

# Chapter U1: ESA conditions of entitlement

## Entitlement to ESA

### Introduction

U1001 ESA was introduced on 27.10.08<sup>1</sup> to replace

1. IB
2. SDA
3. IS on the grounds of disability<sup>2</sup>.

**Note:** See DMG Chapter 45 for guidance on IB Reassessment.

*1 WR Act 07, Part 1; WR Act 07 (Commencement No. 6 and Consequential Provisions) Order 2008, art 2(4);  
2 ESA (Trans Provs) Regs, reg 1(4)*

U1002 From 29.4.13, claims for and awards of ESA under the provisions as in force before amendments to remove ESA(IR)<sup>1</sup> will gradually be phased out. See ADM Chapter V8 for further details. Where ESA is referred to in this Chapter, it means ESA where the contribution conditions are satisfied<sup>2</sup>.

*1 WR Act 07, Part 1; WR Act 12, Sch 3 & Sch 14, Part 1; 2 ESA Regs 13*

U1003 – U1004

### Scope of this Chapter

U1005 This Chapter contains guidance on

1. the conditions of entitlement for ESA
2. waiting days
3. linking periods.

U1006 – U1009

# Conditions of entitlement

## General

U1010 Claimants are entitled to ESA if they

1. satisfy the basic conditions<sup>1</sup> (see U1011) **and**
2. satisfy the contribution conditions<sup>2</sup> (see U1020 et seq) **and**
3. make a claim<sup>3</sup> (see ADM Chapter 02) **and**
4. satisfy the NINO provisions<sup>4</sup> (see ADM Chapter 02).

**Note:** See ADM Chapter V2 (Duration of ESA award) for guidance on where entitlement to ESA is limited to the maximum number of days.

*1 WR Act 07, s 1(2) & (3); 2 s 1(2)(a) & Sch 1, Part 1; 3 SS A Act 92, s 1(1) & (4) 4 s 1(1A)*

## Basic conditions

U1011 Claimants are entitled to ESA<sup>1</sup> if they

1. have LCW (see ADM Chapter U2) **and**
2. are aged 16 or over **and**
3. have not reached pensionable age (see U1013) **and**
4. are in GB (except for certain temporary absences abroad) (see ADM Chapter C4) **and**
5. are not entitled to JSA.

**Note:** See ADM Chapter V2 for guidance on where entitlement to ESA is limited to the maximum number of days.

*1 WR Act 07, s 1(3)*

U1012 A claimant is not entitled to ESA if they are entitled to SSP<sup>1</sup>. See ADM Chapter V1 (ESA amounts) for further guidance.

*1 WR Act 07, s 20(1)*

## Pensionable age

U1013 See DMG Chapter 75 for guidance on the meaning of pensionable age<sup>1</sup>.

*1 WR Act 07, s 1(6); Pensions Act 95, Sch 4, Part 1*

U1014 - U1019

## Contribution conditions

U1020 [\[See Memo ADM 28/16\]](#) In addition to the basic conditions (see U1011), to be entitled to ESA<sup>1</sup> a claimant must satisfy the

1. contribution conditions (see U1025 et seq) **or**
2. conditions relating to youth for claims made before 1.5.12 (see U1045 et seq).

**Note:** see ADM Chapter V1 (ESA amounts) for guidance on the effect on entitlement to ESA where the claimant is entitled to statutory payments such as SSP and SMP.

*1 WR Act 07, s 1(2)(a) & Sch 1, Part 1*

U1021 From 1.5.12 entitlement to ESA for claimants who are not in the support group is limited to a period of no more than 365 days<sup>1</sup>. This includes awards of ESA made under

1. the youth conditions **and**
2. the IB Reassessment rules<sup>2</sup>.

See ADM Chapter V2 for guidance on where this applies to ESA awards, and DMG Chapter 45 for guidance on awards of ESA made under the IB Reassessment rules.

