



**Nottinghamshire  
County Council**

# Nottinghamshire Welfare Rights Service

## **Benefit Briefing**

**July 2007**

**Issue no. 61**

The intention of this Briefing is to raise reader's awareness of new issues relating to social security benefit entitlement, in an accessible format. Although every effort is made to ensure that the items in the Briefing are correct, it only gives what is intended to be general guidance. The information should not be treated as a complete and authoritative statement of the law. Items of interest to readers should be checked and further details sought before acting on the information.

**Gill Westcott – Welfare Rights Service Manager**

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### **INCAPACITY BENEFIT REFORMS**

This edition of the Briefing is devoted to providing readers with the latest information on the planned changes to the Incapacity Benefit System. It is intended to give an overview of the new system and to give an understanding of how Incapacity is likely to be assessed under the new proposals.

#### **Summary of Main Proposals**

The major element of the Welfare Reform Act (given Royal Assent on May 3 2007) is the replacement of the current system of incapacity benefits (Incapacity Benefit and Income Support based on incapacity) with the Employment Support Allowance (ESA).

The ESA is due to be launched in autumn 2008 (This is likely to be in November). There will be a newly revised assessment of capacity for work to determine eligibility for benefit. Monitoring of the effectiveness of the new Personal Capability Assessment will continue each year for the first five years. Draft regulations were published in January 2007 but we are still awaiting final publication. This is scheduled for October 2007.

The Act has paved the way for contracting out welfare to work services with the expectation that the private and voluntary sector will undertake work-focused activities and, even impose benefit sanctions in certain circumstances.

Other proposals contained in the Act include measures reforming benefits for lone parents, housing benefit for private tenants and the Independent Living Fund. These matters are not covered in this edition of Benefit Briefing.

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## Employment Support Allowance (ESA)

- ESA, like Jobseeker's Allowance, has two 'strands': a contributory allowance, and an income-related allowance, calculated much like Income Support. The amount of ESA a person receives will depend on whether they are entitled to the contributory or income related allowance or both, and whether they are entitled to the work related activity or support elements.
- Benefit will be paid at a rate equivalent to the basic JSA rates (personal allowance) in the initial 13 week assessment phase. At eight weeks claimants will have their first work-focused interview.
- The mechanism for deciding whether claimants stay on ESA is the revised Personal Capability Assessment (PCA). This operates on the same basis as the old PCA with activities and points for each descriptor. Fifteen points are needed to stay on ESA after the assessment phase. The PCA will also be used to decide which of two groups the claimant will join (see below).
- Claimants assessed as having limited capability for work will enter the 'work-related activity group' and will have to attend five work-focused interviews at monthly intervals, agree an action plan outlining what work-related activity they will undertake, and if required, attend more PCAs. This will entitle them to the Work-Related Activity Component on top of their basic allowance.
- There are benefit sanctions if claimants do not fulfil these agreed responsibilities (see below) without 'good cause'. Their work-related component will be reduced to half for four weeks, and then to nothing. It is understood that claimants have to appeal within five days of the decision to reduce their entitlement to ESA.
- Claimants with severe illnesses and disabilities will enter the 'support group' and have the Support Component paid on top of their basic allowance. There is no requirement on them to undertake activities and there are no sanctions.
- Claimants receiving the income-related benefit will have access to extra premiums such as the Carer Premium, the Pensioner Premium, the Higher Pensioner Premium, the Severe Disability Premium and the Enhanced Disability Premiums on the same grounds as Income Support and Income-based Jobseekers Allowance. The disability premium will be subsumed within the higher rate of the basic means tested element. Current age additions and adult dependency increases will be removed from the contributory version of the allowance but overall levels of benefit should not be lower for the majority of Incapacity Benefit claimants.
- Claimants who move off benefit into work will be entitled to extra support, including a Return to Work Credit (RTWC) of £40 a week for 52 weeks if they work at least 16 hours a week and earn less than £15,000 a year. The new more generous two year linking rule introduced in October 2006 and the improved permitted work rules will also be carried over onto the new allowance.
- Existing Incapacity Benefit claimants will be migrated across to the Employment Support Allowance. The government has stated this will 'happen over time' and that 'no existing customer will lose out in cash terms' but they will be subjected to more regular re-assessments and asked to consider back to work help.
- Certain young disabled people will continue to have special access to the contributory ESA without the necessary contribution record, as is now the case with Incapacity Benefit.

