

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE (SANCTIONS)
(AMENDMENT) REGULATIONS 2012**

2012 No. 2756

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

This instrument makes provision for the introduction of a new sanctions and hardship regime for Employment and Support Allowance (ESA) claimants. It is proposed that this measure will be introduced from 3rd December 2012.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

4.1 This instrument sets out the detail of the revised sanctions regime for those receiving ESA by amending the 2008 Employment and Support Allowance regulations.

<http://www.legislation.gov.uk/ukxi/2008/794/contents/made>

4.2 The reform of the ESA sanctions regime is part of a wider package of measures which seek to broadly align the ESA and Jobseeker's Allowance (JSA) sanctions regimes with the model to be introduced under Universal Credit (UC). The changes to the JSA sanctions regime are being made through a separate instrument.

5. **Territorial Extent and Application**

This instrument applies to Great Britain.

6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

What is being done and why?

7.1 Research suggests that increased conditionality (the principle of benefit receipt being dependent on meeting certain requirements) for claimants with limited capability for work to engage in employment preparation programmes has been successful in increasing participation and reducing benefit caseloads¹. This is supported by DWP research which shows that around 83% of Employment and Support Allowance (ESA) claimants felt that the compulsory nature of work focused interviews (which are backed by sanctions for failure to attend) made them more likely to participate².

7.2 The introduction of ESA in 2008 signalled recognition that many disabled people and people with health conditions can and should move towards employment if they are given support and encouragement. ESA is aligned more closely with Jobseeker's Allowance than old style incapacity benefits, placing greater emphasis on a claimant's functional capabilities and the importance of moving towards employment. It is therefore important that claimants engage with requirements designed to help them prepare for work, as appropriate to their circumstances, and where they fail to engage, then there should be appropriate consequences. The revised sanction for ESA claimants is designed to reflect the importance of meeting work-related requirements as more of the benefit will be sanctioned.

7.3 The White Paper *Universal Credit: welfare that works*, November 2010: [Universal Credit: welfare that works](#) set out proposals to revise the ESA sanctions regime ahead of the introduction of Universal Credit (UC)³. UC will be phased in, initially through pathfinder areas, from April 2013. The revised ESA regime will broadly align with the sanctions model for the equivalent category of claimant under UC and therefore help pave the way for UC, easing the transition for claimants and staff. The revised regime is intended to make the consequences of non compliance clearer. Requirements (and therefore sanctions) for those receiving ESA will only apply to those who are capable of work-related activity and have been placed in the ESA Work-Related Activity Group (WRAG). All requirements will take account the claimant's health and cannot include requirements to apply for a job, undertake work or undergo medical treatment.

¹ - *Realising Potential: A vision for personalised conditionality and support* - An independent report to the Department of Work and Pensions by Professor Paul Gregg, 2008 <http://www.dwp.gov.uk/docs/realisingpotential.pdf>

² DWP Research Report (2011) Barnes, Sissons, Stevens : Employment and Support Allowance: Findings from a follow up survey with customers <http://research.dwp.gov.uk/asd/asd5/rports2011-2012/rrep745.pdf>

³ Page 28 of the White Paper <http://www.dwp.gov.uk/docs/universal-credit-full-document.pdf>

7.4 Currently claimants who fail to attend a work-focused interview (WFI) or to undertake work-related activity (WRA) without good cause receive an open ended sanction which is lifted when they re-engage. The effect of the sanction is to reduce the Work Related Activity Component (WRAC) by 50%. After 4 weeks of non-engagement this increases to a 100% reduction of the WRAC (the WRAC is currently £28.15).

7.5 The revised sanctions will have two parts: an open ended period and a fixed period. The open-ended part will be lifted when the claimant meets a compliance condition or agrees to do so on a scheduled date. This will normally be the original requirement or, in the case of work related activity, a suitable alternative as appropriate. The open-ended part of the sanction will be followed by a fixed period of 1 week for a first failure, 2 weeks for a second failure within 52 weeks of the first and 4 weeks when it is a third or subsequent failure which is within 52 weeks of the last previous failure (except when the subsequent failure occurs within 2 weeks of the previous failure). When claimants re-engage within one week of the failure or before a decision to sanction has been made only the fixed period will apply. In the case of multiple sanctions, they will run concurrently. If, after a sanction begins, the claimant is moved out of the Work Related Activity Group and therefore no longer subject to the requirements of Work Focused Interviews and Work Related Activity, the sanction will end at that point.

7.6 The effective date of a sanction will also change, that is, the date from which a sanction is applied to a claimant's benefit. Currently a sanction is imposed from the benefit week after the decision is made even if benefit is outstanding for an earlier period. We are changing the approach to ensure that, once the decision is made, it takes effect from the first day of the benefit week after the one for which the claimant was last paid (Employment and Support Allowance) ESA. The aim is to make the link between claimants' failures to comply and the sanction clearer and swifter.

7.7 Whilst we are bringing forward the effective date of the sanction we are maintaining the safeguards of ensuring that claimants receive notification of the decision to sanction before it is applied and have the opportunity to show good cause for non compliance (in which case no sanction will be applied). The right of appeal against the decision also continues to be available.

