WORK CAPABILITY ASSESSMENT AND EMPLOYMENT AND SUPPORT ALLOWANCE

The UK Government strongly rejects the claims made by Disabled People Against Cuts DPAC of “systematic and grave violations” of the rights of persons with disabilities in respect of implementation of the Work Capability Assessment (WCA) in connection with the Employment and Support Allowance (ESA) for people with health conditions and disabilities which affect their ability to work. The following responds to the points set out in paragraphs (f) to (p) and of the Committee’s letter and provides the information requested in paragraphs (h) to (r).

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SECTION A: SUMMARY OF UK GOVERNMENT RESPONSES TO THE SPECIFIC AND QUESTIONS RAISED BY THE COMMITTEE

1. The Committee’s letter of 12 June provided a summary of the information provided by DPAC in regard to WCA, ESA and other pertaining issues. Some of this information is incorrect. The issues raised are complex. In this section, we have provided concise responses to each of the points raised, with links to the more detailed information provided in other sections of our response which we believe will help the Committee’s understanding of the context and approach that we have adopted.

2. Reference: Committee letter, page 2, paragraph f) The Employment and Support Allowance (ESA) was established by the Department for Work and Pensions in 2008 with the aim to provide financial support for persons with disabilities whose ability to work is limited. Applicants are required to undergo a Work Capability Assessment in order to qualify for this allowance.

3. It is not true that ESA is aimed at providing financial support for persons with disabilities whose ability to work is limited but is rather aimed at providing financial support for individuals for whom it is not reasonable to require them to work.

4. From 27th October 2008 the existing range of benefits paid on the basis of incapacity for work (Incapacity Benefit, Severe Disablement Allowance, and Income Support where paid on the grounds of incapacity/disability) was replaced for new claimants with ESA.

5. Consideration of eligibility for ESA includes a Work Capability Assessment (WCA).

6. The UK Government is committed to supporting those who cannot work because of a functional impairment but it wants to support as many people as possible to live independent lives, an important part of which is through employment. The Government does not believe individuals should be denied that opportunity due to any disability or health condition. The WCA is part of the process of delivering on that ambition.

7. Further detailed information is provided in the section entitled ‘Employment and Support Allowance (ESA)’ (P.17), ‘Employment and Support (ESA) Composition and Allowance Legal Framework’ (P.20) and ‘Application process for Employment and Support Allowance (ESA)’ (P.23)

8. Reference: Committee letter, page 2, paragraph g) It is alleged that the Work Capability Assessment is conducted mainly through computer-based questionnaires and that the staff of DWP involved in the decision-making process was not sufficiently qualified.

9. The UK Government refutes this allegation. WCAs are conducted by qualified Healthcare Professionals (HCPs) who receive specialist training in functional capability assessment. They make a recommendation to a Department of Work and Pensions (DWP) Decision Maker (DM) who then considers all of the
evidence available before making a decision about entitlement. DWP Decision Makers are not medically trained, but are trained in the interpretation and application of the law.

10. A computer programme is used to assist HCPs to complete assessment reports. It does not direct the questions which HCPs ask and does not drive assessments in a certain direction – it is merely a tool to help capture information quickly and accurately.

11. For further information please refer to the section entitled ‘Application process for Employment and Support Allowance (ESA)’ (P.23)

12. Reference: Committee letter, page 2, paragraph h) It has been reported that pursuant to the decision of a Work Capability Assessment claimants are considered a) fit for work, b) having limited capability to work and placed in the Work Related Activity Group (WRAG) and c) having limited capability for Work Related Activity and placed in the Support Group.

13. It is correct to say that following a WCA claimants are considered to be in one of the three groups referenced however an applicant is not deemed ‘fit for work’ but rather is deemed as not having ‘limited capability for work’. For further information please refer to ‘Application process for Employment and Support Allowance (ESA)’ (P.23).

14. Page 2, paragraph i) The Employment and Support Allowance substituted a range of ‘incapacity benefits’ in particular, ‘Incapacity Benefit and Income Support’. In 2011 the process for transferring beneficiaries from the former welfare schemes to the scope of the Employment and Support Allowance (ESA) was initiated. In accordance with the information provided to the Committee 1,946,200 beneficiaries were transferred to the ESA and the process of re-assessing beneficiaries will continue until 2014.

15. In 2011 the UK Government began the process of reassessing recipients of incapacity benefits (incapacity Benefit and Income Support paid on the grounds of incapacity) for their eligibility to receive ESA. Recipients of the previous incapacity benefits were not automatically transferred over but are required to undergo a reassessment.

16. The reassessment of 1.5 million existing incapacity benefits claimants started on 11 October 2010 with the reassessment of around 1,700 claimants in the Burnley and Aberdeen areas. These early trials allowed claimants and staff to comment on the reassessment process in order to inform and improve the national reassessment process. The national reassessment exercise began nationally on 4 April 2011, and is expected to be completed by April 2014.

17. For further information please refer to ‘Employment and Support Allowance (ESA)’(P.17) and ‘Incapacity Benefit Reassessment’ (P.18).

18. Reference: Committee letter, page 2, paragraph j) In 2012 the Parliament passed the Welfare Reform Act which reformed the welfare system. It is
alleged that the Welfare Reform Act established a broader regime of
conditionality and sanctions in relation to the Employment and Support
Allowance. Claimants placed in the Work Related Activity Group have been
subjected to sanctions and the number of sanctions has increased overall,
and in some cases claimants have been sanctioned on more than one
occasion.

19. Parliament passed the Welfare Reform Act 2007 which reformed the system
of incapacity benefits that existed at that time in the UK. The Act was
introduced as part of a broad government strategy to assist people with a
disability or health condition to enter or remain in work. The Act established
ESA and its associated entitlement regime, including the conditions of
entitlement and framework for applying sanctions.

20. Sanctions may be applied if claimants do not meet the conditions attached to
their benefit and do not show good cause for non-compliance. Sanctions are
part of moving to an ‘active’ welfare state with two-way commitment between
the Government’s commitment to providing tailored support to help people
move back into work and claimants taking personal responsibility to take
advantage of the assistance on offer. Claimants have the opportunity to put
forward their reasons why they have not attended an interview or activity, and
the right of appeal against any decision to apply a sanction.

21. For further information please refer to ‘Employment and Support Allowance
Legal Framework’ (P.20) and Welfare reform Act 2007 –
http://www.dwp.gov.uk/docs/a13-0101.pdf

22. Reference: Committee letter, page 2, paragraph k) It has been reported that a
compulsory work programme for persons placed in the Work Related Activity
Group has been established, which requires them to demonstrate work as a
condition to be entitled to receive benefits. In addition it has been alleged that
there is no limit about the length of the compulsory work programme for
persons with disabilities.

23. If a claimant is placed in the WRAG they may be referred to the Work
Programme if they are assessed as being likely to be ready to re-enter the
labour market within 12 months or less.

24. The Work Programme is not a compulsory programme of work. It is a system
made up of many specialist providers who offer tailored employment related
support to individuals. Individuals can only be attached to the Work
Programme for a period of up to two years. In order to help an individual move
closer to the labour market and eventually secure a job, as part of their Work
Programme they may be required to undertake a Work Placement.

25. For further information please refer to ‘Access to employment programmes for
Employment and Support Allowance Work Related Activity Group (ESA
WRAG) claimants’ (P.37).
26. Reference: Committee letter page 2, paragraph I). Furthermore, it has been reported that some assessment processes have exceeded maximum term of 13 weeks and some assessment processes have lasted between 3 months and 2 years or even longer periods. The submission underlined that persons with disabilities whose applications for ESA are pending are prevented from seeking for an alternative allowance such as Jobseekers' Allowance.

27. There is no maximum term for the assessment process, but we acknowledge that in practice it can take longer than 13 weeks which is the target time we would like to complete assessment processes in. Where the assessment is not completed within 13 weeks there are arrangements in place to automatically backdate any arrears payments if the claimant is subsequently found to be entitled to either the support or work-related activity components of the benefit. This means that claimants are not financially disadvantaged as a result of delays in the process and remain in receipt of an amount equal to a JSA claimant throughout this period.

28. In order to improve capacity and bring down waiting times the Department for Work and Pensions is also now procuring additional WCA providers on a regional basis. These arrangements are likely to be in place from summer 2014.

29. Claimants cannot claim ESA and Jobseekers Allowance (JCA) at the same time, as their different eligibility criteria makes them mutually exclusive. It is for the claimant to decide which benefit they wish to claim. ESA is the only benefit in the UK where payment can continue pending the outcome of appeal to an independent tribunal. Where a person is claiming JSA and has an appeal outstanding against an earlier ESA decision, the tribunal only considers whether the earlier ESA decision was correct and takes no account of the JSA claim. If the tribunal decides in the claimant's favour, ESA will be reinstated and arrears of benefit will be paid as appropriate.

30. Reference: Committee letter, page 3, paragraph m) The submission refers to the appeal process related to the Work Capability Assessment. According to the information more than 50% assessments have been appealed, and in the period 2011-2012 181,000 appeals were received by the tribunals across the country. Allegedly a high percentage of these appeals have been successful.

31. These figures are not correct, Of all 741,900 claimants who had a “fit for work” outcome after their initial assessment between October 2008 and November 2012, 39% across the UK appealed that outcome. Of the 289,300 individuals that appealed 108,400 or 37% had their decision overturned. This means the Tribunal overturned around 15% of the 741,900 “fit for work” decisions made by the DWP.

32. For further information please see ‘Appealing a Work Capability Assessment (WCA) Decision’ (P.25) and Annex 1 (P.50).

33. Reference: Committee letter, page 3 paragraph n) It has been alleged that under Clause 99 of the Welfare Reform Act from April 2013 "legal aid is no
longer available for First-tier Tribunal hearings which severely restricts the ability of claimants to appeal a decision. Clause 99 of the Welfare Reform Act introduces a mandatory reconsideration or a review period with no time limits, leaving claimants without income whilst they await the review and until an appeal is lodged."

34. This allegation that the Welfare Reform Act 2012 had any effect on claimant's entitlement to Legal Aid is not correct. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 ended legal aid funding for casework on appeals relating to welfare benefits to the First-tier Tribunal, but provided that legal aid is still available for civil legal services provided in relation to an appeal on a point of law to the Upper Tribunal, the Court of Appeal or the Supreme Court relating to a benefit, allowance, payment, credit or pension.

35. The Government considered the fact that it is possible for claimants to represent themselves given that the First-tier Tribunal is hearing is inquisitorial, and also that there are other methods of dispute resolution, such as reconsideration by the decision maker, in making this change.

36. It is also important to note that there remains the possibility that a welfare benefits case which is very complex could be funded through the exceptional funding regime for legal aid.

37. Legal aid changes will only affect individuals wishing to be represented by fee charging legal representatives at their Tribunal hearing.

38. For further information please refer to ‘Application process for Employment and Support Allowance (ESA)’ (P.17) and ‘Appealing a Work Capability Assessment (WCA) Decision’ (P.25).

39. Mandatory reconsideration will be introduced from October 2013. At present there is no time limit for Mandatory Reconsiderations. For further information please refer to ‘Appealing a Work Capability Assessment (WCA) Decision’ (P.25).

40. Reference: Committee letter, page 3 paragraph o) Furthermore, the submission points out that centres where the medical assessment of claimants takes place are not accessible at all, and in particular some centres do not have wheelchair access or car parking for persons with disabilities.

41. All Assessment Centres are accessible to wheelchair users. 123 permanent Assessment Centres are currently in operation. 31 of those do not have ground floor assessment rooms but have lift access. Atos Healthcare (the Government’s private contractor responsible for WCA) and the DWP have safeguards in place to identify those claimants who may face barriers in accessing these sites. Claimants who believe they would have problems with accessibility are offered an appointment at the nearest ground floor assessment centre or they can request a home visit.
42. Further information on the accessibility of assessment centres where WCAs are conducted is provided in ‘Further information regarding Work Capability Assessment (WCA)’ (P.30).

43. Reference: Committee letter, page 3 paragraph p) Overall, the submission calls the attention of the Committee to the high levels of stress and anxiety among persons with disabilities who are ESA claimants as well as the increasingly negative perceptions in the society in relation to persons with disabilities.

44. As the Committee will be aware the United Kingdom Government operates a progressive welfare state and a comprehensive benefits system. In order to ensure that the right benefits go to the people that are entitled to them there need to be effective processes in place to assess and determine entitlement and to prevent fraud and error entering the system. The steps taken to minimise stress and anxiety to individuals claiming ESA are demonstrated throughout this document.

45. The Committee also asked for information on the following specific points. In relation to the Work Capability Assessment. Summary responses are provided below, with links to more detailed information.

46. Reference: Committee letter, page 4, paragraph h) Legal or administrative frameworks applicable to the Employment Support Allowance (ESA).

47. The Welfare Reform Act 2007 and subsequent legislation sets out the legal framework for ESA and provides the detailed criteria against which claimants are assessed. Please see more information on page 13.