## The new Personal Capability Assessment (PCA)

This has been revised and is currently only available as a draft regulation. It is still recognisable in that it has a list of activities for which there are descriptions (descriptors) and points, which will be scored if the claimant is deemed to have met the conditions. However, the mental health part of the test is completely revised and the list for physical disabilities has been changed, with the removal of the lower level descriptors and many made more stringent. For example, claimants are currently entitled to Incapacity Benefit if they are unable to walk 50 metres but ESA is only guaranteed to people unable to walk 30 metres. Also, a claimant assessed as posing a health and safety risk to themselves and colleagues most of the time unless supervised, would not automatically pass the PCA requirement in the draft regulations.

The scoring system is also different. Claimants have to get 15 points to pass the assessment. These can be made up of a combination of physical and mental activities but, unlike in the current system, there is no 'uplift' for mental health scores when combining them with physical descriptors. There will also be no automatic exemption from the PCA according to particular medical conditions as under the current assessment. The new assessment will focus on the severity of the impact of the illness on an individual's ability to function.

The main changes to the mental health activities are:

- Detailed descriptors such as: reading a magazine article, using a telephone directory, encouragement to dress, have been removed.
- New descriptors focus on: completion and execution of tasks, memory and concentration, getting about in a familiar place, coping with change, awareness of hazards, and dealing with other people.
- There are 48 mental health descriptors instead of the previous 25.
- Points are upgraded to the same levels as the physical descriptors, ranging from 6 to 15.
- The descriptors also look at difficulties relating more to people with a learning disability as well as with mental health needs.

## Pathways to Work

The Pathways to Work scheme will be used as the basis for administering the ESA. A Personal Adviser will discuss with the claimant their benefit entitlement, their aspirations for work and the steps they might take to help them take up a job. Pathways-style support will be on offer, including the Condition Management Programme, available via the local NHS, which is designed to help claimants understand and manage their health condition in the work-place.

The government is planning to make work-related activity mandatory. Claimants will be asked to participate in a minimum amount of work-related activity (for example, 1 activity) in a given time period (e.g. four weeks). Participating in **some** work-related activity will be a requirement of entitlement to the full amount of benefit. Claimants who agree to an activity but then do not carry this out and do **no other** work-related activity can be sanctioned if they did not show good cause for their failure.

To continue to be entitled to the work-related activity component, claimants are required to do three things:

1. Undergo a work focussed health related assessment.
2. Attend work focussed interviews to discuss what steps they can take to move towards work and draw up an action plan of work related activity they need to undertake.

3. Carry out activities that increase the likelihood of getting a job, e.g. attending training or attending a programme designed to help improve their condition.

The government wants Pathways to Work to be provided primarily by the private and voluntary sector, and Nottinghamshire has been chosen as one of the areas where this will happen. Tenders from organisations have been submitted but there is a long lead-in time with the preferred bidders, and contracts will not be signed until 3<sup>rd</sup> September 2007. The service will begin on 3<sup>rd</sup> December 2007. Whichever organisation wins the contract will be able to decide how and what they provide to claimants provided they meet the general criteria set down by the government.

## **Impact on the Advice Sector in Nottinghamshire**

ESA claimants will be seen by a Personal Adviser (PAs) who will advise them on their potential benefit entitlements if they take up work. Our experience of PAs is that they can be insufficiently knowledgeable to ensure that people are getting all the benefits to which they could claim. Complex better off calculations need to be undertaken for someone contemplating returning to paid work. On occasions, loss of concessions such as free prescriptions or free school meals are not included in calculations.

The new system of sanctions is also likely to increase the number of people requiring representation at appeals.

Disability organisations have also expressed concern over the possible lack of impartiality of any voluntary or private sector organisation that takes on a contract to provide ESA services. Access to independent and expert advice will therefore be vital and is likely to lead to increased demands on the advice sector in Nottinghamshire.

Nottinghamshire Welfare Rights Service will be providing further information and training in the summer of 2008 when the regulations have been finalised and the details of how the new system will be implemented are clarified.

For further copies of this Briefing please contact the Welfare Rights Services on (0115) 977 4018 or e-mail at [welfare.rights@nottscc.gov.uk](mailto:welfare.rights@nottscc.gov.uk)