7.8 The amount of the sanction will be increased. Instead of the sanction reducing only the Work Related Activity Component (WRAC), under the revised regime ESA claimants will be sanctioned 100% of the prescribed ESA amount for a single person (currently £71.00). They will though retain the WRAC, any premiums and any additional amounts such as mortgage costs. Those claiming for a partner will receive the couple rate less the prescribed amount for a single claimant. The sanctionable amount is being increased to align with the equivalent sanction for claimants in UC. The revised sanction is intended to reflect the importance of meeting requirements and thereby support the focus for claimants in the Work Related Activity Group - which is

an emphasis on what they can do and the support they need to prepare for work.

7.9 The new regime will include access to hardship payments for those who have a sanction imposed on their ESA award. Hardship payments will be available from the beginning of a sanction period providing the claimant meets the conditions for entitlement to income-related ESA. In determining whether hardship payments are appropriate a decision maker will take the following matters into account;

- whether a member of the family satisfies the requirements for a disability premium or an element of child tax credit in respect of a disabled child or young person
- the household's likely resources without hardship payments, including whether the claimant can seek assistance from others such as family or friends;
- the difference between the claimant's likely resources (excluding Child Benefit and Child Tax Credit) and the amount of a hardship payment which could be made;
- the difference between the claimant's likely resources and the amount of a hardship payment which could be made
- the risk that the claimant's household will not have access to essential items (such as food, clothing or heating) or will have access to such essential items at considerably reduced levels without a hardship payment; and
- the length of time these factors will continue.

7.10 Once awarded, a hardship payment will continue until the sanction ends. If, during this period the claimant's circumstances change the hardship award will be reviewed.

7.11 Consequential amendments will need to be made to a number of provisions, this includes;

- Amending the Employment and support Allowance (Work-Related Activity) Regulations 2011
<http://www.legislation.gov.uk/uksi/2011/1349/contents/madeto> reflect the revised sanctions structure; and
- Amending the Social Security and Child Support (Decision and Appeals) Regulations 1999
<http://www.legislation.gov.uk/uksi/1999/991/contents/made> to change the effective date of a sanction.

Consolidation

7.12 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at

<http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security>

8. Consultation outcome

8.1 The Green Paper *21st Century Welfare*, (November 2010, Cm 7971) invited views on reform of the conditionality and sanctions regime. A range of views were expressed on the issue of sanctions including noting conditions for receipt of benefit would be ineffective without some form of sanction to ensure compliance and that the system should be weighted in favour of incentives rather than punishments. A link is provided to the document which summarised the responses (pages 6 to 33). <http://www.dwp.gov.uk/docs/21st-century-welfare-response.pdf> A key theme to emerge was that protection should be in place for vulnerable claimants. These regulations provide for a hardship payment scheme to be introduced for ESA claimants. We have confirmed that existing safeguards procedural safeguards for vulnerable claimants will remain.

8.2 The proposals for the revised ESA sanctions regime were set out in the White Paper '*Universal Credit; welfare that works*' November 2010, Cm 7971, page 28 onwards. [Universal Credit: welfare that works](#)

8.3 The draft regulations were considered by the Social Security Advisory Committee (SSAC) which decided not to take them as a formal reference.

9. Guidance and Learning and Development

9.1 A comprehensive suite of products is being developed for operational staff which includes guidance, awareness and learning and development products to support both staff and claimants in understanding the revised regime. The type of training that staff will receive will vary across the business. All staff will receive general awareness material on the changes. Staff dealing more directly with sanctions aspects of the benefit will receive specific training. Learning and Development officers will deliver facilitated and online training to benefit delivery, advisory and decision making staff. Guidance will be updated for all staff and a bespoke operational guidance product developed for decision-making staff before this measure is introduced (intended to be from 3rd December).

9.2 Existing information leaflets will be updated to explain the revised sanctions system along with a fact sheet giving fuller information as required, these will be issued to new claimants when they first make a claim to ESA and to existing claimants in the weeks prior to the change in legislation. Claimants will be able to access information via a helpline which will be made available for a limited period following go-live to explain the new sanctions regime to claimants.

10. Impact

10.1 This instrument imposes no costs on the private sector or civil society organisations.

10.2 The impact on the public sector is limited.

10.3 A full impact assessment has not been prepared for this instrument since it has no impact on the private sector or civil society organisations.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The new sanctions regime will be monitored and evaluated through:
i) analysis of internal management information (MI);and
ii) the evaluation of the Jobcentre Plus Offer which will include qualitative assessments from staff and claimants of the new sanctions regime and a survey of claimants about their experience of receiving ESA and associated support from Jobcentre Plus.

12.2 The Department will consider undertaking further analysis should these findings suggest further lines of enquiry.

13. Contact

Darren Bird at the Department for Work and Pensions (Tel: 020 7340 4478 or email:Darren.bird1@dwp.gsi.gov.uk) can answer queries regarding this instrument.