

# WELFARE REFORM AND PENSIONS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY

#### *Commentary*

Section 57 inserts new sections 2A and 2B after section 2 of the Administration Act. All references in the commentary below are to these new sections.

*New section 2A* enables regulations to provide that a claim to benefit will only be considered made once the claimant takes part in a work-focused interview. Where benefit is already being paid, the payment can either be stopped, or the amount payable restricted, for failure to take part in an interview.

While the section allows for the detail of these requirements to be provided for in secondary legislation, the main ways in which it is expected to use these powers are laid out in *subsections (3) to (7)*. The reason for this approach is that there needs to be flexibility to adjust the various detailed aspects of the scheme in the light of experience gained during the operation of the pilot exercises.

Paragraph 83 of Schedule 12 makes the first set of regulations made under new section 2A subject to affirmative resolution (requiring positive approval in draft by both Houses of Parliament).

#### *The power itself*

New claims to benefit will be made through the ONE service. As part of the claim process, claimants will be required to take part in an interview with their personal adviser to discuss the barriers they face in moving closer to the labour market, and the help and support that is available to overcome those barriers.

Where it is considered inappropriate for someone to discuss work-related issues at that time, given the particular circumstances that they face (for example, the point of claim would not be an appropriate time to discuss work-related issues with a grieving widow), the interview could be deferred until a later date, using the power in *subsection (6)(c)*.

*Subsection (1)(a)* provides regulation-making powers to require claimants of the benefits listed in *subsection (2)* to take part in a work-focused interview as part of the process of claiming those benefits. The requirement cannot apply to claimants aged 60 and over.

*Subsection (1)(b)* provides for regulations to be made that will enable interviews to take place where one or more of the benefits listed in *subsection (2)* is already in payment.

In some cases, claimants will be required to take part in interviews *after* benefit has been put into payment. This would happen on the occurrence of a specified event (a “*trigger point*”) which could potentially affect someone’s employability. These trigger points will be set out in regulations. They are likely to include: when the youngest child of a lone parent or widow reaches school age, or when the results from a Personal Capacity Assessment (see commentary on section 61) become available. Also, interviews may be

triggered where claimants have not had a work-focused interview for a specified period of time.

The subsection allows for the trigger points to be specified. Claimants who do not take part in these interviews when required to do so will have the amount of benefit in payment reduced (see *subsections (4) and (5)*).

*Subsection (2)* lists the benefits to which the requirements in subsection (1) will apply.

In particular, *subsection (2)(d)* ensures that this provision will apply to the new benefits for widows and widowers introduced by section 55 of this Act. However, the Bereavement Payment (the new lump sum payment that replaces the Widow's Payment) is excluded from the provisions of this section. Although JSA claimants will enter the ONE service, the benefit is not included in this subsection: powers already exist in the Jobseekers Act 1995 enabling regulations to require claimants to attend at specified offices. Such claimants are therefore already required to fulfil the requirements of a work-focused regime.

### ***How the power would be used***

*Subsections (3) to (7)* identify the main ways in which the regulation-making powers provided under subsection (1) might be used, in order to deliver the intention that claimants should take part in work-focused interviews in connection with their benefit claims.

Where a person is claiming or receiving a number of benefits at the same time (for example Income Support, Housing Benefit and Council Tax Benefit), it is not intended to ask them to take part in separate work-focused interviews for each benefit. *Subsection (3)(a)* allows regulations to achieve this.

*Subsection (3)(b)* enables the Secretary of State to prescribe who will conduct the interviews.

Those prescribed are likely to be representatives of the Secretary of State, local authority employees or persons providing services to either.

The ONE service aims to give claimants a more streamlined, integrated service, by offering a single point of contact for all of their benefit requirements. It will not matter who administers the benefits they claim: the Benefits Agency, the Employment Service or local authorities. This means that a work-focused interview may be conducted by a person acting on behalf of the Secretary of State (most commonly an employee of the Benefits Agency or the Employment Service), by a local authority employee, or by a private/voluntary sector organisation contracted to provide services. Younger claimants will be required to have a meeting with the Careers Service.

