

# To require consideration of revision before appeal

Equality impact assessment

October 2011

# Equality impact assessment for requiring consideration of a revision prior to an appeal

## Requiring reconsideration

1. Currently, if a person is unhappy with a decision for most social security and child support benefits and payments, they can request a written explanation or apply for a revision of the decision within one month, triggering a process internally referred to as reconsideration<sup>1</sup>. The body that makes the decision reconsiders the decision and issues a decision notice that either revises the original decision or refuses to revise. If the decision is not revised in the claimant's favour, the claimant has a further month in which to appeal the original decision.
2. Alternatively, the claimant can simply appeal the decision within a month, without requesting a revision. When this happens, the original decision is reconsidered in order to ensure the decision is corrected, if necessary. The appeal lapses if the decision is revised to the claimant's advantage. If the decision is not revised or the decision is unfavourable then the appeal continues against the original decision, unless the appellant withdraws it.
3. An increase in the volume of appeals has led to a substantial increase in the Tribunals Service's caseload for social security and child support appeals, and longer waiting times for these appeals to be heard. We wish to ensure that as far as is reasonably possible, disputes between claimants and the relevant decision making body regarding social security, child support and certain other decisions are resolved through internal processes. This will contribute to delivering timely, proportionate and efficient justice for claimants and to reducing unnecessary demands on the Tribunals Service.
4. The policy change is to introduce a power so that claimants can be required to apply for a disputed decision to be revised before being able to appeal to the First-tier Tribunal. The power would be capable of being exercised in relation to all major social security benefits (working and pension age and benefits recovery); Housing Benefit and Council Tax Benefit; child support; and other payments administered by DWP, e.g., for mesothelioma and vaccine damage.
5. The regulations could apply to some or all of these, or to some at first and others later. Therefore, these changes could affect the administration of benefits and

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<sup>1</sup>For Vaccine Damage Payments a claimant has six years from the date of the decision notification to seek a revision of the decision; there is no time limit for submitting an appeal, which can be made without seeking a revision.

payments carried out by DWP, the Child Maintenance Enforcement Commission (CMEC), Her Majesty's Revenue and Customs (HMRC), and Local Authorities.

6. The policy change creates an enabling power which will come into effect through regulations. The detail of how it will be applied will depend on those regulations. This equality impact assessment therefore provides an overview; more detailed impact assessment will be carried out in connection with regulations.
7. The effect of the change is that decisions will go through a robust reconsideration process before an appeal can be made. This ensures that the decision has been checked thoroughly and the reasons for the decision are explained to the claimant before the case goes to appeal. It also allows an opportunity to proactively seek further evidence from the claimant about the disputed decision before the claimant makes an appeal.
8. Parts of DWP have recently made improvements to their reconsideration processes and DWP is actively considering the potential to improve the reconsideration process further. Improvements of this kind strengthen the argument for requiring claimants to go through the reconsideration process, before making a decision to appeal, if they still perceive that they have not received a fair decision after this stage.
9. If requiring the claimant to apply for a revision prior to being able to appeal were to delay claimants from receiving benefit payments to which they were found to be entitled on appeal, then this would have an adverse financial impact on them. Payment would be backdated if the decision was overturned in their favour. Any such delay in payment of benefits would be mitigated by operational measures to ensure timely delivery of the reconsideration process. It is also anticipated that a reduction in the volume of appeals would contribute to efforts to reduce waiting times at the appeal stage.
10. The proposed changes would require people to apply for a revision and have the outcome of this determined, before being able to appeal. This would mean an additional application in writing having to be made in order to appeal, if the claimant wished to do so after the reconsideration process. The processes for applying for a revision and for appealing will need to be designed to be accessible, to minimise (so far as practicable) the extent to which the processes themselves might deter or inhibit their use.

## Consultation and involvement

11. The Department has well-established mechanisms for engaging with organisations that work with and represent its customers. Briefly, these comprise:
  - the quarterly DWP Policy & Strategy Forum, which is used as a vehicle for consulting with policy officers of key national organisations that work with and represent our customers, as we develop our thinking and our policies; organisations represented include Citizens Advice, Local Government

Association, Age UK, and a wide variety of disability organisations and those that work with our most disadvantaged customers;

- the Equality Schemes Customer Reference Group, which helps the Department involve customers specifically on equality matters and acts as a consultation group for the Department's Equality Schemes. The Group usually meets twice a year and has representatives from each of the equality areas;
- our Customer Representative Forum programme – three larger-scale events (the Annual Forum in London, Welsh Annual Forum in Cardiff and Scottish Annual Forum in Edinburgh/Glasgow) that are designed to allow engagement with representatives of the frontline organisations that work with our customers at regional and local level; these include a wide variety of advice and support organisations from the voluntary sector, as well as health and social services.

