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STATUTORY INSTRUMENTS

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**2008 No. 794**

**The Employment and Support Allowance Regulations 2008**

**PART 8**

**CONDITIONALITY**

**CHAPTER 1**

**Work-focused health-related assessment**

**Requirement to take part in a work-focused health-related assessment**

**47.**—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused health-related assessments as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

(a) is either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply;

(b) is not a member of the support group; and

(c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age.

(3) Any requirement to take part in a work-focused health-related assessment ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

**Work-focused health-related assessment**

**48.** For the purposes of section 11(7)(c) of the Act, matters to be assessed in the work-focused health-related assessment include—

(a) difficulties which are likely to be experienced as a result of the claimant's physical or mental condition in relation to obtaining or remaining in work and how these might be managed or alleviated; and

(b) the claimant's views on the impact of the claimant's physical or mental condition in relation to obtaining or remaining in work and any aspirations in relation to work in the light of that condition.

**Notification of assessment**

**49.**—(1) The health care professional who is to carry out the work-focused health-related assessment, or a person acting on the health care professional's behalf, must notify the claimant of

the requirement to attend the work-focused health-related assessment including details of the date, time and place of the assessment.

(2) Notification under paragraph (1) must be given in writing at least 7 days before the claimant is required to attend the work-focused health-related assessment unless the claimant agrees to accept a shorter period of notice whether given in writing or otherwise.

#### **Determination of the place of the work-focused health-related assessment**

**50.**—(1) Subject to paragraph (2), the work-focused health-related assessment must be carried out in a medical examination centre.

(2) A work-focused health-related assessment may take place at the claimant’s home if the Secretary of State is of the opinion that requiring the claimant to attend elsewhere would cause the claimant undue inconvenience or endanger the claimant’s health.

#### **Taking part in a work-focused health-related assessment**

**51.** A claimant is to be regarded as having taken part in a work-focused health-related assessment if the claimant—

- (a) attends for the assessment at the date, time and place notified in accordance with regulation 49;
- (b) provides all information which the Secretary of State requests as being necessary for the work-focused health-related assessment; and
- (c) participates in discussions to the extent the Secretary of State considers necessary for the work-focused health-related assessment.

#### **Deferral of requirement to take part in a work-focused health-related assessment**

**52.**—(1) Where—

- (a) a health care professional has conducted an assessment in relation to the claimant for the purpose of enabling the Secretary of State to determine whether the claimant has limited capability for work-related activity;
- (b) it appears to the health care professional that—
  - (i) at least one of the descriptors set out in Schedule 3 applies to the claimant; or
  - (ii) regulation 35 applies to the claimant; and
- (c) the Secretary of State has not made a determination about whether the claimant has limited capability for work-related activity,

the requirement to take part in the work-focused health-related assessment does not apply until such time after the Secretary of State has made a determination in relation to the claimant’s limited capability for work-related activity as the Secretary of State may decide.

(2) Where paragraph (1) applies, the health care professional must notify the claimant that the requirement to take part in the work-focused health-related assessment has been deferred, pending determination by the Secretary of State of the claimant’s capability for work-related activity.

#### **Failure to take part in a work-focused health-related assessment**

**53.**—(1) A claimant who is required to take part in a work-focused health-related assessment but fails to do so must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure.

(2) The Secretary of State must determine whether a claimant who is required to take part in a work-focused health-related assessment has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a claimant has shown good cause for the failure to participate in a work-focused health-related assessment, the Secretary of State must take the following matters into account—

- (a) whether the claimant was outside Great Britain at the time of the notification;
- (b) the claimant's state of health at the time of the work-focused health-related assessment;
- (c) the nature of any disability which the claimant has; and
- (d) any other matter which the Secretary of State considers appropriate.

## CHAPTER 2

### Work-focused interviews

#### **Requirement to take part in a work-focused interview**

**54.**—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

- (a) is either—
  - (i) entitled to an employment and support allowance; or
  - (ii) a person in respect of whom the Secretary of State has made an award under regulation 146(1);
- (b) is not a member of the support group;
- (c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age; and
- (d) is not only entitled to a contributory allowance payable at a nil rate.

