

Work Capability Assessment

An informal consultation on accounting for
the effects of cancer treatments

December 2011

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Foreword

The Government is today launching a consultation on reforming the Work Capability Assessment (WCA) to ensure more cancer patients get the support they need.

Government, stakeholder and experts have agreed that under the present rules, which determine someone's eligibility for help due to the sort of treatment they are receiving, some cancer patients are unfairly missing out on support.

This consultation follows a series of recommendations from Professor Malcolm Harrington on how changes to the WCA could result in more people who need help and support from the Employment and Support Allowance (ESA), accessing it more quickly and easily.

As part of Professor Harrington's review of the WCA, he asked Macmillan Cancer Support to look specifically at how it works in relation to cancer patients.

It was clear that the existing WCA needed to change as it was based on the presumption that some forms of cancer treatment could be considered less debilitating than others.

Following Macmillan's contribution, it is clear that assumptions should not be made on an individual's ability to work based purely on the sort of treatment they are receiving.

The Government's overriding concern is to make sure that people who need help and support get it and the existing set-up could mean that cancer patients who should be in the Support Group of the ESA, were instead being made to look for some form of work.

Macmillan's contribution also shows that for many people, seeing a clear route carrying on in or returning to work is an important part of their treatment and recovery from cancer.

We do not want to close off possible avenues back to work and the Government has considered Professor Harrington's recommendations to make a series of proposals that strike the balance between enabling more people to access help through the Support Group of ESA, whilst enabling those who could still do some work to continue to do so.

There would be a presumption that any individual undergoing most treatments for cancer should be placed in the Support Group.

As now, to enter the Support Group an individual will be required to provide information, such as a letter from the claimant's GP or cancer specialist confirming their condition and the treatment they are undergoing. Where this is not provided, safeguards are in place so that this information can be sought for the Department. Avoiding the need for face-to-face assessment and speeding up the process and importantly, access to help.

We would encourage everyone involved in the care of those suffering from cancer as well as individuals who have experience of cancer to share views about how the WCA can best help those people.

About this consultation

Purpose of the consultation

This consultation seeks to gather evidence and views about proposed improvements to the way the Work Capability Assessment assesses individuals who are suffering from cancer.

As a result of evidence supplied by Macmillan Cancer Support the Department has developed proposals for changing the way in which the Work Capability Assessment assesses individuals being treated for cancer. We had hoped to introduce these proposals in April 2012. However, following detailed discussions with Macmillan, we have been unable to secure their support to our proposals. As a result, the Department now intends to seek a wider range of views through this informal consultation before reaching a final decision.

Who this consultation is aimed at

The Department is keen to obtain the views of all interested stakeholders, including individuals who have been or are being affected by cancer, their families and carers, healthcare practitioners and cancer specialists as well as representative organisations and employers.

Scope of consultation

This consultation applies to England, Wales and Scotland.

Duration of the consultation

The consultation period begins on 16 December 2011 and runs until 09 March 2012

How to respond to this consultation

Please send your consultation responses to:

Work Capability Assessment Policy Team

Floor 2, Section B

Caxton House

Tothill Street

London

SW1H 9NA

Email: WCA.team@dwp.gsi.gov.uk

Please ensure your response reaches us by **09 March 2012**.

When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear whom the organisation represents, and where applicable, how the views of members were assembled. We will acknowledge your response.

Other ways of getting involved

We want to get views from as broad a range of people as possible about this issue. This document is available on request in a range of formats, including large print, Braille, audio, BSL video/DVD, and Easy Read either from our website or on request from:

Work Capability Assessment Policy Team

Floor 2, Section B
Caxton House
Tothill Street
London
SW1H 9NA

Phone: 0207 449 5594

Email: WCA.team@dwp.gsi.gov.uk

These alternative formats may take some time to prepare, so please let us know as soon as possible if they are required.

