

EXPLANATORY MEMORANDUM TO

THE EMPLOYMENT AND SUPPORT ALLOWANCE (TRANSITIONAL PROVISIONS, HOUSING BENEFIT AND COUNCIL TAX BENEFIT) (EXISTING AWARDS) REGULATIONS 2010

2010 No. 875

- 1** This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2 Purpose of the instrument

- 2.1 These Regulations provide for the migration to Employment and Support Allowance, of the majority of people with current awards of benefit on incapacity grounds (Incapacity Benefit, Severe Disablement Allowance and Income Support on the grounds of incapacity referred to as an “existing award”).
- 2.2 These Regulations essentially make transitional provision, where appropriate, for those customers whose awards qualify for conversion.

3 Matters of special interest to the Joint Committee on Statutory Instruments

None.

4 Legislative Context

- 4.1 Schedule 4 to the Welfare Reform Act 2007 provides the main legislative authority for the transition to the new arrangements. The Employment and Support Allowance Regulations 2008 (SI 794/2008) and the Employment and Support Allowance (Transitional Provisions) Regulations 2008 (SI 795/2008) already provide that, from 27 October 2008, new customers unable to work because of illness or disability (other than customers whose claims for an incapacity benefit link to past awards of such a benefit¹) must claim Employment and Support Allowance.
- 4.2 These Regulations now provide for the migration of people on existing incapacity benefits and related changes to their Housing Benefit and Council Tax Benefit. This is part of a broader set of reforms introduced to move to a more active welfare system.

5 Territorial Extent and Application

This instrument applies to Great Britain.

6 European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7 Policy Background

What is being done and why

- 7.1 These Regulations provide for the migration of existing benefit recipients who qualify for conversion to Employment and Support Allowance which is a more pro-active, work-

¹ These Regulations provide that, from 31 January 2011, all claims for an incapacity benefit will be treated as a claim to Employment and Support Allowance, irrespective of whether they may otherwise have linked to a previous award of an incapacity benefit.

focused benefit that looks at what a customer is capable of doing. It is designed to ensure that people receive the support they need to take up or prepare for work, where appropriate.

- 7.2 The policy intent is, with few exceptions², for existing incapacity benefits customers to go through the migration process between October 2010 and the end of March 2014. This will determine if they qualify for Employment and Support Allowance and will eventually enable the other incapacity benefit schemes to be wholly wound down.
- 7.3 Migration to the Employment and Support Allowance regime, (to which the Government committed in the December 2008 White Paper³), will align and simplify the benefit system, by ensuring that, over time, all customers with a health condition or disability in similar circumstances will be treated equally, receiving support to get into to work and the same level of financial help.
- 7.4 Some current incapacity benefits customers will be found fit for work and disallowed benefit on grounds of incapacity. They may claim Jobseeker's Allowance or remain on Income Support if they qualify on grounds other than incapacity.
- 7.5 The structure of Employment and Support Allowance and its rate of allowances vary significantly from the incapacity benefits it is replacing. The Government has committed on several occasions that no incapacity benefits customer who qualifies for Employment and Support Allowance will see a cash reduction in their benefit at the point of migration⁴. So, in moving to protect the amount of benefit paid to existing customers, these Regulations provide for three situations -
- Where someone receives more from their existing benefit than the amount they would otherwise receive by way of Employment and Support Allowance, this level will be frozen on a mark-time basis; and they will receive a 'transitional addition' that will make their Employment and Support Allowance up to the level of their old benefit entitlement until either the Employment and Support Allowance rate catches up or 5th April 2020, whichever comes first.
 - Where someone's existing award is the same amount as the amount they would receive by way of Employment and Support Allowance, the customer will get Employment and Support Allowance at the same rate from the effective date of migration.
 - Where someone receives less on their existing benefit than the amount they would receive by way of Employment and Support Allowance, they will receive the appropriate Employment and Support Allowance rate as soon as they are migrated.
- 7.6 These Regulations will make equivalent provisions for customers who are also receiving Housing Benefit and/or Council Tax Benefit.
- 7.7 Informal consolidation will be included in the Department's "the Law Relating to Social Security" (the Blue Volumes)⁵.

8 Consultation Outcome

- 8.1 Initial consultation on the plans to migrate existing customers of incapacity benefits to Employment and Support Allowance took place in the formal twelve-week consultation on

² Exceptions will include people who reach state pension age during the migration period, the Government's view being that it would not be sensible for customers to switch benefit only to transfer to pension benefits shortly thereafter. Customers over State Pension age in receipt of Severe Disablement Allowance will also be excepted since Employment and Support Allowance is solely for working age customers. The migration of customers who are being awarded National Insurance credits-only as a result of being incapable of work will take place after the main migration exercise has ended.

³ Raising expectations and increasing support: reforming welfare for the future' - <http://www.dwp.gov.uk/docs/fullversion.pdf>

⁴ Hansard: 20 Feb 2007 Column GC8/GC9

⁵ Available on the internet at: http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/pdf/c_0031.pdf at no cost to the public.

welfare reform from July 2008, and was contained in the July 2008 consultation Green Paper⁶.

