New ESA sanctions regime

New regulations have been issued in relation to a new two-part employment and support allowance (ESA) sanctions regime.

In force from 3 December 2012, the Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012 (SI No.2756/2012) introduce the new sanctions regime for claimants in the work-related activity group who fail to attend a work-focused interview or to undertake work-related activity without good cause.

Also, from 3 December 2012, work related activity includes work experience and work placements although a claimant cannot be sanctioned for failing to undertake work experience since it is voluntary.

The two parts of the new regime are an open-ended period and a fixed period –
- the open-ended part will be lifted when the claimant meets a compliance condition or agrees to do so on a scheduled date – this will normally be the original requirement or, in the case of work-related activity, a suitable alternative as appropriate; and
- the open-ended part of the sanction will be followed by a fixed period of 1 week for a first failure, 2 weeks for a second failure within 52 weeks of the first, and 4 weeks when it is a third or subsequent failure which is within 52 weeks of the last failure (except when the subsequent failure occurs within 2 weeks of the previous failure).

When claimants re-engage within one week of the failure or before a decision to sanction has been made only the fixed period will apply and, in the case of multiple sanctions, they will run concurrently.

(continued at foot of page 3)

Chancellor announces further welfare savings of £3.7bn

Changes introduced by Autumn Statement 2012 include uprating of working age benefits by 1 per cent

Chancellor George Osborne has set out further welfare savings of £3.7bn in his Autumn Statement of 5 December 2012.

Introducing the welfare reform package, that will save £3.7bn in 2015–2016 on top of the £18bn in previously announced savings for the period 2014–2015, Mr Osborne said –

‘Savings from Whitehall are not enough by themselves to tackle our debts. We need to find other savings – and we need to do it in a way that is fair. Those with the most should contribute the most, and they will. But fairness is also about being fair to the person who leaves home every morning to go out to work and sees their neighbour still asleep, living a life on benefits.

As well as a tax system where the richest pay their fair share, we have to have a welfare system that is fair to the working people who pay for it.’

(continued on page 4 column 1)

Changes to appeals process in 2013

DWP provides further details of how mandatory reconsideration system is to be implemented

In the December 2012 edition of its Touchbase magazine, the DWP says that, following the Welfare Reform Act 2012 (section 102), it is revising its appeals process for the benefits it administers and child maintenance cases with the aim of making sure that more appeals against DWP decisions are resolved without being referred to Her Majesty’s Courts and Tribunals Service (HMCTS).

The DWP goes on to set out three key initiatives designed to deliver this objective –
- Mandatory reconsideration – ‘When a person receives a decision from DWP that they dispute, they will have to request that the (continued on page 4 column 3)
Draft Personal Independence Payment Regulations 2013 published

On 13 December 2012, the government published the draft Social Security (Personal Independence Payment) Regulations 2013. The new regulations set out the main rules for the personal independence payment (PIP), including the assessment criteria and the rates at which the benefit will be paid –

- a ‘standard’ rate daily living component of £53.00;
- an ‘enhanced’ daily living component of £79.15;
- a ‘standard’ rate mobility component of £21.00; and
- an ‘enhanced’ rate mobility component of £55.25

Other draft regulations published on 13 December 2012 include –

- the draft Personal Independence Payment (Transitional Provisions) Regulations that set out the transitional arrangements for assessing existing DLA claimants for entitlement to PIP; and
- the draft Disability Living Allowance, Attendance Allowance and Carer’s Allowance (Amendment) Regulations that provide for changes to certain rules on residence and presence, absences abroad, age limits and hospital and care homes.

All three sets of draft regulations are available at www.legislation.gov.uk.

Government confirms roll out plans for personal independence payment

The DWP will start taking new claims for personal independence payment nationally from June 2013, the government has confirmed.

In a statement issued alongside the publication of the draft Social Security (Personal Independence Payment) Regulations 2013 on 13 December 2012, Work and Pensions Minister Esther McVey said that –

“We [have] listened carefully to concerns about the speed of reassessment. To that end we will now undertake a significantly slower reassessment timetable to ensure we get this right.’

As a result, the Minister confirmed that –

- the new benefit will be phased in, starting with new claims only in a controlled start area in the North West and parts of the North East of England from April 2013;
- new claims will be taken nationally from June 2013;
- from October 2013, the DWP will start reassessing people whose DLA award is due to end, people who report a change in condition and young people who reach the age of 16; and
- the ‘peak period’ of reassessments will not start until October 2015, meaning that, unless they report a change in their condition, those with a lifetime or indefinite DLA award will not be reassessed until October 2015 at the earliest.

