

**2008 No. 2928**

**SOCIAL SECURITY**

**The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008**

<i>Made</i>	- - - -	<i>10th November 2008</i>
<i>Laid before Parliament</i>		<i>14th November 2008</i>
<i>Coming into force</i>	- -	<i>15th December 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations, in exercise of the powers conferred upon him by sections 2A(1), (3) to (6) and (8), 2B(2), (6) and (7), 189(4) to (6) and (7A) and 191 of the Social Security Administration Act 1992(a).

The Social Security Advisory Committee has agreed that proposals in respect of these Regulations should not be referred to it(b).

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008 and come into force on 15th December 2008.

**Interpretation**

2.—(1) In these Regulations—

“the 1998 Act” means the Social Security Act 1998(c);

“the 2000 Regulations” means the Social Security (Work-focused Interviews) Regulations 2000(d);

“the 2001 Regulations” means the Social Security (Jobcentre Plus Interviews) Regulations 2001(e);

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- (a) 1992 c. 5. Sections 2A and 2B were inserted by section 57 of the Welfare Reform and Pensions Act 1999 (c. 30). Section 2B(2) was amended by section 53 of, and paragraphs 8 and 9(1) and (3) of Schedule 7 to, the Employment Act 2002 (c. 22). Section 189(4) to (6) was amended by section 86 of, and paragraph 109 of Schedule 7 to, the Social Security Act 1998 (c. 14). Section 189(7A) was inserted by paragraph 82 of Schedule 12 to the Welfare Reform and Pensions Act 1999. Section 191 is cited because of the meaning there given to the word “prescribe”.
- (b) See section 173(1)(b) of the Social Security Administration Act 1992.
- (c) 1998 c. 14.
- (d) S.I. 2000/897. Provisions of the 2000 Regulations were revoked by regulation 16(1) of, and Schedule 1 to, the Social Security (Jobcentre Plus Interviews) Regulations 2002 (S.I. 2002/1703), however under regulation 16(2) of the 2002 Regulations, the revoked provisions are saved in respect of a specified person to whom those Regulations applied on the day before the revocations took effect.
- (e) S.I. 2001/3210. Provisions of the 2001 Regulations were revoked by regulation 16(1) of, and Schedule 1 to, the Social Security (Jobcentre Plus Interviews) Regulations 2002 (S.I. 2002/1703), however under regulation 16(2) of the 2002 Regulations, the revoked provisions are saved in respect of a specified person to whom those Regulations applied on the day before the revocations took effect.

“the 2002 Regulations” means the Social Security (Jobcentre Plus Interviews) Regulations 2002(a);

“the 2003 Regulations” means the Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003(b);

“action plan” has the meaning given by regulation 7;

“benefit week” means any period of seven days corresponding to the week in respect of which the relevant specified benefit is due to be paid;

“relevant claimant” has the meaning given by regulation 3;

“relevant decision” has the meaning given by section 2B(2) of the Social Security Administration Act 1992 (supplementary provisions relating to work-focused interviews);

“specified benefit” means—

- (a) incapacity benefit;
- (b) income support, if any of the following paragraphs of Schedule 1B (prescribed categories of person) to the Income Support (General) Regulations 1987(c) applies—
  - (i) paragraph 7 (persons incapable of work);
  - (ii) paragraph 24 or 25 (persons appealing against a decision which embodies a determination that they are not capable of work);
- (c) severe disablement allowance;

“work-focused interview” means an interview conducted under regulation 6 for the purposes described in regulation 4.

(2) Any notification under these Regulations that is sent by post is to be taken to have been received on the second working day after posting.

### **Relevant claimant**

3.—(1) A relevant claimant is a person who satisfies all of the following conditions.

(2) The first condition is that the person is entitled to a specified benefit.

(3) The second condition is that, immediately before these Regulations came into force, the person—

- (a) was a “relevant person” within the meaning of the 2003 Regulations; or
- (b) would have been a “relevant person” within the meaning of the 2003 Regulations if not for the person being 16 or 17 years of age; or
- (c) was a “relevant person” within the meaning of the 2000 Regulations or the 2001 Regulations, as saved by regulation 16(2) of the 2002 Regulations.

