

The Employment and Support Allowance
(Limited Capability for Work and Limited
Capability for Work-Related Activity)
Amendment Regulations 2011
(S.I.2011 No.228)

Report by the Social Security Advisory Committee
under Section 174(1) of the Social Security
Administration Act 1992 and statement by the
Secretary of State for Work and Pensions in
accordance with Section 174(2) of that Act

The Employment and Support Allowance
(Limited Capability for Work and Limited
Capability for Work-Related Activity)
Amendment Regulations 2011
(S.I.2011 No.228)

Report by the Social Security Advisory Committee
under Section 174(1) of the Social Security
Administration Act 1992 and statement by the
Secretary of State for Work and Pensions in
accordance with Section 174(2) of that Act

*Presented to Parliament by the Secretary of State for Work and Pensions
pursuant to Section 174(2) of the Social Security Administration Act 1992*

© **Crown copyright 2011**

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Any enquiries regarding this publication should be sent to us at dwphealthandwork.enq@dwp.gsi.gov.uk

This publication is also available on <http://www.official-documents.gov.uk/>

ISBN: 9780108509698

Printed in the UK by The Stationery Office Limited
on behalf of the Controller of Her Majesty's Stationery Office

ID 2410417 02/11 8981 19585

Printed on paper containing 75% recycled fibre content minimum.

Statement by the Secretary of State for Work and Pensions in accordance with Sections 174(2) of the Social Security Administration Act 1992.

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

Introduction

Employment and Support Allowance (ESA) was introduced as the benefit for new customers with a health condition or disability from 27 October 2008. ESA provides income replacement for people who are unable to work because of illness or disability and is based on a functional assessment of capability for work. At the same time, the Work Capability Assessment (WCA) was introduced to assess entitlement to ESA. It replaced the Personal Capability Assessment (PCA) used to assess entitlement to incapacity benefits (IB).

It is important that the WCA continues to be an up-to-date accurate assessment of a person's functional capability for work and work related activity. Therefore, the Department undertook an internal review from March 2009 to March 2010, to establish whether the WCA was correctly identifying an individual's capability for work, and to consider how it could better account for an individual's adaptation to their condition, enabling a more accurate assessment of their functional capability for work.

The review found that generally the WCA was performing according to design. However, the review also identified a number of ways in which the WCA could be improved and the policy advanced. We agreed with the recommendations of this review and announced on 29 June 2010 that we would implement all of them. The Employment and Support Allowance (Amendment) Regulations 2011 implement these changes to the WCA.

DWP officials discussed the Regulations with the Social Security Advisory Committee at their meeting of 4 August 2010. The Committee decided to take the Regulations on formal referral and published the Regulations for consultation on 13th August 2010. The consultation period ended on 10th September and the Committee subsequently issued its report on 14th October.

The Department has noted the concerns expressed by the Committee. I am very grateful to both the Committee and to those who made representations to it. We have given careful consideration to their recommendations.

We have made drafting changes to the regulations to ensure that the changes that extend provision to claimants awaiting chemotherapy or in residential rehabilitation for drug or alcohol misuse, both supported by the Committee,

will come into force in all cases from 28 March 2011. These changes ensure that the original intention of regulations remains.

Since the Committee issued its report, Professor Harrington's independent review of the WCA has also reported its findings. We have committed to implementing all of Professor Harrington's recommendations. This will make the assessment more empathetic and less mechanistic, it will improve the assessment of mental health conditions and it will address a number of concerns set out by the Committee. These changes address a number of the concerns raised by SSAC, as does Professor Harrington's programme of work for the second independent review.

This statement sets out, in accordance with section 174(2) of the Social Security Administration Act 1992, my reasons as to why I have not felt it appropriate to give effect to the Committee's recommendations. In particular, I do not share the Committee's view that the reassessment of existing incapacity benefit claimants should be delayed. I am confident that in implementing Professor Harrington's recommendations we will improve the WCA this year while the programme of annual independent reviews will ensure that we continue to refine and improve the process.

Employment and Support Allowance Amendment Regulations 2011

The Committee's Report and the Government's Response

The Committee's General Comments

1. The Committee recognises that the WCA is intended to measure functionality and has been designed to determine an individual's work capability by reference to range of different activities. The Committee believes that the WCA does not take account of whether that individual is actually employable, particularly in light of the large body of evidence demonstrating that people with health conditions and disabilities face discrimination and that their rates of employment have improved very little in the relatively favourable conditions of the pre-recession era. The Committee believes that despite legislation to combat discrimination and programmes, such as Pathways to Work, that aimed to move Incapacity Benefit recipients closer to the labour market, and the availability of aids and adaptations to the work-place, theoretical work capability has not enabled significant numbers to move into employment.

The Government believes that, by assessing an individual's functional ability, the Work Capability Assessment (WCA) does assess whether they are 'employable' – at least in terms of their physical and mental capability.

The Government has worked hard to challenge prejudices and to support employers in employing people with health conditions and disabilities. However, we do not want the benefit system to legitimise or perpetuate existing prejudices or discriminatory behaviour by labelling individuals unfit for work purely on the basis of the unfair discrimination they may experience from employers.

Where individuals face other barriers to work, these are recognised in the benefit system. Skills gaps can be addressed through Jobseekers Allowance, and where an individual is unable to secure a job despite meeting the conditions agreed with their personal advisor, the wider benefits system continues to provide a financial safety net.

The Work Programme, to be introduced in 2011, will be an integrated package of support and will provide personalised help to a wide range of customers, including those who have a health condition or disability. In addition, in October 2010 the Government launched a new programme to provide support for severely disabled people. Work Choice helps into work disabled people who face the most complex and long term barriers to employment, and who may require high intensity support in the workplace. Through Work Choice and the Work Programme we want to ensure the widest range of support is available to disabled people and those who support and advise them.

2. The Committee feels that the Assessment, by failing to reference the realities of the labour market, presents an immediate problem of comprehension and credibility, particularly for those people who are subject to the test and are found fit for work but still face daunting obstacles to finding employment. Although the Department's Impact Assessment sets out a number of mitigating actions and provisions that are designed to address these constraints, the Committee is not persuaded that these adequately address the scope or scale of the problems these people will face in a real, and very depressed, labour market.

The mitigating actions outlined in the Department's Impact Assessment centre on personalised employment support, delivered through the Work Programme, and appropriate easements on the JSA regime to ensure that someone with a disability or health condition can restrict their availability for employment in any way providing the restrictions are reasonable in the light of their physical or mental condition.

The Work Programme, to be introduced in 2011, is a new model of support for jobseekers. The funding model ensures that providers are incentivised to support those jobseekers who face the greatest barriers and that they are able to make the necessary investment. A new emphasis on sustainable employment will ensure that jobseekers are supported into appropriate work where they will be able to remain in the long term. The involvement of the private and voluntary sectors will introduce innovations and a new dynamism in models of employment support.

In addition, the Government has recently commissioned an independent review into specialist employment support services for disabled people. The review will be led by Liz Sayce, Chief Executive of RADAR, the UK's largest disability campaigning organisation. It will look at the current specialist employment support services for disabled people and consider whether they provide the most effective support possible. Programmes being reviewed will include Access to Work, Residential Training Colleges and Remploy. The Work Programme and Work Choice will not be included. The review has launched a call for evidence – more information is available at <http://dwp.gov.uk/consultations/2010/disability-employment.shtml>

3. The Committee feels that in order to make an assessment of both the effectiveness of the current system and the likely impacts of changes to the descriptors, it needs to know more about how the current descriptors have been working in practice - in particular, the outcomes for individuals who had been found capable of work by the WCA.

The Government is committed to evidence-based policy making, and recognises the importance of analysing the outcomes and effects of the Assessment for customers.

We accept the Committee's recommendation that more work is needed to understand the outcomes for people found capable of work, and will therefore undertake new analysis to study the outcomes for this customer group.

In addition, the department has commissioned a survey of a sample of customers who made a claim for Employment and Support Allowance (ESA) including customers who had been found capable for work, which has now been published:

<http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep707.pdf>

The Department is also commissioning qualitative research into the experiences of a sample of whose ESA entitlement is terminated by Jobcentre Plus, as well as a sample of those found capable of work who do not move into work. Fieldwork is expected to take place shortly after Christmas 2010, with publication of the findings in the DWP research report series in Spring 2011.

As part of his second independent review of the WCA, Professor Harrington will be looking in detail at the outcomes for all people making claims for ESA, including those who are found fit for work.

4. The Committee has questioned whether there is any data on the cost/benefit of the end-to-end process of assessing an ESA claimant. The Committee is concerned that this is a potentially expensive, nugatory process if it does not result in substantial numbers of individuals returning to work. The Committee does not dispute that it is right to assist and encourage everyone who can work to do so but feels that it is both unreasonable and perverse to have a test that has the effect of forcing more people into the JSA regime when they cannot be expected to properly comply with benefit conditionality that assumes that they are fit and ready to work, and have reasonable prospects of finding and keeping employment.

The Government feels very strongly that the long-term benefits of supporting those who can work into suitable employment are of enormous value. This value goes far beyond the immediate and measurable financial savings from the ESA bill – the wider benefits for society and the contribution to the overall wellbeing of an individual make a return to work, where possible, eminently desirable.

The Government does not share the view that individuals who are found by the WCA to be capable of work 'cannot be expected to properly comply with benefit conditionality that assumes that they are fit and ready to work'. Whilst an individual who is found to be capable of work may well have a health condition or disability, they are not considered to have limited capability for work or for work related activity – as such, they are considered to be physically and mentally capable of undertaking the kind of activities that are required in the workplace and required of JSA customers. Moreover, the JSA

regime includes 'easements' which have been built in specifically to address the limitations and barriers that might be faced by someone who is capable of doing some work. JSA does not assume that all jobseekers are fully 'fit' - jobseekers who are disabled or have a health condition are able to agree with their personal advisor reasonable limitations on the type of work they should look for or the number of hours they are expected to work.

Finally, whilst the JSA regime, and the Work Programme when it is introduced, aims to move people into sustainable work as quickly as is reasonably possible, it does not make assumptions about their prospects for work. We recognise that someone's skills and experience as well as fluctuations in the local labour market will all impact upon the time they will take to move into employment and remain committed to supporting jobseekers, both financially and in terms of improving work-readiness, for as long as it takes them to move into sustainable employment.

5. The Committee believes that a points-based scoring system, which should reinforce an objective and evidence-based assessment of capacity, cannot guarantee objectivity, consistency or universality of application. In practice it can also be rigid and unnecessarily prescriptive, encouraging a focus on the individual's specific condition or disability as covered by the descriptors, rather than looking at the individual's capability for work, and adaptation to their condition or disability, holistically. At the same time, the Committee believes that the result of a WCA is an expression of the assessor's opinion and judgement, albeit an opinion based on professional knowledge, training, experience and observation.

The WCA was designed with the aim of achieving outcomes that are fair and consistent both across the country and with reference to a wide range of different disabilities, and which still contains sufficient flexibilities for both trained benefit decision-makers and healthcare professionals qualified in disability analysis to exercise an appropriate degree of judgement. The Government believes that the current scoring system is the best way to achieve the desired fairness and consistency, whilst the descriptors are shaped in such a way as to allow professionals to use their discretion in assessing the level of functional limitation experienced by an individual.

The assessment has been designed around the principle of assessing functional ability rather than making assumptions based on an individual's diagnosis.

6. The Committee believes that the high rate of appeals - around 40% of appeals against a decision that an individual is capable of work are upheld - suggests that the WCA is not generally working as the Department intended. The Committee believes that if tribunals are interpreting the law and evidence differently from the Decision Maker this suggests that there are underlying problems with the assessment

and decision-making process (for example that guidance is not being applied correctly or consistently).

Jobcentre Plus and the Tribunals Service are working together on a review of the appeals process with a view to streamlining, speeding up and improving the service provided to customers.

However, it is important to recognise that appeal rates, and the rate of overturned decisions, is always higher for disability benefits than for other benefits; and that the rate of appeal/success rate for ESA cases is less than that of Incapacity Benefit customers.

A first-tier tribunal hears all evidence, including any evidence that was not available to the original decision-maker, afresh in order to make a decision on benefit entitlement. Thus when a first-tier tribunal reaches a different decision this does not necessarily mean that the original decision lacked validity. To reduce the number of cases which proceed to appeal, a number of innovations have been trialled. These include explaining the decision to customers and ensuring they have submitted all the available evidence rather than only producing it when their appeal is heard; and strengthening processes to reconsider decisions before they reach an appeal hearing. These measures were endorsed by Prof Harrington, who made a number of recommendations aimed at improving the feedback, communication and training between the agencies involved in order to enhance the decision-making process, ensuring that it is consistent and robust on all sides. We have accepted all of these recommendations.

The Committee's comments on key proposed changes

Limited capability for work and work related activity; extending the support group in relation to chemotherapy; and the inclusion of residential rehabilitation

7. The Committee welcomes the changes to ensure that proper account is taken of fluctuating conditions and the needs of people undergoing chemotherapy, particularly the amendments which allow for claimants receiving certain types of chemotherapy to be treated as having Limited Capability for Work-Related Activity (LCWRA).

8. The Committee welcomes the inclusion of residential rehabilitation in the provisions allowing in-patients to be treated as having limited capability for work, but suggests that this may not, in practice, apply to some of the people it is meant to assist. The Committee believes that the majority of rehabilitation programmes are community based rather than residential and questions the rationale for treating people engaged in these programmes differently to those in similar programmes but in a residential setting.

This amendment was introduced in order to rectify an anomaly where the original legislation does not accurately reflect the department's policy intent.

The original legislation used the term 'hospital or similar institution.' 'Similar institution' is defined by caselaw as being an institution where medical staff are present onsite, and as such does not include residential rehabilitation centres. We recognise that someone who is receiving hospital in-patient treatment is, by virtue of the residential nature of their treatment, functionally limited in their capacity for work. This principle applies equally to all forms of residential treatment for drug and alcohol misuse, whether they are in a hospital, clinic or other residential treatment centre. For this reason, the amendment regulations specifically extend the provisions relating to hospital in-patients to people who are receiving residential rehabilitation for the treatment of drug or alcohol misuse.

It is not our view that all people who have alcohol or drug misuse problems are functionally incapable of work. Nor is it our view that all forms of treatment for alcohol or drug misuse necessarily require someone to be out of work or functionally incapacitate them. On the contrary, we know that many people who have alcohol and drug misuse problems are in work, as are many people who are receiving treatment. Moreover, we know that remaining in employment can play a very valuable role in helping an individual to manage or treat their condition and that being out of work can compound many of the problems faced by such people.

Where someone's drug or alcohol misuse, or the treatment they are receiving for it, does functionally limit their physical or mental capacity for work, this will be picked up by the descriptors in the WCA. For example, they may score points under 'learning tasks', 'awareness of hazards', 'initiating and completing personal action' or 'appropriateness of behaviour with other people', amongst other descriptors. Alternatively, they may fall under the 'exceptional circumstances' provision, which provides that someone should not be found to have Limited Capability for Work or Work-Related Activity if, because of a specific disease or disability, there would be substantial risk to their physical or mental health if they were found to be capable of work.

9. The Committee noted some areas in which the Department has recognised the need to introduce some qualifications to descriptors (for example, including '*without experiencing significant discomfort*' against several actions) and believes that there is a case for putting more qualifications like this (for example, building in '*reliably and repeatedly*' in relation to a number of the physical descriptors) rather than reserving them for guidance. Similarly, the Committee believes that the lack of recognition within the descriptors of pain and fatigue, and the generally debilitating and often unpredictable effects of diseases such as MS, ME and Parkinsons, limits the effectiveness and credibility of the test.

The Government shares the Committee's view that the effects of fatigue and pain must be reflected in the assessment, and that it must take account of fluctuating symptoms. This is why the qualifying phrase 'without significant discomfort or exhaustion' has been added to a number of the descriptors, including activity 1 (mobilising) and activity 3 (standing and sitting) in the

assessment of Limited Capability for Work and activity 1 (mobilising) in the assessment of Limited Capability for Work-Related Activity.

The Committee rightly points out that this qualifying phrase has not been included in all of the descriptors and that the guidance issued to healthcare professionals and decision makers emphasises the importance of assessing whether a customer can perform an activity 'repeatedly, reliably and safely.' If they cannot, then they should be treated as unable to perform it at all. This factor is crucial in ensuring that people who are limited by fatigue or whose symptoms fluctuate are accurately assessed. All healthcare professionals conducting WCAs receive training in assessing fluctuating conditions.

Guidance allows more complex and nuanced explanations for what is undeniably a difficult area and provides us with a way to communicate elements of the policy intent, such as this, which are problematic to define in legislation. In this way we try and achieve an effective balance between the clarity needed for legislation and the level of detail needed for policy implementation, whilst maintaining an appropriate level of flexibility for healthcare professionals to use their professional judgement to make a proper case-by-case assessment.

As you know, Professor Harrington has conducted an independent review of the WCA, evaluating its fairness and accuracy. He has made a series of practical recommendations to improve the assessment, which the government fully accepts and is implementing as speedily as possible. Professor Harrington has been appointed to conduct a second independent review of the WCA, in which he intends to focus on the assessment of fluctuating conditions.

Changes to the activities and descriptors

10. The Committee understand the underlying rationale put forward for modifications to the current arrangements, but are concerned about how they would work in practice and their potential impacts in terms of WCA assessment outcomes, particularly in relation to claimants with mental health, intellectual and cognitive function problems.

11. The descriptor addressing '*Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder*' includes the provision '*occasionally has uncontrollable episodes of such behaviour.*' The Committee understands that this is intended to cover instances of such behaviour occurring perhaps a couple of times a year - and where it applies 9 points are awarded - but questions whether this score reasonably and realistically measures the impact that two episodes of such behaviour in a year would have on the individual's capacity to obtain and hold down a job.

This descriptor was agreed in consultation with a number of disability charities, who were keen for the assessment to accurately reflect the level of disability caused by such 'inappropriate' behaviour. Whilst we recognise that

such behaviour can represent a significant barrier for an individual in finding and sustaining employment we feel that, where occasions of such behaviour are 'occasional', it would not, on its own, preclude an individual undertaking any work at all.

12. The Committee has similar concerns with the points awarded for some of the descriptors for continence, where they feel that the assessed theoretical impact of the condition is at odds with the impact on the individual in the real world.

As the Committee recognises in its report, the ability of an individual with a disability or health condition to sustain employment depends to a large degree on the nature of the work place. It also depends on the level of accommodation offered by the employer who, in line with the 'Duty to make Reasonable Adjustments' under Equality Act 2010, has a duty to make 'reasonable adjustments' to a workplace. It is with this in mind that the Government feels that an individual whose problems with continence can be managed if they are able to reach a toilet quickly should not be considered unable to do any work.

