

STATUTORY INSTRUMENTS

2008 No. 794

The Employment and Support Allowance Regulations 2008

PART 8

CONDITIONALITY

CHAPTER 1

Work-focused health-related assessment

Requirement to take part in a work-focused health-related assessment

^{F1}47.

Textual Amendments

F1 Reg. 47 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(a)**

Work-focused health-related assessment

^{F2}48.

Textual Amendments

F2 Reg. 48 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(b)**

Notification of assessment

^{F3}49.

Textual Amendments

F3 Reg. 49 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(c)**

Determination of the place of the work-focused health-related assessment

^{F4}50.

Textual Amendments

F4 Reg. 50 omitted (28.6.2010) by virtue of [The Social Security \(Miscellaneous Amendments\) \(No. 3\) Regulations 2010 \(S.I. 2010/840\)](#), regs. 1, **9(12)**

Taking part in a work-focused health-related assessment

^{F5}**51.**

Textual Amendments

F5 Reg. 51 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(d)**

Deferral of requirement to take part in a work-focused health-related assessment

^{F6}**52.**

Textual Amendments

F6 Reg. 52 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(e)**

Failure to take part in a work-focused health-related assessment

^{F7}**53.**

Textual Amendments

F7 Reg. 53 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **11(f)**

CHAPTER 2

Work-focused interviews

Requirement to take part in a work-focused interview

54.—(1) The Secretary of State may require a claimant who satisfies the requirements in paragraph (2) to take part in one or more work-focused interviews as a condition of continuing to be entitled to the full amount of employment and support allowance payable to the claimant.

(2) The requirements referred to in paragraph (1) are that the claimant—

- (a) is either—
 - (i) entitled to an employment and support allowance; or
 - (ii) a person in respect of whom the Secretary of State has made an award under regulation 146(1);
- (b) is not a member of the support group;

- (c) has not reached the age at which a woman of the same age as the claimant would attain pensionable age;^{F8} ...
 - (d) is not only entitled to a contributory allowance payable at a nil rate^{F9}; and]
 - ^{F9}(e) is not a lone parent who is responsible for and a member of the same household as a child under one.]
- (3) Any requirement to take part in a work-focused interview ceases to have effect if the claimant ceases to satisfy the requirements in paragraph (2).

Textual Amendments

- F8** Word in reg. 54(2)(c) omitted (31.10.2011) by virtue of [The Social Security \(Work-focused Interviews for Lone Parents and Partners\) \(Amendment\) Regulations 2011 \(S.I. 2011/2428\)](#), regs. 1, **5(3)(a)**
- F9** Reg. 54(2)(e) and word inserted (31.10.2011) by [The Social Security \(Work-focused Interviews for Lone Parents and Partners\) \(Amendment\) Regulations 2011 \(S.I. 2011/2428\)](#), regs. 1, **5(3)(b)**

Work-focused interview

- 55.** The purposes of a work-focused interview are any or all of the following—
- (a) assessing the claimant's prospects for remaining in or obtaining work;
 - (b) assisting or encouraging the claimant to remain in or obtain work;
 - (c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
 - (d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
 - (e) identifying current or future work opportunities, including self-employment opportunities, for the claimant, that are relevant to the claimant's needs and abilities.

Notification of interview

56.—(1) The Secretary of State must notify the claimant of the requirement to [^{F10}take part in] the work-focused interview including details of the date, time and [^{F11}if required to attend in person, the] place of the interview.

(2) A work-focused interview may take place at a claimant's home if it is determined that requiring the claimant to attend elsewhere would cause undue inconvenience to, or endanger the health of, the claimant.

(3) The notification referred to in paragraph (1) may be in writing or otherwise.

