

EMPLOYMENT ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Miscellaneous and General

Miscellaneous

Section 49: Work-focused interviews for partners

Section 2AA: Full entitlement to certain benefits conditional on work-focused interview for partner

144. This section builds on section 2A of the Social Security Administration Act 1992 (“the Administration Act”), which was inserted by section 57 of the Welfare Reform and Pensions Act 1999 and which introduced the requirement for certain benefit claimants (including lone parents) to attend work-focused interviews. The new section 2AA prescribes both the circumstances in which the partner of a benefit claimant may be required to take part a work-focused interview, and the consequences for the benefit claim if the partner does not take part in the interview.
145. The work-focused interview will concentrate on job potential and provide the partner with access to a wide range of help and information on work, benefits and services such as childcare. It is intended to encourage partners to take further steps towards labour market participation. However, any action they may choose to take beyond taking part in the interviews will be entirely voluntary.
146. This section inserts new section 2AA into the Administration Act and allows the Secretary of State to prescribe in regulations that where a higher rate of a specified benefit is payable to a person by reference to his partner, then the claimant’s benefit can be reduced by way of a sanction if the partner fails to take part in a work-focused interview, when required to do so.
147. The intention is for the actual proposals to be prescribed in secondary legislation to allow adjustments to be made to the detailed aspects of the scheme in the light of experience of work-focused interviews.
148. The power itself:
 - Subsection (1) allows the Secretary of State to make regulations requiring partners of claimants for certain benefits to take part in a work-focused interview, in prescribed circumstances. Once the claimant’s entitlement to benefit has been established their partner may be required to take part in a work-focused interview. If partners do not take part in these interviews without good cause when required to do so, a benefit sanction will apply (see *subsection (4)(f)*). As the majority of jobseekers find work within the first six months of a claim it is initially intended that partners will be required to attend an interview at the 6 month stage of a claim, thus focusing resources on those partners who need more help in finding work. The

timing of interviews will be considered further in the light of experience of work-focused interviews for benefit claimants.

- Subsection (2) lists the benefits to which the partner work-focused interview requirements will apply. Subsection (3) lists the circumstances in which a higher rate of such a benefit is deemed to be payable to a person by reference to his partner and therefore, the partner is subject to the requirement to take part in an interview.

149. How the power is intended to be used:

- Subsections (4) to (6) identify the main ways in which the regulation-making powers provided under subsection (1) might be used. Where a person is entitled to a number of specified benefits at the same time, it is not intended to ask their partner to take part in separate work-focused interviews for each benefit. They would only be required to take part in one interview. Subsection (4)(a) allows for regulations to achieve this.
- Subsection (4)(b) allows for regulations to prescribe that where a claimant is entitled to benefit for more than one partner (i.e. in the case of a polygamous marriage) each of those partners will be required to take part in a work-focused interview.
- Subsection (4)(c) enables the Secretary of State to prescribe in regulations who will conduct the interviews with partners. This means that work-focused interviews may be conducted by a person acting on behalf of the Secretary of State, by a local authority employee, or by a private/voluntary sector organisation contracted to provide services.
- Regulations under subsection (4)(d) will confer power on those who conduct the interviews with partners to determine where and when an interview will take place. This mirrors section 8 of the Jobseekers Act 1995 and section 2A of the Administration Act. It is intended that the interview will usually be conducted at a range of easily accessible premises. However, where partners cannot reasonably be expected to visit an office, a more suitable location including a home visit may be arranged.
- Subsection (4)(e) enables regulations to prescribe the circumstances in which partners are to be treated as either taking part or not taking part in the interview. Since the regulations under this section will impose a general requirement on partners to take part in a work-focused interview, both the partners and those who conduct the interviews need to be clear about the criteria to be used in judging whether a person has actually taken part in the interview. It is intended that the test of whether partners have taken part will be: (a) whether they attend at the time and place specified; and (b) 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.
- Subsection (4)(f) enables regulations to provide that if a partner is requested to take part in an interview but does not do so then, unless he (or the benefit claimant) can show good cause for that failure within a prescribed period, the claimant's benefit will be reduced.
- Subsection (4)(g) enables regulations to specify what constitutes good cause for not taking part in an interview. *Good cause* is a familiar concept in social security. For example, it is used in relation to work-focused interviews for claimants under section 2A of the Administration Act and in deciding whether people's entitlement to Jobseeker's Allowance should stop where they have not attended as required as a specified time and place (section 8(1)(d) of the Jobseekers Act 1995 and regulations 28 to 30 of the Jobseeker's Allowance Regulations 1996). Examples of good cause might be when the partner had an accident on the day set for the

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(c.22) which received Royal Assent on 8 July 2002*

interview or where their child fell ill or where they misunderstood the requirements placed upon them because of any language or literacy difficulties.

