioned in articles 3, 4 and 12		
20			graduated retirement benefit
21		whose entitlement to a Category A retirement pension is deferred	
21	for whom the rate of short-term incapacity benefit falls to be calculated		
21	any increases in the sums mentioned in articles 3, 4		
21			graduated retirement benefit
22	The increases in the sums mentioned in articles 4(4)(d) and 5(2) shall take effect on 7th April 2008.		
23		Any increases in the sums specified for—	
23	except in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday		
23	Category C retirement pension and carer's allowance referred to in sub-paragraph (a)(i) and (iii)		
24		Any increases in the sums specified for—	
24	in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday		
24	the benefits referred to in heads (i), (iii) and (iv)		
25	In any case where a person's weekly rate of Category A or Category B retirement pension falls to be increased		
25			to which he was previously entitled
26		The increases in the sums specified for the rate	
27	The increases in the sums falling to be calculated		
28		Any increases in the sums specified in articles 3 and 23(c)	
28	whether the rate of any benefit is not to be increased		
29			date on which earnings are treated as paid
30	“£48.65” referred to in paragraph 2		
30	for that sum referred to in paragraph 6(2)(b)		
35			graduated retirement benefit

35	the sum of 10.57 pence shall be increased by 3.9 per cent.		
36			graduated retirement benefit
36			Graduated Retirement Benefit
36			deferred retirement
36	The sums shall be increased by 3.9 per cent.		
37			The sums which are lump sums to which surviving spouses or civil partners will become entitled
37			graduated retirement benefit
37	The sums shall be increased by 3.9 per cent.		
38	The sums which are the additions under section 37(1) shall be increased by 3.9 per cent.		
40		increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date	
42		The sums relevant to the calculation of an applicable amount as specified in the Income Support Regulations shall be the sums set out in this article	
42	unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support		unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support
43		the sum specified	
44		The sums specified in Part I of Schedule 2 shall be as set out in Schedule 2 to this Order.	
46		The sums specified in Part IV of Schedule 2 shall be as set out in Schedule 3 to this Order.	
48	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.	

49		The sums specified in any provision of the Income Support Regulations set out in column (1) of Schedule 5 to this Order are the sums set out in column (2) of that Schedule.	
50	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.	
52		The sums relevant to the calculation of an applicable amount as specified in the Housing Benefit Regulations shall be the sums set out in this article	
52		unless otherwise stated , any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit	unless otherwise stated, any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit
53	regulation 74 as substituted by regulation 14		
54			“£z” remains unchanged 8 times
56			“£z” remains unchanged 3 times
57		The sums specified in Part 1 of Schedule 3 shall be as set out in Schedule 6 to this Order.	
58			“£z” remains unchanged 2 times
59		The sums specified in Part 4 of Schedule 3 shall be as set out in Schedule 7 to this Order.	
60	The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007		
61	to enable provision to be made in relation to allowances		
61			for connected purposes

64		In this Act, “adoption service” means services designed to meet the needs	
65		children who may be adopted	
65		persons who have been adopted	
65	parents and guardians of children mentioned in paragraph (a)		
65		natural parents of persons who have been adopted	
65	children mentioned in paragraph (a)		
65	persons mentioned in paragraph (b)		
65	in relation to persons mentioned in paragraph (g) or (h)		
65	any other persons who are–affected by the placing, affected by an adoption.		
65		proposed placing	
66		arrangements for assessing children who may be adopted	
66	persons mentioned in subsection (3)		
67	persons mentioned in subsection (3)		
68	duties imposed by section 1		
69	the duties imposed by section		
69	enactments mentioned in section 5(1B)		
69		any registered adoption service provided there	any registered adoption service provided there
70	the duties imposed by section 1(1)		
70			registered adoption service
71			registered adoption service
71		an adoption service provided as mentioned in section 2(11)(b)	
71		an adoption service registered under Part 1 of that Act	
72	the services mentioned in those subsections		
73	the adoption service which it is required by section 1(1)		
74	the plan published by it		
75	Health Board constituted under section 2		
75	were they to be provided by the authority		

75	such other persons as may be prescribed by regulations		
75	regulations made by the Scottish Ministers		
76	a plan published under subsection (1)		
76	any plan published by the authority		
77	plan as mentioned in subsection (4)		
78	a plan modified or substituted under subsection (2)		
78	a plan published under subsection (1)		
80	direction given under subsection (7)		
82	guidance given by the Scottish Ministers		
83	Guidance such as is mentioned in subsection (2)		
83	how the power conferred by section 9(1)(b) should be exercised		
83	to whom that power should be exercised		
83	how responsibility for the provision of an adoption service should be transferred		
84	guidance such as is mentioned in subsection (2)		
85		in the way specified in the requirement	
86	a requirement made by virtue of subsection		
87	a Health Board constituted under section 2		
87	such other person as may be prescribed by regulations		
87	regulations made by the Scottish Ministers.		
89	Service which is provided by a local authority under subsection (1)		
89	Service which is provided by a person other than a local authority		
89	services mentioned in subsection (4)		
89		the reference in subsection (5) of that section to a local authority being taken to be a reference to a person other than a local authority	
89	in relation to a service provided, or to be provided , under that section	in relation to a service provided , or to be provided, under that section	
92	the meaning given by section 119(1)		

92	"relevant couple" is to be construed in accordance with section 29(3) of that Act."		
93			a registered adoption service
95	which includes provision granting authority for the child to be adopted		
95	an application to be made within a period specified in the regulations	an application to be made within a period specified in the regulations	
96	a person mentioned in any of paragraphs (a)		
96	a person mentioned in paragraph (j)		
98	in such manner as may be prescribed by regulations		
98	regulations made by the Scottish Ministers		
98	such matters as may be so prescribed		
99	On the request of a person mentioned in subsection (3)		
99	adoption services of a type mentioned in paragraph (d)		
100	On the request of a person mentioned in paragraph (a)		
100	adoption services of a type mentioned in paragraphs (a) to (c)		
102	that the provision of adoption support services is called for in respect of		
102	a person mentioned in any of paragraphs (a) to (i)		
102	a person mentioned in paragraph (j) of that subsection		
103	If in the opinion of a local authority a person mentioned in subsection (3)		
105			person entitled to adoption
107	the matters mentioned in subsection (3)		
108	when the service might have been provided to the person by the authority		
109	A payment under subsection (2) may be made subject to such conditions		
111		circumstances specified in the regulations	
111		the time determined by virtue of paragraph	
111	the persons with whom such arrangements may be made		
112	The power conferred by subsection (1) may be exercised		

119	the duties imposed on it by subsections (2)		
120	an alternative such as is mentioned in subsection (6)		
121		a child who is aged 12 or over is presumed to be of sufficient age	a child who is aged 12 or over is presumed to be of sufficient age
122	before adoption order made		
123	an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met.	an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met .	
123	an adoption order may not be made in relation to the child unless the condition in subsection (4) is met.	unless the condition in subsection (4) is met .	
124	the child was placed with the applicant, or applicants, by an adoption agency		
127	an adoption proposed to be effected by a Convention adoption order		
127	an adoption (...) which is proposed to be effected by an adoption order		
128	Where a child was placed for adoption with the applicants by an adoption agency		
128	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met.	unless the appropriate court is satisfied that the condition in subsection (2) is met .	unless the appropriate court is satisfied
129	both of them together in the home environment have been given to the agency		
130	Where the child was not placed for adoption with the applicants by an adoption agency		
130	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met.	unless the appropriate court is satisfied that the condition in subsection (4) is met .	unless the appropriate court is satisfied
131	both of them together in the home environment have been given		
131		to the local authority within whose area the home is situated	
132	Reports where child placed by agency		
133	a child placed for adoption by an adoption agency.		
135	a child was not placed for adoption with the applicants by an adoption agency.		
136	An adoption order may not be made		

137		the local authority within whose area the home is situated	
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Number of the unit	Short passives	Long passives
1		The Secretary of State for Work and Pensions has made a review as required by section 150(1) of the Social Security Administration Act 1992.
1		The Secretary of State for Work and Pensions has also made a review as required by section 150A(1) of that Act
3	A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act,	
3		and approved by a resolution of each House.
5		the powers conferred by sections 150 , 150A, 151 and 189(1)
6	This Order may be cited as the Social Security Benefits Up- rating Order 2008.	
8	The increases made—	
8	in the sums specified for rates or amounts of benefit	
8	for the purposes referred to in article 6(10)	
8	on the date specified in relation to the case in article 6	
9	The sums specified in paragraph (2) shall be increased	
9	from and including the respective dates specified in article 6	
9	has effect as set out in Schedule 1 to this Order.	
13	The sums mentioned in paragraph (1) are the sums specified in Parts I, III, IV and V	
10	the sums specified for age addition	
10	the sums specified in column (2)	
10	the sums specified for the increase in disablement pension	
11	The sums specified in paragraphs (2) to (5) shall be increased from and including the respective dates specified in article 6.	
12	The sums falling to be calculated under paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (calculation of weekly rate of a beneficiary's retirement allowance) shall be increased by 3.9 per cent.	
14	It is directed that the sums which are	
14	additional pensions in long-term benefits calculated by reference to any final relevant year earlier than the tax year 2007-2008;	
14	where entitlement to retirement pension is deferred	