Textual Amendments

- F10** Words in reg. 56(1) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **12(a)**
- F11** Words in reg. 56(1) inserted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **12(b)**

Taking part in a work-focused interview

57.—(1) A claimant is regarded as having taken part in a work-focused interview if the claimant—

- (a) [^{F12}if required to attend in person,] attends for the interview at the place and at the date and time notified in accordance with regulation 56;
- [^{F13}(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;]
- (b) provides information, if requested by the Secretary of State, about any or all of the matters set out in paragraph (2);
- (c) participates in discussions to the extent the Secretary of State considers necessary, about any or all of the matters set out in paragraph (3);
- ^{F14}(d)
- (2) The matters referred to in paragraph (1)(b) are—
 - (a) the claimant's educational qualifications and vocational training;
 - (b) the claimant's work history;
 - (c) the claimant's aspirations for future work;
 - (d) the claimant's skills that are relevant to work;
 - (e) the claimant's work-related abilities;
 - (f) the claimant's caring or childcare responsibilities; and
 - (g) any paid or unpaid work that the claimant is undertaking.
- (3) The matters referred to in paragraph (1)(c) are—
 - (a) any activity the claimant is willing to undertake which may make obtaining or remaining in work more likely;
 - (b) any such activity that the claimant may have previously undertaken;
 - (c) any progress the claimant may have made towards remaining in or obtaining work;
 - (d) any work-focused health-related assessment the claimant may have taken part in; and
 - (e) the claimant's opinion as to the extent to which the ability to remain in or obtain work is restricted by the claimant's physical or mental condition.

Textual Amendments

- F12** Words in reg. 57(1)(a) inserted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **13(2)**
- F13** Reg. 57(1)(aa) inserted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **13(3)**
- F14** Reg. 57(1)(d) omitted (1.6.2011) by virtue of [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **13(4)**

Action plan

^{F15}**58.**

Textual Amendments

- F15** Reg. 58 revoked (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **14**

Deferral of requirement to take part in a work-focused interview

59.—(1) A requirement to take part in a work-focused interview may be deferred or treated as having been deferred if at the time the work-focused interview is to take place, or was due to take place, such an interview would not at that time be or have been—

- (a) of assistance to the claimant; or
- (b) appropriate in the circumstances.

(2) A decision under paragraph (1) may be made at any time after the requirement to take part in the work-focused interview is imposed, including after the time that the work-focused interview was due to take place or took place.

(3) Where a requirement to take part in a work-focused interview is deferred, or treated as having been deferred, then the time that the work-focused interview is to take place must be re-determined.

Requirement to take part in a work-focused interview not to apply

60. The Secretary of State may determine that a requirement on a claimant to take part in a work-focused interview is not to apply, or is to be treated as not having applied, if that interview would not be, or would not have been, of assistance because the claimant is or was likely to be starting or returning to work.

Failure to take part in a work-focused interview

61.—(1) A claimant who is required to take part in a work-focused interview but fails to do so must show good cause for that failure within 5 working days of the date on which the Secretary of State gives notification of that failure.

(2) The Secretary of State must determine whether a claimant who is required to take part in a work-focused interview has failed to do so and, if so, whether the claimant has shown good cause for that failure in accordance with paragraph (1).

^{F16}(3)

Textual Amendments

F16 Reg. 61(3) omitted (3.12.2012) by virtue of [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), 3 (with reg. 1(2))

Contracting out certain functions relating to work-focused interviews

62.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

(2) The functions are any function under—

- (a) regulation 54(1) (requirement to take part in a work-focused interview);
- (b) regulation 56(1) and (2) (notification requirement);
- (c) regulation 57(1)(b) and (c) (taking part in a work-focused interview);

^{F17}(d)

- (e) regulation 59(1) and (3) (deferral of requirement to take part in a work-focused interview);
- (f) regulation 60 (requirement to take part in a work-focused interview not to apply).

Textual Amendments

- F17** Reg. 62(2)(d) omitted (1.6.2011) by virtue of [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, 16

CHAPTER 3

Reduction of employment and support allowance

Reduction of employment and support allowance

63.—^{F18}(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.]

