

Freedom of Information request

Date received: 11 August 2017

Date of response: 11 September 2017

Information request

Relating to the draft Employment and Support Allowance (Claimant Commitment) Regulations 2016

Contents

Request and response	2
Draft regulations and explanatory memorandum submitted for the committee's consideration at its meeting on 27 July 2016	4
Information provided by DWP in response to queries raised by committee members which could not be addressed at that meeting.....	21
Correspondence from Paul Gray (SSAC Chair) to the Minister of State for Disabled People, Health and Work dated 4 August 2016.	27

Request and response

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Relating to the draft Employment and Support Allowance (Claimant Commitment) Regulations 2016:

1 The explanatory memorandum

Please email me a copy of "The explanatory memorandum" referred to in https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565729/ssac-minutes-july-2016.pdf, if you are not going to provide it with your response to the information request below. I would also like a copy of the written material sent by the to the Minister for Disabled People, Health and Work setting out those "concerns".

2 SSAC wrote to the Minister for Disabled People

"The Committee would therefore write to the Minister for Disabled People, Health and Work setting out those concerns."

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565729/ssac-minutes-july-2016.pdf

3 Earlier Freedom of Information Request (12 July)

Reading your minutes

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565729/ssac-minutes-july-2016.pdf means I need an email copy of draft The Employment and Support Allowance (Claimant Commitment) Regulations 2016 and any follow up and comebacks the DWP mentioned in the minutes.

https://www.whatdotheyknow.com/request/the_employment_and_support_allowance_2#outgoing-677465 Noting "come back" and "follow up" information requested concerning:

"The Department would check the legislation in relation to the different approaches to exemptions and any differences in the lists of exemptions and come back to the Committee in due course." and

"The Department would share its notes from the consultation exercise, which had included a range of stakeholders...The Department subsequently undertook to come back on the specific question about academics."

"The Department would not expect disputes to arise at the stage of reviewing the initial claimant commitment after the Health and Work Conversation, because at that point any activities included would not be sanctionable. It would only be after the WCA, when the contents of the claimant commitment became mandatory, that disputes were likely to arise. However the

Department would look into that question and respond to the Committee outside of the meeting. "

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/565729/ssac-minutes-july-2016.pdf

With regards:

"After a short period of private deliberation he advised them that the Committee was content for the draft regulations to proceed without the need for formal reference to the Committee."

As such there is no valid reason these draft regulations, the memorandum and "come back" and "follow up" information requested be released under the Freedom of Information Act forthwith.


Response

Please find attached the following information held by the Social Security Advisory Committee (SSAC) relating to the draft Employment and Support Allowance (Claimant Commitment) Regulations 2016:

- 1) the draft regulations and explanatory memorandum submitted for the Committee's consideration at its meeting on 27 July 2016;
- 2) information provided by the Department in response to queries raised by Committee members which could not be addressed at that meeting; and
- 3) correspondence from Paul Gray (SSAC Chair) to Penny Mordaunt MP (the Minister of State for Disabled People, Health and Work) dated 4 August 2016.

In closing, it may be helpful to note that the Government subsequently decided not to introduce these proposals.

Draft regulations and explanatory memorandum
submitted for the committee's consideration at its
meeting on 27 July 2016


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13 July 2016

Introduction of the Employment and Support Allowance(Claimant Commitment) Regulations 2016 and amendments to the Employment and Support Allowance (Work-Related Activity) Regulations 2011

Dear Denise,

The purpose of this letter is a formal request, in accordance with section 172 of the Social Security Administration Act 1992, for the Committee to consider proposals to amend the Employment and Support Allowance Regulations (Work-Related Activity) Regulations 2011 and the introduction of The Employment and Support Allowance (Claimant Commitment) Regulations 2016.

The changes proposed reflect a change in policy intended to introduce a Claimant Commitment as a condition of entitlement to all new claimants of legacy Employment Support Allowance (ESA) from November 2016.

Currently ESA claimants are not obliged to accept a Claimant Commitment in order to be eligible for the benefit, but claimants with health conditions and disabilities are required to accept a Claimant Commitment in Universal Credit and new-style ESA. The proposed changes are therefore aimed at introducing the cultural change necessary for the transition into UC, and helping claimants take greater ownership of their journey back to work, whilst offering them earlier, more tailored support through the Health and Work Conversation.

Under the proposed new regime, most claimants will verbally accept a basic Claimant Commitment at the point of claim (safeguards and exemptions will apply). It will be similar in contents to the current customer declaration, obliging claimants to inform the department of any change in circumstances that may affect their benefit and to

AGENDA ITEM 2
Paper 21/16

confirm that the information they have provided is correct. The Claimant Commitment will then be personalised during a mandatory health and Work Conversation at around week four of the claim and will include voluntary steps the claimant can take to manage their health condition and move closer to the labour market. The Claimant Commitment will be a live document for the duration of the claim and will be amended and updated during later Work Focussed Interviews if the claimant is placed in the Work Related Activity Group (WRAG) following the Work Capability Assessment.

Safeguards, such as the provision of a claimant being 'treated as' having accepted a Claimant Commitment, the possibility for claimants to dispute the contents of their Claimant Commitment and exemptions from attendance at the Health and Work Conversation, will be in place. As now, all actions recorded in the Claimant Commitment before the WCA will not be mandatory and if claimants are placed in the WRAG they will continue to be able to show good cause for failure to meet the requirements.

