

Disability Law Service

advice and legal representation for disabled people

Employment Support Allowance

A guide to Employment Support Allowance 'ESA' for claims made from the 28th March 2011 onwards

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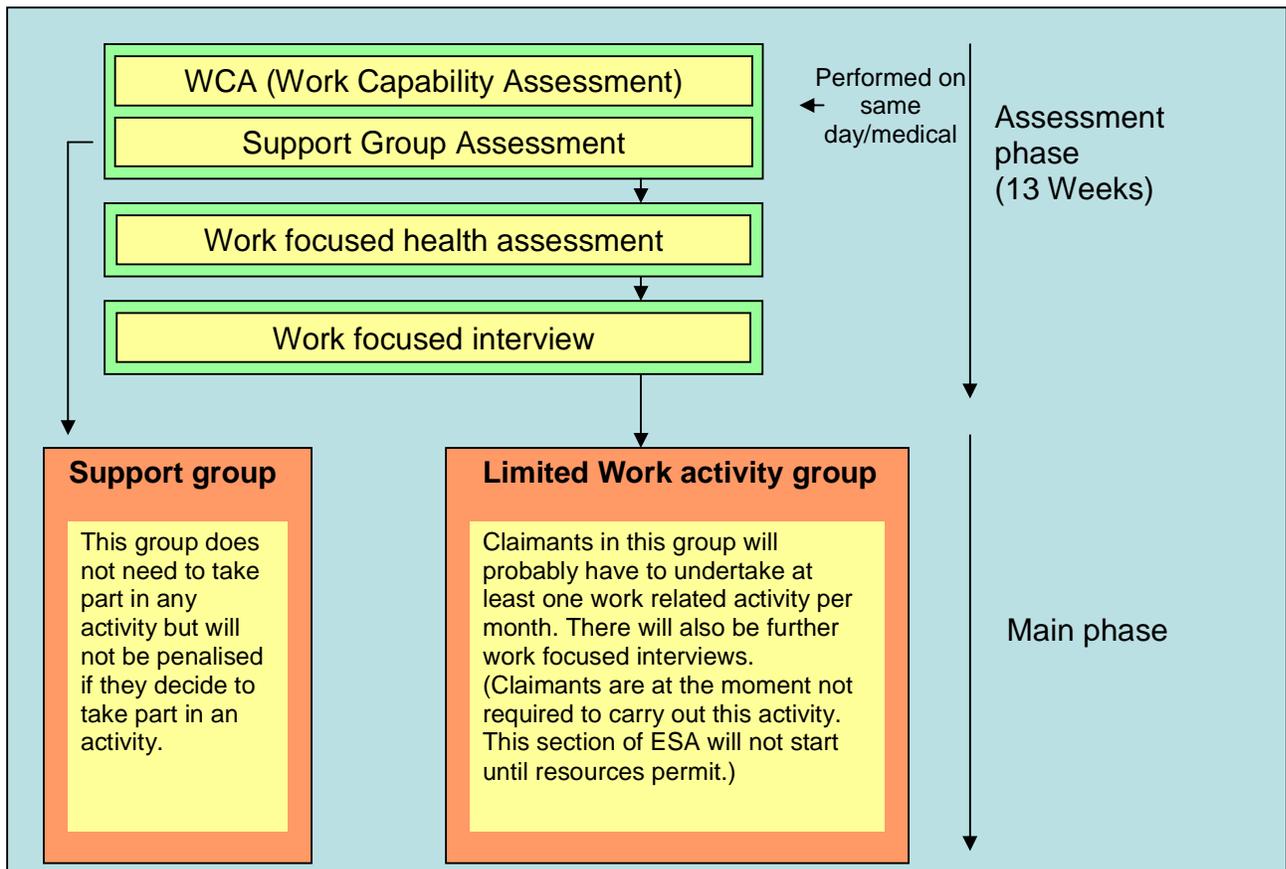
ESA (Employment Support Allowance) Factsheet

Introduction

ESA (Employment Support Allowance) is the replacement for Incapacity Benefit. It also replaces the Income Support on the basis of disability. ESA came into force on the 27th October 2008. It is only applicable to new claimants at the moment. Anyone who is already on Incapacity Benefit or Income Support on the basis of disability will continue to remain on that benefit, in some cases, until 2012/13 when they will be transferred to ESA. (As of this date no specific timetable has been put into place for transferring present claimants on to ESA.)

