

WELFARE REFORM ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

PART 1: Employment and Support Allowance

Assessments relating to entitlement

Section 8: Limited capability for work

67. This section provides powers to set out the system for determining “limited capability for work” in regulations. Limited capability for work is one of the conditions of entitlement a claimant must satisfy before he can be eligible for an employment and support allowance (see section 1(3)). Section 1(4) defines limited capability for work. Section 8 provides powers to specify the type of test that will be used to determine whether or not a claimant has limited capability for work. The test will assess a claimant’s ability to carry out specified activities. The specific activities, and the extent to which a person’s capability to perform them must be limited, will be contained in regulations.
68. Regulations under section 8 may make provision about the manner in which the assessment of a person’s capability for work will be performed (including providing for a medical examination to be carried out if required). Regulations may also provide for a claimant to be treated as not having limited capability for work if he fails, without good cause, to provide requested information or evidence related to his claim, or to provide it in the manner requested or if he fails without good cause to attend for or submit to a medical examination he is called to attend as part of the assessment process. Section 8 is similar to sections 171A and 171C of the Social Security Contributions and Benefits Act 1992.
69. The assessment process used to determine benefit entitlement will be carried out, wherever possible, during the first 13 weeks of a claim. *Subsection (5)* provides regulation making powers that will allow a claimant to be treated as having limited capability for work until the time when his capability for work is actually tested and determined. These powers may be used, for example, so that a claimant can be entitled to an employment and support allowance during the assessment phase, on the basis of medical certificates from his general practitioner, up until the point when the assessment of his capability for work is actually completed.

Section 9: Limited capability for work-related activity

70. This section refers to claimants whose physical or mental conditions are so severely disabling that it is unreasonable to require them to engage in work-related activity or to participate in work-focused interviews as a condition of receiving the full amount of employment and support allowance. A claimant of this description will have “limited capability for work-related activity”. A claimant who demonstrates limited capability for work-related activity will be a member of the “support group” (referred to in sections 11 and 12 and defined in section 24(4)). A claimant with limited capability for work-

related activity will be entitled to receive a support component in addition to the basic allowance of employment and support allowance (see sections 2 and 4).

71. A claimant who is a member of the support group will not be subject to any requirements imposed by regulations under sections 11, 12 and 13 to attend work-focused health-related assessments, participate in work-focused interviews or undertake work-related activity.
72. **Section 9** provides regulation making powers that are similar to the powers provided under section 8. Regulations will make provision about the assessment of a person's capability for work-related activity and about how the assessment will be performed (including providing for a medical examination to be carried out if one is considered necessary). Regulations will also provide for a claimant to be treated as being capable of work-related activity if he fails, without good cause, to comply with requests for information or evidence related to his claim, or to provide it in the manner requested or if he refuses without good cause to attend for or submit to a medical examination where one is required.

Section 10: Report

73. This section requires the Secretary of State to lay before Parliament an annual independent report on the operation of the assessments in sections 8 and 9, for the first five years after these sections come into effect.