

# Department for Work and Pensions

DECISION MAKING AND APPEALS

## Decision Makers Guide

### Volume 8 Amendment 29 – October 2019

**\*PLEASE NOTE\***

**THIS WILL BE THE LAST AMENDMENT PACKAGE PROVIDED IN THIS FORMAT. FROM 2020 A “SUMMARY OF CHANGES” DOCUMENT WILL BE PRODUCED THAT WILL COVER ALL THE CHANGES MADE IN A DMG AMENDMENT PACKAGE**

1. This letter provides details on Amendment 29; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available on the Internet (see link below). These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

<https://www.gov.uk/government/publications/decision-makers-guide-vols-8-and-9-employment-and-support-allowance-staff-guide>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 29 affects chapter 41. The changes:  
  
incorporate DMG Memo 7/19 and ADM Memo 10/19 about changes to the ESA basic conditions of entitlement for mixed-age couples who are unable to claim SPC or UC. The National Minimum Wage (NMW) rate is also updated at Appendix 5.
4. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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# Chapter 41 - ESA conditions of entitlement

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## Basic conditions

- 41012 Claimants are entitled to ESA<sup>1</sup> if they
1. have LCW (see DMG Chapter 42) **and**
  2. are aged 16 or over **and**
  3. have not reached pensionable age (see DMG 41014) **and**
  4. are in GB (except for certain temporary absences abroad) (see DMG Chapter 07 Part 2) **and**
  5. are not entitled to IS **and**
  6. are not
    - 6.1 entitled to JSA **or**
    - 6.2 a member of a couple entitled to joint-claim JSA excluding a couple as in DMG 20023 et seq<sup>2</sup>.

*1 WR Act 07, s 1(3); 2 s 1(6) & (6A); JS Act 95, s 1(2B) & Sch 1, para 8A*

**Note 1:** See DMG 41800 et seq for guidance on where entitlement to ESA(Cont) is limited to the maximum number of days.

**Note 2:** See DMG 41015 et seq for guidance on exceptions to the requirement not to have reached pensionable age for mixed-age couples.

- 41013 A claimant is not entitled to ESA if they are entitled to SSP<sup>1</sup>. See DMG Chapter 44 for further guidance.

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

## Pensionable age

- 41014 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*

## Mixed-age couples

- 41015 A mixed-age couple is a couple where one member of a couple has reached the qualifying age for SPC, and the other member has not<sup>1</sup>. The qualifying age for SPC is<sup>2</sup>
1. pensionable age for a woman **or**
  2. for a man, the age which would be pensionable age for a woman born on the same date as the man.

**Note:** Since 6.12.18, pensionable age for a man or a woman is the same. See DMG Chapters 74 (State pension) and 75 (Retirement pension) for further guidance on pensionable age.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 2(2); 2 SPC Act 02, s 1(6)*

41016 Mixed-age couples are generally excluded from entitlement to SPC<sup>1</sup>, and may be entitled to UC instead. See DMG Chapter 77 for detailed guidance on the conditions of entitlement to SPC. However, these claimants may be restricted from claiming UC<sup>2</sup> – see ADM Chapter M5 for further details. The conditions of entitlement to ESA are amended to allow them to claim ESA instead<sup>3</sup>.

*1 SPC Act 02, s 4(1A); 2 UC (TP) Regs, reg 4 & 4A; WR Act 12 (Commencement No. 32 etc.) Order;  
3 WR Act 12 (Commencement No. 31 etc.) Order, art 8*

41017 Where a mixed-age couple is

1. excluded from entitlement to SPC **and**
2. restricted from claiming UC

the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition of entitlement in DMG 41012 **3.** for the purposes of an award of ESA(IR) to that member of the couple<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 8(2)*

### **Example**

Flo has LCWRA and is entitled to ESA(IR) and HB for herself and her partner George. Her ESA award includes the higher rate SDP. Flo reaches pensionable age, and entitlement to ESA(IR) and HB would normally terminate as she does not satisfy the age-related conditions of entitlement. As George is under pensionable age, the couple cannot be entitled to SPC. Flo and George are also prevented from claiming UC due to the SDP entitlement. George does not have LCW, so cannot claim ESA(IR) instead of Flo. Flo is treated as satisfying the age-related conditions of entitlement, and as not having reached the qualifying age for SPC, so remains entitled to ESA(IR) and HB.

41018 Where an award is made as in DMG 41017, the claimant is treated as satisfying the age-related condition of entitlement until the award of ESA(IR) ends. This applies even if the restrictions on claiming UC referred to in DMG 41016 are removed during the period of the award<sup>1</sup>.

*1 WR Act 12 (Commencement No. 31 etc.) Order, art 8(3)*

41019 Once the younger member of the couple reaches the qualifying age for SPC, they cease to be a mixed-age couple. The award of benefit made as in DMG 41017 ends, and the couple are eligible to claim SPC and pension age HB.

# Appendix 5

## National Minimum Wage rates

<b>Date</b>	<b>Hourly rate</b>
1.10.10	£5.93
1.10.11	£6.08
1.10.12	£6.19
1.10.13	£6.31
1.10.14	£6.50
1.10.15	£6.70
1.4.16	£7.20
1.4.17	£7.50
1.4.18	£7.83
1.4.19	£8.21

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