**5. The Employment and Support Allowance (Amendment) Regulations 2012**

5.1 The Chair welcomed Dr Bill Gunnyeon (Chief Medical Adviser and Director for Health and Wellbeing), Dr James Bolton (Deputy Director) and Andy Vickers (SEO, Work Capability Assessment).

5.2 Dr Gunnyeon explained that there were two components to the amendments. The first related to changes proposed for those who had been diagnosed with cancer and who were undergoing or facing treatment as a result. This derived from recommendations made by Professor Harrington in his review of the Work Capability Assessment. The Department had subsequently put forward proposals which were considered and commented on by a range of stakeholders. As a result of that process the proposals had been agreed by Ministers with the intention of being introduced as soon as possible. In summary the changes were beneficial and would improve the position for cancer patients generally. The other aspect of the amendments involved a number of tidying up measures which clarified the wording used in relation to some of the descriptors. Although there might be elements of the changes which appeared contentious, any contention was in relation to the original point of policy rather than in relation to any clarification of the wording.

5.3 The following questions and issues were raised by the Committee in discussion:

**(a) The comments made in the EIA in relation to the impact upon ethnicity were appreciated. The Committee would welcome seeing the eventual results when the intended data had been gathered.**

This was noted by officials.

**(b) The proposals in relation to cancer treatment were welcome. In relation to the other amendments, there seemed to be a strong distinction being drawn between impairments which had a physical cause and those which had a mental cause when, in reality, there could be a confusion of physical and mental factors (for instance severe back pain giving rise to depression).**

The analysis about physical and mental causes sometimes being confused was accepted. The original policy intent, (considering all the effects of any health condition or disability) was intended to be preserved. The amendment sought to make clear that only physical effects were considered under part 1 and mental, cognitive and intellectual effects under part 2. That would not prevent an individual with back pain, who then developed depression, from scoring under both sections.

**(c) Where the descriptors referred to ‘normally used’, should that be interpreted as normally used by the individual in question or people generally, or others with a similar impairment?**

It should be understood as referring to normal usage by the individual claimant. 5th Floor, Caxton House, Tothill Street, London, SW1H 9NA Tel: 0207 829 3354

**(d) Would the phrase ‘could reasonably be used’ in relation to visual impairment (activity 8) mean that a person would be expected to acquire a guide dog when it is known that only 15% of blind people had a guide dog? Part of the reason for the low figure could be that the accommodation was unsuitable for an animal, or the person was unable to handle or care for a dog.**

No, the intention was that people would be expected to use aids which were cheap and readily available to them. A blind person would not be expected to get a guide dog for example; nor would they be penalised for failing to do so.

**(e) On the descriptor about manual dexterity (activity 5(c) of Schedule 2) a person might be able to make a mark but unable to write. Did that need to be clarified?**

Officials agreed to look into that. It might be something that could be resolved more appropriately through guidance rather than the legislation itself.

**(d) Would the Department consider drawing a distinction between loss of consciousness where incontinence was likely to occur and where it was not? An epileptic might be able to manage employment if colleagues understood the condition and knew what to do, but the deep humiliation from any accompanying incontinence could make it difficult for that person to remain in employment.**

The Work Capability Assessment was constantly being examined and refined. This would be something which officials would consider further in the context of loss of consciousness.

5.4 The Chair informed the officials that the Committee did not wish to take the proposals on formal reference. He thanked the officials for attending the meeting and for their presentation and subsequent contribution to the ensuing discussion.