

# Chapter V2: Duration of ESA award

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# Chapter V2: Duration of ESA award

## Introduction

V2001 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>.

**Note:** See DMG Chapter 45 for guidance on duration of ESA awards 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*

## Further awards of ESA

V2002 There are special provisions allowing claimants to become entitled to a further award of ESA<sup>1</sup> after a previous award has ended due to time limiting where

1. they satisfy the contribution conditions **and**
2. in relation to the second condition, at least one of the relevant income tax years is later than those used for the previous period of entitlement.

See V2045 for further details.

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

V2003 Awards made under the youth conditions are not based on tax years. Any further claim after entitlement is terminated because of time limiting must be based on the normal conditions of entitlement (but see V2004 where the claimant's health condition deteriorates).

V2004 A further provision also allows claimants whose ESA has ceased as a result of time limiting to qualify for a further award of ESA where their health condition deteriorates to the extent that they have, or are treated as having, LCWRA, provided certain conditions are satisfied<sup>1</sup>. See V2056 et seq for further details.

*1 WR Act 07, s 1B*

V2005 – V2009

## Period of entitlement

### Contribution conditions satisfied

V2010 Entitlement to an award of ESA where

1. the first and second contribution conditions are satisfied<sup>1</sup> (see ADM Chapter U1) **and**

2. entitlement is based on the same two tax years  
cannot exceed the relevant maximum number of days<sup>2</sup>.

**Note:** See V2020 et seq for days which do not count towards the maximum number of days.

*1 WR Act 07, s 1(2)(a) & Sch 1, paras 1 – 3; 2 s 1A(1) & (2)*

## Relevant maximum number of days

V2011 The relevant maximum number of days is<sup>1</sup>

1. 365 **or**
2. a greater number of days where specified by order of the Secretary of State.

**Note:** At present no order has been made, and the maximum number of days is therefore 365.

*1 WR Act 07, s 1A(2)*

V2012 – V2014

## Youth conditions satisfied

V2015 Entitlement to an award of ESA where

1. the youth conditions are satisfied **and**
2. the claim was made before 1.5.12

cannot exceed 365 days<sup>1</sup>. See ADM Chapter U1 (ESA conditions of entitlement) for guidance on the youth conditions.

**Note:** See V2020 et seq for days which do not count towards the maximum number of days.

*1 WR Act 07, s 1A(4)*

V2016 – V2019

## Which days are not included

### Claimant has, or is treated as having, LCWRA

V2020 When calculating the period of entitlement for the purposes of V2010 or V2015, days where the claimant is

1. a member of the support group<sup>1</sup> **or**
2. not a member of the support group, but is entitled to the support component<sup>2</sup>  
**or**

3. in the assessment phase<sup>3</sup>, when this is immediately followed by a determination that the claimant is a member of the support group and entitled to the support component

are **not** included<sup>4</sup>.

**Note:** See V2075 et seq for guidance on where the claimant's health condition improves.

*1 WR Act 07, s 24(4); 2 s 2(1)(b); 3 s 24(2); 4 s 1A(5)*

- V2021 A claimant is a member of the support group from the date the determination is made that they have, or are treated as having, LCWRA<sup>1</sup>. This determination may be made before or after the effective date of entitlement to the support component.

*1 WR Act 07, s 24(4)*

### Example

Miranda has been entitled to ESA at the assessment phase rate since 15.5.14. On 6.8.14 after application of the WCA, the DM determines that Miranda has LCW and LCWRA. Miranda is a member of the support group from 6.8.14. The DM then supersedes the decision awarding ESA and awards the support component from 14.8.14, the 14<sup>th</sup> week of entitlement. None of the days when Miranda is entitled to ESA count towards the relevant maximum number of days. Miranda continues to be entitled to ESA for as long as she has LCW and LCWRA. If her health improves to such an extent that she is later found to have LCW but no longer has LCWRA, the 365 day count would begin from the date of that determination.

