

Chapter U6: ESA disqualification

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Chapter U6: ESA disqualification

Scope of this Chapter

U6001 This Chapter gives guidance on disqualification for

1. misconduct
2. imprisonment.

U6002 – U6004

Disqualification for misconduct

U6005 Claimants entitled to ESA are disqualified for receiving it for a period decided by the DM up to a maximum of six weeks if they¹

1. have LCW through their own misconduct (except in a case where LCW is due to a sexually transmitted disease) **or**
2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or surgery which the DM considers is major) recommended by a doctor with whom, or a hospital or similar institution with which, the claimant is undergoing medical treatment, which would be likely to remove the limitation on the claimant's capability for work **or**
3. fail without good cause to refrain from behaviour calculated to retard the claimant's recovery to health **or**
4. are absent without good cause from their place of residence without informing the Secretary of State where they may be found.

Note: See U6035 for exceptions.

1 ESA Regs 13, reg 93(1) & (2)

U6006 Guidance on misconduct may be relevant if the misconduct being considered would have resulted in dismissal from employment and a sanction for JSA. Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors¹.

1 R(S) 2/64

U6007 Alcoholism is one example of behaviour which may be misconduct if a claimant has LCW as a result of excessive drinking on one occasion. But the mental and physical effects of alcoholism can be a condition requiring long spells of treatment, including psychiatric help.

U6008 If a claimant has LCW as a result of an accident which occurred while intoxicated but which could have happened if the claimant was sober, LCW would not be due to misconduct.

- U6009 Drug addiction is similar to alcoholism in that the uncontrolled use of addictive drugs leads to a progressive deterioration in physical or mental condition which can be incapacitating.
- U6010 Disqualification should be applied to the exceptional cases where there is clear evidence that temporary LCW or the addiction resulted from a deliberate decision by a healthy person to experiment with drug taking.
- U6011 When deciding whether to disqualify for receiving ESA the DM should judge how far the claimant's actions have been deliberate and unreasonable rather than thoughtless.
- U6012 Someone who is injured or contracts a disease while committing an illegal act for which they are convicted by a court of law, is subject to being treated as not having LCW.

U6013 – U6019

Treatment

- U6020 Treatment as at U6005 2. has to be in relation to the cause of LCW¹. Medical treatment means medical, surgical or rehabilitative treatment (including any course or diet or other regimen)².

1 R(S) 3/57; 2 ESA Regs 13, reg 2

- U6021 In U6005 2. doctor means

1. a registered medical practitioner **or**
2. outside the UK, a medical practitioner recognised as such in the country where they practice¹.

1 ESA Regs 13, reg 93(4)

- U6022 The claimant has to prove

1. good cause **and**
2. that a refusal of treatment was reasonable in the circumstances.

- U6023 If the objection to treatment is on religious grounds, evidence of a firm personal belief is needed to support good cause¹.

1 R(S) 9/51

U6024

Rules of behaviour

- U6025 One example of behaviour considered under both these rules was a person with influenzal bronchitis, who drove 60 miles from home to business and was not well enough to return for several days. It was decided that the person had

1. undertaken a journey calculated to delay recovery **and**

2. also been absent from home without leaving word.

In view of certain circumstances the period of treating as capable of work was limited to two weeks¹.

1 R(S) 21/52

- U6026 In U6005 **3.** the word “calculated” does not mean that the claimant deliberately intends to delay recovery. The question is whether the delayed recovery is likely to result from the behaviour¹.

1 R(I) 26/51

- U6027 Good cause for the behaviour was not proved by a person who had dermatitis of the hands and was whitewashing the kitchen, because the doctor had advised against getting wet¹. Ignorance of the rules of behaviour is not good cause².

1 R(I) 26/51; 2 R(S) 21/72

U6028 – U6029

Absence

- U6030 U6005 **4.** does not apply unless the claimant has somewhere to live. Once the relevant facts are established the claimant has to prove good cause such as a genuine difficulty in leaving a message¹.

