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ADM Chapter U1: ESA conditions of entitlement

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Introduction

U1001 ESA was introduced on 27.10.08¹ to replace

1. IB

2. SDA

3. IS on the grounds of disability².

Note: See DMG Chapter 45 for guidance on IB Reassessment.

1 WR Act 07, Part 1; WR Act 07 (Commencement No. 6 and Consequential Provisions) Order 2008, art 2(4);

2 ESA (Trans Provs) Regs, reg 1(4)

U1002 From 29.4.13, claims for and awards of ESA under the provisions as in force before amendments to remove ESA(IR)¹ were gradually phased out. Since 1.2.19, it has not been possible to claim ESA under those provisions other than where restrictions on claiming UC apply². See ADM Chapters V8 (ESA Transition) and M5 (Claims for UC - Digital Service area) for further details. Where ESA is referred to in this Chapter, it means ESA where the abolition of ESA(IR) has been brought into force, and the contribution conditions are satisfied³.

1 WR Act 07, Part 1; WR Act 12, Sch 3 & Sch 14, Part 1; 2 WR Act 12 (Commencement No. 32 etc.) Order, art 4(5) - (10); 3 ESA Regs 13

U1003 - U1004

Scope of this Chapter

U1005 This Chapter contains guidance on

1. the conditions of entitlement for ESA

2. waiting days

3. linking periods.

U1006 - U1009

General U1010

U1010 Claimants are entitled to ESA if they

- 1.** satisfy the basic conditions¹ (see U1011) **and**
- 2.** satisfy the contribution conditions² (see U1040 et seq) **and**
- 3.** make a claim³ (see ADM Chapter A2) **and**
- 4.** satisfy the NINO provisions⁴ (see ADM Chapter 02).

Note: See ADM Chapter V2 (Duration of ESA award) for guidance on where entitlement to ESA is limited to the maximum number of days.

1 WR Act 07, s 1(2) & (3); 2 s 1(2)(a) & Sch 1, Part 1; 3 SS A Act 92, s 1(1) & (4) 4 s 1(1A)

Basic conditions U1011 - U1039

[Pensionable age](#) U1013 - Y1039

U1011 Claimants are entitled to ESA¹ if they

- 1.** have LCW (see ADM Chapter U2) **and**
- 2.** have accepted a claimant commitment (see ADM Chapter U3) **and**
- 3.** are aged 16 or over **and**
- 4.** have not reached pensionable age (see U1013) **and**
- 5.** are in GB (except for certain temporary absences abroad) (see ADM Chapter C4 (International Chapters - ESA)) **and**
- 6.** are not entitled to IS or JSA.

Note: See ADM Chapter V2 (Duration of ESA award) for guidance on where entitlement to ESA is limited to the maximum number of days.

1 WR Act 07, s 1(3)

U1012 A claimant is not entitled to ESA if they are entitled to SSP¹. See ADM Chapter V1 (ESA amounts) for further guidance.

1 WR Act 07, s 20(1)

Pensionable age

U1013 See DMG Chapter 75 for guidance on the meaning of pensionable age¹.

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

U1014 - U1039

Contribution conditions U1040 - U1159

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U1040 In addition to the basic conditions (see U1011), to be entitled to ESA¹ a claimant must satisfy the

1. contribution conditions (see U1060 et seq) **or**
2. conditions relating to youth for claims made before 1.5.12 (see U1160 et seq).

Note: see ADM Chapter V1 (ESA amounts) for guidance on the effect on entitlement to ESA where the claimant is entitled to statutory payments such as SSP and SMP.

1 WR Act 07, s 1(2)(a) & Sch 1, Part 1

U1041 From 1.5.12 entitlement to ESA for claimants who are not in the support group is limited to a period of no more than 365 days¹. This includes awards of ESA made under

1. the youth conditions **and**
2. the IB Reassessment rules².

See ADM Chapter V2 (Duration of ESA awards) for guidance on where this applies to ESA awards, and DMG Chapter 45 for guidance on awards of ESA made under the IB Reassessment rules.