The Explanatory Memorandum at Annexe A describes the proposals in more detail. The draft regulations are attached at Annexe B, an Equality Impact Assessment is attached at Annexe C and the keeling schedule is attached in Annexe D.

I hope these documents fully explain the proposals, and that they will aid the Committee members in their consideration of these changes. However, if you or any member of the Committee has any queries or requires further information, please do not hesitate to contact me.

Annexe A

**EXPLANATORY MEMORANDUM TO THE SOCIAL SECURITY ADVISORY
COMMITTEE FROM THE DEPARTMENT FOR WORK AND PENSIONS**

Contents

	Paragraphs
Introduction	1 - 4
Proposed change	5-8
Commencement and application	9
Background and rationale	10 -17
Existing conditionality and effect of the proposed changes	18-22
Information and Communications Strategy	23-28
Safeguards	29 – 33
Consultation on the proposed changes	34- 36
Monitoring and evaluation of the proposed changes	37

ESA Claimant Commitment Explanatory Memorandum

Introduction

1. This Explanatory Memorandum covers:
 - Partial commencement of section 54 of the Welfare Reform Act 2012, which will require claimants who make a claim for old-style Employment and Support Allowance (ESA) on or after 1 November 2016 (new claimants) to have a Claimant Commitment in place as a condition of entitlement to the benefit.
 - The introduction of The Employment and Support Allowance (Claimant Commitment) Regulations 2016. These Regulations contain further details on accepting the Claimant Commitment for new claimants.
 - The amendments to the Employment and Support Allowance (Work-Related Activity) Regulations 2011.
2. Currently, there is no requirement to accept a Claimant Commitment as a condition of entitlement for those claiming ESA; nor do we rely on existing powers to place any conditionality requirements for those claiming ESA prior to them having a Work Capability Assessment.
3. We propose to introduce a Claimant Commitment as a condition of entitlement to legacy ESA for new claimants from November 2016. A basic Claimant Commitment will be accepted at the point of claim and will be similar in content to the customer declaration currently accepted at the point of claim, obliging claimants to confirm the information they have provided is correct and to inform DWP of any change of circumstances that may affect their benefit. The Claimant Commitment will then be personalised during a mandatory Health and Work Conversation at around week four of the claim to include voluntary steps claimants can take to manage their health and move closer to the labour market.
4. The Health and Work Conversation is an enhanced Work Focused Interview, designed specifically for people with health conditions and disabilities. It was co-designed with disabled peoples' organisations, professionals, practitioners and the Behavioural Insights Team. During the Conversation work coaches will use behaviourally informed tools to help claimants identify health and work goals, draw out strengths, make realistic plans, build resilience and motivate claimants.

Proposed changes

5. The Employment and Support Allowance (Claimant Commitment) Regulations 2016 will contain details on accepting the Claimant Commitment for new claimants and will mirror, as far as possible, the Universal Credit Regulations 2013 and the Employment and Support Allowance Regulations 2013 (for new-style ESA).
6. Regulation 2 will detail that the Secretary of State (SoS) has the power to specify a time period within which a claimant can be treated as having accepted a Claimant Commitment after they have claimed. It will also allow the SoS to specify a time period within which a claimant can be treated as having accepted a Claimant Commitment if they have an award of ESA but did not have to make a claim. It will allow the SoS to extend the period within which a claimant can be treated as having accepted a Claimant Commitment if the claimant requests the extension and the SoS thinks it is reasonable. It also details that a claimant must accept the Claimant Commitment by whichever method the SoS specifies, and the SoS can specify that it be electronically, by phone or in writing.
7. Regulation 3 states that there will be two circumstances in which a claimant will not be required to have a Claimant Commitment as a condition of entitlement to benefit: 1) where the claimant lacks capacity to accept a Claimant Commitment; or 2) there are exceptional circumstances which means it would be unreasonable to expect the person to accept a Claimant Commitment.
8. Regulation 4 amends the Employment and Support Allowance (Work-Related Activity) Regulations 2011 to detail that:
 - New claimants will be notified of the requirement to undertake work related activity in such a way as the Secretary of State specifies- electronically, by telephone or in writing. They will not be required to have an action plan. New claimants will be able to request the reconsideration of mandatory work-related activity.
 - On receipt of a request of reconsideration, the Secretary of State must reconsider the work-related activity and give a decision to the claimant in writing.
 - The Secretary of State may contract out both the notification of work-related activity and reconsideration of work-related activity for new claimants.

Commencement and application of the proposed changes

9. The proposed changes are intended to come into force on 1st November 2016. They will apply to all new claims for legacy ESA made from the commencement date.

Background and Rationale for the proposed change

10. The government is committed to bridging the disability employment gap, so while it remains committed to supporting those who cannot work because of a health condition or disability, it also wants to help as many people as possible to find suitable work. There is a large body of evidence showing that work is generally good for physical and mental wellbeing and that, where their health condition permits, sick and disabled people should be encouraged and supported to remain in or to (re)-enter work as soon as possible because work:
 - is therapeutic;
 - helps to promote recovery and rehabilitation;
 - leads to better health outcomes;
 - minimises the harmful physical, mental and social effects of long-term sickness absence;
 - reduces the risk of long-term incapacity;
 - promotes full participation in society, independence and human rights;
 - reduces poverty; and
 - improves quality of life and well-being.

11. Acceptance of a Claimant Commitment as a condition of entitlement to ESA will allow claimants to take greater ownership in planning and managing their journey back to work.

