

ADM Chapter U2: ESA Limited Capability for Work and Limited Capability for Work-Related Activity

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Introduction U2001 - U2019

Introduction

U2001 The WCA describes the end to end medical process comprising of two elements to help the DM decide

1. whether a claimant has LCW and is entitled to ESA

2. whether a claimant who has LCW

2.1 also has LCWRA and is entitled to the support component **or**

2.2 does not have LCWRA and is entitled to the WRAC.

Benefits affected

U2002 Whether a claimant has LCW and LCWRA must be determined using the following guidance.

U2003 A determination on whether a claimant

1. has or does not have **or**

2. is to be treated as having or not having

LCW for entitlement to any benefit, allowance or advantage is conclusive for other decisions on any other benefit, allowance or advantage for the same period where LCW is relevant to entitlement to that benefit, allowance or advantage¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 40(1)

U2004 The benefits and allowances affected include ESA¹, JSA² and NI credits³.

1 ESA Regs 13; 2 WR Act 07, Sch 3, 12(6); 3 SS (Credits) Regs, reg 8B

Scope of this chapter and definitions

U2005 This chapter contains guidance on

- Determination of LCW (see U2020)
- Certain claimants to be treated as having LCW (see U2030)

- Evidence and Information required for determining LCW (see U2140)
- LCW assessment (see U2170)
- Exceptional circumstances (see U2310)
- Treated as having LCW until assessment (see U2350)
- Treated as not having LCW (see U2450)
- LCWRA (see U2610).

Meaning of a health care professional

U2006 A HCP means¹

- 1.** a registered medical practitioner **or**
- 2.** a registered nurse **or**
- 3.** a registered occupational therapist or physiotherapist².

1 ESA Regs 13, reg 2; 2 Health Act 1999, s 60

Meaning of claimant

U2007 Claimant means a person who has claimed ESA¹.

1 WR Act 07, s 24(1)

U2008 - U2019

Determination of limited capability for work U2020 - U2029

U2020 To be entitled to ESA a claimant must have LCW¹. This means that the claimant's capability for work is limited by their physical or mental condition and it is not reasonable to require them to work².

1 WR Act 07, s 1(3)(a); 2 s 1(4)(a) & (b)

U2021 The question of LCW must be decided first in the WCA process as this determines entitlement to benefit. The medical examination may be conducted in person, by telephone or by video. This part of the WCA process is referred to as the LCW assessment.

U2022 A claimant can be treated as having LCW pending a determination of LCW provided certain conditions are satisfied¹ (see U2350 et seq).

1 ESA Regs 13, reg 26

U2023 Certain claimants are treated as having LCW and do not have to undergo the LCW assessment¹ (see U2030). However some claimants who do not have to be assessed for LCW will still have to be assessed for LCWRA (see U2610 et seq).

1 ESA Regs 13, reg 16, 21 & 22

U2024 - U2029

Certain claimants to be treated as having limited capability for work

U2030 - U2139

[See Memo ADM 25/20]

[Certain conditions U2031 - U2049](#)

[Cancer treatment U2050 - U2069](#)

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[Claimants treated as having limited capability for work throughout a day U2100 - U2104](#)

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[Qualifying young claimants to be treated as having limited capability for work in certain circumstances U2120 - U2139](#)

U2030 A claimant is treated as having LCW if the claimant

1. satisfies certain conditions¹ (see U2031) **or**
2. is a hospital patient² (see U2070) **or**
3. is receiving certain treatments³ (see U2090) **or**
4. has LCW for part of a day⁴ (see U2100) **or**
5. has exceptional circumstances⁵ (see U2310).

1 ESA Regs 13, reg 16; 2 reg 21; 3 reg 22; 4 reg 23; 5 reg 25

Certain conditions

U2031 Claimants are treated as having LCW and do not have to undergo the LCW assessment if any of the circumstances in U2032 apply to them¹ unless they are treated as not having LCW because they are working² (see U2600 et seq).

1 ESA Regs 13, reg 16; 2 reg 37

U2032 For the purposes of U2031 the circumstances are that the claimant¹

1. is terminally ill (see U2035 et seq)

2. is

2.1 receiving **or**

2.2 likely to receive **or**

2.3 recovering from

treatment for cancer by way of chemotherapy or radiotherapy and the DM is satisfied that the claimant should be treated as having LCW (see U2050 et seq)

3. is known or reasonably suspected to be a carrier, or to have been in contact with a case, of a relevant infection or contamination and

3.1 is excluded or abstains from work in accordance with a request or notice in writing in accordance with legislation **or**

3.2 is otherwise prevented from working in accordance with legislation (see U2060)

4. is a pregnant woman (see U2061 et seq)

4.1 where there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work **or**

4.2 who is in the MAP and is entitled to MA **or**

4.3 whose EWC or ADC has been certified² on any day in the period

if she would have no entitlement to a MA or SMP were she to make a claim in respect of that period

4.3.a beginning with the first day of the 6th week before the EWC or the ADC, whichever is earlier **and**

4.3.b ending on the 14th day after the ADC

5. satisfies any of the descriptors in the LCWRA activities about

5.1 conveying food or drink to the mouth **or**

5.2 chewing or swallowing food or drink³

6. is entitled to UC and it has previously been determined following assessment under UC rules that they have LCW⁴.

1 ESA Regs 13, reg 16; 2 SS (Med Ev) Regs, reg 2(3);
3 ESA Regs 13, reg 30(2), (3) & (6) & Sch 3, para 15 or 16; 4 reg 16(1)(h); UC Regs, Part 5

U2033 - U2034

Terminally ill

U2035 “Terminally ill” is defined as a claimant who is suffering from a progressive disease and death in consequence of that disease can be reasonably expected within six months¹.

1 ESA Regs 13, reg 2

U2036 Claimants claiming under special rules are terminally ill as diagnosed by a GP or other HCP.

U2037 A claimant who is terminally ill and has made

1. a claim expressly on the ground of being terminally ill **or**

2. an application for supersession or revision expressly on the ground of being terminally ill

is entitled to the support component or WRAC without the assessment phase having ended¹. See ADM Chapter V6 for further details.

1 ESA Regs 13, reg 7(1)(a)

U2038 - U2049

Cancer treatment

U2050 A claimant can be treated as having LCW if¹

1. they are

1.1 receiving treatment for cancer by way of chemotherapy or radiotherapy **or**

1.2 likely to receive treatment as in **1.1** within six months after the date of the LCW determination
or

1.3 recovering from treatment as in **1.1 and**

2. the DM is satisfied that the claimant should be treated as having LCW and LCWRA.

U2051 The claimant is asked in the questionnaire (form ESA50) to ensure that their HCP completes page 20 of the form, giving details of the diagnosis, treatment including how long it is likely to last, and the expected recovery period, as well as an opinion on the effects on the claimant's ability to work. The claimant is asked to complete the form as normal if other health conditions are present.

Note: See U2455 et seq for guidance on when the claimant does not return the questionnaire.

U2052 The DM should take into account the debilitating effects of the treatment in U2050 **1.** when considering whether the claimant should be treated as having LCW. The presumption is that claimants who fall within U2050 **1.** will be treated as having LCW, where the cancer treatment has work limiting side effects, and those effects are likely to limit all forms of work.

Example 1

Martin is diagnosed with cancer of the oesophagus, and has a course of chemotherapy to reduce the size of the tumour. Once the treatment starts, Martin becomes too ill to work, and claims and is awarded ESA. He is referred for the WCA. In the ESA50, Martin's oncologist states that the chemotherapy will continue for 3 months, after which it is hoped to remove the tumour surgically. He will probably require a course of radiotherapy after that. The treatment so far has left Martin feeling very tired, nauseous and weak, as well as giving him difficulties with speaking, eating and drinking. The HCP recommends that Martin is treated as having LCW for 9 months, before referring for a further WCA to see if Martin's condition has improved. The DM accepts the advice, and determines that Martin has LCW.

Example 2

Jay has exploratory surgery as a day patient to remove a lump in his groin. He is diagnosed with non-Hodgkin's lymphoma. He starts a course of chemotherapy, and is awarded UC after the second treatment leaves him unable to work.

Jay is referred for the WCA. In the ESA50, his oncologist says that Jay will have up to 8 chemotherapy treatments by injection every three weeks. Jay is often too weak to get out of bed as a result of the treatment. He has loss of sensation in his hands and feet, and is prone to falling. He has twice been admitted to hospital for treatment for dehydration due to vomiting and diarrhoea. If the side effects continue, the chemotherapy treatment may stop and be replaced by radiotherapy over a longer period. He is likely to take at least six months to recover from the chemotherapy.

Medical advice is that Jay should be treated as having LCW, with a review after a year. The DM accepts the advice.

Example 3

Heather is diagnosed with primary breast cancer following a mammogram. She is admitted to hospital for surgery to remove the tumour, and is required to stay in hospital for 24 hours or longer. She claims

and is awarded ESA. Heather is referred for the WCA. On the ESA50, Heather's oncologist states that Heather will start a course of radiotherapy in about 4 weeks. The radiotherapy will be likely to make her very tired for several months as the treatment progresses, and after it has ended. The HCP recommends that Heather should be treated as having LCW for 6 months, with a further review to check on progress. The DM determines that Heather is treated as having LCW.

Example 4

Rachel has difficulties with mobility, standing and sitting and reaching as a result of generalised arthritis. A small spot on her nose is diagnosed as a melanoma or skin cancer. The melanoma is surgically removed under local anaesthetic. She claims and is awarded ESA.

Rachel is referred for the WCA. Her GP completes the statement in the ESA50 to say that Rachel had facial pain, bruising and swelling for two weeks after the surgery. She will be referred for a single session of radiotherapy, but this is unlikely to affect her ability to work. Rachel completes the rest of the questionnaire to give details about how her arthritis affects her ability to work.

Rachel is required to attend for medical examination. The HCP is of the opinion that Rachel does not satisfy any of the LCW descriptors, and should not be treated as having LCW, because although she is due to have radiotherapy treatment, this is not likely to have any debilitating effects. The DM accepts the advice, and determines that Rachel does not have, and is not treated as having, LCW.

U2053 - U2059

Meaning of relevant infection or contamination

U2060 The following definitions apply¹:

- 1.** in Scotland, the term "contamination" is the same as defined in legislation².
- 2.** in England and Wales, the term "infection or contamination" shall be read in accordance with legislation³.
- 3.** in Scotland, the term "infectious disease" is the same as defined in legislation⁴.
- 4.** in England and Wales, the term "relevant infection or contamination" means
 - 4.1** any incidence or spread of infection or contamination, in respect of which certain legislation applies⁵, for the purpose of preventing, protecting against, controlling or providing a public health response
 - 4.2** any disease, food poisoning, infection, infectious disease or notifiable disease to which certain legislation applies⁶
- 5.** in Scotland, the term "relevant infection or contamination" means

5.1 any infectious disease or exposure to an organism causing that disease, **or**

5.2 contamination or exposure to a contaminant to which certain legislation applies⁷.

1 SS (IW) (Gen) Regs, reg 11(2); ESA Regs 13, reg 16(2); 2 Public Health etc (Scotland) Act 2008, s 1(5);
3 Health and Social Care Act 2008, s 45A(3); 4 Public Health etc (Scotland) Act 2008, s 1(5);
5 Public Health (Control of Disease) Act 1984, Part 2A; 6 Public Health (Aircraft) Regulations 1979,
reg 9 & Public Health (Ships) Regulations 1979, reg 10; 7 Public Health etc (Scotland) Act 2008, s 56 to

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Pregnant women

U2061 A pregnant woman can be treated as having LCW in certain circumstances¹ (see U2032 **4.**).

1 ESA Regs 13, reg 16(d), (e) & (f)

U2062 “Sickness of pregnancy”, which can also be described as “emesis”, “hyperemesis”, “hyperemesis gravidarum”, or “morning sickness”, comes within the definition of a disease. This condition usually occurs between the 29th and 34th weeks before the EWC but can also be accepted outside that period when it may include a complication in the pregnancy.

Note: “Pregnancy” itself does not come within the definition of a disease.

U2063 Unless a woman can be treated as having LCW because of pregnancy as in U2032 **4.**, she should provide other evidence of LCW, for example

- 1.** a complication in the pregnancy **or**
- 2.** a medical condition not related to pregnancy.

U2064 - U2069

Hospital patient

U2070 Claimants are treated as having LCW where they are

- 1.** undergoing medical or other treatment as a patient in a hospital or similar institution **or**
- 2.** recovering from treatment as in **1.** and the DM is satisfied that the claimant should be treated as having LCW¹.

1 ESA Regs 13, reg 21(1)

U2071 Where a claimant attends a residential programme of rehabilitation for the treatment of drug or alcohol abuse, they are regarded as undergoing treatment as in U2040¹.

U2072 A claimant is regarded as undergoing treatment as in U2070 **1.** only where they have been advised by a registered medical practitioner to stay for a period of 24 hours or longer following that treatment¹. This applies even if the claimant disregards that advice and returns home.

Example

Sarah is admitted to hospital for surgery involving a general anaesthetic. She was told before the surgery that she should bring a night bag in case she has to stay overnight. Sarah's surgery goes well, and she is discharged the same day. As Sarah was not advised to stay overnight, she cannot be treated as having LCW. Sarah will need to be assessed for LCW in the normal way by completing a questionnaire and attending for medical examination if necessary.

U2073 "Day of recovery" means a day on which a claimant is recovering from treatment as a patient in a hospital or similar institution and the DM is satisfied that the claimant should be treated as having LCW on that day¹.

U2074 A hospital patient can be treated as having LCW even if admitted only for investigation of symptoms unless the investigation reveals that admission was due to another factor such as a personality disorder¹.

U2075

Future admission to hospital

U2076 Where

- 1.** on consideration of all the evidence after application of the WCA, the DM is of the opinion that the claimant would not have, or would not be treated as having, LCW **and**
- 2.** the HCP advises that the claimant is about to go into hospital for treatment within 21 days of the medical examination

the DM should defer making a determination as to whether the claimant has LCW until it is confirmed that the claimant has become a hospital in-patient.

Planned admission postponed

U2077 If

- 1.** the claimant is not admitted to hospital as planned **and**
- 2.** a new date for admission is provided **and**
- 3.** the claimant continues to provide evidence of LCW (see U2145 et seq)

the DM should continue to defer making a determination on LCW as in U2076.

Planned admission cancelled

U2078 Where a planned admission to hospital is cancelled and no new date is proposed, the DM should determine whether the claimant has LCW as normal.

U2079 - U2089

Receiving regular treatment

U2090 Claimants are treated as having LCW when they

1. receive

1.1. regular weekly treatment by way of haemodialysis for chronic renal failure **or**

1.2. treatment by way of plasmapheresis **or**

1.3. regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function¹ **and**

2. satisfy the condition in U2093²

unless they are treated as not having LCW because they are working³ (see U2360 et seq).

1 ESA Regs 13, reg 22(1); 2 reg 22(2); 3 regs 37

U2091 An explanation of the treatments in U2090 is in the Appendix to this Chapter.