12. In addition to these standing consultation arrangements the Department regularly holds discussions with key stakeholders about current issues and new initiatives.

13. Implementing the measure in the Welfare Reform Bill to require reconsideration prior to an appeal requires regulations which would be subject to the affirmative procedure. We will use the mechanisms referred to above, as appropriate, to engage stakeholders in the development of proposals for the implementation of the power. We also intend to consult publicly on proposals for regulations.

## Impact of requiring reconsiderations

### Cross-cutting Issues

14. The prevalence of claimants with different protected characteristics covered by the Equality Act 2010 varies between the different benefits and payments to which the power may be applied. Moreover, the equality impact of the change will depend on the detail of implementation. We will therefore continue to assess the equality impacts at the regulation making stage.

15. There is, however, a range of cross-cutting issues that all of those bodies involved in the introduction of the change to the appeals process will need to be mindful of, and take action to address, during implementation.

16. Communication issues are likely to be the most significant barrier for people from particular equality strands in terms of both being aware of the availability of the reconsideration process and then subsequently being able to access it, i.e., applying for a revision of a decision.

17. To mitigate this potential barrier, any information relating to the reconsideration process would need to be available in accessible formats. This would include any information regarding the reconsideration process on relevant websites (DWP, CMEC, HMRC, Local Authorities, DirectGov). All affected areas would need to have available appropriate interpretation, translation and alternative format services to be able to provide a responsive and accessible service to clients where this was needed.

18. Employees from all bodies affected by the introduction of the requirement to go through the reconsideration process would need to have received adequate Equality and Diversity training to be able to deal with claimants sensitively and to respond effectively to requests for accessible services.
19. Employees may require additional guidance on when and how claimant representatives may become involved in the reconsideration process; for example a claimant with learning disabilities may have a representative who acts for them in dealing with complex administrative issues. A revision may therefore not be directly requested by the claimant; employees would need to have clear guidance regarding who they could talk to, under what circumstances, and to be aware of the Data Protection issues that this might raise.
20. Currently a person can apply for a revision of a relevant decision within one month of the decision being notified, although late applications are permitted on certain grounds. Consideration needs to be given to the timescale for the process, to ensure that where there is 'good reason' for the request for a revision being made after the end of the one month period – for example on the grounds of mental health, learning disability, access or communication needs – a revision application may still be progressed after the one month period has elapsed.
21. To effectively monitor the equality impact of the change, DWP, CMEC, HMRC and Local Authorities may need to review their monitoring arrangements, in particular to enable them to understand who is accessing the reconsideration process and who may not be, and to assess whether any remedial action is required.

## **Gender**

22. As of May 2010, DWP had a total of 18.8 million recipients of the main benefits it administers. Women make up the majority of claimants (57 per cent), mostly as a result of much larger numbers of pension age claimants. For working age claimants, 52 per cent were male<sup>2</sup>.
23. As of September 2010, of the 4.8 million Housing Benefit recipients, 51 per cent were single females and 20 per cent were couples, and for Council Tax Benefit, of the 5.8 million recipients, 50 per cent were single females and 25 per cent were couples<sup>3</sup>. Therefore the majority of beneficiaries of Housing Benefit and Council Tax Benefit are female.
24. For child support, of the 1.2 million cases at September 2010, the parents with care in 95 per cent of the cases were female, while the non-resident parents in 95 per cent of the cases were male, so the vast majority of the recipients of payments are female. However, 70 per cent of child support appeals are made by the non-resident parent, so it is likely that the majority of appellants will be male<sup>4</sup>.