12. Claimants with health conditions and disabilities are required to accept a Claimant Commitment in Universal Credit and new-style ESA. The introduction of a Claimant Commitment for new legacy ESA claimants will partially align this claimant group with Universal Credit (UC) and new-style ESA claimants and will start to introduce the cultural change necessary for the transition to Universal Credit. As for the UC and JSA Claimant Commitments, the ESA Claimant Commitment will set out voluntary (before the WCA) and a mixture of mandatory and voluntary (after the WCA) actions agreed between claimant and work coach, the support on offer and the consequences associated with non-compliance.

13. The Health and Work Conversation at around week four of the claim which will be mandatory for the majority of claimants, though precise guidelines will be issued to ensure the appropriate claimants are exempt, will provide a good vehicle for developing and personalising the Claimant Commitment. Any activity agreed before the Work Capability Assessment (WCA) will however be voluntary. For claimants exempted from taking part in the Health and Work Conversation, the basic claimant commitment accepted at the point of claim will continue to stand until their WCA and after, if they are placed in the Support Group and do not attend any further WFIs.

- . 14. The Claimant Commitment developed during the Health and Work Conversation will be based on a more personalised approach, centred on active discussion between the Work Coach and the claimant. The Health and Work Conversation provides an opportunity for Jobcentre Plus Work Coaches to engage claimants early in the process, to provide appropriate and tailored support and promote available opportunities or provision. We are aware from ethnographically informed research that ESA claimants can feel anxious and vulnerable at the start of their ESA claim and therefore the Health and Work Conversation provides an opportunity to support them at an early stage.
15. There is a strong policy rationale for mandating a Health and Work Conversation prior to the WCA and there is a precedent to do this; until 2010 claimants were required to attend a work-focused interview before being assessed at the WCA. Currently, claimants are not seen by a work coach in the Jobcentre until they have had their WCA (unless they volunteer) and then only claimants placed in the work-related activity group (WRAG) are seen for mandatory appointments. This can mean claimants are not routinely offered any support for many months. Evidence shows that the longer one is out of work, the harder it is to re-enter the labour market. The current lack of early intervention means that claimants can become detached from the labour market for long periods.
16. During the Health and Work Conversation claimants are given the opportunity to discuss their condition, their goals for the future (which may not necessarily be work-related) the obstacles standing in the way of them achieving their goals, and plan realistic action to overcome challenges. Work coaches are also trained to take a holistic approach and to use behaviourally informed techniques to build claimant resilience and motivation. Work coaches will therefore be able to effectively tailor and personalise the Claimant Commitments with the appropriate voluntary steps each claimant can take to manage their health and move closer to the labour market. Additional interventions before the Work Capability Assessment will be available to a percentage of claimants and will be administered flexibly by operational colleagues. For an overview of the new claimant journey and the Health and Work Conversation process, please see annexe 1.
17. A further benefit of this approach, combined with the work coach delivery model whereby claimants will always be seen by the same work coach, is that after the outcome of the WCA is known, the claimant will have an established relationship with his or her work coach. The Claimant Commitment will be updated as the claimant and work coach build on the Health and Work Conversation and work together to support the claimant's progress towards work.

Existing ESA conditionality and effect of the proposed changes

18. Claimants currently have to verbally agree to a customer statement at the point of claim in order for their claim to be valid. This includes declaring that the information provided is true and that they will inform the Department of any change in their circumstances that may affect their claim.
19. The proposed changes will make the acceptance of a Claimant Commitment at the point of claim a condition of entitlement to the benefit for new claimants. The contents of the Claimant Commitment at the point of claim will mirror part of the contents of the current customer declaration, requiring claimants to inform DWP of any change of circumstances that might affect their benefit and to confirm that the information they have provided is true to their knowledge. Therefore the requirements the claimant will accept for the initial Claimant Commitment will not be any different to the requirements they currently accept through the current customer declaration, although the legal underpinning will change.
20. With the proposed changes, an estimated 90% of new claimants will be required to attend a mandatory Health and Work Conversation, if not exempt because of their health condition or exceptional circumstances, at around week four of their claim. During the conversation the Claimant Commitment will be personalised and claimants will agree with the Work Coach voluntary steps they can take to remain closer to the labour market, manage their health and other barriers to employment.
21. For claimants placed in the Work Related Activity Group following their WCA, the Claimant Commitment will replace the current action plan and record any voluntary or mandatory work-related activities the claimant is required to complete to prepare for a return to work in the future. These actions will be discussed and agreed with their work coach during Work Focused Interviews and recorded on the Claimant Commitment rather than the action plan as is the process now. The introduction of the Claimant Commitment and Health and Work Conversation will not necessitate a change to the sanctions regime, the existing sanctions process will apply including safeguards for vulnerable claimants.
22. Claimants placed in the Support Group following their WCA, will continue to have a Claimant Commitment requiring them to declare any change of circumstances that would affect their benefit claim to the Department, but all other actions will remain voluntary. There will be no requirements to attend further work-focused interviews unless they volunteer.

