

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

Employment and Support Allowance

4. [Part 1](#) of the Act makes provision for the employment and support allowance which will replace incapacity benefit and income support on grounds of incapacity for work or disability. The replacement benefit will have a new benefit structure, incorporating both a contributory allowance and an income-related allowance. The Act provides for the introduction of conditionality to some claimants receiving the benefit. It brings forward the proposals discussed in the Welfare Reform Green Paper published in January 2006 called ‘*A new deal for welfare – Empowering people to work*’¹ and the Consultation Report published in June 2006².
5. A person may be entitled to an employment and support allowance by satisfying either a National Insurance contribution test (similar to incapacity benefit) or an income-related test (similar to income support) and being assessed to be limited in their capability for work because of their physical or mental condition and satisfying certain other conditions.
6. The impact of any physical or mental condition will be determined on the basis of medical evidence from the claimant and their general practitioner or other health care provider, and advice to the decision-maker from a doctor or other healthcare professional approved by the Secretary of State. Advice to the decision-maker may be given on the basis of documentary evidence, or following a face to face medical examination. The matters to be determined are:
 - whether the claimant’s capability for work is limited by his physical or mental condition to the extent that it is not reasonable to require him to work; and
 - whether the claimant’s capability for work is limited to the extent that it is not reasonable to require him to engage in work-related activity. The Act provides for regulations to define the test as to whether a claimant has limited capability for work-related activity.
7. The above tests will be conducted during an ‘assessment phase’, which will generally last from the first day of entitlement until a day specified in regulations. It is intended that regulations would provide that this phase would last 13 weeks in most circumstances. It is also intended that regulations would provide for this phase to be extended in certain circumstances, for example should the medical test not take place in the first 13 weeks.
8. Following the assessment phase, claimants will become entitled to either a ‘work-related activity component’ or a ‘support component’, as determined by the second medical assessment referred to above. If, on the basis of that test, it is determined that the

¹ Cm 6730 (http://www.dwp.gov.uk/welfarereform/docs/A_new_deal_for_welfare-Empowering_people_to_work-Full_Document.pdf).

² Cm 6859 (http://www.dwp.gov.uk/welfarereform/docs/welfare_reform_response.pdf).

*These notes refer to the Welfare Reform Act 2007
(c.5) which received Royal Assent on 3rd May 2007*

claimant has limited capability for work-related activity, he will be placed in the support group and not have any work-related conditionality attached. If it is determined that the claimant does not have limited capability for work-related activity, he may have work-related conditionality attached. If the assessment phase is extended (as explained above) and a claimant subsequently satisfies the medical test, it is intended that the additional component that they would have received will be backdated as if the extension had never occurred.

9. The amount of allowance claimants receive will be determined by whether they are entitled to a contributory or income-related allowance or both, and whether they are entitled to the work-related activity or support component.
10. There are three things that employment and support allowance claimants who are not placed in the support group may be required to do in order that their entitlement is paid in full (known as “work-related conditionality”). These are:
 - work-focused health-related assessments – these assessments will provide additional information about the claimant’s residual functional capability;
 - work-focused interviews – claimants can be required to discuss what steps they can take to move towards work. As part of these interviews claimants may be asked to assist in drawing up an action plan of work related activity they intend to undertake – but they will not be obliged to do what the action plan says; and
 - work-related activity – undertaking activity that increases the likelihood of getting a job. This may include activities such as work trials or training, which may be identified in an action plan. Claimants could also be offered programmes designed to help them manage their condition.
11. The Act enables the benefit to be reduced (“sanctioned”) if a claimant fails to undertake such assessments, interviews or activity as required without good cause. The factors that could be taken into account in determining “good cause” will be set out in regulations, and will be similar to the factors in the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I. 2003/2439\)](#), which are used now in Pathways to Work (described in the Welfare Reform Green Paper). Pathways to Work is a programme in which participants are provided with access to a range of support relating to health-related, personal and external barriers to work. Participants are also required to attend and participate in work-focused interviews.
12. Those entitled to the support component are specifically excluded from the requirement to undertake work-focused health-related assessments, work-focused interviews and work-related activity. However the Government’s intention is that where appropriate, those receiving the support component should be able to volunteer to take part in these if they wish to do so.
13. The Welfare Reform Green Paper envisaged that initially conditionality would only extend to participation in work-focused health-related assessments and work-focused interviews. The Act maintains this flexibility so that, as resources allow, conditionality relating to participation in work related activity can be introduced. The number and frequency of work-focused interviews may also be varied in the future.
14. The Act enables regulations to provide for details concerning work-focused health-related assessments, work-focused interviews and work-related activities. Regulations would also set out the circumstances under which a claimant is required to attend and participate, as well as the circumstances under which a person is deemed to have failed to do what was required without good reason, and the benefit reduction applied in those circumstances.