

Department for Work and Pensions

DECISION MAKING AND APPEALS

Decision Makers Guide

Volume 8

Amendment 24 – October 2017

1. This letter provides details on Amendment 24; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

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

3. Amendment 24 affects chapters 41-45; The changes make amendments to
 - Chapter 41– Incorporation of DMG Memo 07/17
 - Chapter 41– minor amendment
 - Chapter 41 - incorporation of DMG Memo 06/17
 - Chapter 41 - Appendix 5 – NMW rate from 01.04.17
 - Chapter 42 – Minor amendment
 - Chapter 43 – Legal reference updated
 - Chapter 44 – incorporation of DMG Memo 06/17
 - Chapter 44 – minor amendments
 - Chapter 44, Appendix 5 – Rate change from 10.4.17
 - Chapter 44, Appendix 10 – incorporation of DMG Memo 06/17
 - Chapter 45 – minor amendments
4. The last two amendment packages amending Volume 8 were;
Amendment 23 [February 2017]

Amendment 22 [October 2016]
5. 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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Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AFIP	Armed Forces Independence Payment
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BACS	Bankers Automated Clearing System
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BSP	Bereavement support payments
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CECSC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CJEU	Court of Justice of the European Union
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CPen	Civil Penalty
CSM	Child Support Maintenance

CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit
CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
CwP	Community work Placements
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECHR	European convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECSMA	European Convention on Social & Medical Assistance
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EEA	European Economic Area
EFC	Earnings factor credits
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre

ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth
ESDA	Exceptionally Severe Disablement Allowance
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GPoW	Genuine Prospect of Work
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
HWC	Health and Work Conversation

Hep C	Hepatitis C
HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium
HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBS	Infected Blood Schemes
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA 18-21 Pilot Scheme	Jobseeker's Allowance 18-21 Work Skills Pilot Scheme
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction

JSP	Jobseeking Period
LA	Local Authority
LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number

NMW	National Minimum Wage
NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
“PW”	Permitted work as defined in ESA Regs, reg 45(4)
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income

QP	Qualifying Period
QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TT	Thalidomide Trust
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme
WC (Supp)	Workmen's Compensation (supplementation) scheme

WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfl	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

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Exceptions to the general rule

41141 DMG 41122 gives guidance on the general rule that a claimant is treated as not entitled to ESA in any week in which they work¹.

1 ESA Regs, reg 40(1)

41142 However, there are exceptions to the general rule. These exceptions are claimants who

1. do certain categories of work¹ (see DMG 41151 et seq)
2. are receiving certain regular treatment² (see DMG 41176 - 41177)
3. do work in the first or last week of LCW³ (see DMG 41178 - 41180).

1 ESA Regs, reg 40(2); 2 reg 40(3); 3 reg 40(4)

41143 A claimant who is treated as not entitled to ESA in any week in which they work may be treated as not having LCW¹ (see DMG Chapter 42). DMs should note that this does not apply where the claimant remains entitled to ESA(Cont), but is treated as being in remunerative work for ESA(IR)².

1 ESA Regs, reg 44(1); 2 reg 44(2)

Work

41144 Work¹ has the meaning in DMG 41132. It is not employment and there does not have to be a legal contractual relationship.

1 ESA Regs, reg 40(7)

Example

A publican hires James to conduct two quiz nights per week and expects to pay him for doing this. There is no written contract and James does not usually accept payment when it is offered by the publican. This is work not a hobby because it is done for the commercial enterprise of the publican and James feels morally obliged to the publican to fulfil his agreement with him.

41145 Negligible work is considered under a general principle that the law is not concerned with trivialities. This principle is called “de minimis”. Negligible amounts of work can be disregarded before the specific rules are applied so that the claimant is not regarded as working on the day or days in question.

41146 Whether work on part of a day is negligible depends on its proportion to the normal working hours, the type of work and the effort required in relation to full normal duties¹. When deciding if work is “de minimis”, the DM should consider the relevant case law.

1 R(S) 2/61

41147 The question of negligible work can arise in self-employment when a sick person can still attend to some aspects of a business. Work cannot be considered negligible if it contributes materially to the running of the business or involves a significant amount of supervisory or administrative work. For example if the person occasionally does small jobs such as signing cheques, the contribution to the business can be disregarded as negligible¹.

*1 R(S) 5/51; R(S) 13/52; R(S) 24/52; R(S) 34/52; R(S) 37/52; R(S) 8/55;
R(S) 2/61; R(S) 2/74; R(S) 10/79*

Community service

41148 Community service should not be regarded as work. Courts will take account of a person's limited capability and the type and extent of activities prescribed by the court should be appropriate to the limited capability.

41149 - 41150

Claimants who do certain categories of work

41151 The general rule in DMG 41122 does not apply to a claimant who

1. works as a councillor¹ **or**
2. undertakes duties on not more than one full day or two half-days a week as² a member of the FtT who is eligible for appointment under specified legislation³
or
3. undertakes domestic tasks in their own home or takes care of a relative⁴ **or**
4. undertakes duties in caring for another person who is accommodated with them under arrangements for
 - 4.1 fostering **or**
 - 4.2 providing respite careand they receive payment for doing so⁵ **or**
5. undertakes any activity during an emergency to
 - 5.1 protect another person **or**
 - 5.2 prevent serious damage to property or livestock⁶ **or**
6. does work which is exempt work⁷ (see DMG 41186 et seq).

1 ESA Regs, reg 40(2)(a); 2 reg 40(2)(b);

3 The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;

4 ESA Regs, reg 40(2)(c); 5 reg 40(2)(d) & Sch 8, para 28 & 29; 6 reg 40(2)(e); 7 reg 40(2)(f) & reg 45

Work as a councillor

41152 Work as a councillor has the meaning¹ in DMG 41133.

1 ESA Regs, reg 40(7)

41153 A councillor¹ is

1. in England and Wales a member of
 - 1.1 a London borough council **or**
 - 1.2 a county council **or**
 - 1.3 a district council **or**
 - 1.4 a parish or community council **or**
 - 1.5 the Common Council of the City of London **or**
 - 1.6 the Council of the Isles of Scilly **or**
2. in Scotland a member of a council for a local government area².

1 ESA Regs, reg 2(1); 2 Local Government (Scotland) Act 1994, s 2

41154 Guidance on the effect of councillors' allowances for

1. ESA(Cont) is in DMG Chapter 44 **and**
2. ESA(IR) is in DMG Chapter 49.

Member of the FtT

41155 A claimant who is a member of the FtT who is eligible for appointment under specified legislation¹ (see DMG Chapter 06 for further guidance) will be exempt from the general rule only when they undertake duties on not more than one full day or two half-days a week². If a claimant undertakes such duties for a longer period, they will be treated as not entitled to ESA.

1 The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;

2 ESA Regs, reg 40(2)(b)

Domestic tasks and care of a relative

41156 To be exempt from the general rule, domestic tasks must be carried out in the claimant's own home. Domestic tasks is not defined but means "of the home, household or family affairs". Examples of domestic tasks are preparing and cooking food, shopping, cleaning, washing clothes or dishes, making beds.

41157 In addition to taking place in the claimant's own home a domestic task must relate to the claimant's home, household or family affairs. Personal care such as attending to bodily functions or supervision or education of children, are domestic tasks if carried out for a member of the family (including a close relative). If carried out for others the tasks do not relate to the home, household or family affairs. This includes providing accommodation and food to students¹ and other activities carried out in the claimant's home, such as child minding other than of relatives, or tuition.

1 R(IB) 1/03

41158 Although child minding may include some tasks which could be said to be domestic, the activity as a whole does not relate to the home, household or family affairs.

41159 Care means to provide for or look after and should be interpreted broadly. It includes personal care, such as bodily functions but can also include domestic tasks such as cooking, shopping, cleaning and supervision of children.

41160 - 41165

Caring for another person

41166 Caring for other people's children or adults comes within the definition of work¹ (see DMG 41132). However, claimants undertaking such caring are exempt from the general rule in DMG 41122².

1 ESA Regs, reg 40(7); 2 reg 40(2)(d)

41167 The types of work will include adult placement schemes and foster parenting. Looking after a child or children other than relatives will include fostering and pre-adoption situations. In these cases the child is living as part of the family and their care will normally consist of domestic tasks in the claimant's home unless the care includes activities which do not relate to the home, household or family affairs.

41168 Placement of difficult, mentally ill or sick children, or children with a learning difficulty will attract an allowance as well as expenses in recognition of the extra supervision, education or care necessary. However, any such placement with a claimant will not prevent that claimant from being exempt from the general rule.

