

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1: Employment and Support Allowance

Conditionality

Section 11: Work-focused health-related assessments

74. This section provides that regulations may make provision for imposing on claimants who are entitled to an employment and support allowance, but not so severely disabled as to be unable to engage in work-related activity, a requirement to take part in one or more work-focused health-related assessments.
75. The work-focused health-related assessment will be carried out by a health-care professional. Section 11(8) lists different types of regulated health care professions, together with a regulation-making power to add other regulated professions. Members of these professions, will, if they are approved by the Secretary of State, be health care professionals for the purposes of section 11. It is intended that, where possible, the work-focused health-related assessment will follow directly on from the assessments under sections 8 and 9 so that the claimant is only required to attend one appointment. Where it appears to the health-care professional carrying out the section 8 and 9 assessments that the claimant is likely to be a member of the support group, the work-focused health-related assessment is likely to be deferred at that time, pending the outcome of the Secretary of State's decision regarding his capability for work-related activity. The assessment will provide additional information about the claimant's residual functional capability – what the claimant can still do despite the disabling condition – and information about health interventions that would improve their functional capability.
76. The advice from the work-focused health-related assessment will be made available to the claimant and to Personal Advisers, to support actions to be taken during the main phase of the benefit.
77. The nature and content of the work-focused health-related assessment and report will be set out in regulations. *Subsections (2)(f) and (3)* enable regulations to be made which have the effect of providing that if a claimant fails, without good cause, to take part in the assessment, the amount of employment and support allowance payable to him may be reduced. *Subsections 2(g) and (h)* allow regulations to set out what is to constitute, or be taken into account in determining, good cause.

Section 12: Work-focused interviews

78. This section provides for work-focused interviews, which are intended to assist claimants in moving closer to the labour market. Claimants, other than those who are members of the support group, may be made subject to a requirement to attend and participate in work-focused interviews by regulations.

79. Regulations under section 12(1) would provide for certain claimants who are entitled to the work-related activity component to be required to participate in work-focused interviews. *Subsection (5)* sets out that regulations must provide that requirements to participate in work-focused interviews will cease if the claimant becomes a member of the support group.
80. It is intended that there would also be a work-focused interview during the assessment phase which would be for the first 13 weeks of entitlement to an employment and support allowance. This interview would have the purpose of, where appropriate, explaining the benefit and conditionality regime to the claimant and helping them think about what activities they may want to do to help them to return to work. It is intended that regulations will allow interviews to be deferred for those with serious health conditions who may be in the support group after medical assessment.
81. Claimants would be provided with the date and time of their work-focused interview. Regulations would provide that if the claimant cannot attend the work-focused interview, then in certain circumstances it would be able to be moved and take place at another date or time.
82. *Subsections (2)(f), (2)(g), (2)(h) and (2)(i)* enable regulations to deal with situations where a claimant has not attended or not fully participated in a work-focused interview. Anyone failing to take part in a work-focused interview would have an opportunity to show they had good cause for their failure to take part in the work-focused interview, in a similar way as provided under the current legislation relating to incapacity benefit and work-focused interviews (the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I 2003/2439\)](#)). A non-exhaustive list of the matters to be taken into account in deciding if a claimant can show good cause will be set out in regulations under *subsections (2)(h) and (2)(i)*.
83. As well as attending a work-focused interview, claimants would normally be expected to participate fully in the interview. Regulations are likely to provide that claimants are required to provide certain relevant information (such as about their existing skills) and to participate in discussions about their employability and the steps that could be taken to help them move into work or closer to the labour market. Additionally it is intended that where work-related activity becomes mandatory for certain claimants in receipt of the work-related activity component, regulations would require a claimant to discuss the relevant work-related activity that they had undertaken.
84. If the claimant fails to participate fully in a work-focused interview as required in regulations and cannot show good cause for that failure within the permitted time, then the amount of employment and support allowance that they are entitled to would be reduced. Regulations under *subsection (4)* would set out the amounts of the reductions.
85. Regulations under *subsection (6)* would provide for waivers and deferrals of work-focused interviews. The circumstances in which a deferral may be granted will be related to a claimant's health condition or other circumstances, such as transport difficulties (there will be some similarities to the [Social Security \(Incapacity Benefit Work-focused Interviews\) Regulations 2003 \(S.I. 2003/2439\)](#)). A waiver would mean that the requirement on a claimant to take part in a work-focused interview would be considered as not having applied and therefore a sanction could not be imposed.

Section 13: Work-related activity

86. This section provides for mandatory work-related activity, which is intended to assist claimants in moving closer to the labour market. Work-related activity is activity that helps a claimant obtain work, remain in work or to be more likely to obtain work or remain in work. As set out in the Welfare Reform Green Paper, it is intended that, as resources permit, claimants who are entitled to the work-related activity component would be subject to a requirement to participate in work-related activity. This requirement would apply for a set period of time once the assessment phase has

been completed. *Subsection (5)* sets out that regulations must provide that requirements to undertake work-related activity will cease if the claimant becomes a member of the support group.