13. The Committee believes that the proposed merger of a number of descriptor groups dealing with memory and concentration, executing of tasks etc into a single activity defined as '*initiating and completing personal action*' produce a measure of capacity that is both less nuanced and less realistic when it comes to what the claimant might actually be able to do in the workplace. They believe that the new descriptor group '*coping with social engagement*' lacks any measure of the nature of engagement with other people that is particular to the workplace. The Committee is concerned that in attempting to streamline the descriptors for WCA, the DWP has removed some of the necessary subtleties of the test, and that the test's relevance to the real world has not been enhanced.

We share SSAC's desire to ensure that the descriptors dealing with mental health represent a fair and accurate assessment of this complex area.

The review group who developed these revisions to the WCA, which included experts in mental health, gave very careful consideration to the design of descriptors that would accurately measure the level of functional impairment caused by a range of mental health conditions and be sufficiently broad as to allow for the range of functional effects suffered by individuals, whilst at the same time reducing the likelihood of 'double scoring' – where a single functional impairment is reflected in more than one descriptor. The intention of the amendments to these descriptors was not to reduce the scope of the mental function descriptors.

We feel that both the 'initiating personal action' descriptor and the 'copied with social engagement' descriptor are worded in such a way as to encompass considerable variety in both the causes and the specific functional impact of a range of mental health issues.

In order to further improve this element of the assessment, Ministers have asked Mind, Mencap and the National Autistic Society to report to Professor Harrington on refinements to the mental, intellectual and cognitive descriptors and provide recommendations for his consideration. Professor Harrington will assess the refinements, consult with experts and recommend to Ministers those which he believes will improve the fairness and effectiveness of the WCA. We look forward to receiving these recommendations in the new year.

14. The Committee found a number of the other changes to the physical descriptors to be problematic because they appear to have the effect of over-looking the effects of significant impairments in relation to walking, standing and bending, even when they are present in combination. The Committee is concerned that the proposed changes will have the effect of seriously over-estimating capacity and finding people fit for work when, in practice, real 'work' – however well supported and adapted – is not a realistic prospect.

15. The Committee has concerns with the descriptor for 'Getting About', which scores 9 points for someone who needs to be accompanied to familiar and unfamiliar places. Placed in a real world context, the Committee does not agree that someone who must be accompanied by a guide/helper at all times is sufficiently 'adapted' to their condition as to be capable of work. The Committee has similar reservations about the proposed revisions to the descriptors for sensory impairments that do not appear to us adequately reflect the functional impacts of sight loss, for example.

The Committee rightly recognises that these amendments represent a move away from assessing individuals' ability to perform very specific physical activities such as bending, standing and kneeling. We consider this to be the next step in extending the principle of an assessment based on functional ability – that is, the ability to carry out certain functions – rather than being condition-based. As a result, someone's level of mobility is more relevant than their ability to walk; their ability to remain at a work station is more relevant than their ability to stand; and their ability to navigate safely is more relevant than their ability to see. The Government does not believe, for example, that it is reasonable to automatically consider a wheelchair user to be incapable of work.

We recognise that such limitations in mobility, vision or other physical functions might prevent an individual from carrying out certain jobs; and that they would require an accessible workplace. However, with an employers' duty to make reasonable adjustments, and a recognition under Jobseekers Allowance that job seekers can agree reasonable limitations on the kind of employment (including the workplace) that would be suitable, we do not think that this represents an unrealistic assessment of their ability to work.

Summary of Responses to the Consultation

16. The Committee received responses covering both the detail of the proposed regulations and wider concerns about both the process that led to the proposals and the nature and operation of the current work capability regime as well as a large number of responses from individuals concerned about the changes and the way that they would impact on disabled people. Most of the latter were passed to Professor Harrington's independent review.

SSAC's input into Professor Harrington's wider review of the WCA has contributed to the important process of reviewing and improving the WCA in the wider sense. Professor Harrington's report contained a series of practical recommendations for improving the WCA, which we fully accept and are implementing as quickly as possible.

The Committee's Conclusions

17. The Committee recognises that the assessment of capability for work is a contentious and emotive issue and has always advocated a positive approach to the assessment of capability that looks at what the individual is able to do and their adaptation to their health condition or disability, rather than focusing solely on what a health condition or disability prevents the individual from doing. However, the Committee also recognises the complexity of many individual cases and the significance of the factors that may determine capability in the real world but which cannot be easily measured by a test that scores functional capability. While the Committee welcomes the change of emphasis implicit in ESA which aims to look at the individual person's adaptation to their disability, rather than concentrating on their condition and what they are unable to do as a result, it does not believe that the WCA has yet achieved this change of focus.

We share the Committee's commitment to achieving a fair and accurate assessment to deal with varied and often complex barriers to work. Whilst we remain confident that these amendments both refine and develop the assessment, we are committed to a continuing process of reviewing and improving the WCA through the series of 5 independent reviews. We are pleased that SSAC submitted evidence to the first of these, carried out by Professor Harrington, which reported its recommendations on 23rd November.

18. With the recent suspension of the Work Focused Health Related Assessment the Committee believes that there is no mechanism in place for assessing the individual's experience of their health condition or disability in the real world.

Whilst we recognise that any assessment of capability for work makes assumptions about the functional capability needed for work, the WCA was developed with the intention of assessing whether an individual is capable of undertaking some work. It does not attempt to assess what types of work an

individual is capable of or, having identified that an individual is capable of work, identifying the barriers they face and the support they need.

These important next steps in moving an individual closer to employment have been addressed through a number of processes, one of which was the Work-Focused Health-Related Assessment. Our decision to suspend the WFHRA was based on comprehensive feedback from both customers and staff which indicated that it was not providing valuable support. It does not, however, mean that we are any less committed to identifying the support needs of customers and how they can best be supported into work. This assessment and support is currently offered by Jobcentre Plus advisors, but in future will also be incorporated into the Work Programme. Understanding an individual's experience of their health condition or disability will remain a central aspect of supporting them to return to suitable work.

As part of his second independent review of the WCA, Professor Harrington will be looking more closely at whether the assessment could and should incorporate more 'real world' or work-focussed elements and we look forward to receiving his recommendations.

19 The Committee recognises that the assessment process, and the experience of the benefit claimant, can be stressful and frustrating. The Committee is concerned that there is a disagreement of substance between the Department and the external stakeholders who participated in the review as to whether the WCA in its present form could be said to be working satisfactorily.

We share the Committee's desire to ensure that the experience of customers applying for ESA be as smooth as possible and that more be done to reduce the stress or distress placed upon customers. The Department and Jobcentre Plus have carried out extensive work in preparation for the reassessment of customers from incapacity benefits, to improve the way in which we communicate with customers and explain the process to them. These issues were considered more closely by Professor Harrington's independent review of the WCA and his recommendations included improving communication with customers so that they understand the process and why a certain decision has been reached.

As the Committee knows, a number of external stakeholders including specialist disability groups were closely involved in the department-led review. Their input, drawing on their experience and expertise, was valuable and resulted in numerous changes to the WCA. In addition to the main review, officials from the department conducted a series of further meetings with the external stakeholders to address their remaining concerns, and the department was pleased to reach agreement on a number of these issues. However, it must be acknowledged that a policy area such as this will rarely give rise to a consensus of views – and so it is important for the department to benefit from the constructive input of a range of stakeholders without

necessarily pursuing unanimity. We are grateful for the ongoing involvement of such groups in helping us to improve the assessment.

20. The Committee recognises that it is perhaps most difficult to assess people with multiple conditions, such as a mix of physical and mental health problem, and is concerned that the proposed changes will disadvantage those individuals who cannot be fitted easily into one or other category. The Committee shares the concerns of respondents who have identified where they feel proposed streamlining of the descriptors has served to completely exclude consideration of activities that are pertinent to any proper and complete consideration of capacity, in particular where the new descriptors do not make adequate provision for the assessment of people with mental health conditions or with sensory disabilities.

As discussed above, the WCA was designed with a specific aim of improving the assessment of people with mental health conditions. A significant proportion of the assessment is devoted to mental, intellectual and cognitive function, and we feel confident that the revised descriptors are constructed in such a way as to reflect the diverse range and effects of mental health conditions as well as the interaction of conditions. Whilst we have attempted to reduce the potential for 'double scoring' by ensuring that each separate descriptor reflects a discrete function, we feel that the assessment retains a sufficient quantity of descriptors to account for the numerous functional limitations an individual might experience.

21. The Committee welcomes the Department's commitment to refining and improving the WCA system as demonstrated by the ongoing first independent review of the WCA but believes that the credibility of the review process will be enhanced if the Department defers making all but the proposed changes listed below until the review has reported and the trial of the migration of IB customers to ESA has been completed and evaluated.

These amendments to the WCA stem from a thorough review conducted over 12 months ago. As a result, and based on our commitment to continuously improving the assessment, the Government decided to implement the improvements as soon as possible.

Professor Harrington's independent review reported on November 23rd and the Government has committed to implementing all of his recommendations as quickly as possible. A number will be in place before the beginning of reassessment (migration) from incapacity benefits.

The purpose of the early trial of IB reassessment is primarily to evaluate the customer experience, test reactions and gauge our approach. Where possible, we will make any appropriate adjustments before the start of national reassessment. The trial is not intended to be an evaluation of the WCA descriptors, and as such does not impact directly on the decision to implement these changes.

Recommendations

22. The Committee recommends that the Department proceeds with the proposed changes that are intended to ensure that where Limited Capability for Work-related Activity is demonstrated, Limited Capability for Work is also demonstrated, and to expand the support group in relation to chemotherapy.

These proposed changes were the product of a holistic consideration of the assessment and were recommended as a package of amendments. We therefore feel that it would not be appropriate to view them in a piecemeal fashion, selecting some elements of the recommendation for implementation whilst neglecting others.

23. The Committee recommends that the inclusion of residential rehabilitation in the definitions for the purposes of limited capability for work should proceed and that the scope of this provision should be re-examined with a view to extending its coverage to community based rehabilitation programmes.

As discussed above, the Government does not feel that individuals receiving community-based treatment for drug or alcohol misuse should automatically be treated as having limited capability for work. Nonetheless, the series of 5 independent reviews of the WCA will provide opportunity for this question to be re-examined and WCA policy teams will continue to work closely with the Drug and Alcohol Policy Unit with a view to ensuring that people with drug or alcohol misuse problems are accurately and fairly assessed and that the benefits system contributes appropriately to supporting the management and treatment of their condition.

24. The Committee recommends that the Department does not proceed with the remaining proposed changes to the descriptors until these have been reconsidered in the light of the findings of the independent review of the WCA and the experience of the trial of the migration of IB customers to ESA.

As discussed above, it would not be appropriate to delay beginning the process of implementing these recommendations until after both the current Independent Review and the trials of IB/IS reassessment have concluded. The Work Capability Assessment is an organic policy and the Government is fully committed to a process of ongoing review and improvement in the light of both experience and structured evaluation. In this context, the Government must be free to implement changes, where they consider them to improve the assessment, without always awaiting the next stage of review.



From the Chairman

The Right Honourable Iain Duncan Smith MP
Secretary of State for Work and Pensions
Caxton House
London SW1H 9DA

10 October 2010

Dear Secretary of State,

REPORT OF THE SOCIAL SECURITY ADVISORY COMMITTEE MADE UNDER SECTION 174(2) OF THE SOCIAL SECURITY ADMINISTRATION ACT 1992 ON THE EMPLOYMENT AND SUPPORT ALLOWANCE (LIMITED CAPABILITY FOR WORK AND LIMITED CAPABILITY FOR WORK-RELATED ACTIVITY) AMENDMENT REGULATIONS 2011

1. Background

1.1 At the Committee's meeting on 4 August 2010, officials from the Department for Work and Pensions (DWP) presented proposals for our consideration relating to The Employment and Support Allowance (Limited Capability For Work And Limited Capability For Work-Related Activity) Amendment Regulations 2011. A detailed Explanatory Memorandum (EM) of the Department's position accompanied these proposed draft regulations (Appendix 1). Officials subsequently made a number of amendments to the EM we had considered at the meeting, and a revised version (the document attached at Appendix 1A) was provided for our consideration.

1.2 Following discussions with officials, we decided to take these regulations on 'formal referral' for the preparation of this report. On 13 August we published a press release inviting comments on the proposals to reach us by 10 September 2010.

1.3 We received 164 responses. Details of the organisations and individuals who responded are at Appendices 2 and 3. We are grateful to those who responded and to officials of the Department for Work and Pensions for their assistance.

2. The Proposals

2.1 The Secretary of State for Work and Pensions proposes to make the following changes to the Work Capability Assessment (WCA) which was introduced in October 2008 to assess entitlement to Employment and Support Allowance (ESA):

- ensuring that where Limited Capability For Work-Related Activity is demonstrated Limited Capability For Work is also demonstrated
- expanding the Support Group in relation to chemotherapy
- including residential rehabilitation in the provisions allowing in-patients to be treated as having limited capability for work

2.2 The Regulations also propose changes to some of the activities and descriptors used in the WCA for both descriptors of physical disabilities and descriptors for mental, intellectual and cognitive function. The Regulations are designed to remove complexities and overlaps, therefore easing administration and improving transparency for the customer.

3. Summary of the Department's Position

3.1 The Secretary of State for Work and Pensions proposes to amend the ESA regulations so that revised WCA will come into force from April 2011, in time for the start of the national reassessment of incapacity benefit claimants. The proposed changes would mean that all future claims for ESA would be assessed using the new descriptors

3.2 These proposals have been put forward following a Departmental review after the 2008 White Paper¹, beginning in March 2009. The review, carried out by DWP officials, engaged with medical experts, stakeholders and employers. The review found that the WCA was generally working correctly, and also made a number of recommendations for amending the current regulations to clarify the descriptors and take greater account of the way an individual has adapted to their disability.

3.3 The Department will work with Jobcentre Plus to revise the form ESA50², and with Atos Healthcare to make software changes and to train healthcare professionals and DWP decision makers.

3.4 The Department's position is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work, and that there is a large body of evidence to show that work is good for physical and mental well-being and can be beneficial for individuals with health conditions and disabilities.

3.5 The Department's position is summarised in more detail in the revised Explanatory Memorandum attached at Appendix 1.

¹*Raising Expectations* [<http://dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/raising-expectations/>] December 2008

² a questionnaire used by claimants to ESA to describe their condition/s

4. The Committee's View

Introduction

4.1 We took these proposals on formal referral at around the same time as the first independent review of the WCA (conducted by Professor Malcolm Harrington CBE) commenced with a call for evidence³. The evidence-gathering period for the review overlapped our public consultation and we recognised early on that a number of the responses we were receiving to our consultation on the proposed regulations raised issues that were less about the proposed amendments to the WCA and more to do with the current WCA process and claimant experience. Therefore, and with the respondents' consent, we shared these responses with the DWP team supporting the gathering of evidence for the independent review, thus ensuring that they are fed in to the review.

4.2 We also took account of these respondents' contributions in the preparation of our own response to Professor Harrington's review. This response reflects our long-standing interest in the assessment of capacity for work within the benefits system, and serves to put the specific observations we make about the proposed changes in this wider context. We have observed the introduction of ESA in 2008, and we have previously reported on the impending migration of recipients of its predecessor benefit, Incapacity Benefit, to ESA, which is being trialled from October 2010. One of our members took part in a personal capacity in the Department's internal review of the WCA that informed the proposed changes that are the subject of this report; and in June this year we met with DWP officials and representatives of Atos to discuss the customer experience of the WCA.

4.3 As we note in our conclusions below, the WCA is the subject of intense interest and attention. It also provokes very strong opinions, as is evidenced by the unprecedented number of individual responses to our consultation that we received. We therefore welcome the Department's commitment to what is, in effect, an ongoing programme of review and improvement to the WCA, but we have also taken note of the concerns expressed by stakeholders about the impacts of some of the proposed modifications to the test in the current package. There appears to be a widespread perception that, overall, rather than simplifying, streamlining and refining the test, these amendments will make it harder in practice for claimants to demonstrate that they are incapable of work or that they have limited capacity for work or work-related activity.

4.4 We therefore think it important that this report touches on a number of broad policy concerns that we have developed in our response to the independent review as well as our particular concerns about the proposed changes, in particular to the descriptors. These are outlined at paragraph 4.11

³ The Work Capability Assessment – A call for Evidence (DWP – 28 July 2010)

et seq below.

Our general concerns

Capability and employability

4.5 The WCA is intended to measure functionality and has been designed to determine an individual's work capability by reference to range of different activities. As such it does not take account of whether that individual is actually employable, although the assessment takes account of certain other factors (such as the presence of a terminal illness) and the impacts of developments in health care and the modern workplace. However, there is a large body of evidence demonstrating that people with health conditions and disabilities face discrimination and that their rates of employment have improved very little in the relatively favourable conditions of the pre-recession era. Despite legislation to combat discrimination and programmes, such as Pathways to Work, that aimed to move Incapacity Benefit recipients closer to the labour market, and the availability of aids and adaptations to the workplace, theoretical work capability has not enabled significant numbers to move into employment.

4.6 It is perhaps inevitable that a test that does not reference the realities of the labour market presents an immediate problem of comprehension and credibility, particularly for those people who are subject to the test and are found fit for work but still face daunting obstacles to finding employment. Although the Department's Impact Assessment sets out a number of mitigating actions and provisions that are designed to address these constraints, we are not persuaded that these adequately address the scope or scale of the problems these people will face in a real, and very depressed, labour market.

4.7 In this connection we believe that In order to make an assessment of both the effectiveness of the current system and the likely impacts of changes to the descriptors, we need to know more about how the current descriptors have been working in practice. In particular, we need to know more about the outcomes for individuals who had been found capable of work by the WCA. It may be the case, for example, that people with health conditions and disabilities are found to be capable of work, move to JSA and become long-term unemployed as they are not able to find suitable employment. It seems to us that more evidence is needed to support the further development of the WCA going forward, particularly in relation to supporting the forthcoming migration of Incapacity Benefit (IB) customers to ESA

Cost/benefit

4.8 Equally, we have questioned whether there was any data on the costs of the end-to-end process of assessing an ESA claimant. We are concerned that this is a potentially expensive, nugatory process if it does not result in substantial numbers of individuals returning to work. We do not dispute that it is right to assist and encourage everyone who can work to do so. However, it

seems to us both unreasonable and perverse to have a test that has the effect of forcing more people into the JSA regime when they cannot be expected to properly comply with benefit conditionality that assumes that they are fit and ready to work, and have reasonable prospects of finding and keeping employment.

The point scoring system

4.9 Although a points-based system should reinforce an objective and evidence-based assessment of capacity we do not believe that it can guarantee objectivity, consistency or universality of application. In practice it can also be rigid and unnecessarily prescriptive, encouraging a focus on the individual's specific condition or disability as covered by the descriptors, rather than looking at the individual's capability for work, and adaptation to their condition or disability, holistically. At the same time it is an expression of the assessor's opinion and judgement, albeit an opinion based on professional knowledge, training, experience and observation.

Appeal rates

4.10 Officials have told us that around 40% of appeals against a decision that an individual is capable of work are upheld. We find it surprising that so many of the Department's decisions are being overturned on appeal when we have also been told that the WCA is generally working as the Department intended. If tribunals are interpreting the law and evidence differently from the Decision Maker it would suggest to us that there may be underlying problems with the assessment and decision making process (for example that guidance is not being applied correctly or consistently).

