

# **DMG Chapter 45: IB, SDA and IS - claims and reassessment**

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# **IB, SDA and IS - claims and reassessment 45001 - 45299**

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# Introduction 45001 - 45200

45001 This Chapter contains guidance on

**1.** claims for

**1.1** IB

**1.2** SDA and

**1.3** IS on the grounds of disability

(see DMG 45201 et seq).

**2.** reassessment of awards of IB, SDA and IS (see DMG 45300 et seq).

45002 Where the rules differ between ESA(Cont) and ESA(IR) this is stated in the guidance.

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# Claims for IB, SDA and IS 45201 - 45219

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## Introduction

45201 ESA was introduced for new claimants on 27.10.08 to replace IB, SDA and IS on the grounds of disability. From 31.1.11 no claims for IB, SDA and IS on the grounds of disability can be made<sup>1</sup>, other than a claim for

- 1.** IS on the grounds of disability (see DMG 45205) made by a claimant already entitled to IB or SDA<sup>2</sup>**or**
- 2.** IB made by a claimant who is already entitled to IS on the grounds of disability<sup>3</sup>.

See DMG 45213 for further guidance.

1 ESA (Trans Provs) Regs, reg 2(1); 2 reg 2(d); 3 reg 2(2)(e)

45202 The guidance at DMG 45203 et seq applies where

**1.** a claim for

**1.1** IB **or**

**1.2** SDA **or**

**1.3** IS on the grounds of disability

is made in respect of a period which begins on or after the appointed day<sup>1</sup> (see DMG 45203) **or**

**2.** a claim for ESA is made by a person who

**2.1** has an existing award **or**

**2.2** had an existing award and DMG 45214 applies<sup>2</sup>**or**

**3.** a claim for ESA is made for a period before the appointed day<sup>3</sup>.

**Note 1:** There is also transitional protection on being capable of work for JSA purposes<sup>4</sup>. See DMG 20960 et seq for further guidance.

**Note 2:** See DMG 45216 et seq for guidance on specific transitional issues.

1 reg 2; 2 reg 3; 3 reg 4; 4 reg 5

## Meaning of terms

### The appointed day

45203 The appointed day means the day ESA is introduced<sup>1</sup>. The appointed day was 27.10.08<sup>2</sup>.

1 WR Act 07, Sch 4, para 11; 2 WR Act 07 (Commencement No. 6 and Consequential Provisions)

Order 2008, art 2(4)

### Existing award

45204 An existing award<sup>1</sup> is an award of

**1.** IB (including transitional awards of IBLT paid to IB claimants on conversion from SB and IVB<sup>2</sup>)

**2.** SDA

**3.** IS made to a person who is

**3.1** a qualifying young person who is in relevant education and who

**3.1.a** qualifies for the DP or SDP<sup>3</sup> **or**

**3.1.b** has been incapable of work or treated as incapable of work or treated as capable of work by virtue of disqualification or entitled to SSP for a continuous period of not less than 196 days (two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period)<sup>4</sup> **or**

**3.2** incapable of work<sup>5</sup> **or**

**3.3** treated as incapable of work<sup>6</sup> **or**

**3.4** a disabled student<sup>7</sup> **or**

**3.5** a deaf student<sup>8</sup> or

**3.6** blind<sup>9</sup>.

**Note:** See DMG Chapter 55 for guidance on IB transitional provisions, DMG Chapter 56 for guidance on IB, DMG Chapter 57 for guidance on SDA and DMG Chapter 20 for guidance on the meaning of the IS terms in **3.**

1 WR Act 07, Sch 4, para 11; 2 Sch 4, para 11; SS (IB) (Trans) Regs, reg 11(4); 3 IS (Gen) Regs, reg 13(2)(b); 4 reg 13(2)(bb); 5 Sch 1B, para 7(a); SS CB Act 92, Part XIA; 6 IS (Gen) Regs, Sch 1B, para 7(b); SS CB Act 92, s 171D; 7 IS (Gen) Regs, Sch 1B, para 10; 8 Sch 1B, para 12; 9 Sch 1B, para 13

### **IS on the grounds of disability**

45205 IS on the grounds of disability<sup>1</sup> means an award of IS made to a person in DMG 45204 **3.** DMs should note that this does **not** include IS paid to a claimant who is appealing a decision which embodies a determination that they are not incapable of work<sup>2</sup>.

1 ESA (Trans Provs) Regs, reg 1(4); 2 IS (Gen) Regs, Sch 1B, paras 24 & 25; SS CB Act 92, s 171B & 171C

45206 - 45210

### **Claim treated as claim for ESA**

45211 A claim for

**1.** IB or

**2.** SDA or

**3.** IS on the grounds of disability

made in respect of a period which begins on or after the appointed day is treated as a claim for ESA<sup>1</sup>. This means that, unless DMG 45213 applies, there can be no new claim for IB, SDA or IS on the grounds of disability made for a period on or after the appointed day.

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

45212 DMG 45211 applies whenever the claim is made<sup>1</sup>. However, this does not apply where the DM treats the claim as a claim in the alternative<sup>2</sup>. See DMG 02500 et seq for guidance on claims in the alternative.

1 ESA (Trans Provs) Regs, reg 2(1); 2 SS (C&P) Regs, reg 9(1) & Sch 1, Part 1; ESA (Trans Provs) Regs, reg 2(3)

## Claims for IB or IS - claimant entitled to existing award

45213 From 31.1.11, a claim can be made for

**1.** IS on the grounds of disability from a claimant who is entitled to IB or SDA<sup>1</sup>**or**

**2.** IB from a claimant who is entitled to IS on the grounds of disability<sup>2</sup>

on or after the appointed day, and that claim remains a claim for IB or IS on the grounds of disability<sup>3</sup>.

1 ESA (Trans Provs) Regs, reg 2(2)(d); 2 reg 2(2)(e); 3 reg 2(2)

### Example

Sue has been in receipt of IB for several years. She is not entitled to IS because her partner Mark is in remunerative work. Mark is made redundant in February 2011, and Sue claims IS on the grounds of disability. The DM makes a determination that Sue's claim is not treated as a claim for ESA, and decides the claim for IS accordingly.

## People not entitled to claim ESA

### Person who has an existing award

45214 A person who has an existing award is excluded from making a claim for ESA<sup>1</sup>. This applies from 27.7.08<sup>2</sup>.

1 ESA (Trans Provs) Regs, reg 3(1); 2 reg 1(2)

### Person who claims ESA

45215 From 27.7.08, where

**1.** a claim for ESA is made **and**

**2.** DMG 45213 would apply if the claim had been for an existing award (see DMG 45204)

the DM should treat the claim as a claim for the relevant existing award<sup>1</sup>. This applies even where the claimant is already entitled to another existing award - see DMG 45216.

1 ESA (Trans Provs) Regs, reg 1(2) & 3(2)

### Example

Dawn is entitled to IB. Her partner George was entitled to JSA(IB) including housing costs. He leaves the household and she claims ESA. The DM treats this as a claim for IS on the grounds of disability.

## **IB claims under the modification of benefit year rules**

45216 Where

- 1.** a claim for IB made as in DMG 45213 **2.** was disallowed for failure of the first and/or second contribution conditions<sup>1</sup>**and**
- 2.** the claimant has an ongoing award of incapacity credits<sup>2</sup>**and**
- 3.** a further claim for IB is made under the modification of the benefit year rule<sup>3</sup> (see DMG Chapter 56)**and**
- 4.** the claimant is entitled to IS on the grounds of disability<sup>4</sup>

the further claim is treated as a claim for IB<sup>5</sup>.

1 SS CB Act 92, Sch 3, para 2; 2 s 30C; SS (Credits) Regs, 1975, reg 8B;  
3 SS CB Act 92, Sch 3, para 2(7); 4 ESA (Trans Provs) Regs, reg 1(4); 5 reg 2(2)(e)

45217 - 45219



# ESA awarded following application of the PCA 45220 - 45299

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## Introduction

45220 Before 28.6.10, some claimants became entitled to ESA after being found not incapable of work following application of the PCA for the purposes of termination of entitlement to IB or IS. The following guidance applies where an appeal made against a decision which incorporates a determination that the claimant is not incapable of work is allowed.

**Note:** see DMG Chapter 42 for guidance on claims for ESA made on or after 28.6.10 following a determination that the claimant is not incapable of work.

45221 - 45225

## ESA(Cont) awarded and IB appeal allowed

45226 Where

- 1.** the claimant made an appeal against termination of IB **and**
- 2.** the claimant is awarded ESA(Cont) **and**
- 3.** the IB appeal is successful

entitlement to IB is reinstated. The claimant remains entitled to ESA and IB as long as the conditions of entitlement for each benefit continue to be satisfied.

## Overlapping benefits

45227 ESA(Cont) and IB are both personal benefits and subject to adjustment<sup>1</sup> (see DMG 17040 -

17041). The guidance at DMG 17050 and 17052 - 17061 should be followed to decide which benefit should be adjusted<sup>2</sup>.

1 SS (OB) Regs, reg 2(1); 2 reg 4(5)

### **Example**

Audrey's award of IB was terminated on 8.5.09 after she failed the PCA. She claimed and was awarded ESA(Cont) from 25.5.09 and was placed in the support group from 24.8.09. Her IB appeal was allowed on 27.11.09 and she is due IB arrears from 8.5.09. For the purposes of overlapping benefits the weekly benefit ESA(Cont) takes precedence over the daily benefit IB. Only the balance, if any, of IB is payable for the same period.

### **ESA(IR) awarded and IB appeal allowed**

45228 Where

- 1.** the claimant made an appeal against termination of IB **and**
- 2.** the claimant is awarded ESA(IR) **and**
- 3.** the IB appeal is successful

entitlement to IB is reinstated. The claimant remains entitled to ESA and IB as long as the conditions of entitlement for each benefit continue to be satisfied.

### **Income other than earnings**

45229 IB is an income other than earnings and falls to be taken fully into account when determining entitlement to ESA(IR)<sup>1</sup>. This is because there is no disregard for it<sup>2</sup>. See DMG 51020 et seq for further guidance.

1 ESA Regs, reg 104(1); 2 reg 104(2)

45230 Where the claimant's income from IB exceeds the claimant's ESA(IR) applicable amount then there is no entitlement to ESA(IR)<sup>1</sup>.

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

### **Example**

Martin has made an appeal against a decision that he is not entitled to IB following application of the PCA. He claims and is awarded ESA(IR) of £89.80 including the WRAC. His appeal succeeds, and entitlement to IB of £89.80 is reinstated. The DM supersedes the decision awarding ESA(IR) on the grounds of a relevant change of circumstances, the change being that the FtT has reinstated the IB

award, and terminates Martin's award of ESA(IR) from the first day of the benefit week which includes the FtT's decision. IB arrears are reduced (abated) by the amount of ESA(IR) paid for the same period<sup>1</sup> in accordance with DMG 09372 - 09375.

1 SS A Act 92, s 74(2)

## **Claimant entitled to ESA(Cont) and (IR)**

45231 Where

- 1.** the claimant's awards of IB and IS were terminated **and**
- 2.** an appeal is made against the IB decision only **and**
- 3.** the claimant is awarded ESA(Cont) and (IR) **and**
- 4.** the IB appeal is successful

entitlement to IB is reinstated. The claimant remains entitled to ESA and IB as long as the conditions of entitlement for each benefit continue to be satisfied (but see DMG 45232 - 45233 where the claimant wishes to have entitlement to IS restored). The DM should apply the overlapping benefit rules and income rules as in DMG 45227 above.

**Note:** see DMG 45237 if the IS termination is successfully appealed.

### **Example**

Simon was entitled to IB and IS, and was treated as capable of work after he failed to attend for a medical examination. The awards of IB and IS were disallowed on supersession, and Simon appealed against the decision terminating IB only. He claims and is awarded ESA(Cont) and (IR) of £117.15 including the SDP as he was awarded DLA middle rate care component after entitlement to IS and IB ended. His IB appeal is allowed, and IB is reinstated. IB of £89.80 is adjusted by ESA(Cont) of £64.30. The remaining IB payable of £25.50 is taken into account as income. Simon's benefit of £117.15 is made up of ESA(Cont) of £64.30, ESA(IR) of £27.35, and IB of £25.50. Arrears of IB are reduced by application of the overlapping benefit and abatement rules for periods where there is entitlement to ESA and IB.

Simon's award of ESA is superseded from the 14th week of entitlement to award him the support component after application of the WCA. His award of ESA(Cont) of £95.15 overlaps IB completely, and no further IB is payable. The decision awarding IS is not revised, as his ESA(IR) applicable amounts of £117.15 increasing to £161.50 exceed his IS applicable amount of £91.80.

45232 Where the IS applicable amount exceeds the ESA applicable amount, the decisions disallowing IS and awarding ESA should be revised so as to reinstate IS entitlement and remove ESA entitlement. But see DMG 45237 if the IS termination is successfully appealed.

## Example

Gina was entitled to IB and IS, and her awards were terminated following application of the PCA. She appealed the IB decision only. She claimed and was awarded ESA(Cont) and (IR) of £117.15 including the SDP, which is increased to £142.65 to include the WRAC from week 14. Her appeal succeeds, and her award of IB is reinstated. Her combined entitlement to IB and IS including the DP and SDP of £144.65 is greater than her ESA entitlement. The decision disallowing IS is revised to reinstate the IS award from the date of the disallowance, and the decision awarding ESA is revised to disallow from the date of the original award on the grounds that Gina is entitled to IS. Arrears of IS of £27.50 per week are due for the first 14 weeks of ESA entitlement, and £2 weekly thereafter, together with any arrears of IB and IS due for the period before ESA entitlement began.

45233 Where

- 1.** IS was not previously in payment before the claimant was awarded ESA **and**
- 2.** entitlement to IB is reinstated

a claim to IS could be made<sup>1</sup> as in DMG 45213 **1.** (because the claimant is entitled to IB) provided that they relinquish entitlement to ESA. See DMG 04120 et seq for guidance on relinquishment.

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

## ESA awarded and Credits appeal allowed

45234 Where

- 1.** the claimant made an appeal against termination of credits **and**
- 2.** the claimant is awarded ESA **and**
- 3.** the credits appeal is successful

the claimant remains entitled to ESA, and credits are awarded on the basis that the claimant has, or is treated as having, LCW<sup>1</sup>. Although the decision awarding credits on the basis that the claimant is incapable of work has been reinstated by the FtT, only one credit can be awarded for any week. Once the claimant has been credited with earnings equal to the lower earnings limit for any week, a further credit cannot be awarded for that week.

1 SS (Credits) Regs, reg 8B(2)(a)(iv) & (v)

45235 If the claimant ceases to be entitled to ESA at a later date, for example because they are found not to have LCW, they remain entitled to be awarded credits as long as they are incapable of work.

## Entitlement to Income Support

45236 If

1. the claimant's entitlement to IS and credits was terminated **and**
2. they made an appeal against the decision ending credits only **and**
3. they claimed and were awarded ESA **and**
4. the credits appeal is allowed

the claimant's award of IS may be reinstated and the award of ESA terminated as in DMG 45231. Any arrears of IS should be offset against the ESA paid<sup>1</sup>. See DMG 09344 for guidance on offsets.

