

Chapter U3: Employment and Support Allowance claimant responsibilities - the claimant commitment

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Legislation used in Chapter U3

Abbreviation	Full Title
WR Act (NI) 07	Welfare Reform Act (Northern Ireland) 2007
ESA Regs (NI) 16	Employment and Support Allowance Regulations (Northern Ireland) 2016 No. 219
WR (NI) Order 15 (Comm No. 18) (AB) Order (NI) 25	Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 18) (Abolition of Benefits) Order (Northern Ireland) 2015 No. 176

Chapter U3: Employment and Support Allowance claimant responsibilities - the claimant commitment

What the claimant commitment is

Introduction

U3001 It is a condition of entitlement to Employment and Support Allowance that a claimant has accepted a claimant commitment¹. Unless a claimant commitment

1. has been accepted **or**
2. can be treated as having been accepted

then there can be no entitlement to Employment and Support Allowance.

1 WR Act (NI) 07, sec 1(3)(aa)

U3002 A claimant commitment is a record of a claimant's responsibilities in relation to an award of Employment and Support Allowance¹. In order to receive Employment and Support Allowance without a reduction the claimant is expected to carry out what is required of them as recorded on their claimant commitment.

1 WR Act (NI) 07, sec 11A(1)

U3003 It is the responsibility of the Department to prepare for an Employment and Support Allowance claimant a claimant commitment. A claimant commitment can be

1. reviewed **and**
2. updated

at such times as the Department sees fit¹.

1 WR Act (NI) 07, sec 11A(2)

Information included in the claimant commitment

U3004 A claimant commitment must include¹

1. a record of the requirements that the claimant must comply with in connection with an award of Employment and Support Allowance, or such of them as the Department considers it appropriate to include **and**
2. any information specified in regulations **and**

3. any other information that the Department considers appropriate.

1 WR Act (NI) 07, sec 11A(4)

U3005 The claimant commitment can be in any form as the Department sees fit¹. The claimant commitment will be a written document which can be accepted in various ways (see U3008).

1 WR Act (NI) 07, sec 11A(3)

Accepting the claimant commitment

U3006 In order to be entitled to Employment and Support Allowance, a claimant can only be said to have accepted a claimant commitment where it is

1. the most up-to-date version **and**
2. accepted by the claimant in the manner specified in regulations and further by the Department¹.

1 WR Act (NI) 07, sec 11A(5); ESA Regs (NI) 16, reg 44(4)

Example

John is in receipt of Employment and Support Allowance. His claimant commitment recorded that John had to complete some specific actions with regard to a work preparation requirement. John has now completed those actions so a new claimant commitment needs to be drawn up reflecting the new actions which are required of him.

U3007 The requirement to accept a claimant commitment as a condition of entitlement to Employment and Support Allowance¹ does not apply during any period for which the preparation of a claimant commitment has been delayed as per M5306².

1 WR Act (NI) 07, sec 1(3)(aa); 2 WR (NI) Order 15 (Comm No. 18) (AB) Order (NI) 25, art 3

U3008 The methods by which a claimant commitment can be accepted by a person is set out in regulations as

1. electronically **or**
2. by telephone **or**
3. in writing¹.

The Department then specifies which of these methods are to be used by a person to accept their claimant commitment.

1 ESA Regs (NI) 16, reg 44(4)

Date of acceptance of the claimant commitment

U3009 There will often be a gap of time between the date of

1. claim **and**
2. acceptance

of the claimant commitment.

U3010 Where there is such a gap then the claimant can be treated as having accepted the claimant commitment on the first day in respect of which the claim has been made. However, the claimant commitment has to be accepted within a time specified by the Department¹. This may be referred to as a “cooling off” period.

1 ESA Regs (NI) 16, reg 44(1)

U3011 The claimant commitment is generated as a result of a conversation with the claimant. There may be occasions where the claimant refuses to accept their claimant commitment. The claimant must be offered a cooling off period so that they can reconsider. The cooling off period should be a maximum of seven calendar days.