- 8.2 In the Government's response to the consultation⁷, published in December 2008, it was noted that most people welcomed welfare reform and recognised that changes needed to be made. The responses to the specific proposal to convert current incapacity benefits customers to Employment and Support Allowance centred largely on the proposal that, as part of plans to smooth the transition to Employment and Support Allowance, Incapacity Benefit customers with an age addition would have their benefit frozen until they were migrated to Employment and Support Allowance. Following consultation, the Government published its response in the December 2008 White Paper⁸. As a result of the consultation the Government decided to align the rates more slowly by continuing to increase Incapacity Benefit by half of the normal uprating from April 2009. The additions will therefore be phased out more gradually than previously planned. The Department wrote to the Social Security Advisory Committee on 16 January 2009 explaining how it intended to do this as part of the Social Security Benefits Uprating Order 2009.
- 8.3 The Government has been proactively engaging with key stakeholder groups on the detail of these Regulations, including meeting with the Disability Benefits Consortium in January 2010, and engaging with stakeholders through regular events such as:
- the DWP Scottish Annual Stakeholder Forum held on 25th November 2009
 - the JCP Customer Representative Group Forum held on 9th December 2009
 - the DWP Policy Strategy Forum held on 17th December 2009
 - the Welsh Annual Forum held on 25th January 2010
- 8.4 Follow-up meetings have been arranged with some of these forums; there will be a meeting with stakeholders in Scotland and the Jobcentre Plus Customer Representative Forum. Stakeholders will continue to be engaged with on a one-to-one basis.
- 8.5 Jobcentre Plus has ongoing consultation with representative organisations through a series of events, including workshops and presentations at existing forums and local meetings. Jobcentre Plus will continue to keep representative organisations informed as operational plans develop.
- 8.6 The overall response to the proposals has welcomed the Department's plans to protect customers' incomes on migration to Employment and Support Allowance but expressed concern about a number of other areas: the ability of Jobcentre Plus and the Tribunals Service to deal with the increased volumes of appeals; support available to customers going through the migration process; the performance of the Work Capability Assessment and the ability of the Pathways programme to deliver job outcomes. In response to these concerns: joint work is underway across DWP and the Tribunals Service to mitigate any increased volumes of appeals; the Pathways programme is under review and feedback from current Employment and Support Allowance customers and stakeholders is helping to inform development of the migration customer journey. The Government was already committed to both a departmental review of the Work Capability Assessment, which is underway, and an independent review of the Work Capability Assessment which is currently being commissioned, and will report its first findings later in 2010.
- 8.7 The Local Authority Associations were consulted on the proposals to amend the Housing Benefit and Council Tax Benefit regulations. They made no comments.

⁶ 'No one written off: reforming welfare to reward responsibility' (Cm 7363) - <http://www.official-documents.gov.uk/document/cm73/7363/7363.pdf>

⁷ 'The Green Paper Consultation: No one written off – reforming welfare to reward responsibility' - <http://www.dwp.gov.uk/docs/consultationreport.pdf>

⁸ 'Raising expectations and increasing support' (Cm 7506), - <http://www.officialdocuments.gov.uk/document/cm75/7506/7506.pdf>

- 8.8 The Department has formally consulted the Social Security Advisory Committee about these Regulations. The Committee raised similar concerns in their report on these regulations and the report and Government's formal response were published at the same time these Regulations were laid.

9 Guidance

- 9.1 The Government's objectives for communications include:
- For customers – to ensure that they understand the Employment and Support Allowance ethos, what it means for them, what is going to change for them and when and how they will be affected;
 - For staff – to ensure that DWP and provider staff understand the policy and processes in relation to migration and are able to effectively communicate to customers and support them through the migration process;
 - For stakeholders – to provide assurance that Employment and Support Allowance provides a safety net for people who cannot work and is focused on helping those who can prepare for a return to work, as well as supporting stakeholders and sustaining support for Employment and Support Allowance policy. To ensure that local authority staff understand the changes made to the Housing Benefit and Council Tax Benefit policy and the wider policy objectives in relation to migration.
- 9.2 Work to develop and test this strategy both for Employment and Support Allowance and migration is ongoing. A comprehensive round of stakeholder engagement has been undertaken in recent months where one of the issues discussed has been communications. This, together with Departmental analysis following the introduction of Employment and Support Allowance, means we now have a much clearer view of the way forward.
- 9.3 A Departmental communications assurance group has been established which will provide strategic oversight as this work develops - ensuring that the strategy:
- supports the culture and associated behavioural change required for the effective delivery of Employment and Support Allowance and migration; and that it
 - is developed, deployed and delivered effectively.
- 9.4 There is also an ongoing commitment to actively involve external stakeholders and intermediaries as this work progresses.

10 Impact

- 10.1 The legislation does not impact on business, charities or voluntary bodies
- 10.2 In order to achieve the migration of customers on incapacity benefits to Employment and Support Allowance within the planned timescales, around 10,000 cases per week will need to be processed. This is a considerable undertaking for Jobcentre Plus and its contractors. In order to lessen the impact, as much of the work as possible will be automated, particularly around the assessment and payment of benefit awards. Steps are also being taken to increase the medical capacity that is available to undertake the necessary medical assessments.
- 10.3 A full impact assessment is attached to this memorandum at **Annex A**.

11 Regulating Small Business

The legislation does not apply to small business.

12 Monitoring and Review

- 12.1 This policy will be subject to ongoing review. The introduction of Employment and Support Allowance will be fully evaluated by 2014. These Regulations will be monitored and reviewed as part of that evaluation.
- 12.2 The evaluation spans a number of quantitative and qualitative research projects. Quantitative research will provide evidence which is representative of the experiences of the entire Employment and Support Allowance population, while the qualitative elements will provide in-depth information which can probe more complex issues.

13 Contact

- 13.1 Trevor Pendergast at the Department for Work and Pensions (Tel: 020 7449 5639 email: xxxxxxx.xxxxxxxxxx@xxx.xxx.xxx.xx) can answer any queries regarding this instrument

Summary: Intervention & Options

Department /Agency: Department for Work and Pensions		Title: Impact Assessment of Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) Regulations 2010	
Stage: Implementation		Version: Final	Date: March 2010
Related Publications: ‘Raising expectations and increasing support: reforming welfare for the future’ White Paper December 2008			

Available to view or download at:

<http://www.dwp.gov.uk/docs/fullversion.pdf>

Contact for enquiries: Damian Kylah

Telephone: 020 7449 5697

What is the problem under consideration? Why is government intervention necessary?

