

**EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT AND SUPPORT ALLOWANCE REGULATIONS 2008**

2008 No. 794

**AND THE EMPLOYMENT AND SUPPORT ALLOWANCE
(TRANSITIONAL PROVISIONS) REGULATIONS 2008**

2008 No. 795

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Employment and Support Allowance Regulations 2008 set out the conditions of entitlement and benefit regulations for the new social security benefit, Employment and Support Allowance (ESA). ESA will be payable to those who claim benefit on the basis that they have, or are treated as having, a health condition or disability which affects their ability to work. ESA will be payable in respect of new claims arising from 27 October 2008.
 - 2.2 The Employment and Support Allowance (Transitional Provisions) Regulations 2008 provide, in effect, that no new claim for incapacity benefit (IB), severe disablement allowance (SDA) or income support on the grounds of disability or sickness (IS) can be made on or after 27 October 2008. Any such claim will be treated as a claim for ESA. However the regulations do provide for certain persons who have previously been entitled to IB, SDA or IS to make a further claim for that benefit. The regulations also provide that a person who is entitled to one of those benefits, or who would be able to make a further claim for that benefit, is prevented from claiming ESA.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 These are the first regulations to be made under Part 1 of the Welfare Reform Act 2007 (“the Act”) which received Royal Assent on 3 May 2007. The Act provides for the introduction of ESA, which will have two elements – entitlement based upon a person’s national insurance contribution record and entitlement based upon a person’s financial circumstances.

- 4.2 The Act provides that, to be entitled to ESA, a person must meet specified basic conditions and certain other conditions. If the conditions are satisfied it will mean that the person will have an entitlement to the contribution-based element or the income-related element, or both, depending upon their individual circumstances.
- 4.3 One of the basic entitlement conditions is that a person must have ‘limited capability for work’ – i.e. the person’s health condition or disability is such that it would be unreasonable to require them to work at the time they make their claim. To help decide whether a person has limited capability for work, the Act provides that there will be an assessment of the person concerned.
- 4.4 The Act also provides for an assessment which will help to decide whether a person's physical or mental condition limits their capability for work-related activity and whether that limitation is such that it would be unreasonable to require them to undertake work-related activity. If it would be unreasonable, they will enter the ‘Support group’. Otherwise, they will be part of the group who may be required to undertake work-related activity.
- 4.5 The Act also provides that a person who is able to engage in work-related activity may be required to attend work-focused interviews. Further work-related activity requirements, other than attending work-focused interviews, will be introduced as and when analysis supports it and resources allows. The Department will be studying what activities are effective in helping customers return to work in Pathways to Work, to contribute to the development of policy on mandatory work-related activity.
- 4.6 The instruments are, therefore, necessary to set out the detailed regulations underpinning the conditions of entitlement, the calculation of the amount of ESA payable and the detailed provisions relevant to the health and work-related assessments and the work-focused interviews.

5. Territorial Extent and Application

- 5.1 The instruments apply to England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

Policy

- 7.1 The Government set out its strategy for helping those with a health condition or disability in its Green Paper '*A new deal for welfare: Empowering people to work*' (Cm 6730) published in January 2006. The measures proposed were intended to tackle three key areas: increasing the number of people who remain in work when they fall sick or become disabled; increasing the numbers leaving benefits and finding employment; and better-addressing the needs of all those who need extra help and support.
- 7.2 The Government's view is that:
- making a reality of employment opportunity for all supports the national economy, builds local communities and improves prospects for families and individuals over their whole lives;
 - work is the best route out of poverty. It strengthens independence and dignity, builds family aspirations, fosters greater social inclusion and can improve an individual's health and well-being;
 - there is a clear link between benefit dependency and hardship. As many as half of the most severe pockets of deprivation in Britain are contained within the hundred parliamentary constituencies that have the largest numbers of people claiming incapacity benefits.
- 7.3 The Government was particularly concerned that, currently, those claiming incapacity benefits are usually described as 'incapable of work' when, in the majority of cases, this is not the case.
- 7.4 Under current arrangements, a person may claim Statutory Sick Pay, Incapacity Benefit or Income Support, if they are 'incapable of work'. Incapacity for work is determined by an Own Occupation Test for the first 28 weeks. This test looks at whether ill health or disability stops a person from doing their normal job. Thereafter the person is required to satisfy a different test, the Personal Capability Assessment, which looks at their capability to do a range of everyday activities relevant to any job.
- 7.5 To be entitled to Incapacity Benefit claimants must also meet certain national insurance contribution conditions. For those who meet the contribution conditions, there are three rates of benefit. There are two short-term rates: the lower rate (IBST(L)) is paid for the first 28 weeks of sickness and the higher rate (IBST(H)) for weeks 29 to 52. The long-term rate (IBLT) applies to people who have been sick for more than a year.
- 7.6 Income Support can be paid to those who are incapable of work where their Incapacity Benefit entitlement is insufficient to meet their needs, or where they have not met the contribution conditions for Incapacity Benefit.

- 7.7 ESA will focus on how people can be helped into work and will not automatically assume that, because a person has a significant health condition or disability, they are incapable of work. There will be a new ‘Work Capability Assessment (WCA)’, the operational name given to the assessments which will establish:
- whether a person has limited capability for work; and, if so,
 - whether they also have limited capability for work-related activity,
 - the extent to which health-related interventions can improve the capability for work of a person in the work-related activity group (the ‘work-focused health-related assessment’).
- 7.8 If they do not have limited capability for work-related activity (expected to be the case for the large majority of claimants) they will receive a ‘work-related activity component’ amount as part of their ESA entitlement, and will be required to attend work-focused interviews. Otherwise, they will receive the higher ‘support component’. Unlike in Incapacity Benefit where a person has to remain incapable of work for over 12 months to get the long-term rate of benefit, the ESA components will become payable following the completion of an assessment phase – normally the first 13 weeks of entitlement to ESA.
- 7.9 The Government intends that the ESA regime will build on the successful Pathways to Work initiative which is resulting in a significant increase in the number of incapacity benefits claimants who are being helped into work. The Pathways to Work pilots have demonstrated that, with the right help and support, many people on incapacity benefits can move back into work, reinforcing the view that labelling people on incapacity benefits as ‘incapable of work’ is wrong and damaging.
- 7.10 ESA will, therefore, provide a financial and work-related support structure for those who are entitled to benefit on the grounds of having a health condition or disability. In the first instance, it will only be for new claimants and will not affect those claimants who are already in receipt of IB or IS or those whose claims link back to a previous IB claim.
- 7.11 The Government is simplifying the claims process. The new benefit will consist of two strands, contribution-based benefit and income-related benefit, replacing IB and IS. People will, therefore, only need to make one claim for benefit. ESA also attempts to align the rules between both strands wherever possible. In some cases this has not proved practical because of the different nature of income-related and contributory benefits. Complexity that does remain in ESA is needed to protect vulnerable customers, cover a variety of complicated circumstances, and meet delivery considerations.
- 7.12 The impact assessment that accompanied the Welfare Reform Bill (which can be found at

<http://www.dwp.gov.uk/welfarereform/docs/WelfareReformRIA.pdf>) set out the other options that the Government had considered as alternatives to the planned introduction of ESA. Given the Government's strategy, as set out in paragraph 7.1 above, a 'do nothing' option was simply not acceptable. The other partial options – ESA without Pathways to Work support, or extension of Pathways without reforming benefits – were again viewed as not able to deliver fully on the Government's desired outcomes. In particular, it was viewed that a lesser approach than the one adopted would fail to provide the necessary cultural shift, from a regime based on 'incapacity for work' to one based on what a person can do.