### Waiting days

- V2022 A claimant is not entitled to ESA for the first seven days of a PLCW<sup>1</sup>, known as waiting days – see ADM Chapter U1 (ESA conditions of entitlement). Waiting days are therefore not included in the period of entitlement at V2010 and V2015.

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

### Days of disqualification

- V2023 ADM Chapter U7 (Disqualification) gives guidance on treating the claimant as not having LCW if they are disqualified for receiving ESA during a period of imprisonment of more than six weeks<sup>1</sup>. These days are not days of entitlement to ESA, and are therefore not included in the period of entitlement at V2010 or V2015.

*1 ESA Regs 13, reg 95*

V2024 – V2029

## Which days are included

V2030 When calculating the period of entitlement for the purposes of V2010 or V2015, **all** days of entitlement, both before and after 1.5.12, **except** those in V2020, are included in the count<sup>1</sup>. This also includes days where the claimant is entitled to ESA paid at the assessment phase rate pending an appeal against a disallowance following application of the WCA (see ADM Chapter U7).

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See ADM Chapter V6 (ESA: Assessment phase and components) for further details, including where transitional provisions apply.

*1 WR Act 07, s 1A(6)*

### Example

Sally has been entitled to ESA at the assessment phase rate since 8.7.13. On 19.11.13 after application of the WCA the DM determines that Sally does not have LCW, and terminates her entitlement to ESA from the same date. Sally appeals to the FtT, and is awarded ESA at the assessment phase rate from 19.11.13 pending determination of the appeal. As none of these days is excluded from the 365 day period, her last day of entitlement is 7.7.14, the 365<sup>th</sup> day, if the appeal is still outstanding at that time.

If the FtT subsequently allows Sally's appeal, but finds that she does not have LCWRA, Sally is entitled to arrears of the WRAC from the 14<sup>th</sup> week of entitlement for the period 7.10.13 – 7.7.14 only. The decision terminating ESA from 8.7.14 stands.

If the FtT allows the appeal, and finds that Sally has LCWRA, the decision terminating ESA from 8.7.14 should be revised to reinstate entitlement, and arrears of the support component paid as normal. As Sally is in the support group her ESA is not time limited for as long as she has LCW and LCWRA. None of the days from 8.7.13 count towards the 365 day time limit.

V2031 The period of 365 days includes all days of entitlement, including previous periods of entitlement, which are based on the same two tax years<sup>1</sup>. This may be where the 12 week linking provisions apply<sup>2</sup>, or where two awards for claims made in the same relevant benefit year. See ADM Chapter U1 (ESA conditions of entitlement) for guidance on linking PLCWs.

*1 WR Act 07, s 1A(1); 2 ESA Regs 13, reg 86*

### Example

Roberto was entitled to ESA from 20.1.14. He was found to have LCW, but was not placed in the support group. He returned to work on 3.9.14, and his award of ESA was terminated from that date. On 8.10.14 Roberto makes a repeat claim for ESA.

The PLCWs link, and he is awarded ESA from 8.10.14. Roberto's entitlement to ESA will end on 23.2.14, the combined 365<sup>th</sup> day of entitlement, unless he is found to have LCWRA before that date.

V2032 DMs should note that the number of days of entitlement includes days where ESA is not payable, but entitlement continues. This includes days where ESA is not payable

1. for periods of disqualification, for example for imprisonment (see ADM Chapter U6) **or**
2. because the overlapping rules apply (see DMG Chapter 17) **or**
3. because it is reduced to nil through pension payments or councillor's allowances – see ADM Chapter V1 (ESA amounts).

**Note:** See V2023 where days of disqualification due to imprisonment exceed six weeks.

### **Example**

Kylie has been entitled to ESA since 12.5.14. She is not a member of the support group. On 20.4.15 she is sentenced to a period of imprisonment, and the DM decides that Kylie is disqualified from receiving ESA which is therefore not payable. Kylie is released on 22.5.15. Her entitlement to ESA terminates on 11.5.12, even though on that day it is not payable.

