



Incapacity benefit reassessments

Standard Note: SN/SP/6855
Last updated: 1 April 2014
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Section: Social Policy Section

Employment and Support Allowance (ESA) replaced incapacity benefits for new claims from October 2008. There are two forms of ESA: contributory ESA, for those who have a sufficient National Insurance contribution record; and income-related ESA, which is means-tested. To be eligible for ESA, a person must undergo a Work Capability Assessment (WCA) and be found to have a “limited capability for work.” If they are also found to have a “limited capability for work-related activity” they are placed in the “Support Group” (SG); otherwise they are placed in the “Work-Related Activity group” (WRAG) and may be required to undertake “work-related activity.” This can involve participation in the Work Programme. ESA claimants do not however have to be available for work or apply for jobs.

Existing claimants of incapacity benefits (Incapacity Benefit, Severe Disablement Allowance and Income Support for incapacity for work) were not initially affected by the introduction of ESA, but in late 2010 a programme began under which around 1.5 million people are being reassessed for ESA. This is due to be completed in spring 2014. To date, over 1.1 million incapacity benefit claimants have been reassessed, and around a fifth have been found “Fit for Work.” Of those “migrated” to ESA since reassessment started, around half have been placed in the Support Group, but the most recent statistics on reassessment outcomes suggest that a far higher proportion are being placed in the SG.

The IB reassessment programme has continued against the backdrop of the ongoing controversy surrounding the WCA and the role of Atos Healthcare, the contractor which undertakes assessments on behalf of the DWP. Welfare rights organisations and pressure groups have long voiced concerns about the WCA and about the way it is applied. Changes have been made to the WCA following internal reviews and a succession of independent reviews, but many believe that the process is still not “fit for purpose.”

In July 2013 the Government announced that it was taking immediate action to address an “unacceptable reduction in the quality of written reports” produced by Atos, following an internal audit. On 27 March 2014 DWP announced the early exit of Atos from the WCA contract. The Government hopes that a new contractor will be in place to deliver assessments by 2015. The implications for IB reassessments are unclear, but the Ministerial statement said that in the meantime the Department would focus on the delivery of assessments for those making new claims for ESA and claimants whose condition changes.

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1 The introduction of ESA

The Department for Work and Pensions *Five Year Strategy*, published in February 2005¹, set out the Labour Government's plans for a 'radically reformed incapacity benefit' which would focus on 'what people can do rather than on what they cannot.'² In January 2006, the Green Paper *A new deal for welfare: Empowering people to work*³ announced proposals for an 'Employment and Support Allowance' to replace incapacity benefits. The *Welfare Reform Act 2007*⁴ laid the framework for the new benefit, and the detailed rules are set out in the *Employment and Support Allowance Regulations 2008*.⁵ ESA replaced incapacity benefits for people making new claims from 27 October 2008.

The following DWP press release – issued when the regulations were laid before Parliament on 27 March 2008 – gives the background to the changes and outlines the main features of the new benefit (the benefit rates quoted are those which applied between October 2008 and April 2009):

More support to help people into work – Purnell announces rates for new Employment and Support Allowance

The poorest, most disabled people in society will be given more financial support from the Government, while other disabled and long-term ill people who could work will get greater help to find employment, Secretary of State for Work and Pensions James Purnell said today.

The announcement was made as regulations finalising plans to replace Incapacity Benefits (IB) in Great Britain for all new and repeat claimants with the new work-focused Employment and Support Allowance (ESA) were laid in Parliament today.

The move marks the next major phase in implementing the Government's radical welfare reform programme and getting one million people off IB by 2015.

Mr Purnell also revealed for the first time how much money people on ESA will get. The new rates of payment will mean extra support to the poorest, most disabled members of society.

Mr Purnell said:

"Gone are the days when writing a sick note is writing people off for life. ESA will give more financial support to the poorest, most disabled people in society whilst extending the opportunity of employment to all those who can work.

"For those who can work, today's measures are a key cultural shift in the benefit system which puts work at the heart of support.

"Work is the best route out of poverty and gives people independence over their lives - we want to help them to help themselves."

From October this year, all new and repeat claimants will undergo the Work Capability Assessment (WCA) – a new medical test designed to look at what people can do rather than what they cannot. ESA claimants will then be split into two groups, depending on the outcome of the assessment:

¹ Cm 6447

² HC Deb 2 February 2005 c842

³ Cm 6730

⁴ For further background see Library Research Paper 06/39, *The Welfare Reform Bill 2005-06*

⁵ SI 2008/794

- The **“Work-related activity group”**: Those claimants who pass the assessment and are identified as capable of taking part in some form of work-related activity will be entitled to claim ESA at a rate of £84.50 a week. They will be required to attend work-focused interviews through the pioneering Pathways to Work scheme, to help them overcome their barriers to work and support them into long-term sustainable employment. Those who don't fulfill these conditions without a good reason could have their ESA partially cut.
- The **“Support Group”**: Those identified as not able to take part in any work-related activity (the most severely disabled group) will not be expected to take part in work-focused activities unless they want to, but will not face any sanctions. We are targeting more resources to the poorest in this group with a guaranteed income of £102.10 a week (£17.60 more than the long-term rate of Incapacity Benefit), while everyone else in this category will receive a minimum of £89.50 a week.

