

Title: The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011 Lead department or agency: Department for Work and Pensions Other departments or agencies:	Impact Assessment (IA)
	IA No:
	Date: 07/12/2010
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation

Summary: Intervention and Options

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

The Work Capability Assessment is a functional assessment to determine capability for work and work related activity. Doing this accurately means that the Government can offer individuals the most appropriate support to return to work, where possible, which evidence shows is generally good for physical and mental wellbeing.

A department-led review of the WCA identified a number of ways in which the WCA should be changed to make it a fairer and more accurate reflection of capability for work.

As such, it is necessary to revise the WCA, as set out in the Employment and Support Allowance Regulations 2008 to give effect to these recommendations.

What are the policy objectives and the intended effects?

The policy objective is to ensure the Work Capability Assessment is achieving its aim of correctly identifying an individual's capability for work. In order to improve the WCA, these changes will make greater provision for people awaiting or in between courses of chemotherapy and those receiving residential treatment for drug or alcohol misuse; expand the Support Group (those who receive a higher rate of benefit and are not required to take part in any work-related activity) in relation to certain communication difficulties and severe mental health conditions; make the descriptors clearer and simpler; and take greater account of how someone has adapted to their condition. In more accurately assessing claimants, it is anticipated that these changes will result in a small increase in the number of claimants going into the Support Group of ESA and an increase in the number of claimants found capable of work.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

1. Do nothing: continue to use the current Work Capability Assessment. A Department-led review of this assessment has shown it to be generally working well but improvements were recommended which would make the test more accurate.

2. Implement the recommendations of the Review of WCA.

Option 2 is the preferred option because the recommended amendments will simplify and clarify the WCA, correct anomalies and better account for adaptation.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed
12/2011

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

Ministerial Sign-off For final proposal 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) the benefits justify the costs.

Signed by the responsible Minister: C Grayling

Date: 8th February 2011

Summary: Analysis and Evidence

Policy Option 2

Description: Implement the recommendations of the Review of WCA

Price Base Year 10/11	PV Base Year 10/11	Time Period Years 6	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: (77.7)

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	9.2	136.9	620.4

Description and scale of key monetised costs by 'main affected groups'

Individuals: Costs arise for those assessed as fit for work from reduction in benefit payments as individuals move off ESA onto other destinations (see key assumptions below) (average £103.8m p.a.)

Exchequer: Costs arise from: (i) set-up/transition costs to Atos healthcare for IT software for inputting the medical assessments, training Atos healthcare professionals on implementing the revised WCA and increase in medical assessments for ESA repeat assessment cases (one-off cost over three years of £9.2m); (ii) increase in operational costs resulting from increase in appeals and JCP cost of administering JSA and other benefits that those assessed as fit for work may move onto (average £17.8m p.a.); and (iii) increase in ESA payments to those assessed to be in the Support Group (average £15.3m p.a.).

Other key non-monetised costs by 'main affected groups'

None.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	0	121.7	542.7

Description and scale of key monetised benefits by 'main affected groups'

Individuals: Benefits arising from increase in ESA payments for those assessed to be in the Support Group (average £15.3m p.a.).

Exchequer: Savings arising from (i) reduction in benefit payments to those assessed as fit for work (average £103.8m p.a.); and (ii) reduction in operational costs from fewer ESA repeat assessments for those assessed as fit for work (average £2.6m p.a.).

Other key non-monetised benefits by 'main affected groups'

A key benefit of this change is the non-monetised benefit to individuals, the exchequer and the wider economy of individuals returning to suitable employment. A more accurate assessment of functional ability to work will enable the Government to offer more appropriate support to help people move into work. It is expected that some of those found fit for work will find employment earlier. Employment has numerous economic and social benefits for individuals and society as a whole. It has not been possible to estimate the proportion found fit for work that will find employment earlier. This due to the lack of historical data on the destination of those who leave ESA and do not claim other benefits.

Key assumptions/sensitivities/risks

Discount rate 3.5

The revised WCA is expected to increase the proportion assessed as fit for work by 5 percentage points and those assessed to be in the Support Group by 0.5 percentage points. These impacts are based on a model that compares the relationship between the revised and existing descriptors to determine what changes in outcomes are likely. This was achieved using data from almost 60,000 new claims assessments.

Customers who are found fit for work will have their entitlement to ESA ended and will be able to claim another benefit or appeal. It is assumed that the propensity to appeal a fit for work decision for this group of customers is the same as that for existing customers found fit for work. It is further assumed that customers who are found fit for work will have the following destinations: 50% move onto JSA; 20% move onto another benefit (e.g. Income Support, Carers Allowance) or re-claim ESA; and 30% move off benefits.¹

¹ Based on analysis of destinations observed for those leaving Incapacity Benefit after a personal capability assessment

Impact on admin burden (AB) (£m): 0			Impact on policy cost		In
New AB: 0	AB savings: 0	Net: 0	Policy cost savings:		N/A

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Great Britain		
From what date will the policy be implemented?			28/03/2011		
Which organisation(s) will enforce the policy?			N/A		
What is the annual change in enforcement cost (£m)?			No additional costs		
Does enforcement comply with Hampton principles?			N/A		
Does implementation go beyond minimum EU requirements?			N/A		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			No		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: N/A	Benefits: N/A	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	N/A	N/A	N/A	N/A	N/A