Activities undertaken during an emergency

41169 The general rule does not apply to any activity undertaken during an emergency to

1. protect another person **or**
2. prevent serious damage to property or livestock¹.

1 ESA Regs, reg 40(e)

41170 - 41175

Exempt work

Categories of exempt work

41186 The general rule (see DMG 41122) does not apply to claimants who do exempt work. The categories of exempt work are

1. PWK¹ (see DMG 41187 et seq)
2. work done whilst test trading as a S/E earner² (see DMG 41256)
3. voluntary work³ (see DMG 41257 - 41259)
4. work done in a work placement⁴ (see DMG 41260 - 41262).

1 ESA Regs, reg 45(2)-(4); 2 reg 45(5); 3 reg 45(6); 4 reg 45(7)

Permitted Work

41187 There are three types of PWK, each with its own conditions. Claimants can only be in one type of PWK at any one time. It is not always necessary to have medical approval to do PWK. If claimants have two or more jobs the hours and earnings are added together to determine if the work is exempt.

41188 The three types of PWK are

1. PWLL¹(see DMG 41196)
2. SPW² (see DMG 41197)
3. PW³ (see DMG 41211).

1 ESA Regs, reg 45(2); 2 reg 45(3); 3 reg 45(4)

Calculation of weekly earnings

41189 Weekly earnings limits apply in PWK¹. The DM should calculate a claimant's earnings under some of the normal rules for calculating earnings for ESA(IR) purposes² (see DMG Chapters 48 and 49). This applies even if the DM is considering entitlement to ESA(Cont) only.

1 ESA Regs, reg 45(2)-(4); 2 reg 88, reg 91(2), reg 92-99, reg 108(3) & (4) & Sch 7

41190 Where the weekly earnings limit is 16 x NMW, this means the highest rate of NMW as specified in legislation¹ (see Appendix 5). Where 16 x NMW includes an amount less than

1. 50p, the amount is rounded up to the nearest 50p **or**
2. £1, but more than 50p, the amount is rounded up to the nearest £1².

1 The National Minimum Wage Regulations 1999, reg 11; 2 ESA Regs, reg 45(9A)

Example

Meryl starts work on 9.5.11 for 15 hours weekly. The NMW is $16 \times \text{£}5.93 = \text{£}94.88$. As this includes an amount which is more than 50p and less than £1, it is rounded up to £95.00. The DM uses this amount to consider whether Meryl's work is exempt work.

41191 - 41195

Permitted work lower limit

- 41196 Claimants can work as long as their earnings in any week are no more than £20¹ without the general rule in DMG 41122 applying. There is no limit to the period during which they can do this work. This is known as PWLL. Claimants move out of this type of PWK if their earnings in any week are more than £20. The DM should consider whether the claimant meets the requirement for a different type of PWK.

Note: See DMG 41189 – 41190 for guidance on calculation of weekly earnings.

1 ESA Regs, reg 45(2)

Supported permitted work

- 41197 Claimants can do SPW¹ as long as their earnings in any week are no more than 16 x NMW without the general rule in DMG 41122 applying. There is no limit to the period during which they can do this work as long as they continue to meet the requirements for SPW.

1 ESA Regs, reg 45(3)

- 41198 SPW is appropriate for claimants whose disability has stable and established effects with a significant impact on their ability to learn or sustain a traditional job which will

1. always **or**
2. for a number of years

prevent them from working more than a few hours each week.

- 41199 To be SPW, the work must be

1. part of a treatment programme done under medical supervision while the claimant is
 - 1.1 an in-patient **or**
 - 1.2 regularly attending as an out-patient of a hospital or similar institution¹ (see DMG 54018) **or**
2. supervised by a person employed by
 - 2.1 a public or local authority **or**
 - 2.2 a voluntary organization **or**

2.3 a Community Interest Company

which provides or finds work for persons with disabilities².

1 ESA Regs, reg 45(3)(a); 2 reg 45(3)(b)

41200 A voluntary organization¹ is one that carries out activities otherwise than for profit. It does not include public or local authorities.

1 ESA Regs, reg 2(1)

Community Interest Companies

41201 A CIC, as established under relevant legislation¹, is a profit making organisation. However, it is restricted to using its assets and profits for the benefit of the community rather than for the benefit of the owners of the company.

1 The Companies (Audit, Investigations and Community Enterprise) Act 2004

41202 The support worker must direct and oversee the performance of the claimant regularly although the frequency of contact is not laid down. Some claimants may require daily contact, with others it may be as infrequent as, for example, monthly. The extent and the frequency of the support may vary according to the progress of each individual claimant.

41203 The supervision must be more than the normal supports put in place by employers. The support worker will, at least initially, have close involvement in the day to day routine of the claimant and, by implication, with the employer. This involvement will be ongoing at regular intervals according to each claimant's circumstances.

Example 1

Peter's appointee returns form PW1. Peter wants to work in a local market garden for four hours on a Friday afternoon, earning £17 a week. Part 3 of the form PW1 has been completed by Peter's caseworker who works for Kaleidoscope NSF. It is a charitable organization that supports disabled people in work through a Social Firm. Peter's caseworker will visit him regularly and this support will continue. The DM determines that even though the work is for less than £20 a week and could be PWLL, it should be SPW because the work is supported. He can do this work without the general rule applying for as long as his earnings are no more than the set weekly limit and the support continues.

Example 2

Sarah's appointee returns form PW1. It states that Sarah who has Down's Syndrome intends to start work on 30.03.09. The work is in a supermarket collecting trolleys from the car park and stacking shelves. She will be working for four hours a day each Wednesday and Thursday earning £40 a week. Sarah's work has been arranged by Bexley Twofold, an organization funded by Bexley Council and Mencap to arrange work for people with disabilities. Sarah's support worker visits regularly and this support will continue. The DM determines that the work she is doing is

SPW. She can do this work without the general rule applying for as long as the earnings remain no more than the set weekly limit and the support continues.

41204 - 41210

Permitted work

41211 PW is work done for less than 16 hours, or an average of less than 16 hours (see DMG 41213 et seq) in any week, for which the earnings do not exceed 16 x NMW¹.

1 ESA Regs, reg 45(4)

41212

Calculating the hours for permitted work

41213 Where no recognizable cycle has been established, it is

1. the number of hours **or**
2. the average number of hours where the hours worked are likely to fluctuate a claimant is expected to work in a week¹.

1 ESA Regs, reg 45(8)(a)

41214 Where the number of hours a claimant works fluctuate and there is a recognizable cycle, it is over one complete cycle of work. This complete cycle includes periods in which the claimant does no work but excludes other absences such as holidays or sickness¹.

1 ESA Regs, reg 45(8)(b)(i)

41215 Where the number of hours a claimant works fluctuate and there is no recognizable cycle, it is

1. over the five week period **or**
2. any other period to enable the average hours to be decided more accurately immediately before the date of claim, or the date a supersession decision is made¹.

1 ESA Regs, reg 45(8)(b)(ii)

41216 DMs should consider the guidance at DMG 41346 - 41434 in order to decide

1. which hours count towards the weekly total **and**
2. how to identify a recognizable cycle **and**
3. how to calculate the hours if a
 - 3.1 recognizable cycle is established **or**
 - 3.2 recognizable cycle is not established.

41217 - 41255

Remunerative work

ESA(Cont)

41271 Remunerative work does not affect ESA(Cont). If a person claiming ESA(Cont) is working¹, the DM should consider DMG 41141 et seq.

1 ESA Regs, reg 40(1)

ESA(IR)

41272 Remunerative work¹ for ESA(IR) purposes is any work which a claimant does for which payment is made or in expectation of payment other than²

1. work as a councillor³ **or**
2. duties undertaken on not more than one full day or two half-days a week as a member of the FtT⁴ who is eligible for appointment under specified legislation⁵ **or**
3. domestic tasks carried out in the claimant's own home or the care of a relative⁶ **or**
4. where the claimant undertakes duties in caring for another person who is accommodated with them under arrangements for
 - 4.1 fostering **or**
 - 4.2 providing respite careand they receive payment for doing so⁷ **or**
5. any activity done during an emergency solely to
 - 5.1 protect another person **or**
 - 5.2 prevent serious damage to property or livestock⁸ **or**
6. any of the categories of exempt work⁹.

Note 1: See DMG 41152 et seq for full guidance on 1. - 6..

Note 2: Work as a councillor has the same meanings as at DMG 41133.