The key proposed changes

Limited capability for work and work related activity; extending the support group in relation to chemotherapy; and the inclusion of residential rehabilitation

4.11 We welcome the changes to ensure that proper account is taken of fluctuating conditions and the needs of people undergoing chemotherapy. We particularly welcome the amendments to Regulation 35 which allow for claimants receiving certain types of chemotherapy to be treated as having Limited Capability for Work-Related Activity (LCWRA), and we note that the change will bring individuals who are likely to receive chemotherapy within the next six months into scope of this provision. Although we also welcome the inclusion of residential rehabilitation in the provisions allowing in-patients to be treated as having limited capability for work, we would suggest that this may not, in practice, apply to some of the people it is meant to assist. To the best of our knowledge the majority of rehabilitation programmes are community based rather than residential and we would question the rationale for treating people engaged in these programmes differently to those in similar programmes but in a residential setting.

4.12 We have noted some areas in which it appears to us that the Department has recognised the need to introduce some qualifications to descriptors (for example, including *'without experiencing significant discomfort'* against several actions. We welcome this approach, and believe that there is a case for putting more qualifications like this (for example, building in *'reliably and repeatedly'* in relation to a number of the physical descriptors) rather than reserving them for guidance. Similarly, we believe that the lack of recognition within the descriptors of pain and fatigue, and the generally debilitating and often unpredictable effects of diseases such as MS, ME and Parkinsons, limits the effectiveness and credibility of the test.

Changes to the activities and descriptors

4.12 We understand the underlying rationale put forward for modifications to the current arrangements, but we are concerned about how they would work in practice and their potential impacts in terms of WCA assessment outcomes, particularly in relation to claimants with mental health, intellectual and cognitive function problems. We consider a number of examples below.

4.13 The descriptor addressing *'Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder'* includes the provision *'occasionally has uncontrollable episodes'* of such behaviour. We understand that this is intended to cover instances of such behaviour occurring perhaps a couple of times a year, and where it applies 9 points are awarded (when a total equalling or above 15 points is required to be placed in the Support Group). We would question whether this score reasonably and realistically measures the impact that two episodes of such behaviour in a year would have on the individual's capacity obtain and hold down a job.

4.14 We had similar issues with the points awarded for some of the descriptors for continence, where the assessed theoretical impact of the condition seemed to us to be at odds with the impact on the individual in the real world.

4.15 Similarly, the proposed merger of a number of descriptor groups dealing with memory and concentration, executing of tasks etc into a single activity defined as *'initiating and completing personal action'* seems to us to produce a measure of capacity that is both less nuanced and less realistic when it comes to what the claimant might actually be able to do in the workplace. The new descriptor group *'coping with social engagement'* also appears to us to lack any measure of the nature of engagement with other people that is particular to the workplace.

4.16 We found a number of the other changes to the physical descriptors to be problematic because they appear to us to have the effect of over-looking the effects of significant impairments in relation to walking, standing and bending, even when they are present in combination. We are concerned that the proposed changes will have the effect of seriously over-estimating capacity and finding people fit for work when, in practice, real 'work' – however well supported and adapted – is not a realistic prospect.

4.17 We have similar concerns with the descriptor for '*Getting About*' , which scores 9 points for someone who needs to be accompanied to familiar and unfamiliar places. Placed in a real world context, we do not agree that someone who must be accompanied by a guide/helper at all times is sufficiently 'adapted' to their condition as to be capable of work. We have similar reservations about the proposed revisions to the descriptors for sensory impairments that do not appear to us adequately reflect the functional impacts of sight loss, for example.

5. Summary of Responses to the Consultation

5.1 The responses we received covered both the detail of the proposed regulations and wider concerns about both the process that led to the proposals and the nature and operation of the current work capability regime. We also received a large number of responses from individuals concerned about the changes and the way that they would impact on disabled people (a summary of these responses is at Appendix 3). As noted above, most of the latter were passed to Professor Harrington's independent review.

5.2 A number of respondents questioned why the activities comprising the Limited Capability for Work test were being amended before the independent review has reported and/or questioned why the test was apparently being tightened up when it had been described by the Department as generally working well (while also finding many more people fit for work than originally estimated). Some respondents also challenged the conclusions of the Department's 2009 internal review of the WCA, suggesting that they did not represent an outcome that participating stakeholders could recognise or support. A number of respondents went on to challenge the Department's assessment of the impact of the proposed changes on the numbers of people who will be found fit for work, pointing to evidence that the numbers may be higher than the Department has indicated.

5.3 Respondents generally welcomed the amendment to the regulations which will allow the placement of people awaiting chemotherapy in the support group. The change to take account of fluctuating conditions was also welcomed, and there was some acknowledgement of improvements to the clarity of certain descriptors (for example, those relating to learning tasks).

5.4 Provisions to allow people entering residential rehabilitation centres for drug and alcohol problems to be treated as having limited capability for work were welcomed, but respondents commented that this should also include people undergoing recognised out-patient rehabilitation and drug treatment programmes.

5.5 As well as specific points on the individual descriptors (explored in detail below), a number of respondents expressed their dissatisfaction with the descriptors generally, suggesting that they were both subjective and open to interpretation and that the proposed revisions did little to improve or simplify them. Many of the detailed comments on the individual descriptors were

informed by the respondents' direct knowledge of how people with particular health conditions or impairments would approach and experience the activities and situations covered by the descriptors, and the potential impact upon them of aids and adaptations.

5.6 A particular concern was that some descriptors had been removed altogether and not adequately replaced. For example, concern was expressed that the descriptor for 'Vision' (formerly descriptor 9) had been removed entirely and that the new descriptors did not adequately capture the experiences of people with a visual disability in accessing work. The removal of provisions to take account of an individual's ability to wash, operate a tap, dress, feed themselves and use the toilet without assistance was also challenged, and the point made that without account being taken of these functions someone who was unable to function in the day to day world without close assistance and supervision could be found capable of work. Respondents also commented that the descriptors did not cover fatigue and pain and the assessment therefore failed to take account of their potentially significant impacts of on work capability

Physical Disabilities

Descriptor 1: Mobilising with or without a walking stick, manual wheelchair or other aid if such aid can be reasonably used

5.7 Respondents commented that the change from assessing walking to assessing 'mobilising' was unfair and unreasonable, as not every individual is capable of using a wheelchair or has access to aids and adaptations, or wishes to use them when they believe they draw unwanted attention to their disabilities.

Descriptors 4 and 5: Picking up and moving or transferring by the use of the upper body and arms, and Manual Dexterity

5.8 Respondents commented that it would be impractical for a disabled person who had difficulty picking things up from the floor in the workplace to repeatedly ask a colleague for assistance. It was also suggested that this descriptor should be rewritten so as to include the notion of 'locating' an item, thus extending its scope to include sight problems.

Descriptor 7: Understanding communications by both verbal means and non-verbal means using an aid if reasonably used; unaided by another person

5.9 Many of the individuals who responded to the consultation were particularly concerned about this descriptor and felt that it was unrealistic in practice. Respondents commented that it implied that it was acceptable for a hearing impaired person to be alerted to the presence of a fire by another person holding up a written notice. It was suggested that reference should be made to the length of time the method of communication takes. It was also noted that the language used in the descriptor appeared inconsistent. For

example 7b uses the terms '*has significant difficulty*' and 7c uses '*some difficulty*'.

Descriptor 9: *Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, despite the presence of any aids or adaptations normally used*

5.10 Respondents generally welcomed the addition of provisions to take account of leakage from devices to the descriptors.

Bending and Kneeling

5.11 Respondents were concerned that the descriptor for bending and kneeling was being removed, given that these activities are commonly used in a wide range of occupations as well as in the day to day. One recommended that the descriptor be kept but should not apply to wheelchair users as their mobility problems had already been accounted for in preceding descriptors.

Mental, Cognitive and Intellectual Function Assessment

Descriptor 12: *Awareness of everyday hazards*

5.12 Respondents suggested that the scope of this descriptor was narrow, and that the addition of a recognition of the impact of sensory impairments, so that it would read '*Reduced awareness of everyday hazards due to sensory or cognitive impairment....*' would better capture the position of people with sight loss, for example.

Descriptor 13: *Initiating and Completing personal action*

5.13 Respondents commented that this descriptor should be revised so as recognise to issues with motivation, concentration, memory, Obsessive Compulsive Disorder (OCD) and self-neglect.

Descriptor 14: *Coping with Change*

5.14 Respondents pointed to the many different situations in which change might be experienced and the range of possible reactions that might follow (for example, how disruption of travel arrangements might impact someone with a physical disability and someone else with mental health problems).

Descriptor 15: *Getting About*

5.15 Respondents expressed reservations about the application of this descriptor in a range of real world situations, particularly in respect of people with a visual disability.

Descriptor 17: *Appropriateness of Behaviour with other people due to cognitive impairment or mental disorder*

5.16 Respondents felt that this descriptor underestimated the effects of inappropriate behaviour in the workplace, and that occasional outbursts of inappropriate behaviour should be scored the same as frequent outbursts, as both have the same effect on a person's employability. One respondent thought that this descriptor would exclude severely depressed people from the assessment as they may not act unreasonably but due to the avoidance of social interaction over time they may experience issues with work colleagues who perceive the behaviour as unreasonable.

Other concerns

Descriptors for mental health issues

5.17 Several respondents were very concerned that the descriptors did not adequately cover mental health issues. It was pointed out that the descriptors do not include any provision to award points for a propensity to self harm, suicidal actions, and the manifestations of psychosis and self-neglect (and it was also suggested that people with these issues should automatically be placed in the Support Group). Other responses questioned the lack of descriptors for panic and anxiety attacks, sleep disorders and eating disorders, all of which would limit capacity for work.

The WCA in practice

5.18 Almost all respondents commented on the way that the WCA is delivered and conducted. The very strict time limits for responding were identified as a significant barrier for people with mental health issues, who are especially vulnerable when faced with stress. The experiences of claimants with Atos healthcare professionals during the WCA process were recounted, with some respondents reporting that the assessor did not allow them time to answer and did not appear to understand their condition. Others commented on perceived poor customer service from the assessor. As evidence for the problems with the WCA itself respondents quoted the number of appeals that are upheld, suggesting that this implied that the WCA was flawed.

Capability and Employability

5.19 A recurrent theme in the responses was the assertion that the WCA needed to take account of its 'real world' context, and the state of the jobs market. Respondents pointed out that despite legislation and improved disability awareness, many employers still avoided taking on new employees with a disability or long-term health condition. This issue has been exacerbated by the difficult labour market conditions brought about by the recession.

6. The Committee's Conclusions

6.1 We recognise at the outset that the assessment of capability for work is a contentious and emotive issue. We have always advocated a positive approach to the assessment of capability that looks at what the individual is able to do and their adaptation to their health condition or disability, rather than focusing solely on what a health condition or disability prevents the individual from doing. However, we also recognise the complexity of many individual cases and the significance of the factors that may determine capability in the real world but which cannot be easily measured by a test that scores functional capability. While we welcome the change of emphasis implicit in ESA which aims to look at the individual person's adaptation to their disability, rather than concentrating on their condition and what they are unable to do as a result, we do not believe that the WCA has yet achieved this change of focus. With the recent suspension of the Work Focused Health Related Assessment there does not appear to be any mechanism in place for assessing the individual's experience of their health condition or disability in the real world of employment.

6.2 We also recognise that any assessment of benefit entitlement that necessarily involves testing and scoring an individual's functional capabilities is going to be both potentially challenging and controversial. As many of our respondents have pointed out, the assessment process, and the experience of the benefit claimant, can be stressful and frustrating. We have also noted the concerns expressed by respondents about the Department's conclusions with regard to the 2009 internal review of the WCA, and the manner in which they have been presented with regard to the current proposals. It appears to us that there is a disagreement of substance between the Department and the external stakeholders who participated in the review as to whether the WCA in its present form could be said to be working satisfactorily

6.3 We are concerned that in attempting to streamline the descriptors for WCA, the DWP has removed some of the necessary subtleties of the test, and that the test's relevance to the real world has not been enhanced. We recognise that it is perhaps most difficult to assess people with multiple conditions, such as a mix of physical and mental health problem, and we are concerned that the proposed changes will disadvantage those individuals who cannot be fitted easily into one or other category. We also share the concerns of respondents who have identified where proposed streamlining of the descriptors seems to have served to completely exclude consideration of activities that are pertinent to any proper and complete consideration of capacity, in particular where the new descriptors do not make adequate provision for the assessment of people with mental health conditions or with sensory disabilities.

6.4 We welcome the Department's commitment to refining and improving the WCA system as demonstrated by the ongoing first independent review of the WCA. However, we believe that the credibility of the review process will be enhanced if the Department defers making all but the proposed changes

listed in paragraph 7.1 below until the review has reported and the trial of the migration of IB customers to ESA has been completed and evaluated.

7. Recommendations

7.1 We recommend that the Department proceeds with the proposed changes that are intended to ensure that where Limited Capability for Work-related Activity is demonstrated, Limited Capability for Work is also demonstrated, and to expand the support group in relation to chemotherapy.

7.2 We further recommend that the inclusion of residential rehabilitation in the definitions for the purposes of limited capability for work should proceed and that the scope of this provision should be re-examined with a view to extending its coverage to community based rehabilitation programmes.

7.3 We recommend that the Department does not proceed with the remaining proposed changes to the descriptors until these have been reconsidered in the light of the findings of the independent review of the WCA and the experience of the trial of the migration of IB customers to ESA.

Yours sincerely

A handwritten signature in black ink that reads "Richard Tilt". The name "Richard" is written in a cursive style, and "Tilt" is written in a more stylized, blocky cursive.

The Committee

Sir Richard Tilt (Chair)

Kwame Akuffo

Les Allamby

Simon Bartley

Brigid Campbell

Alison Garnham

Carolyn George

Professor Elaine Kempson

Maureen A Reith

Pat Smail

Nicola Smith

Professor Janet Walker

Professor Robert Walker

APPENDIX 1

THE DEPARTMENT'S EM AND DRAFT REGULATIONS AS PROVIDED TO
SSAC ON 13TH AUGUST 2010

EXPLANATORY MEMORANDUM

Gill Saunders
Secretary
Social Security Advisory Committee
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

13th August 2010

Dear Gill

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

In accordance with section 170 of the Social Security Administration Act 1992, I referred the above regulations to the Committee for its consideration on 28th July 2010. At the subsequent meeting on 4th August, SSAC decided to consult on the proposed new legislation. We recognise that this consultation is solely focused on the proposed changes to the regulations as set out in this Explanatory Memorandum and it is important that it is seen as distinct from Professor Malcolm Harrington's broader independent review into the fairness and effectiveness of the WCA which has recently launched its own consultation; www.dwp.gov.uk/consultations

Since its original submission to SSAC, this Explanatory Memorandum has been subject to some minor clarifications. I have also added some recently published figures relating to disallowance rates, and updated figures relating to medical condition.

As you will be aware, the Department (DWP) introduced the Work Capability Assessment (WCA) on 27 October 2008 to assess entitlement to Employment and Support Allowance. It replaced the Personal Capability Assessment (PCA) used to assess entitlement to incapacity benefits (IB).

It is important that the Assessment continues to be an up to date accurate assessment of a person's functional capability for work and work related activity. The Department therefore undertook an internal review to establish whether the WCA is achieving its aim of correctly identifying an individual's capability for work, and to consider how it can better account for an

individual's adaptation to their condition, enabling a more accurate assessment of their functional capability for work.

The review found that generally the WCA accurately identifies individuals' eligibility for benefit. There was broad consensus among the experts that the WCA was performing according to design and reliably identifying capability. The review also identified a number of ways in which the WCA could be improved and the policy advanced.

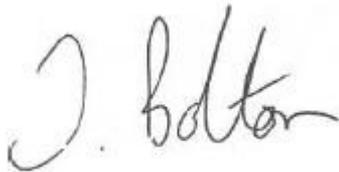
Departmental Ministers agreed with the recommendations made as part of the review and announced on 29 June that they would take steps to implement them. These changes are detailed in the attached Explanatory Memorandum.

Please find enclosed:

- Appendix 1 Explanatory Memorandum explaining the purpose and effects of the Regulations
- Appendix 1a Assessment of Impact
- Appendix 2 Draft regulations for the WCA
- Appendix 3 Keeling Schedule highlighting changes from the old regulations to the new regulations
- Appendix 4 Report of the Department-led internal review upon which the changes are based.

I hope that this will help Committee members in their consideration of this change.

Yours Sincerely

A handwritten signature in black ink that reads "J. Bolton". The signature is written in a cursive, flowing style.

Dr James Bolton
Deputy Director
Health, Work and Well-being Directorate

**EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY
COMMITTEE**

**THE EMPLOYMENT AND SUPPORT ALLOWANCE (LIMITED CAPABILITY
FOR WORK AND LIMITED CAPABILITY FOR WORK-RELATED
ACTIVITY) AMENDMENT REGULATIONS 2011**

Contents

1. Introduction and policy background
2. Proposed changes and rationale
3. Timing, operational plans and transitional provisions
4. Impact and Consultation

1. Introduction and policy background

The WCA

- 1.1 The Work Capability Assessment (WCA) was introduced in October 2008 to assess entitlement to Employment and Support Allowance (ESA). It replaced the Personal Capability Assessment (PCA) used to assess entitlement to incapacity benefits. The WCA was developed by departmental officials, working in close consultation with medical and other experts alongside specialist disability groups⁴.
- 1.2 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 and can be beneficial for individuals with health conditions and disabilities and that being out of work can contribute to poorer health and other negative outcomes⁵.
- 1.3 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.
- 1.4 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

⁴ DWP Report *Transformation of the Personal Capability Assessment, 2006*

⁵ Waddell and Burton: *Is work good for your health and well-being, 2006*

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, claim Jobseekers Allowance even though they may still have a health condition or disability and require appropriate support, or claim another benefit such as Income 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.

The department-led review

- 1.5 A 2008 White Paper⁶ began in March 2009. Its purpose was to establish whether the WCA was achieving its aim of correctly identifying an individual's capability for work. It was also tasked with consideration of both the appropriateness of the content of the assessment and how it could be amended to better account for an individual's adaptation to their condition, enabling a more accurate reflection of their functional capability for work.
- 1.6 The review was led by DWP officials and engaged with medical experts, stakeholders and employers. The combined input of this expert knowledge base, analytical skills and the work and social context provided an informed forum in which to consider and compile proposals. It consisted of expert case analysis, combined with group descriptor analysis.
- 1.7 Based on analysis of cases the review established that the WCA is generally identifying individuals' capability for work correctly. The working group also made a number of recommendations for amending the current regulations, which both clarified the existing descriptors and take greater account of the ways in which an individual has adapted to their health condition or disability.
- 1.8 Accordingly, the report and further addendum (Appendix 4) made a series of recommendations, with the aim of achieving the following:

⁶ Raising Expectations' [<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/raising-expectations/>], December 2008

- Simplifying the descriptors by removing unnecessary complexities and overlaps to ensure ease of administration and transparency for the claimant.
- Expanding the support group (those found to have limited capability for work-related activity, who are paid the higher rate of ESA) in relation to certain mental function and communication problems.
- Ensuring that claimants who are awaiting or in between courses of chemotherapy are treated in the same way as those already receiving it.
- Taking greater account of the effects of adaptations and aids in improving an individual's function. An accurate assessment should identify those individuals who lack the capability to work, rather than assume that they do as the result of a particular functional impairment.
- Improving the assessment of fluctuating conditions by ensuring that the effects of exhaustion are recognised, as well as the effects of discomfort.