Consultation

- 7.13 The Green Paper asked for comments on the Government's proposals. The formal consultation period lasted 12 weeks, up to 21 April 2006. However, comments were accepted up to the following June. The results of over 600 responses were published in '*A new deal for welfare: Empowering people to work. Consultation report*' (Cm 6859) published in June 2006. However, not all responses would have dealt exclusively with ESA. During the consultation period Ministers and officials attended or hosted almost a hundred events with a total estimated audience of over 5,000 people. The Department also initiated a prototype discussion forum devised with, and moderated by, the Hansard Society on which over 80 people registered.
- 7.14 The consultation showed there was strong support for reforming the current incapacity benefits regime and extending the Pathways to Work initiative and that, amongst other things:
- there was also strong support for making the capability assessments more effective and for reviewing the arrangements for people trying work
 - there were concerns about the levels of benefit (which will be the same as the basic levels of Jobseeker's Allowance during 'the assessment phase' – which will normally be the first 13 weeks of benefit) and whether the Pathways to Work support package would respond sufficiently to the needs of people with mental health conditions and those with learning disabilities.
- 7.15 In devising the new Work Capability Assessment which will be integral to the ESA regime, two technical working groups, consisting of medical and other relevant experts, were set up to consider how the current Incapacity Benefit 'Personal Capability Assessment' could be improved and updated. One of these groups focused specifically on mental health and learning disabilities and the other on physical functions. As well as the technical working groups, consultation groups, consisting of organisations representing the main user groups were set up. The Department continues to involve these organisations in other aspects of the work related to the capability assessments.

7.16 Since the Green Paper consultation exercise ended, officials have continued to meet voluntary organisations on request to listen to their concerns in relation to the detailed policy and to consider if, and how, those concerns can be overcome. As ESA moves from detailed policy into implementation Jobcentre Plus is sharing the development of operational plans with representative organisations through a series of events, including workshops and presentations at existing forums and local meetings. In September 2007, Jobcentre Plus hosted a large seminar for representative organisations to explain the ‘customer journey’ – how people will be able to claim ESA and how their claims will be dealt with during the assessment phase. Jobcentre Plus will continue to keep representative organisations informed as operational plans develop.

Guidance

7.17 ESA will transfer many of the benefit rules that currently apply in Incapacity Benefit and Income Support. So, much of the detailed information, for example treatment of income in ESA income-related allowance, is already in the public domain. However, it was recognised that significant changes would be made in relation to the capability assessments that will be a fundamental part of ESA. Therefore, sets of key regulations in draft and other explanatory material were made available to Parliament by the Government during the passage of the Welfare Reform Bill (*Welfare Reform Bill: Draft Regulations and supporting material*, October 2006, revised January 2007). This document was also made publicly available on the Department’s website

7.18 The Department has been in close contact with other Government departments and devolved administrations to ensure that there is clear understanding of the introduction of ESA and that they identify the effects the new benefit will have on their areas of responsibility. The departments have also had an opportunity to comment upon the draft regulations. The regulations have also been sent to, and discussed with, the Social Security Advisory Committee for information.

7.19 Jobcentre Plus recognises that a broad range of audiences need to have information about the new allowance - for example, that customers know how to make a claim, and that GPs understand how to provide their evidence. In developing the ESA communication strategy, Jobcentre Plus has put a great deal of effort into identifying all of the audiences who need to be aware of the introduction of ESA and its implications for them. The strategy is already being put into effect as communications have already started with staff, representative organisations and other stakeholders to raise awareness about the ESA regime and create an understanding about what it will achieve and how it will work. The strategy will employ a wide variety of methods to suit the particular audience including changes to the Department’s

range of benefit leaflets, magazine articles and entries on websites aimed at welfare advisers, healthcare practitioners, representative organisations, employers and others.

Consolidation

7.20 Consolidation is not necessary as these are the first regulations under Part 1 of the Welfare Reform Act 2007.

8. Impact

8.1 An impact assessment has not been completed for these regulations as they have no impact on the private or voluntary sectors.

8.2 A public sector impact assessment has been completed which is attached at Annex A.

9. Contact

John Oliver at the Department for Work and Pensions (tel: 020 7962 8757, or email: john.oliver1@dwp.gsi.gov.uk) can answer any queries regarding these instruments.

Summary: Intervention & Options

Department /Agency: Department for Work and Pensions	Title: Impact Assessment of The Employment and Support Allowance Regulations 2008 - Public Sector Impact only	
Stage: Implementation	Version: Final	Date: 18 March 2008
Related Publications: 'A new deal for welfare: Empowering people to work' (Cm 6730), 'A new deal for welfare: Empowering people to work. Consultation report' (Cm 6859)		

Available to view or download at:

<http://www.dwp.gov.uk/welfarereform/legislation.asp>

Contact for enquiries: John Oliver

Telephone: 020 7962 8757

What is the problem under consideration? Why is government intervention necessary?

Currently, people claiming incapacity benefits receive them on the basis of their incapacity for work. Many believe that they are unemployable, with no life choices or long-term prospects, believing that their illness or medical conditions cannot be catered for in the workplace. However, with the right support, a substantial number are capable of doing work, either part-time or full-time. Government intervention is necessary to bring about a change in the way such claimants perceive their employment prospects and to provide the support necessary for them to achieve their potential.

What are the policy objectives and the intended effects?

To provide financial support for those new claimants who are entitled to benefit on the grounds of having a health condition or disability and, building on the Government's Pathways to Work pilots, to provide work-related support to those who can work that will focus on what they can do, rather than, as now, to pay benefit solely on the basis of what they cannot do. The intended effect is to contribute to the Government's overall aim of providing work opportunities for all, to increase the numbers moving off benefit and into employment and, thereby, to reduce poverty and hardship.

What policy options have been considered? Please justify any preferred option.