*1 WR Act 07, Sch 1, Part 1, paras 6(1)(e), ESA Regs, reg 41; 2 reg 40(2); 3 reg 40(2)(a); 4 reg 40(2)(b);
5 The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008;
6 ESA Regs, reg 40(2)(c); 7 reg 40(2)(d) & Sch 8, para 28 & 29; 8 reg 40(2)(e); 9 reg 40(2)(f) & reg 45*

41273 However, where a claimant who is entitled to ESA(IR) does some work, the DM should follow the guidance at DMG 41123 - 41124. The DM should consider whether the general rule applies before considering the remunerative work exclusion. If the general rule does apply, the DM should decide that a claimant is treated as not entitled to ESA(IR) because they are working, and need not consider the remunerative work exclusion.

Work done for payment or in expectation of payment

41274 Whether or not a claimant is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**
2. it is done in expectation of payment¹.

Remunerative does not mean profitable.

1 ESA Regs, reg 41; R(IS) 1/93

41275 DMs should consider the guidance at DMG 41327 - 41334 to decide whether work is done for payment or in expectation of payment.

Payment to a claimant on termination or interruption of employment

41276 A claimant is not entitled to ESA(IR) if they were, or were treated as being, engaged in remunerative work. The period of the exclusion is the period over which certain payments, paid on termination of that employment, fall to be taken into account¹ (see DMG Chapter 48). Some payments are disregarded² (see DMG Chapter 49).

1 ESA Regs, reg 41(2); 2 reg 41(3) & Sch 7, para 1

41277 - 41300

Which days are not included

Claimant has, or is treated as having, LCWRA

- 41820 When calculating the period of entitlement for the purposes of DMG 41810 or 41815, days where the claimant is
1. a member of the support group¹ or
 2. not a member of the support group, but is entitled to the support component²
or
 3. in the assessment phase³, 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** included⁴.

Note: See DMG 41875 – 41878 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)

- 41821 A claimant is a member of the support group from the date the determination is made that they have, or are treated as having, LCWRA¹. This determination may be made before or after the effective date of entitlement to the support component.

Example

Miranda has been entitled to ESA(Cont) at the assessment phase rate since 15.2.12. On 6.6.12, after application of the WCA, the DM determines that Miranda has LCW and LCWRA. Miranda is a member of the support group from 6.6.12. The DM then supersedes the decision awarding ESA(Cont) and awards the support component from 16.5.12, the 14th week of entitlement. None of the days when Miranda is entitled to ESA(Cont) count towards the relevant maximum number of days. Miranda continues to be entitled to ESA(Cont) 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

- 41822 A claimant is not entitled to ESA for the first seven days of a PLCW¹, known as waiting days (see DMG 41101). Waiting days are therefore not included in the period of entitlement at DMG 41810 or 41815.

1 WR Act 07, Sch 2, para 2; ESA Regs, reg 144(1)

Days of disqualification

41823 DMG 53112 gives guidance on treating the claimant as not having LCW if they are disqualified for receiving ESA(Cont) during a period of imprisonment of more than six weeks¹. These days are not days of entitlement to ESA(Cont), and are therefore not included in the period of entitlement at DMG 41810 or 41815.

1 ESA Regs, reg 159(1)

41824 – 41829

Which days are included

41830 When calculating the period of entitlement for the purposes of DMG 41810 or 41815, **all** days of entitlement, both before and after 1.5.12, **except** those in DMG 41820 – 41823, are included in the count¹. This also includes days where the claimant is entitled to ESA(Cont) paid at the assessment phase rate pending an appeal against a disallowance following application of the WCA (see DMG 42450 et seq).

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 DMG Chapter 44 for further details, including where transitional provisions apply.

1 WR Act 07, s 1A(6)

Example 1

John has been entitled to ESA (Cont) since 17.1.11. As at 1.5.12, this exceeds 365 days. He is not a member of the support group. John's entitlement to ESA (Cont) is terminated from and including 1.5.12. He remains entitled to NI credits for as long as he would have LCW if he had remained entitled to ESA(Cont).

Example 2

Sally has been entitled to ESA(Cont) at the assessment phase rate since 7.7.11. She is not entitled to ESA(IR). On 16.11.11 after application of the WCA the DM determines that Sally does not have LCW, and terminates her entitlement to ESA(Cont) from the same date. Sally appeals to the FtT, and is awarded ESA(Cont) at the assessment phase rate from 16.11.11 pending determination of the appeal. As none of these days is excluded from the 365 day period, her last day of entitlement is 5.7.12, the 365th 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 14th week of entitlement for the period 6.10.11 – 5.7.12 only. The decision terminating ESA(Cont) from 6.7.12 stands.

If the FtT allows the appeal, and finds that Sally has LCWRA, the decision terminating ESA(Cont) from 6.7.12 should be revised to reinstate entitlement, and arrears of the support component paid as normal. As Sally is in the support group her ESA(Cont) is not time limited for as long as she has LCW and LCWRA. None of the days from 7.7.11 count towards the 365 day time limit.

41831 The period of 365 days includes all days of entitlement, including previous periods of entitlement, which are based on the same two tax years¹. This may be where the 12 week linking provisions apply², or where two awards for claims made in the same relevant benefit year. See DMG 41111 for guidance on linking PLCWs.

1 WR Act 07, s 1A(1); 2 ESA Regs, reg 145(1)

Example

Roberto was entitled to ESA(Cont) from 20.1.12. He was found to have LCW, but was not placed in the support group, so was awarded the WRAC. He returned to work on 3.9.12, and his award of ESA was terminated from that date. On 8.10.12 Roberto makes a repeat claim for ESA(Cont). The PLCWs link, and he is awarded ESA(Cont) including the WRAC from 8.10.12. Roberto's entitlement to ESA(Cont) will end on 22.2.13, the combined 365th day of entitlement, unless he is found to have LCWRA before that date.

41832 DMs should note that the number of days of entitlement includes days where ESA(Cont) is not payable, but entitlement continues. This includes days where ESA is not payable

1. for periods of disqualification, for example for imprisonment (see DMG 53071 et seq) **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 DMG Chapter 44561 et seq).

Note: See DMG 41823 where days of disqualification due to imprisonment exceed six weeks.

Example

Kylie has been entitled to ESA(Cont) since 10.5.11. She is not a member of the support group. On 20.4.12 she is sentenced to a period of imprisonment, and the DM decides that Kylie is disqualified from receiving ESA(Cont) which is therefore not payable. Kylie is released on 25.5.12. Her entitlement to ESA(Cont) terminates on 8.5.12, even though on that day it is not payable.

41833 – 41839

Change in claimant's health condition – ESA(Cont) awards

41855 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 entitlement.

Health condition deteriorates

41856 Where the claimant's health condition deteriorates, this can affect further entitlement to ESA(Cont). The action to take depends on whether an award of ESA(Cont) 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(Cont) began on 22.2.11, and ended on 30.4.12, as her entitlement exceeded 365 days and she was not in the support group. Entitlement was based on tax years 2008/2009 and 2009/2010. She is not entitled to ESA(IR) as she has excess income from an occupational pension, but entitlement to NI credits continues. On 6.8.12 she makes a further claim for ESA(Cont) stating that her condition has deteriorated since her previous entitlement ended. The relevant tax years are 2009/2010 and 2010/2011, and Amy satisfies both the first and second contribution conditions, with a later tax year for the second contribution condition. The DM awards ESA(Cont) at the assessment phase rate from 9.8.12.

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.

41857 – 41859

Application made during current award

41860 A claimant who is already entitled to ESA(Cont) 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. See DMG Chapter 04 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 DMG Chapter 44 for further details, including where transitional provisions apply.

1 SS CS (D&A) Regs, reg 6(2)(r) & 7(39)

41861 The award of ESA(Cont) may have terminated as in DMG 41810 or 41815 before the determination of LCWRA has been made. In this case the DM should revise¹ the decision ending entitlement to ESA(Cont), and supersede the previous decision awarding ESA(Cont) as in DMG 41860.

1 SS CS (D&A) Regs, reg 3(5I)

Application made after award has terminated

41862 Where

1. entitlement to ESA(Cont), including under the youth provisions, has been terminated as in DMG 41810 or 41815 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(Cont) **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 DMG 41012) **and**
 5. the DM determines that the claimant has, or is treated as having, LCWRA
- the claimant is entitled to an award of ESA(Cont), even though they do not satisfy the contribution conditions¹. The award is regarded as an award of ESA(Cont) for all other purposes, for example amounts payable².