*1 WR Act 07, s 1A; 2 WR Act 07, Sch 4, para 7(2)(f); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2A*

U1022 – U1024

## Contribution conditions

### What the DM decides

U1025 There are two contribution conditions<sup>1</sup>. The DM decides whether the claimant is entitled to ESA because the contribution conditions are satisfied including

1. the earnings factor derived from them
2. which are the relevant income tax years
3. the years in which the contributions must have been paid or credited
4. the commencement of a PLCW
5. the start of the relevant benefit year.

*1 WR Act 07, s 1(2)(a) & Sch 1, Part 1*

### Reference to HMRC

U1026 Entitlement to ESA depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute

about the record, the matter must be referred by the DM to HMRC for a formal decision<sup>1</sup>.

**Note 1:** See ADM Chapters 03, 04 and 06 for guidance on how decisions and appeals are handled after a reference to HMRC.

**Note 2:** See ADM Chapter 01 where the dispute is about whether credits should be awarded.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 42 & 43*

## Meaning of terms

U1027 When deciding whether the contribution conditions are satisfied, the DM should note that

1. “benefit year” means a period beginning with the first Sunday in January in any calendar year and ending with the Saturday immediately before the first Sunday in January in the following year<sup>1</sup>
2. “class 1 NI contributions” and “class 2 NI contributions” are the NI contributions paid by employed earners and S/E earners respectively<sup>2</sup>
3. “lower earnings limit” and “upper earnings limit” are lowest and highest amounts of earnings on which class 1 NI contributions are paid in any tax year<sup>3</sup> (see Appendix for LEL)
4. “relevant benefit year” means the benefit year which includes the beginning of the PLCW which includes the relevant benefit week<sup>4</sup>
5. “tax year” is the period of 12 months beginning with 6 April each year<sup>5</sup>
6. “relevant benefit week” means the week in relation to which entitlement to ESA is being considered<sup>6</sup>
7. “PLCW” means a period throughout which a person has, or is treated as having, LCW, **excluding** periods which are outside the time for claiming (see ADM Chapter A2 for guidance on the time for claiming)<sup>7</sup>.

**Note 1:** See U1029 for guidance on when the meaning of “relevant benefit year” in 4. is modified.

**Note 2:** See U1048 for guidance on when the meaning of “PLCW” is modified.

*1 WR Act 07, Sch 1, Part 1, para 3(1)(a); SS CB Act 92, s 21(6); 2 WR Act 07, Sch 1, Part 1, para 3(1)(b); SS CB Act 92, s 1; 3 WR Act 07, Sch 1, Part 1, para 3(1)(e); SS CB Act 92, s 22 & 23; 4 WR Act 07, Sch 1, Part 1, para 3(1)(f); 5 Sch 1, Part 1, para 3(1)(g); 6 Sch 1, Part 1, para 5; 7 ESA Regs 13, reg 2; UC, PIP, JSA & ESA (C&P) Regs, reg 28*

U1028 The definition of PLCW in U1027 7. ensures that, when considering whether the contributions conditions in U1032 et seq are satisfied, the relevant benefit year is decided on the basis of the date from which ESA is claimed, provided it falls within the three months time limit for claiming ESA.

## Modification of the meaning of relevant benefit year

U1029 Where U1030 applies the meaning of “relevant benefit year” at DMG U1027 4. is modified so that it is any benefit year which includes all or part of the PLCW which includes the relevant benefit week<sup>1</sup>.

*1 ESA Regs 13, reg 14(1)*

U1030 The modification in U1029 applies to a claimant who<sup>1</sup>

1. does not satisfy
  - 1.1 the first or second contribution conditions **or**
  - 1.2 both conditions **and**
2. would satisfy the conditions in 1. if that modification applied.

*1 ESA Regs 13, reg 14(2)*

U1031 This enables a claimant to become entitled to ESA on a further claim in a subsequent benefit year where

1. they now satisfy the contribution conditions **and**
2. an earlier ESA claim was disallowed because they did not satisfy one or both of the contributions conditions when the PLCW began.