1 WR Act 07, s 1A; 2 WR Act 07, Sch 4, para 7(2)(f); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2A

U1042 – U1059

Contribution conditions

What the DM decides

U1060 There are two contribution conditions¹. The DM decides whether the claimant is entitled to ESA because the contribution conditions are satisfied including

1. the earnings factor derived from them
2. which are the relevant income tax years
3. the years in which the contributions must have been paid or credited
4. the commencement of a PLCW
5. the start of the relevant benefit year.

1 WR Act 07, s 1(2)(a) & Sch 1, Part 1

Reference to HMRC

U1061 Entitlement to ESA depends on the contribution conditions being satisfied. In practice the NI contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the DM to HMRC for a formal decision¹.

Note 1: See ADM Chapters A3 (Revision), A4 (Supersession) and A6 (Appeals - PIP, UC and new style ESA and JSA) for guidance on how decisions and appeals are handled after a reference to HMRC.

Note 2: See ADM Chapter A1 (Principles of decision making and Evidence) where the dispute is about whether credits should be awarded.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 42 & 43

U1062 - U1069

Meaning of terms

U1070 When deciding whether the contribution conditions are satisfied, the DM should note that

1. “benefit year” means a period beginning with the first Sunday in January in any calendar year and ending with the Saturday immediately before the first Sunday in January in the following year¹
2. “class 1 NI contributions” and “class 2 NI contributions” are the NI contributions paid by employed earners and S/E earners respectively²
3. “lower earnings limit” and “upper earnings limit” are lowest and highest amounts of earnings on which class 1 NI contributions are paid in any tax year³ (see Appendix for LEL)

4. “relevant benefit year” means the benefit year which includes the beginning of the PLCW which includes the relevant benefit week⁴

5. “tax year” is the period of 12 months beginning with 6 April each year⁵

6. “relevant benefit week” means the week in relation to which entitlement to ESA is being considered⁶

7. “PLCW” means a period throughout which a person has, or is treated as having, LCW, **excluding** periods which are outside the time for claiming (see ADM Chapter A2 (Claims) for guidance on the time for claiming)⁷.

Note 1: See U1072 for guidance on when the meaning of “relevant benefit year” in **4.** is modified.

Note 2: See U1163 for guidance on when the meaning of “PLCW” is modified for claims under the youth condition made before 1.5.12.

1 WR Act 07, Sch 1, Part 1, para 3(1)(a); SS CB Act 92, s 21(6); 2 WR Act 07, Sch 1, Part 1, para 3(1)(b);
SS CB Act 92, s 1; 3 WR Act 07, Sch 1, Part 1, para 3(1)(e); SS CB Act 92, s 22 & 23;
4 WR Act 07, Sch 1, Part 1, para 3(1)(f); 5 Sch 1, Part 1, para 3(1)(g); 6 Sch 1, Part 1, para 5;
7 ESA Regs 13, reg 2; UC, PIP, JSA & ESA (C&P) Regs, reg 28

U1071 The definition of PLCW in U1070 **7.** ensures that, when considering whether the contributions conditions in U1080 et seq are satisfied, the relevant benefit year is decided on the basis of the date from which ESA is claimed, provided it falls within the three months time limit for claiming ESA.

Modification of the meaning of relevant benefit year

U1072 Where U1073 applies the meaning of “relevant benefit year” at U1070 **4.** is modified so that it is any benefit year which includes all or part of the PLCW which includes the relevant benefit week¹.

1 ESA Regs 13, reg 14(1)

U1073 The modification in U1030 applies to a claimant who¹

1. does not satisfy

1.1 the first or second contribution conditions **or**

1.2 both conditions **and**

2. would satisfy the conditions in **1.** if that modification applied.

1 ESA Regs 13, reg 14(2)

U1074 This enables a claimant to become entitled to ESA on a further claim in a subsequent benefit year

where

- 1.** they now satisfy the contribution conditions **and**
- 2.** an earlier ESA claim was disallowed because they did not satisfy one or both of the contributions conditions when the PLCW began.

U1075 - U1079

The first contribution condition

U1080 The first contribution condition is satisfied¹ if

- 1.** the claimant has actually paid class 1 or class 2 NI contributions in respect of any one of the last two complete tax years before the beginning of the relevant benefit year **and**
- 2.** those contributions have been paid before the relevant benefit week **and**
- 3.** the claimant's earnings for that year as determined in accordance with U1081 must be at least 26 times the LEL for that year.