87. Regulations under this section may specify the amount of work-related activity a person is required at any time to undertake. This might be exercised so as to provide for a specified number of activities per set period of time and this would be reviewed at a work-focused interview taking place within a subsequent set period of time.
88. Work-related activity might include such activities as:
 - work tasters;
 - programmes to manage health in work;
 - jobsearch assistance; and
 - programmes to assist in stabilising a person's life.
89. Regulations would set out how matters would be taken into account when determining whether a claimant has met the requirement to undertake work-related activity or whether they had good cause for not doing so.
90. As for the provisions relating to work-focused interviews under section 12, a failure to meet the requirement under regulations to undertake work-related activity and a failure to show good cause for this within the allowed time would attract reductions in the amount of an employment and support allowance the person was entitled to for a fixed period.
91. Waivers for work-related activity are provided for by regulations under *subsection (6)*. Such regulations may provide that a requirement on a claimant to participate in work-related activity is to be considered as not having applied and therefore a sanction could not be imposed.

Section 14: Action plans in connection with work-focused interviews

92. This section provides that at work-focused interviews, a written action plan will be developed.
93. Regulations made under *subsections (1) and (2)* are expected to provide that the action plan should include a summary of the discussion that took place during the work-focused interview. In a situation where participation in work-related activity is not required under regulations, then the action plan would include possible steps a claimant could consider taking to assist them in returning to work.
94. Where appropriate, it is intended that the action plan would include steps that, if the claimant undertook them, would satisfy the work-related activity requirement under section 13.
95. It is not intended that the claimant would be required by regulations to undertake specific steps in the action plan, even when participation in work-related activity was required. A claimant could still satisfy the work-related activity requirement by undertaking other activity.
96. Regulations provided for under *subsection (4)* are likely to provide that a claimant should be able to ask for their action plan to be reconsidered. This would be in order to resolve situations where a claimant believed the steps included were, or had become, inappropriate or that other steps, not agreed at the work-focused interview, should be included. The action plan would then be reconsidered in a set period of time. It is not intended, in a situation where a claimant asks for a reconsideration of the action plan, that requirements under regulations to undertake work-related activity would be waived or deferred.

Section 15: Directions about work related activity

97. **Section 15** provides a power for the Secretary of State to direct that a specific activity in the case of an individual is not to count as work-related activity. This is intended to stop claimants seeking to satisfy the requirement to undertake work-related activity by undertaking activity that is considered inappropriate for their circumstances.

Section 16: Contracting out

98. This section has the effect of allowing contracted providers in the private and voluntary sectors (“providers”) to exercise functions of the Secretary of State relating to conditionality.
99. It is envisaged that the conditionality regime within employment and support allowance will, when employment and support allowance is introduced, be similar to Pathways to Work that is currently being operated by Jobcentre Plus in 40 per cent of Great Britain. The Government has announced that providers will be contracted to deliver some aspects of Pathways to Work to the rest of Great Britain as it is rolled out. It is intended to put similar arrangements in place for the purposes of employment and support allowance. It is intended that providers will be contracted to provide back to work support to claimants. In addition these organisations may take on responsibility for providing the work-focused interviews.
100. *Subsection (1)* provides that the Secretary of State can authorise providers to undertake certain functions conferred on him by primary legislation (sections 12, 14 and 15) relating to work-focused interviews, action plans and directions relating to work-related activity.
101. *Subsection (2)* allows regulations to be made that allow the Secretary of State to authorise provider organisations to undertake certain of his functions under regulations made under sections 11 to 15. The Secretary of State cannot authorise provider organisations to undertake decisions to which subsection (3) applies (“excluded decisions”).
102. *Subsection (2)* also provides that regulations may be made authorising provider organisations to undertake functions relating to conditionality decisions e.g. revisions and supersessions of conditionality decisions in line with existing decision making processes and legislation. Again, the Secretary of State cannot authorise provider organisations to exercise these functions in relation to excluded decisions.
103. *Subsection (3)* contains a list of excluded decisions. Excluded decisions will be any decision as to whether a person has failed to comply with a conditionality requirement under sections 11 (work-focused health-related assessments), 12 (work-focused interviews) or 13 (work-related activity); decisions as to whether a person had good cause for not complying with the conditionality requirement; and decisions about the reduction in benefit as a result of a person failing to comply with a conditionality requirement.
104. *Subsection (5)* makes it clear that where authorisation is given for providers to undertake a function then authorisation may only apply to part of that function.
105. *Subsection (7)(b)* provides that authorisations granted under or by virtue of section 16 can be revoked and *subsection (7)(c)* provides that giving authorisation to a provider does not preclude the related function from being undertaken by another person, for example the Secretary of State.
106. *Subsections (8) and (9)* establish that, where a function is undertaken by a provider, that function is treated as if it had been undertaken by the Secretary of State. This would not apply for the purposes of the operation of a provider – for example a contractor would be treated as performing work-focused interviews for the purposes of being paid

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

for them. It also establishes that responsibility lies with the provider in respect of any criminal proceedings brought because of their actions.

107. *Subsection (10)* ensures that any decision made by a private or voluntary sector organisation by virtue of section 16 has effect as a decision of the Secretary of State under section 8 of the Social Security Act 1998. This ensures that such decisions fit into the decisions and appeals legislation in the Social Security Act 1998.
108. *Subsection (11)* establishes that where authorisation for a function is revoked by the Secretary of State and the provider is therefore unable to perform the functions which they are contracted for, the contract can be treated as repudiated by the Secretary of State.