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	Yes	Separate EIA published
Economic impacts Competition Competition Assessment Impact Test guidance Small firms Small Firms Impact Test guidance	No	
	No	
Environmental impacts Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
	No	
Social impacts Health and well-being Health and Well-being Impact Test guidance Human rights Human Rights Impact Test guidance Justice system Justice Impact Test guidance Rural proofing Rural Proofing Impact Test guidance	No	
	No	
	No	
	No	
Sustainable development	No	

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No. Legislation or publication

- 1 The Employment And Support Allowance (Limited Capability For Work And Limited Capability For Work-Related Activity) Amendment Regulations 2011

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	3.3	3.1	2.8	0	0	0	0	0	0	0
Annual recurring cost	0	70.9	130.3	158.6	163.8	160.9	0	0	0	0
Total annual costs	3.3	74.0	133.1	158.6	163.8	160.9	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring	0	56.3	113.0	142.7	149.1	147.4	0	0	0	0
Total annual benefits	0	56.3	113.0	142.7	149.1	147.4	0	0	0	0

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

Introduction and Policy Rationale

1. The Work Capability Assessment (WCA) was introduced in October 2008 to assess entitlement to Employment and Support Allowance (ESA) for all new claims. It replaced the Personal Capability Assessment (PCA) used to assess entitlement to incapacity benefits (IB). The WCA was developed by departmental officials, working in close consultation with medical and other experts alongside specialist disability groups.
2. The WCA is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work, and on the large body of evidence which shows that work is good for physical and mental well-being, that it can be beneficial for individuals with health conditions and disabilities and that being out of work can contribute to poorer health and other negative outcomes. It is a functional assessment which focuses not on an individual's condition but on the functional effects on that particular individual. The assessment looks at a range of different activities related to physical, mental, cognitive and intellectual functions and certain additional criteria that do not directly measure function (such as terminal illness) to determine capability for work, taking into account developments in healthcare and the modern workplace.
3. Following an assessment, the healthcare professional provides advice to a DWP decision maker to inform the decision on benefit entitlement. The decision maker will use this advice alongside all other available evidence (including any medical evidence provided by the individual's GP or specialist) to determine an individual's capability for work and capability for work related activity. There are three possible outcomes:
 - An individual is found fit for work and is therefore ineligible for ESA. They would be expected to return to work or claim Jobseekers Allowance even though they may still have a health condition or disability and require appropriate support.
 - An individual is found to have limited capability for work at that time, but able to prepare for a return to work. They would be entitled to ESA and placed in the Work Related Activity Group.
 - An individual is found to have limited capability for work-related activity and therefore entitled to ESA and placed in the Support Group. They are not required to undertake any work related activity.

Reviewing the Work Capability Assessment

4. The Department carried out a review of the Work Capability Assessment (published in March 2010) to ensure it accurately assessed individuals for benefit purposes and to identify how it could better account for adaptation.
5. This was led by Department for Work and Pensions officials and involved medical and other experts alongside representative groups and put forward a number of recommendations to amend the current regulations.

Consultation

6. The review was announced in a July 2008 Green Paper, which underwent public consultation. Recommendations were produced in discussion with the working group. Specialist disability groups were involved in the review. An addendum to the Review was written solely as a result of further work with these representatives to gain better consensus and address specific concerns. Wider consultation specifically on The Employment and Support Allowance (Limited Capability For Work And Limited Capability For Work-Related Activity) Amendment Regulations 2011 was undertaken by Social Security Committee in August and September 2010.

Summary of Internal Review Recommendations

7. The Government proposes to amend the Employment and Support Allowance Regulations 2008 relating to the Work Capability Assessment regulations to:
 - Place people awaiting certain types of chemotherapy in the support group;

- Ensure that people receiving residential treatment for drug or alcohol misuse are automatically entitled to ESA.
- Ensure greater recognition of fluctuating conditions within the assessment itself;
- Expand the support group to cover people with certain communication problems and severe disability due to mental health conditions;
- Make the language of the assessment clearer and the process simplified, to support fair and consistent application; and
- Ensure appropriate account is taken of each individual's adaptation to their condition or disability.

COSTS AND BENEFITS

Option 1: Do nothing

1. The do-nothing option is to continue to use current Work Capability Assessment. A Department-led review of this assessment has shown the assessment to be generally working well but improvements were recommended which would make the assessment more accurate and improve the focus on functional ability. Doing nothing would mean that these improvements are not made.
2. This option has no additional costs or benefits and is used as the baseline for comparison.

Option 2: Implement the recommendations of the Review of the WCA

3. Implementing the recommendations above would simplify and clarify the WCA, correcting for any current anomalies – including improving provision for claimants awaiting chemotherapy or receiving residential treatment for drug or alcohol misuse - and taking better account of individual's adaptation to their condition or disability.
4. The additional costs and benefits outlined below relate to six years - 2010/11 the 'set-up' year and 2011/12 to 2015/16 five years following the introduction of the revised WCA. All costs and benefits are in constant 2010/11 prices³. For further information about costs and benefits see Annex 2.

Main groups affected by change

5. The main groups affected by these changes are:
 - Individuals making new claims to ESA;
 - Existing recipients of ESA (when they come up for repeat assessments). ESA is intended to be a temporary benefit for most customers. When the WCA is conducted, a health professional will advise on when they expect the individual's condition to have improved or an individual to have adapted to their condition to the point where a return to work may be considered. This is used to advise the time at which they should have a repeat assessment. Most people are expected to have returned to being fit for work and moved off ESA within two years; and
 - Existing recipients of incapacity benefits who will be reassessed using the WCA to see if they are eligible for ESA.