Example 1

Peter made his claim to Employment and Support Allowance on 2.11.17. However, he was unable to be seen by the Jobs and Benefits Office to discuss and accept his claimant commitment straightaway. An appointment was made for 9.11.17. When Peter attends the Jobs and Benefits Office on 9.11.17, he accepts his claimant commitment and is treated as having accepted it on 2.11.17. This therefore allows Peter to meet that particular condition of entitlement for Employment and Support from the date of claim.

Example 2

Marie made her claim for Employment and Support Allowance on 2.11.17. A claimant commitment is drawn up but Marie is not entirely happy with the requirements recorded on it. Marie’s adviser allows Marie time to consider the contents of the claimant commitment and the consequences for Marie of not accepting the claimant commitment. Marie is given up to seven calendar days to consider this. After four days, Marie decides to accept the claimant commitment and so it takes effect from 2.11.17.

Example 3

Jason made his claim for Employment and Support Allowance on 2.11.17. A claimant commitment is drawn up but Jason is not entirely happy with the requirements recorded on it. Jason’s adviser allows Jason time to consider the contents of the claimant commitment and the consequences for Jason of not accepting the claimant commitment. He is given up to seven calendar days to consider this. Seven days

pass and Jason makes no contact regarding the claimant commitment. The decision maker decides that in respect of the claim for Employment and Support Allowance made on 2.11.17, Jason is not entitled. This is because a claimant commitment has not been accepted.

U3012 Where an award of Employment and Support Allowance has been made

1. without the claimant making a claim **and**
2. where the claimant commitment has been accepted by the claimant within the time specified by the Department

the claimant commitment is treated as having been accepted on the first day of the first benefit week of that award¹.

Note: ADM Chapter A2 provides guidance on circumstances where an award of Employment and Support Allowance can be made without a claim being required.

1 ESA Regs (NI) 16, reg 44(2)

U3013 – U3014

Extending the period of time to accept the claimant commitment

U3015 The period of time within which a person is required to accept

1. a claimant commitment **or**
2. an updated claimant commitment

can be extended.

U3016 The extended period of time applies where the claimant has requested an extension and the Department considers the request as reasonable¹.

1 ESA Regs (NI) 16, reg 44(3)

U3017 – U3019

Exceptions to the requirement to accept the claimant commitment

U3020 A claimant is not required to meet the basic condition of entitlement of having to accept a claimant commitment if¹

1. they lack capacity to do so (see U3021) **or**
2. exceptional conditions apply and it would be unreasonable to expect the claimant to accept one (see U3024) **or**

3. they are terminally ill (see U3027).

1 ESA Regs (NI) 16, reg 45

Lacking capacity

U3021 A claimant does not have to meet the basic condition of accepting a claimant commitment where they lack the capacity to do so¹.

1 ESA Regs (NI) 16, reg 45(a)

U3022 In this context, “lack the capacity” primarily relates to those claimants with an appointee acting on their behalf. However, a decision should be made based on the available evidence as to whether or not a claimant lacks the capacity to accept a claimant commitment.

Example 1

Mary has severe learning disabilities. She has made a claim to Employment and Support Allowance with an appointee completing the claim on Mary’s behalf. After a discussion with the appointee, Mary’s adviser at the Jobs and Benefits Office decides that Mary is not required to accept a claimant commitment because her learning disabilities mean that Mary cannot understand the expectations or requirements in connection with a claim to Employment and Support Allowance.

Example 2

Catherine makes a claim for Employment and Support Allowance with the help of her neighbour. The neighbour isn’t Catherine’s appointee but is helping her with the claiming process. During the new claim interview with her adviser, it becomes apparent that Catherine does not understand what is required of her with regards to entitlement to Employment and Support Allowance. The adviser decides that Catherine should be referred for appointee action. An appointee is later authorised to act on Catherine’s behalf. Catherine is not required to accept a claimant commitment.