2. Proposed changes and rationale

Ensuring that where Limited Capability for Work-Related Activity is demonstrated, Limited Capability for Work is also demonstrated

- 2.1 All sections of schedule 3 of the Employment and Support Allowance Regulations 2008 have a clear read across to schedule 2 ensuring that wherever Limited Capability for Work Related Activity (LCWRA – the criteria for entry to the Support Group) is identified, the individual also satisfies the Limited Capability for Work (LCW – the criteria for entry into the Work-Related Activity Group) criteria. The exception is eating and drinking. Individuals who satisfy this condition and therefore have LCWRA may not, the way the current legislation is written, have clearly identifiable LCW as defined. The amendment to regulation 20 rectifies this anomaly.

Expanding the Support Group in relation to chemotherapy

- 2.2 Regulation 35 allows for claimants receiving certain types of chemotherapy to be treated as having LCWRA. These individuals are likely to be very unwell and it is therefore unreasonable to expect them to work. In the light of experience there is a further group who should also fall into this category. These are individuals who have just been diagnosed with cancer or who are part way through treatment. Currently such individuals may have to attend for face to face assessment. The instrument amends this Regulation to include individuals who 'are likely to receive chemotherapy within the next 6 months', with corresponding changes to regulation 20 so that LCW is also satisfied.

Inclusion of residential rehabilitation

- 2.3 Regulation 25 ensures that in-patients can be treated as having limited capability for work. Current legislation does not include residential rehabilitation centres for drug and alcohol problems where there are no on-site medical staff. As individuals on such courses are receiving treatment and unlikely to be able to work at that time, this instrument broadens the definition so that they can also be treated as having limited capability for work.

Changes to the activities and descriptors – Physical Disabilities

Walking

- 2.4 Assessing an individual's ability to walk does not provide the most appropriate measure of their capability for work. The intention of this activity is to identify an individual's mobility in and around the workplace. This mobility can be achieved through a variety of means, of which walking is only one.
- 2.5 To ensure that the legislation accounts for an individual's use of aids and their ability to adapt to their condition, changes to Schedules 2 and 3 – Lower Limb – replace the word 'walk' with 'mobilise' and include 'use of a manual wheelchair' to the aids listed. The score associated with mounting two steps has been revised downward to more accurately reflect the functionality of wheelchair users.
- 2.6 The LCWRA (Support Group) criteria to walk 30 metres has been amended to state 'mobilise more than 50 metres' in order to align it with the criteria for LCW.
- 2.7 'Significant discomfort' has been amended in the descriptors relating to walking and sitting or standing to read 'significant discomfort or exhaustion.' This is in order to improve the assessment of fluctuating conditions.

Sitting or Standing

- 2.8 The changes to Schedules 2 and 3 – Lower Limb – remove the descriptors 'to remain seated' and 'to remain standing' for 10 minutes, replacing them with a requirement to 'remain at a workstation', either seated or standing, for 30 minutes and more than an hour. This more accurately reflects the varying requirements of the modern work place. The changes also account for the range of adaptable chairs available.

Bending and kneeling

- 2.9 Bending and Kneeling is an unnecessary requirement for some workplaces. Many wheelchair users who are capable of work may be unable to bend or kneel. The changes to Schedules 2 and 3 – Lower Limb – remove the descriptors relating to ability to bend and kneel.

Manual dexterity

- 2.10 The changes to Schedules 2 and 3 – Upper Limb – change the descriptors relating to manual dexterity. They reflect the fact that a number of the descriptors identifying upper limb disabilities may not accurately measure capability for work. Descriptors identifying limited capability on the basis of functional limitation in one hand, or relating to co-ordinated activity involving two hands, have been removed as they are inappropriate in the assessment of limited capability for work. Descriptors which do not represent a significant limitation of functional capability in relation to the workplace – such as turning a star-headed tap – have been removed. These changes also facilitate clear and transparent application of the assessment.

Sensory Function – understanding and communicating

- 2.11 The changes to Schedules 2 and 3 – Sensory Function – replace assessment of ability to speak with ability to ‘make oneself understood’, replace assessment of ability to hear with ability to ‘understand communication’, and replace assessment of ability to ‘see’ with ability to navigate safely and be aware of hazards. This aligns the descriptors with the functional focus of the assessment and identifies capability for expressive and receptive communication rather than specifying the mode of communication.
- 2.12 Formerly, LCWRA was identified only on the basis of limited expressive communication. These changes expand the support group criteria to include disablement caused by limited receptive communication.

Continence

- 2.13 The changes to this descriptor make it simpler and clearer. They provide a transparent and universally applicable means to assess the impact of the condition upon the individual and their capability for work, recognising the fact that there is no differentiation between the impact upon the individual if the soiling is caused by full evacuation of the bladder/voiding of the bowels, or leakage of any adaptive device used.

Consciousness

- 2.14 The changes recognise the fact that loss of consciousness is either significantly regular to warrant entitlement to benefit on the basis of this single activity, or are relatively managed and controlled, and therefore do not play a significant role in limiting capability for work.

Changes to the activities and descriptors – Mental, Intellectual and Cognitive Function

Learning Tasks

- 2.15 The changes simplify the descriptors relating to ability to learn and understand. The ability to learn is the key component of the activity in relation to the workplace. To measure functional ability, the means by which learning is achieved are less significant than the ability to learn. Therefore, identifying these means through indicators such as verbal prompting risks distorting the identification of whether the individual is

able to learn and thus carry out tasks. In recognition of this, the necessary gradation between the descriptors is the complexity of the task which an individual is able to learn.

Awareness of Hazards

- 2.16 The changes simplify the descriptors relating to awareness of hazards. The risk associated with reduced awareness of hazards represents an alternative measure of disability, rather than using frequency to assess the level of limitation. The most appropriate measure for this disability is the level of input required to manage the risk. The level of supervision required can act as a proxy indicator for this.

Completing personal action

- 2.17 The changes simplify the descriptors relating to memory and concentration, execution of tasks and initiating and sustaining personal action. The amalgamation of three activities – memory and concentration, execution of tasks and initiating and sustaining personal action – recognises the fact that these activities identify the same disability – the inability to complete a task. The requirement to complete ‘at least 2 sequential personal actions’ has been added to recognise the fact that in a work context it is unlikely that an individual would only be required to carry out a single task. Approximating the time it takes an individual to execute a task is an overly complex measurement and involves considerable variation. Therefore, the elements of the descriptors relating to time frame have been removed but consideration of whether it can be done reliably and repeatedly remains.

Coping with change

- 2.18 The changes simplify the descriptors relating to coping with change. Reference to ‘planned’ rather than ‘expected’ change provides clearer indication of the capability which the activity seeks to identify and makes the permanence of the change irrelevant.

Getting About

- 2.19 The changes simplify the descriptors relating to getting about. They refocus the descriptors on the familiarity of the destination, rather than temporality (how often an individual is unable to get to a specified place).

Social Situations

- 2.20 The changes simplify the descriptors relating to social situations. They also introduce an additional descriptor accounting for difficulty engaging in social contact with someone unfamiliar. The three activities – coping with social situations, propriety of behaviour with other people and dealing with other people – have been amalgamated into two – coping with social engagement due to cognitive impairment or mental disorder and appropriateness of behaviour with other people due to cognitive impairment or mental disorder. Changes to the activity ‘coping with social engagement’ reflect the fact that familiarity is a more

appropriate measure in relation to the work place than temporality; and that the individual's ability to engage in social contact is the crucial ability. To reflect the hierarchy of disability relating to inability to engage with familiar or unfamiliar individuals, the scoring for these descriptors is 15 and 9, with no 6 point descriptor. Changes to the activities relating to appropriateness of behaviour remove the distinction between provoked and unprovoked behaviour, as the cause of the behaviour is unimportant, and introduce a measure of whether the behaviour is 'uncontrollable', as this is a more relevant. The language has been amended to use more neutral terms. In order to clarify what is meant by 'appropriate' behaviour, the descriptors specify behaviour that would be 'unreasonable in any workplace.'

3. Timing, operational plans and transitional provisions

- 3.1 We intend for the revised WCA to come into force in March 2011, in time for the start of the national reassessment of incapacity benefit claimants⁷. Operationally, this will involve the ESA50 being revised by Job Centre Plus, changes in IT software by Atos Healthcare, who carry out the assessments and training for Atos Healthcare Professionals and DWP Decision Makers.
- 3.2 Atos Healthcare is working with the Department to ensure that it is ready to implement the new WCA on 1st April 2011. Atos will make any necessary changes to the electronic system (MSRS) that is used by Jobcentre Plus to register and make referrals to Atos. Atos will make changes to the IT system (LiMA) used to assist healthcare professionals when providing advice and carrying out assessments so that the requirements of the WCA review are incorporated. In conjunction with the Department, a revised examination report form will be produced, that incorporates the revised WCA descriptors.
- 3.3 All healthcare professionals employed by Atos will be trained to undertake the new WCA assessment. The training material will be quality assured by doctors working for the Chief Medical Adviser to the Department. Atos is also working with the Department to ensure that there are sufficient numbers of healthcare professionals in place to deliver the new WCA at the same time as delivering the requirements of IB reassessment.
- 3.4 Jobcentre Plus is working closely with all parties concerned to ensure all the guidance is current and up to date on the changes prior to its introduction. They will ensure that all forms have been updated to reflect the necessary changes in particular the ESA50⁸ and ESA65⁹ ready for the introduction.

⁷ http://www.opsi.gov.uk/si/si2010/pdf/uksi_20100875_en.pdf

⁸ Form ESA50 is a questionnaire for claimants to describe their conditions

⁹ Form ESA 65 is a disallowance notification

- 3.5 Legal Group has been included in discussions. This will allow the Decision Makers Guide to be updated and training for Decision makers to take place.
- 3.6 The legislation contains 'transitional provisions' to cover the period during which the revised WCA is being introduced. The provisions have been designed to ensure that there is a clear and robust rationale as to whether a claimant is assessed using the old or new regulations; decision-makers have all the relevant information for the decisions they are making; the revision does not create any more operational complications than is necessary. From the date that the new regulations come into force, claimants will be assessed according to the new regulations *unless* their claim was already underway and an ESA50 had been issued to gather evidence against the old regulations. There will be a cut-off period of 6 months after which no decisions will be made using the old regulations. [Note, though, that where a decision is subject to a reconsideration or appeal, this will always be based on the same regulations that were used for the original decision.]

4. Impact and consultation

Assessment of Impact

- 4.1 An impact assessment, including an equalities impact assessment, was published in March 2010¹⁰ and looked at the impact of implementing these recommendations. This has been updated and is included at Appendix 1a. The following section reproduces the key points of this assessment.
- 4.2 As part of the department-led review analytical work was done to model the implications of the new proposals upon existing data on ESA claimants. By looking at the relationship between the proposals and the existing descriptors it was possible to generate a model which indicates what the outcome may be if claimants were assessed under a revised version of the WCA. This took place using data from almost 60,000 assessments of new claimants.
- 4.3 Further detailed analysis on specific cases was undertaken by a panel of medical experts. The expert group reviewed ESA cases in order to examine the effects of the proposed descriptors more closely. During this evaluation exercise, experts compared the outcome of current ESA cases and likely scores if the case was assessed using the proposed descriptors, based on evidence in the medical report. A cross section of cases was evaluated including a wide range of physical and mental health conditions. Using this method, the group tested the validity of the revisions, considering whether the entitlement decision was likely to change and whether such a change was appropriate.

¹⁰ <http://dwp.gov.uk/docs/building-bridges-to-work-impact-assessment.pdf>

- 4.4 The overall analysis of the descriptors 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 small number of cases that members felt would be inappropriately assessed resulted in further minor refinement of the descriptors.

Affected Groups

- 4.5 The groups affected by this change are:
- Individuals making new claims to ESA, and
 - Existing recipients of ESA and Incapacity Benefit.
- 4.6 The main effect of the proposals is on physical function relating to greater inclusiveness towards adaptation. The proposals recommend little change in the area of mental function as this was fully restructured in the introduction of the WCA. The main proposals in this area are to simplify the descriptors to improve the transparency of the assessment and eliminate overlaps. This is expected to have minimal impact on the disallowance rate.

Current and projected disallowance rates

- 4.7 For all 686,500 **new claims to Employment and Support Allowance started** between 27th October 2008 to 30th November 2009 (including claims that were closed before a decision was taken), decision rates (including the outcome of any appeal) are as follows:

- Fit for Work 39%
- Work-Related Activity Group 14%
- Support Group 6%
- Claim closed before assessment completed 37%
- Assessment still in progress 4%

For the 496,200 **completed assessments** (excluding those claims closed before a decision was made) to the end of May 2010 the decision rates (including the outcome of any appeal) are as follows:

- Fit for Work 66%
- Work Related Activity Group 24%
- Support Group 10%

- 4.8 A recent review by the National Audit Office concluded that 'currently around 38% of new claimants are found capable of work...which appears, at this preliminary stage, to be in line with the Department's expectations.'
- 4.9 We expect that, as a result of the proposed changes to the WCA, the number of people being put into the support group will increase by 0.5% (from 6.4% to 6.9%), and the number of people being found fit for work will increase by 5%.

Risks

- 4.10 A risk associated with changes to the WCA is that customers with health conditions or disabilities who are found fit for work, take up Jobseeker's Allowance (JSA) and become long-term unemployed rather than finding appropriate work.
- 4.11 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 disability 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 disability 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. 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 disability and Work Psychologists work with both customers and advisers to help improve employment outcomes.
- 4.12 The Government has committed to introducing the Work Programme by the summer of 2011. The precise detail of what the work programme will look like is still being developed. It will however provide greater freedom for delivery partners to give people the support they need rather than prescribing one-size-fits-all programmes from the centre. This freedom, along with an outcome based payment system that rewards delivery partners for helping those with greatest need, ensures that they will be well motivated to help all customers, including those moving from incapacity benefits. We are 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 with 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, we intend to build on the strengths of the personalised support

delivered through JSA so that personal advisers can assess an individuals need in order to provide enhanced support and low cost, flexible provision, to help improve employability. Until the Work Programme is implemented, the Government will ensure that people receive the support they need.

- 4.13 Consultation around the WCA highlighted concerns that those with fluctuating conditions or mental health problems may face undue barriers in receiving their entitlement, representing a potential risk To mitigate these risks, the WCA has been designed to take account of fluctuating conditions, assessing a customer’s capability over time. Guidance states that if an individual cannot complete an action safely, reliably and repeatedly they should be considered unable to complete it at all. Recognising the challenges associated with assessing fluctuating conditions there is continual work which aims to enhance the training that Healthcare Professionals receive and ensure that advice in this area is comprehensive.
- 4.14 In recognition of the importance of accurately assessing fluctuating function, changes have been suggested to certain descriptors where exertion is a significant component. This reinforces that where a customer is unable to do something as a result of exhaustion experienced, rather than discomfort, that it is captured in the assessment.

Specific Impact Assessments

Disability

- 4.15 Most ESA and incapacity benefits customers are likely to be covered by the Disability Discrimination Act (DDA) and so this reform has considerable significance for disabled people.
- 4.16 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 condition¹¹

MEDICAL CONDITION	SHARE OF ESA CASELOAD
Mental and Behavioural Disorders	33.0%
Diseases of the Musculoskeletal system and Connective Tissue	13.5%
Symptoms, Signs and Abnormal Clinical and Laboratory findings, not elsewhere classified	12.9%
Injury, Poisoning and certain other consequences	12.3%

¹¹ Source: Department of Work and Pensions Employment and Support Allowance: Work Capability Assessment by Health Condition and Functional Impairment: Official Statistics August 2010

of external causes	
Not Recorded	8.8%
Diseases of the Circulatory System	3.9%
Neoplasms	3.2%
Diseases of the Nervous System	3.0%
Diseases of the Digestive System	2.1%
Diseases of the Respiratory System	1.6%
Endocrine, Nutritional and Metabolic Diseases	1.2%
Certain Infectious and Parasitic Diseases	0.9%
Diseases of the Genitourinary System	0.8%
Diseases of the Skin and Subcutaneous System	0.7%
Factors influencing health status and contact with health services	0.7%
Diseases of the Eye and Adnexa	0.5%
Pregnancy, Childbirth and the Puerperium	0.5%
Diseases of the Ear and Mastoid Process	0.3%
Diseases of the Blood and Blood forming organs and certain diseases involving the immune mechanism	0.2%
Congenital Malformations, Deformations and Chromosomal Abnormalities	0.1%

- 4.17 Reforms to the WCA are not targeting any particular group of customers with health conditions in relation to their condition. The medical 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.
- 4.18 The proposed changes will affect customers with some conditions more than others, 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.
- 4.19 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 a decision maker to consider whether the claimant had good cause for missing an assessment or failing to return paperwork.
- 4.20 As with the original development of the WCA, representatives from a range of disability groups have been involved in the review, providing an opportunity for input into policy development. The review has also

involved detailed case analysis, exposing the experts to individual cases, and an understanding of how the WCA relates to individuals. In focusing on what customers are capable of, as well as what they are not, the WCA presents an opportunity to promote confidence in the capabilities of those with disabilities to participate in working life.

Ethnicity

- 4.21 Information on the ethnicity of ESA customers is not available. The best data that is available is for incapacity benefits customers from the Family Resource Survey which provides a useful approximation.
- 4.22 There is a low risk that ethnic minorities could be disproportionately affected by changes to the WCA, as survey evidence 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).

Table 2 Proportion of incapacity benefits customers by ethnicity¹²

Ethnicity	Incapacity benefits	Working Age Population
White	94%	88%
Ethnic minority	6%	12%

- 4.23 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 provided with, 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.
- 4.24 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 Race 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.

Gender

¹² Source: Based on the Family Resources survey 2007/08

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

4.26 Currently there are 1.27 million men claiming existing incapacity benefits and 925,000 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 3 Incapacity Benefits customers by Gender¹³

Benefit	Male	Female	Percentage male	Percentage female
Incapacity Benefit	717,000	438,000	62%	38%
IB credits only (inc. Income Support)	452,000	387,000	54%	46%
SDA	99,000	99,000	50%	50%
Total	1,269,000	925,000	58%	42%

4.27 Currently there are 247,000 men claiming ESA and 179,000 women. This means that men make up around 58 per cent of the ESA caseload, similar to the incapacity benefits caseload.

