Draft Regulations laid before Parliament under section 26(1)(b) of the Welfare Reform Act 2007 and section 8(3) of the Welfare Reform Act 2009 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No. 000

SOCIAL SECURITY

The Employment and Support Allowance (Work-Related Activity) Regulations 2011

Made - - - -	*2011*
Coming into force - -	*1st June 2011*

In accordance with section 26(1)(b) of the Welfare Reform Act 2007(**1**), and section 8(3) of the Welfare Reform Act 2009(**2**), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 9 and 10 of the Social Security Act 1998(**3**), and sections 11, 12(1) and (2), 13, 14, 15(**4**), 16, 17(3)(b), 24(1)(**5**) and 25 of the Welfare Reform Act 2007 after reference to the Social Security Advisory Committee(**6**).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Employment and Support Allowance (Work-Related Activity) Regulations 2011 and shall come into force on 1st June 2011.

Interpretation

2.—(1) In these Regulations—

(**1**) 2007 c.5.
(**2**) 2009 c.24.
(**3**) 1998 c.14.
(**4**) Subsections (1), (1A) and (2) of section 15 were substituted for subsections (1) and (2), as originally enacted, by section 10 of the Welfare Reform Act 2009 (c.24).
(**5**) Section 24(1) is an interpretation provision and is cited because of the meaning it gives to the word "prescribed".
(**6**) *See* section 172 of the Social Security Administration Act 1992 (c.5).

"the Act" means the Welfare Reform Act 2007;

"the ESA Regulations" means the Employment and Support Allowance Regulations 2008(**7**);

"action plan" means an action plan issued in accordance with regulation 5;

"carer's allowance", "child", "lone parent", "medical treatment" and "working day" have the meaning given in regulation 2(1) of the ESA Regulations.

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Work-related activity

Requirement to undertake work-related activity

3.—(1) The Secretary of State may require a person who satisfies the requirements in paragraph (2) to undertake work-related activity(**8**) as a condition of continuing to be entitled to the full amount of employment and support allowance payable to that person.

(2) The requirements referred to in paragraph (1) are that the person—

(a) is required to take part in, or has taken part in, one or more work-focused interviews pursuant to regulation 54 of the ESA Regulations;

(b) is not a lone parent who is responsible for and a member of the same household as a child under the age of 5;

(c) is not entitled to a carer's allowance; and

(d) is not entitled to a carer premium under paragraph 8 of Schedule 4 to the ESA Regulations.

(3) A requirement to undertake work-related activity ceases to have effect if the person becomes a member of the support group(**9**).

(4) A requirement imposed under paragraph (1)—

(a) must be reasonable in the view of the Secretary of State, having regard to the person's circumstances; and

(b) may not require the person to—

(i) apply for a job or undertake work, whether as an employee or otherwise; or

(ii) undergo medical treatment.

(5) A person who is a lone parent and in any week is responsible for and a member of the same household as a child under the age of 13, may only be required to undertake work-related activity under paragraph (1) during the child's normal school hours.

Directions about work-related activity

4.—(1) The circumstances in paragraph (2) are the circumstances prescribed for the purposes of section 15(1)(a) of the Act.

(2) The circumstances referred to in paragraph (1) are that—

(a) the person has been identified by the Secretary of State as having a barrier to work and in the view of the Secretary of State has refused to address that barrier; and

(**7**) S.I. 2008/794.
(**8**) For the meaning of "work-related activity" see sections 13(7) and 24(1) of the Act.
(**9**) For the meaning of "member of the support group" see section 24(4) of the Act.

(b) the Secretary of State considers that the activity specified in the direction given under section 15(1) of the Act is a prerequisite to the person's ability to obtain or remain in work.

Notification of work-related activity and action plans

5.—(1) The Secretary of State must notify a person of a requirement to undertake work-related activity by including the requirement in a written action plan given to the person.

(2) The action plan must specify—

(a) the work-related activity which the person is required to undertake; and

(b) any other information that the Secretary of State considers appropriate.

Requirement to undertake work-related activity at a particular time not to apply

6. The Secretary of State may determine that a requirement as to the time at or by which work-related activity is to be undertaken is not to apply, or is to be treated as not having applied, if in the view of the Secretary of State it would be, or would have been, unreasonable to require the person to undertake the activity at or by that time.

Reconsideration of action plans

7.—(1) A person may request reconsideration of an action plan.

(2) On receipt of a request the Secretary of State must reconsider the action plan.

(3) A decision of the Secretary of State following a request must be in writing and given to the person.

Failure to undertake work-related activity

8.—(1) A person who is required to undertake work-related activity but fails to do so must show good cause for the failure within 5 working days of the date on which the Secretary of State gives notice of the failure.

(2) The Secretary of State must determine whether a person who is required to undertake work-related activity has failed to do so and, if so, whether the person has shown good cause for the failure.

(3) In deciding whether a person has shown good cause for the failure, the Secretary of State must take account of all the circumstances of the case including in particular the person's physical or mental health or condition.

PART 3

Contracting Out

Contracting out

9.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

(2) The functions are—

(a) any function under—

(i) regulation 3 (requirement to undertake work-related activity);

(ii) regulation 5 (notification of work-related activity and action plans);

(iii) regulation 6 (requirement to undertake work-related activity not to apply);

(iv) regulation 7 (reconsideration of action plans);

(b) any function under regulation 64(1)(a) and (c) and (1A) of the ESA Regulations (decisions in relation to cessation of reduction).

PART 4

Amendments to the ESA Regulations

Amendment to regulation 2(1) of the ESA Regulations (interpretation)

10. In regulation 2(1) of the ESA Regulations, omit the definition of "action plan".

Revocation of regulations relating to work-focused health-related assessments

11. The following regulations of the ESA Regulations are revoked—

(a) regulation 47 (requirement to take part in a work-focused health-related assessment);

(b) regulation 48 (work-focused health-related assessment);

(c) regulation 49 (notification of assessment);

(d) regulation 51 (taking part in a work-focused health-related assessment);

(e) regulation 52 (deferral of a requirement to take part in a work-focused health-related assessment); and

(f) regulation 53 (failure to take part in a work-focused health-related assessment).

Amendment to regulation 56 of the ESA Regulations (notification of interview)

12. In regulation 56(1) of the ESA Regulations—

(a) for "attend" substitute "take part in"; and

(b) after "time and" insert "if required to attend in person, the".

Amendment to regulation 57 of the ESA Regulations (taking part in a work-focused interview)

13.—(1) Regulation 57 of the ESA Regulations is amended as follows.

(2) In paragraph (1)(a), at the beginning insert " if required to attend in person,".

(3) After paragraph (1)(a) insert a new sub-paragraph—

"(aa) if not required to attend in person, is available and responds at the date and time notified in accordance with regulation 56 to any contact made at that time for the purpose of carrying out the interview;".

(4) Omit paragraph (1)(d).

Revocation of regulation 58 of the ESA Regulations (action plans)

14. Regulation 58 of the ESA Regulations is revoked.