(4) The third condition is that the person has not attained the age of 60 years.

(5) The fourth condition is that, on the day on which the requirement to take part in a work-focused interview would have arisen, the person is not treated as incapable of work in accordance with regulation 10 of the Social Security (Incapacity for Work) (General) Regulations 1995(d) (certain persons with a severe condition to be treated as incapable of work).

### **Purposes of a work-focused interview**

4. A work-focused interview is an interview with a relevant claimant that is conducted for any or all of the following purposes—

- (a) assessing the relevant claimant’s prospects of remaining in or obtaining work;

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(a) S.I. 2002/1703.

(b) S.I. 2003/2439.

(c) S.I. 1987/1967. Schedule 1B was inserted by regulation 22 of S.I. 1996/206. Paragraph 24 of Schedule 1B was amended by S.I. 1999/2422. Paragraph 25 of Schedule 1B was amended by S.I. 1999/2422 and 3109 and S.I. 2005/337.

(d) S.I. 1995/311. Regulation 10 was amended by S.I. 1995/987, S.I. 1996/3207, S.I. 1997/1009 and S.I. 1999/3109.

- (b) assisting or encouraging the relevant claimant to remain in or obtain work;
- (c) identifying activities that the relevant claimant may undertake that will make remaining in or obtaining work more likely;
- (d) identifying training, educational or rehabilitation opportunities for the relevant claimant which may make it more likely that the relevant claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities, including self-employment opportunities, for the relevant claimant, which are relevant to that person's needs and abilities.

**Requirement for a relevant claimant to take part in a work-focused interview**

5.—(1) Subject to the following provisions of this regulation, a relevant claimant may be required by the Secretary of State to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of the specified benefit which is payable to that claimant.

(2) The Secretary of State may determine that a requirement that a relevant claimant take part in a work-focused interview is not to apply, or is treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work.

(3) A relevant claimant in relation to whom a requirement to take part in a work-focused interview has been determined not to apply under paragraph (2) must be treated as having complied with that requirement in respect of that interview for the purposes of—

- (a) paragraph (1); and
- (b) entitlement to a specified benefit.

(4) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred by the Secretary of State if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to that relevant claimant; or
- (b) appropriate in the circumstances.

(5) A deferral under paragraph (4) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(6) If a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined and notified to the relevant claimant.

(7) Any requirement to take part in a work-focused interview ceases to have effect if the relevant claimant ceases to satisfy the conditions in regulation 3.

**The work-focused interview**

6.—(1) The Secretary of State must notify, in writing or otherwise, a relevant claimant who is required to take part in a work-focused interview of the date, time and place of that interview.

(2) A work-focused interview may take place at a relevant claimant's home if the Secretary of State determines that requiring the relevant claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the relevant claimant.

(3) A relevant claimant is to be regarded as having taken part in a work-focused interview if the claimant—

- (a) attends for the work-focused interview at the place and on the date and time notified under paragraph (1);
- (b) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (4);

- (c) participates in discussions to the extent the Secretary of State considers necessary, about any or all of the matters set out in paragraph (5);
  - (d) assists the Secretary of State in the completion of an action plan in accordance with regulation 7.
- (4) The matters referred to in paragraph (3)(b) are—
- (a) the relevant claimant’s educational qualifications and vocational training;
  - (b) the relevant claimant’s work history;
  - (c) the relevant claimant’s aspirations for future work;
  - (d) the relevant claimant’s skills that are relevant to work;
  - (e) the relevant claimant’s work-related abilities;
  - (f) the relevant claimant’s caring or childcare responsibilities;
  - (g) any paid or unpaid work that the relevant claimant is undertaking.
- (5) The matters referred to in paragraph (3)(c) are—
- (a) any activity the relevant claimant is willing to undertake which may make obtaining or remaining in work more likely;
  - (b) any such activity that the relevant claimant may have previously undertaken;
  - (c) any progress the relevant claimant may have made towards remaining in or obtaining work;
  - (d) the relevant claimant’s opinion as to the extent to which the ability to remain in or obtain work is restricted by the relevant claimant’s physical or mental condition.

