Welfare Reform Bill receives Royal Assent

The Welfare Reform Bill — that includes provision for the introduction of Employment Support Allowance (ESA) in place of the current system of incapacity benefits — has received Royal Assent.

Alongside ESA — to be launched in autumn 2008 — the Welfare Reform Act 2007 also provides for a new assessment of capacity for work in place of the current Personal Capability Assessment (PCA), involving revised activity descriptors and scores.

NB — Work and Pensions Minister, Jim Murphy, has however assured MPs that ‘it has always been our intention that there should be ongoing monitoring of the effectiveness of the revised PCA’ and that therefore each year for the first five years the Secretary of State will be required to lay an ‘independent report’ before Parliament on its operation.

Other measures contained in the Act include —

- the contracting out of welfare to work services, including responsibility for carrying out work-focused interviews;
- new ‘work-focused health-related assessments’, action plans, and a requirement to take part in ‘work-related activity’;
- the national roll-out of local housing allowance to the private rented sector;
- the piloting of housing benefit sanctions for people who refuse support following eviction for anti-social behaviour; and
- miscellaneous provisions relating, for example, to information sharing between the DWP and local authorities, local authority powers to investigate and prosecute benefit fraud, DLA and attendance allowance for under 16s and care home residents, vaccine damage payments, the social fund and the Independent Living Funds.

The Welfare Reform Act 2007 is available @ www.opsi.gov.uk

Revenue to introduce independent review of tax credit overpayment decisions

Pilot to commence in summer 2007

The Revenue has confirmed plans to introduce an independent review of tax credit overpayment decisions.

In its 2007 Departmental Report, the Revenue says that, following discussions around the feasibility of introducing an independent review of decisions to recover overpayments caused by official error, HMRC and the Adjudicator plan a pilot in the summer of 2007, with ‘a proportion of cases’ being offered the new service —

‘If a claimant disputes the recovery of an overpayment and, after review, we conclude it is recoverable under the Code of Practice 26, we will give the claimant the option of having this case reviewed by the Adjudicator by a fast track process. This will be an alternative to the current procedure where the claimant then has to make a formal complaint about the handling of their case, and that case has to be first reviewed as part of the Department’s complaint handling procedures.’

NB — elsewhere in the report, the Revenue also advises that automatic limits on the rates of recovery of overpayments — first announced by the government in December 2005, but delayed by IT problems — will be introduced by June 2007.

Overpayment recovery on discharge from bankruptcy

New High Court judgment

In a new judgment, the High Court has considered whether an overpayment of benefit can be recovered following an appellant’s discharge from bankruptcy.

In Balding, R (on the application of) v Secretary of State for Work & Pensions (3 April 2007), the High Court holds that the Department cannot seek recovery of an overpayment, in this case of income support, following an appellant’s discharge from bankruptcy where the recoverability decision was made prior to the bankruptcy order.

The High Court bases its judgment on its view that the overpayment fell within the definition of a ‘bankruptcy debt’ as defined in section 382 of the Insolvency Act 1986 and that, in line with the general purpose underpinning section 281 of the Act ‘which is in effect to wipe the slate clean’ and ‘enable the bankrupt to make a fresh start’, discharge released the appellant from liability for recovery of the overpayment.

NB — in a 2005 judgment in Steele, the Court of Appeal held that the right to recover an overpayment is not lost on a claimant’s discharge from bankruptcy where benefit was awarded and paid prior to the date of the bankruptcy order, and the decision that it was recoverable was issued after that date.
**DWP undertaking review of Special Rules DLA/AA awards**

The Disability and Carers Service is undertaking a sample review of cases awarded attendance allowance or disability living allowance under the Special Rules provisions.

NB – the Special Rules provisions apply to those claimants who are not expected to live longer than 6 months because of a terminal illness, and allow them to qualify for help with personal care at the highest rate automatically, even if no help is needed.

In an exercise that began on 15 March 2007, the Disability and Carers Service is making contact with claimants who’ve been in receipt of benefit under the Special Rules for more than 7 years.

A sample of claimants will receive a letter – referenced DBD 551/DBD 555 – with an enquiry form that asks –

- for details of the claimant’s hospital doctor or specialist, and when they were last seen;
- whether anyone else can provide information about the claimant’s illnesses or disabilities – for example someone from Social Services, a support worker, a teacher, care worker, or carer;
- for details of the claimant’s illnesses, disabilities or diagnosis, how long they have had the illness or disability, and details of medicines and/or treatments being received; and
- for the claimant’s consent for the DWP to contact their GP or others involved in their treatment or care.

If the enclosed enquiry form is returned and demonstrates that the claimant still satisfies the Special Rules, they will be notified that no further action will be taken on the case.

However, if the Disability and Carers Service are unable to confirm entitlement under the Special Rules, it will make further enquiries to ascertain whether there is ongoing entitlement under the normal rules.

