



## BRIEFING PAPER

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# ESA and PIP reassessments

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Since 29 September 2017, some Employment Support Allowance claimants with the most severe health conditions and disabilities have been exempt from future reassessments.

On 18 June 2018 the Government announced that an equivalent exemption from reassessment would be introduced for Personal Independence Payment claimants on the highest level of support - where their needs are expected to stay the same.

## 1. Employment and Support Allowance reassessments

On 1 October 2016 the Secretary of State for Work and Pensions, Damian Green, announced that changes would be made to the rules on repeat assessments for Employment and Support Allowance (ESA) claimants.<sup>1</sup> All new ESA claimants would still have to undergo the Work Capability Assessment (WCA), but it was proposed to exempt some ESA claimants with the most severe health conditions and disabilities from future reassessments (at the time all ESA claimants, regardless of their condition, were reassessed periodically).

DWP consulted on the criteria for identifying those who should not be reassessed. On 10 October 2016 the Secretary of State for Work and Pensions issued a written statement setting out the Government's plans:

### **Employment and Support Allowance: Written statement - HCWS174**

#### **Department for Work and Pensions**

Made on: 10 October 2016

Made by: [Damian Green](#) (The Secretary of State for Work and Pensions)

I would like to update hon. Members on the main item of business undertaken by my Department since the House rose for conference recess.

When people claim Employment and Support Allowance (ESA) and/or Universal Credit (UC) due to a health condition or disability they are required to take part in Work Capability Assessments (WCA) on an ongoing basis to confirm their eligibility. This includes people with the most severe health conditions or disabilities, even though we

<sup>1</sup> ["ESA benefit payments: Re-tests axed for chronically ill claimants,"](#) BBC News, 1 October 2016; see also Conservative Party, [Green: Speech to Conservative Party Conference](#), 4 October 2016

## 2 ESA and PIP reassessments

already know from their initial WCA, and from healthcare professionals, that, short of medical advances, their condition is unlikely to improve.

On 1 October, I announced that that we will stop reassessing people with the most severe health conditions and disabilities. This change will apply to people who have already been placed in the ESA Support Group or UC Limited Capability for Work and Work Related Activity categories following a WCA and who have the most severe health conditions and disabilities (defined as claimants with severe, lifelong, often progressive and incurable conditions, with minimally fluctuating care needs, who are unlikely to ever be able to move closer to the labour market and into work). The IT changes needed are expected to be completed by the end of 2017. In the meantime, we will be working to ensure these people are not reassessed unnecessarily.

Over the coming months we will work with key stakeholders, including disabled people, disability charities, our health assessment provider, the Centre for Health and Disability Assessments, medical professionals and others to develop a set of criteria, set out in guidance, to switch off reassessments for those that are eligible.

The change would only apply to claimants placed in the ESA Support Group and the equivalent group in Universal Credit.<sup>2</sup> Exemption from reassessment would not be based on medical condition. The Government stated:

Rather than a list of specific medical conditions, the criteria will be based on identifying claimants with the most severe health conditions or disabilities where it would be unreasonable to expect the individual to undertake any form or amount of work or work-related activity.<sup>3</sup>

ESA claimants in the Work-Related Activity Group, and non-exempt Support Group claimants, will continue to be reassessed. DWP's [Technical guide to the Work Capability Assessment](#) (ESA214, 7 July 2016) states (p16):

The Work Capability Assessment will continue to be applied at regular intervals during the life of an award to ensure the conditions for entitlement are maintained.

The timing of further assessments is determined by the Jobcentre Plus decision maker. To assist the decision maker, the approved healthcare professional includes advice on the assessment report about when it is likely the claimant will be able to return to work. However, the assessment can be applied sooner if the decision maker considers there has been a significant change in the claimant's health condition or disability.

The internal guidance for Maximus assessors on a claimant's prognosis at the examination and the appropriate interval before reassessment might be considered is in section 3.10 of the DWP's [Revised WCA Handbook](#) (MED-ESAAR2011/2012HB-001, 1 August 2017).

