

Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012

Equality analysis

November 2012

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Introduction

1. The Department for Work and Pensions has carried out an Equality Analysis on planned reforms to the Employment and Support Allowance (ESA) sanctions regime and introduction of a hardship regime. It is intended that these changes will be introduced by the Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012 from 3rd December 2012. The reforms include a revised sanction regime for ESA claimants in the Work Related Activity Group which will have two parts: an open ended period which will be lifted when the claimant re-engages, followed by a short fixed period. Claimants will be sanctioned 100% of the personal amount for a single claimant (currently £71.00). Claimants entitled to income – related ESA will also be able to apply for hardship payments for the duration of the sanction.

Scope of this assessment

2. Under the Equality Act 2010 the general duty requires the Department, when carrying out its functions, to have due regard to the need to:
 - Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
 - Advance equality of opportunity between people who share a protected characteristic and those who do not; and
 - Foster good relations between people who share a protected characteristic and those who do not.
3. This Equality Analysis seeks to assess the proposals to revise the ESA sanctions regime and introduce a hardship regime against this duty and to show due regard to the impact of the proposals on race, disability and gender (including gender reassignment and sexual orientation), age, religion and belief, pregnancy and maternity, marriage and civil partnership.

Policy description

Background

4. The introduction of ESA in 2008 signalled a recognition that many disabled people and people with health conditions can and should move towards employment if they

are given support and encouragement. ESA places greater emphasis on a claimant's functional capabilities and the importance of moving towards employment. It is therefore important that claimants engage with requirements designed to help them prepare for work, and where they fail to engage then there should be appropriate consequences.

5. Research suggests that increased conditionality (the principle of benefit receipt being dependent on meeting certain requirements) for claimants with limited capability for work to engage in employment preparation programmes has been successful in increasing participation and reducing benefit caseloads¹. This is supported by DWP research which shows that around 83% of ESA claimants felt that the compulsory nature of work-focused interviews (which are backed by sanctions for failure to attend) made them more likely to participate².

Existing conditionality and sanctions regime

6. ESA is divided into two phases: an assessment phase and a main phase. When a claimant first applies for ESA they normally receive an assessment phase rate of benefit whilst their capability for work is assessed. During the assessment phase claimants do not have to engage in work-focused interviews or work-related activity.
7. During the assessment phase claimants normally complete a questionnaire, the ESA50, and attend a Work Capability Assessment (WCA) carried out by an independent healthcare professional. The ESA 50 and the WCA report together with any evidence provided by the claimant are used by the decision maker to determine his/her capability for work. Claimants with limited capability for work are placed in the Work-Related Activity Group. Claimants with limited capability for work-related activity are placed in the Support Group. Claimants in the Support Group are not subject to any work-related requirements but can access employment and health related support on a voluntary basis.
8. Claimants in the Work Related Activity Group who have been assessed as capable of work-related activity are required to attend Work-Focused Interviews (WFI) where the claimant meets a Personal Adviser to discuss the support available to help him or her take steps towards being able to gain employment in the future. Claimants placed in this group can also be required to undertake work-related activity where this is appropriate in their personal circumstances.
9. Claimants who fail to attend a WFI or to undertake WRA without good cause currently receive an open ended sanction which is lifted when the claimant re-engages. The effect of the sanction is to reduce the Work-Related Activity Component (WRAC) of the benefit by 50% for the first 4 weeks of the failure which rises to 100% of the WRAC for any subsequent weeks. The WRAC is currently £28.15.

¹ - *Realising Potential: A vision for personalised conditionality and support* - An independent report to the Department of Work and Pensions by Professor Paul Gregg, 2008

² DWP Research Report (2011) Barnes, Sissons, Stevens : Employment and Support Allowance: Findings from a follow up survey with customers