All people claiming ESA may also continue to be eligible for other benefits, such as Disability Living Allowance and Housing and Council Tax Benefit.

Those who do not qualify for ESA can instead apply for Jobseeker's Allowance and will be expected to take part in the work-focused interviews and programmes to help them get back to work.

The main changes to the current system of incapacity benefits announced in the regulations are:

- A move away from an inactive benefit to an active benefit which takes away incentives to stay on benefit for a long period of time. At the moment the amount of money someone gets goes up after six months and then again after one year.
- Removal of the 'age addition' which gives more money to people who start their claim before they are 45 – taking away another outdated incentive to stay on incapacity benefit for a long time.
- Medical assessments to be conducted much sooner – within 13 weeks – helping to prevent people from falling into benefit dependency. Those who need it receive support much faster and those who are able to work get the help they need to get back into the workplace.
- A simpler benefit – people will apply for just one benefit instead of the current system where they either claim Incapacity Benefit or Income Support on grounds of incapacity, or even a combination of both. .

1.1 Changes under the current Government

Broadly speaking, the current Government continued the reforms to incapacity benefits begun by the Labour Government. However, there were also been further changes to ESA as a result of the *Welfare Reform Act 2012*:

- Time-limiting receipt of contributory ESA for those in the Work-Related Activity Group (WRAG) to twelve months; and
- Abolition of the rules whereby people incapacitated early in life could become entitled to contributory ESA without having to satisfy the usual National Insurance contribution conditions (sometimes known as the “ESA youth rules” or “ESA in youth”)

Time-limiting contributory ESA in particular will have a significant impact. The time limit was introduced on 30 April 2012. All recipients of contributory ESA in the WRAG, **including Incapacity Benefit claimants “migrated” to ESA on reassessment**, will be affected by the time limit. Savings of almost £1.5 billion a year are expected by 2015-16.

The Government argues that ESA for people in the Work Related Activity Group was never intended to be a long-term benefit, and that the change brings ESA closer into line with contribution-based Jobseeker’s Allowance, which is payable for six months only. It also points out that means-tested support will still be available for those affected. Of the 700,000 ESA claimants who will be affected by the time limit, around 60% are expected to have some entitlement to income-related ESA, but around 280,000 will lose ESA completely – because, for example, they have other income or savings, or a working partner.

The time limit is highly controversial. Welfare rights and disability organisations argued that it undermines the contributory principle and will increase poverty and financial distress for people with long-term conditions. During consideration of *the Welfare Reform Bill 2010-12*, The Opposition did not reject time-limiting on principle but argued that the choice of twelve months was arbitrary. Government defeats in the Lords on time-limiting were overturned by the Commons, although some concessions were announced regarding people with cancer.

Further information can be found in Library briefing SN06305, [Time limiting of contributory Employment and Support Allowance from 30 April 2012](#).

ESA claimants in the Work-Related Activity Group may also be required to attend Work-Focused Interviews (WFIs), and to undertake “work-related activity”, by an adviser in the DWP or the Work Programme. Work-related activity means “activity which makes it more likely that the person will obtain or remain in work or be able to do so.” This could include things such as voluntary work, work trials, or a training programme but claimants do not have to apply for jobs or undergo medical treatment. Failure to undertake an activity when mandated to do so may result in a benefit sanction.

2 Reassessment of the existing incapacity benefit claimants

2.1 Background

Employment and Support Allowance did not initially affect existing claimants of incapacity benefits, but the Labour Government made it clear from the outset that existing claimants would be reassessed for ESA. Budget 2008 announced that all existing Incapacity Benefit claimants would be required to take the Work Capability Assessment from April 2010.⁶

Regulations laid before Parliament by the Labour Government on 29 March 2010 provided for the “migration” of the remaining incapacity benefits claimants customers to ESA between October 2010 and March 2014, provided they satisfied the Work Capability Assessment.⁷ Those found not to have a “limited capability for work” could claim Jobseeker’s Allowance instead (unless they could claim Income Support on other grounds, e.g. as carers). Draft regulations were subject to full scrutiny by the Social Security Advisory Committee (SSAC), and the [SSAC’s report, together with the Government’s response](#), was published in March 2010.

⁶ HM Treasury, *Budget 2008*, HC 388 2007-08, 12 March 2008, para 4.5

⁷ [Employment and Support Allowance \(Transitional Provisions, Housing Benefit and Council Tax Benefit\) \(Existing Awards\) Regulations 2010](#); SI 2010/875

On 29 June the new Government announced that it would proceed with the “migration” of the remaining incapacity benefits claimants to ESA or Jobseeker’s Allowance, starting with a trial involving 1,700 claimants in Burnley and Aberdeen from October 2010, before beginning the national migration from February 2011.⁸

In its report on the draft regulations, the Social Security Advisory Committee welcomed the commitment to supporting incapacity benefits claimants into work and endorsed the aim of ensuring that the right people were on the right benefit with the right level of support and conditionality. However, the Committee believed that the migration arrangements in the draft regulations could not be implemented without the risk of “operational stress and adverse impacts on significant numbers of vulnerable people.”⁹ It added:

It is of particular concern to the Committee that the Department is moving ahead with the migration of existing claimants of incapacity benefits without a solid evidence base for either the decision to migrate or the proposed migration arrangements. The Committee notes that the evaluation of ESA for new claimants is not planned to be completed until 2011, by which time the proposed migration arrangements will have commenced.