It must be noted that this factsheet covers the rules in force from the 28th March 2011 when the Employment Support Allowance Regulations were amended which changed some of the descriptors. If you think your claim or decision falls on or before the 27th March 2011 please see our other ESA factsheet which relates to claims and decisions before the 27th March 2011.

While ESA replaces the aforementioned benefits, it is structured in a completely different way to incapacity style benefits. Previously a person would expect to go on to an incapacity benefit believing that they would not be required to take any action other than filling in their yearly application for Incapacity Benefit. ESA changes this situation by requiring the majority of people on ESA to attend work-focused interviews which will draw up 'action plans' requiring them to take part in activities that will help get them back into the workplace. Those required to take part may be required to carry out around one activity per month. Some reports at the moment state that some 80% of successful claimants are being placed in the Limited Capability for Work Group.



Claimants on ESA are put into either a **support group** or the **limited capability for work group**. As you can see from the diagram above, a claimant will start on ESA on the assessment phase which should last around 13 weeks but in practice may take longer.

The assessment phase

As you can see from the diagram, the assessment phase has four main tasks to complete as follows:

1. They must assess whether you are **eligible for ESA** by giving you the WCA (Work Capability Assessment). This is a test similar to the PCA (Personal Capability Assessment) that is carried out for Incapacity Benefit. To be eligible for ESA you must gain at least 15 points by matching your issues to one or more of the ESA descriptors. The descriptors are split into physical problems and mental problems. You can add physical scores and mental scores to reach the score of at least 15. The doctor will make his assessment but it is the DWP decision maker that makes the final judgement. As a result, you can send in further evidence which they must take into account when making their decision. The

descriptors are available in appendix 1 which is at the back of this document. An example of a descriptor is shown below:

WCA descriptor examples:

- Cannot pick up and move a 0.5 litre carton full of liquid with either hand **(15 points)**
- Cannot pick up and move a one litre carton full of liquid with either hand **(9 points)**

2.They must assess if you are eligible for the support group or if you should continue on to the limited capability for work group. The assessment may be carried using a paper assessment or they may test you via a face to face assessment held at the same time as the WCA. To gain entry to the support group again requires that a claimant match a set of descriptors.

In this case there are 46 descriptors and if you match one of them then you are eligible for the support group. As such there is no need for points. The test is much higher standard than the WCA. The descriptors are available in appendix 2 of this document. On the next page you will find examples of descriptors:

Support group descriptor examples:

- Cannot manually propel the claimant's wheelchair more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.
- Cannot pick up and move 0.5 litre carton of liquid with either hand.

3.They must now assess if you to see what problems you might have in the workplace using the 'work focussed health assessment'. This may be held at the same time as the WCA. It will not be carried out if they believe that it is likely that you are going into the support group.