14	by virtue of an order made under section 126A	
14	shall in each case be increased by 3.9 per cent.	
15	paragraph 2 of Schedule 5A to the Contributions and Benefits Act are increases in the rates of such pensions, shall in each case be increased by 3.9 per cent.	
16	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.	
17	if payment of his occupational pension is postponed	
17	Sums shall be increased by—	
18	Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act are increased by this Order.	Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act are increased by this Order.
19		date on which the increases made by this Order
19	in the sums specified for rates or amounts of benefit	
20	any increases in the sums mentioned in articles 3, 4 and 12	
21	whose entitlement to a Category A retirement pension is deferred	
21	for whom the rate of short-term incapacity benefit falls to be calculated	
21	any increases in the sums mentioned in articles 3, 4	
22	The increases in the sums mentioned in articles 4(4)(d) and 5(2) shall take effect on 7th April 2008.	
23	Any increases in the sums specified for—	
23	except in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday	
23	Category C retirement pension and carer's allowance referred to in sub-paragraph (a)(i) and (iii)	
24	Any increases in the sums specified for—	
24	in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday	
24	the benefits referred to in heads (i), (iii) and (iv)	
25	In any case where a person's weekly rate of Category A or Category B retirement pension falls to be increased	
26	The increases in the sums specified for the rate	
27	The increases in the sums falling to be calculated	
28	Any increases in the sums specified in articles 3 and 23(c)	
28	whether the rate of any benefit is not to be increased	

30	"£48.65" referred to in paragraph 2	
30	for that sum referred to in paragraph 6(2)(b)	
35	the sum of 10.57 pence shall be increased by 3.9 per cent.	
36	The sums shall be increased by 3.9 per cent.	
37	The sums shall be increased by 3.9 per cent.	
38	The sums which are the additions under section 37(1) shall be increased by 3.9 per cent.	
40	increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date	
42	The sums relevant to the calculation of an applicable amount as specified in the Income Support Regulations shall be the sums set out in this article	
42	unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support	
43	the sum specified	
44	The sums specified in Part I of Schedule 2 shall be as set out in Schedule 2 to this Order.	
46	The sums specified in Part IV of Schedule 2 shall be as set out in Schedule 3 to this Order.	
48	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.
49	The sums specified in any provision of the Income Support Regulations set out in column (1) of Schedule 5 to this Order are the sums set out in column (2) of that Schedule.	
50	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.	
52	The sums relevant to the calculation of an applicable amount as specified in the Housing Benefit Regulations shall be the sums set out in this article	
52	unless otherwise stated , any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit	
53		regulation 74 as substituted by regulation 14
57	The sums specified in Part 1 of Schedule 3 shall be as set out in Schedule 6 to this Order.	

59	The sums specified in Part 4 of Schedule 3 shall be as set out in Schedule 7 to this Order.	
60		The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007
61	to enable provision to be made in relation to allowances	
64	In this Act, “adoption service” means services designed to meet the needs	
65	children who may be adopted	
65	persons who have been adopted	
65	parents and guardians of children mentioned in paragraph (a)	
65	natural parents of persons who have been adopted	
65	children mentioned in paragraph (a)	
65	persons mentioned in paragraph (b)	
65	in relation to persons mentioned in paragraph (g) or (h)	
65		any other persons who are— affected by the placing, affected by an adoption.
65	proposed placing	
66	arrangements for assessing children who may be adopted	
66	persons mentioned in subsection (3)	
67	persons mentioned in subsection (3)	
68		duties imposed by section 1
69		the duties imposed by section
69	enactments mentioned	
69	any registered adoption service provided there	
70		the duties imposed by section 1(1)
71	an adoption service provided as mentioned in section 2(11)(b)	
71	an adoption service registered under Part 1 of that Act	
72	the services mentioned in those subsections	
73		the adoption service which it is required by section 1(1)
74		the plan published by it
75	Health Board constituted under section 2	
75		were they to be provided by the authority
75		such other persons as may be prescribed by regulations
75		regulations made by the Scottish Ministers
76	a plan published under subsection (1)	
76		any plan published by the authority
77	plan as mentioned in subsection (4)	

78	a plan modified or substituted under subsection (2)	
78	a plan published under subsection (1)	
80	direction given under subsection (7)	
82		guidance given by the Scottish Ministers
83	Guidance such as is mentioned in subsection (2)	
83	how the power conferred by section 9(1)(b) should be exercised	how the power conferred by section 9(1)(b) should be exercised
83	to whom that power should be exercised	
83	how responsibility for the provision of an adoption service should be transferred	
84	guidance such as is mentioned in subsection (2)	
85	in the way specified in the requirement	
86	a requirement made by virtue of subsection	
87	a Health Board constituted under section 2	
87		such other person as may be prescribed by regulations
87		regulations made by the Scottish Ministers.
89		Service which is provided by a local authority under subsection (1)
89		Service which is provided by a person other than a local authority
89	services mentioned in subsection (4)	
89	the reference in subsection (5) of that section to a local authority being taken to be a reference to a person other than a local authority	
89	in relation to a service provided , or to be provided , under that section	
92		the meaning given by section 119(1)
92	"relevant couple" is to be construed in accordance with section 29(3) of that Act."	
95	which includes provision granting authority for the child to be adopted	
95	an application to be made within a period specified in the regulations	
96	a person mentioned in any of paragraphs (a)	
96	a person mentioned in paragraph (j)	
98		in such manner as may be prescribed by regulations
98		regulations made by the Scottish Ministers
98	such matters as may be so prescribed	
99	On the request of a person mentioned in subsection (3)	
99	adoption services of a type mentioned in paragraph (d)	
100	On the request of a person mentioned in paragraph (a)	

100	adoption services of a type mentioned in paragraphs (a) to (c)	
102	that the provision of adoption support services is called for in respect of	
102	a person mentioned in any of paragraphs (a) to (i)	
102	a person mentioned in paragraph (j) of that subsection	
103	If in the opinion of a local authority a person mentioned in subsection (3)	
107	the matters mentioned in subsection (3)	
108		when the service might have been provided to the person by the authority
109	A payment under subsection (2) may be made subject to such conditions	
111	circumstances specified in the regulations	
111	the time determined by virtue of paragraph	
111	the persons with whom such arrangements may be made	
112	The power conferred by subsection (1) may be exercised	The power conferred by subsection (1) may be exercised
119		the duties imposed on it by subsections (2)
120	an alternative such as is mentioned in subsection (6)	
121	a child who is aged 12 or over is presumed to be of sufficient age	
122	before adoption order made	
123	an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met .	
123	an adoption order may not be made in relation to the child unless the condition in subsection (4) is met .	
124		the child was placed with the applicant, or applicants, by an adoption agency
127	an adoption proposed to be effected by a Convention adoption order	an adoption proposed to be effected by a Convention adoption order
127	an adoption (...) which is proposed to be effected by an adoption order	an adoption (...) which is proposed to be effected by an adoption order
128		Where a child was placed for adoption with the applicants by an adoption agency
128	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met .	
129	both of them together in the home environment have been given to the agency	
130		Where the child was not placed for adoption with the applicants by an adoption agency
130	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met .	

131	both of them together in the home environment have been given	
131	to the local authority within whose area the home is situated	
132		Reports where child placed by agency
133		a child placed for adoption by an adoption agency .
135		a child was not placed for adoption with the applicants by an adoption agency .
136	An adoption order may not be made	
137	the local authority within whose area the home is situated	

Number of the unit	Be-passives	Bare passives
1		The Secretary of State for Work and Pensions has made a review as required by section 150(1) of the Social Security Administration Act 1992.
1		The Secretary of State for Work and Pensions has also made a review as required by section 150A(1) of that Act
3	A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act, and approved by a resolution of each House.	A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act, and approved by a resolution of each House.
5		Accordingly, the Secretary of State for Work and Pensions in exercise of the powers conferred by sections 150, 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 makes the following Order
6	This Order may be cited as the Social Security Benefits Up-rating Order 2008.	
8		The increases made—
8		in the sums specified for rates or amounts of benefit
8		for the purposes referred to in article 6(10)
8		on the date specified in relation to the case in article 6
9	The sums specified in paragraph (2) shall be increased	The sums specified in paragraph (2) shall be increased
9		from and including the respective dates specified in article 6
9		has effect as set out in Schedule 1 to this Order.
10		The sums mentioned in paragraph (1) are the sums specified in Parts I, III, IV and V
10		the sums specified for age addition
10		the sums specified in column (2)
10		the sums specified for the increase in disablement pension

11	The sums specified in paragraphs (2) to (5) shall be increased from and including the respective dates specified in article 6.	The sums specified in paragraphs (2) to (5) shall be increased from and including the respective dates specified in article 6.
12	The sums falling to be calculated under paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (calculation of weekly rate of a beneficiary's retirement allowance) shall be increased by 3.9 per cent.	
14	It is directed that the sums which are	additional pensions in long-term benefits calculated by reference to any final relevant year earlier than the tax year 2007-2008;
14	where entitlement to retirement pension is deferred	
14		by virtue of an order made under section 126A
14	shall in each case be increased by 3.9 per cent.	
15	paragraph 2 of Schedule 5A to the Contributions and Benefits Act are increases in the rates of such pensions, shall in each case be increased by 3.9 per cent.	
16	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.
17	if payment of his occupational pension is postponed	
17	Sums shall be increased by—	
18	Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act are increased by this Order.	
19		date on which the increases made by this Order
19		in the sums specified for rates or amounts of benefit
20		any increases in the sums mentioned in articles 3, 4 and 12
21	whose entitlement to a Category A retirement pension is deferred	
21	for whom the rate of short-term incapacity benefit falls to be calculated	
21		any increases in the sums mentioned in articles 3, 4
22		The increases in the sums mentioned in articles 4(4)(d) and 5(2) shall take effect on 7th April 2008.
23		Any increases in the sums specified for—
23	except in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday	
23		Category C retirement pension and carer's allowance referred to in sub-paragraph (a)(i) and (iii)
24		Any increases in the sums specified for—