Table 1 – Beneficiaries of Employment and Support Allowance (ESA) (age):

<table>
<thead>
<tr>
<th>Age</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>under 18</td>
<td>4,360</td>
<td>0%</td>
</tr>
<tr>
<td>18 - 24</td>
<td>134,200</td>
<td>9%</td>
</tr>
<tr>
<td>25 - 34</td>
<td>226,250</td>
<td>16%</td>
</tr>
<tr>
<td>35 - 44</td>
<td>321,480</td>
<td>22%</td>
</tr>
<tr>
<td>45 - 49</td>
<td>215,700</td>
<td>15%</td>
</tr>
<tr>
<td>50 - 54</td>
<td>221,850</td>
<td>15%</td>
</tr>
<tr>
<td>55 - 59</td>
<td>224,280</td>
<td>15%</td>
</tr>
<tr>
<td>60+</td>
<td>99,860</td>
<td>7%</td>
</tr>
<tr>
<td>Total</td>
<td>1,447,980</td>
<td>100%</td>
</tr>
</tbody>
</table>

Table 1: ESA claimants by age (as of November 2012)
Source: DWP Tabtool
Table 2 – Beneficiaries of ESA (gender)

Table 2: ESA claimants by gender (as of November 2012)
Source: DWP Tabtool

<table>
<thead>
<tr>
<th>Gender</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Female</td>
<td>674,360</td>
<td>47%</td>
</tr>
<tr>
<td>Male</td>
<td>773,620</td>
<td>53%</td>
</tr>
<tr>
<td>Total</td>
<td>1,447,980</td>
<td>100%</td>
</tr>
</tbody>
</table>

49. Reference: Committee letter, page 4, paragraph j) The process to carry out work capability assessments in particular its timeframe, criteria used to assess ESA’s claimants, qualifications of DWP staff who carried out the assessments, types of support and assistance provided to the claimants during the application process. Please provide data about number of persons with disabilities who were beneficiaries of incapacity benefits and had undergone work capability assessment since August 7 2009; as well as data on persons with disabilities who have been declared fit for work, placed in the Work Related Activity Group and/or in the support group; data on persons with disabilities who had undergone WCA and were declared fit for work or placed under WRAG after successfully challenged the WCA before tribunals;

50. As the Committee will be aware these are very complex issues, therefore brief information is included below, with reference to where further information is contained in this document:

- **Timeframe** – ESA and the WCA were introduced in October 2008, following extensive consultation with medical experts and representative groups including disabled people and their organisations. Further information is contained in Section D. Since its introduction the WCA has been subject to regular review and improvement. Further information is contained in ‘Review and Refinement of the Work Capability Assessment (WCA)’ (P32);

- **Criteria used to assess ESA claimants** – claimants are assessed against a series of descriptors for both physical health and mental function. These descriptors are established in legislation. Further information is contained in ‘Employment and Support (ESA) Allowance Legal Framework’ (P20) and the descriptors themselves are at Annex 2;
Qualifications of DWP staff who carried out the assessments – healthcare professionals employed by Atos Healthcare carry out face-to-face assessments on behalf of DWP. All healthcare professionals must have three years post qualification experience and are trained in disability analysis. Further information is contained in the section titled ‘Application Process for ESA’ (P.23). DWP Decision Makers made final decisions on eligibility for benefits. Decision Makers are trained in social security law and its application;

Types of support and assistance provided to the claimants during the application process – a number of safeguards and easements to the WCA process are in place to help claimants, including safeguards for claimants with mental health conditions. There are also various options to help claimants who are unable to do so to complete the necessary forms. Further information is contained in ‘Further information regarding Work Capability Assessment’ (P30);

Data about number of persons with disabilities who were beneficiaries of incapacity benefits and had undergone work capability assessment since August 7 2009 – DWP published updated results from the reassessment of incapacity benefits on 23 July 2013, adjusted to account for outcomes of appeal. These show that, for claims referred for reassessment before the end of November 2012, 841,000 decisions on whether a claim qualified for conversion to ESA had been made. Of these:

- 227,000 individuals (27%) were not entitled to ESA;
- 267,500 individuals (32%) were placed in the ESA Support Group; and
- 346,500 individuals (41%) were placed in the ESA Work Related Activity Group.

Data on persons with disabilities who have been declared fit for work, placed in the Work Related Activity Group and/or in the support group:

Table 3 – Data on WCA outcomes for new ESA claims.

<table>
<thead>
<tr>
<th>WCA outcomes</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fit for work</td>
<td>946,100</td>
<td>56%</td>
</tr>
<tr>
<td>WRAG</td>
<td>428,200</td>
<td>25%</td>
</tr>
<tr>
<td>Support Group</td>
<td>310,000</td>
<td>18%</td>
</tr>
</tbody>
</table>

Table 3: WCA outcomes (for new claims starting up to November 2012)
Source: Employment and Support Allowance: Outcomes of Work Capability Assessments, Great Britain
DWP Quarterly Official Statistics Bulletin
Issue: 23 July 2013
| Total of completed WCAs | 1,684,400 | 100% |

- Data on persons with disabilities who had undergone WCA and were declared fit for work or placed under WRAG after successfully challenged the WCA before tribunals – All figures are aggregated and as such data is not available on WRAG appeals. DWP data shows that between October 2008 and May 2012, over 1.47 million decisions were made on new ESA claims following a Work Capability Assessment. 846,500 (around 57%) were found Fit for Work. 332,400 appeals were heard on these decisions up to May 2013:
  - 123,900 (37%) DWP decision overturned.
  - 208,500 (63%) DWP decision upheld.

This means that the original DWP decision was confirmed in 63% of appeals heard. Altogether, the Tribunal overturned only around 15% of the 846,500 “no limited capability for work” decisions made in respect of new claims.

51. Reference: Committee letter, page 4, paragraph k) Appeal process against a decision denying an Employment and Support Allowance. Legal assistance provided to applicants, timeframes and outcomes of the appeal; decisions adopted by DWP that allegedly curtail legal aid to applicants; legal implications of the entry into force of clause 99 of the Welfare reform act for applicants who have challenged or want to challenge their WCA.

52. The right to appeal against decision about being found fit for work and being placed in the Work Related Activity Group is a fundamental part of the social security administration process in the UK and is enshrined in primary legislation. Please see information pertaining to:

- Legal assistance available at appeal and recent changes at page 25;
- Timeframes and outcomes of appeal at page 29;
- Upcoming changes as a result of section 102 of the Welfare Reform Act 2012 (clause 99 of the Welfare Reform Act) at page 27, paragraph 161.

53. Reference: Committee letter, page 4, paragraph l) Legal framework and policy measures related to the implementation of compulsory work programmes for persons with disabilities, including information about its results.

54. There are no compulsory work programmes for disabled people in receipt of ESA. Refer to paragraphs 24 and 236 for further information.

55. Disabled people who are in receipt of ESA, placed in the WRAG and agree may be required to undertake a Work Placement as part of a Work Programme providing them with tailored support to help them move closer to the labour market.
56. For information regarding the legal framework and policy measures of the UK Governments Work Programme scheme refer to paragraphs 233 – 253, and for information about its results refer to paragraphs 241 – 243.

57. For information regarding upcoming changes as a result of section 102 of the Welfare Reform Act 2012 (clause 99 of the Welfare Reform Act) refer to page 27, paragraph 161.

58. Reference: Committee letter, page 4, paragraph m) Complementary allowances or entitlements for persons with disabilities in addition to the ESA, providing further information about their scope and goals. Please indicate the difference between ESA and Jobseeker allowance, and provide information on number of persons with disabilities that have been denied ESA and had to apply for JSA.

59. There are a range of benefits for people with disabilities or health conditions available in the UK, including ESA and Disability Living Allowance/Personal Independence Payment. Further details on these benefits – and the key differences between them – can be found under Section C (P.14).

60. Jobseekers Allowance (JSA) is a benefit designed to provide support to an individual who is capable of undertaking work but is currently unemployed. ESA is a benefit paid to individuals who have an illness or disability that limits their capacity to work.

61. People who do not meet the criteria for receiving ESA do not have to apply for JSA, but can do so if they meet the qualifying criteria and are willing to be available for work and can demonstrate that they are seeking employment. The proportion of ESA claimants who have been found fit for work (and therefore may have made a subsequent claim for JSA) is contained in Table 3 (P.9).

62. Reference: Committee letter, page 4, paragraph n) Information about the situation of persons with disabilities who had been declared fit for work, their living conditions; how many of them have been hired in the open labour market; how many of them have requested other social security benefits.

63. Reference: Committee letter Page 4, paragraph o) Data on persons with disabilities placed in the WRAG, including any impact assessment on their conditions of living carried in the state party; sanctions to which they have been allegedly subjected and impact of these sanctions in their living conditions.

64. Reference: Committee letter Page 4, paragraph p) Legal or other remedies to ensure that persons with disabilities whose ESA applications have been rejected receive appropriate redress, including support to overcome reported stress, anxiety and depression.

65. The Department for Work and Pensions does not hold information on the living conditions of people who have been assessed for the benefits which it
administers. Details of how many people have been placed in the WRAG and who have been found fit for work is in Table 3 (P.9).

66. Sanctions are only applied to claimants who fail to meet the conditions attached to their benefit and are unable to demonstrate good cause for such non-compliance. For further information regarding sanctions see paragraphs 219-223 and for information regarding conditions to entitlement for ESA see paragraphs 208-218.

67. Reference: Committee letter page 4, paragraph q) Measures to ensure accessibility to centres where work capability assessments take place.

68. The Government and Atos (the private contractor hired to carry out assessments on its behalf) have procedures in place to ensure accessibility to assessment centres does not become an issue for individuals undergoing an assessment. However, not all assessment centres have ground floor assessment rooms. Domiciliary visits are offered where it is not possible for individuals to be assessed at an assessment centre. Please see information pertaining to this on page 31.

69. Reference: Committee letter page 4, paragraph r) Measures to prevent and combat any stereotypes and negative perceptions against persons with disabilities in the media and by authorities.

70. The Government is committed to challenging negative stereotypes of persons with disabilities and to promoting positive attitudes and perceptions, including through the media. More information is provided at page 46.
SECTION B: Introduction

71. The UK operates a progressive welfare state and has a comprehensive system of support in place for individuals with a disability, ill health or a functional impairment. It has been designed to provide support for individuals to lead independent lives and to enable them to play a full and equal part of society. This includes support for those capable of and looking for work, and those in need of greater support due to disability or ill health.

72. The UK Government’s approach has been informed in recent years by a dramatically improved understanding of the relationship between work and health. Perceptions of disability and understanding of how various disabilities affect individuals have changed substantially in the past decade. This move away from old-fashioned preconceptions about who can and cannot work, and from the view that being away from the workplace is always in the best interest of someone with a disability or health condition is reflected in present Government policy.

73. There have been many studies indicating that work is good for health\(^1\). We now know that losing contact with the labour market is often detrimental to individuals in many aspects of their lives, including health.\(^2\) This understanding has greatly shaped the UK Government’s policies relating to the benefit and employment system, and underpinned our success in helping more people off benefits and into work.\(^3\) Changes made to the benefit system in the UK through the Welfare Reform Act 2007 have been made in accordance with this evidence.

74. The system in place prior to the Welfare Reform Act 2007 was based more on a diagnosis of disability or health condition, and a subsequent abandonment of those individuals to a life on benefits. This focus on the disability or condition, rather than the functional impact on an individual, led to perceptions that disabilities and ill health created a barrier to employment that could not be overcome. The previous Incapacity Benefit regime, whilst providing financial assistance, did not offer the support that people with a disability or health condition require to remain close to the labour market.

75. The new system of support aims to help people with disabilities or health conditions to live independent lives, enabling them to take a full and equal part in society.

Health and work figures

76. The figures below provide a high-level view of the numbers of people in the UK claiming income or incapacity related benefits. More data relating to

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\(^1\) Waddell and Aylward (2010), *Models of Disability and Sickness*
\(^2\) Waddell and Aylward (2010), *Models of Disability and Sickness*
specific requests made by the Committee are found in the main body of this response and in Annex 1 on page 50.

77. The UK Government estimate that around 20 per cent of all disabled people in the United Kingdom are currently claiming Employment and Support Allowance (ESA) or Incapacity Benefit (IB). This is calculated from the over eleven million people in the United Kingdom defined as having a limiting long term illness\(^4\)\(^5\) compared to the 2.53 million people claiming either IB or ESA\(^6\).

78. Figures to March 2011 showed that:

- 27.5 million people in the United Kingdom are in employment, of which 7.15 million (26%) have a health condition or a disability.
- Of 9 million inactive people (those without a job and not seeking work), 4.41 million (49%) have a health condition or a disability.
- Of 2.4 million people unemployed (without a job and seeking work), 720,000 (30%) have a health condition or a disability.

79. As of November 2012, 2.53 million people were in receipt of incapacity benefits overall, of which 1.45m were claiming Employment and Support Allowance (ESA). On average, approximately 70,000\(^7\) new claims for this benefit are made each month. We are currently conducting around 100,000\(^8\) Work Capability Assessments each month. Of the 1,477,980 individuals in receipt of ESA 674,360 (47%) are female, and 773,620 (53%) are male.