Queries about the content of this document

Please direct any queries about the subject matter of this consultation to:

Work Capability Assessment Policy Team

Floor 2, Section B
Caxton House
Tothill Street
London
SW1H 9NA

Phone: 0207 449 5594

Email: WCA.team@dwp.gsi.gov.uk

How we consult

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Central Freedom of Information Team
The Adelphi
1-11, John Adam Street
London WC2N 6HT

Freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. More information about the Freedom of Information Act can be found at www.dwp.gov.uk/freedom-of-information

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
DWP Consultation Coordinator
1st floor, Crown House
2, Ferensway
Hull HU2 8NF

Phone 01482 584681

>> roger.pugh@dwp.gsi.gov.uk

In particular, please tell us if you feel that the consultation does not satisfy the consultation criteria. Please also make any suggestions as to how the process of consultation could be improved further.

If you have any requirements that we need to meet to enable you to comment, please let us know.

We will publish the Department's response to the consultation during Spring 2012 in a report on the consultations section of our website www.dwp.gov.uk/consultations. The report will summarise the responses and the action that we will take as a result of them.

The Work Capability Assessment: accounting for the effects of cancer treatments

Introduction

1. As part of his second Independent Review of the Work Capability Assessment (WCA) Professor Malcolm Harrington asked Macmillan Cancer Support (Macmillan) to look in detail at how the WCA assesses people with cancer and to provide him with recommendations for further improvements.
2. Macmillan provided compelling evidence for changing the way the WCA assesses the effects of cancer treatments on individuals. The Department accepted there is a need for change and has therefore developed proposals based on Macmillan's evidence.
3. As announced on 24 November, as part of the Government's Response to Professor Harrington's second review of the WCA, the Department is now consulting on these proposals to seek a wider range of views.

Why are we consulting?

4. The evidence provided by Macmillan shows there is need to change the way in which the WCA assesses individuals who are being treated for cancer. The Government has drawn up proposals for improving the assessment of people being treated for cancer. However following detailed discussions with Macmillan, we have been unable to secure their support to our proposals which reflected their evidence. As a result, we wish to seek a wider range of views on the proposed changes.
5. The evidence gathered by Macmillan is primarily from a number of senior oncologists and cancer care professionals from a range of different cancer specialisms, including healthcare representatives from other charities. As part of our consultation we are particularly seeking the views of:
 - Healthcare professionals, including cancer specialists and other healthcare professionals with experience treating cancer sufferers.
 - Individuals who are undergoing or have undergone treatment for cancer, and their families or carers.
 - Employers particularly if they have supported employees through cancer treatment.

6. We wish to gather further evidence and views regarding the proposals, to test whether:
 - the evidence that supports the proposals for change is robust; and
 - the proposals for change are the correct ones for assessing the debilitating effects of cancer treatments on individuals.

Background

7. The WCA assesses entitlement to Employment and Support Allowance (ESA). It focuses on the functional effects of an individual's condition rather than the condition itself, to provide a comprehensive assessment of an individual's ability to work. The assessment is carried out by independent healthcare professionals employed by Atos Healthcare and approved by the Department.
8. Following an assessment, a decision on benefit entitlement is made by a Departmental decision maker, who considers all available evidence including the report from the Atos Healthcare professional. There are three possible outcomes:
 - An individual is found fit for work and is therefore ineligible for ESA. They are expected to return to work although they may still have a significant 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 are therefore 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.
9. Under current provisions, for all who have completed the WCA process, the majority of individuals with a primary diagnosis of cancer are placed in the Support Group. The following statistics show the percentage in each ESA main phase group and also a comparison with national ESA figures covering all health conditions and disabilities:

| | Individuals with a primary diagnosis of cancer (%) ¹ | All completed WCAs (%) ² |
|-----------------------------|---|-------------------------------------|
| Support group | 66 | 11 |
| Work Related Activity Group | 18 | 27 |
| Fit for Work | 16 | 62 |

¹ Based on ESA claim claims data from October 2008 to February 2011

² Based on ESA claim claims data from October 2008 to May 2011.

Evidence currently available

10. At Professor Harrington's request, Macmillan gathered evidence as to whether there were improvements that could be made to the WCA. To do this they consulted a number of senior oncologists and cancer care professionals from a range of different cancer specialisms. A summary of this evidence is detailed below.

Debilitating effects of cancer treatment

11. Currently, only those cancer patients who are receiving (or are likely to within 6 months or, if considered appropriate, are recovering from) non-oral chemotherapy are automatically treated as having limited capability for work-related activity. This includes chemotherapy received:

- intravenously – treatment administered directly into a vein;
- intraperitoneally – treatment administered into the peritoneal cavity; or
- intrathecally – treatment administered by injection into the spinal canal

12. This was based on a view that invasive chemotherapy is more debilitating in most circumstances than oral chemotherapy. However, this view is no longer supported by the evidence.