U2092 Subject to U2093 a claimant referred to in U2090 is to be treated as having LCW during any week in which that claimant is engaged in treatment or has a day of recovery from that treatment¹.

1 ESA Regs 13, reg 22(1)

U2093 Claimants who receive the treatment in U2090 **1.** are only treated as having LCW from the first week of treatment where they have no fewer than

1. two days of treatment **or**

2. two days of recovery from that treatment **or**

3. one day of treatment and one day of recovery from that treatment

but the days of treatment or recovery or both need not be consecutive¹.

1 ESA Regs 13, reg 22(2)

U2094 The condition in U2093 must be satisfied during the period of the current claim for ESA. Where the condition was satisfied before the date of the current claim, and is not satisfied at the date of that claim, the claimant cannot be treated as having LCW under the regular treatment rules.

Example

Bill is receiving radiotherapy on one day a week, with a further day for recovery from the treatment. The treatment is changed so that he no longer needs a recuperation period. His SSP expires, and he claims ESA. He cannot be treated as having LCW because his regular treatment is only once a week. Later his condition deteriorates, and the radiotherapy treatment again means that he needs a subsequent day to recover. He is treated as having LCW from the first week after the date of claim in which he has two days of treatment including the day of recovery. Bill continues to be treated as having LCW as long as the treatment lasts, even if it reduces to one day.

U2095 There are no linking rules for periods of regular treatment. If

1. a claimant has been treated as having LCW as in U2090 **and**

2. entitlement to ESA ends (for example because the treatment ends) **and**

3. a further award of ESA is made from a later date when treatment begins again

the claimant must satisfy the condition in U2093 again before they can be treated as having LCW.

U2096 A “day of recovery” means a day on which the claimant is recovering from any of the forms of treatment listed at U2090 and the DM is satisfied the claimant should be treated as having LCW on that day¹.

1 ESA Regs 13, reg 22(3)

U2097 Where a claimant is

1. in receipt of ESA **and**

2. treated as having LCW as per U2092 **and**

3. working on any day during a week when he is receiving regular treatment or recovering from it

the work does not affect the claimant's entitlement to ESA¹. But the claimant is only paid ESA for the days of receiving or recovering from treatment if they are not days of work² (see ADM Chapter V1 for further guidance).

1 ESA Regs 13, reg 40; 2 reg 102

U2098 - U2099

Claimants treated as having limited capability for work throughout a day

U2100 If a claimant

- 1.** has LCW at the start of a day but becomes capable later that day **or**
- 2.** is capable of work at the start of the day but develops LCW during the day

the whole day is treated as a day of LCW if no work is done on that day¹.

Note: The exception to this would be where the night shift worker provision applies (see U2105).

1 ESA Regs 13, reg 23

U2101 The guidance at U2100 applies where there is a sudden onset of, or recovery from, an incapacitating condition. It does not provide that a claimant with a variable condition that incapacitates them for part of each day has LCW throughout the whole of every day.

U2102 When DMs determine that a claimant has LCW they can consider if this provision applies to treat the claimant as having LCW for the day at the beginning or end of the period of illness.

U2103 Even if a claimant is treated as having LCW under this provision any work that they do on that day or on another day in that week may mean that they are to be treated as not having LCW. A day cannot be a day of LCW if they have undertaken work on that day¹. The normal rules for exempt work² apply.

Note: For guidance on exempt work see ADM Chapter V3.

1 ESA Regs 13, reg 23; 2 reg 39

Example

If a claimant works 9am to 5pm from Monday to Friday, and on the Wednesday has an accident at work at 11am resulting in them being unable to continue with that day's work this will not be treated as a day of LCW. The first day of LCW will be the day following the accident if they do not return to work on that day.

U2104

Night shift workers

U2105 Night shift workers are claimants who work for a period of employment which begins on one day and extends over midnight into the next day. It is necessary to establish how many hours are worked before and after midnight. The hours of work on any other occasion are not relevant¹.

1 R(I) 31/55

U1206 The day on which the lesser hours are worked is treated as a day of LCW if¹

1. a claimant works on a night shift for a continuous period over midnight **and**
2. the claimant has LCW for the rest of that day.

1 ESA Regs 13, reg 24(1)

U2107 The second day of a night shift is treated as a day of LCW if¹

1. the hours before and after midnight are equal **and**
2. the night shift is at the beginning of the PLCW.

1 ESA Regs 13, reg 24(2)(a)

U2108 The first day of the shift is treated as a day of LCW if¹

1. the hours before and after midnight are equal **and**
2. the night shift is at the end of a PLCW.

1 ESA Regs 13, reg 24(2)(b)

U2109 The provisions do not apply to claimants whose employment lasts for more than 24 hours on either side of midnight¹. For example, it would not apply to continuous employment from 6 pm on Monday to 2 am on Wednesday. In this example the Wednesday cannot be treated as a day of LCW.

1 R(U) 18/56

U2110 A night worker paid by the shift is normally paid for a meal break and this should be included in the calculation of the total time worked.

U2111 A night worker paid by the hour is not normally paid for a meal interval. This should be deducted from the shift hours to arrive at the actual hours worked. The shift is still regarded as one continuous period of employment because the meal break is a normal break.

U2112 - U2119

Qualifying young claimants to be treated as having limited capability for work in certain circumstances

U2120 To help satisfy the condition relating to youth claimants can be treated as having LCW for days on which they are entitled to SSP¹ (see ADM Chapter U1).

1 ESA Regs 13, reg 29

U2121 - U2139

Evidence and information for limited capability for work U2140 - U2169

[Evidence U2145](#)

[Self-certification U2146 - U2159](#)

[Information U2160 - U2169](#)

U2140 Information or evidence is needed to determine whether a claimant has LCW¹.

1 ESA Regs 13, reg 17

U2141 - U2144

Evidence

U2145 Evidence of LCW should be provided for the day or days of LCW until the claimant has undergone the LCW assessment. Evidence may be¹

1. self-certification² (see U2146) **or**

2. a statement from a doctor³ (see U2148) **or**

3. if it is unreasonable to require such a statement, other evidence which is sufficient to show that the claimant is limited by their physical or mental condition and it is not reasonable to expect them to work because of some specific disease or bodily or mental disablement⁴.

1 ESA Regs 13, reg 17(1)(a); 2 SS (Med Ev) Regs, reg 5; 3 reg 2(1); 4 reg 2(1A)

Self-certification

U2146 Evidence of LCW for a spell of less than eight days, or for the first seven days of a longer spell, may be self-certification. Self-certification is only appropriate for the first seven days of a PLCW.

Note: Where PLCWs link (see ADM Chapter U1), a claimant can self-certify for the first seven days of each PLCW even if they are treated as a continuation of an earlier PLCW¹.

1 SS (Med Ev) Regs, reg 5(1)

U2147 A self-certificate is¹

1. a declaration made in writing by the claimant, in a form approved by the Secretary of State **or**

2. a verbal declaration by the claimant in such cases where the DM allows (for example where the claim to ESA is made by telephone).

Note: It should include the information that they have been unfit for work from a date or for a period. It may also include a statement that the claimant expects to continue to be unfit for work.

1 SS (Med Ev) Regs, reg 5(2)

Doctor's statements

U2148 A doctor's statement is a statement given in writing by a doctor. They are made on an approved form¹.

1 SS (Med Ev) Regs, reg 2(1) & Sch 1, Pt 2

U2149

Other evidence

U2150 Evidence other than on an approved form or from a registered medical practitioner can be accepted¹ if

1. it is unreasonable to require a doctor's statement **and**

2. the evidence shows that the claimant is unfit for work because of a disease or disablement.

1 SS (Med Ev) Regs, reg 2(1A)

U2151 The DM decides what is reasonable in each case. For example, evidence from alternative therapists such as chiropractors, osteopaths, etc can be accepted if the claimant is usually treated by them as well as, or instead of, a GP.

U2152 Depending on the circumstances¹ a declaration that a claimant is incapable of following a particular occupation and is receiving non-medical treatment such as Christian Science treatment (i.e. treatment through prayer) may be sufficient proof of LCW.

1 R(S) 9/51

U2153 An employer's certificate which only confirms absence from work is not sufficient evidence¹.

1 R(S) 13/51

U2154 - U2159

Information

U2160 The DM can ask for any additional information to help determine whether a claimant has LCW¹.

Note: See U2192 – U2194 for guidance on the role of medical services in information gathering.

1 ESA Regs 13, reg 17(1)(c)

U2161 Any information relating to the claimant's ability to perform certain activities¹ may be requested in the form of a questionnaire² unless

1. there is already sufficient information to determine the question³ **or**

2. a claimant is to be treated as having LCW⁴ because they

2.1 satisfy certain conditions (see U2031) **or**

2.2 are a hospital patient (see U2070) **or**

2.3 receive certain treatments (see U2090).

1 ESA Regs 13, reg 15 & Sch 2; 2 reg 17(1)(b); 3 reg 17(2); 4 reg 17(3)

U2162 - U2169

Limited capability for work assessment U2170 - U2309

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Introduction

U2170 The LCW assessment is the part of the WCA process that assesses LCW. It will normally be completed during the assessment phase of ESA¹ and determines entitlement to benefit beyond the assessment phase.

1 WR Act 07, s 8(1) & (2)

U2171 Whether a claimant's capability for work is limited by their physical or mental condition and the limitation is such that it is not reasonable to require that claimant to work is determined on the basis of a LCW assessment¹.

1 ESA Regs 13, reg 15(1)

U2172 Satisfying the LCW assessment depends on the ability to perform certain functions reliably and repeatedly¹.

1 ESA Regs 13, reg 15(2)

U2173 When assessing the extent of the claimant's LCW, it is a condition that the claimant's inability to perform¹

1. physical descriptors² arises

1.1 from a specific bodily (i.e. physical) disease or disablement **or**

1.2 as a direct result of treatment by a registered medical practitioner for such a condition **and**

2. mental descriptors³ arises

2.1 from a specific mental illness or disablement **or**

2.2 as a direct result of treatment by a registered medical practitioner for such a condition.

1 ESA Regs 13, reg 15(5); 2 Sch 2, Part 1; 3 Sch 2, Part 2

Example 1

Brian suffers from rheumatoid arthritis in his hands and knees, and claims ESA. In the questionnaire Brian states that due to cognitive and mental impairment he has difficulty with learning tasks, awareness of hazards and completing personal actions. At the medical examination, Brian explains that the high level of painkillers he takes for his arthritis makes him too tired to concentrate. The HCP advises that Brian is mentally disabled by the medication, but not sufficiently to satisfy any mental health descriptors. Brian scores 6 points for mobility problems.

Example 2

Rita is injured in an accident which leaves her with significant mobility problems and facial scarring. Rita also suffers from depression and social anxiety disorder as a result of the accident. Meeting people outside her immediate family brings on a panic attack, so she avoids this. She scores 6 points for mobility problems arising from her physical health condition, and 9 points for coping with social engagement arising from her mental health condition.

Example 3

Ailsa suffers from mechanical back pain. She states that she has difficulties with mobilising as well as getting about unless she has someone with her. The HCP advises that Ailsa's need for assistance with getting about is only due to her physical problems. The DM determines that Ailsa does not score any points for mental health descriptors.

U2174 Certain claimants can be treated as having LCW without undergoing the LCW assessment (see U2030).

U2175 Claimants who are not treated as having LCW as in U2174 and so have to undergo the LCW assessment can be treated as having LCW pending actual assessment, provided certain conditions are satisfied¹ (see U2350 et seq).

1 ESA Regs 13, reg 26

U2176 As part of the assessment, claimants who are not treated as having LCW may be required to complete a questionnaire (see U2161) and if necessary attend a medical examination, which may be conducted in person, by telephone or by video. If they fail without good cause to do either, they can be treated as not having LCW¹ (see U2450 et seq).

U2177 A claimant will have LCW if, by adding the points scored against any descriptor, a score of at least 15 points is reached¹ (see U2218).

1 ESA Regs 13, reg 15(3)

U2178 - U2189

Application of the assessment

U2190 The questionnaire is not required¹ if the claimant

- 1.** satisfies certain conditions² (see U2032) **or**
- 2.** is a hospital patient³ (see U2070) **or**
- 3.** receives certain treatment⁴ (see U2090) **or**
- 4.** the DM is satisfied that there is sufficient information to decide whether a claimant has LCW without it.

All other claimants will be sent the questionnaire (ESA50) during the assessment phase of their award of ESA.

1 ESA Regs 13, reg 17; 2 reg 16; 3 reg 21; 4 reg 22

U2191 The questionnaire is designed for the claimant to give as much information about their condition, how it affects them in their daily functioning, and how they manage their condition.

U2192 Medical services will

- 1.** scrutinise evidence regarding a claimant's condition and give an opinion as to whether
 - 1.1** they are treated as having LCW
 - 1.2** in second or subsequent referrals they actually have LCW without requiring a LCW assessment
- 2.** provide impartial medical advice on request.

U2193 Medical services are responsible for gathering any information required to support the WCA process. This includes

- 1.** sending the questionnaire (ESA50)

2. sending a reminder if the claimant does not reply within three weeks
3. deciding if further medical evidence is required from the claimant's GP or HCP.

U2194 Medical services will arrange for a HCP to provide an opinion on LCW on either an

1. ESA85 if the claimant has been examined **or**
2. ESA85A if the claimant has not been examined.

U2195 Medical services will provide an independent medical opinion on the claimant's condition, functionality and their ability to perform activities related to work. They do not provide a diagnostic examination. Their focus is on a claimant's abilities rather than their disabilities. HCPs should provide relevant information and good justification for their recommendations with regard to LCW.

U2196 In the main, medical reports will be completed electronically. There is no requirement for the report to be signed by the examining HCP¹. However the report must identify the status of the HCP, i.e. whether he/she is a doctor or a registered nurse.

1 R(IB) 7/05

U2197 The personalised summary statement forms part of the report form ESA85 where that is produced electronically, and is also produced as a separate form ESA85(S). It is part of the evidence considered by the DM when making determinations as to whether the claimant has LCW, and if so, whether they have LCWRA.

U2198 The personalised summary statement is a statement of facts and findings made by the HCP, and is personal to the claimant. It gives the HCP the opportunity to

1. justify their recommendation on the LCW and LCWRA activities and descriptors **and**
2. explain where the recommendation conflicts with the claimant's view of their condition.

U2199 The personalised summary statement should refer to all of the claimant's health conditions, and consider the combined impact where multiple conditions are present. This should reflect the consensus of medical opinion. It should not introduce new information not already in form ESA85.

U2200 The questionnaire, the medical report, and any other medical evidence obtained by medical services, are referred to the DM to consider whether the claimant has LCW. There may be differences between the answers from the claimant and the HCP.

Example

On the questionnaire Kevin indicates he can walk on level ground but cannot walk 200 metres. He also indicates on the form that he can walk about 50 metres before he has to stop due to severe pain. On the medical report the HCP should collect more evidence to identify the actual distance the claimant can

walk and the amount of pain and discomfort experienced and how that affects the daily functioning.