No direct impact on the private sector and civil society organisations is anticipated.

Overall effect

6. The main effect of the revised WCA is on physical function relating to better accounting for how an individual has adapted to their disability or condition. This means that where an individual has adapted to their condition the assessment will take account of this. For example, an individual may no longer be entitled to ESA if they cannot walk but can successfully use a manual wheelchair to mobilise. This is expected to increase the numbers of customers assessed as capable of work.

³ Figures are adjusted for inflation on the basis of CPI for AME costs and benefits and average earnings for DEL costs and benefits (http://budgetresponsibility.independent.gov.uk/d/econ_fiscal_outlook_291110.pdf).

Customers who are assessed as being capable of work are not entitled to ESA, although they may be able to claim Jobseekers Allowance or other benefits.

7. There has also been a widening of the ESA Support Group criteria mainly in mental function following the identification of areas where individuals might face severe functional limitation, specifically relating to:
 - Receptive communication (currently only expressive/outgoing problems in the support group);
 - Awareness of hazards;
 - Coping with change;
 - Coping with social engagement; and
 - Appropriateness of behaviour with other people.
8. Analytical work was undertaken to assess the implications of these proposals using existing data from new ESA claims. A model was created that compares the relationship between the revised and existing descriptors to determine what changes in outcomes are likely. This has been achieved using data from almost 60,000 new claims assessments. Further detailed analysis on specific cases was then undertaken by a panel of experts.
9. The revised WCA is estimated to lead to **an increase of around 5 percentage points in the numbers found fit for work**. Currently 39% are found fit for work⁴. This is therefore expected to rise to 44%.

The analysis also showed around a **0.5 percentage point increase** (from 6.4% to 6.9%) in the proportion assessed to be in the ESA Support Group.

10. Estimates of the numbers of customers that will be affected from the introduction of the revised WCA are outlined in table 1 below. It is estimated that an additional 45,000 to 80,000 customers per year will be found fit for work each year and an additional 11,000 to 37,000 per year customers will also be assessed to be in the ESA Support Group.

Table 1: Numbers of customers affected

Year	Additional customers found fit for work	Additional customers in the Support Group	Total decisions affected
2011/12	45,000	11,000	56,000
2012/13	68,000	22,000	89,000
2013/14	80,000	32,000	113,000
2014/15	78,000	35,000	113,000
2015/16	75,000	37,000	113,000

Impact on main affected groups

Impact on customers

Benefits

11. There is good evidence to show that work is generally good for physical and mental health and wellbeing, including for disabled people and people with health conditions, and may help to promote recovery. Being out of work often leads to poorer health as well as other negative outcomes.⁵
12. Amending the WCA so that it takes greater account of the way an individual has adapted to their condition facilitates a more accurate assessment of their functional ability for work. This is expected to lead to earlier entry into the workplace for customers who are identified as capable of work because they use aids or adaptations to mitigate the disabling impact of their condition. By taking steps to provide people with appropriate support, the Government can contribute to an increased likelihood of returning to work. Ensuring the accuracy of the gateway to entitlement contributes to

⁴ http://research.dwp.gov.uk/asd/workingage/index.php?page=esa_wca

⁵ Waddell G and Burton A (2006) *Is work good for your health and wellbeing?* (London: The Stationery Office)

achieving this benefit for customers.

13. It is estimated that customers who are found fit for work will have the following destinations⁶ :
- 50% move onto Jobseekers Allowance.
 - 20% move onto another benefit (e.g. Income Support, Carers Allowance) or re-claim ESA.
 - 30% move off benefit.

However, the benefits of earlier entry into the workplace have not been estimated in this impact assessment as there are currently limited data on the destinations of those who move off benefit.

14. The revised WCA is expected to result in more accurate identification of individuals who are unable to engage in work-related activity and the provision of greater financial support and appropriate conditionality for this group. Customers assessed to be in the support group will receive higher rates of ESA. A single person in the support group can receive up to £96.85 per week, whilst a single person in the work-related activity group receives up to £91.40 per week in 2010/11. In total, it is estimated that individuals will receive an additional £15.3m p.a. (note that this is a transfer payment from the Exchequer to customers and does not represent a benefit for the economy⁷).

Costs

14. This more accurate assessment will result in more customers being appropriately assessed as capable for work and disallowed ESA. These customers will be able to appeal; or claim Jobseekers Allowance or other benefits if they meet the entitlement criteria. The amount payable to claimants of these benefits is lower than that paid to ESA claimants. This is expected to result in a cost to individuals of £103.8m p.a. (note this is a transfer payment and does not represent a cost to the economy). Customers claiming JSA will receive more intensive and more appropriate support to return to work. As discussed above, the benefits of work mean that this is likely to be a positive move for the customer.
15. Data shows that around 30% of customers who are disallowed ESA do not claim another out-of-work benefit. This may be because they move into work but reliable data about the destinations of these customers is not available. However, as part of his second independent review of the WCA Professor Harrington will be examining what happens to customers who are disallowed ESA, including those who are unable to claim JSA. His findings and recommendations will form an important part of our policy development process.

Impact on the Exchequer

Benefits

16. There will be benefits for the Exchequer in terms of savings from paying and administering ESA due to the increased numbers being assessed as fit for work through the amended WCA. The savings arising from reduction in benefit payments to those assessed as fit for work (cost of ESA minus costs of JSA or other benefits claimed) is estimated to be an average of £103.8m per year (note this is a transfer payment and does not represent a benefit to the economy). In addition, the reduction in operations costs from conducting fewer repeat WCAs on ESA claimants is expected to lead to a benefit to the exchequer of an average of £2.6m per year.