(3) Any requirement to take part in a work-focused interview ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

#### **Work-focused interview**

**55.** 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;
- (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, including self-employment opportunities, for the claimant, that are relevant to the claimant's needs and abilities.

#### **Notification of interview**

**56.**—(1) The Secretary of State must notify the claimant of the requirement to attend the work-focused interview including details of the date, time and place of the interview.

(2) A work-focused interview may take place at a claimant's home if it is determined that requiring the claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the claimant.

(3) The notification referred to in paragraph (1) may be in writing or otherwise.

### **Taking part in a work-focused interview**

**57.**—(1) A claimant is regarded as having taken part in a work-focused interview if the claimant—

- (a) attends for the interview at the place and at the date and time notified in accordance with regulation 56;
- (b) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (2);
- (c) participates in discussions to the extent the Secretary of State considers necessary, about any or all of the matters set out in paragraph (3);
- (d) assists the Secretary of State in the completion of an action plan.

(2) The matters referred to in paragraph (1)(b) are—

- (a) the claimant's educational qualifications and vocational training;
- (b) the claimant's work history;
- (c) the claimant's aspirations for future work;
- (d) the claimant's skills that are relevant to work;
- (e) the claimant's work-related abilities;
- (f) the claimant's caring or childcare responsibilities; and
- (g) any paid or unpaid work that the claimant is undertaking.

(3) The matters referred to in paragraph (1)(c) are—

- (a) any activity the claimant is willing to undertake which may make obtaining or remaining in work more likely;
- (b) any such activity that the claimant may have previously undertaken;
- (c) any progress the claimant may have made towards remaining in or obtaining work;
- (d) any work-focused health-related assessment the claimant may have taken part in; and
- (e) the claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by the claimant's physical or mental condition.

### **Action plan**

**58.**—(1) An action plan is a document that is completed by the Secretary of State and contains—

- (a) a record of a work-focused interview;
- (b) a record of any activity that the claimant is willing to take which may make obtaining or remaining in work more likely or which may make it more likely that the claimant will be able to do so;
- (c) any other information that the Secretary of State considers to be appropriate.

(2) An action plan must be in writing.

(3) The Secretary of State must provide a claimant who attends a work-focused interview with an action plan.

### **Deferral of requirement to take part in a work-focused interview**

**59.**—(1) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to the claimant; or
- (b) appropriate in the circumstances.

(2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(3) Where a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined.

### **Requirement to take part in a work-focused interview not to apply**

**60.** The Secretary of State may determine that a requirement on a claimant to take part in a work-focused interview is not to apply, or is to be treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work.

### **Failure to take part in a work-focused interview**

**61.**—(1) A claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure.

(2) The Secretary of State must determine whether a claimant who is required to take part in a work-focused interview has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

(3) In determining whether a claimant has shown good cause for the failure to take part in a work-focused interview, the Secretary of State may take the following matters into account—

- (a) that the claimant misunderstood the requirement to take part in the work-focused interview due to learning, language or literacy difficulties or any misleading information given or sent by the Secretary of State;
- (b) that the claimant had transport difficulties and that no reasonable alternative was available;
- (c) that the claimant was attending an interview with an employer with a view to remaining in or obtaining work;
- (d) that the claimant was pursuing employment opportunities as a self-employed earner;
- (e) that the claimant was attending a medical or dental appointment and that it would have been unreasonable in the circumstances to re-arrange the appointment;
- (f) that the claimant was accompanying another person for whom the claimant has caring responsibilities to a medical or dental appointment and that it would have been unreasonable for that other person to re-arrange the appointment;
- (g) that the claimant, a dependant or another person for whom the claimant provides care suffered an accident, sudden illness or relapse of a physical or mental condition;
- (h) that the claimant was attending the funeral of a relative or close friend on the day of the work-focused interview;
- (i) that the physical or mental condition of the claimant made it impossible to attend at the time and place fixed for the interview;

- (j) that the established customs and practices of the religion to which the claimant belongs prevented attendance on that day or at that time;
- (k) any other matter which the Secretary of State considers appropriate.

