New work capability assessment introduced from March 2011

New regulations have been issued that provide for the introduction of a new work capability assessment.

In force from 28 March 2011, the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011 (SI.No.228/2011) substitute the descriptors and criteria applied to determine capability for work, and for work-related activity, as well as amending provisions which allow a person to be treated as having limited capability for work, or for work-related activity, without an assessment in certain circumstances.

Welcoming the publication of the new regulations, Work and Pensions Minister Chris Grayling said –

"Improving the work capability assessment is central to our commitment to help thousands of people start the journey back to work. It’s in everyone’s interest that we get the assessment right and that it’s seen as a positive first step towards work. Those who are found fit for work will get the help and support they need to get a job. Those found too sick or disabled to work won’t be expected to and will continue to receive the help and support they need to lead fulfilling lives."

Amongst the changes to the descriptors – that the DWP expects to result in a small increase in the number

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Government outlines biggest change to the welfare system for more than 60 years

On 17 February 2011, the government published the Welfare Reform Bill 2011 that, amongst other measures, provides for the introduction of a ‘Universal Credit’ from 2013.

The Bill follows the publication of the November 2010 White Paper ‘Universal Credit: welfare that works’ that set out the government’s proposals for welfare reform, which aim to improve work incentives, simplify the benefits system and make it less costly to administer. Whilst not all the measures in the White Paper will require primary legislation, the Bill gives effect to those proposals that do.

Welcoming the publication of the Bill, that the government says provides for the biggest change to the welfare system for more than 60 years, Secretary of State for Work and Pensions Iain Duncan Smith said that ‘the universal credit will make sure that the poorest in society will be better off’, but that, with the introduction of the Work Programme this summer, ‘a life on benefits will no longer be an option’.

NB – the Secretary of State did however confirm that the government’s plan to reduce housing benefit for the long-term unemployed is not being taken forward.

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New rules restrict eligibility for maternity grants

New regulations have been issued that restrict eligibility to the sure start maternity grant.

In force from 24 January 2011, the Social Fund Maternity Grant Amendment Regulations 2011 (SI.No.100/2011) restrict payment of the grant to families where their new baby, or babies if it is a multiple birth, will be the only child under 16 in their household.

The regulations will apply to babies born, expected, or the subject of an adoption or other analogous arrangement, on or after 11 April 2011.

NB – new DWP guidance on the change – DMG Memo 02/11 – is available @ www.dwp.gov.uk/docs/m-02-11.pdf
Government consults on ‘radical re-shaping’ of child maintenance

The government has launched a consultation on its proposals for a ‘radical re-shaping’ of the statutory child maintenance system. Proposals included in a Green Paper, ‘Strengthening families, promoting parental responsibility: the future of child maintenance’, include –

- changing the structure of applying for child maintenance to encourage and support choice through a mandatory gateway which will signpost to support and advice for parents to come to their own arrangements;
- further developing the ‘maintenance direct’ service that encourages the transfer of monies directly between parents and a calculation-only service to further support ‘robust and independent’ family-based arrangements;
- the introduction of charges to ensure that applicants consider their maintenance choices fully by paying a proportion of the cost of their application;
- the introduction of a charge to be paid by both the non-resident parent and the parent with care if they use the collection service; and
- imposing charges on non-resident parents where enforcement action is required against them to promote compliance with payment of maintenance.

The government says it will launch the scheme for new cases in 2012 and that the closing of existing CSA cases will be phased over two years.

NB – the deadline for responding to the consultation is 7 April 2011.

The DWP consultation on child support reform is available at www.dwp.gov.uk/consultations/2011

New work capability assessment introduced from March 2011

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of claimants going into the ESA support group, but also an increase in the number of claimants found capable of work, are –

- the replacement of the ‘walking’ descriptors with ‘mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used’;
- a significant revision of the ‘standing and sitting’ and ‘manual dexterity’ descriptors;
- the deletion of the ‘bending and kneeling’ descriptor;
- the replacement of the ‘speech’ descriptor, with ‘making self understood through speaking, writing, typing, or other means’;
- the replacement of the ‘hearing’ descriptor, with ‘understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used’;
- the replacement of the ‘vision’ descriptor with ‘navigation and maintaining safety, using a guide dog or other aid if normally used’;
- the replacement of the ‘continence’ descriptors with ‘absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used’;
- a ‘simplification’ of the ‘remaining conscious’ descriptor;
- the revision of the ‘learning’ descriptor;
- the amalgamation of the ‘memory and concentration’, ‘initiating and sustaining personal action’ and ‘execution of tasks’ descriptors, into a new descriptor, ‘initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks)’;
- the amalgamation of the ‘coping with social situations’, ‘propriety of behaviour’ and ‘dealing with other people’ descriptors into new ‘coping with social engagement and appropriateness of behaviour’ due to cognitive impairment or mental disorder descriptors;
- the deletion of ‘rising from sitting’, in the ‘rising from sitting and transferring to another seated position’ descriptor;
- the replacement of the ‘communication’ descriptor for the purposes of assessing limited capability for work related activity, with ‘making self understood through speaking, writing, typing, or other means normally used’ and ‘understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used’;
- the deletion of the ‘maintaining personal hygiene’ descriptor;
- new descriptors for the purposes of assessing limited capability for work related activity in relation to ‘awareness of hazard’, ‘coping with change’, ‘coping with social engagement, due to cognitive impairment or mental disorder’, and ‘appropriateness of behaviour with other people, due to cognitive impairment or mental disorder’.