1 SS (POR) Regs, reg 5(2) Case 2

45237 Where

1. the claimant also makes an appeal against the decision terminating IS **and**
2. that decision is set aside by a FtT on appeal

the award of ESA may be terminated as in DMG 45232, with an offset as in DMG 45236.

45238 If the claimant wishes to remain on ESA, for example where ESA entitlement exceeds IS entitlement, the DM should supersede the original decision awarding IS from the first day of the benefit week in which ESA entitlement began on the grounds of a relevant change of circumstances<sup>1</sup>. The change is that the claimant was awarded ESA, and a person cannot be entitled to IS if they are entitled to ESA<sup>2</sup>.

1 SS CS (D&A) Regs, Sch 3A, para 1; 2 SS CB Act 92, s 124(1)(h)

## Satisfying the conditions of entitlement to ESA and IB

45239 The claimant must continue to satisfy the conditions of entitlement for both IB and ESA, even where only one of those benefits is in payment following application of the overlapping benefit rules. Where entitlement to ESA or IB is subject to submitting medical evidence, the claimant must continue to send in doctor's statements even if the benefit is not in payment.

45240 - 45299



# Reassessment of IB, SDA and IS 45300 - 45879

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45300 From 11.10.10, the Secretary of State began to make decisions on whether the awards of claimants who, on or after that date, have an existing award of IB, SDA or IS, qualify for conversion to ESA. The process of conversion is known as reassessment. See DMG 45204 for the meaning of existing award.

45301 A claimant may be entitled to more than one existing award, i.e. they may be entitled to IB and IS, or SDA and IS. Throughout this Chapter, reference to “an existing award” includes a reference to entitlement to one or more existing awards.

45302 Conversion will be completed in stages, beginning with 1700 selected cases in two Jobcentre Plus Benefit Delivery Centres (Aberdeen and Burnley) on 11.10.10, and starting nationally on 28.2.11.

45303 Claimants entitled to

**1. IB or**

**2. IS or**

**3. IB and IS**

will be considered for conversion before those entitled to SDA only or SDA and IS.

### **Overlapping benefits**

45304 Where a claimant’s entitlement to IB or SDA overlaps with another personal benefit, the claimant is still subject to the conversion process. The claimant may choose to relinquish entitlement to IB or SDA if they do not wish to take part in the conversion process, for example where it is not in payment because



it is overlapped by another personal benefit. See DMG Chapter 04 for guidance on relinquishment, and Chapter 17 for guidance on overlapping benefits.

45305 In cases where the claimant's existing award is converted into an award of ESA(Cont), and was subject to the overlapping benefit rules, the DM should consider how those rules should be applied after conversion.

**Note:** IB is a daily benefit, and ESA is a weekly benefit.

### **Example**

Rosemary is entitled to IB of £91.40 and CA of £53.90. CA is fully overlapped by IB and is not payable. Following conversion, Rosemary is awarded ESA(Cont). The DM determines that CA is overlapped by ESA(Cont) and is still not payable.

## **IS - more than one prescribed category of person**

45306 Some claimants entitled to an existing award of IS on the grounds of disability may also be entitled to IS on other grounds, for example because they are a lone parent or a carer. These claimants may choose to stay on IS without the DP even if their existing award qualifies for conversion to ESA. Claimants whose existing award does not qualify for conversion may also remain on IS without the DP. See DMG 45525 and DMG 45555 for further guidance.

45307 - 45309

## **Claimant already entitled to IB or SDA and ESA**

45310 Where the claimant has an existing award (IB or SDA only) and is entitled to ESA (see DMG 45221 et seq), the existing award is converted to ESA, and the previous ESA award is terminated. See DMG 45513 and DMG 45551 for further guidance.

45311 - 45314

## **Credits only**

45315 This Chapter does **not** apply to people who are

- 1.** entitled to be credited with earnings because they are incapable of work **and**
- 2.** not entitled to an existing award.

Further guidance will be issued at a later date.

45316 - 45319

## The conversion process

45320 The conversion process begins when the claimant is notified that they are in the conversion phase – see DMG 45410. The claimant is then required to satisfy the conditions of entitlement for ESA, including the WCA. The basic conditions are modified for the purposes of conversion. In particular, the condition that the claimant is not entitled to IS does not apply for the purposes of making conversion decisions.

At the end of the conversion process, the DM makes a conversion decision. See DMG 45481 for the meaning of conversion decision.

45321 The conditions of entitlement to ESA are modified for the purposes of considering whether the claimant’s existing award qualifies for conversion to ESA. See DMG 45450 et seq for details.

45322 Where the existing award qualifies for conversion, the DM also considers whether the claimant is entitled to a TA. See DMG 45600 et seq for guidance on entitlement to a TA.

45323 Where the existing award does not qualify for conversion, it is terminated (or in cases where the claimant chooses to remain on IS, the DP is terminated) without a separate outcome decision being made. The claimant has the right of appeal against the decision that the existing award does not qualify for conversion. See DMG 45700 et seq for more details.

45324 - 45349

## Notifications

45350 In this Chapter, wherever there is a requirement to give notice or to notify, notification must be given in writing<sup>1</sup>. This applies to

1. the notice beginning the conversion phase<sup>2</sup> (see DMG 45410)
2. the notification of the conversion decision<sup>3</sup> (see DMG 45480 - 45483)
3. the notification that a conversion decision will not be made or has lapsed<sup>4</sup> (see DMG 45490 – 456492).

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 2(2); 2 reg 4; 3 reg 5(5); 4 reg 5(6)(b), (8) & (9)

45351 A message sent by electronic communication is treated as a notice given in writing<sup>1</sup>.

1 reg 2(2)(a)

45352 “Electronic communication” means<sup>1</sup> a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)

**1.** by means of an electronic communications network **or**

**2.** by other means but while in an electronic form.

1 reg 2(2)(b); Electronic Communications Act 2000, s 15(1)

45353 - 45354

## **Claims**

45355 No claim to ESA is required when the claimant is entitled to an existing award<sup>1</sup> which is subject to conversion<sup>2</sup>. See DMG 45204 for the meaning of existing award.

1 WR Act 07, Sch 4, para 11; 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 18(b);  
SS (C&P) Regs, reg 3(k)

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# The conversion phase 45400 - 45449

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## Introduction

45400 The conversion phase is the period during which the DM establishes whether the claimant's existing award qualifies for conversion to an award of ESA. See DMG 45450 et seq for guidance on the conditions for conversion.

45401 The conversion phase

- 1.** begins when the Secretary of State issues in writing a notice to a person entitled to an existing award (see DMG 45410) **and**
- 2.** ends on the day before the effective date of the conversion decision, or the date the claimant's entitlement to the existing award ends if that is earlier (see DMG 45430).

45402 - 45404

## When the conversion phase begins

45405 For each claimant entitled to an existing award, the conversion phase begins when they are notified

- 1.** that their existing award is to be converted into an award of ESA where certain conditions are satisfied **and**
- 2.** that if those conditions are not satisfied, the existing award will not be converted and will terminate **and**
- 3.** of such other matters as considered appropriate by the Secretary of State<sup>1</sup>.

<sup>1</sup> ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 4(3)

45406 The conversion phase begins on the date the notification is issued to the claimant<sup>1</sup>. Where the claimant is entitled to more than one existing award, the notice begins the conversion phase for each of those awards<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 4(4); 2 reg 4(6)

45407 The notice will be issued in accordance with the date on which the claimant was next due to be assessed for the purposes of the PCA. It tells the claimant that they will be required to complete a questionnaire (form ESA50), and may be required to attend for medical examination.

45408 If the claimant contends that

1. the notice does not contain the information in DMG 45405 **or**
2. they did not receive the notice

this does not invalidate the subsequent conversion decision<sup>1</sup>.

1 [2014] AACR 5

45409 - 45412

### **Obtaining information**

45413 The claimant's duty to disclose information relevant to their existing award of benefit is modified to enable the Secretary of State to require from the claimant information or evidence for the purposes of determining whether that award should be converted to ESA<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 13(a); SS (C&P) Regs, reg 32(1)

45414 This enables the Secretary of State to establish whether a claimant whose existing award is IB or SDA, and who is not entitled to IS, might be entitled to ESA(IR) as well as ESA(Cont) on conversion.

### **Example**

Carlton is entitled to IB of £91.40. During the conversion phase the Secretary of State establishes that he has no other income. Following application of the WCA, Carlton is placed in the support group. On conversion, Carlton is entitled to ESA of £110.50 made up of ESA(Cont) of £96.85 and ESA(IR) of £13.65 (EDP).

### **Claimants not subject to conversion**

45415 No notice may be issued to a person entitled to an existing award<sup>1</sup>

1. if they reach pensionable age<sup>2</sup> at any time before 6.4.14 **or**

**2.** for any period when their existing award is subject to recovery of an adjustment following the change from weekly to fortnightly payments<sup>3</sup>.

**Note:** See DMG Chapter 75 for guidance on the equalisation and extension of pensionable age.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 4(5); 2 Pensions Act 95, Sch 4, para 1;  
3 SS (Transitional Payments) Regs, reg 4

45416 In practice, where the claimant

- 1.** is entitled to an existing award **and**
- 2.** will reach pensionable age within 12 months **and**
- 3.** has not been notified that the conversion process has begun

no notice as in DMG 45410 will be issued.

45417 - 45429

## **When the conversion phase ends**

45430 The conversion phase ends<sup>1</sup>

- 1.** immediately before the effective date of the conversion decision notified to the claimant **or**
- 2.** if earlier, when the claimant's entitlement to the existing award is no longer subject to conversion.

See DMG 45500 for guidance on the effective date, and DMG 45520 and DMG 45550 for guidance on when an existing award ends after the conversion phase begins.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 5(6)

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## Introduction

45450 The conversion decision is made in accordance with the modified provisions set out at DMG 45455 et seq<sup>1</sup>. In practice, these modifications allow the claimant to satisfy all the conditions of entitlement to ESA, or for those conditions not to apply, **except** the condition that they have LCW. All claimants whose existing awards are reassessed are referred for the WCA during the conversion phase.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 6(1) & (2) & Sch 1

45451 These modified provisions apply when

1. making an original conversion decision **or**
2. revising an original conversion decision **before** its effective date<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 6(1)

45452 For the purposes of revision, the conversion decision is treated as if it were a decision made on a

claim for ESA<sup>1</sup>.

**Note:** See DMG 45750 et seq for revision or supersession of a conversion decision after its effective date.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 6(3)

45453 - 45454

45455 A claimant whose existing award is subject to conversion is entitled to ESA<sup>1</sup> if they

**1.** are entitled to an existing award<sup>2</sup> of

**1.1** IB or SDA **or**

**1.2** IS on the grounds of disability and satisfy the conditions of entitlement to ESA(IR)<sup>3</sup> - but see DMG 45457 for exception **and**

**2.** satisfy the basic conditions<sup>4</sup> including the condition that they have LCW, but **excluding** the condition that they are not entitled to IS.

See DMG 41012 for guidance on the basic conditions, DMG 45204 for the meaning of existing award and DMG 45205 for the meaning of IS on the grounds of disability.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 1, para 2; 2 WR Act 07, Sch 4, para 11; 3 Sch 1, Part 2; 4 s 1(3)

45456 A claimant who is entitled to an existing award of IB, SDA or IS on the grounds of disability is not treated as having LCW pending application of the WCA<sup>1</sup> during the conversion phase. Until the conversion decision takes effect, they must continue to satisfy the conditions of entitlement, including any requirement to take part in a Wfl, which apply to the existing award. The existing award remains in payment during the conversion phase.

1 ESA Regs, reg 30; ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 10

## **Disabled persons in relevant education and deaf or disabled students**

45457 Where the claimant's existing award of IS is made on the basis that they are a

**1.** disabled qualifying young person in relevant education<sup>1</sup> **or**

**2.** disabled student<sup>2</sup> **or**

**3.** deaf student<sup>3</sup>

the condition in DMG 41552 et seq that they are not receiving education does not apply on conversion to



ESA(IR)<sup>4</sup>. See DMG Chapter 20 for further guidance on IS conditions of entitlement.

1 IS (Gen) Regs, reg 13(2)(b) or (bb); 2 Sch 1B, para 10; 3 Sch 1B, para 12;  
4 WR Act, Sch 1, para 6(1)(g); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 2

### **Example**

Aqila has a hearing impairment and is studying a funded access course for deaf students. She is entitled to IS, and is not entitled to DLA. Although Aqila is receiving education, her existing award can be converted to ESA(IR). On conversion, she is placed in the WRAG. The fact that she is receiving education does not affect her converted ESA award.

### **Entitlement to the support component**

45458 The conditions of entitlement to the support component<sup>1</sup> as modified<sup>2</sup> are that

1. the conversion phase has ended<sup>3</sup>
2. the claimant has LCWRA<sup>4</sup> (see DMG Chapter 42) **and**
3. any other conditions as may be prescribed are satisfied<sup>5</sup>.

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

1 WR Act 07, s 2(2) & s 4(4); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 3;  
3 WR Act 07, s 2(2)(a) & s 4(4)(a); 4 s 2(2)(b) & s 4(4)(b); 5 s 2(2)(c) & s 4(4)(c)

### **Entitlement to the work-related activity component**

45459 The conditions of entitlement to the WRAC<sup>1</sup> as modified<sup>2</sup> are that

1. the conversion phase has ended<sup>3</sup>
2. the claimant does not have LCWRA<sup>4</sup> (see DMG Chapter 42) **and**
3. any other conditions as may be prescribed are satisfied<sup>5</sup>.

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

1 WR Act 07, s 2(3) & s 4(5); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 4;  
3 WR Act 07, s 2(3)(a) & s 4(5)(a); 4 s 2(3)(b) & s 4(5)(b); 5 s 2(3)(c) & s 4(5)(c)

## Contribution conditions

45460 For the purposes of ESA(Cont), the contribution conditions (including the condition relating to youth) in DMG 41021 et seq do not apply<sup>1</sup>. This means that a person whose award of IB or SDA is converted to ESA is regarded as satisfying the contribution conditions for ESA(Cont).

1 WR Act 07, Sch 1, paras 1-5; ESA Regs, reg 8-13;  
ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 6(a) & 9

## ESA(IR) conditions of entitlement

45461 It is one of the conditions of entitlement for ESA(IR)<sup>1</sup> that a claimant must

1. have no income **or**
2. have an income which does not exceed the applicable amount.

DMG 41091 provides guidance on the conditions of entitlement for ESA(IR).

1 WR Act 07, s 1(2)(b) & Sch 1, para 6(1)(a)

45462 Where

1. a claimant's existing award of IS is converted to ESA(IR) **and**
2. the claimant is entitled to a TA

the TA is disregarded as part of the applicable amount for the purposes of Step 1 (see DMG 45581) when the DM is determining whether the condition of entitlement in DMG 45461 is satisfied<sup>1</sup>. See DMG 45600 et seq for guidance on the TA.