24	in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday	
24		the benefits referred to in heads (i), (iii) and (iv)
25	In any case where a person's weekly rate of Category A or Category B retirement pension falls to be increased	
26		The increases in the sums specified for the rate
27	The increases in the sums falling to be calculated	
28		Any increases in the sums specified in articles 3 and 23(c)
28	whether the rate of any benefit is not to be increased	
29		date on which earnings are treated as paid
30		"£48.65" referred to in paragraph 2
30		for that sum referred to in paragraph 6(2)(b)
35	the sum of 10.57 pence shall be increased by 3.9 per cent.	
36	The sums shall be increased by 3.9 per cent.	
37	The sums shall be increased by 3.9 per cent.	
38	The sums which are the additions under section 37(1) shall be increased by 3.9 per cent.	
40		increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date
42		The sums relevant to the calculation of an applicable amount as specified in the Income Support Regulations shall be the sums set out in this article
42		unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support
43		the sum specified
44		The sums specified in Part I of Schedule 2 shall be as set out in Schedule 2 to this Order.
46		The sums specified in Part IV of Schedule 2 shall be as set out in Schedule 3 to this Order.
48	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.
49		The sums specified in any provision of the Income Support Regulations set out in column (1) of Schedule 5 to this Order are the sums set out in column (2) of that Schedule.
50	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.	
52		The sums relevant to the calculation of an applicable amount as specified in the Housing Benefit Regulations shall be the sums set out in this article

52		unless otherwise stated , any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit
53		regulation 74 as substituted by regulation 14
57		The sums specified in Part 1 of Schedule 3 shall be as set out in Schedule 6 to this Order.
59		The sums specified in Part 4 of Schedule 3 shall be as set out in Schedule 7 to this Order.
60	The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007	
61	to enable provision to be made in relation to allowances	
64		In this Act, “adoption service” means services designed to meet the needs
65	children who may be adopted	
65	persons who have been adopted	
65		parents and guardians of children mentioned in paragraph (a)
65	natural parents of persons who have been adopted	
65		children mentioned in paragraph (a)
65		persons mentioned in paragraph (b)
65		in relation to persons mentioned in paragraph (g) or (h)
65	any other persons who are–affected by the placing, affected by an adoption.	
65		proposed placing
66	arrangements for assessing children who may be adopted	
66		persons mentioned in subsection (3)
67		persons mentioned in subsection (3)
68		duties imposed by section 1
69		the duties imposed by section
69		enactments mentioned
69		any registered adoption service provided there
70		the duties imposed by section 1(1)
71		an adoption service provided as mentioned in section 2(11)(b)
71		an adoption service registered under Part 1 of that Act
72		the services mentioned in those subsections
73	the adoption service which it is required by section 1(1)	
74		the plan published by it
75		Health Board constituted under section 2
75	were they to be provided by the authority	
75	such other persons as may be prescribed by regulations	
75		regulations made by the Scottish Ministers
76		a plan published under subsection (1)

76		any plan published by the authority
77		plan as mentioned in subsection (4)
78		a plan modified or substituted under subsection (2)
78		a plan published under subsection (1)
80		direction given under subsection (7)
82		guidance given by the Scottish Ministers
83	Guidance such as is mentioned in subsection (2)	
83	how the power conferred by section 9(1)(b) should be exercised	how the power conferred by section 9(1)(b) should be exercised
83	to whom that power should be exercised	
83	how responsibility for the provision of an adoption service should be transferred	
84	guidance such as is mentioned in subsection (2)	
85		in the way specified in the requirement
86		a requirement made by virtue of subsection
87		a Health Board constituted under section 2
87	such other person as may be prescribed by regulations	
87		regulations made by the Scottish Ministers.
89	Service which is provided by a local authority under subsection (1)	
89	Service which is provided by a person other than a local authority	
89		services mentioned in subsection (4)
89	the reference in subsection (5) of that section to a local authority being taken to be a reference to a person other than a local authority	
89	in relation to a service provided, or to be provided , under that section	in relation to a service provided , or to be provided, under that section
92		the meaning given by section 119(1)
92	"relevant couple" is to be construed in accordance with section 29(3) of that Act."	
95	which includes provision granting authority for the child to be adopted	
95	an application to be made within a period specified in the regulations	an application to be made within a period specified in the regulations
96		a person mentioned in any of paragraphs (a)
96		a person mentioned in paragraph (j)
98	in such manner as may be prescribed by regulations	
98		regulations made by the Scottish Ministers
98	such matters as may be so prescribed	
99		On the request of a person mentioned in subsection (3)

99		adoption services of a type mentioned in paragraph (d)
100		On the request of a person mentioned in paragraph (a)
100		adoption services of a type mentioned in paragraphs (a) to (c)
102	that the provision of adoption support services is called for in respect of	
102		a person mentioned in any of paragraphs (a) to (i)
102		a person mentioned in paragraph (j) of that subsection
103		If in the opinion of a local authority a person mentioned in subsection (3)
107		the matters mentioned in subsection (3)
108	when the service might have been provided to the person by the authority	
109	A payment under subsection (2) may be made subject to such conditions	
111		circumstances specified in the regulations
111		the time determined by virtue of paragraph
111	the persons with whom such arrangements may be made	
112	The power conferred by subsection (1) may be exercised	The power conferred by subsection (1) may be exercised
119		the duties imposed on it by subsections (2)
120	an alternative such as is mentioned in subsection (6)	
121	a child who is aged 12 or over is presumed to be of sufficient age	
122		before adoption order made
123	an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met .	
123	an adoption order may not be made in relation to the child unless the condition in subsection (4) is met .	
124	the child was placed with the applicant, or applicants, by an adoption agency	
127	an adoption proposed to be effected by a Convention adoption order	an adoption proposed to be effected by a Convention adoption order
127	an adoption (...) which is proposed to be effected by an adoption order	
128	Where a child was placed for adoption with the applicants by an adoption agency	

128	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met .	
129	both of them together in the home environment have been given to the agency	
130	Where the child was not placed for adoption with the applicants by an adoption agency	
130	an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met .	
131	both of them together in the home environment have been given	
131	to the local authority within whose area the home is situated	
132		Reports where child placed by agency
133		a child placed for adoption by an adoption agency.
135	a child was not placed for adoption the applicants by an adoption agency.	
136	An adoption order may not be made	
137	the local authority within whose area home is situated	

Number of the unit	Passives with modals
6	This Order may be cited as the Social Security Benefits Up-rating Order 2008.
9	The sums specified in paragraph (2) shall be increased
12	The sums falling to be calculated under paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (calculation of weekly rate of a beneficiary's retirement allowance) shall be increased by 3.9 per cent.
14	shall in each case be increased by 3.9 per cent.
15	shall in each case be increased by 3.9 per cent.
16	It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.
17	Sums shall be increased by—
35	the sum of 10.57 pence shall be increased by 3.9 per cent.
36	The sums shall be increased by 3.9 per cent.
37	The sums shall be increased by 3.9 per cent.
38	The sums which are the additions under section 37(1) shall be increased by 3.9 per cent.
50	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.
65	children who may be adopted
66	arrangements for assessing children who may be adopted
75	such other persons as may be prescribed by regulations
83	how the power conferred by section 9(1)(b) should be exercised
83	to whom that power should be exercised
83	how responsibility for the provision of an adoption service should be transferred

87	such other person as may be prescribed by regulations
98	in such manner as may be prescribed by regulations
108	when the service might have been provided to the person by the authority
109	A payment under subsection (2) may be made subject to such conditions
111	the persons with whom such arrangements may be made
112	The power conferred by subsection (1) may be exercised
123	an adoption order may not be made
123	an adoption order may not be made
128	an adoption order may not be made
130	an adoption order may not be made
136	An adoption order may not be made

Number of the unit	Prepositional passives
8	for the purposes referred to in article 6(10)
23	Category C retirement pension and carer's allowance referred to in sub-paragraph (a)(i) and (iii)
24	the benefits referred to in heads (i), (iii) and (iv)
30	"£48.65" referred to in paragraph 2
30	for that sum referred to in paragraph 6(2)(b)
102	that the provision of adoption support services is called for in respect of

Table showing the distribution of active voice throughout the texts analysed

Number of the unit	Active voice
1	The Secretary of State for Work and Pensions has made a review as required by section 150(1) of the Social Security Administration Act 1992.
1	(...) it appeared to him that the general level of prices was greater at the end of the period under review than it was at the beginning of the period.
2	The Secretary of State for Work and Pensions has also made a review as required by section 150A(1) of that Act
2	(...) it appeared to him that the general level of earnings was greater at the end of the period under review than it was at the beginning of the period.
4	The Treasury has consented to the making of this Order.
5	the Secretary of State for Work and Pensions (...) makes the following Order.
7	Subject to paragraph (3), this Order shall come into force for the purposes of –
7	article 8, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary
7	has the same meaning as in regulation 2(1)
7	in so far as it relates to any increase to which article 6(10)(b) applies , on 1st April 2008;
7	for which purpose it shall come into force on 7th April 2008;
7	has the same meaning as in the Income Support Regulations;
7	in so far as they relate to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary, on or after 7th April 2008, and for the purpose of this sub-paragraph "benefit week" has the same meaning as in the Income Support Regulations
7	articles 23 to 25, in so far as they relate to a particular beneficiary