13. Existing provision also means that certain cancer patients receiving radiotherapy are automatically treated as having limited capability for work for the time of the treatment (and recovery from it) and so will be entitled to ESA. However, they will not automatically be placed in the Support Group. This would depend on an assessment of their capability for work related activity.

14. Macmillan's evidence supports the view that all forms of chemotherapy may cause substantial debilitation. Chemotherapy is a systemic treatment that can affect the entire body often resulting in severe side-effects. However, there are exceptions such as oral chemotherapy administered as long-term or "maintenance" therapies for longer than six months, where side effects may be less.

"Someone receiving short-term oral chemotherapy (six months or less) is more likely to experience significant side-effects than someone receiving long-term (six months or longer) treatment."³

15. Additionally, evidence provided by Macmillan indicates that cancer patients receiving radiotherapy for certain cancers are highly likely to experience

³ Unless otherwise stated, quotations are provided from the senior oncologists and cancer care professionals consulted by Macmillan Cancer Support as part of their evidence gathering.

significant debilitation. This shows that treatment for certain tumour sites, notably head and neck, lung, gastro-intestinal and pelvic, may lead to debilitation that is comparable or in some cases worse than that experienced by chemotherapy patients.

“Given the complex range of factors that affect the level of debilitation from both radiotherapy and chemotherapy, experts unsurprisingly struggle to draw general comparisons between the two types of treatment”.

16. Evidence also confirms that one of the most severely debilitating treatment regimens is radiotherapy in combination with chemotherapy.

“As this particular treatment regimen is considered to be particularly debilitating, we feel it warrants highlighting separately.”

Individual effects of cancer treatment

17. The evidence provided by Macmillan also shows that there is considerable individual variation in terms of the impact of the cancer treatment on the individual.

“Not all patients will experience toxicity related to treatment.”

“Tiredness and sickness (nausea and/or vomiting) are the most common side-effects. The risk and severity of these problems varies enormously according to the drug being given and the dose and schedule being employed.”

18. The experts surveyed attested to the wide range and individual nature of symptoms experienced by people undergoing chemotherapy and other cancer treatments. As many of the experts point out this makes it difficult to generalise about the impact on individuals being treated for cancer.

Potential beneficial effects of work during cancer treatment

19. The experts consulted by Macmillan were only asked questions focused on the type of treatment and the likely debilitation experienced, not on role or relative importance of work. Despite this, a number of the contributors provided evidence of the importance of work to an individual's rehabilitation and emotional well-being.

“A lot of people are able to continue with work after a relatively short period of time following chemo, and we don't want to discourage that”

20. The individual nature of the debilitation experienced makes it difficult to generalise in all cases, so while many people will not be able to work, some can and do work and for them work is an important part of coping with their diagnosis and

treatment. This evidence is also highlighted in a number of Macmillan's reports, such as their 2010 report *Making it work*⁴ and by other cancer charities.

⁴ Macmillan Cancer Support, 2010, *Making it Work*
(<http://www.macmillan.org.uk/Documents/GetInvolved/Campaigns/WorkingThroughCancer/MakingitWorkPolicyPage.pdf>)

The Government's proposals and their effects

21. Based on the evidence received from Macmillan, the Government has drawn up proposals for improving the way in which the WCA assesses cancer sufferers.
22. The available evidence demonstrates that it is not reasonable to differentiate between the debilitating effects of different types of chemotherapy, radiotherapy to certain sites of the body and combined chemo-irradiation. Therefore we propose to change and expand the current provisions to include individuals:
 - Awaiting, receiving or recovering from treatment by way of oral chemotherapy, except when the therapy is continuous for a period of more than six months;
 - Awaiting, receiving or recovering from combined chemo-irradiation; or
 - Awaiting, receiving or recovering from radiotherapy in the treatment of cancer in the following sites: Head and neck; Brain; Lung; Gastro-intestinal; Pelvic
23. However, the evidence supplied by Macmillan shows that the current provision of automatic entitlement to the Support Group for non oral chemotherapy treatment is no longer valid. Therefore, our proposals are to add an element of discretion into each decision. We believe this will ensure decisions are made on the true nature of each individual's capability.
24. The **presumption** would be that an individual undergoing the above cancer treatments should be in the Support Group. Each individual would be assessed on a paper basis and the vast majority would be placed straight into the Support Group. The information required would be evidence confirming the treatment being provided, such as a letter from a GP or consultant.
25. In a small number of cases, where the evidence indicated that the debilitating effects might be limited, individuals could be invited to a face to face assessment, and those who may be capable of work in the future would receive support through the work-related activity group.