## The first contribution condition

U1032 The first contribution condition is satisfied<sup>1</sup> if

1. the claimant has actually paid class 1 or class 2 NI contributions in respect of any one of the last two complete tax years before the beginning of the relevant benefit year **and**
2. those contributions have been paid before the relevant benefit week **and**
3. the claimant’s earnings for that year as determined in accordance with U1033 must be at least 26 times the LEL for that year.

*1 WR Act 07, Sch 1, Part 1, para 1(1)*

U1033 For the purposes of U1032 3. the earnings are the aggregate of the claimant’s

1. relevant earnings for that year on which class 1 NI contributions have been paid or treated as paid **and**
2. earnings factors derived from class 2 NI contributions<sup>1</sup>.

*1 WR Act 07, Sch 1, Part 1, para 1(2)*

U1034 In U1033 1., a claimant’s relevant earnings are the amount of earnings at the LEL for the year in which the first contribution condition is satisfied. Earnings which exceed the LEL are disregarded<sup>1</sup>.

*1 WR Act 07, Sch 1, para 1(3); ESA Regs 13, reg 8*

## Relaxation of the first contribution condition

U1035 The first contribution condition is taken to be satisfied<sup>1</sup> if

1. the claimant has paid Class 1 or 2 contributions for any one tax year before the relevant benefit week<sup>2</sup> **and**
2. the claimant has
  - 2.1 earnings at the LEL in that tax year on which Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the LEL for that year, are not less than the LEL multiplied by 26<sup>3</sup> **or**
  - 2.2 earnings factors in that tax year derived from Class 2 contributions multiplied by 26<sup>4</sup> **and**
3. the claimant
  - 3.1 was entitled to CA in the last complete tax year immediately before the relevant benefit year in which the first day of LCW occurred<sup>5</sup> **or**
  - 3.2 had been engaged in qualifying remunerative work<sup>6</sup> for a period of more than 2 years immediately before the first day of LCW and was entitled to the disability element, or the severe disability element, of WTC throughout that period<sup>7</sup> **or**
  - 3.3 is entitled to be credited with earnings or contributions following release from prison where a conviction is quashed<sup>8</sup>, or would be if an application was made, in respect of any week in any tax year preceding the relevant benefit year<sup>9</sup> **or**
  - 3.4 is entitled to be credited with earnings equal to LEL on the grounds that they
    - 3.4.a. are a spouse or civil partner of a member of HMF **and**
    - 3.4.b. accompanied that member of HMF on an assignment outside the UK or treated as such by the Secretary of State<sup>10</sup>.

*1 WR Act 07, Sch 1, Part 1, para 1(4)(b); ESA Regs 13, reg 9; 2 reg 9(1)(a); 3 reg 9(1)(b)(i); 4 reg 9(1)(b)(ii); 5 reg 9(2)(a); 6 reg 2(1); Tax Credit Act 02, Part 1; 7 ESA Regs 13, reg 9(2)(b); 8 SS (Credits) Regs, reg 9D; 9 ESA Regs 13, reg 9(2)(c); 10 reg 9(2)(ca); SS (Credits) Regs, reg 9E*

## The second contribution condition

U1036 The second contribution condition is satisfied<sup>1</sup> if

1. in the last two complete relevant income tax years before the beginning of the relevant benefit year the claimant has
  - 1.1 paid or been credited with class 1 or class 2 NI contributions **or**
  - 1.2 been credited with earnings **and**

2. the earnings factor in each of those years is not less than 50 times the LEL for those last two complete relevant income tax years.

*1 WR Act 07, Sch 1, Part 1, para 2(1)*

U1037 For the purposes of U1036 **2.** the earnings factor is the aggregate of the claimant's earnings factors derived<sup>1</sup> from

1. the amount of earnings which did not exceed the upper earnings limit for the last two complete relevant income tax years in U1036 **1.** on which class 1 NI contributions have been paid or treated as paid **and**
2. class 2 NI contributions.

