

# Equality Analysis Extending Periods of JSA Sickness

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# Introduction & Policy background

1. This document records the analysis undertaken by the Department to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay due regard to the need to:
  - eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
  - advance equality of opportunity between people who share a protected characteristic and those who do not; and
  - foster good relations between people who share a protected characteristic and those who do not.
2. In undertaking the analysis that underpins this document, where applicable, the Department has also taken into account the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and in particular the three parts of Article 19 which recognise the equal right of all disabled people to live in the community, with choices equal to others, and that the Department should take effective and appropriate measures to facilitate full enjoyment by disabled people of this right and their full inclusion and participation in the community.

## Current Policy

3. Each year a substantial number of people move from Jobseeker's Allowance (JSA) to Employment and Support Allowance (ESA). This is mainly because they have acquired a health condition which prevents them from meeting the minimum requirements of the JSA regime meaning they are no longer eligible to be paid JSA. Where claimants may not claim Universal Credit (UC) (where applicable) or where they have no alternative source of income, they will usually make a claim to ESA. (Paragraph 5 explains more about the changes to JSA introduced under Welfare Reform.)
4. ESA is the benefit for those with a health condition that limits their ability to work. Under current JSA rules, even where a person's health condition is very temporary, they are generally required to make a new claim to ESA and this can disrupt benefit payments including passported benefits such as housing benefit. There is limited employment support available during the assessment phase (although claimants can volunteer for help) before the work capability assessment (WCA). This may delay a return to work. The latest available figures indicate that around 40% of ESA claimants close their ESA claim before their medical assessment suggesting that the duration of their health condition is relatively short.
5. The majority of JSA claimants are entitled to JSA only if they are available for employment, actively seeking employment and do not have limited capability for work. In applicable areas following the Welfare Reform changes, a new contribution-based JSA (new-style JSA) was introduced to work alongside the UC regime. Under new-style JSA, a person need only demonstrate that they are fit for work to be entitled to JSA. But if somebody isn't searching for work, then they lose payment of JSA as a sanction but do not lose entitlement.
6. Both legacy and new-style JSA regulations allow for a claimant with a health condition to be treated as not have limited capability for work for a period of two weeks. Under the legacy scheme those treated as capable of work are also treated as being available for employment and actively seeking work. Under the new-style JSA regime, work search and work availability requirements must not be imposed. Neither scheme allows for health condition to extend beyond two occasions of two weeks in any one 12 month jobseeking period (JSP) or if the JSP lasts for more than 12 months in any successive 12 month period. Those with no alternative income source or where they are not entitled to claim UC (because they are not in an area

where UC has been rolled out or where they are not a member of couple in a UC area) generally move on to ESA.