There are 2.3 million people on incapacity benefits in Great Britain. Many have had little support to get back to work and effectively been written off. This is not only bad for the individual but for the economy as a whole. Without intervention from government, there is a risk that people who could return to work will remain on benefit and not return to work. The 2008 welfare reform White Paper announced an intention to migrate existing incapacity benefits customers to Employment and Support Allowance (ESA) which provides customers with a more active benefit including employment support.

What are the policy objectives and the intended effects?

The overarching policy objective is to ensure that people with health conditions are supported and enabled by the benefit system rather than 'written off'. Migration will move people to a more modern, more active benefit with all customers treated equally over time and most financial help for the most severely disabled people. Part of the process of assessing entitlement to Employment and Support Allowance is the work capability assessment (WCA) which is a new medical assessment that provides an accurate assessment of what an individual is capable of doing.

What policy options have been considered? Please justify any preferred option.

1. Do nothing
2. Migrate people from existing incapacity benefits to ESA

This policy objective is to ensure that people with health conditions are supported and enabled by the benefit system to return to work where they can rather than 'written off'. Migration will also simplify the benefit system by enabling the phasing out of other incapacity benefits. Neither of these would be realised under the "do nothing" option.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? DWP will evaluate the early phase to inform national migration and will continually assess using a combination of management information and commissioned research. These regulations will be reviewed as part of a full evaluation of ESA by 2014

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Jonathan Shaw

.....Date: 18/03/10

Summary: Analysis & Evidence							
Policy Option: Migration to ESA			Description: Public sector Impact assessment of migration of incapacity benefits customers on to Employment and Support Allowance				
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by ‘main affected groups’ Costs of paying extra benefit to the poorest and most severely disabled people when they migrate. Cost of implementing migration and ongoing costs of administering ESA claims. Costs of paying benefits to those found fit for work moving on to other benefits.				
	One-off (Transition)	Yrs					
	£ 300 million	5					
	Average Annual Cost (excluding one-off)						
	£ 300 million		Total Cost (PV)		£ 1,500 million		
Other key non-monetised costs by ‘main affected groups’							
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by ‘main affected groups’ Benefit savings from those who are found fit for work when they are assessed using the WCA and from alignment of benefit rates. Reduced administration costs from a simplified benefit system.				
	One-off	Yrs					
	£ -	5					
	Average Annual Benefit (excluding one-off)						
	£ 500 million		Total Benefit (PV)		£ 2,500 million		
Other key non-monetised benefits by ‘main affected groups’ There will be a positive employment impact as a result of this policy. There is the benefit of higher economic output from additional employment and the subsequent gain in revenue from increased taxation. There will also be some positive health benefits of customers going into work.							
Key Assumptions/Sensitivities/Risks The number of customers to be migrated and assumptions on the impact of the WCA. In particular it is assumed that 23% of customers will be found fit for work.							
Price Base Year 2009		Time Period Years 5		Net Benefit Range (NPV) £		NET BENEFIT (NPV Best estimate) £ 1,000 million	
What is the geographic coverage of the policy/option?						Great Britain	
On what date will the policy be implemented?						October 2010	
Which organisation(s) will enforce the policy?						N/A	
What is the total annual cost of enforcement for these organisations?						£ N/A	
Does enforcement comply with Hampton principles?						Yes/No	
Will implementation go beyond minimum EU requirements?						N/A	
What is the value of the proposed offsetting measure per year?						£ N/A	
What is the value of changes in greenhouse gas emissions?						£ N/A	
Will the proposal have a significant impact on competition?						No	
Annual cost (£-£) per organisation (excluding one-off)				Micro	Small	Medium	Large
Are any of these organisations exempt?				Yes/No	Yes/No	N/A	N/A
Impact on Admin Burdens Baseline (2005 Prices)							(Increase - Decrease)
Increase of £		Decrease of £		Net Impact		£ Nil	
Kev:				Annual costs and benefits: Constant Prices		(Net) Present Value	

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

PROPOSED POLICY CHANGE

1. To migrate existing incapacity benefits customers to Employment and Support Allowance (ESA) from October 2010.
2. Employment and Support Allowance was introduced for new customers on 27 October 2008. ESA is a combined benefit, bringing together rules from Incapacity Benefit (IB) and Income Support (IS). Currently existing incapacity benefits customers can be in receipt of Incapacity Benefit (including former Invalidity Benefit), Severe Disablement Allowance (SDA) and/or Income Support on the grounds of incapacity. By migrating these customers to ESA there will be a single benefit for those out of work due to illness or disability.

What is the change in policy?

3. The welfare reform White Paper, "Raising expectations and increasing support: reforming welfare for the future", published in December 2008, set out the intention to transfer all existing incapacity benefits customers to Employment and Support Allowance, using an objective work capability assessment (WCA) as a key assessment tool.
4. Those who are eligible for ESA will automatically have their existing awards migrated to awards of ESA. There will be a higher rate of benefit for some people placed in the support group; transitional protection to ensure that no one moving to ESA has a cash reduction in their benefit while ensuring alignment to ESA rates over time; and personalised support to help those in the work related activity group move into work.

Reason for the change in policy

5. Many incapacity benefits customers have been on benefits for a long time. Table One shows that 62% of existing incapacity benefits customers have benefit durations of five years or more. These customers have had little support to get back towards work and they have effectively been written off in the past.