SECTION C: Overview of UK Benefits System

80. Before describing the WCA and ESA in more detail and directly addressing the points put to the UK Government by the Committee, we have provided a brief introductory section describing the UK’s provision of financial and employment support to those with disabilities and health conditions. We hope that this will provide the necessary context to help the Committee best understand the role of the WCA.

81. The UK benefit system is based on laws passed through Parliament and is subject to extensive ongoing scrutiny by elected officials, independent experts and representative groups.

\(^4\) Source: Family Resource Survey 2010/11
\(^5\) A limiting long-term illness is defined as any long-term illness, health problem or disability which limits someone’s daily activities or the work they can do.
\(^6\) November 2012 ESA claimant caseload
\(^7\) Source: Employment and Support Allowance: statistics on reassessments of incapacity benefits, July 2013. Average number of claims received June 2012 to November 2012.
\(^8\) Source as above. Average number of completed initial and repeat ESA WCAs, September 2012 to February 2013. Average number of completed IBR WCAs for IB Reassessment claims referred, June 2012 to November 2012
82. The main benefits in the UK are as follows.

Jobseekers Allowance (JSA)
83. Jobseekers Allowance (JSA) is a benefit designed to provide support to individuals capable of undertaking work but who are currently unemployed.

84. Those wishing to claim must meet certain criteria which primarily involve the individual being available to work and demonstrating that they are actively seeking employment. Of all non-working benefits JSA has the most conditions attached to entitlement. According to the most recent figures there are 1,439,782\(^9\) JSA recipients.

Employment and Support Allowance (ESA) and Incapacity Benefit (IB)
85. Incapacity Benefit (IB) is a benefit paid to individuals between 16 years of age and state pension age who are unable to work due to a disability, health condition, or functional impairment. This benefit was replaced by ESA in October 2008 for new claims. All existing IB recipients, and those receiving Severe Disablement Allowance (SDA) and Income Support (IS) paid on the grounds of incapacity, are going through a process of re-assessment to determine whether they meet the eligibility criteria for ESA. This reassessment involves undertaking a Work Capability Assessment (WCA).

86. ESA is a benefit paid to individuals who have an illness or disability which limits their ability to work. This applies where an individual meets the entitlement criteria regardless of their normal employment status, i.e. whether they are normally employed, self-employed or unemployed, if they are not entitled to Statutory Sick Pay\(^10\) (SSP), or their entitlement to SSP has ended. According to the most recent figures there are 2,455,000\(^11\) IB and ESA recipients.

87. Further details on these are contained in paragraphs 117 - 232

Disability Living Allowance (DLA), Personal Independence Payment (PIP) and Attendance Allowance (AA)
88. Disability Living Allowance (DLA), which was introduced in 1992, is a tax free, non-means tested and non-contributory benefit that provides a monetary

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\(^9\) JSA claimant figures correct as of June 2013: [http://www.nomisweb.co.uk/articles/750.aspx](http://www.nomisweb.co.uk/articles/750.aspx)

\(^10\) An individual can receive £86.70 per week Statutory Sick Pay (SSP) if they’re too ill to work. It’s paid by their employer for up to 28 weeks. They need to qualify for SSP and have been off work sick for four or more days in a row (including non-working days).

contribution towards the extra costs for care and mobility needs arising as a result of a long-term impairment or health condition. DLA is payable to people who are both in and out of work.

89. DLA is being replaced for people aged 16 to 64 by PIP. PIP will not apply to people who were aged 65, or over, on 8 April 2013. Those DLA recipients aged 65 and over on 8 April 2013 will be able to continue to receive their DLA provided they continue to meet the eligibility criteria. PIP will also not apply to children until they reach age 16; this group will continue to receive DLA as at present, provided they continue to meet the eligibility criteria.

90. PIP, like DLA, is a non-means tested, non-taxable cash benefit which can be claimed both in and out of work. The assessment for PIP will look at how an individual’s impairment affects their ability to live an independent life by assessing their ability to carry out a range of everyday activities such as cooking, communicating and getting around.

91. AA, like PIP and DLA, provides a contribution towards the extra costs faced by severely disabled people as a result of their disabilities. Entitlement to AA is based on the need for personal care or supervision which results from severe disability and is available to people becoming disabled aged 65 or over. According to the most recent figures there are 615,170 DLA and ESA recipients; 3,282,640 DLA recipients and 1,557,790 AA recipients.

Universal Credit (UC)

92. The UK Government is embarking on a major reform of how benefits are administered to those both in work and those out of work with the introduction of Universal Credit (UC). We are simplifying the existing system and abolishing the array of multiple, overlapping benefits. This was introduced in the Welfare Reform Act 2012.

93. Elements of this new benefit paid on the grounds of disability will be based on limited capability for work, similar to existing arrangements for ESA. By 2017 it is planned UC will have replaced all income related benefits. The UK Government have committed to the WCA being the single assessment for the disability elements under UC.

Industrial Injuries Scheme

94. Through the Industrial Injuries Scheme the government provides tax free, non-contributory, no-fault compensation to people who are disabled through an injury or disease as a result of their employment. There are over 70 specified occupationally caused diseases that are covered by the scheme. The main components of the scheme are: Industrial Injuries Disablement Benefit and Reduced Earnings Allowance/Retirement Allowance. Constant Attendance Allowance and Exceptionally Severe Disablement Allowance can be paid alongside Industrial Injuries Disablement Benefit where constant care is required.
95. Industrial Injuries Benefits are not income related, but will be taken into account as income for the purposes of some other benefits, including UC.

Housing Benefit

96. Any individual can receive help with their rent costs if on benefit or a low income, and is paid at a level dependent on the individual’s income and circumstances.

Council Tax Reduction

97. Individuals may be entitled to a Council Tax Reduction if they pay Council Tax and are on a low income or are claiming benefits.

Child Tax Credits

98. Individuals may be entitled to claim Child Tax Credit for each child they are responsible for if the child is:
   • Under 16
   • Under 20 and in approved education or training

99. An individual does not need to be working to claim Child Tax Credit. They are paid for each child that qualifies and Child Tax Credit does not affect their Child Benefit (a payment given to anybody earning less than £50,000, responsible for a child less than 16 years of age).

100. Note: All figures given above were accurate as of November 2012\(^\text{12}\). No figures are currently available for the number of PIP recipients.

SECTION D: Response to the points and questions put to the United Kingdom Government – detailed information on ESA and the WCA

Employment and Support Allowance (ESA)

101. ESA is a benefit that has been introduced to replace Incapacity Benefit (IB), Severe Disablement Allowance and Income Support. It has been designed to provide financial support for persons diagnosed with a disability or with a health condition which prevents them from undertaking work.

Incapacity Benefit (IB)

102. IB was introduced in 1995 and is paid to people who were assessed as being incapable of work under the assessment used for that benefit. IB was widely considered to contain flaws which undermined its effectiveness. In particular it failed to adequately support individuals facing barriers to employment. Once in receipt of IB people were told they would not be able to return work and would not be expected to take steps to do so. They continued to be paid IB

\(^{12}\) http://tabulation-tool.dwp.gov.uk/100pc/wa/comb/ccstatgp/a_carate_r_comb_c_ccstatgp_nov12.html
regardless of how their condition developed or improvements made to the management of such conditions. IB did not recognise or account for the many people in receipt of it with less severe health conditions who did not have any absolute physical or mental barriers to work.

103. This was not in keeping with the UK Government’s developing view that disabled people or those with ill health should be enabled to achieve their full potential and participate equally in society.

Road to reform

104. Based on the principles above in January 2006 the Department for Work and Pensions (DWP) published the Welfare Reform Green Paper ‘A new deal for welfare – Empowering people to work’. This paper introduced a range of reforms intended to help more people into jobs. This more ‘active’ welfare state involves a two-way commitment; with the Government committing to providing tailored support to help people move back into work, and conditionality is attached to benefits so that recipients have a personal responsibility to take advantage of the assistance on offer. In this sense the UK benefits system is in line with the OECD assessment that a benefits system should not just offer social protection but also social integration.

Employment and Support Allowance (ESA)

105. The Welfare Reform Act 2007 introduced ESA as a key part of a broader governmental strategy to assist people with a disability or health condition to enter into or remain in work.

106. The aim of the new benefit was to move away from a system which made assumptions about individual ability by reference to diagnosis and to instead focus on the individual themselves and what they could actually do. This is done by reference to a set of functional descriptors approved by Parliament.

107. The process of determining this is known as the Work Capability Assessment (WCA), an assessment developed by working with medical health professionals and disability representative organisations. The WCA replaced the 12 year old Personal Capability Assessment (PCA), which had assessed eligibility for IB. It aimed to address many of the inherent shortcomings identified in the government-produced ‘Transformation of the Personal

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14 For further information about conditionalities to benefit, please see pages 28-30 of this document.

Capability Assessment: Report of the Physical Function and Mental Health Technical Working Groups\textsuperscript{17}.

108. The WCA aims to deliver a comprehensive and objective assessment of the extent to which an individual is capable of work in a modern working environment. This is a key difference between ESA and IB. For example, under the old IB system certain groups, such as blind people, were automatically exempt from assessment and assumed to be incapable of work. This is at odds with the clear evidence that many people with visual impairments, including a former Secretary of State at the DWP, successfully thrive at work with the right support and adjustments.

109. It is our firm belief that enabling individuals and offering them the support they need to return to the labour market will improve not only the individual’s health but will help to reduce the hardship and deprivation they experience as a result of their condition. This principle is in keeping with the body of evidence that people are better off in work; not only financially, but in terms of their health and well-being, their self-esteem and the future prospects of both themselves and their family. Work is an integral part of life, in terms of meeting the financial demands and psychosocial needs placed on individuals, and is central to individual identity as well as social status. For instance, people who are long-term unemployed or who have never worked are up to three times more likely to have poor health than those in work and two to three times more likely to develop a mental health condition.\textsuperscript{18}

110. In this vein, ESA places greater emphasis on a claimant’s functional capabilities and the importance of moving towards employment where reasonable. For this reason ESA was designed with two claimant groupings which distinguished the type and level of support and conditionality placed on a claimant. As well as identifying if a claimant was eligible for ESA, the WCA process also separates those who do meet the eligibility criteria into two groups:

- those with the most severe impairments (Support Group); and
- those capable of taking steps to prepare themselves for employment with the appropriate support (Work Related Activity Group).

111. Claimants identified as having the most severe impairments (those in the Support Group) receive a higher rate of benefit and are not subject to any conditionality. However, in keeping with the Government’s belief that work is beneficial, these claimants are entitled to take part voluntarily in the employment support available if they choose.

**Incapacity Benefit Reassessment**

112. In 2011 the United Kingdom Government began the process of reassessing recipients of incapacity benefits nationally (incapacity Benefit and Income

\textsuperscript{17} DWP (2006), *Transformation of the Personal Capability Assessment: Report of the Physical Function and Mental Health Technical Working Groups*

\textsuperscript{18} Waddell and Burton (2006), *Is Work Good for Your Health and Well-Being?*
Support paid on the grounds of incapacity) for their eligibility to receive ESA. Recipients of the previous incapacity benefits were not automatically transferred over but are required to undergo a reassessment.

113. To establish eligibility to ESA, the new income support benefit for those with disabilities or health conditions, claimants must undergo a WCA even if they were previously in receipt of IB.

114. Reassessment aims to ensure that support is well targeted and that higher rates of benefit payment go to the right people. People assessed as having limited capability for work will be moved to ESA and will be placed either in the Support Group or the Work Related Activity Group. Those reassessed as capable of work can move onto JSA where eligible.

115. It is expected that 1.5 million people will go through the reassessment process by the time it concludes in 2014. The DWP published updated results from the reassessment of incapacity benefits on 23 July 2013, adjusted to account for outcomes of appeal. These show that, for claims referred for reassessment before the end of November 2012, 841,000 decisions on whether a claim qualified for conversion to ESA had been made. Of these:
   - 227,000 individuals (27%) were not entitled to ESA;
   - 267,500 individuals (32%) were placed in the ESA Support Group; and
   - 346,500 individuals (41%) were placed in the ESA Work Related Activity Group


**Employment and Support (ESA) Allowance Legal Framework**

117. Section 1 of the Welfare Reform Act 2007 sets out the conditions a claimant must meet in order to be entitled to ESA. There are a number of conditions which must be met, including financial conditions. However, the primary condition is that the claimant must have “limited capability for work”. Section 1(4) sets out that a person has “limited capability for work” if their capability for work is limited by their physical or mental condition, and the limitation is such that it is not reasonable to require them to work.