Information and Communications Strategy

23. We are developing a range of learning and awareness products which fully support all staff in understanding the changes entailed by the introduction of a Claimant Commitment for new ESA claimants and a mandatory Health and Work Conversation.
24. The changes will be clearly communicated to all those affected in advance of the change and a full communications strategy is being developed to ensure a smooth transition and complete clarity over changes and requirements for claimants.
25. The Health and Work Conversation is a wholly new approach, based on evidence and scientific techniques; coaching skills are fundamental to its successful delivery. A comprehensive two day training package for work coaches is under development and will be tested in jobcentres before roll out. This will equip work coaches with the necessary skills to effectively tailor Claimant Commitments (with voluntary actions) and to acquire the right set of skills to engage with claimants with health conditions.
26. To meet the requirements of the Equality Act 2010, the Department for Work and Pensions has carried out an Equality Analysis on this measure. Such an assessment considers the potential impact of the proposed policies in terms of the protected characteristics (disability, ethnicity and gender), and the additional protected characteristics (age, gender reassignment, sexual orientation, religion or belief, marriage and civil partnership, and pregnancy and maternity) and helps to ensure that the Department has due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations when developing strategies policies and services.
27. Some of the provisions contained in the regulations may affect people with characteristics protected under the Equality Act 2010, the analysis (Annex x) shows that by definition everybody potentially affected by our policy proposal has an illness or disability. These changes will therefore have an impact on this group. However, we see this policy as having a positive impact on claimants and are of the view that it is a proportionate means of meeting the legitimate aims of ensuring that disabled people are supported early on in their claim and are prepared for the transition into Universal Credit. As steps are taken towards bridging the disability employment gap, public confidence in the welfare system will grow and, ultimately, people will be helped to get back to work sooner. Any potential negative effects will also be mitigated by the safeguards that will be applied (for example, reasonable adjustments for those claimants unable to attend in person) and guidance that will be issued to work coaches and decision makers

28. This change will require implementation costs of around £3m in 2016/17 and additional yearly DEL costs; full funding for the change was secured in the 2015 Spending Round.

Safeguards

29. Provisions will be put in place to protect the most vulnerable claimants. Claimants will be exempted from accepting a claimant commitment when:
- They cannot accept a Claimant Commitment because they lack the capacity to do so,
 - Or there are exceptional circumstances which mean that it would be unreasonable to expect the claimant to accept a Claimant Commitment.
30. Claimants will also be entitled to dispute the contents of their claimant commitment, should they disagree with any of its requirements. In the case of a dispute, the claimant commitment is referred to a second work coach for review. At the second opinion interview, the disputed Claimant Commitment is reviewed and a determination made to decide if it should be changed. If the Work Related requirements under review are judged to be unreasonable, based on the claimant's personal circumstances, then the Claimant Commitment will be changed.
31. Where it would be inappropriate for a claimant to take part in the Health and Work Conversation at a particular time, then Work Coaches will have the discretion to defer the Health and Work Conversation and clear operational instructions will be issued around the circumstances in which this would apply.
32. A small percentage of claimants will be altogether exempt from the Health and Work Conversation, where this would be inappropriate, for example claimants who are undergoing treatment, are in hospital or are terminally ill. Guidelines will be issued to protect the most vulnerable claimants.
33. In the event of a failure to attend a mandatory Health and Work Conversation, the same safeguards used in ESA mandatory WFIs will apply. Firstly, a work coach will attempt to contact the claimant by telephone, offering them the opportunity to show 'good cause' for failing to attend. If contact is made and good cause shown, another interview is booked and no further action is taken. If contact is not made, the claimant is then issued a letter requesting proof of good cause within five days. If good cause still not shown (through no contact or contact but no good reason) work coaches consider claimant vulnerability and the option of making a core visit. If, following the core visit still no good cause is shown, then the case is referred to a Labour Market Decision Maker

who then considers the case and makes the final decision as to whether to impose a sanction for failing to take part in the work-focussed interview.

