

C/o xxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxx.xxx

04 March 2013

Dear Mr Adams

Freedom of Information Act – Request for Information
Our Reference: FOI 0326

Thank you for your Freedom of Information request which we received on 22 January 2013.

You asked:

With regards to the Employment and Support Allowance (Amendment) Regulations 2012 coming into force on January 28th it makes provisions for the following..

With medication and other treatment as long as the assessor believes that trying a new therapy or treatment might reduce the risk to health if they are found not to have limited capability for work , there's no need for evidence that the treatment will help. On the basis of assumption only a claimants benefit may be stopped.

The “imaginary wheelchair test” has been extended for many more aids, including guide dogs and false limbs, even if the claimants do not own or may not be able to use those aids.

1) As there are no stated limitations in the regulations, could you provide extracts of any consultation process and/or guidance sufficient to indicate the intent of the regulations. with regards to

a) *What limitations does the DWP consultation process or guidance put on this, e.g. would a person with chronic breathing problems be expected to take oxygen cylinders on his journey to work and in the workplace, or bed hoists etc..?*

b) In the amended regulations, as there is no need for evidence that the treatment will help, then what are the DWP procedures or guidelines if the treatment is not available, or makes the person worse? The regulations make no provisions for this but if the treatment is not carried out, then the claimants may lose their benefit.

c) What is the situation if the individual refuses treatment on religious grounds, or under their human rights. Exemptions are not included in these amended regulations.. If a person is not at liberty to decline to receive medical treatment, this could potentially violate article eight of the Human Rights Act (the right to a private life) and article three (freedom from inhuman and degrading treatment). Similarly this could also breach article nine, which preserves the right to freedom of thought, conscience and religion.

d) What assessment has been carried out prior to the introduction of these amended regulations regarding the impact on vulnerable claimants, the Equalities Act and with regards to the Human Rights issues, and who was involved in these assessments.

e) Could you provide any extracts of consultation or guidelines sufficient to show if any consideration was given with regards to proportionality and necessity in these regulatory requirements.

In response to your questions you should be aware that the FOI process is designed to facilitate requests for factual information.

As such, given the information you have requested DWP are able to supply the following relevant available information: -

- An update to standard which addresses aids and appliances.
- A copy of the Decision Makers Guide can be found at http://intranet2.gpn.gov.uk/1/lg/acileeds/native/dwp_t745491.doc in which the relevant paragraphs are 14 and 15.
- During the development process the draft Regulations were referred to the Social Security Advisory Committee (SSAC) and an Impact Assessment was produced as part of referral, and this can be found in the attachments, which are copies of the paper referred to SSAC. The Impact Assessment confirmed that these amendments would not result in significant change, and SSAC granted their approval for implementation of the regulations.

The Work Capability Assessment (WCA) was designed in consultation with medical experts and representative groups. It builds on the experience gained from the operation of the Personal Capability Assessment (PCA) which was used for Incapacity Benefit, which was replaced by ESA and was designed to be a more accurate reflection of an individual's capability for work, taking account of modern workplaces, healthcare, and legislation (such as the Disability Discrimination Act).

- a copy of the WCA Revised Employment and Support Allowance (ESA) (LCW/LCWRA) Amendment Regulations 2011 Handbook that is issued to approved HCPs employed by Atos Healthcare can be found through this link <http://www.dwp.gov.uk/publications/specialist-guides/#other>

These documents have been produced as part of a training programme for approved Healthcare Professionals (HCPs) to carry out medical assessments, and Decision Makers to make decisions on benefit entitlement.

HCPs undertaking these medical assessments must be registered medical or nursing practitioners who in addition, have undergone training in disability assessment medicine and more specific training. The training includes theory training in a classroom setting, supervised practical training, and a demonstration of understanding as assessed by quality audit. These documents must be read with the understanding that, as experienced medical or nursing practitioners, the HCPs will have detailed knowledge of the principles and practice of diagnostic techniques and therefore such information is not contained in these documents. In addition, these are not stand-alone documents, and form only a part of the training and written documentation that a HCP receives. As disability assessment is a practical occupation, much of the guidance also involves verbal information and coaching. Thus, although the documents may

be of interest to non-medical readers, some of the information may not be readily understood without background medical knowledge and an awareness of the other training and guidance given to HCPs.

I believe some of the information contained in the document falls within the exemptions allowed by Section 40 of the Freedom of Information Act and has therefore been redacted. The Section 40 exemption is applied on the basis that it is personal data about a third party, in this case names of DWP and/or Atos Healthcare employees who are below the Senior Civil Service (SCS) Grade, and it is Departmental policy that the names of employees below SCS grades are not released and the disclosure would breach data protection principles.

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Yours sincerely

Business Management Team
Health & Disability Assessments (Operations)

dwp.medicalservicescorrespondence@dwp.gsi.gov.uk

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwp.gsi.gov.uk or by writing to DWP, Central FoI Team, Caxton House, Tothill Street, London SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk