

Annex 3 – Equality Assessment

Introduction & Policy background

Introduction

1. This document records the analysis undertaken by the Department to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to pay 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.
2. In undertaking the analysis that underpins this document, where applicable, the Department has also taken into account the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and in particular the three parts of Article 19 which recognise the equal right of all disabled people to live in the community, with choices equal to others, and that the Department should take effective and appropriate measures to facilitate full enjoyment by disabled people of this right and their full inclusion and participation in the community.
3. We have also taken into account the purposes of Article 27 of the UNCRPD which requires the Department to take appropriate steps to:
 - promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include incentives and other measures;
 - promote the acquisition of work experience in the open labour market; and,
 - promote vocational and professional rehabilitation, job retention and return-to-work programmes.

Current policy

4. There is a large body of evidence showing that work is good for physical and mental wellbeing and that being out of work can lead to poor health and other negative outcomes. So, whilst the Government is committed to supporting those who cannot

work because of a health condition or disability, it wants to help as many people as possible to find suitable work. To do this the Department needs a fair and accurate assessment of the extent to which a person's health condition or disability limits their capability for work.

5. Entitlement to Employment and Support Allowance (ESA) is based on an individual's functional ability rather than the condition itself. Anyone claiming ESA will undergo the Work Capability Assessment (WCA). The WCA is based on the premise that eligibility should not be based on a person's condition, but rather on the way that condition limits their functional capability.
6. The WCA was developed in consultation with medical and other experts alongside representative groups to ensure that it deals more effectively with the types of conditions that are prevalent today. It focuses on the functional effects of an individual's condition rather than the condition itself.
7. There are currently around 60-70,000 WCAs a month and they are undertaken by health care professionals employed by the Department's health and disability assessments provider, presently Atos Healthcare. Health care professionals make recommendations about a claimant's functional capability, but DWP Decision Makers determine eligibility for benefit having considered all available evidence, including that provided by the claimant.
8. When someone claims ESA, they enter an "assessment phase" during which they undergo a Work Capability Assessment (WCA) to determine whether they have limited capability for work (LCW) and, if so, whether they also have limited capability for work-related activity (LCWRA). During this period, provided they supply medical evidence, the claimant may be treated as having LCW and, if so, is paid ESA at the basic rate. Claimants are not required to engage in steps to return to work whilst they are in the assessment phase.
9. If, following the application of the WCA, it is determined that the claimant:
 - does not have LCW, their award of ESA is terminated;
 - has LCW but is nevertheless capable of undertaking some work related activity, their award of ESA continues and they are allocated to the work-related activity group;
 - has both LCW and LCWRA, their award of ESA continues and they become a member of the support group.
10. Under the current system, a WCA-based determination that a claimant does not have LCW (and is thus not entitled to ESA) normally has validity for six months. Claimants have the right of appeal against this decision after completing the Mandatory Reconsideration (MR) process. If the claimant appeals, ESA uniquely can continue to be paid at the assessment phase, until the appeal is heard.
11. Where a new claim based on the same health condition is made within this six month period there would be no entitlement to ESA from the date of claim, if the evidence from the previous WCA is used to assess the claimant as not having LCW. In circumstances where the Decision Maker cannot decide on LCW immediately, they may refer the claimant for a new WCA but in such cases the claimant will not be

treated as having LCW and will therefore not receive payment of ESA pending the outcome of that WCA.

12. This six month barrier on repeat awards does not apply where the claimant's health condition has, in the interim, significantly worsened or a new condition has developed. Nor does it apply if the claimant appeals against the decision which embodies the determination that they do not have LCW. However, once the six months has passed, there is no barrier to a repeat award of ESA, pending a fresh WCA, even where the claimant provides no evidence to suggest that their condition has substantially changed etc.
13. ESA is re-awarded at the assessment phase rate (the same rate as Jobseeker's Allowance (JSA)) and the cycle between ESA claim, WCA and disallowance starts all over again.

Policy changes and who will be affected

14. Under the proposed change it is intended that claimants will not be treated as having LCW if their most recent WCA outcome was that they were found fit for work unless they can demonstrate that there has been a significant deterioration in their health condition or a new health condition has developed. Furthermore ESA payments pending appeal will not be made for people affected by this measure who are found fit for work again. This should stop people looping around the ESA system instead of claiming JSA and receiving the help and support they need to return to work. It would also bring the ESA arrangements broadly into line with those for Universal Credit. Universal Credit is planned to replace income-related ESA.
15. It is estimated that around 230,000 of the 700,000 new ESA claims started in 2013 are repeat claims, but only around 30-40,000 are estimated to make a repeat claim using the same broad health condition as at the previous WCA determination.
16. There have been 2.05 million decisions on new ESA claims started between October 2008 and June 2013, following an initial WCA.
 - 1,032,000 were found Fit for Work.
 - 418,600 appeals heard on these decisions.
 - 155,000 (37%) DWP decision overturned.
 - 263,500 (63%) DWP decision upheld.
17. The 418,600 represents around 41% of the 1,032,000 fit for work decisions. The Tribunal overturned the DWP decision in around 155,000 (37%) of the 418,600 appeals heard. The original DWP decision was therefore confirmed in 63% of fit for work appeals heard. Overall Tribunals overturned only around 15% of the 1,032,000 'Fit for Work' decisions made.
18. Information is not currently available about the number of claimants who make a repeat claim for ESA and who choose to appeal a fit for work decision with broadly the same health condition.
19. Note: DWP figures do not relate to the Ministry of Justice data releases which covers all ESA appeals heard (including appeals on IB Reassessment cases), and not just fit for work

decisions on initial claims, and all appeals heard in 2012/13 regardless of when the original decision was made.

20. This change applies to both ESA under the Employment and Support Allowance Regulations 2008 (contributory and income-related) and the Employment and Support Allowance Regulations 2013 (contributory only). There are also changes needed to the Social Security (Claims and Payments) Regulations 1987 (SI 1987/1968), the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380) and the Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No.2) Regulations 2010 (SI 2010/1907).

Why we are making these changes?

21. We are making this policy change because we believe that the existing ESA rules encourage claimants to loop around the system, rather than reflecting the outcome of the WCA which is designed to make sure that people with health conditions get the help and support they need in order to return to work. The changes we make here will also reduce the administrative burden on the Department and mean that those new claimants waiting for an assessment should have reduced waiting times in the longer-term.

What the changes mean for claimants

22. The Secretary of State will be able to refuse to treat ESA claimants as having LCW if they make a new ESA claim more than six months after they are found fit for work, where their condition has not altered and they have not developed a new condition, pending a fresh WCA. This means these claimants will not be entitled to ESA while awaiting the new determination on whether they have LCW. , Additionally, these claimants will not be treated as having LCW if they appeal a decision that they do not have LCW, so they will cease to become entitled to ESA whilst they are awaiting the outcome of the appeal.. Where a claim is determined and refused, or the claimant is not treated as having LCW, these claimants may be able to claim JSA instead. JSA is the appropriate benefit for someone who has been found fit for work. JSA provides claimants with personalised support to return to work taking into account their health condition or disability.

Mitigation

23. There are extensive safeguards in place to ensure that decisions on entitlement to ESA following a WCA are correctly made, and support and alternative benefits are available for claimants.
24. In recognition of the vulnerability of claimants with mental health conditions the WCA includes activities related to mental, cognitive and intellectual function. These include coping with social situations and dealing with other people. In addition special consideration is given to claimants with mental health conditions throughout the WCA process. For example, people who claim ESA are asked to complete a questionnaire

(ESA50) as part of the claim process. The ESA50 was designed with input from technical working groups including Mencap and the National Autistic Society, to ensure a properly structured series of questions to guide a claimant to provide a full explanation of any mental health issues. However, if someone with a mental health condition does not return their ESA50 within the required 4 week period, payment of ESA continues and their case is still considered by a health care professional, instead of being returned to DWP for a decision on whether benefit entitlement can continue.

