
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Employment and Support Allowance Regulations 2008 (“the ESA Regulations”) in relation to sanctions for failures to take part in a work-focused interview or to undertake work-related activity. The Regulations also make provision for hardship payments in accordance with section 16A of the Welfare Reform Act 2007 (inserted by section 56 of the Welfare Reform Act 2012) and consequential amendments to other Regulations.

Regulation 1 makes clear that the provisions only apply to failures that occur on or after the date these Regulations come into force.

Regulation 2 inserts a definition of “hardship payment” into the ESA Regulations.

Regulation 3 revokes the provision in regulation 61 of the ESA Regulations which sets out factors to be taken into account by the Secretary of State in considering whether the claimant has shown good cause for a failure to take part in a work-focused interview. Regulation 7(2) revokes the equivalent provision for failures to undertake work-related activity. Guidance will make clear that all matters relevant to the claimant should be considered.

Regulations 4 and 5 amend the provisions for sanctions in relation to such failures. They provide for a sanction to reduce the claimant’s award by the amount of the single claimant’s personal allowance for an open ended period (until the claimant meets a compliance condition as defined by the regulation) followed by a short fixed period.

The length of the fixed period depends on the number of previous failures. It is 1 week for a first failure, 2 weeks for a second failure within 52 weeks of the first failure and 4 weeks for any subsequent failure within 52 weeks of a previous failure that resulted in a 2 or 4 week sanction, or would have done but for regulation 63(3). The sanction period does not increase where the previous failure occurred before the date these Regulations come into force or within 2 weeks of the most recent failure.

Where the claimant meets a compliance condition within a short period after the date of the failure, only the fixed period sanction will apply. Where the claimant ceases to be subject to a requirement, the sanction terminates (in accordance with existing provision in regulation 64).

Regulation 6 inserts provisions for hardship payments. A hardship payment will be made where the claimant is at risk of not being able to meet certain basic needs and certain conditions are met. The amount of a hardship payment is 60% of the single claimant’s personal allowance.

Regulation 7 makes consequential amendments to the Employment and Support Allowance (Work-Related Activity) Regulations 2011, in particular to align the good cause and contracting out provisions with the changes made in relation to work-related activity by regulations 3, 4 and 5 of these Regulations.

Regulation 8 makes consequential amendments to the provisions relating to decisions and appeals.

A full impact assessment has not been published for this instrument as it has no impact on the private sector and civil society organisations.