Table 4 ESA customers by Gender¹⁴

Benefit	Male	Female	Percentage male	Percentage female
ESA	247,000	179,000	58%	42%

4.28 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 Gender Equality Duty, which offers an

¹³ Source: Department of Work and Pensions Longitudinal Study November 2009

¹⁴ Source: Department of Work and Pensions Longitudinal Study November 2009

opportunity to raise awareness about gender issues amongst those administering the WCA.

Age

- 4.29 Data for ESA and incapacity benefits customers by age is provided in the tables below.
- 4.30 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 and may also reflect labour market factors such as the decline of traditional manufacturing industry. 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 5 Incapacity Benefits Customers by Age¹⁵

Age	Percentage
16-17	0%
18-24	5%
25-34	12%
35-44	22%
45-49	15%
50-54	16%
55-59	19%
60-64	12%
Total	100%

Table 6 ESA Customers by Age¹⁶

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%

¹⁵ Source Department of Work and Pensions Longitudinal Study November 2009

¹⁶ Source Department of Work and Pensions Longitudinal Study November 2009

- 4.31 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 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.

Consultation

- 4.32 The review was announced in a July 2008 Green Paper, which underwent public consultation.
- 4.33 In addition, the proposals presented here were developed in consultation with key stakeholders including medical experts, members of representative groups and employers. The recommendations were produced in consultation with the working group, and have been put to them for comment. Responses were mixed, therefore the proposals should not be considered to represent a consensus of opinion within the group. While there was support for the proposals, with experts coming out in support of the proposed changes, specific discontent came from several representative groups, namely RNIB, RNID, RSI Action, Mind and NAS. The concerns of these groups have been taken into account throughout the review process. There was space for discussion of the proposals and opportunity for constructive input.
- 4.34 In light of some of the concerns we have reviewed and adjusted the descriptors accordingly. However, we maintain that these proposals are a positive step to improve the assessment of individuals' capability for work, and would achieve a more accurate assessment for benefit entitlement.

Monitoring and Evaluation

- 4.35 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 reviews has been commissioned and will serve to monitor the changes as they come into force and ensure that they are functioning correctly. We hope that it will report before the end of 2010.
- 4.36 In addition, the changes to the assessment will be implemented by the medical assessment provider. 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.

Revising the Work Capability Assessment – Assessment of Impact

Introduction and Policy Rationale

1. The medical assessment for Employment and Support Allowance (ESA), the Work Capability Assessment (WCA), was developed to assess an individual's functional capability in relation to work encompassing limitation in both physical and mental function. It moved away from assessing what a person can't do towards focusing more on what they can do.

Reviewing the Work Capability Assessment

2. 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.
3. 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

4. The review was announced in a July 2008 Green Paper, which was followed by public consultation. Recommendations were produced in discussion with the working group. Further consultation has not been proposed at this stage as the proposals are specialised and technical in nature.

Summary of Recommendations

5. The Government proposes to amend the regulations to:
 - Place people awaiting chemotherapy in the support group;
 - 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.

Overall Estimated Impact of Policy/ Estimating Costs and Benefits

6. The main effect of the proposals is on physical function by taking greater account of possible adaptation. This means that where an individual has adapted to their condition, or could reasonably do so, the assessment will take account of this. For example, an individual will no longer automatically be entitled to ESA if they cannot walk but can successfully use a manual wheelchair to mobilise. There has also been a widening of the ESA Support Group criteria mainly in mental function following the identification of areas where individuals would face severe functional limitation.

Groups affected

7. When considering the affected groups in relation to the descriptors it is important that the changes are considered as a whole. The expert group undertook a detailed analysis of ESA cases in order to examine effects of the proposed descriptors more closely. During this evaluation exercise experts compared the outcome of current ESA cases and likely scores if the case was assessed using the proposed descriptors, based on evidence in the medical report. A cross section of cases was evaluated including a wide range of physical and mental health conditions. All these cases were initially identified through modelling as being affected by the proposed changes, such that a different decision on entitlement was likely. This enabled testing of the validity of the revisions to the WCA. The experts considered two key areas:
 - Is the entitlement decision likely to change as a result of the revised descriptors?
 - If the decision changes, is it appropriate?
8. The overall analysis of the descriptors 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 groups affected by this change are:
 - Individuals making new claims to ESA, and
 - Existing recipients of ESA and incapacity benefits (when an IB Claimant is reassessed for ESA).
9. Analysis has been carried out to model the implications of these proposals using data on ESA customers. Of all new ESA claims,

around 38% are found fit for work.¹⁷ The revised WCA is estimated to result in a five percentage point increase in the numbers found fit for work. Estimates of the additional numbers found fit for work with the introduction of the revised WCA are as follows:

Financial Year	Cumulative extra customers found fit for work
2009/10	0
2010/11	0
2011/12	45,000
2012/13	65,000
2013/14	75,000

10 The analysis also shows around a 0.5 percentage point increase (from 6.4% to 6.9%) in the proportion assessed to be in the ESA Support Group. As stated above, the Support Group criteria were widened specifically in relation 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.

11. ESA is intended to be a temporary benefit for most customers, where a health professional will assess the length of time an individual is expected to need to recover or adapt to their condition to the point where they will be fit to seek work. This is used to advise the time at which they should be reassessed. In reality many people are expected to have returned to being fit for work and moved off ESA within two years.

Costs

12. There are one-off costs for implementing the proposed changes. The majority of the costs lie with revising the ATOS healthcare IT software for inputting the medical assessments, and training ATOS healthcare professionals to implement the revised assessment. There will also be costs for revising the customer questionnaire in line with the proposals.

13. There will be ongoing operational costs 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 could be a five percentage point rise in the overall disallowance rate and an

¹⁷ **Employment & Support Allowance: Work Capability Assessment Statistical Release**
http://research.dwp.gov.uk/asd/workingage/esa_wca.asp

increase the number of appeals by 13 per cent. A large proportion of the associated costs lie with Ministry of Justice.

14. There will be costs to the Exchequer of paying and administering JSA and other benefits due to some customers moving to these benefits after they have been assessed as fit for work through the amended WCA.
15. 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.

Benefits

16. There will be benefits for the Exchequer in terms of savings from paying and administering ESA and incapacity benefits due to the increased numbers being assessed as fit for work through the amended WCA.
17. Ensuring that the gateway to ESA is accurately identifying individuals for the most appropriate benefit will result in the following benefits for customers:
 - Accurate identification of individuals who are unable to engage in work related activity, and the provision of greater financial support.
 - Assessment with greater emphasis on adaptation will lead to earlier entry into the work place for customers who will be identified as capable of work where they have taken steps to modify their condition.
 - The Government can ensure that those who need it are provided with appropriate support, leading to an increase in their likelihood of returning to work. Ensuring the accuracy of the gateway to entitlement contributes to achieving this benefit for customers.

Equality Impact Assessments

Risks

18. A risk associated with changes to the WCA is that customers with health conditions or disabilities are found fit for work, take up Jobseeker's Allowance (JSA) and may become long-term unemployed rather than finding appropriate work. Evidence shows that JSA customers with a health condition or disability 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 JSA customers with a health condition or disability.

19. 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 disability 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 disability 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. 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 disability and Work Psychologists work with both customers and advisers to help improve employment outcomes.
20. The Government has committed to introducing the Work Programme by the summer of 2011. The precise detail of what the work programme will look like is still being developed. It will however provide greater freedom for delivery partners to give people the support they need rather than prescribing one-size-fits-all programmes from the centre. This freedom, along with an outcome based payment system that rewards delivery partners for helping those with greatest need, ensures that they will be well motivated to help all customers, including those moving from incapacity benefits. We are 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 with 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, 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 low cost, flexible provision, to help improve employability. Until the Work Programme is implemented, the Government will ensure that people receive the support they need.
21. Consultation around the WCA highlighted concerns that those with fluctuating conditions or mental health problems may face undue barriers in receiving their entitlement, representing a potential risk. To mitigate these risks, the WCA has been designed to take account of fluctuating conditions, assessing a customer's capability over time. Guidance states that if an individual cannot complete an action safely, reliably and repeatedly they should be considered unable to complete it at all. Recognising the challenges associated with assessing fluctuating conditions there is continual work which aims to enhance the training that Healthcare Professionals receive and ensure that advice in this area is comprehensive.

22. In addition, in recognition of the importance of accurately assessing fluctuating function, changes are proposed to certain descriptors where exertion is a significant component. This reinforces that where a customer is unable to do something as a result of exhaustion experienced, rather than discomfort, that it is captured in the assessment.

Disability

23. Most ESA and incapacity benefits customers are likely to be covered by the Disability Discrimination Act (DDA) and so this reform has considerable significance for disabled people.

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

Table 7 ESA customers by medical condition¹⁸

MEDICAL CONDITION	SHARE OF ESA CASELOAD
Mental and Behavioural Disorders	33.0%
Diseases of the Musculoskeletal system and Connective Tissue	13.5%
Symptoms, Signs and Abnormal Clinical and Laboratory findings, not elsewhere classified	12.9%
Injury, Poisoning and certain other consequences of external causes	12.3%
Not Recorded	8.8%
Diseases of the Circulatory System	3.9%
Neoplasms	3.2%
Diseases of the Nervous System	3.0%
Diseases of the Digestive System	2.1%
Diseases of the Respiratory System	1.6%
Endocrine, Nutritional and Metabolic Diseases	1.2%
Certain Infectious and Parasitic Diseases	0.9%
Diseases of the Genitourinary System	0.8%
Diseases of the Skin and Subcutaneous System	0.7%
Factors influencing health status and contact with health services	0.7%
Diseases of the Eye and Adnexa	0.5%
Pregnancy, Childbirth and the Puerperium	0.5%
Diseases of the Ear and Mastoid Process	0.3%
Diseases of the Blood and Blood forming organs and certain diseases involving the immune	0.2%

¹⁸ Source: Department of Work and Pensions Employment and Support Allowance: Work Capability Assessment by Health Condition and Functional Impairment: Official Statistics August 2010

mechanism	
Congenital Malformations, Deformations and Chromosomal Abnormalities	0.1%

25. Reforms to the WCA are not targeting any particular group of customers with health conditions in relation to their condition. The medical 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.
26. The proposed changes will affect customers with some conditions more than others, 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 appropriate to make the assessment of these conditions more consistent with the principle of identifying customers for benefit on the basis of their functional capability rather than their condition.
27. 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.
28. As with the original development of the WCA, representatives from a range of disability groups have been involved in the review, providing an opportunity for input into policy development. The review has also involved detailed case analysis, exposing the experts to individual cases, and an understanding of how the WCA relates to individuals. In focusing on what customers are capable of, as well as what they are not, the WCA presents an opportunity to promote confidence in the capabilities of those with disabilities to participate in working life.

Ethnicity

29. Information on the ethnicity of ESA customers is not available. The best data that is available is for incapacity benefits customers from the Family Resource Survey which provides a useful approximation.
30. There is a low risk that ethnic minorities could be disproportionately affected by changes to the WCA, as survey evidence 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).

Table 2 Proportion of incapacity benefits customers by ethnicity¹⁹

Ethnicity	Incapacity benefits	Working Age Population
White	94%	88%
Ethnic minority	6%	12%

31. 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.
32. 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 Race 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.

Gender

33. Data for ESA and incapacity benefits customers by gender is provided in the tables below.
34. Currently there are 1.27 million men claiming existing incapacity benefits and 925,000 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 3 incapacity benefits customers by Gender²⁰

Benefit	Male	Female	Percentage male	Percentage female
Incapacity	717,000	438,000	62%	38%

¹⁹ Source: Based on the Family Resources survey 2007/08

²⁰ Source: Department of Work and Pensions Longitudinal Study November 2009

Benefit				
IB credits only (inc. Income Support)	452,000	387,000	54%	46%
SDA	99,000	99,000	50%	50%
Total	1,269,000	925,000	58%	42%

35. Currently there are 247,000 men claiming ESA and 179,000 women. This means that men make up around 58 per cent of the ESA caseload, similar to the incapacity benefits caseload.

Table 4 ESA customers by Gender²¹

Benefit	Male	Female	Percentage male	Percentage female
ESA	247,000	179,000	58%	42%

36. 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 Gender Equality Duty, which offers an opportunity to raise awareness about gender issues amongst those administering the WCA.

Age

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

38. 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 and may also reflect labour market factors such as the decline of traditional manufacturing industry. 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,

²¹ Source: Department of Work and Pensions Longitudinal Study November 2009

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 5 incapacity benefits Customers by Age²²

Age	Percentage
16-17	0%
18-24	5%
25-34	12%
35-44	22%
45-49	15%
50-54	16%
55-59	19%
60-64	12%
Total	100%

Table 6 ESA Customers by Age²³

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%

39. 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 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.

Monitoring and Evaluation

40. Prior to implementing these changes there is already a system in place to evaluate their effectiveness. In line with the Welfare Reform Act 2007, section 10 and the ESA Regulations 2008, the Government is committed to an independent review of the WCA every year for the first

²² Source Department of Work and Pensions Longitudinal Study November 2009

²³ Source Department of Work and Pensions Longitudinal Study November 2009

5 years. The first of these reviews has been commissioned and will serve to monitor the changes as they come into force and ensure that they are functioning correctly. We hope that it will report before the end of 2010.

41. In addition, the changes to the assessment will be implemented by the medical assessment provider. 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.

 STATUTORY INSTRUMENTS

2011 No. 000

SOCIAL SECURITY

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

<i>Made</i>	- - - -	2011
<i>Laid before Parliament</i>		2011
<i>Coming into force</i>	- -	28 March 2011

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 8(1), 9(1), 24(1)⁽²⁴⁾ and 25(5) of, and paragraphs 1 and 9 of Schedule 2 to, the Welfare Reform Act 2007⁽²⁵⁾,

In accordance with section 172(1) of the Social Security Administration Act⁽²⁶⁾ the Secretary of State referred the proposals for these Regulations to the Social Security Advisory Committee.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) Amendment Regulations 2011 and shall come into force on 28 March 2011.

(1) In these Regulations:-

“the ESA Regulations” means the Employment and Support Allowance Regulations 2008⁽²⁷⁾;

“the Reassessment Regulations” means the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010⁽²⁸⁾.

Application

2.—(2) These Regulations apply to :-

- (a) a person who makes a claim for employment and support allowance on or after 28 March 2011 (including a claim in respect of any period before that date);

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

⁽²⁵⁾ 2007 c.5.

⁽²⁶⁾ 1992 c.5.

⁽²⁷⁾ S.I. 2008/794.

⁽²⁸⁾ S.I. 2010/1907.

- (b) subject to paragraphs (2) to (5), a person who made a claim for employment and support allowance before 28 March 2011 in respect of whom capability for work is determined on or after that date in accordance with regulation 19(1) of the ESA Regulations;
- (c) subject to paragraphs (2) to (5), a person who is entitled to employment and support allowance in respect of whom capability for work is determined afresh on or after 28 March 2011 in accordance with regulation 19(7) of the ESA Regulations;
- (d) subject to paragraphs (2) to (5), a notified person as defined by regulation 4 of the Reassessment Regulations ⁽²⁹⁾ in respect of whom capability for work is determined on or after 28 March 2011 in accordance with regulation 19(1) of the ESA Regulations⁽³⁰⁾.

(2) In the circumstances mentioned in paragraph (3), regulations 3(2) and (3) and 4(1) do not apply to a person for the purposes of-

- (a) an examination under regulation 23 of the ESA Regulations; or
- (b) a subsequent determination of capability for work under regulation 19(1) or (7) of those Regulations.

(3) The circumstances are where, in connection with that examination or determination, a questionnaire relating to the previous version of Schedule 2 to the ESA Regulations was issued to a person in accordance with regulation 21(1)(b) of those Regulations (information required for determining capability for work).

(4) In the circumstances mentioned in paragraph (5), regulations 3(4) and 4(2) do not apply to a person for the purposes of-

- (a) an examination under regulation 38 of the ESA Regulations; or
- (b) a subsequent determination of capability for work-related activity under regulation 34(1) or (4) of those Regulations.

(5) The circumstances are where, in connection with that examination or determination, a questionnaire relating to the previous version of Schedule 3 to the ESA Regulations was issued to a person in accordance with regulation 36(1)(a) of those Regulations (information required for determining capability for work-related activity).

(6) In this regulation “the previous version of Schedule 2 to the ESA Regulations” and “the previous version of Schedule 3 to the ESA Regulations” means those Schedules as they have effect immediately before the date these Regulations come into force.

(7) The provisions of paragraphs (2) to (6) do not apply to any examination carried out, or determination made, on or after 28 September 2011.

Amendment of the ESA Regulations

3.—(3) The ESA Regulations are amended as follows.

(1) In regulation 20 (certain claimants to be treated as having limited capability for work):-

- (a) at the end of sub-paragraph (b)(i), after “chemotherapy”, insert “, or is likely to receive such treatment within 6 months of the date of the determination of capability for work”; and
- (b) after paragraph (f) insert –
 - “(g) the claimant meets any of the descriptors at paragraph 15 or 16 of Schedule 3.”.

⁽²⁹⁾ Regulation 4 of the Migration Regulations defines a notified person as a person to whom a notice is issued. A notice commences the conversion phase under the Migration Regulations for persons who are entitled to an existing award. An existing award is an award of incapacity benefit, severe disablement allowance, or income support on the grounds of incapacity (see paragraph 11 of Schedule 4 to the Welfare Reform Act 2007 (2007 c.5)).

⁽³⁰⁾ Regulation 19(1) is applied by virtue of section 6 of the Reassessment Regulations (for pre-conversion purposes) and section 16 of those regulations (for post conversion purposes).

(2) In regulation 25 (hospital in-patients), after paragraph (1) insert -

“(1A) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending a residential programme of rehabilitation for the treatment of drug or alcohol addiction.”.

(3) In regulation 35(1) (certain claimants to be treated as having limited capability for work-related activity) at the end of sub-paragraph (b)(i), after “chemotherapy”, insert “, or is likely to receive such treatment within 6 months of the date of the determination of capability for work-related activity”.

Substitution of Schedules 2 and 3 to the ESA Regulations

4.—(4) For the provisions in Schedule 2 to the ESA Regulations (assessment of whether a claimant has limited capability for work) substitute the provisions in Schedule 1.

(1) For the provisions in Schedule 3 to the ESA Regulations (assessment of whether a claimant has limited capability for work-related activity) substitute the provisions in Schedule 2.