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<sup>2</sup> DWP Tabulation Tool

<sup>3</sup> DWP Housing Benefit and Council Tax Benefit Statistical Release

<sup>4</sup> CMEC Management Information

25. Over half of Social Security and Child Support (SSCS) appeals submitted are for Employment and Support Allowance (ESA) and incapacity benefits and for these benefits 58 per cent of claimants are male<sup>5</sup>. Appeal rates against the DWP decision for men and women on ESA are very similar, at 40 per cent of those found fit for work. Female appellants are more likely to have the appeal decided in their favour with 43 per cent having the decision overturned compared to 38 per cent for males<sup>6</sup>.
26. Available information suggests that in most cases, men and women are equally likely to appeal a decision. The changes are not expected to affect differently appellants of different genders, so there is not expected to be an adverse impact on people of different genders, for any of the benefits and payments that may be affected by the changes. We do not have evidence to suggest that there is likely to be any adverse impact on transgender people. Gender data for recipients of mesothelioma and vaccine damage payments are not available.

## Disability

27. The definition of disability for the purposes of equality impact assessment is now the definition contained in the Equality Act 2010, and was previously that defined by the Disability Discrimination Act. Administrative data do not record whether a claimant is disabled according to the Equality Act definition; therefore for the purposes of this equality impact assessment, the definition of disabled people is people who have a substantial, limiting physical or mental impairment.
28. There were 2.2 million claimants of DWP disability benefits (Disability Living Allowance (DLA) and Attendance Allowance (AA)) in May 2010 and an additional 2.6 million claimants of ESA or incapacity benefits<sup>7</sup>. The majority of SSCS appeals are made in respect of these medically assessed benefits, which are more likely to be claimed by people who have limiting impairments, e.g., in 2009/10, 179,000 appeals were received for ESA or incapacity benefits (53 per cent of all SSCS appeals) and a further 75,600 were received for AA or DLA (22 per cent of all SSCS appeals)<sup>8</sup>.
29. People who are diagnosed with mesothelioma, and as a result are eligible for mesothelioma payments, will very quickly, if not at the time of diagnosis, become disabled to some degree. Vaccine damage payments are only available to people who are severely disabled as a result of a vaccination against certain diseases.
30. Disability and incapacity benefits provide an important source of income for disabled people and help reduce their levels of poverty. If there were to be any delay in the handling of appeals, as a result of the proposed changes, this would be more likely to have an impact on claimants who have limiting impairments, as they are more likely to claim the benefits with the highest numbers and rates of appeals. As stated in paragraph 9 above, any such effect would be mitigated by

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<sup>5</sup> DWP Tabulation Tool

<sup>6</sup> DWP Management Information

<sup>7</sup> DWP Tabulation Tool

<sup>8</sup> Tribunals Service Annual Statistics, 2009/10

operational measures to ensure timely delivery of the reconsideration process. It is also anticipated that a reduction in the volume of appeals would contribute to efforts to reduce waiting times at the appeal stage.

31. People appealing their ESA decision receive the assessment rate of ESA while waiting for their appeal to be heard, while for AA and DLA the appellant is paid at the rate determined by the original decision until the appeal is heard. Therefore if there were to be any delays in the appeal process, this would lead to some disabled appellants living on reduced incomes for longer, if the decision was overturned in their favour on appeal. Payment would be backdated in these circumstances. While people are waiting for their appeals to be heard they can receive other DWP benefits to which they are entitled, e.g., Housing Benefit and Council Tax Benefit, meaning there is support available for those who need it most.
32. As stated in paragraph 10, the proposed changes would require people to apply for a revision and have the outcome of this determined, before being able to appeal. This would mean an additional application in writing having to be made in order to appeal, if the claimant wished to do so after the reconsideration process.
33. This extra step may have a larger effect on some disabled people, such as people with mental health problems or learning disabilities, who may have more difficulties navigating the appeals process. This would be mitigated through measures to make communications and processes accessible; to enable the use of representatives; and other relevant measures described under "Cross-cutting Issues" above.
34. Additionally, work in DWP is underway to make improvements which should improve the assessment of ESA claimants and reduce the numbers of people needing to appeal. The first independent review of the Work Capability Assessment for ESA carried out by Professor Malcolm Harrington, was published on 23 November 2010. The Department for Work and Pensions fully endorses Professor Harrington's recommendations, which include the following:
  - a. empowering and investing in decision makers so that they are able to take the right decision, can gather and use additional information appropriately and speak to claimants to explain their decision. This will include reviewing training and launching a forum for best practice;
  - b. making the Work Capability Assessment a more compassionate process by telephoning customers to ensure they understand what is happening, explaining their result and explaining the support that is available after the Work Capability Assessment;
  - c. accounting for the particular difficulties in assessing mental, intellectual and cognitive impairment, by ensuring that Atos employ "mental, cognitive and intellectual champions" in each Medical Examination Centre; and
  - d. improving transparency of the Atos assessment by ensuring that each report contains a personalised summary of the Atos healthcare

professional's recommendations, sending this summary to all claimants and piloting the audio recording of Atos assessments.