V2033 – V2034

## **Credits**

V2035 A person whose entitlement to ESA has been terminated after 365 days remains entitled to NI credits for any day which

1. would have been a day of LCW if the ESA award had not been terminated<sup>1</sup>  
**and**
2. is not a day of entitlement to UC<sup>2</sup>.

*1 SS (Credits) Regs, reg 8B(2)(a)(iva); 2 reg 8B(2A)(b)*

V2036 – V2039

## **Repeat claim for ESA**

### **Introduction**

V2040 Where

1. an award of ESA has terminated as in V2010 or V2015 **and**
2. a further claim for ESA is made

the DM should firstly consider whether the guidance on establishing a further 365 days entitlement based on a later tax year in V2045 applies. If not, the DM should next consider whether the guidance on deterioration in the claimant's health condition in V2056 et seq applies.

V2041 If neither of those circumstances apply, the claimant cannot be entitled to ESA. They may be eligible to claim UC instead.

V2042 – V2044

## **Claim based on a later tax year**

V2045 A further claim for ESA where the claimant has already been entitled for 365 days on the basis of the contribution conditions can succeed if

1. the claimant satisfies the first and second contribution conditions (but see ADM Chapter U1 for guidance on relaxation of the first contribution condition) **and**
2. in relation to the second contribution condition, at least one tax year is later than the second of the two years on which the previous entitlement was based<sup>1</sup>.

**Note:** See V2075 et seq where an award is made and the claimant's condition improves.

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

### **Example 1**

Nicholas has been entitled to ESA since February 2014. He is not a member of the support group. His entitlement was based on 52 paid contributions for the tax year 2012/2013 in relation to the first condition, and a combination of paid contributions and NI credits for unemployment for the tax years 2011/2012 and 2012/2013 in relation to the second condition. Nicholas's last day of entitlement to ESA is 4.3.15.

Nicholas makes a further claim for ESA on 3.8.15. There has been a break of more than 12 weeks in the PLCWs for benefit purposes so the contribution conditions can be considered afresh in the later benefit year. He satisfies the first condition with paid contributions for the tax year 2012/2013. In relation to the second contribution condition, the tax years are 2012/2013 and 2013/2014. As one of these years is later than the years on which his previous period of entitlement was based, Nicholas is entitled to a further 365 days of ESA as long as he continues to satisfy the conditions of entitlement.

### **Example 2**

Zelda has been entitled to ESA since she took ill-health retirement in April 2013, based on the tax years 2010/2011 and 2011/2012. She is not a member of the

support group. Her last day of entitlement is 30.4.14. Zelda finds work on 12.5.14, but gives this up when her condition deteriorates in March 2016. She makes a further claim from 14.3.16, and the DM determines that the tax years are 2013/2014 and 2014/2015. Zelda satisfies the first and second conditions, and the tax years are later than her previous award of ESA.

On application of the WCA, the DM determines that Zelda has LCW and LCWRA. Zelda is entitled to ESA, with the support component payable from week 14. None of the days when Zelda is entitled to ESA count towards the relevant maximum number of days. Zelda continues to be entitled to ESA for as long as she has LCW and LCWRA. If her health improves to such an extent that she is later found to have LCW but not LCWRA, the 365 day count would begin from the date of that determination.

V2046 – V2049

## **ESA in youth**

V2050 Where an award of ESA based on the claimant satisfying the youth conditions terminates

1. as in V2015 **or**
2. for any other reason

any further claim must be based on the normal conditions of entitlement. The claimant cannot benefit from the youth conditions again, even if the PLCWs link. But see V2056 et seq where the claimant's health condition deteriorates.

### **Example 1**

Fran has been entitled to ESA since January 2011 as a result of an accident while she was a student. Her entitlement was based on the youth conditions, and she is not a member of the support group. She continues studying on a part-time basis. Her entitlement terminates on 30.4.12. On 25.6.14, after finishing her part-time studies, Fran makes a further claim for ESA. She has never worked, and the DM determines that she does not satisfy the contribution conditions. Fran is not entitled to ESA. She may be eligible to claim UC instead.

