Government’s plan to sanction the benefits of drug users should be dropped

Proposals could interfere with claimants’ human rights, says Parliamentary Committee

The government has launched a consultation on regulations that will provide for the introduction next year of a new medical ‘fit note’ in place of the sick note.

Developed in response to Dame Carol Black’s March 2008 report ‘Working for a healthier tomorrow’, the government’s aim is that the new fit note will help more people stay in work rather than drift into long term sickness by enabling them to get advice about staying in work, and if they can’t work what their employer can do to help them return to work sooner.

With the publication of the draft Social Security (Medical Evidence) and Statutory Sick Pay (Medical Evidence) (Amendment) Regulations 2010, Health Minister Ben Bradshaw said –

“We know that sickness absence is economically and socially damaging and makes people more likely to drift into social exclusion and poverty. Getting people back into work quicker is good for their health as well as the country’s finances.

The fit note will give GPs a new opportunity to benefit their patients and I look forward to it being used in surgeries everywhere.’

The new fit notes, that will be computer-generated in GPs’ surgeries, will roll-out across Great Britain in the Spring of 2010.

The consultation paper ‘Reforming the Medical Statement’ is available @ www.dwp.gov.uk/consultations/2009

The deadline for responses is 19 August 2009.

Industrial injuries benefit and osteoarthritis of the knee in miners

New regulations have been issued that provide for entitlement to industrial injuries benefit for miners with osteoarthritis of the knee.

The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2009 (SI.No.1396/2009) prescribe a new disease – Osteoarthritis of the knee (A14) – in relation to work underground in a coal mine for a period of, or periods which amount in aggregate to, at least 10 years, either –

- before 1st January 1986 as a coal miner; or
- on or after 1st January 1986 as a face worker working on a non-mechanised coal face; a development worker; a face-salvage worker; a conveyor belt cleaner; or a conveyor belt attendant.

The new rules are introduced from 13 July 2009.
Flexible New Deal contractors could be paid 40 per cent ‘up front’

The government has indicated that those successful in bidding for contracts to deliver the Flexible New Deal (FND) could be paid ‘up front’ service fees worth 40% of the contract, regardless of how many people they place into work.

Before the economic downturn, 80% of the funds available under contracts to deliver the FND were effectively ‘payment by results’. However, recent forecasts have suggested that the number of people expected to start Phase 1 of the new employment programme in autumn 2009 is likely to be up to 300% greater than originally anticipated.

As a result, Work and Pensions Minister Tony McNulty told Parliament in February 2009 that the government would consider alternative models based on a higher service fee element over the initial period of the contracts and now, in its response to the Work and Pensions Select Committee’s report ‘DWP’s Commissioning Strategy and the Flexible New Deal’, the government has said that whilst its aim is still to start Phase 1 of the new employment programme in autumn 2009 it is ‘managed effectively’.

‘...in the initial phase of the contract ... customer volumes may be high and job outcomes possibly harder to achieve ... DWP has [therefore] invited views from shortlisted bidders on what would work best for both parties. In order to understand better the impact of the current economic conditions DWP has asked bidders to set out the effect on their performance proposals of moving to a 60:40 fee model for the initial 18 month period.’

NB – on 29 May 2009, the government announced its ‘preferred bidders’ for delivering FND phase 1 – the majority of which are from the private sector – and, on 16 June 2009, launched the bidding round for delivery of phase 2 that is due to go live from October 2010.

Requiring EEA national claimants to satisfy a ‘stronger test of employment prospects’

Consideration is being given to requiring EEA national JSA claimants to satisfy a ‘stronger test of employment prospects’, the government has said.

In response to a Parliamentary Written Question on 18 June 2009, Work and Pensions Minister Jim Knight said that having carried out a review the government has concluded that there are already ‘robust’ rules in place on EEA nationals’ access to the benefit system.

However, Mr Knight added that the review also suggested that the DWP’s ability to monitor claims from EEA nationals should be improved and that —

‘...a stronger test of employment prospects should be applied to EEA nationals claiming income-based jobseeker’s allowance ...’

Mr Knight did however acknowledge that ‘complex issues’ relating to EU law need to be considered before decisions can be reached on the way forward.