The DM then considers the merit of each answer and any other evidence to determine an overall score. As with all evidence DMs have to decide what weight to give to the content of the medical report.

Note: The report should be read as a whole and any concerns over inconsistent or improbable entries addressed before a determination of LCW is made.

U2201 There should be no changes made to the content of the medical report other than of a very minor nature e.g. a typing error, and these are to be carried out by the same HCP who completed the original wherever possible. It is permissible for another approved HCP to make the amendment, having consulted the author of the original report, for example to avoid unnecessary delay. However the HCP making the amendment should make it clear that it has been made following consultation. Any other additions or alterations should be provided in a separate document.

U2202 A claimant may not have returned a questionnaire. The DM can proceed without it if satisfied that there is sufficient information for a determination to be made whether the claimant has LCW without it¹. For example the claimant is considered to be in a vulnerable group, i.e. there is a diagnosis of a mental health condition. A decision to treat as not having LCW due to non-return of the questionnaire would not be made but the claimant referred for assessment.

1 ESA Regs 13, reg 17(2)

U2203 The medical report includes an opinion of a HCP approved by the Secretary of State on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a claimant can be treated as having LCW if they do not satisfy the test from the descriptors¹ (see U2323 et seq).

1 ESA Regs 13, reg 25

U2204 - U2209

Qualifying conditions

U2210 The LCW assessment is an assessment of the extent of a claimant's LCW because of some specific bodily disease or disablement, a specific mental illness or disablement or as a direct result of treatment provided by a registered medical practitioner for such a disease or disablement to perform specified **activities**¹. The performance of activities is measured by **descriptors** the points from which have to reach a set total for the claimant to have LCW². If the required number of points is not reached the claimant does not have LCW. The test is the ability to perform any work, not a specific occupation.

1 ESA Regs 13, reg 15(2) & Sch 2, Column 1; 2 reg 15(3) & Sch 2, Column 2

U2211 The level of each activity is measured by points. Part 1 contains activities characterising physical

function which are broken down into descriptors. Part 2 contains activities characterising mental, cognitive and intellectual function which are also broken down into descriptors. The extent to which a claimant can or cannot carry out an activity is determined by which descriptor applies to that claimant.

U2212 - U2214

Calculation of score

U2215 Where a claimant meets a descriptor points will be awarded corresponding to that descriptor.

U2216 Where more than one descriptor specified for an activity applies to a claimant, only the descriptor with the highest score in respect of each activity which applies can be counted¹.

1 ESA Regs 13, reg 15(6)

U2217 Other than as in U2241, there is no scoring limitation based on the claimant's specific disease or bodily disablement. So, for example, a claimant who cannot walk up and down 2 steps even with the support of a handrail because of their defective sight can score points both for the activity of vision and that of walking¹.

1 R(IB) 3/98

U2218 A claimant has LCW when

1. one or more of the descriptors in the physical disabilities¹ or mental, cognitive and intellectual functions² apply **and**

2. a total is reached of at least 15 points³ from the descriptors

2.1 specified in Part 1 **or**

2.2 specified in Part 2 **or**

2.3 in both categories.

1 ESA Regs 13, Sch 2, Part 1; 2 Sch 2, Part 2; 3 reg 15(3)

U2219 - U2229

Use of prostheses, aids and appliances

U2230 A claimant is assessed

1. as if fitted with or wearing any prosthesis with which they are normally fitted (such as an artificial limb) or normally wear **and**

2. as if wearing or using any aid or appliance which is normally, or could reasonably be expected to be, worn or used (such as a hearing aid)¹.

1 ESA Regs 13, reg 15(4)

U2231 The DM should apply the following principles:

- 1.** where a claimant normally uses an aid or appliance, they must be assessed as if they were using it
- 2.** if an aid or appliance has been prescribed or recommended by a person with appropriate expertise, the claimant must be assessed as using it unless it would be unreasonable for them to use it
- 3.** if a claimant does not use an aid or appliance, and it has not been prescribed or recommended, the claimant must be assessed as if using it if

3.1 it is normally used by people in the same circumstances acting reasonably **and**

3.2 it would be reasonable for the claimant to use it.

U2232 Where U2231 **3.** applies, the DM must explain how an aid or appliance would help the claimant.

General application

U2233 The test of normal use of an aid or appliance applies to the assessment of all of the physical activities in the WCA¹. It is not restricted to those activities that make specific reference to aids or appliances.

1 ESA Regs 13, reg 15(4) & Sch 2, Part 1

U2234 Four of the LCW physical activities¹ refer specifically to the use of aids. Activity 1 (mobilising), Activity 7 (understanding communication), Activity 8 (navigation), and Activity 9 (continence), all refer to aids that are normally or could reasonably be used. The DM should apply the test in a way that displays consistency between the WCA as a whole and the assessment of each descriptor in particular.

1 ESA Regs 13, Sch 2, Part 1

Aid or appliance prescribed or advised

U2235 The DM should establish whether the claimant normally uses an aid or appliance, and if not, whether the use of it has been prescribed or advised.

U2236 If the claimant does not have an aid or appliance which they have been prescribed or advised to use, the DM should establish

- 1.** whether it would help the claimant

2. why they are not using one

3. whether the explanation is reasonable.

Example 1

Billy has been advised by his GP to use a walking stick to help with balance problems when walking and standing. He states that he doesn't like the idea of a walking stick because it makes him look old. The DM considers that it would be reasonable to expect Billy to use a walking stick, and assesses LCW and LCWRA as if he is using it.

Example 2

Annie lives in a one bedroom apartment on the upper storey of a two storey block. There is no lift. She has been advised by her GP that a wheelchair would help her to mobilise over longer distances and that a wheelchair could be provided on request. Annie states that she could not get a wheelchair into her apartment, and could not store a wheelchair, either in her apartment or elsewhere. The DM considers that it would not be reasonable to expect Annie to use a wheelchair, and assesses LCW and LCWRA without it.

Aid or appliance not prescribed or advised

U2237 The WCA should be applied in the context of a notional employer in a modern workplace who is prepared to make reasonable adjustments¹ to enable the claimant to work.

1 Equality Act 2010

U2238 **All** the circumstances of the individual claimant should be taken into account when considering whether it would be reasonable to assess them as using an aid or appliance that has not been prescribed or that they have not been advised to use. An example would be whether it would be reasonable to expect a claimant to mobilise using a manual wheelchair¹.

1 [2015] AACR 5

U2239 Factors include whether

1. the claimant possesses the aid or appliance
2. the claimant was given specific medical advice about managing their condition, and it is reasonable for them to continue following that advice (see U2250)
3. the claimant would be advised to use an aid or appliance if they raised it with the appropriate authority such as a GP or occupational therapist (advice may only be given on request)
4. it is medically reasonable for them to use an aid or appliance

5. the health condition or disability is likely to be of short duration
6. an aid or appliance is widely available (see U2253)
7. an aid or appliance is affordable in the claimant's circumstances (people are not routinely required to buy equipment where it can be prescribed.)
8. the claimant is able to use and store the aid or appliance (see U2252)
9. the claimant is unable to use an aid or appliance due to their physical or mental health condition, for example they are unable to use a walking stick or manual wheelchair due to a cardiac, respiratory, upper body or mental health condition.

Example 1

Miranda has significantly reduced mobility due to arthritis of the right hip and is on the waiting list for a hip replacement. She uses a walking stick to help with balance, but this does not enable her to walk any further than 200 metres before she experiences pain. She has not been advised to use a wheelchair. The HCP advises that she has no other health problems, and in their opinion based on clinical experience, would be provided with a manual wheelchair if she asked her consultant about this. If she had a wheelchair, she would be able to mobilise over longer distances. The DM decides that it would be reasonable, having considered all relevant factors, for Miranda to use a manual wheelchair, and that none of the Activity 1 descriptors apply.

Example 2

Gary has problems standing due to a condition which affects his balance. He would normally be helped by the use of a walking stick. However, the HCP advises that due to arthritis of the hands, Gary would have difficulty using a stick because he has reduced grip. The DM determines that it would not be reasonable to assess Gary taking a walking stick into account.

U2240 Where it is considered that the claimant should be assessed using an aid or appliance they do not have, the DM must give a clear explanation of how it could help the claimant. In the majority of cases the HCP will give advice on their use in the medical report. If not, or if the advice is not clear, the DM should seek further advice as to how reasonable it is to expect the claimant to use or benefit from the aid or appliance.

U2241 The aid or appliance must be relevant to the activity being assessed. For example, when assessing activity 5, manual dexterity, it is not appropriate to consider the use of devices, such as a grabber, which substitute for the hands, other than prosthetic hands. DMs are additionally reminded that some activities and descriptors specify that the person must be assessed without the help of another person.

U2242 - U2249

Use of manual wheelchair

Medical factors

U2250 All medical considerations affecting an ability to use a manual wheelchair need to be taken into account, including any potential consequences such as muscle wasting. However, it should be noted that use of a wheelchair need only be for short distances and for limited periods.

Note: See U2239 **2.** - **5.** and **9.** for examples of medical factors which should be considered.

U2251 These considerations apply to all aspects of using a manual wheelchair, including getting in and out, propelling, and being able to control it. It may be that some of the reasons for not being able to use a wheelchair are relevant to other functional descriptors, for example inability to move from one seated position to another unaided.

Home environment

U2252 The claimant's domestic environment is potentially relevant – see U2239 **8.**. However, given

- 1.** the underlying purpose of the WCA **and**
- 2.** the circumstances in the modern workplace

an inability to use or store the wheelchair at home, due to factors such as inaccessible doors or stairs, is unlikely to be important, as the wheelchair could be stored at the workplace as part of the employer's duty to make reasonable adjustments.

Availability of manual wheelchairs

U2253 The availability of manual wheelchairs is a question of fact requiring evidence of how they could be obtained, including local knowledge. There is no requirement for an NHS wheelchair assessment before considering whether the claimant could reasonably use a manual wheelchair, although such evidence would be useful if it existed.

U2254 It should be possible for the Secretary of State to

- 1.** provide evidence about ways of obtaining inexpensive manual wheelchairs, such as from private companies or charities, if one is required to enable the claimant to work **or**
- 2.** ensure that the availability of manual wheelchairs is not an issue through a DWP scheme.

U2255 The DM will therefore need to explain in decisions, and responses to the FtT, how the claimant could obtain a manual wheelchair if that is required to enable them to take up employment.

Evidence

U2256 The DM should consider requesting advice from disability employment advisers about what

provision is available in the claimant's area, including under any DWP Scheme, such as Access to Work, or the Flexible Support Fund, that would enable the claimant to take up an offer of employment.

U2257 For more generic evidence, the FtT could be referred to on-line NHS or local authority guidance about provision of wheelchairs. The DM should also consider whether a manual wheelchair could be made available on rental terms.

Reasons for DM's decision

U2258 DMs in decisions, and responses to the FtT, should explain, based on evidence specific to the claimant, and generic published evidence, why it is considered that

- 1.** it is reasonable to assess the claimant's ability to mobilise with a manual wheelchair if they do not have one **and**
- 2.** the use of a manual wheelchair by the claimant promotes the underlying purpose of ESA.

U2259 The underlying purpose of ESA is to assess a person's functionality i.e. what they can do in the modern workplace, and enable them to engage in the labour market where appropriate. People who can use aids such as a manual wheelchair to mobilise, if working in a fully accessible area, are not limited in their capability for some types of work if they are unable to walk. Manual wheelchairs are widely available. It is therefore reasonable to assess a person as if using a manual wheelchair for the required distances where appropriate.

Example 1

Vincent has mobility problems after an accident at work affecting his right foot. He also suffers from asthma, diabetes and depression. He claimed ESA after being medically retired from his job as a van driver. At the face-to-face assessment, Vincent told the HCP that the pain in his ankle stopped him from walking more than short distances using crutches. He went round the supermarket slowly leaning on a shopping trolley, or using an electric wheelchair trolley. When on holiday recently he had been given a wheelchair to get around the airport which his wife had pushed, and he spent his holiday at the hotel or on coach trips. He had not asked to be assessed for a wheelchair as he had nowhere to keep it; he lived in a first floor flat over a shop.

The HCP advises that Vincent has no upper body problem, and the asthma and diabetes are controlled by medication. He should not have any difficulty using a manual wheelchair independently for more than 200 metres. Although Vincent claimed he had problems with standing and sitting, he was able to sit for more than an hour without significant discomfort. His depression is treated with mild anti-depressants, and did not affect his functions to the extent that any mental or cognitive descriptor applied. The DM determines that it was reasonable to assess Vincent's mobility as if he had a manual wheelchair, and there was no reason why he could not obtain one through the NHS wheelchair service if he needed one to use at work, where it could be stored. Vincent is found not to have LCW, and his ESA award is terminated.

Example 2

Sasje suffered from injuries to her head and legs in a road traffic accident. She claimed ESA after being discharged from hospital. At the face-to-face assessment, her mother told the HCP that Sasje is still unable to walk more than a few steps. She pushes Sasje about in a manual wheelchair supplied by the NHS wheelchair service. Sasje was not given a self-propelled wheelchair, as the wheelchair assessment had identified that she had poor road safety and spatial awareness, possibly as a result of the head injury.

The DM accepts the HCP's recommendation that Sasje is unable to mobilise 50 metres without help, and also requires supervision when in the wheelchair to ensure she does not put herself or others in danger. The DM determines that Sasje satisfies Sch 2 Activity 1(a)(i) (15 points) and 12(c) (6 points), as well as Sch 3 Activity 1(a). She is placed in the support group.

U2260 - U2269

Determination of the limited capability for work assessment

U2270 The DM determines whether the assessment is satisfied from

1. the questionnaire if one is available (see U2161) **and**
2. a statement from the GP¹ if one is available **and**
3. the medical report of the claimant's ability to perform the specified functions **and**
4. the personalised summary statement **and**
5. any other relevant evidence.

1 SS (Med Ev) Regs, reg 2(1)

U2271 The normal principles apply to considering the evidence (see ADM Chapter A1).

U2272 The LCW assessment does not have to be satisfied in respect of each day¹. A claimant should satisfy the test throughout a period. A claimant whose condition varies from day to day and who would easily satisfy the LCW assessment on three days a week and would nearly satisfy it on the other four days might have LCW for the whole week.

1 R(IB) 2/99

U2273 A claimant may have long periods of illness separated by periods of remission lasting some weeks, during which he or she suffers no significant disablement; such a claimant might have LCW during the periods of illness but not have LCW during the periods of remission. This is so even if the periods of illness are longer than the periods of remission¹.

1 R(IB) 2/99

U2274 The test of whether a claimant cannot perform an activity is not whether or not they are physically incapable of performing it. Matters such as pain, discomfort and repeatability are taken into account. A claimant is not capable of carrying out an activity if they can only do so with severe pain or, if having done it once, they are unable to repeat it for hours or days. The extent of a claimant's ability to repeat the activity in a single stretch and of the intervals at which the claimant would be able to repeat the performance should be identified. A decision can then be made on whether the claimant can perform the relevant descriptor with reasonable regularity.