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

U1081 For the purposes of U1080 **3.** the earnings are the aggregate of the claimant's

- 1.** relevant earnings for that year on which class 1 NI contributions have been paid or treated as paid **and**
- 2.** earnings factors derived from class 2 NI contributions¹.

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

U1082 In U1081 **1.**, a claimant's relevant earnings are the amount of earnings at the LEL for the year in which the first contribution condition is satisfied. Earnings which exceed the LEL are disregarded¹.

1 WR Act 07, Sch 1, para 1(3); ESA Regs 13, reg 8

U1083 - U1084

Relaxation of the first contribution condition

U1085 The first contribution condition is taken to be satisfied¹ if

- 1.** the claimant has paid Class 1 or 2 contributions for any one tax year before the relevant benefit week²
and
- 2.** the claimant has

2.1 earnings at the LEL in that tax year on which Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the LEL for that year, are not less than the LEL multiplied by 26³ **or**

2.2 earnings factors in that tax year derived from Class 2 contributions multiplied by 26⁴ **and**

3. the claimant

3.1 was entitled to CA or CSP in the last complete tax year immediately before the relevant benefit year in which the first day of LCW occurred⁵ **or**

3.2 had been engaged in qualifying remunerative work⁶ for a period of more than 2 years immediately before the first day of LCW and was entitled to the disability element, or the severe disability element, of WTC throughout that period⁷ **or**

3.3 is entitled to be credited with earnings or contributions following release from prison where a conviction is quashed⁸, or would be if an application was made, in respect of any week in any tax year preceding the relevant benefit year⁹ **or**

3.4 is entitled to be credited with earnings equal to LEL on the grounds that they

3.4.a. are a spouse or civil partner of a member of HMF **and**

3.4.b. accompanied that member of HMF on an assignment outside the UK or treated as such by the Secretary of State¹⁰.

1 WR Act 07, Sch 1, Part 1, para 1(4)(b); ESA Regs 13, reg 9; 2 reg 9(1)(a); 3 reg 9(1)(b)(i); 4 reg 9(1)(b)(ii); 5 reg 9(2)(a); 6 reg 2(1); Tax Credit Act 02, Part 1; 7 ESA Regs 13, reg 9(2)(b); 8 SS (Credits) Regs, reg 9D; 9 ESA Regs 13, reg 9(2)(c); 10 reg 9(2)(ca); SS (Credits) Regs, reg 9E

U1086 - U1089

The second contribution condition

U1090 The second contribution condition is satisfied¹ if

1. in the last two complete relevant income tax years before the beginning of the relevant benefit year the claimant has

1.1 paid or been credited with class 1 or class 2 NI contributions **or**

1.2 been credited with earnings **and**

2. the earnings factor in each of those years is not less than 50 times the LEL for those last two

complete relevant income tax years.

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

U1091 For the purposes of U1090 **2.** the earnings factor is the aggregate of the claimant's earnings factors derived¹ from

- 1.** the amount of earnings which did not exceed the upper earnings limit for the last two complete relevant income tax years in U1090 **1.** on which class 1 NI contributions have been paid or treated as paid **and**
- 2.** class 2 NI contributions.

Note: See U1096 for guidance on when earnings exceed the upper earnings limit.

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

U1092 - U1094

The first and second contribution condition

U1095 Where

- 1.** class 1 NI contributions have been paid or treated as paid in any tax year from 1987/88 **and**
- 2.** the amount paid, plus any class 2 or class 3 NI contributions paid or credited, is not enough to make the year a qualifying year by
 - 2.1** £25.00 or less for the first contribution condition **or**
 - 2.2** £50.00 or less for the second contribution condition

the earnings factor is increased by the amount required to make the year a qualifying year¹.

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

Earnings exceeding the upper earnings limit

U1096 For the purposes of U1095 **1.** where class 1 NI contributions have been paid or treated as paid, the earnings factor is calculated on earnings that did not exceed the upper earnings limit¹.

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

U1099

Late payment of contributions

U1100 The DM determines whether the contribution conditions for ESA are satisfied. Contributions paid after the due date are generally treated as paid on the date of payment. However, there are circumstances in which contributions may be accepted as having been paid on an earlier date¹. The DM will need to liaise with HMRC.