7	in so far as it relates to an increase to which article 6(10)(b) applies
7	for all other purposes, on the first day of the first benefit week to commence for that beneficiary
7	has the same meaning as in the Jobseeker's Allowance Regulations
7	article 26, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary
7	has the same meaning as in the State Pension Credit Regulations.
8	in so far as it is relevant for the purposes
8	shall take effect for each case on the date specified
9	The sums specified in paragraph (2) shall be increased from and including the respective dates
9	has effect as set out in Schedule 1 to this Order.
10	The sums mentioned in paragraph (1) are the sums specified in Parts I, III, IV and V
10	which remain the same.
11	shall be increased from and including the respective dates specified in article 6
12	The sums falling to be calculated
13	for “£x” substitute “£y” 2 times
14	It is directed that the sums which are
14	where pensioner's deceased spouse or civil partner has deferred entitlement
14	The sums which under paragraph 2 of Schedule 5A to the Contributions and Benefits Act are increases in the rates of such pensions, shall in each case be increased by 3.9 per cent.
16	which provides for increases in a person's guaranteed minimum pension
17	after he attains pensionable age
17	including sums payable by virtue of section 17(2) and (3) of that Act
17	3.9 per cent where the increase under section 15(1) is attributable to earnings factors for the tax year 1987-88 and earlier tax years
17	0.9 per cent per cent where the increase under section 15(1) is attributable to earnings factors for the tax years 1988-89 to 1996-97 inclusive.
19	Paragraphs (2) to (9), which are subject to the provisions of paragraph (10), specify the date on which the increases shall take effect for each case.
20	any increases for dependants, shall take effect on 7th April 2008.
21	for whom the rate of short-term incapacity benefit falls to be calculated
21	shall take effect on 10th April 2008.
22	The increases in the sums mentioned in articles 4(4)(d) and 5(2) shall take effect on 7th April 2008.
23	except in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday
23	maternity allowance shall in all cases take effect on 7th April 2008.
24	in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday
24	shall in all cases take effect on 9th April 2008.
25	In any case where a person's weekly rate of Category A or Category B retirement pension falls to be increased
25	any increase in such sum shall take effect on 7th April 2008.
26	The increases shall take effect in all cases on 10th April 2008.
27	The increases shall take effect in all cases on 9th April 2008.
28	in so far as those sums are relevant for the purposes
28	whether the rate of any benefit is not to be increased
28	because the earnings of the dependant exceed a specified amount
28	Any increases shall take effect

28	except in a case where sub-paragraph (b) applies , on the first day of the first benefit week to commence for the beneficiary
29	Regulations (...) applies on the first day of the first benefit week to commence for the beneficiary on or after 1st April 2008, and for the purpose of this paragraph, "benefit week" has the same meaning as in regulation 2(1)
30	From and including —
30	incapacity allowance supplementing workmen's compensation
30	for that sum referred to in paragraph 6(2)(b) (...) substitute "£50.55".
31	for "£180.00", in both places where it occurs , substitute "£185.00"
31	for "£24.00" substitute "£25.00".
32	for "£72.55" substitute "£75.40".
33	for "£112.75" substitute "£117.18".
34	for "£x" substitute "£y" 2 times
35	from and including 7th April 2008 the reference in that provision to that sum shall have effect as a reference to 10.98 pence.
37	The sums which are lump sums to which surviving spouses or civil partners will become entitled
38	The sums which are the additions under section 37(1)
39	"£x" substitute for "£y" 5 times
40	increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date
40	"£x" substitute for "£y" 2 times
41	"£x" substitute for "£y" 3 times
42	The sums relevant to the calculation of an applicable amount as specified in the Income Support Regulations shall be the sums set out in this article
42	unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support Regulations bearing that number.
43	the sum specified is in each case £3,000.
44	The sums specified in Part I of Schedule 2 shall be as set out in Schedule 2 to this Order.
45	"£x" substitute for "£y" 2 times
46	The sums specified in Part IV of Schedule 2 shall be as set out in Schedule 3 to this Order.
47	"z" remains unchanged 6 times
47	"£x" substitute for "£y" 8 times
48	Those sums which are not increased by this Order are the sums set out in Schedule 4 to this Order.
49	The sums specified in any provision of the Income Support Regulations set out in column (1) of Schedule 5 to this Order are the sums set out in column (2) of that Schedule.
50	It is directed that the sums which are special transitional additions to income support shall be increased by 2.3 per cent.
51	for "£32.00" substitute "£32.50".
52	The sums relevant to the calculation of an applicable amount as specified in the Housing Benefit Regulations shall be the sums set out in this article
52	unless otherwise stated, any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit Regulations bearing that number.
53	the reference to regulation 74 means regulation 74
54	"£z" remains unchanged 8 times
54	for "£x" substitute "£y" 9 times
55	for "£x" substitute "£y"

56	“£z” remains unchanged 3 times
57	The sums specified in Part 1 of Schedule 3 shall be as set out in Schedule 6 to this Order.
58	“£z” remains unchanged 2 times
58	for “£x” substitute “£y”
59	The sums specified in Part 4 of Schedule 3 shall be as set out in Schedule 7 to this Order.
60	The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007
61	An Act of the Scottish Parliament to restate and amend the law relating to adoption; to make other provision in relation to the care of children; to enable provision to be made in relation to allowances in respect of certain children; and for connected purposes.
62	Duty of local authority to provide adoption service
63	Each local authority must — to the extent that it already provides an adoption service in its area, continue to do so, and to the extent that it does not provide such a service in its area, provide such a service there.
64	In this Act, “adoption service” means services designed to meet the needs
65	Those persons are —
65	persons who treated the child as their child
65	persons who may adopt a child
65	persons who have adopted a child
65	any other persons who are —
66	An adoption service includes , in particular, services consisting of or including —
67	In this Act, “adoption support services” means services consisting of or including the provision of
67	that the local authority providing an adoption service in a particular case considers appropriate
69	a local authority must have regard to
69	the other services that it provides in its area
69	power of the Scottish Ministers to issue certain directions
69	including , in particular, those functions in so far as they relate to children
70	A local authority may carry out the duties imposed by section 1(1)
71	In this section, “registered adoption service” means an adoption service
72	The Scottish Ministers may by regulations— amend subsection (4) or (5); make further provision about adoption services
73	before the expiry of such period as the Scottish Ministers may direct
73	each local authority must prepare and publish a plan
73	to continue to provide , or to provide
74	Each local authority— must from time to time review the plan; may , having regard to such review, prepare and publish
75	In preparing a plan, or carrying out a review, under this section a local authority must consult —
75	which provides services
75	such voluntary organisations as appear to the authority to represent the interests of persons who use , or are likely to use , the adoption service in that area
75	such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be an adoption service
76	A local authority may incorporate a plan
77	Where a local authority incorporates a plan
77	it need not separately publish a plan under subsection (1)

78	Subsections (2) and (5) apply to a plan
78	as they apply to a plan
79	The Scottish Ministers may give a local authority directions
80	The Scottish Ministers may vary or revoke
81	Subsection (2) applies where a local authority is carrying out its function under section 1 to continue to provide , or to provide , an adoption service or to secure the provision of such a service.
82	The local authority must have regard to any guidance
83	Guidance such as is mentioned in subsection (2) may , in particular, contain provision relation to— how a local authority should assess (or reassess) the needs
84	The Scottish Ministers may vary or revoke any guidance
85	Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions
85	it may require the person to assist the authority
86	An appropriate person need not comply
86	it would not be reasonably practicable to do so
86	doing so would be incompatible with the person's functions
86	where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions
87	For the purposes of this section, a person is “appropriate” if the person is
88	for subsections (11) and (12) substitute
89	An adoption service is any service which (...)
89	which consists of, or includes , services mentioned in subsection (4)
89	to be a reference to a person other than a local authority
89	whether the person functions generally
90	(...) is not an adoption service
91	In subsection (12) above, “relevant person” means
91	where a parent of the child is a member of a relevant couple
92	In subsection (12A) above— “relative” has the meaning
93	The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions
94	The Scottish Ministers may make regulations
95	Regulations under this section may in particular make provision
95	circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority
96	A local authority— must (...) make an assessment of the needs; may (...) make an assessment of the needs
97	Where a local authority makes an assessment of the needs
97	the authority must decide whether the needs of the person call for the provision
98	A local authority making an assessment of needs under subsection (1) must—do so in such manner (...); have regard to such matters (...)
99	a local authority must provide adoption services
100	local authority— must provide adoption services; may , without prejudice to subsection (4)(a), provide adoption support services
101	it is immaterial whether the local authority has made an assessment of the needs of the person
102	Where a local authority decides under section 9(2)
102	the authority must provide the services to the person
102	the authority may provide the services to the person