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

Example

Bogdan's award of ESA(Cont) ended on 30.4.12 as it exceeded 365 days. Entitlement was based on tax years 2008/2009 and 2009/2010. He is not entitled to ESA(IR) as he has a partner in full-time remunerative work. He remains entitled to NI credits. Bogdan makes a further claim to ESA(Cont) from 10.7.12 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(Cont) and the support component from 10.7.12. He does not have to serve waiting days or the assessment phase.

- 41863 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 ESA¹ (see DMG 02153 et seq).

1 SS (C&P) Regs, reg 4G & 4H

41864

Deterioration identified on routine WCA

- 41865 The guidance at DMG 41862 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 entitled to NI credits.

Example

Mina's entitlement to ESA(Cont) 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(Cont) had not ended due to time limiting. She is not entitled to ESA(IR) as she has a partner who is entitled to JSA(IB) for her. On 18.9.12, 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(Cont), stating she wishes to claim from 10.9.12, is received on 14.11.12. The DM determines that she does not satisfy the contribution conditions, but is entitled under the deterioration rule. Mina is awarded ESA(Cont) including the support component from 10.9.12.

41866 – 41869

Date award begins

- 41870 Where an award is made as in DMG 41862 – 41865, the claimant does not have to serve waiting days before entitlement begins¹. The support component is payable from the first day of entitlement². See DMG 41875 –41878 where an award is made and the claimant's condition then improves.

Note: This does not apply if the claimant is entitled to ESA(Cont) on the basis of a later tax year as in DMG 41847. See DMG 41877 for further details.

1 ESA Regs, reg 144(2)(e); 2 reg 7(1)(d)

41871 - 41874

Health condition improves

41875 Claimants who

1. are awarded ESA (Cont) **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(Cont) 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 DMG Chapter 44 for further details, including where transitional provisions apply.

Example

Lily has been entitled to ESA(Cont) including the support component since 20.4.11. Following a routine WCA, the DM determines that Lily has LCW but no longer has LCWRA. The award of ESA(Cont) is superseded to award the WRAC instead of the support component from 2.10.11. As long as Lily continues to have LCW, her entitlement to ESA(Cont) will terminate on 30.9.12 unless she is subsequently found to have LCWRA again.

41876 Where entitlement to ESA(Cont) 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 DMG 41820 – 41823.

Example

Liam's entitlement to ESA(Cont) began on 9.11.11. On 20.1.12 the DM determines that Liam has LCW but does not have LCWRA. Liam is awarded the WRAC from 8.2.12.

Following an accident, Liam reports a change in his health condition on 9.8.12. After a further application of the WCA, the DM determines that Liam has LCWRA. The support component is paid from 9.8.12.

Liam's condition improves following surgery. On 10.1.13 the DM determines that Liam no longer has LCWRA. Taking into account the 274 days already paid before 9.8.12, Liam's last day of entitlement to ESA(Cont) will be 10.4.13.

41877 Claimants who are awarded ESA(Cont) because

1. they satisfy the conditions in DMG 41847 (entitlement based on later tax year) **and**
2. their award includes the support component

can receive a further 365 days ESA(Cont) 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(Cont) including the WRAC began on 22.3.11, and terminated on 30.4.12 as her entitlement exceeded 365 days. She makes a further claim to ESA(Cont) on 24.7.12, and the DM determines that she satisfies the contribution conditions based on different tax years. She is awarded ESA(Cont) 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 14.11.13 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 14.11.13 count towards the 365 days maximum.

- 41878 Where the claimant becomes entitled to an award of ESA(Cont) as in DMG 41862 – 41865 and their condition improves to the extent that they no longer have, or are treated as having, LCWRA, entitlement to ESA(Cont) terminates from the date of the DM's decision. The claimant is not entitled to a further 365 days of ESA(Cont) even though they may still have LCW. This is because they no longer satisfy the condition at DMG 41862 5. i.e. that they have or are treated as having LCWRA¹.

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

Example

Marvin's award of ESA(Cont) ended on 30.4.12 as his entitlement exceeded 365 days. He is not entitled to ESA(IR), as his partner is entitled to IS for him. He remains entitled to NI credits on the grounds that he would have LCW had he remained entitled to ESA(Cont). On 13.6.12 he makes a further claim to ESA(Cont). He does not satisfy the contribution conditions. The DM determines that Marvin has LCWRA, and awards ESA(Cont) including the support component from 13.6.12 under the deterioration rule.

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

41879 - 41899

Appendix 5

National Minimum Wage rates

Date	Hourly rate
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

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

42076 Where

1. on consideration of all the evidence after application of the WCA, the DM is of the opinion that the claimant would not have, or would not be treated as having, LCW **and**
2. either
 - 2.1 the HCP advises that the claimant is about to go into hospital for treatment within 21 days of the medical examination **or**
 - 2.2 the claimant subsequently provides evidence that they are about to go into hospital within 21 days of the date when 1. applies

the DM should defer making a determination as to whether the claimant has LCW until it is confirmed that the claimant has become a hospital patient.

Planned admission postponed

42077 If

1. the claimant is not admitted to hospital as planned **and**
2. a new date for admission is provided **and**
3. the claimant continues to provide evidence of LCW (see DMG 42145 et seq)

the DM should continue to defer making a determination on LCW as in DMG 42076.

Planned admission cancelled

42078 Where a planned admission to hospital is cancelled and no new date is proposed, the DM should determine whether the claimant has LCW as normal.

42079 - 42089

Receiving regular treatment

42090 Claimants are treated as having LCW when they

1. receive
 - 1.1. regular weekly treatment by way of haemodialysis for chronic renal failure **or**
 - 1.2. treatment by way of plasmapheresis **or**
 - 1.3. regular weekly treatment by way of total parenteral nutrition for gross impairment of enteric function¹ **and**
2. satisfy the condition in DMG 42093²

unless they are treated as not having LCW because they are working³ (see DMG 42600 et seq).

1 ESA Regs, reg 26(1); 2 reg 26(2); 3 regs 40 & 44

42091 An explanation of the treatments in DMG 42090 is in the Appendix to this Chapter¹.

1 ESA Regs, reg 26

42092 Subject to DMG 42093 a claimant referred to in DMG 42090 is to be treated as having LCW during any week in which that claimant is engaged in receiving treatment or has a day of recovery from that treatment¹.

1 ESA Regs, reg 26(1)

42093 Claimants who receive the treatment in DMG 42090 **1.** are only treated as having LCW from the first week of treatment where they have no fewer than

- 1.** two days of treatment **or**
- 2.** two days of recovery from that treatment **or**
- 3.** one day of treatment and one day of recovery from that treatment

but the days of treatment or recovery or both need not be consecutive¹.

1 ESA Regs, reg 26(2)

42094 The condition in DMG 42093 must be satisfied during the period of the current claim for ESA. Where the condition was satisfied before the date of the current claim, and is not satisfied at the date of that claim, the claimant cannot be treated as having LCW under the regular treatment rules.

42095 There are no linking rules for periods of regular treatment. If

- 1.** a claimant has been treated as having LCW as in DMG 42090 **and**
- 2.** entitlement to ESA ends (for example because the treatment ends) **and**
- 3.** a further award of ESA is made from a later date when treatment begins again

the claimant must satisfy the condition in DMG 42093 again before they can be treated as having LCW.

42096 A “day of recovery” means a day on which the claimant is recovering from any of the forms of treatment listed at DMG 42090 and the DM is satisfied the claimant should be treated as having LCW on that day¹.

1 ESA Regs, reg 26(3)

42097 Where a claimant is in receipt of ESA(IR) normal rules for exempt work apply (see DMG 42600 et seq). This means that if the claimant works during a week and their work does not fit within exempt work rules they cannot be treated as having LCW¹.

1 ESA Regs, reg 44(3)(a)

42098 Where a claimant is

1. in receipt of ESA(Cont) **and**
2. treated as having LCW as per DMG 42092 **and**
3. working on any day during a week when he is receiving regular treatment or recovering from it

the work does not affect the claimant's entitlement to ESA(Cont)¹. But the claimant is only paid ESA(Cont) for the days of receiving or recovering from treatment if they are not days of work² (see DMG Chapter 46 for further guidance).

1 ESA Regs, reg 46; 2 reg 169

42099

Claimants treated as having limited capability for work throughout a day

42100 If a claimant

1. has LCW at the start of a day but becomes capable later that day **or**
2. is capable of work at the start of the day but develops LCW during the day

the whole day is treated as a day of LCW if no work is done on that day¹.

Note: The exception to this would be where the night shift worker provision applies (see DMG 42105).