35. The Department for Work and Pensions intends to implement the recommendations of the review as quickly as possible. These changes will improve the assessment process for ESA of people with limiting impairments, particularly those with mental, intellectual and cognitive impairments, and this should reduce the number of ESA appeals.

## Race

36. Ethnicity information is not widely recorded for the benefits and payments which could be affected by the proposed changes. Ethnicity information is recorded for some of DWP's benefit claimants. For Jobseeker's Allowance in May 2010, ethnicity was recorded for 93 per cent of claimants and, of these, 16 per cent are recorded as being from ethnic minority groups<sup>9</sup>. For ESA, 11 per cent of people assessed to June 2010 who had their ethnicity recorded were from ethnic minority groups; however 20 per cent of those assessed had no ethnicity recorded, so caution is necessary in interpreting these figures<sup>10</sup>.
37. 11 per cent of the working age population are from ethnic minority backgrounds<sup>11</sup>, so people from ethnic minority groups appear to be slightly over-represented on the Jobseeker's Allowance caseload, but the ESA figures appear to be representative of the ethnicity of the working age population.
38. Appeals figures for ESA show that people from ethnic minority groups appear to have lower rates of appealing, with 34 per cent of those found fit for work appealing, compared to 39 per cent of others. People from ethnic minority groups are also slightly less likely to have their decisions overturned on appeal, compared with others<sup>12</sup>.
39. Ethnicity information which could be used to determine the appeal rates and likely effects of the proposed changes for people from different ethnic backgrounds is not available for the other benefits and payments which could be affected by the proposed changes, i.e., for the other major social security benefits, Housing Benefit and Council Tax Benefit, child support and other payments, e.g., for mesothelioma and vaccine damage.
40. If there is a gap between the appeal rates of white people and those from ethnic minority groups, as appears to be the case for ESA, this could increase as a result of the extra step that would be introduced to the appeals process. The changes to the process would require the claimant to apply for a revision and be notified of the outcome before they could make an appeal and it is possible that communications difficulties for people with English as a second language could further increase the gap in appeal rates.

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<sup>9</sup> DWP Tabulation Tool

<sup>10</sup> DWP Management Information

<sup>11</sup> Labour Force Survey

<sup>12</sup> DWP Management Information



41. This risk would be mitigated through measures to make communications and processes accessible; to enable the use of third-party representatives; and other relevant measures described under "Cross-cutting Issues" above.
42. Planned improvements to the process for claiming ESA, in response to the independent review by Professor Harrington (as described under "Disability" above) could also help to mitigate this risk. The improvements will make it easier for ESA claimants to have evidence from their health care advisers used in determining entitlement for the benefit, and will also ensure that decision makers more clearly explain the benefit entitlement decision. This should be particularly helpful for people with English as a second language, who may otherwise have difficulties in describing the effects of their health conditions on their capability for work.

## Age

43. Recipients of disability and incapacity benefits, which make up the majority of SSCS appeals, are likely to be older than average benefit recipients. In May 2010, 32 per cent of working age people receiving DWP benefits were aged 50 and over, but 44 per cent of ESA and incapacity benefits recipients were in this age group<sup>13</sup>.
44. In September 2010, 27 per cent of Housing Benefit recipients and 38 per cent of Council Tax Benefit recipients were aged 65 and over<sup>14</sup>; 20 per cent of the GB population aged 15 and over are aged 65 and over<sup>15</sup>, so recipients of Housing Benefit and Council Tax Benefit tend to be older than the general population.
45. People in child support cases tend to be relatively young, with only 9 per cent of cases at September 2010 having parents with care aged 50 or over<sup>16</sup>.
46. Due to the long latency of mesothelioma, most claimants for mesothelioma payments will have been exposed to asbestos in the 1950s, 1960s or 1970s. Therefore most of these claimants will be older people. Age data for vaccine damage payment recipients are not available.
47. Figures for ESA show that people aged from 35 to 59 are the most likely to appeal a decision that they are found fit for work, with around 43 per cent of these claimants appealing, compared to 34 per cent for other age groups. People aged 60 and over have relatively low appeal rates, at around 33 per cent, partly because many of the claimants may be eligible for Pension Credit if found ineligible for ESA<sup>17</sup>.
48. The changes are not expected to affect differently appellants of different ages, so there is not expected to be an adverse impact on people of different ages, for any of the benefits and payments that may be affected by the changes.