118. Sections 8 and 9 of the Welfare Reform Act set out the legislative framework for the assessment to determine whether a claimant has limited capability for work (section 8) or limited capability for work related activity (section 9). The ESA Regulations 2008 (S.I 2008/794) set out the scheme of assessment in more detail in regulations 19 to 39. The Regulations are made by statutory instrument and any changes must be approved by Parliament.
Claimant Groups

119. The Support Group comprises claimants whose conditions mean that they have limited capability for both work and work-related activity (LCWRA) as measured against descriptors\(^\text{19}\) set out in Schedule 3 to the ESA Regulations. These are claimants who are most seriously affected by their disabilities or conditions and they are not expected to do anything to receive their benefit (regulation 34). However, as previously stated, they can engage in work-related activity on a voluntary basis if they wish.

120. The Work Related Activity Group (WRAG) comprises those claimants whose conditions mean that they have limited capability for work (LCW), as measured against descriptors contained in Schedule 2 to the ESA Regulations, and it is considered that they should be able to return to the work place in due course.

121. The descriptors are functional descriptors and each carries a score. A claimant must score at least 15 points – either against a single descriptor or by scoring against multiple descriptors where points are added together – to meet the criteria for limited capability for work and be placed in the WRAG (regulation 19). These claimants are expected to engage in work-related activity in order to receive their benefit. The claimant is also given a prognosis which reflects the length of time the DWP believes it will take the claimant to be ready for a return to the labour market.

122. Claimants in both groups are periodically reassessed to determine whether their functional capability has changed for the better or worse since the previous assessment.

123. The descriptors against which claimants are measured were developed by the DWP in consultation with stakeholders including disabled people and their organisations. They are not intended to be a measure of employability, but simply to measure how the claimant’s ability to function is affected by their condition or disabilities.

124. DWP is working with disability charities on a project to assess and determine whether changes to the descriptors are needed.

125. There are also some circumstances in which the claimant will automatically be placed into either the Support Group or the WRAG, for example when terminally ill (Support Group) or in hospital or recovering from certain types of treatment or surgery. People awaiting, undergoing or recovering from cancer treatment will also be treated as meeting the Support Group criteria, subject to the provision of confirmatory evidence from their doctor or oncologist.

126. In addition, the statutory scheme recognises that there may be some exceptional cases where the claimant may be able to function above the level required to meet the descriptors, but there would be a risk to themselves or

\(^{19}\) For further detail of the descriptors, please see Annex 2.
others if they are not found to have LCW or LCWRA and in such cases the Decision Maker is empowered to find LCW or LCWRA even though it is not justified on the descriptors (regulations 29 and 35).

127. Claimants placed in the WRAG are expected to take part in Work Focused Interviews and may be expected to undertake work-related activity if this is reasonable in their circumstances. Many of the legislative changes to the system since it was introduced relate to this aspect of ESA. This is known as conditionality and if claimants refuse to engage with this part of the process then they may suffer loss of benefit. This reflects the fact that it is considered that they should be able to return to the work place in due course. The relevant sections in the Welfare Reform 2007 are sections 12 to 15 and WRAG claimants are also subject to the provisions of the ESA (Work-Related Activity) Regulations 2011 (S.I 2011/1349).

128. Please note further information can be found in the section titled ‘Conditions to Entitlement for Employment and Support Allowance (ESA)’ on page 35.

129. For data on persons placed into the WRAG please refer to Table 3 (P.9) and Annex 1 – Table 5. We do not record data on how many of these individuals are persons with disabilities as opposed to having a health condition. ESA is a benefit for individuals who have a disability or health condition which limits their ability to work; this applies regardless of their normal employment status and functional capacity to undertake work related activity.

Notes


131. The regulations for Employment and Support Allowance can be found in ‘The Employment and Support Allowance Regulations 2008’ and ‘The Employment and Support Allowance Regulations 2013’ (2013 regulations apply to UC).


133. ‘The Employment and Support Allowance Regulations 2008’ are available online at: http://www.dwp.gov.uk/docs/a13-5101.pdf

134. ‘The Employment and Support Allowance Regulations 2013’ are available online at: http://www.dwp.gov.uk/docs/a13-4701.pdf
Application process for Employment and Support Allowance (ESA)

WCA process

135. When a new claim for ESA is accepted, the claimant enters what is known as the “assessment phase” which ends no later than thirteen weeks after the claim begins or the date on which a determination as to LCW or LCWRA is made. It is during this assessment phase that the WCA process takes place.

136. Once it is determined that the claimant meets all the basic criteria for ESA, such as right to reside in the United Kingdom and any financial conditions, then the award of ESA is made and payment begins. At its heart, it is a very simple process which usually follows the following steps:

1) A questionnaire, the ESA50, is issued by Atos Healthcare (the contractor which conducts certain elements of the WCA process) to claimants, requesting them to provide further information about their disabilities and health conditions, with particular reference to how these affect their ability to function. Claimants have 28 days in which to return this form.

2) When the ESA50 is returned, a healthcare professional employed by Atos Healthcare will review the file and all documents held, to decide whether further medical evidence should be obtained. They will also determine whether the claimant should be called for a face-to-face assessment or whether LCW or LCWRA can be decided on the basis of the information already provided. The majority of claimants will be called for a face-to-face assessment and this is conducted by an Atos healthcare professional.

3) The Atos healthcare professional will make a report of their finding, either following the review or after the face-to-face assessment, and the file will be returned to DWP.

4) A DWP Decision Maker will review the file and make the final determination on whether the claimant has LCW or LCWRA or is considered “fit for work”.

5) The claimant can request that the decision be reconsidered (by a different Decision Maker) or can appeal the decision if applicable.

137. A decision that a claimant does not have LCW or LCWRA is referred to as a decision that the claimant is ‘fit for work’. However, what this actually means is that the claimant does not meet the functional descriptors set out in the ESA Regulations for LCW or LCWRA. It does not represent a finding on whether or not the claimant is employable or whether the claimant will be able to find work.

138. The DWP has contracted Atos Healthcare to conduct part of the WCA process. Atos employ healthcare professionals who can be registered medical
practitioners, or registered nurses or physiotherapists who meet certain registration requirements. HCPs must have at least three years post-qualification training in their own field and they also receive specialist training in disability assessment.

139. It is a common misconception that the role of the HCP is to make the decision on benefit entitlement. It has always been the case, in relation to every benefit where an assessment was required, that the final decision on benefit entitlement is taken by a DWP Decision Maker, acting on behalf of the Secretary of State for Work and Pensions. The role of the HCP is to provide specialist medical advice on how the diagnosis (if there is one) affects the claimant’s ability to perform certain functions.

140. Decision Makers review the papers in the case file, including the HCP’s report and any other medical evidence that may have been obtained or provided and will then apply the legal tests as set out in primary and secondary legislation and interpreted by the case law in order to come to a decision. Decision Makers are civil servants, employed by the DWP and trained to made decisions on benefits in accordance with the law.

ESA entitlement decision

141. If a claimant is found fit for work, then the payment of the ESA basic rate is terminated. Before this occurs however, the DWP Decision Maker will make up to two attempts to make telephone contact with the claimant to explain the decision and ask if the claimant has additional information that ought to be taken into account.

142. If the claimant is placed in either the WRAG or the Support Group they will receive a back payment of the component to which they are entitled, payable from the fourteenth week of their claim and going forward they will receive the basic rate plus the additional component.

143. If a claimant is found fit for work or if they are placed in the WRAG group and consider that they should have been placed in the Support Group then they have the right to appeal to an independent Tribunal Service. The Tribunal Service is a part of HMCTS and appeals against a Decision Maker’s determination are made to the First-tier Tribunal (Social Entitlement Chamber). The First-tier Tribunal consists of a judge and a medical representative. It is a free to access service, funded from the public purse.

144. For more information on the WCA appeals process, please refer to the section titled ‘Appealing a Work Capability Assessment (WCA) decision’ (P.25).

145. For data on persons who made an application for ESA, subsequently underwent a WCA and who have been declared fit to work, placed in the Work Related Activity Group and/or in the Support Group please refer to Table 3 below.
Table 3 – Data on WCA outcomes for new ESA claims.

<table>
<thead>
<tr>
<th>WCA outcomes</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fit for work</td>
<td>946,100</td>
<td>56%</td>
</tr>
<tr>
<td>WRAG</td>
<td>428,200</td>
<td>25%</td>
</tr>
<tr>
<td>Support Group</td>
<td>310,000</td>
<td>18%</td>
</tr>
<tr>
<td>Total of completed WCAs</td>
<td>1,684,400</td>
<td>100%</td>
</tr>
</tbody>
</table>

146. For data on persons with illness, functional impairment or disabilities who have undergone a WCA and were declared fit to work or placed in the WRAG after successfully challenging the outcome of their WCA under tribunal please refer to Table 4 in the ‘Appealing a Work Capability Assessment (WCA) Decision’ section (P.30). Please note the DWP does not disaggregate appeals data and therefore does not hold appeals data solely for Incapacity Benefit reassessment. DWP data consists of appeals lodged against decisions taken on new claims made for ESA.

**Appealing a Work Capability Assessment (WCA) Decision**

147. Any claimant who is either unsuccessful in their application for ESA, or who believes that they should have been placed in the Support Group rather than the WRAG is entitled to make an appeal against that decision to an independent Tribunal. The right to appeal such decisions is a fundamental part of the social security administration process in the United Kingdom and is enshrined in primary legislation²⁰.

148. ESA is the only benefit where a claimant may continue to receive payment as long as they have lodged an appeal and they continue to provide a medical certificate from their doctor, certifying that they are not fit for work and meet the conditions of entitlement. In such circumstances, benefit continues to be paid at the assessment rate until the appeal is determined by the independent Tribunal.

149. A growing backlog of appeal cases in the Tribunal which developed following the introduction of ESA in 2008 led to long delays in dealing with appeals and thus long delays in decisions for claimants. In order to deal with the problems caused by these delays, DWP has developed an Appeals strategy, which aims to ensure:

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²⁰ Social Security Act 1998, sections 12 to 15
that benefit disputes, where possible, are resolved through the internal dispute resolution procedures within DWP; and

that, when appeals are escalated outside of DWP, the process for dealing with them is proportionate and appropriate.

150. DWP’s process for dealing with appeals is changing to ensure more disputes are resolved without referral to Her Majesty’s Courts and Tribunals Service (HMCTS). The key changes being introduced are:

- mandatory reconsideration by DWP of a disputed decision before any appeal can be lodged; and
- direct lodgement of appeals with HMCTS.

The process at present – until 28 October 2013

151. Claimants who wish to dispute the decision made in their case can either request a revision of the decision (known as reconsideration) or they can choose to proceed directly with an appeal to the First-tier Tribunal. Information on appeal rights is sent to all claimants with the letter advising them of the decision on their entitlement to the benefit.

152. At present, reconsideration is an internal DWP process, whereby the original decision is reviewed by a different Decision Maker in order to check that it was correct. The process is that all appeals should be submitted to DWP, for onward transmission to the First-tier Tribunal. DWP will automatically reconsider the original decision on receipt of an appeal, as part of the process of preparing the appeal. If the decision is not changed, then DWP forward the appeal to HMCTS, together with their response to the claimant’s submissions.

153. The First-tier Tribunal will then take over responsibility for administering the case, including setting the hearing date, if applicable. If further information is supplied to the Tribunal by the claimant, then this is forwarded to DWP and a further reconsideration will take place.

154. Appeals are heard at first instance by the First-tier Tribunal (Social Engagement Chamber, which is administered by HMCTS). Tribunals are specialist judicial bodies which decide disputes in specific areas of law. Appeals to Tribunals are usually against the decisions of government departments and the procedures adopted are usually less formal and complicated than those in other kinds of courts. Access to the First-tier Tribunal is free for claimants and intended to be as user-friendly as possible. Claimants may choose to have their case heard at an oral hearing, at which they can be present, or decided on the papers. In many cases where the First-tier Tribunal overturns a decision in favour of the claimant, it is because of new evidence obtained from the claimant.

155. The First-tier Tribunal hearing is inquisitorial rather than adversarial, and the purpose of the hearing is to establish the facts of the case and ensure the law has been correctly applied by the DWP in making the decision. The tribunal
consists of a judge and a medical professional\textsuperscript{21} and will probe the facts of the case on behalf of both parties. It is also possible for the Tribunal to raise issues of its own accord if it feels it is necessary to explore them before a correct decision can be made. It is this inquisitorial character of the First-tier tribunal which means that legal representation is not considered to be a requirement, as would be the case in an adversarial court hearing.

156. If either the claimant or the DWP wishes to dispute the decision of the First-tier Tribunal, then they can appeal to the Upper Tribunal on a point of law only. The decision of the First-tier Tribunal is binding on questions of fact. If either party disputes the decision of the Upper Tribunal, then there is provision for appeals on points of law to be made to the Court of Appeal and subsequently to the Supreme Court, which is the highest Court in the United Kingdom.

157. The allegation that the Welfare Reform Act 2012 had any effect on claimants’ entitlement to Legal Aid is simply not correct. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 was debated at length in both Houses of Parliament and received Royal Assent (i.e. became law) on 1 May 2012. It was this Act which ended legal aid funding for casework on appeals relating to welfare benefits to the First-tier Tribunal, but provided that legal aid is still available for civil legal services provided in relation to an appeal on a point of law to the Upper Tribunal, the Court of Appeal or the Supreme Court relating to a benefit, allowance, payment, credit or pension.