Regulations under *subsection (3)(c)* will give those who conduct the interviews the power to determine where and when an interview will take place. This mirrors the provisions in section 8 of the Jobseekers Act.

It is intended that the interview will usually be conducted at a range of easily accessible Benefits Agency, Employment Service or local authority premises. However, where claimants cannot reasonably be expected to visit an office, a home visit may be arranged.

*Subsection (3)(d)* explains that regulations can set out the circumstances in which a person is to be treated as taking part in or not taking part in the interview.

Since the regulations under this section will impose a general requirement on claimants to take part in a work-focused interview, both the claimants and the personal advisers who conduct the interviews need to be clear about the criteria to be used in judging whether a person has actually taken part.

It is intended that the test of whether claimants have taken part will be:

whether they attend at the time and place specified; and

whether they provide information in areas relevant to their employment prospects, such as their level of educational qualifications, their previous work history, and any barriers to work they may face.

Where someone does not take part in an interview, this will affect their claim or the amount of benefit they receive (depending on when the failure to take part occurred), unless they can show 'good cause' for that failure.

*Good cause* is a familiar concept in social security and is used, for example, in deciding whether people's entitlement to JSA should stop where they have not kept an appointment with a representative of the Secretary of State (section 8(1)(d) of the Jobseekers Act).

*Subsection (3)(e)* enables regulations to provide that if a person is requested to take part in an interview but does not do so then, unless he can show good cause within the prescribed period, *subsection (4)* (which deals with the consequences of failure) will apply.

*Subsection (3)(f)* enables regulations to specify what constitutes good cause for not taking part in an interview.

Examples might be when someone had an accident on the day set for the interview or where their child fell ill or where they misunderstood the requirements placed upon them because of any language or literacy difficulties.

*Subsection (4)* deals with the consequences if a claimant does not take part in a work-focused interview when asked to do so.

*Subsection (4)(a)* deals with the *initial* work-focused interview that takes place at the point of claim or (where the interview is deferred) after benefit has been put into payment.

If a person does not take part in an interview at the point of claim, they will be regarded as not having completed the claims process. Any claim for benefit will therefore not proceed. Where there is a failure to take part in a deferred initial interview, that is, after benefit has been put into payment, the award will be terminated and benefit withdrawn.

*Subsection (4)(b)* deals with the circumstances where entitlement already exists and a further work-focused interview is triggered under *subsection (1)(b)*.

If a person does not take part in such an interview, regulations may provide for the amount of their benefit to be reduced. The reduction will apply until such time as the claimant fulfils the requirement to take part in the interview.

*Subsection (5)* links to *subsection (4)(b)*, in that it deals with how any reduction in the amount of benefit payable should be calculated and applied.

*Subsection (5)(a)* gives the power to specify how the amount of the reduction will normally be calculated.

*Subsection (5)(b)* enables the regulations to allow the normal deduction to be set at a lesser amount in prescribed circumstances.

This power will be used where the amount of the reduction would otherwise be greater than the amount of benefit. In addition, it is the intention to ensure that the claimant retains entitlement to a nominal amount of each benefit, to prevent the claim from lapsing and, where appropriate, to ensure that entitlement to any "passported" benefits (such as free NHS Prescriptions, free school meals) is retained.

*Subsection (5)(c)* allows regulations to specify that if the individual is claiming more than one benefit, the reduction may be applied to more than one of the benefits; but the total reduction must not exceed the amount calculated under *subsection (5)(a) or (b)*.

*These notes refer to the Welfare Reform and Pensions Act 1999 (c.30)  
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The regulations will also prioritise the benefits against which the reduction is to be applied. It is expected that Housing Benefit will be among the last benefits to which sanctions should be applied, given its specific role in covering essential housing costs. Since regulations will place an obligation only on those claiming benefits included in *subsection (2)*, no sanctions will be applied against any benefit not included within this subsection.

There will be certain people for whom a work-focused interview will not be appropriate. *Subsection (6)* enables regulations to prescribe the circumstances in which the requirement to take part in a work-focused interview is not to be applied.

