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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

The Employment and Support Allowance  
(Work-Related Activity) Regulations 2011

PART 4

Amendments to the ESA Regulations

**Amendment to regulation 2(1) of the ESA Regulations (interpretation)**

10. In regulation 2(1) of the ESA Regulations, omit the definition of “action plan”.

**Revocation of regulations relating to work-focused health-related assessments**

11. The following regulations of the ESA Regulations are revoked—

- (a) regulation 47 (requirement to take part in a work-focused health-related assessment);
- (b) regulation 48 (work-focused health-related assessment);
- (c) regulation 49 (notification of assessment);
- (d) regulation 51 (taking part in a work-focused health-related assessment);
- (e) regulation 52 (deferral of a requirement to take part in a work-focused health-related assessment); and
- (f) regulation 53 (failure to take part in a work-focused health-related assessment).

**Amendment to regulation 56 of the ESA Regulations (notification of interview)**

12. In regulation 56(1) of the ESA Regulations—

- (a) for “attend” substitute “take part in”; and
- (b) after “time and” insert “if required to attend in person, the”.

**Amendment to regulation 57 of the ESA Regulations (taking part in a work-focused interview)**

13.—(1) Regulation 57 of the ESA Regulations is amended as follows.

(2) In paragraph (1)(a), at the beginning insert “if required to attend in person,”.

(3) After paragraph (1)(a) insert a new sub-paragraph—

- “(aa) if not required to attend in person, is available and responds at the date and time notified in accordance with regulation 56 to any contact made at that time for the purpose of carrying out the interview;”.

(4) Omit paragraph (1)(d).

**Revocation of regulation 58 of the ESA Regulations (action plans)**

14. Regulation 58 of the ESA Regulations is revoked.

**Substitution of regulation 61 of the ESA Regulations (failure to take part in a work-focused interview)**

15. For regulation 61(3) of the ESA Regulations (failure to take part in a work-focused interview), substitute—

“(3) In deciding whether a person has shown good cause for the failure, the Secretary of State must take account of all the circumstances of the case including in particular the person’s physical or mental health or condition.”.

**Amendment to regulation 62 of the ESA Regulations (contracting out certain functions relating to work-focused interviews)**

16. In paragraph (2) of regulation 62 of the ESA Regulations omit sub-paragraph (d).

**Amendment to regulation 63 of the ESA Regulations (reduction of employment and support allowance)**

17.—(1) Regulation 63 of the ESA Regulations is amended as follows.

(2) For paragraph (1) substitute—

“(1) Where the Secretary of State has determined—

- (a) that a claimant who was required to take part in a work-focused interview has failed to do so and has failed to show good cause for that failure in accordance with regulation 61; or
- (b) that a claimant who was required to undertake work-related activity has failed to do so and has failed to show good cause for that failure in accordance with regulation 8 of the Employment and Support Allowance (Work-Related Activity) Regulations 2011,

(“a failure determination”) the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.”.

(3) In paragraph (3)(b)(i) for “a work-focused health-related assessment” substitute “work-related activity”.

**Amendment to regulation 64 of the ESA Regulations (cessation of reduction)**

18.—(1) Regulation 64 of the ESA Regulations is amended as follows.

(2) For paragraph (1) substitute—

“(1) Any reduction imposed as a result of a failure determination which resulted from a failure to undertake work-related activity in accordance with the Employment and Support Allowance (Work-Related Activity) Regulations 2011 ceases to have effect if—

- (a) the claimant complies with a requirement to undertake the work-related activity specified in the action plan or, where permitted by the Secretary of State, an alternative activity;
- (b) the claimant subsequently ceases to be subject to a requirement to undertake work-related activity; or
- (c) the Secretary of State decides it is no longer appropriate to require the person to undertake work-related activity at that time.”.

(3) After paragraph (1) insert—

“(1A) The Secretary of State must notify the person in writing—

(a) where an alternative activity is permitted under paragraph (1)(a), by inclusion of that activity in the action plan; and

(b) of any decision under paragraph (1)(c).”.

(4) In paragraph (2)(a) for “attend” substitute “take part in”.

#### **Amendment to Schedule 8 to the ESA Regulations**

**19.** In Schedule 8 to the ESA Regulations (sums to be disregarded in the calculation of income other than earnings) after paragraph 15, insert—

“**15A.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, in complying with a requirement to undertake work-related activity.”.

#### **Amendment of Schedule 9 to the ESA Regulations**

**20.** In Schedule 9 to the ESA Regulations (capital to be disregarded) after paragraph 32, insert—

“**32A.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, in complying with a requirement to undertake work-related activity but only for 52 weeks beginning with the date of receipt of the payment.”.