The Committee believes that the Department has underestimated the support required by this vulnerable group of claimants, in terms of both their participation in a more active benefit regime and the support required to move them closer to the labour market. With the Pathways [to Work] model, as currently delivered and targeted, having been found largely ineffective, and no alternative yet proposed, the Committee is concerned that the migration will neither be informed by evidence of how ESA is working for new claimants, nor supported by the sorts of services and programmes that these claimants will need if they are to comply with more demanding benefits conditionality.¹⁰

The Committee recommended that the migration to ESA should not proceed to the planned timetable but should wait until:

- A stronger evidence base on what works and whether ESA was working was available;
- A new regime for claimants with a health condition or disability (following the review of the Pathways to Work programme) had bedded down;
- DWP’s review of the WCA was complete, its recommendations considered and any necessary changes made; and
- Demand-side approaches to stimulating the labour market had begun to have a positive impact on local demand for labour, particular in areas with high numbers of IB claimants.¹¹

If the Government decided to proceed with the timetable as planned, SSAC recommended a series of safeguards, including an extension of the initial trial to six months, improvements to the ESA regime, and a comprehensive customer information strategy.

In its response, the Labour Government rejected the Committee’s call to alter the timetable for migration, but took on board some of the Committee’s concerns and undertook to continue to engage with “stakeholders” as the migration proceeded. It stated:

⁸ HC Deb 29 June 2010 cc39-42WMS

⁹ para 131

¹⁰ paras 134-135

¹¹ para 139

The Government has carefully considered the Committee's concerns in relation to the ESA transitional Regulations and their wider concerns about the migration programme. However, for the reasons outlined in this response it does not accept the Committee's recommendation that migration should not continue to the current timetable. The Government considers the migration of existing incapacity benefits customers to be a key element of welfare reform and one that will greatly benefit customers at a time when support to get back to work is urgently needed. The Government does not believe it would be right or fair to delay this support for customers who have been without it for too long already.¹²

In a subsequent report on the final regulations published on 17 June 2010, the House of Lords Merits of Statutory Instruments Committee echoed concerns voiced by the SSAC about whether there would be sufficient support for vulnerable groups, and the lack of evidence on how ESA was working for new claimants.¹³ The Committee said there were uncertainties about how migration would impact on existing claimants, and about the capacity of Jobcentre Plus and Atos Healthcare to process the number of claimants appropriately. Significant issues – such as whether longer term IB claimants would be able to continue to enjoy tax advantages – also remained unresolved, again raising concerns that “DWP are not looking sufficiently broadly at the impact of their regulations when formulating them.”¹⁴ The Committee's report continued:

This strengthens the Committee's view that, from the limited evidence we have seen, a major project with a potential impact on the lives of some of the most vulnerable in the community is being conducted in a rather ad hoc fashion. The second phase is being rolled out before the first has been evaluated and although better information will be sought on the outcomes, the Department's intended course of action, and evidence to support it, all seem rather vague.¹⁵

The House of Lords debated a motion to take note of the Merits Committee's report on 20 July 2010.¹⁶ Responding for the new Government, Lord Freud said that Jobcentre Plus was well equipped to deliver incapacity benefit reassessment to the proposed timeframe. He also said the Department, in conjunction with customer representative groups and advisory bodies, would develop additional sources of information on the reassessment process, which would be in place for the beginning of the trials in October 2010. As regards those with health conditions and disabilities who are moved onto Jobseeker's Allowance, the Minister said that the Department was looking at what additional help they might require before they entered the Work Programme.¹⁷

Claims that Professor Malcolm Harrington – the first independent reviewer of the Work Capability Assessment – told Ministers in summer 2010 that he believed that the system was in “sufficient shape” for the Government to proceed with incapacity benefit reassessment¹⁸ have been called into question, following reports in December 2013 suggesting that Professor Harrington had in fact made it known to Ministers that he would have preferred the

¹² para 141

¹³ [HL 7 2010-11](#), 17 June 2010

¹⁴ para 9

¹⁵ para 10

¹⁶ HL Deb 20 July 2010 cc947-964

¹⁷ HL Deb 20 July 2010 cc958-964

¹⁸ [HC Deb 1 February 2012 c289WH](#)

reassessment to have been postponed for a year to allow changes to the WCA to take effect.¹⁹

2.2 Rationale

Information on the IB reassessment programme is available at GOV.UK.²⁰ This includes background briefings for advisors, intermediaries and other “stakeholders”, factsheets and FAQs for claimants, and information on transitional protection. A DWP briefing [Reassessment of incapacity benefits: An introduction](#) explains why the Government believes it is necessary to reassess the remaining IB claimants:

Background – The case for change

There are currently 2.6 million people on incapacity benefits, some 7 per cent of the working age population, at a cost to the taxpayer of around £13 billion a year. We know that many of these people, with the right support, could and indeed do want to work but the current system doesn't always give them that opportunity.

