

# Appendix 14

## Examples of appeal responses for ESA conversion

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The following examples contain only sections 4 and 5 of the standard DM's response as per Appendix 7.



# Appendix 14

## Example 1

### No limited capability for work related activity

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she> has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability> since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she> completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. <On <date> <Title><Surname> attended for medical examination.>\* The opinion of the Health Care Professional in the report (form ESA85<A>\*) was that <Title><Surname> did not meet any of the descriptors dealing with limited capability for work-related activity.
4. On <date of decision> the Decision Maker considered all the evidence and determined that <Title><Surname> had limited capability for work, but did not have limited capability for work-related activity. As a result <he/she> was not a member of the support group. The Decision Maker decided that <Title><Surname>'s award of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability> qualified for conversion to Employment and Support Allowance, including the work-related activity component, from <effective date>.
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 1

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation  
4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010,  
regulations 6, 7, 13 and 14 and Schedule 1**

3. The question of whether a claimant has limited capability for work-related activity is determined by an assessment of whether a claimant's capability for work-related activity is limited by <his/her> physical or mental condition, and whether the limitation is such that it is not reasonable to require <him/her> to undertake such activity.

**Welfare Reform Act, section 2(5)**

4. A claimant has limited capability for work-related activity where at least one of the descriptors applies to the claimant for most of the time, or for most of the occasions on which the claimant undertakes or attempts to undertake the activity described by that descriptor. The claimant is assessed as if they were wearing any prosthesis normally fitted, or using any aid or appliance normally worn or used. From the available evidence, the Decision Maker found that none of the descriptors was satisfied

**Employment and Support Allowance Regulations, regulation 34 and Schedule 3**

5. A claimant can be treated as having limited capability for work-related activity without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work-related activity where there would be a serious risk to health if the claimant is found not to have limited capability for work-related activity. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulation 35**

6. <Insert reasons why DM considers no LCWRA descriptors are satisfied, and arguments about grounds of appeal.>

7. I respectfully request that the Tribunal confirms the decision that although <Title><Surname>'s existing awards(s) qualify for conversion to Employment and Support Allowance, <he/she> is not entitled to the support component on the grounds that <he/she> does not have limited capability for work-related activity.

\* Delete as appropriate

## Example 2

### Failure to attend for medical examination

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> was invited to attend for medical examination. The invitation was issued on <date>, which is at least 7 days before the date of the examination. <Title><Surname> failed to attend the examination. When asked the reasons for non-attendance <he/she>\* stated that <give reasons>.
4. On <date of decision> the Decision Maker considered <Title><Surname>'s explanation, and determined that <he/she>\* had not shown good cause for the failure to attend the examination, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance, and terminated the award(s) from <effective date>.
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 2

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11 Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation 4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where it falls to be determined whether a claimant has limited capability for work the claimant may be called by on or behalf of a health care professional approved by the Secretary of State to attend for medical examination.

**Employment and Support Allowance Regulations, regulation 23(1)**

6. A claimant is treated as not having limited capability for work if they fail without good cause to attend for medical examination. A claimant cannot be treated as not having limited capability for work unless

1. written notice of the time and place for the examination is sent to the claimant at least 7 days in advance, or
2. the claimant agreed to accept a shorter period of notice whether in writing or otherwise.

**Employment and Support Allowance Regulations, regulation 23(2) and (3)**

7. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>did. It is for the claimant to show that there was good cause for <his/her>\* failure to attend.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

8. When determining whether the claimant has shown good cause, matters to be taken into account include

1. whether the claimant was outside Great Britain at the relevant time
2. the claimant's state of health at the relevant time
3. the nature of any disability the claimant has.

**Employment and Support Allowance Regulations, regulation 24**

9. <Notice of the time and place for examination was sent on <date>, which is at least 7 days in advance of the date of the examination><On <he/she>\* agreed to accept a shorter period of notice for the examination>\*. <Title><Surname> failed to attend for examination on <date>.

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to attend for medical examination, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to attend the medical examination, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and to consider whether the award(s) <qualifies/qualify>\* for conversion to Employment and Support Allowance.