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

U1101 If there is an existing decision, the DM may need to consider revising or superseding it. A change of circumstances will occur on the date it is accepted that late contributions are treated as having been paid¹. See ADM Chapter A3 (Revision) for full guidance on revision and Chapter A4 (Supersession, suspension and termination) for full guidance on supersession.

1 SS (Crediting etc) Regs, reg 4-8

Effect on second contribution condition

U1102 For the purposes of the second contribution condition, any Class 1 or 2 contributions paid after the end of the benefit year immediately before the relevant benefit year are treated as

1. not paid before the end of a 42 day penalty period beginning on the date payment is made **and**
2. paid only on the day after the end of that 42 day period¹.

Note: See U1070 for the meaning of benefit year and relevant benefit year.

1 SS (Crediting etc) Regs, reg 4(8)(b)

U1103 This has the effect that, where the second contribution condition is not satisfied at the date of claim, there can be no entitlement to ESA for the whole of that 42 day period. Once the 42 day period ends, the claimant must serve the seven waiting days before entitlement can begin.

Example

Gary claims ESA on 12.5.20 after giving up his self-employment due to ill health. For Gary the benefit year is the year beginning on 5.1.20, and the relevant income tax years are 2017/2018 and 2018/2019. The first contribution condition is met for the year 2017/2018. Gary has not paid his Class 2 contributions for the year 2018/2019, so the second contribution condition is not met and the claim is disallowed. Gary pays his Class 2 contributions for the year 2018/2019 on 16.6.20, and makes a further claim for ESA. His claim is disallowed for the penalty period 16.6.20 – 27.7.20, and he is awarded ESA from 4.8.20 after serving seven waiting days.

U1104 – U1119

Class 2 NI contributions

Contributions paid by due date

U1120 The deadline for the payment of Class 2 NI contributions from the 2015/16 tax year onwards is 31 January of the following calendar year; for example, Class 2 NI contributions due in the 2015/2016 tax year are due to be paid by 31.1.2017. This date falls after the start of the benefit year for ESA, which means there is a possibility of a claim for these benefits being made in circumstances where entitlement relies on as yet unpaid contributions, and consequently being disallowed.

U1121 A decision to disallow claims to ESA may be revised¹ at any time where

- 1.** on or after the date of the decision a contribution that is paid by the due date is treated as paid² before the relevant benefit week **and**
- 2.** as a result, the person now satisfies the contribution conditions.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 17(3); 2 Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001, reg 7A

Example

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

Contributions refunded

U1122 A decision to award ESA may be revised¹ at any time where contributions are repaid or returned to the contributor where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

1 UC, PIP, JSA & ESA (D&A) Regs, reg 17(4) & 17(5)

Example

ESA is awarded in January 2018 to a claimant who is self-employed. The award was based on Class 2 NI contributions paid in respect of 2015/16 and 2016/17 tax years. Class 2 NI contributions for 2016/17

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

U1123 - U1159

Condition relating to youth U1160 - U1222

[Introduction](#) U1160

[Conditions of entitlement](#) U1161 - U1222

Introduction

U1160 Since 1.5.12 no further claims can be made for ESA under the youth conditions¹. The guidance at U1161 – U1222 is retained for the purposes of existing awards.

Note: See ADM Chapter V2 (Duration of ESA) for guidance on where ESA entitlement under the youth conditions is limited to a maximum number of days.

1 WR Act 07, s 1(3A)

Conditions of entitlement

U1161 The conditions for receiving ESA relating to youth, including the age conditions, are set out in U1162. In some circumstances the upper age condition can be extended (see U1165). In some circumstances a claimant who does not satisfy the upper age condition can be entitled to ESA because of previous entitlement to ESA relating to youth (see U1220).

U1162 The conditions of entitlement¹ for ESA relating to youth are that

- 1.** the claimant is aged under 20 (or under 25 in the circumstances described in U1165) when the relevant PLCW began (see U1163)
- 2.** the claimant is not receiving FTE (see U1182 et seq)
- 3.** the claimant satisfies the conditions of residence and presence in GB and is not a PSIC² (see ADM Chapter C4 (International Chapters - ESA))
- 4.** there has been a day in the relevant PLCW which was
 - 4.1** a day on which the claimant was aged at least 16 **and**
 - 4.2** preceded by a period of 196 consecutive days throughout which the claimant had LCW.

