

---

DRAFT STATUTORY INSTRUMENTS

---

**2013 No.**

**The Employment and Support Allowance Regulations 2013**

**PART 7**

**Claimant responsibilities**

**Interpretation**

**41.—(1)** In this Part—

“responsible carer”, in relation to a child, means—

- (a) a person who is the only person responsible for the child; or
- (b) a person who is a member of a couple where—
  - (i) both members of the couple are responsible for the child; and
  - (ii) the person has been nominated by the couple jointly as responsible for the child;

“responsible foster parent”, in relation to a child, means—

- (a) a person who is the only foster parent in relation to the child; or
- (b) a person who is a member of a couple where—
  - (i) both members of the couple are foster parents in relation to the child; and
  - (ii) the person has been nominated by the couple jointly as the responsible foster parent.

(2) The nomination of a responsible carer or responsible foster parent for the purposes of paragraph (1) may be changed—

- (a) once in a 12 month period, beginning with the date of the previous nomination; or
- (b) on any occasion where the Secretary of State considers that there has been a change of circumstances which is relevant to the nomination.

(3) Only one person may be nominated as a responsible carer or a responsible foster parent.

(4) The nomination applies to all of the children for whom the claimant is responsible.

**Application of regulations where there is dual entitlement**

**42.—(1)** This regulation applies where a person is entitled to universal credit and an employment and support allowance.

(2) The work-related requirements under sections 11B to 11I of the Act<sup>(1)</sup> and regulations 46 to 49 of these Regulations do not apply to such a person.

(3) Reductions relating to the award of an employment and support allowance under section 11J of the Act<sup>(2)</sup> and regulations 50 to 60 of these Regulations do not apply to such a person.

---

(1) Sections 11B to 11I were inserted by section 57 of the Welfare Reform Act 2012.

(2) Section 11J was inserted by section 57 of the Welfare Reform Act 2012.

### **Sanction ceases to apply to employment and support allowance**

**43.**—(1) This regulation applies where—

- (a) a person is entitled to an employment and support allowance;
- (b) there is a reduction relating to the award of the employment and support allowance under section 11J of the Act;
- (c) the person becomes entitled to universal credit; and
- (d) the person remains entitled to an employment and support allowance.

(2) Any reduction relating to the award of the employment and support allowance is to cease being applied to the award of the employment and support allowance.

### **Claimant commitment – date and method of acceptance**

**44.**—(1) For the purposes of section 1(3)(aa) of the Act<sup>(3)</sup>, a claimant who has accepted a claimant commitment within such period after making a claim for an employment and support allowance as the Secretary of State specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

(2) In a case where an award of an employment and support allowance may be made without a claim, a claimant who accepts a claimant commitment within such period as the Secretary of State specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first benefit week in relation to the award.

(3) The Secretary of State may extend the period within which a claimant is required to accept a claimant commitment or an updated claimant commitment where the claimant requests an extension and the Secretary of State considers that the request is reasonable.

(4) A claimant must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—

- (a) electronically;
- (b) by telephone; or
- (c) in writing.

### **Claimant commitment – exceptions**

**45.** A claimant may be entitled to an employment and support allowance without having accepted a claimant commitment if the Secretary of State considers that—

- (a) the claimant cannot accept a claimant commitment because they lack capacity to do so; or
- (b) there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

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

**46.** The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining work;
- (b) assisting or encouraging the claimant to remain in or obtain work;
- (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;

---

(3) Section 1(3)(aa) was inserted by section 54 of the Welfare Reform Act 2012.

- (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
- (e) identifying current or future work opportunities for the claimant that are relevant to the claimant's needs and abilities.

### **Claimants subject to no work-related requirements**

**47.**—(1) A claimant falls within section 11D of the Act (persons subject to no work-related requirements) if they are a claimant who—

- (a) has caring responsibilities for one or more severely disabled persons for at least 35 hours a week but does not meet the conditions of entitlement to a carer's allowance;
- (b) is the responsible foster parent of a child under the age of one;
- (c) is an adopter and it is 52 weeks or less since—
  - (i) the date on which the child was placed with the claimant; or
  - (ii) if the claimant requested that the 52 weeks should run from a date within 14 days before the child was expected to be placed, that date;
- (d) has been enrolled on, been accepted for or is undertaking, a full-time course of study or training which is not a course of advanced education and—
  - (i) is under the age of 21, or is 21 and reached that age whilst undertaking the course; and
  - (ii) is without parental support;
- (e) is entitled to an employment and support allowance which is payable at a nil rate;
- (f) is pregnant and it is 11 weeks or less before her expected week of confinement; or
- (g) was pregnant and it is 15 weeks or less since the date of her confinement.

(2) Subject to paragraph (3), for the purposes of section 11D of the Act, a person has regular and substantial caring responsibilities for a severely disabled person if the person—

- (a) satisfies the conditions for entitlement to a carer's allowance; or
- (b) would satisfy those conditions but for the fact that their earnings have exceeded the limit prescribed for the purposes of that allowance.

(3) A person does not have regular and substantial caring responsibilities for a severely disabled person if the person derives earnings from those caring responsibilities.

(4) Paragraph (2) applies whether or not the person has made a claim for a carer's allowance.

(5) In this regulation—

“adopter” means a person who has been matched with a child for adoption and who is, or is intended to be, the responsible carer for the child, but excluding a person who is a foster parent or close relative of the child;

“matched with a child for adoption” means an adoption agency has decided that the person would be a suitable adoptive parent for the child;

“severely disabled” has the meaning in section 70 of the Contributions and Benefits Act<sup>(4)</sup>;

“without parental support” means the person is not being looked after by a local authority and—

- (a) has no parent (in this definition, “parent” includes any person acting in the place of a parent);
- (b) cannot live with their parents because the person is estranged from them or there is a serious risk—

---

(4) Section 70 was amended by S.I.s [1994/2556](#), [2002/1457](#) and [2011/2426](#).

- (i) to the person's physical or mental health; or
- (ii) that the person would suffer significant harm if the person lived with them; or
- (c) is living away from their parents, and neither parent is able to support the person financially because that parent—
  - (i) has a physical or mental impairment;
  - (ii) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
  - (iii) is prohibited from entering or re-entering Great Britain.

### **Claimants subject to work-focused interview requirement only**

**48.**—(1) For the purposes of section 11E(1)(a) of the Act (claimant is the responsible carer for a child aged at least one and under a prescribed age) the prescribed age is five.

(2) A claimant falls within section 11E of the Act (claimants subject to work-focused interview requirement only) if—

- (a) the claimant is the responsible foster parent in relation to a child aged at least one;
- (b) the claimant is the responsible foster parent in relation to a qualifying young person and the Secretary of State is satisfied that the qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work preparation requirement;
- (c) the claimant is a foster parent, but not the responsible foster parent, in relation to a child or qualifying young person and the Secretary of State is satisfied that the child or qualifying young person has care needs which would make it unreasonable to require the claimant to comply with a work preparation requirement;
- (d) the claimant is a foster parent who—
  - (i) does not have a child or qualifying young person placed with them, but intends to; and
  - (ii) fell within sub-paragraph (a) within the past eight weeks; or
- (e) the claimant has become a friend or family carer in relation to a child within the past 12 months and is also the responsible carer in relation to that child.

(3) In paragraph (2)(e), “friend or family carer” means a person who is responsible for a child, but is not the child's parent or step-parent, and has undertaken the care of the child in the following circumstances—

- (a) the child has no parent or has parents who are unable to care for the child; or
- (b) it is likely that the child would otherwise be looked after by a local authority because of concerns in relation to the child's welfare.

### **Victims of domestic violence**

**49.**—(1) Where a claimant has recently been a victim of domestic violence and the circumstances set out in paragraph (3) apply—

- (a) a requirement imposed on that claimant under sections 11 to 11G of the Act<sup>(5)</sup> ceases to have effect for a period of 13 consecutive weeks starting on the date of the notification referred to in paragraph (3)(a); and

---

(5) Sections 11 to 11G were inserted by section 57 of the Welfare Reform Act 2012.

- (b) the Secretary of State must not impose any other such requirement on that claimant during that period.
- (2) A person has recently been a victim of domestic violence if a period of six months has not expired since the violence was inflicted or threatened.
- (3) The circumstances are that—
  - (a) the claimant notifies the Secretary of State, in such manner as the Secretary of State specifies, that domestic violence has been inflicted on or threatened against the claimant by a person specified in paragraph (4) during the period of six months ending on the date of the notification;
  - (b) this regulation has not applied to the claimant for a period of 12 months before the date of the notification;
  - (c) on the date of the notification the claimant is not living at the same address as the person who inflicted or threatened the domestic violence; and
  - (d) as soon as possible, and no later than one month, after the date of the notification the claimant provides evidence from a person acting in an official capacity which demonstrates that—
    - (i) the claimant’s circumstances are consistent with those of a person who has had domestic violence inflicted on or threatened against them during the period of six months ending on the date of the notification; and
    - (ii) the claimant has made contact with the person acting in an official capacity in relation to such an incident, which occurred during that period.
- (4) A person is specified in this paragraph if the person is—
  - (a) where the claimant is, or was, a member of a couple, the other member of the couple;
  - (b) the claimant’s grandparent, grandchild, parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, step-brother, brother-in-law, sister, step-sister or sister-in-law; or
  - (c) where any of the persons listed in sub-paragraph (b) is a member of a couple, the other member of that couple.
- (5) In this regulation—

“domestic violence” means abuse of a kind specified on page 11 of section 2.2 of ‘Responding to domestic abuse: a handbook for health professionals’ published by the Department of Health in December 2005<sup>(6)</sup>;

“person acting in an official capacity” means a person who is a member of a profession regulated by a body mentioned in section 25(3) of the National Health Service Reform and Health Care Professions Act 2002<sup>(7)</sup>, a police officer, a registered social worker, the claimant’s employer, a representative of the claimant’s trade union or any public, voluntary or charitable body which has had direct contact with the claimant in connection with domestic violence;

“registered social worker” means a person registered as a social worker in a register maintained by—

  - (a) the General Social Care Council;
  - (b) the Care Council for Wales;
  - (c) the Scottish Social Services Council; or

---

(6) The handbook is available on the Department of Health website [www.dh.gov.uk](http://www.dh.gov.uk) at [/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4126161](http://en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4126161) and from Department of Health Publications, PO Box 777, London SE1 6XH.

(7) 2002 c.17. Section 25(3) was amended by paragraph 17 of Schedule 10 to the Health and Social Care Act 2008 (c.14) and paragraph 56 of Schedule 15 to the Health and Social Care Act 2012 (c.7) and S.I. 2010/231.

(d) the Northern Ireland Social Care Council.