
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance Regulations 2008. They substitute the descriptors and criteria applied to determine capability for work, or work-related activity, and amend provisions which allow a person to be treated as having limited capability for work, or work-related activity, without an assessment in certain circumstances.

Regulation 2 sets out who the Regulations apply to. It provides that they apply to all persons who claim Employment and Support Allowance on or after the date these Regulations come into force. The Regulations also apply to persons who claim before that date, and persons who have been notified under the re-assessment process (under which those on incapacity benefit, severe disablement allowance or income support on grounds of incapacity are assessed to determine whether they are entitled to Employment and Support Allowance), who have their capability for work or work-related activity determined (including a determination as to whether they are to be treated as capable for work or work-related activity) on or after that date. Finally, the Regulations apply to persons who are re-assessed on or after that date. However, these Regulations do not apply to a person who was sent a questionnaire (as to their capability for work or for work-related activity) before the date on which these Regulations come into force and in respect of whom a determination is made as to that person's capability for work after that date. Instead the determination will be based on the un-amended provisions. This is subject to a six month limit after which all assessments will be made under the amended provisions (regulation 2(5)). A determination made after the date these Regulations come into force as to whether a person is to be treated as being capable for work is subject to the provisions of these Regulations irrespective of when that person was sent the questionnaire.

Regulation 3 amends the provisions in Regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients) and 35 (certain claimants to be treated as having limited capability for work-related activity). Paragraph (2) adds to those who are to be treated as having limited capability for work persons who are likely to receive chemotherapy treatment within 6 months after the date on which the determination is made, and those who meet the eating and drinking descriptors in paragraphs 15 and 16 of Schedule 3,. Paragraph (3) makes clear that a person who attends residential rehabilitation for the treatment of drug or alcohol addiction is regarded as receiving treatment within the terms of regulation 25. Paragraph (4) makes similar provision to paragraph (2) for persons likely to receive chemotherapy treatment within 6 months after the date of the determination as to whether the person is to be treated as having limited capability for work-related activity.

Regulation 4 substitutes Schedules 2 and 3 which, respectively, set out the criteria for the assessment of whether a person has limited capability for work or for work-related activity.

These regulations have no impact on the private sector and civil society organisations. An assessment of the impact of these regulations on the public sector has been made. Copies of this impact assessment are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website:

<http://www.dwp.gov.uk/resourcecentre/ria.asp>.