Welfare Reform Act 2009

2009 CHAPTER 24

PART 1

SOCIAL SECURITY

Revised system of working-age benefits

2 Work-related activity: income support claimants and partners of claimants

(1) The Social Security Administration Act 1992 (c. 5) is amended as follows.

(2) After section 2C insert—

"**2D Work-related activity**

(1) Regulations may make provision for or in connection with imposing on a person who—

(a) is entitled to income support, and

(b) is not a lone parent of a child under the age of 3,

a requirement to undertake work-related activity in accordance with regulations as a condition of continuing to be entitled to the full amount of income support payable apart from the regulations.

(2) Regulations may make provision for or in connection with imposing on a person ("P") who—

(a) is under pensionable age, and

(b) is a member of a couple the other member of which ("C") is entitled to a benefit to which subsection (3) applies at a higher rate referable to P,

a requirement to undertake work-related activity in accordance with regulations as a condition of the benefit continuing to be payable to C at that rate.

(3) The benefits to which this subsection applies are—

(a) income support;

(b) an income-based jobseeker's allowance other than a joint-claim jobseeker's allowance; and

(c) an income-related employment and support allowance.

(4) Regulations under this section may, in particular, make provision—

(a) prescribing circumstances in which a person is to be subject to any requirement imposed by the regulations (a "relevant requirement");

(b) for notifying a person of a relevant requirement;

(c) prescribing the time or times at which a person who is subject to a relevant requirement is required to undertake work-related activity and the amount of work-related activity the person is required at any time to undertake;

(d) prescribing circumstances in which a person who is subject to a relevant requirement is, or is not, to be regarded as undertaking work-related activity;

(e) in a case where C is a member of more than one couple, for determining which of the members of the couples is to be subject to a relevant requirement or requiring each of them to be subject to a relevant requirement;

(f) for securing that the appropriate consequence follows if —

(i) a person who is subject to a relevant requirement has failed to comply with the requirement, and

(ii) it is not shown, within a prescribed period, that the person had good cause for that failure;

(g) prescribing the evidence which a person who is subject to a relevant requirement needs to provide in order to show compliance with the requirement;

(h) prescribing matters which are, or are not, to be taken into account in determining whether a person had good cause for any failure to comply with a relevant requirement;

(i) prescribing circumstances in which a person is, or is not, to be regarded as having good cause for any such failure.

(5) For the purposes of subsection (4)(f) the appropriate consequence is that the amount of the benefit payable is to be reduced by the prescribed amount until the prescribed time.

(6) Regulations under subsection (5) may, in relation to any such reduction, provide—

(a) for the amount of the reduction to be calculated in the first instance by reference to such amount as may be prescribed;

(b) for the amount as so calculated to be restricted, in prescribed circumstances, to the prescribed extent.

(7) Regulations under this section may include provision that in such circumstances as the regulations may provide a person's obligation under the regulations to undertake work-related activity at a particular time is not to apply, or is to be treated as not having applied.

(8) Regulations under this section must include provision for securing that lone parents are entitled (subject to meeting any prescribed conditions) to restrict the times at which they are required to undertake work-related activity.

(9) For the purposes of this section and sections 2E and 2F—

(a) "couple" has the meaning given by section 137(1) of the Contributions and Benefits Act;

(b) "lone parent" means a person who—

(i) is not a member of a couple, and

(ii) is responsible for, and a member of the same household as, a child;

(c) "prescribed" means specified in, or determined in accordance with, regulations;

(d) "work-related activity", in relation to a person, means activity which makes it more likely that the person will obtain or remain in work or be able to do so;

(e) any reference to a person attaining pensionable age is, in the case of a man born before 6 April 1955, a reference to the time when a woman born on the same day as the man would attain pensionable age;

(f) any reference to a benefit payable to C at a higher rate referable to P is a reference to any case where the amount payable is more than it would be if C and P were not members of the same couple.

(10) For the purposes of this section regulations may make provision—

(a) as to circumstances in which one person is to be treated as responsible or not responsible for another;

(b) as to circumstances in which persons are to be treated as being or not being members of the same household.

(11) Information supplied in pursuance of regulations under this section is to be taken for all purposes to be information relating to social security.

2E Action plans in connection with work-focused interviews

(1) The Secretary of State must in prescribed circumstances provide a document (referred to in this section as an "action plan") prepared for such purposes as may be prescribed to a person who is subject to a requirement imposed under section 2A or 2AA in relation to any of the following benefits.

