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Employment Support Allowance briefing

Employment and Support Allowance (ESA) is a new benefit that will replace incapacity benefit (IB) and income support (IS) paid on the grounds of ill-health or disability. The introduction of ESA forms part of Government's welfare reform plans contained in the Welfare Reform Act. Regulations setting out how ESA will work were published in March 2008, with the introduction of ESA proposed as being the 27 October 2008.

This briefing explains Government's progress on the development of the detail relating to the introduction of the new benefit and outlines the implications of its introduction for disabled people and those with long-term health conditions.

Background

On 24 January 2006, the Government published its welfare reform consultative Green Paper¹, setting out their plans to reform IB and introduce ESA. The Green Paper outlined changes to statutory sick pay (SSP) and other benefits payable to people who are unable to work due to disability or ill-health and also contained chapters on lone parents, people over 50 and housing benefit.

During the three-month consultation period, individuals and organisations submitted their views about the proposed changes. Government reviewed these responses, and published their own response, following which the Welfare Reform Bill was introduced in Parliament on 4 July 2006.

¹ A new deal for welfare: empowering people to work, DWP, January 2006

The fundamental principles and proposals contained within the Bill received strong cross-party support, with very little amendment to the substantive nature of the proposals. The Bill received royal assent on 3 May 2007 and thus became the Welfare Reform Act. DWP are in the process of drafting regulations for the implementation of ESA, and as well as undertaking reviews of the Personal Capability Assessment, the self-assessment form (the ESA50) and medical certification.

Pathways to work pilots

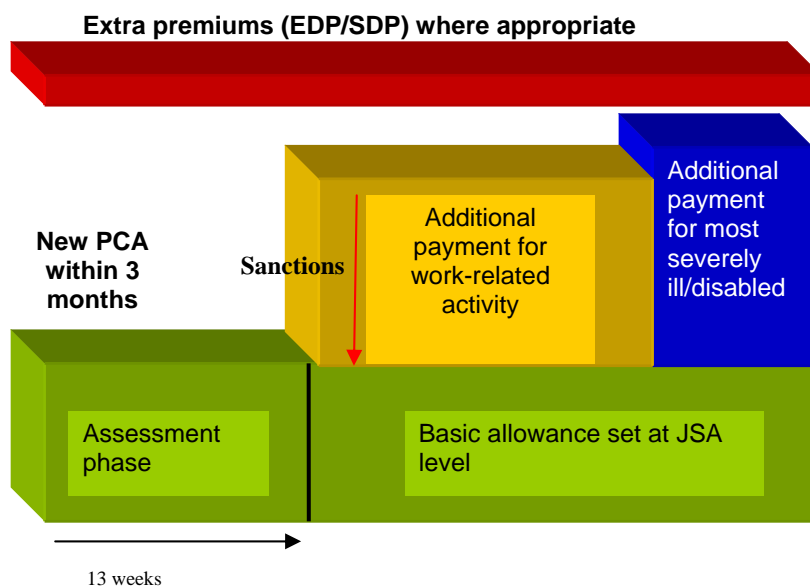
Pathways to Work pilot schemes have been the flagship of the Government's efforts to help more disabled people move into work. Much of the detail of the ESA related proposals covered by the Bill are based on these pilot schemes. Increasing numbers of pilots have been running in regions across the UK and evaluations undertaken on an ongoing basis. Elements of the pilots, such as the Condition Management Programme and the Return to Work credit, are noted as having been particularly helpful.

IB Personal Advisers (PA's) have played a key role in delivering Pathways and evaluation of the pilots has suggested that the majority of PA's deliver a good service. However, the Work and Pensions Select Committee noted that PA's also require improved training to deliver a better service, particularly on handling clients with mental health conditions and that they may benefit from sharing best practice. There is also evidence of PA's having to overcome client fears around conditionality and wide variations in the application of sanctions, with some PA's avoiding sanctions whenever possible.

Pathways to Work will be rolled out across the United Kingdom with effect from April 2008. This will mean that existing benefit claimants claiming incapacity benefit or income support due to incapacity will be subject to work focused interviews and other aspects of the pilots.

What is Employment Support Allowance?

Employment Support Allowance (ESA) will replace both IB and IS paid on the basis of incapacity. ESA will have a new structure that has both a contributory element and a means-tested element.