1 WR Act 07, Sch 1, Part 1, para 4(1); 2 ESA Regs 13, reg 12(1)

U1163 When considering whether a claimant satisfies the conditions of entitlement at U1162, the DM should note that

- 1.** the relevant PLCW means the PLCW which includes the relevant benefit week¹
- 2.** the effect of U1162 **1.** is that a claimant who is entitled to ESA in a PLCW does not lose entitlement on becoming 20 (or where relevant 25) in the same PLCW
- 3.** although SSP days are not part of a PLCW (see ADM Chapter U2 (ESA LCW and LCWRA)) a claimant may satisfy the relevant age conditions on a day in a period of entitlement to SSP immediately preceding the relevant PLCW which means that any days of entitlement to SSP immediately preceding the relevant PLCW are treated as days of LCW for the purposes of ESA for those satisfying the condition relating to youth²
- 4.** for the purposes of U1162 **4.**
 - 4.1** consecutive days may be made up of days of LCW which form part of a PLCW and days of LCW which do not **and**
 - 4.2** linking provisions cannot be used to meet this condition when days of LCW are not consecutive³
 - 4.3** periods of IfW **cannot** be treated as forming part of a PLCW
- 5.** the definition of PLCW at U1070 **7.** does not apply. For the purposes of U1062, a PLCW is a period throughout which the claimant has, or is treated as having, LCW⁴.

1 WR Act 07, Sch 1, Part 1, para 4(2) & 5; 2 ESA Regs 13, reg 29; 3 reg 10(6); 4 reg 3(2)

U1164 An example of where U1063 **4.1** may apply is where days for which a claimant is not entitled to ESA because of a late claim do not form part of a PLCW (see ADM Chapter U2 (ESA LCW and LCWRA)) but may count towards the 196 day condition if there is sufficient evidence of LCW.

Extension of upper age limit to 25

U1165 The upper age condition can be extended to 25¹ if a claimant

- 1.** registered on a course of
 - 1.1** F/T advanced or secondary education (see U1080) **or**
 - 1.2** training (see U1081)

at least 3 months before the claimant's 20th birthday² **and**

2. attended one or more such courses in the academic term after registration during the period in U1166³.

1 ESA Regs 13, reg 10(1); 2 reg 10(2)(a); 3 reg 10(2)(b)

U1166 For the purposes of U1165 **2.** the period is one which

1. began on or before a day at least 3 months before the claimant's 20th birthday¹ **and**

2. ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to ESA because the first and second contribution conditions were satisfied².

1 ESA Regs 13, reg 10(3)(a); reg 10(3)(b)

U1052 When considering U1165 DMs should note that a claimant is attending a course on any day on which the course is interrupted by an illness or domestic emergency¹.

1 ESA Regs 13, reg 10(4)

U1169 - U1179

Full-time advanced or secondary education

U1180 When considering whether U1165 **1.1** is satisfied, the DM should note that¹

1. "advanced education" means education for the purposes of

1.1 a course in preparation for

1.1.a a degree **or**

1.1.b a diploma of higher education **or**

1.1.c a higher national diploma **or**

1.1.d a higher national diploma of the BTEC or the Scottish Qualifications Authority **or**

1.1.e a teaching qualification **or**

1.2 any other course which is of a standard above

1.2.a ordinary national diploma **or**

1.2.b a diploma of the BTEC **or**

1.2.c a higher or advanced higher national certificate of the Scottish Qualifications Authority
or

1.2.d a general certificate of education (advanced level).

2. “F/T” includes P/T where a claimant’s disability prevents attendance at a F/T course

3. “secondary education” means a course of education below a course of advanced education by attendance at

3.1 an establishment recognized by the Secretary of State as being, or comparable to, a university, college or school **or**

3.2 another establishment where the Secretary of State is satisfied that education is equivalent to that given in an establishment at **3.1**.

Note: There is no specific requirement as to hours. If there is a doubt as to whether or not a course is F/T evidence should be obtained from the education authorities.