1 ESA Regs, reg 27

42101 This provision applies where there is a sudden onset of, or recovery from, an incapacitating condition. It does not provide that a claimant with a variable condition that incapacitates them for part of each day has LCW throughout the whole of every day.

42102 When DMs determine that a claimant has LCW they can consider if this provision applies to treat the claimant as having LCW for the day at the beginning or end of the period of illness.

42103 Even if a claimant is treated as having LCW under this provision any work that they do on that day or on another day in that week may mean that they are to be treated as not having LCW. A day cannot be a day of LCW if they have undertaken work on that day¹. The normal rules for exempt work² apply.

Note: For guidance on exempt work see DMG Chapter 41.

1 ESA Regs, reg 27; 2 reg 45

Example

If a claimant works 9am to 5pm from Monday to Friday, and on the Wednesday has an accident at work at 11am resulting in them being unable to continue with that

day's work this will not be treated as a day of LCW. The first day of LCW will be the day following the accident if they do not return to work on that day.

42104

Night shift workers

42105 Night shift workers are claimants who work for a period of employment which begins on one day and extends over midnight into the next day. It is necessary to establish how many hours are worked before and after midnight. The hours of work on any other occasion are not relevant¹.

1 R(I) 31/55

42106 The day on which the lesser hours are worked is treated as a day of LCW if¹

1. a claimant works on a night shift for a continuous period over midnight **and**
2. the claimant has LCW for the rest of that day.

1 ESA Regs, reg 28(1)

42107 The second day of a night shift is treated as a day of LCW if¹

1. the hours before and after midnight are equal **and**
2. the night shift is at the beginning of the PLCW.

1 ESA Regs, reg 28(2)(a)

42108 The first day of the shift is treated as a day of LCW if¹

1. the hours before and after midnight are equal **and**
2. the night shift is at the end of a PLCW.

1 ESA Regs, reg 28(2)(b)

42109 The provisions do not apply to claimants whose employment lasts for more than 24 hours on either side of midnight¹. For example, it would not apply to continuous employment from 6 pm on Monday to 2 am on Wednesday. In this example the Wednesday cannot be treated as a day of LCW.

1 R(U) 18/56

42110 A night worker paid by the shift is normally paid for a meal break and this should be included in the calculation of the total time worked.

42111 A night worker paid by the hour is not normally paid for a meal interval. This should be deducted from the shift hours to arrive at the actual hours worked. The shift is still regarded as one continuous period of employment because the meal break is a normal break.

42112 - 42119

Membership of the household - children and young persons

Children and young people who may be members of the household

- 43071 Any child or young person who is the responsibility of the claimant or partner may be a member of the claimant's household. These may be
1. the claimant's children **or**
 2. the children of the claimant's partner if the claimant is a member of a couple **or**
 3. the children of the claimant's partners if the claimant is a member of a polygamous marriage **or**
 4. any child or young person living with the claimant for whom the claimant or any partner is the responsible person **or**
 5. the children of any of the children in 1. to 4..

Note: In this paragraph children has its everyday meaning and includes young persons.

Child or young person living with the claimant

- 43072 There may be other children or young persons living with the claimant who do not come into the categories in DMG 43071.

Under the control of a local authority or awaiting adoption

- 43073 Do not treat as a member of the claimant's household any child or young person who is
1. in England and Wales, placed with the claimant or partner
 - 1.1 by a LA or voluntary organization¹ **or**
 - 1.2 while waiting for adoption² **or**
 2. boarded out under a relevant enactment with the claimant or partner, whether or not with a view to adoption³ **or**
 3. placed for adoption with the claimant or partner while a decision is awaited⁴.

1 ESA Regs, reg 156(5)(a); Children Act 89, s 22C(2) & 59(1)(a); Child Care Act 1980; SS Well being(Wales) Act 14, s 81(2); *2* ESA Regs, reg 156(5)(b); *3* reg 156(5)(c) & reg (2)(1); *4* reg 156(5)(d); Adoption Agencies Regs 1983; Adoption Agencies (Scotland) Regs 1996

43074 - 43075

Eligible child, relevant child or person of prescribed description living with the claimant

43076 The terms “eligible child”, “relevant child” and person of prescribed description apply to certain 16 or 17 year olds who have been looked after by a LA. See DMG Chapter 30 for the definitions of who is an eligible child, a relevant child or a person of prescribed description.

43077 A young person aged 16 or 17 who is no longer living in accommodation provided by a LA **cannot** form part of the claimant’s family if the young person is an eligible child, a relevant child or a person of prescribed description unless the young person is either

1. a lone parent **or**
2. a single person looking after foster children **or**
3. incapable of work **or**
4. a disabled worker **or**
5. a disabled or deaf student **or**
6. blind **or**
7. appealing against a decision that they are not incapable of work **or**
8. in relevant education, severely mentally or physically handicapped and unlikely to obtain employment within the next twelve months **or**
9. in relevant education, a lone parent of a child for whom they are treated as responsible and is treated as a member of their household¹.

1 Children (Leaving Care) Act 2000 (Comm No. 2 and Consequential Provisions) Order, Sch 1, para (b) & Sch 4 para (b)

43078 Where a young person has been placed with a person or family under the relevant legislation¹ and has stayed for at least six months, the young person is not a relevant child, despite falling within the definition², and can form part of the claimant’s family. This applies whether or not the six month period began before or after the young person ceased to be looked after by an LA³.

1 Children Act 1989, s 23(4); 2 Children (Leaving Care) (England) Regs 2001, reg 4(5); Children (Leaving Care) (Wales) Regs 2001, reg 4(4); Support and Assistance of Young People Leaving Care (Scotland) Regs 2003, reg 13; 3 Children (Leaving Care) (England) Regs 2001, reg 4(6); Children (Leaving Care) (Wales) Regs 2001, reg 4(5); Support and Assistance of Young People Leaving Care (Scotland) Regs 2003, reg 13

43079 Where the young person ceases to live with the person or family they should again be treated as a relevant child¹.

1 Children (Leaving Care) (England) Regs 2001, reg 4(7)

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Statutory Payments

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The assessment phase

Meaning of assessment phase

44011 The assessment phase is the period of time during which the initial LCWA takes place. It is generally a fixed period of 13 weeks beginning with the first day of entitlement to ESA¹. Entitlement will usually commence after the claimant has served seven waiting days². The assessment phase may sometimes be extended in certain circumstances, for example should the WCA not take place within the first 13 weeks³.

Note: DMG Chapter 41 provides guidance on waiting days.

1 WR Act 07, s 24(2); 2 Sch 2, para 2; 3 ESA Regs, reg 4(2)

44012 The assessment phase is calculated differently for those claimants who

1. have previously claimed ESA and the PLCW links to an earlier PLCW (see DMG 44019) **or**
2. are appealing a decision embodying an adverse determination on LCW (see DMG 44022) **or**
3. claim ESA immediately following an award of JSA EPS (see DMG Chapter 20).

44013 The normal amount of ESA payable will depend on whether the claimant is in the assessment phase. Unless the claimant is within a prescribed group (see DMG 44636) then during the assessment phase

1. the support component is not payable¹
2. the personal allowance² for ESA(IR) (see DMG 44056) and the personal rate for ESA(Cont) are age related³ (see DMG 44027).

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 Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2(2), s 2(3), s 4(4) & s 4(5); 2 ESA Regs, reg 67(1); 3 reg 67(2)

44014 In cases where the assessment phase has lasted for a period longer than 13 weeks payment of the support component may be backdated to the first day after the 13th week (see DMG 44647)¹.

1 WR Act 07, s 2(4)(b), s 4(6)(b); SSCS (D&A) Regs, reg 6(2)(r) and 7(38) & (40)

Ending of the assessment phase – new claimants

44015 The assessment phase ends on

1. the last day of the relevant period¹ (see DMG 44016) **or**
2. the date of the determination in DMG 44017 if later².

1 ESA Regs, reg 4(1) & (3); 2 reg 4(2)

Meaning of relevant period

44016 The relevant period is the period of 13 weeks beginning with

1. the first day of the assessment phase (that is, the first day of ESA entitlement)¹ **or**
2. where the first day of ESA entitlement immediately follows an award of JSA EPS, the first day of the EPS².

1 WR Act 07, s 24(2)(a); ESA Regs, reg (4)(a); 2 reg 4(b) & (5); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Pat is entitled to JSA, and sends in fit notes when he has flu and develops a chest infection. He starts an EPS on 10.6.15. Pat has serious injuries after a road traffic accident on 9.7.15, and is admitted to hospital. He claims ESA from 9.7.15, and on 1.9.15 the DM determines that Pat is treated as having LCW. The relevant period begins on 10.6.15, the first day of the EPS, and ends on 9.9.15.

