

WELFARE REFORM AND PENSIONS ACT 1999

EXPLANATORY NOTES

COMMENTARY

Commentary

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)*.

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.