## Policy Changes and Who would be affected

7. Under the proposed change, all JSA claimants on both legacy and new-style JSA with a health condition and appropriate medical evidence will be given the option to remain voluntarily on JSA for the period of the health condition one continuous period for up to 13 weeks in a 12 month period. They will not be able to have more than one such period and the period cannot be split into multiple periods. The first 12 months in a JSP will start from the first day on which the claimant is unable to work on account of the health condition, and if the JSP exceeds 12 months, in each successive 12 period.
8. To reduce the risk of financial loss for claimants who stay on JSA on an extended period of sickness (EPS), the change also enables the ESA assessment phase to be reduced by the amount of time a claimant may have spent on an EPS on JSA in certain circumstances and for the main phase ESA components to be paid from an earlier date. This is necessary because after 13 weeks on ESA, the claimant may be entitled to one of two additional components if the claimant is determined to have limited capability for work or limited capability for work related activity following the outcome of WCA.
9. We are also amending the Universal Credit (UC) Transitional Regulations 2014 so that if claimants moving from an EPS on legacy and new-style JSA onto UC are found to have limited capability for work/work-related activity following a WCA, the calculation of the period before additional elements become payable, will include the period of the EPS.
10. Claimants who choose to remain on legacy JSA with an EPS will be treated as capable of work and available for work and can also be treated as actively seeking employment if there are no steps in that week that it would be reasonable to expect them to take to look for work depending on the nature of the health condition. The changes to the new-style JSA have been aligned so that they more closely reflect the UC conditionality regime. Therefore for those on new-style JSA, advisers will be able to apply both work search and work availability requirements flexibly depending on the nature of the health condition. This is important because under UC where there is dual entitlement to new-style JSA and to UC, the conditionality provisions for UC take precedence. The difference that will remain between new-style JSA and UC is the duration of the easement related to health condition. The easement for new-style JSA is limited to a maximum of a continuous period of 13 weeks (along with the existing other two periods of sickness). Whereas those claiming new-style JSA and a UC will have their conditionality tailored for as long as the work coach deems it to be appropriate taking into account their health condition. The changes broadly align to UC in that UC claimants with short-term health condition may be subject to personalised work search conditionality.
11. Data on JSA claimants with short-term health conditions is not collated centrally so we cannot identify precisely who will and will not be affected by this policy. We can examine our lower and upper estimates and form a view on the characteristics of the people potentially affected by any policy proposals targeted at this client group. We can also track short-term movements between the JSA and ESA benefits and gain an approximate understanding of the characteristics of the people *potentially* affected by these policy proposals. Accordingly, the figures in this document are provided as estimates only and are not based upon a tightly defined and clearly identifiable group of JSA claimants. Currently a little under 300,000 claimants move from JSA to ESA each year. We cannot say with any degree of accuracy how many of those have a short term health condition and how many would remain on JSA given the choice. We estimate that around 10% of claimants might want to benefit from this change and stay on JSA rather than being required to make a claim to ESA.

12. This document examines the equalities evidence base in order to assess the likelihood of a negative and disproportionate impact upon any particular 'protected group' as defined by the Equality Act 2010 and therefore the need for any mitigations or adjustments to policy.

## **Why we are making these changes**

13. We believe that the current JSA sickness rules may unnecessarily disrupt people's benefit receipt where they have a short-term health condition and this may lead to a greater detachment from the labour market. We anticipate that this policy will introduce more flexibility into the JSA regime by allowing claimants the option of voluntarily staying on JSA and in touch with the personalised support available through Jobcentre Plus enabling DWP to tailor support and keep claimants closer to the labour market to encourage a faster return to work. We also believe that the change has the potential to result in a more proactive JSA regime that will help people to manage health conditions which affect their work capability. The policy also aims to reduce the movement of claimants between JSA and ESA and the associated administration and disruption to benefit payments.
14. We are also amending the Universal Credit (UC) Transitional Regulations 2014 so that if claimants moving from an EPS on legacy and new-style JSA onto UC are found to have limited capability for work/work-related activity following a WCA, the calculation of the period before additional elements become payable, will include the period of the EPS.

## **What the changes mean for claimants**

15. JSA claimants with medical evidence of a health condition expected to last more than two weeks but less than 13 weeks will be given the choice to stay on JSA or claim ESA. Work coaches will discuss the claimant's options and explain that if claimants decide to stay on JSA they will not have to meet the full range of conditionality requirements and they will stay in touch with their work coach who will continue to support them to return to work as soon as they are well enough. They will not have to make a new claim to benefit and the payment of benefit including passported benefits such as housing benefit will not be interrupted.
16. If they decide to stay on JSA the work coach and claimant will discuss and agree what the claimant feels it is reasonable for them to do to look for work. The work coach will make a note that the claimant has a health condition and medical evidence and record what steps the claimant has agreed to take to look for work. In some circumstances it might be reasonable for the work coach to turn off all work search requirements for a period of time. In other circumstances the work coach and claimant might agree that there are some steps claimants can take to look for work. In all circumstances the claimant will stay in touch with their work coach at agreed and regular intervals to discuss their current health condition, provide on-going medical evidence discuss what steps they should be taking to look for work and what support the work coach can provide.
17. Work coaches should only be agreeing work search activity that is appropriate and reasonable for the claimant taking into account their health condition and through discussion with the claimant about how that health condition affects their ability to prepare for a return to work. Claimants will be made aware that there may be circumstances where work coaches decide that they may not have not taken reasonable steps to look for work. In those circumstances the claimant's benefit may be disallowed and they may be sanctioned.
18. The Department recognises that the policy will work most effectively if claimants who have a health condition fully understand the potential benefits of staying on JSA and will put in place