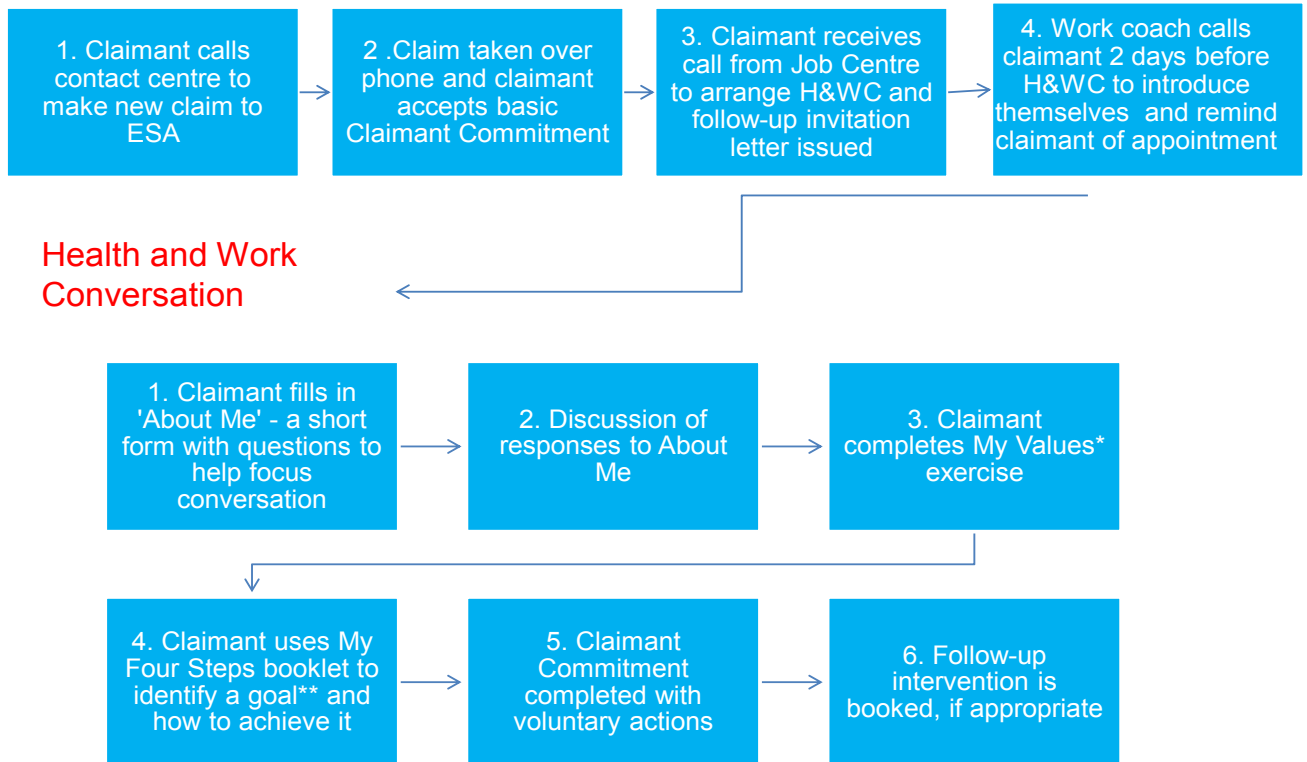
Consultation on the proposed changes

34. The design of the Health and Work Conversation was carried out in open consultation with a number of key external stakeholders including: charities, think-tanks, academics and practitioners. Regular co-design workshops were held in the design phase of the Health and Work Conversation with relevant charity representatives. Consultation with other experts such as practitioners, academics, insurance companies and think tanks was conducted through update sessions, interviews and in-person conversations.
35. Two process tests of the Health and Work Conversation will have been carried out before roll out to qualitatively test the feasibility of the conversation and its products. The learning gathered from these has been used to update and modify the products to better suit claimant and business needs.
36. The introduction of the Claimant Commitment to ESA for new claimants and consequential amendments to the ESA (WRA) Regulations 2011 are being made using the powers in the Welfare Reform Acts of 2007 and 2012, and the principles behind the change have been subject to Parliamentary scrutiny. The commencement of section 54 of the Welfare Reform Act 2012 and the new regulations made with regards to the claimant commitment do not require us to consult SSAC as the regulations are being made within 6 months of commencing s.54 of the Act (s.173(5)(b)(ii) Social Security Administration 1992). However, the amendments to the Employment and Support Allowance (Work-Related Activity) Regulations 2011 do require us to consult SSAC.

Monitoring and evaluation of the proposed changes

37. We will monitor the impact of the change through established customer feedback processes and through a formal evaluation. Formal evaluation will be conducted as the Health and Work Conversation is rolled out on a phased basis to manage the impact on operations and ensure all work coaches are appropriately trained to deliver both a Health and Work Conversation and a Claimant Commitment. We will also seek feedback from external stakeholders through regular informal meetings to help ensure that the policy design meets its objective.

Annexe 1



*Self-affirmation theory underpinning the exercise posits that if individuals reflect on values that are personally meaningful to them they become more resilient. This exercise can be used at the Work Coach's discretion, if the claimant is struggling to find a goal.

**goal does not need to be work related, as long as it is something that matters to the claimant

Annexe B

Annex A) ESA Claimant Commitment Regulations

STATUTORY INSTRUMENTS

2016 No.

SOCIAL SECURITY

**The Employment and Support Allowance (Claimant Commitment)
Regulations 2016**

Made - - - - - ***
Laid before Parliament ***
Coming into force - - - *1st November 2016*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 1C, 13, 14, 15, 16, 24(1), 25(2) to (5) of, and paragraph 4A of Schedule 2 to, the Welfare Reform Act 2007⁽¹⁾.

[In accordance with section 172(1) of the Social Security Administration Act 1992⁽²⁾ the Secretary of State has referred the proposals for these Regulations to the Social Security Advisory Committee.] [or]

[In accordance with section 173(1)(b) of the Social Security Administration Act 1992⁽³⁾, the Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it.]

Citation and commencement

These Regulations may be cited as the Employment and Support Allowance (Claimant Commitment) Regulations 2016 and come into force on [1 November 2016].

Claimant Commitment— date and method of acceptance

—a) For the purposes of section 1(3)(aa) of the Act, a claimant who has accepted a claimant commitment within such period after making a claim for an employment and support allowance as the Secretary of State specifies is to be treated as having accepted that claimant commitment on the first day of the period in respect of which the claim is made.

In a case where an award of an employment and support allowance may be made without a claim, a claimant who accepts a claimant commitment within such period as the Secretary of State specifies is to be treated as having accepted a claimant commitment on the day that would be the first day of the first benefit week in relation to the award.

(1) 2007 c. 5. Section 24(1) is cited for the meaning of “prescribed”.
(2) 1992 c. 5.
(3) 1992 c. 5.

The Secretary of State may extend the period within which a claimant is required to accept a claimant commitment or an updated claimant commitment where the claimant requests an extension and the Secretary of State considers that the request is reasonable.

A claimant must accept a claimant commitment by one of the following methods, as specified by the Secretary of State—

- electronically;
- by telephone; or
- in writing.

Claimant Commitment—exceptions

A claimant may be entitled to an employment and support allowance without having accepted a claimant commitment if the Secretary of State considers that—

- the claimant cannot accept a claimant commitment because they lack capacity to do so; or
- there are exceptional circumstances in which it would be unreasonable to expect the person to accept a claimant commitment.

Amendment of the Employment and Support Allowance (Work-Related Activity) Regulations 2011

—b) The Employment and Support Allowance (Work-Related Activity) Regulations 2011⁽⁴⁾ are amended as follows.