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**HB sanctions and anti-social behaviour pilot areas announced**

The government has announced the local authorities that will pilot the use of housing benefit sanctions to tackle anti-social behaviour.

Provision for the two-year pilot is contained in the Welfare Reform Act 2007 and forms part of the government’s Respect programme. In the pilot areas it is proposed that sanctions will apply to those who have been evicted for anti-social behaviour and who refuse to address their behaviour using the support and help offered to them.

In a written ministerial statement to parliament on 28 March 2007, Under Secretary of State for Work and Pensions, James Plaskitt, said that the scheme will be piloted in the following local authorities –

Blackburn with Darwen Borough Council; Blackpool Borough Council; Dover District Council; Manchester City Council; New Forest District Council; Newham London Borough Council; South Gloucestershire Council; and Wirral Metropolitan Borough Council.

NB – in the House of Lords, Lord McKenzie of Luton gave an assurance that, prior to any national roll-out, the scheme will be the subject of further parliamentary scrutiny and primary legislation. He also said that the new sanctions were not intended to be imposed widely and that they would be judged to be a success if they were never applied as ‘that would suggest that the households involved would have engaged in rehabilitation’.

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**Social Fund is in limbo, says Select Committee**

Social Fund policy is currently in limbo, and the DWP must address the performance of the Fund as a matter of urgency, the Work and Pensions Select Committee has said.

In a new report, the Select Committee acknowledges that the government has been working to remedy some of the Fund’s problems, and that there has been an injection of an extra £90 million to the discretionary fund since 2003.

However, the Committee reports that it has nevertheless been presented with evidence of many of the same problems that its predecessor Social Security Committee had identified in 2001, including inaccurate decisions, lack of consistency and poor management information.

For example, there is still not enough money in the community care grant budget for all those who have been assessed as having a high priority need, the Committee reports (noting that the Social Fund Commissioner has described the situation as unacceptable). Problems also persist, the Committee says, with the telephony and application process for crisis loans, having received evidence of applicants ‘whose fingers ached from pressing the redial button’.

“We are concerned that the re-sourcing of the Social Fund is inadequate to remedy the situation in terms of both staff numbers and training’, the Committee concludes. ‘There has been no formal consultation process on reform with no timetable for improvements.’

Expressing its disappointment that the debate has moved on so little in the six years since 2001, the Committee says that ‘it is our impression that social fund policy is currently in limbo, pending wider government work on financial inclusion. Given the severe operational and resource issues which we have described … we recommend that the DWP must now address the performance of the Fund as a matter of urgency, and launch a formal consultation exercise on how it can be improved.’

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For more information on all these changes see –

[www.rightsnet.org.uk](http://www.rightsnet.org.uk)

the welfare rights website for advice workers
Two week backdating rule to be introduced for DLA/AA

‘Double dated’ claim packs are discriminatory, says DWP

Further to the announcement in Budget 2007 of the government’s intention to align the ‘backdating period’ for disability living allowance and attendance allowance forms, the DWP has confirmed that the current ‘discriminatory rules’ are to be replaced with a single rule which will allow two weeks backdating for all successful claims.

NB – currently ‘double dated’ DLA/AA claim packs have two spaces for dates to be inserted. The first is the date the form was issued by the approved office and the second is a date six weeks later. If the claimant returns the claim form before the second date, benefit is paid from the first date.

However in a memorandum submitted to the Work and Pensions Select Committee inquiry into benefit simplification, the DWP says that it will –

‘... remove the different and discriminatory rules for determining the date when disability living allowance and attendance allowance entitlement starts, depending on where a customer gets their claim form ... (since) the current two-tier process disadvantages those customers who use the services of the Department’s external partners when claiming benefits.’

The introduction of a standard rule – which will allow two weeks backdating for all successful claims – will, the DWP says –

● ensure equal treatment for all the Department’s customers regardless of where they obtain their claim form;

● simplify claims processing and remove an unjustifiable unfairness that may give rise to litigation;

● provide a uniform backdating system that supports the government’s commitment to working equitably with partner organisations in modernising welfare delivery; and

● send a powerful message that the government is committed to joined-up services across society.

Since the change requires primary legislation however, the DWP says that the timing of its introduction will depend on the availability of a suitable legislative vehicle.

Revenue incapable of a credible and effective response to ongoing tax credit problems, says Commons Committee

Tax credits worth billions of pounds are still being overpaid to claimants and the Revenue seems incapable of mounting a credible and effective response to the ‘flood of money being wasted’ –

‘This is the fourth time that this Committee has had to examine the current tax credits system – and it will not be the last. Billions of pounds, far more than those who thought up the system ever envisaged, are still routinely overpaid to claimants.