For example, whilst ESA helps people with an illness or disability move into work if they are able, it could be a considerable length of time before those on the old style incapacity benefits have to speak to anyone at the Department for Work and Pensions about their condition or their work options.

With certain exceptions, everyone on old-style incapacity benefits will be reassessed, between October 2010 and spring 2014, to see if they qualify for Employment and Support Allowance or if they are capable of work. This reassessment will use the Work Capability Assessment (WCA) and will focus on what an individual can do despite their health condition, rather than simply what they can't. It is based on the Government's firm belief that for most people appropriate work is good for their health and well-being.

Those with the most severe disabilities or health conditions will not be expected to undertake any work-related activity and will get the extra support they need as part of the Support Group. People who are found capable of work will be invited to claim Jobseeker's Allowance (JSA) if they satisfy the conditions of entitlement for that benefit. People who need more support to prepare for work will get that help on Employment and Support Allowance in the Work-Related Activity Group.

We are determined that the transition will run smoothly for all claimants. For those who transfer to Employment and Support Allowance we will ensure that benefit payments are not disrupted. No one moving from their existing benefits to Employment and Support Allowance will see a reduction in the level of their benefit entitlement at the point of change.

Overall, around 1.5 million people will be reassessed. Reassessment commenced on the 11 October 2010 with a trial in Aberdeen and Burnley. At the end of February, Jobcentre Plus started a limited introductory phase. Full national reassessment began in April 2011.

From the end of February 2011, letters were sent to 1,000 claimants a week nationally. In April, we increased the number of cases to around 7,000 a week and since May, we have been processing around 11,000 cases a week. This steady increase in activity has enabled many of the findings in Professor Harrington's review of the Work Capability Assessment to be put into practice.

¹⁹ See “[Breaking News: Government Reviewer Opposed Rollout of ESA](#)”, *Diary of a Benefit Scrounger Blog*, 13 December 2013; “[Ministers 'ignored advice on inhumane fit-for-work tests'](#)”, *The Guardian*, 16 December 2013

²⁰ DWP, [Incapacity benefits: reassessing claims: guidance for advisers and intermediaries](#)

We have re-deployed around 1,150 staff to handle the reassessment of these cases.

This is a challenging timescale, but we believe it is important that we provide claimants with employment support as quickly as possible and do not delay providing extra financial support for those placed in the Support Group.²¹

2.3 The claimant journey

Reassessment affects people claiming three benefits:

- Incapacity Benefit;
- Severe Disablement Allowance; or
- Income Support paid on the grounds of illness or disability

People claiming one of the above benefits will be reassessed for ESA unless they are due to reach State Pension age before 6 April 2014.

The DWP note [Reassessment of incapacity benefits: An introduction](#) outlines the “claimant journey” for reassessment:

Jobcentre Plus will write to claimants when their benefit becomes due for reassessment to tell them about the changes. Jobcentre Plus will also phone the claimant shortly after this to check they have received the letter, that they understand what action they need to take, and to find out if they need any extra help.

Claimants will then be sent a limited capability for work questionnaire (ESA50) by Atos Healthcare (our medical services contractor) to complete and return. The contents of the ESA50 and any other evidence supplied will be used to decide if the claimant needs to attend a face-to-face Work Capability Assessment. If they need to attend an assessment, Atos Healthcare will call them to arrange an appointment. The Work Capability Assessment is the main assessment for Employment and Support Allowance. The assessment will concentrate on what people can do rather than only focusing on what they can't. It is our intention that those claimants who are the most severely disabled or who are terminally ill will not need to attend a face-to-face appointment.

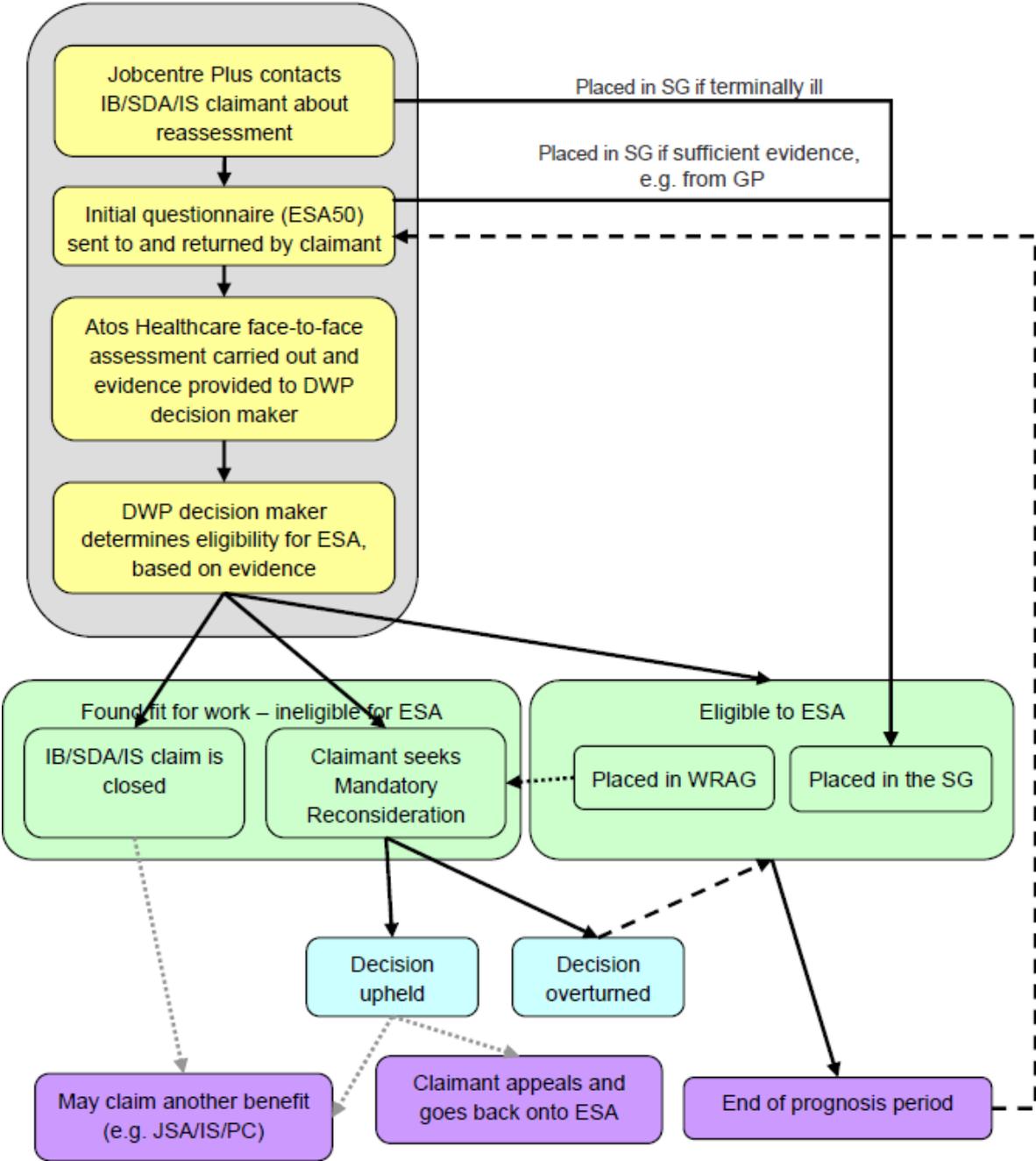
Using the information from the questionnaire, the face-to-face assessment and any other evidence provided, a Jobcentre Plus decision maker will decide if the person's existing award qualifies for conversion to ESA. People will continue to receive their current benefit, as long as they meet the conditions of entitlement, until Jobcentre Plus have completed the reassessment of their benefit.

If the decision maker does not consider that the claimant qualifies for conversion to ESA, they will, before making a final decision, phone the claimant and explain to them why they think their award does not qualify for conversion. They will also ask the claimant if they have any additional evidence which they feel the decision maker needs to be aware of. If, following this discussion, the decision maker decides that the claimant does not qualify for ESA they will inform them accordingly, and outline the options available to the person. The claimant will be sent a letter to confirm the decision and informing them, where appropriate, of the date from which their current award of benefit will terminate.

²¹ DWP, [Reassessment of incapacity benefits: An introduction](#), August 2011 (updated April 2013), original emphasis

Where a claimant disagrees with a decision that they are “Fit for Work”, or if they have been placed in the Work-Related Activity Group but they think they should be in the Support Group, they may challenge the decision in the usual way, i.e. by reconsideration and appeal.

The figure below – from a DWP background note accompanying the latest WCA statistics – depicts the “end-to-end” process of incapacity benefits reassessments, starting with claimants being informed about reassessment, taking in the functional assessment, and ending with an initial decision, a decision after mandatory reconsideration or appeal, or a repeat assessment after a prognosis period.²²



²² DWP, *Employment and Support Allowance: outcomes of Work Capability Assessments, Great Britain: Background Information*, 27 March 2014

2.4 Reassessment outcomes

The most recent results from the national reassessment of the remaining incapacity benefits claimants were published by DWP on 27 March 2014 and cover Incapacity Benefit, Severe Disablement Allowance and Income Support claimants referred for reassessment up to June 2013.²³

The following table compares the Labour Government's original estimate from December 2009 of the proportions likely to be found eligible for the ESA components and "fit for work" on reassessment, with actual outcomes from the Aberdeen and Burnley trials and outcomes from the national reassessment exercise so far. Of the 1,224,250 cases referred for reassessment by June 2013, outcomes were known for 1,131,800 individuals.