In regulation 2 (interpretation) after the definition of “carer’s allowance”, insert—

““claimant commitment” has the meaning given in section 1C of the Act;

“existing claimant” means a person who makes or is treated as making a claim for an employment and support allowance in accordance with regulations 4(1), 4ZC(1), 6(1F) and 19(1) of the Social Security (Claims and Payments) Regulations 1987 on or before the [31 October 2016];

“new claimant” means a person who makes or is treated as making a claim for an employment and support allowance in accordance with regulations 4(1), 4ZC(1), 6(1F) and 19(1) of the Social Security (Claims and Payments) Regulations 1987⁽⁵⁾ on or after the [1 November 2016].”

In regulation 5 (notification of work-related activity and action plans), before paragraph (1), insert—

“(A1) This regulation only applies to an existing claimant.”

After regulation 5, insert—

“5A. (Notification of work-related activity to new claimants)

The Secretary of State must notify a new claimant of a requirement to undertake work-related activity by one of the following methods—

- (1) in writing;
- (2) by telephone; or
- (3) electronically.”

In regulation 7 (reconsideration of action plans), before paragraph (1), insert—

“(A1) This regulation only applies to an existing claimant.”

After regulation 7, insert—

“7A. (Reconsideration of work-related activity for new claimants)

(1) A new claimant may request reconsideration of work-related activity notified to them by the Secretary of State.

⁽⁴⁾ S.I. 2011/1349
⁽⁵⁾ S.I. 1987/1968

(2) On receipt of a request the Secretary of State must reconsider the work-related activity.

(3) A decision of the Secretary of State must be in writing and given to the person.”

In regulation 9(2)(a), omit paragraphs (iii) and (iv) and substitute—

“(iii) regulation 5A (notification of work-related activity to new claimants);

(iv) regulation 6 (requirement to undertake work-related activity not to apply);

(v) regulation 7 (reconsideration of action plans);

(vi) regulation 7A (reconsideration of work-related activity for new claimants;”

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

Date

Name
Minister of State
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations contain provisions for accepting the claimant commitment which is a condition of entitlement for all persons making a new claim to old-style employment and support allowance on or after 1 November 2016.

Regulation 2 details the circumstances in which a claimant can be treated as having accepted a claimant commitment as well as the methods by which a claimant can accept a claimant commitment

Regulation 3 states that there will be two circumstances in which a claimant will not be required to have a claimant commitment as a condition of entitlement to benefit: 1) where the claimant lacks capacity to accept a claimant commitment; or 2) there are exceptional circumstances which means it would be unreasonable to expect the person to accept a claimant commitment.

Regulation 4 amends the Employment and Support Allowance (Work-Related Activity) Regulations 2011 (WRA Regulations) to add information on notification and reconsideration of work-related activity for persons who make a claim to old-style ESA on or after 1 November 2016 (new claimants). New claimants will not have an action plan and instead they are notified of work-related activity in writing, by telephone or electronically. They can request reconsideration of that work-related activity. On receipt of a request the Secretary of State must reconsider the work-related activity and must give a decision to the claimant in writing. The Secretary of State may contract out both the notification of work-related activity and reconsideration of work-related activity for new claimants.

There are no amendments to the WRA Regulations for existing claimants (those who have claimed on or before 31 October 2016). They will not be required to have a claimant commitment, and any work-related activity will continue to be recorded in an “action plan” as detailed in the Employment and Support Allowance (Work-Related Activity) Regulations 2011.

An impact assessment has not been produced for this instrument as it has no impact on business or civil society organisations.

Information provided by DWP in response to queries raised by committee members which could not be addressed at that meeting



Department
for Work &
Pensions

From: [REDACTED]

To: Social Security Advisory Committee

Date: 6 September 2016

Dear [REDACTED]

During the meeting on 27 July when the Employment and Support Allowance (Claimant Commitment) Regulations 2016 were discussed, DWP officials agreed to come back to the committee separately on a few points and on some of the questions it raised.

Officials agreed to look into and provide the committee with additional information on the following:

- The reason for not mirroring Universal Credit (UC) regulation 89 and New Style ESA regulation 47 in the exemptions from the Health and Work Conversation. The committee questioned the Department's intention to set out exemptions from the Health and Work Conversation in guidance rather than in regulations, and officials agreed to look into the issue further.
- The findings from the beta test of the Health and Work Conversation which was conducted in July this year and when they would become available.
- The process that will be put in place for claimants who might want to challenge the contents of their Claimant Commitment.
- The summary from learning collected from the consultations with stakeholders- what they recommended and what was incorporated in the design of the Health and Work Conversation.
- The academics the policy team consulted with during the design phase of the Health and Work Conversation.

Below are responses to each of these points in turn.

Health and Work Conversation Exemptions

The Department has set out exemptions from acceptance of a Claimant Commitment in regulations that mirror those in Universal Credit. However, the Department has proposed setting exemptions from the Health and Work Conversation in guidance rather than in regulations.

Regulation 89 of the Universal Credit Regulations and regulation 47 of the Employment Support Allowance (2013) regulations, both set out those claimants who are not subject to any work-related requirements. Work-related requirements include work focussed interviews, but also work preparation, work search, work

availability. The Work Focussed Interview is therefore only one part of other possible work related activities, most of which are more onerous than the Work Focussed Interview itself. For this reason the Department has thus far decided not to mirror these regulations and set exemptions for the Health and Work Conversation in guidance. All relevant exemptions from work-related requirements in both the Universal Credit and new style ESA regulations will be included in the guidance, which will also be supplemented with additional exemptions that are not included in the regulations, and are aimed at protecting the most vulnerable claimants. For example, claimants who are in residential care, claimants who have an appointee, claimants who are in hospital, claimants receiving haemodialysis for chronic renal failure, post operative claimants, claimants affected by psychosis and claimants affected by dementia.

