

# Emergency Budget News

Here are some of the most notable changes to the benefits and tax credits rules announced by George Osborne in the emergency budget on 22nd June 2010.

## Benefits and Children

- Health in Pregnancy Grant to be abolished from January 2011
- Child Benefit to be frozen for three years from April 2011
- Eligibility to Sure Start Maternity Grants to be restricted to the first child from April 2011

## Housing Costs and Housing Benefit

- Housing Benefit awards to be reduced to 90 per cent of the initial award if a claimant remains on Jobseekers Allowance for longer than twelve months from April 2013
- Government contribution to discretionary housing payments are to be increased by £10 million in 2011/2012, and £40 million each year from 2012/2013
- The standard interest rate for mortgage interest paid with means-tested benefits is to be calculated using a level equal to the Bank of England's monthly Average Mortgage Rate, from October 2010
- Local Housing Allowance rates are to be capped from 2011



## Tax Credits

- The second income threshold for the family element of child tax credit is to be reduced from £50,000 to £40,000 from April 2011
- The baby element of child tax credit is to be removed from April 2011
- The 50+ element is to be removed from working tax credit from April 2012
- The disregard of in-year rises in income is to decrease from £25,000 to £10,000 from April 2011, and to £5,000 from April 2013

## Disability Living Allowance

- Objective medical assessments to be introduced for all DLA claimants from 2013/2014
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# Child Trust Fund

The Child Trust Fund (CTF) is a long-term tax-free savings and investment account for children born on or after 1 September 2002. The government intends to reduce and then stop CTF payments. These changes are likely to take place in August 2010 and January 2011.

## How the CTF works now

You are given a voucher to open a special account for your child when you are awarded Child Benefit, for a child born on or after 1 September 2002 .

The voucher is worth £250. If you get Child Tax Credit, with an income of no more than £16,190, for tax year 2010-11, your child will get an extra £250. This is paid straight into the CTF account when your Tax Credit award has been finalised.

When your child reaches seven years old, a further payment of £250 or £500 is made when, as above, your Tax Credit award has been finalised.

From April 2009, your child will get an extra annual payment if you get Disability Living Allowance (DLA) for them. This will be £200 if the DLA award includes the highest rate care component or £100 if they are entitled to any other rate of DLA. These payments will be made from April 2010.

## How the changes will affect the Child Trust Fund

From 31st July 2010 additional payments for 7 year olds will stop.

From 1 August 2010 to 31st December, payment at birth will reduce to £50. If you get Child Tax Credit, as above, your additional payment will also reduce to £50.

From 1 January 2011 new Child Trust Fund vouchers will stop.

In April 2011, the final additional payments for children getting DLA will be made. These are for the 2010/2011-tax year.

**If your child has a CTF or you have a baby before 1st January 2011 payments will continue until the date that the changes take place.**

Example 1: if you made a claim for Child Tax Credit before 1st August but this is not finalised until September your child is entitled to the £250 additional payment.

Example 2: Your child is 7 on 30th July; they are entitled to the additional payment.

Further information is available on [direct.gov.uk](http://direct.gov.uk) and [childtrustfund.gov.uk](http://childtrustfund.gov.uk)

## Suspension of Work-focused Health Related Assessments

These assessments were introduced as an integral part of the Work Capability Assessment for Employment and Support Allowance. The assessment came at the tail end of two other assessments – the first deciding whether there was any entitlement to ESA, the second, what group a claimant went into: the support group or the work-related activity group.

This third assessment looked at a claimant's "work-readiness".

In a letter dated 24th June 2010 the DWP stated it was suspending these tests for two years. They are doing this so that they can "focus on and cope with the demands of the reassessment of existing incapacity benefit customers".

# Disability Living Allowance – What is Severe Discomfort?

Every case-worker and tribunal representative knows that severe discomfort doesn't necessarily kick in when you can no longer continue walking because of it. Judge Parker said this unequivocally in R(DLA)4/03. That is why the case was reported. But some people still haven't grasped the idea yet.