In addition, the new regulations –

- add persons who are likely to receive chemotherapy treatment within 6 months after the date of the determination of capability for work, and those who meet the eating and drinking descriptors, to those who are to be treated as having limited capability for work;
- add persons likely to receive chemotherapy treatment within 6 months after the date of the determination of capability for work-related activity to those who are to be treated as having limited capability for work-related activity; and
- make clear that a person who attends residential rehabilitation for treating drug or alcohol addiction is regarded as receiving treatment within the terms of regulation 25 (that relates to hospital patients).

NB – the new regulations apply to all persons who claim ESA on or after the date the regulations come into force; those who claim before that date, and persons who have been notified under the migration process (from incapacity benefit, severe disablement allowance or income support on grounds of incapacity), who have their capability for work determined on or after that date; and to persons who are re-assessed on or after that date. However, where the person was sent a questionnaire (as to their capability for work or for work-related activity) based on the un-amended provisions before that date, the new regulations will not apply. Instead the determination and any examination in such cases will be based on the un-amended provisions, subject to a six month limit after which all assessments will be made under the amended provisions.
Welfare benefits to be taken out of scope of civil legal aid

The government has confirmed its plan to take welfare benefits and certain other areas of social welfare law outside of the scope of civil legal aid.

In a Green Paper, ‘Proposals for the Reform of Legal Aid in England and Wales’, the government has outlined proposals designed to deliver £350m of savings as a ‘substantial contribution’ to the Ministry of Justice’s target of a 23 per cent reduction in its budget.

However, whilst reducing spend is acknowledged as one of the main drivers for reform, the government says that it also believes that there is an overwhelming case for reform of the legal aid system, with its scope having been widened far beyond what was originally intended when the modern scheme was established in 1949 to include some issues that ‘should not require any legal expertise to resolve’.

As a result, the government proposes that certain areas should be taken out of the scope of legal aid including –

- welfare benefits;
- debt matters, where the client’s home is not at immediate risk;
- specified housing matters;
- employment;
- certain immigration cases; and
- consumer and general contract law.

In relation to welfare benefits, the government says –

‘We … consider that legal aid is not justified in these cases because the issues are not generally of sufficiently high importance to warrant funding, and the user-accessible nature of the tribunal will mean that appellants are able to represent themselves. In addition, they may also have access to help and advice from other sources in order to help them resolve their issues without recourse to publicly funded legal assistance. Having taken all these factors into account, we propose to exclude all welfare benefits issues from the scope of civil legal aid.’

NB – the government says that having considered the responses received to its recent consultation on the proposals, it will introduce primary legislation ‘as soon as parliamentary time allows’, with any changes to be implemented as early as 2012.

Overpayment recovery where claimant subject to debt relief order

The Court of Appeal has issued a judgment in relation to whether the Secretary of State has the right to recover overpayments of social security benefits and social fund loans from claimants who are subject to a debt relief order (DRO).

In a victory for the claimant in Secretary of State for Work & Pensions v Payne & Anor [2010] EWCA Civ 1431, the Court of Appeal, in dismissing the Secretary of State’s appeal, held that the provision in the 1986 Insolvency Act relating to DROs –

‘… prevents any listed creditor from exercising any remedy against the debtor; that includes the remedy of set-off or deduction at source’.

As a result of the judgment, the DWP has issued new guidance – U1/2011 – stating that recoveries from benefit for DWP debt, social fund debt and housing benefit debt (collected by local authorities) must cease with immediate effect where the debt is subject to a DRO, and that to do otherwise runs the risk of being found in contempt of court.

For more information on all these changes see –

www.rightsnet.org.uk
the welfare rights website for advice workers

DWP to replace most face to face interpreters with telephone service

The DWP is to reduce the number of face to face interpreters it uses, replacing them with a telephone service.