1 ESA Regs 13, reg 10(5)

Training

U1181 When considering whether U1165 **1.2** is satisfied the DM should note that “training” means¹

1. training in pursuance of arrangements made under prescribed legislation² **or**

2. any training received on a course which a person attends for 16 hours or more a week for the primary purpose of being taught occupational or vocational skills.

1 ESA Regs 13, reg 2; 2 E&T Act 73, s 2(1), Enterprise and New Towns (Scotland) Act 1990, s 2(3)

Full-time education condition

U1182 For the purpose of U1162 **2.** a claimant is treated as receiving FTE for any period during which the claimant

1. is aged 16 or over but under 19 **and**

2. attends a course of education for 21 hours or more a week¹.

1 ESA Regs 13, reg 13(1)

U1183 In determining the duration of a period of FTE any temporary interruption of that education may

be disregarded¹.

1 ESA Regs 13, reg 13(3)

U1184 A claimant who is 19 years of age or over is not treated as receiving FTE¹. This applies whether or not the claimant is undergoing FTE. DMs should note that a claimant is over 19 from and including the 19th birthday.

1 ESA Regs 13, reg 13(4)

Calculation of hours of attendance

U1185 In calculating the number of hours of attendance at a course of education, the DM should take into account time spent in following the particular course, not the time spent at a particular place of education.

U1186 The DM should **include** time spent on

1. classroom instruction suitable for people of the same age with no disabilities (see U1200 et seq)
2. supervised study
3. examinations
4. practical work
5. taking part in any exercise, experiment or project which is part of the course.

U1187 The DM should **exclude** time spent on

1. any instruction or tuition which is not suitable for claimants of the same age who does not have a disability¹ (see U1200 et seq)
2. unsupervised private study whether
 - 2.1 at home **or**
 - 2.2 on the premises of the educational establishment
3. morning assemblies
4. normal meal and relaxation breaks.

1 ESA Regs 13, reg 13(2)

U1189 - U1199

Instruction or tuition which is “not suitable”

U1200 The words “instruction” or “tuition” cover the content as well as the method. Instruction or tuition which is not suitable for ordinary students includes

- 1.** the teaching of special skills required by people with disabilities **and**
- 2.** the methods of teaching, where these would not be suitable for people of the same age who do not have a disability¹.

1 R(S) 2/87

U1201 A course of education includes

- 1.** attendance at an ordinary school or college including grammar, comprehensive and 6th form college
- 2.** attendance at a special school or training centre designed specifically for people with disabilities
- 3.** home tuition arranged by the LEA.

U1202 People attending special schools may be in FTE. Similarly students attending ordinary schools may not be in FTE.

U1203 The DM should consider the circumstances of each claimant to decide whether

- 1.** the course content and method of teaching for each subject is suitable for people without disabilities **and**
- 2.** the course amounts to 21 or more hours a week.

U1204 For the purposes of U1203 **1.** it may be clear that the entire course content is either

- 1.** suitable **or**
- 2.** not suitable

for people with no disabilities of the same age as the claimant. Many claimants may receive a mixture of **1.** and **2.** The DM should consider each lesson to determine whether the content is or is not suitable for people without disabilities.

U1205 Examples of what the DM should exclude when calculating the time spent on the course include

- 1.** activities connected with the student's disability (life skills or independence training)
- 2.** curriculum levels intended for a younger person.

U1206 Where

1. people are following the normal subject curriculum for people of that age with no disabilities **and**

2. the time spent is 21 or more hours

there is no entitlement to ESA even though the number of subjects undertaken is limited by the disability.

U1207 It will be clear in some cases that the method of teaching is not suitable for people of the same age without disabilities, for example

1. a profoundly deaf person using radio links or sign language **or**

2. a blind person using Braille.

U1208 In deciding whether the claimant is receiving FTE, the DM should exclude time spent on instruction

1. which is slower **or**

2. where the hours for each subject are far greater

than would be necessary for people without disabilities.

