



Department  
for Work &  
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Denise Whitehead  
Secretary  
Social Security Advisory Committee  
5th Floor, Caxton House  
6-12 Tothill Street  
London  
SW1H 9NA

14 November 2014

Dear Denise,

**DRAFT REGULATIONS: THE EMPLOYMENT AND SUPPORT ALLOWANCE  
(REPEAT ASSESSMENTS AND PENDING APPEAL AWARDS) (AMENDMENT)  
REGULATIONS 2015**

Further to my letter of 20 October, and my appearance before the Committee on 5 November concerning the draft Employment and Support Allowance (Repeat Assessments) (Amendment) Regulations.

At the meeting I explained that the original draft of the regulations which had been sent to the Committee for its consideration did not reflect the Ministerial decision that where -

- a claimant makes a repeat claim for Employment and Support Allowance (ESA) following a previous decision embodying a determination that they have been found not to have limited capability for work (LCW) (also known as being found fit for work)
- in respect of the later claim, it is again determined that the claimant does not have LCW, and
- (following mandatory reconsideration) the claimant appeals the decision,

no payment of ESA will be made pending the determination of the appeal by the First-tier Tribunal.

The Committee advised that it was not in a position to make a decision as to whether to refer the regulations, without seeing an updated version of the statutory instrument. Consequently I now attach updated versions of the Explanatory Memorandum (**Annex 1**), Equality Assessment (**Annex 3**); and the draft statutory instrument (**Annex 2**). The

draft regulations remain subject to legal checks and further drafting amendments may be required.

At the meeting the Committee asked whether the Department had additional data about the number of people likely to be affected by the measure. I explained that we only had broad data of the number of people who make a repeat claim (30,000-40,000 in 2013) with broadly the same condition, and that this was very likely to be an overestimate of the number of claimants affected by the policy. Analysts considered the number of cases who were making a repeat claim to ESA following a fit for work decision at their previous work capability assessment and who were reporting the same primary condition, to a fairly detailed degree. However, it is not possible to determine from this condition data whether a condition has demonstrably changed in the intervening period.

I was also asked whether the Department had conducted any research into the reasons why claimants made repeat claims for ESA, and although we have not undertaken any specific research, we have published "Routes onto Employment and Support Allowance" which may be of interest to the Committee. Please see link.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214556/rr\\_ep774.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214556/rr_ep774.pdf)

I hope my answers and the updated documentation will aid the Committee in their consideration of these changes, and I will be happy to answer any further questions that members of the Committee may have.

Yours sincerely

By email

Trevor Pendergast  
Employment and Support Allowance Directorate