

**EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INCAPACITY BENEFIT WORK-FOCUSED
INTERVIEWS) (AMENDMENTS) REGULATIONS 2009**

2009 No. 1541

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These draft Regulations amend the Incapacity Benefit Work-focused Interviews Regulations 2008 (“the IB WFI Regulations”) with the result that existing Incapacity Benefit (IB) customers aged 18 to 24, who have been claiming continuously for 12 months or more and live in a Jobcentre Plus Pathways to Work area will be required to attend 3 mandatory Work-focused Interviews (WFI).
 - 2.2 Additionally, since the Incapacity Benefit Work-focused Interviews Regulations 2008 were laid, it has been discovered that, for a small number of customers, they failed to achieve the policy intention of aligning the work-focused interview process for Incapacity Benefit (IB) and Employment and Support Allowance (ESA) customers.
 - 2.3 Consequently, these regulations provide that those customers who make a repeat claim for IB, and those existing IB customers covered by the 2002 regulations, will be subject to Pathways conditionality.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 A person may claim IB if he or she is within a category of person prescribed in the IB Regulations. Currently, only customers who make a new claim to Incapacity Benefit or Income Support on the grounds of incapacity (or ESA from October 2008) are included in the existing Pathways to Work regime. Existing “stock” customers who made their claim to IB before Pathways to Work was introduced have had no conditionality requirements (except for their Personal Capability Assessment) in order for them to continue to be eligible for IB.
 - 4.2 IB WFI Regulations require that customers captured by the Pathways to Work Regime receive a series of WFIs. The purpose of a WFI is to discuss the availability of assistance for customers in this group who

want to take up employment or training or prepare for employment in the future. A Jobcentre Plus Pathways to Work Adviser ensures that these customers are informed of the range of help available to them, including New Deal for Disabled People (NDDP).

- 4.3 In order to simplify the administration of the WFIs regime, the Incapacity Benefit Work-focused Interviews Regulations 2008 were introduced to align incapacity benefits work-focussed interview conditionality with Employment and Support Allowance work-focussed interview conditionality. However, they fail to make provision to apply Pathways to Work to customers making a repeat claim for Incapacity Benefit who were not previously subject to the Pathways to Work WFI requirements.
- 4.4 Additionally, the 2008 regulations fail to fulfil the intention to have simplified sanction rules for all IB customers subject to WFIs. Customers who were required to attend WFIs under the 2002 regulations were omitted. This resulted in two different sanction regimes for the same customer group; these regulations rectify this situation.

5. Territorial Extent and Application

- 5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure, and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Government is committed to improving the employability of those individuals currently disadvantaged in the labour market. It does this through a combination of measures that encourage more active labour market participation. Indeed, over the past decade the Government has pursued policies aimed at expanding employment opportunities to disadvantaged groups. The success of this approach is shown by the numbers on Incapacity Benefit continuing to fall – Incapacity Benefit numbers are down 47,000 to 2.60million in the year to May 2008.
- 7.2 Pathways to Work plays a major role in delivering the Government's Welfare Reform policy agenda and is central to helping the Government achieve its long-term aspirations of an 80% employment rate and the eradication of child poverty by 2020. It aims to improve the employment opportunities available to people with a health condition or disability who are claiming Employment and Support Allowance (ESA) or Incapacity Benefits. Externally commissioned research shows that Pathways to Work increases the chances of a customer being in employment after 18 months by around 25%.

- 7.3 Since announcing this initiative, the economic downturn has emphasised the importance of continuing to provide back to work support to people on benefits . There is no clear evidence yet that the economic downturn is leading to rising numbers on Incapacity Benefit but we will continue to monitor the situation closely. There is also no evidence yet of the downturn having an impact on disabled people's employment rates and off-flows, from Incapacity Benefit appear to remain stable. Despite difficult economic conditions ahead in the short term, the Government still expect to make significant progress towards meeting the goal of one million fewer on IB/ESA by 2015.
- 7.4 It will be more important in these circumstances to seek to ensure that disabled people and people with long-term health conditions get access to a wider range and higher percentage of the job opportunities that are available and are better enabled to stay in work.
- 7.5 The extension to Pathways Conditionality also forms part of the Government's commitment (announced in the recent White Paper "Raising Expectations and Increasing Support – reforming Welfare for the Future") to migrate all IB customers to ESA. Customers subject to these regulations will not need to attend the 3 WFIs again when this future IB to ESA migration takes place.

Consolidation

- 7.6 Informal consolidation will be included in due course in the Department's "the Law Relating to Social Security" (the Blue Volumes) which are available on the internet at:
http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf
at no cost to the public.

8. Consultation Outcome

- 8.1 The concept of requiring existing incapacity benefits customers to take part in work-focused interviews has been widely consulted on since the publication of the Green Paper "Pathways to Work: helping people into employment" in November 2002. The Government's response and action plan, published in June 2003, is available on the Internet at:
http://www.dsdni.gov.uk/pathways_to_work_govt_response_and_action_plan.pdf
at no cost to the public.
- 8.2 These proposals initially led to the establishment of the Pathways to Work pilots for new customers. However, the Government made a commitment in the Green Paper, which was confirmed in the Response and Action Plan, that it would consider if it was sensible and feasible to extend the pilots to existing customers.