The policy options are discussed in the Regulatory Impact Assessment prepared for the Welfare Reform Act 2007 ("the Act") [available at <http://www.dwp.gov.uk/welfarereform/docs/WelfareReformRIA.pdf>]

During the drafting of the regulations, additional administrative expenditure of over £5m has been identified which impacts on the public sector only. This impact assessment relates solely to the impact of Regulations 19 and 34, and Schedules 2 and 3, on the public sector.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? ESA monitoring and evaluation will be an ongoing process, as with other benefits. In the first 5 years, s.10 of the Act requires a report on s.8 and s.9, under which regulations 19 and 34 are made.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy; and (b) that the benefits justify the costs.

Signed by the responsible Minister:

Stephen. C. Timms

Date: 25 March 2008

Summary: Analysis & Evidence

Policy Option: WCA under ESA	Description: The new Work Capability Assessment (WCA), applied to ESA customers
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The new WCA will be applied to ESA customers and will be a tighter gateway than the PCA; fewer people will gain eligibility to ESA. This will lead to costs (DEL) incurred through: (i) more appeals work and (ii) more administration of benefits where people failing the WCA make a subsequent claim to an alternative benefit
	One-off (Transition)	Yrs	
	£ 0.5m	1	
	Average Annual Cost (excluding one-off)		
	£ 10.5m		
Total Cost (PV)			£ 90m (10years)
Other key non-monetised costs by 'main affected groups' N/A			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The new WCA will mean a lower ESA caseload, generating AME and DEL as a result of (i) fewer people being paid benefit (AME) and (ii) lower administrative costs maintaining the ESA caseload (DEL) - the latter will be modest and largely offset by higher caseload maintenance costs in non-ESA benefits
	One-off	Yrs	
	£ 0		
	Average Annual Benefit (excluding one-off)		
	£ 215m (by year10)		
Total Benefit (PV)			£ 1.1bn (10years)
Other key non-monetised benefits by 'main affected groups' N/A			

Key Assumptions/Sensitivities/Risks The estimated costs and savings are based on estimates for extra number of people not qualifying for ESA as a result of the WCA, and for the extra number of appeals. These estimates, which are partly assumption-based, are subject to a high degree of uncertainty.

Price Base Year 2008	Time Period Years 10	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ 1.0bn
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What is the geographic coverage of the policy/option?	Great Britain				
On what date will the policy be implemented?	27 October 2008				
Which organisation(s) will enforce the policy?	N/A				
What is the total annual cost of enforcement for these organisations?	£ N/A				
Does enforcement comply with Hampton principles?	No				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro N/A</td> <td style="width: 25%; text-align: center;">Small N/A</td> <td style="width: 25%; text-align: center;">Medium N/A</td> <td style="width: 25%; text-align: center;">Large N/A</td> </tr> </table>	Micro N/A	Small N/A	Medium N/A	Large N/A
Micro N/A	Small N/A	Medium N/A	Large N/A		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ N/A	Decrease of £ N/A	Net Impact £ N/A

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

The new Work Capability Assessment (WCA) will be applied to ESA claimants, instead of the Personal Capability Assessment (PCA) currently used in respect of Incapacity Benefit (IB) claimants. A number of ESA claimants who would have passed the PCA gateway, had it been applied, will not pass the WCA.

ADDED APPEALS WORK

Background

As a result of the tighter gateway, it is anticipated there will be an increase in the level of appeals and appeal hearings where claimants are denied ESA.

Appeals will be further increased by new appealable decisions, which currently do not exist under incapacity benefits. The key one will be around group placement; appeals challenging decisions for whether the claimant should be placed in the new 'Support Group'. This group is for the more severely disabled on ESA who will not be required to undertake work-related activity. The WCA process determines who belongs in the Support Group. It will be based on an individual's functional capability, rather than on medical condition, and so arguably more subjective.

The number of appeals

Appeals against a failed WCA

Estimates suggest around 60,000 more people a year will fail the WCA than are currently failing the PCA under IB, though this is partly the result of people being tested earlier under ESA. Based on current observation for those failing the PCA, it is estimated that around a third of those who fail the WCA will appeal and around 70 percent of these will reach an appeal hearing. It implies that 20,000 more will appeal each year and that 14,500 of these reach a hearing.

Appeals against placement in the Work-Related Activity Group

It is assumed that slightly fewer claimants will be placed in the Support Group, compared to those who are currently PCA exempt, and that around 1% of awards inflows (or around 6,000 people) who would have been PCA exempt will not be placed in the Support Group. It is further assumed that all of these people will appeal and reach the hearing stage.

Appeals against sanctions

It is considered that sanctions will apply to, at most, 0.5% of awards inflows resulting in a modest number of appeals each year (1,500).

Total added appeals

In a full year it is estimated that an extra 26,500 appeals will be lodged, with 21,000 of those reaching a tribunal hearing.

Table 1: increased number of appeals heard at tribunal under ESA

Appeal type	2008/09*	2009/10	2010/11
(Baseline)			
Against WCA			
Failed test	+3,500	14,500	+14,500
Group placement	+1,500	+6,000	+6,000
Sanctions	+500	+1,500	+1,500
Improved appeals process	-neg	-1,000	-1,000
Total	+5,500	+21,000	+21,000

* Part year

Costs of appeals

The costs of these extra appeals are as follows:

Job Centre Plus

A total of £4m a year to cover:

- processing extra appeals

Ministry of Justice

A total of £5m a year to cover:

- provision for hearings (Tribunals Service)
- provision of legal aid (Legal Services Commission)

The total direct costs are therefore estimated at around £9m a year.

In addition to these ongoing annual costs, there are one-off set up costs to the Tribunals Service, covering the training of additional legal professionals for hearings, estimated at £0.5m.

The number of 'double claims'

It is expected that around half of the extra people failing the WCA (and who are unsuccessful at appeal) will move to Jobseeker's Allowance (JSA). This is based on current observations for the destinations of those flowing off incapacity benefits as a result of failing the PCA and then adjusted to take account of the changing lone parent benefits regime. This will incur costs through new (additional) benefit claims, largely to JSA. There will also be modestly added JSA caseload maintenance costs but these will be offset by a lower ESA caseload maintenance.

Total added annual inflows to JSA as a result of the WCA are projected to be around 15,000 to 20,000 a year.

Costs of 'double claims'

A new claim to JSA costs around £90 to process. Based on the added claims to all other benefits annually, a cost of around £1½m a year (Job Centre Plus) is projected.

SAVINGS

Fewer people being paid benefit

The revised gateway affects the caseload through off-flows (from the assessment phase), not through initial inflows.

Firstly, the WCA will take place earlier than the old PCA; more people will actually take the test and so potentially they will move off ESA sooner. Secondly, the disallowance rate is expected to rise under the WCA, initially by around 12 percentage points (a third), compared to the PCA, adding to the off-flow effect. This will gradually reduce the ESA caseload with time.

Even taking into account those moving onto other benefits (described above), the expenditure (AME) savings across the whole benefit system are likely to be substantial. The savings will arise because:

- the other benefits that claimants will move to (e.g. JSA) will pay less than ESA rates
- a significant proportion of claimants is expected to leave the benefit system entirely, some into work – most of these will claim the Working Tax Credit. The expenditure savings (AME), together with the cumulative reductions in the ESA caseload, are estimated as follows:

Summary of caseload impacts of applying the WCA to ESA claimants

Financial Year	Cumulative ESA caseload reduction*	In-year expenditure savings (AME)*
2008/09	neg	-£0m
2009/10	-30,000	-£50m

2010/11	-50,000	-£85m
2011/12	-65,000	-£115m
2012/13	-75,000	-£135m
2013/14	-85,000	-£155m
2014/15	-90,000	-£170m
2015/16	-95,000	-£190m
2016/17	-105,000	-£200m
2017/18	-110,000	-£215m

**average*

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	Yes	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Employment and Support Allowance Equality Impact Assessment

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Contact details of officer responsible

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Context

The Welfare Reform Act 2007 contains provision for a key element of the Government's Welfare Reform proposals - the creation of the new Employment and Support Allowance (ESA), which will replace incapacity benefits for new customers from October 2008. The availability of Pathways to Work across the country from April 2008 will underpin and support the introduction of the new benefit, as ESA will utilise a Pathways to Work style conditionality regime, and customers will have access to the Pathways to Work service. The changes will move the main emphasis away from what people cannot do, to what they can do and how they can be helped to do even more.

Government departments have a legislative requirement under the Race Equality Duty, Gender Equality Duty and Disability Equality Duty to eliminate discrimination and promote equality of opportunity. As part of this, Departments have a specific duty to carry out equality impact assessments on current and proposed functions, policies or services and any changes to them. This document is an Equality Impact Assessment for Employment and Support Allowance.

Purpose and aims of change

The New Benefit

Employment and Support Allowance (ESA) will be paid to new customers assessed as having “limited capability for work” because of a health condition or disability. ESA replaces contributory Incapacity Benefit and Income Support on the basis of incapacity. These existing benefits will continue in payment to existing customers.

ESA will have a contributory strand accessible via a National Insurance Contribution test and an income related strand accessible via an income-test. This new unified structure will simplify and improve the claiming process for new customers, many of whom will no longer have to claim two separate benefits.

ESA will be split into two phases:

- **Assessment phase:** This will normally last for 13 weeks from the start of the claim during which the customers receive an age-related rate of benefit, depending on whether they are 16-24 or 25 and over, equivalent to the personal allowances in Jobseekers' Allowance (JSA) / Income Support. Recipients of the income-related strand may also qualify for certain premiums (though not the Disability Premium) and housing costs. During this 13 week period nearly all customers will undergo a Work Capability Assessment (WCA).
- **Main Phase:** Subject to satisfying an assessment of “limited capability for work”, customers will progress onto the main phase of the benefit. This will be structured so that the customer's entitlement will consist of:
 - The basic rate – a flat rate of benefit, regardless of age, equivalent to the JSA/IS 25+ year old personal allowance.
 - On top of this basic rate, a work-related activity or support component is payable. Around 90% of new customers will be placed in the **Work-Related Activity Group** and receive the work-related activity component. These customers will be required to engage in work-related activity, and may be subject to sanction if they do not participate in these conditionality requirements. The remaining 10% - those with more severe health conditions - will be placed in the **Support Group** and receive the support component. They will not have the conditionality requirements placed on them.
 - Premiums – Customers on income-related ESA may also receive premiums such as the Enhanced Disability Premium, Severe Disability Premium, Carer Premium and Pensioner Premium.
 - Housing costs may also be payable as part of the income-related benefit, such as mortgage interest.

Work Capability Assessment (WCA)

Customers claiming Employment and Support Allowance will be subject to a Work Capability Assessment (WCA), a revised version of the Personal Capability Assessment that is used in incapacity benefits.

The revised WCA will comprise of three elements, though customers placed in the Support Group will not be required to undergo the work-focused health-related assessment element:

- Consideration of whether a person has “limited capability for work”, and is therefore entitled to ESA, and the **work-related activity component**;
- Consideration of whether a person who has “limited capability for work” also has “limited capability for work-related activity”, and is therefore entitled to the **support component** of ESA, and
- For those entitled to the work-related component but not in the Support Group, consideration of the interventions or actions that may be required in each person's case to help them move back to the workplace (through a **work-focused health-related assessment**).

In line with the Government's welfare reform aims, the WCA has been transformed from an incapacity-based tool for determining entitlement to Incapacity Benefit, to a more positive assessment around ability to work.

A number of changes are being introduced in the new WCA, these will:

- Ensure the assessment deals more effectively with the types of conditions that are prevalent today;

- Ensure that the new assessment fully addresses the needs of people with cognitive and intellectual function problems (for example conditions such as learning disability, autistic spectrum disorder, and acquired brain injury); and
- Change the scoring system for mental function, to remove a bias in the current PCA against people with mental health problems, as opposed to limitation of physical function.

Linked to the overall objectives of the new benefit, the starting point for the assessment will be that the overwhelming majority of customers are capable of some work, given the right support. This will lead to better employment outcomes for disabled people. Treating people in line with their capabilities, instead of making assumptions based on their condition, will have a positive impact on the attitudes of others to disabled people.

This is a sea change in the way the social security system interacts with disabled people and people with health conditions, and will promote wider societal change in attitudes to disabled people and work.

Conditionality

Employment and Support Allowance creates a regime that recognises the responsibilities people have to get themselves off benefits, while ensuring that society fulfils its obligations to those unable to help themselves.

ESA brings rights, responsibilities and opportunities to people with health conditions and disabilities by asking them to engage with us and work towards their ambitions. In order to engage customers in this way, to provide them with the help and support that they need to overcome barriers, to achieve their ambitions, and to get back into work, ESA incorporates a Pathways to Work style element of conditionality.

Under ESA, customers placed in the **Work-Related Activity Group** will be required to engage in a mandatory 6 work-focused interview regime, starting from week 8 of their claim.

There is also scope for introducing further mandatory work-related activity requirements, beyond attending work-focused interviews. However, we currently have no plans to introduce work-related activity in this spending review period in advance of Pathways to Work contracts being recontracted in 2010-2011. During this period we will be studying what activities are effective in helping customers return to work in Pathways to Work, and any other applicable evidence, for the development of policy on mandatory work-related activity.

Similarly to Pathways to Work, sanctions under ESA, attended by safeguards, exist as a way of encouraging engagement with the work-focused interview provision. If a customer fails to attend their work-focused interview, without showing good cause, they can be sanctioned by deducting a portion of their ESA benefit.

However, the ESA sanctions regime will be different from current Pathways to Work arrangements:

- for the first 4 weeks of non-compliance a sanction worth half the amount of the work-related activity component would be deducted;
- after 4 weeks of non-compliance the equivalent of the work-related activity component would be deducted.