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

Date

Name
Minister of State for Work and Pensions
Department for Work and Pensions

SCHEDULE 1

“SCHEDULE 2 Regulation 19(2) and (3)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

Part 1

Physical disabilities

<i>(1)Activity</i>		<i>(2) Descriptors</i>	<i>(3)Points</i>
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	1	(a) Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
		(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9

		(c)	Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
		(d)	Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
		(e)	None of the above apply.	0
2. Standing and sitting.	2	(a)	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
		(b)	Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
		(c)	Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
		(d)	None of the above apply	0
3. Reaching.	3	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
		(b)	Cannot raise either arm to top of head as if to put on a hat.	9
		(c)	Cannot raise either arm above head height as if to reach for something.	6
		(d)	None of the above apply.	0
4. Picking up and moving or transferring by the use of the upper body and arms.		(a)	Cannot pick up and move a 0.5 litre carton full of liquid.	15
		(b)	Cannot pick up and move a one litre carton full of liquid.	9
		(c)	Cannot transfer a light but bulky object such as an empty cardboard box.	6

		(d)	None of the above apply.	0
5. Manual dexterity.	5	(a)	Cannot either: (i) press a button, such as a telephone keypad; or (ii) turn the pages of a book with either hand.	15
		(b)	Cannot pick up a £1 coin or equivalent with either hand.	15
		(c)	Cannot use a pen or pencil to make a meaningful mark.	9
		(d)	Cannot use a suitable keyboard or mouse.	9
		(e)	None of the above apply.	0
6. Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.	6	(a)	Cannot convey a simple message, such as the presence of a hazard.	15
		(b)	Has significant difficulty conveying a simple message to strangers.	15
		(c)	Has some difficulty conveying a simple message to strangers.	6
		(d)	None of the above apply.	0
7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person.	7	(a)	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
		(b)	Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
		(c)	Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
		(d)	None of the above apply.	0
8. Navigation and maintaining safety, using a guide dog or other aid if normally used.	8	(a)	Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
		(b)	Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
		(c)	Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
		(d)	None of the above apply.	0
9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-	9	(a)	At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change	15

wetting) despite the presence of any aids or adaptations normally used.

in clothing.

		(b)	At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
		(c)	None of the above apply.	0
10. Consciousness during waking moments.	10	(a)	At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
		(b)	At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
		(c)	None of the above apply.	0.

Part 2

Mental, cognitive and intellectual function assessment

11. Learning tasks.	11	(a)	Cannot learn how to complete a simple task, such as setting an alarm clock.	15
		(b)	Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
		(c)	Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
		(d)	None of the above apply.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	12	(a)	Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.	15
		(b)	Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that they frequently require supervision to maintain safety.	9
		(c)	Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions	6

			such that they occasionally require supervision to maintain safety.	
		(d)	None of the above apply.	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	13	(a)	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
		(b)	Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9
		(c)	Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
		(d)	None of the above apply.	0
14. Coping with change.	14	(a)	Cannot cope with any change to the extent that day to day life cannot be managed.	15
		(b)	Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
		(c)	Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
		(d)	None of the above apply.	0
15. Getting about.	15	(a)	Cannot get to any specified place with which the claimant is familiar.	15
		(b)	Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
		(c)	Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
		(d)	None of the above apply.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	16	(a)	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
		(b)	Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.	9
		(c)	Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	6
		(d)	None of the above apply.	0
17. Appropriateness of behaviour with other people, due to cognitive	17	(a)	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15

impairment or mental disorder.	(b)	Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c)	Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d)	None of the above apply.	0.”

SCHEDULE 2

“SCHEDULE 3

Regulation 34(1)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK RELATED ACTIVITY

Activity

1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.
2. Transferring from one seated position to another.
3. Reaching.
4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).
5. Manual dexterity.
6. Making self understood through speaking, writing, typing, or other means normally used.
7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.

Descriptors

- Cannot either:
- (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion;
 - or
 - (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.
- Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.
- Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
- Cannot pick up and move a 0.5 litre carton full of liquid.
- Cannot either:
- (a) press a button, such as a telephone keypad; or
 - (b) turn the pages of a book with either hand.
- Cannot convey a simple message, such as the presence of a hazard.
- Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used.
- At least once a week experiences:
 (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or
 (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.
9. Learning tasks.
- Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.
10. Awareness of hazard.
- Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:
 (a) injury to self or others; or
 (b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.
11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).
- Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.
12. Coping with change.
- Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.
13. Coping with social engagement, due to cognitive impairment or mental disorder.
- Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.
14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.
- Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
15. Conveying food or drink to the mouth.
- (a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
 (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
 (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
 (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:
 (i) physical assistance from someone else; or
 (ii) regular prompting given by someone else in the claimant's

- presence.
16. Chewing or swallowing food or drink.
- (a) Cannot chew or swallow food or drink;
 - (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
 - (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or
 - (d) Owing to a severe disorder of mood or behaviour, fails to:
 - (i) chew or swallow food or drink; or
 - (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance Regulations 2008 relating to the work capability assessment. These Regulations substitute the descriptors and criteria applied to determine capability for work, and for work-related activity, and amend provisions which allow a person to be treated as having limited capability for work, or for work-related activity, without an assessment in certain circumstances.

Regulation 2 sets out who the Regulations apply to. It provides that they apply to all persons who claim ESA, or are notified under the migration process (from incapacity benefit, severe disablement allowance or income support on grounds of incapacity), after the date these Regulations come into force. The Regulations also apply to persons who claim before that date but have not yet had their capability for work assessed, and those who are re-assessed after that date, except where, in either case, the person was sent a questionnaire (as to their capability for work or for work-related activity) based on the un-amended provisions before that date. This is subject to a six month limit after which all assessments will be made under the amended provisions (regulation 2 (6)).

Regulation 3 amends the provisions in Regulations 20 (certain claimants to be treated as having limited capability for work), 25 (hospital in-patients) and 35 (certain claimants to be treated as having limited capability for work-related activity). Paragraph (2) adds persons who are likely to receive chemotherapy treatment within 6 months of the date of the determination of capability for work and those who meet the eating and drinking descriptors in paragraphs 15 and 16 of Schedule 3 to those who are to be treated as having limited capability for work. Paragraph (3) makes clear that a person who attends residential rehabilitation for treating drug or alcohol addiction is regarded as receiving treatment within the terms of regulation 25. Paragraph (4) similarly adds persons likely to receive chemotherapy treatment within 6 months of their determination of capability for work-related activity to those who are to be treated as having limited capability for work-related activity.

Regulation 4 substitutes Schedule 2 and 3 which, respectively, set out the criteria for the assessment of whether a person has limited capability for work or for work-related activity.

Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-related Activity) Amendment Regulations 2011.

Keeling Schedule

These regulations amend the Work Capability Assessment used to decide entitlement to Employment and Support Allowance.

Regulation 2 of these regulations clarifies to whom the Amendment regulations apply.

Regulation 3 of these regulations amends the provisions about which claimants may be treated as having limited capability for work without the need for a face to face assessment, specifically:

- People likely to receive certain types of chemotherapy within the next 6 months (the regulations also clarify that these people will also be treated as having limited capability for work-related activity);
- People with severe difficulties eating and drinking or chewing and swallowing; and
- People attending residential rehabilitation for treatment of drug or alcohol addiction.

Regulation 4 substitutes new sets of activities and descriptors for those in Schedules 2 and 3 of the Employment and Support Allowance Regulations 2008. These will be used to determine whether a person has Limited Capability for Work and Limited Capability for Work Related Activity.

The order of some of the activities has changed for different reasons. Some descriptors have been removed, others amalgamated, some new activities have been added and others placed in a different order so that Schedules 2 and 3 of the ESA regulations 2008 are more consistent where possible.

Social Security

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

Keeling Schedule

Reg	Existing Regulations: Employment and Support Allowance Regulations 2008 – (words to be amended highlighted in blue)	Proposed Amendment to: Employment and Support Allowance Regulations 2008 – (highlighted in blue)
2.	Employment and Support Allowance Regulations [No existing regulation]	<p>Insertion of an ‘Application’ regulation to the amendment regulations. Clarifying to whom the amending regulations apply.</p> <p>Application</p> <p>2. ---(1) These Regulations apply to :-</p> <p style="padding-left: 40px;">(a) a person who makes a claim for employment and support allowance on or after [28 March 2011] (including a claim in respect of any period before that date);</p> <p style="padding-left: 40px;">(b) subject to paragraphs (2) to (5), a person who made a claim for employment and support allowance before [28 March 2011] in respect of whom capability for work is determined on or after that date in accordance with regulation 19(1) of the ESA Regulations;</p> <p style="padding-left: 40px;">(c) subject to paragraphs (2) to (5), a person who is entitled to employment and support allowance in respect of whom capability for work is determined afresh on or after [28 March</p>

RESTRICTED

		<p>2011] in accordance with regulation 19(7) of the ESA Regulations;</p> <p>(d) a person who becomes a notified person as defined by regulation 4 of the Migration Regulations on or after [28 March 2011]⁽³¹⁾.</p> <p>(2) In the circumstances mentioned in paragraph (3), regulations 3(2) and (3) and 4(1) do not apply to a person for the purposes of-</p> <p>(a) an examination under regulation 23 of the ESA regulations</p> <p>(b) a subsequent determination of capability for work under regulation 19(1) or (7) of those Regulations.</p> <p>(3) The circumstances are where, before 28 March 2011, in connection with that examination or determination, a questionnaire relating to the activities referred to in Schedule 2 to the ESA Regulations was sent [or given?] to a person in accordance with regulation 21(1)(b) of those Regulations (information required for the determination of capability for work).</p> <p>(4) In the circumstances mentioned in paragraph (5), regulations 3(4) and 4(2) do not apply to a person for the purposes of-</p> <p>(a) an examination under regulation 38 of the ESA Regulations; or</p> <p>(b) a subsequent determination of capability for work-related activity under regulation 34(1) or (4) of those Regulations.</p> <p>(5) The circumstances are where before 28 March 2011, in connection with that determination or examination a questionnaire relating to the descriptors set out in Schedule 3 to the ESA</p>
--	--	--

RESTRICTED

		<p>Regulations has been sent [or given?] to a person in accordance with regulation 36(1)(a) of those Regulations (information required for the determination of capability for work-related activity). (6) The provisions of paragraphs (2) to (5) shall not apply to any examination carried out, or determination made, on or after 28 September 2011.</p>
<p>3.</p>	<p>Regulation 20 – Certain Claimants to be treated as having limited capability for work</p> <p>20 (b) the claimant is to be treated as having limited capability for work if – (b) the claimant is (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or</p> <p>[No existing regulation - New insertion]</p> <p>(ii) recovering from that treatment and the secretary of State is satisfied the claimant should be treated as having limited capability for work:</p>	<p>Regulation 20 – Certain Claimants to be treated as having limited capability for work</p> <p>20 (b) the claimant is to be treated as having limited capability for work if – (b) the claimant is (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or</p> <p>(ia) likely to receive such treatment within 6 months of the date of the determination of capability for work; or</p> <p>(ii) recovering from that treatment and the secretary of State is satisfied the claimant should be treated as having limited capability for work:</p>
<p>3.</p>	<p>Regulation 20 – Certain Claimants to be treated as having limited capability for work.</p> <p>20. A claimant is to be treated as having limited capability for work if - [No existing regulation (g) – New insertion]</p>	<p>Regulation 20 – Certain Claimants to be treated as having limited capability for work.</p> <p>20. A claimant is to be treated as having limited capability for work if – (g) the claimant meets either of the descriptors at paragraph 15 or 16 of schedule 3.</p>

RESTRICTED

<p>3.</p>	<p>Regulation 25 – Hospital In-patients</p> <p>25.- (1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or which is a day of recovery from that treatment.</p> <p>[No existing regulation - New insertion]</p> <p>(2) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as an in-patient in a hospital or equivalent under paragraph (1) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.</p>	<p>Regulation 25 – Hospital In-patients</p> <p>25.- (1) A claimant is to be treated as having limited capability for work on any day on which that claimant is undergoing medical or other treatment as an in-patient in a hospital or similar institution, or which is a day of recovery from that treatment.</p> <p>(1A) The circumstances in which a claimant is to be regarded as undergoing treatment falling within paragraph (1) include where the claimant is attending residential rehabilitation for the treatment of drug or alcohol addiction.</p> <p>(2) For the purposes of this regulation, “day of recovery” means a day on which a claimant is recovering from treatment as an in-patient in a hospital or equivalent under paragraph (1) and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work on that day.</p>
<p>3.</p>	<p>Regulation 35 – Certain Claimants to be treated as having limited capability for work-related activity</p> <p>35-(1) A claimant is to be treated as having limited</p>	<p>Regulation 35 – Certain Claimants to be treated as having limited capability for work-related activity</p> <p>35-(1) A claimant is to be treated as having limited capability</p>

RESTRICTED

	<p>capability for work-related activity if –</p> <p>(b) the claimant is –</p> <p style="padding-left: 20px;">(i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or</p> <p style="padding-left: 20px;">(ii) recovering from that treatment and the secretary of State is satisfied the claimant should be treated as having limited capability for work:</p>	<p>for work-related activity if –</p> <p>(b) the claimant is –</p> <p style="padding-left: 20px;">(i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy, or is likely to receive such treatment within 6 months of the date of the determination of capability for work-related activity, or</p> <p style="padding-left: 20px;">(ii) recovering from that treatment and the secretary of State is satisfied the claimant should be treated as having limited capability for work:</p>																									
4	<p>Existing Schedule 2 to the ESA regulations 2008</p> <p>Activity 1</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 15%; text-align: center;"><i>(1)</i> Activity</th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 65%; text-align: center;"><i>(2)</i> Descriptors</th> <th style="width: 10%; text-align: center;"><i>(3)</i> Points</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Walking with a walking stick or other aid if such aid is normally used.</td> <td style="text-align: center; vertical-align: top;">1</td> <td style="text-align: center; vertical-align: top;">(a)</td> <td style="padding: 5px;">Cannot walk at all</td> <td style="text-align: center; vertical-align: top;">15</td> </tr> </tbody> </table>	<i>(1)</i> Activity			<i>(2)</i> Descriptors	<i>(3)</i> Points	Walking with a walking stick or other aid if such aid is normally used.	1	(a)	Cannot walk at all	15	<p>Proposed Amendment to:</p> <p>Schedule 2 to the ESA regulations 2008</p> <p>Activity 1</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 15%; text-align: center;"><i>(1)</i> Activity</th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 65%; text-align: center;"><i>(2)</i> Descriptors</th> <th style="width: 10%; text-align: center;"><i>(3)</i> Points</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.</td> <td style="text-align: center; vertical-align: top;">1</td> <td style="text-align: center; vertical-align: top;">(a)</td> <td style="padding: 5px;">Cannot either (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion.</td> <td style="text-align: center; vertical-align: top;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center; vertical-align: top;">(b)</td> <td style="padding: 5px;">Cannot mount or descend two steps unaided by another person even with</td> <td style="text-align: center; vertical-align: top;">9</td> </tr> </tbody> </table>	<i>(1)</i> Activity			<i>(2)</i> Descriptors	<i>(3)</i> Points	Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	1	(a)	Cannot either (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion.	15			(b)	Cannot mount or descend two steps unaided by another person even with	9
<i>(1)</i> Activity			<i>(2)</i> Descriptors	<i>(3)</i> Points																							
Walking with a walking stick or other aid if such aid is normally used.	1	(a)	Cannot walk at all	15																							
<i>(1)</i> Activity			<i>(2)</i> Descriptors	<i>(3)</i> Points																							
Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	1	(a)	Cannot either (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion.	15																							
		(b)	Cannot mount or descend two steps unaided by another person even with	9																							

RESTRICTED

		(b)	Cannot walk more than 50 metres on level ground without repeatedly stopping or severe discomfort.	15			the support of a handrail.	
		(c)	Cannot walk up or down two steps even with the support of a handrail.	15		(c)	Cannot either (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) repeatedly mobilise 100 meters within a reasonable timescale because of significant discomfort or exhaustion.	9
		(d)	Cannot walk more than 100 metres on level ground without stopping or severe discomfort.	9		(d)	Cannot either (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) repeatedly mobilise 200 meters within a reasonable timescale because of significant discomfort or exhaustion.	6
		(e)	Cannot walk more than 200 metres on level	6		(e)	None of the above apply.	0

RESTRICTED

			ground without stopping or severe discomfort.		
		(f)	None of the above apply.	0	

Existing Schedule 2 to the ESA regulations 2008 Activity 2					Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Activity 2				
(1) Activity		(2) Descriptors		(3) Points	(1) Activity		(2) Descriptors		(3) Points
Standing and sitting	2	(a)	Cannot stand for more than 10 minutes, unassisted by another person, even if free to move around, before needing to sit down.	15	Standing and sitting	2	(a)	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15

RESTRICTED

		(b)	Cannot sit in a chair with a high back and no arms for more than 10 minutes before needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	15			(b)	Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around) or; (ii) sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9	
		(c)	Cannot rise to standing from sitting in an upright chair without physical assistance from another person.	15			(c)	Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around) or; (ii) sitting (even in an adjustable chair) for more than an hour, before needing to move away in order to avoid significant discomfort or exhaustion.	6	
		(d)	Cannot move between one seated position and another seated position located next to one another	15			(d)	None of the above apply.	0	

RESTRICTED

			without receiving physical assistance from another person.														
		(e)	Cannot stand for more than 30 minutes, even if free to move around, before needing to sit down.	6													
		(f)	Cannot sit in a chair with a high back and no arms for more than 30 minutes without needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting.	6													
		(g)	None of the above apply.	0													
<p>Existing Schedule 2 to the ESA regulations 2008</p> <p>Activity 3</p> <table border="1"> <thead> <tr> <th>(1) Activity</th> <th></th> <th>(2) Descriptors</th> <th>(3) Points</th> </tr> </thead> <tbody> <tr> <td>Bending</td> <td>3</td> <td>(a) Cannot bend to touch knees</td> <td>15</td> </tr> </tbody> </table>					(1) Activity		(2) Descriptors	(3) Points	Bending	3	(a) Cannot bend to touch knees	15	<p>Proposed Amendment to:</p> <p>Schedule 2 to the ESA regulations 2008</p> <p>Activity 3</p> <p>Activity and descriptors removed.</p>				
(1) Activity		(2) Descriptors	(3) Points														
Bending	3	(a) Cannot bend to touch knees	15														

RESTRICTED

	or kneeling.		and straighten up again.						
		(b)	Cannot bend, kneel or squat, as if to pick up a light object, such as a piece of paper, situated 15cm from the floor on a low shelf, and to move it and straighten up again without the help of another person.	9					
		(c)	Cannot bend, kneel or squat, as if to pick a light object off the floor and straighten up again without the help of another person.	6					
		(d)	None of the above apply.	0					
Existing Schedule 2 to the ESA regulations 2008 Activity 4					Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 3				
	(1)		(2)	(3)		(1)		(2)	(3)

RESTRICTED

<i>Activity</i>		<i>Descriptors</i>		<i>Points</i>	<i>Activity</i>		<i>Descriptors</i>		<i>Points</i>
Reaching	4	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15	Reaching	3	(a)	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
		(b)	Cannot put either arm behind back as if to put on a coat or jacket.	15			(b)	Cannot raise either arm to top of head as if to put on a hat.	9
		(c)	Cannot raise either arm to top of head as if to put on a hat.	9			(c)	Cannot raise either arm above head height as if to reach for something.	6
		(d)	Cannot raise either arm above head height as if to reach for something.	6			(d)	None of the above apply.	0
		(e)	None of the above apply.	0					
Existing Schedule 2 to the ESA regulations 2008					Proposed Amendment to:				

RESTRICTED

Activity 5				Schedule 2 to the ESA regulations 2008 Now Activity 4					
<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>	<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>
Picking up and moving or transferring by the use of the upper body and arms (excluding all other activities specified in Part 1 of this schedule).	5	(a)	Cannot pick up and move a 0.5 litre carton full of liquid with either hand.	15	Picking up and moving or transferring by the use of the upper body and arms.	4	(a)	Cannot pick up and move a 0.5 litre carton full of liquid.	15
		(b)	Cannot pick up and move a one litre carton full of liquid with either hand.	9			(b)	Cannot pick up and move a one litre carton full of liquid.	9
		(c)	Cannot pick up and move a light but bulky object such as an empty cardboard box, requiring the use of both hands together.	6			(c)	Cannot transfer a light but bulky object such as an empty cardboard box.	6
		(d)	None of the above apply.	0			(d)	None of the above apply.	0

RESTRICTED

**Existing Schedule 2 to the ESA regulations 2008
Activity 6**

(1) Activity		(2) Descriptors	(3) Points
Manual Dexterity	6	(a) Cannot turn a star headed sink tap with either hand.	15
		(b) Cannot pick up a £1 coin or equivalent with either hand.	15
		(c) Cannot turn the pages of a book with either hand	15
		(d) Cannot physically use a pen or pencil.	9
		(e) Cannot physically use a conventional keyboard or mouse.	9
		(f) Cannot do up/undo	9

**Proposed Amendment to:
Schedule 2 to the ESA regulations 2008
Now Activity 5**

(1) Activity		(2) Descriptors	(3) Points
Manual Dexterity	5	(a) Cannot either: (i) Press a button, such as a telephone keypad or; (ii) Turn the pages of a book with either hand.	15
		(b) Cannot pick up a £1 coin or equivalent with either hand.	15
		(c) Cannot use a pen or pencil to make a meaningful mark.	9
		(d) Cannot use a suitable keyboard or mouse.	9
		(e) None of the above apply.	0

RESTRICTED

			small buttons, such as shirt or blouse buttons.							
		(g)	Cannot turn a "star headed" sink tap with one hand but can with the other.	6						
		(h)	Cannot pick up a £1 coin or equivalent with one hand but can with the other.	6						
		(i)	Cannot pour from an open 0.5 litre carton full of liquid.							