- Subsection (5) deals with how any reduction in benefit should be calculated and applied.
- Subsection (5)(a) enables regulations to specify how the reduction will normally be calculated and subsection (5)(b) enables regulations to specify that the amount of the reduction shall be restricted in prescribed circumstances. The power under subsection (5)(b) 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, 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) enables regulations to specify that if a person is claiming more than one benefit, the sanction may be applied to more than one of the benefits; but the total sanction must not exceed the amount calculated in regulations under subsection (5)(a). The regulations will also prioritise the benefits against which the sanction is to be applied. No sanctions will be applied against any benefit not specified in new section 2AA(2).
- Subsection (6) enables regulations to prescribe the circumstances in which the requirement for a partner to take part in a work-focused interview is not to be applied. This is so that the interview can be waived or deferred until a later date if that is necessary or appropriate in any case. There will be certain people for whom a work-focused interview will not be appropriate. 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.
- Subsection (6)(a) enables regulations to specify circumstances in which the requirement to take part in a work-focused interview will not apply to a partner: either permanently or until a specified time. It is intended that this power will be used to exempt partners of people who are claiming the benefits listed in subsection (2) but who are required to attend work-focused interviews in their own right.
- Subsection (6)(b) enables the ‘designated authority’ to decide that the requirement to take part in a work-focused interview is not to apply where it would not be of assistance or appropriate in the particular circumstances of that person. Regulations will not specify which groups should have the requirement waived although one example might be where a terminally ill person is the partner of a benefit claimant.
- 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 partner who had just given birth. Regulations provided for under subsection (6) may also set out that, where a partner has their interview waived or deferred, they will be treated, as having met the requirement – until such time as it is appropriate for them to attend an interview. Where an interview is either waived or deferred (see subsection (6)(c)), despite the fact that there has been no interview, no change will be made to the amount of benefit payable or in payment.
- Subsection (7) defines terms used throughout the section. A “*work-focused interview*” is the interview that almost all partners of claimants of the benefits listed in subsection (2) will be asked to take part in. The purpose of such an interview is to assist or encourage partners to improve their employment prospects over time, and to identify and take steps to overcome the barriers to work they face through training

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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.

150. [Schedule 7](#) (Paragraphs 8 to 10, 14 and 49): makes minor and consequential amendments to the Administration Act and to the Social Security Act 1998.
- Paragraph 9 amends section 2B of the Administration Act, which makes further provision as to how the power in section 2A may be used. It ensures that the decisions and appeals procedures in Chapter II of Part I of the Social Security Act 1998 apply in relation to any “relevant decisions” under the new section 2AA. It also provides that any decision that a partner has, without good cause, failed to take part in an interview as required by the new section 2AA may be revised or appealed against. It also sets out in that section what are to be “relevant decisions” under the new section 2AA – namely, decisions that someone has failed, without good cause, to take part in an interview required under that section, and makes a consequential amendment in relation to decisions under section 2A. It ensures that all “relevant decisions” under the new section 2AA are treated as having been made by the Secretary of State – even if the decision maker is not a civil servant, and that such a decision may be revised or superseded by someone other than the original decision maker. The powers in the Social Security Act 1998 to revise or supersede a decision would then apply. It would also allow for information gathered about a person’s employability to be passed on to the relevant decision maker.
 - Paragraph 10 amends section 2C of the Administration Act so as to ensure that the powers, which are intended to enable closer working between central and local government in order to make the delivery of social security benefits more customer-focused and better co-ordinated, also apply to the new section 2AA.
 - Paragraph 14 amends section 190(1) of the Administration Act so as to require the first set of regulations to be made under the new section 2AA to be passed by the affirmative resolution procedure.
 - Paragraph 49 amends the Social Security Act 1998 so as to provide that the right of appeal is against the decision that the partner 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 be across a number of benefits) and is intended to avoid confusion.