Costs

17. There is a one-off cost of £9.2m for implementing the revised WCA over three years - £4.8m of this cost lies with revising the ATOS healthcare IT software for inputting the medical assessments, and training ATOS healthcare professionals to conduct the revised assessment. The remaining £4.4m

⁶ Based on analysis of destinations observed for those leaving Incapacity Benefit after a personal capability assessment

⁷ Transfer payments are those for which no good or service is obtained in return. Transfer payments may change the distribution of income or wealth, but do not give rise to direct economic benefits or costs. See HMT, The Green Book: Appraisal and evaluation in Central Government. London: TSO.
(http://www.hm-treasury.gov.uk/data_greenbook_index.htm)

relate to changes to the WCA used for repeat assessments. This will result in an increase in the number of face-to-face assessments conducted.

18. There will be ongoing operational costs of £10.2m per year from processing increased appeals. This is as a result of higher numbers of customers expected to be assessed as fit for work. Current estimates are that there would be a five percentage point rise in the overall disallowance rate and, assuming the same propensity to appeal as now, an increase the number of appeals by 13 per cent. A large proportion of the associated costs lie with Ministry of Justice.
19. There will be a Jobcentre Plus cost to the Exchequer from administering increased volumes of JSA and other benefit claims due to some customers moving to these benefits after they have been assessed as fit for work through the amended WCA. This is expected to be an average of £7.6m p.a.
20. There will also be costs to the Exchequer of paying higher rates of ESA to the additional numbers expected to be assessed to be in the Support Group through the amended WCA. This is estimated at an average of £15.3m p.a. (note this is a transfer payment and does not represent a cost to the economy).

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Section 10 of the Welfare Reform Act 2007 commits the Secretary of State to lay an independent report about the WCA before Parliament each year for the first 5 years of operation, there is therefore, an existing statutory requirements for regular reviews.

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

Professor Malcolm Harrington, who conducted the first independent review of the WCA in 2010, has been appointed to conduct the second independent review, due to be published in late 2011. He has set out his programme of work, which will focus on the descriptors themselves, looking in particular at the assessment of fluctuating conditions and mental, intellectual and cognitive function; on whether the assessment should include more work-focussed elements; and on what happens to individuals after they have been assessed. The second review will also monitor the implementation of the recommendations in the year one report. Subsequent independent reviews will look at elements of the operation of the WCA to be defined more closely as the policy develops.

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

The Post Implementation Review will use the evidence and findings from the independent reviews to form the basis of its report.

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

The baseline position (current WCA) is outlined in Work Capability Assessment Internal Review, March 2010

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Successful implementation of the revised WCA will:

- Create a more accurate assessment of capability by accounting for adaptations an individual makes to mitigate the disabling impact of their condition
- Simplify the assessment to ensure clarity and uniformity in its application. Making it easier for claimants to understand the basis of benefit entitlement through clarifying the language and activities used in the descriptors.

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]

Detailed management information and administrative data on the outcomes of WCAs is collected and used to assess and refine the assessment.

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

ANNEX 2: SUMMARY OF ALL COST AND BENEFITS

Note the figures in brackets are negative.

All figures are in constant prices unless otherwise stated (base: 2010/11) (£m)

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Individuals							
Benefits							
Support Group - higher rates of ESA	-	6.4	12.4	18.2	19.3	20.2	76.5
Costs							
Fit for work - lower benefits as some move from ESA to other benefits	-	48.0	97.8	121.4	127.1	124.7	519.0
Net benefit	-	(41.6)	(85.4)	(103.2)	(107.8)	(104.5)	(442.5)
Exchequer							
Benefits							
Savings from processing fewer ESA cases (as more customers are found fit for work)	-	2.0	2.8	3.1	2.8	2.5	13.1
Savings from benefit payments to those found fit for work	-	48.0	97.8	121.4	127.1	124.7	519.0
Costs							
One-off cost of implementing the revised WCA (IT; training; recruitment; project management)	3.3	1.2	0.3	-	-	-	4.8
Increase in medical assessments	-	1.9	2.5	-	-	-	4.4
On-going operational costs of processing increased appeals	-	10.9	12.1	10.3	9.4	8.5	51.2
Cost of administering JSA and other benefits	-	5.7	8.0	8.7	8.1	7.5	37.9
Increase in benefit payments to Support Group	-	6.4	12.4	18.2	19.3	20.2	76.5
Net benefit	(3.3)	23.9	65.3	87.3	93.1	91.0	357.3

	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Total
Economy							
Benefits							
Savings from processing fewer ESA cases (as more customers are found fit for work)	-	2.0	2.8	3.1	2.8	2.5	13.1
Savings to Exchequer from benefit payments to those found fit for work	-	48.0	97.8	121.4	127.1	124.7	519.0
Higher benefit payments to individuals in the Support Group	-	6.4	12.4	18.2	19.3	20.2	76.5
Costs							
One-off cost of implementing the revised WCA (IT; training; recruitment; project management)	3.3	1.2	0.3	-	-	-	4.8
Increase in medical assessments	-	1.9	2.5	-	-	-	4.4
On-going operational costs of processing increased appeals	-	10.9	12.1	10.3	9.4	8.5	51.2
Cost of administering JSA and other benefits	-	5.7	8.0	8.7	8.1	7.5	37.9
Increase in benefit payment for Exchequer to those in the Support Group	-	6.4	12.4	18.2	19.3	20.2	76.5
Fit for work - lower benefits to individuals in for work group	-	48.0	97.8	121.4	127.1	124.7	519.0
Net benefit	(3.3)	(17.7)	(20.1)	(15.9)	(14.7)	(13.5)	(85.2)
Net benefit (present value)	(3.3)	(17.1)	(18.8)	(14.3)	(12.8)	(11.4)	(77.7)

The Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011

25th January 2011

Equality impact assessment for the revised Work Capability Assessment

Introduction

The Department for Work and Pensions has carried out an equality impact assessment on the proposal to implement the recommendations of a department-led review of the Work Capability Assessment, assessing the proposal in line with the current public sector equality duties.