Table One: Duration of current claims for those on incapacity benefits

Duration of current claim (days)	Number on incapacity benefits	Share of incapacity benefits caseload
Up to 3 months	12,160	0.5%
3 months up to 6 months	11,780	0.5%
6 months up to 1 year	139,110	6.0%
1 year and up to 2 years	238,030	10.2%

2 years and up to 5 years	487,980	20.9%
5 years and over	1,444,430	61.9%
Total	2,333,490	100.0%

Source: Department of Work and Pensions Longitudinal Study May 2009

6. The Government want to work with people to get them back into jobs and help them stay there which is beneficial for individuals, society and the economy⁹. Many people on incapacity benefits believe that they are unemployable, with no life choices or long-term prospects because they do not think their illness or disability can be catered for in the workplace¹⁰. However, this is not the case – many people with such conditions are able to take up work, if the right support is in place.
7. The work capability assessment (WCA) will ensure people receive the correct benefit. The WCA is a positive assessment that focuses on what a person remains capable of and identifies the help they need to overcome their health condition and make a return to work. This will ensure existing incapacity benefit customers will receive the appropriate benefit and support to help them return to work.
8. Also moving to just one benefit for those out of work due to illness or disability is a major simplification to the benefit system and, over time, ensures people with the same circumstances are treated equally.

Costs and Benefits

9. The costs and benefits are outlined below;

Costs

- Administrative costs of migration (for example computer system, staff costs, training) to ensure the policy is delivered successfully.
- Recurring administrative costs to maintain additional claims on ESA including extra appeals
- Costs of paying extra benefit (including Housing Benefit (HB) and Council Tax Benefit (CTB)) to the poorest and most severely disabled people when they migrate.

Benefits

- Net benefit savings from those who are found fit for work when they are assessed using the WCA. This is made up of savings in incapacity benefits, partially offset by additional spending on JSA and other benefits.
- Simplified benefit rates (including benefit savings from rate alignment for incapacity benefits).
- Increased financial support for the poorest and the most severely disabled people.

⁹ The Welfare Reform White Paper, “Raising expectations and increasing support: reforming welfare for the future”, published in December 2008

¹⁰ Katharine N, Davidson J, Sainsbury R ‘Provider led Pathways: Experiences and views of early implementation’ Department of Work and Pensions Research Report No. 595

- Wider benefits of a simplified benefit system, with a single set of rates and rules reducing complexity.
- Increased number of people moving towards work and the wider fiscal benefits of people going into work.
- Reduced administration costs from operating just one system of support rather than two.

<i>Economic Costs</i>	<i>Economic Benefits</i>	<i>Fiscal Costs and Benefits</i> ¹¹	<i>Wider Benefits</i>
<p>One off administrative costs arising from migrating existing customers to ESA (including computer system costs) £300 million</p> <p>Recurrent administrative costs from migrating existing customers to ESA of £30 million</p>	<p>Reduced administration costs from operating just one system of support rather than two £70 million</p> <p>There will be a positive employment impact as a result of this policy. There is the benefit of higher economic output from additional employment¹²</p>	<p>Costs of paying extra benefit to the poorest and most severely disabled people when they migrate £150 million</p> <p>Net benefit savings from those who are found fit for work when they are assessed using the WCA £750 million</p> <p>Net benefit savings from an alignment of benefit rates (including HB/CTB) – £350 million</p> <p>Net savings from aligning with ESA rules (including permitted work and linking rules) £10 million</p> <p>Furthermore there will be gains from direct and indirect tax from those entering work</p>	<p>With more disabled people returning to work as a result of this policy there will be individual health benefits</p>

10. All costs and benefits are presented as Net Present Values in 2009/10 prices, and include costs and benefits occurring between 2009/10 and 2013/14.

¹¹ Note that reductions in fiscal costs could, in theory, be included both as an economic benefit (to the exchequer) and an economic cost (to the individual who no longer receives out-of-work benefits). The same applies in reverse for policies that involve increases in tax credits/benefits. These would cancel out exactly unless distributional weights were applied, and are not included in the tables to avoid confusion.

¹² A positive employment impact is expected as a result of applying personalised support to those in the work related activity group, but these will be assessed separately. It is also anticipated that there will be a positive employment impact from those being found fit for work when they are assessed through the WCA – either directly or via Jobseekers Allowance. This effect is uncertain and has not been quantified.

11. The economic impact of the policy (**Net Present Value**) is **£1,000 million** (excluding one-off costs). Positive number represents benefits. This impact assessment covers just the impact of migration cases and not all ESA cases going forward.

Numbers of people affected

12. Table Two shows the breakdown of incapacity benefit customers by benefit type. The majority of customers are on either Incapacity Benefit or Incapacity Benefit and Income Support.

Table Two: The incapacity benefits caseload by benefit type

Rate of Benefit	No of Customers
IB only	835,000
IB and IS only	894,000
Invalidity Benefit	294,000
SDA only	44,000
SDA and IS	151,000
IB and Pension Credit	116,000
Total	2,333,000

Source: Department of Work and Pensions Longitudinal Study May 2009

13. It is estimated that around 1.5 million customers will be directly affected by migration. This is because since the introduction of ESA in October 2008 there are no new claims to incapacity benefits apart from linked claims. As a result of expected off-flows by October 2010, when migration starts there will be around 2 million customers still on incapacity benefits.
14. Anybody who reaches state pension age (65 for men, 60 rising to 62 for women) during the migration period will not be migrated to avoid potentially having to move benefit twice in a short period of time. This reduces the number to 1.8 million people who will need to be migrated.
15. Finally some people will naturally move off incapacity benefits before they go through migration which means that in total by the end of the process 1.5 million will have been migrated.

Work Capability Assessment

16. The work capability assessment will assign people to the right benefit, with appropriate support to move towards work. The work capability assessment is a more positive

assessment that focuses on what a person remains capable of and identifies the help they need to overcome their problems and make a return to work.

17. There will be three possible outcomes from the work capability assessment;

- i. Support group in ESA
- ii. Work-related activity group in ESA
- iii. Fit for work (not eligible for ESA)

18. Although published statistics¹³ on how the WCA is performing for new ESA customers show that 38% of new claims and 69% of those that are assessed have been found fit for work, it is estimated that the proportion found fit for work will be lower for existing customers going through migration. This is because these customers will have been on benefit for at least two years and many will have already satisfied the personality capability assessment (PCA) so are likely to have a more severe condition relative to new customers.