The ESA sanction regime will be easier to administer than the current incapacity benefits regime, where a customer's benefit can be reduced by up to 100% of the basic rate of Income Support (through 5 applications of a 20% sanction). This means that under ESA, the maximum sanction of 100% of the work-related activity component is less severe, as the assessment phase rate is protected.

Sanctions are not designed to be punitive. Rather, they are designed to be an encouragement to engage actively with the conditionality requirements of the benefit. When the customer complies with the conditionality requirement, the sanction will be removed. The experience of the Pathways pilots indicates that sanctions are highly effective and therefore they rarely need to be applied.

A rigorous system of safeguards is adhered to before a sanction is imposed to ensure that no-one has their benefit reduced inappropriately and to give each individual the chance to comply with the requirements.

There are other differences between current incapacity benefits conditionality and ESA. Under ESA the waivers and deferrals rules are being tightened to ensure that customers in the Work-Related Activity Group are only waived of their requirement to attend a WFI if they are about to move into work. Deferrals may be used where it is inappropriate for a customer to attend a WFI at that time (e.g. because of significant caring responsibilities) but who may benefit from the WFI occurring later as their circumstances change. This will ensure that all customers, for whom work-related activity would be appropriate, engage with, and benefit from, the regime.

All customers, whether they are in the Work-Related Activity Group or Support Group will have access to the range of support offered within the Pathways to Work programme, to help them back to work. This includes the Pathways "Choices" employment support, the Condition Management Programme, and Return to Work Credit.

In this way ESA will endeavour to enhance the skills, confidence and work readiness of customers, and level the playing field of opportunity for people with health conditions and disabilities. Conditionality is core to this mission, providing support for our customers, and also expecting them to engage with us, to help them meet their aspirations.

Existing Customers

Initially ESA will only be available to new customers, and people already on incapacity benefits will have their benefit levels protected in cash terms. However we intend to migrate existing customers from contributory Incapacity Benefit and Income Support on the basis of Incapacity, and Ex Invalidity Benefit cases, over time and as resources allow. .

Pathways to Work will be rolled out nationally by April 2008, and as such the employment programme support that it offers will be voluntarily available to every incapacity benefits customer across Great Britain. From 2009, we will move existing young customers under the age of 25 onto mandatory Pathways to Work and make them subject to the new medical assessment.

In terms of conditionality there are a number of aspects of the incapacity benefits regime which we will be aligning with the ESA approach to ensure the fairest treatment of all our customers. These changes will occur with the introduction of ESA.

Impact of the policy

This section analyses the impact of Employment and Support Allowance in terms of race, gender, disability, age, religion and sexual orientation. They outline the measures the Department has taken to be sensitive to the needs of various groups in the policy development and operational plans for ESA, and how we have made reasonable adjustments as required by law. The Department is committed to promoting equality and diversity.

Race

The Department has not yet published statistics on incapacity benefits rates broken down by ethnicity as data is only available for about one-third of IB cases. The data currently is skewed towards those who have attended the jobcentre for a Work Focused Interview and is not representative of the IB population as a whole. As Pathways rolls out to the entire country, we expect to have better data on the ethnicity of claimants.

Employment and Support Allowance will not apply differently to people of different races or cultures. Eligibility to the benefit, the Work Capability Assessment, and conditionality, will apply equally to everyone who claims ESA irrespective of race. There will be no direct impact on customers in terms of their race, though the Department will take steps to be sensitive to the needs of customers of different races.

Habitual Residence Test

Eligibility for ESA, as for all income-related Social Security benefits is subject to satisfying the Habitual Residence Test (HRT). This is a two stage test where the claimant has to show that they have a right to reside in the United Kingdom, Channel Islands, Isle of Man or Republic of Ireland (the common travel area or CTA) as well as being habitually resident in the CTA (some people are exempt from this part of the test). This test is applicable to everyone including UK nationals. It is exempted from Race Relation legislation under section 41 of the Race Relations Act 1976.

Promoting Equality

In terms of operating ESA, the Department will work to engage customers of all races and cultures with the regime. Jobcentre Plus, who will be administering the WCA process, and conditionality regime, will continue to have in place communications policies to take account of contact with people whose first language is not English.

The Commission for Racial Equality and Council for Ethnic Minority Voluntary organisations are both members of the DWP Policy and Strategy Forum with which we are promoting ESA.

Information products publicising the new benefit and the new WCA process will be available in a range of languages and accessible formats. The Department will meet all of its duties under the Welsh Language Act, Race Relations (Amendment) Act (RRA) 2000 and Disability Discrimination Act.

ATOS Healthcare, who are the contract holders for the provision of medical services to the Department, will continue to have in place policies to ensure that the healthcare professionals they employ are sensitive to the needs of racial or ethnic minorities when medical examinations are carried out.

In this way, the Department will be sensitive to customers of all races and cultures, and attempt to create an environment where everyone can engage with ESA without fear of prejudice.

Gender

Currently there are 1.5 million men claiming incapacity benefits, and 1.1 million women. This means that men count for around 58% of the caseload, but this is lower than in 1997 when they accounted for around 62%.

There will be no specific changes in Employment and Support Allowance which will impact on the volume of customers in terms of their gender. However, whilst in general there will be no discrimination on grounds of gender in ESA, or indeed in the WCA process or conditionality regime, there are some ways in which customers may be treated differently because of their gender.

In terms of the Work Capability Assessment, ATOS Healthcare will continue to have in place policies to ensure that they comply with requests for medical examinations to be carried out by health care professionals of the same sex as the customer and the need for a third-party to be present if the customer so requires.

State Pension Age

As ESA is a benefit for people of working age, customers will only be able to receive it up to State Pension Age. This means that women will not be entitled to ESA after 60, while men can continue to claim until 65. Currently, we have a derogation from requirements to equalise access to benefits on the grounds of the cost. However, this disparity within ESA (and social security benefits in general) will gradually disappear with the reforms to female State Pension Age which take place between 2010 and 2020. So by 2020 both men and women will be eligible for ESA up to the age of 65. In the meantime, women who are over State Pension Age are able to claim the State Pension and/or Pension Credit instead of ESA. This will, initially, apply to a little over 14,000 women, but will decline by around 2,000 each year from 2010 until the equalisation of SPA.

It is important to note that women over 60, now and once ESA has been introduced, are still able to voluntarily engage in the Pathways to Work regime of employment support, even if they are not eligible for Incapacity Benefit or ESA, because of their age. This supports our commitment to support people into work irrespective of their gender or age.

Pregnant women

There are around 4,500 women who are on Incapacity Benefit due to pregnancy and conditions associated with childbirth. Currently IB provides a "fall back" for those women who cannot get Statutory Maternity Pay (SMP) or Maternity Allowance (MA), as well as those who receive MA at a weekly rate less than the IB short-term weekly rate, as long as they also meet the IB contribution conditions. ESA will carry forward this approach using the maternity certificate as evidence of "limited capability for work". In this way ESA will satisfy the requirement in the Pregnant Workers Directive that maternity payments must be at least equal to the payment the woman would receive if she were off work sick.