### **Example 2**

Dipesh has been entitled to ESA since March 2009 when he reached age 16. He has LCW, but is not a member of the support group. His entitlement terminates on 30.4.12.

Dipesh finds work from 4.6.12. On 19.1.15 he makes a further claim for ESA after his health deteriorates, and is found to have LCW but not LCWRA. Dipesh is entitled to ESA for a further 365 days because he now satisfies the relevant contribution

conditions for the tax years 2012/13 and 2013/14. The award will continue for as long as he continues to have or be treated as having LCW until the 365 day time limit is reached. If during this time he becomes a member of the support group the 365 day count would stop.

V2051 – V2054

## **Change in claimant's health condition**

V2055 During the period of an award, the claimant's health condition may deteriorate or improve to the extent that the DM determines that they

1. have, or are treated as having, LCWRA **or**
2. no longer have, or are treated as having, LCWRA.

These changes can occur more than once throughout the period of ESA entitlement.

### **Health condition deteriorates**

V2056 Where the claimant's health condition deteriorates, this can affect further entitlement to ESA. The action to take depends on whether an award of ESA has already terminated before it is determined that the claimant has, or is treated as having, LCWRA. DMs are reminded that they should always firstly consider whether a claim could succeed because one of the tax years for the second contribution condition is later than those on which the earlier award was based, before consideration is given to a further award solely based on deterioration in their health.

#### **Example**

Amy's entitlement to ESA began on 22.4.14, and ended on 21.4.15, as her entitlement exceeded 365 days and she was not in the support group. Entitlement was based on tax years 2011/2012 and 2012/2013. She continues to have LCW. On 6.8.15 she makes a further claim for ESA stating that her condition has deteriorated since her previous entitlement ended. The relevant tax years are 2012/2013 and 2013/2014, and Amy satisfies both the first and second contribution conditions, with a later tax year for the second contribution condition. The DM awards ESA at the assessment phase rate from 6.8.15.

Following application of the WCA, the DM determines that Amy has LCW and LCWRA. The award is superseded to award the support component from week 14. The deterioration rule does not apply.

V2057 – V2059

## Application made during current award

V2060 A claimant who is already entitled to ESA on the basis that they have LCW may apply for supersession on the basis that they consider they have LCWRA. If, following application of the WCA, the DM determines that the claimant has, or is treated as having, LCWRA, the decision that the claimant has, or is treated as having, LCW should be superseded as normal to award the support component<sup>1</sup>. See ADM Chapter A4 (Supersession) for guidance on the effective date rule.

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See ADM Chapter V6 (ESA: Assessment phase and components) for further details, including where transitional provisions apply.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 26(1) & 35(6)*

V2061 The award of ESA may have terminated as in V2010 or V2015 before the determination of LCWRA has been made. In this case the DM should revise<sup>1</sup> the decision ending entitlement to ESA, and supersede the previous decision awarding ESA as in V2060.

*1 UC, PIP, JSA & ESA (D&A) Regs, reg 15(5)*

## Application made after award has terminated

V2062 Where

1. entitlement to ESA, including under the youth provisions, has been terminated as in V2010 or V2015 because it exceeded 365 days **and**
2. the claimant
  - 2.1 reports a deterioration in their health condition **or**
  - 2.2 makes a further claim for ESA **and**
3. the claimant had, or is treated as having had, LCW since the previous entitlement ended **and**
4. the claimant satisfies the basic conditions of entitlement (see ADM Chapter U1) **and**
5. the DM determines that the claimant has, or is treated as having, LCWRA

the claimant is entitled to an award of ESA, even though they do not satisfy the contribution conditions<sup>1</sup>. The award is regarded as an award of ESA for all other purposes, for example amounts payable<sup>2</sup>.

*1 WR Act 07, s 1B(1); 2 s 1B(2)*

### Example

Bogdan's award of ESA ended on 5.5.15 after 365 days. Entitlement was based on tax years 2012/2013 and 2013/2014. He continues to have LCW for the purpose of

NI credits. Bogdan makes a further claim to ESA from 6.7.15 on the grounds that his condition has deteriorated. As the PLCWs link, the tax years on which entitlement could be based do not change. The claim cannot be decided until the DM determines whether or not Bogdan has, or is treated as having, LCWRA.

