Work capability assessment ‘not working as well as it should’

The work capability assessment (WCA) is ‘not working as well as it should’ according to an independent review published on 23 November 2010.

In ‘An Independent Review of the Work Capability Assessment’, that was commissioned by the government in June 2010, the review’s author Professor Harrington states there are clear and consistent criticisms of the whole system and much negativity surrounding the process and that –

‘There is strong evidence that the system can be impersonal and mechanistic, that the process lacks transparency and that a lack of communication between the various parties involved contributes to poor decision making and a high rate of appeals.’

However, Professor Harrington states that he does not believe that the system is ‘broken or beyond repair’ and that –

‘I am proposing a substantial series of recommendations to improve the fairness and effectiveness of the WCA. If adopted, I believe these recommendations can have a positive impact on the process – making it fairer and more effective, changing perceptions so the WCA is seen as a positive first step towards work, and reducing the rate of appeals.’

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Universal Credit to replace all working age means-tested benefits

Government publishes ‘Welfare that works’ White Paper

The government has set out its plans to introduce legislation to reform the welfare system by creating a new Universal Credit to replace all working age means-tested benefits.

In his foreword to a new White Paper, ‘Universal Credit: welfare that works’, Secretary of State for Work and Pensions Iain Duncan Smith says –

‘Universal Credit marks the beginning of a new contract between people who have and people who have not. At its heart, Universal Credit is very simple and will ensure that work always pays and is seen to pay. Universal Credit will mean that people will be consistently and transparently better off for each hour they work and every pound they earn. It will cut through the complexity of the existing benefit system to make it easier for people to get the help they need, when they need it.’

Key elements of the Universal Credit outlined in the White Paper, to be given effect in a Welfare Reform Bill in January 2011, include –

- a single taper – a rate of 65% at which benefit is reduced to take account of earnings;
- income disregards – for certain groups (e.g. parents or people with a disability) to ensure that people are ‘encouraged to take jobs of only a few hours a week if this is all that is possible for them in the short term’;

(continued on page 4, column 1)

Benefit uprating 2011/2012

The government has published the new benefit rates to be introduced in April 2011.

NB – benefit uprating each April has previously been linked to the inflation rate in the preceding September as measured by the Retail Prices Index. However in its June 2010 Budget, the government announced that, from April 2011, most benefit levels will instead be set by reference to the Consumer Prices Index which, as confirmed by the Office for National Statistics, stood at 3.1 per cent in September 2010, compared to the Retail Prices Index which stood at 4.6 per cent.

Drug dependant claimants to face ‘rigorous enforcement’ of sanctions if they refuse treatment

Drug dependant benefit claimants are to face the ‘rigorous enforcement’ of sanctions if they refuse treatment and are then unable to meet the normal conditions of benefit receipt, according to the government’s new drug strategy ‘Reducing demand, restricting supply, building recovery: supporting people to live a drug-free life’.

Amidst the key elements of the strategy, designed to address the barriers to employment that the strategy, designed to address the barriers to employment that the new strategy is available from –

- equipping people with the skills to enable them to compete for the jobs that are available, even though ‘it is not possible to create large numbers of jobs specifically for people in recovery’;
- offering claimants who are dependent on drugs or alcohol a choice between rigorous enforcement of the normal conditions and sanctions where they are not engaged in structured recovery activity, or appropriately tailored conditionality for those that are;
- looking at amending legislation to make it clear that where someone is attending residential rehabilitation and would be eligible for out-of-work benefits, they will be deemed to have a reduced capability for employment and will therefore be automatically entitled to employment and support allowance; and
- over the longer term, exploring how appropriate incentives might be built into the universal credit system to encourage and reward treatment take-up.

The new strategy is available from www.homeoffice.gov.uk

Reform of local housing allowance from April 2011

New regulations have been issued in relation to the reform of local housing allowance from April 2011.

The new regulations – the Housing Benefit (Amendment) Regulations 2010 (SI.No.2835/2010) and the Rent Officers (Housing Benefit Functions) Amendment Order 2010 (SI.No.2836/2010) – limit the amount of local housing allowance that can be awarded by –

- removing the five bedroom local housing allowance rate so that the maximum level is for a four bedroom property;
- introducing absolute caps so that local housing allowance weekly rates cannot exceed £250 for one bedroom property, £290 for a two bedroom property, £340 for a three bedroom property and £440 for a four bedroom property;
- providing for local housing allowance rates to be set at the 30th percentile of rents in each broad rental market area rather than the median; and
- removing the up to £15 per week excess benefit which some claimants can receive.