\* Delete as appropriate





## Example 3

### Failure to attend for medical examination – IS remains in payment

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> was invited to attend for medical examination. The invitation was issued on <date>, which is at least 7 days before the date of the examination. <Title><Surname> failed to attend the examination. When asked the reasons for non-attendance <he/she>\* stated that <give reasons>.
4. On <date of decision> the Decision Maker considered <Title><Surname>'s explanation, and determined that <he/she>\* had not shown good cause for the failure to attend the examination, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance. The award of <Incapacity Benefit/Severe Disablement Allowance>\* was terminated from <effective date>. <Title><Surname> remained entitled to Income Support on other grounds from <effective date>. Entitlement to the disability premium terminated from <effective date>.#
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 3

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation  
4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date. Entitlement to Income Support and the disability premium may continue if the claimant remains entitled other than on the grounds of incapacity for work or disability.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010,  
regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where it falls to be determined whether a claimant has limited capability for work the claimant may be called by on or behalf of a health care professional approved by the Secretary of State to attend for medical examination.

**Employment and Support Allowance Regulations, regulation 23(1)**

6. A claimant is treated as not having limited capability for work if they fail without good cause to attend for medical examination. A claimant cannot be treated as not having limited capability for work unless

3. written notice of the time and place for the examination is sent to the claimant at least 7 days in advance, or
4. the claimant agreed to accept a shorter period of notice whether in writing or otherwise.

**Employment and Support Allowance Regulations, regulation 23(2) and (3)**

7. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>did. It is for the claimant to show that there was good cause for <his/her>\* failure to attend.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

8. When determining whether the claimant has shown good cause, matters to be taken into account include

4. whether the claimant was outside Great Britain at the relevant time
5. the claimant's state of health at the relevant time
6. the nature of any disability the claimant has.

**Employment and Support Allowance Regulations, regulation 24**

9. <Notice of the time and place for examination was sent on <date>, which is at least 7 days in advance of the date of the examination><On <he/she>\* agreed to accept a shorter period of notice for the examination>\*. <Title><Surname> failed to attend for examination on <date>.

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to attend for medical examination, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to attend the medical examination, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and to consider whether the award(s) <qualifies/qualify>\* for conversion to Employment and Support Allowance.

\* Delete as appropriate

# Delete if still entitled to DP on another ground



## Example 4

### Failure to submit to medical examination

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> was invited to attend for medical examination. The invitation was issued on <date>, which is at least 7 days before the date of the examination. <Title><Surname> failed to submit to the examination. When asked the reasons for refusing to submit to examination <he/she>\* stated that <give reasons>.
4. On <date of decision> the Decision Maker considered <Title><Surname>'s explanation, and determined that <he/she>\* had not shown good cause for the failure to submit to the examination, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance, and terminated the award(s) from <effective date>.
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation 4**

Example 4

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where it falls to be determined whether a claimant has limited capability for work the claimant may be called by on or behalf of a health care professional approved by the Secretary of State to attend for medical examination.

**Employment and Support Allowance Regulations, regulation 23(1)**

6. A claimant is treated as not having limited capability for work if they fail without good cause to submit to medical examination. A claimant cannot be treated as not having limited capability for work unless

1. written notice of the time and place for the examination is sent to the claimant at least 7 days in advance, or
2. the claimant agreed to accept a shorter period of notice whether in writing or otherwise.

**Employment and Support Allowance Regulations, regulation 23(2) and (3)**

7. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>\* did. It is for the claimant to show that there was good cause for <his/her>\* failure to submit.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

8. When determining whether the claimant has shown good cause, matters to be taken into account include

1. whether the claimant was outside Great Britain at the relevant time
2. the claimant's state of health at the relevant time
3. the nature of any disability the claimant has.

**Employment and Support Allowance Regulations, regulation 24**

9. <Notice of the time and place for examination was sent on <date>, which is at least 7 days in advance of the date of the examination><On <he/she>\* agreed to accept a shorter period of notice for the examination>\*. <Title><Surname> failed to submit to examination on <date>.