**Note:** for all other purposes, the TA is part of the ESA award - see DMG 45675.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 6(b); WR Act 07, Sch 1, paras 6(1A) & (1B)

45463 A claimant entitled to IS

1. whose existing award qualifies for conversion **and**
2. who would not be entitled to ESA(IR) because their income exceeds their ESA(IR) applicable amount **and**
3. who would otherwise be entitled to a TA

is treated as satisfying DMG 45461, and the amount of ESA(IR) which they are entitled to for Step 1 (see DMG 45581) is nil<sup>1</sup>.

## Example

Ronan is entitled to IS of £12.60 weekly for himself and his partner Lorna, who has P/T earnings of £150. On conversion, his ESA(IR) entitlement at Step 1 is nil, because Lorna's earnings with a £20.00 disregard exceed his applicable amount of £128.70. Entitlement to TA at Step 2 is £13.90 (IS applicable amount of £102.75 + DP of £39.85 = £142.60 – ESA(IR) applicable amount of £102.75 + WRAC of £25.95 = £128.70). Ronan is entitled to ESA(IR) of £13.90.

## Right to reside

45464 A claimant who has been entitled to a specified income related benefit continuously from 30.4.04 is transitionally protected<sup>1</sup> from the requirement to have a right to reside in the Common Travel Area for IS purposes<sup>2</sup> and is treated as habitually resident (see DMG 071241). A claimant in receipt of IS who has this transitional protection will not be a person from abroad for the purpose of conversion to ESA (IR)<sup>3</sup>.

1 SS Hab Res, Regs 2004, reg 6; 2 IS (Gen) Regs, reg 21AA(2);

3 ESA (TP, HB & CTB)(EA)(No 2) Regs, Sch 1, para 10A; ESA Regs, reg 70(4)

## Disregard of pension payments

45465 Certain pension payments or PPF periodic payments, described at DMG 44716 et seq, do not fall to be deducted from ESA(Cont). In addition any pension payment or PPF periodic payment is disregarded<sup>1</sup> where

**1.** the claimant was entitled to IB immediately before conversion to ESA **and**

**2.** the provisions reducing IB by a pension or PPF payment<sup>2</sup> did not apply because

**2.1** the claimant was entitled to<sup>3</sup>

**2.1.a** DLA care component at the highest rate **or**

**2.1.b** AFIP **or**

**2.1.c** PIP daily living component at the enhanced rate **or**

**2.2** the claimant qualified for IB under the provisions for those incapacitated in youth because of previous entitlement to SDA<sup>4</sup> **or**

**2.3** the claimant was entitled to IB before 6.4.01 on any day of IfW in a PIW which began before and continues after that date<sup>5</sup>.

1 ESA (TP, HB & CTB)(EA)(No 2) Regs, Sch 1, para 11; ESA Regs, reg 75(1)(g); 2 C & B Act s 30DD(1);  
3 SS (IB) Regs, reg 26; 4 reg 19; 5 WRP Act 99 (Commencement No 9 and Transitional and Savings  
Provisions) Order 2000, Art 3

45466 Where the conditions in DMG 45465 **1.** and **2.1, 2.2** or **2.3** are satisfied on the day before the effective date of the conversion decision, it is irrelevant that the pension or PPF payment began after the condition in **2.1 - 2.3** was satisfied.

### **Example**

Bert was awarded IB from 9.1.99. His award is converted to ESA(Cont) from 14.2.13. On 22.10.13 Bert notifies that he will start to receive monthly pension payments from his former employer starting from 31.10.13. The amount of the pension payment would normally result in a reduction of ESA(Cont). As Bert's award of IB began before 6.4.01, the pension payments are disregarded for as long as Bert remains entitled to a converted award of ESA(Cont), including where the linking rules apply.

45467 Where a pension payment is disregarded as in DMG 45465 because the claimant was entitled to any of the benefits in DMG 45465 **2.1** on the day before the effective date of the conversion decision, the disregard continues to apply even if the award of those benefits ends.

45468 - 45474

### **Waiting days**

45475 A claimant whose existing award qualifies for conversion does not have to serve waiting days when the award of ESA begins<sup>1</sup>. There is no break in entitlement between the existing award and the converted award of ESA.

1 ESA Regs, reg 144; ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1, para 12

### **Duty to disclose**

45476 The claimant's duty to disclose information or evidence in connection with payment of benefit applies where an existing award is converted to ESA<sup>1</sup>. See DMG Chapter 09 for further guidance on the duty to disclose.

1 ESA (TP, HB & CTB)(EA)(No 2) Regs, Sch 1, para 13(b); SS (C&P) Regs, reg 32(1A)

45477 - 45479

# Making a conversion decision 45480 - 45499

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## Introduction

45480 Where a claimant

1. is entitled to an existing award **and**
2. has been notified that the conversion phase has begun

the DM **must** make a conversion decision<sup>1</sup> unless DMG 45491 - 45492 applies<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 5(1); 2 reg 5(8)

## Meaning of conversion decision

45481 A conversion decision is a decision that the claimant's existing award

1. qualifies for conversion to ESA **or**
2. does not qualify for conversion to ESA<sup>1</sup>.

The conversion decision includes determinations as to whether the claimant has LCW, and if so, whether they have LCWRA.

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

45482 Where the conversion decision is a decision that the existing award qualifies for conversion, the notice of the decision must specify

1. the amount of ESA the claimant is entitled to (including any TA) **and**
2. the effective date **and**
3. any relevant deductions<sup>1</sup>.

For further guidance, see DMG 45580 et seq on calculating the amount, DMG 45600 et seq on the TA, DMG 45500 on the effective date, and DMG 45565 et seq on relevant deductions.

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

45483 The conversion decision must be notified to the claimant<sup>1</sup>, and carries the right of appeal<sup>2</sup>. See DMG 45700 et seq for further guidance on appeals against a conversion decision.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 5(5); 2 Sch 2, para 5; SS Act 98, Sch 3, para 8E

45484 - 45489

## **When a conversion decision is not made or lapses**

45490 Where a claimant's entitlement to an existing award ceases to be subject to conversion after the conversion phase has begun, the action to be taken depends on the stage reached in the conversion phase.

45491 If the existing award ceases to be subject to conversion before a conversion decision has been made, the claimant is notified that

**1.** the conversion phase has ended **and**

**2.** no conversion decision will be made<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 5(8)(a)

### **Example**

Jenny is entitled to IB. She is notified that the conversion phase has begun, and is issued with the questionnaire ESA50. However, she does not complete this and returns to work. The DM makes a determination that the work is not exempt work, and treats Jenny as capable of work. Her entitlement to IB is terminated, and she is also notified that the award of IB will not be converted.

45492 If the existing award ceases to be subject to conversion after a conversion decision has been made, but before it comes into effect, the claimant is notified that the conversion decision will not come into effect<sup>1</sup>. Once the notice has been given, the conversion decision lapses immediately<sup>2</sup>. No further action is required.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 5(8)(b); 2 reg 5(9)

### **Example**

Fabian is a lone parent who is incapable of work, and is entitled to IS with housing costs. His award includes the DP. The DM decides that his existing award qualifies for conversion to ESA(IR). Before the

effective date of the conversion decision, Fabian starts P/T work with earnings of £100 weekly. The DM determines that the work is not exempt work, and treats Fabian as capable of work. The decision awarding IS is superseded to remove entitlement to the DP. Fabian is also notified that the conversion decision has lapsed.

45493 - 45499

## Effective date of conversion decision 45500 - 45509

45500 The effective date of a conversion decision is the first day of the benefit week following the first complete fortnightly period of payment of the existing award after notification of the conversion decision<sup>1</sup>. But see DMG 45501 where the claimant's existing award is not paid fortnightly.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 13(1)

### Example

Olivia's IB is paid fortnightly, and her BWE day is Wednesday. The notification that her existing award qualifies for conversion to ESA(Cont) is issued on 14.6.11. Her next payment of IB is due on 22.6.11. This payment is for the period 9 - 22.6.11. The following payment is due on 6.7.11 for the period 23.6.11 - 6.7.11. This is the first full fortnight's payment after 14.6.11. The effective date of the conversion is 7.7.11. Olivia's entitlement to IB ends on 6.7.11. Her next payment on 20.7.11 will be the converted ESA award for the period 7.7.11 - 20.7.11.

45501 Where the claimant's existing award is not paid fortnightly, the effective date is the first day of the benefit week following the second complete benefit week of payment of the existing award made after the conversion decision is notified<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 13(2)

### Example

Jonathan's IS is paid weekly by cheque. His BWE day is Friday. His award does not qualify for conversion to ESA as he is found not to have LCW on application of the WCA. The conversion decision is notified on 14.6.11. His next weekly payment is due on 17.6.11 with further payments on 24.6.11 and 1.7.11. The effective date of the conversion decision is 2.7.11. Jonathan's entitlement to IS ends on 1.7.11.

45502 - 45509



# When does an existing award qualify for conversion 45510 - 45519

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[Claimant already entitled to ESA 45513 - 45519](#)

## Introduction

45510 An existing award qualifies for conversion to ESA where the claimant satisfies the basic conditions as set out in DMG 41012 **except** DMG 41012 **5.** (that the claimant is not entitled to IS)<sup>1</sup>. See DMG 45455 et seq for the modifications to those conditions which apply when making a conversion decision.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 7(1); WR Act 07, s 1(3)

45511 All claimants entitled to an existing award are subject to the WCA when considering whether the award qualifies for conversion to ESA. But see DMG 45513 where the claimant is already entitled to ESA.

45512

## Claimant already entitled to ESA

45513 Where

- 1.** the claimant has an existing award of IB which has been reinstated following a successful appeal (see DMG 45221 et seq) **and**
- 2.** the claimant has an award of ESA made before the IB award was reinstated **and**
- 3.** it has been determined in relation to the ESA claim that the claimant

**3.1** has LCW<sup>1</sup> **or**

**3.2** is treated as having LCW other than under DMG 42201 (pending assessment)<sup>2</sup>

the claimant is treated as having satisfied the condition in DMG 41012 (that they have LCW) for the purposes of reassessment of the existing award<sup>3</sup>. The claimant is not required to undergo the WCA process again.

1 ESA Regs, reg 19; 2 reg 30; 3 WR Act 07, s 1(3)(a); ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 7(2)

45514 From 1.5.12, the DM should also treat the claimant as having LCW where<sup>1</sup>

**1.** they have an existing award of IB **and**

**2.** their entitlement to ESA(Cont) terminated after 365 days **and**

**3.** they had, or were treated as having, LCW during the award of ESA(Cont) **and**

**4.** they would otherwise continue to be entitled to ESA(Cont), that is, they continue to have, or be treated as having, LCW (other than pending application of the WCA<sup>2</sup>)

for the purposes of reassessment of the existing award.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 7(3); 2 ESA Regs, reg 30

45515 - 45519

## Existing award does not qualify for conversion 45520 - 45549

[Termination of existing award 45520 - 45524](#)

[Claimant entitled to IS other than on the grounds of disability 45525 - 45529](#)

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### Termination of existing award

45520 Where the claimant's existing award does not qualify for conversion, it is terminated immediately before the effective date of the conversion decision<sup>1</sup>. But see DMG 45525 – 45530 and DMG 45536 et seq for exceptions to this rule, and DMG 45750 et seq where a change of circumstances which occurs before the effective date is notified on or after the effective date<sup>2</sup>. See DMG 45500 for guidance on the effective date.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 15(2); 2 reg 15(7)(a) & 17

45521 - 45524

### Claimant entitled to IS other than on the grounds of disability

45525 Where the claimant

1. has an existing award of IS **and**
2. would remain entitled to IS on the effective date other than on the grounds of disability

the existing award of IS only terminates as in DMG 45520 if the claimant notifies the Secretary of State before the effective date that they do not wish to remain on IS<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 15(2A)

45526 Where

**1.** IS entitlement does not terminate **and**

**2.** the claimant was entitled to the DP solely on the ground that they are or are treated as incapable of work

the DP terminates on the day before the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 15(2B)

45527 - 45529

## **Claimant is a member of a JSA joint-claim couple**

45530 Where

**1.** the claimant's existing award of IB or SDA is terminated<sup>1</sup> as in DMG 45520 **and**

**2.** the claimant is a member of a JSA joint-claim couple<sup>2</sup> (see DMG 20004) **and**

**3.** before the effective date the couple was entitled to a DP on the basis that a member of the couple was entitled to IB or SDA<sup>3</sup> as in DMG 23123

the DP is terminated on the day before the effective date<sup>4</sup>.

1 ESA (TP, HB & CTB)(EA)(No 2) Regs, reg 15(2)(a); 2 JS Act 95, s 1(4);  
3 JSA Regs, Sch 1, para 20H(1)(b) or (d); 4 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 15(6)

## **Claimant is partner of IS or JSA(IB) claimant**

45531 Where

**1.** the claimant's existing award of IB or SDA is terminated<sup>1</sup> as in DMG 45520 **and**

**2.** the claimant is a partner of a person whose entitlement to IS or JSA(IB) includes an amount for the claimant<sup>2</sup> (see DMG 23031) **and**

**3.** before the effective date the person was entitled to a DP on the basis that the claimant was entitled to IB or SDA<sup>3</sup> as in DMG 23123 **2.** or DMG 23128 **2.**

the award of IS or JSA(IB) is superseded to remove the DP once the award of IB or SDA is terminated in accordance with normal supersession rules<sup>4</sup>. See DMG Chapter 04 for guidance on supersession.

1 ESA (TP, HB & CTB) (EA) (No 2) Regs, reg 15(2)(a); 2 JSA Regs, reg 83(a) & 86A(a);  
IS (Gen) Regs, reg 17(1)(a); 3 JSA Regs, Sch 1, para 14(1)(b) or (d);

45532 - 45534

## Termination of Credits

45535 Entitlement to be credited with earnings on the basis of IfW also terminates immediately before the effective date of the conversion decision<sup>1</sup>. But see DMG 45750 et seq where a change of circumstances which occurs before the effective date is notified on or after the effective date<sup>2</sup>. See DMG 45500 for guidance on the effective date.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 15(3); SS (Credits) Regs, reg 8B(2)(a);

2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 15(7)(a) & 17

## Exceptions

45536 DMG 45520 and DMG 45535 does not apply where<sup>1</sup>

**1.** the conversion decision is made following a determination that the claimant is treated as not having LCW because they

**1.1** failed to return the questionnaire<sup>2</sup> (form ESA50) **or**

**1.2** failed to attend for medical examination<sup>3</sup> **and**

**2.** after the claimant is notified of the conversion decision, the DM or the FtT on appeal determines that the claimant had good cause for that failure.

See DMG Chapter 42 for guidance on good cause.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 15(4); 2 ESA Regs, reg 22(1); 3 reg 23(2)

45537 Where DMG 45536 applies, the conversion decision is treated as never having been made<sup>1</sup>, and entitlement to the existing award and credits is reinstated from the effective date of the conversion decision<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 15(5)(a); 2 reg 15(5)(b)

45538 The claimant remains in the conversion phase, and the DM must make a new conversion decision in the normal way<sup>1</sup>. There is no need to issue a further notice as in DMG 45410<sup>2</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 15(5)(c) & (e); 2 reg 15(5)(d)

45539 The claimant may have claimed and been awarded JSA while an application for reconsideration of

or an appeal against a decision as in DMG 45536 et seq is being considered. If it is subsequently determined that the claimant had good cause for the failure, and entitlement to the existing award and incapacity credits is reinstated as in DMG 45537, the decision awarding JSA is revised<sup>1</sup>. The time limit for making an application for revision in DMG 03063 does not apply<sup>2</sup>.

