

**ESA: REMOVAL OF WORK-RELATED ACTIVITY
COMPONENT**

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INTRODUCTION

- 1 This memo gives guidance on changes to the ESA WRAC made by

1. the Welfare Reform and Work Act 2016¹ **and**
2. the Employment and Support Allowance and Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regs 2017²

which come into force on 3.4.17.

1 WR & W Act 16, s 15; 2 ESA & UC (Misc Amdt etc.) Regs, SI 2017 No. 204

2 The legislation

1. removes the WRAC from ESA prescribed amounts¹ **and**
2. makes consequential provisions including for other benefits² **and**
3. makes provisions for the removal of the WRAC not to apply in specified cases³.

1 WR & W Act 16, s 15(1) - (3); ESA & UC (Misc Amdt etc.) Regs, reg 2; 2 WR & W Act 16, s 34(1); ESA & UC (Misc Amdt etc.) Regs, Sch 1, Part 1; 3 WR & W Act 16, s 15(4) - (7); ESA & UC (Misc Amdt etc.) Regs, Sch 2, Part 1

REMOVAL OF THE WRAC

3 From 3.4.17, the WRAC can no longer be included in an award of ESA for claims made on or after that date. This means that, where an ESA claimant

1. is found to have, or is treated as having, LCW **and**
2. does not have, or is not treated as having, LCWRA **and**
3. enters the main phase

no component is included in the ESA award¹.

Note 1: See paragraphs 21 - 28 for exceptions.

Note 2: See DMG [Chapter 44](#) for guidance on the ESA amounts payable including the components.

1 ESA Regs, reg 67(3) & Sch 4, para 1 & 12

Example

Cindy, who is 23, claims and is entitled to ESA from 21.4.17 at the assessment phase rate for claimants aged under 25. Following application of the WCA, Cindy is found to have LCW and is placed in the WRAG. Cindy's award of ESA is superseded to

increase the applicable amount to the main phase rate from 28.7.17. The WRAC is not included.

Entitlement to component before the end of the assessment phase

- 4 [DMG 44631](#) et seq gives guidance on payment of the component where certain conditions are satisfied, including relevant linked cases where PLCWs link¹. From 3.4.17, the only component payable is the support component.

Note: See paragraph 24 for cases where the linked PLCW begins before 3.4.17.

1 ESA Regs, reg 7 & 145(1)

Example

Gavin has been entitled to ESA since 13.4.17, and is in the assessment phase. His award is terminated from 20.6.17 when he notifies that he is going to New Zealand from 23.5.17 to stay with his daughter. He does not expect to return for about six months.

On 5.9.17 Gavin claims ESA again, after returning to GB earlier than planned. He provides evidence of LCW, and is referred for the WCA. The DM determines that Gavin has LCW, but does not have LCWRA. Gavin's award is not changed to include the WRAC, although he is not required to serve waiting days as the PLCWs link.

CONSEQUENTIAL CHANGES

ESA housing costs

- 5 The description of a disabled person at DMG 44210 is amended to remove any reference to the WRAC. From 3.4.17 a disabled person includes, among the other remaining conditions

1. a claimant **or**
2. a person living with the claimant

who would be entitled to ESA but for the application of time limiting¹.

1 ESA Regs, Sch 6, para 1(3)(a)(ii)

- 6 The guidance at [DMG 44606 2.5](#) describes the circumstances where a non-dependant deduction is not appropriate. From 3.4.17 this paragraph is amended to include the

situation where the person is aged under 25, in receipt of ESA and their assessment phase has not ended¹.

1 ESA Regs, Sch 6, para 19(7)(d)

JSA housing costs

- 7 A definition is introduced into the JSA regulations to describe a new ESA group. This is a member of the work-related activity group – which means a claimant who has or is treated as having LCW and their assessment phase has ended¹.

1 JSA Regs, reg 1(3)

- 8 The guidance at [DMG 23770 2.5](#) describes the circumstances where a non-dependant deduction is not appropriate. From 3.4.17 this paragraph is amended to include the situation where the person is aged under 25, in receipt of ESA and is not a member of the work-related activity group¹.

1 JSA Regs, Sch 2, para 17(7)(i)

IS housing costs

- 9 Two definitions are introduced into the IS regulations to describe new ESA groups. They are
1. member of the support group – which means a claimant who has or is treated as having LCWRA and their assessment phase has ended **and**
 2. member of the work-related activity group – which means a claimant who has or is treated as having LCW and their assessment phase has ended¹.

1 IS Gen Regs, reg 2(1); JSA Regs, reg 1(3)

- 10 The guidance at [DMG 23770 2.5](#) describes the circumstances where a non-dependant deduction is not appropriate. From 3.4.17 this paragraph is amended to include the situation where the person is aged under 25, in receipt of ESA and is not a member of the work-related activity group or a member of the support group¹.