It also ensures that the “designated authority” (i.e. a representative of the Secretary of State, a local authority employee or a person providing services to either) has the power to waive or defer the interview. There is no intention to set out in regulations the categories of people for whom this would be appropriate. Such decisions will be made on a case-by-case basis, depending on the circumstances of the individual claimant. Regulations will also set out that, where a person has their interview waived or deferred, they will be treated, for the purposes of their claim to benefit, as having met the requirement – until such time as it is appropriate for them to attend an interview.

*Subsection (6)(a)* enables regulations to specify circumstances in which the requirement to take part in a work-focused interview will be disapplied: either permanently or until a specified time.

It is intended that this power will be used to exempt groups of people who are claiming the benefits listed in *subsection (2)* but to whom the requirement should not apply. For example, Housing Benefit and Council Tax Benefit claimants who are already in full-time employment, or those claiming one of the specified benefits as well as JSA.

*Subsection (6)(b)* enables the “designated authority” to decide that the requirement to take part in a work-focused interview (either as part of a claim to benefit or where entitlement already exists) should be removed where it would not be of assistance to that person, or appropriate in their particular circumstances.

Regulations will not specify which groups should have the requirement waived although one example might be where a terminally ill person claimed benefit. Where an interview at the point of claim is either waived or deferred (see *subsection (6)(c)*), the claim will be treated as made, despite the fact that there has been no interview; where entitlement already exists, no change will be made to the amount of benefit in payment.

*Subsection (6)(c)* enables the “designated authority” to decide that the requirement to take part in a work-focused interview should be deferred if it is determined that an interview would not be of assistance, or appropriate, at that particular time.

Examples might include a person in the early stages of recovery from a major operation, or a lone parent who had just given birth.

*Subsection (7)* makes clear that, where the initial interview is deferred from the point of claim until a later date, regulations may provide that the interview is to take place after benefit has been put into payment.

*Subsection (8)* defines terms used throughout the section.

A “*work-focused interview*” is the interview that almost all claimants will be asked to take part in, either as part of the process of making a claim, or after the benefit has been put into payment. The purpose of such an interview is to assist or encourage claimants to improve their employment prospects over time, and to identify and take steps to overcome the barriers to work they face through training or specialist support; so that, where appropriate, they can move towards education or taking up employment (whether paid or unpaid). To this end, an interview may cover such areas as previous employment record, capacity to undertake work, the in-work financial support which is available and help in areas such as childcare, housing and training.

### ***Supplementary provisions***

*Section 2B* makes further provision as to how the power in section 2A will be used. It provides that any decision by a personal adviser that a claimant has, without good cause, failed to take part in an interview, may be revised or appealed against – whether the adviser is from the Benefits Agency, the Employment Service or a local authority. It also provides that any personal adviser may actually revise another’s decision.

*Subsection (1)* enables the decisions and appeals procedures in Chapter II of Part I of the Social Security Act 1998 to apply in relation to any “relevant decisions” taken by personal advisers.

*Subsection (2)* sets out what these “relevant decisions” are – namely, decisions that someone has failed, without good cause, to take part in an interview required under section 2A.

*Subsections (3) and (4)* provide that all “relevant decisions” by personal advisers should be treated as having been made by the Secretary of State – even if the personal adviser is not a civil servant. The powers in the Social Security Act to revise or supersede a decision will apply. *Subsection (5)* will enable all personal advisers to revise or supersede a previously-taken “relevant decision”.

*Subsection (6)* requires regulations to give a right of appeal, under section 12 of the Social Security Act, against any relevant decision.

This is intended to ensure that, in practice, all such decisions, whether made by a representative of the Secretary of State or otherwise, will be treated in the same way, with all appeals going to an independent appeals tribunal.

The subsection ensures that the right of appeal is against the personal adviser’s decision that the claimant had failed to take part in an interview, rather than the decision to stop or reduce benefit. It focuses on the one decision that causes a penalty to be imposed (which may potentially affect a number of benefits).