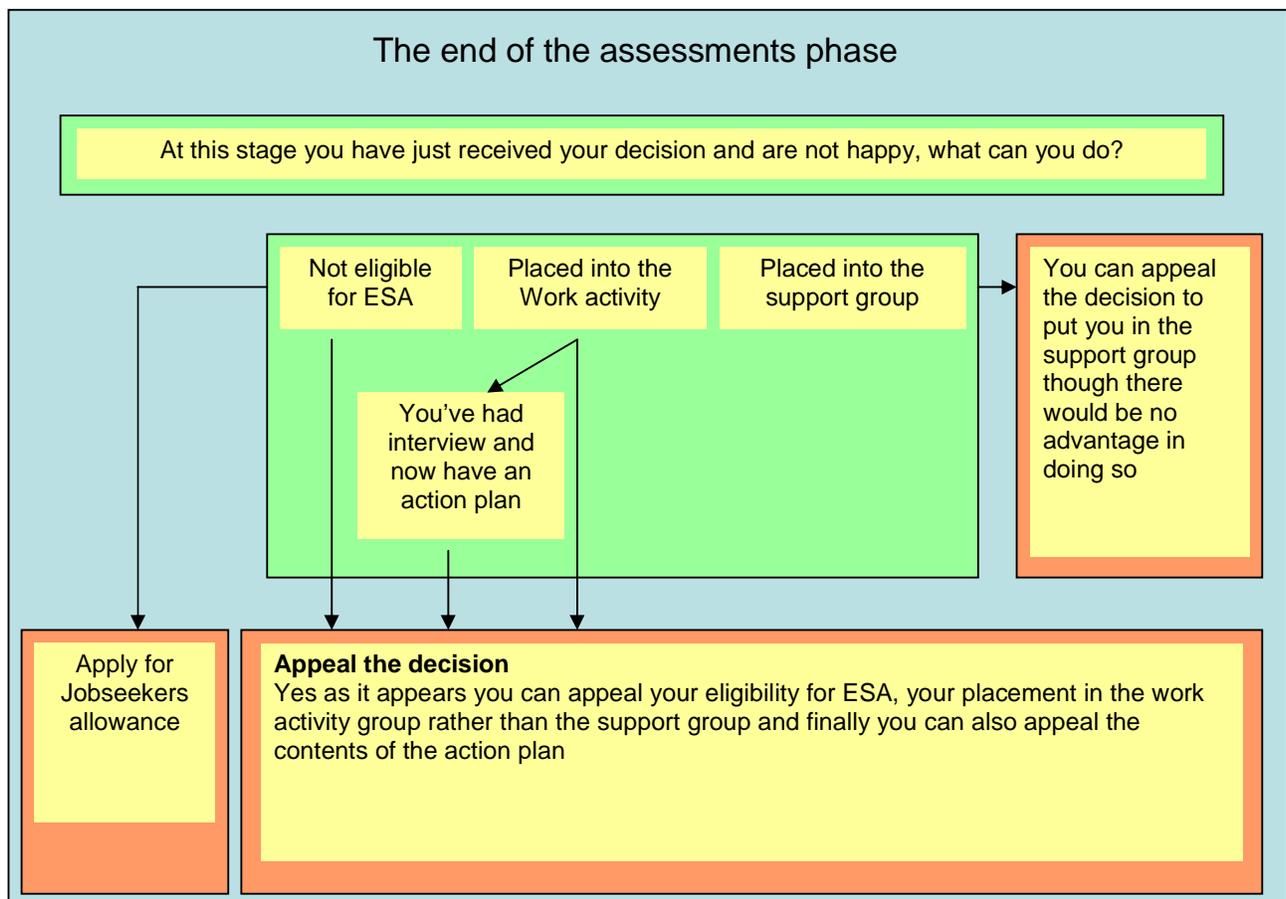
4.The final task will be the work focussed interview. This is expected to be held around week 8. The focus of this will be to see what you can do and to produce an action plan. The aim being that each month you will complete at least one task that counts as an activity.

5.It must be noted that in a number of cases the DWP are behind schedule so these timings may be different due to this.

After the assessment phase

After the assessment phase you will be notified if you are entitled to ESA and if you are in the support group or work focused group. You have the right to appeal these decisions. If you appeal you have one month to do so and take the case to an appeal tribunal if the DWP decides not to change its decision.

If you fail to be awarded ESA then you can claim Jobseekers allowance. The table below shows your options.



Appealing Employment Support Allowance decisions

You have the right to appeal both the decision as to whether you have enough points for ESA and also which group you are placed in. The timeframes are the same as other benefits for appealing in that you have one month from the date of a decision to appeal against it. You should appeal using the GL24 form which is available from jobcentres, the DWP and from the internet. If you wish to appeal then you will be looking to compare the descriptors which you will find on the following pages to see which descriptors you believe you should be awarded. You will then want to gather as much evidence as possible to send to the DWP or the Tribunal in order to prove that you deserve a different award.