In an Equality Impact Assessment on the change, the DWP says that whilst there will be a number of situations where face to face interpreters will continue to be used – including fraud interviews or where a claimant is identified as being vulnerable, as needing a reasonable adjustment, or who would be disadvantaged by not providing a face to face interpreter –

‘Telephone interpreting is the most cost-effective option in the great majority of circumstances. Interpreters are available on the phone within 60 seconds for 90% of our transactions and do not have to be pre-booked.’

However, the DWP says, in consideration of the race equality impact of the change, that it –

‘… will not reduce the overall service to these customers…’

- and should not result in a negative or disproportionate impact on any group or individual.

As a result, the DWP says that whilst it has set up a ‘customer reference group’ to help gather views –

‘…it has not been necessary to undertake additional consultation with customer representative groups with regard to the changes’.

NB – the DWP also advises that where face to face interpreting is needed, the Department’s contracted suppliers must be used in the future unless cost-free community interpreters are normally used and available, and that there will therefore no longer be the option to use community based services that require a fee.
Government outlines biggest change to the welfare system for more than 60 years

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Amongst the reforms set out in the Bill are –

- the introduction of a new benefit, to be known as **universal credit**, which will replace income support, income based JSA, income-related ESA, working tax credit, child tax credit, housing benefit and council tax benefit;
- changes to the responsibilities of claimants of income support, JSA and ESA in the period leading up to the introduction of universal credit, with particular provision made for the introduction of a ‘claimant commitment’ that will be a record of the requirements claimants are expected to meet in order to receive benefit and the consequences should they fail to do so;
- the introduction of increased **lone parent conditionality**, removing entitlement to income support for those whose youngest child is aged at least 5;
- limiting awards of **contributory ESA** to a maximum period of 365 days for those in the work related activity group, and the abolition of the youth condition in contributory ESA;
- the introduction of **entitlement to work** as a condition of entitlement for contribution-based JSA, contributory ESA, maternity allowance and all statutory payments;
- provision for a new benefit, ‘**personal independence payment**’, to be paid at two rates in place of the existing disability living allowance, with entitlement based on the ability of an individual to perform specified activities;
- provision for the **capping of the total amount of welfare benefits** a claimant or a couple receives by reference to the average earnings of working households in Great Britain;
- **housing benefit** reforms, including provision for appropriate maximum housing benefit to be calculated other than by reference to rent officer determinations in order that, for example, the Secretary of State can periodically consider re-setting LHA rates without reference to rent officer determinations (providing for LHA rate increases to be linked to the CPI), and a size criteria can be introduced for working age claimants receiving housing benefit in the social rented sector;
- the abolition of **community care grants and crisis loans** (other than ‘alignment loans’ currently available to applicants pending payment of benefit), to be replaced by ‘locally-administered assistance’, the replacement of budgeting loans and alignment loans with payments on account, and the abolition of the Social Fund Commissioner and the Independent Review Service;
- measures to resolve more disputes with claimants through the **internal reconsideration** process before an appeal to the tribunal is made, by enabling the Secretary of State to make regulations setting out the cases or circumstances in which an appeal can be made only when the Secretary of State has considered whether to revise the decision;
- **amendment of the Limitation Act**, that imposes a **time limit of six years** on any ‘action’ to recover a sum recoverable, to make clear that references in that Act to ‘action’ do not include recovery under social security and tax credits legislation by means other than proceedings in a court of law;
- the introduction of a **civil penalty** where claimants fail to disclose information that would affect benefit entitlement or the amount of benefit payable, fail without reasonable excuse, to report changes of circumstances or negligently provide incorrect information;
- the extension, from 4 to 13 weeks, of the **loss of benefit sanction** for claimants who are convicted of a first benefit offence, the introduction of a 26 week sanction for those convicted of a second benefit offence, and a three year sanction for claimants convicted of a benefit offence preceded by two previous offences;
- the introduction of a new minimum **administrative penalty** of £350 for benefit fraud or 50% of the amount overpaid whichever is greater up to a maximum of £2,000;
- measures relating to the creation of a **Single Fraud Investigation Service** to assume sole responsibility for the investigation of all suspected benefit fraud, combining relevant resources across local authorities, HMRC and the DWP;
- **date sharing** measures, for example to allow local authority housing benefit teams to use information from local authority social services teams to confirm whether a person requires an overnight carer, in relation to organisations delivering skills, employment and training services to Jobcentre Plus customers, and in relation to the operation of the Tell Us Once service; and
- changes to **industrial injuries benefits**, including paying under 18s at the normal IIBD scheme rate, the abolition of the right to request an accident declaration, and the repeal of legislation that maintains separate schemes for pre-1948 industrial injuries.

The Welfare Reform Bill 2011 is available from www.parliament.uk