(2) The benefits are—

(a) income support;

(b) an income-based jobseeker's allowance other than a joint-claim jobseeker's allowance; and

(c) an income-related employment and support allowance.

(3) Regulations may make provision about—

(a) the form of action plans;

(b) the content of action plans;

(c) the review and updating of action plans.

(4) Regulations under this section may, in particular, make provision for action plans which are provided to a person who is subject under section 2D to a requirement to undertake work-related activity to contain particulars of activity which, if undertaken, would enable the requirement to be met.

(5) Regulations may make provision for reconsideration of an action plan at the request of the person to whom it is provided and may, in particular, make provision about—

(a) the circumstances in which reconsideration may be requested;

(b) the period within which any reconsideration must take place;

(c) the matters to which regard must be had when deciding on reconsideration whether the plan should be changed;

(d) notification of the decision on reconsideration;

(e) the giving of directions for the purpose of giving effect to the decision on reconsideration.

(6) In preparing any action plan, the Secretary of State must have regard (so far as practicable) to its impact on the well-being of any person under the age of 16 who may be affected by it.

2F Directions about work-related activity

(1) In prescribed circumstances, the Secretary of State may by direction given to a person subject to a requirement imposed under section 2D provide that the activity specified in the direction is—

(a) to be the only activity which, in the person's case, is to be regarded as being work-related activity; or

(b) to be regarded, in the person's case, as not being work-related activity.

(2) But a direction under subsection (1) may not specify medical or surgical treatment as the only activity which, in any person's case, is to be regarded as being work-related activity.

(3) A direction under subsection (1) given to any person—

(a) must be reasonable, having regard to the person's circumstances;

(b) must be given to the person by being included in an action plan provided to the person under section 2E; and

(c) may be varied or revoked by a subsequent direction under subsection (1).

(4) Where a direction under subsection (1) varies or revokes a previous direction, it may provide for the variation or revocation to have effect from a time before the giving of the direction.

2G Contracting-out

(1) The following functions of the Secretary of State may be exercised by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose, namely—

(a) conducting interviews under section 2A or 2AA;

(b) providing documents under section 2E;

(c) giving, varying or revoking directions under section 2F.

(2) Regulations may provide for any of the following functions of the Secretary of State to be exercisable by, or by employees of, such person (if any) as the Secretary of State may authorise for the purpose—

(a) any function under regulations under any of sections 2A to 2F, except the making of an excluded decision (see subsection (3));

(b) the function under section 9(1) of the 1998 Act (revision of decisions) so far as relating to decisions (other than excluded decisions) that relate to any matter arising under regulations under any of sections 2A to 2F;

(c) the function under section 10(1) of the 1998 Act (superseding of decisions) so far as relating to decisions (other than excluded decisions) of the Secretary of State that relate to any matter arising under regulations under any of sections 2A to 2F;

(d) any function under Chapter 2 of Part 1 of the 1998 Act (social security decisions), except section 25(2) and (3) (decisions involving issues arising on appeal in other cases), which relates to the exercise of any of the functions within paragraphs (a) to (c).

(3) Each of the following is an "excluded decision" for the purposes of subsection (2)—

(a) a decision about whether a person has failed to comply with a requirement imposed by regulations under section 2A, 2AA or 2D;

(b) a decision about whether a person had good cause for failure to comply with such a requirement;

(c) a decision about the reduction of a benefit in consequence of a failure to comply with such a requirement.

(4) Regulations under subsection (2) may provide that a function to which that subsection applies may be exercised—

(a) either wholly or to such extent as the regulations may provide,

(b) either generally or in such cases as the regulations may provide, and

(c) either unconditionally or subject to the fulfilment of such conditions as the regulations may provide.

(5) An authorisation given by virtue of any provision made by or under this section may authorise the exercise of the function concerned—

(a) either wholly or to such extent as may be specified in the authorisation,

(b) either generally or in such cases as may be so specified, and

(c) either unconditionally or subject to the fulfilment of such conditions as may be so specified;

but, in the case of an authorisation given by virtue of regulations under subsection (2), this subsection is subject to the regulations.

(6) An authorisation given by virtue of any provision made by or under this section—

(a) may specify its duration,

(b) may be revoked at any time by the Secretary of State, and

(c) does not prevent the Secretary of State or any other person from exercising the function to which the authorisation relates.