19. We previously estimated that around 15% would be found fit for work based on information about outcomes from Personal Capability Assessments (PCA). We have conducted further analysis and recognised that the previous approach underestimated the proportion found fit for work for cases that have not had a face to face PCA. As a consequence we have made new assumptions about cases that have not had a face to face assessment, and overall this increases our estimate found fit for work to around 23%. This increases the estimated net savings from those found fit for work.

Customers assessed to be in the Support Group

20. Customers who are placed in the support group on migration will be offered personalised support on a voluntary basis. In terms of ESA payable, they will immediately receive the support component; and those on a low income will automatically be entitled to the enhanced disability premium. It is estimated that 65% of those entering the support group will gain financially on migration. For the remaining 35% where their current benefit is paid at a higher rate than their ESA entitlement, the amount of their current award will be protected on a transitional basis.

21. Customers who were previously entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit (HB) and Council Tax Benefit (CTB). Customers receiving “standard”¹⁴ HB/CTB who become entitled to income-related ESA will become entitled to maximum eligible HB/CTB. Those who continue to receive “standard” HB/CTB will see an increase in their overall benefit income.

Customers assessed to be in the Work Related Activity Group

22. Customers who are placed in the work-related activity group on migration will receive personalised support to help them move towards work. In terms of the ESA payable, they will immediately receive the work-related activity component. As with customers placed in the support group, if their current benefit is paid at a higher rate than their ESA entitlement, the amount of their current award will be protected on a transitional basis.

¹³ Employment and Support Allowance: Work Capability Assessment Statistical Release January 2010
http://research.dwp.gov.uk/asd/workingage/esa_wca/esa_wca_19012010.pdf

¹⁴ Standard HB/CTB is calculated on the grounds that no other income-related benefit has been awarded because the customer's income is too high. In such circumstances the amount of HB/CTB will be based on the customer's family make up, their income and the amount of their rent and/or council tax liability and will usually be less than the maximum.

23. Customers who are not receiving income-related ESA (and hence maximum eligible HB/CTB) and as a consequence continue to receive “standard” HB/CTB will have their HB/CTB protected so that they do not see a reduction in overall benefit income.

Customers found fit for work by the WCA

24. Customers who are found fit for work will have their entitlement to incapacity benefits ended and will be able to claim another benefit or appeal. Based on the outcomes of customers who do not satisfy the personal capability assessment it is estimated that customers who are found fit for work will have the following destinations¹⁵ :

- 50% move onto Jobseekers Allowance.
- 20% move onto another benefit (e.g. Income Support, Carers Allowance) or re-claim ESA.
- 30% move off benefit.

25. The Government expect that some customers that are found fit for work will go back into work either directly or via JSA where they will receive support to help them return to work.

26. Customers who move to income-based Job Seekers Allowance or Income Support will be entitled to maximum eligible Housing Benefit / Council Tax Benefit. Those who are not entitled to any of the other income-related benefits, including those who move into work may continue to be entitled to “standard”¹⁶ Housing Benefit / Council Tax Benefit.

Rate alignment

27. The process to align IB and ESA benefit rates has already begun by uprating the benefits of IB customers with age additions by a lower amount than the ESA uprating. The cash increase in their overall benefit was, in April 2009, half of the *Rossi* index. As explained in the White Paper “Raising expectations and increasing support: reforming welfare for the future”, this has begun the process of achieving alignment with ESA but more gradually than previously planned. This mitigates any risk of existing claimants being disadvantaged whilst promoting an age neutral regime for the future.

28. Those assessed to move to ESA by the WCA will be either in the support group or work related activity group. Of those moving on to ESA, some customers will have a benefit rate below the appropriate ESA rate. For these cases their benefit rate will be increased on migration to the level of the ESA rate. The Government will ensure that no customers whose benefit rates are higher than the ESA rate will experience a cash reduction in their benefit on migration to ESA, by transitionally protecting their existing level of benefit. After that, their benefit will be frozen until the ESA benefit rate catches up so that over time all customers on ESA are treated equally.

Benefit rate increase

29. Where, at the point of migration, customers’ current level of benefits are lower than their ESA rate, their benefit will immediately be increased to the ESA rate.

¹⁵ Based on analysis of destinations observed for those leaving Incapacity Benefit after a personal capability assessment

¹⁶ Standard HB/CTB is calculated on the grounds that no other income-related benefit has been awarded because the customer’s income is too high. In such circumstances the amount of HB/CTB will be based on the customer’s family make up, their income and the amount of their rent and/or council tax liability and will usually be less than the maximum.

Summary of customers that will see an increase in their benefit rate

- 30. Some customers that are assessed to be in the support group will receive an increase in their benefits. This includes contributory Incapacity Benefit claimants who do not receive additions and many of the poorest customers who receive Income Support. These customers have been assessed to have the most severe conditions.
- 31. Severe Disability Allowance (SDA) customers, who do not receive an income-related top-up to their benefit, receive lower rates of benefit and will gain on moving to ESA.

Transitional protection

- 32. Transitional protection will remain in place for those whose current benefit rate is higher than their ESA rate until 2020.

Summary of customers that will have their benefits transitionally protected

- 33. In ESA there are no age or adult or child dependency additions. Incapacity Benefit age or adult dependency additions can be up to £70 a week. These dependency allowances will be transitionally protected and these customers will see no cash reduction in the value of their benefit.
- 34. Those receiving Income Support also receive the disability premium. This is not replicated in ESA. Those moving into the work related activity group will have a higher existing award than their ESA rate and will be transitionally protected.
- 35. Couples on Income Support receive a higher benefit rate than under ESA due to the couple rate of the disability premium. This is not replicated in ESA. These claimants will be transitionally protected and see no cash reduction in their benefit.
- 36. The majority of SDA claimants receive an Income Support top up and so are unlikely to see gains on migration to ESA unless placed in the support group. These customers will be transitionally protected.