U2275 There is no specific requirement that a claimant must be able to perform the activity in question with "reasonable regularity". Even so regard should be had to some such concept. The real issue is whether, taking an overall view of the claimant's limited capability to perform the activity in question, they should reasonably be considered to be incapable of performing it. The fact that they might occasionally manage to accomplish it, would be of no consequence if, for most of the time, and in most circumstances, they could not do so¹.

1 R(IB) 2/99

U2276 Where relevant descriptors are expressed in terms that the claimant "cannot" perform the activity, one should not stray too far from an arithmetical approach that considers what the claimant's abilities are most of the time¹.

1 R(IB) 2/99

U2277 Descriptors which state that "none of the above apply" to their ability to carry out the activity or where they do not apply mean that the claimant has no problem performing the activity or has less of a problem than would satisfy any of the other descriptors for that activity.

Example

Activity 1 descriptor (e) is "None of the above applies". Descriptor (d) is "Cannot, unaided by another person, either

(i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or

(ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion."

"None of the above applies" means the claimant has no mobilising problem, or less of a problem than would satisfy the penultimate descriptor 1(e) and would score no points for that activity.

U2278 Where a descriptor refers to a claimant being able to use a tool or implement, the use referred to is the use to which the tool or implement is normally put. The activity relates to hand function and is intended to reflect the ability to manipulate objects in order to carry out work-related tasks.

Example

Ability to use a pen or pencil is intended to reflect the physical use of the object not reflect a claimant's level of literacy. The same concept applies to the use of a computer keyboard or mouse.

U2279 The DM should decide which descriptor applies to each activity. Provided the determination is sufficiently supported by evidence, for each activity the DM can select the descriptor from the medical report (ESA85), the evidence provided by the claimant (including the ESA50 questionnaire), or a different descriptor. Satisfaction of the test is decided on the total number of points from the final selection of individual descriptors (see U2177).

U2280 The DM must record the final scores for each descriptor and the reasons for the decision. Guidance on burden of proof is in ADM Chapter A1.

U2281 If the required number of points is not reached a claimant does not have LCW¹.

1 ESA Regs 13, reg 15(3)

U2282 - U2289

Determining limited capability for work afresh

U2290 Where it has been determined that a claimant

1. has LCW **or**

2. is treated as having LCW

2.1 in certain conditions (see U2031) **or**

2.2 as a hospital patient (see U2070) **or**

2.3 due to receiving certain regular treatment (see U2090) **or**

2.4 in exceptional circumstances (see U2310) **or**

the DM can determine afresh whether the claimant still has LCW¹.

1 ESA Regs 13, reg 15(7)

U2291 U2290 applies where¹

1. the DM wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition **or**

2. the DM wishes to determine whether the previous determination was made in ignorance of, or based on a mistake as to some material fact **or**

3. at least 3 months have passed since the date of the previous determination.

1 ESA Regs 13, reg 15(8)

Second or subsequent referrals

U2292 The medical report also includes advice on the period of time that should pass before a claimant is reconsidered for the next WCA process. This advice is given in all cases but the DM can determine afresh whether the claimant still has LCW in prescribed circumstances (see U2290). This may be at a different time to the advice given on the medical report.

U2293 In second and subsequent referrals medical services will

- 1.** provide confirmation of the assessments which reach or exceed the threshold to satisfy LCW **or**
- 2.** arrange for a HCP to examine all claimants who do not reach the threshold and provide a medical report on their ability to perform the specified activities **or**
- 3.** provide a recommendation on whether they fall into the support group criteria (see guidance in U2610 et seq).

U2294 Not all claimants require a LCW assessment in subsequent referrals. Medical services will decide if LCW can be assessed on scrutiny of the available evidence. However it may be necessary to call the claimant for examination on subsequent referrals to assess LCWRA (see U2732).

Recommendation by First-tier Tribunal

U2295 In cases where the claimant has been successful at appeal, the FtT may recommend when the claimant should next be referred for a WCA. This should only be altered where there is strong justification.

U2296 The DM should apply the recommendation of the FtT as to when the next WCA should take place, from the date of the original decision unless the FtT specifies otherwise. This is because the FtT was looking at the claimant's circumstances as at that date¹ and not the date of the hearing. However, where the FtT advises that the next WCA should take place on a date calculated from the date of the FtT hearing then the DM should accept that.

1 SS Act 98, s 12(8)(b)

Example 1

Judy's appeal has been upheld by the FtT and as a result she is entitled to ESA. The appeal hearing took place on 2.6.14. Judy's claim to ESA was made on 3.3.14. In making its decision the FtT has indicated that

Judy should have another WCA in 12 months time but without specifying from which date. The DM decides that for Judy, the next WCA should be in March 2015 because this is 12 months from the date of the decision under appeal.

Example 2

Alex's appeal against the DM's decision that he was not entitled to ESA on the grounds of not having LCW has been allowed by the FtT on 11.9.14. The DM has implemented the decision of the FtT that Alex is entitled to ESA. In making its decision, the FtT has indicated that Alex's next WCA should be 12 months from the date of the hearing. The DM accepts this and preparations are made for Alex to have his next WCA in 12 months time in September 2015.

U2297 Where a claimant's appeal to the FtT is successful, there should be a minimum period of eight months between the date of the appeal decision and a subsequent WCA, unless

- 1.** there are good grounds for believing that an earlier review is required **or**
- 2.** the FtT has recommended a longer review period.

U2298 Where the FtT recommends that the next WCA should take place at a date earlier than the minimum review period then the DM should, unless there are good reasons not to, apply the minimum review period. Where the FtT recommends a review period which is in excess of the minimum review period then the DM should abide by that recommendation.

Example 1

Alex's appeal against the DM's decision that he was not entitled to ESA on the grounds of not having LCW has been allowed by the FtT on 1.9.14. The DM has implemented the decision of the FtT that Alex is entitled to ESA. In making its decision, the FtT has indicated that Alex should have a second WCA nine months from the date of the appeal hearing. The DM also accepts this and preparations are made for Alex to have his next WCA in nine months time in June 2015.

Example 2

Ben's appeal at the FtT has been successful. The hearing was held on 10.10.14. In making its decision, the FtT did not indicate when Ben should have his next WCA. The DM decides that for Ben, the WCA process should commence in June 2015 with a recall notice being issued in April 2015. In doing so the DM has applied an eight month minimum review period between the FtT hearing and the next WCA.

U2299 There may be occasions where, for example, following a successful appeal the FtT recommends that the next WCA should take place in 24 months time but it has already taken 20 months for the appeal to be heard. As the FtT recommendation is applied from the original date of decision unless otherwise stated, without applying the minimum review period the claimant will be reviewed in four months time. However by applying the minimum review period between a successful appeal hearing and the next WCA the customer will not be seen until eight months time.

Example

Nazyah's claim for ESA was refused on 20.7.12. She appealed against the decision and the appeal was finally heard on 7.10.14. The appeal was allowed by the FtT and it was recommended that Nazyah should have her next WCA in 18 months time. As the Tribunal recommendation is applied from the original date of decision, in this case 18 months from July 2012 would result in Nazyah being seen in January 2015. To ensure Nazyah is not seen within three months of a successful appeal a minimum review period of eight months is applied meaning Nazyah will not be seen for her next WCA until June 2015.

U2300 DMs should, unless there are circumstances which indicate otherwise, use a minimum period of eight months as the point when the claimant should undertake a subsequent WCA following a successful appeal. This means that recall notices should be issued after six months inviting claimants to attend a WCA.

U2301 There may be circumstances where it will be reasonable to request that the claimant has another WCA within a shorter time frame than the minimum period of eight months. For instance, there may have been a change of circumstances affecting the claimant's health since the original decision and the DM may wish for a claimant to have another WCA in order to assess the situation.

U2302 - U2309

Exceptional circumstances U2310 - U2349

Uncontrolled or uncontrollable disease U2315 - U2319

Substantial risk U2320 - U2349

U2310 Claimants who do not satisfy the LCW assessment by having enough points must be treated as having LCW¹ if they

1. are suffering from a life threatening disease for which

1.1 there is medical evidence (see U2316) that the disease is uncontrollable, or uncontrolled by a recognised therapeutic procedure **and**

1.2 in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure **or**

2. are suffering from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk (see U2320) to the mental or physical health of any person if they were found not to have LCW

unless they are treated as not having LCW because they are working² (see ADM Chapter V3).

1 ESA Regs 13, reg 25; 2 reg 37

U2311 - U2314

Uncontrolled or uncontrollable disease

U2315 There should be evidence that the disease is either uncontrolled or uncontrollable. The DM should establish that there is a reasonable cause for it not being controlled by medication or other recognised therapeutic procedure.

Medical evidence

U2316 Medical evidence means evidence¹

1. from a HCP approved by the Secretary of State **and**

2. from any HCP, hospital or similar institution **or**

3. that constitutes the most reliable evidence available in the circumstances.

Note: This definition does not apply to U2553 - U2554.

1 ESA Regs 13, reg 25(4)

U2317 - U2319

Substantial risk

U2320 [[See Memo ADM 14-22](#)] A claimant is treated as having LCW¹ if

1. they are suffering from some specific disease or bodily or mental disablement **and**
2. as a result, there would be a substantial risk (see U2190) to the mental or physical health of the claimant or anyone else if they were found not to have LCW.

But see U2321 for where this does not apply.

1 ESA Regs 13, reg 25(2)(b)

U2321 The claimant cannot be treated as having LCW if the risk could be significantly reduced by

1. reasonable adjustments being made to the claimant's workplace **or**
2. the claimant taking medication prescribed by their GP to manage their condition¹.

1 ESA Regs 13, 25(3)

Example 1

Khaled suffers from back pain, and claims ESA. His previous employment was office work. Khaled argues that he satisfies the substantial risk rules, as he cannot sit at a desk for lengthy periods without exacerbating his condition. The DM determines that the risk to his health could be alleviated by reasonable adjustments to his workstation, such as a desk which can rise and fall to allow working in standing and sitting positions, and taking breaks away from his workstation. The DM determines that Khaled cannot be treated as having LCW.

Example 2

Lucy is at risk of potentially fatal anaphylactic shock if she comes into contact with products containing latex, which is a risk at work and in the journey to and from work. There is no suggestion that she satisfies any of the descriptors. The DM determines that the risk could be substantially reduced if Lucy carried an adrenaline auto-injector which has been prescribed for her, and a medical alert bracelet.

Meaning of substantial risk

U2322 'Substantial' is not defined and should be given its ordinary meaning. What amounts to 'substantial' is a question which must be determined using all the available evidence and taking account of all the circumstances.

U2323 The substantial risk can be to the claimant or to any other person. For example, the claimant's mental health may be such that they may self-harm or self-neglect or may be violent to others.

U2324 A claimant's anxiety or concern about their ability to cope with the demands of work or a return to work alone does not constitute a substantial risk.

U2325 Substantial risk must be determined, not only in the context of work undertaken or in the workplace itself, but also the journey to and from work¹.

1 Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42; R(IB) 2/09

Risk at work

U2326 The judgment states that the DM must consider whether a substantial risk arises in the light of the work which the person might be expected to perform in the workplace he might find himself in. In making this assessment, the DM need only identify a broad range of duties that the person could be capable of, taking into account any training given, the person's aptitude and their disease or disablement.

Example 1

Peter is 27 years old and suffers from alcohol dependency syndrome. He has never worked and says that his condition prevents him from undertaking any kind of work. The DM identifies that Peter could undertake straightforward and unstructured, unskilled work without substantial risk to himself or any person. The DM need not identify a particular type of work that Peter could be capable of.

Example 2

Phillip is 22 years old and has recently been diagnosed as suffering from epilepsy. Since the age of 18 he has worked as a roofer and scaffolding erector. Phillip says that if he were to return to this work, his health would be at substantial risk as he was often expected to work at great height. The DM determines that Phillip could now undertake closely supervised, indoor or outdoor work, at ground level without risk to himself or any person. The DM need not identify a particular type of work that Phillip could be capable of.

U2327 - U2349

Treated as having limited capability for work until assessment is carried out U2350 - U2449

[Conditions U2351 - U2369](#)

[Further claim after determination that claimant does not have LCW U2370 - U2409](#)

[Further claim after claimant treated as not having LCW U2410 - U2429](#)

[Gap in medical evidence U2430 - U2449](#)

U2350 A claimant can be treated as having LCW until such time as it has been determined whether the claimant¹

1. has LCW **or**

2. is to be treated as having LCW **or**

3. is to be treated as not having LCW because they fail without good cause to provide the required information for the LCW assessment or to attend or submit for examination (see U2450 et seq)

unless they are treated as not having LCW because they are working² (see ADM Chapter V3).

1 ESA Regs 13, reg 26(1); 2 reg 37

Conditions

U2351 Where there is evidence of LCW (see U2145 et seq) and U2352 does not apply the claimant is treated as having LCW¹ until

1. actual assessment **or**

2. they are treated as having LCW **or**

3. they are treated as not having LCW because they fail without good cause to

3.1 provide the information in the questionnaire **or**

3.2 attend for or submit to a medical examination.

1 ESA Regs 13, reg 26(2)(a); SS (Med Ev) Regs, regs 2 & 5

U2352 A claimant is not treated as having LCW if

1. in the last determination before the date of the ESA claim, it has been determined that the claimant did not have LCW¹**or**

2. in the six months preceding the date of the ESA claim it has been determined that the claimant was treated as not having LCW because of a failure without good cause

2.1 to provide the required information **or**

2.2 to attend or submit for examination²

unless any of the conditions in ADM U2353 apply³.

Note: See ADM U2370 et seq for detailed guidance.

1 ESA Regs 13, reg 26(2)(b)(i); 2 reg 26(2)(b)(ii); 3 reg 26(4)

U2353 The conditions in DMG U2352 are that

1. the claimant is suffering from some specific disease or bodily or mental disablement from which the claimant was not suffering at the time of that determination **or**

2. a disease or bodily or mental disablement from which the claimant was suffering at the time of that determination has significantly worsened **or**

3. a claimant who was treated as not having LCW for failure to provide information has since provided the information requested by the DM¹.

Note: Where the FtT dismisses an appeal against a decision which includes a determination that a claimant does not have LCW, the date of the LCW determination is still that made by the DM.

1 ESA Regs 13, reg 26(4)

U2354 The conditions at U2352 **1.** do not apply where

1. a claimant has made and is pursuing an appeal against a relevant decision that the claimant does not have LCW after application of the WCA **and**

2. that appeal has not yet been determined by a FtT¹.

See ADM Chapter U7 for detailed guidance.

Note: This guidance does not apply where the claimant makes a further appeal to the UT against a FtT decision.