**Note:** See U1041 for guidance on when earnings exceed the upper earnings limit.

*1 WR Act 07, Sch 1, Part 1, para 2(2)*

U1038 – U1039

## The first and second contribution condition

U1040 Where

1. class 1 NI contributions have been paid or treated as paid in any tax year from 1987/88 **and**
2. the amount paid, plus any class 2 or class 3 NI contributions paid or credited, is not enough to make the year a qualifying year by
  - 2.1 £25.00 or less for the first contribution condition **or**
  - 2.2 £50.00 or less for the second contribution condition

the earnings factor is increased by the amount required to make the year a qualifying year<sup>1</sup>.

*1 SS (Earnings Factor) Regs 1979, Sch 1, para 4*

## Earnings exceeding the upper earnings limit

U1041 For the purposes of U1040 **1.** where class 1 NI contributions have been paid or treated as paid, the earnings factor is calculated on earnings that did not exceed the upper earnings limit<sup>1</sup>.

*1 WR Act 07, Sch 1, Part 1, para 2(3)*

## Late payment of contributions

U1042 The DM determines whether the contribution conditions for ESA are satisfied. Contributions paid after the due date are generally treated as paid on the date of payment. However, there are circumstances in which contributions may be accepted as having been paid on an earlier date<sup>1</sup>. The DM will need to liaise with HMRC.

*1 SS (Conts) Regs, reg 60-65; SS (Crediting etc) Regs, reg 4*

U1043 If there is an existing decision, the DM may need to consider revising or superseding it. A change of circumstances will occur on the date it is accepted that late contributions are treated as having been paid<sup>1</sup>. See ADM Chapter 03 for full guidance on revision and Chapter 04 for full guidance on supersession.

*1 SS (Crediting etc) Regs, reg 4-8*

U1044

## Condition relating to youth

### Introduction

U1045 Since 1.5.12 no further claims can be made for ESA under the youth conditions<sup>1</sup>. The guidance at U1046 – U1083 is retained for the purposes of existing awards.

**Note:** See ADM Chapter V2 for guidance on where ESA entitlement under the youth conditions is limited to a maximum number of days.

*1 WR Act 07, s 1(3A)*

### Conditions of entitlement

U1046 The conditions for receiving ESA relating to youth, including the age conditions, are set out in U1047. In some circumstances the upper age condition can be extended (see U1050). In some circumstances a claimant who does not satisfy the upper age condition can be entitled to ESA because of previous entitlement to ESA relating to youth (see U1081).

U1047 The conditions of entitlement<sup>1</sup> for ESA relating to youth are that

1. the claimant is aged under 20 (or under 25 in the circumstances described in U1050) when the relevant PLCW began (see U1048)
2. the claimant is not receiving FTE (see U1058 et seq)
3. the claimant satisfies the conditions of residence and presence in GB and is not a PSIC<sup>2</sup> (see ADM Chapter C4)
4. there has been a day in the relevant PLCW which was
  - 4.1 a day on which the claimant was aged at least 16 **and**
  - 4.2 preceded by a period of 196 consecutive days throughout which the claimant had LCW.

*1 WR Act 07, Sch 1, Part 1, para 4(1); 2 ESA Regs 13, reg 12(1)*

U1048 When considering whether a claimant satisfies the conditions of entitlement at U1047, the DM should note that

1. the relevant PLCW means the PLCW which includes the relevant benefit week<sup>1</sup>