(7) Anything done or omitted to be done by or in relation to an authorised person (or an employee of that person) in, or in connection with, the exercise or purported exercise of the function concerned is to be treated for all purposes as done or omitted to be done by or in relation to the Secretary of State.

(8) But subsection (7) does not apply—

(a) for the purposes of so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function, or

(b) for the purposes of any criminal proceedings brought in respect of anything done by the authorised person (or an employee of that person).

(9) Any decision which an authorised person makes in exercise of the function concerned has effect as a decision of the Secretary of State under section 8 of the 1998 Act.

(10) Where—

(a) the authorisation of an authorised person is revoked at any time, and

(b) at the time of the revocation so much of any contract made between the authorised person and the Secretary of State as relates to the exercise of the function is subsisting,

the authorised person is entitled to treat the contract as repudiated by the Secretary of State (and not as frustrated by reason of the revocation).

(11) In this section—

(a) "the 1998 Act" means the Social Security Act 1998;

(b) "authorised person" means a person authorised to exercise any function by virtue of any provision made by or under this section;

(c) references to functions of the Secretary of State under any enactment (including one comprised in regulations) include functions which the Secretary of State has by virtue of the application of section 8(1)(c) of the 1998 Act in relation to the enactment.

2H Good cause for failure to comply with regulations

(1) This section applies to any regulations made under section 2A, 2AA or 2D that prescribe matters to be taken into account in determining whether a person has good cause for any failure to comply with the regulations.

(2) The provision made by the regulations prescribing those matters must include provision relating to—

(a) the person's physical or mental health or condition;

(b) the availability of childcare."

(3) In the italic heading before section 2A, insert "*and work-related activity*".

(4) In section 189(7A) (regulations which may make provision only in relation to specified areas), for "2C" substitute "2F".

(5) In section 72(3) of the Welfare Reform and Pensions Act 1999 (c. 30) (supply of information for certain purposes), for paragraphs (a) and (aa) substitute—

"(a) any of sections 2A to 2F and 7A of the Administration Act,".

3 Lone parents

(1) In section 124 of the Social Security Contributions and Benefits Act 1992 (c. 4) (conditions for income support), after subsection (1) insert—

"(1A) Regulations under paragraph (e) of subsection (1) must secure that a person who—

(a) is not a member of a couple, and

(b) is responsible for, and a member of the same household as, a child under the age of 7,

falls within a category of person prescribed under that paragraph.

(1B) Subsection (1A) does not apply if regulations under subsection (4)(c) of section 1A of the Jobseekers Act 1995 containing the provision mentioned in subsection (5) of that section are in force."

(2) In section 2A of the Social Security Administration Act 1992 (c. 5) (work-focused interviews)—

(a) after subsection (2) insert—

"(2A) No requirement may be imposed by virtue of this section on a person who—

(a) is not a member of a couple, and

(b) is responsible for, and a member of the same household as, a child under the age of one.

(2B) For the purposes of subsection (2A)(b) regulations may make provision—

(a) as to circumstances in which one person is to be treated as responsible or not responsible for another;

(b) as to circumstances in which persons are to be treated as being or not being members of the same household.", and"

(b) in subsection (8), after "In this section—" insert—

""couple" has the meaning given by section 137(1) of the Contributions and Benefits Act;".

(3) In section 12 of the Welfare Reform Act 2007 (c. 5) (employment and support allowance: work-focused interviews), in subsection (1)(b), at the end insert "or a lone parent of a child under the age of one".

(4) In section 13 of that Act (employment and support allowance: work-related activity)—

(a) in subsection (1), after "section 12(1)" insert ", and who is not a lone parent of a child under the age of 3,", and

(b) after subsection (6) insert—

"(6A) Regulations under this section shall include provision for securing that lone parents are entitled (subject to meeting any prescribed

conditions) to restrict the times at which they are required to undertake work-related activity."

(5) In section 24 of that Act (interpretation of Part 1), after subsection (3) insert—

"(3A) For the purposes of this Part, a person is a lone parent if the person—

(a) is not a member of a couple (within the meaning given by section 137(1) of the Contributions and Benefits Act), and

(b) is responsible for, and a member of the same household as, a person under the age of 16.