1 ESA Regs 13, reg 26(3) & (5); TCE Act 07, s 3(1)

U2355 Advice can be obtained from medical services on whether the reason for LCW is new or the previous medical condition has significantly worsened if this is not clear from the available evidence.

U2356 - U2369

Further claim after determination that claimant does not have LCW

General

U2370 A claimant may make a further claim and provide medical statements after the DM has determined that they do not have LCW. The DM, if possible, applies the LCWA.

Note: See U2410 et seq where a claim is made after the DM has determined that the claimant is treated as not having LCW as in U2351 **3.**

U2371 The DM may already have sufficient information with which to carry out a new LCW assessment. This could include

- 1.** medical evidence from the previous medical examination
- 2.** medical evidence provided to support the new claim **and**
- 3.** any other evidence received by the DM relevant to assessment of LCW on the new claim.

U2372 If the DM considers there is sufficient information they should carry out the LCW assessment (see U2170). If the information provided with the repeat claim shows that the question of whether or not a claimant has LCW can be determined immediately without gathering further evidence, the claimant cannot be treated as having LCW as in U2350 et seq for any period before a decision is made on the claim.

U2373 If the DM considers there is insufficient information to carry out the LCW assessment they should consider whether the claimant can be treated as having LCW until the LCW assessment is carried out¹ (see U2350 et seq).

1 ESA Regs 13, reg 26

U2374 If the claimant cannot be treated as having LCW because U2352 applies, their claim cannot be decided until the LCW assessment is carried out.

U2375 - U2379

Determining LCW

U2380 Where the claimant makes a claim for ESA after a previous determination that they do not have LCW, the DM should consider whether they have sufficient evidence from the most recent previous determination to determine whether or not the claimant has LCW.

U2381 Previous evidence could be

- 1.** the questionnaire (form ESA50)
- 2.** the HCP report (form ESA85)
- 3.** further medical evidence, such as
 - 3.1** a GP report (form ESA113)
 - 3.2** a hospital report
 - 3.3** letters from the GP or consultant
- 4.** information from someone who provides the claimant with care, support or treatment.

U2382 Where the previous determination is unchanged following mandatory reconsideration or an appeal to the FtT, any evidence or information provided for the DM or FtT should also be considered.

U2383 The DM should not assume without further investigation that there has been no change since the last determination of LCW. The evidence provided by the claimant as part of their repeat claim, including any information given by telephone, should be considered carefully, together with the evidence provided when the previous determination was made.

U2384 The claimant may have been awarded JSA after the previous determination that they did not have LCW, for example

- 1.** during the mandatory reconsideration process
- 2.** after any appeal to the FtT was dismissed
- 3.** while awaiting determination of a repeat claim for ESA.

U2385 Although JSA is awarded on the condition that the claimant does not have LCW¹, no determination of LCW has been made for the period of the JSA award, and there is no presumption that the claimant does not have LCW for the purposes of the ESA repeat claim. It should be noted that the claimant may have been sending in evidence of LCW for the purposes of a JSA EPS² – see ADM Chapter R2 for further details.

1 JS Act 95, s 1(2)(f); 2 JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

U2386 It may not be appropriate to rely on the previous evidence, for example because

- 1.** the evidence has been lost or routinely destroyed
- 2.** the claimant states that they have a new or significantly worse condition

3. the claimant's health condition is one which is expected to deteriorate

4. the claimant provides evidence with the repeat claim which might indicate that they should be treated as having LCW¹, for example they have been in hospital.

Note: This list is not exclusive.

1 ESA Regs 13, reg 16, 21 & 22

U2387 The mere passage of time since previous evidence was obtained does not of itself show that it cannot be relied on as evidence of the claimant's current health condition. For example, where

1. a condition was previously reported to be stable **or**

2. the previous evidence had taken variability into account

and there is no evidence of any change, there may be no reason to refer the claimant for a further WCA.

U2388 The DM should consider all the claimant's circumstances from the date of the previous LCW determination to the date of determination of the repeat ESA claim. For example, where the repeat claim is made after an appeal has been dismissed, there may have been a considerable elapse of time since the original LCW determination. The FtT is not permitted to consider any changes since the decision embodying that determination was made¹. The fact that the FtT upheld that determination should not be considered conclusive for the repeat claim.

1 SS Act 98, s 12(8)(b)

U2389 If the DM determines that

1. the previous evidence cannot be relied on to make a further determination of LCW **and**

2. the claimant should be referred for a further WCA

they should consider whether the claimant can be treated as having LCW pending the WCA¹. This means considering whether the claimant has a new or significantly worse health condition since the most recent LCW determination was made.

Note: The DM is reminded that, if it is determined that the claimant does not have a new or significantly worse health condition, the ESA claim cannot be decided until a further LCW determination is made – see U2374.

1 ESA Regs 13, reg 26(2)

U2390 - U2399

Meaning of new or significantly worse health condition

U2400 If the claimant states that they have a new or significantly worse condition since the previous determination was made, they should be asked if they have further information or evidence of this. In the case of deterioration, the claimant should be asked how it affects their ability to perform the functional descriptors since the previous determination that they had LCW.

U2401 The evidence need not be a requirement to obtain evidence from a GP or other health care professional treating the claimant. For example, it could be information provided by the claimant, or by someone who knows them well, such as a carer, social worker or support worker.

Note: DMs are reminded that the claimant's evidence does not require corroboration unless it is inherently improbable or self-contradictory – see ADM Chapter A1.

U2402 Where the DM accepts that there is a new or significantly worse condition, the claimant should be

1. treated as having LCW¹ in the normal way as in U2350 **1. and**

2. referred for a further WCA.

1 ESA Regs 13, reg 26(2)

U2403 Whether or not the claimant has a new health condition should be determined in relation to the evidence used to make the most recent previous LCW determination.

U2404 Where the claimant states that their health condition has deteriorated since their last assessment, the DM should consider whether this change would be likely to be sufficient to score 15 points or more.

Example 1

Felicity was awarded ESA after sending in fit notes showing she had low back pain. Her award was terminated after she was found not to have LCW following application of the WCA. No other conditions were assessed by the HCP. Her subsequent appeal was dismissed by the FtT, and the ESA award made pending the outcome of that appeal was terminated. Felicity makes a further claim for ESA on the basis that she is suffering from depression. The DM decides to treat Felicity as having LCW pending a further assessment, and awards ESA at the assessment phase rate.

Example 2

Jermaine was entitled to ESA at the assessment phase rate, on the basis that he was suffering from problems as a result of injuries to his back, knees and elbows. The DM accepts the HCP's recommendation that 6 points are awarded for problems with mobilising, and a further 6 points for difficulties with standing and sitting. As the score is less than 15 points, Jermaine's award of ESA is terminated. His appeal is dismissed.

Jermaine makes a further claim for ESA, stating that his condition has significantly worsened since the last LCW determination. His GP writes a letter to say that Jermaine's knees have got worse after unsuccessful surgical intervention, and his walking distance has reduced significantly. The DM determines that Jermaine might score at least 9 points for Activity 1, which would be sufficient to score at least 15 points, and treats him as having LCW pending a further WCA.

Example 3

Sadie's award of ESA was terminated after she was found not to have LCW. She had difficulties with her right arm which restricted her ability to reach and to pick up objects, but was able to manage these functions with her left arm.

Sadie makes a further claim and states that her condition has deteriorated. Her right hand is now worse, and she is not able to use her mobile phone or read a book. The DM establishes that Sadie's left arm is not affected, and determines that Sadie would be unlikely to score any further points. The DM finds that Sadie does not have LCW, using the evidence provided for the repeat claim, as well as the previous LCW determination and the claim is disallowed. Sadie is not treated as having LCW for the period before the claim is decided, and is not referred for a further WCA.

Example 4

Hassan has suffered from back pain and depression for over 20 years following a road traffic accident. He gave up his job as a hospital porter due to back pain. He is awarded ESA, but the award was terminated following application of the WCA. On appeal, the FtT found that Hassan could reasonably and repeatedly walk at least 400 metres before needing to stop, and could sit and stand for at least an hour without significant discomfort. Although he suffered from low mood, he did not score points in relation to any of the mental health descriptors. The appeal was dismissed.

Hassan made a further claim for ESA, providing evidence that his medication for back pain and depression had been increased, as his back problems had worsened due to degenerative change. His GP states that Hassan's mobility is restricted, and he had been referred to the pain clinic. Hassan tells the DM that he walks to the nearby shops 200 metres away most days, sitting for a few minutes to relieve pain before completing his shopping, and returning home. The increased medication for depression was helping, and he was unable to provide any examples which might show a mental health descriptor was satisfied. The DM determines that the worsening in Hassan's condition is not significant, and that the new evidence together with the evidence provided for the most recent previous LCW determination continues to show that Hassan does not score any points, and does not have LCW. Hassan's claim is disallowed.

Example 5

Molly was entitled to ESA while she was recovering from surgery for a fracture of her right leg. She is referred for a WCA after three months. Molly says that although she has been discharged from hospital out-patients, she still has mobilising problems. She uses crutches to get about, but cannot manage to walk very far due to pain. She has no other health condition. The DM accepts the HCP's advice that Molly

could mobilise repeatedly for lengthy distances using a manual wheelchair, and finds that she does not have LCW. Molly's award of ESA is terminated, and a subsequent appeal is dismissed.

Molly makes a repeat claim stating that her mobilising problem had got worse, because she had found using crutches too difficult, and she now had a wheelchair to get about. The DM disallows the repeat claim, because although Molly's health condition had deteriorated, this did not change the finding made as part of the previous LCW determination that she could reliably and repeatedly mobilise with a manual wheelchair.

Example 6

Darren's award of ESA is terminated in June 2014 when he is found not to have LCW. His health condition at the time was diagnosed as early stage Parkinson's disease. Darren makes a further claim in May 2015 with the same health condition. He does not respond to requests for information about whether there have been any changes since June 2014 in how his health condition affects him.

The DM concludes that, as Parkinson's disease is a degenerative condition, it would not be reasonable to determine whether or not Darren has LCW on the basis of the evidence used to make the previous LCW determination. Darren is referred for a further WCA. In the absence of any information that Darren's condition has significantly worsened, he cannot be treated as having LCW while he is referred for the WCA.

U2405 - U2409

Further claim after claimant treated as not having LCW

U2410 The guidance at U2370 et seq does **not** apply to claims made following a determination that the claimant is treated as not having LCW because they have failed without good cause

- 1.** to return the questionnaire **or**
- 2.** to attend for or to submit to a medical examination¹.

The claimant should be referred for the WCA in the normal way.

1 ESA Regs 13, reg 18, 19 & 26(2)(b)(ii)

U2411 Where the claim is made within six months of the determination in U2410, the claimant cannot be treated as having LCW as in U2350 unless they

- 1.** are suffering from a new or significantly worse condition since the date of the previous LCW determination¹**or**
- 2.** return the questionnaire where they had failed to do so².

U2412 Where U2411 applies, the claimant

- 1.** is referred for the WCA **and**
- 2.** can be treated as having LCW as in U2350 **and**
- 3.** can be awarded ESA

pending determination of whether or not they have, or are treated as having, LCW, even though they have previously been found not to have, or were treated as not having, LCW.

U2413 Where a repeat claim is made more than six months after a previous determination that the claimant is treated as not having LCW, the practice of awarding ESA at the assessment phase rate where medical evidence is provided on a repeat claim continues.

Example

Craig's award of ESA is terminated on 3.4.15 after he is found not to have LCW. He makes a further claim on 18.6.15 with evidence of a new health condition, and is awarded ESA as the DM treats him as having LCW. On 3.9.15 Craig is treated as not having LCW after he fails without good cause to return the questionnaire. Craig makes a further claim for ESA on 8.3.16. Craig is treated as having LCW pending assessment, as the claim is made more than six months after the determination that he was treated as not having LCW.

U2414 - U2429

Gap in medical evidence

Contact with claimant not lost

U2430 If a claimant fails to provide doctor's statements in the period pending a determination of LCW, and contact with the claimant has not been lost, payment of benefit may be suspended¹ (see ADM Chapter A4 for further guidance on suspension of the payment of benefit).

¹ UC, PIP, JSA & ESA (D&A) Regs, reg 44

U2431 In such cases, the DM must apply the WCA in the normal way (see U2170 et seq).

Note: The DM should consider whether the claimant has LCW from the day after the last day for which medical evidence is provided down to the date of the decision.

U2432 The test may need to be applied on the balance of probabilities using all the available evidence, including evidence from the previous claim where appropriate. For example, it might not be possible to refer the claimant for medical examination where they have returned to work or claimed JSA. Where

there is little or no evidence, the DM may draw adverse inferences. Advice should be sought from medical services in cases of doubt. Insufficient evidence does not mean that the WCA cannot be applied.

U2433 Where a claimant stops submitting the required medical evidence this does not count as a change of circumstances to justify a decision to supersede the entitlement decision. The DM can suspend paying the claimant benefit because of the failure to provide medical evidence but cannot conclude they are not entitled to ESA without carrying out the WCA¹. The determination on LCW gives the grounds for supersession, not the lack of medical evidence.

1 R(IB) 1/05

U2434 This applies even in cases where the claimant is treated as not having LCW because they fail to return the questionnaire or fail to attend or submit for examination.

Example 1

Graham is treated as having LCW while submitting doctor's statements. On 1.12.14 medical evidence expires and despite reminders no further medical evidence is received. Graham asks for the LCW assessment to be applied. The questionnaire is issued on 17.12.14 but is not returned. A reminder is issued on 8.12.14. On 4.2.15 the DM determines that Graham is treated as not having LCW from 15.1.15. They also make a determination that for the period from 2.12.14 to 14.1.15 the claimant scores 0 points for the purposes of the LCW assessment and does not have LCW. The decision awarding ESA or credits is superseded to terminate entitlement from 2.12.14.

Example 2

Lois is treated as having LCW while submitting doctor's statements. On 1 November medical evidence expires and after reminders Lois writes to say that she resumed work on 5 November. The DM determines that for the period between 1 and 5 November the claimant scored 0 points for the purposes of the LCW assessment and does not have LCW.

U2435 In all cases the effective date of the supersession to end entitlement to ESA or credits is the date from which the claimant does not have LCW¹. This is because the later determination about LCW showed there had been a change of circumstances when the claimant was no longer treated as having LCW².

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, para 4; 2 ESA Regs 13, reg 26

Contact lost with claimant

U2436 For cases where medical evidence ceases and contact with the claimant is lost, see U2553 et seq.