No change in benefit rates

- 37. Contributory Incapacity Benefit customers that do not have additions will see neither any gain nor have their benefit rate protected if they are assessed to be in the work related activity group.
- 38. In addition some contributory Incapacity Benefit customers receiving lower age additions will also see neither any gains or have their benefit rate protected if they are assessed to be in the Support Group as their benefit rates will already have aligned before migration begins.

ESA Rules

- 39. Customers, who are eligible for ESA, will, upon migration, immediately become subject to, and able to benefit from, ESA rules when they migrate to ESA.
- 40. Permitted work allows customers to try work up to a certain level of earnings before they lose their benefits. As part of aligning benefit rules and rates it is intended that the permitted work rules should apply in ESA to all customers successfully migrating from existing incapacity benefits. For contributory customers the permitted work rules are the same, but

people previously on Income Support paid on the grounds of incapacity will be able to keep £93 per week of their permitted work earnings compared to £20 per week currently. This is in keeping with the work-focussed ethos of ESA and will allow customers to try out work as a stepping-stone to returning to work. A positive employment effect is expected from this measure.

41. Contributory ESA customers and Incapacity Benefit customers who claimed after 2001 have half the amount of any income from occupational pension over £85 per week deducted from their contributory benefit. However Incapacity Benefit and Severe Disablement Allowance customers who claimed benefit prior to 2001 or are entitled to higher rate care component of DLA have any occupational pension fully disregarded. If, on migration to ESA, ESA rules are applied to these customers, those with occupational pensions over £85 per week could see a significant reduction in their benefit. Therefore to ensure that customers do not see a reduction in their benefit on migration the occupational pensions disregard will be carried forward into ESA for customers who currently have any occupational pension disregarded. This will mean that there will be different rules for the treatment of occupational pension in ESA until there are no customers with an occupational pension disregard remaining on ESA. This will protect the level of benefit for up to 30,000 people.

Support to return to work

42. Those customers that are in the work related activity group will receive support to help them return to work. The requirements to engage with back to work support help will be covered by separate regulations and the costs and benefits will be assessed in a separate impact assessment.

EQUALITY IMPACT ASSESSMENT

Gender

43. Currently there are 1.35 million men claiming existing incapacity benefits and just under 1 million women. This means that men make up around 58 per cent of the caseload. However this varies by type of incapacity benefit received as shown in Table Three. For example, 62% of contributory Incapacity Benefit customers are male, compared to 50% of SDA customers.

Table Three: Incapacity Benefits customers by Gender

Benefit	Men	Women	%Women	% Men
Incapacity Benefit	767,000	468,000	38%	62%
Income Support	482,000	412,000	46%	54%
SDA	101,000	102,000	50%	50%
Total	1,350,000	982,000	42%	58%

Source: Department of Work and Pensions Longitudinal Study May 2009

44. As men make up the majority of people on contributory Incapacity Benefit they are more likely to be in receipt of an age addition and adult dependency increase than women.

Indeed a higher proportion of all men on IB receive more than £150 per week compared to women.

Table Four: Incapacity Benefit customers by benefit amount and gender

IB rate	Women	Men	Women %	Men %
under £80.00	1,900	3,310	0%	0%
£80.00 to under £100.00	276,300	444,200	59%	58%
£100.00 to under £150.00	189,400	292,000	40%	38%
£150.00 and over	1,200	27,400	0%	4%
Total	468,800	766,940	100%	100%

Source: Department of Work and Pensions Longitudinal Study May 2009

45. This represents a risk that rate alignment proposals could disproportionately affect men. However the provision of transitional protection will help mitigate this risk. As men and women represent an equal share of SDA customers, they are equally likely to benefit from the higher benefit rates in ESA for those not receiving an income-related top up.
46. The differing proportions can in part be explained by the unequal state pension ages as, other than SDA, incapacity benefits are working age benefits. However state pension ages are being aligned between 2010 and 2020, and this may help to address the gender imbalance.

Work Capability Assessment

47. Administration of the work capability assessment does entail some risk that customers may be treated differently because of their gender. Individuals may feel vulnerable if required to participate in an assessment carried out by a healthcare professional of the opposite gender, or that their gender makes them exposed to discrimination. In mitigation of the risk healthcare professionals are contractually required to meet all requests for medical assessments to be carried out by healthcare professionals of the same sex on cultural or religious grounds. They must also adhere to all requests for the presence of a third party during assessments. Random samples of customers are provided with feedback forms in which they are able to comment on their assessment and raise any issue of concern. The complaints procedure also provides a mechanism to identify and monitor discrimination. Whilst in general it is anticipated that no discrimination in the WCA process, all healthcare professionals will receive training on the gender equality duty, which offers an opportunity to raise awareness about gender issues amongst those administering the WCA.

Housing Benefit and Council Tax Benefit

48. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of gender.¹⁷ The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent or Council Tax. Gender is not

¹⁷ This is in contrast to certain other benefits which are targeted to those unable to work or those of a certain age group.

considered in the calculation. Approximately 60% of both Housing Benefit and Council Tax Benefit working age recipients are women¹⁸.

49. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. It is not expected that the different outcomes will be disproportionately spread across men or women in receipt of Housing Benefit and Council Tax Benefit.

Disability

50. The reforms to incapacity benefits are designed to help disabled people and people with health conditions move into work, with improved financial support for those for whom preparation to return to work would be unreasonable. As such the policy aims to promote equality of opportunity.
51. Most incapacity benefits customers are likely to be covered by the Disability Discrimination Act (DDA) and so these reforms have considerable significance for disabled people. The table below shows the distribution of incapacity benefits customers by medical condition, with mental and behavioural conditions being the most common.