The test of entitlement to the contributory element will be similar to that currently used for IB, i.e. sufficient national insurance contributions paid. The test of entitlement for the means-tested element will be similar to that currently used for IS i.e. an income-based assessment.

ESA rates

There will be a 13-week assessment phase for all new ESA claimants. During this period, claimants aged over 25 years will be paid an 'assessment phase' rate of ESA, equivalent to the weekly rate of jobseekers allowance (JSA) payable for people aged over 25 (currently £60.50). For those under 25, a reduced weekly rate of ESA will be payable, again in line with JSA rates (£47.95 for under 25 year old rate).

After the 13-week assessment phase, there will be an additional element payable on top of the basic rate of ESA. Claimants placed in the 'support group' will receive a slightly higher element than claimants in the 'work-related activity group'. The support component is worth £29 per week and the work-related activity component is worth £25 per week. There are no increases in these components for couples.

Claimants under 25 years that have completed the 13-week assessment phase will receive the full basic ESA rate rather than the reduced amounts payable in the assessment phase referred to above. Further, the Severe Disability Premium and Enhanced Disability Premium, currently payable with IS, will also be payable under the new system.

Whilst the Welfare Reform Act was passing through Parliament, Government spokespeople made repeated pledges that the rates of ESA would be higher than the rate of long term incapacity benefit, yet disappointingly, they have set

the rates of ESA at exactly the same rates as long term incapacity benefit. This means an effective drop of £1.85 per week for single claimants in the work-related activity group, comparing current income support levels with proposed ESA rates for this group of people, and a drop of £12.85 per week for couples.

The age-related and dependant additions currently payable with IB are no longer payable with ESA. This will result in many ESA claimants receiving less benefit than they would with IB currently. Government has recognised this and will make provision to ensure that existing IB and IS claimants who transfer to ESA do not experience a drop in their income at the point of transfer. However, this migration may not take place for a few years yet.

All new ESA claimants will have to serve the 13-week assessment phase, before moving onto the higher rates of ESA, regardless of their circumstances, except in cases where the claimant has a terminal illness who will go straight to the main phase rates. For claimants coming onto ESA from SSP, and new claimants who also receive disability living allowance, this appears particularly harsh. It also is possible that such claimants could receive less benefit than they currently receive on IB and IS, due to the difference in rates between SSP and assessment phase ESA, and the lack of an equivalent to the disability premium in ESA.

First work-focused interview

During the 8th week of an ESA claim, the DWP intend to carry out a work-focused interview with all ESA claimants. A Jobcentre Plus personal adviser will meet the claimant to discuss their ESA entitlement, their aspirations for work, the steps that could be taken to help them to take-up a job and the support that is available.

This interview can be deferred if a decision is taken that a claimant is so sick or disabled that the interview would be of no assistance to them, or is not appropriate e.g. for terminally ill claimants. Otherwise, attendance at the interview will be mandatory and ESA payments can be reduced or 'sanctioned', if a claimant fails to attend or participate in this interview without good cause. (for more on sanctions, see below)

Work capability assessment

In addition to the basic tests of entitlement, ESA claimants will have to undergo a work capability assessment (WCA) within the 13-week assessment phase. The new WCA will look at:

1. whether they have limited capability for work, and

2. whether they have limited capability for work-related activity, and
3. a work-focused health-related assessment for most claimants.

The first assessment will be similar in structure to the current incapacity benefit Personal Capability Assessment (PCA) and will be used to assess basic eligibility for ESA. The second part of the assessment is new and will assess whether a claimant is placed in the *'support group'* or the *'work-related activity group'*. The third part of the assessment only applies to claimants placed in the work-related activity group. We now look at the three assessments in turn.

1. Limited capability for work assessment: This assessment will be carried out by a health care professional working for DWP. The health care professional will investigate a number of physical and mental health functions of the ESA claimant. The various functions are called *'descriptors'*. Depending on the level of a claimant's functional limitations in relation to these descriptors, a score of 6, 9 or 15 points is assigned to each descriptor. If the total score of descriptors is high enough (15 points or more) then, as with the existing PCA, it will be accepted that the claimant is incapable of work and thus entitled to ESA.

