

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Commentary

Summary of changes

Section 61: Incapacity for work: Personal Capability Assessments

The section replaces section 171C of the Contributions and Benefits Act, which provides for the All Work Test. *New section 171C* for the most part mirrors the existing provision for the All Work Test, but renames it the Personal Capability Assessment. It also enables the Personal Capability Assessment to be carried out before a person technically becomes subject to the assessment. The intention is to speed up the process and secure a proper assessment of people's needs at an early opportunity. The section also ensures that the Personal Capability Assessment may be repeated, to determine whether a person continues to be incapable of work.

New subsections (1) to (3) mirror the existing provision for the All Work Test.

Subsection (1) provides for the "Personal Capability Assessment" to apply in the same way as the All Work Test.

Subsection (2): allows the details of the Personal Capability Assessment to be set out in regulations.

This follows the existing provision for the All Work Test, but deals with capacity as well as incapacity. The existing regulations for the All Work Test set out measures of the extent of a person's incapacity in specified activities which relate to the ability to work. They cover physical, sensory and mental functions (e.g. walking; sitting; bending and kneeling; hearing; vision; concentration and mood). Assessment is based on a scoring system: claimants who reach a set points threshold are entitled to incapacity benefits, subject to meeting entitlement conditions.

Subsection (3) gives the power to provide for treating people as incapable of work until they have had a Personal Capability Assessment, or have been classed as capable of work for other reasons (for instance, if they fail to respond to a request for information or evidence). It ensures that incapacity benefits can remain in payment pending a decision on whether a person satisfies the test of incapacity.

New subsections (4) and (5) make new provisions for the Personal Capability Assessment.

Subsection (4) enables a Personal Capability Assessment to be carried out during the first 28 weeks of incapacity (i.e. while the Own Occupation Test still applies for benefit entitlement purposes).

Currently the process of assessment cannot begin until the date when the All Work Test applies (usually after 28 weeks of incapacity), and can typically take many weeks to

*These notes refer to the Welfare Reform and Pensions Act 1999
(c.30) which received Royal Assent on 11 November 1999*

complete. This can mean that decisions on benefit entitlement are delayed, and that, following the introduction of the new capability element, information which would be helpful in preparing for a return to work would not be available when it would be of most value – before people have become detached from the labour market. Enabling the process to begin *before* week 29 is intended to address these problems.

Subsection (5) ensures that “the Secretary of State” (normally a Benefits Agency official, acting on the Secretary of State’s behalf) may require people who have been found incapable of work in accordance with a Personal Capability Assessment (and who are therefore entitled to incapacity benefits) to undergo a reassessment for the purposes of determining whether they are still incapable of work.