1 SS CS (D&A) Regs, reg 3(1); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 25A

45540 - 45549

# Existing award qualifies for conversion 45550 - 45579

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[Termination of Credits 45572 - 45579](#)

## Introduction

45550 Where a claimant's existing award qualifies for conversion to ESA, the claimant's existing award is converted to ESA from the effective date of the conversion decision<sup>1</sup>. But see DMG 45750 et seq where a change of circumstances which occurs before the effective date is notified on or after the effective date<sup>2</sup>. See DMG 45500 for guidance on the effective date.

**Note:** See DMG 45555 for guidance on claimants who are entitled to IS on more than one ground, and DMG 45551 for guidance on claimants who are already entitled to ESA.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 14(2); 2 reg 14(7)(a) & 17

## Claimant already entitled to ESA

45551 Where the claimant is already entitled to ESA (see DMG 45221 et seq), and the existing award qualifies for conversion as in DMG 45513

1. the existing award is converted to ESA from the effective date as in DMG 45550 **and**
2. the previous entitlement to ESA terminates on the day before the effective date<sup>1</sup>.

See DMG 45750 et seq where a change of circumstances which occurs before the effective date is notified on or after the effective date<sup>2</sup>. See DMG 45500 for guidance on the effective date.

45552 - 45554

## **Claimant entitled to IS other than on the grounds of disability**

45555 Where the claimant

- 1.** has an existing award of IS **and**
  - 2.** would remain entitled to IS on the effective date other than on the grounds of disability **and**
  - 3.** notifies the Secretary of State before the effective date that they wish to remain on IS on that date
- the existing award of IS is not converted to ESA<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 14(2A)

45556 Instead, any entitlement to

- 1.** IB or SDA **and**
  - 2.** the DP where this is awarded solely on the ground that the claimant is, or is treated as, incapable of work<sup>1</sup>
- terminates on the day before the effective date<sup>2</sup>.

1 IS (Gen) Regs, Sch 2, para 12(1)(b); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 14(2B)

### **Example 1**

George is entitled to IS both because he is incapable of work and because he is caring for his elderly mother. He also receives IB. After application of the WCA, the DM decides that his existing awards qualify for conversion to ESA. George notifies during the telephone call made to explain the conversion decision that he would prefer to stay on IS. The DM does not convert the IS award to ESA, and instead terminates IB and the DP from the effective date.

### **Example 2**

Sue is entitled to IS on the grounds that she is a lone parent and is incapable of work. She also receives the lowest rate of the care component of DLA. After application of the WCA, the DM decides that her existing award qualifies for conversion to ESA. Sue notifies during the telephone call made to explain the conversion decision that she would prefer to stay on IS. The DM does not convert the IS award to ESA, and Sue's entitlement to DP is also left in place as long as she remains entitled to DLA.



## **Claimant is a member of a JSA joint-claim couple**

45560 Where

- 1.** the claimant's existing award of IB or SDA is converted to ESA<sup>1</sup> as in DMG 45550 **and**
- 2.** the claimant is a member of a JSA joint-claim couple<sup>2</sup> (see DMG 20004) **and**
- 3.** before the effective date the couple was entitled to a DP on the basis that a member of the couple was entitled to IB or SDA<sup>3</sup> as in DMG 23123

the couple continue to be entitled to a DP on the basis that a member of the couple has had, or has been treated as having, LCW for 196 days in the case of a person who is terminally ill, or 364 days<sup>4</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 14(2)(a); 2 JS Act 95, s 1(4);  
3 JSA Regs, Sch 1, para 20H(1)(b) or (d); 4 Sch 1, para 20H(1)(ee);  
ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 14(7)

## **Claimant is partner of IS or JSA(IB) claimant**

45561 Where

- 1.** the claimant's existing award of IB or SDA is terminated<sup>1</sup> as in DMG 45520 **and**
- 2.** the claimant is a partner of a person whose entitlement to IS or JSA(IB) includes an amount for the claimant<sup>2</sup> (see DMG 23031) **and**
- 3.** before the effective date the person was entitled to a DP on the basis that the claimant was entitled to IB or SDA<sup>3</sup> as in DMG 23123 **2.** or DMG 23128 **2.**

the award of IS or JSA(IB) is superseded to remove the DP once the award of IB or SDA is terminated in accordance with normal supersession rules<sup>4</sup>. See DMG Chapter 04 for guidance on supersession.

1 ESA (TP, HB & CTB)(EA)(No 2) Regs, reg 15(2)(a); 2 JSA Regs, reg 83(a) & 86A(a);  
IS (Gen) Regs, reg 17(1)(a); 3 JSA Regs, Sch 1, para 14(1)(b) or (d); IS (Gen) Regs, Sch 2, para 11(1)(b)((ii);  
4 SS CS (D&A) Regs, Sch 3A

# Deductions

## Relevant deduction

45565 Any relevant deductions being made from

1. the existing award **or**
2. the award of ESA where the claimant is entitled to both ESA and an existing award

immediately before the effective date continue to be made from the converted ESA award as calculated in DMG 45581<sup>1</sup>. But see DMG 45750 et seq where a change of circumstances which occurs before the effective date is notified on or after the effective date<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No 2) Regs, reg 14(4); 2 reg 14(7)(a) & 17

45566 A relevant deduction<sup>1</sup> includes any deduction made from benefit in respect of

1. mortgage interest paid to qualifying lenders<sup>2</sup>
2. payments to third parties<sup>3</sup> of
  - 2.1 housing costs
  - 2.2 miscellaneous accommodation costs
  - 2.3 hostel payments
  - 2.4 rent arrears and service charges for fuel
  - 2.5 fuel costs
  - 2.6 water charges
  - 2.7 CSM
  - 2.8 eligible loans
  - 2.9 integration loans
3. arrears of CC or CT paid to a LA<sup>4</sup>
4. payment of fines to a court<sup>5</sup>
5. recovery of an overpayment of benefit or SF loan<sup>6</sup>.

See DMG Chapter 09 for guidance on recovery of overpayments, and DMG Chapter 46 for guidance on third party deductions.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 2(1) definition of “relevant deduction”;  
2 SS (C&P) Regs, reg 34A & 34B; 3 reg 35; 4 Community Charges (Deductions from IS) (No 2) Regs 90;  
Council Tax (Deductions from IS) Regs 93; 5 Fines (Deductions from IS) Regs 92; 6 SS A Act 92, s 71, 74  
& 78

## **WFI sanction**

45567 Where

- 1.** the existing award is subject to a reduction following a relevant decision, i.e. where the claimant has failed to take part in a Wfl **and**
- 2.** the existing award qualifies for conversion

the sanction ceases from the effective date of the conversion decision. See DMG Chapter 05 for guidance on relevant decisions.

**Note:** In practice existing awards where a reduction is continuing will not be subject to conversion until such time as the reduction ceases.

## **Benefit fraud offences sanction**

45568 Where the existing award is subject to a restriction and is reduced or not payable due to benefit fraud offences, a converted award of ESA is a sanctionable benefit. The DM should make a further determination imposing a restriction in order for that to continue for the remainder of the disqualification period. See DMG 08200 et seq for guidance on sanctions for benefit fraud offences.

45569

## **Existing award suspended**

45570 Where payment of a claimant’s existing award is suspended<sup>1</sup>, for example because they have been imprisoned, or there are doubts about whether they are still living at the last known address, the issue causing a suspension should be resolved before a notice is sent to begin the conversion phase (see DMG 45410). See DMG Chapter 04 for guidance on suspension.

1 SS CS (D&A) Regs, reg 16

45571 Where the suspension is imposed after the conversion phase has begun, the conversion process should be delayed until the issue causing a suspension is resolved.

## Termination of Credits

45572 Where the claimant is entitled to credits for IfW, that entitlement ceases from the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 14(5)

45573 - 45579

# Amount of ESA on conversion 45580 - 45599

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## Introduction

45580 [\[See DMG 11/18 at Appendix 2 of this chapter\]](#) Where the DM decides that the claimant's existing award qualifies for conversion, the amount of ESA on conversion is calculated in steps<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 8(1)

## Step 1

45581 The DM first calculates the amount of ESA the claimant would have been entitled to if, on a claim for ESA

1. the DM had determined that the claimant was entitled to ESA **and**
2. the assessment phase had ended.

The DM should take into account occupational pension, income or capital in this calculation as normal. But see DMG 45587 and 45565 et seq for guidance on relevant deductions.

**Note:** See DMG Chapter 44 for normal amounts payable, and DMG Chapter 54 for amounts payable in special cases.

## Step 2

45582 The DM next determines whether the claimant is entitled to a TA, and if so the amount. See DMG 45600 et seq for guidance on calculating the TA.

## Step 3

45583 The DM then aggregates the amounts of Steps 1 and 2. See DMG 45587 and 45565 et seq for guidance on relevant deductions.

### Example 1

Peter is entitled to IB of £106.40 including an age addition of £15.00 weekly. He has no other income. On conversion, the DM places Peter in the WRAG. His converted entitlement of ESA(Cont) is £106.40, including the TA of £15.

### Example 2

Naomi is entitled to IB of £112.05, including an age addition of £10.70. She is not entitled to IS. On conversion, Naomi is placed in the SG. She entitled to ESA(Cont) of £112.05, made up of £71.70 personal allowance, support component of £34.80 and a TA of £5.55. She is also entitled to ESA(IR) of £9.60 (£71.70 + £34.80 + £15.15 EDP – £112.05). Naomi's overall ESA award on conversion is £121.65.

### Example 3

Rory's award of IB of £112.05 is converted to ESA(Cont) including a TA of £11.90 when he is placed in the WRAG. Rory is not entitled to IS, and has no other income. On appeal, the FtT decides that he should have been placed in the SG. In implementing the decision, the DM recalculates the TA and awards a TA of £5.55. Rory is also entitled to ESA(IR) of £9.60 (£71.70 + £34.80 + £15.15 EDP – £112.05). His overall ESA entitlement from the effective date of the conversion decision is £121.65.

45584

## Claimant already entitled to ESA

45585 Where

- 1.** the claimant is already entitled to ESA before an award of IB is converted to ESA (see DMG 45221 et seq) **and**
- 2.** a determination as to whether the claimant has LCWRA has been made for the purposes of the original ESA award

the LCWRA determination is treated as made for the purposes of Step 1. This means that the amount for the component in Step 1 is the same as that included in the original award<sup>1</sup>.

## **ESA amount higher than existing award**

45586 Where the amount of ESA on conversion is higher than the amount of the existing award, the higher amount is payable from the effective date. See DMG 45500 for guidance on the effective date.

### **Example**

Anita is entitled to IB at £91.40 weekly. Following the conversion phase, her existing award is converted to ESA(Cont). She is placed in the support group, and her ESA entitlement is £96.85 weekly. She receives the ESA award from the effective date of the conversion decision, and no TA is payable.

## **Deductions**

45587 Once the amount has been calculated as in DMG 45581, any relevant deductions are applied. See DMG 45565 et seq for guidance on relevant deductions.

45588 - 45599

# Transitional addition 45600 - 45669

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[Transitional addition - IB and SDA 45610 - 45629](#)

[Transitional addition - IS 45630 - 45634](#)

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## Introduction

45600 The TA is an amount which ensures that no claimant entitled to an existing award will be entitled to less benefit where their award qualifies for conversion to ESA. In this Chapter the abbreviation TA only refers to a TA for the purposes of converting an existing award to ESA. Some claimants are already entitled to a TA as part of their existing award of IS, which was awarded when their Supp B award was converted to IS. Other claimants have transitional protection when their award of SB or IVB was treated as a transitional award of IBLT. These amounts are taken into account when calculating the TA on conversion of an existing award to ESA, and then terminated when the existing award is converted to ESA. See DMG 45204 for guidance on the meaning of an existing award.

45601 Some claimants entitled to more than one existing award may be entitled to more than one TA on conversion. In cases where the claimant's partner is also entitled to ESA on conversion, they may also be entitled to a TA.

45602 The TA is gradually reduced, for example on uprating or when the conditions for a dependency increase are no longer satisfied. Any entitlement to TA is terminated when entitlement to a converted award ends, or on 5.4.20 if it is still in payment immediately before that date. See DMG 45800 et seq for further guidance.

45603 - 45609

## Transitional addition - IB and SDA

45610 The following paragraphs apply to a claimant who is entitled to an existing award of IB or SDA. For the purpose of calculating whether or not the claimant is entitled to a TA on conversion of the existing award, any entitlement to IS is disregarded<sup>1</sup>.



45611 The TA is the difference between Amount A and Amount B<sup>1</sup> where

- 1.** A is the weekly rate of the existing award<sup>2</sup> **and**
- 2.** B is the amount of ESA(C) including where applicable
  - 2.1** the WRAC **or**
  - 2.2** the support component<sup>3</sup>.

**Note:** See DMG Chapter 54 for guidance on amounts payable in special cases.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(2); 2 reg 10(3); 3 reg 10(4) & 12(5)

## **IB**

45612 Where the existing award is IB, the weekly rate payable when calculating Amount A is<sup>1</sup>

- 1.** the normal rate payable under specified legislation including age-related additions<sup>2</sup>
- 2.** IBLT for widows and widowers<sup>3</sup>
- 3.** transitional award of IBLT (former SB recipients)<sup>4</sup>
- 4.** transitional award of IBLT (former IVB recipients)<sup>5</sup>
- 5.** any CDIs and ADIs<sup>6</sup>.

See DMG Chapter 56 for guidance on IB amount payable, and DMG Chapter 55 for guidance on transitional IB.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(5)(a); 2 SS CB Act 92, s 30B(2), (6) or (7);  
3 s 40(5) or 41(4); 4 SS (IB)(Trans) Regs, reg 11(4); 5 reg 17(1) & 17A; 6 SS CB Act 92, s 80, 81 & 86A

45613 The amounts in DMG 45612 **1.** - **4.** are calculated excluding any deduction<sup>1</sup> which is

- 1.** a relevant deduction<sup>2</sup> (see DMG 45565) **and**
- 2.** any other deduction relating to the existing award which is made under specified legislation<sup>3</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(6); 2 reg 2(1);  
3 SS CB Act 92; SS A Act 92; SS (IfW) Act 94; WR Act 07, Sch 3

45614 This means that normally the gross amount of IB payable before deductions are made is used to calculate Amount A for the purposes of the TA. DMs should note that where an age addition is reduced or extinguished<sup>1</sup> as in DMG 56108, the amount of the age addition taken into account for the purposes of Amount A is the amount after the reduction<sup>2</sup>. See DMG 45618 for guidance on where payability of CDIs and ADIs is reduced.

