

Disability Benefits Consortium briefing for Peers on amendments to Clause 51: Employment and Support Allowance time-limiting

December 2011

The Disability Benefits Consortium (DBC) is a national coalition of over 50 disability and welfare charities and other organisations committed to working towards a fair benefits system.¹ Using our combined knowledge, experience and direct contact with disabled individuals, people with long-term conditions and carers, we seek to ensure that government policy reflects and meets the needs of all disabled people.

Amendment to clause 51

Lord Patel, Lord Mckenzie of Luton

Page 36, line 34, leave out “365 days” and insert “a prescribed number of days which must be at least 730”

Purpose of amendment

Clause 51 of the Bill amends the Welfare Reform Act 2007 to introduce a 12 month limit to the amount of time a person is entitled to contributory Employment and Support Allowance (cESA) for those in the Work-Related Activity Group (WRAG).

The DBC opposes the time-limiting of cESA in principle. However, we recognise the importance to find a compromise that will allow the Government to make savings while protecting the most vulnerable by giving sick and disabled people a more realistic amount of time to make the journey back to employment. 12 months is simply not long enough. We therefore encourage peers to support Lord Patel’s amendment, which would allow a time-limit, of not less than two years, to be brought in through regulations.

This amendment would allow more consideration to be given to developing a time-limit that is appropriate and fair, and ensures that disabled people continue to receive critical financial support for a reasonable amount of time to allow them to attempt to return to employment. The amendment would mean that this is a minimum of two years; discretion would be allowed to grant a longer period according to someone’s ability to return to work.

Reason for amendment

The Government’s current proposals to time-limit cESA to just one year will be devastating for disabled people. Rather than providing an incentive to work, it will penalise them simply for being unable to return to work quickly enough.

The Government has not provided any evidence that indicates 12 months is sufficient time for many disabled people to return to work. In fact, according to the Government’s own estimates, in steady state, **94% of people** in the WRAG on cESA will continue to need

support for longer than 12 months.¹ In total, **700,000 disabled people** will be affected by time-limiting by 2015/16.

“I’ve worked all my life and paid for decades into the system on the understanding that there’ll be support if I need it. To be told that all of this support could have an arbitrary time limit is both unfair and stressful.” (Liz – a person with Parkinson’s disease)

Meanwhile, the eligibility threshold for means-tested ESA is so low that any disabled person whose partner earns as little as £149 per week, or whose partner works just 24 hours or more per week, will lose all of their ESA. This is despite having worked and paid into the system before becoming ill. This will leave many sick and disabled people living below the poverty line.

Despite estimating that 700,000 people will be affected by the time-limiting of ESA the Government’s impact assessment claims that there will be no impact on health and wellbeing. The Government has also failed to properly assess the inevitable impact time-limiting of ESA will have on the numbers of people in poverty, health and social care budgets and welfare advice services.

Stephen Townend started claiming ESA in March 2011. His partner earns roughly £160 per week. Under the Bill he will lose his ESA in April 2012:

“I can’t believe the Government is planning to take away all my ESA after just 12 months because my wife works more than 24 hours a week. I had renal cancer and have had a kidney removed. I’m still in a lot of pain, I need a stick to walk and get awful pins and needles down my legs. Without my ESA we would find it really difficult to get by. We have used up virtually all our savings already. I have worked all my life and paid into the system but this doesn’t seem to mean anything.”

In addition, we believe that the time limit will disincentivise working and saving for as long as possible with a disability or long-term condition, will encourage partners who earn over the threshold to reduce their hours or give up work, and may even cause family breakdown.

“We’re made to feel awful when we’ve always paid a full stamp for so many years, we’ve never claimed anything, always worked and saved and paid for everything. We’ve worked hard to build up a few savings – which we might need to pay for care. It just seems so unfair that when you’re genuinely ill that you’ll get nothing. We feel like we may as well just spend the lot so we’ll have nothing - then we’ll get the support we need from the Government.” (Jean – a person with MS)

Imposing a 12 month time-limit on contributory ESA was criticised by Peers from across the House of Lords during 2nd Reading and Committee stages of the Bill and was opposed by Liberal Democrats at the Party Conference in September.

¹ Parliamentary Question 55206, 16th May 2011

www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110516/text/110516w0004.htm#11051628000780

The concerns have been most recently echoed by the Joint Committee on Human Rights, which highlighted that the lack of evidence that 12 months is a reasonable time-frame, and the problems with the tests assigning people to the WRAG “call into question the objective justification for the disparate impact, and at the very least suggests the need for close scrutiny to ensure that Article 14 is not breached”.²

The DBC is asking Peers to stand-up for sick and disabled people who have paid into the system and ensure they are not cut off from a vital benefit that they need after just 12 months – a completely unrealistic time-scale in which to expect someone facing significant barriers to return to work.