**Action plan**

7.—(1) An action plan is a written document completed by the Secretary of State, which contains a record of the discussions a relevant claimant has participated in with the Secretary of State in relation to the relevant claimant’s employability, including any action the relevant claimant and the Secretary of State agree is reasonable and the relevant claimant is willing to take in order to help that relevant claimant enhance his or her employment prospects.

(2) The Secretary of State must provide the relevant claimant with a copy of the action plan completed under paragraph (1) at the end of the work-focused interview.

**Failure to take part in a work-focused interview**

8.—(1) A relevant claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within five working days of the date on which the Secretary of State gives notification of that failure.

(2) In determining whether a relevant claimant has shown good cause for a failure to take part in a work-focused interview, the matters to be taken into account include—

- (a) that the relevant claimant misunderstood the requirement to take part in the work-focused interview due to any learning, language or literacy difficulties of the relevant claimant or any misleading information given to the relevant claimant by the Secretary of State;
- (b) that the relevant claimant had transport difficulties and that no reasonable alternative was available;
- (c) that the relevant claimant was attending an interview with an employer with a view to remaining in or obtaining employment;
- (d) that the relevant claimant was pursuing employment opportunities as a self-employed earner;
- (e) that the relevant claimant was attending a medical or dental appointment and that it would have been unreasonable in the circumstances to re-arrange the appointment;

- (f) that the relevant claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and that it would have been unreasonable for that other person to re-arrange the appointment;
- (g) that the relevant claimant, a dependant or another person for whom the relevant claimant provides care suffered an accident, sudden illness or relapse of a physical or mental health condition;
- (h) that the relevant claimant was attending the funeral of a relative or close friend on the day fixed for the work-focused interview;
- (i) that the physical or mental condition of the relevant claimant made it impracticable to attend at the time and place fixed for the interview;
- (j) that the established customs and practices of the religion to which the relevant claimant belongs prevented attendance on the day or at the time fixed for the work-focused interview;
- (k) any other matter that the Secretary of State considers appropriate.

(3) If the Secretary of State determines that a relevant claimant has failed to take part in a work-focused interview and good cause has not been shown for that failure within five working days of the day on which the interview was to take place, the Secretary of State shall make a relevant decision for the purposes of section 2B of the Social Security Administration Act 1992.

#### **Consequences of failure to take part in a work-focused interview**

**9.**—(1) A relevant claimant in respect of whom a relevant decision has been made in accordance with regulation 8(3) shall, in accordance with this regulation, have his or her benefit reduced—

- (a) by 50% of the “work-related activity component” in each of the first four benefit weeks to which, by virtue of section 10(5) of the 1998 Act or regulations made under section 10(6) of that Act, the reduction applies;
- (b) by 100% of that component for each subsequent benefit week.

(2) If two or more specified benefits are in payment to a relevant claimant, a reduction made in accordance with paragraph (1) shall be applied, subject to paragraphs (3) to (6), to the specified benefits in the following order of priority—

- (a) income support;
- (b) incapacity benefit;
- (c) severe disablement allowance.

(3) If the amount of the reduction is greater than some, but not all, of the specified benefits listed in paragraph (2), the reduction shall be made against the first benefit in that list that is the same as, or greater than, the amount of the reduction.

(4) For the purpose of determining whether a specified benefit is the same as, or greater than, the amount of the reduction for the purposes of paragraph (3), ten pence shall be added to the amount of the reduction.

(5) In a case where the whole of the reduction cannot be applied against any one specified benefit because the amount of no one benefit is the same as, or greater than, the amount of the reduction, the reduction shall be applied against the first benefit in payment in the list of priorities in paragraph (2) and so on against each benefit in turn until the whole of the reduction is exhausted or, if this is not possible, the whole of the specified benefits are exhausted.