guidance to help support work coaches to tailor advice and the claimant commitment carefully depending on the nature of the claimant's health condition and personal circumstances.

19. To help assess whether the policy is supporting claimants with a short-term health condition to remain more engaged with the labour market and to assess whether JSA claimants with a health condition are given the most appropriate advice we will conduct on-going equality assessments to monitor the impact of the change through established feedback processes and by consulting external stakeholders. We will also gather internal MI to assess the effectiveness of the policy.

## Consultation and involvement

20. Representatives from DWP Strategy and Policy Group discussed the changes at a meeting with representatives of disabled claimants from SCOPE, MIND, RNIB, Disability Rights UK and Leonard Cheshire Disability at meeting on 7 October 2014. We also discussed the changes with the London and Home Counties ESA Claimant Journey Group made up of senior operational staff representing front line operational staff delivering ESA. A detailed report of their observations and recommendations can be found at Annex F. The outcome of these discussions helped inform the decision to enable the ESA assessment phase to be reduced by the time spent on the JSA EPS. We will continue to engage stakeholders through regular meetings to discuss progress of this measure and wider ESA reforms. As part of those discussions we will seek feedback about the change and whether it is working as intended for claimants.

## Evidence and analysis

21. The following sections look specifically at the possible impact of the policy changes in terms of the protected groups (gender, disability, age, race, sexual orientation, gender re-assignment, pregnancy and maternity, marriage and civil partnership and religion and belief). Our statistical information is sourced from within DWP's administrative systems and data from the Office of National Statistics (ONS).
22. For some characteristics DWP does not routinely collect relevant information which limits our ability to assess impacts specific to those groups. However we will monitor customer and stakeholder feedback to identify any actual or potential adverse consequences and resolve these.
23. The changes apply equally for claimants on legacy JSA and those on new-style JSA.

### Gender

24. The changes will apply to all claimants on JSA with a short-term health condition, both male and female. We estimate that 64% of the JSA claimants who will benefit from this policy are male and 36% are female. The disproportionate number of males is broadly reflective of their increased participation in the labour market. That is, a greater proportion of working aged women than men are economically inactive (27.7% cf. 16.8%<sup>1</sup>) which means men can be expected to be more prevalent in both the employed and the unemployed groups. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA,

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<sup>1</sup> Figures for August to October 2013, Source ONS Labour market Statistics.

we consider the impact of the change in relation to gender is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).

## **Disability**

25. Within the meaning of the Equality Act 2010, an health condition or disability must be expected to last at least 12 months (or the rest of a person's life if shorter than this). This includes progressive and fluctuating conditions. Some health conditions lasting up to 13 weeks may be connected with an underlying disability within the meaning of the Act. Some claimants affected by this change may be suffering from conditions that would be defined as a disability under the Equality Act. We do have some information on pre-existing conditions and we present that data as a measure of the extent to which the policy proposal affects people with a health condition and disability to a greater or lesser degree.
26. Under the Equality Act 2010, disability is a protected characteristic. DWP routinely collects administrative data on claimants' perceptions of their disabilities and according to the Equality Act definition we believe that roughly half the JSA claimants who will benefit from the policy change have declared a disability. This is greater than the general JSA client base but that is only to be expected given the targeted nature of the policy.
27. More than half of the people potentially affected by this policy have an health condition related to mental health when they move to ESA. We cannot be precise about the true proportion – it may be as high as 70%. However, we do know that it is greater than the general population of both JSA and ESA claimants.
28. This policy will minimise the disruption to benefit for those with fluctuating or progressive disabilities rather than requiring those claimants to make a new claim to ESA and potentially disrupting any passported claims. This has the potential to reduce unequal treatment for people with a health condition or disabled people should they wish to remain on JSA.
29. Engagement in the workplace is a valuable and effective mechanism to achieve engagement in wider society. By maintaining close contact with Jobcentre Plus work coaches, appropriate support to enhance the employment outcomes is available when needed. The regular contact with a work coach ensures that the Department is aware of any changes in participants' condition or circumstances and the support and requirements consequent to this policy can be modified to reflect those changes. By enhancing employment opportunities, this policy will improve relations between people who share a protected characteristic and those who do not. The support available may help to tackle barriers both to employment and to social inclusion.
30. We anticipate that this policy will reduce the difference in treatment between disabled and non-disabled people in relation to the labour market, improve the degree to which claimants with a health condition or disability are integrated within wider society, reduce the barriers between people with a health condition or a disability and those without a health condition or disability thereby promoting equality of opportunity for this group.