This part of the assessment is based on the current PCA, used to assess entitlement to IB and IS. However, the structure of the new WCA has been radically revised. The total number of physical descriptors is reduced, lower scoring physical descriptors have been abolished and the assessment of mental descriptors is amended to mirror the structure and style of the physical descriptors. The new assessment has been piloted and subject to evaluation, although Disability Alliance has serious concerns about both the seemingly higher level of functional incapacity necessary to establish entitlement under the revised WCA as well as the method of evaluation and the lack of truly independent scrutiny. It appears from evaluation that the disallowance rate under the WCA is in the region of 51%, compared to 38% under the PCA. Government has agreed that an annual report about the operation of the new WCA should take place for at least the first five years of operation of the WCA.

2. Limited capability for work-related activity: This assessment will be carried out at the same time as the limited capability for work assessment. This looks at whether it is reasonable for the claimant to undertake any work-related activity. If a claimant demonstrates that any one of 46 descriptors applies to them, they will be put into the *'support group'*. Those claimants placed in the *'support group'* will not be expected to engage in work related activity, although they can volunteer to do so. Those in the *'work-related activity group'* will have to undertake a variety of work-related activities as a condition of continued entitlement to ESA.

Support group

If it is decided that an ESA claimant does have limited capability to undertake work-related activity, they are placed in the '*support group*'. This means that they do not have to undertake further work-related activities if they do not want to, although they can volunteer to participate if they wish. Once placed in the '*support group*', they receive a higher rate of ESA (basic rate plus a support element), and are not subject to conditionality or sanctions. The DWP say that they hope to identify those claimants who should be in the support group without the need for any face-to-face medical assessment i.e. on the basis of diagnosis and supporting medical evidence alone.

Work-related activity group

If it is decided that a claimant does not have a limited capability to undertake work-related activity, they are placed in the '*work-related activity group*'. They will have to participate in a work-focused health-related assessment (see below), as well as further work-focused interviews. They will also receive a higher rate of ESA (basic rate plus a work-related activity element), although the total payable will not be as much as for claimants in the '*support group*'.

If it is decided that a claimant in the '*work-related activity group*' has failed to attend or participate in the range of work-related activities without good cause, the extra work-related element of their ESA payment may be sanctioned.

3. Work-focused health-related assessment

The work-focused health-related assessment (WFHRA) will be carried out by a health-care professional approved by the Secretary of State. It seems likely that this will be carried out immediately after the two capability assessments, as noted above. The WFHRA provides additional information about the claimant's residual functional capacity, i.e. what the claimant can do despite their disabling condition, as well as information about any health interventions that would improve their functional capacity. This includes adaptations that might be necessary to support a person going back to work.

The advice from the WFHRA, in the form of a '*capability report*', will be made available to the claimant and their personal adviser to be used when they have passed the assessment phase and are undertaking further work-focused interviews. A failure to participate in the WFHRA, without good cause, can attract sanctions to ESA payments, except for '*support group*' claimants who volunteer to participate in a WFHRA.

Further work-focused interviews

Those placed in the '*work-related activity group*' will undergo five further work focused interviews after the 13-week assessment phase has passed. During these interviews, a personal adviser will try to help the claimant back to work.

The interviews will usually take place on a monthly basis, although there should be some flexibility here. At this stage, the personal advisers will usually be employed by a contracted private or voluntary sector organisation.

The capability report produced from the WFHRA will be used to inform actions recommended during the work-focused interviews. The Personal Adviser will draw up an Action Plan outlining activities that the claimant could consider undertaking to move closer to the labour market. They can also give direction about what can and cannot be accepted as work-related activity. This will be optional initially, but in the longer term, the Government intends to make compliance mandatory, with regards to the directions and undertaking some kind of work-related activity.

From the introduction of ESA, attendance and participation at the interviews is mandatory, with the risk of sanctions being imposed for failure to attend or participate without good cause. ESA claimants can ask for an interview to be deferred or waived but this is at the discretion of their personal adviser. Regulations will set out what constitutes good cause for failing to attend or participate in an interview. There is no right of appeal against a refusal to defer or waive an interview, although there should be a right of appeal against any decision to impose a sanction for non attendance/participation at interview.

Work-related activity

The Government has stated that when ESA is introduced in 2008, no claimant will be forced to undertake any work-related activity resulting from their work-focused interview or Action Plan. However, there is a longer-term intention to review this situation, and the Bill contains powers to make claimants in the '*work-related activity group*' undertake some form of work-related activity. Again, there are powers to sanction the extra element of ESA, if claimants refuse to undertake some form of work-related activity without good cause. Work-related activity can include work tasters, managing health and work issues, improving employability, job search assistance and stabilising life styles.