1 IS Gen Regs, Sch 3, para 18(7)(i);

IS and JSA housing costs

- 11 The description of a disabled person at [DMG 23410](#) is amended to remove **4.** and **5.** which refer to the WRAC. From 3.4.17 a disabled person is described as a person who, among the other remaining conditions

1. is a person in respect of whom the support component is payable or they are a member of the work-related activity group¹ **or**
2. would but for the application of time limiting, be entitled to ESA².

1 IS Gen Regs, Sch 3, para 1(3)(d)(i); JSA Regs, Sch 2, para 1(3)(e)(i); 2 IS Gen Regs, Sch 3, para 1(3)(d)(ii); JSA Regs, Sch 2, para 1(3)(e)(ii)

SPC housing costs

- 12 A definition is introduced into the SPC regulations to describe a new ESA group. This is a member of the work-related activity group – which means a claimant who has or is treated as having LCW and their assessment phase has ended¹.

1 SPC Regs, reg 2(1)

- 13 The description of a disabled person at [DMG 78186](#) is amended to remove any reference to the WRAC. From 3.4.17 a disabled person is described as a person who, among the other conditions

1. is a person in respect of whom the support component is payable or they are a member of the work-related activity group **or**
2. would but for the application of time limiting, be a member of the work-related activity group¹.

1 SPC Regs, Sch II, para 1(2)(a)(iii)(dd)

- 14 The guidance at [DMG 78521 2.5](#) describes the circumstances where a non-dependant deduction is not appropriate. From 3.4.17 this paragraph is amended to include the situation where the person is aged under 25, in receipt of ESA and is not a member of the work-related activity group or they are in receipt of the support component¹.

1 SPC Regs, Sch II, para 14(7)(g)

SF Cold Weather Payments

Definitions

- 15 Two definitions are introduced to the SFCWP regulations. “Member of the support group” means¹ a claimant who has or is treated as having LCWRA and their assessment phase has ended..

1 SFCWP Regs, reg 1(2)

- 16 “Member of the work-related activity group” means¹ a claimant who has LCW or is treated as having LCW and their assessment phase has ended.

1 SFCWP Regs, reg 1(2)

- 17 From 3.4.17, guidance at [DMG 39700 3.2.e](#) is amended to read

3.2.e they receive ESA(IR) and the claimant is a member of the work-related activity group or member of the support group¹.

1 SFCWP Regs, reg 1A(3)(e)(ii)

SAVINGS

- 18 The guidance in paragraphs 3 –17 does **not** apply where any of the circumstances in paragraphs 21 - 28 apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 1(1)

Meaning of claim

- 19 A claim means making a claim for ESA in accordance with specified provisions¹. See DMG [Chapter 02](#) for detailed guidance on making a claim for ESA.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 1(2); SS (C&P) Regs, reg 4ZC, 4G, 4H & 4I

- 20 DMs should note that an award of ESA made pending the outcome of an appeal against a decision embodying a determination that the claimant does not have LCW is made without the need to make a claim¹. However, the claimant may be protected from the removal of the WRAC as in paragraphs 24 or 27.

1 SS (C&P) Regs, reg 3(j)

Example

Lionel's award of ESA is terminated from 29.3.17 after he is found not to have LCW. The DM refuses to revise the disallowance following a mandatory reconsideration, and Lionel appeals to the FtT. He is awarded ESA from 27.4.17 pending the outcome of the appeal. On 5.9.17 Lionel's appeal succeeds, and the FtT places him in the WRAG. The FtT decision is implemented to award ESA with the WRAC up to 26.4.17, and the DM revises the decision awarding ESA from 27.4.17 to include the WRAC from the same date.

Claim made before 3.4.17

21 Where

1. the claimant has made or is treated as having made a claim for ESA before 3.4.17 **and**
2. that claim results in an award of ESA

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 2

22 The guidance at paragraph 21 applies whether the award of ESA is made

1. immediately following that claim **or**
2. following mandatory reconsideration **or**
3. on appeal.

Example 1

Catherine claims ESA on 28.3.17. She is awarded ESA from 4.4.17. On 26.7.17 following the WCA, the DM determines that Catherine has LCW, but does not have LCWRA. Catherine's award of ESA is superseded to include the WRAC from 4.7.17.

Example 2

Brian claims ESA and is awarded from 5.8.16 at the assessment phase rate. He is treated as not having LCW from 18.4.17 when the DM determines that Brian does not have good cause for a failure to attend the medical examination. Brian applies for a mandatory reconsideration, and when the decision is not revised, lodges an appeal to the FtT. The FtT allows the appeal, and Brian's award of ESA is reinstated when he sends in backdated fit notes again. Following the WCA, Brian is found to have LCW, and the decision awarding ESA is superseded to award the WRAC from 4.11.16.

23 The guidance at paragraph 21 also applies where it is determined that the claimant has, or is treated as having, LCW and LCWRA, and later following a repeat WCA, it is determined that the claimant has LCW, but no longer has LCWRA.