(3B) For the purposes of subsection (3A)(b) regulations may make provision—

(a) as to circumstances in which one person is to be treated as responsible or not responsible for another;

(b) as to circumstances in which persons are to be treated as being or not being members of the same household."

4 Entitlement to jobseeker's allowance without seeking employment etc.

(1) The Jobseekers Act 1995 (c. 18) is amended as follows.

(2) In section 1 (the jobseeker's allowance)—

(a) for subsections (2) to (2D) substitute—

"(1A) The circumstances in which a claimant is entitled to a jobseeker's allowance are set out in—

(a) section 1A (jobseeker's allowance other than joint-claim jobseeker's allowance), and

(b) section 1B (joint-claim jobseeker's allowance).", and

(b) in subsection (4), for the definition of "a joint-claim couple" substitute—

""a joint-claim couple" means a couple other than a couple of a prescribed description;".

(3) After section 1 insert—

"**1A Jobseeker's allowance other than joint-claim jobseeker's allowance**

(1) A claimant is entitled to a jobseeker's allowance if the claimant meets—

(a) the basic conditions; and

(b) the conditions set out in section 2 (the contribution-based conditions).

(2) A claimant who—

(a) is not a member of a joint-claim couple, or

(b) is a member of a joint-claim couple the other member of which has limited capability for work,

is entitled to a jobseeker's allowance if the claimant meets condition A or B.

(3) Condition A is that the claimant meets—

(a) the basic conditions; and

(b) the applicable conditions set out in section 3 (the income-based conditions).

(4) Condition B is that the claimant—

(a) is not otherwise entitled to a jobseeker's allowance;
(b) meets the basic conditions other than the jobseeking conditions;
(c) falls within a prescribed description of person; and
(d) meets the applicable conditions set out in section 3.

(5) Regulations under paragraph (c) of subsection (4) must secure that a person who—
(a) is not a member of a couple, and
(b) is responsible for, and a member of the same household as, a child under the age of 7,
falls within a description of person prescribed under that paragraph.

(6) Subsection (5) does not apply if regulations under subsection (1)(e) of section 124 of the Benefits Act containing the provision mentioned in subsection (1A) of that section are in force.

(7) For the purposes of this Act a person meets the basic conditions if the person—
(a) is available for employment;
(b) has entered into a jobseeker's agreement which remains in force;
(c) is actively seeking employment;
(d) is not engaged in remunerative work;
(e) does not have limited capability for work;
(f) is not receiving relevant education;
(g) is under pensionable age; and
(h) is in Great Britain.

(8) Regulations may prescribe circumstances in which subsection (2) is to apply to a claimant who is a member of a joint-claim couple the other member of which does not have limited capability for work.

(9) Subsections (1) and (2) are subject to the provisions of this Act.

1B Joint-claim jobseeker's allowance

(1) A joint-claim couple are entitled to a jobseeker's allowance if—
(a) a claim for the allowance is made jointly by the couple;
(b) each member of the couple meets the basic conditions; and
(c) the conditions set out in section 3A are met in relation to the couple.

(2) Regulations may, in respect of cases where a person would (but for the regulations) be a member of two or more joint-claim couples, make provision for only one of those couples to be a joint-claim couple.

(3) The regulations may, in particular, make provision for the couple which is to be the joint-claim couple to be nominated—
(a) by the persons who are members of the couple; or
(b) in default of one of the couples being so nominated, by the Secretary of State.

(4) Subsection (1) is subject to the provisions of this Act."

(4) Schedule 1 contains—

(a) amendments of the Jobseekers Act 1995 (c. 18) to provide for work-focused interviews, and action plans in consequence of work-focused interviews, for persons entitled to a jobseeker's allowance without being required to meet the jobseeking conditions,

(b) amendments of that Act to provide for the imposition on such persons of requirements to undertake work-related activity, and

(c) other amendments in consequence of, or otherwise in connection with, the amendments made by this section or the amendments mentioned in paragraphs (a) and (b).

5 Couples where at least one member capable of work

(1) In section 124 of the Social Security Contributions and Benefits Act 1992 (c. 4) (conditions for income support)—

(a) in subsection (1), after paragraph (g) (but before the "and" at the end of it) insert—

"(ga) except in such circumstances as may be prescribed, if he is a member of a couple, the other member of the couple has limited capability for work;",

(b) after subsection (6) insert—

"(6A) The question whether a person has, or does not have, limited capability for work shall be determined for the purposes of this section in accordance with the provisions of Part 1 of the Welfare Reform Act 2007 (employment and support allowance).