103	If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services
103	nothing in section 9 prevents the authority from providing, or arranging for the provision of those services for the person without first carrying out an assessment
104	If by virtue of subsection (1) a local authority provides , or arranges for the provision
104	adoption support services the authority must (...) make an assessment
105	Power to provide payment
106	Subsection (2) applies where a local authority– has, in respect of a person, an obligation to provide , or secure the provision of (...); has a power so to provide and determines it should provide
107	the authority may , after having regard to the matters mentioned in subsection (3), provide the person with a payment
108	Those matters are –
108	where the person is so eligible
108	the ability of the authority to provide , or secure the provision of
109	including conditions as to repayment
109	as the authority considers reasonable
110	In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance
111	The Scottish Ministers may by regulations make provision
111	in the regulations which local authority is , or may become , responsible for
111	the circumstances in which, a local authority's duty to provide an adoption service ends
111	the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed
111	the arrangements a local authority may make when a person in respect of whom the authority provides , or has a power or a duty to provide , an adoption service moves outwith the authority's area
111	persons who have moved or who intend to move
112	may be exercised so as to make different provision for different adoption services
113	Considerations applying to the exercise of powers
114	Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child
115	The court or adoption agency must have regard to all the circumstances of the case
116	The court or adoption agency is to regard the need to safeguard and promote the welfare
117	The court or adoption agency must have regard in particular to–
117	views regarding the decision
118	Where an adoption agency is placing a child for adoption it must have regard , so far as is reasonably practicable
119	In carrying out the duties imposed on it by subsections (2) to (4) an adoption agency must , before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of the child or whether there is some better practical alternative for the child
120	If an adoption agency concludes that there is an alternative
120	it must not make arrangements for the adoption of the child
121	a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection
122	Child to live with adopters
123	Where– subsection (2) applies ; subsection (2) does not apply
124	This subsection applies if– the person applying for the adoption order (the “applicant”), or one of the applicants, is a parent, step-parent or relative of the child

125	The conditions are – that the child is at least 19 weeks old; that at all times during the period of 13 weeks immediately preceding the making of the order the child's home was with the applicants
126	The condition is that at all times during the period of 12 months immediately preceding the making of the order the child's home was with the applicants
127	subsection (3)(b) has effect as if the reference to a period of 13 weeks were a reference to a period of 6 months
129	The condition is that sufficient opportunities to see the child with the applicant
131	The condition is that sufficient opportunities to see the child with the applicant
131	where the home is in Scotland
131	where the home is outwith Scotland
133	Subsection (2) applies where an application for an adoption order relates to a child placed for adoption by an adoption agency
134	The agency must – submit to the court a report; assist the court in any manner
135	Subsection (2) applies where a child was not placed for adoption with the applicants by an adoption agency
136	An adoption order may not be made in relation to the child unless the applicants have , at least 3 months before the date of the order, given notice to the appropriate local authority of their intention to apply for the order.
137	In subsection (2), “appropriate local authority” means – where the applicants have their home in Scotland; where they have their home outwith Scotland
138	This section applies where a local authority receives a notice under section 18 in respect of a child.
139	On receipt of the notice the authority must – investigate the matter; submit to the court a report of the investigation

Appendix 2
The texts analysed

The Social Security Benefits Up-rating Order 2008 (No. 632)

2008 No. 632

SOCIAL SECURITY
TERMS AND CONDITIONS OF
EMPLOYMENT

The Social Security Benefits Up-rating Order
2008

Made

6th March 2008

Coming into force in accordance with Article 1

1 The Secretary of State for Work and Pensions has made a review as required by section 150(1) of the Social Security Administration Act 1992 and it appeared to him that the general level of prices was greater at the end of the period under review than it was at the beginning of the period.

2 The Secretary of State for Work and Pensions has also made a review as required by section 150A(1) of that Act and it appeared to him that the general level of earnings was greater at the end of the period under review than it was at the beginning of the period.

3 A draft of this Order was laid before Parliament in accordance with sections 150(2), 150A(2) and 190(1)(a) of that Act, and approved by a resolution of each House.

4 The Treasury has consented to the making of this Order.

5 Accordingly, the Secretary of State for Work and Pensions in exercise of the powers conferred by sections 150 , 150A, 151 and 189(1), (4) and (5) of the Social Security Administration Act 1992 makes the following Order.

PART 1

INTRODUCTION

Citation, commencement and effect

6 1. — (1) This Order may be cited as the Social Security Benefits Up-rating Order 2008.

7 (2) Subject to paragraph (3), this Order shall come into force for the purposes of—

- (a) this article and articles 2, 6, 21, 22 and 27, on 1st April 2008;
- (b) article 8, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary on or after 1st April 2008, and for the purpose of this sub-paragraph “benefit week” has the same meaning as in regulation 2(1) of the Computation of Earnings Regulations;
- (c) article 3—
 - (i) in so far as it relates to any increase to which article 6(10)(b) applies, on 1st April 2008; and
 - (ii) for all other purposes, on 7th April 2008;
- (d) articles 4, 5, 7, 12 and 13, on 7th April 2008;
- (e) article 9, on 6th April 2008;
- (f) article 10, on 6th April 2008, except for the purpose of determining the rate of maternity allowance in accordance with section 35A(1) of the Contributions and Benefits Act, for which purpose it shall come into force on 7th April 2008;
- (g) article 11, on 6th April 2008;
- (h) articles 14 and 15, on 10th April 2008;

(i) articles 16 to 18, in so far as they relate to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary, on or after 7th April 2008, and for the purpose of this sub-paragraph “benefit week” has the same meaning as in the Income Support Regulations;

(j) articles 19 and 20, in relation to a case where rent is payable at intervals of a week or any multiple thereof, on 7th April 2008, and in relation to any other case, on 1st April 2008;

(k) articles 23 to 25, in so far as they relate to a particular beneficiary—

(i) for the purposes of article 23(c), in so far as it relates to an increase to which article 6(10)(b) applies, on 1st April 2008; and

(ii) for all other purposes, on the first day of the first benefit week to commence for that beneficiary, on or after 7th April 2008, and for the purposes of this head “benefit week” has the same meaning as in the Jobseeker's Allowance Regulations; and

(l) article 26, in so far as it relates to a particular beneficiary, on the first day of the first benefit week to commence for that beneficiary, on or after 7th April 2008, and for the purpose of this sub-paragraph “benefit week” has the same meaning as in the State Pension Credit Regulations.

8 (3) The increases made—

(a) in the sums specified for rates or amounts of benefit under the Contributions and Benefits Act or the Pension Schemes Act; and

(b) by article 23(c) in so far as it is relevant for the purposes referred to in article 6(10), shall take effect for each case on the date specified in relation to that case in article 6.

PART 2

SOCIAL SECURITY BENEFITS AND PENSIONS

Increase in rates or amounts of certain benefits under the Contributions and Benefits Act

9 3. —(1) The sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6 so that Schedule 4 to the Contributions and Benefits Act (contributory periodical benefits, non-contributory periodical benefits, increases for dependants and rates of industrial injuries benefit), except paragraph 5 of Part III of that Schedule (guardian's allowance), has effect as set out in Schedule 1 to this Order.

10 (2) The sums mentioned in paragraph (1) are the sums specified in Parts I, III, IV and V of Schedule 4 to the Contributions and Benefits Act except, in—

- (a) Part III, the sums specified for age addition to a pension of any category and otherwise under section 79 of that Act;
- (b) Part IV, the sums specified in column (2)(increase for qualifying child); and
- (c) Part V, the sums specified for the increase in disablement pension for dependant children, widow's pension (initial rate) and death benefit allowance in respect of children and qualifying young persons, which remain the same.

Increase in rates or amounts of certain pensions and allowances under the Contributions and Benefits Act

11 4. —(1) The sums specified in paragraphs (2) to (5) shall be increased from and including the respective dates specified in article 6.

12 (2) The sums falling to be calculated under paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (calculation of weekly rate of a beneficiary's retirement allowance) shall be increased by 3.9 per cent.

13 (3) In section 44(4) of the Contributions and Benefits Act (basic pension in a Category A retirement pension)—

(a) for “£78.05” substitute “£81.10”; and

(b) for “£87.30” substitute “£90.70”.

14 (4) It is directed that the sums which are—

(a) additional pensions in long-term benefits calculated by reference to any final relevant year earlier than the tax year 2007-2008;

(b) increases in the rates of retirement pensions under Schedule 5 to the Contributions and Benefits Act (pension increase or lump sum where entitlement to retirement pension is deferred);

(c) lump sums to which surviving spouses or civil partners will become entitled under paragraph 7A of that Schedule on becoming entitled to a Category A or Category B retirement pension (entitlement to lump sum where pensioner's deceased spouse or civil partner has deferred entitlement); and

(d) payable to a pensioner as part of his Category A or Category B retirement pension by virtue of an order made under section 126A of the Social Security Act 1975, section 63 of the Social Security Act 1986 or section 150(1)(e) of the Administration Act, shall in each case be increased by 3.9 per cent.

15 (5) The sums which, under—

(a) section 55A of the Contributions and Benefits Act, are shared additional pensions; and

(b) paragraph 2 of Schedule 5A to the Contributions and Benefits Act, are increases in the rates of such pensions, shall in each case be increased by 3.9 per cent.

Increase in rates or amount of certain benefits under the Pension Schemes Act

16 5. —(1) It is directed that the sums specified in paragraph (2) shall be increased from and including the respective dates specified in article 6.

