

2012 No. 2756

SOCIAL SECURITY

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

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| <i>Made</i> | - - - - | <i>2nd November 2012</i> |
| <i>Laid before Parliament</i> | | <i>5th November 2012</i> |
| <i>Coming into force</i> | - - | <i>3rd December 2012</i> |

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 12(2), (3) and (4), 13(2), (6) and (4), 16, 16A(a) and 25(2), (3) and (5) of the Welfare Reform Act 2007(b) and sections 10(6) and 79(4) and (6) of the Social Security Act 1998(c) after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(d).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Employment and Support Allowance (Sanctions) (Amendment) Regulations 2012 and come into force on 3rd December 2012.

(2) These Regulations apply to a claimant only in relation to a failure to take part in a work-focused interview or to undertake work-related activity which occurs on or after 3rd December 2012.

(3) In these Regulations “the ESA Regulations” means the Employment and Support Allowance Regulations 2008(e).

Amendment of Regulation 2 of the ESA Regulations (interpretation)

2. In regulation 2(1) of the ESA Regulations (interpretation), after the definition of “guaranteed income payment” insert—

““hardship payment” means an income-related employment and support allowance payable at a reduced rate in accordance with the provisions of regulation 64D;”.

(a) Section 16A was inserted by section 56 of the Welfare Reform Act 2012 (c.5).
(b) 2007 c.5.
(c) 1998 c.14.
(d) See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).
(e) S.I. 2008/794.

Amendment of Regulation 61 of the ESA Regulations (failure to take part in a work-focused interview)

3. In regulation 61 of the ESA Regulations (failure to take part in a work-focused interview)(a) (omit paragraph (3)).

Amendment of Regulation 63 of the ESA Regulations (reduction of employment and support allowance)

4.—(1) Regulation 63 of the ESA Regulations (reduction of employment and support allowance) (b) is amended as follows.

(2) For paragraph (2) substitute—

“(2) Subject to paragraph (3), the amount of the reduction in relation to each failure determination is 100% of the prescribed amount for a single claimant as set out in paragraph (1)(a) of Part 1 of Schedule 4.”.

(3) In paragraph (3), in sub-paragraph (c), for “amount of the work-related activity component as set out in Part 4” substitute “prescribed amount for a single claimant as set out in paragraph 1(a) of Part 1”.

(4) After paragraph (5) insert—

“(6) Subject to paragraph (10), the reduction is to have effect for—

- (a) one week for each 7 day period during which the claimant fails to meet a compliance condition; and
- (b) a further fixed period determined in accordance with paragraph (7).

(7) The length of the fixed period is—

- (a) 1 week, where there has been no previous failure by the claimant which falls within paragraph (8);
- (b) 2 weeks, where there has been only one previous failure by the claimant which falls within paragraph (8); or
- (c) 4 weeks, where there have been two or more previous failures by the claimant and the most recent of those failures—
 - (i) falls within paragraph (8), and
 - (ii) resulted in a reduction that has effect for 2 weeks under sub-paragraph (b) or 4 weeks under this sub-paragraph, or would have done but for paragraph (3).

(8) A previous failure falls within this paragraph if—

- (a) it relates to a failure for which a reduction was imposed under this regulation, or would have been but for paragraph (3);
- (b) that failure occurred on or after 3rd December 2012; and
- (c) the date of that failure is within 52 weeks but not within 2 weeks of the date of the current failure.

(9) This paragraph applies where the claimant meets a compliance condition before the end of the period of one week after the date of the failure to which the failure determination relates.

(10) Where paragraph (9) applies, the claimant’s employment and support allowance is reduced only for the fixed period set out in paragraph (7) applicable to the claimant.

(11) In this regulation—

“compliance condition” means—

(a) Regulation 61 was amended by regulation 16 of S.I. 2011/1349.
(b) Regulation 63 was amended by regulation 17 of S.I. 2011/1349.

- (a) where the failure by the claimant relates to a requirement to take part in a work-focused interview, either—
 - (i) taking part in a work-focused interview, or
 - (ii) making an agreement with the Secretary of State to take part in a work-focused interview at an agreed date;
- (b) where the failure by the claimant relates to a requirement to undertake work-related activity, either—
 - (i) undertaking the activity specified in the action plan, or
 - (ii) where so notified by the Secretary of State, undertaking an alternative activity, or
 - (iii) making an agreement with the Secretary of State to undertake the activity referred to in sub-paragraph (i) or (ii) at an agreed date;

“current failure” means a failure which may lead to a reduction under this regulation in relation to which the Secretary of State has not yet determined whether the amount of the employment and support allowance payable to the claimant is to be reduced in accordance with this regulation.”.