1 PS Act 93, s 46(3); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(7)

## **SDA**

45615 Where the existing award is SDA, when calculating Amount A the weekly rate payable<sup>1</sup> includes any

**1.** age-related addition<sup>2</sup> **and**

**2.** any CDI and ADI<sup>3</sup>.

See DMG 57201 - 57300 for further guidance on SDA.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(5)(b); SS CB Act 92, s 68(7) as saved;

2 s 69(1) as saved; 3 s 90(a) as saved

45616 The amounts in DMG 45615 are calculated excluding any deduction<sup>1</sup> which is

**1.** a relevant deduction<sup>2</sup> (see DMG 45565) **and**

**2.** any other deduction relating to the existing award which is made under specified legislation<sup>3</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(6); 2 reg 2(1); 3 SS CB Act 92, SS A Act 92; WR Act 07, Sch

3

45617 This means that normally the gross amount of SDA payable before deductions are made is used to calculate Amount A for the purposes of the TA. But see DMG 45618 for guidance on where payability of an ADI is reduced.

## **Deductions from CDI and ADI**

45618 Where the claimant's existing award of IB or SDA includes entitlement to a CDI or ADI, and the increase is reduced or is not payable, only the reduced amount of the increase is taken into account for the purposes of calculating Amount A<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 10(7)

## **Example 1**

Andrew is entitled to IB and is also entitled to an ADI for his wife Jo. Jo started work earning £80 weekly shortly before the DM decides that Andrew's award of IB qualifies for conversion to ESA, and his ADI is not payable immediately before the effective date. The DM does not include the ADI when calculating whether Andrew's award of ESA should include a TA.

## Example 2

Caroline is entitled to IB, with an ADI of £53.10 payable in respect of her partner Dave, and CDIs of £8.10 and £11.35 respectively payable for their sons Paul and Richard. The full amount of CDI of £11.35 to which Caroline is entitled for Paul is not taken into account when calculating whether she is entitled to a TA on conversion.

45619 - 45629

## Transitional addition - IS

45630 The following paragraphs apply to a claimant who is entitled to an existing award of IS. For the purpose of calculating whether or not the claimant is entitled to a TA on conversion of the existing award, any entitlement to IB or SDA is disregarded<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 11(1)

45631 The TA is the difference between Amount C and Amount D<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 11(2)

45632 Amount C<sup>1</sup> is the claimant's gross IS applicable amount<sup>2</sup> excluding any

**1.** housing costs<sup>3</sup> **and**

**2.** amount included in respect of a child or young person who is a member of the claimant's family or household<sup>4</sup>.

See DMG Chapter 23 for guidance on IS applicable amounts, housing costs, and amounts for children or young persons.

**Note:** ESA does not include applicable amounts for children or young persons.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 11(3); 2 IS (Gen) Regs, reg 17 or 18 & Sch 2;  
3 reg 17(1)(e) or 18(1)(f) & Sch 3; 4 reg 17(1)(b), (c) or (d) or 18(1)(b), (c), (d) or (e);  
SS (WTC & CTC)(Cons Amdt) Regs, reg 1 & 7

45633 Amount D<sup>1</sup> is the prescribed amount for ESA(IR)<sup>2</sup>, including the WRAC or support component, but excluding any housing costs<sup>3</sup>. See DMG Chapter 44 for guidance on ESA prescribed amounts and

housing costs. See DMG Chapter 54 for guidance on prescribed amounts in special cases.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 11(4); 2 ESA Regs, reg 67(1) or 68(1); 3 reg 67(1)(c) or 68(1)(d)

45634 When calculating Amount C and D for Step 2 (DMG 45582), the applicable amounts are also calculated without any deductions, for example for income. These are applied, together with amounts for housing costs, when calculating entitlement to ESA(Cont) or ESA(IR) at Step 1 (DMG 45581).

## Transitional addition - IB or SDA and IS

45635 Where a claimant is entitled to more than one existing award, the TA is calculated separately for each existing award.

### Example

Jim is entitled to IB of £106.40 including an age-related addition of £15.00 weekly. Jim is also entitled to IS of £16.20, his applicable amount including the DP of £39.85 and housing costs of £120. His partner June is in P/T work for 20 hours a week with earnings of £160, which has a £20 weekly disregard. Jim's total benefit income is £122.60. On conversion Jim is placed in the WRAG with a WRAC of £25.95.

### Conversion to ESA(Cont):

Step 1 ESA(Cont) prescribed amount is £65.45 + WRAC £25.95 = **£91.40**

Step 2 Amount A (IB) £106.40 - Amount B (ESA(Cont)) £91.40 = **£15.00**

Step 3 Amount of ESA(Cont) is £91.40 + TA £15.00 = **£106.40**

### Conversion to ESA(IR):

Step 1 ESA(IR) applicable amount is (£102.75 + £25.95 + £120 housing costs) - £140 (partner's earnings less £20 disregard) = **£108.70**

Step 2 Amount C (IS applicable amount less housing costs ignoring earnings) £142.60 - Amount D (ESA(IR) less housing costs ignoring earnings) £128.70 = **£13.90**

Step 3 Amount of ESA(IR) is £108.70 + £13.90 = **£122.60**.

### Amount payable

Jim is entitled to ESA of **£122.60**. This is made up of ESA(Cont) of £106.40 including TA of £15.00, and ESA(IR) of £16.20 including TA of £13.90.

45636 - 45639

## Calculating Transitional Addition Amounts

### Which benefit week is used

45640 Amount A or C as appropriate is the claimant's entitlement to IB, SDA or IS in the benefit week ending immediately before the effective date of the conversion decision<sup>1</sup>. See DMG 45642 et seq for exceptions to this rule. See DMG 45500 for guidance on the effective date.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 12(2)(a)

45641 Amount B or D as appropriate is the claimant's entitlement to ESA in the benefit week beginning on the effective date of the conversion decision<sup>1</sup>. See DMG 45500 for guidance on the effective date.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 12(2)(b)

### Effect of uprating

45642 Where

1. the rate of IB or SDA **or**
2. the applicable amount of IS

would, had the existing award not been converted to ESA, have increased on uprating<sup>1</sup> on any day in the first week of entitlement to ESA on conversion, Amount A or C is calculated using the uprated rate or amount<sup>2</sup>.

1 SS A Act 92, s 150; 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 12(3)

### Example

Valerie is notified that her award of IS of £93.45 including the DP is to be converted to ESA including the WRAC from 14.4.11. When calculating entitlement to the TA the DM uses the amount of IS of £96.35 as uprated from 12.4.11 rather than the lower amount in the previous benefit week, and awards a TA of £2.10 (IS £96.35 – ESA £94.25).

### Changes of circumstances during first week of ESA entitlement

45643 Where

1. there is a change of circumstances which would have resulted in an increase or decrease of IB, SDA or IS **and**
2. that increase or decrease would have taken effect on any day in the first benefit week after the effective date of the conversion decision

Amount A or C is calculated using the amount that would have been payable if the existing award had not been subject to conversion<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 12(4)

45644 If the change is notified after the conversion decision has been made, the TA is recalculated and the conversion decision is revised to take account of the change<sup>1</sup>. The rule in DMG 03012, that a decision cannot be revised for a change of circumstances since the decision had effect, does not apply in this case<sup>2</sup>.

1 SS CA (D&A) Regs, reg 3(1); 2 reg (9)(a); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 25A(1)(b)

### **Example 1**

Vajid is incapable of work and is entitled to IS. Following application of the conversion phase, his award is converted to ESA(IR) of £96.35 including a TA of £2.10. The conversion decision is notified on 22.6.11 and takes effect from 13.7.11.

Vajid notifies that he has married Jodhi who joined his household on 15.7.11. The DM recalculates the TA. Amount C (IS) is increased to £145.80, and ESA entitlement is £131.90, so that Vajid's ESA(IR) entitlement from the effective date is £145.80 including a TA of £13.90.

### **Example 2**

Henry is entitled to IB of £94.25, and an ADI of £54.75 payable for his partner Gemma. His award of IB is converted to ESA(Cont) of £149.00 including a TA of £54.75, effective from 12.5.11. He notifies that Gemma started work for 20 hours a week with earnings of £95 weekly on 16.5.11. The DM recalculates the TA and determines that Amount A (IB) no longer includes an ADI. As Amount A of £94.25 is now the same as the amount of ESA (Cont), Henry is no longer entitled to a TA, and the conversion decision is revised accordingly.

45645 - 45669

# Modified conditions after conversion 45670 - 45749

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## Introduction

45670 Once a conversion decision has come into effect, the claimant satisfies the conditions of entitlement to ESA if<sup>1</sup>

1. they satisfy the basic conditions of entitlement (see DMG 41012) **and**
2. a conversion decision was made that their existing award qualified for conversion to ESA, and that decision has come into effect **and**
3. where on conversion the claimant is entitled to

**3.1** an income-related allowance (see DMG 45781) **or**

**3.2** a contribution-based allowance (see DMG 45780) and later becomes entitled to an income-related allowance

they satisfy the income-related conditions of entitlement<sup>2</sup> (see DMG 41091) (but see DMG 45671 where the claimant is in education).

**Note:** see DMG 45675 and DMG 45855 where the claimant's entitlement to ESA(IR) on conversion is or is reduced to entitlement by virtue of a TA only.

1 WR Act 07, s 1(2) & (3); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2(a);

2 WR Act 07, Sch 1, Part 2

## **Disabled persons in relevant education and deaf or disabled students**

45671 Where the claimant was entitled to an existing award of IS on the basis that they are a

**1.** disabled qualifying young person in relevant education<sup>1</sup> **or**

**2.** disabled student<sup>2</sup> **or**

**3.** deaf student<sup>3</sup>

the condition of entitlement to an income-related allowance in DMG 41551 et seq and 45670 **3.** that the claimant is not receiving education does not apply following conversion to ESA(IR)<sup>4</sup>. See DMG Chapter 20 for further guidance on IS conditions of entitlement.

1 IS (Gen) Regs, reg 13(2)(b) or (bb); 2 Sch 1B, para 10; 3 Sch 1B, para 12;

4 WR Act, s 1(2)(c) & Sch 1, para 6(1)(g); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2(a)

45672 - 45673

## **Entitlement to ESA(IR) TA only**

45674 A claimant whose existing award of IS is converted to ESA(IR) is required to satisfy the condition of entitlement that they have no income, or an income which does not exceed the applicable amount<sup>1</sup> (see DMG 41091 **1.**). Following conversion, the TA is disregarded as part of the applicable amount solely for the purposes of calculating income<sup>2</sup>. For all other purposes, the TA becomes part of the prescribed amount of ESA<sup>3</sup>.

1 WR Act 07, Sch 1, para 6(1)(a); 2 para 6(1B); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 4A;

3 paras 12 & 13; ESA Regs, reg 67(1)(d) & 68(1)e



## Contribution conditions

45675 For the purposes of ESA(Cont), the contribution conditions (including the condition relating to youth) in DMG 41021 et seq do not apply<sup>1</sup>.

**Note:** See DMG 45880 et seq for guidance on where entitlement to ESA(Cont) is limited to the maximum number of days.

1 WR Act 07, Sch 1, paras 1-5; ESA Regs, reg 8-13; ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 9

45676 Where<sup>1</sup>

**1.** an award of ESA(Cont) made on conversion from IB or SDA is terminated **and**

**2.** a further claim for ESA is made **and**

**3.** the claimant has, or is treated as having, LCW within the 12 week linking period<sup>2</sup> ([see DMG 41111](#) et seq)

the contribution conditions do not apply<sup>3</sup>. DMs are reminded that, where an award is ended after application of the WCA, or because the claimant failed to return the questionnaire or failed to attend an examination, on a further claim made within six months the claimant cannot be treated as having LCW pending assessment<sup>4</sup> ([see DMG 42203](#)).

**Note:** See DMG 45880 et seq for guidance on where entitlement to ESA(Cont) is limited to the maximum number of days.

1 WR Act 07, Sch 1, paras 1 – 5; ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2 para 9; 2 ESA Regs, reg 145(1);  
3 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1A); 4 ESA Regs, reg 30(2)(b)

## Permitted work

45677 Where a person's existing award is converted to ESA, the rules about exempt work for ESA apply as normal. But see DMG 45679 for exceptions.

45678 A claimant whose existing award is converted to ESA(IR) may see an increase in their benefit entitlement. This is because the income rules for permitted work in ESA are different from those for IS.

### Example

Iain is entitled to IS on the grounds that he is incapable of work. His applicable amount is £93.45. He works P/T for 12 hours a week earning £71.16. For the purposes of IfW rules, the DM has determined that this is supported permitted work. His earnings are taken into account for IS purposes with a £20.00 disregard, so that his IS entitlement is £42.29.

On conversion to ESA(IR), Iain is placed in the WRAG. His earnings are fully disregarded, as exempt work is not remunerative work. His ESA(IR) entitlement is £93.45, including a TA of £2.05.

45679 When considering whether any work done after the conversion decision takes effect is exempt work, for the purposes of PWHL specified work means<sup>1</sup>

**1.** PWHL under the ESA rules<sup>2</sup> (see DMG 41211 and 41251 - 41253)

**2.** PWHL under the IfW rules<sup>3</sup> (see DMG 13910 and 13920 - 13926).

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 11; 2 ESA Regs, reg 45(4) & (10);  
3 SS (IW)(Gen) Regs, reg 17(4)(a)

45680 This means that, except where DMG 45679 applies, a claimant who was already undertaking PWHL and had started a PWP under the IfW rules does not start a new PWP under ESA rules. The PWP for the existing award continues when that award is converted to ESA.

### **Example**

Abid is entitled to IB and started working for 10 hours with earnings of £59.30 a week on 7.2.11. The DM determines that he is doing PWHL, and his PWP begins on 7.2.11. From 10.8.11 his IB is converted to ESA. His PWP continues to 5.2.12.

45681 Where

**1.** the claimant

**1.1** has an existing award **and**

**1.2** is doing PW (PCA exempt)<sup>1</sup> **and**

**2.** the existing award is converted to ESA

the DM should consider whether the work is exempt work under the normal ESA rules - see DMG 41186 et seq. This is because there is no equivalent to PW (PCA exempt) for the purposes of ESA. If the work is PWHL, the claimant's PWP starts from the effective date of the conversion decision. See DMG 13911 et seq for guidance on PW (PCA exempt).

1 SS (IW)(Gen) Regs, reg 17(4)(b); reg 10

45682 - 45684

### **Right to reside - transitional protection**

45685 Where<sup>1</sup> a person is entitled to ESA

1. by virtue of the by virtue of prescribed legislation governing conversion of existing awards<sup>2</sup> (i.e. on conversion) **or**
2. because the person is treated as having LCW under a specific ESA reg<sup>3</sup> in the circumstances where the person has made and is pursuing an appeal against a conversion decision which includes a determination that the person does not have limited capability for work **and**
3. immediately before the effective date of the conversion decision ([see DMG 45481](#)) the person was entitled to one or another of the specified benefits for a continuous period of entitlement which started on or before 30.4.04.

that person is not subject to the right to reside test until the award ends.

**Note:** In DMG 45685 **3.** as long as entitlement is continuous, this can include periods of entitlement to different specified benefits. For example a period of IS followed without a break by JSA(IB) followed without a break by IS.

