

2011 No. 1349

SOCIAL SECURITY

The Employment and Support Allowance (Work-Related Activity) Regulations 2011

Made - - - -

26th May 2011

Coming into force -

1st June 2011

In accordance with section 26(1)(b) of the Welfare Reform Act 2007(a), and section 8(3) of the Welfare Reform Act 2009(b), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 9 and 10 of the Social Security Act 1998(c), and sections 11, 12(1) and (2), 13, 14, 15(d), 16, 17(3)(b), 24(1)(e) and 25 of the Welfare Reform Act 2007.

In accordance with section 173(1) of the Social Security Administration Act 1992(f), the Secretary of State has obtained the agreement of the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to them.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Work-Related Activity) Regulations 2011 and shall come into force on 1st June 2011.


Interpretation

2.—(1) In these Regulations—

“the Act” means the Welfare Reform Act 2007;

“the ESA Regulations” means the Employment and Support Allowance Regulations 2008(g);

“action plan” means an action plan issued in accordance with regulation 5;

“carer’s allowance”, “child”, , “medical treatment” and “working day” have the meaning given in regulation 2(1) of the ESA Regulations.

¹Words omitted in reg. 2(1) by reg. 7 of S.I. 2011/2428 as from 31.10.11.

(a) 2007 c. 5.

(b) 2009 c. 24.

(c) 1998 c. 14.

(d) Subsections (1), (1A) and (2) of section 15 were substituted for subsections (1) and (2), as originally enacted, by section 10 of the Welfare Reform Act 2009 (c. 24).

(e) Section 24(1) is an interpretation provision and is cited because of the meaning it gives to the word “prescribed”.

(f) 1992 c. 5.

(g) S.I. 2008/794.

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Work-related activity

Requirement to undertake work-related activity

3.—(1) The Secretary of State may require a person who satisfies the requirements in paragraph (2) to undertake work-related activity^(a) as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.

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

- (a) is required to take part in, or has taken part in, one or more work-focused interviews pursuant to regulation 54 of the ESA Regulations;
- (b) is not a lone parent who is responsible for and a member of the same household as a child under the age of 13¹; and
- (c) is not entitled to a carer's allowance; and
- (d) is not entitled to a carer premium under paragraph 8 of Schedule 4 to the ESA Regulations.

(3) A requirement to undertake work-related activity ceases to have effect if the person becomes a member of the support group^(b).

(4) A requirement imposed under paragraph (1)—

- (a) must be reasonable in the view of the Secretary of State, having regard to the person's circumstances; and
- (b) may not require the person to—
 - (i) apply for a job or undertake work, whether as an employee or otherwise; or
 - (ii) undergo medical treatment.

(5) A person who is a lone parent and in any week is responsible for and a member of the same household as a child under the age of 13, may only be required to undertake work-related activity under paragraph (1) during the child's normal school hours.

Directions about work-related activity

4.—(1) The circumstances in paragraph (2) are the circumstances prescribed for the purposes of section 15(1)(a) of the Act.

(2) The circumstances referred to in paragraph (1) are that—

- (a) the person has been identified by the Secretary of State as having a barrier to work and in the view of the Secretary of State has refused to address that barrier; and
- (b) the Secretary of State considers that the activity specified in the direction given under section 15(1) of the Act is a prerequisite to the person's ability to obtain or remain in work.

Notification of work-related activity and action plans

5.—(1) The Secretary of State must notify a person of a requirement to undertake work-related activity by including the requirement in a written action plan given to the person.

^(a) For the meaning of "work-related activity" see sections 13(7) and 24(1) of the Act.

^(b) For the meaning of "member of the support group" see section 24(4) of the Act.

¹Word substituted in reg. 3(2)(b) by reg. 15 of S.I. 2014/1097 as from 28.4.14.

- (2) The action plan must specify—
- (a) the work-related activity which the person is required to undertake; and
 - (b) any other information that the Secretary of State considers appropriate.

Requirement to undertake work-related activity at a particular time not to apply

6. The Secretary of State may determine that a requirement as to the time at or by which work-related activity is to be undertaken is not to apply, or is to be treated as not having applied, if in the view of the Secretary of State it would be, or would have been, unreasonable to require the person to undertake the activity at or by that time.

Reconsideration of action plans

- 7.—(1) A person may request reconsideration of an action plan.
- (2) On receipt of a request the Secretary of State must reconsider the action plan.
- (3) A decision of the Secretary of State following a request must be in writing and given to the person.

Failure to undertake work-related activity

8.—(1) A person who is required to undertake work-related activity but fails to do so must show good cause for the failure within 5 working days of the date on which the Secretary of State gives notice of the failure.

(2) The Secretary of State must determine whether a person who is required to undertake work-related activity has failed to do so and, if so, whether the person has shown good cause for the failure.

(3) ►¹◄

¹Reg. 8(3) omitted and words in 9(2)(b) and (c) substituted by reg. 7 of S.I. 2012/2756 as from 3.12.12.