RESTRICTED

<p>Existing Schedule 2 to the ESA regulations 2008 Activity 7</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%; text-align: center;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th style="width: 10%;"></th> <th style="width: 55%; text-align: center;"><i>(2) Descriptors</i></th> <th style="width: 15%; text-align: center;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Speech</td> <td style="text-align: center;">7</td> <td style="text-align: center;">(a)</td> <td>Cannot speak at all.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(b)</td> <td>Speech cannot be understood by strangers.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(c)</td> <td>Strangers have great difficulty understanding speech.</td> <td style="text-align: center;">9</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(d)</td> <td>Strangers have some</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>	<i>(1) Activity</i>			<i>(2) Descriptors</i>	<i>(3) Points</i>	Speech	7	(a)	Cannot speak at all.	15			(b)	Speech cannot be understood by strangers.	15			(c)	Strangers have great difficulty understanding speech.	9			(d)	Strangers have some	6	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 6</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%; text-align: center;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th style="width: 10%;"></th> <th style="width: 55%; text-align: center;"><i>(2) Descriptors</i></th> <th style="width: 15%; text-align: center;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">Making self understood through speaking, writing, typing, or other means normally used; unaided by another person.</td> <td style="text-align: center;">6</td> <td style="text-align: center;">(a)</td> <td>Cannot convey a simple message, such as the presence of a hazard.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(b)</td> <td>Has significant difficulty conveying a simple message to strangers.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(c)</td> <td>Has some difficulty conveying a simple message to strangers.</td> <td style="text-align: center;">6</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(d)</td> <td>None of the above apply.</td> <td style="text-align: center;">0</td> </tr> </tbody> </table>	<i>(1) Activity</i>			<i>(2) Descriptors</i>	<i>(3) Points</i>	Making self understood through speaking, writing, typing, or other means normally used; unaided by another person.	6	(a)	Cannot convey a simple message, such as the presence of a hazard.	15			(b)	Has significant difficulty conveying a simple message to strangers.	15			(c)	Has some difficulty conveying a simple message to strangers.	6			(d)	None of the above apply.	0
<i>(1) Activity</i>			<i>(2) Descriptors</i>	<i>(3) Points</i>																																															
Speech	7	(a)	Cannot speak at all.	15																																															
		(b)	Speech cannot be understood by strangers.	15																																															
		(c)	Strangers have great difficulty understanding speech.	9																																															
		(d)	Strangers have some	6																																															
<i>(1) Activity</i>			<i>(2) Descriptors</i>	<i>(3) Points</i>																																															
Making self understood through speaking, writing, typing, or other means normally used; unaided by another person.	6	(a)	Cannot convey a simple message, such as the presence of a hazard.	15																																															
		(b)	Has significant difficulty conveying a simple message to strangers.	15																																															
		(c)	Has some difficulty conveying a simple message to strangers.	6																																															
		(d)	None of the above apply.	0																																															

RESTRICTED

			difficulty understanding speech.																																
		(e)	None of the above apply.	0																															
<p>Existing Schedule 2 to the ESA regulations 2008 Activity 8</p> <table border="1"> <thead> <tr> <th>(1) Activity</th> <th></th> <th colspan="2">(2) Descriptors</th> <th>(3) Points</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Hearing with a hearing aid or other aid if normally worn.</td> <td rowspan="2">8</td> <td>(a)</td> <td>Cannot hear at all.</td> <td>15</td> </tr> <tr> <td>(b)</td> <td>Cannot hear well enough to</td> <td>15</td> </tr> </tbody> </table>					(1) Activity		(2) Descriptors		(3) Points	Hearing with a hearing aid or other aid if normally worn.	8	(a)	Cannot hear at all.	15	(b)	Cannot hear well enough to	15	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 7</p> <table border="1"> <thead> <tr> <th>(1) Activity</th> <th></th> <th colspan="2">(2) Descriptors</th> <th>(3) Points</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid if reasonably used; unaided by another person.</td> <td rowspan="2">7</td> <td>(a)</td> <td>Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</td> <td>15</td> </tr> <tr> <td>(b)</td> <td>Has significant difficulty</td> <td>15</td> </tr> </tbody> </table>					(1) Activity		(2) Descriptors		(3) Points	Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid if reasonably used; unaided by another person.	7	(a)	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15	(b)	Has significant difficulty	15
(1) Activity		(2) Descriptors		(3) Points																															
Hearing with a hearing aid or other aid if normally worn.	8	(a)	Cannot hear at all.	15																															
		(b)	Cannot hear well enough to	15																															
(1) Activity		(2) Descriptors		(3) Points																															
Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid if reasonably used; unaided by another person.	7	(a)	Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15																															
		(b)	Has significant difficulty	15																															

RESTRICTED

			be able to hear someone talking in a loud voice in a quiet room, sufficiently clearly to distinguish the words being spoken.					understanding a simple message from a stranger due to sensory impairment.	
		(c)	Cannot hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish the words being spoken.	9			(c)	Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
		(d)	Cannot hear someone talking in a loud voice in a busy street, sufficiently clearly to distinguish the words being spoken.	6			(d)	None of the above apply.	0
		(e)	None of the above apply.	0					

RESTRICTED

Existing Schedule 2 to the ESA regulations 2008 Activity 9				Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 8					
<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>	<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>
Vision including visual acuity and visual fields, in normal daylight or bright electric	9	(a)	Cannot see at all.	15	Navigation and maintaining safety, using a guide dog or other aid if normally used.	8	(a)	Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15

RESTRICTED

light, with glasses or other aid to vision if such aid is normally worn.									
		(b)	Cannot see well enough to read 16 point print at a distance of greater than 20cm.	15		(b)	Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15	
		(c)	Has 50% or greater reduction of visual fields.	15		(c)	Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.		
		(d)	Cannot see well enough to recognise a friend at a distance of a least 5 metres.	9		(d)	None of the above apply.	0	
		(e)	Has 25% or more but less than 50% reduction of visual fields.	6					
		(f)	Cannot see well enough to recognise a friend at a distance of at least 15 metres.	6					
		(g)	None of the above apply.	0					

RESTRICTED

	<p>Existing Schedule 2 to the ESA regulations 2008 Activity 10 (a)</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 15%;"><i>(2) Descriptors</i></th> <th style="width: 60%;"></th> <th style="width: 5%;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td>Continence other than enuresis</td> <td>10</td> <td>(a)</td> <td>(i)</td> <td>Has no voluntary control over the evacuation of the</td> <td>15</td> </tr> </tbody> </table>	<i>(1) Activity</i>			<i>(2) Descriptors</i>		<i>(3) Points</i>	Continence other than enuresis	10	(a)	(i)	Has no voluntary control over the evacuation of the	15	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 9</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 15%;"><i>(2) Descriptors</i></th> <th style="width: 60%;"></th> <th style="width: 5%;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td>Absence or loss of control</td> <td>9</td> <td>(a)</td> <td></td> <td>At least once a month experiences</td> <td>15</td> </tr> </tbody> </table>	<i>(1) Activity</i>			<i>(2) Descriptors</i>		<i>(3) Points</i>	Absence or loss of control	9	(a)		At least once a month experiences	15
<i>(1) Activity</i>			<i>(2) Descriptors</i>		<i>(3) Points</i>																					
Continence other than enuresis	10	(a)	(i)	Has no voluntary control over the evacuation of the	15																					
<i>(1) Activity</i>			<i>(2) Descriptors</i>		<i>(3) Points</i>																					
Absence or loss of control	9	(a)		At least once a month experiences	15																					

RESTRICTED

	(bed wetting) where the claimant does not have an artificial stoma or urinary collecting device.			bowel.		leading to extensive evacuation of the bowel and/or bladder, despite the presence of any aids or adaptations normally used.			(i) Loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) Substantial leakage of the contents of a collecting device; sufficient to require the individual to clean themselves and change clothing.		
			(a)	(ii)	Has no voluntary control over the voiding of the bladder.		15		(b)	At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change of clothing, if not able to reach a toilet quickly.	6
			(a)	(iii)	At least once a month loses control of bowels so that the claimant cannot control the full evacuation of the bowel.		15		(c)	None of the above apply.	0
			(a)	(iv)	At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the		15				

RESTRICTED

				bladder.							
		(a)	(v)	Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel.	9						
		(a)	(vi)	At least once a month loses control of bladder so that the claimant cannot control the full voiding of the bladder.	6						
		(a)	(vii)	Risks losing control of bowels or bladder so that the claimant cannot control the full evacuation of the bowel or the full voiding of the bladder if not able to reach a toilet quickly.	6						
		(a)	(viii)	None of the above apply.	0						
Existing Schedule 2 to the ESA regulations 2008 Activity 10 (b)						Proposed Amendment to: Schedule 2 to the ESA regulations 2008					

RESTRICTED

<i>(1) Activity</i>				<i>(2) Descriptors</i>	<i>(3) Points</i>
Continence where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.	10	(b)	(i)	Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person.	15
		(b)	(ii)	Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents.	15
		(b)	(iii)	Has no voluntary control over the evacuation of the bowel.	15
		(b)	(iv)	At least once a month, loses control of bowels so that	15

Activity and descriptors amalgamated into new activity 9.

RESTRICTED

				the claimant cannot control the full evacuation of the bowel.		
		(b)	(v)	Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel.	9	
		(b)	(vi)	Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel.	6	
		(b)	(vii)	None of the above apply.	0	

RESTRICTED

Existing Schedule 2 to the ESA regulations 2008 Activity 10 (c)					Proposed Amendment to: Schedule 2 to the ESA regulations 2008					
					Activity and descriptors amalgamated into new activity 9.					
<i>(1) Activity</i>			<i>(2) Descriptors</i>		<i>(3) Points</i>					
Continence other than enuresis (bed wetting) where the claimant has an artificial stoma.	10	(c)	(i)	Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person.	15					
		(c)	(ii)	Is unable to affix remove or empty stoma appliance without causing leakage of contents.	15					
		(c)	(iii)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of bladder so that the claimant cannot	15					

RESTRICTED

				control the full voiding of the bladder.	
		(c)	(iv)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at last once a month, loses control of bladder so that the claimant cannot control the full voiding of the bladder.	9
		(c)	(v)	Where the claimant's artificial stoma relates solely to the evacuation of the bowel, risks losing control of the bladder so that the claimant cannot control the full voiding of the bladder if not able to reach a toilet quickly.	6
		(c)	(vi)	None of the above apply.	0

RESTRICTED

	<p>Existing Schedule 2 to the ESA regulations 2008 Activity 11</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th colspan="2" style="width: 40%;"><i>(2) Descriptors</i></th> <th style="width: 10%;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td>Remaining conscious during waking moments.</td> <td style="text-align: center;">11</td> <td style="text-align: center;">(a)</td> <td>At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(b)</td> <td>At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.</td> <td style="text-align: center;">9</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(c)</td> <td>At least twice in the six months immediately preceding the assessment,</td> <td style="text-align: center;">6</td> </tr> </tbody> </table>	<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>	Remaining conscious during waking moments.	11	(a)	At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	15			(b)	At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	9			(c)	At least twice in the six months immediately preceding the assessment,	6	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 10</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>(1) Activity</i></th> <th style="width: 5%;"></th> <th colspan="2" style="width: 40%;"><i>(2) Descriptors</i></th> <th style="width: 10%;"><i>(3) Points</i></th> </tr> </thead> <tbody> <tr> <td>Consciousness during waking moments.</td> <td style="text-align: center;">10</td> <td style="text-align: center;">(a)</td> <td>At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.</td> <td style="text-align: center;">15</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(b)</td> <td>At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.</td> <td style="text-align: center;">6</td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">(c)</td> <td>None of the above apply.</td> <td style="text-align: center;">0</td> </tr> </tbody> </table>	<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>	Consciousness during waking moments.	10	(a)	At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	15			(b)	At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	6			(c)	None of the above apply.	0
<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>																																						
Remaining conscious during waking moments.	11	(a)	At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	15																																						
		(b)	At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	9																																						
		(c)	At least twice in the six months immediately preceding the assessment,	6																																						
<i>(1) Activity</i>		<i>(2) Descriptors</i>		<i>(3) Points</i>																																						
Consciousness during waking moments.	10	(a)	At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	15																																						
		(b)	At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.	6																																						
		(c)	None of the above apply.	0																																						

RESTRICTED

			has had an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration.							
		(d)	None of the above apply.	0						
Existing Schedule 2 to the ESA regulations 2008 Activity 12					Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 11					
	<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>		<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>	
	Learning or comprehension in the completion of tasks.	1 2	(a) Cannot learn or understand how to successfully complete a simple task, such as setting an alarm clock, at all.	15		Learning tasks.	11	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15	
			(b) Needs to witness a demonstration, given more than once on the same occasion, of how to carry out a simple task before the claimant is able to learn or	15				(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9	

RESTRICTED

			understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it.					
		(c)	Needs to witness a demonstration of how to carry out a simple task, before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person.	9		(c)	Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
		(d)	Needs to witness a demonstration of how to carry out a moderately complex task, such as the steps involved in operating a washing machine to correctly clean clothes, before the claimant is able to learn	9		(d)	None of the above apply.	0

RESTRICTED

			or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person.						
		(e)	Needs verbal instructions as to how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable, within a period of less than one week, to successfully complete the task the following day without receiving a verbal prompt from another person.	6					
		(f)	None of the above apply.	0					

RESTRICTED

**Existing Schedule 2 to the ESA regulations 2008
Activity 13**

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
---------------------	----------------------------	-----------------------

**Proposed Amendment to:
Schedule 2 to the ESA regulations 2008
Now Activity 12**

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
Awareness of everyday hazards (such as boiling water or sharp	12 (a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions, such that they require supervision	15

RESTRICTED

	Awareness of hazard	13	(a)	Reduced awareness of the risks of everyday hazards (such as boiling water or sharp objects) would lead to daily instances of or to near avoidance of: (i) injury to self or others; or (ii) significant damage to property or possessions to such an extent that overall day to day life cannot be successfully managed.	15				for the majority of the time to maintain safety.	
			(b)	Reduced awareness of everyday hazards leads to a significant risk of (i) Injury to self or others; or (ii) Damage to property or possessions, Such that they frequently require supervision to maintain safety.	9					9
				(b)	Reduced awareness of the risks of everyday hazards would lead for the majority of the time to daily instances of or to near avoidance of: (i) injury to self or others; or (ii) significant damage to property or possessions to such an extent that overall day to day life	9				

RESTRICTED

			cannot be successfully managed without supervision from another person.					(i) Injury to self or others; or (ii) Damage to property or possessions, Such that they occasionally require supervision to maintain safety.	
		(c)	Reduced awareness of the risks of everyday hazards has lead or would lead to frequent instances of or to near avoidance of: (i) injury to self or others; or (ii) significant damage to property or possessions but not to such an extent that overall day to day life cannot be successfully managed when such incidents occur.	6					
		(d)	None of the above apply.	0			(d)	None of the above apply.	0

RESTRICTED

Existing Schedule 2 to the ESA regulations 2008 Activity 14				Proposed Amendment to: Schedule 2 to the ESA regulations 2008	
<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>	Activity amalgamated into new activity 13.	
Memory and concentration.	14	(a) On a daily basis, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence.	15		
		(b) For the majority of the time, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence.	9		
		(c) Frequently forgets or loses concentration to such an extent that	6		

RESTRICTED

			overall day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed.	
		(d)	None of the above apply.	0

RESTRICTED

Existing Schedule 2 to the ESA regulations 2008 Activity 15		Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now Activity 13	
<i>(1) Activity</i>	<i>(3) Points</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
Execution of tasks.	15	(a) Is unable to successfully complete any everyday task.	15
		(b) Takes more than twice the length of time it would take a person without any form of mental disablement, to successfully complete an everyday task with which the claimant is familiar.	15
<i>(1) Activity</i>	<i>(3) Points</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	13	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
		(b) Cannot, due to impaired mental function, reliably initiate or complete at least two personal actions for the majority of the time.	9

RESTRICTED

		(c)	Takes more than one and a half times but no more than twice the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.	9			(c)	Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
		(d)	Takes one and a half times the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar.	6			(d)	None of the above apply.	0
		(e)	None of the above apply.	0					

RESTRICTED

	<p>Existing Schedule 2 to the ESA regulations 2008 Activity 16</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>(1)</i> <i>Activity</i></th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 15%;"><i>(2)</i> <i>Descriptors</i></th> <th style="width: 60%;"><i>(3)</i> <i>Points</i></th> </tr> </thead> <tbody> <tr> <td rowspan="2">Initiating and sustaining personal action.</td> <td rowspan="2">16</td> <td>(a)</td> <td>Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).</td> <td>15</td> </tr> <tr> <td>(b)</td> <td>Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action</td> <td>15</td> </tr> </tbody> </table>	<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>	Initiating and sustaining personal action.	16	(a)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	15	(b)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action	15	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008</p> <p>Activity amalgamated into new activity 13.</p>
<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>											
Initiating and sustaining personal action.	16	(a)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	15											
		(b)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action	15											