Revised regime

10. The proposal is to introduce a revised sanctions regime for ESA claimants in the Work Related Activity Group. It will form part of a new sanctions approach for both JSA and ESA claimants which broadly aligns with the Universal Credit model. The table at Annexe 1 compares the existing ESA sanctions regime to the new model.
11. The revised JSA and ESA regime will have three tiers of higher, intermediate and lower level sanctions. All three levels of sanction will apply to JSA claimants but ESA claimants will only be subject to lower level sanctions.
12. For ESA claimants a lower level sanction will be imposed when a claimant fails, without showing they had a good reason for failing, to comply with a requirement designed to improve their chances of preparing for work. There will be two parts to a lower level sanction: an open ended period which will be lifted when the claimant re-engages with requirements (or makes an agreement with their adviser to meet a requirement at a future date) and a fixed period which will follow re-engagement. The fixed period is 1 week for a first failure, 2 weeks for a second failure and 4 weeks for a third or subsequent failure. The fixed period will increase to a longer period only when the failure occurred within 52 weeks of the previous failure. However if the previous failure occurred within two weeks of the current one the fixed period will not increase.
13. The open ended part is intended to encourage claimants to quickly re-engage with specific requirements and the fixed reduction period will ensure there is always a consequence for failure to comply. Open ended sanctions on their own would mean claimants could repeatedly fail to meet requirements and – so long as they re-engaged immediately - escape with a very short sanction as the open ended element of the sanction is lifted on re-compliance. If claimants comply within one week of the sanctionable failure then the open ended element of the sanction will not be applied; only the relevant fixed period element of the sanction (1, 2 or 4 weeks) will be applied.
14. The Government is committed to providing claimants who have health conditions or disabilities with the support they need to prepare for a return to work. In return, it is expected that claimants who are capable of undertaking steps to achieve a return to work should do so. Under the revised regime the sanctionable amount is being increased to align with the equivalent sanction to be introduced for claimants with limited capability for work under Universal Credit. ESA claimants in the Work-Related Activity Group (WRAG) will be sanctioned 100% of the prescribed amount for a single person (currently £71.00) but will retain the Work Related Activity Component (currently £28.15) and any premiums. The revised sanction is designed to help encourage claimants to comply and actively participate in work-related activity.

Hardship Regime

15. We propose to introduce a hardship regime for ESA claimants, our intention is that the hardship regime in ESA will be similar to that currently available to JSA claimants.
16. In determining whether hardship payments are appropriate a decision maker will take the following matters into account;

- whether a member of the family satisfies the requirements for a disability premium or an element of child tax credit in respect of a disabled child or young person
 - the household's likely resources without hardship payments, including whether the claimant can seek assistance from others such as family or friends;
 - • the difference between the claimant's likely resources (excluding Child Benefit and Child Tax Credit) and the amount of a hardship payment which could be made;
 - the difference between the claimant's likely resources and the amount of a hardship payment which could be made
 - the risk that the claimant's household will not have access to essential items (such as food, clothing or heating) or will have access to such essential items at considerably reduced levels without a hardship payment; and
 - the length of time these factors will continue.
17. All ESA (Income - Related) claimants will be able to apply for hardship payments when their benefit is sanctioned. In line with the approach for JSA, ESA claimants in receipt of contributory ESA only will not be eligible to apply for hardship as they are considered to have access to additional resources. Once a hardship award is made, payment will continue until the end of the sanction (it will be awarded for both the open ended and fixed period) or until the claimant notifies us of a change of circumstances.
18. The proposal is to award hardship payments to claimants who meet the criteria (set out above) at a rate of 60% of the prescribed amount for single claimants. The WRAC and any premiums the claimant receives will not be deducted from the hardship payment but are taken into account when assessing whether the claimant is in hardship. Claimants will be able to appeal a decision not to award a hardship payment.
19. The box below sets out a case study to illustrate the differences between the existing and revised sanction regime:

Case study example

Jane is a single claimant who fails to undertake work-related activity without good cause and the decision maker determines that a sanction should be applied. It is her first failure and so the relevant fixed period is 1 week. Jane complies with the requirement in week 5 of the sanction. Her ESA is made up of the personal amount and the WRAC as set out below

ESA payable Personal Allowance	71.00
WRAC	<u>28.15</u>
Total weekly	99.15

The comparisons below show how the sanction would be applied under the existing and revised regime

Sanction amount weeks 1 – 4	Current regime	Revised regime
Personal Allowance	71.00	00.00
WRAC	<u>14.07 (50%)</u>	<u>28.15</u>
Total weekly	85.08	28.15 (Claimant will be able to apply for hardship payments. Once claimant complies the relevant fixed period will be applied)
Sanction amount week 5		
Personal Allowance	71.00	00.00
WRAC	<u>00.00</u>	<u>28.15</u>
Total weekly	71.00	28.15 (One week fixed period. Claimant will be able to apply for hardship payments)