158. The Government considered the fact that it is possible for claimants to represent themselves given that the First-tier Tribunal is hearing is inquisitorial, and also that there are other methods of dispute resolution, such as reconsideration by the decision maker, in making this change.

159. It is also important to note that there remains the possibility that a welfare benefits case which is very complex could be funded through the exceptional funding regime for legal aid.

The new process – from 28 October 2013

160. The United Kingdom Government recognised that the current practice could be made easier for claimants and the following new processes were introduced for Universal Credit claimants from April 2013 and will be introduced for ESA and all other benefits administered by DWP from 28 October 2013.

161. Section 102 of the Welfare Reform Act 2012 (clause 99 of the Welfare Reform Bill) introduced powers for the Secretary of State to require claimants to request revision of a disputed decision before they may appeal against it: this is known as mandatory reconsideration. It is important to note that this does

\textsuperscript{21} The relevant Order defines “registered medical practitioner” as meaning a fully registered person within the meaning of the Medical Act 1983 whether or not they hold a licence to practise under that Act.
not remove the right of appeal, but it strengthens the reconsideration process by putting it on a statutory footing and helps to ensure that decisions are put right as soon as possible, if they were incorrect the first time.

162. The process is intended to reduce the number of appeals, with the expectation that more cases will be resolved at the reconsideration stage. In addition, all claimants who proceed to appeal will be making an informed decision, having received a thorough explanation of the disputed decision.

163. There is no time limit set in which the DWP must complete the mandatory reconsideration. The clear focus of the process is to ensure that the disputed decision is explained to the claimant, that where applicable additional evidence is identified and supplied, and that where the evidence supports it the decision is revised. The DWP considers that to apply a strict time limit to this process would be counter-productive, as the focus would shift to completing the process within an arbitrary time limit, rather than the above.

164. The DWP is mindful, however, of the impact that delays in completing mandatory reconsideration may have and plans to closely monitor the time taken to conduct mandatory reconsideration from the introduction to current benefits in October 2013 with a view to developing appropriate internal performance indicators at a later date.

Mandatory Reconsideration – how it will work

165. When a claimant contacts the DWP to advise that they wish to dispute their benefit decision, they will be given a full explanation of the decision by telephone and helped to identify any additional evidence that could change the decision.

166. A Decision Maker will reconsider the decision, taking into account the reasons for the dispute and any new evidence provided. The Decision Maker can decide to change the decision (revise it) or to leave it unchanged. Regardless of the outcome, the claimant can then appeal if they choose to do so.

167. While a case is being reconsidered, the claimant’s ESA payment will cease. However, if the claimant proceeds to appeal the decision after the mandatory reconsideration, then payment at the assessment rate would commence once again and be backdated to cover the mandatory reconsideration period as long as medical evidence is provided to cover the period.

Direct Lodgement – how it will work

168. From 28 October 2013, under the new “direct lodgement” process, claimants who are unhappy with the outcome of the mandatory reconsideration process will submit their appeal direct to the First-tier Tribunal.

169. The overall intention of “direct lodgement” is to speed up the appeals process as the Tribunal will be able to start the appeals administration process immediately. At present, the Tribunal does not receive the appeal until a
number of internal DWP processes have taken place, which can take several weeks.

170. Once the appeal is lodged, DWP will have to submit their response to the Tribunal and thereafter a hearing will be arranged.

Appeals Data

171. The latest Quarterly Statistics from the Ministry of Justice show that the Tribunal Service received 181,000 ESA appeals in 2011/12 and 328,000 in 2012/13.\(^{22}\)

172. The increase in the number of ESA related appeals has been driven in the main by the high volume of cases being reassessed through the Incapacity Benefit Reassessment exercise. These figures do not relate to the DWP figures discussed below because the Ministry of Justice figures cover:
   - All ESA appeals heard, and not just fit for work decisions on initial claims;
   - All appeals heard in 2012/3 regardless of when the original decision on entitlement was made

173. DWP data shows that between October 2008 and May 2012, over 1.47 million decisions were made on new ESA claims following a Work Capability Assessment. 846,500 (around 57%) were found Fit for Work. 332,400 appeals were heard on these decisions up to May 2013:
   - 123,900 (37%) DWP decision overturned.
   - 208,500 (63%) DWP decision upheld.

174. This means that the original DWP decision was confirmed in 63% of appeals heard. Altogether, the Tribunal overturned only around 15% of the 846,500 “fit for work” decisions made.

175. For data on persons with illness, functional impairment or disabilities who have undergone a WCA and were declared fit to work or placed in the WRAG after successfully challenging the outcome of their WCA under tribunal please refer to Table 4 below. Please note the DWP does not disaggregate appeals data and therefore does not hold appeals data solely for Incapacity Benefit reassessment. DWP data consists of appeals lodged against decisions taken on new claims made for ESA.

Table 4 – Data on ESA appeals.

<table>
<thead>
<tr>
<th>Appeal outcomes where completed appeals information is available</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial decision upheld</td>
<td>208,500</td>
<td>63%</td>
</tr>
<tr>
<td>Initial decision overturned</td>
<td>123,900</td>
<td>37%</td>
</tr>
<tr>
<td>Total</td>
<td>332,400</td>
<td>100%</td>
</tr>
</tbody>
</table>

176. The information in which groups these individuals were placed is currently not available. Numbers are rounded to the nearest 100.

Further information regarding Work Capability Assessment (WCA)

Safeguards for claimants within the Work Capability Assessment (WCA) process

177. A number of safeguards were built into the Work Capability Assessment (WCA) from the outset, and we have introduced further improvements to ensure the process deals with potentially vulnerable people fairly and accurately.

178. If someone with a Mental Health Condition (MHC) does not return their ESA50 within the 4 week period their case is still considered by Atos Healthcare, instead of being returned to DWP for a Decision Maker to consider whether the benefit should be terminated, as is usually the case.

179. Claimants who cannot manage their own affairs are entitled and encouraged to allow someone they trust – an appointee – to manage their affairs and contact the DWP on their behalf.

180. Where Atos informs a DWP Decision Maker that a claimant has failed to attend a face-to-face assessment the Decision Maker will normally proceed to take a decision on entitlement, after giving the claimant an opportunity to explain why they failed to attend (known as establishing good cause). However, where the claimant is known to have a MHC he or she may be considered “vulnerable” and, if so, attempts will be made to contact the
claimant by telephone and, if appropriate, to arrange a “safeguarding home visit” before a decision on entitlement is made.

181. There are also several means available to claimants via DWP to help them complete the paperwork needed for an ESA claim, particularly the ESA50, including: transcription services, either on the telephone or face-to-face; audio versions of the forms; and online versions of the forms which are compatible with accessibility computer software.

182. We recognise the challenges associated with fluctuating conditions and we have been working to continually enhance the training that HCPs receive and ensure that advice in this area is comprehensive. The activities and descriptors used in the assessment were developed in consultation with medical experts and a wide range of mental and physical health representative groups to ensure that they are appropriate for all conditions. The assessment is not a snap-shot – if a person can’t carry out a function repeatedly and reliably they will be treated as unable to carry out that function at all.

Accessibility of assessment centres

183. Given the likelihood that a proportion of individuals undergoing WCAs will have accessibility requirements the government and its private contractor (Atos Healthcare) which carries out work capability assessments (WCA) have procedures in place to ensure this does not become an issue for individuals undergoing an assessment.

184. On the 26 July 2011 the Work and Pensions Select Committee of the United Kingdom Parliament published a report in which it was critical of the fact that not all assessment centres have ground floor assessment rooms.

185. Between January 2011 and December 2012, 974 claimants were sent home unseen for health & safety / ground floor inaccessibility reasons. This equates to 0.1% of the total face to face assessments completed for ESA and IB Reassessments during the same period.

186. There are 123 permanent assessment centres currently in operation. 31 do not have ground floor assessment rooms. However, all Assessment Centres do have lift access and are therefore accessible to wheelchair users. There is a health and safety concern where claimants have disabilities which would prevent them from using the stairs in an emergency and every attempt is made to identify these claimants when booking the assessment. In four of these centres, a ground floor room is available on an ad hoc basis.

187. Atos Healthcare and the DWP have several safeguards in place during the process to identify those claimants who may have problems in accessing these sites. Firstly this is done when an Atos Healthcare call centre agent rings the claimant to book the appointment. Then documentation sent with the appointment letter also makes it clear if the centre is not on a ground floor together with an indication of the number of stairs to descend.
188. Claimants who believe they would have problems will be offered an appointment at the nearest ground floor assessment centre or they can request a home visit. Atos Healthcare accommodates home visits for those who need them.

189. DWP guidance states that Atos Healthcare must request a letter from the customer’s doctor specifying that a home visit is necessary. Under normal circumstances, if the claimant is able to visit their GP at their surgery, DWP would expect the claimant to attend an appointment for a face to face WCA in an assessment centre.

A computer based assessment

190. It is often claimed that the WCA is ‘computer driven’ or that the computer software used in the assessments – Logic Integrated Medical Assessments (LIMA) – determines the questions which healthcare professionals ask claimants. This is categorically not the case.

191. Given the number of ESA claimants each month it is necessary to have an assessment which is replicable and consistent. Using a computer programme to help assessors is therefore sensible. As such, Atos healthcare professionals use LIMA to capture information quickly and accurately during face-to-face assessments.

192. The LIMA system does not generate questions or drive healthcare professionals down a certain path. Healthcare professionals remain in control of the assessment at all times and are fully responsible for the reports they produce.

193. The Department and Atos Healthcare regularly review and update LIMA on the basis of the latest available medical evidence and to account for changes in the overall assessment process.

Review and Refinement of the Work Capability Assessment (WCA)

194. As well as basing the new WCA on the findings of the technical working group that assessed its predecessor, the Personal Capability Assessment (PCA), the DWP continues to keep the WCA under expert review to ensure that it is fulfilling its purpose of accurately and consistently assessing people for the appropriate level of benefit.

195. Formulating, developing and reforming any benefit system will always be an extremely challenging process. The UK Government is committed to ensuring the WCA continues to be developed in an open manner and in conjunction with representative organisations, including disabled people’s organisations and medical professionals.

196. The UK Government recognises that with any new benefits system unanticipated problems can occur. A very large number of individuals claim
ESA and some 100,000 people go through the WCA process each month. With such a large number of claims even if the assessment were successful in 99% of cases there would still be a significant number of people who would be dissatisfied with the system and its outcomes.

197. A DWP-led review of the assessment, which engaged with both independent experts and specialist disability groups, led to a report and addendum in March 2010. Improvements as a result of this review were implemented in March 2011.

198. Additionally, to ensure that the process itself is as efficient and accessible as possible, the DWP engages with external stakeholders when revising aspects of the WCA, such as some of the forms used by applicants. An example of this is the ESA50; a questionnaire completed by individuals making an application for ESA. This was designed with input from technical working groups including Mencap, Forward ME, Arthritis Care and the National Autistic Society. Every effort was made to ensure the form has a properly structured series of questions which guide a claimant to provide a full explanation of how their illness or disability affects them.

Independent Review

199. The UK Government’s determination to implement a non-discriminatory system which facilitates as full and effective participation in society as possible led to it statutorily committing to independently review the WCA annually for the first five years of its operation. Section 10 of the Welfare Reform Act 2007 states that “[t]he Secretary of State shall lay before Parliament an independent report on the operation of the assessments under section 8 and 9 [limited capability for work and limited capability for work-related activity] annually for the first 5 years after those sections come into force”.

200. The annual independent review engages with stakeholder groups of all kinds as well as individuals who wish to participate. For each review there is a ‘call for evidence’ where anybody is able to submit evidence to the Independent Reviewer to be considered as part of their latest report. All review materials are issued in accessible formats such as Braille, British Sign Language and audio.

201. The review process, and in particular the evidence gathering process, is a robust practice. It involves a call for evidence, stakeholder meetings and seminars, visits to Benefit Delivery Centres where claims are processed and Decision Makers consider cases (including unannounced visits), interviews with managers and Decision Makers about changes already underway, dialogue with DWP ministers and senior officials, visits to Atos assessment centres and a training centre, access to Atos management information and

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ongoing dialogue with Tribunal judges and private providers charged with delivering the governments Work Programme.

202. The first such review of this kind found that generally the WCA was accurately identifying individuals for their entitlement to benefit but it also made recommendations where improvement to the assessment could be made. Recommendations from the reviews to date have included simplifying much of the language used throughout the assessment process, making greater provision for individuals awaiting chemotherapy treatment and widening the criteria for support in relation to people’s mental function. The Government has to date implemented, or is in the process of implementing, over 50 recommendations from the first three reviews. The UK Government has readily accepted every recommendation made to date in full.