2. the effect of U1047 **1.** is that a claimant who is entitled to ESA in a PLCW does not lose entitlement on becoming 20 (or where relevant 25) in the same PLCW
3. although SSP days are not part of a PLCW (see ADM Chapter U2) a claimant may satisfy the relevant age conditions on a day in a period of entitlement to SSP immediately preceding the relevant PLCW which means that any days of entitlement to SSP immediately preceding the relevant PLCW are treated as days of LCW for the purposes of ESA for those satisfying the condition relating to youth<sup>2</sup>
4. for the purposes of U1047 **4.**
  - 4.1 consecutive days may be made up of days of LCW which form part of a PLCW and days of LCW which do not **and**
  - 4.2 linking provisions cannot be used to meet this condition when days of LCW are not consecutive<sup>3</sup>
  - 4.3 periods of IfW **cannot** be treated as forming part of a PLCW
5. the definition of PLCW at U1024 **7.** does not apply. For the purposes of U1047, a PLCW is a period throughout which the claimant has, or is treated as having, LCW<sup>4</sup>.

*1 WR Act 07, Sch 1, Part 1, para 4(2) & 5; 2 ESA Regs 13, reg 29; 3 reg 10(6); 4 reg 3(2)*

U1049 An example of where U1048 **4.1** may apply is where days for which a claimant is not entitled to ESA because of a late claim do not form part of a PLCW (see ADM Chapter U2) but may count towards the 196 day condition if there is sufficient evidence of LCW.

### **Extension of upper age limit to 25**

U1050 The upper age condition can be extended to 25<sup>1</sup> if a claimant

1. registered on a course of
  - 1.1 F/T advanced or secondary education (see U1056) **or**
  - 1.2 training (see U1057)
 at least 3 months before the claimant's 20th birthday<sup>2</sup> **and**
2. attended one or more such courses in the academic term after registration during the period in U1051<sup>3</sup>.

*1 ESA Regs 13, reg 10(1); 2 reg 10(2)(a); 3 reg 10(2)(b)*

U1051 For the purposes of U1050 **2.** the period is one which

1. began on or before a day at least 3 months before the claimant's 20th birthday<sup>1</sup> **and**

2. ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to ESA because the first and second contribution conditions were satisfied<sup>2</sup>.

*1 ESA Regs 13, reg 10(3)(a); reg 10(3)(b)*

U1052 When considering U1050 DMs should note that a claimant is attending a course on any day on which the course is interrupted by an illness or domestic emergency<sup>1</sup>.

*1 ESA Regs 13, reg 10(4)*

U1053 - U1055

### **Full-time advanced or secondary education**

U1056 When considering whether U1050 **1.1** is satisfied, the DM should note that<sup>1</sup>

1. “advanced education” means education for the purposes of
  - 1.1 a course in preparation for
    - 1.1.a a degree **or**
    - 1.1.b a diploma of higher education **or**
    - 1.1.c a higher national diploma **or**
    - 1.1.d a higher national diploma of the BTEC or the Scottish Qualifications Authority **or**
    - 1.1.e a teaching qualification **or**
  - 1.2 any other course which is of a standard above
    - 1.2.a ordinary national diploma **or**
    - 1.2.b a diploma of the BTEC **or**
    - 1.2.c a higher or advanced higher national certificate of the Scottish Qualifications Authority **or**
    - 1.2.d a general certificate of education (advanced level).
2. “F/T” includes P/T where a claimant’s disability prevents attendance at a F/T course
3. “secondary education” means a course of education below a course of advanced education by attendance at
  - 3.1 an establishment recognized by the Secretary of State as being, or comparable to, a university, college or school **or**
  - 3.2 another establishment where the Secretary of State is satisfied that education is equivalent to that given in an establishment at **3.1**.

**Note:** There is no specific requirement as to hours. If there is a doubt as to whether or not a course is F/T evidence should be obtained from the education authorities.

*1 ESA Regs 13, reg 10(5)*

## Training

U1057 When considering whether U1050 **1.2** is satisfied the DM should note that “training” means<sup>1</sup>

1. training in pursuance of arrangements made under prescribed legislation<sup>2</sup> **or**
2. any training received on a course which a person attends for 16 hours or more a week for the primary purpose of being taught occupational or vocational skills.