The categories of prognosis that an assessor can advise are:<sup>4</sup>

I advise that work could be considered within:

- three months
- six months
- 12 months
- 18 months

I advise that work is unlikely:

- Within two years
- In the longer-term

The [Revised WCA Handbook](#) states (at p147; original emphasis)):

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<sup>2</sup> PQ 49346 [on Employment and Support Allowance], 26 October 2016

<sup>3</sup> PQ 52657 [on Employment and Support Allowance: Chronic Illnesses], 16 November 2016

<sup>4</sup> HC Deb 23 October 2013 c165w

**In all cases your [ie the assessor's] opinion on when engaging in work or there is likely to be an improvement in the persons condition could be considered must be fully and comprehensively justified. It is important to consider each case individually and to choose and justify the appropriate time period.**

## 1.1 Criteria for “switching off” ESA reassessments

On 29 September 2017, the DWP announced that ESA claimants in the Support Group and Universal Credit claimants with limited capability for work and work-related activity (LCWRA), attending a Work Capability Assessment will no longer need to be reassessed if they:

- have a severe, lifelong disability, illness or health condition
- are unlikely to ever be able to move into work

Claimants will be told if they will not be reassessed **following** their WCA.<sup>5</sup>

DWP [Severe Conditions Guidance](#) for healthcare professionals (HCPs)<sup>6</sup> states that to avoid a reassessment, claimants will have to satisfy, **all four** of the following:

1. the level of function will always meet LCWRA criteria;
2. the condition will always be present (some lifelong conditions are present from birth, but others will develop or be acquired later in life);
3. no realistic prospect of recovery of function (with advice on this being based on currently available treatment and not on the prospect of scientists discovering a cure in the future);
4. unambiguous condition (following all relevant clinical investigations a recognised medical diagnosis has been made).<sup>7</sup>

If all the above four criteria and any of the LCWRA criteria are met, the HCP is to advise the decision maker that the claimant has a severe condition and has LCWRA.<sup>8</sup>

Examples of conditions that might meet all four criteria are given:<sup>9</sup>

- Motor Neurone Disease (MND);
- severe and progressive forms of MS, Parkinson's;
- all dementias;
- Huntington's;
- severe irreversible cardiorespiratory failure; and
- severe acquired brain injury.

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<sup>5</sup> DWP, [Employment and Support Allowance and Universal Credit: changes to the Work Capability Assessment](#), 29 September 2017

<sup>6</sup> DWP [Severe Conditions Prognosis/Re-referral Guidance at WCA Face to Face Assessments and Filework](#), 14 September 2017. The changes will be reflected in the summer 2018 edition of the WCA Handbook; see [PO 9976](#) [Employment Support Allowance], 11 September 2017

<sup>7</sup> DWP [Severe Conditions Prognosis/Re-referral Guidance at WCA Face to Face Assessments and Filework](#), [p30-31](#)

<sup>8</sup> Ibid p31

<sup>9</sup> Ibid p30

However, the guidance does make clear that “this list is not exhaustive”.<sup>10</sup>

The guidance further provides that the “new re-referral period will apply to those with LCWRA ONLY. If a claimant has LCW but not LCWRA, the process remains as now.”<sup>11</sup>

The change does not therefore affect:

- ESA claimants placed in the Work-Related Activity Group
- UC claimants who are found to have Limited Capability for Work

The charity [Disability Rights UK](#) welcomed the new criteria as an improvement on the previous approach, but argued that they fail to resolve the problems of poor decision-making at the WCA stage, resulting in “eighty per cent of mandatory reconsiderations failing but with two thirds of independent appeals succeeding.”<sup>12</sup>

Disability Rights UK is also critical of the timing of reassessment determinations: claimants will be told if they will not be reassessed following their WCA. It states:

There is no need for an immediate decision to be made on whether someone should be exempt from further reassessment at the WCA itself. ESA could be awarded whilst, over a longer time period, a specialist opinion as to long term prognosis could be sought.

Such a procedure would lead to less unnecessary WCA future reassessments.<sup>13</sup>

## 2. Periodic reviews of PIP awards

All Personal Independence Payment (PIP) awards are currently subject to periodic review - a key feature of the benefit. The Coalition Government had argued that one of the problems with Disability Living Allowance was that there was “no system to check whether awards remain correct”, although disability organisations and others disputed this assertion.<sup>14</sup>

Some organisations argue that people with profound life-long disabilities or progressive conditions should not have to face regular reassessment for PIP. There is also concern that regular reassessment could cause anxiety and affect physical or mental health of vulnerable claimants.

