
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a social security benefit to be known as an employment and support allowance, which replaces the existing benefit of the same name. The new benefit is for people who have a health condition or disability which limits their capability to work. People will only be able to claim the new benefit where they have made sufficient National Insurance contributions. People will no longer be able to claim employment and support allowance where they have low or no other income but have not made sufficient National Insurance contributions. Many rules for the existing benefit are replicated in these Regulations for the new benefit.

Most claimants will be required to serve an assessment phase which will normally last for 13 weeks from the start of the claim (regulations 5 to 7). During this period claimants will receive a rate of benefit that depends on whether they are aged under or over 25 years. Once the assessment phase is complete and subject to satisfying the assessment of “limited capability for work” (see Part 4) claimants will move onto the main phase of the benefit. Their entitlement will then consist of the basic rate – a flat rate of benefit, regardless of age – and, on top of this, a work-related activity or support component. Some claimants will be entitled to the work-related activity component and will be required to engage in “conditionality” (Part 7). Failure to engage can lead to the imposition of a reduction in benefit (Part 8). Claimants who demonstrate “limited capability for work-related activity” (Part 5) will be entitled to the support component instead of the work-related activity component, in addition to the basic rate. These claimants will be those with the most severe health conditions and will not be subject to any conditionality requirements.

Part 2 provides detailed provisions on when the assessment phase will end.

Part 3 deals with conditions of entitlement.

Part 4 deals with the determination of whether or not a claimant has limited capability for work. The assessment used to determine this is set out in Schedule 2. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work.

Part 5 deals with the determination of whether or not a claimant has limited capability for work-related activity. The assessment used to determine this is set out in Schedule 3. It also provides for the circumstances in which a claimant is to be treated as having or not having limited capability for work-related activity.

Part 6 provides for the circumstances in which the work a claimant does affects the claimant’s entitlement.

Part 7 makes provision in relation to the claimant’s responsibilities. The claimant can be required to prepare for work and attend interviews in relation to work or work preparation. The provisions in Part 2 include details on which requirements apply to which claimants, how those requirements are met and circumstances in which they do not apply. Regulation 42 deals with the claimant’s responsibilities where they are entitled to Universal Credit as well as an employment and support allowance. Regulations 44 and 45 contain provisions for accepting the claimant commitment which is usually a condition of entitlement.

Part 8 contains provisions relating to the reduction of benefit where a claimant fails to meet their responsibilities without good reason. This is known as a sanction. This includes the cases in which a sanction cannot be imposed, how long a sanction is to last and how much of the claimant’s employment and support allowance will be sanctioned. There are also provisions for transferring

Status: This is the original version (as it was originally made).

sanctions to and from Universal Credit, for example where a claimant with a sanction ceases to be entitled to Universal Credit and becomes entitled to an employment and support allowance.

Part 9 specifies the amounts of employment and support allowance which are payable.

Part 10 deals with the calculation of a claimant's income and earnings.

Part 11 provides for supplementary provisions. This includes providing that a claimant must wait a number of days at the start of a period of limited capability for work before becoming entitled to ESA (regulation 85) and rules which enable two periods of limited capability for work separated by not more than 12 weeks to be linked together (regulation 86).

Part 12 provides for the circumstances in which a claimant may be disqualified from receiving an employment and support allowance and includes provision to deal with the situation where this would leave a person in hardship.

Part 13 contains details enabling the amount of an employment and support allowance to be calculated where the claimant is entitled for a period of less than a week.

A full impact assessment has not been published for these Regulations as they have no impact on the private sector or civil society organisations. An assessment has been made of the impact of the introduction of Universal Credit. The Welfare Reform Act 2012 abolishes income-related employment and support allowance as a consequence of the introduction of Universal Credit. That assessment is therefore relevant, in part, for these Regulations. Copies of that impact assessment may be obtained from the Better Regulation Unit of the Department for Work and Pensions, 2D Caxton House, Tothill Street, London SW1 9NA or from the DWP website: <http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-act-2012/impact-assessments-and-equality>.