If you are unable to find 15 points on the ESA list of descriptors, as a plan B you can argue that you fall within section 29 of the ESA regulations 2009. This is an exception where you can show that due to your disability there would be a substantial risk to your health or anyone else if you are found not to be eligible for ESA. The part of the regulation which is relevant is put below.

‘The claimant suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work.’

I have drafted a new factsheet regarding appealing which is available on our website which may assist you if you go to www.dls.org.uk and click on factsheets and download the **Employment Support Allowance Appeal Factsheet**.

Please find on the following pages in the appendixes the new descriptors for being awarded Employment Support Allowance. Please note that it is different from the old incapacity descriptors. As stated, you need to get 15 points worth of descriptors to be classified as incapable of work.

Appendixes (These are the new descriptors as of 28th March 2011)

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

Part 1- Physical disabilities

1. Walking with a walking stick or other such aid if such aid is normally used.

a. Cannot either:

- (i) Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion;
- (ii) Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion. **15**

b. Cannot mount or descend two steps unaided by another person even with the support of a handrail.

9

c. Cannot either:

- (i) Mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion;
- (ii) Repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion. **9**

d. Cannot either:

- (i) Mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion;
- (ii) Repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion. **6**
- (iii) Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used. **1**

e. None of the above apply **0**

2. Standing and sitting.

- a. Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person. **15**

- b. Cannot, for the majority of the time, remain at a work station, either:
 - (i) Standing unassisted by another person (even if free to move around); or
 - (ii) Sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion. **9**

- c. Cannot, for the majority of the time, remain at a work station, either:
 - (i) Standing unassisted by another person (even if free to move around); or
 - (ii) Sitting (even in an adjustable chair) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion. **6**

- d. None of the above apply. **0**

3. Reaching.

- a. Cannot raise either arm as if to put something in the top pocket of a coat or jacket. **15**
- b. Cannot raise either arm to top of head as if to put on a hat. **9**
- c. Cannot raise either arm above head height as if to reach for something. **6**
- d. None of the above apply. **0**

4. Picking up and moving or transferring by the use of the upper body and arms.

- a. Cannot pick up and move a 0.5 litre carton full of liquid. **15**
- b. Cannot pick up and move a one litre carton full of liquid. **9**
- c. Cannot transfer a light but bulky object such as an empty cardboard box. **6**
- d. None of the above apply. **0**

5. Manual dexterity

- a. Cannot either:
 - (i) Press a button, such as a telephone keypad; or
 - (ii) Turn the pages of a book with either hand. **15**
 - (iii)

- b. Cannot pick up a £1 coin or equivalent with either hand. 15
- c. Cannot use a pen or pencil to make a meaningful mark. 9
- d. Cannot use a suitable keyboard or mouse. 9
- e. None of the above apply. 0

6. Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.

- a. Cannot convey a simple message, such as the presence of a hazard. 15
- b. Has significant difficulty conveying a simple message to strangers. 15
- c. Has some difficulty conveying a simple message to strangers. 6
- d. None of the above apply. 0

7. Understanding communication by both verbal means (such as hearing or lip reading) and nonverbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person.

- a. Cannot understand a simple message due to sensory impairment, such as the location of a fire escape. **15**
- b. Has significant difficulty understanding a simple message from a stranger due to sensory impairment. **15**
- c. Has some difficulty understanding a simple message from a stranger due to sensory impairment. **6**
- d. None of the above apply. **0**

8. Navigation and maintaining safety, using a guide dog or other aid if normally used.

- a. Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment. **15**
- b. Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment. **15**
- c. Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment. **9**
- d. None of the above apply. **0**

9. Absence or loss of control leading to extensive evacuation of the bowel and/ or bladder, other than enuresis (bed- wetting) despite the presence of any aids or adaptations normally used