## Age

31. The people affected by this policy proposal are split fairly evenly across all the age ranges eligible for JSA. The table below provides a complete breakdown of JSA claimant ages.

### Age of JSA claimants

Age Band	Percentage of Caseload
Under 25	23%
25 to 34	26%
35 to 49	31%
50 or Over	19%

- a. Source: Work and Pensions Longitudinal Study, May 2014.

*All figures rounded to the nearest percentage point*

32. The likelihood of ill-health and disability increases with age. By introducing more flexibility into the JSA system to allow more claimants who may have a short-term or fluctuating health condition or disability we may also be benefiting more older workers by enabling them to remain more closely engaged with the labour market through a tailored support package from their advisor.
33. Engagement in the workplace is a valuable and effective mechanism to achieve engagement in wider society. By enhancing employment opportunities this policy will improve relations between people who share a protected characteristic and those who do not. The support available will include confidence building which leads to an improved ability to tackle barriers both to employment and to social inclusion.

## Race

34. The majority (76%) of the JSA claimants potentially affected by this policy are of white ethnicity. A full breakdown of the ethnicities of people potentially affected by the policy is provided in the table below. Around 5% of ethnicities are 'unknown' or 'prefer not to say' which means that the known figures are likely to be underestimates. The ethnic composition of the JSA claimant count is reflective of the wider society and labour market participation.
35. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA we consider the impact of the change in relation to race is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).

### Ethnicity of JSA claimants

Age Band	Percentage of Caseload
White	76%
Mixed	2%
Asian	6%
Black	7%
Chinese/Other	3%
Prefer not to say	4%
Unknown	1%

Source: Work and Pensions Longitudinal Study, May 2014.

*All figures rounded to the nearest percentage point*

36. As outlined within this document there is a risk of disadvantage for claimants who decide to stay on JSA and then later claim ESA. It is important that claimants understand the potential implications of the decision. This risk might be greater for claimants who do not have English as a first language. To support claimants who do not have English as a first language and where the claimant does not have their own interpreter (that could include a family member), the Department can, if it is appropriate, arrange interpreting services through community organisations, or by using contracted telephone or face to face interpreting services.

## **Sexual orientation**

37. The policy proposals will apply to all JSA claimants regardless of their sexual orientation. The Department does not hold information on its administrative systems on the sexual orientation of claimants. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA we consider the impact of the change in relation to sexual orientation is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).

## **Gender re-assignment**

38. The Department does not hold information on its administrative systems on transgender persons. We have no specific evidence on how the policy may impact on JSA claimants who have undergone gender re-assignment. However, where a person has or is undergoing gender re-assignment the easements in the JSA conditionality that we are proposing will allow the claimant to better manage the effects of the medical treatment itself and any subsequent adverse consequences of that treatment. Medical considerations aside, the Department has endeavoured to ensure that claimants will be treated in the same way, regardless of whether or not they have undergone gender re-assignment.

39. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA we consider the impact of the change in relation to gender re-assignment is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).

## **Pregnancy and maternity**

40. The policy proposals will only apply be relevant to claimants until they are within 11 weeks of their expected due date at which point they are entitled to claim Income Support and/or Maternity Allowance. Similarly, where a joint claimant for JSA becomes a parent, they are no longer subject to the JSA regime. Rather, the requirements of conditionality relating to the partner will apply to them (an exemption from conditionality can be applied to a joint claim jobseeker for pregnancy- related health condition). In the early stages of pregnancy the claimant may experience pregnancy related conditions that may limit their capacity to meet the conditionality of JSA. The introduction of this policy could enable those claimants to remain on JSA rather than make a new claim to ESA until they become entitled to Income Support and/or Maternity Allowance. Engagement in the workplace is a valuable and effective mechanism to achieve engagement in wider society. By enhancing employment opportunities this policy will improve relations between people who share a protected characteristic and those who do not.

## **Marriage and civil partnership**



- 41. Approximately 8% to 9% of the JSA claimants potentially affected by this policy are registered as having a partner. Contribution- based JSA claimants have no obligation to register their partner so this figure is likely to be an undercount.
- 42. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA, we consider the impact of the change in relation to gender is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).

## **Religion or belief**

- 43. We do not have a breakdown on religion or belief for JSA claimants. Because the proposed change does not impose any compulsion on claimants to stay on JSA or claim ESA we consider the impact of the change in relation to gender is neutral in relation to all three aspects of the PSED (as detailed in paragraph 1).
- 44. The Department wants to provide a service appropriate to the needs of claimants with different religions/beliefs, to enable them to access the Department's services. Jobcentre Plus already has in place within their working practices, various general measures which are sensitive to the needs of people from different religions.

## **Family Test**

- 45. We have considered this change alongside the family test. Because the nature of the change is voluntary we consider that this has a positive impact.

## **Decision making**

- 46. Having taken due regard of the PSED and the UNCRPD, the evidence and the analysis detailed in this document we believe that this policy change will not have an adverse impact on claimants with a protected characteristic. Nor is there any indication that the proposed change would have an adverse impact under the UNCHR.
- 47. We believe that the policy change may advance equality for those with a protected characteristic who find themselves affected by a short-term, fluctuating or progressing health condition or disability by enhancing labour market opportunities. We do not have evidence to indicate that the change will lead to adverse impact on the duty to foster good relations between disabled people and those who do not have protected characteristics. The change should not have an impact on disabled people's ability to choose where they live in the community. Housing Benefit will remain available. Disabled people will still have access to community services and help and support will be provided to those who claim JSA to return to work, in common with other members of the general population. This assessment will be attached to a submission that is being sent to Ministers to consider whether this change of policy should be made and in doing so personally consider equality duties under the PSED and UNCRPD.

## **Monitoring and evaluation**

- 48. The Department is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.
- 49. We will use administrative datasets, including the Department's Work and Pensions Longitudinal Study (WPLS), to monitor trends in the benefit caseloads for the protected groups

and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.

50. We will also use survey data, such as the Family Resources Survey (FRS) and Labour Force Survey (LFS), to assess trends in the employment outcomes of the protected groups. Both the FRS and LFS will collect information on age, disability, gender, ethnicity, sexual orientation, religion and civil partnerships.
51. We will continue to monitor feedback from customers through our normal feedback channels to assess whether there are unintended consequences or adverse consequences for protected groups and assess the broader impact of the policy. We will also engage stakeholders through regular meetings to discuss progress of this measure and seek feedback about the change and whether it is working as intended for claimants. We will also ask stakeholders to review the learning and development and operational guidance and any written communication to claimants that will support the change. Findings will inform a further equalities analysis to consider the implementation of the change.
52. The Department is looking across its activities to identify and address further gaps in data provision, for protected groups, wherever reasonable.

## **Sign off**

Jennifer Bradley – Labour Market Interventions Strategy