(6) If the rate of any specified benefit payable to a relevant claimant changes, the rules set out in this regulation for a reduction in the benefit payable shall be applied to the new rates and any adjustments to the benefits against which the reductions are made shall take effect from the beginning of the first benefit week to commence for that relevant claimant following the change.

(7) Paragraph (1) applies to a relevant claimant each time a relevant decision is made in accordance with regulation 8(3) in respect of that person.

(8) In the case of a relevant claimant whose benefit has been reduced in accordance with paragraph (1) and who subsequently takes part in a work-focused interview, the whole of the reduction shall cease to have effect on the first day of the benefit week in which the requirement to take part in a work-focused interview was met.

(9) In the case of a relevant claimant whose benefit has been reduced in accordance with paragraph (1) and who subsequently fails to meet the conditions specified in regulation 3(4) or (5), the whole of the reduction shall cease to have effect on the first day of the benefit week in which those conditions are no longer satisfied.

(10) For the purposes of determining the amount of any benefit payable, a relevant claimant shall be treated as receiving the amount of any specified benefit which would have been payable but for a reduction made in accordance with paragraph (1).

(11) Despite regulation 8(3), the consequences specified in paragraph (1) do not apply to a person who—

- (a) brings new facts to the notice of the Secretary of State within one month of the date on which the initial determination was notified to that person and—
  - (i) those facts could not reasonably have been brought to the Secretary of State's notice within five working days of the date on which the notification of the initial determination was received; and
  - (ii) those facts show that there is good cause for the person's failure to take part in the work-focused interview;
- (b) is no longer required to take part in a work-focused interview as a condition of continuing to be entitled to the full amount of the specified benefit that is payable to that person apart from these Regulations; or
- (c) attains the age of 60.

(12) Despite anything to the contrary in this regulation, no benefit is to be reduced in any benefit week—

- (a) below 10 pence;
- (b) in relation to more than one relevant decision relating to a particular work-focused interview;
- (c) by more than 100% of the work-related activity component.

(13) For the purposes of this regulation, “work-related activity component” is the amount specified in Part 4 of Schedule 4 to the Employment and Support Allowance Regulations 2008(a).

## **Appeals**

**10.—**(1) This regulation applies to any relevant decision under regulation 8(3) or any decision made under section 10 of the 1998 Act (decisions superseding earlier decisions) superseding such a relevant decision.

(2) This regulation applies whether the decision is as originally made or as revised under section 9 of the 1998 Act (revision of decisions).

(3) In the case of a decision to which this regulation applies, the relevant claimant in respect of whom the decision was made shall have a right of appeal under section 12 of the 1998 Act (appeal to first-tier tribunal) to the First-tier tribunal.

## **Exercise of certain functions relating to work-focused interviews**

**11.—**(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by a person providing services to the Secretary of State (including the employees of such a person) as may be authorised by the Secretary of State.

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(a) S.I. 2008/794.



- (2) The functions are any function under—
- (a) regulation 5(1), (2) and (4) (requirement to take part in a work-focused interview);
  - (b) regulation 6(1), (2) and (3)(b), (c) and (d) (the work-focused interview);
  - (c) regulation 7 (action plan).

### **Revocations, consequential amendments, savings and transitional provisions**

**12.**—(1) The following Regulations are revoked—

- (a) the 2003 Regulations;
- (b) The Social Security (Incapacity Benefit Work-focused Interviews) Amendment Regulations 2005(a);
- (c) The Social Security (Incapacity Benefit Work-focused Interviews) Amendment (No. 2) Regulations 2005(b);
- (d) The Social Security (Incapacity Benefit Work-focused Interviews) Amendment Regulations 2006(c);
- (e) The Social Security (Incapacity Benefit Work-focused Interviews) Amendment (No. 2) Regulations 2006(d).

(2) In regulation 4(4) of the Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000(e), for “Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003” substitute “Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008”.

(3) In regulation 8(3) of the 2002 Regulations, for “Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003” substitute “Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2008”.