### **Contracting out certain functions relating to work-focused interviews**

**62.**—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

(2) The functions are any function under—

- (a) regulation 54(1) (requirement to take part in a work-focused interview);
- (b) regulation 56(1) and (2) (notification requirement);
- (c) regulation 57(1)(b) and (c) (taking part in a work-focused interview);
- (d) regulation 58(1) and (3) (action plan);
- (e) regulation 59(1) and (3) (deferral of requirement to take part in a work-focused interview);
- (f) regulation 60 (requirement to take part in a work-focused interview not to apply).

## **CHAPTER 3**

### **Reduction of employment and support allowance**

#### **Reduction of employment and support allowance**

**63.**—(1) Where the Secretary of State has determined that a claimant who was required to take part in—

- (a) a work-focused health-related assessment; or
- (b) a work-focused interview,

has failed to do so and has failed to show good cause for that failure in accordance with regulation 53 or 61, as the case may be (“a failure determination”), the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.

(2) Subject to paragraph (3), the amount of the reduction in relation to each failure determination is—

- (a) 50% of the amount of the work-related activity component as set out in Part 4 of Schedule 4 for the first 4 benefit weeks to which, by virtue of section 10(5) of the Social Security Act 1998(1) or regulations made under section 10(6) of that Act, the reduction applies; and
- (b) 100% of the amount of that component for each subsequent benefit week.

(3) In any benefit week, the amount of an employment and support allowance payable to a claimant is not, by virtue of this regulation, to be reduced—

- (a) below 10 pence;
- (b) in relation to more than—
  - (i) one failure determination relating to a work-focused health-related assessment; and
  - (ii) one failure determination relating to a work-focused interview; and
- (c) by more than 100% of the amount of the work-related activity component as set out in Part 4 of Schedule 4 in any circumstances.

(4) Where a claimant is entitled to both a contributory allowance and an income-related allowance, any reduction in the claimant’s allowance must first be applied to the part of that

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(1) 1998 c. 14.

allowance treated as attributable to the claimant's contributory allowance and only if there is any amount outstanding is it to be applied to the part of that allowance treated as attributable to the claimant's income-related allowance.

(5) For the purposes of determining the amount of any income-related allowance payable, a claimant is to be treated as receiving the amount of any contributory allowance which would have been payable but for any reduction made in accordance with this regulation.

### **Cessation of reduction**

**64.**—(1) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused health-related assessment ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused health-related assessment; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 47(2).

(2) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused interview ceases to have effect if—

- (a) the claimant complies with a requirement to attend a work-focused interview; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 54(2).

## **CHAPTER 4**

### **Notification**

### **Notification under this Part**

**65.**—(1) Where written notification is to be given in accordance with this Part, such notification may be sent by post.

(2) Any notification sent by post is to be taken to have been received on the second working day after posting.

## **CHAPTER 5**

### **Modification of the Act in relation to claims to which section 5(1)(c) of the Administration Act applies**

### **Modifications of the Act**

**66.**—(1) Where a person has made a claim for an employment and support allowance to which section 5(1)(c) of the Administration Act applies, the Act applies with the following modifications.

(2) Section 11(1) of the Act applies—

(a) as if for sub-paragraph (a) there were substituted—

“(a) either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply; and”;

(b) as if for “continuing to be” there were substituted “being”.

(3) Section 12(1) of the Act applies—

(a) as if for sub-paragraph (a) there were substituted—

“(a) either—

- (i) entitled to an employment and support allowance; or
- (ii) a person who has made a claim to which section 5 applies; and”; and
- (b) as if for “continuing to be” there were substituted “being”.