

**NOTICE UNDER SECTION 26 OF THE SOCIAL SECURITY ACT 1998
TO: THE FIRST-TIER TRIBUNAL**

**APPEALS CONCERNING REGULATION 35(2) OF THE EMPLOYMENT
AND SUPPORT ALLOWANCE REGULATIONS 2008 (SI 2008/794)**

Pursuant to section 26(2) of the Social Security Act 1998 ("the Act"), the Secretary of State for Work and Pensions ("the Secretary of State") hereby gives notice requiring the First-tier Tribunal not to determine any appeal which raises an issue as to the application of regulation 35(2) of the Employment and Support Allowance Regulations 2008 ("the Regulations").

Section 26(2) of the Act provides:

If the Secretary of State considers it possible that the result of appeal B will be such that, if it were already determined, it would affect the outcome of appeal A, he may serve notice requiring First-tier Tribunal or Upper Tribunal –

- (a) not to determine appeal A but to refer it to him; or
- (b) to deal with the appeal in accordance with subsection (4) below.

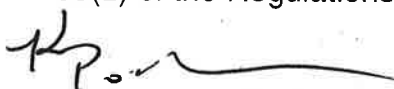
Pursuant to sections 26 of the Act, from the date of this notice the appeal identified in the attached response, which raises issues as to whether the claimant is to be treated as having limited capability for work-related activity in accordance with regulation 35(2) of the Regulations, is to be dealt with in the following way:

- (a) stayed in accordance with section 26(4)(a) of the Act; or
- (b) determined in accordance with section 26(4)(b) of the Act.

REASONS FOR THIS NOTICE

1. On 15th September 2014 a three Judge panel of the Upper Tribunal gave a decision in the case of *IM v SSWP (ESA)* [2014] UKUT 412 (AAC). In that case the Upper Tribunal allowed the claimant's appeal against the decision of the First-tier Tribunal.
2. The Secretary of State is considering whether to apply to the Upper Tribunal for permission to appeal to the Court of Appeal.
3. In the event that the Court of Appeal allows the Secretary of State's appeal from the Upper Tribunal and the Upper Tribunal's decision is set aside, the Secretary of State considers it possible that the result of the appeal to the Court of Appeal will be such that, if it were already determined, it would affect the determination of appeals concerning regulation 35(2) of the Regulations.

Signed



(on behalf of the Secretary of State for Work and Pensions)

Dated

12-11-14