U2437 - U2449

Treated as not having limited capability for work U2450 - U2609

[General U2450 - U2454](#)

[Failure to return the questionnaire U2455 - U2471](#)

[Questionnaire returned before good cause considered U2472 - U2479](#)

[Failure to attend or submit to a medical examination](#)
[Failure to attend or submit to a medical examination U2480 - U2491](#)

[Failure to submit U2492 - U2499](#)

[Consideration of good cause U2500 - U2549](#)

[Certain claimants to be treated as not having limited capability for work U2550 - U2552](#)

[Medical evidence ends U2553 - U2569](#)

[Medical evidence ceases before appeal heard - contact with claimant lost U2570 - U2574](#)

[Medical evidence ceases before appeal heard - contact with claimant not lost U2575 - U2579](#)

[Detention in legal custody U2580 - U2589](#)

[Claimant does not have LCW for the purposes of UC U2590 - U2599](#)

[Claimants who are treated as not entitled to ESA by reason of working to be treated as not having limited capability for work U2600 - U2602](#)

[Date of determination U2603 - U2609](#)

General

U2450 [\[See ADM Memo 23/20\]](#) A claimant can be treated as not having LCW if

1. they fail without good cause to provide information, attend or submit to examination¹ (see U2455 et seq)

2. they are certain claimants who

2.1 have a day of sick absence from duty recorded by the Secretary of State for Defence² (see U2550)

2.2 are attending a training course for which a training allowance or premium is paid³ (see U2551)

2.3 cease to supply medical evidence⁴ (see U2553 et seq)

2.4 are disqualified for receiving ESA during a period of imprisonment or detention in legal custody⁵ (see U2580)

3. they are not entitled to ESA by reason of working⁶ (see ADM Chapter V3).

1 ESA Regs 13, reg 18 & 19; 2 reg 27(1); 3 reg 27(2); 4 reg 28(1); 5 reg 95; 6 reg 37

U2451 - U2454

Failure to return the questionnaire

U2455 A claimant can be required to

1. provide certain information asked for by the DM including the return of the questionnaire (see U2457)
and

2 attend and submit to a medical examination for the LCW assessment (see U24801)

If they fail without good cause to do either, claimants are treated as not having LCW¹.

1 ESA Regs 13, reg 18 & 19

U2456 Before a claimant can be treated as not having LCW, the DM has to be satisfied that the prescribed conditions are met. These include the way in which the information or attendance was requested and the amount of notice given.

U2457 A claimant who is subject to the LCW assessment can be asked to provide information¹ relating to their ability to perform certain activities². This information is usually asked for by sending the claimant a questionnaire.

1 ESA Regs 13, reg 17(1)(b); 2 Sch 2

U2458 The questionnaire is not required in certain circumstances¹ (see U2161). All other claimants will be sent the questionnaire.

1 ESA Regs 13, reg 17(3)

U2459 It is not appropriate to treat a claimant as not having LCW for non-return of the questionnaire if a claimant fails to return the form but the DM has exercised discretion to proceed without it¹.

U2460 A claimant is treated as not having LCW for failure to return the questionnaire without good cause if the Secretary of State can show that

- 1.** the questionnaire was sent **and**
- 2.** there is no response after four weeks to the first request for the information¹ from the day following the date of issue **and**
- 3.** a further request was sent at least three weeks after the first letter and at least one week has passed since then²**and**
- 4.** good cause has not been accepted for delay beyond the period stated in **2.** and **3.** above³.

1 ESA Regs 13, reg 18(2)(a); 2 reg 18(2)(b); 3 reg 18(1)

U2461 - U2464

The Secretary of State's duty

U2465 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation¹ to send the questionnaire and the reminder to the claimant. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted.

1 Inte Act 78, s 7

Has the questionnaire been sent

U2466 Care must be taken to identify the date the questionnaire was sent. The date of its issue is only an indication of the date on which it was posted. The DM should consider whether the questionnaire actually left the issuing office and was put into the external mail on the date recorded¹.

1 R(IB) 1/00

U2467 - U2469

Has the correct amount of time passed

U2470 The correct period of time must have passed since the first questionnaire was sent. The period of time starts on the day after the questionnaire is sent and ends at midnight on the last day provided for. If the questionnaire is posted to the claimant's last known address, the date on which it is sent is the date it was posted¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 3(2)

Example

A questionnaire was sent to Jack on 5.11.14. A reminder is due and sent on 27.11.14. If he still does not return the questionnaire, the first day on which the DM can consider whether he should be treated as not having LCW is 5.12.14.

Good cause

U2471 If the DM concludes that the Secretary of State has complied with the duty set out in the legislation, they may then go on to consider whether the claimant had good cause for their failure to return the questionnaire¹ (see U2500).

1 ESA Regs 13, reg 20

Questionnaire returned before good cause considered

U2472 As in U2465 the law imposes time limits on the Secretary of State in relation to the sending of the questionnaire and the reminder. However, there is no law imposing a time limit on the claimant for the return of the questionnaire. Sometimes the questionnaire is returned **after** the time limit imposed on the Secretary of State but **before** the DM has considered whether there was good cause for the earlier failure to return the questionnaire. In these circumstances, the determination cannot be made because it cannot be held that the claimant has failed to return the questionnaire. Instead, normal WCA action should resume.

Example

A questionnaire was sent to Jayne on 7.5.14. This was not returned so a reminder was sent to her on 29.5.14. If the questionnaire is not returned, the first day on which the DM could consider making a determination treating Jayne as not having LCW is 6.6.14. The DM obtains the case on 18.6.14 to make the determination, but notes that the questionnaire had been received in the office on 12.6.14. The DM cannot make the determination treating Jayne as not having LCW because she has not failed to return the questionnaire. Instead, normal WCA action resumes.

U2473 - U2479

Failure to attend or submit to a medical examination

General

U2480 Claimants may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether they have LCW¹. The purpose of the medical examination is to enable the DM with the benefit of a medical opinion to determine whether a claimant meets the threshold for LCW. The medical examination may be conducted in person, by telephone or by video.

1 ESA Regs 13, reg 19(1)

U2481 Claimants can be treated as not having LCW if

1. they fail without good cause to attend or submit to a medical examination¹**and**

2. they

2.1 had at least seven days' written notice of the examination **or**

2.2 agreed to accept a shorter period of notice whether given in writing or otherwise².

1 ESA Regs 13, reg 19(2); 2 reg 19(3)

U2482 Medical services will contact the claimant by telephone to arrange an appointment for the examination and will keep a detailed record of the date, time and place of the examination agreed with the claimant. Written notice will be issued to confirm the arrangement. The claimant can agree to accept a shorter period of notice than seven days.

The Secretary of State's duty

U2483 Unless the claimant has agreed to accept a shorter period of notice whether given in writing or by telephone (see U2862 and U2485), when considering whether a claimant should be treated as not having LCW, the DM has to be satisfied that the Secretary of State has complied with the duty set out in the legislation¹, that

1. a written notice was sent **and**

2. the notice included the time and place of the examination **and**

3. the notice was sent at least seven days before the date of the examination **and**

4. the examination had not been cancelled.

1 ESA Regs 13, reg 19(3)

U2484 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the DM decides that seven days had not elapsed¹, they should consider whether the claimant has agreed to accept a shorter period of notice whether given in writing or by telephone. If there is no evidence that the claimant had agreed to accept a shorter period of notice the claimant cannot be treated as not having LCW.

1 ESA Regs 13, reg 19(3)

U2485 Where the claimant has agreed to accept a shorter period of notice the DM considers the appropriate amount of time agreed between medical services and the claimant¹. Medical services always send a confirmation of the date, time and venue of the appointment whether or not this has been agreed

in a telephone call with the claimant.

1 ESA Regs 13, reg 19(3)

U2486 Only one rescheduled appointment can be offered during a WCA referral. If the claimant cannot attend the rescheduled appointment, medical services will record that the customer has failed to attend. The DM will have to consider the reasons why the claimant cannot attend and consider good cause (see U2500 et seq).

U2487 If the DM cannot confirm that the provisions in U2483 were met, the claimant cannot be treated as not having LCW.

Note: Medical services can provide evidence of notification for requests from DMs who are considering revision or supersession of disallowance determinations and appeal submissions.

Has notice been sent

U2488 The DM needs to be sure that the claimant has been sent notice. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted¹. In addition the DM should make sure that the notice was in writing and included the time and place of the medical examination unless the claimant had agreed to accept a shorter period of notice whether given in writing or otherwise. Medical services always send a confirmation of the date, time and venue of the appointment whether or not this has been agreed in a telephone call with the claimant.

1 Inte Act 78, s 7

Have seven days passed

U2489 Where there is no evidence that the claimant agreed to accept a shorter period of notice whether in writing or otherwise, the DM needs to be sure that the correct period of notice has been given. The DM has to decide when the notice was sent. The day after is day one. Seven clear days of notice have to pass before the date of the examination¹.

1 R(IB) 1/00

Example 1

A letter giving the time and place of a medical examination is prepared and placed in the post tray at 3 pm on Friday 1st. Because of the timing of the internal post collection it does not reach the post room until Monday lunchtime and leaves the office into the external mail on Monday at 5 pm. The appointment is timed for Monday 11th. The recipient does not attend. It is not possible to treat the claimant as not having LCW because if Tuesday 5th is Day one, Monday 11th is Day seven and they have not received seven days clear notice.

Example 2

A letter giving the time and place of a medical examination leaves the office on Wednesday 6th. The appointment is timed for Thursday 14th. The recipient does not attend. Subject to good cause the claimant is treated as not having LCW because Thursday 7th is Day one, Thursday 14th is Day eight and they have received at least seven days clear notice.

Has the appointment been cancelled

U2490 Claimants cannot fail to attend the medical examination if the appointment had already been cancelled by medical services. The DM should investigate any indications that the claimant had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment had been left open for the claimant.

Good cause

U2491 If the DM concludes that the Secretary of State has complied with the duty set out in U2483 they may go on to consider whether the claimant had good cause for their failure to attend to medical examination (see U2500).

Failure to submit

U2492 Where a claimant attends a LCW assessment but fails to participate in the process the assessment is terminated. This may happen where a claimant

1. refuses to be examined **or**
2. poses a threat to staff or others **or**
3. shows inappropriate or threatening behaviour **or**
4. shows intoxication from alcohol or substance abuse **or**
5. is persistently uncooperative.

U2493 Medical services will record a full and detailed account of the claimant's behaviour. A full report will be completed and referred to the DM to decide whether the claimant should be treated as not having LCW due to a failure to submit to an examination.

U2494 If a claimant makes it clear that they will not be medically examined then that constitutes a failure to submit to an examination. Going to the examination but refusing to be examined constitutes attendance but is a failure to submit¹.

U2495 A claimant fails to submit to an examination not only by refusing to be examined but also if that

claimant seeks to impose as a condition of being examined a term which would render the examination useless for the purpose for which it is required.

Example

The claimant requests the medical report should not be passed to a layman, including a DM, insisting on complete confidentiality. By imposing such a condition the examination becomes useless for the purposes for which it was required (see U2480) and the claimant is failing to submit to an examination.

Good cause

U2496 If the DM concludes that the Secretary of State has complied with the duty set out in U2483 they may go on to consider whether the claimant had good cause for their failure to submit to a medical examination (see U2500).

U2497 - U2499

Consideration of good cause

U2500 When a claimant fails to return the questionnaire or fails to attend or submit to examination, consideration of good cause includes

- 1.** whether the claimant was outside GB at the relevant time **and**
- 2.** the claimant's state of health at the relevant time **and**
- 3.** the nature of any disability the claimant has¹.

Note: The list is not exhaustive (see U2501 et seq for further guidance on good cause).

1 ESA Regs 13, reg 20

U2501 The claimant will have been asked to give the reasons for not complying with the Secretary of State's request for information or to attend or submit for examination. The DM should bear in mind the guidance about evidence, including corroboration, in ADM Chapter A1.

U2502 The onus of proving good cause lies with the claimant who fails to comply. The test of good cause is whether the DM judges the reason for non-return or non-attendance or failure to submit to be reasonable and likely on the balance of probabilities. See ADM Chapter A1 for guidance. The DM needs to ascertain the precise facts and apply the concept of "good cause".

U2503 The DM may determine that a claimant is treated as not having LCW if

- 1.** they have failed to

1.1 return the questionnaire **or**

1.2 attend or submit for examination and

2. they have not replied to enquiries or the reasons given do not amount to good cause general considerations

U2504 When considering whether the claimant showed good cause, the DM should ensure that they fully explain how they made their determination by recording

- 1.** findings about the claimant's state of health at the time and the nature of their disability
- 2.** what evidence was considered
- 3.** what findings were made on the evidence
- 4.** what steps they took to contact the claimant
- 5.** whether the claimant is vulnerable
- 6.** whether there were previous failures and whether good cause was accepted
- 7.** the reasons for their determination on good cause.

Claimant's state of health

U2505 The claimant may state that they were unable to attend a face-to-face assessment due to the state of their health on the date of the appointment (see U2532). Claimants may have difficulty in producing further medical evidence to support their statement, as GPs are not obliged to provide this. Failure to provide such evidence is not of itself a reason for refusing to accept that good cause was shown.

U2506 The DM should consider whether the stated health problem prevented the claimant from contacting Medical Services to re-arrange the appointment. The DM should also consider the nature of the claimant's health condition and whether it could reasonably have lead to the claimant being, for example, incapacitated, forgetful, confused, unmotivated or too anxious to comply with the process because of their health condition.

Example 1

Luke has an appointment for an examination on 5.8.13. He contacts Medical Services to say that he cannot attend as he has flu, and arranges another appointment for 19.9.13. Luke fails to attend the new appointment. He returns the BF223 form explaining that the reason he did not attend was because he still had flu. Luke's recent fit note shows low back pain as the reason for LCW. The DM determines that good cause was not shown. Flu is incapacitating but usually only lasts for a week where there are no complications. It was unlikely that he still had flu since the previous appointment, and in any event it

should not have prevented him from contacting Medical Services.

Example 2

Katie has an appointment for an examination on 2.10.13, but fails to attend. She states on the BF223 form that she woke up on the day of the appointment with severe dental pain, and had to wait in the dentist's surgery for an emergency appointment. She required root canal treatment, and was prescribed a 5 day course of antibiotics for an infected wisdom tooth. As a result she was unable to attend the appointment. The DM accepts that good cause was shown for the failure to attend.

Nature of claimant's disability

U2507 DMs are reminded that the nature of the claimant's disability is a factor that must be taken into account when considering whether good cause is shown (see U2500). The DM should make every effort to ensure that all sources of evidence are considered before making a determination on good cause. Evidence about the claimant's health may be obtained from

- 1.** form BF223 (good cause enquiry form)
- 2.** any fit notes supplied
- 3.** ESA1 claim form
- 4.** ESA50 questionnaire where one is available
- 5.** any evidence previously submitted that is relevant
- 6.** ESA85 report where one is available.

U2508 This may be particularly relevant in cases where the claimant has

- 1.** mental health conditions affecting memory or concentration
- 2.** a learning difficulty, for example where this affects comprehension
- 3.** medication which affects memory or concentration
- 4.** a sensory impairment, such as being registered blind.

Example 1

Jack claims ESA. His fit note states that he has problems with his feet. Jack fails to return form ESA50, and did not give any reasons for this failure. The award of ESA was terminated. Jack's social worker returned the form which had been completed for him, and explained that Jack had significant difficulties understanding correspondence, and often delayed seeking help as he panicked. Good cause is accepted, and ESA is reinstated.