Sanctions

Sanctions can only be applied to the additional elements of ESA that become payable after the 13-week assessment period has ended. Thus, an ESA claimant will always retain entitlement to the basic or '*assessment phase*' rate of ESA, provided they satisfy the other basic entitlement criteria of having a limited capability for work.

A sanction will initially be a 50% reduction of the additional element for 4 weeks. This will be followed by a 100% reduction of the additional element,

and this lower rate of benefit will be paid until the claimant complies with the requirement(s) placed upon them. Once they do this, e.g. by attending the work-focused interview, the sanction is removed and full ESA will be put back into payment. However, it does not appear that a claimant will receive any back-dated payments for the period that the sanction was imposed. A decision to impose a sanction can be appealed against by a claimant in the usual way.

The Minister has stated that a '*sanctions-last*' approach will be taken under the national roll-out of ESA, and that no-one will be unfairly penalised. Further, there are a range of safeguards that should be adopted before a sanction decision is made.

Safeguards

The government has pledged that a number of safeguards will be put into place, before sanctions are imposed. This includes regular contact with claimants, identifying the date, time and place of appointments, consideration of the impact of medical conditions upon attendance, and home visiting claimants with whom there has been no verbal contact or those claimants identified as having a particular mental health condition or learning disability. There is, however, no information about what a particular mental health condition is in relation to this safeguard.

Private and voluntary sector contractors

A key element of the new approach to supporting sick and disabled ESA claimants is the involvement of voluntary, statutory and private sector organisations in the activities previously carried out by the DWP. Their involvement will be centred mainly on employment rehabilitation i.e. helping and encouraging ESA claimants to undertake work-related activity. A large number of organisations have submitted tenders to take on this work and be involved in the national roll-out of the programme. It appears that the Government will award 3-year contracts to successful bidders. Contractors will have to be accredited around compliance with statutory requirements, including the Disability Discrimination Act 1995 as well as other equality and diversity requirements.

Decisions about limited capability for work and limited capability for work-related activity will remain the responsibility of the DWP, via Jobcentre Plus. However, they may give contractors the authority to make decisions about whether there was adherence to and attendance at work-focused interviews, whether good cause for non-attendance has been shown and whether someone has fulfilled their responsibilities in respect of work-related activity. The Government did confirm that contractors will not be able to apply or impose sanctions to any claimant's ESA payments.

The actual administrative function of applying a sanction will remain within Jobcentre Plus. Further, the intention is that the personal adviser will not be doing the sanctioning under any roll-out of the powers contained in the Bill. The government has stated that they will not provide a financial incentive framework that would ensure a vested interest for the organisations taking this work on to apply sanctions.

Existing IB/IS claimants

When ESA is introduced in 2008, the government has stated that all existing IB and IS claimants will be migrated across to ESA over time. This is to:

'bring all claimants under the same system, helping to smooth the administration of the new benefit and reduce dual-system complexity...we intend, as resources allow, to require all existing claimants to complete an action plan and participate in a number of work-focused interviews.'

It appears that the intention is to move the most recent IB and IS claimants over to the new ESA system first, as well as those with dependent children. Claimants will be required to undertake the work-focused interviews but not the work-related activity.

As stated above, the government has pledged to protect income levels for claimants in this situation. An analysis of current IB claimants suggests that there could be approximately 850,000 claimants who would receive this transitional protection at current rates of payment. Further, there are some 550,000 current IB claimants who have been receiving IB for more than 5 years so it would appear that they could remain on the 'old' system for sometime to come.

Updates

Government announced, in December 2007, in the Green Paper *'Ready for Work: full employment in our generation'* that existing claimants aged under 25 will be subject to mandatory Pathways to Work interviews and the new Work Capability Assessment from 2009. Further, ESA claimants will be subject to a skills screen early in their claim, and where appropriate, may direct a claimant to undergo a mandatory Skills Health Check at some later point. They announced the introduction of a Return to Work Credit of £40 per week tax free for a year available to everyone eligible who moves into work.

In the 2008 Budget speech, it was announced that all existing claimants of incapacity benefit will be subject to the new work capability assessment over a three-year period, although these people will only be offered the support back into employment as resources allow.

'Breaking the link between poverty and disability'

Updated: May 2008