(4) Despite paragraph (1)(a)—

- (a) regulation 10(2) of the 2003 Regulations continues to have effect in respect of a person who immediately before these Regulations come into force is subject to the consequences specified in that provision; and
- (b) any other provision of the 2003 Regulations continues to have effect insofar as is necessary to give full effect to sub-paragraph (a) above.

(5) For the purposes of regulation 9(8), (9) and (11) (ending of a sanction), a person referred to in paragraph (4)(a) above is deemed to be subject to the consequences under regulation 9(1) (a sanction imposed under these Regulations) and from that date regulation 10(2) of the 2003 Regulations will cease to apply to that person.

Signed by authority of the Secretary of State for Work and Pensions.

*Jonathan Shaw*  
Parliamentary-Under-Secretary of State,  
Department for Work and Pensions

10th November 2008

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(a) S.I. 2005/3.  
(b) S.I. 2005/2604.  
(c) S.I. 2006/536.  
(d) S.I. 2006/3088.  
(e) S.I. 2000/1926. Regulation 4(4) was inserted by S.I. 2007/1034.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Regulation 1 provides for citation and commencement.

Regulation 2 provides definitions for certain terms used in these Regulations.

Regulation 3 defines a relevant claimant for the purposes of these Regulations. Generally, these Regulations apply to a person who is in receipt of a specified benefit, except for people who were excluded by the earlier Regulations, people who fall under a different work-focused interview regime, people aged over 59 or people exempted by reason of being incapable of work.

Regulation 4 sets out the purposes of a work-focused interview.

Regulation 5 provides that a relevant claimant is required to take part in one or more work-focused interviews if so required by the Secretary of State, unless the person is exempted or the work-focused interview is deferred.

Regulation 6(1) provides that the Secretary of State must inform the relevant claimant of the time, date and place of the work-focused interview. Regulation 6(2) provides that a work-focused interview may take place at a relevant claimant's home in certain circumstances. Regulation 6(3) to (5) sets out a list of factors to determine whether a relevant claimant has taken part in a work-focused interview.

Regulation 7 provides for the making of an action plan in relation to the relevant claimant.

Regulation 8 provides for the case where a relevant claimant has failed to take part in a work-focused interview. Paragraph (1) gives a relevant claimant an opportunity to show good cause why he or she has failed to take part in a work-focused interview. Paragraph (2) provides for a list of 'good cause' reasons. Paragraph (3) mandates that a relevant claimant who has failed to show good cause for taking part in a work-focused interview shall suffer the consequences set out in regulation 9.

Regulation 9 sets out the consequences of a failure to show good cause for not taking part in a work-focused interview. Generally, these consequences are a 50% reduction of the amount of the work-related activity component of benefit for the first 4 weeks, followed by a 100% reduction in subsequent weeks. The "work-related activity component" is a reference to an amount specified under the Employment and Support Allowance Regulations 2008. Paragraphs (2) to (6) provide for an order of priority of reductions in a case where more than one specified benefit is paid to a relevant claimant. Paragraphs (8) to (11) provide for the consequences set out in paragraph (1) to come to an end in certain circumstances.

Regulation 10 provides for an appeal path from a relevant decision made under regulation 8(3).

Regulation 11 provides that certain powers under these Regulations may be exercised by a person, or employees of that person, authorised by the Secretary of State.

Regulation 12 provides that certain sets of Regulations are revoked, makes minor consequential amendments to two other sets of Regulations and includes a savings and a transitional provision. Paragraph (1) revokes the 2003 Regulations and all of the instruments that amended those Regulations. Paragraphs (2) and (3) update references in two other instruments, in provisions stating that the 2003 Regulations do not apply to certain claimants, to ensure that Regulations do not apply to the same claimants. Paragraph (4) is a savings provision to ensure that a person who is subject to a sanction on the date on which these Regulations come into force remains subject to the sanctions regime under the 2003 Regulations. Paragraph (5) is a transitional provision and provides that a person subject to a saved sanction is transitioned to these Regulations upon the ending of that sanction.



A full impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

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