

WELFARE REFORM ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Universal credit

Section 37: Capability for work or work-related activity

197. *Section 37* provides powers relating to the determination of limited capability for work and limited capability for work-related activity owing to a physical or mental condition. A person's capability for work may affect the amount of a claimant's universal credit award and may determine the work-related requirements which may be imposed under chapter 2. The section allows for the same provision as for ESA in sections 8 and 9 of WRA 2007.
198. *Subsections (1)* and *(2)* define limited capability for work and limited capability for work-related activity for the purposes of universal credit. Regulations under *subsections (3), (4)* and *(5)* will set out how a person's capability for work is to be determined and provides powers for an assessment to be carried out, including a medical examination if required. It is intended that the work capability assessment will continue to be used to determine limited capability for work and limited capability for work-related activity for universal credit, as is currently the case for ESA.
199. Under *subsection (6)* regulations may provide for a claimant to be treated as having or not having limited capability for work or work-related activity. In particular, a claimant may be treated as not having limited capability for work or work-related activity if they fail without good reason to provide any evidence or information requested in the prescribed manner or to attend a medical examination when required to do so. Provisions on good reason are contained in paragraph 8 of Schedule 1.
200. *Subsection (8)* enables a person to be treated as having limited capability for work before they undertake an assessment or a decision is made to treat them as not having limited capability for work (if, for example, they fail to attend a work capability assessment). This will allow a claimant's work-related requirements to be decided initially on the basis of medical certificates while the assessment process is carried out. The intention is that this provision has the same effect as section 8(5) of WRA 2007.
201. *Subsection (9)* allows for an assessment of a person's capability for work to be made whilst they are being treated under subsection (6) as having limited capability for work or work-related activity.