44017 Where a LCW determination has not been made within the relevant period in DMG 44016¹, the assessment phase will end once it has been determined that the claimant has LCW² either by

1. a LCWA being carried out (see DMG Chapter 42)³ **or**
2. the claimant being treated as having LCW (see DMG Chapter 42)⁴.

1 ESA Regs, reg 4(4); 2 reg 4(2); 3 reg 4(3)(a), 19 & Sch 2; 4 reg 4(3)(b), 20,25,26,29 or 33(2)

Example

After serving waiting days for the period 25-31 May, Claudia has been entitled to ESA since 1 June on the basis of medical evidence supplied by her GP. A LCWA is not carried out until 10 September. On 12 September the DM determines that Claudia has LCW. Claudia's assessment phase ends on 12 September.

44018 Where

1. a claimant's entitlement to ESA ends, for example because they have returned to work, after the 13th week of entitlement but before the WCA has been carried out **and**
2. the claimant asks for arrears of a component to be paid from week 14

the DM should make a decision refusing to supersede the decision which awarded entitlement, or any later superseding decision, on the grounds that the conditions allowing supersession are not satisfied. See [DMG 04019 - 04020](#) for guidance on making a decision not to supersede. The decision carries the right of appeal to the FtT¹.

1 SS Act 98, s 12(1); R(DLA) 1/03

Ending of the assessment phase - previous claimants

44019 Where

1. the claimant's current PLCW links to an earlier PLCW under the 12 week linking rule¹ (see DMG Chapter 42) **and**
2. the claimant was entitled to ESA in that earlier period² **and**
3. the assessment phase had not ended in that earlier period³

the assessment phase begins on the first day of entitlement in the earlier period⁴.

Note: See DMG 44020 where the claimant was previously entitled to JSA.

1 ESA Regs, reg 5(2)(a)(i); 2 reg 5(2)(a)(ii); 3 reg 5(2)(a)(iii); 4 reg 5(1)(a)

44020 When adding together periods of entitlement to ESA as in DMG 44019, a claimant is treated as entitled to ESA for any period where they were

1. entitled to JSA **and**
2. treated as capable of work or as not having LCW during an EPS¹.

Note: See DMG Chapter 20 for guidance on JSA and EPS.

1 ESA Regs, reg 5(1) & (1A); JSA Regs, reg 55ZA; JSA Regs 13, reg 46A

Example

Tricia is awarded ESA from 15.4.15 after injuring her wrist in a fall. She claims JSA from 14.5.15. Tricia is diagnosed with a suspected eye infection affecting her vision, and starts an EPS on 29.5.15 after sending in fit notes from her GP. She makes a further claim for ESA on 20.7.15, as she is now experiencing significant mobilising problems. Tricia is later diagnosed with multiple sclerosis, and found to have LCW and LCWRA. Tricia is awarded the support component from 30.7.15, as the ESA award for the periods 15.4.15 – 13.5.15 and from 20.7.15 are combined with the period of JSA EPS (29.5.15) to total 13 weeks.

44021 Where DMG 44019 applies, the assessment phase ends on the day when the total number of weeks entitlement in the earlier period and current period is 13 weeks provided that it has been determined that the claimant

1. has LCW **or**
2. is treated as having LCW¹.

Note: Where the entitlement in the previous period was 13 weeks or more see DMG 44636 **2.** for guidance on backdated entitlement to the support component.

1 ESA Regs, reg 5(1)(b)

44022 If by the time that period referred to in DMG 44019 ends it has not yet been determined that the claimant has LCW, then the assessment phase will end once it has been determined that the claimant has LCW, provided that

1. a LCW determination has not been carried out within 13 weeks of the first day of entitlement to ESA¹ **and**
2. there has been no determination treating the claimant as having LCW².

1 ESA Regs, reg 5(3A)(a); 2 reg 5(3A)(b)

The assessment phase - claimants appealing a decision

44023 Where the claimant

1. has made and is pursuing an appeal against a decision which embodies a determination that the claimant does not have LCW **and**
2. is entitled to ESA

DMG 44019 - 44022 and 44636 do not apply to the PLCW until a determination of LCW is made after the FtT has heard the appeal¹. But see DMG 44024 where there is a change of circumstances before the appeal is heard.

Note: See DMG Chapter 42 for detailed guidance on awards of ESA made pending the outcome of an appeal.

1 ESA Regs, reg 5(4) & 7(2)

Example

Emile's award of ESA began on 12.2.10 and was terminated from 20.4.10 following application of the WCA. He makes an appeal on 11.5.10 and is awarded ESA from 20.4.10. On 8.9.10 his appeal is allowed, the FtT finding that he has LCW and LCWRA, and should be placed in the support group. The FtT determinations are binding on the DM. The decision awarding ESA from 20.4.10 is superseded to award the support component from 14.5.10, the 14th week of the combined PLCW.

44024 DMG 44023 does not apply where there is a change of circumstances which leads the DM to make a determination that the claimant

1. has LCW following application of the WCA **or**
2. is treated as having LCW other than in DMG 42202.

The guidance in DMG 44019 - 44022 and 44636 applies instead.

Example 1

Robin's award of ESA was terminated after ten weeks following application of the WCA. He makes an appeal, and is awarded ESA from the date his previous entitlement ended. Two months later he is admitted to hospital and is referred for the WCA. The HCP advises that Robin should be treated as having LCW as a hospital

patient, and that he does not have and cannot be treated as having LCWRA. The assessment phase ends after week three of the current PLCW. The component is awarded from week four of the current PLCW where Robin is found to have LCW and LCWRA, and the support component is awarded by the FtT, or following application of the WCA if that takes place before the FtT hears the appeal.

Example 2

Denise's award of ESA is terminated after 20 weeks following application of the WCA, and she makes an appeal. She is awarded ESA from the date her previous entitlement ended. Several weeks later Denise produces evidence that her condition has deteriorated and she is referred for the WCA. The DM determines that she has LCW and LCWRA, and is placed in the support group. The support component is paid from the first day of the award made after the appeal was lodged, even though her appeal has yet to be heard.

44025

The main phase

44026 The main phase of ESA begins where there is entitlement to the support component (see **DMG 44631 for guidance on entitlement to the component**)¹. The assessment phase must usually have been completed before a claimant enters the main phase (see DMG 44011 - 44024).

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 Appendix 10 for where transitional provisions apply.

1 ESA Regs, reg 2(1)

44027 The prescribed amount payable during the main phase of ESA may be increased depending on

1. the claimant's age **and**
2. if the claimant is a member of a couple, their circumstances.

Guidance later in this chapter provides more details.

44028

ESA(Cont)

44029 ESA(Cont) is paid for the claimant only. There are no increases for any partner or dependants. The amount for each benefit week is calculated by¹

1. deciding the personal rate appropriate to the claimant² **and**
2. adding the amount of the support component if the claimant is entitled to this³ **and**
3. deducting⁴
 - 3.1 any pension payments⁵ **and**
 - 3.2 any PPF periodic payments⁶ **and**
 - 3.3 any councillors' allowances⁷.

Note 1: Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded⁸.

Note 2: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2; 2 s 2(1)(a); ESA Regs, reg 67(2); 3 s 2(1)(b); 4 WR Act 07, s 2(1)(c); 5 s 3(1)(a); 6 s 3(1)(b); 7 s 3(1)(c); 8 ESA Regs, reg 3(a)

44030 In the assessment phase only, ESA(Cont) has two separate personal rates. They are for claimants aged

1. less than 25 **or**
2. 25 and over¹.

In the main phase all ESA(Cont) claimants, regardless of their age, are entitled to the 25 and over rate².

1 WR Act 07, s 2(1)(a); ESA Regs, reg 67(2) & Sch 4, para 1(1)(b) & (c); 2 reg 67(2) & Sch 4, para 1(1)(a)

44031 - 44034

ESA(IR)

Amount of ESA(IR) payable

44035 One of the conditions of entitlement for ESA(IR) is that the claimant should have

1. no income **or**
2. income that does not exceed the applicable amount¹.

1 WR Act 07, Sch 1, para 6(1)(a)

44036 The amount of ESA(IR) payable is

1. the applicable amount if the claimant has no income **or**
2. the difference between the income and the applicable amount if the claimant has income that does not exceed the applicable amount¹.