U1209 - U1219

Over the upper age limit but previously entitled

U1220 People who do not satisfy the upper age condition (see U1162 and U1165) may still be entitled to ESA if

1. they previously ceased to be entitled to ESA as a claimant satisfying the condition relating to youth¹ **and**

2. their previous entitlement was not ended by a determination that they did not have LCW² (apart from a determination under **5.**) **and**

3. the linking rules do not apply³ **and**

4. they are aged⁴

4.1 20 or over **or**

4.2 25 or over if U1165 et seq applies **and**

5. their previous entitlement ended with a view to taking up employment or training⁵ **and**

6. their earnings factor from employment or employments pursued between the termination of the previous entitlement and the beginning of the period of LCW was less than 25 times the lower earnings limit in any of the last 3 complete tax years before the relevant benefit year⁶ **and**

7. they

7.1 in the last two complete tax years before the relevant benefit year had

7.1.a paid **or**

7.1.b been credited with earnings

equivalent to 50 times the lower earnings limit in each of those years and, in the last tax year, at least one credit was in respect of the disability element or severe disability element of WTC **or**

7.2 make a claim for ESA within a period of 12 weeks after the day the employment in **6.** ended⁷.

Note 1: “Training” has the same meaning as in U1181.

Note 2: See U1301 for guidance on the linking rule.

1 ESA Regs 13, reg 11(1)(a); 2 reg 11(1)(b); 3 reg 11(1)(c); 4 reg 11(1)(d);
5 reg 11(2)(a); 6 reg 11(2)(b); 7 reg 11(2)(c)

ESA for claimant satisfying the condition relating to youth and overlapping benefits

U1221 For the purpose of overlapping benefits ESA is a contributory benefit¹. This applies even though ESA for those satisfying the condition relating to youth is not based on contribution conditions.

1 SS (OB) Regs, reg 2(1); SS CB Act 92, Part II

ESA for claimant satisfying the condition relating to youth and CHB

U1222 A claimant is not entitled to CHB for any week in which that claimant is entitled to ESA under the provisions for people incapacitated in youth¹.

Note: See ADM Chapter D1 (Overpayments, Recoverability, Adjustments, Civil Penalties and Recoupment) if an offset is appropriate.

1 CHB (Gen) Regs, reg 8(2)

Members of Her Majesty's Forces U1223 - U1299

U1223 Members of HMF¹ are not entitled to ESA unless they are² members of

1. any prescribed territorial or reserve force³ not undergoing training or instruction continuously for longer than 72 hours **or**

2. the Royal Irish Regiment who are **not** also serving as members of any regular naval, military or air forces

2.1 on the F/T permanent staff **or**

2.2 serving or undergoing training or instruction continuously for longer than 72 hours.

Note: See U1106 et seq for the meaning of member of HMF.

1 ESA Regs 13, reg 2; 2 SS (Conts) Regs, Sch 6; 3 SS (Benefit) (Members of Forces) Regs 1975, reg 2

U1224 - U1299

Waiting days and linking rule U1300 - U1999

[Claimants who do not have to serve waiting days](#) U1303 - U1304

[Meaning of terminally ill](#) U1305

[Meaning of member of HMF](#) U1306 - U1310

[Linking PLCW](#) U1311 - U1999

U1300 [[See Memo ADM 25/20](#)] A claimant is not entitled to ESA for the first seven days of a PLCW¹. These seven days are called waiting days.

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

U1301 However, claimants do not have to serve waiting days where U1303 et seq applies or there is a linking PLCW (see U1311).

Note: See ADM Chapter U2 (ESA LCW and LCWRA) for guidance on people undergoing certain treatment and the effect on waiting days.

U1302 DMs should note that waiting days have to be served even if the claimant is or has been entitled to UC, and it has already been determined that they have LCW.

Example

Vanessa claims UC on 7.9.20 providing doctor's statements, and following the WCA the DM determines that she has LCWRA. Vanessa's UC award begins on 7.9.20, and includes the LCWRA element from 7.12.20.

On 13.10.20 Vanessa claims ESA from 7.9.20. Vanessa is treated as having LCW and LCWRA. Her award of ESA begins on 14.9.20 after serving waiting days, and includes the support component from 14.12.20. Her award of ESA is taken into account as unearned income for the purpose of her entitlement to UC.