The effects of implementing the proposals

26. As part of the development process, the Department has undertaken a review to compare a number of cases of people who have cancer comparing outcomes under the current provisions, with those likely under the proposed revised provisions.
27. The outcome of the review indicates that for people with a primary diagnosis of cancer there is likely to be an increase in those going to the Support Group. This

is from an expected movement of around 10 per cent from the Work-related Activity Group to the Support Group.

28. The review indicated that there would be no overall impact on those found to be fit for work. To illustrate the likely impact of our proposals, we have set out the following illustrative case studies:

Cases which will be in the Support Group under new proposals

Case 1 – Oral chemotherapy

29. A man with a recent diagnosis of leukaemia, who has been treated with hydroxycarbamide within the last 2 months. He has symptoms of fatigue, weakness and his GP confirms his diagnosis and treatment plan.
30. Currently, he would be invited for a face to face assessment and placed in the Work-related Activity Group. However, under the new proposals a healthcare professional would be able to provide advice to the Departmental decision maker that this person should be placed in the Support Group based on paper based evidence.

Case 2 – Combined chemotherapy and radiotherapy

31. A lady who has bowel cancer, had surgery 4 months ago and is now being treated with oral chemotherapy and radiotherapy.
32. Currently, she would be placed into the Work Related Activity Group. Under the new proposals a healthcare professional would be able to provide advice to the Departmental decision maker that this person should be placed in the Support Group based on paper based evidence.

Case 3 – Radiotherapy to head and neck

33. A man who was recently diagnosed with cancer of the larynx and medical evidence from his GP confirms that he is due to commence radiotherapy in 2 weeks.
34. Currently, he would be placed into the Work Related Activity Group. Under the new proposals a healthcare professional would be able to provide advice to the Departmental decision maker that this person should be placed in the Support Group based on paper based evidence.

A case where automatically placing a person in the Support Group would be inappropriate

Case 4 – Cancer treatment with little effect on function

35. A lady with history of breast cancer who was treated with chemotherapy and radiotherapy 8 months ago, now finds she has a has swelling of her right arm and has been referred to a lymphoedema clinic.
36. She is currently able to wash, dress, cook, perform housework tasks and shopping on her own. An examination found that she had mild swelling of the right arm with minimal limitation of movement and that all of the other examination findings were normal.
37. The evidence suggests therefore, that this person is unlikely to have significant functional impairment and as a result is likely to be fit to prepare for or return to work with appropriate support.

Questions

38. We would welcome views on our proposals and the evidence that has led to them, as set out in previous sections. To assist that process, we have set out a series of questions to help focus debate.

39. We have set out a number of initial general questions which focus on the proposals and seek evidence and views about them.

Widening the treatment groups covered

40. The proposals seeks to expand the groups of cancer treatments that we would consider for the Support Group to include individuals:

- Awaiting, receiving or recovering from treatment by way of all types of chemotherapy, except when the therapy is continuous for a period of more than six months;
- Awaiting, receiving or recovering from combined chemo-irradiation; or
- Awaiting, receiving or recovering from radiotherapy in the treatment of cancer in the following sites: Head and neck; Brain; Lung; Gastro-intestinal; Pelvic

Question 1

Given the evidence underpinning the proposals, do you believe that the selected group of treatments covers all the cancer treatments that should be included?

Importance of working for some with cancer

41. Evidence also confirms that there is a wide variation in symptoms experienced by individuals undergoing treatment for cancer. We recognise that the debilitating effects of that treatment will mean that for most work will not be possible. It is our presumption therefore that the majority of individuals will require the full and unconditional support offered as part of the ESA Support Group.