1 WR Act 07, s 4(1)

Applicable amount

44037 ESA(IR) is paid for the claimant and any partner or partners¹. There is no amount for dependants. The applicable amount includes²

1. the claimant's personal allowance. This may include an amount for any partner or, in the case of a polygamous marriage, partners³ (see DMG 44061). During the assessment phase the personal allowance is age related (see DMG 44058) **and**
2. if appropriate
 - 2.1 premiums
 - 2.2 certain housing costs **and**
3. if appropriate the support component⁴.

Note 1: In special circumstances a claimant may have an applicable amount of nil⁵. An applicable amount may also be reduced in certain circumstances or may be limited to allowable housing costs only (see DMG Chapter 54).

Note 2: From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See Appendix 10 for where transitional provisions apply.

1 ESA Regs, reg 67(1)(a); 2 reg 67(1); 3 reg 68; 4 WR Act 07, s 4(2)(b); 5 s 4(3)

44038 When deciding ESA(IR) amount payable the applicable amount may be awarded without

1. housing costs¹ or
2. SDP²

if there is not enough evidence to include these elements.

1 SS CS (D&A) Regs, reg 13(1); 2 reg 13(2)

44039 The applicable amount may be revised or superseded if further information about SDP or housing costs is received after the claim or question has been decided¹.

1 SS CS (D&A) Regs, reg 3 & 6

44040 - 44044

General rules on premiums

Categories

44071 For ESA(IR) the four categories of premium are¹

1. PP
2. SDP
3. EDP
4. CP.

1 ESA Regs, Sch 4, Parts 2 & 3

Rates of premium

44072 DMs should note that

1. CP is paid at one rate
2. PP for
 - 2.1 single claimants is payable at one of two rates depending on whether the claimant
 - 2.1.a is entitled to the support component **or**
 - 2.1.b is not entitled to the support component
 - 2.2 where the claimant is a member of a couple is payable at one of two rates depending on whether the claimant
 - 2.2.a is entitled to the support component **or**
 - 2.2.b is not entitled to the support component
3. EDP is payable at a
 - 3.1 lower rate if the claimant is single **or**
 - 3.2 higher rate if the claimant is a member of a couple or polygamous marriage
4. SDP is payable at one of two rates depending on
 - 4.1 whether the claimant is single **and**
 - 4.2 where the claimant is the member of a couple or polygamous marriage whether CA is in payment in respect of the claimant.

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 the Appendix to this Chapter for where transitional provisions apply.

Qualifying conditions

44073 Each premium has its own qualifying conditions. See the guidance on individual premiums. To be entitled to a premium the qualifying conditions may apply to

1. the claimant **or**
2. a partner of the claimant.

Multiple premiums

44074 A claimant cannot be entitled to the EDP as well as the PP. Where the claimant is entitled to the PP then the EDP cannot also be paid. The claimant will only be entitled to the PP¹.

1 ESA Regs, Sch 4, para 3

44075 The claimant may be entitled to

1. SDP (see DMG 44111 et seq) **or**
2. CP (see 44166 et seq)

in addition to any premium awarded in DMG 44074¹.

1 ESA Regs, Sch 4, para 3

Qualifying benefits

In receipt of, or entitled to, a qualifying benefit

44076 A premium may be awarded because the claimant or partner is in receipt of or entitled to a qualifying benefit. Entitlement to the premium may end if receipt of, or entitlement to, the qualifying benefit ceases.

Meaning of in receipt of

44077 A person is in receipt of a qualifying benefit only

1. if it is paid because of that person's own incapacity or disability **and**
2. for the period for which the benefit is paid¹.

1 ESA Regs, Sch 4, para 10; R(IS) 10/94

Example 1

Alan is a married man who claims ESA. His wife, Mary, is in receipt of CA because she cares for him. The CP should be awarded as part of Alan's ESA(IR).

Pensioner premium

44091 Age is the only qualifying condition for PP.

44092 PP is payable if the claimant or partner has reached the qualifying age for SPC¹. The two types of PP are

1. single claimants PP - for a single claimant who is aged 60 or over² **and**
2. couples PP - for a claimant who is a member of a couple³.

1 ESA Regs, Sch 4, para 5; 2 Sch 4, para 11(1)(a); 3 Sch 4, para 11(1)(b)

Single claimants

44093 The amount of PP payable in respect of a single claimant depends upon whether there is

1. entitlement to the support component¹ **or**
2. no entitlement to the support component².

1 ESA Regs, Sch 4, para 11(1)(a)(ii); 2 Sch 4, para 11(1)(a)(iii)

Member of a couple

44094 The amount of PP payable in respect of a claimant who is a member of a couple depends upon whether there is

1. entitlement to the support component¹ **or**
2. no entitlement to the support component².

1 ESA Regs, Sch 4, para 11(1)(b)(i)(ii); 2 Sch 4, para 11(1)(b)(iii)

44095 - 44100

Entitlement to the components

ESA(IR) and ESA(Cont)

General

44631 Both ESA(Cont) and ESA(IR) attract entitlement to the support component¹.

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 Appendix 10 for where transitional provisions apply.

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.

1 WR Act 07, s 2(1)(b); s 4(2)(b)

44632 The support component is based on the claimant's entitlement. There is no couple rate and the circumstances of any partner are not relevant to the claimant's entitlement to the support component¹.

1 ESA Regs, reg 67(3) & Sch 4, paras 12 & 13

44633 Except for prescribed circumstances, there is no entitlement to the support component during the assessment phase. Once entitlement to the component is established and it is in payment then the claimant is on main phase ESA¹.

1 ESA Regs, reg 2(1)

The support component

44634 The conditions of entitlement to the support component¹ are that

1. the assessment phase has ended² unless the circumstances in DMG 44636 applies
2. the claimant has LCWRA³ (see DMG Chapter 42) **and**
3. any other conditions as may be prescribed⁴.

Note 1: For the purposes of **2.** no component is payable after a continuous period of more than 52 weeks as a patient (see DMG 54109).

Note 2: For the purposes of **3.** no conditions have yet been prescribed.

1 WR Act 07, s 2(2) & s 4(4); 2 s 2(2)(a) & s 4(4)(a); 3 s 2(2)(b) & s 4(4)(b); 4 s 2(2)(c) & s 4(4)(c)

44635

Entitlement to the support component before the end of the assessment phase

44636 The condition that the assessment phase must end before the support component can be paid does not apply in a relevant linked case¹. A relevant linked case is a case where²

1. on a repeat claim, the PLCWs link³ **and**
2. the conditions in paragraph DMG 44637, 44638, 44640 or 44642 apply.

1 ESA Regs, reg 7(1)(b); 2 reg 7(1A); 3 reg 145(1)

Note: A relevant linked case does not happen where the PLCW arises as a result of the application of reg 147A(2)¹.

1 ESA Regs, reg 7(2)

Case 1

44637 Where

1. in the previous PLCW, the claimant was entitled to ESA including the support component **and**
2. that entitlement ended other than following application of the WCA
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant is entitled to the support component from the first day of entitlement to ESA on the new claim, even though the WCA has not been carried out¹. See DMG 44644 for guidance on the LCWRA determination.

1 ESA Regs, reg 7(1B)(a)

Example 1

Constance is entitled to ESA(IR) including the support component. On 23.11.12 she is joined by her partner Oliver, who is in full-time work, and her ESA entitlement is terminated. She remains entitled to NI credits on the basis that she would have LCW if she were entitled to ESA. On 18.1.13 the relationship breaks down and Oliver leaves the household. Constance makes a repeat claim for ESA. The DM treats her as having LCW, and awards her ESA including the support component from 19.1.13, and refers her for the WCA.

Example 2

Gabriel has been entitled to ESA, including the support component, since 14.6.10. He is referred for a further routine WCA. The award is terminated from 7.6.12 after the DM determines that Gabriel failed without good cause to return the questionnaire, and is treated as not having LCW. Gabriel makes a further claim for ESA on 25.7.12 which is accompanied by evidence of LCW and the questionnaire.

The DM awards him ESA including the support component from 25.7.12. Gabriel is referred for a medical examination as part of the normal WCA process.

Case 2

44638 Where

1. the claimant was entitled to ESA for 13 weeks or longer **and**
2. that entitlement ended because the claimant was
 - 2.1 found not to have LCW **or**
 - 2.2 was treated as not having LCW **and**
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW and LCWRA¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(b), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(b)(iv) & 30

44639 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example 1

Miriam's award of ESA began on 25.1.12. It is terminated from 5.6.12 when the DM finds that she does not have LCW following application of the WCA. On 27.6.12 Miriam makes a further claim for ESA, which includes evidence of a new health condition. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Miriam has LCW, but does not have LCWRA. Miriam is placed in the WRAG, but the decision awarding ESA is not revised as she is not entitled to the support component.