Consultation

20. The Green Paper *21st Century Welfare*, (November 2010, Cm 7971) invited views on reform of the conditionality and sanctions regime. The focus was on proposals for the Universal Credit conditionality and sanctions regime, however, as previously noted the revised ESA sanctions regime is broadly aligned with the sanction for claimants with limited capability for work within the UC model. A range of views were expressed on the issue of sanctions including noting conditions for receipt of benefit would be ineffective without some form of sanction to ensure compliance and that the system should be weighted in favour of incentives rather than punishments. A link is provided to the document which summarised the responses – [21st-century-welfare-response](#)
21. Whilst the ESA sanctions changes are being made using powers in existing legislation, the principles behind the revised sanction have been subject to

Parliamentary scrutiny. This is because they are part of the reformed sanctions framework for JSA and ESA. The JSA element was subject to scrutiny during the passage of the Welfare Reform Act 2012 (section 46 of the Welfare Reform Act refers). The revised sanction regime for ESA is also reflected in the UC sanctions model (the sanction proposed for claimants with limited capability for work) which was also subject to full and comprehensive Parliamentary scrutiny.

22. A particular concern raised during the passage of the Act was to ensure the new regime incorporates sufficient safeguards, particularly for vulnerable claimants. Assurance was provided that all relevant facts are taken into account before a sanction decision is made and before any work-related activity requirement is imposed. When decision makers are deciding whether to impose a sanction for failure to meet a requirement they must consider whether the claimant has good cause for that failure. If good cause is shown no sanction will be imposed.

Impact of the proposal

23. The revised sanctions regime is intended to encourage claimants to meet requirements to help them move into or prepare for work more effectively. The new approach will make the consequences of non compliance clearer and more robust and provide an incentive for claimants to re-engage.
24. It is not possible to predict the behavioural response to the revised system. We have therefore used data from the year 2010/11³ on how sanctions fell amongst different equality groups as a proxy for the future distribution of sanctions. Using this data we compare the split of ESA sanctions in different equality groups with the distribution in the overall ESA WRAG caseload (that is all those eligible to receive a sanction and therefore potentially affected by the change in the sanctions regime).

Equality impact

25. The tables below show the proportion split of sanctions received by equality group, compared to proportion split of the overall ESA WRAG caseload by equality group. These figures are based on data used to produce the ESA sanctions official statistics publication⁴. The ESA WRAG caseload is a snapshot from 31st August 2010. Sanctions are from the financial year 2010/11.

Gender

26. Table 1 shows that a slightly higher proportion of women (around 3%) receive sanctions than the proportion of women in the ESA WRAG caseload. It is impossible to know what the gender split of sanctions will be in the future when the new sanctions regime is introduced since it is not possible to predict the behavioural response to the revised system, overall or between different groups. However, we will monitor the incidence of sanctions and publish the sanction statistics on the DWP website.

³ The data from 2010/11 reflects the sanction failures in operation at that time

⁴ - link -xxxx

Table 1: ESA WRAG caseload and sanctions by gender

	Female	Male
% of ESA WRAG caseload	45%	55%
% of sanctions	48%	52%

Age

27. Table 2 shows that a higher proportion of young claimants receive sanctions compared to the overall proportion of young claimants in the ESA WRAG caseload, while a lower proportion of claimants over age 50 receive sanctions compared to overall proportion in the ESA WRAG caseload. A 2006 review of the JSA sanctions regime⁵ noted that the higher proportion of young people on JSA sanctioned was considered by some to be a consequence of their attitude towards sanctioning, which was said to be more relaxed than those from other groups, possibly the result of younger claimants often being financially supported by their family. The same may be true of the ESA WRAG caseload.
28. We cannot be sure that young people will continue to receive relatively more sanctions than other age groups when the new sanctions regime is introduced since it is not possible to predict the behavioural response to the revised system, overall or between different groups. However, we will monitor the incidence of sanctions and publish the sanction statistics on the DWP website.