- 8.3 Some respondents to the consultation exercise commented that it appeared perverse not to apply the full regime to existing customers, as those who are capable of some work are in more need of accessing the intensive support available to help them gain the social and financial benefits that having a job brings, and prevent them spending prolonged spells on benefit.
- 8.4 Following the early success of the initial pilots and because there was significant voluntary participation by existing customers, Pathways to Work requirements were extended to existing customers. In the original pilot areas, the regime was applied to those who had been on benefit for two years before the start of the Pathways to Work pilots in February 2005 and to those who had been on benefit for two to six years in April 2006.
- 8.5 A further consultation exercise was carried out in 2005 before the extension of the Pathways to Work regime to existing customers. Both internal and external stakeholders were invited to attend seminars and requested to submit any comments on the design of a WFI regime. A range of replies was received, with most of the 20 external respondents welcoming the principle of extending the mandatory help available. There was broad support for the main features of the proposed regime and agreement that, because they have been on IB for some time, many existing customers are likely to have more barriers to work and require greater support and reassurance than new clients. The following was frequently highlighted:
- A need for sensitivity in the way we communicate with customers to minimise unnecessary fear and concern, reduce non-attendance levels and maximise interest in ongoing voluntary participation. It was felt customers need positive messages about the help on offer, reassurance that the aim of the regime is to help them consider their employment options and that participation in work related activity is voluntary
 - As each customer will have their own individual needs and expectations, Personal Advisers (PAs) will need to adopt a flexible approach. It is important they have the skills, knowledge and confidence to deal with the additional barriers they may encounter and the ability to tailor support to meet each customer's specific requirements.
- 8.6 We accepted that these were important issues and, along with other issues raised by the stakeholders, they were taken into account in the design and implementation of our pilots. The principal difference from the work-focused interview regime introduced for new customers was an intensive phase of three mandatory work focused interviews (instead of six, as for new customers) after which the standard repeat work-focused interview regime that applies elsewhere in Jobcentre Plus was applied.

- 8.7 It is this regime of three interviews for existing customers which is to be applied to those aged 18 to 24 by these amending regulations.
- 8.8 Since the announcement of the Government's intention to extend the Pathways to Work interview regime to 18 to 24 year olds, the Department has consulted further on its welfare reform agenda. In response to the Green Paper consultation "No One Written Off: reforming welfare to reward responsibility", the majority of respondents welcomed our commitment to increasing employment and skills opportunities for out-of-work people, particularly for those with the most extensive barriers to returning to work. Many people welcomed the fact that disabled people and those with health conditions continue to be at the forefront of our proposals to reform the welfare state.
- 8.9 Towards the end of the consultation period, people raised understandable concerns about the impact of the economic climate on job availability and security. Some felt this was a reason to retreat from reforms, fearing that undue pressure would be put on people to find employment in a highly competitive market. Others, and the government agrees with them, considered that now is not the time to turn our backs on people and encouraged us to press on with our reforms. Preparing for a return to work, and developing the skills employers need, is an investment worth making.
- 8.10 Overall, people broadly welcomed:
- more support to help people back to work, particularly for those with the most employment barriers;
 - an increased focus on ability rather than disability;
 - a greater focus on offering lone parents, disabled people and people with health conditions the chance to improve their work skills; and
 - more promotion of volunteering opportunities.
- 8.11 The Department for Work and Pensions consulted the Social Security Advisory Committee (SSAC) concerning its proposals for these amending regulations. The Committee decided not to conduct further formal consultation of its own on the Regulations.

9. Guidance

- 9.1 Guidance on both regulatory and operational changes will be provided to Jobcentre Plus staff and Decision Makers. However, as Jobcentre Plus Pathways Advisers are already trained in conducting WFIs and are accustomed to working with Incapacity Benefit customers of all age groups, it is not envisaged that any additional training will be

required beyond the extensive Learning and Development materials. These are already available and form part of the mandatory training routeway for all Jobcentre Plus Pathways Advisers.

- 9.2 Letters will be issued to all customers affected by these changes at the appropriate time. Jobcentre Plus will also put in place a range of extra steps to contact Customer Representative Groups and Contracted Providers to ensure they are aware of the changes.

10. Impact

- 10.1 There is no impact on business, charities or volunteer bodies.
- 10.2 The impact on the public sector is less than £5m in administration costs.
- 10.3 A full impact assessment has not been prepared for this instrument.

11. Regulating Small Business

- 11.1 The legislation does not apply to small business.

12. Monitoring and Review

- 12.1 The impact of these regulations will form part of a full evaluation of the outcomes that result from the Extension to Pathways for Existing Customer Under 25 initiative.

13. Contact

Joanne Rudge or Jackie Blakeley at the Department for Work and Pensions can answer any queries regarding the instrument. Please contact - Tel: 0113 23274870 or e-mail: joanne.rudge@jobcentreplus.gsi.gov.uk