203. Already this practice of review and refinement has yielded quantifiable changes for those going through the WCA process to assess entitlement to ESA. For instance, the proportion of claimants with mental health conditions who are awarded ESA has been increasing. Shortly after ESA was introduced 33% of people claiming with a mental health condition were successful in their application whereas latest statistics published in July 2013 show this figure has risen to 44%.24

More information on the Independent Reviews can be found here:


Evidence Based Review (EBR)

204. Important though the Independent Review process is it is not the only mechanism for assessing and evaluating the impact and effectiveness of the WCA. In line with the DWPs emphasis on evidence-based policy making and a commitment to monitoring and, where necessary, making adjustments to the implementation programmes the ESA is routinely the subject of analysis and research. The department is therefore currently undertaking an Evidence Based Review alongside the fourth Independent Review.

205. The Evidence Based Review is a unique opportunity to understand how the DWP can make the WCA fairer or more accurate by systematically reviewing the existing descriptors against a different version developed in consultation

with a wide range of representative groups. We have since continued to work closely with representative organisations to refine the descriptors for mental, cognitive and intellectual functioning and for fluctuating conditions.

206. The testing phase of the Evidence Based Review is underway and results will be reported later in the year.

207. The DWP has been fully committed to assessing and improving the WCA proactively since its launch and will continue to do so in the future.

SECTION E: Response to the points and questions put to the United Kingdom Government – detailed information on entitlement to ESA and employment support

Conditions to entitlement for Employment and Support Allowance (ESA)

208. The conditions that must be met in order to continue to qualify for Employment and Support Allowance (ESA) differ depending on whether the claimant is placed in the Support Group or the Work Related Activity Group (WRAG). Claimants in the Support Group are not subject to any conditions to their entitlement to ESA (conditionality), however they must notify the DWP if their condition improves. If a claimant in the Support Group wishes to access certain work related activities, they are able to volunteer to do so, including participating in the Work Programme.

209. ESA claimants who have been placed in the WRAG following completion of the Work Capability Assessment (WCA) have conditions attached to their entitlement to receive ESA. These are explored further below.

Claimants in the WRAG

210. ESA WRAG claimants are required to attend periodic Work Focused Interviews delivered by specialist advisers. These interviews offer tailored advice and support to address the needs of the individual and are designed to prepare the individual for a future return to employment. Sections 12(1) and 13(1) of the Welfare Reform Act 2007 (WRA 2007) set out the primary powers enabling DWP to require ESA WRAG claimants to attend work-focused interviews and work related activity. Failure to comply with a mandatory requirement to prepare for a possible return to work may lead to a benefit sanction.

211. Whilst this does place requirements on those in the WRAG, DWP is sensitive to the needs of these claimants. As part of tailoring the support provided, all ESA WRAG claimants have an action plan which records activity they are required to do to help them prepare for a future return to work. The action plan is discussed at the New Joiners Work Focused Interview (NJWFI) and subsequent interventions.

212. The action plan captures details of the analysis carried out in the NJWFI including details of the claimant's health condition and a framework of work
related activity to support claimants overcome barriers to a future return to work. Advisers actively involve the claimant in drafting an action plan to secure their commitment and allow a discussion regarding any concerns about particular work related activities (WRA) that the claimant might have.

213. WRA must be reasonable with regard to the claimant’s circumstances and must not require the claimant to:
- apply for a job or undertake work, as an employee or otherwise; or
- undergo medical treatment.

214. As a condition of continued entitlement to ESA, an adviser can require the claimant to undertake WRA, where appropriate.

215. Section 55 of the Welfare Reform Act 2012 extended the definition of WRA to include voluntary work experience and mandatory work placements. This came into force on 3 December 2012. This applies to claimants receiving support from either JCP or the Work Programme. For further information please refer to paragraphs 244 and 251.

216. Work experience is voluntary and is treated in the same way as any other voluntary work related activity that an ESA claimant might undertake to help them move closer to or return to work. A period of work experience will help people with limited, or without recent employment history get a flavour of the workplace environment, gain new skills, boost their confidence and increase employability.

217. In some circumstances it may benefit a claimant to undertake a community benefit work placement. Work placements are a supportive measure and are only considered where it is reasonable and appropriate to an individual’s circumstances. They are mandatory, where appropriate. The intent behind work placements is to provide ESA claimants in the WRAG with the experience of a structured work environment so that they can learn new skills and get insight into working life whilst helping to increase their confidence and employability. ESA work placements are in the nature of a learning experience, and unlike a job, are generally a short-term and more flexible commitment, with lower expectations placed on the individual, in recognition of the fact it is a learning experience and in view of the individual’s limited capability for work. They must be accessible and appropriate to the claimant’s health condition (including location, hours of attendance, placement content).

218. If the claimant feels that the activity they have been asked to undertake is inappropriate or unreasonable, they can request a reconsideration of their Action Plan. On receipt of this request, the WRA must be reconsidered by the adviser and a decision notified to the claimant in writing. If it is decided that the activity is not appropriate the action plan is updated. If a claimant refuses

25 If work related activity (WRA) is appropriate this must be recorded on the action plan, including timescales and expected outcomes and any other relevant information.
to engage in WRA as set out in their action plan, they may be subject to a sanction.

Sanctions

219. Sanctions are applied if claimants do not meet the conditions attached to their benefit and do not show good cause for such non-compliance. In ESA, this non-compliance would consist of not undertaking work-related activities detailed on the action plan. Sanctions are not designed to be punitive but are an encouragement to engage actively with the conditionality requirements.

220. Claimants are always given the opportunity to put forward their reasons for not attending the interview or activity, and ‘good cause’ is taken into consideration in all sanction decisions where it has been provided. If a sanction is applied and the claimant feels that this should not be the case, they have the right to appeal against it.

221. The sanction continues until the claimant complies with the relevant activity, followed by a short fixed period of 1, 2 or 4 weeks. Claimants who re-comply within the same week of the failure will receive the relevant fixed period sanction only. (Regulation 63)

222. If a sanction determination is made, then the amount of the reduction in benefit is the personal allowance amount payable to a single claimant. The work-related activity component, and any other additional elements to which the claimant may be entitled such as premiums or payments for mortgage interest, will not be affected. Other benefits (such as DLA, PIP or Housing Benefit) that the claimant might be entitled to also remain in payment during the sanction period.

223. Additionally, claimants who are receiving income related ESA and who have had a sanction applied can apply for hardship payments. These payments are made if claimants can demonstrate that they cannot buy essential items, including food, clothing, heating and accommodation and so are at risk of severe suffering or privation. If claimants are eligible for hardship payments they will receive 60% of the weekly amount payable to a single claimant. Regulations 64A to 64D and 158 deal with person in hardship.

Access to employment programmes for Employment and Support Allowance
Work Related Activity Group (ESA WRAG) claimants

Jobcentre Plus

224. ESA WRAG claimants who are assessed as not likely to return to work within 12 months are referred to the Jobcentre, which is the operational part of the DWP which provides support services to people of working age, and are required to attend work-focused interviews. Advisers start working with ESA

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26 The length of the fixed period is related to the number of times that the claimant has failed to meet conditionality within a 12 month period.
WRAG claimants as soon as possible after the outcome of their WCA is known, starting with a new joiner’s work-focused interview (NJWFI).

225. Those who are eligible for the Work Programme are referred by the adviser, although through diagnostic interview advisers will consider whether some claimants may be better supported through Work Choice (see explanation of Work Choice below). Advisers deliver interventions with ESA claimants flexibly and can offer a range of appropriate support for claimants, including voluntary work experience, job search support, signposting to health support, specialist disability adviser support and access to sector based work academies and self employment options.

Work Choice

226. Work Choice is voluntary for disabled people of working age with the highest support needs, regardless of the benefit they are claiming. The programme provides specialised support where no other Jobcentre Plus provision is suitable. Work Choice provides help in preparing for, finding and staying in work (including self-employment). As such, Work Choice acts as an alternative source of provision to the Jobcentre and the Work Programme for those disabled people with the greatest barriers to getting and keeping a job.

227. Work Choice provides a range of specialist employment services to respond to the individual needs of disabled people and their employers. It is delivered by contracted providers with referrals made by Jobcentre Disability Employment Advisers (DEAs). In particular Work Choice provides,

- support for individuals, including job-coaching and mentoring,
- long-term help and support for those who need it most, with the emphasis on progression to unsupported employment where possible,
- tailored Development Plans as a key component,
- provision for all types of disability, and
- greater focus on job outcomes.

228. Work Choice can also provide an indefinite period of support once the customer is in work, unlike mainstream employment provision. This is in recognition of the fact that some Work Choice participants may need ongoing support to overcome barriers in work that cannot be met through normal workplace adjustments.

Work Programme

229. The UK Government presently consists of a coalition of two parties, and in the coalition agreement the government gave a commitment to "create a single welfare to work programme to help all unemployed people get back into work". The DWP is delivering this commitment via the Work Programme. This was launched in June 2011 and is designed to support people who have been claiming out of work benefits for a long period, or who are at risk of falling into this group. This is being sustained by over £3 billion worth of spending across 5 years.
230. The Work Programme is delivered through 18 different Prime providers, many of whom are specialised in dealing with long-term unemployment. To aid the provision of tailored support for claimants referred to the Work Programme, all Prime providers have assembled specialist supply chains to help deliver services to participants with a wide range of different needs.

231. The main principles on which the Work Programme contracts are based are:

- Prime providers are paid almost entirely on the basis of sustained job outcomes for claimants. The longer a person stays in work, the more a provider is paid. Higher payments are attached to supporting claimants with certain complex barriers to employment such as those faced by ex-IB ESA WRAG claimants.
- Local providers are often best placed to identify the most effective way of helping people into employment. Work Programme contracts reflect this, allowing freedom to innovate, effectively focus resources and tailor the service to individual claimant’s needs.

232. Work Programme providers must work to a set of minimum service level requirements, which includes actions such as each claimant must have an action plan and the Jobcentre Plus must receive an exit report for each person who completes their period on the programme. These promised service levels are also made public so that claimants and their representatives can judge whether providers are delivering what they have promised. If the providers fail to deliver these minimum service levels, DWP have the ability to treat it as a breach of contract.

Delivery of Work Programme

233. The Work Programme supports a wide range of claimants, including those who are disabled or have a health condition and may have subsequently been out of work for several years. Previous United Kingdom welfare-to-work programmes were often designed for specific groups – such as younger people, people with disabilities and lone parents. The Work Programme does not categorise claimants in this way, but instead focuses on the individual and their personal challenges. In this way they are able to tailor the support provided and bring in specialists from their supply chain.

234. ESA claimants who are eligible for mandatory referral to the Work Programme are those in the ESA WRAG group who are assessed as likely to be able to return to work within 3, 6 or 12 months. Before a claimant is referred to a provider they will have a handover meeting with a Jobcentre Plus (JCP) adviser. The JCP adviser will explain, both verbally and in writing, the;

- requirements that the Work Programme provider may place on them depending on whether their participation in the programme is voluntary or mandatory and the conditionality that may or may not be applied;
- the minimum service levels they can expect; and
- the process for raising any concerns about treatment by the provider.
Providers have a maximum of 104 weeks to work with claimants. This maximum period of two years gives providers time to build relationships with the claimants, addressing the often complex barriers to work faced by long-term unemployed people and to help them progress into sustained employment.

Safeguards

Safeguards exist to ensure that ESA claimants in the Work Programme are treated fairly and that consideration is given to the way they are affected by their disability or health condition. Any activity included in the ESA claimant’s action plan must be reasonable in their circumstances, and cannot include seeking work, working or undergoing medical treatment. ESA participants may request a reconsideration of any activity they have been mandated to undertake if they feel that it is not reasonable. The Work Programme provider must:
- review the activity, taking into account why the claimant feels the activity is not appropriate, and
- reconsider if the activity remains reasonable and appropriate in the participant’s circumstances.

If a Work Programme provider considers a participant to be a vulnerable ESA claimant, they must ensure that the claimant fully understands their responsibilities. It is also important that they comply with legal requirements regarding safeguarding vulnerable participants e.g. CRB checks. Not all ESA participants are considered to be vulnerable. However, where an ESA participant is identified as being vulnerable, and they fail to participate in a mandatory activity, the Work Programme provider is required to make every effort to ensure that the participant has understood the requirement to undertake the agreed mandatory activity.

If the claimant still refuses to participate in this activity, Work Programme providers inform the Jobcentre Plus and a DWP Decision Maker will review the refusal to participate and decide whether a sanction should apply, after giving the claimant an opportunity to provide an explanation for the non-participation (good cause). Work Programme providers have no legal basis to make a sanction decision themselves. A sanction can only be applied if the claimant understands that the activity is part of their work related activity requirements and yet fails to participate.

If a claimant is unhappy with the service they have received or feel that they have been unfairly treated, they have recourse to a complaints process. Work Programme Prime providers must have an appropriate complaints process across the whole of their supply chain to attempt to resolve participant complaints. Where complaints cannot be resolved, an individual can complain direct to the Independent Case Examiner (ICE). The Independent Case Examiner’s purpose is to act as an independent referee for people who feel

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27 Vulnerable ESA claimants in this instance can include those people with mental health conditions, learning disabilities or conditions affecting communication and/or cognition
that they have not been treated fairly or have not had their complaints dealt with in a satisfactory manner. The ICE is a free service and is available for use by anyone.