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to submit to medical examination, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to attend the medical examination, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and to consider whether the award(s) <qualifies/qualify>\* for conversion to Employment and Support Allowance.

\* Delete as appropriate





## Example 5

### Failure to submit to medical examination – IS remains in payment

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> was invited to attend for medical examination. The invitation was issued on <date>, which is at least 7 days before the date of the examination. <Title><Surname> failed to submit to the examination. When asked the reasons for refusing to submit to examination <he/she>\* stated that <give reasons>.
4. On <date of decision> the Decision Maker considered <Title><Surname>'s explanation, and determined that <he/she>\* had not shown good cause for the failure to submit to the examination, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance. The award of <Incapacity Benefit/Severe Disablement Allowance>\* was terminated from <effective date>. <Title><Surname> remained entitled to Income Support on other grounds from <effective date>. Entitlement to the disability premium terminated from <effective date>.#
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation 4**

Example 5

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date. Entitlement to Income Support and the disability premium may continue if the claimant remains entitled other than on the grounds of incapacity for work or disability.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where it falls to be determined whether a claimant has limited capability for work the claimant may be called by on or behalf of a health care professional approved by the Secretary of State to attend for medical examination.

**Employment and Support Allowance Regulations, regulation 23(1)**

6. A claimant is treated as not having limited capability for work if they fail without good cause to submit to medical examination. A claimant cannot be treated as not having limited capability for work unless

1. written notice of the time and place for the examination is sent to the claimant at least 7 days in advance, or
2. the claimant agreed to accept a shorter period of notice whether in writing or otherwise.

**Employment and Support Allowance Regulations, regulation 23(2) and (3)**

7. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>\* did. It is for the claimant to show that there was good cause for <his/her>\* failure to submit.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

8. When determining whether the claimant has shown good cause, matters to be taken into account include

1. whether the claimant was outside Great Britain at the relevant time
2. the claimant's state of health at the relevant time
3. the nature of any disability the claimant has.

**Employment and Support Allowance Regulations, regulation 24**

9. <Notice of the time and place for examination was sent on <date>, which is at least 7 days in advance of the date of the examination><On <he/she>\* agreed to accept a shorter period of notice for the examination>\*. <Title><Surname> failed to submit to examination on <date>.

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to submit to medical examination, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to submit to the medical examination, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and to consider whether the award(s) qualify for conversion to Employment and Support Allowance.

\* Delete as appropriate

# Delete if still entitled to DP on another ground



## Example 6

### Failure to return questionnaire

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* was sent a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. As the questionnaire was not returned after 4 weeks a further request was sent on <date>, but the completed questionnaire was not returned.
4. On <date of decision> the Decision Maker considered all the evidence and determined that <Title><Surname> had failed without good cause to return the questionnaire, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance, and the award(s) <was/were>\* terminated from <effective date>.
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 6

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation  
4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010,  
regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where a claimant's limited capability for work falls to be determined by way of an assessment, <he/she>\* must provide the information requested in the questionnaire. The claimant is treated as not having limited capability for work if <he/she>\* fails without good cause to return the questionnaire.

**Employment and Support Allowance Regulations, regulations 21(1) and 22(1)**

6. The claimant cannot be treated as not having limited capability for work until

1. at least 6 weeks have passed since the questionnaire was sent to the claimant and
2. a reminder was sent at least 4 weeks after the questionnaire was issued and
3. at least 2 weeks have passed since the reminder was sent.

**Employment and Support Allowance Regulations, regulation 22(2)**

7. Form ESA85 was issued to <Title><Surname> on <date>, and a reminder issued on <date>.

8. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>\* did. It is for the claimant to show that there was good cause for <his/her>\* failure to attend.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

9. When determining whether the claimant has shown good cause, matters to be taken into account include

1. whether the claimant was outside Great Britain at the relevant time
2. the claimant's state of health at the relevant time
3. the nature of any disability the claimant has.
- 4.