Expected and actual outcome of completed reassessment of existing IB/SDA/IS claims, for claims referred for reassessment up to June 2013, Great Britain

Outcome	Initial estimate, December 2009 [1]	Aberdeen and Burnley trials, Autumn 2010		National reassessment (including Autumn 2010 trials) – taking into account appeals [3] [4]
		Initial decision only [2]	Outcome taking into account appeals [3]	
ESA - SG	20%	30%	32%	39%
ESA - WRAG	65%	38%	45%	40%
Fit for Work	15%	32%	24%	22%
All completed assessments	100%	100%	100%	100%

Notes

1. DWP, *Impact Assessment of migration of incapacity benefits customers on to Employment and Support Allowance*, December 2009, para 19
2. Work and Pensions Committee, *The role of incapacity benefit reassessment in helping claimants into employment*, HC 1015 2010-12, para 153, p49
3. DWP, *ESA: outcomes of Work Capability Assessments March 2014*, 27 March 2014, Table 10
4. 1,131,800 cases referred for reassessment up to June 2013, where the outcome was known

Of the 1,131,800 individuals referred to reassessment up to Jun 2013 who had completed the process, 439,200 (39%) were placed in the ESA Support Group and 449,200 (40%) in the Work-Related Activity Group. 243,400 (22%) were found "Fit for Work."

²³ DWP, *ESA: outcomes of Work Capability Assessments March 2014*, 27 March 2014

Outcomes from more recent assessments are however rather different. Looking at individuals referred for reassessment between April and June 2013, two thirds (66%) were placed in the Support Group and 23% were placed in the WRAG. Only 12% of claimants were found Fit for Work. For cases referred for reassessment in the same quarter in 2012, the corresponding percentages were 35%, 42% and 23% respectively.²⁴

The figures for more recent cases referred for reassessment will change as results from outstanding reassessments feed through and appeals are heard, but it seems unlikely that they will change dramatically. If the future statistics confirm an increase in the proportions of IB claimants assessed as entitled to ESA, and placed in the Support Group, there are a number of possible contributing factors:

- Differences in the characteristics of those reassessed more recently, compared with those reassessed at the beginning of the programme;
- Changes made to the Work Capability Assessment from March 2011, following the internal DWP review
- Other changes made to the WCA and to the way it is applied as a result of the independent reviews led by Professor Malcolm Harrington.

The statistics on outcomes from IB reassessments are markedly different from those for new claims for ESA. The latest statistics on outcomes of initial completed assessments on new ESA claims since 2008 (taking account of appeals heard to date), show 22% being assessed for the Support Group, 32% placed in the WRAG, and 46% being found Fit For Work. The commentary in the latest DWP statistical bulletin states that it is likely that, compared with new ESA claims, the remaining IB claimants will include a greater proportion of individuals with long-standing and multiple health conditions.

3 Recent developments regarding the Work Capability Assessment

The Work Capability Assessment is based on the principle that a health condition or disability should not automatically be regarded as a barrier to work, and that for such people work can itself have benefits. It has however been controversial from the outset. The latest statistics show that 53% of those who have undergone an initial assessment on making a new claim for ESA (not including IB reassessment cases) so far have been declared “Fit for Work.” To date, 36% of Fit for Work decisions have been appealed against. 37% of appeals against Fit for Work decisions on new ESA claims have been successful, although the statistics suggest that for more recent appeals a lower percentage of decisions are being overturned.²⁵

Welfare rights and disability organisations have voiced serious concerns about aspects of the test and about the way it has been applied. There is particular concern about how the test takes account of mental health problems and fluctuating conditions, and about the conduct of face-to-face assessments undertaken by Atos Healthcare staff on behalf of the DWP.²⁶

Major changes were made to the WCA in March 2011 following an internal DWP review, and changes have also been made, or are being made, as a result of the independent reviews

²⁴ Ibid. Table 10

²⁵ DWP, *ESA: outcomes of Work Capability Assessments March 2014*, 27 March 2014

²⁶ See Library briefing SN05850, *The Work Capability Assessment for Employment and Support Allowance*

carried out by Professor Malcolm Harrington and by his successor as independent reviewer, Dr Paul Litchfield. A background note accompanying the latest DWP statistics summarises the outcomes from the independent reviews as follows:

The Government has a statutory commitment to independently review the Work Capability Assessment annually for the first five years of its operation. The first four reviews have been undertaken and published.

In the first review, published in November 2010, Professor Harrington made a series of practical recommendations for improving the Work Capability Assessment, all of which the Government has accepted and now implemented. These include:

improving the way Jobcentre Plus communicates with claimants;

introducing mental, cognitive and intellectual 'champions' into assessment centres to improve the assessment of these functions;

empowering and improving training for decision makers; and

improving the transparency of the process.

In the second review, published in November 2011, Professor Harrington (while satisfied that the department has taken the advice in his first review) made further recommendations to improve the WCA's fairness and effectiveness. The Government has endorsed Professor Harrington's second review; and accepted the majority of its recommendations. For the remainder they conducted work to assess the feasibility and implications of the remaining recommendations and have now accepted these.