During the passage of the *Welfare Reform Bill 2010-12* the Coalition Government did not agree to exemptions from reassessment for people with particular disabilities, but said that decisions on the frequency of reassessments would take into account of the nature of the person’s disability and the likelihood of a change in their circumstances. It also said that, for some individuals, a face-to-face consultation might not be necessary for their award to be reassessed.<sup>15</sup>

The following written answer from November 2013 sets out the then Government’s position on PIP reassessments for people with lifelong conditions:

**Helen Jones:** To ask the Secretary of State for Work and Pensions if he will make it his policy that people with long-term conditions are not subject to costly and stressful

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<sup>10</sup> Ibid

<sup>11</sup> Ibid p29

<sup>12</sup> [DR UKs statement on the new WCA reassessment guidance](#), 6 October 2017

<sup>13</sup> Ibid

<sup>14</sup> See section 4.7 of Commons Library briefing 5869, [Disability Living Allowance reform](#)

<sup>15</sup> For further information on consideration of these issues during the Commons Committee Stage of the Bill see [pp45-47 Library briefing RP11/48](#)

reassessments for personal independence payments when their condition is not likely to improve; and if he will make a statement. [141428]

**Esther McVey:** Personal independence payment is designed to assess people as individuals and ensure that decisions on entitlement, award lengths and timing of reviews are appropriate and evidence-based. While in some cases short-term awards of one or two years may be appropriate, we have been clear that longer term awards will be made in cases where the claimant's needs are expected to remain relatively stable or change slowly. Ongoing awards will be made in some cases where significant change in the claimant's needs is very unlikely.

All awards, regardless of duration, will be reviewed periodically to ensure that the individual continues to receive the correct amount of benefit. Awards will be reviewed in a proportionate way with consideration given to the circumstances of the individual.

While face-to-face consultations will be an important part of the assessment for most individuals, allowing an in-depth look at their circumstances, they will not be appropriate in every case. Where there is sufficient and robust factual information about the claimant and the impacts of their health condition or impairment on which to make a paper-based assessment, it would be inappropriate to require individuals to attend a consultation. However, these decisions need to be taken on a case-by-case basis, as impairments can affect people in very different ways.<sup>16</sup>

At the end of 2015, the current Government's position remained the same, as this written answer indicates:

**Personal Independence Payment: Written question – 20024**

Asked by Louise Haigh (Sheffield, Heeley)

Asked on: 14 December 2015

To ask the Secretary of State for Work and Pensions, for what reasons recipients of personal independence payments are called for reassessment.

Answered by: Justin Tomlinson

Answered on: 17 December 2015

Personal Independence Payment is designed to ensure decisions on entitlement, award lengths and timing of reviews are appropriate and evidence-based.

All ongoing awards, regardless of duration, will be reviewed periodically to ensure that the individual continues to receive the correct amount of benefit. Where we have sufficient evidence to do so, we will conduct a paper based assessment without the need for the claimant to attend a face to face assessment.

The claimant can also ask for a review if the daily living needs or mobility needs arising change.

Reviews can result in a higher or lower award or no change.

When a person is assessed for PIP, a health professional employed by Atos or Capita (the assessment providers) will make a **recommendation** on when it might be appropriate to review the award, based on the prognosis for the individual. How health professionals should go about this is covered in section 1.10 of [PIP assessment guide part 1: the assessment process](#) (last update 28 June 2018).

The **decision** on the length of the award and on when the award should be reviewed is however taken by a DWP "Case Manager" (CM).<sup>17</sup> The following extract from the DWP's

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<sup>16</sup> HC Deb 4 February 2013 cc98-9w

<sup>17</sup> "Case Manager" is the name given to the "Decision Maker" for PIP claims

Decision Making Process guide – released in August 2014 in response to a Freedom of Information request<sup>18</sup> - gives details:

#### **Award period and reviews**

340. The CM decides the period of an award based on all the evidence including the advice from the HP [Health Professional]. The CM also decides if a review or 'planned intervention' will apply and when the review date should be set for. This should also be based on all the evidence including the claimant questionnaire, (PIP2) other evidence provided and advice from the HP.

See: [Chapter P2 - Assessment for PIP](#) Advice for Decision Makers 'Duration of Award'

341. A review point or 'planned intervention' is an opportunity to look at entitlement at set intervals to ensure the claimant continues to get the right amount of PIP. The review point selected should be based on the claimant's individual circumstances.

342. If the CM decides a planned intervention is appropriate based on the evidence and advice they record the review date in PIPCS when the decision is made. The CM sets the end date of the award for a year after the planned intervention date this is to allow enough time for the intervention to take place.

343. The award period options for the CM to consider and decide are:

- Short fixed term award, (SFT) with or without a planned intervention, these can be for a minimum of 9 months and up to a maximum of two years.
- Longer fixed term award, (LFT) the CM decides the review (planned intervention) point and then sets the end date of the award for 12 months after the review date.
- Ongoing award, where any change is very unlikely and with a planned intervention date no more than 10 years from the award date.

See: ADM [Chapter P2 - Assessment for PIP](#) 'Duration of Award'

In relation to “**ongoing awards**”, the guidance states:

370. Ongoing awards are appropriate where the claimant's restrictions on daily living and or mobility are unlikely to change significantly. If the HP considers no significant change is likely and no requirement for future review it indicates an ongoing award may be appropriate.