Ensuring that the social fund is ‘managed effectively’

The DWP has provided an update on a number of ‘small scale’ changes to the social fund being made to ‘help ensure that the cash limited fund is managed effectively’.

The changes, that are being made in addition to the proposals for reform outlined in the Welfare Reform Bill – that include ‘external providers’ providing loans to benefit claimants and others; paying benefits in advance to reduce the need for crisis loans; and arranging for the provision of goods or services, rather than cash, to those awarded Community Care Grants – include two that were implemented nationally from 6 April 2009 –

• prohibiting the award of a second crisis loan for living expenses for the same period unless there has been a further emergency or disaster that again places the claimant’s health or safety at risk; and
• reducing the range of cases where a review request requires the offer of a formal interview with the claimant.

In addition, the DWP advises that two more changes are being tested in two Pathfinder regions from 27 April 2009 –

• limiting the number of crisis loans a claimant can receive for living expenses, excluding alignment, to three in a rolling 12 month period; and
• requiring applicants on their third and subsequent application for living expenses, excluding alignment, to attend a face to face interview.

STOP PRESS:
Loans provided to claimants by ‘external providers’ as a result of the government’s planned reforms of the social fund will not be subject to the DWP’s review procedures, it has been confirmed.

In a letter to the National Association of Welfare Rights Advisers – it having raised concerns about the proposed reforms of the social fund contained in the Welfare Reform Bill – the government said —

‘External Provider Social Funds Loans will not be part of the Social Fund, therefore they will not be subject to the current Social Fund internal review process or to the independent review provided by the Independent review service.’

Instead, any review or complaint process will be covered by Financial Service Association legislation governing the external provider.
Only a minority of DWP staff think that the Department is well managed

Only a minority of DWP staff think that the Department is well managed or that its Executive Team has a clear vision for the future, according to the results of a new DWP staff survey.

Designed to help DWP managers understand how staff feel about their job and working for the DWP, and to be used ‘to identify strengths and opportunities for improvement and to guide your efforts to enhance people satisfaction’, the survey received more than 73,000 responses.

However, whilst most respondents said that their part of the DWP ‘does an important job’ and that they are clear about what is expected of them in their job, there were significant levels of dissatisfaction in other areas, including in relation to leadership. For example –

- only 17% of respondents said that, in their experience, the DWP’s Executive Team provide effective leadership;
- 28% agreed that ‘I believe the DWP

Executive Team has a clear vision for the future of DWP’;
- 22% said that, overall, they have confidence in the senior managers within the DWP; and
- 27% agreed that the ‘DWP as a whole is well managed’.

Resource issues were also identified as a problem, with only 43% of respondents agreeing that there are usually sufficient people in their unit to handle the normal workload, and 52% saying that the information technology they have access to seldom provides effective support for the job that they do (and 5% that it never does).

In addition, 33% of staff disagree or strongly disagree that their part of the DWP ‘is committed to delivering a quality customer service’ and less than half agreed that ‘we act on the feedback we receive from customers.’

The DWP’s 2009 Staff Survey is available @ www.dwp.gov.uk/resourcecentre/dwp-survey-results-2009.pdf

National minimum wage will not apply to new ‘Work for your benefit’ scheme

The national minimum wage will not apply to those required to participate in the ‘Work for your benefit’ scheme, proposals for which are currently going through Parliament in the Welfare Reform Bill, the government has confirmed.

According to the Bill, the Work for your benefit scheme will be piloted for long-term jobseekers who will have received increasingly intensive support from Jobcentre Plus and specialist back-to-work providers, and will give them the opportunity to develop their work skills through undertaking full time work-experience. The scheme will be mandatory and aim to help jobseekers find sustained work in the open labour market by enabling them to benefit from the opportunity to develop work habits and routines that they may not have experienced for some time.

However, the government has subsequently said that whilst discussions have taken place between the Department for Business, Enterprise and Regulatory Reform and the DWP to ensure the Work for your benefit programme will be ‘consistent’ with national minimum wage legislation –

‘Individuals taking part in work placements on government programmes do so on the basis that such participation gives them work experience or training which adds value and which improves their employability.’

Existing Government policy for people participating in employment programmes is that a person who continues to receive financial support from the Government are not entitled to receive the national minimum wage while on a work placement. As such the national minimum wage will not apply in Work for Your Benefit.”