Table 2: ESA WRAG caseload and sanctions by age

	Under 18	18-24	25-49	Over 50
% of ESA WRAG caseload	1%	12%	66%	22%
% of sanctions	1%	15%	67%	17%

Ethnicity

29. Table 3 suggests that a higher proportion of white claimants receive sanctions than the overall proportion of white claimants in the ESA WRAG caseload. However, a higher proportion of the overall ESA WRAG group have unknown ethnicity making this result unreliable.
30. We cannot be sure that white claimants will continue to receive relatively more sanctions than other ethnicities when the new sanctions regime is introduced since it is not possible to predict the behavioural response to the revised system, overall or between different groups. However we will monitor the incidence of sanctions and publish the sanction statistics on the DWP website.

⁵ A Review of the JSA Sanctions Regime: Summary Research Findings (p.17). Available at http://research.dwp.gov.uk/asd/asd5/report_abstracts/rr_abstracts/rra_313.asp

Table 3: ESA WRAG caseload and sanctions by ethnicity

	Not known/prefer not to say	White or White British	Black or Black British	Asian or Asian British	Other	Mixed
% of ESA WRAG caseload	20%	73%	2%	3%	1%	1%
% of sanctions	11%	81%	3%	3%	1%	1%

Medical Condition

31. Table 4 shows that a higher proportion of claimants with mental and behavioural disorders receive sanctions than the overall proportion of the ESA WRAG caseload. We cannot be sure that this will continue to be the case when the new sanctions regime is introduced since it is not possible to predict the behavioural response to the revised system, overall or between different groups. However, we do not believe that the new regime will necessarily lead to an increase in the incidence of sanctions for this group
32. The sanctions regime will incorporate a number of safeguards to ensure that claimants with mental and behavioural disorders are not sanctioned inappropriately. The full list of safeguards (which will also apply to other ESA claimants) are set out at paragraph 33. The additional safeguard which applies to claimants with a mental and behavioural disorder only is that Jobcentre Plus or the Work Programme provider will contact ESA claimants with a mental health condition, learning disability or condition affecting communication or cognition, or their carer or healthcare professional, before a sanction is considered. The aim is to ensure that claimants fully understand their responsibilities, the implications of non-engagement and to record good cause reasons.

Table 4: ESA WRAG caseload and sanctions by medical condition

	Mental and Behavioural Disorders	Diseases of the Nervous system	Diseases of the circulatory system	Diseases of the Musculo-skeletal system	Injury, Poisoning and consequences of external causes	Other
% of ESA WRAG caseload	40%	5%	7%	17%	7%	22%
% of sanctions	44%	4%	6%	16%	8%	22%

Summary

33. The analysis highlights possible factors to explain the current distribution of sanctions. Although it is not possible to predict the behavioural effect of the new regime, the revised policy will incorporate a number of safeguards to minimise adverse effects for protected groups. These are summarised below:

- **Information** - A mailshot detailing the changes has been produced for existing ESA claimants. For new ESA claimants the ESA40 information booklet will be updated to include information on the new sanctions regime and for those claimants who are placed in the work-related activity group, staff will explain the new sanctions regime at their New Joiners Work-Focused Interview and issue a fact sheet;
- Claimants will be able to access information via a helpline which will be made available for a limited period following go-live to explain the new sanctions regime to claimants;
- **Personalised requirements** - work-related activity requirements will continue to be tailored to the claimant's needs and circumstances and will be reasonable for the individual claimant. The new joiner's work-focused interview is also diagnostic so the adviser will find out more about the claimant's circumstances in order to determine which (if any) work-related activity requirements are appropriate. Should a claimant feel that the requirements placed on them are unreasonable, they can request that the adviser reconsiders the activity. A DWP decision maker must then consider the case, looking at evidence from both sides, and provide a written decision for the claimant;
- Jobcentre Plus advisers have a range of tools to help them assess and identify claimants' needs such as the Customer Assessment Tool to record information eg on a claimants' capability for a specific job. The learning programme for Jobcentre Plus Advisers is also regularly updated to reflect changes in policy and ensure advisers have up to date skills to deal with claimant interactions and support them in making relevant and appropriate decisions about individual claimants. The key messages throughout the learning focus on providing a personalised, flexible service to the claimant, treating them as individuals and building strong relationships with them;
- **Communication and appropriate location** - we will contact claimants before a work-focused interview to remind them that it is due and consider in the context of each work-focused interview whether the interview should be waived or deferred. If appropriate we will offer a more convenient location or a home visit;
- **Good cause** - the imposition of a sanction remains subject to the claimant providing good cause for non compliance. When decision makers are deciding whether to impose a sanction they must consider all evidence and information the claimant presents for that failure, so if for example a claimant provides information about their health which is relevant to the failure then this must be considered. If good cause is shown then a sanction will not be applied;
- **Revisiting guidance** - We are revisiting the guidance for Decision Makers on deciding good cause in order to emphasise the need to actively consider all of the claimant's circumstances. As part of this we intend to remove the provisions in