Jack then fails to attend an examination on 24.9.13, and does not reply when the BF223 form is issued. The evidence in the questionnaire is that Jack has severe learning difficulties. He has limited literacy skills and lives alone. The DM accepts that Jack had good cause for failure to attend the examination, as due to the nature of his disability he is unable to comply with the process. The DM determines that Jack is likely to need ongoing support for his benefit claims and refers for consideration of appointee action. They also request that Medical Services arranges a home visit.

Example 2

Tamara is required to attend for an examination on 13.9.13. She rings the examination centre and says that she is due to attend an out-patient clinic at the same time. She is offered and accepts a further appointment for 24.9.13, which she fails to attend.

Tamara does not return form BF223, or respond to attempts to phone her. There is no evidence in the claim form, fit note or ESA50 which indicates that her health condition is likely to impact her ability to attend the appointment. The DM determines that Tamara did not have good cause for the failure to attend, and treats her as not having LCW.

Example 3

Alex claims ESA, stating that he suffers from agoraphobia, anxiety and depression. He does not return the questionnaire. Alex contacts Medical Services to ask for a home visit after being asked to attend the examination centre. The appointment is rearranged, and he is advised to get a supporting letter from his GP. Alex fails to attend an examination 15.8.13. In the BF223 form he states that his GP had told him he would fax a letter to the examination centre requesting a home visit. He had no copy of the letter, and was struggling to keep organised. There is no information on the Medical Services computer system about a request for home visits, but the DM has no reason to doubt Alex's explanation. The DM accepts that Alex had good cause for his failure to attend. The DM also asks Medical Services to arrange a home visit.

Previous WCA attended

U2509 The fact that the claimant has previously attended the WCA and been found to have LCW is not sufficient reason that good cause has not been shown for a subsequent failure to attend. The DM should consider each case on its merits.

Example

Lorraine, who has mental health problems, is placed in the SG following previous application of the WCA. She is referred for a further WCA 18 months later, and does not return the questionnaire. She also fails to attend for examination.

In response to the BF223 form, Lorraine's CPN says that due to the strength of the medication taken for several years for paranoid schizophrenia, Lorraine often forgets to carry out daily tasks or attend appointments. The fact that Lorraine had previously managed to attend for examination despite her

memory problems is not of itself sufficient to show that there was no good cause for the current failure.

Repeated failures

U2510 Where a claimant repeatedly fails to attend an examination, and good cause is accepted, the DM should consider the previous reasons given critically. It may be appropriate to require further evidence to support any explanation for the subsequent failure. Wherever possible the DM should contact the claimant to discuss the importance of attendance.

U2511 However, the fact that good cause was previously accepted is not a reason for concluding that the claimant should be aware of the requirement to attend a subsequent appointment. The same reasons for the failure may continue to demonstrate that good cause is shown, such as in the case of a claimant who has a long term mental health problem, who can only intermittently comply with the processes necessary to manage their benefit claim due to effects of their condition and its treatment.

Example

Viktor failed to attend for an examination. He did not respond to the BF223 form, and his ESA award was terminated. He subsequently provided evidence that on the day of the appointment he had a panic attack on his way to the assessment centre. He was taken to hospital, and discharged later in the day. The DM accepts that good cause was shown, and ESA is reinstated.

Viktor fails to attend the subsequent appointment. He replies on the BF223 form, saying that he had a panic attack and felt unable to leave the house on the day of the appointment, and was too anxious to explain this at the time. The DM accepts that good cause was shown, and asks Medical Services to consider a home visit.

U2512 The DM may wish to consider whether it would be possible to ensure that the claimant does not fail to attend future appointments, where the nature of the claimant's health condition is the reason for good cause being accepted, and the health condition is likely to be long term. For example, if the evidence shows that the claimant is not capable of arranging their own affairs, is appointee action appropriate? Should a home visit be recommended?

U2513 – U2529

Good cause - some scenarios

U2530 Any reasons given for the non-return of the questionnaire should be judged on the balance of probabilities. Whether the reasons for delay amount to good cause depends upon whether the DM considers, for example,

- 1.** it was reasonable not to return the questionnaire on this occasion **or**
- 2.** if non receipt by the office or claimant was more probable than not.

U2531 If a claimant says that they were too ill to attend because of the nature of their disability, the DM

should ask for evidence to support this. If the claimant is usually able to get out, for example to the doctor or hospital, good cause should only be accepted if it is unreasonable to expect the claimant to have attended on that occasion. Exceptionally, a claimant may be examined at home if they are unable to travel.

U2532 A claimant may say they were too ill to attend because of a condition unrelated to their disability, for example they may say that they had flu at the time of the appointment. If the DM accepts the evidence, the claimant has shown good cause for their non-attendance.

U2533 Good cause was not accepted in a case where a claimant had tried to avoid attending several examinations by submitting final certificates. In the particular circumstances the final certificate was irrelevant because it was replaced by an open statement which included the day of the examination¹.

1 R(S) 12/59

U2534 If the claimant contends that they did not receive the notice of the appointment, DMs should satisfy themselves that the notice was sent. The DM should give consideration to the date on which the written notice was posted, the time sufficient to show whether or not it would have been collected from the post box, the address to which it was posted and whether by first or second class post. The DM should also be satisfied the letter has not been returned undelivered.

U2535 The DM will normally need better evidence of the address to which it was posted than a later computer generated print out showing the address on the file at that later date. If there is no evidence to show whether first or second class post was used the DM should assume that second class post was used. If it was sent it can be assumed it was delivered unless there is evidence to the contrary.

U2536 Where the claimant says the postal difficulties are specific to them or their address, all of their circumstances are to be given fair consideration. They will have to show that they have done enough to ensure as far as is reasonably possible that they receive their mail, special care may be expected in the cases of accommodation addresses and premises in multiple occupation.

U2537 Sometimes it may be right to reject a claimant's allegation of non-receipt where the excuse extends to a number of letters, or is coupled with suspicious circumstances, or if the non-receipt of mail is selective so that only certain letters are not received. However the uncontradicted evidence of the non-receipt of a single letter in plausible circumstances, such as the communal delivery of mail to a particular premises where another person went through the mail before the claimant had a chance to do so may establish good cause.

U2538 DMs can see all changes of address and when the changes were effective from in the relevant medical services computer system to help them decide where the questionnaire was sent and when.

U2539 If a claimant attends but refuses to have a physical examination, for example because of genuinely held religious beliefs, the DM should normally accept good cause unless it is evident that the refusal is based on a prejudice against or distaste for the examination rather than because of a particular

belief¹.

1 R(S) 9/51

U2540 It is possible for the DM to consider that a claimant did not have good cause for failure to submit to an examination because of drunkenness, drug abuse or other problem behaviour. However if the behaviour is a symptom of the stated medical condition such as alcoholism rather than an isolated occurrence, the claimant may have good cause.

U2541 If a claimant did not attend for medical examination because a consultant advised that attendance was not necessary, that does not show good cause for failure to attend. Irrespective of a medical advisor's opinion as to LCW, a claimant is obliged to abide by the rules for claiming benefit.

U2542 A failure to comply with a notice to attend a medical examination will be deliberate, except in cases where the claimant is unable to make a choice between attendance and non-attendance. The question is whether there is good cause for the deliberate failure to comply with the notice.

U2543 A claimant who fails to attend an examination for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure was to not attend or participate in the LCWRA part of the WCA.

U2544 - U2549

Certain claimants to be treated as not having limited capability for work

Member of Her Majesty's Forces

U2550 A claimant who is or has been a member of HMF¹ is treated as not having LCW on any day which is recorded by the Secretary of State for Defence as a day of sickness absence from duty². See ADM Chapter U1 for guidance on the meaning of HMF.

1 ESA Regs 13, reg 2; 2 reg 27(1)

Training course

U2551 A claimant is treated as not having LCW on any day on which they¹

1. attend a training course **and**

2. are paid a training allowance or premium under certain provisions².

1 ESA Regs 13, reg 27(2); 2 E&T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 1990, s 2(3)

U2302 The guidance at U2551 does not apply

1. where the ESA claim is made for a period which begins after the claimant ceased attending the training course **or**
2. where any training allowance or premium paid to the claimant is paid for the sole purpose of travelling and meal expenses incurred as part of the training course¹.

1 ESA Regs 13, reg 27(3)

Medical evidence ends

U2553 A person may be treated as not having LCW¹ if

1. they have supplied medical evidence in accordance with legislation² **and**
2. the period covered by that medical evidence has ended **and**
3. the Secretary of State has requested further medical evidence **and**
4. the person has not, within six weeks

4.1 supplied further medical evidence **or**

4.2 otherwise made contact with the Secretary of State to indicate that they wish to have the question of LCW determined.

Note: The definition of medical evidence at U2316 does not apply. See U2145 for further guidance.

1 ESA Regs 13, reg 28(1); 2 reg 28(2); SS (Med Ev) Regs, reg 2 or 5

U2554 The six week period begins on

1. the date of the Secretary of State's initial request for further medical evidence **or**
2. the day after the date on which the period covered by the medical evidence has ended

whichever is the later¹.

1 ESA Regs 13, reg 28(1)(d)

U2555 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the DWP, the DM should treat the claimant as not having LCW from the day after the medical evidence expires. The decision is effective from the date of the change¹, which is the date from which the claimant is treated as not having LCW.

1 UC, PIP, JSA & ESA (D&A) Regs, Sch 1, para 4

Example

Victor's current medical certificate provides him with evidence of LCW up to and including 19.5.14. A reminder that further medical evidence will be required is issued on 12.5.14. The six weeks period ends on 30.6.14, and Victor does not contact the DWP by then. He is treated as not having LCW from 20.5.14, the day after the medical evidence ends.

U2556 Where the person

1. fails to provide further medical evidence **and**
2. asks for LCW to be determined

the DM should continue to follow the guidance in U2430 - U2435.

Example

William is covered by a doctor's statement up until 5.7.14. On 15.7.14 the local office receives a letter from him stating that he became fit enough to start work on 14.7.14. The DM may accept this as a request from William for his LCW to be determined for the period from 6.7.14 to 12.7.14.

U2557 - U2569

Medical evidence ceases before appeal heard - contact with claimant lost

U2570 Where

1. a claimant is entitled to ESA pending an appeal **and**
2. medical evidence ceases **and**
3. the claimant does not respond to reminders requesting further medical evidence

the DM should consider whether the guidance at U2553 - U2556 about treating the claimant as not having LCW and terminating the award applies¹.

1 ESA Regs 13, reg 28

Appeal allowed

U2571 Where

1. an award is terminated as in U2570 **and**
2. the FtT allows the appeal

the DM should award arrears of ESA as appropriate up to the date of the termination of the pending

appeal award¹.

1 ESA Regs 13, reg 87(7) & (8)

U2572 – U2574

Medical evidence ceases before appeal heard - contact with claimant not lost

U2575 Where

- 1.** a claimant is entitled to ESA pending an appeal **and**
- 2.** medical evidence ceases **and**
- 3.** the claimant states that he is unable to provide further medical evidence but wishes LCW to be determined

the guidance at U2431 - U2435 about determining LCW does not apply while the appeal is awaiting hearing. This is because the claimant cannot be referred for a WCA unless they have a new or worse health condition - see ADM Chapter U7.

U2576 Payment of ESA should be suspended pending the outcome of the appeal¹.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 44

Appeal allowed

U2577 Where the appeal is allowed, the suspension should be lifted and the guidance at ADM Chapter U7 (ESA award made pending appeal) applied as normal.

Appeal withdrawn, struck out or dismissed

U2578 Where the appeal is withdrawn, struck out or dismissed, the guidance at U2431 - U2435 should be applied.

Example

Karen has been entitled to ESA since 6.10.14 pending an appeal against the decision terminating her award of ESA following application of the WCA. On 15.3.15 medical evidence expires, and Karen states that she is unable to supply further doctor's statements. The DM suspends payment of ESA. Karen does not make a claim for another benefit.

On 26.6.15 Karen's appeal is dismissed. The DM treats Karen as not having LCW from 6.7.15, and also determines that for the period 16.3.15 – 5.7.15, on the balance of probabilities she scores 0 points for the purposes of the WCA. The award of ESA is terminated from 16.3.15.

U2579

Detention in legal custody

U2580 A claimant is to be treated as not having LCW if disqualified for receiving ESA during a period of imprisonment or detention in legal custody if that disqualification is for more than six weeks¹. Payment of ESA is suspended from the first day of imprisonment or detention in legal custody. If a decision is subsequently made to disqualify the claimant for receiving ESA, that decision will apply from the first day of imprisonment or detention in legal custody. Therefore, unless it is for a period of six weeks or less, the claimant will be treated as not having LCW from the first day of imprisonment or detention in legal custody.

Note: See ADM Chapter U6 for guidance on disqualification for imprisonment or detention in legal custody.

1 ESA Regs 13, reg 95

Example

Kenneth is detained in legal custody on 1.10.14 and payment of his ESA is suspended. On 3.12.14 the DM decides that Kenneth should be disqualified for receiving ESA from 1.10.14 because he has been sentenced to a period of imprisonment for a period exceeding six weeks. There is also a determination that Kenneth is treated as not having LCW from 1.10.14.

U2581 - U2589

Claimant does not have LCW for the purposes of UC

U2590 A claimant is treated as not having LCW where

1. in the six months preceding the date of the ESA claim it has been determined that the claimant did not have LCW following application of the WCA **and**

2. it appears to the DM that

2.1 the determination was not based on ignorance of or mistake as to a material fact **and**

2.2 there has been no relevant change of circumstances in the claimant's physical or mental health condition since the UC LCW determination was made¹.

1 ESA Regs 13, reg 27(4)

U2591 - U2599

Claimants who are treated as not entitled to ESA by reason of working to be treated as not having limited capability for work

U2600 For guidance on the effect of working on a claim or an award of ESA see ADM Chapter V3.

U2601 Claimants who are treated as not entitled to ESA by reason of working are treated as not having LCW¹.

1 ESA Regs 13, reg 38(1)

U2602 The guidance at U2601 applies even if it is determined that the claimant has or is to be treated as having LCW because they¹

- 1.** satisfy certain conditions² (see U2031) **or**
- 2.** are a hospital patient³ (see U2070) **or**
- 3.** are receiving certain treatments⁴ (see U2090) **or**
- 4.** have exceptional circumstances⁵ (see U2310) **or**
- 5.** satisfy the conditions pending assessment⁶ (see U2350).

1 ESA Regs 13, reg 38(2); 2 reg 16; 3 reg 21; 4 reg 22; 5 reg 25; 6 reg 26(2)

Date of determination

U2603 Where a claimant is in receipt of ESA the determination to treat someone as not having LCW applies to the whole week during which the work is done. However that person is only treated as not having LCW on the days on which they actually work in the week in which they

- 1.** first have LCW¹**or**
- 2.** start or return to work².