It is relevant to note that when ESA was first introduced work focussed interviews in the assessment phase were part of the customer journey and no exemptions were enshrined in the legislation. The Department's proposals are therefore coherent with initial policy intention.

Health and Work Conversation Beta test findings

Findings from the beta test of the Health and Work Conversation, will be sent to the committee separately, once they become available in early September.

Process for Claimant Commitment Review

The actions recorded in the Claimant Commitment during the Health and Work Conversation will be agreed between the Work Coach and claimant as part of the Conversation; they will also be voluntary before completion of the Work Capability Assessment, making a review of these unnecessary.

Only claimants placed in the Work Related Activity Group group will have mandatory actions recorded in the Claimant Commitment (currently, these are recorded in the action plan). In these cases, if a claimant disagrees with the work search/availability requirements of their Claimant Commitment, or whether any limitation should apply, and refuses to accept it, they have the following options:

- A cooling off period – of up to 5 working days to reconsider whether they will accept it
- Ask for a reconsideration

Reviewing a Claimant Commitment

A review of the requirements within a Claimant Commitment will be carried out by a second work coach. The work coach will interview the claimant (usually the same or next day).

If the original Claimant Commitment is upheld as reasonable, the claim will end and the claimant will need to re-claim.

If the original Claimant Commitment is not upheld as reasonable, it is revised. The claimant will be asked to accept the revised Claimant Commitment. If they do not, they will be advised that their claim will end (no recourse to a further cooling off period or review).

Claimants can ask for one review per updated Claimant Commitment.

During the review period the claimant should be informed of the consequences of not accepting the Claimant Commitment.

Stakeholder insights

The policy design of the Health and Work Conversation builds on insights from front-line practitioners, charities, academics and end-users. In the development phase of the Health and Work Conversation, the ESA Reform team undertook a series of co-design workshops to gather stakeholder feedback and input in the Health and Work Conversation. Many of the lessons and principles gathered from these workshops played a central role in the design of the Health and Work Conversation, though not all could be included, for operational, practical and political reasons.

The table below summarises the learning collected from a variety of stakeholders during our consultations and indicates whether and how each of the points were included in the conversation design:

Stakeholder Views	H&WC
The information disclosed should not be taken into account at the WCA, nor should people be sanctioned if they cannot fulfil their action plans.	The Health and Work Conversation does not have an impact on the outcome of the WCA, to ensure claimants can engage with work coaches more freely.
It is useful for a work coach to have information on the claimant (health condition, skills, employment history) in advance. However, this must be balanced with the need not to overburden or confuse claimants with excessive information requests	One of the products used in the H&WC and designed by the Behavioural Insights Team, is the 'About Me'. It is a short set of questions giving the work coach information about the claimant's experience, likes, strengths, etc. It also acts as an ice breaker
There is value in finding out about the experience of previous work (ie good and bad experiences) as well as simple job history	The About Me form gives claimants the opportunity to provide information on past experience and providing WCs with a holistic picture of the claimant.
Charities themselves should be able to conduct the conversation. This would reassure claimants and bring in expertise on the impact of health conditions.	This element could not be included in the design of the H&WC, for operational reasons.

Claimants should be able to choose the channel (phone, Web chat or face to face)	The standard model for the delivery of the H&WC is face to face, but we are exploring whether it is possible to conduct the H&WC over the phone.
The conversation and action plans should be flexible, and allow for positive steps that might not be directly linked to work, but could act as stepping stones, such as participating in social activities	The 'My 4 Steps' exercise allows for claimants to come up with a goal that need not be work or health related, and help them make realistic plans to achieve that goal.
Empathy and coaching skills are essential for the person facilitating.	Work Coaches will receive a full 2 day training in addition to their core training, to ensure they are equipped with these skills.
Ideally a health management plan should be integrated into the action plan	This is not something we can take forward at the moment but will explore with colleagues from the Joint Work and Health Unit.
Identification of support needs has to be backed up by relevant support.	Work Coaches are trained to have a thorough knowledge of local support and be able to sign post it to the appropriate claimants.
In a mandatory environment, need to ensure that work coaches are sufficiently skilled to make nuanced judgements on claimants' capabilities and to vary conditionality accordingly	Work Coaches will receive a full 2 day training in addition to their core training, to ensure they are equipped with the appropriate skills to deal with a wide variety of claimants and claimant circumstances.
Claimants with complex needs may need more than one interview	Flexible follow-up interventions will be available. These can be face to face, by email, text message and telephone call.
There should be clarity and reassurance about the consequences of the conversation and reassurance should be given about impact on sanctions/WCA.	The H&WC provides a good opportunity for Work Coaches to explain the claim process in more detail to the claimant. Reassurance is included both in the invitation telephone call and letter as well as during the conversation itself that it is not connected to the WCA
The Conversation should be voluntary in order for claimants to engage more fully.	The H&WC will be mandatory to prepare this claimant group for the transition on to Universal Credit and to support the introduction of the Claimant Commitment.
Must ensure accessibility of H&WC products for all claimants	Accessibility of all H&WC will be ensured as part of feasibility work.