This process will help to ensure that:

- the Department's strategies, policies and services are free from discrimination;
- the Department complies with current equality legislation;
- due regard is given to equality in decision making and subsequent processes; and
- opportunities for promoting equality are identified.

This equality impact assessment considers the potential impact of the proposed policies in terms of disability, race, gender, gender reassignment, sexual orientation and religion and belief.

Outline

The Work Capability Assessment (WCA) was introduced in October 2008 as a key part of the assessment process to determine entitlement to Employment and Support Allowance (ESA) for new claims.

From March 2009 to March 2010, officials engaged with independent medical experts and specialist disability groups to conduct a department-led review of the WCA. (Note that this is a separate exercise to the Independent Review recently conducted by Professor Malcolm Harrington.) The report of the review, published on 29 March 2010, found that generally the WCA accurately identifies individuals' eligibility for benefit. The review also recommended a number of improvements, including:

- Making greater provision for individuals awaiting or between courses of certain types of chemotherapy, so that they are automatically entitled to ESA at the higher 'support group' rate.
- Making greater provision for individuals receiving residential treatment for drug or alcohol misuse so that they are automatically entitled to ESA.
- Expanding the support group (those who receive a higher level of benefit and are not required to undertake any work-related activity) to cover more people with certain communication impairments and who need the most support due to mental health conditions;
- Taking greater account of someone's adaptation to a condition or impairment.
- Simplifying the language of the descriptors, to ensure fair, consistent and transparent application.

We have decided to implement these recommendations.

Consultation and involvement

In July 2008, the Green Paper 'No-One Written Off: Reforming Welfare to Reward Responsibility'⁸ consulted publicly on whether the WCA should be reviewed. This consultation received over 1,100 responses. The concept of reviewing WCA was welcomed, and the ensuing White Paper 'Raising Expectations'⁹, published in December 2008, announced that the Government would review it.

A Department-led review of the WCA commenced in March 2009, with the remit of establishing whether it accurately identifies capability for work, whether the content is appropriate, and how it could be amended to better take into account how individuals adapt to their conditions. Due to the technical nature of the review, the Department did not launch an open public consultation. We did, however, engage closely with a wide range of experts in the fields of physical, mental and occupational health, representatives of employers, disability organisations and wider customer representative organisations.

In October 2009, the review concluded and produced an initial set of proposals. Following publication of report, and in response to representation from disability organisations that some of the review recommendations had not adequately addressed their concerns, a further technical review was undertaken by the Department's Chief Medical Advisor. At further meetings with the disability organisations, these concerns were explored. This led to the production of an addendum, which proposed further amendments and addressed a number of the concerns.

These Regulations implement the recommendations of the Department-led review and the further technical review (addendum). In August 2010, they were referred to the Social Security Advisory Council (SSAC) who decided to refer them for public consultation.¹⁰ This concluded on 10th September. SSAC received 164 responses to their consultation, which they summarised in a detailed report to the department.

⁸ <http://www.dwp.gov.uk/docs/noonewrittenoff-complete.pdf>

⁹ <http://www.dwp.gov.uk/docs/fullversion.pdf>

¹⁰ <http://ssac.org.uk/pdf/esa-amendment-regulations-2011.pdf>

The Government's response to these recommendations can be found in the Act Paper. Whilst the Regulations in question relate to a number of specific changes to the descriptors used in the Work Capability Assessment, many of the submissions to the SSAC, and the comments of the Council themselves, related to wider issues about the nature and operation of the current work capability regime. We are committed to an ongoing process of review and improvement and are therefore pleased that SSAC's comments were submitted to an independent review of the WCA, which had a much broader remit.

The Welfare Reform Act 2007 committed the Government to commissioning an independent review of the WCA annually for the first five years of its operation. The first of these reviews¹¹, led by Professor Malcolm Harrington, from the University of Birmingham, between August until November 2010, included a public Call for Evidence that elicited 400 responses; meetings with around 100 key organisations including disability organisations, providers, representative groups, unions and employers; and evidence from DWP staff, Atos and the Tribunal Service. Professor Harrington identified a number of ways in which the WCA is not working as well as it should, and made a series of practical recommendations for improving it. The Government has accepted all of these recommendations¹² and is now working to implement them as quickly as possible. This can be done within the legislative framework provided by these regulations. Professor Harrington also set out a work programme for the second independent review. He has agreed to conduct the second independent review and has started work on reviewing the descriptors in relation to mental health and fluctuating conditions.

Impact of Revising the WCA

These estimates are expected to lead to around a 5 percentage point increase in the number of claimants being found capable of work and a 0.5 percentage point increase in the number of claimants being put into the support group. Overall an estimated 110,000 ESA claimants, and incapacity benefits customers being reassessed, will be directly affected by 2015/16.