Changes have been made to the system but who will be confident that they will make any difference? HMRC itself is uncertain how effective they will be. Nor does it have up to date information on the amount of public money lost through claimant error and fraud. It is quite extraordinary that the Department doesn’t routinely estimate this and or set targets for reducing levels.’

The Committee’s tax credit report is available @ www.publications.parliament.uk

Right of widowers to widow’s benefits

In a new judgment the European Court of Human Rights (ECHR) has considered the question of whether widowers whose wives died before the introduction of bereavement benefits – payable to men and women in respect of deaths occurring on or after 9 April 2001 – should be entitled to widow’s benefits equivalent to those available to comparable bereaved women.

In Runkee and White v the United Kingdom (10 May 2007) the applicants argued that their complaints – against the refusal of their claims for widow’s pension and widow’s payment – fell within the ambit of both Article 1 of Protocol No. 1 (protection of property) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

Dismissing the applicants’ complaints in relation to widow’s pension, the ECHR holds that –

‘... until its abolition in respect of women whose spouses died after 9 April 2001, widow’s pension was intended to correct ‘factual inequalities’ between older widows, as a group, and the rest of the population.’

This difference in treatment was ‘reasonably and objectively justified’, the Court concludes.

However, in relation to widow’s payment the ECHR notes that the government has not sought to argue that the difference in treatment between men and women was based on any objective and reasonable justification, and holds that it sees no reason to distinguish the present applications from its judgment in Willis. There has been a violation of Article 14, taken in conjunction with Article 1, the Court concludes, and both applicants are therefore entitled to a widow’s payment.

NB – however, only men who made a complaint to the ECHR before 4 November 2005 will be able to establish entitlement to a widow’s payment as a result of the judgment.
New advance claims rules introduced despite there being neither a ‘convincing or compelling case for change’

The government has decided to proceed with changes to the means tested benefit regulations, to stop ‘people from abroad’ making advance claims for benefit, despite the Social Security Advisory Committee (SSAC) having said that there is neither a convincing or compelling case for change.

The new rules, introduced from 23 May 2007 by the Social Security, Housing Benefit and Council Tax Benefit (Miscellaneous Amendments) Regulations 2007, nullify the effect of the Court of Appeal’s 2006 judgment in Bhakta in which it was held that a decision maker can use their discretion to make an advance award of benefit when, in their opinion, the claimant will satisfy the requirement to be habitually resident at a future date.

However, having consulted on the changes, the SSAC has said that it was struck by the consistency of the messages and evidence that it received from respondents –

‘Without exception, they pointed to the discretionary nature of the advance claims provision and the lack of evidence that the exercise of discretion in habitual residence cases would present either exceptional difficulties for decision makers or be particularly open to abuse. A number of respondents offered examples of equally challenging cases that decision makers routinely have to deal with.

Likewise, the general usefulness of the provision – in terms of reducing the administrative burden of repeat claims and appeals, the stress and uncertainty of this cycle upon claimants, and the potential to reduce complexity was identified.’

As a result, the Committee recommended that the government should not proceed with the proposed amendments –

‘We do not think that the Department has made either a convincing or compelling case for change. Rather than closing a potential loophole, and avoiding complexity for decision makers, an opportunity is being missed to allow decision makers to exercise reasonable judgment where the facts of the case merit the exercise of discretion, and avoid some of the administrative and procedural ‘log jams’ that follow from repeated claims and appeals.’

However in his response to the Committee’s recommendations, published in May 2007 (Command Paper 7073), the Secretary of State for Work and Pensions says that whilst the government believes that the advance claims provisions are a highly useful discretionary tool that operates to the benefit of individual claimants and the DWP alike in some circumstances, bringing the habitual residence test within the scope of the advance claiming provisions serves to weaken the test and has introduced an inappropriate level of complexity and speculation into the decision-making process.

In addition, the Secretary of State says that evidence shows that some decision-makers are having difficulty applying guidance relating to the Bhakta judgment in a proper and consistent manner. Whilst one option, the Secretary of State acknowledges, would be to amend the guidance, he says, since ‘although it cannot be quantified precisely there is a risk of exploitation against which the government needs to safeguard the benefit system.’

So what do you think?

We’d really like to know what you think of review and would be grateful if you could spend a couple of minutes completing the questions below.

All completed questionnaires received by 30 June 2007 will be entered into our prize draw to win a £25 book token.

What type of agency do you work in?

What areas of advice do you cover?

How many people will usually see a copy of review?

How useful do you find review in keeping up-to-date with benefit changes? (Please circle)

Not useful Very useful

Do you use the rightsnet website @ www.rightsnet.org.uk? If so, can you tell us how it helps you in your work?

Thank you for your help.

Please complete the following if you would like to be entered in the draw.

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Organisation

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Telephone

Please fax back your completed questionnaire to 020 7247 4725.