Table Five: Incapacity Benefits customers by medical condition

Medical Condition	Share of the incapacity benefits caseload
Mental and Behavioural Disorders	43%
Diseases of the Nervous System	7%
Diseases of the Circulatory or Respiratory System	7%
Diseases of the Musculoskeletal system and Connective Tissue	17%
Injury, Poisoning and certain other consequences of external causes	5%
Other	21%
Total	100%

Source: Department of Work and Pensions Longitudinal Study May 2009

¹⁸ Based on three years of Family Resources Survey data (2005/6 to 2007/8). Gender refers to the head of the benefit unit. Working age is defined as the head of the benefit unit being under 60 years of age

52. The rates of benefit paid to people on ESA do not vary because of disability. It is the effect of disability that matters. In ESA the most severely disabled people are assisted through higher benefit rates paid to those in the support group.

Work Capability Assessment

53. By using the WCA to assess eligibility to ESA for existing customers, all disabled people and those with health conditions who are out of work will be treated equally. The medical assessment is based on the severity of functional limitation caused by a condition; not on the basis of the condition itself, because different people may be affected in different ways by the same condition. However previous consultation has highlighted concern that those with fluctuating conditions of mental health problems may face undue barriers in receiving their entitlement, representing a potential risk. To mitigate these risks, the WCA has been designed to take account of fluctuating conditions, assessing a customer's capability over time. Unless an individual is capable of an activity that is carried out reliably and repeatedly over a sustained period of time, they are considered unable to carry it out at all. The healthcare professionals carrying out of the assessments also receive specific training on assessing those with mental health conditions. As with all customers, the legal right of appeal remains if an individual feels that they have been unfairly assessed. To mitigate any risk that sanctions may have a disproportionate effect, especially on those with mental health conditions and learning difficulties, there are facilities which allow good cause to be applied by the decision maker in cases of failure to attend a work capability assessment.

Jobseeker's Allowance and Health conditions

54. The refreshed Jobseeker's Allowance regime and Flexible New Deal are designed to offer personalised, tailored support to customers. This includes the needs of customers with a health condition or disability who will get more intensive support as they progress through their claim to help overcome related barriers to work.
55. Customers on Jobseeker's Allowance with a health condition may restrict their availability for work provided those restrictions are "reasonable" given their condition, be fast-tracked to the point in the customer journey where additional support becomes available and receive specialist disability services from the disability employment adviser network.

Housing Benefit and Council Tax Benefit

56. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of disability. The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent or council tax. The increased income premium and allowances used in the Housing Benefit and Council Tax Benefit assessment are more generous for disabled people, to reflect the additional costs incurred in their day-to-day living expenses.
57. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. Some of those with the most severe health conditions who are placed in the support group will see an increase in their Housing Benefit and Council Tax Benefit award.

Ethnicity

58. The rate of benefit paid to people on incapacity benefits or ESA does not vary because of race or culture. There is a low risk that ethnic minorities could be disproportionately affected by the rate alignment measures, as survey evidence indicates that there is a lower proportion of ethnic minorities on incapacity benefits (6%) relative to the working age ethnic minority population as a whole (12%).

Table Six: Proportion of incapacity benefits customers by ethnicity

Ethnicity	Incapacity benefits	Working Age Population
White	94%	88%
Ethnic minority	6%	12%

Source: Based on the Family Resources survey 2007/08

Work Capability Assessment

59. The work capability assessment (WCA) will not apply differently to people of different races or cultures. The Healthcare professionals carrying out the assessment will neither be provided with, nor ask the customers their ethnicity, thus facilitating uniformity in the application of the assessment to all applicants for ESA irrespective of their ethnicity. However there is a potential risk of racial discrimination on a case by case basis in the course of the assessment itself. The presence of a language barrier may also make it difficult for applicants to convey their health problems and challenges to entering work. In order to mitigate these risks, healthcare professionals will ensure that an interpreter is always available if requested when the appointment is made. Those involved in all stages of the process will receive training on the race equality duty, while a specific training course on multi-cultural awareness is also provided for all new and existing healthcare professionals undertaking work for the Department for Work and Pensions.

Housing Benefit and Council Tax Benefit

60. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of ethnicity. The rules do not distinguish between the ethnicity of the customer. The calculation of the amount of Housing Benefit and Council Tax Benefit is based on a means test and an assessment of eligible rent or council tax. Ethnicity is not considered for the purpose of this calculation but as Housing Benefit and Council Tax Benefit are income-related benefits, a different pattern for ethnic groups reflecting differences in income levels and benefits take-up may be observed.
61. Anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. It is not expected that the different outcomes will be disproportionately spread across the different ethnic groups in receipt of Housing Benefit and Council Tax Benefit.
62. For the Housing Benefit and Council Tax Benefit populations as a whole, Table seven presents a breakdown of the working age Housing Benefit and Council Tax Benefit populations by ethnicity. The proportion of people from an ethnic minority on Housing Benefit is similar to the proportion of all renters from an ethnic minority. The proportion of people on

Council Tax Benefit from an ethnic minority is slightly higher than the proportion of people with a Council Tax liability from an ethnic minority.

Table Seven: Proportion of Housing Benefit and Council Tax Benefit customers by ethnicity

Ethnicity	All working age on HB	All working age renters	All working age on CTB	All working age Council Tax liable
White	86%	85%	84%	89%
Ethnic minority	14%	15%	16%	11%

Notes: Based on three years of Family Resources Survey data (2005/6 to 2007/8). Ethnicity refers to ethnicity of the head of the benefit unit. Working age is defined as the head of the benefit unit being under 60 years of age.

Age

63. Nearly half of customers claiming incapacity benefits are over the age of 50. This is because older people are more likely to have a disability or health condition and may also reflect labour market factors such as the decline of traditional manufacturing industry. However, this does not mean that they do not want or are unable to work. The government is committed to promoting employment prospects for older people, indeed for people of all ages, with and without health conditions. The proposed measures to increase support to help customers back to work will contribute to this and will work towards meeting the Government's aim of reducing the number of people on incapacity benefits by one million.