^{F19}(2) Subject to paragraph (3), the amount of the reduction in relation to each failure determination is 100% of the prescribed amount for a single claimant as set out in paragraph (1)(a) of Part 1 of Schedule 4.]

(3) In any benefit week, the amount of an employment and support allowance payable to a claimant is not, by virtue of this regulation, to be reduced—

- (a) below 10 pence;
- (b) in relation to more than—
 - (i) one failure determination relating to ^{F20}work-related activity]; and
 - (ii) one failure determination relating to a work-focused interview; and
- (c) by more than 100% of the ^{F21}prescribed amount for a single claimant as set out in paragraph 1(a) of Part 1] of Schedule 4 in any circumstances.

(4) Where a claimant is entitled to both a contributory allowance and an income-related allowance, any reduction in the claimant's allowance must first be applied to the part of that allowance treated as attributable to the claimant's contributory allowance and only if there is any amount outstanding is it to be applied to the part of that allowance treated as attributable to the claimant's income-related allowance.

(5) For the purposes of determining the amount of any income-related allowance payable, a claimant is to be treated as receiving the amount of any contributory allowance ^{F22}including new style ESA] which would have been payable but for any reduction made in accordance with this regulation ^{F23}or section 11J of the Act respectively].

^{F24}(6) Subject to paragraph (10), the reduction is to have effect for—

- (a) one week for each 7 day period during which the claimant fails to meet a compliance condition; and
- (b) a further fixed period determined in accordance with paragraph (7).

^{F25}(7) The fixed period that applies in the circumstances described in the first column of the following table is set out in the second column.

Circumstances applicable to claimant’s case	Fixed period
Where there has been no previous failure by the claimant that falls within paragraph (8)	1 week
Where there have been one or more previous failures by the claimant that fall within paragraph (8) and the date of the most recent previous failure is not within 52 weeks beginning with the date of the current failure	1 week
Where there have been one or more previous failures by the claimant that fall within paragraph (8) and the date of the most recent previous failure is within 52 weeks, but not within 2 weeks, beginning with the date of the current failure and the period of reduction applicable to the most recent previous failure is or, but for paragraph (3), would have been—	
(a) 1 week	2 weeks
(b) 2 weeks	4 weeks
(c) 4 weeks	4 weeks
Where there have been one or more previous failures by the claimant that fall within paragraph (8) and the date of the most recent previous failure is within 2 weeks beginning with the date of the current failure and the period of reduction applicable to the most recent previous failure is or, but for paragraph (3), would have been—	
(a) 1 week	1 week
(b) 2 weeks	2 weeks
(c) 4 weeks	4 weeks.]

- (8) A previous failure falls within this paragraph if—
- (a) it relates to a failure for which a reduction was imposed under this regulation, or would have been but for paragraph (3); [^{F26}and]
 - (b) that failure occurred on or after 3rd December 2012; ^{F27} ...
 - ^{F27}(c)

(9) This paragraph applies where the claimant meets a compliance condition before the end of the period of one week after the date of the failure to which the failure determination relates.

(10) Where paragraph (9) applies, the claimant’s employment and support allowance is reduced only for the fixed period set out in paragraph (7) applicable to the claimant.

- (11) In this regulation—
- “compliance condition” means—
- (a) where the failure by the claimant relates to a requirement to take part in a work-focused interview, either—

- (i) taking part in a work-focused interview, or
- (ii) making an agreement with the Secretary of State to take part in a work-focused interview at an agreed date;
- (b) where the failure by the claimant relates to a requirement to undertake work-related activity, either—
 - (i) undertaking the activity specified in the action plan, or
 - (ii) where so notified by the Secretary of State, undertaking an alternative activity, or
 - (iii) making an agreement with the Secretary of State to undertake the activity referred to in sub-paragraph (i) or (ii) at an agreed date;

“current failure” means a failure which may lead to a reduction under this regulation in relation to which the Secretary of State has not yet determined whether the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.]