Here's what Judge Parker said, word for word, back in 2003:

*“It is an error of law to equate the onset of severe discomfort with the point at which the claimant stops walking. Walking which gives rise to severe discomfort is discounted. If a claimant walks 100 yards of which the last 10 are after the onset of severe discomfort, he must be judged as if the distance he walks at that stage is the farthest distance he can go without such a result, which could be 80 yards or so.”*

In a recent Upper Tribunal Case (CDLA 2235 2009), heard by Judge Nicholas Paines QC, the person who hadn't quite grasped the idea was the Examining Medical Practitioner. This was demonstrated clearly in his report to the DWP. He believed (and who can blame him; he's a doctor, not a lawyer) that the assessment of walking ability was primarily about distance, and that the point at which the claimant stopped was the same point at which severe discomfort commenced. His report, of course, went before the tribunal. So what did the tribunal do with it?

The tribunal adopted the EMP's opinion. If the EMP's opinion was incorrect, there's no way the tribunal's decision is going to be anything but the same. In doing this, it went wrong in law. Here's what Judge Paines said about the case:

*“...a tribunal will need to be alert to anything which suggests that the medical practitioner may have misinterpreted or misapplied the statutory test. Otherwise the tribunal risks adopting his error of law so that it vitiates their own reasoning.”*

## Welfare to Work Projects Cancelled

As part of the new government's drive to save money by cutting public spending, four welfare-to-work projects are to be axed, saving a combined total of one billion pounds.

The Future Jobs Fund (FJF) is to go. This project aimed to create 110,000 new jobs by March 2011. The Project was mainly aimed at young people aged 18-24 who had been claiming Jobseekers Allowance for six months. I'm not sure how close they got to achieving their laudable target. This will save £290 million.

The extension of the Young Person's Guarantee to March 2011 is to be given the chop. This extension was announced only a few months ago, in the then Labour government's Budget. Again, as the title suggests, the cancellation of the extension of the programme will affect young claimants. The FJF was a part of it. The other parts included work-focused training, and the Community Task Force. This will save £450 million.

Two other initiatives, recruitment subsidies worth £30 million, and the Jobseeker's Guarantee, worth £515 million, are also to be axed.

All these projects are to be replaced by a more effective single work programme by the summer of 2011.

# Work Capability Asses

Those of you who work with clients who are ill or disabled will be aware that undergoing a medical assessment is part of the claiming process. With the introduction of Employment and Support Allowance (ESA) in October 2008, this assessment became more stringent and far more complex for new claimants.

In March 2010, the government of the day published its 'Building Bridges to Work' paper. This set out changes to improve the accuracy of assessments and the timetable for migrating all incapacity-related claims to ESA. This paper drew many unfavourable comments. The Disability Benefits Consortium stated that the paper failed to reflect the problems caused by the test for many disabled people. This is corroborated by expressions of concern by Jobcentre Plus advisers at the stringency of the assessment process which has left many people with severe health problems in the work-related activity group and those with significant health problems being found fit for work. Individuals who have undertaken the assessment have also commented on the complexity of the pre-assessment form (ESA50) and of long delays experienced on the actual day of the assessment.

Statistics released by the Department for Work and Pensions (DWP) on 12/05/2010 show that 68% of claimants were found fit for work, 23% were placed in the work-related activity group and only 9% were placed in the support group. The difficulties don't stop there. To date only 29% of cases appealed since October 2008 have been heard at tribunal: of these 61% have had the decision confirmed.

The work capability assessment, based on a person's ability to perform a range of tasks and linked to both physical and mental health and disability, determines a person's ability to work or not. The assessment is not a snapshot in time on the day of the assessment or the day the ESA50 was completed. The approach to making the decision should be based on the reasonableness of carrying out the activities. It appears that the cuckoo of target achievement has pushed reasonableness out of the nest, or to paraphrase Albert Einstein, 'a perfection of means and a confusion of aims seem to be the main problem'.

So, how has this problem arisen? Decision Makers base their decisions on medical evidence. Atos Healthcare, whose doctors carry out medicals on behalf of the DWP, provides much of the evidence. Atos Healthcare has a history of discredited evidence. An example of this is a severely disabled young man awaiting a series of operation on a shattered leg who was deemed fit for work despite the evidence of two orthopaedic surgeons and his GP to the contrary. The Decision Makers appear to be unable to divorce themselves from the Atos Healthcare assessments to look at a person's situation holistically.

There are currently a significant number of cases waiting to be heard by the Upper Tribunal (Commissioners). Of the six decisions that are currently available five have either been referred back to be reheard or had a new decision substituted in favour of the claimant. There has also been extensive criticism of the calibre of decision making by both Decision Makers and First-Tier Tribunals.