Following application of the WCA, the DM determines that Bogdan has LCWRA. He is entitled to ESA and the support component from 6.7.14. He does not have to serve waiting days or the assessment phase.

- V2063 Where the claimant reports a change in their condition other than by making a claim, the DM should consider whether the contact satisfies the conditions for claiming ESA<sup>1</sup> (see ADM Chapter A2).

*1 UC, PIP, JSA & ESA (C&P) Regs, reg 14 & 16*

V2064

## **Deterioration identified on routine WCA**

- V2065 The guidance at V2062 also applies where the DM determines that the claimant has, or is treated as having, LCWRA, after application of the WCA where the claimant is not entitled to ESA.

### **Example**

Mina's entitlement to ESA began on 18.11.08 and terminated on 30.4.12 as it exceeded 365 days. She is not a member of the support group, and remains entitled to NI credits on the basis that she would have LCW if her entitlement to ESA had not ended due to time limiting. On 18.9.14, following a routine WCA, the DM determines that Mina has LCW and LCWRA, and invites her to make a further claim for ESA. Mina's claim for ESA, stating she wishes to claim from 10.9.14, is received on 14.11.14. The DM determines that she does not satisfy the contribution conditions, but is entitled under the deterioration rule. Mina is awarded ESA including the support component from 10.9.14.

V2066 – V2069

## **Date award begins**

- V2070 Where an award is made as in V2062 – V2065, the claimant does not have to serve waiting days before entitlement begins<sup>1</sup>. The support component is payable from the first day of entitlement<sup>2</sup>. See V2075 et seq where an award is made and the claimant's condition then improves.

**Note:** This does not apply if the claimant is entitled to ESA on the basis of a later tax year as in V2045. See V2077 for further details.

*1 ESA Regs 13, reg 85(2)(d); 2 reg 7(1)(d)*

V2071 – V2074

## Health condition improves

V2075 Claimants who

1. are awarded ESA **and**
2. are not subject to time limiting for all or part of their award because they are a member of the support group

can receive a total of 365 days ESA if, on a further application of the WCA, they are found to have LCW, but no longer have LCWRA.

**Note:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See ADM Chapter V6 (ESA: Assessment phase and components) for further details, including where transitional provisions apply.

### Example

Lily has been entitled to ESA including the support component since 20.4.17. Following a routine WCA, the DM determines that Lily has LCW, but no longer has LCWRA. The award of ESA is superseded to remove the support component from 2.10.17. As long as Lily continues to have LCW, her entitlement to ESA will terminate on 1.10.18, unless she is subsequently found to have LCWRA again.

V2076 Where entitlement to ESA is based on the same tax years, and the claimant's health condition changes, the claimant can only be entitled for a maximum of 365 days during the period of the award, excluding days as in V2020 et seq.

### Example

Liam's entitlement to ESA began on 8.11.13. On 20.1.14 the DM determines that Liam has LCW but does not have LCWRA. Liam is awarded the main phase rate from 7.2.14.

Following an accident, Liam reports a change in his health condition on 6.8.14. After a further application of the WCA, the DM determines that Liam has LCWRA. The support component is paid from 6.8.14.

Liam's condition improves following surgery. On 12.1.15 the DM determines that Liam has LCW, but no longer has LCWRA. Taking into account the 274 days already paid before 9.8.12, Liam's last day of entitlement to ESA will be 15.4.15.

V2077 Claimants who are awarded ESA because

1. they satisfy the conditions in V2045 (entitlement based on later tax year) **and**
2. their award includes the support component

can receive a further 365 days ESA if, on a further application of the WCA, they are found to have LCW but no longer have LCWRA.