These predictions were produced as part of the department-led review, which conducted analytical work to assess the implications of the proposals, using existing data from new ESA claims. A model was created that compares the relationship between the revised and existing descriptors to determine what changes in outcome are likely. This was achieved by using data from almost 60,000 new claim assessments. Further detailed analysis on specific cases was then undertaken by a panel of experts.

Risks

There are a number of risks associated with assessing capability for work in order to determine benefit entitlement. These revolve around the risk of inaccurately assessing individuals as capable of work or assignment to Work Related Activity Group or Support Group. This is mitigated by action to improve the accuracy of the assessment as well as provision for individuals to appeal against a decision; and the risk to individuals who are found to be capable of work and disallowed benefit or assigned to the WRAG on a lower rate of benefit rather than the Support Group on a higher rate of benefit. It is important to note, however, that being found capable of work is not, in itself, a 'risk.' Customers who are found capable of work are able to request reconsideration, appeal the decision and may be able to claim Jobseekers Allowance with support to help them move into work. There is also provision within the ESA legislation so that individuals can be treated as having limited capability for work if there would be a substantial risk to their health if found fit for work.

Moving into work

We are aware of the risk that disabled customers or those with health conditions who are

¹¹ <http://www.dwp.gov.uk/docs/wca-review-2010.pdf>

¹² <http://www.dwp.gov.uk/docs/wca-review-2010-response.pdf>

found capable of work and take up Jobseeker's Allowance (JSA) may become long-term unemployed rather than finding appropriate work. Evidence shows that disabled JSA customers and those with a health condition stay on JSA for longer than the average jobseeker. We also know that customers moving from incapacity benefits to JSA flow off JSA slower than current disabled JSA customers or those with a health condition.

This risk is mitigated in a number of ways. Under current provision, in addition to the support available to all customers on JSA, customers who have or who develop a health condition or become disabled while on Jobseeker's Allowance also have access to additional support and flexibilities to help them return to work. We recognise that for some customers their health condition or impairment may have an impact on what they are expected to do on JSA in order to meet the stricter conditionality requirements. For those who have a more limited availability for work and scope to find and carry out certain types of work they can restrict their work search activity and availability for work provided those restrictions are "reasonable" given their condition or impairment. This is agreed between the customer and personal adviser. Disability Employment Advisers are also available to provide specialist support to people facing employment challenges because of a health condition or because they are disabled and Work Psychologists work with both customers and advisers to help improve employment outcomes.

The Government has committed to introducing the Work Programme by the summer of 2011. Under the Work Programme, delivery partners will have longer to work with individuals and greater freedom to decide the appropriate support for them. We will offer providers higher rewards for supporting harder to help customers into employment to reflect the higher costs involved, so providers will have equal financial incentives to provide appropriate support for all customer groups including those with a disability. They will be able to subcontract support through disability and mental health charities where they feel this is the best way to help customers into employment. Giving delivery partners greater freedom to innovate, we believe we can develop a more personalised approach for all customers, regardless of disability or health condition.

We are also looking at what additional support may be required for these customers before they enter the Work Programme. There is no clear cut relationship between diagnosis and disability / employment challenges at an individual level so not all jobseekers who are disabled or have a health condition will require extra support over and above what is already available through Jobseeker's Allowance. For any jobseeker with a health condition who needs more support, we intend to build on the strengths of the personalised support delivered through JSA so that personal advisers can assess an individual's need in order to provide enhanced support and flexible provision, to help improve employability. This will include advice and support about maintaining well-being and managing health in preparation for a return to work. Until the Work Programme is implemented, the Government will ensure that people receive the support they need.

Accuracy of the assessment

Consultation around the WCA highlighted a number of concerns relating to the accuracy of the WCA, in particular relating to the assessment of fluctuating conditions and mental, cognitive and intellectual function.

These risks are mitigated by:

- The original design of the WCA, which was developed in consultation with experts and disability organisations and carefully tested, to make it as accurate as possible. For example, the WCA was designed to take account of fluctuating conditions, assessing a customer's capability over time rather than as a snapshot, and to improve the assessment of mental, intellectual and cognitive function.
- Ongoing training and guidance for assessors and decision-makers to enable them to provide accurate advice and make the right decisions including specific training on assessing those with mental health conditions. Additionally, on the recommendation of Professor Harrington's independent review of the WCA, we are working to empower and invest in decision-makers to ensure that they take the right decision and can gather and use additional information appropriately.
- The department-led review, which examined whether the assessment is accurately identifying capability for work. The review made a number of recommendations for improving the accuracy of the assessment, which these regulations implement. As with the original development of the WCA, representatives from a range of disability groups were involved in the review, providing an opportunity for input into policy development. The review involved detailed case analysis, which revealed that in the vast majority of cases experts thought that the new descriptors would result in appropriate changes in the entitlement decision. The descriptors were thought to be functioning as anticipated and providing a more concise and clearer assessment. The re-focusing of the physical functional areas better reflect the activities most applicable to the workplace. The mental function descriptors were found to be clearer and consequently minimised double scoring in addition to providing improved clarity.
- The Government's statutory commitment to commission five independent reviews of the operation of the WCA. The first of these has reported, making a series of practical recommendations which the government has accepted. In particular, the review recommends improving the assessment of mental, intellectual and cognitive impairments by ensuring Atos employ 'mental, intellectual and cognitive champions' into each Medical Examination Centre to spread best practice and build understanding of these impairments.
- The provision for claimants to appeal. Of customers who made a claim for ESA between October 2008 and August 2009 and who were found fit for work at assessment, 33% have had an appeal heard by Tribunals Service to date. The original decision made by DWP has been confirmed for 60% of these appeals heard.¹³ All customers can request a reconsideration of their case from the Decision Makers. Customers also have a right of appeal against the decision made in their case, which includes the results of the medical assessment. To mitigate any risk that sanctions may have a disproportionate effect, especially on those with mental health conditions and learning difficulties, there are flexibilities which allow good cause to be applied.