17 (2) Sums which are payable by virtue of section 15(1) of the Pension Schemes Act (which provides for increases in a person's guaranteed minimum pension if payment of his occupational pension is postponed after he attains pensionable age) to a person who is also entitled to a Category A or Category B retirement pension (including sums payable by virtue of section 17(2) and (3) of that Act), shall be increased by—

- (a) 3.9 per cent. where the increase under section 15(1) is attributable to earnings factors for the tax year 1987-88 and earlier tax years; and
- (b) 0.9 per cent. where the increase under section 15(1) is attributable to earnings factors for the tax years 1988-89 to 1996-97 inclusive.

18 Dates on which sums specified for rates or amounts of benefits under the Contributions and Benefits Act or the Pension Schemes Act are increased by this Order

19 6. —(1) Paragraphs (2) to (9), which are subject to the provisions of paragraph (10), specify the date on which the increases made by this Order in the sums specified for rates or amounts of benefit under the Contributions and Benefits Act or the Pension Schemes Act shall take effect for each case.

20 (2) Subject to paragraph (3), any increases in the sums mentioned in articles 3, 4 and 12 for Category A and Category B retirement pension and graduated retirement benefit together with, where appropriate, any increases for dependants, shall take effect on 7th April 2008.

21 (3) In the case of a person over pensionable age—

(a) whose entitlement to a Category A retirement pension is deferred;
and

(b) for whom the rate of short-term incapacity benefit falls to be calculated in accordance with section 30B(3) of the Contributions and Benefits Act, any increases in the sums mentioned in articles 3, 4 and 12 for Category A and Category B retirement pension and graduated retirement benefit together with, where appropriate, any increases for dependants, shall take effect on 10th April 2008.

22 (4) The increases in the sums mentioned in articles 4(4)(d) and 5(2) shall take effect on 7th April 2008.

23 (5) Any increases in the sums specified for—

(a) the rate of—

(i) Category C and Category D retirement pension,

(ii) attendance allowance, and

(iii) carer's allowance (except in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday); and

(b) any increases in—

(i) Category C retirement pension and carer's allowance referred to in sub-paragraph (a)(i) and (iii), and

(ii) maternity allowance, widowed mother's allowance and widowed parent's allowance, in respect of dependants, shall in all cases take effect on 7th April 2008.

24 (6) Any increases in the sums specified for—

(a) the rate of—

(i) carer's allowance in a case where the Secretary of State has made arrangements for it to be paid on a Wednesday,

(ii) disablement benefit,

- (iii) maximum disablement gratuity under paragraph 9(2) of Schedule 7 to the Contributions and Benefits Act,
 - (iv) industrial death benefit by way of widow's and widower's pension and allowance in respect of children and qualifying young persons,
 - (v) the maximum of the aggregate of weekly benefit payable for successive accidents, under section 107(1) of the Contributions and Benefits Act; and
- (b) any increases in—
- (i) the benefits referred to in heads (i), (iii) and (iv) of sub-paragraph (a) in respect of dependants, and
 - (ii) disablement pension, shall in all cases take effect on 9th April 2008.

25 (7) In any case where a person's weekly rate of Category A or Category B retirement pension falls to be increased under the provisions of section 47(1) or 48C(2) of the Contributions and Benefits Act by reference to the weekly rate of invalidity allowance or age addition to long-term incapacity benefit to which he was previously entitled, any increase in such sum shall take effect on 7th April 2008.

26 (8) The increases in the sums specified for the rate of incapacity benefit and severe disablement allowance (together with, where appropriate, any increases for dependants) shall take effect in all cases on 10th April 2008.

27 (9) The increases in the sums falling to be calculated in accordance with paragraph 13(4) of Schedule 7 to the Contributions and Benefits Act (retirement allowance) shall take effect on 9th April 2008.

28 (10) Any increases in the sums specified in articles 3 and 23(c), in so far as those sums are relevant for the purposes of establishing whether the rate of any benefit is not to be increased in respect of an adult dependant because the earnings of the dependant exceed a specified amount, shall take effect—

(a) except in a case where sub-paragraph (b) applies, on the first day of the first benefit week to commence for the beneficiary on or after 7th April 2008;

(b) in a case where regulation 7(b) of the Computation of Earnings

29 Regulations (date on which earnings are treated as paid) applies, on the first day of the first benefit week to commence for the beneficiary on or after 1st April 2008,

and for the purpose of this paragraph, "benefit week" has the same meaning as in regulation 2(1) of the Computation of Earnings Regulations.

Increase in rates of certain workmen's compensation and industrial diseases benefits in respect of employment before 5th July 1948

30 7. From and including—

(a) 9th April 2008, for "£48.65" referred to in paragraph 2(6)(c) of Schedule 8 to the Contributions and Benefits Act (maximum weekly rate of lesser incapacity allowance supplementing workmen's compensation);

(b) 10th April 2008, for that sum referred to in paragraph 6(2)(b) of that Schedule (industrial diseases benefit schemes: weekly rate of allowance payable where disablement is not total), substitute "£50.55".

Earnings Limits

31 8. In section 80(4) of the Contributions and Benefits Act (earnings limits in respect of child dependency increases)—

(a) for "£180.00", in both places where it occurs, substitute "£185.00";
and

(b) for "£24.00" substitute "£25.00".

Statutory Sick Pay

32 9. In section 157(1) of the Contributions and Benefits Act (rate of payment of statutory sick pay) for “£72.55” substitute “£75.40”.

Statutory Maternity Pay

33 10. In regulation 6 of the Statutory Maternity Pay (General) Regulations 1986 (prescribed rate of statutory maternity pay) for “£112.75” substitute “£117.18”.

Statutory Paternity Pay and Statutory Adoption Pay

34 11. In the Statutory Paternity Pay and Statutory Adoption Pay (Weekly Rates) Regulations 2002—

(a) in regulation 2(a)(weekly rate of payment of statutory paternity pay) for “£112.75” substitute “£117.18”; and

(b) in regulation 3(a)(weekly rate of payment of statutory adoption pay) for “£112.75” substitute “£117.18”.

Increase in rate of graduated retirement benefit

35 12. —(1) In section 36(1) of the National Insurance Act 1965 (graduated retirement benefit)—

(a) the sum of 10.57 pence shall be increased by 3.9 per cent.; and

(b) from and including 7th April 2008 the reference in that provision to that sum shall have effect as a reference to 10.98 pence.

36 (2) The sums which are the increases of graduated retirement benefit under Schedule 2 to the Social Security (Graduated Retirement

Benefit)(No. 2) Regulations 1978 (increases for deferred retirement) shall be increased by 3.9 per cent.

37 (3) The sums which are lump sums to which surviving spouses or civil partners will become entitled under Schedule 1 to the Social Security (Graduated Retirement Benefit) Regulations 2005 (increases of graduated retirement benefit and lump sums) shall be increased by 3.9 per cent.

38 (4) The sums which are the additions under section 37(1) of the National Insurance Act 1965 (additions for widows and widowers) shall be increased by 3.9 per cent.

Increase in rates of Disability Living Allowance

39 13. In regulation 4 of the Social Security (Disability Living Allowance) Regulations 1991 (rate of benefit)—

(a) in paragraph (1)(a) for “£64.50” substitute “£67.00”;

(b) in paragraph (1)(b) for “£43.15” substitute “£44.85”;

(c) in paragraph (1)(c) for “£17.10” substitute “£17.75”;

(d) in paragraph (2)(a) for “£45.00” substitute “£46.75”; and

(e) in paragraph (2)(b) for “£17.10” substitute “£17.75”.

Increase in rates of age addition to long-term incapacity benefit

40 14. In regulation 10(2) of the Social Security (Incapacity Benefit) Regulations 1994 (increase in rate of incapacity benefit where beneficiary is under prescribed age on the qualifying date)—

(a) in sub-paragraph (a) for “£17.10” substitute “£17.75”;>; and

(b) in sub-paragraph (b) for “£8.55” substitute “£8.90”.

Increase in rates of transitional invalidity allowance in long-term incapacity benefit cases

41 15. In regulation 18(2) of the Social Security (Incapacity Benefit)(Transitional) Regulations 1995 (rate of long-term incapacity benefit in transitional cases)—

(a) in sub-paragraph (a) for “£17.10” substitute “£17.75”;

(b) in sub-paragraph (b) for “£11.00” substitute “£11.40”; and

(c) in sub-paragraph (c) for “£5.50” substitute “£5.70”.

PART 3

INCOME SUPPORT, HOUSING BENEFIT AND COUNCIL TAX BENEFIT

Applicable amounts for Income Support

42 16. — (1) The sums relevant to the calculation of an applicable amount as specified in the Income Support Regulations shall be the sums set out in this article and Schedules 2 to 5 to this Order; and unless stated otherwise any reference in this article to a numbered Schedule is a reference to the Schedule to the Income Support Regulations bearing that number.

43 (2) In—

(a) regulations 17(1)(b), 18(1)(c), 21(1) and 71(1)(a)(ii) and (d)(i); and

(b) paragraphs 13A(2)(a) and 14(2)(a) of Part III of Schedule 2, the sum specified is in each case £3,000.

44 (3) The sums specified in Part I of Schedule 2 (applicable amounts: personal allowances) shall be as set out in Schedule 2 to this Order.

45 (4) In paragraph 3 of Part II of Schedule 2 (applicable amounts: family premium)—

(a) in sub-paragraph (1)(a) for “£16.43” substitute “£16.75”; and

(b) in sub-paragraph (1)(b) for “£16.43” substitute “£16.75”.