1 R(S) 7/83, R(S) 6/55

Period of disqualification

- U6031 The length of the period of disqualification can be from one day to six weeks. The length of the disqualification depends on the circumstances of the case. The DM has to give reasons for the choice of period¹.

1 R(U) 8/74, R(S) 1/87, R(U) 4/87

- U6032 For misconduct the period of disqualification can begin on

1. the day following the date of the act of misconduct **or**
2. from the date of the decision if benefit has continued in payment¹.

If the misconduct is repeated, a fresh period of disqualification may be imposed.

1 R(U) 12/59, R(S) 4/61

- U6033 The period of disqualification for failure to observe the rules of behaviour depends upon the number of times, and the period over which the failure has occurred. Any extenuating circumstances can be taken into account even though good cause has not been proved¹.

1 R(S) 21/52

- U6034 If, during the period of disqualification, a claimant

1. submits a closed doctor’s statement **and**

2. then makes a further claim

any disqualification continues for the outstanding part of the original period, unless the determination has been set aside on supersession or appeal.

Exceptions

U6035 Disqualification as in U6005 does not apply if the claimant is

1. a person in hardship¹ **or**
2. disqualified for receiving ESA under certain legislation² (loss of benefit provisions).

Note: See ADM Chapter B2 for guidance on loss of benefit.

1 ESA Regs 13, reg 93(3)(a); 2 reg 93(3)(b); SS Fraud Act 01, s 6B & 7

Person in hardship

U6036 A claimant is a “person in hardship” if they

1. have informed the DM of the circumstances on which they rely to establish that fact **and**
2. fall within U6037 – U6040¹.

1 ESA Regs 13, reg 94(1)

U6037 A claimant is a person in hardship as in U6036 if¹

1. the claimant is pregnant **or**
2. a member of the claimant’s family is pregnant **or**
3. the claimant is a single person aged less than 18 **or**
4. the claimant is a member of a couple and both members are aged less than 18.

1 ESA Regs 13, reg 94(2)

U6038 A claimant is a person in hardship as in U6036 if¹

1. the claimant or their partner has been awarded
 - 1.1 “AA” **or**
 - 1.2 DLA care component (higher or middle rate)² **or**
 - 1.3 PIP daily living component (standard or enhanced rate)³ **or**
 - 1.4 AFIP **or**
2. the claimant or their partner has claimed
 - 1.1 “AA” **or**
 - 1.2 DLA care component (higher or middle rate) **or**
 - 1.3 PIP daily living component (standard or enhanced rate) **or**

1.4 AFIP

and the claim has not yet been determined (but see U6039) **or**

- 3.** the claimant or their partner devotes what the DM considers is a considerable portion of each week caring for another person who has been awarded

3.1 “AA” or

3.2 DLA care component (higher or middle rate) or

3.3 PIP daily living component (standard or enhanced rate) or

3.4 AFIP or

- 4.** the claimant or their partner devotes what the DM considers is a considerable portion of each week caring for another person who has claimed

4.1 “AA” or

4.2 DLA care component (higher or middle rate) or

4.3 PIP daily living component (standard or enhanced rate) or

4.4 AFIP

and the claim has not been determined (but see U6039) **or**

- 5.** the claimant or their partner has reached the qualifying age for SPC⁴ (see DMG Chapter 77).

Note: For a definition of “AA” see U6050.

1 ESA Regs 13, reg 94(3); 2 SS CB Act 92, s 72(3); 3 WR Act 12, s 78; 4 SPC Act 02, s 1(6)

U6039 Where U6038 **2.** or **4.** applies, a claimant can only be a “person in hardship” for a maximum of 26 weeks from the date of the claim¹.

1 ESA Regs 13, reg 94(4)

U6040 A claimant is a person in hardship as in U6036 if the DM, having regard to all the circumstances and in particular those at U6041, is satisfied that the claimant or a member of the claimant’s family will suffer hardship unless ESA is paid¹.

