Chapter U1 - ESA conditions of entitlement

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Chapter U1: ESA conditions of entitlement

Entitlement to ESA

Introduction

U1001 ESA was introduced on 27.10.08\(^1\) to replace

1. IB
2. SDA
3. IS on the grounds of disability\(^2\).

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)\(^1\) 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\(^2\).

\(^1\) WR Act 07, Part 1; WR Act 12, Sch 3 & Sch 14, Part 1; 2 ESA Regs 13

Scope of this Chapter

U1003 – U1004

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\(^1\) (see U1011) and
2. satisfy the contribution conditions\(^2\) (see U1020 et seq) and
3. make a claim\(^3\) (see ADM Chapter 02) and
4. satisfy the NINO provisions\(^4\) (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 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. 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.

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

U1014 - U1019

Contribution conditions

U1020 In addition to the basic conditions (see U1011), to be entitled to ESA 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
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\(^1\). This includes awards of ESA made under

1. the youth conditions and
2. the IB Reassessment rules\(^2\).

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

**Contribution conditions**

**What the DM decides**

There are two contribution conditions\(^1\). 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.

Reference to HMRC

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\(^1\).

**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.

Meaning of terms

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.

2. “class 1 NI contributions” and “class 2 NI contributions” are the NI contributions paid by employed earners and S/E earners respectively.

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 (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.

5. “tax year” is the period of 12 months beginning with 6 April each year.

6. “relevant benefit week” means the week in relation to which entitlement to ESA is being considered.

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).

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.

1.1 does not satisfy

1.1.1 the first or second contribution conditions or

1.2 both conditions and

Modification of the meaning of relevant benefit year

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

The definition of PLCW in U1027 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.

Where U1030 applies the meaning of “relevant benefit year” at DMG U1027 is modified so that it is any benefit year which includes all or part of the PLCW which includes the relevant benefit week.
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 satisfied1 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.

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 disregarded1.

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 satisfied1 if

1. the claimant has paid Class 1 or 2 contributions for any one tax year before the relevant benefit week2 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 263 or
2.2 earnings factors in that tax year derived from Class 2 contributions multiplied by 26\(^4\) 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\(^5\) or

3.2 had been engaged in qualifying remunerative work\(^6\) 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\(^7\) or

3.3 is entitled to be credited with earnings or contributions following release from prison where a conviction is quashed\(^8\), or would be if an application was made, in respect of any week in any tax year preceding the relevant benefit year\(^9\) 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\(^10\).

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\(^1\) 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\(^1\) 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 U1039 for guidance on when earnings exceed the upper earnings limit.

1 WR Act 07, Sch 1, Part 1, para 2(2)
The first and second contribution condition

U1038 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.

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

Earnings exceeding the upper earnings limit

U1039 For the purposes of U1038 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.

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

Late payment of contributions

U1040 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. The DM will need to liaise with HMRC.

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

U1041 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. 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

Class 2 NI contributions

Contributions paid by due date

U1042 The deadline for the payment of Class 2 NI contributions from the 2015/16 tax year onwards is 31 January of the following calendar year; for example, Class 2 NI contributions due in the 2015/2016 tax year are due to be paid by 31.1.2017. This date falls after the start of the benefit year for ESA, which means there is a
possibility of a claim for these benefits being made in circumstances where entitlement relies on as yet unpaid contributions, and consequently being disallowed.

U1043 A decision to disallow claims to ESA may be revised at any time where

1. on or after the date of the decision a contribution that is paid by the due date is treated as paid before the relevant benefit week and
2. as a result, the person now satisfies the contribution conditions.