46 (5) The sums specified in Part IV of Schedule 2 (applicable amounts: weekly amounts of premiums) shall be as set out in Schedule 3 to this Order.

47 (6) In paragraph 18 of Schedule 3 (housing costs: non-dependant deductions)—

(a) in sub-paragraph (1)(a) “£47.75” remains unchanged;

(b) in sub-paragraph (1)(b) “£7.40” remains unchanged;

(c) in sub-paragraph (2)(a) for “£111.00” substitute “£116.00”;

(d) in sub-paragraph (2)(b)—

(i) for “£111.00” substitute “£116.00”;

(ii) for “£164.00” substitute “£172.00”;

(iii) “£17.00” remains unchanged;

(e) in sub-paragraph (2)(c)—

(i) for “£164.00” substitute “£172.00”;

(ii) for “£213.00” substitute “£223.00”;

(iii) “£23.35” remains unchanged;

(f) in sub-paragraph (2)(d)—

(i) for “£213.00” substitute “£223.00”;

(ii) for “£283.00” substitute “£296.00”;

(iii) “£38.20” remains unchanged; and

(g) in sub-paragraph (2)(e)—

(i) for “£283.00” substitute “£296.00”;

(ii) for “£353.00” substitute “£369.00”;

(iii) “£43.50” remains unchanged.

48 (7) Those sums relevant to the calculation of an applicable amount which are specified in Schedule 7 (applicable amounts in special cases) which are not increased by this Order are the sums set out in Schedule 4 to this Order.

49 (8) The sums specified in any provision of the Income Support Regulations set out in column (1) of Schedule 5 to this Order are the sums set out in column (2) of that Schedule.

Income Support Transitional Protection

50 17. It is directed that the sums which are special transitional additions to income support payable in accordance with regulation 15 of the Income Support (Transitional) Regulations 1987 (special transitional addition) shall be increased by 2.3 per cent.

The Relevant Sum for Income Support

51 18. In section 126(7) of the Contributions and Benefits Act (trade disputes: the relevant sum) for “£32.00” substitute “£32.50”.

Housing Benefit

52 19. — (1) The sums relevant to the calculation of an applicable amount as specified in the Housing Benefit Regulations shall be the

sums set out in this article and Schedules 6 and 7 to this Order; and unless otherwise stated, any reference in this article to a numbered Schedule is a reference to the Schedule to the Housing Benefit Regulations bearing that number.

53 (2) In paragraph (4) the reference to regulation 74 means regulation 74 of the Housing Benefit Regulations as in force immediately before 1st April 2008 and regulation 74 as substituted by regulation 14 of the Housing Benefit (Local Housing Allowance and Information Sharing) Amendment Regulations 2007.

54 (3) In regulation 27(3)(calculation of income on a weekly basis)—

(a) in sub-paragraph (a) “£175.00” remains unchanged; and

(b) in sub-paragraph (b) “£300.00” remains unchanged.

(4) In regulation 74 (non-dependant deductions)—

(a) in paragraph (1)(a) “£47.75” remains unchanged;

(b) in paragraph (1)(b) “£7.40” remains unchanged;

(c) in paragraph (2)(a) for “£111.00” substitute “£116.00”; (d) in paragraph (2)(b)—

(i) for “£111.00” substitute “£116.00”;

(ii) for “£164.00” substitute “£172.00”;

(iii) “£17.00” remains unchanged;

(e) in paragraph (2)(c)—

(i) for “£164.00” substitute “£172.00”;

(ii) for “£213.00” substitute “£223.00”;

(iii) “£23.35” remains unchanged;

(f) in paragraph (2)(d)—

(i) for “£213.00” substitute “£223.00”;

(ii) for “£283.00” substitute “£296.00”;

(iii) “£38.20” remains unchanged; and

(g) in paragraph (2)(e)—

(i) for “£283.00” substitute “£296.00”;

(ii) for “£353.00” substitute “£369.00”;

(iii) “£43.50” remains unchanged.

55 (5) In paragraph 2 of Part 1 of Schedule 1 (ineligible service charges), for “£21.10”, “£21.10”, “£10.65”, “£14.05”, “£14.05”, “£7.05” and “£2.60” substitute “£21.60”, “£21.60”, “£10.90”, “£14.35”, “£14.35”, “£7.20” and “£2.65” respectively.

56 (6) In paragraph 6 of Part 2 of Schedule 1 (payments in respect of fuel charges)—

(a) in sub-paragraph (2)(a) “£15.45” remains unchanged;

(b) in sub-paragraph (2)(b) and (d) “£1.80” remains unchanged; and

(c) in sub-paragraph (2)(c) “£1.25” remains unchanged.

57 (7) The sums specified in Part 1 of Schedule 3 (applicable amounts: personal allowances) shall be as set out in Schedule 6 to this Order.

58 (8) In paragraph 3 of Part 2 of Schedule 3 (applicable amounts: family premium)—

(a) in sub-paragraph (1)(a) “£22.20” remains unchanged;

(b) in sub-paragraph (1)(b) for “£16.43” substitute “£16.75”; and

(c) in sub-paragraph (2) “£10.50” remains unchanged.

59 (9) The sums specified in Part 4 of Schedule 3 (applicable amounts: premiums) shall be as set out in Schedule 7 to this Order.

Adoption and Children (Scotland) Act 2007

2007 asp 4

60 The Bill for this Act of the Scottish Parliament was passed by the Parliament on 7th December 2006 and received Royal Assent on 15th January 2007

61 An Act of the Scottish Parliament to restate and amend the law relating to adoption; to make other provision in relation to the care of children; to enable provision to be made in relation to allowances in respect of certain children; and for connected purposes.

PART 1

ADOPTION

CHAPTER 1

THE ADOPTION SERVICE

The adoption service

62 Duty of local authority to provide adoption service

63 (1) Each local authority must—

- (a) to the extent that it already provides an adoption service in its area, continue to do so, and
- (b) to the extent that it does not provide such a service in its area, provide such a service there.

64 (2) In this Act, “adoption service” means services designed to meet the needs, in relation to adoption, of persons mentioned in subsection (3).

65 (3) Those persons are—

- (a) children who may be adopted
- (b) persons who have been adopted,
- (c) parents and guardians of children mentioned in paragraph (a),
- (d) natural parents of persons who have been adopted,
- (e) persons who, before the placing of a child for adoption or the adoption of a child, treated the child as their child,
- (f) siblings (whether of the whole-blood or half-blood), natural grandparents and former guardians of—
 - (i) children mentioned in paragraph (a), or
 - (ii) persons mentioned in paragraph (b),
- (g) persons who may adopt a child,
- (h) persons who have adopted a child,
- (i) in relation to persons mentioned in paragraph (g) or (h), children of, or children treated as children of, such persons, and
- (j) any other persons who are—
 - (i) affected by the placing, or proposed placing, of a child for adoption, or
 - (ii) affected by an adoption.

66 (4) An adoption service includes, in particular, services consisting of or including—

- (a) arrangements for assessing children who may be adopted,

- (b) arrangements for assessing prospective adopters,
- (c) arrangements for placing children for adoption,
- (d) the provision of information about adoption to any of the persons mentioned in subsection (3), and
- (e) adoption support services.

67 (5) In this Act, “adoption support services” means services consisting of or including the provision of—

- (a) counselling to any of the persons mentioned in subsection (3),
- (b) guidance about adoption to such persons,
- (c) any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers appropriate in the circumstances of that case.

68 2 Carrying out of duties imposed by section 1

69 (1) For the purpose of carrying out the duties imposed by section 1(1) efficiently and effectively, a local authority must have regard to—

- (a) the other services that it provides in its area in carrying out the functions of a local authority under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (c. 49)(power of the Scottish Ministers to issue certain directions) including, in particular, those functions in so far as they relate to children, and
- (b) any registered adoption service provided there.

70 (2) A local authority may carry out the duties imposed by section 1(1) by securing the provision of its adoption service by a registered adoption service.

71 (3) In this section, “registered adoption service” means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.

3 Adoption service: regulations

72 The Scottish Ministers may by regulations—

(a) amend subsection (4) or (5) of section 1 by—

(i) adding further services,

(ii) modifying the services mentioned in those subsections,

(b) make further provision about adoption services.

4 Local authority plans

73 (1) Before the expiry of such period as the Scottish Ministers may direct, each local authority must prepare and publish a plan for the provision of the adoption service which it is required by section 1(1) to continue to provide, or to provide, in its area.

74 (2) Each local authority—

(a) must from time to time review the plan published by it under subsection (1), and

(b) may, having regard to any such review, prepare and publish—

(i) modifications of the plan, or

(ii) a plan in substitution for the plan.

75 (3) In preparing a plan, or carrying out a review, under this section a local authority must consult—

(a) each Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which provides services under that Act in the area of the local authority,

- (b) such voluntary organisations as appear to the authority to represent the interests of persons who use, or are likely to use, the adoption service in that area,
- (c) such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be an adoption service, and
- (d) such other persons as may be prescribed by regulations made by the Scottish Ministers.

76 (4) A local authority may incorporate a plan published under subsection (1) in any plan published by the authority under section 19(1) of the 1995 Act (local authority plans for services for children).

77 (5) Where a local authority incorporates a plan as mentioned in subsection (4), it need not separately publish a plan under subsection (1).