Textual Amendments

- F18** Reg. 63(1) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **17(2)**
- F19** Reg. 63(2) substituted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **4(2)** (with reg. 1(2))
- F20** Words in reg. 63(3)(b)(i) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **17(3)**
- F21** Words in reg. 63(3)(c) substituted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **4(3)** (with reg. 1(2))
- F22** Words in reg. 63(5) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **37(4)(a)**
- F23** Words in reg. 63(5) inserted (29.4.2013) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations 2013 \(S.I. 2013/630\)](#), regs. 1(2), **37(4)(b)**
- F24** Reg. 63(6)-(11) inserted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **4(4)** (with reg. 1(2))
- F25** Reg. 63(7) substituted (with application in accordance with reg. 2 of the amending S.I.) by [The Social Security \(Jobseekers Allowance, Employment and Support Allowance and Universal Credit\) \(Amendment\) Regulations 2016 \(S.I. 2016/678\)](#), regs. 1, **4(a)**
- F26** Word in reg. 63(8)(a) inserted (with application in accordance with reg. 2 of the amending S.I.) by [The Social Security \(Jobseekers Allowance, Employment and Support Allowance and Universal Credit\) \(Amendment\) Regulations 2016 \(S.I. 2016/678\)](#), regs. 1, **4(b)(i)**
- F27** Reg. 63(8)(c) and word omitted (with application in accordance with reg. 2 of the amending S.I.) by virtue of [The Social Security \(Jobseekers Allowance, Employment and Support Allowance and Universal Credit\) \(Amendment\) Regulations 2016 \(S.I. 2016/678\)](#), regs. 1, **4(b)(ii)**

Cessation of reduction

64.—^{F28}(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—

- ^{F29}(a)
- (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.]

[^{F30}(1A) The Secretary of State must notify the person in writing—

^{F31}(a)

- (b) of any decision under paragraph (1)(c).]

(2) Any reduction imposed as a result of a failure determination which resulted from a failure to take part in a work-focused interview ceases to have effect if—

^{F32}(a)

- (b) the claimant subsequently ceases to meet the requirements set out in regulation 54(2).

Textual Amendments

- F28** Reg. 64(1) substituted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **18(2)**
- F29** Reg. 64(1)(a) omitted (3.12.2012) by virtue of [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **5** (with reg. 1(2))
- F30** Reg. 64(1A) inserted (1.6.2011) by [The Employment and Support Allowance \(Work-Related Activity\) Regulations 2011 \(S.I. 2011/1349\)](#), regs. 1, **18(3)**
- F31** Reg. 64(1A)(a) omitted (3.12.2012) by virtue of [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **5** (with reg. 1(2))
- F32** Reg. 64(2)(a) omitted (3.12.2012) by virtue of [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **5** (with reg. 1(2))

[^{F33}**Hardship payments**

64A. The Secretary of State must make a hardship payment to a claimant only where—

- (a) the Secretary of State is satisfied that the claimant is or will be in hardship unless a hardship payment is made;
- (b) the claimant’s employment and support allowance has been reduced in accordance with regulation 63;
- (c) the claimant meets the conditions of entitlement to an income-related employment and support allowance;
- (d) the claimant completes and submits an application —
 - (i) approved for the purpose by the Secretary of State, or in such other form as the Secretary of State accepts as sufficient, and
 - (ii) in such manner as the Secretary of State determines; and
- (e) the claimant provides such information or evidence as the Secretary of State may require, in such manner as the Secretary of State determines.

Textual Amendments

- F33** Regs. 64A-64D inserted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), **6** (with reg. 1(2))

Circumstances in which a claimant is to be treated as being in hardship

64B. A claimant is to be treated as being in hardship if the claimant's partner, or a child or qualifying young person for whom the claimant or the claimant's partner is responsible, is or will be in hardship unless a hardship payment is made.