Example

Shani's award of ESA from 2016 includes the support component. Following a routine repeat WCA, on 20.4.17 the DM determines that Shani has LCW but no longer has LCWRA. Shani's award is superseded from 20.4.17 to remove the support component, and include the WRAC.

Claimants previously found to have LCW before 3.4.17

24 Where a claimant

1. is awarded ESA on or after 3.4.17 and has, or is treated as having, LCW **and**
2. a previous award of ESA ended within 12 weeks of the current PLCW **and**
3. the combined PLCW began before 3.4.17

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 3; ESA Regs, reg 145

Example 1

Edmund has been entitled to ESA since November 2016 at the assessment phase rate. His award is terminated on 30.3.17 after he is found not to have LCW. He makes a further claim for ESA on 5.6.17 after developing a new health condition. After the WCA, Edmund is found to have LCW, but not LCWRA. As the PLCWs link, Edmund's award includes the WRAC from 5.6.17.

Example 2

Anne's award of ESA is terminated on 30.3.17 when she starts work. Anne finds the work too difficult because of her health condition, and she makes a further claim for ESA on 5.6.17. Following the WCA, Anne is found to have LCW but not LCWRA. As the PLCWs link, Anne's award of ESA includes the WRAC.

IB Reassessment cases

25 Where

1. the claimant is entitled to IB, SDA or IS on the grounds of disability **and**
2. the conversion process begins (whether before or after 3.4.17) **and**
3. the claimant is found to have, or is treated as having, LCW or LCWRA (whether for old style or new style ESA)

the removal of the WRAC does not apply¹.

Note: See DMG [Chapter 45](#) for detailed guidance on IB Reassessment and the conversion process.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 4; ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 4

Example 1

Richard is entitled to IB, and on 15.3.17 is notified that the conversion process has begun. Following the WCA, Richard is found to have LCW and LCWRA, and his award is converted to ESA(Cont) including the support component. Later, Richard's health condition improves, and after a repeat WCA, on 26.10.17 he is found to have LCW but not LCWRA. Richard's award is superseded to remove the support component and include the WRAC.

Example 2

Bridget is entitled to SDA and IS, and on 6.4.17 she is notified that the conversion process has begun. Following the WCA, on the DM determines Bridget has LCW, and her award is converted to an award of ESA with the WRAC from 12.7.17.

Claim made within the prescribed time for claiming before 3.4.17

26 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the claim is made within the prescribed time for claiming from a date before 3.4.17

the removal of the WRAC does not apply¹.

1 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 5; SS (C&P) Regs, reg 19(1) & Sch 4, para 16

Example

Eoin claims ESA on 10.4.17., and provides a fit note to say he is not fit for work from 11.1.17. He is awarded ESA from 18.1.17. Following application of the WCA, the DM determines that Eoin has LCW, and supersedes the awarding decision to add the WRAC from 26.4.17.

Assessment phase begins before 3.4.17

27 Where

1. a claim for ESA is made on or after 3.4.17 **and**
2. the assessment phase begins before 3.4.17 under specified legislation¹

the removal of the WRAC does not apply².

Note: See DMG [Chapter 44](#) for guidance on when the assessment phase begins for previous claimants.

1 ESA Regs, reg 5; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 6

Example

George is entitled to JSA, and begins a JSA EPS on 21.1.17. His condition does not improve as expected, and on 6.4.17 he claims ESA. George is found to have LCW but not LCWRA. The period of JSA EPS is treated as a period of ESA entitlement, and George's assessment phase begins on 21.1.17. His award of ESA from 6.4.17 includes the WRAC from 22.4.17.

Previously entitled to maternity allowance

28 Where

1. the claimant has been entitled to MA¹ and the end of that award is no longer than 12 weeks before a new claim for ESA **and**
2. immediately before the award of MA began, the claimant was previously entitled to ESA before 3.4.17

the removal of the WRAC does not apply².

Note: See DMG [Chapter 62](#) for guidance on MA.

1 SS CB Act 92, s 35; 2 ESA & UC (Misc Amdt etc.) Regs, Sch 2, para 7

Example

Adele is entitled to MA from 5.9.16. She was entitled to ESA(IR) immediately before that date. However, she is not entitled to ESA(IR) while she is entitled to MA. Her entitlement to MA ends on 4.6.17. Adele makes a further claim for ESA on 19.6.17. Her award of ESA includes the WRAC.

ANNOTATIONS

Please annotate the number of this memo (Memo DMG 6/17) against the following DMG paragraphs:

[23410](#), [23770](#), [39700 heading](#), [44210](#), [44606](#), [44631 main heading](#), [44635](#), [44636 heading](#), [78186](#), [78521](#)

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, 1S25, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 03/13](#) - Obtaining legal advice and guidance on the Law.

DMA Leeds: April 2017

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