NB – following concerns raised by the Social Security Advisory Committee, amongst others, the regulations provide up to nine months of transitional protection from the changes to local housing allowance rates to claimants who have claimed housing benefit before 1 April 2011.

In addition, the new regulations –

- provide for an additional bedroom within the size criteria used to assess housing benefit claims in the private rented sector where a disabled person, or someone with a long term health condition, has a proven need for overnight care and it is provided by a non-resident carer who requires a bedroom; and
- make a change to the payment provisions for cases assessed under the local housing allowance arrangements to allow local authorities to consider paying housing benefit directly to the landlord if it would enable the claimant to secure or retain a tenancy.

SI.No.2835/2010 and SI.No.2836/2010 are available from www.legislation.gov.uk

Work capability assessment ‘not working as well as it should’

(continued from page 1, column 1)

Professor Harrington’s key recommendations include –

- building more empathy into the process with Jobcentre Plus managing and supporting the claimant: this includes speaking to them to explain the process, to explain their decision; and
- improving transparency of the medical assessment by ensuring each report contains a personalised summary of the healthcare professional’s recommendations; sending this summary to all claimants; and piloting the audio recording of assessments;
- accounting for the particular difficulties in assessing mental, intellectual and cognitive champions’ in each Medical Examination Centre to spread best practice and build understanding of these disabilities;
- empowering and investing in decision makers so that they are able to take the right decision, can gather and use additional information appropriately and speak to claimants to explain their decision; and
- better communication and feedback between Jobcentre Plus, Atos and the First-tier Tribunal to improve the quality of decision making on all sides.

NB – in response to the independent review, Minister for Employment Chris Grayling stated that the government ‘fully endorses’ Professor Harrington’s recommendations and that, as a result, it intends to move forward with reforms to the WCA which it believes will ‘significantly improve the process and make it fit for purpose for the nation-wide migration next year’.

Government proposes to replace DLA with a ‘personal independence payment’

The government has launched a consultation on a proposal to replace disability living allowance (DLA) with a new benefit, the personal independence payment, which, it says, will maintain the key principles of DLA but will be delivered in a fairer, more consistent and sustainable manner.

The DWP states that it plans to introduce the new benefit in 2013/14, when it will begin reassessing the working age (16–64 year olds) caseload, and that it is also considering whether to reassess children and people aged over 65.

Key features of the personal independence payment set out in the consultation document include –

- the new benefit will have two components, each with two rates – the ‘mobility’ component will be based on a claimant’s ability to get around, while the ‘daily living’ component will be based on their ability to carry out ‘other key activities necessary to participate in everyday life’;
- claimants will have to qualify for the benefit for a period of six months and be expected to continue to qualify for a further six months before an award can be made;
- there will no automatic entitlements for people with specified health conditions – other than the special rules for people who are terminally ill – instead, each case will be looked at individually;
- entitlement will be based on an ‘objective assessment’ focusing on a claimant’s ability to carry out a range of ‘key activities necessary to everyday life’;
- the assessment process will include information from the claimant and health care professionals who look after them, and, in most cases, there will be a face-to-face meeting with an independent healthcare professional ‘allowing an in-depth analysis of an individual’s circumstances’;
- the personal independence payment will take greater account of aids and adaptations and the DWP is considering how best to take account of these in the assessment in a way that reflects how they are used and paid for;
- the DWP will take into account the way that DLA currently ‘passes’ the claimant to other benefits in its reforms, and will also consider how it interacts with other forms of support, for example adult social care, and explore whether it is possible to share information at the assessment stage and eliminate areas of overlap;
- all awards will be periodically reviewed and there will be penalties if a claimant knowingly fails to report a change that would have resulted in a reduction in benefit;
- the DWP is exploring ways to help individuals manage their health condition or impairment such as signposting to other sources of support.

The consultation runs until 14 February 2011. For more information see www.dwp.gov.uk/docs/dla-reform-consultation.pdf

Supreme Court overpayments victory for the Child Poverty Action Group

The Supreme Court ruled unanimously, on 8 December 2010, that the DWP does not have the power to recover official error overpayments under common law.

The Supreme Court judgment concerns a test case brought by the Child Poverty Action Group (CPAG) challenging the DWP’s practice of seeking to recover official error overpayments under the common law and highlighting the fact that, between March 2006 and February 2007, the government wrote to more than 65,000 claimants telling them that money overpaid due to the DWP’s error, whilst not recoverable under social security law, could be recovered through the courts if they did not pay the money back.