In the third review, Professor Harrington set out a series of recommendations to the Government which complement the recommendations from his first and second reviews. The Government welcomed Professor Harrington's findings and recommendations and has responded with how it will work towards achieving all of Professor Harrington's recommendations.

On 26 February 2013 the Secretary of State for Work and Pensions appointed Dr Paul Litchfield to undertake the fourth independent review of the Work Capability Assessment.

In the fourth independent review, published in December 2013, Dr Litchfield has made 32 recommendations to the Department to improve the WCA and 5 further recommendations to the Department for Social Development in Northern Ireland. The key findings and recommendations from his report are around simplifying the WCA process, improving the way people going through an assessment feel they are treated, improving decision making and improving knowledge of mental health for Decision Makers and Healthcare Professionals.

The Government has welcomed Dr Litchfield's recommendations and is currently carefully considering them before publishing a response in the first quarter of 2014.²⁷

The Government's response to Dr Litchfield's first review (the fourth annual review) was published on 27 March 2014.²⁸

²⁷ DWP, *Employment and Support Allowance: outcomes of Work Capability Assessments, Great Britain: Background Information*, 27 March 2014

²⁸ DWP, *Government's response to the year four independent review of the Work Capability Assessment*, Cm 8843

However, the WCA remains controversial. In a March 2014 submission to the Work and Pensions Committee, the National Association of Welfare Rights Advisers (NAWRA) flags up a number of continuing “major concerns” about the WCA and decision-making within ESA including:

- Restrictive descriptors which limit assessment of the overall effect of an illness or condition
- Failure to properly consider regulations 29 and 35 [which allow claimants in certain exceptional circumstances to be awarded ESA where they would not otherwise have satisfied the conditions] until appeal stage
- Insensitive and inappropriate treatment of terminally ill claimants
- Poorly trained and inappropriately qualified health care professionals (HCPs)
- Decision makers failing to make fully considered decisions based on all the evidence leading to poor decisions
- Claimants left in extreme financial hardship due to both the mandatory reconsideration process and in situations where good cause is not properly considered
- Unnecessary and extreme stress placed on claimants both through the number of poor initial decisions and the continual reassessments²⁹

The NAWRA submission was in response to the announcement by the Work and Pensions Committee on 6 February of a new enquiry into Employment and Support Allowance and Work Capability Assessments, “in light of recent developments in this area, including the publication of a number of reviews of the WCA, expressions of concern from DWP regarding Atos’s performance in delivering the WCA, and the introduction of mandatory reconsideration.”³⁰

3.1 Early exit of Atos from the WCA contract

Face to face assessments for ESA are carried out by Atos Healthcare, which holds the DWP Medical Services contract.

The contract, which was awarded in March 2005, was for seven years, with an option to extend it for a further three years and then for a further two. In 2009 the DWP entered into negotiations with Atos and in November 2010 it was announced that the contract would be extended to 31 August 2015. The main reason given by the Government was that it would not have been sensible to change supplier in the middle of the reassessment and “migration” of incapacity benefits claimants to Employment and Support Allowance.³¹

In its report on [Contract Management of medical services](#) published in October 2012, the National Audit Office detailed serious criticisms of the DWP’s management of the Medical Services contract and of the performance of the contractor, Atos Healthcare. The NAO

²⁹ [Response to the inquiry into Employment and Support Allowance and Work Capability Assessments](#) *Written evidence submitted by National Association of Welfare Rights Advisers*, March 2014

³⁰ Work and Pensions Committee press release, [Employment and Support Allowance and Work Capability Assessments](#), 6 February 2014

³¹ See Part 3 of the Work and Pensions Committee report on [The role of incapacity benefit reassessment in helping claimants into employment](#), HC 1015 2010-12, 26 July 2011; and the [Government’s response to the report](#) – HC 1642 2010-12, 9 November 2011.

concluded that the Department had “not sought adequate financial redress for contractor underperformance” and that current contractual targets for Atos were not “sufficiently challenging”. The Public Accounts Committee also followed up the NAO investigation and on 8 February 2013 published a report, *Department for Work and Pensions: Contract management of medical services*.

The Government denied that it failed to adequately enforce “financial levers” to manage performance (its response to the NAO can be found [here](#), and its response to the PAC was published in *Treasury Minutes* released in March 2013), but on 22 July 2013 it announced that it had decided to bring in other contactors to undertake WCAs alongside Atos, hopefully by summer 2014.

This was partly to bring down waiting times, but it also followed a DWP audit which had identified a “reduction in the quality of written reports which are produced by Atos”. This, the Government said, was “contractually unacceptable”, and DWP was “considering all its options under the contract and will apply all appropriate contractual remedies to ensure quality and value.” Atos was instructed by the Department to immediately enact a quality improvement plan.³²

After much speculation, on 27 March 2014 the Government announced the “early exit” of Atos from the contract to deliver Work Capability Assessments. In a Written Ministerial Statement, the Minister for Disabled People, Mike Penning, said:

The previous Government appointed Atos the sole provider for carrying out work capability assessments in 2008. Since this Government inherited the contract to deliver the work capability assessment, we have been committed to a process of continuous improvement.