U3023 Where it is accepted that a claimant lacks capacity then the requirement to accept a claimant commitment is lifted. An appointee is not required to accept a claimant commitment on the claimant’s behalf and should not be asked to do so.

Exceptional circumstances

U3024 The claimant is not required to accept a claimant commitment where¹

1. exceptional circumstances apply **and**

2. it would be unreasonable to expect the claimant to accept a claimant commitment.

1 ESA Regs (NI) 16, reg 45(b)

U3025 Examples of when exceptional circumstances apply may include where

1. the claimant is incapacitated in hospital and is likely to be there for several weeks
2. the Jobs and Benefits Office is closed due to an emergency, for example, a fire or a flood
3. there is a domestic emergency preventing the claimant from accepting the claimant commitment.

This list is not exhaustive. When determining whether or not exceptional circumstances apply, the decision maker should remember that the normal everyday meaning of “exceptional” is “unusual; not typical”.

Note: Once the exceptional circumstances have passed then the claimant is required to accept a claimant commitment.

U3026 The decision maker has to take into account the circumstances of each individual case in deciding whether it is also unreasonable to expect the claimant to accept the claimant commitment.

Note: Reasonable is not defined in regulations but means fair and sensible in the circumstances.

Example 1

Roger made a claim to Employment and Support Allowance but due to a fire at the Jobs and Benefits Office was unable to attend the meeting with his adviser to accept his claimant commitment. The decision maker treated Roger as having accepted his claimant commitment and so Roger became entitled to Employment and Support Allowance. Now that the Jobs and Benefits Office is re-opened, Roger is required to accept a claimant commitment drawn up by his adviser.

Example 2

Julie has made a claim to Employment and Support Allowance. On the day that she is due to meet her adviser to accept her claimant commitment she is, at short notice, given an appointment at hospital to have a long awaited operation. Julie is expected to be in hospital for some time but is unsure for exactly how long at this stage. It would be unreasonable to expect Julie to cancel her operation in order to accept the claimant commitment. Once she has been discharged from hospital, another appointment can be booked with her adviser to accept her claimant commitment.

Example 3

Michael has made a claim to Employment and Support Allowance. On the day that he is due to accept his claimant commitment, he phones the Jobs and Benefits Office to say that he cannot attend because his boiler has broken and an engineer is due to fix it that day. However, Michael lives with his retired mother and she can be at home for the engineer. The decision maker does not treat Michael as having accepted his claimant commitment because it is not unreasonable to expect Michael to arrange with his mother to deal with the engineer.

Terminally ill

U3027 Terminally ill means

1. that the claimant is suffering from a progressive disease **and**
2. that death in consequence of that disease can reasonably be expected within 12 months¹.

Note: Legislation uses the terminology 'terminally ill' but for operational purposes and communications the term 'end of life' is used. Decision makers may see reference to either terminology but both have the same meaning as defined in U3027.

1 ESA Regs (NI) 16, reg 2

U3028 A claimant will not have to meet the basic condition of entitlement to have accepted a claimant commitment to be entitled to Employment and Support Allowance if the person is terminally ill¹ as per U3027.

1 ESA Regs (NI) 16, reg 45(2)

U3029

Reviewing the claimant commitment

U3030 A claimant commitment can be reviewed and updated at such time as the Department sees fit¹.

1 WR Act (NI) 07, sec 11A(2)

Example

Natasha has been in receipt of Employment and Support Allowance for 6 months. During that time Natasha's health has improved and although she isn't yet ready for employment, she is at a stage where she can attempt some voluntary work for a few hours a week, perhaps working for a charity. Natasha's adviser at the Jobs and Benefits Office decides that Natasha's claimant commitment is updated to reflect this. Natasha has to accept the updated claimant commitment in order to retain entitlement to Employment and Support Allowance.

U3031 Where a claimant commitment has been reviewed and updated then the claimant must accept it in order to maintain entitlement to Employment and Support Allowance¹.

1 WR Act (NI) 07, sec 11A(5)

U3032 – U3999

The content of the examples in this document (including use of imagery) is for illustrative purposes only