Textual Amendments

F33 Regs. 64A-64D inserted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), 6 (with reg. 1(2))

Matters to be taken into account in determining hardship

64C.—(1) The Secretary of State must take the following matters into account in determining hardship—

- (a) whether the claimant's partner or a person in the claimant's family satisfies the requirements for a disability premium specified in paragraphs 6 and 7 of Schedule 4, or an element of child tax credit in respect of a child or young person who is disabled or severely disabled within the meaning of regulation 8 of the Child Tax Credit Regulations 2002;
- (b) the resources which are likely to be available to the household without a hardship payment, including resources from persons who are not members of the household, but excluding any payment referred to in paragraph (2);
- (c) the difference between the resources referred to in sub-paragraph (b) and the amount of the hardship payment that the claimant would receive;
- (d) whether there is substantial risk that the household will not have access to essential items (including food, clothing, heating and accommodation), or will have access to such essential items at considerably reduced levels, without a hardship payment; and
- (e) the length of time that the factors set out in sub-paragraphs (b) to (d) are likely to continue.

(2) The payments to be excluded from the resources referred to in paragraph (1)(b) are payments made under paragraph 7 (1) or (2) of Schedule 8 (sums to be disregarded in the calculation of income other than earnings: child tax credit and child benefit) to the claimant or the claimant's partner in respect of a child or young person who is a member of the claimant's household or family.

Textual Amendments

F33 Regs. 64A-64D inserted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), 6 (with reg. 1(2))

The amount of a hardship payment

64D.—^{F34}(1) A hardship payment is either—

- (a) 80% of the prescribed amount for a single claimant as set out in paragraph (1)(a) of Part 1 of Schedule 4 where—
 - (i) the claimant has an award of employment and support allowance which does not include entitlement to a work-related activity component under section 4(2)(b) of the Welfare Reform Act 2007 as in force immediately before 3rd April 2017; and
 - (ii) the claimant or any other member of their family is either pregnant or seriously ill; or

(b) 60% of the prescribed amount for a single claimant as set out in paragraph (1)(a) of Part 1 of Schedule 4 in any other case.]

(2) A payment calculated in accordance with paragraph (1) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.]

Textual Amendments

F33 Regs. 64A-64D inserted (3.12.2012) by [The Employment and Support Allowance \(Sanctions\) \(Amendment\) Regulations 2012 \(S.I. 2012/2756\)](#), regs. 1(1), 6 (with reg. 1(2))

F34 Reg. 64D(1) substituted (3.4.2017) by [The Employment and Support Allowance \(Exempt Work Hardship Amounts\) \(Amendment\) Regulations 2017 \(S.I. 2017/205\)](#), regs. 1, 5

CHAPTER 4

Notification

Notification under this Part

65.—(1) Where written notification is to be given in accordance with this Part, such notification may be sent by post.

(2) Any notification sent by post is to be taken to have been received on the second working day after posting.

CHAPTER 5

Modification of the Act in relation to claims to which section 5(1)(c) of the Administration Act applies

Modifications of the Act

66.—(1) Where a person has made a claim for an employment and support allowance to which section 5(1)(c) of the Administration Act applies, the Act applies with the following modifications.

(2) Section 11(1) of the Act applies—

(a) as if for sub-paragraph (a) there were substituted—

“(a) either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim for an employment and support allowance to which regulations under section 5(1)(c) of the Administration Act apply; and”;

(b) as if for “continuing to be” there were substituted “being”.

(3) Section 12(1) of the Act applies—

(a) as if for sub-paragraph (a) there were substituted—

“(a) either—

(i) entitled to an employment and support allowance; or

(ii) a person who has made a claim to which section 5 applies; and”;

(b) as if for “continuing to be” there were substituted “being”.

Changes to legislation:

There are currently no known outstanding effects for the The Employment and Support Allowance Regulations 2008, PART 8.