When this Government took over responsibility for the work capability assessment we were concerned about the nature of the contract and the process we inherited from the previous Government. We immediately identified the need for considerable improvements and we undertook a series of reviews to improve the balance. When I took over responsibility, I decided to build on the work identified by my predecessors who engaged Professor Harrington, a respected occupational physician, to undertake the initial independent review. We have taken forward the recommendations from the three Harrington reviews and these have significantly improved the assessment. Today I am pleased to announce we are publishing our response to the first review by his successor Doctor Litchfield.

My commitment to performance is why my Department took immediate action last summer when we identified significant quality failures in the written reports produced by Atos following assessments.

Today I am announcing that following detailed negotiations with Atos, the Government have reached a settlement for Atos to exit the contract to deliver work capability assessments before it is due to end in August 2015.

I am pleased to confirm that Atos will not receive a single penny of compensation from the taxpayer for the early termination of their contract. Quite the contrary, I can also confirm that Atos has made a substantial financial settlement to the Department for Work and Pensions.

³² See also [HL Deb 22 July 2013 ccWS151–WS152](#). See also the DWP press release *Hoban – taking action to improve the Work Capability Assessment* for further information.

It is important to outline that we have learnt from the mistakes of the last contract agreed by the previous Government. We have negotiated an agreement covering the remaining term that is more robust, with an agreed performance regime that gives us confidence delivery goals will be achieved. It is that same commercial rigour that will underpin the new procurement for these services that I am announcing today.

I will shortly be issuing a notice in the *Official Journal* of the European Union seeking a new provider to deliver health and disability assessments including work capability assessments. My Department will now withdraw the notice issued in the *Official Journal* of the European Union last September.

To ensure protection for claimants and a smooth transition, I believe the most effective way to stabilise and then increase delivery is to bring in one national provider to deliver the work capability assessment, initially using elements of the Atos infrastructure. In the longer term, I am committed to moving to multiple providers to increase competition. My Department is committed to learning the lessons from these past failures and ensuring they are reflected in the design and management of future contracts, as well as the Department's own commercial capability.

The plan is for the new contract to be awarded later this year, with a view to the new provider taking responsibility for delivery of work capability assessments by 2015. It is expected that the transfer of undertakings protection of employment regulations will apply and most of the Atos employees will transfer to the new provider. The new provider should therefore be able to step into the contract without disrupting the service. My absolute priority for the new provider will be to deliver the best service possible for claimants, increase the volume of assessments carried out and reduce waiting times. In the meantime, we will focus on delivery of assessments for those making new claims and those who have changes in their condition.

Atos is announcing today that the company will be withdrawing from delivery of work capability assessments in Great Britain (Atos will continue to deliver these assessments under its separate contract in Northern Ireland). Atos will continue to deliver personal independence payment assessments in two regions of Great Britain.

Atos will continue to deliver work capability assessments until contract exit and will be subject to a rigorous quality and service credit regime. To that end, I am appointing a remedial advisory team to work with the Atos health care management during this period to assist Atos in meeting their contractual obligations, ahead of awarding the contract to a new provider. This is being accomplished with the full co-operation of Atos who will meet all related costs.

There is strong evidence that work is good for physical and mental well-being, and that being out of work can contribute to poorer health and other negative outcomes. While we will always support people who genuinely cannot work, this Government are committed to getting as many people as possible into work. Notwithstanding the considerable improvements that we have had to make to the work capability assessment process we inherited, our reforms mean that over 650,000 people are now looking for, or preparing for, work. I am committed to ensuring that the assessments are fair and accurate and, together with robust contract management, the recommendations made by Dr Litchfield in his independent review will help us continue to improve the work capability assessment.³³

The implications of the announcement for the IB reassessment programme – which was due to be completed in April 2014 – are unclear. It is not clear whether the statement that the

³³ HC Deb 27 March 2014 cc56-58WMS

focus in the meantime is to be on assessments relating to people making new claims and those who have changes in their condition means that IB reassessments will be suspended. In a separate written answer on 27 March, Mr Penning gave information on the numbers awaiting reassessment:

Kate Green: To ask the Secretary of State for Work and Pensions how many people are currently awaiting work capability assessments. [186209]

Mike Penning: In May 2010 there were 225,000 cases with Atos Healthcare and as of 28 February 2014 there were around 766,000 outstanding cases awaiting work capability assessments being completed. This figure does not include cases yet to be referred to Atos or cases referred to Atos but where the claimant has yet to return the claimant questionnaire.

This includes:

- (a) around 371,000 new claimants of employment and support allowance who should be receiving the assessment rate of the benefit;
- (b) around 293,000 existing recipients of employment and support allowance awaiting a review; and
- (c) around 102,000 existing incapacity benefit recipients awaiting reassessment.

This figure is based on operational management information received from Atos Healthcare and is rounded to the nearest thousand.³⁴

³⁴ HC Deb 27 March 2014 c349-350w