Example

A claim to ESA is made on 21.1.18 in respect of a period of LCW starting on 14.1.18. Entitlement relies on satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self-employment in April 2015. The claimant has previously paid his Class 2 NI contributions for 2015/16, but, at the point of claim, has not yet filed his Self Assessment return for 2016/2017. His Class 2 liability for this year has not yet been established and no Class 2 NI contributions have been paid. As a result, whilst the first contribution condition is satisfied, the second contribution condition is not, and his claim to ESA is disallowed. DWP is subsequently notified that the claimant has paid his Class 2 NI contributions for 2016/2017 on 31.1.18. These are treated as having been paid before 14.1.18. Both contribution conditions are now satisfied and the original decision to disallow ESA is revised in the claimant’s favour.

Contributions refunded

U1044 A decision to award ESA may be revised at any time where contributions are repaid or returned to the contributor where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

Example

ESA is awarded in January 2018 to a claimant who is self-employed. The award was based on Class 2 NI contributions paid in respect of 2015/16 and 2016/17 tax years. Class 2 NI contributions for 2016/17 were paid on the basis of profits declared on a Self Assessment return filed on 31.1.18. In March 2018 HMRC adjusts the declared profits for 2016/17 to a figure below which no liability for Class 2 NI contributions actually arose. HMRC informs the claimant of this and they pursue and accept a refund of Class 2 NI contributions. These are removed from the claimant’s NI record. As a consequence of this the claimant does not satisfy the
contribution conditions for ESA. The decision to award ESA is revised so as to disallow the award.

**Condition relating to youth**

**Introduction**

U1045 Since 1.5.12 no further claims can be made for ESA under the youth conditions¹. 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 entitlement¹ 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 PSIC² (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 week¹
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\(^2\).

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\(^3\)

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\(^4\).

\(^1\) 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\(^1\) 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\(^2\) and

2. attended one or more such courses in the academic term after registration during the period in U1051\(^3\).

\(^1\) 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\(^1\) 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\(^2\).

\(^1\) 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\(^1\).
U1053 - U1055

Full-time advanced or secondary education

When considering whether U1050 1.1 is satisfied, the DM should note that

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.

Training

When considering whether U1050 1.2 is satisfied the DM should note that “training” means

1. training in pursuance of arrangements made under prescribed legislation 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 week¹.

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 disregarded¹.

1 ESA Regs 13, reg 13(3)

U1060 A claimant who is 19 years of age or over is not treated as receiving FTE¹. 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 disability¹ (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.

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.

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.
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.

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.

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.

Over the upper age limit but previously entitled

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 and
2. their previous entitlement was not ended by a determination that they did not have LCW (apart from a determination under 5.) and
3. the linking rules do not apply and
4. they are aged
   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 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 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. ended7.

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 benefit1. 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 youth1.

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 HMF1 are not entitled to ESA unless they are2 members of
1. any prescribed territorial or reserve force3 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
Waiting days and linking rule

No entitlement to ESA

U1100  [See Memo ADM 02/20] A claimant is not entitled to ESA for the first seven days of a PLCW\(^1\). 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\(^1\) 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\(^2\) (see U1105) and have made
   2.1 a claim expressly for that reason or
   2.2 an application for supersession or revision\(^3\) 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\(^4\) 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 (see ADM Chapter V2).

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.

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

For the purposes of U1103 2. people are terminally ill 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.

Meaning of member of HMF

A member of HMF 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 (see U1107).

For the purposes of U1106 2. a member of certain named establishments or organizations means 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.

However, a person who is
1. recruited locally overseas in certain circumstances¹ or
2. a deserter or
3. a person to whom U1106 1. or 2. applies²

is not a member of HMF.

Meaning of full-pay service

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.

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

Linking PLCW

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 weeks¹.

Appendix

Lower earnings limit

<table>
<thead>
<tr>
<th>From</th>
<th>Amount</th>
</tr>
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<tbody>
<tr>
<td>6.4.10</td>
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</tr>
<tr>
<td>6.4.11</td>
<td>£102</td>
</tr>
<tr>
<td>6.4.12</td>
<td>£107</td>
</tr>
</tbody>
</table>

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