371. If the HP considers the claimant's restrictions will continue but are likely to deteriorate they would usually advise on an appropriate review period rather than no review - See: 'PIP Assessment Guide' – 'Prognosis' section.

372. If the CM considers all the evidence and advice and decides an ongoing award applies, they don't record an end date in PIPCS.

373. The planned intervention date will depend on the particular circumstances of the case and the CM will decide the most appropriate date based on the evidence and the advice from the HP. A date may be set for less than 10 years but in any case the planned intervention date should be no longer than 10 years - **See: Completing the assessment questionnaire in PIPCS**, the See: 'PIP Assessment Guide', and Assessment Provider Process and 'Planned Interventions' guidance.

On 19 October 2016 Roger Godsiff MP tabled a parliamentary question asking the Secretary of State for Work and Pensions if he would “take steps to end reassessments for personal independence payments claimants with lifelong or degenerative conditions in line with his Department's policy on employment and support allowance.” On 26 October the DWP Minister Penny Mordaunt replied:

The length of a Personal Independence Payment (PIP) award is based on an individual's circumstances and can vary from 9 months to an on-going award with a

<sup>18</sup> See [https://www.whatdotheyknow.com/request/pip\\_renewal\\_process](https://www.whatdotheyknow.com/request/pip_renewal_process)

light touch review at the ten year point. PIP already recognises that for the most severely disabled claimants, the award review process could seem unnecessarily intrusive. Existing PIP claimants with the most severe, lifetime disabilities, whose functional ability has remained the same, are more likely to have their evidence reviewed by a DWP Decision Maker and will not need to have another face-to-face assessment with a healthcare professional.<sup>19</sup>

The same response was given to subsequent PQs. For example, asked whether the Government would remove mandatory PIP reassessments for people with progressive conditions in receipt of PIP at the enhanced rate, Penny Mordaunt said in a written answer on 25 July 2017:

Reviews of PIP are a key part of the benefit and ensure that not only awards remain correct where needs may change and that we also maintain contact with the claimant, both features missing from its predecessor Disability Living Allowance. The length of an award is based on an individual's circumstances and can vary from nine months to an on-going award with a light touch review at the ten year point. PIP recognises that for the most severely disabled claimants, the award review process could seem unnecessarily intrusive. Existing PIP claimants with the most severe, lifetime disabilities, whose functional ability has remained the same, are more likely to have their evidence reviewed by a DWP Decision-Maker and will not need to have another face-to-face assessment with a healthcare professional.

We will continue to closely monitor developments across the health and disability landscape and engage with stakeholders to improve the service we provide. We are committed to ensuring that the PIP reassessment process works effectively across the spectrum of disabilities and health conditions, including mental health conditions, cognitive impairments and physical disabilities.<sup>20</sup>

On 18 June 2018, the Minister for Disabled People, Health and Work, Sarah Newton, announced that, after listening to feedback from organisations and from the public, the Government would be implementing changes so that PIP claimants with severe or progressive conditions requiring high level support under PIP would not face reassessment for 10 years.<sup>21</sup> On the timeframe for introducing the changes, the Minister said:

The government will be working with stakeholders to design the light touch review process so that it adds value for both our claimants and the department – for example, by providing information on services available and ensuring that contact or bank details have not changed.

We are still finalising details of the guidance and will publish it later this summer.<sup>22</sup>

Reacting to the announcement, Laura Cockram, head of policy and campaigns at Parkinson's UK, said it:

...will be welcome news for people with Parkinson's currently receiving the highest level of PIP, as they will now avoid needless and stressful annual reassessments...<sup>23</sup>

She however added that the change was a "piecemeal solution for a broken system that needs a complete overhaul" and called the PIP assessment process as "simply

<sup>19</sup> PQ 49342 [on Personal Independence Payment: Chronic Illnesses], 26 October 2016

<sup>20</sup> PQ 5325 [on Personal Independence Payment: Medical Examinations]

<sup>21</sup> DWP Press release, [Government to end unnecessary PIP reviews for people with most severe health conditions](https://www.gov.uk/government/news/government-to-end-unnecessary-PIP-reviews-for-people-with-most-severe-health-conditions), 18 June 2018

<sup>22</sup> Ibid. In its [response](#) to the Work & Pensions Committee inquiry into PIP and ESA assessments, the Government indicated that the changes would be implemented by amending the Case Managers guidance. [HC 986](#), 23 April 2018 at p2