David is 20 years old and has Asperger syndrome. When he left school at 16 it took his support worker six months to get David to leave the house and go to the shops and another six months of support for him to apply to a music course. For two years, David needed one-to-one support to make the journey to college and complete lessons. David is now looking for work. While he has a lot to offer a potential employer, given his high level of need and the difficulties he faces in coping with social and professional situations, it is highly unlikely that just 12 months of ESA would be enough time for him to access the support he needs to be work ready.

Philip is 56 years old and was diagnosed with MS in 2007. He was able to work for a further 12 months but was made redundant in September 2008. He has sent out over 200 applications for a new job but to no avail. Philip has Secondary Progressive MS which means his condition will get worse year on year, and his mobility is becoming increasingly difficult. He recently received the letter stating that his ESA may be limited to 12 months. He is very concerned that his ESA could be withdrawn despite his MS becoming even more difficult to live with.

Additional amendments to Clause 51

The DBC opposes the time-limiting of ESA in principle. Should time-limiting remain as part of the Bill, we have serious concerns about how the Government intends to implement the proposal.

Amendment to ensure that the time-limit for contributory ESA for those in the WRAG only takes into account days spent on the benefit after the Welfare Reform Bill comes into force

Clause 51, Page 36, line 32, leave out paragraph (a) and insert –

² Joint Committee on Human Rights; Legislative Scrutiny: Welfare Reform Bill; [Twenty-first Report of Session 2010–12](#)

“(a) does not include any days occurring before the coming into force of this section.”

Time-limiting will be applied retrospectively meaning that 100,000 people who are still too ill to work will lose their contributory ESA in April 2012 when the provisions come into force, and will not receive any ESA if they fail the means test, despite the fact that the Welfare Reform Bill was not in force when they started their claim. A further 200,000 people will lose their contributory ESA within the first year. **The DBC supports Lord Patel’s amendment to address this concern.**

Martin was diagnosed with Primary Progressive MS in February 2007. He continued to work until November 2009 albeit with difficulty. He cannot walk or stand up, has incontinence problems and suffers badly with fatigue and muscular weakness in his legs and back. Martin recently received a letter from the DWP outlining how the Government is seeking to change the rules on ESA and impose a time limit on the benefit.

“The real sting in the tail is that the ‘clock’ starts ticking from the date you first ever started receiving the benefit. In my case that is since June 2009, so some 27 months, so in their eyes I am 15 months over the limit! Therefore, my payments would stop immediately once the policy comes into force next year.”

The DBC is pleased that the Government has introduced **Amendment 43** to make it clear that people, such as those with Parkinson’s Disease, MND or MS would be able to re-qualify for contributory ESA if their condition deteriorates to such an extent they would become eligible for the Support Group of ESA. It is extremely important that a person in the WRAG who has been subject to the ESA time limit of 365 days is able to re-qualify for the contributory benefit **at any time** if they are subsequently assessed as eligible for the Support Group. While it does not address our central concerns about the inadequacy of the 12-month time-limit **the DBC welcomes this clarifying amendment.**

Contacts for further information:

Geoff Heyes, Macmillan Cancer Support: 0207 840 4843 / ghey@macmillan.org.uk

Lucy Bramwell, MS Society: 0208 438 0962/ lbramwell@mssociety.org.uk

Simon Shaw, Sense and Co-chair of the DBC Parliamentary Group: 020 7014 9386 / simon.shaw@sense.org.uk

ⁱ DBC members: Action for Blind People, Action for M.E., Age UK, Action on Hearing Loss, Ambitious about Autism, Arthritis Care, Breast Cancer Care, Capability Scotland, Carers UK, Child Poverty Action Group, The Children’s Society, Citizens Advice, CLIC Sargent, Crohn’s and Colitis UK, Cystic Fibrosis Trust, Deafblind UK, Disability Alliance, Every Disabled Child Matters, Guide Dogs, Hafal, Haemophilia Society, Inclusion London, LASA, Learning Disability Coalition, Leonard Cheshire Disability, Livability, Macmillan Cancer Support, Mencap, Meningitis Research Foundation, Mind, Motor Neurone Disease Association, MS Society, Muscular Dystrophy Campaign, Myeloma UK, National AIDS Trust, National Association of Welfare Rights Advisers, National Autistic Society (NAS), National Deaf Children’s Society, National Rheumatoid Arthritis Society, Papworth Trust, Parkinson’s UK, RADAR, Rethink, Royal National Institute of Blind People (RNIB), Royal College of Psychiatrists, RSI Action, Scope, Scottish Association for Mental Health, Sense, Sense Scotland, Skill, The Stroke Association, Sue Ryder, Transport for All, TUC, United Response, Vitalise