1 ESA Regs 13, reg 37(4)(a); 2 reg 37(4)(b)

U2604 See U2105 for guidance on the day or days in a week on which a night shift worker works¹

1 ESA Regs 13, reg 37(6)

U2605 See U2097 et seq for guidance on the effect of work on claimants who are receiving or recovering from regular treatment.

U2606 - U2609

Limited capability for work-related activity U2610 - U2999

[General U2610 - U2619](#)

[Claimant treated as not having limited capability for work-related activity U2620 - U2669](#)

[Determination of limited capability for work-related activity U2670 - U2679](#)

[Certain claimants treated as having limited capability for work-related activity U2680 - U2739](#)

[Information required for determining capability for work-related activity U2740 - U2754](#)

[Claimants who may be called for examination U2755 - U2759](#)

[Consideration of good cause U2760 - U2769](#)

[Determination of whether a claimant has limited capability for work-related activity U2770 - U2999](#)

General

U2610 A determination has to be made whether a claimant who has LCW also has LCWRA at the end of the assessment phase¹.

1 WR Act 07, s 9(1) & (2)

U2611 Where it is determined a claimant has LCW the claimant will receive an ESA component during the main phase of ESA entitlement. Which component they receive depends on whether or not they also have LCWRA.

Note: See ADM Chapter V1 for guidance on amounts payable.

U2612 Claimants with the most severe illnesses or disabilities who have LCWRA will receive the support component¹ and are in the no work-related requirements group². They may participate in work-related activity on a voluntary basis if they so wish.

Note: See ADM Chapter U4 for guidance on work-related requirements groups.

1 WR Act 07, s 2(2); 2 s 11(3)(a)

U2613 Claimants who do not have LCWRA will receive the WRAC¹. These claimants may fall into the

1. work-focused interview requirement only group² **or**

2. work-focused interview and work preparation requirements group³.

Note: For further guidance see ADM Chapter U4. See Chapter U5 for guidance on work-related requirements.

1 WR Act 07, s 2(3); 2 s 11(3)(b); 3 s 11(3)(c)

U2614 - U2619

Claimant treated as not having limited capability for work-related activity

U2620 A claimant is treated as not having LCWRA where

1. in the six months preceding the date of the ESA claim it has been determined that the claimant did not have LCWRA following application of the WCA for the purposes of UC **and**

2. it appears to the DM that

2.1 the determination was not based on ignorance of or mistake as to a material fact **and**

2.2 there has been no relevant change of circumstances in the claimant's physical or mental health condition since the UC LCWRA determination was made¹.

1 ESA Regs 13, reg 31(3); UC Regs, Part 5

U2621 - U2669

Determination of limited capability for work-related activity

U2670 Whether a claimant's capability for work-related activity is limited by the claimant's physical or mental condition and the limitation is such that it is not reasonable to require the claimant to undertake such activity is determined if one or more of the descriptors are met¹.

1 ESA Regs 13, reg 30(1) & Sch 3

U2671. [\[See memo ADM 18/16\]](#) A descriptor applies to a claimant if that descriptor applies to the claimant for the majority of the time or on the majority of the occasions on which the claimant carries out or attempts to carry out the activity described by that descriptor¹.

1 ESA Regs 13, reg 30(2)

U2672 A claimant will be assessed as if wearing any prosthesis with which they are fitted or wearing or using any aid or appliance which they normally wear or use¹. See U2160 et seq for detailed guidance.

1 ESA Regs 13, reg 30(3)

Certain claimants treated as having limited capability for work-related activity

U2680 A claimant is treated as having LCWRA if

1. they are terminally ill¹**or**

2. they are

2.1 receiving **or**

2.2 likely to receive **or**

2.3 recovering from

treatment for cancer by way of chemotherapy or radiotherapy (see U2050 et seq)²**or**

3. in the case of a woman, she is pregnant and there is a serious risk of damage to her health or the health of her unborn child if she does not refrain from work-related activity³

4. they are entitled to UC and it has determined that they have LCWRA following assessment under UC rules⁴

5. they were previously entitled to ESA including the support component and

5.1 the previous award ended other than because they were found not to have LCW **and**

5.2 on a further claim for ESA, the PLCWs link⁵ – see ADM Chapter U1 (Conditions of entitlement) and Chapter V1 (Amounts) for further details.

1 ESA Regs 13, reg 2 & 31(1)(a); 2 reg 31(1)(b); 3 reg 31(1)(c)
4 reg 31(1)(d); UC Regs, Part 5; 5 ESA Regs 13, reg 7(3)(a), 32 & 86

U2681 [[See Memo ADM 02/18](#)] A claimant who does not have LCWRA is treated as having LCWRA if

1. the claimant suffers from some specific disease or bodily or mental disablement **and**

2. by reasons of such disease or disablement, there would be a substantial risk (see U2320) to the mental or physical health of any person if that claimant were found not to have LCWRA¹.

1 ESA Regs 13, reg 31(2)

Information required for determining capability for work-related activity

U2740 The information required to determine whether a claimant has LCWRA is¹

1. any information relating to the descriptors that may be requested in the form of a questionnaire **and**
2. any additional information as may be requested.

1 ESA Regs 13, reg 33(1)

U2741 Where the DM is satisfied there is sufficient information to determine whether a claimant has LCWRA without the questionnaire that information will not be required¹. For example the claimant is considered to be in a vulnerable group, i.e. there is a diagnosis of a mental health condition. A decision to treat as not having LCWRA due to non-return of the questionnaire would not be made but the claimant referred for assessment.

1 ESA Regs 13, reg 33(2)

U2742 Certain claimants who are treated as having LCW (see U2030 et seq) are not required to complete a questionnaire for the purposes of determining LCW. but will be required to provide information relating to the descriptors for LCWRA unless they are also treated as having LCWRA (see U2673).

U2743 Medical services are responsible for gathering any information required to support the WCA process. This includes

1. sending the questionnaire (ESA50 or ESA50A)
2. sending a reminder if the claimant does not reply within three weeks.

Note: This could be any such additional information as the DM requires to determine whether a claimant has LCWRA¹.

1 ESA Regs 13, reg 33(1)

U2744 It will not be necessary to obtain completion of an ESA50A for LCWRA in every case where the claimant has already provided information on an ESA50 for LCW. The HCP should obtain additional information regarding the descriptors at the medical examination for LCW in order to provide an opinion on LCWRA (see U2771).

Note: There will be no need for a medical examination if medical services can give an opinion on the basis of paper evidence that the claimant is, or is not, in the support group. If both LCW and LCWRA can be assessed from the same piece of evidence then there is no need to obtain further information.

Failure to provide information

U2745 A claimant is treated as not having LCWRA if

- 1.** the questionnaire was sent **and**
- 2.** there is no response after four weeks to the first request for the information¹ from the day following the date of issue **and**
- 3.** a further request was sent at least three weeks after the first letter and at least one week has passed since then²**and**
- 4.** good cause has not been accepted for the delay beyond the period stated in the **2.** and **3.** above³.

1 ESA Regs 13, reg 34(2)(a), 2 reg 34(2)(b), 3 reg 34(1)

U2746 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation¹ to send the questionnaire and the reminder to the claimant. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted.

1 Inte Act 78, s 7

U2747 If the DM concludes that the Secretary of State has complied with the duty set out in the legislation, they may then go on to consider whether the claimant had good cause for their failure to return the questionnaire¹ (see U2760).

1 ESA Regs 13, reg 36

U2748 Any reasons given for the non-return should be judged on the balance of probabilities. Whether the reasons for delay amount to good cause depends upon whether the DM considers, for example,

- 1.** it was reasonable not to return the questionnaire on this occasion **or**
- 2.** if non receipt by the office or claimant was more probable than not.

U2749 See U2760 et seq for guidance on good cause where a claimant fails to return a questionnaire for a determination of LCWRA. The general principles in U2466 - U2472 to be considered when determining LCW also apply to LCWRA.

Note: A claimant who fails to provide information for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure was to not provide information in respect of the LCWRA part of the WCA.

U2750 - U2754

Claimants who may be called for examination

U2755 Claimants may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether or not they have LCWRA¹. The medical examination may be conducted in person, by telephone or by video.

1 ESA Regs 13, reg 35(1)

U2756 Claimants can be treated as not having LCWRA if

1. they fail without good cause to attend or submit to a medical examination¹**and**

2. they

2.1 had at least seven days' written notice of the examination **or**

2.2 agreed to accept a shorter period of notice whether given in writing or otherwise².

1 ESA Regs 13, reg 35(2); 2 reg 35(3)

U2757 The general principles in U2482 - U2496 to be considered when determining LCW also apply to LCWRA.

Note: A claimant who fails to attend or submit for examination for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure to attend or submit for examination was in respect of the LCWRA part of the WCA.

U2758 Where a claimant fails without good cause to attend or submit for examination the claimant can be treated as not having LCWRA¹ (see U2756).

1 ESA Regs 13, reg 35(2)

U2759 If the DM concludes that the Secretary of State has complied with the duty set out in U2756 they may go on to consider whether the claimant had good cause for their failure to attend or submit to a medical examination (see U2760).

Consideration of good cause

U2760 When a claimant fails to provide information or to attend or submit to an examination, consideration of good cause includes

1. whether the claimant was outside GB at the relevant time **and**

2. the claimant's state of health at the relevant time **and**

3. the nature of any disability the claimant has¹.

1 ESA Regs 13, reg 36

U2761 The onus of proving good cause lies with the claimant who fails to comply. The test of good cause is whether the DM judges the reason for non-attendance or failure to attend or submit to examination to be reasonable and likely on the balance of probabilities. See ADM Chapter A1 for guidance. The DM needs to ascertain the precise facts and apply the concept of “good cause”.

U2762 See U2504 - U2543 for further guidance on consideration of whether a claimant has good cause. This guidance is general on the principles of good cause and applies to consideration of both LCW and LCWRA.

Note: A claimant who fails to return information, attend or submit for an examination for LCWRA can only be treated as not having LCWRA. A claimant cannot be treated as not having LCW if their failure was to not return information, attend or participate in the LCWRA part of the WCA.

U2763 Where there is no evidence of good cause or the reasons provided are not accepted as good cause, the DM should determine that the claimant is treated as not having LCWRA.

U2764 - U2769

Determination of whether a claimant has limited capability for work-related activity

U2770 The DM determines whether a claimant has LCWRA from

1. the questionnaire if one is available **and**
2. a statement from the GP if one is available **and**
3. the medical opinion from the HCP including the personalised summary statement **and**
4. any other relevant evidence.

U2771 HCPs should provide relevant information and good justification for their recommendations with regard to LCWRA on a medical report form on either an

1. ESA85 if the claimant has been examined for LCW and the recommendation is that the claimant does not have LCWRA **or**

2. ESA85A if the claimant

2.1 has not been examined **or**

2.2 has been examined for LCW and the recommendation is that the claimant has LCWRA **or**

2.3 is treated as having LCW and has been called for examination for assessment of LCWRA only.

Note: For the purposes of **2.2** if LCWRA is identified at examination the DM will get two reports: an ESA85 for LCW and an ESA85A for LCWRA.

U2772 In the main, medical reports will be completed electronically. There is no requirement for the report to be signed by the examining HCP¹. However the report must identify the status of the HCP, i.e. whether he/she is a doctor or a registered nurse.

1 R(IB 7/05)

U2773 The medical report includes an opinion of a HCP on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a claimant can be treated as having LCWRA if they do not satisfy the test for LCWRA from the descriptors¹ (see U2681).

1 ESA Regs 13, reg 31(2)

U2774 The normal principles apply to considering the evidence. Guidance is in ADM Chapter A1.

U2775 - U2779

Second or subsequent referrals

U2780 The medical report also includes advice on the period of time that should pass before a claimant is reconsidered for the next WCA process. This advice is given in all cases but the DM can determine afresh whether the claimant still has or can be treated as having LCWRA in prescribed circumstances (see U2785). This may be at a different time to the advice given on the medical report.

U2781 In second and subsequent referrals medical services will provide a recommendation on whether a claimant has LCWRA.

U2782 Not all claimants require a WCA in subsequent referrals. Medical services will decide if LCW can be assessed on scrutiny of the available evidence; however it may be necessary to call the claimant for examination on subsequent referrals to assess LCWRA.

U2783 Medical conditions can improve with treatment or they may decline. Depending on the outcome of future assessments claimants who are placed in the WRAG may be removed from that group and placed in the support group and vice versa.

U2784

Determining limited capability for work-related activity afresh

U2785 Where it has been determined a claimant

1. has LCWRA **or**

2. is treated as having LCWRA **or**

3. is treated as not having LCWRA

the DM can determine afresh whether the claimant still has or is to be treated as having LCWRA¹.

1 ESA Regs 13, reg 30(4)

U2786 The guidance at U2785 applies where¹

1. the DM wishes to determine whether there has been a relevant change of circumstances in relation to the claimant's physical or mental condition **or**

2. the DM wishes to determine whether the previous determination was made in ignorance of, or based on a mistake as to some material fact **or**

3. at least three months have passed since the date of the previous determination.

1 ESA Regs 13, reg 30(5)

U2787 - U2999

Appendix - Explanation of treatments

[Plasmapheresis](#)

[Radiotherapy](#)

[Renal dialysis](#)

[Total parenteral nutrition](#)

Plasmapheresis

Plasmapheresis is a process by which harmful substances can be removed from the bloodstream. Blood is taken from the person's vein, and the fluid part (plasma) containing the harmful substance is separated from the blood cells and removed. The blood cells are then mixed with an appropriate substitute fluid and returned to the person.

Radiotherapy

Radiotherapy is the use of X-rays to kill cancer cells. It is given as a series of administrations, with varying intervals between doses. Persons undergoing radiotherapy often feel very unwell for a few days after each dose.

Renal dialysis

Renal dialysis is used in the treatment of kidney (renal) failure. It is the process whereby waste products, which would usually be excreted in the main by the kidneys, are artificially removed from the body. There are two forms of dialysis: haemodialysis and peritoneal dialysis.

In haemodialysis, blood is circulated from the person's arm into a machine which removes the waste substances; the cleansed blood is then returned to the person. Haemodialysis is usually carried out two or three times a week.

In peritoneal dialysis the process involves introducing fluid into the abdomen through a permanently-positioned tube (an indwelling catheter). Harmful waste products are removed from the blood into this fluid through the inner lining of the abdomen (the peritoneum). After some hours, the fluid is drained from the abdomen and replaced with a fresh volume, and the cycle is repeated on a continuous basis.

Total parenteral nutrition

Total parenteral nutrition is a recent development in the treatment of serious intestinal conditions such as Crohn's disease. It is a way of ensuring adequate nutrition when normal absorption of food and fluid

from the gut is impossible as a result of severe disease.

A fine tube (catheter) is inserted into a major vein in the neck, and is held in permanent position; its end is capped when not in use. A special feeding solution, three to five litres in all, is pumped through the catheter using a special pump mounted on a stand. The process takes eight to fourteen hours, and is usually carried out overnight.

For most people, the need for total parenteral nutrition will be life-long.

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