

# Freedom of Information request 726/2013

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## Information request and DWP response

*Dear Department for Work and Pensions,  
Please could you provide the following information:-*

***1. Any policy documents or guidance documents which outline the appropriate secondary law in relation to the requirement to fill in and complete an 'ESA3' form following a change of circumstances which has already been notified in writing;***

### Background to decision-making

Decisions on claims and applications for Social Security benefits are made by the Secretary of State. In practice the Secretary of State does not make decisions personally, and decision makers exercise these functions on the Secretary of State's behalf.

The principles underpinning decision-making are that the decision-maker gathers the evidence (facts) on behalf of the Secretary of State, applies the law (including any relevant case law) to those facts, and arrives at a decision that is sustainable on the evidence.

Evidence can be collected by telephone, letter or interview, as the decision maker determines. Proper consideration and careful recording of evidence when making and recording decisions is essential, so that anyone subsequently needing to re-visit the issue, or wishing to challenge or defend the decision, can see exactly what facts were used to reach the decision.

### Employment and Support Allowance

Employment and Support Allowance has both personal (contributory) and income-related elements. But it remains a single benefit, with a single award, and for which a single claim is required. Where someone makes a claim to ESA, they are making a claim to both elements; and the decision maker will make a decision on whether the claimant is entitled to either or both. They will always consider entitlement to the contributory element first, since, under the Welfare Reform Act 2007, this takes precedence over the income-related element.

Where the claimant knows beforehand that they are not entitled to the income-related element, they often choose not to fill in the appropriate parts of the ESA claim form. Where, at any time thereafter, their financial circumstances change, they may ask the Secretary of State to determine whether they are now entitled to the income-related element. At this point, the decision maker may elect to establish the claimant's current financial circumstances by asking the claimant to complete form ESA3.

***2. The primary or secondary legislation, policy documents or guidance documents which describe and or gives the secretary of state for work and pensions the power to suspend ESA payments pending receipt of specifically, an ESA 3 form?***

The information requested is not available. There are no references in ESA procedural guidance about suspension of ESA pending receipt of, specifically, an ESA3 form.

The decision maker can suspend payment of benefit when they are considering whether the decision on an award of benefit should be revised or superseded. When the decision-maker has asked the claimant to provide information they must:

- supply that information within a period of 14 days beginning with the date on which the notification was sent or such longer period as the decision maker allows in that notification; or
- supply that information within such longer period as he satisfies the decision maker is necessary in order to enable him to comply with the requirement

in default of which payment of benefit may be suspended. Alternatively, the claimant must satisfy the decision maker within 14 days beginning with the date on which the notification was sent that either:

- the information does not exist; or
- it is not possible for him to obtain it.

The powers to suspend benefit are provided for in section 21 of the Social Security Act 1998, and regulation 17 of the Social Security and Child Support (Decisions and Appeals Regulations) 1999

***3. Any policy, guidance or legislative documents which take into account the hardship or impact of a 50 page ESA 3 form to furnish a change of circumstances as a pose to a 1 page form where all of the same information can be provided?***

The information requested is not available. There are no references in ESA procedural guidance to the impact of a 50 page ESA form to furnish a change of circumstances. Changes of circumstances can be reported in various ways including phone contact, in writing, or by e-mail. In some cases, a change may be required to be reported in writing. As explained above, the purpose of form ESA3 is to enable the decision maker to determine whether people receiving contributory ESA might become entitled to income-related ESA following a change of circumstances. Income-related benefits take account of a wide variety of circumstances and the amount of information that needs to be collected differs from person to person.

***4. Any guidance, policy or legislation dealing with interim payments pending the completion of an ESA3 form?***

The information requested is not available. There are no references in ESA procedural guidance about the making of interim payments pending receipt of an ESA3 form. In practice, since the claimant who is being asked to complete a form ESA3 will already have established their entitlement to contributory ESA, any delay in returning the form will not result in a suspension of existing payments. Accordingly, the issue of making interim payments doesn't arise – any delay in returning the completed ESA3 will simply mean that the decision-maker will be unable to determine whether the claimant is entitled to the income-related strand of ESA: any entitlement to the contributory strand will continue regardless.

If a claimant's entitlement to contributory ESA is terminating in the near future by virtue of the application of the 365 day time limit, and form ESA3 is issued to the claimant beforehand to determine if they might, at that stage, become entitled to income-related ESA, then, in the event that day 365 is reached before the form EA3 has been returned, no interim payment of income-related ESA will be made. This is because the Secretary of State cannot, at that stage, and before he has received and considered the evidence, be satisfied that any entitlement to income-related ESA will properly arise.