78 (6) Subsections (2) and (5) apply to a plan modified or substituted under subsection (2) as they apply to a plan published under subsection (1).

79 (7) The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2).

80 (8) The Scottish Ministers may vary or revoke any direction given under subsection (7).

5 Guidance

81 (1) Subsection (2) applies where a local authority is carrying out its function under section 1 to continue to provide, or to provide, an adoption service or to secure the provision of such a service.

82 (2) The local authority must have regard to any guidance given by the Scottish Ministers.

83 (3) Guidance such as is mentioned in subsection (2) may, in particular, contain provision in relation to—

- (a) how a local authority should assess (or reassess) the needs of a person for adoption support services,
- (b) how the power conferred by section 9(1)(b) should be exercised,
- (c) the classes of person in relation to whom that power should be exercised,
- (d) how responsibility for the provision of an adoption service should be transferred from one local authority to another.

84 (4) The Scottish Ministers may vary or revoke any guidance such as is mentioned in subsection (2).

6 Assistance in carrying out functions under sections 1 and 4

85 (1) Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions under section 1 or 4, it may require the person to assist the authority in the way specified in the requirement.

86 (2) An appropriate person need not comply with a requirement made by virtue of subsection (1) if—

- (a) it would not be reasonably practicable to do so,
- (b) doing so would be incompatible with the person's functions (whether statutory or otherwise), or
- (c) where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions.

87 (3) For the purposes of this section, a person is “appropriate” if the person is—

- (a) another local authority,
- (b) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
- (c) such other person as may be prescribed by regulations made by the Scottish Ministers.

7 Meaning of “adoption service” in Regulation of Care (Scotland)

Act 2001

88 In section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8)(meaning of “care services”), for subsections (11) and (12) substitute—

89 (11) An adoption service is any service which is—

- (a) provided by a local authority under subsection (1) of section 1 of the Adoption and Children (Scotland) Act 2007 (asp 4); or
- (b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, or to be provided, under that section).

90 (12) For the purposes of subsection (11)(b) above—

- (a) the making by a person of arrangements for the adoption of a child by a relevant person, or
- (b) the placing by a person of a child for adoption with a relevant person, is not an adoption service.

91 (12A) In subsection (12) above, “relevant person” means—

- (a) a parent of the child,
- (b) any other relative of the child, or
- (c) where a parent of the child is a member of a relevant couple, the other member of the couple.

92 (12B) In subsection (12A) above— “relative” has the meaning given by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4), “relevant couple” is to be construed in accordance with section 29(3) of that Act.”.

8 Adoption agencies: regulations about carrying out of functions

93 (1) The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions by a registered adoption service.

94 (2) The Scottish Ministers may make regulations with respect to the carrying out by local authorities of their functions in relation to adoption.

95 (3) Regulations under this section may in particular make provision for or in connection with—

- (a) specifying circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority for the child to be adopted,
- (b) requiring such an application to be made within a period specified in the regulations.

Adoption support services

9 Assessment of needs for adoption support services

96 (1) A local authority—

- (a) must, on the request of a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, make an assessment of the needs of the person for adoption support services,
- (b) may, on the request of a person mentioned in paragraph (j) of that subsection, make an assessment of the needs of the person for such services.

97 (2) Where a local authority makes an assessment of the needs of a person for adoption support services under subsection (1), the authority must decide whether the needs of the person call for the provision of such services.

98 (3) A local authority making an assessment of needs under subsection (1) must—

(a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and

(b) have regard to such matters as may be so prescribed.

10 Provision of services

99 (1) On the request of a person mentioned in subsection (3) of section 1, a local authority must provide adoption services of a type mentioned in paragraph (d) of subsection (4) of that section to the person.

100 (2) On the request of a person mentioned in paragraph (a), (c) or (g) of subsection (3) of section 1, a local authority—

(a) must provide adoption services of a type mentioned in paragraphs (a) to (c) of subsection (4) of that section to the person, and

(b) may, without prejudice to subsection (4)(a), provide adoption support services to the person.

101 (3) For the purposes of subsection (2), it is immaterial whether the local authority has made an assessment of the needs of the person under section 9(1)(a).

102 (4) Where a local authority decides under section 9(2) that the provision of adoption support services is called for in respect of—

(a) a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, the authority must provide the services to the person,

(b) a person mentioned in paragraph (j) of that subsection, the authority may provide the services to the person.

11 Urgent provision

103 (1) If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services as a matter of urgency, nothing in section 9 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for adoption support services.

104 (2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, adoption support services the authority must, as soon as is reasonably practicable after such provision, make an assessment of the person's needs for adoption support services.

105 12 Power to provide payment to person entitled to adoption support service

106 (1) Subsection (2) applies where a local authority—

(a) has, in respect of a person, an obligation to provide, or secure the provision of, an adoption support service under this Part, or

(b) has a power so to provide and determines it should provide.

(2) 107 Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.

(3) 108 Those matters are—

(a) the person's eligibility for assistance from any other body,

(b) where the person is so eligible, the availability to the person of that assistance at the time when the service might have been provided to the person by the authority,

(c) the ability of the authority to provide, or secure the provision of, the service, and

(d) the person's need for the service.

(4) 109 A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.

110 In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance from any other body.

Regulations

13 Regulations

(1) 111 The Scottish Ministers may by regulations make provision for or in connection with—

(a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—

(i) the provision of an adoption service,

(ii) the making of an assessment of needs under section 9(1)(a),

(b) determining the time at which, and the circumstances in which, a local authority's duty to provide an adoption service ends,

(c) specifying the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed,

(d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves outwith the authority's area,

(e) specifying the persons with whom such arrangements may be made,

(f) assessing the needs for adoption support services of persons who have moved or who intend to move—

(i) from one local authority area to another,

(ii) from outwith Scotland to Scotland.

(2) 112 The power conferred by subsection (1) may be exercised so as to make different provision for different adoption services.

CHAPTER 2

THE ADOPTION PROCESS

Preliminary

113 14 Considerations applying to the exercise of powers

114 (1) Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child.

115 (2) The court or adoption agency must have regard to all the circumstances of the case.

116 (3) The court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.

117 (4) The court or adoption agency must, so far as is reasonably practicable, have regard in particular to—

(a) the value of a stable family unit in the child's development,

(b) the child's ascertainable views regarding the decision (taking account of the child's age and maturity),

(c) the child's religious persuasion, racial origin and cultural and linguistic background, and

(d) the likely effect on the child, throughout the child's life, of the making of an adoption order.

118 (5) Where an adoption agency is placing a child for adoption it must have regard, so far as is reasonably practicable, to the views of the parents, guardians and other relatives of the child.

119 (6) In carrying out the duties imposed on it by subsections (2) to (4) an adoption agency must, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of the child or whether there is some better practical alternative for the child.

120 (7) If an adoption agency concludes that there is an alternative such as is mentioned in subsection (6), it must not make arrangements for the adoption of the child.

121 (8) Without prejudice to the generality of subsection (4)(b), a child who is aged 12 or over is presumed to be of sufficient age and maturity to form a view for the purposes of that subsection.

Pre-adoption requirements

122 15 Child to live with adopters before adoption order made

123 (1) Where—

(a) subsection (2) applies, an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met,

(b) subsection (2) does not apply, an adoption order may not be made in relation to the child unless the condition in subsection (4) is met.

124 (2) This subsection applies if—

(a) the person applying for the adoption order (the “applicant”), or one of the applicants, is a parent, step-parent or relative of the child, or

(b) the child was placed with the applicant, or applicants, by an adoption agency.

125 (3) The conditions are—

(a) that the child is at least 19 weeks old, and

(b) that at all times during the period of 13 weeks immediately preceding the making of the order the child's home was with the applicants.

126 (4) The condition is that at all times during the period of 12 months immediately preceding the making of the order the child's home was with the applicants.

127 (5) In relation to—

(a) an adoption proposed to be effected by a Convention adoption order, or

(b) an adoption of a child habitually resident outwith the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order, subsection (3)(b) has effect as if the reference to a period of 13 weeks were a reference to a period of 6 months.

16 Home visits

128 (1) Where a child was placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met.

129 (2) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given to the agency.

130 (3) Where the child was not placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met.

131 (4) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given—

(a) where the home is in Scotland, to the local authority within whose area the home is situated,

(b) where the home is outwith Scotland, to any local authority.

132 17 Reports where child placed by agency

133 (1) Subsection (2) applies where an application for an adoption order relates to a child placed for adoption by an adoption agency.

134 (2) The agency must—

(a) submit to the court a report on—

(i) the suitability of the applicants, and

(ii) any other matters relevant to the operation of section 14, and

(b) assist the court in any manner the court directs.

18 Notification to local authority of adoption application

135 (1) Subsection (2) applies where a child was not placed for adoption with the applicants by an adoption agency.

136 (2) An adoption order may not be made in relation to the child unless the applicants have, at least 3 months before the date of the order, given notice to the appropriate local authority of their intention to apply for the order.

137 (3) In subsection (2), “appropriate local authority” means—

(a) In subsection (2), “appropriate local authority” means where the applicants have their home in Scotland, the local authority within whose area the home is situated,

(b) where they have their home outwith Scotland, any local authority.

19 Notice under section 18: local authority's duties

138 (1) This section applies where a local authority receives a notice under section 18 in respect of a child.

139 (2) On receipt of the notice the authority must—

(a) investigate the matter, and

(b) submit to the court a report of the investigation.