1 ESA (TP, HB & CTB)(EA)(No.2) Regs, Sch 2, para 27; 2 ESA (TP, HB & CTB)(EA)(No.2) Regs;

3 ESA Regs, reg 30

45686 Where

1. DMG 45685 has applied **and**
2. a repeat claim to ESA is made **and**
3. the PLCWs link because they are separated by less than 12 weeks

the repeat claim will not be subject to the right to reside test.

45687 - 45689

## Amounts payable

### ESA(Cont)

45690 A converted award of 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 by<sup>1</sup>

1. deciding the personal rate appropriate to the claimant<sup>2</sup> **and**
2. adding the amount of any component which the claimant is entitled to<sup>3</sup> (see DMG Chapters 44 and 54) **and**
3. deducting<sup>4</sup>

**3.1** any pension payments<sup>5</sup> **and**

**3.2** any PPF periodic payments<sup>6</sup> **and**

**3.3** any councillors' allowances<sup>7</sup> **and**

**4.** adding the amount of any TA (see DMG 45610 - 45618) which the claimant is entitled to<sup>8</sup>.

**Note 1:** See DMG 45880 et seq for guidance on where entitlement to ESA(Cont) is limited to the maximum number of days.

**Note 2:** See DMG 45465 for guidance on where no deduction is made for pension and PPF payments<sup>9</sup>.

1 WR Act 07, s 2; 2 s 2(1)(a); ESA Regs, reg 67(2); 3 reg 67(3) & 69; WR Act 07, 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 (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 12; 9 para 14

45691

## **ESA(IR)**

45692 The amount of ESA(IR) payable after conversion 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 amount<sup>1</sup>.

1 WR Act 07, s 4(1)

## **Applicable amount**

45693 A converted award of ESA(IR) is paid for the claimant and any partner or partners<sup>1</sup>. There is no amount for dependants. The applicable amount includes<sup>2</sup>

**1.** the claimant's personal allowance (this may include an amount for any partner or, in the case of a polygamous marriage, partners<sup>3</sup>) **and**

**2.** if appropriate

**2.1** premiums

**2.2** certain housing costs **and**

**3.** if appropriate

**3.1** the support component **or**

**3.2** the WRAC<sup>4</sup> **and**

**4.** if appropriate, the amount of any TA<sup>5</sup> (see DMG 45630 - 45634).

**Note:** See DMG Chapter 54 for guidance on amounts payable in special cases.

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

5 ESA Regs, reg 67(1)(d), reg 68(1)(e); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, paras 12 & 13

45694 - 45699

## Appeals

45700 Where a decision is not revised following mandatory reconsideration, the claimant has the right of appeal against the conversion decision<sup>1</sup>. This is treated as if it were a decision on entitlement to ESA made on a claim<sup>2</sup>.

**Note:** See DMG Chapters 03 and 06 for guidance on mandatory reconsideration and appeals.

1 SS Act 98, Sch 3 para 8E; ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1) & (2)(b);

2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(3)

45701 Where the claimant makes an appeal against a conversion decision which embodies a determination that they do not have LCW, the guidance in DMG Chapter 42 applies, including the action to take where the claimant reports a change in their health condition, **except** where the appeal is successful - see DMG 45704.

### Example

The DM decides that Robin's award of IB should not be converted to ESA following application of the WCA. Robin appeals to the FtT, and is awarded ESA pending the outcome of the appeal. Robin's health condition deteriorates and he is referred for a further WCA. The DM accepts the HCP's opinion that Robin has LCW, and awards the WRAC from week 14.

If the appeal is successful, the ESA award should be terminated as in DMG 45704. If it is dismissed, the ESA award continues as normal.

45702 Where a claimant appeals as in DMG 45700, they can be treated as having LCW as in DMG 42202 - 42204<sup>1</sup> and awarded ESA. See DMG 45710 for guidance about claims after an appeal. Note that this award is **not** a converted award of ESA. See DMG 45710 et seq for further details.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 10; ESA Regs, reg 30(3) & 147A

45703 If the appeal is against a decision that an existing award of IB or SDA does not qualify for conversion, the claimant is treated as having satisfied the contribution conditions in DMG 41022 et seq<sup>1</sup>.

1 ESA Regs, reg 147A(1A); WR Act 07, Sch 1, Part 1; ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 15

45704 Where the appeal is successful, the award of ESA made as in DMG 45701 is terminated from the first day of the benefit week following the date on which the Secretary of State is notified of the FtT's decision on the appeal<sup>1</sup>. The FtT's decision on conversion should be implemented as normal (see DMG Chapter 06 for guidance on implementing FtT decisions). This allows the claimant to be awarded a TA where appropriate.

**Note:** See DMG Chapter 42 for guidance on the action to take where a claimant was referred for a WCA after a change in their health condition, and no determination has been made before the appeal was allowed.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 15; ESA Regs, reg 147A(6)

45705 – 45709

## Claims

45710 A claim for ESA is not required where

1. the claimant has made and is pursuing an appeal against a conversion decision which embodies a determination that they do not have LCW<sup>1</sup> **or**
2. the claimant was entitled to ESA following conversion and has made and is pursuing an appeal against a later decision which embodies a determination that they do not have LCW<sup>2</sup>.

**Note 1:** The modified conditions of entitlement in DMG 45450 et seq do **not** apply. But see DMG 45703 for guidance on the contribution conditions. See DMG 53704 for the action to take if the appeal is successful.

**Note 2:** See DMG Chapter 42 for guidance on claims made after a determination that the claimant does not have LCW where no appeal is made.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 18(a); SS (C&P) Regs, reg 3(k)(i); 2 reg 3(k)(ii)

45711 DMs should note that where

1. the claimant's existing award does not qualify for conversion because they are treated as not having LCW<sup>1</sup> as in DMG 42222 - 42278 (failure without good cause to return the questionnaire or attend for medical examination) **and**

**2.** a claim for ESA is made

the modified conditions of entitlement in DMG 45450 et seq do **not** apply. For example, the claimant may need to satisfy the contribution conditions in DMG 41022 et seq.

1 ESA Regs, reg 22 & 23

45712 Where

**1.** an award is made as is DMG 45710 or 45711 **and**

**2.** the claimant is found to have LCW on application of the WCA

the normal rules about when the assessment phase ends in DMG Chapter 44 should be followed.

### **Example**

Hugh is entitled to IB and in the conversion phase. Following application of the WCA, the DM determines that Hugh does not have LCW, and his IB award does not qualify for conversion. Hugh makes an appeal against the conversion decision, and is awarded ESA(Cont) and (IR). He is treated as satisfying the contribution conditions.

Later Hugh's condition deteriorates following a stroke. He is referred for a WCA, and the DM determines that Hugh has LCW and LCWRA. Hugh's award of ESA is superseded to include the support component from week 14.

### **Payments**

45713 Payment issues relating to the time and manner of payment of any TA should be determined as if the TA is included in an award of ESA<sup>1</sup>. See the guidance in DMG Chapter 08.

1 ESA (TP, HB & CTB)(EA) Regs, Sch 2, para 19; SS (C&P) Regs, reg 26C

45714

### **Changes to be notified**

45715 The requirement for the claimant or appointee to tell the Secretary of State of any changes of circumstances which they might reasonably be expected to know might affect

**1.** the continuance of entitlement to benefit **or**

**2.** the payment of benefit

as soon as reasonably practicable after the change occurs is modified to include changes which might

affect the amount of any TA to which the claimant is entitled<sup>1</sup>. See DMG 04150 - 04156 and DMG 09248 for further guidance.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 20; SS (C&P) Regs, reg 32(1B)

45716 - 45719

## **Third party deductions**

45720 Where it is converted from an existing award, ESA including any TA as in DMG 45600 et seq is a specified benefit for the purposes of third party deductions<sup>1</sup>. See DMG Chapter 46 for guidance on third party deductions. See also DMG 45565 et seq for guidance on relevant deductions.

1 ESA (TP, HB & CTB) (EA) Regs, Sch 2, paras 21- 25; SS (C&P) Regs, Sch 9

45721 Where a deduction is being made from an existing award immediately before the effective date of the conversion decision, that deduction is treated as a deduction from ESA where it is converted from an existing award with effect from the date of the new award<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) Regs, Sch 2, paras 21-25; SS (C&P) Regs, Sch 9 & 9B; Community Charges (Deductions from IS) (Scotland) Regs 89; Community Charges (Deductions from IS)(No. 2) Regs 90; Fines (Deductions from IS) Regs 92; Council Tax (Deductions from IS) Regs 93

45722 - 45729

## **What provisions no longer apply when a conversion decision is made**

45730 Once a conversion decision has been made, the law relating to

- 1.** entitlement to IB (including IBLT for widows and widowers)<sup>1</sup> (see DMG Chapter 56)
- 2.** entitlement to SDA<sup>2</sup> (see DMG Chapter 57)
- 3.** IS on the grounds of disability<sup>3</sup> (see DMG Chapter 20)
- 4.** TA paid to IS claimants on conversion from Supp B<sup>4</sup> (see DMG Chapter 36)
- 5.** transitional awards of IBLT paid to IB claimants on conversion from SB and IVB<sup>5</sup> (see DMG Chapter 55)
- 6.** days and periods of incapacity for work, including the linking rules<sup>6</sup> (see DMG 56255 et seq)

no longer applies to the claimant from the effective date of the conversion decision<sup>7</sup>.



1 SS CB Act 92, s 30A, 40 or 41; 2 s 68; 3 IS (Gen) Regs, reg 13(2)(b) or (bb); Sch 1B, para 7(a) or (b),  
10, 12 or 13; 4 IS (Trans) Regs; 5 IB (Trans) Regs; 6 SS CB Act 92, s 30C;  
7 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 22

45731 The effect of DMG 45730 is that, whether or not their existing award qualified for conversion, the claimant cannot make a claim for IB, SDA or IS on the grounds of disability, once the conversion decision has been made.

45732 - 45739

### **Other legislation that applies after conversion**

45740 See the Appendix to this Chapter for a list of Acts and Regulations that apply after an existing award has been converted to ESA<sup>1</sup>. This enables other matters to be determined after conversion, such as whether a new deduction should be applied.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(2); Sch 3

45741 - 45749

# Changing the conversion decision 45750 - 45799

[Changes before the effective date 45750 - 45769](#)

[Changes after the effective date 45770 - 45799](#)

## Changes before the effective date

45750 DMG 45751 applies where

**1.** there is a change of circumstances or other relevant event which

**1.1** would have been relevant to the existing award **and**

**1.2** occurred before the effective date of a conversion decision **and**

**2.** the change is notified on or after the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 17

45751 Where DMG 45750 applies the DM must

**1.** treat the existing award which was

**1.1** converted as in DMG 45550 **or**

**1.2** terminated as in DMG 45520

as if it had not been converted or terminated<sup>1</sup> **and**

**2.** treat the termination of entitlement to incapacity credits as if it had not been terminated<sup>2</sup> **and**

**3.** treat the termination of the DP as in DMG 45526 and DMG 45556 as if it had not been terminated<sup>3</sup>  
**and**

**4.** take account of the change of circumstances or relevant event when considering whether to revise or supersede any decision relating to the existing award which was the subject of the conversion decision<sup>4</sup>  
**and**

**5.** if appropriate, revise or supersede the decision relating to the existing award<sup>5</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 17(a); 2 reg 17(b); 3 reg 17(c); 4 reg 17(d); 5 reg 17(e)

45752 Where DMG 45751 **5.** applies, the DM must

- 1.** consider whether to revise or supersede the conversion decision<sup>1</sup> **and**
- 2.** in an appropriate case, revise or supersede the conversion decision<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 17(f); 2 reg 17(g)

45753 Where following the conversion decision the claimant's existing award was

- 1.** converted to ESA (see DMG 45550) **or**
- 2.** terminated (see DMG 45520)

it is not reinstated pending determination of whether the decision relating to that award should be revised or superseded.

45754 - 45759

### **Change in claimant's physical or mental health condition**

45760 Where

- 1.** the claimant's existing award is

**1.1** converted to ESA (see DMG 45550) **or**

**1.2** terminated (see DMG 45520) **and**

- 2.** the claimant notifies that

**2.1** he is suffering from a new physical or mental health condition **or**

**2.2** his existing condition has significantly worsened

the action to take depends on when the change occurred and whether the existing award was converted or terminated.

45761 Where

- 1.** the existing award was converted **and**
- 2.** the change occurred before the conversion decision was made **and**
- 3.** the claimant was placed in the WRAG

the DM should consider whether the claimant has or is treated as having LCWRA, and refer to Medical

Services where appropriate. If the claimant is placed in the support group, the conversion decision is revised<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1)(a) & Sch 2, para 25A(1)(c); SS CS (D&A) Regs, reg 3(9)(a)

45762 Where

**1.** the existing award was converted **and**

**2.** the change occurred

**2.1** after the conversion decision was made **and**

**2.2** before the effective date **and**

**3.** the claimant was placed in the WRAG

the DM should consider whether the claimant has or is treated as having LCWRA, and refer to Medical Services where appropriate. If the claimant is placed in the support group, the conversion decision is superseded from the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1)(a) & Sch 2, para 25A(2); SS CS (D&A) Regs, reg 6(2)(a)(i)

45763 Where

**1.** the existing award was terminated **and**

**2.** the change occurred before the conversion decision was made

the DM should consider whether the WCA should be applied again to establish whether the claimant has or is treated as having LCW. Where the claimant is found to have LCW, the conversion decision is revised<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1)(a) & Sch 2, para 25A(1)(c); SS CS (D&A) Regs, reg 3(9)(a)

45764 Where

**1.** the existing award was terminated **and**

**2.** the change occurred after the conversion decision was made but before the effective date

the claimant may make a claim for ESA under the normal rules (see DMG Chapter 42).

45765 Where a claim is made as in DMG 45764, the claimant may not satisfy the contribution conditions in DMG 41022 et seq.

**Note:** see DMG 45700 et seq where the claimant makes an appeal against the conversion decision.

45766 - 45769

## **Changes after the effective date**

45770 The conversion decision can be revised or superseded after its effective date in accordance with the modified conditions set out at DMG 45670 et seq<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 16(1)(a) & Sch 2

45771 These modified provisions also apply when making a determination in relation to a claimant's entitlement or continuing entitlement to a converted award of ESA<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 16(1)(b)

45772 Where DMG 45770 - 45771 applies, the conversion decision is treated as if it were a decision made on a claim for ESA<sup>1</sup>.

**Note:** see DMG 45752 for revision of a conversion decision for a change which occurs before its effective date.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 16(3)

45773 - 45779

## **Meaning of contributory allowance**

45780 The definition of contributory allowance<sup>1</sup> is modified to mean an award of ESA(Cont) which has been converted from an existing award of IB or SDA<sup>2</sup>. This includes any TA to which the claimant may be entitled on conversion from IB or SDA.

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

## **Meaning of income-related allowance**

45781 The definition of an income-related allowance<sup>1</sup> is modified to mean an award of ESA(IR) which has been converted from an existing award of IS<sup>2</sup>. This includes any TA to which the claimant may be entitled on conversion from IS.