1 ESA Regs 13, reg 94(5)

U6041 The circumstances referred to in U6040 are

- 1.** the resources which are likely to be available to the claimant and their family and the length of time for which they might be available **and**
- 2.** whether there is a substantial risk that essential items such as food, clothing and heating will
 - 2.1** cease to be available to the claimant or a member of the claimant’s family **or**
 - 2.2** only be available at considerably reduced levels **and**

the length of time that this might be so¹.

1 ESA Regs 13, reg 94(6)

U6041 The amount of ESA payable in hardship cases is reduced by 20% of the claimant's applicable amount¹.

1 ESA Regs 13, reg 63(2)

U6042 – U6049

Meaning of “AA”

U6050 “AA” means¹

1. AA² **or**
2. an increase of disablement pension for constant attendance or exceptionally severe disablement³ **or**
3. any
 - 3.1 payments for attendance under the Civilians Personal Injury Scheme⁴
or
 - 3.2 similar payment to 3.1 **or**
4. any payment for attendance which is part of a war disablement pension⁵.

Note: Payments in 3. are made to people who receive a disability pension because of war injuries suffered as civilians or civil defence volunteers.

1 ESA Regs 13, reg 94(7); 2 SS CB Act 92, s 64; 3 s 104 & 105;

4 Personal Injuries (Civilians) Scheme 83, Art 14–16 & 43–44; 5 Income Tax (Earnings and Pensions) Act 03

U6051 – U6059

Disqualification for imprisonment

Introduction

U6060 A claimant is disqualified for receiving ESA for any period during which they are undergoing imprisonment or detention in legal custody

1. in connection with a charge brought or intended to be brought in criminal proceedings **and**
2. pursuant to any sentence **or**
3. pursuant to any order of detention.

1 WR Act 07, s 18(4)(b)

U6061 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.

Treating a claimant as not having limited capability for work

- U6062 The claimant is to be treated as not having LCW if they are disqualified for receiving ESA during a period of imprisonment or detention in legal custody if that disqualification is for more than 6 weeks¹ (see ADM Chapter U2).

1 ESA Regs 13, reg 95

Exceptions to the disqualification provisions

- U6063 There are exceptions to the provisions disqualifying ESA on imprisonment or detention in legal custody¹. These are where

1. no penalty is imposed (U6064) **or**
2. the person is suffering from mental disorder (U6075 et seq).

1 ESA Regs 13, reg 96(2) & (3)

No penalty imposed

- U6064 There is no disqualification for receiving ESA for imprisonment or detention in legal custody unless at the end of criminal proceedings the court imposes

1. a penalty **or**
2. a penalty for fine default¹.

1 ESA Regs 13, reg 96(2)

Meaning of court

- U6065 Court means¹ any

1. court in
 - 1.1 UK
 - 1.2 Channel Islands
 - 1.3 Isle of Man
 - 1.4 any place to which certain legislation applies² **or**
2. naval, army or air force court-martial within the meaning of certain legislation³ **or**
3. Courts-Martial Appeal Court.

1 ESA Regs 13, reg 96(6)(a); 2 Colonial Prisoners Removal Act 1884; 3 Courts-Martial (Appeals) Act 1968

Meaning of penalty

U6066 Penalty¹ is

1. a sentence of imprisonment
2. detention in a young offenders institution
3. an order for detention in a young offenders institution
4. detention in GB as a result of any order made under certain legislation².

1 ESA Regs 13, reg 96(7)(c); Powers of Criminal Courts (Sentencing) Act 00, s 90, 91 & 100; Criminal Justice Act 03, s 226 & 228; Criminal Procedure (Scotland) Act 95, s 205, 207 & 208;

2 ESA Regs 13, reg 160 (5)(d); Colonial Prisoners Removal Act 1884

U6067 – U6069

U6070 The term penalty includes a suspended sentence of imprisonment at the end of criminal proceedings, even if it has not taken effect¹.