legislation which set out factors which should be considered as good cause. Whilst these factors are not exhaustive, as Decision Makers can currently consider any information put forward by the claimant regarding good cause. Setting out the factors in legislation can be too prescriptive and risks a tick list approach being adopted. We therefore believe removing the factors will help to ensure that all evidence put forward by the claimant is actively considered. As now where a claimant demonstrates good cause for the failure a sanction will not be applied;

- **Safeguard Visits** - As already mentioned Jobcentre Plus or the Work Programme provider will attempt to contact ESA claimants with a mental health condition, learning disability or condition affecting communication or cognition, or their carer or healthcare professional, before a sanction is considered. The aim is to ensure that they fully understand their responsibilities and to record good cause reasons;
- **Hardship payments** - We are also introducing access to hardship payments for ESA claimants who are sanctioned. The objective behind the introduction of hardship payments is to support claimants in greatest need without undermining the deterrent effect of sanctions. Matters which should be taken into account when deciding whether a claimant would suffer hardship if a payment is not made include the risk that the claimant's household will not have access to essential items such as food, clothing or heating. Claimants who meet the criteria for a hardship award will receive 60% of the prescribed amount for a single claimant. Although claimants will continue to receive the WRAC (currently £28.15) and any premiums they are entitled to during the period of the sanction we will not automatically deduct these components from the hardship award but will consider them when deciding if a claimant is in hardship. We believe that this approach will help to ensure that claimants with particular needs which need to be funded, for example special dietary needs, continue to receive the appropriate level of financial support.
- **Right of appeal** - Claimants will also continue to be able to request further information about the decision to sanction, request reconsideration and appeal the decision.

Gender Re-assignment

38. The Department does not currently collect data on gender re-assignment. In providing consideration whether a sanction is warranted, Jobcentre Plus will treat all customers fairly and equally regardless of whether they have undergone or propose to undergo gender re-assignment.

Religion or Belief

39. The Department does not currently collect data on claimants' religion or beliefs. All Jobcentre Plus claimants will be treated fairly and equally regardless of their religion or beliefs. They will not be asked to undertake any activity which goes against their beliefs, and allowances will be made to reflect religious holidays and practices.

Pregnancy or Maternity

40. No data is available to assess whether the revised sanctions regime will have an impact by pregnancy or maternity. Jobcentre Plus will treat all customers fairly and equally regardless of pregnancy or maternity.

Staff

41. This measure does not impact on the gender, disability, age, or ethnicity of staff.

Monitoring

42. The new sanctions regime will be monitored and evaluated through:

- i) analysis of internal management information (MI); and
- ii) the evaluation of the Jobcentre Plus Offer which will include qualitative assessments from staff and claimants of the new sanctions regime and a survey of claimants about their experience of receiving JSA and ESA and associated support from Jobcentre Plus.

The Department will consider undertaking further analysis should these findings suggest further lines of enquiry.

ESA Sanctions – Existing and Revised Regime

Sanction	Open ended until claimant engages with requirements	Open ended until claimant engages with requirements Followed by a fixed period sanction of 1,2 or 4 weeks – the exact period is dependent on previous non compliance in the previous 52 weeks
Sanctionable amount	50% of the Work Related Activity Component (WRAC) for the first 4 weeks of non compliance rising to 100% of the WRAC thereafter Currently the WRAC is £28.15	100% of the prescribed amount for a single person (currently £71.00) The WRAC (£28.15) and any premiums will not be sanctioned ESA (Income Related) claimants will be able to apply for hardship payments