Claimants who do not have to serve waiting days

U1303 Claimants do not have to serve waiting days¹ if

1. their entitlement to ESA begins within twelve weeks of the end of their entitlement to

1.1 IS or

1.2 SPC or

1.3 JSA or

1.4 CA or

1.5 CSP or

1.6 SSP or

1.8 MA or

1.9 IB or

1.10 SDA or

2. they are terminally ill² (see U1305) and have made

2.1 a claim expressly for that reason **or**

2.2 an application for supersession or revision³ which contains a statement that they are terminally ill **or**

3. they have been discharged from being a member of HMF (see U1306 et seq) and three or more days immediately before that discharge were days of sickness from duty which were recorded by the Secretary of State for Defence⁴ **or**

4. they are awarded ESA after

4.1 entitlement has previously terminated because it exceeded the maximum number of days **and**

4.2 their health condition has deteriorated⁵ (see ADM Chapter V2 (Duration of ESA award)).

1 ESA Regs 13, reg 85(2)(a); UC, PIP, JSA & ESA (D&A) Regs, reg 48(5) & (6);

2 ESA Regs 13, reg 85(2)(b); 3 SS CS (D&A) Regs; UC, PIP, JSA & ESA (D&A) Regs;

4 ESA Regs 13, reg 85(2)(c); 5 WR Act 07, s 1B; ESA Regs 13, reg 85(2)(d)

Example

Dolores was entitled to IS until Sunday 25.10.20. She then claims and satisfies the conditions of entitlement to ESA from and including Monday 18.1.21. Dolores has to serve seven waiting days and is not entitled to ESA for the period from Monday 18.1.21 to Sunday 24.1.21. To be within twelve weeks of her entitlement to IS coming to an end, Dolores would have had to have claimed ESA and satisfied the entitlement conditions on Sunday 17.1.20.

U1304 DMs should note that entitlement to ESA can exist even though nothing is payable. An example of

when this may happen is where people are entitled to ESA only but they have a pension payment that exceeds the allowable limit so no ESA is payable.

Meaning of terminally ill

U1305 For the purposes of U1303 **2.** people are terminally ill¹ if

- 1.** they are suffering from a progressive disease **and**
- 2.** their death in consequence of that disease can reasonably be expected within 12 months.

1 ESA Regs 13, reg 2

Meaning of member of HMF

U1306 A member of HMF¹ is a person

- 1.** over 16 years old **and**
- 2.** who gives full-pay service (see U1309) as a member of certain named establishments or organizations² (see U1307).

1 ESA Regs 13, reg 2; 2 Sch 1, Part 1

U1307 For the purposes of U1306 **2.** a member of certain named establishments or organizations means¹ any member of the

- 1.** regular naval, military or air forces of the Crown
- 2.** Royal Fleet Reserve
- 3.** Royal Naval Reserve
- 4.** Royal Marines Reserve
- 5.** Army Reserve
- 6.** Territorial Army
- 7.** Royal Air Force Reserve
- 8.** Royal Auxiliary Air Force
- 9.** Royal Irish Regiment.

1 ESA Regs 13, Sch 1, Part 1

U1308 However, a person who is

1. recruited locally overseas in certain circumstances¹ **or**

2. a deserter **or**

3. a person to whom U1306 **1.** or **2.** applies²

is not a member of HMF.

1 ESA Regs 13, Sch 1, Part 2; 2 reg 2(1); 2 SS (Benefit) (Members of Forces) Regs 1975, reg 2

Meaning of full-pay service

U1309 A member of the armed forces is giving full-pay service if normal salary continues to be paid from

1. a civilian employer **or**

2. one of the branches of the armed forces.

U1310 A person on unpaid leave or less than normal salary is not giving full-pay service.

Linking PLCW

U1311 Claimants do not have to serve waiting days if there is a linking PLCW. There is a linking PLCW when a PLCW is separated from another such period by not more than 12 weeks¹.

1 ESA Regs 13, reg 86

U1312 - U1999

Appendix - Lower earnings limit

From	Amount
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6.4.10	£97
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6.4.11	£102
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6.4.12	£107
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6.4.13	£109
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6.4.14	£111
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6.4.15	£112
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6.4.16	£112
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6.4.17	£113
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6.4.18	£116
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6.4.19	£118
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6.4.20	£120
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6.4.21	£120
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The content of the examples in this document (including use of imagery) is for illustrative purposes only