Disability

Employment and Support Allowance is a benefit designed to help disabled people and people with certain health conditions into work, with support for those for whom work would be unreasonable. As such the benefit has been designed to have a positive impact on people with health conditions and disabilities. Each of the key aspects of ESA – the benefit, the medical assessment, and the conditionality regime, contributes to this impact, and changes the way the Department supports these customers. ESA will contribute to increasing employment rates for disabled people, and will work towards the Government’s aim that, by 2025, disabled people in Britain should have full opportunities and choices to improve their quality of life and will be respected and included as equal members of society.

The Work Capability Assessment (revised Personal Capability Assessment)

The old test, the Personal Capability Assessment (PCA) is the process used to assess individuals’ eligibility for incapacity benefits. As part of welfare reform proposals the assessment has been revised to develop a new test: the Work Capability Assessment (WCA). The WCA is a more positive assessment of mental and physical capability and of the support an individual needs to help them work.

Since the old test was developed we have seen changes in society, in workplaces, in the pattern of health problems and disabilities being presented and in the types of treatments available. People with health problems and disabilities have higher expectations of being able to work.

Over 41% of those on incapacity benefits are claiming because they have a mental health condition. This is a 14 percentage point increase since 1997.

Number of working age claimants and proportions by medical condition in Great Britain				
	2007		1997	
Mental & Behavioural	1,090,000	41.3%	707,000	27.0%
Diseases of the Nervous System	161,000	6.1%	145,000	5.5%
Circulatory & Respiratory	201,000	7.6%	339,000	13.0%
Musculoskeletal	468,000	17.7%	598,000	22.8%
Injury and Poisoning	149,000	5.6%	154,000	5.9%
Other	574,000	21.7%	673,000	25.7%

The Disability Discrimination Act requires employers to make reasonable adjustments for employees with disabilities. We want to ensure the assessment remains relevant to today’s environment, and that it accurately identifies those people whose functional capacity is so limited it is unreasonable to require them to work.

In this way, the WCA will deal more effectively with the types of conditions that are prevalent today, and lead to assessments that are more equitable between groups with different impairments. In particular, the changes to the mental function assessment will address a current gap in the assessment of cognitive and intellectual function – in conditions such as learning disability, autistic spectrum disorder, and acquired brain injury. This means that customers with these types of health conditions will be more accurately assessed as having “limited capability for work”.

The WCA will also introduce a work-focused health-related assessment (WFHRA) for customers assessed as being in the Work-Related Activity Group. The WFHRA is about identifying health-related interventions that could help to support a return to work. It is a new element of the medical testing process aimed at ensuring that we accurately assess what a claimant can do and the help and support they will need to manage their condition and increase the likelihood of a return to work. It will include exploring with the claimant their views about themselves and the help they may need, in relation to their disabling condition in order to return to work. Combined with advice from the health care professional carrying out the assessment, this will enable us to develop a plan of support tailored to the individual's needs.

As with the current benefit, arrangements can be made for the medical examination to take place at the customer’s home if this is required because of the extent of their disability. As now, Jobcentre Plus staff and health care

professionals involved in the WCA process will continue to receive training in communicating with disabled people and in taking account of their particular needs. Emphasis will be given to appropriate interpersonal skills, and to carrying out assessments of people with mental illness or cognitive impairment, which will ensure that the right information is obtained in order to advise on benefit entitlement and on appropriate interventions.

Conditionality

The WCA process will identify those for whom it would be unreasonable to require undertaking work-related activity. These customers will be placed in the Support Group, and therefore will not be required to engage with the conditionality regime (currently 6 work-focused interviews), though they will be able to do so voluntarily. The assessment is based on the severity of functional limitation caused by their condition; not on the basis of the condition itself, because different people may be affected in different ways by the same condition.

As such, conditionality will be applied differently to people with different severity of health condition or disability. This is a positive outcome for disabled people, as customers who are able to undertake work-related activity will be mandated to do so, and supported back to work, whilst customers with the most severe limitations will not have this requirement placed upon them.

All customers will have access to the range of back-to-work support that Pathways to Work offers, which will roll out nationally by April 2008. This includes a Condition Management Programme, Return to Work Credit, and - in Jobcentre Plus areas (40% of the country) - mentoring, job coaching, Occupational Health Support, and debt counselling. ESA will work hand-in-hand with Pathways to Work to help people with health conditions and disabilities back into work and improve their lives.

In terms of operating the work-focused interview regime, the Department will take steps to make reasonable adjustments for disabled customers with particular needs. For example, in communication with profoundly deaf people, we will endeavour to arrange an interview with communicator support e.g. BSL signer, lip reader, or whatever communicator is appropriate – within one working day. Otherwise we will follow the lead of the individual – passing notes or with an advocate or friend in attendance.

Benefit Design

In terms of the design of the actual benefit, there are number of changes which ESA will bring, that will help improve the customer experience, both in terms of claiming and in understanding their benefit, and reduce the burdens on Jobcentre Plus staff. They will also help people move closer to the labour market

Permitted Work

One such aspect is the revision of the permitted work rules which were an area of considerable stakeholder interest. ESA will extend the permitted work rules to customers on the income-related side of benefit, who do not currently have this provision under incapacity benefit. This means more individuals will be able to enjoy the benefits of the £88.50 and 16-hour per week permitted work disregard, which will allow them to try work before they return permanently full time.

Age-related Additions

The new work-focused approach of ESA has led us to alter some other current Incapacity Benefit provision. Age-related additions were originally intended to compensate for the loss of the contributions to the State Earnings-Related Pension Scheme (now replaced with State Second Pension), for those who were deemed to have Incapacity for Work. This does not fit with the policy intention of ESA, which is to assist the customer in moving into employment, rather than to act as a long term earnings replacement. In ESA these customers will receive a higher rate of benefit sooner (after the 13 week assessment phase, as opposed to after a year on contributory IB). Currently there are around 350,000 IB claimants who receive age-related additions -while these customers will be protected, new claimants to ESA (C) will lose this entitlement.

Disability Premium 52 week trigger

Likewise, it has been decided not to bring forward the 52 week trigger for the Disability Premium that currently exists in Incapacity Benefit, in order to simplify the benefit, and also because the Disability Premium will not exist under ESA. Under the current system, if an IB customer has a partner who is in receipt of an income-related benefit (i.e. IS or JSA), the higher couples' rate of the Disability Premium (DP) is included in the award of the couple's income-related benefit once the IB recipient has been incapable of work for 52 weeks. This will not happen under ESA but very few customers are affected by this.