In addition, the Minister said that a number of changes have been made following the consultation exercise carried out earlier this year, including in relation to –

- broadening the approach to aids and appliances, assessing ability to read and taking account of specialist orientation aids that help mobility;
- mirroring the linking rules for DLA – helping ensure continuity for people with fluctuating conditions; and
- new plans for contacting young people when they reach the age of 16 or their appointees to help a smooth transition to personal independence payment.

However, also publishing new case-load assumptions about the impact of the new benefit, the Minister said –

‘By October 2015 we estimate we will have reassessed 560,000 claimants. Of these 160,000 will get a reduced award and 170,000 will get no award.’

Esther McVey’s statement on the personal independence payment is available at www.dwp.gov.uk/newsroom/ministers-speeches/2012/13-12-12.shtml.

Government outlines changes to personal independence payment rules

The government has outlined changes it intends to make to the personal independence payment rules following the consultation exercise it carried out earlier this year.

Alongside the publication on 13 December 2012 of the draft Social Security (Personal Independence Payment) Regulations 2013, the government published its response to the consultation that had sought views on the personal independence payment eligibility rules, payability and reassessment, as well as associated changes to the residence and presence rules for disability living allowance (DLA), attendance allowance and carer’s allowance.

With more than 1,600 responses to the consultation having been received, the government says that, as a result of the advice received from disabled people and their representative organisations, changes will include –

- the linking rules will allow for a two year linking period for people under the age of 65 and a one year period for those over 65, during which a claimant can re-claim the benefit without being required to re-serve the 3 month qualifying period, providing the new claim results from substantially the same condition or conditions, or one which developed from the original condition;
- a temporary absence abroad of 13 weeks will be permitted, or up to 26 weeks if the absence is specifically for medical treatment; and
- the reassessment arrangements will allow for a period of four weeks in which to claim personal independence payment, after which DLA will be suspended, but there will be discretion to extend this period in exceptional circumstances, where the Secretary of State considers it reasonable – for example, where the claimant has recently gone into hospital.

The government’s response to the consultation on DLA reform and the personal independence payment is available at www.dwp.gov.uk/docs/pip-detailed-design-response.pdf.
Draft universal credit regulations laid before parliament

The government has laid a number of draft affirmative welfare reform regulations before parliament, including the Universal Credit Regulations 2013.

NB – affirmative regulations must be expressly approved by parliament although, as the parliament website makes clear, ‘parliament’s room for manoeuvre is limited. Parliament can accept or reject a statutory instrument but cannot amend it.’

Announcing the laying of the regulations in a written statement to parliament on 10 December 2012, Secretary of State for Work and Pensions Iain Duncan Smith said that –

‘Universal Credit will act as a ‘launch pad’ for motivating people back into work, fostering confidence and self-esteem and helping to end the dependency culture; and significantly reduce the cost of fraud and error to the taxpayer.’

To this end, the draft affirmative regulations laid before parliament are –

- the Universal Credit Regulations 2013 – that set out provisions for universal credit, including entitlement, elements of the award, calculation of income and capital, and claimant responsibilities (and also make provision for a benefit cap);
- the Universal Credit (Transitional Provisions) Regulations 2013 – that reflect the government’s decision to introduce universal credit from 29 April 2013 only for a small number of claimants in certain categories in a ‘Pathfinder in a defined geographical area in Oldham, Warrington, Tameside and Wigan;
- the Jobseeker’s Allowance Regulations 2013 – that remove income-related rules and provide for an award of jobseeker’s allowance based only on national insurance contributions;
- the Employment and Support Allowance Regulations 2013 – that remove income-related rules and provide for an award of employment and support allowance based only on national insurance contributions;
- the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 – that make provision in relation to the administration of the four benefits – in particular the making of decisions where there are disputes, changes in circumstances and doubts about awards; and in relation to rights of appeal – and also provide for a new requirement for claimants to apply to the Secretary of State for a decision to be revised before they can make an appeal; and
- the Social Security (Payments on Account of Benefit) Regulations 2013 – that provide for the introduction both of ‘universal credit advances’ and ‘short term benefit advances’ in place of existing interim payments and some crisis loans, and of ‘budgeting advances’ in place of existing budgeting loans.


New ESA sanctions regime
(continued from page 1, column 1)

Under the revised regime ESA claimants will be sanctioned 100 per cent of the prescribed ESA amount for a single person (currently £71.00) but will retain the work related activity component, any premiums and any additional amounts such as mortgage costs.

There is a right of appeal against a sanction being imposed and claimants entitled to income-related ESA will be able to apply for hardship payments (of 60 per cent of the prescribed amount for single claimants) for the duration of the sanction.

SI.No.2756/2012 is available from legislation.gov.uk

DWP releases first Work Programme outcome figures

In Work Programme Statistical Release, published on 27 November 2012, the DWP set out statistics on validated Work Programme job outcomes and sustainment payments for the first time.