**Employment and Support Allowance Regulations, regulation 24**

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to return the questionnaire, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to return the questionnaire, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and consider whether the award(s) <qualifies/qualify>\* for conversion to Employment and Support Allowance.

\* Delete as appropriate





## Example 7

### Failure to return questionnaire – IS remains in payment

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner> aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* was sent a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. As the questionnaire was not returned after 4 weeks a further request was sent on <date>, but the completed questionnaire was not returned.
4. On <date of decision> the Decision Maker considered all the evidence and determined that <Title><Surname> had failed without good cause to return the questionnaire, and was treated as not having limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance. The award of < Incapacity Benefit/Severe Disablement Allowance>\* was terminated from <effective date>. <Title><Surname> remained entitled to Income Support on other grounds from <effective date>. Entitlement to the disability premium terminated from <effective date>.#
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation 4**

Example 7

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date. Entitlement to Income Support and the disability premium may continue if the claimant remains entitled other than on the grounds of disability.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. Where a claimant's limited capability for work falls to be determined by way of an assessment, <he/she>\* must provide the information requested in the questionnaire. The claimant is treated as not having limited capability for work if <he/she>\* fails without good cause to return the questionnaire.

**Employment and Support Allowance Regulations, regulations 21(1) and 22(1)**

6. The claimant cannot be treated as not having limited capability for work until
1. at least 6 weeks have passed since the questionnaire was sent to the claimant and
  2. a reminder was sent at least 4 weeks after the questionnaire was issued and
  3. at least 2 weeks have passed since the reminder was sent.

**Employment and Support Allowance Regulations, regulation 22(2)**

7. Form ESA85 was issued to <Title><Surname> on <date>, and a reminder issued on <date>.

8. Good cause means some fact which, having regard to all the circumstances, would probably have caused a reasonable person of the claimant's age and experience to act or fail to act as <he/she>\* did. It is for the claimant to show that there was good cause for <his/her>\* failure to attend.

**CS 371/49(KL), R(S) 2/63, R(SB) 6/83**

9. When determining whether the claimant has shown good cause, matters to be taken into account include

1. whether the claimant was outside Great Britain at the relevant time
2. the claimant's state of health at the relevant time
3. the nature of any disability the claimant has.

**Employment and Support Allowance Regulations, regulation 24**

10. <Insert reasons why DM considers that good cause was not shown, and arguments about grounds of appeal.>

11. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* failed without good cause to return the questionnaire, and is treated as not having limited capability for work.

12. Should the Tribunal find that <Title><Surname> does have good cause for the failure to return the questionnaire, I respectfully request that they refer the case to the Decision Maker to reinstate <his/her>\* existing award(s), and to consider whether the award(s) <qualifies/qualify> for conversion to Employment and Support Allowance.

\* Delete as appropriate



## Example 8

### No limited capability for work

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability> since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> attended for medical examination. The opinion of the Health Care Professional in the report (from ESA85) was that <the following descriptors applied> <Title><Surname> <did not meet any of the descriptors dealing with limited capability for work>\*.
4. On <date of decision> the Decision Maker considered all the evidence and determined that <Title><Surname> <scored x points on the physical and x points on the mental health descriptors>. As this is less than 15 points, the Decision Maker determined that <Title><Surname> did not have limited capability for work. The Decision Maker decided that <Title><Surname>'s award of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance, and the award(s) <was/were>\* terminated from <effective date>.
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 8

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation  
4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010,  
regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. <Insert reasons why DM considers no (further) points should be awarded, and arguments about grounds of appeal.>

6. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* does not have limited capability for work.

7. Should the Tribunal find that <Title><Surname> does have limited capability for work, I respectfully request that they determine whether <he/she>\* has limited capability for work-related activity. If they determine that there is insufficient evidence, the tribunal is requested to refer the case to the Decision Maker for determination.