Consultation with academics

The think tank *Reform* was involved in a number of co-design workshops and stakeholder sessions.

████████████████████, a senior lecturer in sociology and social policy from the University of Kent, who was on secondment to the Department for six months, was involved and inputted in the design of the Health and Work Conversation.

Correspondence from Paul Gray (SSAC Chair) to the Minister of State for Disabled People, Health and Work dated 4 August 2016.

Penny Mordaunt MP
Minister of State for Disabled People, Health and Work
Department for Work and Pensions
4th Floor
Caxton House
Tothill Street
London
SW1H 9NA

4 August 2016

Dear Minister

The Employment and Support Allowance (Claimant Commitment) Regulations 2016

First, let me take this opportunity to welcome you to your new post in the Department. You have an interesting and important portfolio which touches on the lives of some of the most vulnerable people in our society, and I look forward to working with you on those issues. As I hope will become apparent to you over time, the Social Security Advisory Committee is keen to position itself as a constructive and supportive source of advice to you and your Ministerial colleagues.

At the Committee's meeting on 27 July, we scrutinised the Department's proposals¹ to extend the requirement to agree a Claimant Commitment as part of the claiming process (a feature of claims for Universal Credit and for Jobseeker's Allowance) to claims for Employment and Support Allowance (ESA). After careful consideration of the proposals, the Committee concluded that it might be helpful to share with you some of the concerns that we raised with officials during that discussion.

In doing so, I should emphasise at the outset that the Committee welcomes the Department's commitment to provide early intervention by way of support to claimants who, at some point in the future, may need to think about returning to work or at least moving closer towards the labour market. There are clear benefits for claimants in finding appropriate and fulfilling work that supports them financially.

Timetable for implementation

We understand that the Department has trialled this proposal on a small scale over a period of six weeks, and that the tracked outcomes from that exercise are still being analysed by DWP officials.

¹ The Employment and Support Allowance (Claimant Commitment) Regulations 2016
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Given that there is, as yet, no conclusive evidence from that exercise we suggest that there would be merit in the Department reviewing its current plans for implementation of this policy on a major scale on 1 November. Our view, based on the information available to us, is that the proposed timetable may be too rapid and that it might be more appropriate to develop a revised plan for implementation that enables the changes to be introduced in a steady and phased way, and which would enable early learning to be acted on.

Our view is strengthened by the inevitable challenges that operational staff will face in preparing to deliver this change effectively. For example, given the complexity of health conditions, and the different effects they can have on each individual, we think it important to consider carefully whether work coaches will be sufficiently prepared by 1 November to deliver this effectively, and for it to be generally viewed by claimants as a supportive intervention rather than something more punitive. Work coaches are being asked to introduce individually tailored requirements for ESA claimants in order to position themselves nearer to the labour market in less than four months, but in our experience the ability of claimants with mental health condition or learning difficulties to appreciate the distinction between having, or not having, a sanction attached to a written requirement is often limited. We welcome the fact that work coaches will receive a two day training session in preparation for this work, but consider it important that the Department reviews the plans for those sessions to satisfy itself that they are adequate both in content and duration.

Mandation: absence of relevant evidence

The Committee notes that the initial testing involved individuals who had volunteered to take part in the health and work conversation, so they could not be sanctioned if they failed to participate. We consider the case for using the findings of a voluntary process to inform a process that would impose benefit sanctions for non-compliance unpersuasive. In making this point to officials at our meeting, we were advised that the testing involved claimants who were told that the requirement to participate in the health and work conversation was mandatory (a point that raises its own ethical questions that we do not intend to dwell on here) but, because that was not the case, there was no follow up activity in the event of a failure to participate. The Department therefore has no data relating to the reasons for non-compliance, which limits the opportunities to 'test and learn'.

Guidance and support for work coaches

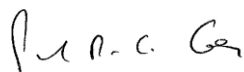
The Committee acknowledges the increasing reliance on guidance as opposed to the prescription of exemptions in the regulations themselves. We recognise that there is a balancing act to be struck between setting out rigid rules in legislation and allowing for the personalised discretion and flexibility of work coaches and decision-makers through guidance. Nonetheless in this case we are concerned about a potential lack of consistency that might arise in these cases. For example, the level of experience of individual work coaches will be a critical factor here – some will have real insight into mental health problems, whereas others inevitably will be less experienced in this

area. Such differences between the work coaches have the potential to lead to very different decisions about the content of a Claimant Commitment or in exempting individuals from the obligation to accept a Claimant Commitment.

More generally, the Committee notes the very major changes in the emerging role of work coaches and wonders whether the Department might be expecting too much of them too quickly. When considering regulatory proposals relating to benefits for people of working age, we are frequently assured that work coaches will receive further training and guidance in relation to the particular proposal in question. While many of the standard changes in procedure may be easy pick up, some of the more recent expectations - such as a good understanding of physical and mental health problems - are more challenging. It may therefore be timely for the Department to pause and take stock of the extent of changing expectations of the role of the work coach. In particular we would suggest that you seek assurance that such staff are sufficiently supported by the appropriate training, that strong supporting guidance is in place and that staff are allocated sufficient time to undertake each aspect of their role effectively and efficiently.

I trust that these observations are helpful. I would be very happy to discuss any of the issues raised in this note if you would find that helpful.

I am copying this letter to Lord Freud, Caroline Nokes, Robert Devereux, Andrew Rhodes and Jeremy Moore.

A handwritten signature in black ink, appearing to read 'Paul Gray'.

Paul Gray
Chair