<sup>23</sup> ["Parkinson's and MS patients spared benefit retesting in U-turn"](#) Guardian 18 June 2018



not fit for purpose,” as it “does not recognise the reality of living with long-term, progressive conditions.”<sup>24</sup>

### 3. Work and Pensions Committee Inquiry

Concerns about the ability of health professionals employed by contracted assessment providers to conduct the assessment process for both ESA and PIP cases have been raised by a number of groups.<sup>25</sup> Evidence given to the Work and Pensions Committee during a one-off inquiry on PIP last year was also critical of the assessment process.<sup>26</sup> Those concerns, coupled with the high rate of cases overturned at appeal,<sup>27</sup> led the Committee to launch a follow-up inquiry on 29 September 2017 into the effectiveness of assessment processes used to determine eligibility for ESA and PIP.

Announcing the inquiry, Frank Field MP, the Chair of the Committee, said:

The truly amazing rate of overturned ESA and PIP decisions seems to point to something being fundamentally wrong with the initial assessment and Mandatory Reconsideration stages. Quite apart from the human cost this represents – the distress and difficulty for applicants trying to get help with daily living or getting into work – it looks to be wasteful, inefficient, and a huge cost to taxpayers.

We would like to hear from claimants – and assessors – about whether and where the system works, or is failing, and how it might be fixed.<sup>28</sup>

In February 2018, the Committee published two inquiry reports on PIP and ESA assessments. The [first](#) examined claimant experiences of PIP and ESA<sup>29</sup> and the [second](#) focused on identifying technical changes to the assessment processes.<sup>30</sup> The inquiry found that although most claimants proceeded with their assessments without significant problems, many did not. The [assessment report](#) stated:

Since 2013, 290,000 claimants of PIP and ESA—6% of all those assessed—only received the correct award after challenging DWP’s initial decision. Those cases, set alongside other recurring problems with applications and assessments, have ramifications far beyond the minority of claimants directly affected. Applying for PIP or ESA—and in doing so, facing up to the full limitations imposed by a health condition—can be stressful and challenging. A deficit of confidence in the assessment processes adds considerably to claimants’ distress.<sup>31</sup>

The Committee reported that failings in the entire claimant process – “from application, to assessment, to decision-making and to challenge mechanisms—have contributed to a lack of trust in both benefits” and risked undermining the entire operation.<sup>32</sup> It recommended that as the PIP and ESA contracts with third party contractors drew to a close, DWP:

....consider whether the market is capable of delivering assessments at the required level and of rebuilding claimant trust. If it cannot—as already

<sup>24</sup> Ibid

<sup>25</sup> See for example, the [Disability Rights UK’s recent statement](#), September 2017

<sup>26</sup> Work and Pensions Committee, [Personal Independence Payment inquiry](#) 6 March 2016

<sup>27</sup> See Ministry of Justice, [Tribunals and gender recognitions certificates statistics quarterly: January to March 2017 and 2016 to 2017](#)

<sup>28</sup> Work and Pensions Committee, [Are PIP and ESA Assessments working well?](#)

<sup>29</sup> Work and Pensions Committee, [PIP and ESA assessments: claimant experiences](#), HC 355, 17 January 2018

<sup>30</sup> Work and Pensions Committee, [PIP and ESA assessments](#), HC 829, 14 February 2018

<sup>31</sup> Ibid, Summary

<sup>32</sup> Ibid, Summary



floundering market interest may suggest—the Department may well conclude assessments are better delivered in house.<sup>33</sup>

The [Government response](#) to the Committee's report was published on 23 April 2018.<sup>34</sup> In relation to the Committee's criticisms of the current providers' standards, the Government stated:<sup>35</sup>

We expect the highest professional standards from our providers and that claimants are treated fairly with dignity and respect. We set our providers challenging targets and monitor performance closely.

We are aware that some claimants can find the process daunting so we place great emphasis on the HCPs [healthcare professionals] receiving the right training, guidance and ongoing support to enable them to provide a caring and supportive service for our claimants.

[.....]

Results from claimant satisfaction reviews continue to show providers exceeding the minimum satisfaction level of 91%. However, we know we want to do more. The Department will therefore continue to work closely with our current providers, and with any future providers to ensure we continue to make improvements. For future assessments, the aim within any contracted service is to secure the best value for money for the Department with a service that will deliver the quality, volumes and claimant experience required.

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<sup>33</sup> Ibid, para 94

<sup>34</sup> [PIP and ESA assessments: Government Response to the Committee's Seventh Report of 2017–19](#), HC 968, 23 April 2018

<sup>35</sup> Ibid, p 18

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