42. However, evidence also confirms that in some cases the impact of the treatment may be such that work or work related activity may be possible. As such we propose that decisions on Employment and Support Allowance (ESA) entitlement are made on a case by case basis, on the true nature of each individual's capability for work based on evidence regarding the individual's specific condition, its severity and nature of the treatment regime.

Question 2

How reasonable is it to assume that in some cases where the effects of cancer treatment are less debilitating, an individual can return to or continue to work?

43. Given the evidence that work is generally good for an individual's health and well-being⁵, we recognise that there may also be therapeutic and psychological benefits experienced as a result of working. We propose therefore to allow individuals undergoing or recovering from cancer treatment the option to remain in or return to work wherever possible and indeed we wish to support them to do so.

Question 3

Given the wide variation in symptoms experienced as a result of cancer treatments, how important do you believe it is for some individuals to be able to work?

Further questions for specific groups

44. We would welcome evidence from those with particular experiences, and have therefore set out some questions for specific groups of respondents.

45. Whilst general evidence about the WCA and its assessment of cancer treatment is not excluded, we would ask that, wherever possible, views and evidence are focused on addressing the specific questions posed below.

Healthcare professionals

46. As a healthcare professional with experience or expertise in treating individuals with cancer we believe your observations, views and evidence will help deepen our evidence base about the effects of treatments on individuals and the importance of work.

Question 4a

Do you agree that the debilitating effects of cancer treatments can vary from individual to individual?

Question 4b

In your experience, are some patients who are undergoing, or have undergone treatment for cancer able to continue with or return to some work (with appropriate adjustments)?

Individual cancer sufferers and their families

47. Individuals who have or are being treated for cancer may have valuable evidence about how their treatment affected their ability to work as well as whether they felt able to continue or return to work during their treatment.

Question 5a

How important to you and/or your family was work during treatment for cancer or during recovery from that treatment?

⁵ G Waddell, A K Burton, 2006, *Is work good for your health and well-being?* TSO

Question 5b

If you are willing, please could you provide details about your treatment and the effects on your ability to work.

Employers

48. As an employer, we believe that you have a valuable role to play, wherever possible, to support members of your staff to remain in or return to work, whilst they are either undergoing or recovering from treatment for cancer.

Question 6

Are you able to offer examples of workplace support that you have offered or provided staff members undergoing cancer treatment? For example, flexible working patterns, work place adaptations, etc

Other comments

49. This consultation document deliberately asks specific questions to gather evidence about the proposals for improving the WCA for cancer sufferers. However, individuals and groups may also wish to submit additional evidence and suggest specific changes that would make a positive difference on this issue.

Question 7

Is there anything else that you would like to tell us that you think is relevant to this subject?

50. For ease of reference all of the consultation questions are also located in **Annex A** of this document.

Next steps

51. We now invite organisations and individuals to submit evidence to help us assess how the WCA may be improved in its assessment of the effects of cancer treatments on individuals.
52. The closing date for this evidence is **09 March 2012**.
53. The evidence will then be properly considered by the Department and we will publish a response document in Spring 2012. This document will set out the evidence received and announce any proposals for changing the way in which the WCA assesses the effects of cancer treatment.

Annex A – Consultation Questions

- **Question 1:** Given the evidence underpinning the proposals, do you believe that the selected group of treatments covers all the cancer treatments that should be included?
- **Question 2:** How reasonable is it to assume that in some cases where the effects of cancer treatment are less debilitating, an individual can return to or continue to work?
- **Question 3:** Given the wide variation in symptoms experienced as a result of cancer treatments, how important do you believe it is for some individuals to be able to work?
- **Question 4a:** Do you agree that the debilitating effects of cancer treatments can vary from individual to individual?
- **Question 4b:** In your experience, are some patients who are undergoing, or have undergone treatment for cancer able to continue with or return to some work (with appropriate adjustments)?
- **Question 5a:** How important to you and/or your family was work during treatment for cancer or during recovery from that treatment?
- **Question 5b:** If you are willing, please could you provide details about your treatment and the effects on your ability to work.
- **Question 6:** Are you able to offer examples of workplace support that you have offered or provided for staff members undergoing cancer treatment? For example, flexible working patterns, work place adaptations, etc
- **Question 7:** Is there anything else that you would like to tell us that you think is relevant to this subject?