
STATUTORY INSTRUMENTS

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.