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

45782 - 45799



# Reducing the transitional addition 45800 - 45839

[General rule 45800 - 45819](#)

[Child dependant increase 45820 - 45824](#)

[Adult dependant increase 45825 - 45839](#)

## General rule

45800 The TA is reduced (but not below nil) by the aggregate of relevant increases in the amount of ESA payable which occur on or after the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 18(1)

## Meaning of relevant increase

45801 For ESA(Cont), a relevant increase<sup>1</sup> is an increase in the claimant's prescribed amount of ESA including the appropriate component<sup>2</sup> (see DMG 44029). But see DMG 45810 for excluded increases.

**Note:** Where an ESA(Cont) claimant later becomes entitled to ESA(IR), this is not a relevant increase, because prescribed amounts for ESA(Cont) do not include amounts for partners or premiums.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 18(2)(a); 2 ESA Regs, reg 67(2)(a) & (3) & Sch 4, para 1(1)

## Example

Anita is entitled to ESA(Cont) including the WRAC on conversion from IB which included an age-related addition. Her converted award is £91.40 with a TA of £15.00. Following an accident, Anita is unable to walk, and her ESA award is superseded to include the support component, an increase of £5.45. Her TA is reduced by the same amount to £9.55. Anita's overall benefit entitlement remains £106.40.

On a further application of the WCA, Anita's condition has improved and her ESA award is superseded to award her the WRAC, a reduction of £5.45. Her TA remains £9.55, and her overall benefit entitlement is reduced to £100.95.

45802 For ESA(IR), a relevant increase<sup>1</sup> is an increase in

1. the amount prescribed for the claimant, and their partner if they have one
2. the appropriate component **and**

3. any premium they may be entitled to<sup>2</sup> (see DMG 44035 - 44036).

**Note:** where the claimant is awarded a premium, and their ESA(IR) award did not previously include a premium, this is a relevant increase.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 18(2)(b); 2 ESA Regs, reg 67(1)(a) & (b) & (3) or 68(1)(a)-(c)

### Example

Hans is entitled to an award of ESA(IR) of £93.45 converted from IS which includes a TA of £2.05. He is joined by his partner Klaus. Hans' ESA(IR) entitlement is increased to £128.45, and his TA is reduced to nil.

45803 - 45809

### Excluded increases

45810 The TA is not reduced where the increase of the ESA amount is

1. any increase which applies to the benefit week beginning with the effective date<sup>1</sup> **and**

2. any increase which follows the reversal on revision or appeal of a decision that the claimant's entitlement to the support component is reduced to the WRAC<sup>2</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 18(3)(a); 2 reg 18(3)(b)

### Example

Berni is entitled to ESA(Cont) and (IR) of £159.50 for herself and her partner which includes an ESA(Cont) TA of £5.70. She is in the support group. Following a further application of the WCA, the DM decides to reduce the ESA award to £128.70 following a determination that Berni no longer has LCWRA. Her TA is not affected. On appeal the DM's decision is set aside by the FtT, which reinstates the support component. The TA is not reduced even though the amount of ESA is increased.

45811 Any increase in housing costs is **not** a relevant increase, and does not have the effect of reducing a TA.

45812 Where the award of ESA(IR) is increased because the claimant's partner's earnings decrease, this does not have the effect of reducing a TA.

45813 - 45819

### Child dependant increase

45820 Where



**1.** on the day before the effective date of the conversion decision the claimant's existing award of IB or SDA included a CDI<sup>1</sup> **and**

**2.** on or after the effective date is entitled to an award of ESA which includes a TA<sup>2</sup>

the TA is reduced as in DMG 45821 when entitlement to CHB for the child or QYP for whom the CDI is payable terminates<sup>3</sup>. See DMG Chapter 16 for guidance on CDIs.

1 SS CB Act 92, s 80 & 90 as saved; 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 19(1); 3 reg 19(2)

45821 Where DMG 45820 applies, the TA is reduced (but not below nil) by an amount equal to the amount of the claimant's CDI payable for that child or qualifying young person on the day before the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 19(3)

### **Example**

Declan's existing award of IB includes an age addition of £15.00 and a CDI of £8.10 for his daughter Niamh. On conversion, he is entitled to ESA(Cont) including a TA of £13.10. Niamh reaches age 18 and starts higher education. Declan's TA is reduced by £8.10, the amount of CDI in payment at the point of conversion.

45822 - 45824

### **Adult dependant increase**

45825 Where

**1.** on the day before the effective date of the conversion decision the claimant's existing award of IB or SDA included an ADI **and**

**2.** on or after the effective date is entitled to an award of ESA which includes a TA<sup>1</sup>

the TA is reduced as in DMG 45827 where any of the circumstances in DMG 45826 applies<sup>2</sup>.

**Note:** See DMG Chapter 16 for guidance on ADIs for IB and SDA awards.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 20(1); SS CB Act 92, s 86A & 90;

2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 20(2)

45826 The circumstances for reducing the TA are where<sup>1</sup>

**1.** the adult dependant dies **or**

**2.** the claimant and the adult dependant permanently separate **or**

**3.** the claimant's or the adult dependant's entitlement to CHB ends **or**

**4.** the adult dependant is awarded a personal benefit<sup>2</sup> which is the same as or greater than the amount of ADI to which the claimant was entitled immediately before the effective date of the conversion decision.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 20(2); 2 SS (OB) Regs

45827 Where DMG 45826 applies, the TA is reduced (but not below nil) by an amount equal to the amount of the ADI payable on the day before the effective date<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 20(3)

### **Example**

Cameron is entitled to IB of £159.50 weekly which includes an age addition of £15 and ADI of £53.10 for his wife Catriona. He is not entitled to IS. From June 2011 his award is converted to ESA(Cont) of £159.50. This includes a TA of £68.10 (IB of £159.50 - ESA(Cont) of £91.40). Their son Donald leaves non-advanced education in December 2011 and Catriona's entitlement to CHB ends. Cameron's TA award is reduced by £53.10, the amount of ADI in payment at the date of conversion, to £15. Cameron's entitlement to ESA(Cont) is now £106.40, including a TA of £15. The DM also determines that Cameron is entitled to ESA(IR) of £128.70, but this does not reduce the TA. Cameron's ESA award is made up of ESA(Cont) of £106.40 and ESA(IR) of £22.30.

45828 DMs should note that where

**1.** an award of IS which included an amount for the claimant's partner is converted to ESA(IR) **and**

**2.** the award of ESA(IR) includes a TA **and**

**3.** the partner leaves the household or dies **and**

**4.** the award of ESA(IR) is reduced

the TA is **not** reduced as in DMG 45826 – 45827.

45829 - 45839

# Termination of the transitional addition 45840 - 45879

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[Exceptions 45845 - 45879](#)

## Introduction

45840 Entitlement to a TA terminates

1. where the TA is reduced to nil as in DMG 45800 et seq **or**
2. where the claimant's entitlement to ESA ends (but see DMG 45845 for exceptions)

whichever is the earlier<sup>1</sup>.

**Note:** DMs should note that a TA is part of the appropriate ESA contributory or income-related allowance. See DMG 45780 - 45781 for further guidance.

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

## Example

Wesley is entitled to IB, which includes an age addition, He is not entitled to IS. His award of IB is converted to ESA(Cont). His award is made up of the personal allowance, the WRAC, and a TA. Wesley's award of ESA(Cont) is terminated after 365 days. As he has no income, Wesley is entitled to ESA(IR) when the ESA(Cont) award is terminated. The TA is part of his entitlement to ESA(Cont) only, and terminates on the same day as entitlement to ESA(Cont).

45841 For the purposes of DMG 45840 **2.**, entitlement to ESA includes an award made on conversion from an existing award, or a later award of ESA which includes a TA as in DMG 45846 et seq.

45842 - 45844

## Exceptions

### Entitlement to ESA reinstated on revision or appeal

45845 Where a decision ending entitlement to a converted award of ESA is reversed on revision or appeal, entitlement to the TA may be reinstated<sup>1</sup>. See DMG 45853 for guidance on calculation of the TA where it is reinstated.

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

## Example

Maurice's converted award of ESA, which includes a TA of £15.00, is terminated on supersession after he is found not to have LCW following application of the WCA. His appeal to the FtT is successful, and his award of ESA including the TA is reinstated.

## Entitlement to ESA awarded under linking rules

45846 Where entitlement to a TA ends because the award of ESA is terminated (see DMG 45840 **1.**), the TA is treated as suspended<sup>1</sup> rather than terminated where a claim for ESA is made within the 12 weeks or 104 weeks linking period (see DMG Chapter 41), and the PLCW links with a PLCW on a converted award of ESA<sup>2</sup>. See DMG 45853 for calculation of the TA after the suspension is lifted.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 21(3); 2 reg 21(3), (4) & (5); ESA Regs, reg 145(1) or (2)

45847 In 12 week linking cases, the TA is treated as suspended<sup>1</sup> where

**1.** DMG 45846 applies **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, LCW<sup>2</sup> **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 WCA<sup>3</sup>.

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 WRAC 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 WRAC and the TA from 25.7.12.

## Example 2

Clifford's award of IS was converted to ESA(IR) including the WRAC 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, but does not have LCWRA. The DM revises the awarding decision to pay the WRAC and the TA from 26.6.12.

45848 If the new entitlement is a case where the claimant is a WTB<sup>1</sup>, the TA is awarded from the date entitlement begins. For all other cases, the TA is only awarded if the claimant is found to have LCW, or is treated as having LCW, other than as in DMG 42201<sup>2</sup>.

1 ESA Regs, reg 148; 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(5)(c)

### **Example**

Ben has an award of ESA(Cont) including the WRAC, and a TA of £15 weekly on conversion from IB. He is treated as not having LCW after starting work which is not exempt work. Two months later Ben is injured, and claims ESA again as a WTB. He is treated as having LCW while submitting doctor's notes, and is entitled to a TA of £15 from the date entitlement began. On application of the WCA Ben is found to have LCW, and is placed in the WRAG. The decision awarding ESA is revised to award the WRAC from the date entitlement began.

### **Converted award of ESA(Cont)**

45849 From 1.5.12, where the conditions in DMG 45850 are satisfied, the TA awarded in relation to a converted award of ESA(Cont) is treated as suspended<sup>1</sup>.

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

45850 DMG 45849 applies where

- 1.** the claimant was entitled to an award of ESA(Cont) on conversion from an award of IB or SDA **and**
- 2.** ESA(Cont) including the TA ends as in DMG 45886 **and**
- 3.** a further claim for ESA is made where the PLCW is within 12 weeks of an earlier PLCW (see DMG Chapter 41) **and**
- 4.** in relation to the later claim, the DM determines that the claimant has, or is treated as having, LCWRA<sup>1</sup>.

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

### **ESA(IR) - Partner starts work**

45851 Where

- 1.** entitlement to ESA(IR) and the TA ended solely because the claimant's partner began remunerative work<sup>1</sup> **and**
- 2.** the claimant subsequently becomes entitled to ESA(IR) again because their partner is no longer in

remunerative work **and**

**3.** that entitlement begins within 12 weeks of the previous entitlement to ESA(IR)

the TA is treated as suspended.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(6); WR Act 07, Sch 1, para 6(1)(f)

45852 DMG 45851 applies whether or not the claimant remained entitled to ESA(Cont) after entitlement to ESA(IR) ended. See DMG 45853 for calculation of the TA after the suspension is lifted.

### **Example**

Louis' existing awards of IB and IS for himself and his partner Ella were converted to an award of ESA(Cont) and (IR). His ESA(Cont) entitlement is £91.40 + TA of £15.00. His ESA(IR) entitlement is £22.30 + TA of £13.90. Louis' overall ESA entitlement is £142.60. Ella starts F/T work, and Louis' ESA is reduced so that he is entitled to ESA(Cont) and TA of £106.40. His entitlement to ESA(IR) and ESA(IR) TA terminates.

Ella's job comes to an end after only 10 weeks. Louis' award of ESA(Cont) is superseded to award ESA(IR) of £36.20 including the TA of £13.90.

### **Rate of TA payable following lifting of suspension**

45853 Where DMG 45845 - 45852 applies, the TA is payable at the same rate as when entitlement to ESA ended, unless it would otherwise have been reduced as in DMG 45800 et seq<sup>1</sup>.

1 ESA (TP, HB & CTB)(EA)(No. 2) Regs, reg 21(7)

### **Example**

Katie is entitled to a converted award of ESA(Cont) which includes a TA of £15.00. Her award is terminated when she starts F/T work in March 2011. She claims ESA in August 2011 as a WTB. Katie's TA is regarded as suspended during the break in entitlement, but is reduced to take account of uprating in April 2011.

45854

### **ESA(IR) - income exceeds entitlement**

45855 Where the claimant

**1.** was entitled to ESA(IR) on conversion **and**

**2.** following a change of circumstances ceases to satisfy the condition that they have

**2.1** no income **or**

**2.2** an income which does not exceed the applicable amount (excluding the amount of any TA)<sup>1</sup>  
**and**

**3.** otherwise remains entitled to a TA

the claimant is treated as satisfying the income rules, and they remain entitled to ESA(IR) with the amount of the TA only<sup>2</sup>. See also DMG 45675.

1 WR Act 07, Sch 1, para 6(1)(a); 2 ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 4A;  
WR Act 07, Sch 1, para 6(1C)

### **Example**

Jan is entitled to IS of £142.60 weekly on the grounds of incapacity for work for herself and her partner Rory. Jan's award is converted to ESA(IR) of £142.60, made up of ESA(IR) of £128.70 and an ESA(IR) TA of £13.90. Rory starts P/T work for 20 hours weekly earning £155 a week. Allowing for a £20.00 disregard, Jan's income exceeds the ESA(IR) applicable amount of £128.70, but has no effect on the TA. Jan's entitlement to ESA(IR) is reduced to £13.90.

45856 – 45879

## **Duration of ESA(Cont) 45880 - 45999**

[Introduction 45880 - 45886](#)

[Which days are counted 45887](#)

[Which days are not counted 45888](#)

[Claimant entitled to ESA\(Cont\) and IB 45889](#)

[Claimant also entitled to ESA\(IR\) 45890](#)

[Repeat claim for ESA\(Cont\) 45891 - 45899](#)

[Appeal against time limit decision 45900 - 45999](#)

### **Introduction**

45880 From 1.5.12 entitlement to ESA(Cont) for claimants who are not in the support group will be limited to a period of no more than 365 days<sup>1</sup>. This includes awards of ESA(Cont) made under the IB Reassessment rules<sup>2</sup>.

See DMG Chapter 41 for guidance on duration of ESA(Cont) for awards not made under the IB Reassessment rules, including the youth conditions.

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

45881 - 45885

45886 From 1.5.12 entitlement to ESA(Cont) converted on reassessment from an existing award of IB or SDA is limited to a period of 365 days<sup>1</sup>.

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

### **Which days are counted**

45887 Days of entitlement to ESA(Cont) following conversion before and after 1.5.12 are counted towards the period of 365 days, including linked periods<sup>1</sup>. The 365 day count begins from the effective date of the conversion decision. But see DMG 45889 for cases where the claimant is entitled to ESA(Cont) and IB at the same time.

1 WR Act 07, s 1A(5); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2A



## Which days are not counted

45888 Days where the claimant is

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

are **not** included in the period at DMG 45886<sup>3</sup>.