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

## Full-time education condition

U1058 For the purpose of U1047 **2**, a claimant is treated as receiving FTE for any period during which the claimant

1. is aged 16 or over but under 19 **and**
2. attends a course of education for 21 hours or more a week<sup>1</sup>.

*1 ESA Regs 13, reg 13(1)*

U1059 In determining the duration of a period of FTE any temporary interruption of that education may be disregarded<sup>1</sup>.

*1 ESA Regs 13, reg 13(3)*

U1060 A claimant who is 19 years of age or over is not treated as receiving FTE<sup>1</sup>. This applies whether or not the claimant is undergoing FTE. DMs should note that a claimant is over 19 from and including the 19th birthday.

*1 ESA Regs 13, reg 13(4)*

## Calculation of hours of attendance

U1061 In calculating the number of hours of attendance at a course of education, the DM should take into account time spent in following the particular course, not the time spent at a particular place of education.

U1062 The DM should **include** time spent on

1. classroom instruction suitable for people of the same age with no disabilities (see U1066 et seq)
2. supervised study
3. examinations
4. practical work
5. taking part in any exercise, experiment or project which is part of the course.

- U1063 The DM should **exclude** time spent on
1. any instruction or tuition which is not suitable for claimants of the same age who does not have a disability<sup>1</sup> (see U1066 et seq)
  2. unsupervised private study whether
    - 2.1 at home **or**
    - 2.2 on the premises of the educational establishment
  3. morning assemblies
  4. normal meal and relaxation breaks.

*1 ESA Regs 13, reg 13(2)*

U1064 - U1065

### **Instruction or tuition which is “not suitable”**

- U1066 The words “instruction” or “tuition” cover the content as well as the method. Instruction or tuition which is not suitable for ordinary students includes
1. the teaching of special skills required by people with disabilities **and**
  2. the methods of teaching, where these would not be suitable for people of the same age who do not have a disability<sup>1</sup>.

*1 R(S) 2/87*

- U1067 A course of education includes
1. attendance at an ordinary school or college including grammar, comprehensive and 6th form college
  2. attendance at a special school or training centre designed specifically for people with disabilities
  3. home tuition arranged by the LEA.

U1068 People attending special schools may be in FTE. Similarly students attending ordinary schools may not be in FTE.

- U1069 The DM should consider the circumstances of each claimant to decide whether
1. the course content and method of teaching for each subject is suitable for people without disabilities **and**
  2. the course amounts to 21 or more hours a week.

- U1070 For the purposes of U1069 1. it may be clear that the entire course content is either
1. suitable **or**
  2. not suitable

for people with no disabilities of the same age as the claimant. Many claimants may receive a mixture of **1.** and **2.** The DM should consider each lesson to determine whether the content is or is not suitable for people without disabilities.

U1071 Examples of what the DM should exclude when calculating the time spent on the course include

1. activities connected with the student's disability (life skills or independence training)
2. curriculum levels intended for a younger person.

U1072 Where

1. people are following the normal subject curriculum for people of that age with no disabilities **and**
2. the time spent is 21 or more hours

there is no entitlement to ESA even though the number of subjects undertaken is limited by the disability.

U1073 It will be clear in some cases that the method of teaching is not suitable for people of the same age without disabilities, for example

1. a profoundly deaf person using radio links or sign language **or**
2. a blind person using Braille.

U1074 In deciding whether the claimant is receiving FTE, the DM should exclude time spent on instruction

1. which is slower **or**
2. where the hours for each subject are far greater

than would be necessary for people without disabilities.