### **Example**

Jessica's award of ESA began on 22.3.12, and terminated on 21.3.13 as her entitlement exceeded 365 days and she was not in the support group. She makes a further claim to ESA on 24.7.13, and the DM determines that she satisfies the contribution conditions based on different tax years. She is awarded ESA at the assessment phase rate pending the WCA. On application of the WCA, Jessica is found to have LCWRA. She is awarded the support component from week 14. None of the days count towards the relevant maximum number of days, as the assessment phase is immediately followed by payment of the support component.

On 14.11.14 after a further routine WCA, the DM determines that Jessica has LCW, but no longer has LCWRA. As long as Jessica continues to have LCW but not LCWRA, all days of entitlement from and including 14.11.14 count towards the 365 days maximum.

- V2078 Where the claimant becomes entitled to an award of ESA as in V2062 et seq, and their condition improves to the extent that they no longer have, or are treated as having, LCWRA, entitlement to ESA terminates from the date of the DM's decision. The claimant is not entitled to a further 365 days of ESA even though they may still have LCW. This is because they no longer satisfy the condition at V2062 5. i.e. that they have or are treated as having LCWRA<sup>1</sup>.

*1 WR Act 07, s 1B(1)(c)*

### **Example**

Marvin's award of ESA ended on 30.4.14 as his entitlement exceeded 365 days and he was not a member of the support group. He remains entitled to NI credits on the grounds that he would have LCW had he remained entitled to ESA. On 13.6.14 he makes a further claim to ESA. He does not satisfy the contribution conditions. The DM determines that Marvin has LCWRA, and awards ESA including the support component from 13.6.14 under the deterioration rule.

Following a routine WCA, the DM determines that Marvin has LCW, but no longer has LCWRA. The award of ESA is terminated from the date of the decision. Entitlement to NI credits continues as long as Marvin would have LCW if his ESA entitlement had not ended.

V2079 – V2099

## **Appeal against time limit decision**

- V2100 Claimants have a right of appeal against a decision terminating ESA after 365 days, and are entitled to argue on such an appeal that the award should be extended on the grounds that, on the effective date of that decision, they had LCWRA.

V2101 The DM is not required to make a further determination about LCWRA when making a decision terminating ESA after 365 days. They can rely on any previous determination made that the claimant does not have LCWRA.

**Note:** See ADM V2062 – V2063 for guidance where the claimant states that their condition has deteriorated since the previous determination was made.

V2102 The FtT is at liberty to consider whether the claimant has LCWRA when hearing an appeal against the decision to terminate ESA, even if the issue is not raised by the appeal, provided that the DM is given the opportunity to consider any further evidence.

V2103 The DM can apply for an appeal against a decision to terminate ESA to be struck out where there is no dispute about the calculation of the 365 days, and no arguments are made about whether the claimant is a member of the support group. See ADM Chapter 06 (Appeals) for guidance about strike out.

#### **Example 1**

Bradley is awarded ESA from 12.6.14, and following application of the WCA, on 14.1.15 the DM determines that Bradley has LCW but not LCWRA. Bradley is placed in the WRAG from 11.9.14. Bradley is notified on 11.6.15 that his entitlement to ESA is to terminate from 12.6.15 as he has received ESA for 365 days. Bradley applies for reconsideration of the decision of 11.6.15, on the grounds that he should be in the support group. The DM refuses to revise, as the evidence provided does not show a change in Bradley's health condition since the previous LCWRA determination was made, or indicate that it was incorrect.

#### **Example 2**

Miranda is awarded ESA from 13.8.14. Following application of the WCA, on 11.12.14 the DM determines that Miranda has LCW but not LCWRA, and places her in the WRAG from 12.11.14. On 12.8.15 Miranda is notified that her entitlement to ESA terminates from 13.8.15 as she has now received this for 365 days. Miranda applies for reconsideration of the decision of 12.8.15, on the grounds that she should be in the support group. Medical Services advises that the evidence shows a change in Miranda's health condition, and she is referred for the WCA. The DM determines that Miranda now has LCWRA. The supersession decision terminating entitlement is revised, and Miranda is entitled to the support component from 13.8.15, the date from which the original decision took effect.

V2104 – V2999

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