(6B) References in that Part to the purposes of that Part shall be construed, where the provisions of that Part have effect for the purposes of this section, as references to the purposes of this section.", and

(c) in subsection (7), for "Part 1 of the Welfare Reform Act 2007 (employment and support allowance)" substitute "that Part".

(2) In paragraph 6 of Schedule 1 to the Welfare Reform Act 2007 (c. 5) (conditions for income-related employment and support allowance)—

(a) in sub-paragraph (1), after paragraph (d) insert—

"(da) is not a member of a couple the other member of which does not have limited capability for work;", and"

(b) after sub-paragraph (2) insert—

"(2A) Regulations may prescribe circumstances in which sub-paragraph (1)(da) does not apply."

6 Statutory sick pay and employment and support allowance

In section 20 of the Welfare Reform Act 2007 (relationship of employment and support allowance with statutory sick pay and other statutory payments), for subsection (1) substitute—

"(1) A person—

(a) is not entitled to a contributory allowance in respect of a day, and

(b) except as regulations may provide, is not entitled to an income-related allowance in respect of a day,

if, for the purposes of statutory sick pay, that day is a day of incapacity for work in relation to a contract of service and falls within a period of entitlement (whether or not it is a qualifying day)."

7 Transitional provision relating to sections 4 to 6

(1) The Secretary of State may by regulations make such provision as the Secretary of State considers necessary or expedient for the purposes of, or in connection with, the transition of persons to—

(a) income-based jobseeker's allowance, or

(b) income-related employment and support allowance,

by virtue of any provision of sections 4 to 6.

(2) Regulations under this section may, in particular, make provision—

(a) for the termination or cancellation of awards of income support or income-related employment and support allowance;

(b) for a person whose award of income support or income-related employment and support allowance has been terminated or cancelled under regulations made by virtue of paragraph (a) to be treated as having been awarded a transitional allowance;

(c) for any such award of a transitional allowance to be—

(i) of such a kind,

(ii) for such period,

(iii) of such an amount, and

(iv) subject to such conditions,

as may be determined in accordance with the regulations;

(d) for a person's continuing entitlement to a transitional allowance to be determined by reference to such provision as may be made by the regulations;

(e) for the termination of an award of a transitional allowance;

(f) for the review of an award of a transitional allowance;

(g) that—

(i) days which were days of entitlement to income support or income-related employment and support allowance, and

(ii) such other days as may be specified in or determined in accordance with the regulations,

are to be treated as having been days during which a person was, or would have been, entitled to an income-based jobseeker's allowance or income-related employment and support allowance.

(3) Subsections (3) to (5) of section 175 of the Social Security Contributions and Benefits Act 1992 (c. 4) (supplementary provisions in relation to powers to make subordinate legislation under that Act) apply in relation to the power to make regulations under this section as they apply to any power to make regulations under that Act.

(4) The power to make regulations under this section is exercisable by statutory instrument.

(5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) In this section—

"income-based jobseeker's allowance" has the same meaning as in the Jobseekers Act 1995 (c. 18);

"income-related employment and support allowance" means an income-related allowance under Part 1 of the Welfare Reform Act 2007 (c. 5) (employment and support allowance);

"transitional allowance" means an income-based jobseeker's allowance or income-related employment and support allowance.

8 Parliamentary procedure: regulations imposing work-related activity requirements on lone parents of children under 7

(1) This section applies to regulations made under any relevant provision which impose a requirement on any lone parent of a child under the age of 7 to undertake work-related activity (within the meaning of the regulations).

(2) In subsection (1) "relevant provision" means—

(a) section 2D(1) of the Social Security Administration Act 1992 (c. 5),

(b) section 18B of the Jobseekers Act 1995 (c. 18), or

(c) section 13 of the Welfare Reform Act 2007 (c. 5).

(3) A statutory instrument containing regulations to which this section applies (whether alone or with other provision) may not be made at any time during the period of 5 years beginning with the day on which this Act is passed unless a draft of the statutory instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4) If subsection (3) applies to any regulations, any provision of an Act under which a statutory instrument containing the regulations would be subject to annulment in pursuance of a resolution of either House of Parliament does not apply.