Amendment of Regulation 64 of the ESA Regulations (cessation of reduction)

5. In regulation 64 of the ESA Regulations (cessation of reduction)(a) omit sub-paragraph (a) in each of paragraphs (1), (1A) and (2).

Further amendments of the ESA Regulations

6. After regulation 64 (cessation of reduction) insert—

“Hardship payments

- 64A.** The Secretary of State must make a hardship payment to a claimant only where—
- (a) the Secretary of State is satisfied that the claimant is or will be in hardship unless a hardship payment is made;
 - (b) the claimant’s employment and support allowance has been reduced in accordance with regulation 63;
 - (c) the claimant meets the conditions of entitlement to an income-related employment and support allowance;
 - (d) the claimant completes and submits an application —
 - (i) approved for the purpose by the Secretary of State, or in such other form as the Secretary of State accepts as sufficient, and
 - (ii) in such manner as the Secretary of State determines; and
 - (e) the claimant provides such information or evidence as the Secretary of State may require, in such manner as the Secretary of State determines.

Circumstances in which a claimant is to be treated as being in hardship

64B. A claimant is to be treated as being in hardship if the claimant’s partner, or a child or qualifying young person for whom the claimant or the claimant’s partner is responsible, is or will be in hardship unless a hardship payment is made.

(a) Regulation 64 was amended by regulation 18 of S.I. 2011/1349.

Matters to be taken into account in determining hardship

64C.—(1) The Secretary of State must take the following matters into account in determining hardship—

- (a) whether the claimant’s partner or a person in the claimant’s family satisfies the requirements for a disability premium specified in paragraphs 6 and 7 of Schedule 4, or an element of child tax credit in respect of a child or young person who is disabled or severely disabled within the meaning of regulation 8 of the Child Tax Credit Regulations 2002;
- (b) the resources which are likely to be available to the household without a hardship payment, including resources from persons who are not members of the household, but excluding any payment referred to in paragraph (2);
- (c) the difference between the resources referred to in sub-paragraph (b) and the amount of the hardship payment that the claimant would receive;
- (d) whether there is substantial risk that the household will not have access to essential items (including food, clothing, heating and accommodation), or will have access to such essential items at considerably reduced levels, without a hardship payment; and
- (e) the length of time that the factors set out in sub-paragraphs (b) to (d) are likely to continue.

(2) The payments to be excluded from the resources referred to in paragraph (1)(b) are payments made under paragraph 7 (1) or (2) of Schedule 8 (sums to be disregarded in the calculation of income other than earnings: child tax credit and child benefit)(a) to the claimant or the claimant’s partner in respect of a child or young person who is a member of the claimant’s household or family.

The amount of a hardship payment

64D.—(1) A hardship payment is 60 per cent of the prescribed amount for a single claimant as set out in paragraph (1)(a) of Part 1 of Schedule 4.

(2) A payment calculated in accordance with paragraph (1) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.”.

Amendment of the Employment and Support Allowance (Work-Related Activity) Regulations 2011

7.—(1) The Employment and Support Allowance (Work-Related Activity) Regulations 2011(b) are amended as follows.

(2) In regulation 8 (failure to undertake work-related activity) omit paragraph (3).

(3) In regulation 9 (contracting out)—

(a) in paragraph (2)(b) for “regulation 64(1)(a) and (c) and (1A)” substitute “regulation 64(1)(c) and (1A)(b)”; and

(b) after paragraph (2)(b) insert—

“(c) any function relating to a compliance condition under regulation 63(11) (compliance condition: notifications and agreements).”.

(a) Paragraph 7 was amended by regulation 16(13) of S.I. 2011/674.

(b) S.I.2011/1349.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

8.—(1) Regulation 7 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (date from which a decision superseded takes effect)(a) is amended as follows.

(2) Omit paragraph (35).

(3) For paragraph (36) substitute—

“(36) A decision made in accordance with regulation 6(2)(p) shall take effect —

- (a) on the first day of the benefit week in which the failure determination was made where, on the date of that determination, the claimant has not been paid an employment and support allowance since the failure to which that determination relates; or
- (b) in any other case, on the first day of the benefit week after the end of the benefit week in respect of which the claimant was last paid an employment and support allowance.”.

Signed by authority of the Secretary of State for Work and Pensions

Mark Hoban

Minister of State

2nd November 2012

Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

(a) S.I. 1999 /991. Regulation 7 has been amended in ways not material to these Regulations

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

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

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

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

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

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STATUTORY INSTRUMENTS

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