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<sup>13</sup> DWP Tabulation Tool

<sup>14</sup> DWP Housing Benefit and Council Tax Benefit Statistical Release

<sup>15</sup> Government Actuary's Department age projections

<sup>16</sup> CMEC Management Information

<sup>17</sup> DWP Management Information

## **Gender reassignment**

49. The Department does not hold information on people of transgender people and it is not likely that this will be available in the future. However the Government does not envisage an adverse impact on these grounds.

## **Sexual orientation**

50. The Department does not hold information on sexual orientation of claimants and it is not likely that this will be available in the future. However the Government does not envisage an adverse impact on these grounds.

## **Religion or belief**

51. The Department does not hold information on the religion or beliefs of claimants and it is not likely that this will be available in the future. However the Government does not envisage an adverse impact on these grounds.

## **Pregnancy and maternity**

52. The Department only holds information on pregnancy and maternity where it is the primary reason for incapacity on ESA, or if someone is receiving free milk vouchers on Income Support. It cannot therefore be used to accurately assess the equality impacts; however, the Government does not envisage an adverse impact on these grounds.

## **Monitoring and evaluation**

53. The material in this Equality Impact Assessment covers the equality groups currently covered by the equality legislation, i.e. age, disability, gender (transgender), ethnicity, religion, sexual orientation, pregnancy/maternity and civil partnerships. DWP is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.

- a. We will use administrative datasets, including the Department for Work and Pension's Work and Pensions Longitudinal Study (WPLS), to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.
- b. We will use survey data, such as the Family Resources Survey (FRS) and Labour Force Survey (LFS), to assess trends in the incomes of the protected groups and in their employment outcomes. Both the FRS and LFS will collect information on age, disability, gender, ethnicity, sexual orientation, religion and civil partnerships.

- c. We will use qualitative research and feedback from stakeholder groups to assess whether there are unintended consequences for the protected groups, and whether the policy is likely to result in adverse consequences for particular groups.
  - d. We will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of complaints in order to assess the broader impact of the policy.
  - e. We will draw on broader DWP research where appropriate, as well as any research commissioned specifically as part of the evaluation of the measure.
54. As part of our actions in the context of the data requirements under the Equality Act, we are looking across DWP activities to identify and address further gaps in data provision wherever reasonable.
55. The material in this Equality Impact Assessment covers age, disability, gender (transgender), and ethnicity. For these strands we can obtain some information from administrative data and some survey data may also provide reasonable background information.
56. From 2011, sexual orientation, religion and pregnancy/maternity will also be covered by equality legislation; with the exception of maternity, these groups will not be captured in the Departmental administrative information. We have asked for information on religion and sexual orientation to be included in the main survey used for low income and poverty analysis from April 2011. Also, as part of our actions in the context of the data requirements under the Equality Act, we are looking across DWP activities to identify and address further gaps in data provision wherever reasonable.
57. The effects of the proposed changes will be monitored when they are implemented. As far as is practicable, information on outcomes for the protected groups and the effects of the proposed changes will be used in evaluating the effectiveness of the policy.

## Next steps

58. As stated in paragraph 6 above, implementing the measure in the Welfare Reform Bill to require reconsideration prior to an appeal requires regulations which would be subject to the affirmative procedure. The regulations will set out the way in which the change will apply and the types of decisions to which it will apply. We will consider further the equalities impacts of our proposals for regulations as they are developed.
59. A range of options is still being considered for the implementation of this measure. These could include phased implementation for different types of decision. As and when the policy change is applied, business processes will be designed to minimise the effects on protected groups and the actual effects on these groups will be monitored within the first six months in particular and on an

ongoing basis, to assess whether any of the groups have been adversely affected. Operational and policy changes can then be introduced to reduce any adverse equalities impacts.

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