- a. At least once a month experiences:
 - (i) Loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or
 - (ii) Substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing. **15**

- b. At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly. **6**

- (c) None of the above apply. **0**

10. Consciousness during waking moments.

- a. At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. **15**

- b. At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. **6**

- c. None of the above apply. **0**

PART 2 - Mental, cognitive and intellectual function
assessment

11. Learning tasks.

- a. Cannot learn how to complete a simple task, such as setting an alarm clock. **15**
- b. Cannot learn anything beyond a simple task, such as setting an alarm clock. **9**
- c. Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes. **6**
- d. None of the above apply. **0**

12. Awareness of everyday hazards (such as boiling water or sharp objects).

- a. Reduced awareness of everyday hazards leads to a significant risk of: **15**
 - (i) Injury to self or others; or
 - (ii) Damage to property or possessions such that they require supervision for the majority of the time to maintain safety.
- b. Reduced awareness of everyday hazards leads to a significant risk of **9**
 - (i) Injury to self or others; or

- (ii) Damage to property or possessions such that they frequently require supervision to maintain safety.
- c. Reduced awareness of everyday hazards leads to a significant risk of:
 - (i) Injury to self or others; or
 - (ii) Damage to property or possessions such that they occasionally require supervision to maintain safety **6**
- (d) None of the above apply. **0**

13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).

- a. Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions. **15**
- b. Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time. **9**
- c. Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions. **6**
- d. None of the above apply. **0**

14. Coping with change.

- a. Cannot cope with any change to the extent that day to day life cannot be managed. **15**
- b. Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult. **9**
- c. Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult. **6**
- d. None of the above apply. **0**

15. Getting about.

- a. Cannot get to any specified place with which the claimant is familiar. **15**
- b. Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person. **9**
- c. Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person. **6**
- d. None of the above apply. **0**

16. Coping with social engagement due to cognitive impairment or mental disorder.

- a. Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual. **15**
- b. Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual. **9**
- c. Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual. **6**
- d. None of the above apply. **0**

17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.

- a. Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. **15**
- b. Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. **15**

- c. Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. 9
- d. None of the above apply. 0

SCHEDULE 3

ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK RELATED ACTIVITY

1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used. Cannot either:

- a. Mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or
- b. Repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

2. Transferring from one seated position to another. Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

- 3. Reaching. Cannot raise either arm as if to put something in the top pocket of a coat or jacket.**
- 4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule). Cannot pick up and move a 0.5 litre carton full of liquid.**
- 5. Manual dexterity. Cannot either:**
- a. Press a button, such as a telephone keypad; or
 - b. Turn the pages of a book with either hand.
- 6. Making self understood through speaking, writing, typing, or other means normally used. Cannot convey a simple message, such as the presence of a hazard.**
- 7. Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used. Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.**

8. Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used. At least once a week experiences:

- a. Loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or
- b. Substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.

9. Learning tasks. Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.

10. Awareness of hazard. Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:

- a. Injury to self or others; or
- b. Damage to property or possessions such that they require supervision for the majority of the time to maintain safety.

- 11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks). Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.**
- 12. Coping with change. Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.**
- 13. Coping with social engagement, due to cognitive impairment or mental disorder.
Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.**
- 14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder. Has on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.**

15. Conveying food or drink to the mouth.

- a. Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
- b. Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
- c. Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
- d. Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:
 - (i) Physical assistance from someone else; or
 - (ii) Regular prompting given by someone else in the claimant's presence.

16. Chewing or swallowing food or drink.

- a. Cannot chew or swallow food or drink;
- b. Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
- c. Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or

d. Owing to a severe disorder of mood or behaviour, fails to:

- (i) Chew or swallow food or drink; or
- (ii) Chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.

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For further advice on these matters please contact:

Disability Law Service

Telephone: **020 7791 9800**

Minicom: **020 7791 9801**

Fax: **020 7791 9802**

Email: **advice@dls.org.uk**

Website: **www.dls.org.uk**

Or write to us at: 39 – 45 Cavell Street, London E1 2BP

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