Disability

Most ESA and incapacity benefits customers are likely to be disabled people as defined in the Equality Act 2010 and this reform has some significance for disabled customers.

The revisions to the WCA are designed to improve the accuracy of assessing individuals' capability for work, in order that we are better able to help disabled people and people with health conditions move into work. The greater participation by disabled people in the labour market is likely, over time, to reduce overall inequality between disabled and non-disabled people.

¹³ Work Capability Assessment Statistical Release October 2010: http://research.dwp.gov.uk/asd/workingage/index.php?page=esa_wca

Reforms to the WCA are not targeting any particular group of customers with health conditions in relation to their condition. The assessment is based on the severity of functional limitation caused by a condition, not on the basis of the condition itself, because different people may be affected in different ways by the same condition.

The proposed changes will, however, affect customers with some conditions more than others. The quality and complexity of the data available makes it difficult to reliably model the impact on different condition groups, but the department-led review did consider a wide range of conditions. In addition to the overall effect it was possible to look at the physical and mental function changes separately. From this it is clear that the impact is far greater upon scores in relation to physical function. This is not unexpected as the majority of the changes that are proposed in this area encompass adaptation. The changes in relation to mental function will have a less significant impact upon entitlement as these predominantly focus on simplification and clarification of the assessment.

For example, customers who are able to use a manual wheelchair may no longer automatically be entitled to ESA. This is not because these particular groups have been targeted, but because it was necessary to bring the assessment of these conditions into line with the rest of the assessment and its ethos of identifying customers for benefit on the basis of their functional capability rather than their condition.

The table below shows the distribution of ESA customers by medical condition, with mental health and behavioural conditions being the most common.

Table 1 ESA customers by medical condition¹⁴

Medical Condition	Share of ESA caseload
Mental and Behavioural Disorders	38%
Diseases of the Musculoskeletal system and Connective Tissue	15%
Symptoms, Signs and Abnormal Clinical and Laboratory findings, not elsewhere classified	13%
Injury, Poisoning and certain other consequences of external causes	11%
Diseases of the Circulatory System	4%
Other	19%
Total	100%

All customers can request a reconsideration of their case from the Decision Makers. Customers also have a right of appeal against the decision made in their case, which includes the results of the medical assessment. To mitigate any risk that sanctions may have a disproportionate effect, especially on those with mental health conditions and learning difficulties, there are flexibilities which allow good cause to be applied.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

¹⁴ Department of Work and Pensions Longitudinal Study FEBRUARY 2010

Race

Information on the race of ESA customers is available, however the race of a large proportion of ESA customers is unknown, which makes it difficult to conclude what the overall impact will be. Table 3 shows that 9% of ESA customers are from an ethnic minority, or 12% excluding unknowns.

However, we believe there is a low risk that ethnic minorities will be disproportionately affected by changes to the WCA, as survey evidence for incapacity benefits indicates that there is a lower proportion of ethnic minorities on incapacity benefits (6 per cent) relative to the working age ethnic minority population as a whole (12 per cent)¹⁵.

¹⁵ Source: Family Resources Survey, 2006/07, 2007/08, 2008/09.

Table 3 Proportion of ESA customers by ethnicity¹⁶

Ethnicity	Proportion of ESA caseload
White	67%
Mixed	1%
Asian or Asian British	4%
Black or Black British	3%
Chinese or other ethnic group	1%
Unknown	24%
Total	100%

Changes to the Work Capability Assessment will not apply differently to people of different races or cultures. The Healthcare Professional carrying out the assessment will neither be informed about, nor ask the customer their ethnicity, thus facilitating uniformity in the application of the assessment to all applicants for ESA irrespective of their ethnicity. However, there is a potential risk of racial discrimination on a case by case basis during the course of the assessment itself. The presence of a language barrier may also make it difficult for applicants to convey their health problems and challenges to entering work.

In order to mitigate these risks, the medical assessments providers will make reasonable endeavours to ensure that an interpreter is available, if requested when the appointment is made. Those involved at all stages of the process will receive training on the Public Sector Equality Duty, while a specific training course on working with diversity is also provided for all new and existing Healthcare professionals undertaking this work. Monitoring of customer experiences through the complaints procedure will take place to ensure that there is no racial discrimination. This is facilitated by the provision of a detailed breakdown of all complaints raised against healthcare professionals to the Department on a monthly basis.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Gender

Data for ESA and incapacity benefits customers by gender is provided in the tables below.

Currently there are 1.24 million men claiming existing incapacity benefits and 900,500 women. This means that men make up around 58 per cent of the caseload. However this varies by type of incapacity benefit received as shown in table 3. For example, 62 per cent of contributory Incapacity Benefit customers are male, compared to 50 per cent of Severe Disablement Allowance (SDA) customers.