PART 3

Contracting Out

Contracting out

9.—(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—
- (a) any function under—
 - (i) regulation 3 (requirement to undertake work-related activity);
 - (ii) regulation 5 (notification of work-related activity and action plans);
 - (iii) regulation 6 (requirement to undertake work-related activity not to apply);
 - (iv) regulation 7 (reconsideration of action plans);
 - (b) any function under ►¹regulation 64(1)(c) and (1A)(b)◄ of the ESA Regulations (decisions in relation to cessation of reduction);
 - ¹(c) any function relating to a compliance condition under regulation 63(11) (compliance condition: notifications and agreements).◄

PART 4

Amendment to the ESA Regulations

Amendment to regulation 2(1) of the ESA Regulations (interpretation)

[Regulation 10 amends regulation 2(1) of S.I. 2008/794.]

[Regulation 11 revokes regulations 47, 48, 49, 51, 52 & 53 of S.I. 2008/794.]

[Regulation 12 amends regulation 56(1) of S.I. 2008/794.]

[Regulation 13 amends regulation 57 of S.I. 2008/794.]

[Regulation 14 amends regulation 58 of S.I. 2008/794.]

[Regulation 15 amends regulation 61(3) of S.I. 2008/794.]

[Regulation 16 amends regulation 62 of S.I. 2008/794.]

[Regulation 17 amends regulation 63 of S.I. 2008/794.]

[Regulation 18 amends regulation 64 of S.I. 2008/794.]

[Regulation 19 amends Schedule 8 of S.I. 2008/794.]

[Regulation 20 amends Schedule 9 of S.I. 2008/794.]

PART 5

Amendment to the Social Security and Child Support (Decisions and Appeals)
Regulations 1999

**Amendment to the Social Security and Child Support (Decisions and Appeals)
Regulations 1999**

[Regulation 21 amends regulation 1(3) of S.I. 1999/991.]

Signed by authority of the Secretary of State for Work and Pensions.

26th May 2011

Chris Grayling
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under the provisions in Part 1 of the Welfare Reform Act 2007 (“the Act”).

Section 13 of the Act introduced work-related activity requirements for claimants of employment and support allowance (ESA) who are not in the “support group” (defined in section 24(4) as persons in respect of whom it is determined that they have, or are to be treated as having, limited capability for work-related activity).

Regulation 3 sets out the circumstances in which the Secretary of State may require such a person to undertake work-related activity and who such a requirement may be applied to. It also makes clear that a requirement must be reasonable in the view of the Secretary of State, having regard to the person’s circumstances and may not require the person to apply for a job, undertake work or undergo medical treatment as part of the work-related activity requirement. It also provides that a lone parent with a child under the age of 13 may only be required to undertake work related activity during normal school hours.

Regulation 4 sets out the circumstances in which the Secretary of State may exercise the power to give a direction under section 15 of the Act.

Regulation 5 sets out the way in which the Secretary of State must notify a person of a requirement to undertake work-related activity, by including the requirement in a written action plan.

Regulation 6 provides that the requirement to undertake work-related activity at or by a particular time may be adjusted in certain circumstances.

Regulation 7 sets out a right to request reconsideration of the action plan. On receipt of the request the action plan must be reconsidered and a decision notified to the person.

Regulation 8 sets out what happens if a person fails to undertake work-related activity and provides an opportunity to show good cause for the failure. If good cause is not shown, a sanction may be given under regulation 63 of the Employment and Support Allowance Regulations 2008 (S.I. 2008/794) “the ESA Regulations” as amended by regulation 17 of these Regulations.

Regulation 9 makes provision for contracting out the work-related activity functions (with the exception of functions relating to the consideration of good cause and the imposition of sanctions).

Regulations 10-21 make certain consequential and miscellaneous amendments to the ESA Regulations:

Regulations 10, 13(4), 14 and 16 revoke regulations regarding action plans relating to work focused interviews. Action plans will only be required if work related activity is imposed under these Regulations.

Regulation 11 revokes provisions relating to work-focused health related assessments which are no longer required of ESA claimants.

Regulations 12 and 13 allow for work-focused interviews to be carried out other than in person and regulation 15 substitutes new good cause provisions for failures to take part in a work-focused interview, to align with regulations in relation to failures to undertake work-related activity.

Regulations 17 and 18 apply the existing ESA sanctions regime for failure to take part in a work-focused interview to a failure to undertake work-related activity and provide for when a sanction will cease.

Regulations 19 and 20 provide that travel and other expenses paid to persons in connection with their undertaking of work-related activity are disregarded as income and capital for the purposes of income related ESA.

Regulation 21 makes consequential amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991).

A full impact assessment has been produced for this instrument. Copies are available in the libraries of both Houses of Parliament, and may also be obtained from the Better Regulation Unit of the Department for Work and Pensions, 6B Caxton House, Tothill Street, London SW1H 9NA, or from the DWP website: <http://www.dwp.gov.uk/resourcecentre/ria.asp>.