RESTRICTED

			without requiring verbal prompting given by another person in the claimant's presence for the majority of the time.		
		(c)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring verbal prompting given by another person in the claimant's presence for the majority of the time.	9	
		(d)	Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring frequent verbal prompting given by another person in the claimant's presence.	6	
		(e)	None of the above apply.	0	

RESTRICTED

	<p>Existing Schedule 2 to the ESA regulations 2008</p> <p>Activity 17</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"><i>(1)</i> <i>Activity</i></th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 60%;"><i>(2)</i> <i>Descriptors</i></th> <th style="width: 10%;"><i>(3)</i> <i>Points</i></th> </tr> </thead> <tbody> <tr> <td>Coping with change</td> <td>17</td> <td>(a)</td> <td>Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed.</td> <td>15</td> </tr> <tr> <td></td> <td></td> <td>(b)</td> <td>Cannot cope with expected changes in routine (such as a pre-arranged permanent</td> <td>9</td> </tr> </tbody> </table>	<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>	Coping with change	17	(a)	Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed.	15			(b)	Cannot cope with expected changes in routine (such as a pre-arranged permanent	9	<p>Proposed Amendment to: Schedule 2 to the ESA regulations 2008</p> <p>Now activity 14</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"><i>(1)</i> <i>Activity</i></th> <th style="width: 5%;"></th> <th style="width: 5%;"></th> <th style="width: 60%;"><i>(2)</i> <i>Descriptors</i></th> <th style="width: 10%;"><i>(3)</i> <i>Points</i></th> </tr> </thead> <tbody> <tr> <td>Coping with change</td> <td>14</td> <td>(a)</td> <td>Cannot cope with any change to the extent that day to day life cannot be managed.</td> <td>15</td> </tr> <tr> <td></td> <td></td> <td>(b)</td> <td>Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled</td> <td>9</td> </tr> </tbody> </table>	<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>	Coping with change	14	(a)	Cannot cope with any change to the extent that day to day life cannot be managed.	15			(b)	Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled	9
<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>																												
Coping with change	17	(a)	Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed.	15																												
		(b)	Cannot cope with expected changes in routine (such as a pre-arranged permanent	9																												
<i>(1)</i> <i>Activity</i>			<i>(2)</i> <i>Descriptors</i>	<i>(3)</i> <i>Points</i>																												
Coping with change	14	(a)	Cannot cope with any change to the extent that day to day life cannot be managed.	15																												
		(b)	Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled	9																												

RESTRICTED

			change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.				for a lunch break), to the extent that overall day to day life is made significantly more difficult.																								
		(c)	Cannot cope with minor, unforeseen changes in routine (such as an unexpected change of the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6		(c)	Cannot cope with minor unplanned changes (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6																							
		(d)	None of the above apply.	0		(d)	None of the above apply.	0																							
Existing Schedule 2 to the ESA regulations 2008 Activity 18 <table border="1"> <thead> <tr> <th>(1) Activity</th> <th></th> <th>(2) Descriptors</th> <th>(3) Points</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Getting about</td> <td>18</td> <td>(a) Cannot get to any specified place with which the claimant is, or would be, familiar.</td> <td>15</td> </tr> <tr> <td></td> <td>(b) Is unable to get to a specified place with which the claimant is</td> <td>15</td> </tr> </tbody> </table>					(1) Activity		(2) Descriptors	(3) Points	Getting about	18	(a) Cannot get to any specified place with which the claimant is, or would be, familiar.	15		(b) Is unable to get to a specified place with which the claimant is	15	Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now activity 15 <table border="1"> <thead> <tr> <th>(1) Activity</th> <th></th> <th>(2) Descriptors</th> <th>(3) Points</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Getting about</td> <td>15</td> <td>(a) Cannot get to any specified place with which the claimant is familiar.</td> <td>15</td> </tr> <tr> <td></td> <td>(b) Is unable to get to a specified place with which the claimant</td> <td>9</td> </tr> </tbody> </table>					(1) Activity		(2) Descriptors	(3) Points	Getting about	15	(a) Cannot get to any specified place with which the claimant is familiar.	15		(b) Is unable to get to a specified place with which the claimant	9
(1) Activity		(2) Descriptors	(3) Points																												
Getting about	18	(a) Cannot get to any specified place with which the claimant is, or would be, familiar.	15																												
		(b) Is unable to get to a specified place with which the claimant is	15																												
(1) Activity		(2) Descriptors	(3) Points																												
Getting about	15	(a) Cannot get to any specified place with which the claimant is familiar.	15																												
		(b) Is unable to get to a specified place with which the claimant	9																												

RESTRICTED

			familiar, without being accompanied by another person on each occasion.				is familiar, without being accompanied by another person.		
		(c)	For the majority of the time is unable to get to a specified place with which the claimant is familiar without being accompanied by another person.	9		(c)	Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6	
		(d)	Is frequently unable to get to a specified place with which the claimant is familiar without being accompanied by another person.	6		(d)	None of the above apply.	0	
		(e)	None of the above apply.	0					
Existing Schedule 2 to the ESA regulations 2008					Proposed Amendment to: Schedule 2 to the ESA regulations 2008 Now activity 16				
Activity 19									
<i>(1) Activity</i>			<i>(2) Descriptors</i>	<i>(3) Points</i>	<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>	
Coping with	19	(a)	Normal activities, for example, visiting new places or engaging	15	Coping with social	16	(a) Engagement in social contact is always precluded due to difficulty	15	

RESTRICTED

	social situations		in social contact, are precluded because of overwhelming fear or anxiety.		engagement due to cognitive impairment or mental disorder		relating to others or significant distress		
		(b)	Normal activities, for example, visiting new places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety.	9		(b)	Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.	9	
		(c)	Normal activities, for example, visiting new places or engaging in social contact, are frequently precluded, due to overwhelming fear or anxiety.	6		(c)	Engagement in social contact with someone unfamiliar to the claimant is precluded for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	9	
		(d)	None of the above apply.	0		(d)	None of the above apply.	0	
Existing Schedule 2 to the ESA regulations 2008					Proposed Amendment to:				
Activity 20					Schedule 2 to the ESA regulations 2008				
Now activity 17									
	(1)		(2)	(3)		(1)	(2)	(3)	

RESTRICTED

<i>Activity</i>		<i>Descriptors</i>	<i>Points</i>	<i>Activity</i>		<i>Descriptors</i>	<i>Points</i>
Propriety of behaviour with other people.	20	(a) Has unpredictable outbursts of aggressive, disinhibited, or bizarre behaviour, being either: (i) Sufficient to cause disruption to others on a daily basis; or (ii) Of such severity that although occurring less than on a daily basis, no reasonable person would be expected to tolerate them.	15	Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	19	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
		(b) Has a completely disproportionate reaction to minor events or to criticism to the extent that the claimant has an extreme violent outburst leading to threatening behaviour or actual physical violence.	15			(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
		(c) Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient in severity and frequency to cause disruption for the majority of the time.	9			(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
		(d) Has a strongly disproportionate reaction to minor events or to criticism,	9			(d) None of the above apply.	0

RESTRICTED

			to the extent that the claimant cannot manage overall day to day life when such events or criticism occur.						
		(e)	Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient to cause frequent disruption.	6					
		(f)	Frequently demonstrates a moderately disproportionate reaction to minor events or to criticism but not to such an extent that the claimant cannot manage overall day to day life when such events or criticism occur.	6					
		(g)	None of the above apply.	0					

RESTRICTED

Existing Schedule 2 to the ESA regulations 2008				Proposed Amendment to: Schedule 2 to the ESA regulations 2008	
Activity 21				Activity amalgamated into new activities 16 and 17.	
<i>(1) Activity</i>		<i>(2) Descriptors</i>	<i>(3) Points</i>		
Dealing with other people.	21	(a) Is unaware of impact of own behaviour to the extent that: (i) Has difficulty relating to others even for brief periods, such as a few hours; or (ii) Causes distress to others on a daily basis.	15		
		(b) The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress on a daily basis.	15		
		(c) Is unaware of impact of own behaviour to the extent that: (i) has difficulty relating to others for longer periods, such as a day or two; or (ii) causes distress to others for the majority of the	9		

RESTRICTED

			time.		
		(d)	The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress to himself for the majority of the time.	9	
		(e)	Is unaware of impact of own behaviour to the extent that: (i) has difficulty relating to others for prolonged periods such as a week; or (ii) frequently causes distress to others.	6	
		(f)	The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress on a frequent basis.	6	
		(g)	None of the above apply.	0	

RESTRICTED

4	<p>Existing Schedule 3 to the ESA regulations 2008</p> <p><i>Activity</i></p> <table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">1. Walking or moving on level ground.</td> <td>Cannot – (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel the claimant’s wheelchair; more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.</td> </tr> <tr> <td>2. Rising from sitting and transferring from one seated position to another.</td> <td>Cannot complete both of the following – (a) rise to standing from sitting in an upright chair without receiving</td> </tr> </table>	1. Walking or moving on level ground.	Cannot – (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel the claimant’s wheelchair; more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.	2. Rising from sitting and transferring from one seated position to another.	Cannot complete both of the following – (a) rise to standing from sitting in an upright chair without receiving	<p>Proposed Amendment to: Schedule 3 to the ESA regulations 2008</p> <p><i>Descriptors</i></p> <table border="1" style="width: 100%;"> <tr> <td style="width: 40%;">1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.</td> <td>Cannot either (i) Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</td> </tr> <tr> <td>2. Transferring from one seated position to another.</td> <td>Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from</td> </tr> </table>	1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	Cannot either (i) Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from
1. Walking or moving on level ground.	Cannot – (a) walk (with a walking stick or other aid if such aid is normally used); (b) move (with the aid of crutches if crutches are normally used); or (c) manually propel the claimant’s wheelchair; more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.									
2. Rising from sitting and transferring from one seated position to another.	Cannot complete both of the following – (a) rise to standing from sitting in an upright chair without receiving									
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.	Cannot either (i) Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion or (ii) Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.									
2. Transferring from one seated position to another.	Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from									

RESTRICTED

	physical assistance from someone else; and (b) move between one seated position and another seated position located next to one another without receiving physical assistance from someone else.		someone else.
3. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).	Cannot pick up and move 0.5 litre carton full of liquid with either hand.	3. Reaching	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
4. Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting bending or kneeling and all other activities specified in this schedule).	Cannot pick up and move 0.5 litre carton full of liquid.
5. Manual dexterity.	Cannot– (a) turn a “star-headed” sink tap with either hand; or (b) pick up a £1 coin or equivalent with either hand.	Manual dexterity	Cannot either - (a) press a button, such as a telephone keypad or; (b) turn the pages of a book with either hand.
6. Continence.	(a) Has no voluntary control	6. Making self understood	Cannot convey a simple

RESTRICTED

	<p>(a) Continence other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device.</p>	<p>over the evacuation of the bowel; (b) Has no voluntary control over the voiding of the bladder; (c) At least once a week, loses control of bowels so that the claimant cannot control the full evacuation of the bowel; (d) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder; (e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour; or (f) At least once a week, fails to control full-voiding of the bladder, owing to a severe disorder of mood or behaviour.</p>	<p>through speaking, writing, typing, or other means normally used.</p>	<p>message, such as the presence of a hazard.</p>
	<p>(b) Continence where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling</p>	<p>(a) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another</p>		

RESTRICTED

		<p>bowel, has no voluntary control over voiding of bladder;</p> <p>(d) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of the bladder so that the claimant cannot control the full voiding of the bladder; or</p> <p>(e) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, fails to control the full voiding of the bladder, owing to a severe disorder of mood or behaviour.</p>			
	<p>7. Maintaining personal hygiene.</p>	<p>(a) Cannot clean own torso (excluding own back) without receiving physical assistance from someone else;</p> <p>(b) Cannot clean own torso (excluding own back) without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot clean own torso</p>	<p>7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.</p>	<p>Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</p>	

RESTRICTED

		<p>_1(excluding own back)_ without receiving regular prompting given by someone else in the claimant's presence; or (d) Owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving— (i) physical assistance from someone else; or (ii) regular prompting given by someone else in the claimant's presence.</p>			
	<p>8. Eating and drinking (a) Conveying food or drink to the mouth.</p>	<p>(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else. (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot convey food or drink to the claimant's own</p>	<p>8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used.</p>	<p>At least once a week experiences (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device; sufficient to require the individual to clean themselves and change clothing</p>	

RESTRICTED

	<p>(b) Chewing or swallowing food or drink</p>	<p>mouth without receiving regular prompting given by someone else in the claimant's physical presence; or (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving— (i) physical assistance from someone else; or (ii) regular prompting given by someone else in the claimant's presence.</p> <p>(a) Cannot chew or swallow food or (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or (d) Owing to a severe disorder of mood or</p>			
--	---	--	--	--	--

RESTRICTED

		<p>behaviour, fails to– (i) chew or swallow food or drink; or (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant’s presence.</p>			
	<p>9. Learning and comprehension in the completion of tasks.</p>	<p>(a) Cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all; (b) Needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it; or (c) Fails to do any of the matters referred to in (a) or</p>	<p>9. Learning tasks.</p>	<p>Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.</p>	

RESTRICTED

	(b) owing to a severe disorder of mood or behaviour.		
10. Personal action.	(a) Cannot initiate or sustain any personal action (which means planning, rganisation, problem solving, prioritising or switching tasks); (b) Cannot initiate or sustain personal action without requiring daily verbal prompting given by someone else in the claimant’s presence; or (c) Fails to initiate or sustain basic personal action without requiring daily verbal prompting given by some else in the claimant’s presence, owing to a severe disorder of mood or behaviour.	10. Awareness of hazard.	Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions, such that they require supervision for the majority of the time to maintain safety.
11. Communication.	(a) None of the following forms of communication can be achieved by the claimant– (i) speaking (to a standard that may be understood by strangers); (ii) writing (to a	11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

RESTRICTED

		<p>standard that may be understood by strangers); (iii) typing (to a standard that may be understood by strangers); (iv) sign language to a standard equivalent to Level 3 British Sign Language;</p> <p>(b) None of the forms of communication referred to in (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;</p> <p>(c) Misinterprets verbal or nonverbal communication to the extent of causing distress to himself or herself on a daily basis; or</p> <p>(d) Effectively cannot make himself or herself understood to others because of the claimant's disassociation from reality owing to a severe disorder of mood or behaviour.</p>		
			<p>12. Coping with change.</p>	<p>Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent</p>

RESTRICTED

			that day to day life cannot be managed.
		<p>13. Coping with social engagement, due to cognitive impairment or mental disorder</p>	Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.
		<p>14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder</p>	Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.
		<p>15. Conveying food or drink to the mouth.</p>	<p>(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;</p> <p>(b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;</p> <p>(c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or</p> <p>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without</p>

RESTRICTED

			receiving— (i) physical assistance from someone else; or (ii) regular prompting given by someone else in the claimant's presence.
		16. Chewing or swallowing food or drink.	(a) Cannot chew or swallow food or drink; (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or (d) Owing to a severe disorder of mood or behaviour, fails to— (i) chew or swallow food or drink; or (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

The Department-led review of the WCA can be downloaded at:

<http://www.dwp.gov.uk/docs/work-capability-assessment-review.pdf>

The Addendum, reporting on the further technical review, can be downloaded at:

<http://www.dwp.gov.uk/docs/work-capability-assessment-review-addendum.pdf>

RESTRICTED

APPENDIX 2

List of Respondents to the Consultation Exercise (in order of date received)

In addition to the organisations listed below the committee received 134 responses from individuals.

1.	Jon Hastie	Brighton & Hove Federation of Disabled People
2.	Keith Dryburgh	Citizens Advice Scotland
3.	Bernie Sass	National Centre for Independent Living
4.	Philip Connolly	RNIB and Action for Blind People –
5.	Jan McVittie	North-West Mental Health and Welfare Rights Group
6.	Steve Fisher	RSI Action
7.	Anna Worgan	Cardiff and Vale Coalition of Disabled People
8.	Simon Shaw	Sense
9.	Alex Caine	Action for M.E.
10.	Michael Fothergill	Crisis
11.	Tony Britton	ME Association
12.	Helen Terry	Crohn's and Colitis UK
13.	Emma Mamo	Mind
14.	Jane Alltimes	Mencap
15.	Rory O'Kelly	Mind in Croydon
16.	Martin Williams	Child Poverty Action Group
17.	Ian Burnip	United Kingdom Disabled People's Council
18.	Tristana Rodriguez	Action for M.E.
19.	Ian Greaves	Disability Alliance
20.	Sarah Hannan	Welfare Rights Unit
21.	Lisa James	National Autistic Society
22.	Kelly Smith	National Association of Welfare Rights Advisers
23.	Robert Jenkins	Stockport Advice
24.	Mary Holt	Welfare Rights & Money Advice Service
25.	Sam Cook	Equality & Human Rights Commission
26.	Georgina Ryan - White	Law Centre
27.	Lesley Stirton	South Lanarkshire Council
28.	Rebecca Rennison	Leonard Cheshire Disability
29.	Theresa Rowe	Richmond AID (advice and information on disability)
30.	Sue Royston	Citizens Advice service

APPENDIX 3

Summary of responses from individuals³²

1. We received over 134 responses from concerned individuals.
2. Most responses asserted that the Government was trying to save money by targeting the most vulnerable in society and that the ESA regime generally, and the changes to the WCA in particular, scapegoated sick and disabled people. Some complained that the Government was wasting money on other groups when it should be spent on those people who are genuinely disabled.
3. Most respondents had personal experience of the ESA claiming process. Many expressed the view that Atos Healthcare assessors were working with an agenda of trying to get as many people off ESA and into work as possible. Others complained that the Atos assessor had little knowledge of their individual circumstances; that there was not enough time during the assessment for them to comprehensively explain how their condition affected them and that the assessment was a tick-box exercise with a predetermined outcome.
4. Many respondents thought that there were still social barriers affecting disabled people's ability to work, and some noted that this was exacerbated by current conditions in the labour market. Many individuals said that they would like to be able to work but that their condition and the lack of acceptance of disability in the workplace made this impossible. They were concerned that the ESA process did not recognise or address these issues.

³² We did not seek permission to publish the names of the individual respondents



information & publishing solutions

Published by TSO (The Stationery Office) and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0870 600 5522

Order through the Parliamentary Hotline Lo-Call 0845 7 023474

Fax orders: 0870 600 5533

E-mail: customer.services@tso.co.uk

Textphone: 0870 240 3701

The Parliamentary Bookshop

12 Bridge Street, Parliament Square

London SW1A 2JX

Telephone orders/General enquiries: 020 7219 3890

Fax orders: 020 7219 3866

Email: bookshop@parliament.uk

Internet: <http://www.bookshop.parliament.uk>

TSO@Blackwell and other Accredited Agents

Customers can also order publications from:

TSO Ireland

16 Arthur Street, Belfast BT1 4GD

Tel 028 9023 8451 Fax 028 9023 5401

ISBN 978-0-10-850969-8