Note: A suspended sentence does not disqualify a claimant who is not in prison or detained in legal custody.

1 R(S) 1/71

U6071 The following are not penalties and so no disqualification is imposed for the period before the end of criminal proceedings during which the person is remanded in custody when

1. a fine is imposed (see U6074)
2. the charge is withdrawn
3. there is a conditional or absolute discharge or acquittal
4. the claimant is detained in hospital by court order following conviction
5. an order putting a person under guardianship is made
6. a Community Rehabilitation order is made.

Note: This list is not exhaustive.

Penalty cancelled

U6072 Where a penalty has been imposed, a Higher Court can later

1. quash the conviction **or**
2. substitute another penalty with an order which is not a penalty.

The effect is as though no penalty had been imposed.

U6073 Disqualification will therefore be removed for any relevant period of imprisonment or detention in legal custody. See ADM Chapter A4 for further guidance on supersession for a relevant change of circumstances and when the decision takes effect.

Imprisonment for non-payment of fines

U6074 Imprisonment for non-payment of a fine can be the result of civil proceedings. The DM should consider the nature of the original offence if a person is imprisoned for non-payment of a fine. If the original offence was a criminal action, the DM should

1. regard the imprisonment as a criminal offence **and**
2. disqualify from benefit¹.

1 ESA Regs 13, reg 96(2)(b)

Mentally disordered persons detained in legal custody

U6075 Subject to the exceptions in U6081, disqualification does not apply¹ for any period during which a person is detained in legal custody at the end of criminal proceedings, if it is a period during which that person is liable to be detained in a hospital or similar institution as a person suffering from a mental disorder.

1 ESA Regs 13, reg 96(3)

U6076 Hospital or similar institution means¹ any place in which people suffering from mental disorder may receive care or treatment but not at or in a

1. prison
2. young offenders institution
3. secure training centre
4. secure accommodation in a children's home
5. remand centre.

1 ESA Regs 13, reg 96(6)(b)

U6077 – U6079

U6080 If a person is found to be insane during criminal proceedings so that they cannot be tried or their trial cannot proceed, those proceedings will be treated as completed¹. There will be no disqualification.

1 ESA Regs, reg 96(5)(e)

U6081 The exceptions referred to in U6075 are where the person is¹

1. detained (or liable to be detained) under specific legislation² which allows a court, which has imposed a term of imprisonment, to direct that the offender be detained in a hospital or similar institution instead of a prison where that offender suffers from a psychopathic disorder **or**
2. serving a sentence of imprisonment and is then detained in a mental hospital under specific legislation³ which allows the Secretary of State for Justice or Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

*1 ESA Regs 13, reg 96(4)(a) & (5); 2 MH Act 83, s 45A; Criminal Procedure (Scotland) Act 95, s 59A
3 MH Act 83, s 47; M H (C & T) (Scot) Act 03, s 136*

U6082 Where there is a hospital direction as in U6081 **1.** or where the person is transferred from prison to a mental hospital as in U6081 **2.** the person will be disqualified for receiving ESA¹.

1 ESA Regs 13, reg 96(4)(a) & (5)

U6083 A person who is transferred to a mental hospital as in U6084 may recover and be sent back to prison. The normal rules disqualifying prisoners from receiving benefits will apply.

U6084 Where a person has been disqualified and is transferred to

- 1.** a hospital **or**
- 2.** similar institution

the disqualification will apply up to the date when the person is expected to be released, had the transfer not been made¹.

1 ESA Regs 13, reg 96(4)(b); MH Act 83, s 50(3)

U6085 Where a prisoner is transferred to a mental hospital and detained under certain legislation¹ the disqualification as in U6082 will continue until the date when they would have been released.

