
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

^{F1}47.

Textual Amendments

F1 [Reg. 47](#) revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(a)**

Work-focused health-related assessment

^{F2}48.

Textual Amendments

F2 [Reg. 48](#) revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(b)**

Notification of assessment

^{F3}49.

Textual Amendments

F3 [Reg. 49](#) revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(c)**

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

^{F4}50.

Status: Point in time view as at 31/10/2011.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8. (See end of Document for details)

Textual Amendments

F4 Reg. 50 omitted (28.6.2010) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(12)**

Taking part in a work-focused health-related assessment

^{F5}**51.**

Textual Amendments

F5 Reg. 51 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(d)**

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

^{F6}**52.**

Textual Amendments

F6 Reg. 52 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(e)**

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

^{F7}**53.**

Textual Amendments

F7 Reg. 53 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(f)**

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;^{F8} ...
 - (d) is not only entitled to a contributory allowance payable at a nil rate^{F9}; and]
 - ^{F9}(e) is not a lone parent who is responsible for and a member of the same household as a child under one.]
- (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).

Textual Amendments

- F8** Word in [reg. 54\(2\)\(c\)](#) omitted (31.10.2011) by virtue of [The Social Security \(Work-focused Interviews for Lone Parents and Partners\) \(Amendment\) Regulations 2011 \(S.I. 2011/2428\)](#), regs. 1, **5(3)(a)**
- F9** [Reg. 54\(2\)\(e\)](#) and word inserted (31.10.2011) by [The Social Security \(Work-focused Interviews for Lone Parents and Partners\) \(Amendment\) Regulations 2011 \(S.I. 2011/2428\)](#), regs. 1, **5(3)(b)**

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 [^{F10}take part in] the work-focused interview including details of the date, time and [^{F11}if required to attend in person, the] 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.

Textual Amendments

- F10** Words in [reg. 56\(1\)](#) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **12(a)**
- F11** Words in [reg. 56\(1\)](#) inserted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **12(b)**

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—

Status: Point in time view as at 31/10/2011.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8. (See end of Document for details)

- (a) [^{F12}if required to attend in person,] attends for the interview at the place and at the date and time notified in accordance with regulation 56;
- [^{F13}(aa) if not required to attend in person, is available and responds at the date and time notified in accordance with regulation 56 to any contact made at that time for the purpose of carrying out the interview;]
- (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);
- ^{F14}(d)
- (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.

Textual Amendments

F12 Words in reg. 57(1)(a) inserted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **13(2)**

F13 Reg. 57(1)(aa) inserted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **13(3)**

F14 Reg. 57(1)(d) omitted (1.6.2011) by virtue of The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **13(4)**

Action plan

^{F15}58.

Textual Amendments

F15 Reg. 58 revoked (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **14**

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).

[^{F16}(3) In deciding whether a person has shown good cause for the failure, the Secretary of State must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.]

Textual Amendments

F16 Reg. 61(3) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, 15

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);
 - ^{F17}(d)
 - (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).

Status: Point in time view as at 31/10/2011.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8. (See end of Document for details)

Textual Amendments

F17 Reg. 62(2)(d) omitted (1.6.2011) by virtue of [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **16**

CHAPTER 3

Reduction of employment and support allowance

Reduction of employment and support allowance

63.—^{F18}(1) Where the Secretary of State has determined—

- (a) that a claimant who was required to take part in a work-focused interview has failed to do so and has failed to show good cause for that failure in accordance with regulation 61; or
- (b) that a claimant who was required to undertake work-related activity has failed to do so and has failed to show good cause for that failure in accordance with regulation 8 of the Employment and Support Allowance (Work-Related Activity) Regulations 2011,

(“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 ^{F19} 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 [^{F20}work-related activity]; 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 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.

Textual Amendments

F18 Reg. 63(1) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **17(2)**

F19 1998 c. 14.

F20 Words in reg. 63(3)(b)(i) substituted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **17(3)**

Cessation of reduction

64.—^{F21}(1) Any reduction imposed as a result of a failure determination which resulted from a failure to undertake work-related activity in accordance with the Employment and Support Allowance (Work-Related Activity) Regulations 2011 ceases to have effect if—

- (a) the claimant complies with a requirement to undertake the work-related activity specified in the action plan or, where permitted by the Secretary of State, an alternative activity;
- (b) the claimant subsequently ceases to be subject to a requirement to undertake work-related activity; or
- (c) the Secretary of State decides it is no longer appropriate to require the person to undertake work-related activity at that time.]

^{F22}(1A) The Secretary of State must notify the person in writing—

- (a) where an alternative activity is permitted under paragraph (1)(a), by inclusion of that activity in the action plan; and
- (b) of any decision under paragraph (1)(c).]

(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 ^{F23}take part in] a work-focused interview; or
- (b) the claimant subsequently ceases to meet the requirements set out in regulation 54(2).

Textual Amendments

F21 Reg. 64(1) substituted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **18(2)**

F22 Reg. 64(1A) inserted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **18(3)**

F23 Words in reg. 64(2)(a) substituted (1.6.2011) by The Employment and Support Allowance (Work-Related Activity) Regulations 2011 (S.I. 2011/1349), regs. 1, **18(4)**

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.

Status: Point in time view as at 31/10/2011.

Changes to legislation: There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8. (See end of Document for details)

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”;

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

Status:

Point in time view as at 31/10/2011.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8.