25. The healthcare professionals carrying out the assessments are trained in disability assessment medicine in order to assess the capability of an individual to engage in work. They are given specific training in assessing individuals with mental health conditions and receive continuing professional education in order to remain up to speed with developments in the field of disability medicine.
26. DWP is committed to ensuring that the WCA accurately assesses the capability of people with conditions affecting mental function and the Department has made considerable efforts to ensure that the special needs of persons with mental health conditions are met as part of the assessment process. This is why following Professor Harrington's recommendation, a full complement of mental function champions have been in place since July 2011 as a resource to support the assessment of individuals with mental health conditions.
27. Prior to making a decision that someone is fit for work the DWP Decision Maker attempts to contact the claimant to explain that based on the evidence available they are likely to find them fit for work and ask if there is further evidence that they wish to be considered. If the claimant is still unhappy with the decision they can request a Mandatory Reconsideration which is undertaken by a separate Decision Maker. Data is not currently available about the effects of Mandatory Reconsideration, which was introduced for ESA claimants in October 2013. The Department is aiming to provide data by the end of this year. Finally there is also the option to appeal the decision, and some claimants may claim JSA during the mandatory reconsideration and appeal period. In addition if a claimant is successful in their appeal, ESA is re-awarded and any arrears that may be due are paid, after offsetting any JSA paid during the appeal period where relevant.
28. There are also statutory provisions for claimants with a physical or mental health condition claiming JSA which enable them to restrict their availability in any way - provided the restrictions are reasonable in the light of their physical or mental health condition. For example, a person with emphysema could restrict the:
 - type of work - to avoid working in smoke or fumes;
 - number of hours worked in a week;
 - number of hours in a shift.
29. Where the claimant imposes acceptable restrictions because of their physical or mental health condition they do not have to show they have reasonable prospects of getting a job. However, they must show all the restrictions are reasonable and are connected with their health condition. A claimant may also restrict their travel time if they have a physical or mental health condition, which affects their ability to travel.

30. In these situations jobcentre staff will consider the claimant’s availability and any restrictions which may be appropriate in light of their health condition and review and amend the claimant’s Jobseeker’s Agreement as appropriate.

Consultation and involvement

31. This policy proposal will require a change to Regulations. As part of the legislative process DWP has decided not to undertake a formal consultation exercise. However DWP has had informal discussions with both external stakeholder organisations and DWP staff in relation to the removal of the six month period, but not the proposals to end payments pending second or subsequent appeal. They have both stressed the importance of ensuring that advisers, GPs, claimants and others receive clear information about what evidence will be required in circumstances where a repeat claim has been made. DWP guidance will be amended to reflect the legislative change and also the input from stakeholders, which was limited to how to communicate the change.

Evidence and analysis

32. The following sections look specifically at the possible impact of the policy changes in terms of the protected groups (gender, disability, age, race, sexual orientation, gender re-assignment, pregnancy and maternity, marriage and civil partnership and religion and belief).

33. We have used internal administrative data to identify ESA claimants who have made a repeat claim for ESA with the same broad condition (and are thus more likely to be affected by the policy). This is likely to be an overestimate of the actual population affected by the policy as it is not possible to identify cases where the broad condition has deteriorated. We have compared the characteristics of the “potentially affected population” to the overall ESA caseload using the latest results from DWP Administrative Data and Atos Assessment Information for November 2013. We have also used data from the latest Family Resources Survey to consider the characteristics of ESA claimants in relation to the overall working age population.

Gender

34. The changes will apply to all claimants on ESA who make a repeat claim after the six month period and whose condition has not changed, both male and female. We estimate that around 57% of the claimants who could potentially be affected by the policy are male and 43% are female. Overall, 54% of ESA claimants are male and 46% are female and so men are slightly more likely to be in the potentially affected group. The data is shown in Table 1 below.