NB – it is currently planned that the Work for your benefit scheme will be piloted from 2010 in the Flexible New Deal Phase I areas.

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of the European Convention on Human Rights (ECHR) – that provides for a right to respect for private and family life – provides protection for the individual against compulsory medical treatment and provides guarantees in respect of the disclosure of medical information.

As a result, the Committee says that it is of concern that the government has provided very little evidence to support its view that the steps authorised by the proposed regulations will be justified and proportionate to a legitimate aim. In particular, the government has provided no evidence to support its assertion that benefit compulsion will lead more claimants suffering from drug dependency into treatment.

Indeed, whilst the Committee reports that during the course of its scrutiny of the proposals it asked for further information in relation to the government’s views on compatibility, it expresses its concern that the evidence provided focused principally on the dangers posed by drugs, rather than the ability of the proposals to reduce drug dependency and encourage people back into work or other economic activity.

In addition, whilst the Committee welcomes the limitations in the Bill requiring the Secretary of State to report to Parliament before the provisions are extended beyond a pilot programme, it says that it is not persuaded that evidence to support the government’s position should be sought during a pilot programme which could pose a significant risk to individual privacy rights.

As a result, the Committee concludes that –

‘... these proposals [should be] deleted from the Bill, unless clear evidence is provided to support the Government’s view that the interference proposed with the right to respect for private life is necessary and will be accompanied by appropriate safeguards.’

In any event, we consider that the Bill should be amended to remove (a) the potential for drug testing to be undertaken subject to sanction; (b) the power to direct individuals to undergo specific treatment subject to sanction and (c) the proposals in the Bill for extensive information sharing regulations, particularly the proposal for Job Centre Plus officials to pass information gathered under these provisions onto third parties.’

More information on the Committee’s work can be found @ www.parliament.uk

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Government launches consultation on ‘Right to Control’ for disabled people

The government has launched a consultation that asks whether funding provided by the DWP, amongst other public bodies, should be included in a series of ‘Right to Control’ trailblazers designed to ‘dramatically change the way every disabled person lives their life’.

NB – the ‘Right to Control’ proposals – that include regulation-making powers that could be used to give adult disabled people greater choice and control over the way in which ‘relevant services’ (for example in relation to education, training, employment and independent living) are provided by ‘relevant authorities’ – are contained in Part 2 of the Welfare Reform Bill that is currently going through Parliament.

Launching the consultation, the new Work and Pensions Secretary Yvette Cooper said –

‘Disabled people know more about their own lives than anyone else, and the Right to Control will give them the power to decide what support they need and who should provide it.’

With plans to pilot the initiative in ‘trailblazer’ local authority areas in England from 2010, the consultation asks a series of questions that include what criteria should be used to select funding streams –

‘We want to ask people’s opinions about how funding provided by the Department for Work and Pensions, particularly Access to Work, the Independent Living Fund and the specialist disability employment programmes could be included in the trailblazers.

In addition to DWP programmes, there are other funding streams, such as Disabled Facilities Grants, and locally-administered funding such as housing-related support which could also be included or aligned within the trailblazers.’

NB – the consultation paper however highlights that the Welfare Reform White Paper published in December 2008 had said that funding streams will not be included, either in the trailblazer sites or in any subsequent extension, if the funding stream is already paid as a cash benefit.

The consultation will run until 30 September 2009.

The consultation paper ‘Making choice and control a reality for disabled people’ is available @ www.odi.gov.uk/working/right-to-control.php

HB entitlement and earnings from permitted work

The DWP has confirmed the government’s intention to introduce a new permitted work earnings disregard in housing benefit (HB) and council tax benefit (CTB).

Whilst those undertaking permitted work whilst claiming contribution-based employment and support allowance (ESA), incapacity benefit or severe disablement allowance can currently earn up to £92 a week without it affecting any of those benefits, the person’s HB/CTB is reduced in respect of earnings above £20.

However, acknowledging that the current rules act as a disincentive to claimants trying work out, the DWP advises that –

‘... a new permitted work earnings disregard of up to £92.00 a week will be introduced in HB/CTB for customers who are claiming contributory ESA, incapacity benefit or severe disablement allowance. This will align with HB/CTB permitted work policy for those getting income-related ESA.’

The government is currently planning to introduce the change from April 2010, the DWP says.