With the Court of Appeal having found in CPAG’s favour, the Secretary of State then appealed to the Supreme Court.

In The Child Poverty Action Group v Secretary of State for Work and Pensions [2010] UKSC 54 (8 December 2010), Lord Brown dismisses the Secretary of State’s appeal, stating, in a lead judgment, that section 71 of the Social Security Administration Act 1992 provides not just for an express entitlement to recover overpaid benefits in cases of misrepresentation or non-disclosure, but also for the whole process of determining the facts relevant to such entitlement, including making provision for appeals to a tribunal, and that –

‘It seems to me inconceivable that Parliament would have contemplated leaving the suggested common law restitutionary route to the recovery of overpayments available to the Secretary of State to be pursued by way of ordinary court proceedings alongside the carefully prescribed scheme of recovery set out in the statute.’

Universal Credit to replace all working age means-tested benefits

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- transitional protection – if the amount of Universal Credit a person is entitled to is less than the amount they were getting under the old system, an additional amount will be paid to ensure that they will be no worse off in cash terms;
- structure – a basic personal amount with additional amounts for disability, caring responsibilities, housing costs, and children;
- disability – additional benefit components similar to those for people in employment and support allowance;
- carers – the government is considering whether changes to carer’s allowance will be necessary to take account of the introduction of Universal Credit and provide clearer, more effective support for carers;
- housing costs – an appropriate amount will be added to the award to help meet the cost of rent and mortgage interest with support for rent, currently delivered by local authorities, to be replaced by Universal Credit;
- support with mortgage costs – the government is considering whether changes are needed to the current approach to calculating help with mortgage costs to ensure it is consistent with Universal Credit principles;
- council tax costs – local authorities will be given a greater say in decisions on helping people on low incomes pay their council tax alongside a 10 per cent reduction in council tax benefit expenditure from 2013–14;
- children – Universal Credit will include fixed amounts to provide for children’s living costs based on those currently provided through child tax credit and in addition to child benefit;
- childcare – the government is seeking views on how to improve and simplify the way support is offered whilst ensuring that it remains ‘fair, affordable and targeted to those most in need’;
- upper age limit – the upper age limit for Universal Credit will be the age at which people are eligible for pension credit, but the government is considering an option of allowing those pensioners who choose to extend their working lives to claim Universal Credit, rather than pension credit, so that they can take advantage of the tailored in-work arrangements;
- national insurance credits – most people currently receiving credits will continue to do so during periods when they receive Universal Credit but ‘there may be a case for preventing these people from gaining National Insurance credits’ where conditionality requirements are not met;
- maximum payment – the award of Universal Credit will not exceed a maximum amount when combined with child benefit and other non-Universal Credit payments (such as contributory Jobseeker’s allowance and employment and support allowance) and the maximum will be set on the basis of median earnings after tax and national insurance for working families; and
- four broad conditionality groups – full conditionality for jobseekers; work preparation for people with a disability or those with a health condition which means they have limited capability for work at the current time; keeping in touch with the labour market for lone parent or lead carer in a couple with a child over age one but below age five; and no conditionality for people with a disability or health condition which prevents them from working, carers, lone parents or lead carers with a child under the age of one.

In addition, the White Paper highlights changes to the existing conditionality and sanctions regime (to be carried forward under Universal Credit) that include increasing the level of conditionality that is applied to some claimants; the introduction of a ‘claimant commitment’; and introducing ‘Mandatory Work Activity’ so that some claimants will be required to take part in full-time work activity for four weeks or face a sanction of more than three months. The government also says that it is considering replacing hardship payments, for claimants who have received a sanction, with loans.

The White Paper also gives details of the way in which Universal Credit will be claimed and administered from October 2013, and sets out a timetable for completing the transfer to the new benefit by October 2017.

In relation to the wider system, the government states that contributory benefits will remain in their present form but will be administered through the Universal Credit system and will be paid for a limited period. It also states that elements of the social fund that can be automated will be paid through the Universal Credit system with discretionary elements, such as community care grants and crisis loans, being devolved to local authorities.

In relation to passported benefits (such as school meals and prescriptions), the government states that it will replace the current rules with an income or earnings-related system that gradually withdraws entitlements to prevent all passported benefits being withdrawn at the same time.


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