Key findings from the statistical release include –

- the total number of referrals and attachments to the Work Programme from 1st June 2011 to the end of July 2012 were 878,000 and 837,000 respectively;
- the total number of job outcomes (paid to providers after a participant has been in employment for 13 or 26 weeks depending on payment group) from 1st June 2011 to the end of July 2012 was 31,000; and
- the total number of sustainment payments (paid to providers if a participant continues to remain in employment) from 1st June 2011 to the end of July 2012 was 50,000 and these were paid for 20,000 participants.

Commenting on the figures on 28 November 2012, Public Accounts Committee Chair Margaret Hodge said they demonstrated that the programme was falling ‘woefully short of expectations’, adding that –

‘These shocking figures reveal for the first time that all Work Programme contractors have failed to meet contractual minimum performance standards. My committee raised the alarm in February this year that the department’s targets looked overly optimistic given the economic backdrop. Despite this, the department told us they were completely confident targets would be met. My concern is that poor performance will drive contractors simply to ‘park’ the hardest-to-help participants in order to cut their costs.’

Chancellor announces further welfare savings of 3.7bn

(continued from page 1, column 3)

Welfare benefit related measures outlined by Mr Osborne, and in accompanying Treasury documents, include –

- working age benefits will be uprated by 1 per cent for three years from April 2013. This includes the main elements of jobseeker’s allowance, employment and support allowance and income support; applicable amounts for housing benefit; and maternity allowance, statutory sick pay, statutory maternity pay, statutory paternity pay and statutory adoption pay. However, it excludes the disability, carers and pensioner premiums in these benefits where applicable and the support component in employment and support allowance, which will continue to be uprated by prices.

- the 1 per cent uprating will extend to child tax credit and working tax credit (excluding disability elements). The couple, lone parent and child elements will be uprated by 1 per cent for three years from April 2013; the basic and 30 hour elements will not be uprated in 2013–2014 (as set out in Spending Review 2010) but will be uprated by 1 per cent in 2014–2015 and 2015–2016; although all disability elements will continue to be uprated by prices each year.

- child benefit, which is currently frozen, will be uprated by 1 per cent in 2014–2015 and 2015–2016.

- the basic state pension will be increased by 2.5 per cent, meaning an increase of £2.70 per week.

- other benefits, including the additional state pension, and those specifically for disability and carers, will continue to be uprated in line with prices.

- the government will uprate local housing allowance rates in line with the previously announced policy in April 2013 but will cap increases to 1 per cent in most areas in 2014–2015 and 2015–2016 and use 30 per cent of the potential savings to exempt rates in those areas where rent increases are highest.

- universal credit earnings disregards will be increased by 1 per cent for two years from April 2014.

- temporary changes to support for mortgage interest (SMI) are extended until 2015–2016 for working-age SMI claims – the waiting period will remain at 13 weeks and the working-age capital limit will remain at £200,000 until 31 March 2015.

- housing payments for those in supported exempt accommodation will be disregarded for the purpose of the benefit cap – funds available for discretionary housing payments will be reduced by £10m in 2013–2014 and 2014–2015, and by £5m in 2015–2016 and 2016–2017 to fund this measure.

Mr Osborne also said that, to bring all the uprating decisions together, the government will be introducing a Welfare Uprising Bill to parliament.

In addition, Mr Osborne said that the government will save over £1bn in the next four years through the introduction of a package of measures aimed at reducing tax credits error and fraud that include –

- requiring evidence from households reporting high childcare costs;

- requiring evidence provided by households each year for children aged between 16 and 19 to ensure their child tax credit payments continue; and

- changing the information technology to allow debt from an individual’s old tax credit award to be recovered through their current tax credit award.

The Autumn Statement 2012 and accompanying Treasury documents are available on the DWP website.

Changes to appeals process in 2013

(continued from page 1, column 3)

Department conducts a ‘mandatory reconsideration’ before being allowed to lodge an appeal. This reform aims to resolve more disputes at an earlier stage and help ensure that people receive their correct entitlement earlier.’

- Direct lodgement – ‘People who want to appeal after mandatory reconsideration will need to send their appeal directly to HMCTS. This change will align the appeals process for the Social Security and child maintenance jurisdiction with the other major tribunal jurisdictions within HMCTS. It will allow DWP to focus on its key role as a party to appeals.’

- Time limits – ‘The introduction of the changes is an opportunity to introduce time-limiting on appeals responses. DWP is currently in discussions with the Tribunal Procedure Committee as to what these limits might be.’

The DWP also advises that it will introduce mandatory reconsideration and direct lodgement in April 2013 for universal credit and personal independence payment and October 2013 for all other DWP administered benefits and child maintenance cases.

The December 2012 edition of Touchbase is available from the DWP website.

2013/2014 benefit rates

Check out our draft benefit rates poster – including universal credit and the personal independence payment – on rightsnet in the New Year...