Although this means that some customers will not receive as high a level of benefit as they would have done after a year, we would like to move to a benefit system that is more individualised, and it was thought that the premium encouraged inactivity of partners. Moreover, there remain a number of other triggers such as being registered

blind, and being in receipt of Disability Living Allowance or Attendance Allowance, which protect customers with a clear need.

Income Support top-up and passported benefits

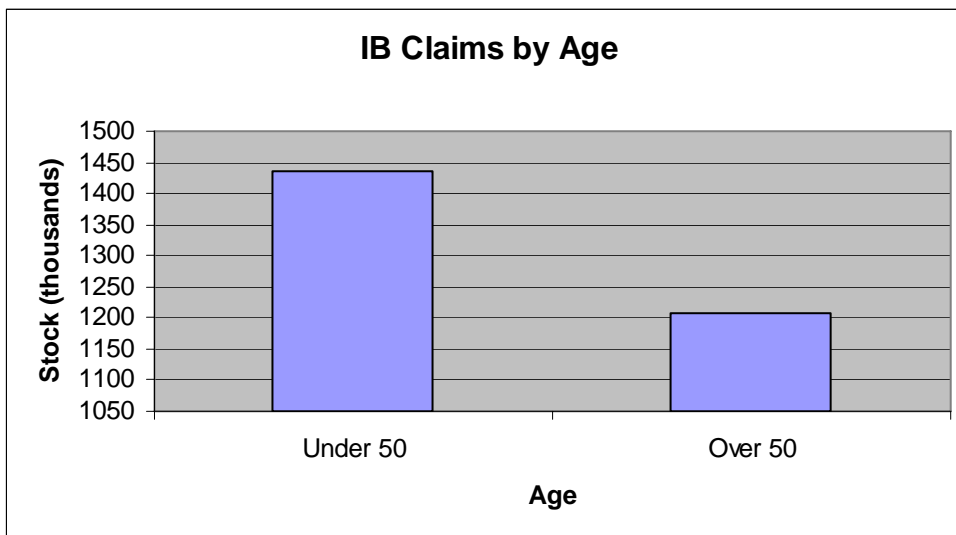
Across the benefit system customers in receipt of income-related benefits are eligible to “passported” benefits and schemes (including schemes like free prescriptions and legal aid). Some customers become eligible for these schemes through an income support “top up” to their contributory benefit, because of a disparity between the contributory and income-related benefit rates. Unlike in Incapacity Benefit, this disparity will not exist in ESA, and as such a small number of customers will no longer be eligible to these passported schemes. However, existing incapacity benefits will mirror this arrangement by 2013/14 as this disparity between the contributory and income-related rates is removed by benefit uprating.

This will mean that a small number of customers will not have this **automatic passport** to other benefits and schemes; though they will not lose entitlement to the scheme themselves (they will still be able to make a separate claim). It is important to remember this is because, under ESA, they will be receiving a contributory benefit **equal** to the income-related rates.

Conclusion

And so, ESA will have a significant and wide ranging positive impact on disabled people and people with health conditions, who are out of work. ESA is a benefit designed to help these people overcome their barriers, and where appropriate move into work and improve their lives. The WCA seeks to more accurately assess the prevalent conditions of today, and focus on what people can do, rather on what they are unable to do. The conditionality regime seeks to engage customers placed in the Work-Related Activity Group, and allows them access to the employment and condition management programmes of Pathways to Work, whilst recognising the needs of those in the Support Group. The design of ESA seeks to better reflect the modern environment of the social security system and the aspirations of disabled people, and improve the customer experience of individuals on the benefit.

Age



Half of customers claiming Incapacity Benefit are over 50. This is because older people are more likely to have a disability or health condition; however this doesn't mean that they don't want, or are unable to work. The Department is committed to promoting employment prospects for older people, indeed for people of all ages, with and without health conditions. ESA will contribute to this, and will work towards meeting the Government's aim of an additional one million older people in work.

There are a number of ways in which aspects of ESA will apply differently depending on how old a customer is. However, overall, these differences are in order to tailor activities appropriately to different age-groups and so to improve the outcomes for individuals, rather than discriminate against them. All ESA customers, irrespective of age, will be able to access the range of employment support ESA and Pathways to Work offers. Other than in the assessment phase, and unlike the current incapacity benefits system, ESA will pay the same rate to everybody regardless of age.

Benefit Rate

Under ESA customers will receive an age-related rate of benefit during the assessment phase, depending on whether they are 16-24 or 25 and over, equivalent to the personal allowances in Jobseeker's Allowance / Income Support. Recipients of the income-related strand may also qualify for certain premiums and housing costs.

The new benefit will mirror Jobseeker's Allowance (JSA) in the assessment phase meaning that the rate of benefit will be calculated according to whether the customer is aged 16-24 or 25 and over.

In JSA, this disparity is in order to avoid a financial incentive for young people to leave education and enter the benefit system. It also takes into account the fact that young people are likely to have different circumstances from the rest of the caseload.

Therefore this age-related rate provision will be taken forward into ESA, during the assessment phase, so that customers are not labelled as having "Limited Capability for Work" prior to undergoing, and satisfying, a medical assessment. However, once the assessment phase ends all customers will receive a flat basic rate of benefit, regardless of age, with the additional work-related activity component or support component on top of that.

This flat rate regardless of age is a principle which will run through ESA. Currently Incapacity Benefit customers receive an age-related addition if they claim under the age of 45. This amounts to either £8.55 or £17.10 depending on the age of the customer at the start of their claim. This provision is not being taken forward into ESA as it is an outdated provision based on the notion that people claiming incapacity benefits cannot return to work at all.

Conditionality

Customers aged 16-17 will have slightly different conditionality requirements than older customers, in order to reflect different ambitions about education and work at that stage in their lives. Instead of the 6 WFI regimes, 16-17 year old customers will attend a single interview at Connexions Service, which will focus on learning, training, and careers support. Further, non-mandatory contact will be encouraged. In this way the Department supports the wider Government agenda to improve education and skills for this age group.

State Pension Age

As discussed under the “Gender” section, there is a temporary disparity in eligibility for ESA between older men and women, because of the gradual equalisation of state pension age. Please see the “Gender” section for further details.

Religion

ESA will not apply differently to customers because of their religion or belief, and the Department will endeavour to promote equality for all customers irrespective of their religion. We have no evidence that incapacity benefits or ESA will have a specific impact on individuals because of their religion or belief. That being said, the Department is sensitive to people with different beliefs.

ATOS Healthcare, who are the contract holders for the provision of medical services to the Department, will continue to have in place policies to ensure that the healthcare professionals they employ are sensitive to the needs of racial or ethnic minorities when medical examinations are carried out.

In the sanction arrangements for the conditionality regime, one of the examples of good-cause which can be used to justify non-attendance at a work-focused interview, before a sanction is applied, is “that the established customs and practices of the religion to which the person belongs prevented him attending on that day or at that time”. This is in order to be sensitive to customers with different beliefs and religious commitments before applying a reduction to their benefit.