Table Eight: Incapacity Benefits Customers by Age

Age	Percentage of incapacity benefit customers
16-17	0%
18-24	5%
25-34	12%
35-44	22%
45-49	14%
50-54	15%
55-59	19%
60-64	12%
Total	100%

Source *Department of Work and Pensions Longitudinal Study May 2009*

64. The amount of incapacity benefits received for existing customers can vary by age as age additions are payable. Under IB age additions are payable after a year of incapacity. There are two rates; £15.60 for those whose incapacity began before the age of 35 and £6.55 for those whose incapacity began between 35 and 45. These additions were originally intended to compensate those whose incapacity began at an early stage in life (for example, the young man very badly injured in a workplace accident) for the potentially high loss of possible future earnings, due to the assumption that they were unlikely to return to work. ESA does not carry forward the additions. After the assessment phase ESA is age neutral.

However, those receiving age additions within their existing benefit will have the cash level of their benefit protected.

Table Nine: Incapacity Benefit customers by benefit amount and age

IB rate	Aged Under 50	Aged 50+	Total
under £80.00	1%	0%	0%
£80.00 to under £100.00	38%	74%	58%
£100.00 to under £150.00	60%	23%	39%
£150.00 and over	1%	3%	2%
Total	100%	100%	100%

Source *Department of Work and Pensions Longitudinal Study May 2009*

65. Table Nine shows that customers aged 50 or over are more likely to have a rate of benefit below £100 per week than those aged under 50. There is a risk then that customers aged under 50 may be disproportionately affected by rate alignment. However transitional protection will ensure those moving to ESA will not see a cash reduction in their benefit income. This will mitigate the risks of this group being disproportionately affected.

Work Capability Assessment

66. The work capability assessment will be applied uniformly to individuals from all age groups and we do not envisage any discrimination on these grounds. Any potential risk stems from the possibility of discrimination on a case by case basis in the course of the assessment itself. To mitigate this risk, robust complaints and quality-assurance procedures enable healthcare professionals to be monitored to ensure that age discrimination is not taking place. Decisions on entitlement to benefit are taken by separate decision makers and customers have a right of appeal to an independent appeal tribunal if they do not agree with the decision.

Housing Benefit and Council Tax Benefit

67. Housing Benefit and Council Tax Benefit are available to all the equality groups, regardless of age.

68. For working age customers, anyone receiving Housing Benefit and Council Tax Benefit at the point of migration will not see a reduction in overall benefit income as a result of migration due to transitional protection in Housing Benefit and Council Tax Benefit. This mitigates the risk that any group will be disproportionately negatively affected. Customers who are entitled to Income Support and who become entitled to income-related ESA will continue to be entitled to maximum eligible Housing Benefit and Council Tax Benefit. It is not expected that the different outcomes will be disproportionately spread across the different working age groups in receipt of Housing Benefit and Council Tax Benefit.

69. Cases assessed under the Housing Benefit and Council Tax Benefit provisions for people who have reached the qualifying age for Pension Credit do not receive amounts in respect of disability or ESA components. Therefore no protection is needed for them in Housing Benefit and Council Tax Benefit. Even if their ESA entitlement is higher than their Incapacity Benefit, current rules mean their overall benefit income will not reduce.

70. Table Ten shows the breakdown of working age Housing Benefit and Council Tax Benefit customers by age. This shows that the percentage of people aged 45 or over on Housing Benefit and Council Tax Benefit is higher than the percentage of all renters of this age group.

Table Ten: Housing Benefit and Council Tax Benefit recipients by age

	All working age on HB	All working age renters	All working age on CTB	All working age Council Tax liable
Age under 25	13%	21%	11%	19%
Age 25 to 34	21%	28%	19%	21%
Age 35 to 44	26%	23%	25%	23%
Age 45 to 54	20%	16%	21%	20%
Age 55 to 59	9%	7%	11%	10%
Age 60 to 64	10%	6%	13%	8%
Total (aged less than 65)	100%	100%	100%	100%

Notes: Based on three years of Family Resources Survey data (2005/6 to 2007/8). Working age refers to the head of the benefit unit being aged under 65 years old. In the final column, all households include only those liable to pay council tax.

State Pension age during migration

71. The Government will not migrate people who will reach state pension age during the migration period (before April 2014). This will ensure that they do not have to change benefits twice in potentially a short period of time. An estimated 160,000 incapacity benefits customers will reach state pension age over the period (11%).

SEXUAL ORIENTATION

72. There is no evidence of, and the Government do not envisage any, unequal treatment on these grounds

RELIGIOUS BELIEFS

73. There is no evidence of, and the Government do not envisage any, unequal treatment on these grounds

HUMAN RIGHTS

74. There is no evidence of, and the Government do not envisage any, unequal treatment on these grounds.

CHILD POVERTY IMPACT ASSESSMENT

75. Migrating incapacity benefits customers to ESA is intended to reduce poverty by supporting people into work and providing greater support to the most severely disabled. Providing transitional protection will ensure that customers do not see a cash reduction in their benefit, mitigating the risk of rate alignment having an adverse impact on poverty. About one in six of

those claiming incapacity benefits have dependent children. The proposals will have a negligible affect on the relative child poverty measure due to the relatively small number of existing customers with children.

RURAL IMPACT ASSESSMENT

76.No adverse effect is expected on incapacity benefits customers living in rural areas. It is estimated that in England less than 20% of incapacity benefits customers live in rural areas which is less than the proportion for the population as a whole. Customers that have to travel large distances for their work capability assessment will be reimbursed for their travel costs and any additional information required to migrate customers to ESA will be obtained over the phone and by post, mitigating disruption for customers in rural areas.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	Yes	No

Annexes