240. ICE will mediate between the Prime provider and the participant to attempt to broker a resolution. If a resolution cannot be agreed between either party, ICE will undertake a full investigation of the complaint. If the complaint is upheld at this stage, in part or in full, then the Provider may be charged a fee of up to £5,000.

Results

241. To March 2013 there had been 168,810 ESA referrals to the Work programme and at the time the figures were published 154,190 of the individuals referred had been attached to Work Programme providers. 4,600 individuals have recorded job outcomes against their records.

242. A job outcome constitutes paid employment that has lasted for a period of more than 13 weeks. Therefore many ESA claimants who are included in the figures above could not possibly have registered a job outcome yet given the timescales required.

243. Across the entire Work Programme (including both ESA and non-ESA claimants) 131,900 job outcomes have been recorded. 25,400 of these individuals had a self-declared health condition or disability indicating 19 per cent of all job outcomes from the Work programme have been individuals with a disability or health condition.

The following programmes are accessible to individuals in any ESA WRAG group (please note Work Placements are not work programmes):

Work Experience

244. Work Experience can help the claimant understand more about their career options and skills, increase confidence, and provide valuable experience that makes them more attractive to an employer.

245. Work Programme providers can decide, as appropriate, to arrange Work Experience on a voluntary basis for both JSA and ESA Work Programme participants.

246. Work Experience on a voluntary basis does not incur sanction action if the individual fails to participate.

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**Work Placement (Community Benefit)**

247. A community benefit work placement is short-term, unpaid, does not displace existing jobs, and must be of benefit to the community over and above the benefit of providing a placement to the individual. The focus is on learning new skills and getting experience of the work place rather than meeting the more taxing demands of paid work. Paid work would normally be a longer term and less flexible commitment with much higher expectations on the worker. We would also expect any Work Placement to be in controlled conditions which would take full account of the claimant’s physical/mental health conditions, ensuring that any reasonable adjustments are made.

248. Referral to a work placement is always mandatory for a suitable JSA and ESA claimant.

249. If an ESA claimant is in the Work Related Activity Group (WRAG) and not exempt from Work Related Activity (WRA), and if it is appropriate for the claimant to be referred to Work Placement then it is part of their WRA, is in their Action Plan, and hence mandatory.

250. If a JSA or ESA participant is undertaking a community benefit work placement they may be subject to a sanction if they fail to participate and are unable to provide good cause as to why.

**Mandatory Work Activity**

251. ESA work placements are not Mandatory Work Activity, which is a scheme specifically for JSA claimants. ESA claimants cannot be required to undertake Mandatory Work Activity.


253. If an ESA claimant in the WRAG who is exempt from WRA, or is in the Support Group, they can be referred to Work Experience on a voluntary basis and cannot be sanctioned as their participation is on a voluntary basis.

**Disabled People claiming Jobseekers Allowance (JSA)**

254. If after a WCA an individual is found to have a functional impairment which limits their ability to undertake work related activity they will receive ESA. This is not limited to persons with disabilities and can be received by individuals who are usually able to undertake work but have an illness or health condition that would prevent them from doing so.

255. The United Kingdom Government estimates that only around 20 per cent of all disabled people in the United Kingdom are currently claiming ESA or IB. This
is calculated from the over eleven million people in the United Kingdom defined as having a limiting long term illness\textsuperscript{29} \textsuperscript{30} compared to the 2.53 million people claiming IB and either claiming or in the process of making a claim for ESA\textsuperscript{31} Many disabled people are in employment and as such if they were to become unemployed may make a claim for Jobseekers Allowance (JSA).

256. The government does not keep statistics on disabled people claiming JSA. An individual can notify the DWP if they are disabled but this does not provide a comprehensive view of disabled people claiming JSA. If the individual wished to make a claim for JSA their disability would be taken into consideration by DWP advisors and support would be tailored accordingly. If, after undertaking a WCA, an individual is found to be unfit for work or capable of work but with additional support, they will receive ESA. The number of individuals found fit for work since the WCA was first introduced in 2008 is 946,100\textsuperscript{32} for new claims. In addition 227,000 claimants were found fit for work following IB reassessment up to November 2012 (including the trial areas)\textsuperscript{33}.

257. This figure is the number of WCAs undertaken where the applicant was found fit for work. This is not a figure of the number of individuals making claims for ESA. If an individual’s circumstances change despite being found fit for work they would be able to make another claim for ESA and would then undergo another WCA assessment.

258. The WCA is designed to assess whether an individual has limited capability for work or limited capability for work related activity, as determined against a set of functional descriptors contained in legislation. Accordingly, even individuals who are not disabled but only temporarily unable to work due to ill health are entitled to receive ESA and would undergo a WCA.

SECTION F: Response to the points and questions put to the United Kingdom Government – detailed information on benefits other than ESA

Personal Independence Payment (PIP)

259. On 8 April 2013 Personal Independence Payment (PIP) began replacing Disability Living Allowance (DLA) in Great Britain for people aged 16 to 64.

260. DLA, which was introduced in 1992, is a tax free, non means tested and non contributory benefit that provides a monetary contribution towards the extra costs for care and mobility needs arising as a result of a long-term impairment

\textsuperscript{29} Source: Family Resource Survey 2010/11
\textsuperscript{30} A limiting long-term illness is defined as any long-term illness, health problem or disability which limits someone’s daily activities or the work they can do.
\textsuperscript{31} November 2012 ESA claimant caseload
\textsuperscript{32} Source: Employment and Support Allowance, outcomes of Work Capability Assessments, Great Britain, DWP Quarterly Official Statistics Bulletin Issue: 23 July 2013
\textsuperscript{33} If a claimant is found ‘fit for work’ they have the option to appeal this decision if they wish. Please refer to page 26 for further information.
or health condition. DLA is payable to people who are both in and out of work. Currently 3.3 million people in the United Kingdom are in receipt of DLA\(^3^4\).

261. PIP, like DLA, is a non-means-tested, non-taxable cash benefit which can be claimed both in and out of work. PIP is designed to contribute towards the increased extra costs disabled people are likely to incur to be able to live independently. The assessment looks at people as individuals, assessing their ability to carry out a series of key everyday activities such as washing, dressing, cooking, communicating and getting around.

262. By 2018 it is expected that 3 million people will continue to receive PIP or DLA and over 500,000 reassessed claimants will actually be receiving more under the new system.

263. Following successful implementation of PIP in the North of England we have proceeded in a measured way and started taking new claims across the United Kingdom from 10 June. From October 2013 existing DLA recipients who were aged 16 to 64 on 8 April 2013, or reach age 16 after that date, will begin to be invited to claim PIP. We expect to have invited all such DLA claimants to claim PIP by the latter part of 2017.

264. This is a principled reform to modernise the system for working age disabled people. There are four main reasons why we had to replace DLA. DLA is loosely defined, with outdated eligibility criteria which meant claimants with identical needs could get different outcomes from the same assessment. There is also confusion about the purpose and rules of the benefit. We found this damages public confidence and also leads to high levels of nugatory claims; fewer than half of DLA claims currently made are successful.

265. There is also an over reliance on self-assessment with over half of all DLA award decisions made without any additional medical evidence. This increases the risk of incorrect awards. Finally, DLA does not have a systematic award review mechanism. There are 130,000 people on DLA who, since its introduction in 1992, have never had their award changed. Over 70% of the current DLA caseload has an indefinite award, which means an award may continue for life without ever being checked to see if it still reflects their needs. Given the fluctuating nature of many conditions, advances in medicine and developments in the treatment of conditions, the manner in which DLA was awarded was not fit for purpose.

266. The majority of DLA recipients will continue to receive support under PIP. Nearly three-quarters (74%) of reassessed DLA recipients are estimated to keep an award under PIP and 29% are expected to gain financially compared to their current award under DLA (by May 2018). This translates to over half a million who will actually receive more under the new system. Nearly 25% of PIP recipients are expected to get a combination of the highest rates –

\(^3^4\) As of November 2012
currently worth £134.40 a week – compared with only 16% on DLA by May 2018.

267. Our commitment to supporting disabled people is demonstrated by the fact that overall spending on PIP and DLA will be higher in real terms in every year to 2015-16 (£13.8bn) than spending on DLA was in 2009-10 (£12.5bn).

268. We have consulted extensively with disabled people and their organisations as we developed PIP and made a number of significant changes before it was introduced. We are continuing to listen and consult and will effect change where the evidence points to a need.

269. Two statutory, independent reviews on the operation of the PIP assessment will be carried out within the first four years of its operation. We intend that the first will be completed by the end of 2014, to allow us to consider its findings and make any necessary changes before the majority of existing DLA recipients begin to be reassessed from October 2015. This will ensure that we can learn the lessons of our early experiences.

**Universal Credit (UC)**

270. The “Universal Credit: welfare that works”\(^{35}\) White Paper set out the government’s commitment to supporting disabled people to participate fully in society, including remaining in or returning to work wherever feasible. Universal Credit (UC) will help tackle the poor work incentives and complexities in the current system, providing a single system of means-tested support with a simpler set of rules.

271. These major improvements to the welfare system will encourage claimants to have the confidence to remain in work or move into work and recognise the positive benefits of doing so.

272. It also recognises that those with a disability or health condition often face the extra challenge of longer periods on benefit, which have financial implications. UC, as is the case with ESA, will provide two levels of additional payment: one for disabled people who need some degree of support and a higher rate for the more severely disabled people who have a much greater need of support.

273. UC incorporates the principles of Employment and Support Allowance (ESA) whilst ultimately simplifying the system for recipients.

274. Complex ‘Permitted Work’ rules currently in place will be replaced with work incentives for disabled people via UC’s flat taper rate and more generous work allowances. The work allowances will let people keep more of their earnings before benefit begins to be reduced. As well as this for the first time

\(^{35}\) [https://www.gov.uk/government/publications/universal-credit-welfare-that-works](https://www.gov.uk/government/publications/universal-credit-welfare-that-works)
disabled claimants with children who work under 16 hours a week can also receive help with childcare costs.

275. Out-of-work UC claimants determined as having limited capability for work who then move into work, and in-work UC claimants determined as having limited capability for work who remain in work, will:
   - continue to have the LCW/LCWRA element included in their assessment; and
   - repeat Work Capability Assessments (WCA) at the determined review dates for as long as they remain eligible for UC and eligible for a LCW/LCWRA element.

276. Claimants will be expected to sign up to a clear set of responsibilities. The conditionality regime will be flexible enough to take account of a claimant’s capability and circumstances.

277. These work-related requirements will be set out in a Claimant Commitment and reviewed and updated on an ongoing basis. Those with a disability which prevents them from working will not be asked to work and will be supported through UC. Others with a limited capability for work will be supported until such time that they can work again but will be expected to prepare for work so far as they are able.

278. Out of work claimants who are sick or disabled will also have access to employment support earlier than under the current Employment and Support Allowance (ESA) system. This is because in the first 13 weeks of an individuals claim for UC before undergoing a WCA, they are placed in the all work requirements conditionality group. This is designed to ensure they are provided with back to work support where appropriate from the outset of their claim. Any conditionality requirements placed on a claimant will be tailored to take account of an individual’s personal circumstances and capabilities.

(r) Measures to prevent and combat any stereotypes and negative perceptions against persons with disabilities

280. The UK Government is committed to combating stereotypes and prejudice relating to disabled people, and to raising awareness of their abilities. This is a key theme of the new Government disability strategy published on 2 July 2013 – Fulfilling Potential : Making It Happen – which addresses changing attitudes and behaviour by promoting positive attitudes and behaviours towards disabled people to enable them to participate in community life and wider society, tackling discrimination and harassment wherever they occur.

281. The Government is very careful about the language it uses when referring to welfare reform as it is clear that it is the system itself that has for too long trapped people in a life of welfare dependency. That is why this Government is making such a radical overhaul of the benefits.
to restore its integrity and ensure that those who need help and support receive it.

282. The policy of the Department for Work and Pensions, for Government, is to challenge and rebut negative portrayals of disabled people and disability issues generally. For example, the Department contacted the BBC Breakfast television programme about the use of the term "wheelchair bound" and will continue to ensure that the Department leads by example by using the appropriate tone and language in its own communications. The Department is also developing a language guide which should help to reduce the use of negative language within the media.

283. The 2012 Paralympic Games in London had a dramatic impact in terms of positive perceptions of disabled people. Ipsos Mori for BBC immediately after the Games reported that 81% of people felt that the Games has had a positive effect on the way people perceived disabled people. More than six months after the Games in March 2013, 53% of people said that the Paralympics had a positive impact on the way they themselves viewed disabled people, and none said that it had a negative impact. The Government is committed to building a lasting legacy for disabled people from the 2012 Games, and that includes maintaining the positive impact on attitudes.

284. The new disability strategy – Fulfilling Potential – is part of that commitment. In addition, the Department for Work and Pensions has joined forces with disability groups including Whizz-Kidz to run a campaign which aims to promote positive role models for disabled people, and which highlight for them and non-disabled people, what they can achieve.