\* Delete as appropriate

## Example 9

### No limited capability for work – IS remains in payment

#### Section 4: The facts of the case

1. <Title><Forename><Surname> is a <single/married> <person/civil partner>\* aged <age>. <He/she>\* has been entitled to <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* since <date>.
2. On <date initial notification was sent> <Title><Surname> was notified that the conversion phase had begun. <He/she>\* completed a questionnaire (form ESA50) on <date>. Form ESA50 asks the claimant to provide information about their ability to perform activities in order to assess whether they have limited capability for work and if so, whether they have limited capability for work-related activity.
3. On <date> <Title><Surname> attended for medical examination. The opinion of the Health Care Professional in the report (from ESA85) was that <the following descriptors applied> <Title><Surname> <did not meet any of the descriptors dealing with limited capability for work>\*.
4. On <date of decision> the Decision Maker considered all the evidence and determined that <Title><Surname> <scored x points on the physical and x points on the mental health descriptors>. As this is less than 15 points, the Decision Maker determined that <Title><Surname> did not have limited capability for work. The Decision Maker decided that <Title><Surname>'s award(s) of <Incapacity Benefit/Severe Disablement Allowance/Income Support on the grounds of incapacity for work or disability>\* did not qualify for conversion to Employment and Support Allowance. The award of < Incapacity Benefit/Severe Disablement Allowance> was terminated from <effective date>. <Title><Surname> remained entitled to Income Support on other grounds from <effective date>. Entitlement to the disability premium terminated from <effective date>.#
5. <Title><Surname> made an appeal on the approved form, on the grounds that <insert summary of grounds of appeal>. The decision of <date> was reconsidered but not revised.

#### Section 5: The Secretary of State's response

1. From 1 October 2010 all claimants entitled to an existing award are being reassessed to establish whether the award qualifies for conversion to Employment and Support Allowance. An existing award is an award of Incapacity Benefit, Severe Disablement Allowance or Income Support on the grounds of incapacity for work or disability. The period of reassessment for each claimant is known as the conversion phase. This begins when a notice is issued to the claimant, and ends when a conversion decision is notified.

Example 9

**Welfare Reform Act 2007, Schedule 4, paragraphs 1, 7 and 11  
Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010, regulation  
4**

2. An existing award qualifies for conversion where the claimant is found to have, or is treated as having, limited capability for work. The Employment and Support Allowance Regulations are modified to enable the claimant to satisfy all other conditions of entitlement to Employment and Support Allowance. Where the existing award does not qualify for conversion, it is terminated from the effective date. Entitlement to Income Support and the disability premium may continue if the claimant remains entitled other than on the grounds of disability.

**Employment and Support Allowance (Transitional Provisions, Housing Benefit  
and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010,  
regulations 6, 7, 13, 14 and 15 and Schedule 1**

3. The question of whether a claimant has limited capability for work is determined by an assessment of the extent to which a claimant is capable of performing activities due to disease or disablement. Points may be scored if the claimant satisfies an appropriate descriptor for an activity. Where a total of 15 or more points are scored, the claimant has limited capability for work.

**Welfare Reform Act, section 8  
Employment and Support Allowance Regulations, regulation 19 and Schedule 2**

4. A claimant can be treated as having limited capability for work without assessment where certain conditions are satisfied, such as where the claimant is undergoing specified treatment. They can also be treated as having limited capability for work where there would be a serious risk to health if the claimant is found not to have limited capability for work. From the available evidence, the Decision Maker found that none of these conditions applied.

**Employment and Support Allowance Regulations, regulations 20, 25, 26 or 29**

5. <Insert reasons why DM considers no (further) points should be awarded, and arguments about grounds of appeal.>

6. I respectfully request that the Tribunal confirms the decision that <Title><Surname>'s existing awards(s) <does/do>\* not qualify for conversion to Employment and Support Allowance on the grounds that <he/she>\* does not have limited capability for work.

7. Should the Tribunal find that <Title><Surname> does have limited capability for work, I respectfully request that they determine whether <he/she>\* has limited capability for work-related activity. If they determine that there is insufficient evidence, the tribunal is requested to refer the case to the Decision Maker for determination.

\* Delete as appropriate

# Delete if still entitled to DP on another ground