# Assessments

Many of us, as advisers, have been keenly aware of this situation. What do we have to look forward to now? The migration of Incapacity Benefit and Income Support recipients, on incapacity grounds, to ESA. This process is scheduled to start, with pilots, in October 2010 and to be completed by April 2014. We know that some clients will not pass the ESA assessment. There are, however, those who should clearly pass the assessment but are likely to fail because of current procedures. The result? More individuals whose health will be further undermined.

We must ensure therefore that: the information provided for the assessment is as clear and concise as possible; that clients, as far as possible, are accompanied so they have a witness to proceedings; and that decisions are challenged.

## References

[http://www.rightsnet.org.uk/cgi-bin/sub\\_client/search.cgi?template2=news/user\\_details2.html&output\\_number=1&sort=news.submission\\_date+desc&news.ID=512172718740&start=](http://www.rightsnet.org.uk/cgi-bin/sub_client/search.cgi?template2=news/user_details2.html&output_number=1&sort=news.submission_date+desc&news.ID=512172718740&start=)

<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/building-bridges-to-work/>

[http://www.bailii.org/cgi-bin/sino\\_search\\_1.cgi?method=phrase&query=%27Employment+and+Support+Allowance%27&results=50&rank=on&callback=on&mask\\_path=uk%2Fcases%2FUKUT%2FAAC](http://www.bailii.org/cgi-bin/sino_search_1.cgi?method=phrase&query=%27Employment+and+Support+Allowance%27&results=50&rank=on&callback=on&mask_path=uk%2Fcases%2FUKUT%2FAAC)

*Private Eye Magazine, May 2010*

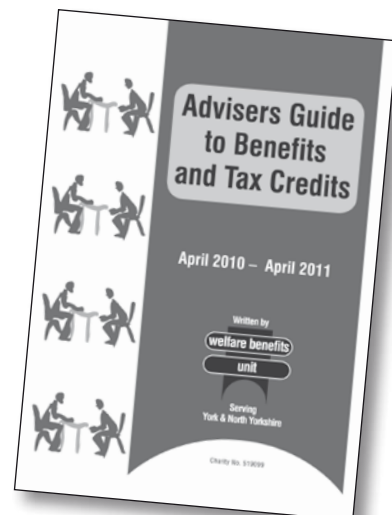
## Enlarged copies of Benefits for People over 60 and Benefits if you are Disabled.

This year, for the first time, we have had enlarged copies of these booklets done at the printers. We normally just expand them on the photocopier. If you would like to order please phone 01904 646058.



## Advisers Guide

Don't forget the 2010 – 2011 Advisers Guide to Benefits and Tax Credits is in circulation now. If you haven't got your copy, let us know.



# “Full-Time” Education for Carers Allowance

A court of appeal case has provided some guidance on what constitutes “full-time education” for the purposes of entitlement to Carers Allowance. The magic number here is 21. If you are studying for more than 21 hours a week – no Carers Allowance. If not, a claim can be made, because the education is not full-time. It’s part-time.

But there is a lot of fuzziness in the relation between the two. Regulations provide not exactly a method, but a few hints here and there, as to the calculation of these hours. You’ll find them in Regulation 5 of the Social Security (Invalid Care Allowance) Regulations 1976. On the one hand, the regulation states that a person shall be treated as receiving full-time education “for any period during which he attends a course of education at an ..... educational establishment for twenty-one hours a week”. There is that magic number again. On the other hand, the regulation states that excluded from the total of hours is any time spent on “unsupervised study”.

Judge Mesher, in the initial decision, decided in favour of the claimant. Her circumstances were these. She said she spent 12.5 hours attending the university in supervised study. That is all she needed because she was a particularly hard-working and gifted student. Only these hours should count towards the total. She was thus not in full-time education. However, the DWP appealed to the court of appeal, arguing that it was the standard number of hours the University expected their students to devote to contact hours and supervised study, not the actual number. The essence of the issue was whether individual circumstances could be taken into account in the calculation.

Judge Mesher said they could.

Here is what the court of appeal said:

*“The consequence of [Judge Mesher’s] approach is that entitlement to Carers Allowance is dependent upon whether the student is hard working or lazy, brilliant or less able... and there seems to be no reason of policy or fairness for drawing such distinctions”*

The decision is “Secretary of State for Work and Pensions v Deane [2010] EWCA Civ 699” (23 June 2010).