Example 2

Tom has been entitled to ESA since January 2012. He starts work on 21.5.12. The DM determines that the work is not exempt work, and treats Tom as not having LCW, terminating the ESA award. Tom gives up the job and claims ESA from 11.8.12. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Tom has LCW and LCWRA. The decision awarding ESA is revised to pay the support component from 11.8.12.

Case 3

44640 Where

1. the claimant was entitled to ESA for 13 weeks or longer **and**
2. that entitlement ended before it was determined whether the claimant had, or was treated as having had, LCW (other than being treated as having LCW pending the WCA) **and**
3. a repeat claim is made where the PLCW links with the previous entitlement

the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW and LCWRA¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(c), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(c)(iv) & 30

44641 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example 1

Paul's entitlement to ESA began on 7.11.11, and terminates when he returns to work on 14.5.12. The WCA had not been completed by the time his award ended. On 26.7.12 Paul makes a further claim to ESA following an accident at work. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Paul has LCW and LCWRA. The decision awarding ESA is revised to pay the support component from 26.7.12.

Example 2

Gavin has been entitled to ESA since 13.4.17, and is in the assessment phase. His award is terminated from 20.6.17 after 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 as the conditions of entitlement to the support component are not satisfied.

Case 4

44642 Where

1. in the previous PLCW, the claimant was entitled to ESA including the support component **and**
 2. that entitlement ended because the claimant was
 - 2.1 found not to have LCW **or**
 - 2.2 treated as not having LCW **and**
 3. a repeat claim is made where the PLCW links with the previous entitlement
- the claimant cannot be paid the support component in relation to the repeat claim until it is determined that they have, or are treated as having, LCW¹. This does not include being treated as having LCW pending the WCA².

1 ESA Regs, reg 7(1B)(d), 19, 20, 25, 26, 29 & 33(2); 2 reg 7(1B)(d)(iii) & 30

44643 If it is determined that the claimant has, or is treated as having, LCW and LCWRA, the decision awarding ESA is revised to pay the support component from the first day of entitlement¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, LCWRA.

1 SS CS (D&A) Regs, reg 3(5F)

Example

Lydia's award of ESA included the support component. She was referred for a further routine WCA, and the DM finds that Lydia does not have LCW. The award of ESA is terminated from 22.5.12. Lydia makes a new claim from 7.8.12 and provides evidence of a new health condition. The DM awards ESA at the assessment phase rate.

Following application of the WCA, the DM determines that Lydia has LCW and LCWRA. The DM revises the decision awarding ESA to include the support component from 7.8.12.

Treated as having LCWRA

44644 Where a claimant

1. was previously entitled to ESA including the support component¹ **and**
 2. makes a further claim where the PLCWs link² **and**
 3. is not required to serve the assessment phase³ as in DMG 44637
- they are treated as having LCWRA⁴.

1 WR Act 07, s 2(2) or 4(4); 2 ESA Regs, reg 145(1); 3 reg 7(1B)(a); 4 reg 35A

IB Reassessment: termination of transitional addition

44645 DMG 45846 gives guidance on treating the TA as suspended rather than terminated where

1. an award of ESA made following conversion from an existing award **and**
2. a repeat claim for ESA is made **and**
3. the PLCWs link¹.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(3), (4) & (5)

44646 In 12 week linking cases, the TA is treated as suspended¹ where

1. the circumstances in paragraph DMG 44645 apply **and**
2. the previous award was terminated
 - 2.1 other than where the DM determined that the claimant did not have, or was treated as not having, LCW² **or**
 - 2.2 where the DM determined that the claimant did not have, or was treated as not having, LCW, and on the repeat claim it is determined that the claimant has, or is treated as having, LCW, other than pending the WCA³.

*1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(3) & (4); 2 reg 21(5)(c)(i);
3 reg 21(5)(c)(ii); ESA Regs, reg 30*

Example 1

Leo's award of IS was converted to ESA(IR). The award includes the support component and a TA. His entitlement is terminated from 14.6.12 when he is joined by his partner Yvette, who is in full-time remunerative work. Leo continues to be entitled to NI credits. The relationship breaks down, and Yvette leaves the household. Leo makes another claim for ESA(IR) on 25.7.12. The DM awards him ESA(IR) including the support component and the TA from 25.7.12.

Example 2

Clifford's award of IS was converted to ESA(IR) including the support component and a TA. Following a routine application of the WCA, the DM determines that Clifford does not have LCW. The award of ESA is terminated from 17.4.12. Clifford makes a new claim for ESA from 26.6.12, providing evidence that his health condition has deteriorated. The DM awards ESA at the assessment phase rate from 26.6.12 pending application of the WCA. Following application of the WCA, the DM determines that Clifford has LCW and LCWRA. The DM revises the awarding decision to pay the support component and the TA from 26.6.12.

Backdating of entitlement to the support component

44647 Where the assessment phase has lasted for a period greater than 13 weeks then entitlement to the support component may be backdated¹. No component is included if the DM determines that the claimant does not have, or cannot be treated as having, 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 Appendix 10 for where transitional provisions apply.

1 WR Act 07, s 2(4)(b) & s 4(6)(b)

44648 Once a determination has been made as to whether the claimant has

1. LCW and LCWRA **or**
2. LCW but does not have LCWRA

the DM should award the support component¹ where **1.** applies. For both **1.** and **2.**, the assessment phase has now ended². The claimant is now entitled to main phase ESA³.

1 WR Act 07, s 2(2) & 4(4); 2 ESA Regs, reg 4; 3 reg 2(1)

44649 The DM awards¹

1. the support component if DMG 44648.1 applies **or**
2. no component if DMG 44648.2 applies.

1 SS CS (D&A) Regs, reg 6(2)(r) & ESA Regs, reg 67(3)

The date to which entitlement to the support component is backdated

44650 The backdating of the support component is to the day which would have been the first day of the main phase if the claimant's assessment phase had actually lasted 13 weeks. This means that the award of the component will take effect from the 92 day of entitlement to ESA¹. This also applies where the assessment phase is made up of linked periods.

1 SS CS (D&A) Regs, reg 7(38)

Example 1

Toby's award of ESA begins on 1 May. There is a delay in carrying out the WCA and Toby isn't finally assessed until 16 August. Following the assessment the DM decides that Toby is entitled to the support component and this is backdated to 31 July. This is because this is the day that would have been the first day of the main phase for Toby if the assessment phase had actually lasted 13 weeks.

Example 2

Sara's award of ESA began on 1 May before coming to an end on 15 May. Sara then reclaims ESA from 1 June. The WCA isn't carried out until 7 September. Following the assessment, the DM decides that Sara is entitled to the support component and this is backdated to 17 August. This is because this is the day that would have been the first day of the main phase for Sara following a 13 week assessment phase running from 1 May to 14 May and then 1 June to 16 August.

Rates from 11.4.16

10

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £133.00 £14.65
 - 2.2 £133.00 to £194.99 £33.65
 - 2.3 £195.00 to £252.99 £46.20
 - 2.4 £253.00 to £337.99 £75.60
 - 2.5 £338.00 to £419.99 £86.10
 - 2.6 £420.00 or more £94.50
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.65.

Rates from 10.4.17

11

Deductions apply where

1. non-dependants aged 18 or over are in remunerative work - £94.50
2. the DM is satisfied that the non-dependant in remunerative work has a gross weekly income of
 - 2.1 Less than £136.00 £14.80
 - 2.2 £136.00 to £199.99 £34.00
 - 2.3 £200.00 to £258.99 £46.65
 - 2.4 £259.00 to £345.99 £76.35
 - 2.5 £346.00 to £429.99 £86.95
 - 2.6 £430.00 or more £95.45
3. any other non-dependant aged 18 or over for whom deductions are relevant - £14.80.

Appendix 10

Removal of WRAC: savings

1 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.

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

2 The removal of the WRAC does not apply where any of the circumstances in paragraphs 3 - 12 apply¹.

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

Meaning of claim

3 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 SS (C&P) Regs, reg 4ZC, 4G, 4H & 4I

4 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 8 or 11.

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

5 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

6 The guidance at paragraph 5 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.

7 The guidance at paragraph 6 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

8 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 PLCW's 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 PLCW's link, Anne's award of ESA includes the WRAC.

IB Reassessment cases

9 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

10 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

11 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.

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

12 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.