Table 1: Gender

	All ESA	Potentially affected subgroup
Female	46%	43%
Male	54%	57%

Source: DWP Administrative Data and Atos Assessment Information
All figures rounded to the nearest percentage point

Disability

35. By definition everybody potentially affected by our policy proposal has an illness or disability of some sort and according to the latest Family Resources Survey (FRS), over 90% of ESA claimants report that they are disabled according to the DDA definition¹. This compares with 25% of the overall working age population, according to the survey.
36. We have considered the primary condition reported by the potentially affected subgroup and the overall ESA caseload. The subgroup has a higher proportion of claimants reporting a mental health condition as compared to the total ESA caseload. 53% of those who make a repeat claim with the same broad condition fall into the category of mental and behavioural disorders compared with 46% of the total ESA caseload. Correspondingly they appear less likely than the overall ESA caseload to report a disease of the nervous system or to be in the category 'injury, poisoning and certain other consequences of external causes'. The data on conditions is set out in Table 2 below:-

Table 2: Health Conditions

	All ESA	Potentially affected subgroup
Diseases of Musco-skeletal system and Connective Tissues	15%	18%
Diseases of the Nervous System	6%	3%
Diseases of Respiratory and Circulatory System	6%	5%
Injury, Poisoning and certain other consequences of external causes	5%	2%
Mental and Behavioural Disorders	46%	53%
Other	21%	18%

Source: DWP Administrative Data and Atos Assessment Information
All figures rounded to the nearest percentage point

Age

37. Analysis suggests that the policy will impact claimants across the age range. Overall it appears that those under 45 are more likely to be in the potentially affected caseload (those making a repeat claim based on the same condition) than the ESA caseload overall. Those under 45 constitute 59% of those who made a repeat Claim and report

¹ 93%, Family Resources Survey, 2011/12

the same broad condition whilst those under 45 constitute only 43% of the total ESA caseload. The data is shown in Table 3 below.

Table 3: Age

	All ESA	Potentially affected subgroup
Under 18	*	1%
18-24	8%	12%
25-34	15%	19%
35-44	20%	27%
45-49	15%	15%
50-54	16%	13%
55+	26%	13%

Source: DWP WCA Cohort Data Set and Work and Pensions Longitudinal Study
All figures rounded to the nearest percentage point

38. The latest FRS data indicates that ESA claimants also tend to be older than the overall working age population - 48% of the ESA caseload is over 45 in the latest survey compared to 39% of the working age population as a whole.

Race

39. A significant number of respondents chose not to identify their ethnicity on the DWP administrative data. The proportion whose ethnicity is unknown is larger for the total ESA caseload (21%) than it is for those in the potentially affected caseload. The data is shown in Table 4 below.

40. Once we account for the discrepancy in the 'unknown' cases there does not appear to be a significant difference between the ethnic makeup of the overall ESA caseload and those potentially affected by the policy proposal.

Table 4: Ethnic group

	All ESA	Potentially affected subgroup
White	66%	78%
Mixed	1%	1%
Asian or Asian British	3%	6%
Black or Black British	2%	4%
Chinese or other Ethnic Group	1%	2%
Prefer not to Say	6%	4%
Unknown	21%	5%

Source: DWP Administrative Data and Atos Assessment Information
All figures rounded to the nearest percentage point

41. According to the latest FRS estimates, 89% of the ESA caseload report a white ethnic background compared to 82% of the working age population as a whole. Sample size

* Less than 1 per cent

restrictions preclude any further breakdown of the ethnicity of the ESA caseload reported on the FRS.

Sexual orientation

42. The policy proposals will apply to all ESA claimants regardless of their sexual orientation. The Department does not hold information on its administrative systems on the sexual orientation of claimants. We do not envisage an adverse impact on these grounds.

Gender re-assignment

43. The Department does not hold information on its administrative systems on transgender persons. We have no specific evidence on how the policy may impact on ESA claimants who have undergone gender re-assignment, but do not consider that there will be an adverse impact on these grounds. The Department has endeavoured to ensure that customers will be treated in the same way, regardless of whether they have undergone gender re-assignment.

Pregnancy and maternity

44. Claimants who are pregnant are automatically treated as having LCW for ESA purposes if they are within the Maternity Allowance period and do not have to go through the WCA process. Similarly if there is a serious risk to the claimant or her unborn child she would be treated as having LCW. Accordingly, therefore, we do not believe there will be an adverse impact on the basis of pregnancy or maternal status because of this proposed policy change.