## Extra help with fuel bills

An automatic deduction of £80 is to be made from the householder’s fuel bill, from the following energy suppliers:

- British Gas
- EDF Energy
- EON
- Npower
- Scottish Power
- Scottish and Southern Energy

Payable for each household where one person is aged 70 or over and in receipt of Pension Credit guarantee credit on 26 March 2010. The Government estimate 250,000 households will benefit from the scheme. There is no need to claim, the Department for Work and Pensions will share information with the energy suppliers to help identify households entitled. Rebates will be applied automatically by electricity suppliers. If this is not possible, the Department for Work and Pensions will write to you to advise you what you need to do so you do not lose out.

More details on the Scheme are available by calling 0845 600 0033 or contact your energy supplier.

# Announcement Follows SSAC Report on Substance Misuse

Maria Millar, Minister for Disabled People, announced on 18th June that there was to be a radical re-think on getting drug and alcohol users back to work. She said this in response to a Social Security Advisory Committee (SSAC) report on a pilot scheme – the Welfare Reform Drug Recovery Pilot Scheme.

The SSAC report said the pilot scheme was flawed and ineffective. It contained too much conditionality. What is the point, after all, in sanctioning adults who may already be vulnerable? Thus, one of the pilot-specific vulnerabilities for most claimants was the

danger of dropping out of the benefits system altogether, after being sanctioned, and, in desperation, stealing to buy their substance.

Ms Millar, in response to the report, said that 80% of problem drug and alcohol users claim benefits... Furthermore, “Those with drug and alcohol problems often face other difficulties in finding work, and we will now focus on addressing substance misuse in the wider context of other barriers to employment such as housing and mental health issues”.

## Poverty and Life Chances

The new government is to set up an independent review body to look at poverty and life chances. To ensure that it is independent and dispassionate, David Cameron has appointed an expert in poverty and life chances – the Labour MP Frank Field.

The first thing Frank is to look at is Child Benefit. He is thinking of “front-loading” it – that is, paying more when the child is young, less when the child’s age reaches double figures, and stopping it altogether in the early ‘teens. The rationale behind the thinking is that children, by the time they reach fourteen, can handle themselves, and don’t need looking after. And their parent should be out at work by that time anyway.

Mr Field is also looking at taxing Child Benefit. Of course, without details, figures, and projections, no-one at present can foresee whether or not there will be a financial loss to individual claimants.

## New Employment and Support Allowance Guidance

This guidance, found in DMG Memo 33/10, gives advice on a number of issues, but specifically payment of ESA where an appeal has been made.

Here are the main points:

The provision which allows a claimant to be entitled to ESA without making a claim where they appeal a decision about their limited capability for work is amended

Also amended are the rules for ending the assessment phase of ESA

The good cause provisions for ESA claimants who fail to take part in a work-focused interview are changed

The rules on temporary absences abroad while claiming ESA are also changed.

**BENEFITS BULLETIN IS COMPILED BY THE WELFARE BENEFITS UNIT**

**17 Priory Street, York YO1 6ET**

For further information or to include items in the next issue, ring the advice line (below).

## George Osborne Proposes Housing Benefit Cuts

George Osborne, at the G20 summit, said that he wants to cut the Housing Benefit budget. At least, that is what I think he is saying.

Here is what he said:

*“Some of these benefits individually are very much larger than most government departments. Housing Benefit is one of the largest. In its own right, it would be treated as one of the largest government departments.”*

There are two causes for concern here. The first, of course, is obvious. So obvious we don't even need to mention it. The second is Mr Osborne's dreadful use of spoken English. How can a benefit be larger than a government department? “Findlay” – the book containing all the Housing Benefit law and regulations – is pretty large; I grant him that. I think his announcement demonstrates one of two things. Either he does not know about Housing Benefit, or his parents wasted an awful lot of money on his public school education. Or maybe it is a bit of both.

## Do you require any Welfare Benefits Training?

The Welfare Benefits unit provides over 800 places on training courses every year. We offer a 3-day Introduction to Benefits course, which suits those people who are new to the world of benefits and others because they need a refresher to update them on recent changes. In addition we offer more specific days of training either focusing on a particular benefit for example Employment and Support Allowance or benefits which affect a particular client group for example Carers or people facing redundancy.

We try to respond to local 'need' around the county by offering bespoke days tailored to an organisations needs.

If you have training need please contact Margaret Callaghan 01904 646058.

**BENEFITS UNIT ADVICE LINE**

**01904 642512**

Mon – Fri: 10am – 1pm • Wed: 10am – 4pm

Please do not give this number to members of the public.