Table 1 Incapacity Benefits customers by Gender¹⁷

¹⁶ Department of Work and Pensions Longitudinal Study FEBRUARY 2010

¹⁷ Source: Department of Work and Pensions Longitudinal Study FEBRUARY 2010

Benefit	Male	Female	Percentage male	Percentage female
Incapacity Benefit	697,000	426,000	62%	38%
IB credits only (inc. Income Support)	441,000	377,000	54%	46%
SDA	98,000	98,000	50%	50%
Total	1,236,000	901,000	58%	42%

Currently there are 277,000 men claiming ESA and 202,000 women. This means that men make up around 58 per cent of the ESA caseload, similar to the incapacity benefits caseload.

Table 2 ESA customers by Gender¹⁸

Benefit	Male	Female	Percentage male	Percentage female
ESA	277,000	202,000	58%	42%

Administration of the WCA does introduce some risk that customers may be treated differently because of their gender. Individuals may feel vulnerable if required to participate in an assessment carried out by a Healthcare Professional of the opposite gender, or that their gender makes them exposed to discrimination. In mitigation of this risk, the provider is contractually required to meet all requests for medical assessments to be carried out by healthcare professionals of the same sex on cultural or religious grounds. Customers are invited to bring a friend or relative to attend the assessment and the provider must adhere to all requests for the presence of a third-party.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

All healthcare professionals will receive training on the Public Sector Equality Duty, which offers an opportunity to raise awareness about gender issues amongst those administering the WCA. Diversity and equality learning for Jobcentre plus includes gender. This learning helps ensure our staff can support, and do not discriminate against customers on the grounds of their gender.

Gender Reassignment

Jobcentre Plus does not hold accurate data on whether their customers are transgender. Transgender customers will, like all other customers, be able to request additional support or submit additional needs requests which will endeavour to be met by the Department. We therefore do not expect changes to the Work Capability Assessment to have an impact on equality or discrimination on the grounds transgender.

Diversity and equality learning for Jobcentre plus includes transgender. This learning helps ensure our staff can support, and do not discriminate against, transgender customers. Medical Services staff also receive training on transgender.

¹⁸ Source: Department of Work and Pensions Longitudinal Study FEBRUARY 2010

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Sexual Orientation

Jobcentre Plus does not hold data on the sexual orientation of its customers. A customer's sexual orientation has no bearing on whether they are entitled to Employment and Support Allowance. We therefore do not expect changes to incapacity benefits to have a marked impact on equality or discrimination on the grounds of their sexual orientation.

Diversity and equality learning for Jobcentre plus and medical services staff includes sexual orientation. This learning helps ensure our staff can support, and do not discriminate against customers on the grounds of their sexual orientation.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Religion and belief

A customer's religion or belief has no bearing on whether they are entitled to Employment and Support Allowance. Both Jobcentre Plus and our Medical Services provider will aim to accommodate any reasonable request for adjustments on the basis of religion and belief. We therefore do not expect changes to Incapacity Benefit to have a marked impact on equality or discrimination on the grounds of religion or belief.

Diversity and equality learning for Jobcentre plus and Medical Services staff includes religion and belief. This learning helps ensure our staff can support, and do not discriminate against, customers on the grounds of religion or belief.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Age

Data for ESA and incapacity benefits customers by age is provided in the tables below.

Nearly half of customers claiming incapacity benefits are over the age of 50 years and nearly half of ESA customers are over the age of 45 years. This is because older people are more likely to have a disability or health condition. However, this does not mean that they do not want or are unable to work. The Government is committed to promoting employment prospects for older people, indeed for people of all ages, with and without health conditions. Measures to increase support to help customers back to work will contribute to this.

Table 3 Incapacity Benefits Customers by Age

Age	Percentage
16-17	0%
18-24	4%
25-34	12%
35-44	22%
45-49	15%
50-54	16%
55-59	19%
60-64	12%
Total	100%

Table 4 ESA Customers by Age¹⁹

Age	Percentage
Under 18	1%
18-24	14%
25-34	18%
35-44	24%
45-49	13%
50-54	12%
55-59	12%
60-64	5%
Total	100%

The WCA will be applied uniformly to individuals from all age groups, and the Department does not envisage any discrimination on these grounds. Any potential risk stems from the possibility of discrimination on a case by case basis in the course of the assessment itself. To mitigate this risk, a robust complaints procedure enables Healthcare Professionals to be monitored to

¹⁹ Source Department of Work and Pensions Longitudinal Study FEBRUARY 2010

ensure that age discrimination is not taking place. Decisions on entitlement to benefit are taken by separate decision makers and customers have a right of appeal to an independent appeal tribunal if they believe that the decision is incorrect.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Monitoring and evaluation

Prior to implementing these changes there is already a system in place to evaluate their effectiveness. In line with the 2008 legislation, the Government is committed to an independent review of the WCA every year for the first 5 years. The first of these independent reviews reported in November 2010, making a series of recommendations which the Government has accepted. The second independent review has been commissioned and will serve to monitor the changes as they come into force and ensure that they are functioning correctly.

In addition, the work of all health care professionals is subjected to quality audit, which is conducted by experienced medical auditors employed by the provider. The quality of audit is validated by senior medical auditors from the provider and doctors working for the Chief Medical Adviser to the Department for Work and Pensions.

A random sample of customers will be provided with feedback forms in which they are able to comment on their assessment and raise any issues of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination.

Next steps

The Work Capability Assessment will be subject to an independent assessment annually in the years 2011-14. In addition, we will review the Equality Impact Assessment a year after the Regulations come into force to ensure that the impact is as expected.

Contact details

Any queries regarding this equality impact assessment should be directed to James Bolton at the Department for Work and Pensions e-mail dwphealthandwork.enq@dwp.gsi.gov.uk