U1075 - U1080

### **Over the upper age limit but previously entitled**

U1081 People who do not satisfy the upper age condition (see U1047 and U1050) may still be entitled to ESA if

1. they previously ceased to be entitled to ESA as a claimant satisfying the condition relating to youth<sup>1</sup> **and**
2. their previous entitlement was not ended by a determination that they did not have LCW<sup>2</sup> (apart from a determination under **5.**) **and**
3. the linking rules do not apply<sup>3</sup> **and**
4. they are aged<sup>4</sup>

- 4.1 20 or over **or**
- 4.2 25 or over if U1050 et seq applies **and**
- 5. their previous entitlement ended with a view to taking up employment or training<sup>5</sup> **and**
- 6. their earnings factor from employment or employments pursued between the termination of the previous entitlement and the beginning of the period of LCW was less than 25 times the lower earnings limit in any of the last 3 complete tax years before the relevant benefit year<sup>6</sup> **and**
- 7. they
  - 7.1 in the last two complete tax years before the relevant benefit year had
    - 7.1.a paid **or**
    - 7.1.b been credited with earnings equivalent to 50 times the lower earnings limit in each of those years and, in the last tax year, at least one credit was in respect of the disability element or severe disability element of WTC **or**
  - 7.2 make a claim for ESA within a period of 12 weeks after the day the employment in 6. ended<sup>7</sup>.

**Note 1:** "Training" has the same meaning as in U1057.

**Note 2:** See U1111 for guidance on the linking rule.

*1 ESA Regs 13, reg 11(1)(a); 2 reg 11(1)(b); 3 reg 11(1)(c); 4 reg 11(1)(d);  
5 reg 11(2)(a); 6 reg 11(2)(b); 7 reg 11(2)(c)*

### **ESA for claimant satisfying the condition relating to youth and overlapping benefits**

- U1082 For the purpose of overlapping benefits ESA is a contributory benefit<sup>1</sup>. This applies even though ESA for those satisfying the condition relating to youth is not based on contribution conditions.

*1 SS (OB) Regs, reg 2(1); SS CB Act 92, Part II*

### **ESA for claimant satisfying the condition relating to youth and CHB**

- U1083 A claimant is not entitled to CHB for any week in which that claimant is entitled to ESA under the provisions for people incapacitated in youth<sup>1</sup>.

**Note:** See ADM Chapter D1 if an offset is appropriate.

*1 CHB (Gen) Regs, reg 8(2)*

## Members of Her Majesty's Forces

- U1084 Members of HMF<sup>1</sup> are not entitled to ESA unless they are<sup>2</sup> members of
1. any prescribed territorial or reserve force<sup>3</sup> not undergoing training or instruction continuously for longer than 72 hours **or**
  2. the Royal Irish Regiment who are **not** also serving as members of any regular naval, military or air forces
    - 2.1 on the F/T permanent staff **or**
    - 2.2 serving or undergoing training or instruction continuously for longer than 72 hours.

**Note:** See U1106 et seq for the meaning of member of HMF.

*1 ESA Regs 13, reg 2; 2 SS (Conts) Regs, Sch 6; 3 SS (Benefit) (Members of Forces) Regs 1975, reg 2*

U1085 - U1099

## Waiting days and linking rule

### No entitlement to ESA

- U1100 A claimant is not entitled to ESA for the first seven days of a PLCW<sup>1</sup>. These seven days are called waiting days.

*1 WR Act 07, Sch 2, para 2; ESA Regs 13, reg 85(1)*

- U1101 However, claimants do not have to serve waiting days where U1103 et seq applies or there is a linking PLCW (see U1111).

**Note:** See ADM Chapter U2 for guidance on people undergoing certain treatment and the effect on waiting days.

U1102

### Claimants who do not have to serve waiting days

- U1103 Claimants do not have to serve waiting days<sup>1</sup> if
1. their entitlement to ESA begins within twelve weeks of the end of their entitlement to
    - 1.1 IS **or**
    - 1.2 SPC **or**
    - 1.3 JSA **or**
    - 1.4 CA **or**