*1 MH Act 83, s 45A; s 47; Criminal Procedures (Scotland) Act 1995, s 59A;
MH (C & T) (Scot) Act 03, s 136*

U6086 In England and Wales, where applicable, the earliest date on which the prisoner would have been expected to be discharged from prison will be notified in a certificate. Where the prisoner was sentenced to life imprisonment the certificate issued is not endorsed with a release date.

U6087 In Scotland certificates are not issued on any case because the terms of the prisoner's transfer to mental hospital cease at the point that their sentence would have ended¹. Any further detention would require a fresh order which would not be made under the relevant legislation².

1 CSS/239/07; MH (C & T) (Scot) Act 03, s 136; s 217; 2 s 136

U6088 In U6086 – U6087 it is enough to know under what legislation the prisoner is being held in mental hospital. They will be disqualified if it is under the relevant legislation and there is no certificate.

U6089

Technical Lifers - England and Wales only

U6090 A High Court judgment¹ dealt with the issue of whether there was unequal treatment under Human Rights legislation between those persons

1. sent to hospital for treatment² without having been given a prison sentence and who **are** eligible for benefit **and**
2. those given a prison sentence and are either –
 - 2.1 sent directly to hospital for treatment³
 - 2.2 transferred to hospital from prison⁴

who are **not** eligible for benefit.

*1 Regina (EM and others) v Secretary of State for Work and Pensions [2009] EWHC 454 (Admin);
2 MH Act 83, s 37 & 41; 3 s 45A; 4 s 47*

U6091 The Court found that the difference in treatment of those persons termed 'technical lifers' could not be justified.

U6092 A 'technical lifer' is an administrative classification. It involves the Secretary of State for Justice accepting that the criminal court that heard the individual's case would have given an order for hospital treatment rather than impose a sentence of imprisonment, if, for example, a suitable bed had been available.

U6093 The effect of this is that a person given the status of a 'technical lifer' should be treated, for the purposes of benefit entitlement, as though they had been sent to hospital for treatment without having been given a prison sentence (see U6090 1. above).

Note: The practice of awarding 'technical lifer' status to eligible prisoners was abandoned in 2005.

Imprisonment or detention in legal custody abroad

U6094 When a person is imprisoned or detained in legal custody abroad¹, the same benefit rules apply for

1. disqualification
2. exception from disqualification.

Note: UK benefit rules apply only for imprisonment for a criminal offence. The DM should decide whether the offence for which the claimant is convicted in the other country would be a criminal offence in the UK. A person detained abroad without trial is not disqualified for receiving benefit, but see U6095 if they are detained abroad pending trial.

1 R(S) 2/81; ESA Regs 13, reg 96(7)

Suspension of payment during imprisonment

U6095 The payment of ESA to those claimants who are not disqualified for receiving it whilst undergoing imprisonment or detention in legal custody as a consequence of U6063 or U6094 is suspended¹. The suspension covers the period of imprisonment or detention in legal custody and any benefit payable during that period even if it is not in respect of that period.

1 ESA Regs 13, reg 97(1)

U6096 ESA is not suspended while the claimant is detained in a hospital or similar institution as a person suffering a mental illness unless U6081 applies¹.

1 ESA Regs 13, reg 97(2)

U6097 If ESA is suspended for any period, the period of suspension is not to be taken into account in calculating any period in respect of the extinguishment of the right to sums payable which are not obtained within the prescribed time¹.

1 ESA Regs 13, reg 97(3); UC, PIP, JSA & ESA (C&P) Regs, reg 55

U6098 Where a person who is held in custody on remand is given a prison sentence which is less than the time already spent in custody (and is immediately released) they are disqualified for the entirety of the time spent in custody. No benefit is refunded to the value of the extra time spent in prison¹.

Example

Kenneth is detained in legal custody on 1.9.14. The DM suspends payment of his ESA. On 1.12.14 the DM is notified that Kenneth was given a custodial sentence. The DM decides that Kenneth should be disqualified for receiving ESA from 1.9.14.

1 WR Act 07, s 18(4)(b)

U6099 – U6999

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