285. Representation of disabled people in broadcast media was at the heart of the positive impact of the Paralympics and the Government has been exploring with broadcast media how to maintain that effect as part of the Paralympic Legacy. The Minister for Disabled People held a roundtable discussion, and one to one meetings, with representatives of broadcast media companies which has led to a statement that publicly demonstrates their commitment to increasing the representation of disabled people both in front of camera and in the broadcasting industry.

286. The Government will continue to monitor attitudes so that changes can be tracked over time, with questions added to the Office of National Statitistics Opinions Survey and the British Social Attitudes Survey.
287. The Government is committed to tackling disability hate crime and harassment, recognising that disability hate crime in all its forms is intolerable, and perpetuates segregation, creates fear and has no place in society. In March 2012 the Government published its cross-Government Hate Crime Action Plan – ‘Challenge it, report it, stop it’ - setting out its approach to tackling hate crime for the remainder of this Parliament.

288. Despite strong legislation to protect victims, hate crimes remain hugely under-reported. Victims may be reluctant to come forward, for various reasons such as fear of further abuse. The Government has recognised that it has a key role to play in setting the direction at national level, including making more and better national-level data available so that there is better understanding of these offences and support to victims can be improved.

289. The Government is meeting its commitment to improve the recording of such crimes and, from April 2011, all police forces now report hate crimes centrally. In September 2012 the Government published official statistics on hate crimes, including disability hate crimes, recorded by policy forces in England and Wales (in 2011/12) for the first time. This data will be published on an annual basis and used to identify trends and help map resources. This will enable local communities to challenge the priority and resources that are put on policing in local communities.

290. The Government is also working with other partners to encourage more victims to come forward for example, by developing ‘third party’ reporting centres, where hate crimes can be reported to those organisations and then forwarded to the police. The Government is working with local charities such as Disability First in Blackpool, to encourage disabled people to come forward.

292. With increased confidence amongst disabled people in the reporting processes that are being developed, and greater willingness to report crime, the levels of disability-related hate crime can be properly established.

293. In addition to more effective reporting, ‘Challenge it, report it, stop it’ – sets out a variety of measure designed to tackle hate crime. Amongst the actions delivered, there has been a sharing of hate crime guidance with the Press Complaints Commission to address negative media stereotypes of disabled people; publication of guidance produced through the Government-funded Disabled People’s User-Led Organisations (DPULO) programme – the ‘Making A Difference: Disability Hate Crime Good Practice Examples’; and the launch of a Crown Prosecution Services disability hate crime education resource for
schools. In addition, Section 65 of the Legal Aid Sentencing and Punishment of Offenders Act increases the sentence starting point for murders aggravated by disability from 15 to 30 years. The Government is currently reviewing the plan in order to assess progress one year on and to ensure that it responds to new and emerging issues.

294. Updated training is being provided for all police roles that are responsible for tackling hate crime. The College of Policing has commenced a process of developing a national package of Public Protection training, which will include hate crime. Training has also been delivered locally in many police forces, as a direct response to an inquiry into disability-related harassment conducted by the Equality and Human Rights Commission.

295. The Government is also undertaking a review of sentences for crimes motivated by hostility on the grounds of disability. The Government has asked the Law Commission to conduct a review of aggravated offences and stirring up hatred offences. The Commission is consulting on whether new offences are necessary or whether improvements to the sentencing regime would provide effective and adequate protection. The Commission consultation runs until September 2013. It will report on findings in February/March 2014.
Annex 1 – Data and statistics of Employment and Support Allowance (ESA) claims

Table 5 – Data on Incapacity Benefit (IB) reassessment Work Capability Assessment (WCA) outcomes.

<table>
<thead>
<tr>
<th>IB reassessment</th>
<th>Total Caseload</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fit for work</td>
<td>227,000</td>
<td>27%</td>
</tr>
<tr>
<td>WRAG</td>
<td>346,500</td>
<td>41%</td>
</tr>
<tr>
<td>Support Group</td>
<td>267,500</td>
<td>32%</td>
</tr>
<tr>
<td>Total</td>
<td>841,000</td>
<td>100%</td>
</tr>
</tbody>
</table>


Annex 2 – Criteria (‘descriptors’) used to assess Employment and Support Allowance (ESA) claimants during the Work Capability Assessment (WCA)

SCHEDULE 2  
Regulation 19(2) and (3)  
ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

Part 1  
Physical disabilities

<table>
<thead>
<tr>
<th>(1) Activity</th>
<th>(2) Descriptors</th>
<th>(3) Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.</td>
<td>(a) Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>(c) Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>(d) Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(e) None of the above apply.</td>
<td>0</td>
</tr>
<tr>
<td>2. Standing and sitting.</td>
<td>(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.</td>
<td>15</td>
</tr>
</tbody>
</table>
### 3. Reaching

<table>
<thead>
<tr>
<th>Item</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Reaching.</td>
<td>3</td>
</tr>
<tr>
<td>(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Cannot raise either arm to top of head as if to put on a hat.</td>
<td>9</td>
</tr>
<tr>
<td>(c) Cannot raise either arm above head height as if to reach for something.</td>
<td>6</td>
</tr>
<tr>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
</tbody>
</table>

### 4. Picking up and moving or transferring by the use of the upper body and arms.

<table>
<thead>
<tr>
<th>Item</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Picking up and moving or transferring by the use of the upper body and arms.</td>
<td></td>
</tr>
<tr>
<td>(a) Cannot pick up and move a 0.5 litre carton full of liquid.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Cannot pick up and move a one litre carton full of liquid.</td>
<td>9</td>
</tr>
<tr>
<td>(c) Cannot transfer a light but bulky object such as an empty cardboard box.</td>
<td>6</td>
</tr>
<tr>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
</tbody>
</table>

### 5. Manual dexterity

<table>
<thead>
<tr>
<th>Item</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>5. Manual dexterity.</td>
<td>5</td>
</tr>
<tr>
<td>(a) Cannot either: (i) press a button, such as a telephone keypad; or (ii) turn the pages of a book with either hand.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Cannot pick up a £1 coin or equivalent with either hand.</td>
<td>15</td>
</tr>
<tr>
<td>(c) Cannot use a pen or pencil to make a meaningful mark.</td>
<td>9</td>
</tr>
<tr>
<td>(d) Cannot use a suitable keyboard or mouse.</td>
<td>9</td>
</tr>
<tr>
<td>(e) None of the above apply.</td>
<td>0</td>
</tr>
</tbody>
</table>

### 6. Making self understood through speaking, writing, typing, or other

<table>
<thead>
<tr>
<th>Item</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Making self understood through speaking, writing, typing, or other</td>
<td>6</td>
</tr>
<tr>
<td>(a) Cannot convey a simple message, such as the presence of a hazard.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Has significant difficulty conveying a simple message to strangers.</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td></td>
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<tr>
<td>mean normally used, unaided by another person.</td>
<td></td>
</tr>
<tr>
<td>7. Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person.</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Has some difficulty conveying a simple message to strangers.</td>
</tr>
<tr>
<td>(d)</td>
<td>None of the above apply.</td>
</tr>
<tr>
<td>(a)</td>
<td>Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</td>
</tr>
<tr>
<td>(b)</td>
<td>Has significant difficulty understanding a simple message from a stranger due to sensory impairment.</td>
</tr>
<tr>
<td>(c)</td>
<td>Has some difficulty understanding a simple message from a stranger due to sensory impairment.</td>
</tr>
<tr>
<td>(d)</td>
<td>None of the above apply.</td>
</tr>
<tr>
<td>8. Navigation and maintaining safety, using a guide dog or other aid if normally used.</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.</td>
</tr>
<tr>
<td>(b)</td>
<td>Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.</td>
</tr>
<tr>
<td>(c)</td>
<td>Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.</td>
</tr>
<tr>
<td>(d)</td>
<td>None of the above apply.</td>
</tr>
<tr>
<td>9. Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used.</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.</td>
</tr>
<tr>
<td>(b)</td>
<td>At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.</td>
</tr>
<tr>
<td>(c)</td>
<td>None of the above apply.</td>
</tr>
<tr>
<td>10. Consciousness during waking moments.</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.</td>
</tr>
<tr>
<td>(b)</td>
<td>At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.</td>
</tr>
</tbody>
</table>
None of the above apply.

**Part 2**

Mental, cognitive and intellectual function assessment

<table>
<thead>
<tr>
<th>Section</th>
<th>Question</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>11. Learning tasks</td>
<td>(a) Cannot learn how to complete a simple task, such as setting an alarm clock.</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
<tr>
<td>12. Awareness of everyday hazards (such as boiling water or sharp objects).</td>
<td>(a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>(b) Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that they frequently require supervision to maintain safety.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>(c) Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that they occasionally require supervision to maintain safety.</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
<tr>
<td>13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).</td>
<td>(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.</td>
<td>15</td>
</tr>
<tr>
<td></td>
<td>(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.</td>
<td>9</td>
</tr>
<tr>
<td></td>
<td>(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
<tr>
<td>14. Coping with change.</td>
<td>(a) Cannot cope with any change to the extent that day to day life cannot be managed.</td>
<td>15</td>
</tr>
<tr>
<td>15. Getting about.</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td>----</td>
<td></td>
</tr>
<tr>
<td>(a) Cannot get to any specified place with which the claimant is familiar.</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.</td>
<td>6</td>
<td></td>
</tr>
<tr>
<td>(d) None of the above apply.</td>
<td>0</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>16. Coping with social engagement due to cognitive impairment or mental disorder.</th>
<th>16</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.</td>
<td>9</td>
</tr>
<tr>
<td>(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.</td>
<td>6</td>
</tr>
<tr>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.</th>
<th>17</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</td>
<td>15</td>
</tr>
<tr>
<td>(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</td>
<td>15</td>
</tr>
<tr>
<td>(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</td>
<td>9</td>
</tr>
<tr>
<td>(d) None of the above apply.</td>
<td>0</td>
</tr>
</tbody>
</table>
## SCHEDULE 1

**“SCHEDULE 3**

**Regulation 34(1)**

**ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK RELATED ACTIVITY**

<table>
<thead>
<tr>
<th>Activity</th>
<th>Descriptors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.</td>
<td>Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</td>
</tr>
<tr>
<td>2. Transferring from one seated position to another.</td>
<td>Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.</td>
</tr>
<tr>
<td>3. Reaching.</td>
<td>Cannot raise either arm as if to put something in the top pocket of a coat or jacket.</td>
</tr>
<tr>
<td>4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).</td>
<td>Cannot pick up and move a 0.5 litre carton full of liquid.</td>
</tr>
<tr>
<td>5. Manual dexterity.</td>
<td>Cannot either: (a) press a button, such as a telephone keypad; or (b) turn the pages of a book with either hand.</td>
</tr>
<tr>
<td>6. Making self understood through speaking, writing, typing, or other means normally used.</td>
<td>Cannot convey a simple message, such as the presence of a hazard.</td>
</tr>
<tr>
<td>7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used.</td>
<td>Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td><strong>8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used.</strong></td>
<td><strong>At least once a week experiences:</strong>&lt;br&gt;<strong>(a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or</strong>&lt;br&gt;<strong>(b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.</strong></td>
</tr>
<tr>
<td><strong>9. Learning tasks.</strong></td>
<td><strong>Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.</strong></td>
</tr>
<tr>
<td><strong>10. Awareness of hazard.</strong></td>
<td><strong>Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:</strong>&lt;br&gt;<strong>(a) injury to self or others; or</strong>&lt;br&gt;<strong>(b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.</strong></td>
</tr>
<tr>
<td><strong>11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).</strong></td>
<td><strong>Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.</strong></td>
</tr>
<tr>
<td><strong>12. Coping with change.</strong></td>
<td><strong>Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.</strong></td>
</tr>
<tr>
<td><strong>13. Coping with social engagement, due to cognitive impairment or mental disorder.</strong></td>
<td><strong>Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.</strong></td>
</tr>
<tr>
<td><strong>14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.</strong></td>
<td><strong>Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</strong></td>
</tr>
<tr>
<td><strong>15. Conveying food or drink to the mouth.</strong></td>
<td><strong>(a) Cannot convey food or drink to the claimant’s own mouth without receiving physical assistance from someone else;</strong>&lt;br&gt;<strong>(b) Cannot convey food or drink to the claimant’s own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;</strong>&lt;br&gt;<strong>(c) Cannot convey food or drink to the claimant’s own mouth without receiving regular prompting given by someone else in the claimant’s physical presence; or</strong>&lt;br&gt;<strong>(d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant’s own mouth without receiving:</strong></td>
</tr>
<tr>
<td>16. Chewing or swallowing food or drink.</td>
<td>(a) Cannot chew or swallow food or drink;</td>
</tr>
<tr>
<td></td>
<td>(b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;</td>
</tr>
<tr>
<td></td>
<td>(c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant’s presence; or</td>
</tr>
<tr>
<td></td>
<td>(d) Owing to a severe disorder of mood or behaviour, fails to: (i) chew or swallow food or drink; or (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant’s presence.”</td>
</tr>
</tbody>
</table>