**Note:** See DMG Chapter 41 for guidance on where the claimant's health condition improves.

1 WR Act 07, s 24(4); 2 s 2(1)(b); 3 s 1A(4); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2A

## Claimant entitled to ESA(Cont) and IB

45889 DMG 45220 et seq gives guidance on cases where, following a successful appeal, a claimant may be entitled to both IB and ESA(Cont). Where

1. the ESA(Cont) award is terminated **and**
2. the IB award is converted to an award of ESA(Cont) as in DMG 45513 and 45551

the period of ESA(Cont) entitlement before the effective date of the conversion decision does not count towards the period in DMG 45886. The days may count for the purpose of any subsequent entitlement to ESA(Cont) (see DMG Chapter 41).

## Claimant also entitled to ESA(IR)

45890 Where the ESA(Cont) claimant

1. is also entitled to ESA(IR)<sup>1</sup>**or**
2. would be entitled to ESA(IR) but for the rules about amounts payable<sup>2</sup> (see DMG Chapter 44) **or**
3. would be entitled to ESA(IR) once entitlement to ESA(Cont) terminates

the DM may need to reassess entitlement from the date that ESA(Cont) terminates. This includes pending appeal awards and converted awards of ESA(Cont).

1 WR Act 07, s 6(5); 2 s 6(4)

### Example 1

Mervyn is entitled to ESA(Cont) and ESA(IR), including the WRAC, for himself and his partner Keira. His

entitlement to ESA(Cont) ends on 24.5.12 as it reaches 365 days. Mervyn and Keira have no other income. As the overall amount of ESA Mervyn is entitled to does not change once ESA(Cont) ends, the DM does not supersede the decision awarding ESA.

## **Example 2**

Aisha is entitled to ESA(Cont) including the WRAC. Her underlying entitlement to ESA(IR) is less than the amount of ESA(Cont) awarded. Aisha's entitlement to ESA(Cont) ends on 30.4.12 as she has been entitled since 2.3.11, which is more than 365 days as at 1.5.12. She has an occupational pension of £55 a week which is disregarded for the purposes of ESA(Cont) as it is below the £85 threshold. She has no other income, and there have been no changes since the award of ESA(Cont) began. When her ESA(Cont) terminates, the DM supersedes the last awarding decision to award ESA(IR), taking the occupational pension into account as income.

## **Repeat claim for ESA(Cont)**

45891 Where an award of ESA(Cont) which was converted from an award of IB or SDA terminates as in DMG 45886, any further claim must be based on the normal conditions of entitlement<sup>1</sup>. The claimant cannot become entitled to a further award of ESA(Cont) under the conversion exercise unless

- 1.** a further claim is made which links to the last day of the converted award<sup>2</sup>**and**
- 2.** in respect of that claim, the DM determines that the claimant has, or is treated as having, LCWRA.

Otherwise, any further claim must be based on the normal conditions of entitlement, including the contribution conditions where appropriate, and must be in respect of a PLCW which does not link to the time-expired award. But see DMG Chapter 41 where the claimant's health condition deteriorates.

1 WR Act 07, s 1A(3); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 2, para 2A; 2 reg 16(1A); ESA Regs, reg 145(1)

45892 – 45899

## **Appeal against time limit decision**

45900 Claimants have a right of appeal against a decision terminating ESA(Cont), including converted awards, after 365 days, and are entitled to argue on such an appeal that the award should be extended on the grounds that, on the effective date of that decision, they had LCWRA.

45901 The DM is not required to make a further determination about LCWRA when making a decision terminating ESA(Cont) after 365 days. They can rely on any previous determination made that the claimant does not have LCWRA.

**Note:** See DMG Chapter 41 for guidance where the claimant states that their condition has deteriorated

since the previous determination was made.

45902 The FtT is at liberty to consider whether the claimant has LCWRA when hearing an appeal against the decision to terminate ESA(Cont), even if the issue is not raised by the appeal, provided that the DM is given the opportunity to consider any further evidence.

45903 The DM can apply for an appeal against a decision to terminate ESA(Cont) to be struck out where there is no dispute about the calculation of the 365 days, and no arguments are made about whether the claimant is a member of the support group. See DMG Chapter 06 for guidance about strike out.

### **Example 1**

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

### **Example 2**

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

45904 - 45999

## **Appendix - Enactments that apply after an existing award is converted to ESA (DMG 45740)**

SS (Recovery of Benefits) Act 97

SS Act 98 Part 1 Chapter 2

WR Act 07 Part 1

Acts amended by WR Act 07 Sch 3

SS (Benefit) (Married Women and Widows Special Provisions) Regs 1974

SS (Ben) (Members of the Forces) Regs

SS (Airmen's Ben) Regs

SS (Mariners' Ben) Regs

SS (Credits) Regs 1975

SS (Med Ev) Regs

SS (OB) Regs

SSP (Gen) Regs

Statutory Maternity Pay (General) Regs 1986

IS (Gen) Regs

SS (C & P) Regs

SF (Recovery by Deductions from Benefits) Regs 1987

SS (POR) Regs

SFCWP (Gen) Regs

CC (Deductions from IS) (No. 2) Regs 1990

CS (MAP) Regs

CS (MASC) Regs

Fines (Deductions from IS) Regs 1992

CT (Deductions from IS) Regs 1993

JSA Regs

SS Benefits (Maintenance Payments and Consequential Amendments) Regs 1996

EP (Recoupment of JSA and IS) Regs

CS Departure Direction and Consequential Amendments Regs 1996

SS CS (D&A) Regs

SS (I&A) Cql Amdts Regs

SFWFP Regs

CS (MCSC) Regs

CS (Variations) Regs 2001

CS (Maintenance Calculation Procedure) Regs 2001

SS (Crediting etc) Regs

Children (Leaving Care) SS Benefits Regs 2001

SS (Loss of Benefit) Regs

SPC Regs

SS (JPIfP) Regs

SS Hab Res Regs

Age-Related Payments Regs 2005

SFMFE (Gen) Regs

ESA Regs

ESA (TP, HB & CTB)(EA)(No. 2) Regs Part 3

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

# Appendix 2 - DMG Memo 11-18 - IB Reassessment – Arrears of ESA(IR)

Memo DMG 11/18

## IB REASSESSMENT – ARREARS OF ESA(IR)

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### INTRODUCTION

1 This memo gives guidance on payment of arrears of ESA(IR) to claimants whose awards of IB or SDA were converted to awards of ESA(Cont) only. It **replaces** Memo DMG 2/18 which is **cancelled** and should no longer be followed.

### BACKGROUND

2 This memo is issued following a recent Order by a three Judge panel of the UT on an application for

judicial review (“JR”)<sup>1</sup>.

1 DS v SSWP [2018] UKUT 270 (AAC)

3 The claimant’s award of IB had been converted to an award of ESA(Cont) only effective from 14.9.12. On 15.12.17 the claimant asked for the conversion decision to be revised for official error so as to include ESA(IR). The DM refused to revise for official error, and instead superseded for error of law to include ESA(IR) from 21.10.14. The claimant applied to the High Court for permission to JR the refusal to revise, and the application was transferred to the UT.

4 On 10.8.18 the UT granted permission to apply for JR, and allowed the JR claim by consent between the parties. The Secretary of State accepted that

1. ESA is a single benefit with two elements
2. no separate claim is required for each element
3. the DM is required to consider entitlement to both elements from the effective date when making a conversion decision and to gather information about the claimant’s financial circumstances
4. the failure to gather financial information was an official error, and the conversion decision should be revised from the effective date

5. SK v SSWP<sup>1</sup> (which held that a previous decision of the UT<sup>2</sup> showed that the conversion decision in SK v SSWP was erroneous in law) was itself erroneous in law.

1 CSE/33/18; 2 LH v SSWP [2014] UKUT 480 (AAC); [2015] AACR 14

5 The UT ordered that

1. the conversion decision arose from an official error **and**
2. SK v SSWP should not be followed.

6 The claimant in SK v SSWP has been granted permission to appeal to the Court of Session. The Secretary of State is seeking to agree a similar order in that case for the Court of Session to consider.

## **MAKING THE INITIAL CONVERSION DECISION**

7 Detailed guidance on conversion of awards of IS, IB and SDA is contained in [DMG Chapter 45](#).

8 Where the DM determines that

1. an award of IB or SDA qualifies for conversion to ESA **and**



2. the claimant is not entitled to IS

the DM **must** determine whether the claimant satisfies the financial conditions for ESA(IR) **before** making the conversion decision. Information should be gathered in the normal way, for example by issuing form ESA3 and allowing sufficient time for its return<sup>1</sup>.

**Note:** See DMG [45413 - 45414](#) for further details about obtaining information.

1 SS (C&P) Regs, reg 32(1) & (1A); ESA (TP, HB & CTB)(EA)(No. 2) Regs, Sch 1 para 13

9 If the claimant

1. does not return form ESA3 **or**

2. states that they do not wish to be assessed for entitlement to ESA(IR)

a record of this **must** be kept (see DMG [01302 and 01320](#)). The DM should make the conversion decision on the basis that, on the balance of probabilities (see DMG [01343 - 01345](#) and [01405](#)), the claimant is not entitled to ESA(IR).

## THE LEAP EXERCISE

10 Conversion decisions, where no evidence about the claimant's financial circumstances was requested **before** the decision was made, are being reviewed in a special exercise (called a Legal Entitlements and Administrative Practices (LEAP) exercise). As part of this exercise the claimant is asked to provide information relating to the ESA(IR) financial conditions<sup>1</sup>. Where the information indicates that the claimant satisfied the financial conditions from and including the effective date of the conversion decision, that decision should be revised for official error, and arrears of ESA(IR) paid accordingly.

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

11 If the financial conditions are satisfied from a later date, the normal supersession rules apply<sup>1</sup>. See DMG [Chapter 04](#) for further details.

1 SS Act 98, s 10; SS CS (D&A) Regs, regs 6 & 7 & Sch 3C

12 Until 31.7.18, decisions made as part of the LEAP exercise were made on the basis that the conversion decision could not be revised for official error, and instead were superseded for error of law effective from 21.10.14<sup>1</sup>.

1 SS Act 98, s. 27

13 These decisions will be looked at again as part of the LEAP exercise – see also paragraphs 15 and 16 where the claimant applies for mandatory reconsideration or has lodged an appeal.

## CLAIMANT APPLIES FOR ARREARS OF ESA(IR) – NON-LEAP CASES

14 The guidance in paragraphs 10 - 11 also applies in conversion cases where

1. entitlement to ESA(IR) was not considered when the conversion decision was made **and**
2. the claimant applies for and is entitled to arrears of ESA(IR) from
  - 2.1 the effective date of the conversion decision **or**
  - 2.2 a later date.

## DECISION MAKING AND APPEALS

### Request for mandatory reconsideration

15 Where a claimant applies for mandatory reconsideration of a decision made incorrectly as in paragraph 12, the DM should consider whether it should be revised for official error<sup>1</sup>, and replaced with a decision revising the conversion decision for official error.

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

### Appeals

16 Where an appeal has been lodged against a supersession decision made incorrectly as in paragraph 12, the decision under appeal should be revised as in paragraph 15 and the appeal lapsed<sup>1</sup>. See DMG [Chapter 06](#) for guidance on lapsing appeals.

1 SS & CS (D&A) Regs, reg 30

### Offset

17 Where a conversion decision is revised or superseded as in paragraphs 10 - 11 or 15 - 16, any ESA paid under the original conversion decision should be offset against arrears due<sup>1</sup>. See DMG [Chapter 09](#) for detailed guidance about offsetting.

1 SS (POR) Regs, reg 5(1), (2) & (6) Case 1

## EXAMPLES

### Example 1

Raheel's award of IB is converted to ESA(Cont) effective from 6.9.11 after it is determined that he has LCW. The DM does not consider whether he satisfies the ESA(IR) financial conditions. Raheel is also entitled to the middle rate of the care component of DLA and has no other income. He is single, lives alone, and has no carer. Raheel's award of ESA(Cont) terminates after 365 days, and he is awarded

ESA(IR) including the SDP from 6.9.12.

Raheel's case is reviewed as part of the LEAP exercise. The DM determines that Raheel satisfied the conditions for an award of the SDP at the effective date of the conversion decision. The conversion decision is revised for official error to include the SDP from 6.9.11, the effective date of the conversion decision.

### **Example 2**

Anna's award of IB is converted to ESA(Cont) effective from 20.6.12 after it is determined that she has LCW. The DM does not consider whether she satisfies the ESA(IR) financial conditions. On 17.9.13 following a routine WCA the DM determines that Anna has LCWRA. The conversion decision is superseded to include the support component from 17.9.13.

Anna's case is reviewed as part of the LEAP exercise. The DM determines that Anna's award of ESA(Cont) on 20.6.12 was the same amount as entitlement to ESA(IR), so that the ESA award is treated as an award of ESA(Cont) only, and no arrears of ESA(IR) are due from that date. However, when Anna was placed in the support group, she would have been entitled to the EDP. The decision made on 17.9.13 is revised for official error to include the EDP from 17.9.13, the effective date of the supersession.

### **Example 3**

Matt's award of IB is converted to ESA(Cont) effective from 17.7.11 after it is determined that he has LCW and LCWRA. The DM does not consider whether he satisfies the ESA(IR) financial conditions. On 17.9.12 Matt is awarded the highest rate care component of DLA. He is single, lives alone, and has no carer. He has no other income.

Matt's case is reviewed as part of the LEAP exercise. The DM determines that Matt satisfied and continues to satisfy the ESA(IR) financial conditions. The conversion decision is revised for official error to include the EDP from 17.7.11, the effective date of the conversion decision, and then superseded to include the SDP from 17.9.12 under the qualifying benefit rules.

### **Example 4**

Yvonne's award of IB is converted to ESA(Cont) effective from 14.3.13 after it is determined that she has LCW and LCWRA. The DM does not consider whether she satisfies the ESA(IR) financial conditions. Yvonne is also entitled to the highest rate care component of DLA, and lives with her husband Jack who is in F/T employment. Jack reduces his hours to 15 hours a week from 5.2.18.

Yvonne's case is reviewed as part of the LEAP exercise. The DM determines that Yvonne did not satisfy the ESA(IR) financial conditions at the effective date of conversion, so the conversion decision is not revised. Yvonne is entitled to a small amount of ESA(IR) once Jack's earnings reduced. As Yvonne did not report this at the time, the DM supersedes the conversion decision to include the couple rate, the EDP and SDP from the date the review action began.

## **Example 5**

Ross's award of IB is converted to ESA(Cont) effective from 9.10.13 after it is determined that he has LCW and LCWRA. The DM does not consider whether he satisfies the ESA(IR) financial conditions. Ross is also entitled to the enhanced daily living component of PIP. He is single, lives alone, and has no carer. He has no other income.

As part of the LEAP exercise, on 16.4.18 the DM supersedes Ross's award of ESA(Cont) to include the EDP and SDP from 21.10.14. Ross applies for mandatory reconsideration. The DM revises the decision dated 16.4.18 and the conversion decision for official error to include the EDP and SDP from 9.10.13.

## **ANNOTATIONS**

Please annotate the number of this memo (Memo DMG 11/18) against the following DMG paragraph:

DMG [45580 main heading](#)