Marriage and civil partnership

Table 5: Marriage and Civil Partnership - ESA caseload (August 2013) by the partner status of claimants and ESA phase:

Status	Claims (no partner recorded)	Claims (partner recorded)	Total
Unknown	50,000 (79%)	13,000 (21%)	63,000
Assessment Phase	439,000 (86%)	69,000 (14%)	508,000
Work Related Activity Group	467,000 (84%)	93,000 (17%)	559,000
Support Group	748,000 (87%)	109,000 (13%)	856,000
Total	1,704,000 (86%)	283,000 (14%)	1,987,000

Source: DWP Administrative Data. *Data is based on cases with adult dependency allowances - so it significantly under represents contributions based claimant partners, who are not included in contribution based ESA claims. Figures may not sum due to rounding*

45. We do not envisage that this policy will have an adverse impact on the basis of marriage or civil partnership status.

Religion or belief

46. We do not have a breakdown on religion or belief for ESA claimants. We do not envisage an adverse impact on these grounds. The Department wants to provide a service appropriate to the needs of claimants with different religions/beliefs, to enable them to access the Department's services. Jobcentre Plus already has in place within their working practices, various general measures which are sensitive to the needs of people from different religions.

Decision making

47. Having had due regard to the PSED and the UNCRPD, the evidence and the analysis detailed in this document, including ending payments pending appeal for this group, the Department acknowledges that this policy may have an adverse impact on some claimants with a protected characteristic. However, this is mitigated in part by the availability of JSA for some ESA claimants. The JSA regime can also be modified to take account of a claimant's health and JSA also provides personalised support to help claimants to return to work. There is also no indication that the proposed change would have an adverse impact under the UNCRPD as the change is intended to encourage disabled people to return to work.

48. The effect of the policy change is to restore the original policy intention that the functional assessment determination should stand unless there has been a change in the claimant's condition, or a new condition has developed; in which case ESA may be re-awarded.

49. In particular there is no evidence that the proposed policy would have an adverse impact on the duty to eliminate discrimination. We believe that the policy change will advance equality of opportunity of disabled people by providing claimants who claim JSA as a result of this measure with personalised support to return to work in future. We recognise that not all those who qualify for ESA would also qualify for JSA (primarily self-employed people). We do not have evidence to indicate that the change will lead to adverse impact on the duty to foster good relations between disabled people and those who do not have protected characteristics.

50. The change to ESA eligibility should not have an impact on disabled people's ability to choose where they live in the community. Housing Benefit will remain available regardless of the availability of ESA to those on low incomes. Disabled people will still have access to community services and help and support will be provided to those who claim JSA to return to work, in common with other members of the general population.

51. This assessment will be attached to a submission that is being sent to Ministers to consider whether this change of policy should be made and in doing so personally consider equality duties under the PSED and UNCRPD.

Monitoring and evaluation

52. DWP is committed to monitoring the impacts of its policies and we will use evidence from a number of sources on the experiences and outcomes of the protected groups.

a) We will use administrative datasets, including the Department for Work and Pension's Work and Pensions Longitudinal Study (WPLS), to monitor trends in the benefit caseloads for the protected groups and in the level and distribution of benefit entitlements. The administrative data will provide robust material for age and gender although not, as a rule, for the other protected groups. Where it is practical we will endeavour to incorporate information for the other protected groups.

b) We will use survey data, such as the Family Resources Survey (FRS) and Labour Force Survey (LFS), to assess trends in the employment outcomes of the protected groups. Both the FRS and LFS will collect information on age, disability, gender, ethnicity, sexual orientation, religion and civil partnerships.

53. DWP is looking across its activities to identify and address further gaps in data provision, for protected groups, wherever reasonable.

When will the potential impacts be reviewed?

54. Once the policy is introduced we will monitor on a regular basis the effects of the change.

55. We will use qualitative research and feedback from stakeholder groups to assess whether there are unintended consequences for the protected groups, and whether the policy has resulted in adverse consequences for particular groups.

56. We will utilise feedback from Departmental employee networks and internal management information. For example we will monitor the level of complaints in order to assess the broader impact of the policy.

Sign off

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