Equally individuals can be disqualified from ESA for failure, without good cause, to follow medical advice which could result in them no longer having limited capability for work (as is the case with other incapacity benefits). Objection to the advice (e.g. blood transfusion) on religious grounds, would be considered good cause in these circumstances.

In terms of polygamous marriages, ESA will align to the approach found across the benefits system and Tax Credits system. Both the benefit system and the Tax Credit system recognise polygamy, and the benefit rules ensure that couples in these circumstances have no financial advantage as a result of their polygamous marriage.

Sexual Orientation

ESA will not apply differently to customers because of their sexual orientation, and we have no evidence to suggest that ESA would have a specific impact on individuals because of their sexual orientation. The Department has endeavoured to ensure customers will be treated in the same way, regardless of their sexual orientation.

Civil Partnerships

Fewer than 12% of those who claim incapacity benefits do so as part of a couple. Nevertheless, the definition of “partner” within Employment and Support Allowance will encompass those same-sex couples within civil partnerships, giving them the same access to ESA as heterosexual couples.

Consultation and involvement

In January 2006, the Government outlined its strategy for helping people with a health condition or disability in its Green Paper 'A new deal for welfare: Empowering people to work'.

A formal consultation period on the Government's proposals lasted 12 weeks, up to 21 April 2006. The results of over 600 responses were published in June 2006 in 'A New Deal for Welfare: Empowering People to Work. Consultation Report'. However, not all responses dealt exclusively with the ESA. During the consultation period officials and ministers attended or hosted almost one hundred events, with a total estimated audience of over 5,000 people. The Department also initiated a prototype discussion forum devised with, and moderated by, the Hansard Society, on which over 80 people registered.

The consultation showed there was strong support for reforming the current Incapacity Benefits regime and extending the Pathways to Work initiative and that, amongst other things:

- there was also strong support for making the capability assessments more effective and for reviewing the arrangements for people trying work but staying on benefit. ESA addresses these concerns through the new Work Capability Assessment and the revision of the permitted-work rules.
- there were concerns about the levels of benefit (which will be the same as the basic levels of Jobseeker's Allowance during 'the assessment phase' - normally the first 13 weeks of benefit) and whether the Pathways to Work support package would respond sufficiently to the needs of people with mental health conditions and those with learning disabilities. The new WCA attempts to better address customers with mental health conditions.

Since the Green Paper consultation exercise ended, officials have continued to meet voluntary organisations to listen to their concerns in relation to the detailed policy and to consider if, and how, those concerns can be addressed. Jobcentre Plus has also held a large seminar for representative organisations to explain the 'customer journey' – how people will be able to claim ESA and how their claims will be dealt with during the assessment phase. Jobcentre Plus will continue to keep representative organisations informed as operational plans develop, through mechanisms such as the Jobcentre Plus Customer Representative Forum.

The Department set up a Technical Working Group to undertake a review of the PCA and develop the WCA. Members of the group were drawn from a wide range of expertise of relevant fields. The project was undertaken in close consultation with stakeholder groups directly representing service users. Please see **Annex A** for a list of members of these Technical and Consultative working groups. We have also had input from focus groups representing those with learning disabilities and autistic spectrum disorders as well as those with mental health conditions. These were drawn from clients of Mind, Rethink, Mencap, and the National Autistic Society. We plan to continue involving stakeholder groups in evaluation of the WCA and its implementation.

Next steps

Monitoring – future analysis

Plans for the evaluation of ESA are still in an early stage. Much of the impact of ESA, in terms of an effect on the client group caseload, will be through the new Work Capability Assessments, the timing of the 13 week assessment phase in which they take place, and the increased conditionality claimants will experience under Pathways to Work. These effects will be evaluated individually, to ensure they meet the policy intention.

Overall the evaluation will look at how ESA will:

- Create a gateway for work;
- Improve support for those who are unable to work;
- Improve customer experience;
- Improve efficiency and demonstrate value for money; and
- Improve people experience (i.e. the experience of Jobcentre Plus staff)

This will be done through analysis of administrative data supported by surveys of ESA recipients. We will seek customers' views on the process of claiming the benefit, experience with JCP, conditionality, the new WCA and WHFRA process.

The Welfare Reform Act requires that the Secretary of State lays before Parliament an independent report on how the assessments of limited capability for work and limited capability for work-related activity have operated. These reports will be produced annually for the first five years after the WCA comes into force.

Future engagement with stakeholders

The Department continues to regularly meet with an array of stakeholders, in both policy development and in planning the operational implementation of ESA. Jobcentre Plus is working with a variety of stakeholders including those from a range of Customer Representative Groups and linking with employers' intermediaries such as HMRC. The Department is also in consultation with the Social Security Advisory Committee.

We will continue to involve stakeholders throughout the process – as Employment and Support Allowance is introduced – and beyond, including in the evaluation of the WCA and its implementation.

Annex A

Technical and Consultative Working Groups involved in the creation of the Work Capability Assessment.

Mental Health Technical Working Group

Professor Geoff Shepherd, Director of Service Improvement, Cambridgeshire and Peterborough Mental Health Trust

Dr Jed Boardman, Royal College of Psychiatrists and Sainsbury Centre for Mental Health

Dr Bob Grove, Department of Health and Sainsbury Centre for Mental Health

Miles Rinaldi, Head of Delivery, National Institute for Mental Health in England

Dr Paul Litchfield, Faculty of Occupational Medicine

Sue Godby, College of Occupational Therapists and Unum Provident

Dr Angela Graham, Atos Origin

Physical Function Technical Working Group

Anne Johnson, Occupational Therapist, Royal National Hospital for Rheumatological Diseases

Dr David Henderson Slater, Consultant in Neurological Disability/Rehabilitation Medicine, Oxford Centre for Enablement

Anne Spaight, Physiotherapist, and Chair of the Disability Living Allowance Advisory Board

Dr Peter Dewis, Disability Analyst and Customer Care Director, UnumProvident

Dr Angela Graham, Atos Origin Medical Services

Dr Andy Tyerman, Consultant Clinical Neuropsychologist, Vale of Aylesbury NHS Primary Care Trust

Brigid Campbell, Social Security Advisory Committee

Andy Barrick, Royal National Institute for the Blind

Christine Jess, Disability Employment Advisory Council

Mental Health Consultative Group

MIND Disability Rights Commission

MENCAP Rethink

Turning Point Judy Scott Consultancy

SANE RADAR

DEAC TUC

The National Autistic Society Salford Council Welfare Rights Services

Overarching Consultative Group

Leonard Cheshire Disability Alliance

Rethink DEAC

RNIB

RNID

Macmillan Cancer Support

MENCAP

SSAC

TUC

Child Poverty Action Group [from August 2006]

SENSE

Arthritis Care

SCOPE

MIND

Citizen's Advice

Disability Rights Commission