*Subsection (8)* extends the definition of “information relating to social security” to include information supplied as part of a work-focused interview (which might, for example, include such subjects as a person’s previous employment record and capacity to work). The intention is to ensure that information gathered about a client’s employability can be passed on to their personal adviser. The extended definition applies to:

section 3 of the Social Security Act 1998 (which allows information relating to social security, child support or war pensions to be exchanged and used for any of those purposes); and

section 72 of this Act, which provides a framework for the use or supply of the information that underpins a number of social security and employment-related activities, including the ONE service. See the commentary on section 72 for further details.

### ***Section 58***

#### ***: Optional work-focused interviews***

#### **Background**

This section gives regulation-making powers that will enable new functions to be conferred on local authorities enabling them to undertake a range of work-related activities with claimants. This will allow local authorities to support the introduction of the ONE service into the benefits system (see section 57 above).

Local authorities currently have statutory responsibility for administering Housing Benefit and Council Tax Benefit. Under existing legislation, local authority staff can undertake activities and collect information only where it is relevant to the

administration of those particular benefits. Various sections in this Act extend the functions of local authorities to allow them to play a full and active part in the ONE service process: for example, regulations under section 71 will enable local authorities to accept claims and collect information for other benefits. Regulations under section 72 will enable local authorities to use and disclose information about people's employability collected as part of the ONE process.

In addition, regulations under section 57 (which will come into effect in April 2000) will make it a condition of entitlement that claimants of certain benefits (including Housing Benefit and Council Tax Benefit) take part in work-focused interviews – both at the point of claim and at various points afterwards. Section 57 will also allow local authority staff to conduct these *compulsory* work-focused interviews.

However, all ONE service staff, including those working for local authorities, will also need to undertake *voluntary* work-related activities with claimants throughout the duration of the pilots.

The ONE service will be piloted in twelve areas, starting for those making new claims to benefit from the end of June 1999. For those making claims before the powers in section 57 come into force, taking part in this initiative, and having work-focused interviews with a personal adviser, will be voluntary on their part.

Once section 57 does come into effect, claimants will be required to take part in compulsory work-focused interviews in specified circumstances. However, the purpose of these compulsory interviews is to encourage claimants to take further action, including participation in additional, voluntary interviews to improve their job prospects.

Section 58 extends the statutory functions of local authorities to allow them to perform these functions. This will enable local authorities to play a full and active role in the operation of the ONE service, allowing them to provide appropriate support to those making claims to benefit both before and after the start of the compulsory phase in April 2000.

The Act also enables local authorities to be paid for this extra work (Schedule 12, paragraph 80). See the commentary after section 71 for details.

### ***Commentary***

Section 58 inserts a new section 2C after section 2B of the Administration Act (itself inserted by section 57). Section 2C enables regulations to be made to confer additional functions on local authorities in prescribed areas to allow them to undertake job-related activities, including work-focused interviews where claimants of certain benefits request or consent to such support.

*Subsection (1)* provides a power to make regulations to confer functions on local authorities in connection with conducting optional work-focused interviews. The main functions, in addition to the work-focused interview itself, are set out in subsection (3).

*Subsection (2)* will enable local authorities to provide such assistance to people making claims, or entitled to, prescribed benefits. The ONE service pilots are intended to apply primarily to those making claims to the benefits referred to in section 2A(2). The subsection will also enable local authority staff to provide extra, voluntary help to JSA claimants, and makes clear that the provisions can apply even where compulsory interviews under section 57 have taken place.

*Subsection (3)* specifies the main functions in connection with conducting work-focused interviews that will be conferred on local authorities under subsection (1). These will enable local authorities to ask for and receive information and evidence in connection with the interviews, including information about current and future employment or

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training needs. It will also enable local authorities to undertake jobsearch activity on the claimant's behalf.

*Subsection (4)* enables regulations under this section to make different provisions in different areas across the country. It is the intention that, initially, the regulations will confer these additional functions only on those local authorities supporting the twelve pilot areas.

***Sections 59-60  
: Jobseeker's Allowance***

***Section 59  
and  
Schedule 7  
: Joint claims for Jobseeker's Allowance***

This section introduces Schedule 7, which provides for certain couples to claim income-based Jobseeker's Allowance (JSA) jointly (rather than one person claiming it on behalf of the couple, as happens under the existing legislation).