- 1.5 SSP **or**
- 1.6 MA **or**
- 1.7 IB **or**
- 1.8 SDA **or**
- 2. they are terminally ill<sup>2</sup> (see U1105) and have made
  - 2.1 a claim expressly for that reason **or**
  - 2.2 an application for supersession or revision<sup>3</sup> which contains a statement that they are terminally ill **or**
- 3. they have been discharged from being a member of HMF (see U1106 et seq) and three or more days immediately before that discharge were days of sickness from duty which were recorded by the Secretary of State for Defence<sup>4</sup> **or**
- 4. they are awarded ESA after
  - 4.1 entitlement has previously terminated because it exceeded the maximum number of days **and**
  - 4.2 their health condition has deteriorated<sup>5</sup> (see ADM Chapter V2).

*1 ESA Regs 13, reg 85(2)(a); UC, PIP, JSA & ESA (D&A) Regs, reg 48(5) & (6);  
 2 ESA Regs 13, reg 85(2)(b); 3 SS CS (D&A) Regs; UC, PIP, JSA & ESA (D&A) Regs;  
 4 ESA Regs 13, reg 85(2)(c); 5 WR Act 07, s 1B; ESA Regs 13, reg 85(2)(d)*

### Example

Dolores was entitled to IS until Sunday 26.10.14. She then claims and satisfies the conditions of entitlement to ESA from and including Monday 19.1.15. Dolores has to serve three waiting days and is not entitled to ESA on Monday 19.1.15, Tuesday 20.1.15 and Wednesday 21.1.15. To be within twelve weeks of her entitlement to IS coming to an end, Dolores would have had to have claimed ESA and satisfied the entitlement conditions on Sunday 18.1.15.

U1104 DMs should note that entitlement to ESA can exist even though nothing is payable. An example of when this may happen is where people are entitled to ESA only but they have a pension payment that exceeds the allowable limit so no ESA is payable.

### Meaning of terminally ill

U1105 For the purposes of U1103 2. people are terminally ill<sup>1</sup> if

- 1. they are suffering from a progressive disease **and**
- 2. their death in consequence of that disease can reasonably be expected within six months.

*1 ESA Regs 13, reg 2*



## Meaning of member of HMF

U1106 A member of HMF<sup>1</sup> is a person

1. over 16 years old **and**
2. who gives full-pay service (see U1109) as a member of certain named establishments or organizations<sup>2</sup> (see U1107).

*1 ESA Regs 13, reg 2; 2 Sch 1, Part 1*

U1107 For the purposes of U1106 **2.** a member of certain named establishments or organizations means<sup>1</sup> any member of the

1. regular naval, military or air forces of the Crown
2. Royal Fleet Reserve
3. Royal Naval Reserve
4. Royal Marines Reserve
5. Army Reserve
6. Territorial Army
7. Royal Air Force Reserve
8. Royal Auxiliary Air Force
9. Royal Irish Regiment.

*1 ESA Regs 13, Sch 1, Part 1*

U1108 However, a person who is

1. recruited locally overseas in certain circumstances<sup>1</sup> **or**
2. a deserter **or**
3. a person to whom U1106 **1.** or **2.** applies<sup>2</sup>

is not a member of HMF.

*1 ESA Regs 13, Sch 1, Part 2; 2 reg 2(1); 2 SS (Benefit) (Members of Forces) Regs 1975, reg 2*

## Meaning of full-pay service

U1109 A member of the armed forces is giving full-pay service if normal salary continues to be paid from

1. a civilian employer **or**
2. one of the branches of the armed forces.

U1110 A person on unpaid leave or less than normal salary is not giving full-pay service.

## Linking PLCW

U1111 Claimants do not have to serve waiting days if there is a linking PLCW. There is a linking PLCW when a PLCW is separated from another such period by not more than 12 weeks<sup>1</sup>.

*1 ESA Regs 13, reg 86*

U1112 - U1999

# Appendix

## Lower earnings limit

<b>From</b>	<b>Amount</b>
6.4.10	£97
6.4.11	£102
6.4.12	£107

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