



# Benefits Briefing

## Employment and Support Allowance

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### **What is Employment and Support Allowance?**

Employment and Support Allowance (ESA) is a new benefit replacing Incapacity Benefit (IB), Severe Disablement Allowance (SDA) and Income Support (IS) on grounds of incapacity for work. ESA forms part of the Government's plans for welfare reform contained in the Welfare Reform Act 2007. The Regulations which set out how ESA will work were published in March 2008. ESA itself will be introduced on October 27<sup>th</sup> 2008 and will initially apply to new claimants only.

### **Existing Incapacity Benefit, Severe Disablement Allowance and Income Support claimants**

If you are already in receipt of Incapacity Benefit (IB), Severe Disablement Allowance (SDA) or Income Support (IS) on grounds of incapacity for work prior to ESA being introduced, you will remain on that benefit for the time being. However, it is the Government's intention to migrate existing IB, SDA and IS claimants onto ESA, so that all claimants will eventually be brought under the same system. This process will take place over a period of time and will involve all existing claimants completing an action plan and participating in a number of work-focused interviews.

The December 2007 green paper 'Ready for Work: Full Employment In Our Generation' states that IB and IS claimants under 25 will become subject to mandatory Work-Focused Interviews and the Work Capability Assessment from 2009. In addition, the 2008 budget report states that from April 2010 all IB, SDA and IS claimants will be required to take the Work Capability Assessment (WCA).

### **How ESA will work**

ESA will be made up of two elements, a contributory element and an income-based element. To qualify all claimants will have to satisfy the following basic conditions of entitlement:

- be aged 16 or over and under pension age (currently 60 for women and 65 for men);
- be resident in Great Britain and not subject to immigration control;
- not be entitled to IS, Jobseeker's Allowance (JSA) or Statutory Sick Pay (SSP);
- have '**limited capability for work**' (see below).

and also satisfy:

- **either** the national insurance contribution conditions for contribution-based ESA
- **or** the means-test for income-based ESA.

### **Contribution-Based ESA - The National Insurance Contribution Rules**

Claimants over 20 must satisfy the following conditions:

- in one of the previous three tax years, have paid some Class 1 or 2 contributions to the value of 25 times the lower earnings limit; **and**
- in each of the two previous complete tax years, have paid or were credited with contributions to the value of 50 times the lower earnings limit.

The lower earnings limit is the lowest wage you can earn and have to pay national insurance contributions. The Department for Work and Pensions (DWP) will treat as actual national insurance payments any credits that are earned as a carer. They may also treat a claimant as meeting the contribution conditions if s/he was getting the disability element of Working Tax Credit.

Contact your Jobcentre Plus office, or HM Revenue and Customs (HMRC) for further information.

Claimants under 20 can qualify for contribution-based ESA without satisfying the above national insurance conditions, as long as they:

- have had limited capability for work for a period of at least 196 days (days before their 16<sup>th</sup> birthday can count towards this);
- are not in full-time education;
- are not subject to immigration control and satisfy 'basic conditions' relating to residence and presence in Great Britain.

Under certain circumstances, the age limit can be extended to 25 for claimants who are in education or training at the time they turn 20.

### **Income-Based ESA - The Qualifying Conditions**

In order to qualify for income-based ESA the claimant must:

- have capital below £16,000;
- have no income, or income which does not exceed her/his applicable amount;
- not be in remunerative work, or have a partner in remunerative work;
- not be entitled to Pension Credit, or have a partner who is entitled to Pension Credit, IS, income-based JSA, or income-based ESA;
- not be 'receiving education'. **N.B. claimants who are in education will not be excluded from entitlement to income-based ESA if they are receiving Disability Living Allowance.**

As is currently the case with IS, where the claimant is part of a couple, the DWP will take the income and savings of both partners into account when assessing entitlement to income-based ESA.

### **ESA Rates**

All claims will begin with a 13-week assessment phase during which the claimant will be assessed for her/his capability for work, by means of the Work Capability Assessment (WCA). During this phase all claimants over 25 will be paid at an 'assessment phase rate' equivalent to the rates for JSA, currently £60.50 per week. Claimants under 25 will be paid at a reduced rate, again in line with the rates for those under 25 claiming JSA, currently £47.95 per week.

At the end of the 13-week assessment phase, dependent upon which group the claimant falls into, s/he will be paid an additional element on top of the basic element.

- work-related activity group will be paid an additional £24.00 per week
- support group will be paid £29.00 per week.

Please note if the claimant is part of a couple s/he will not be paid any additional amounts.

Following the 13-week assessment phase, claimants under 25 will no longer be paid ESA at the reduced rate, but will be paid the standard basic rate of £60.50 plus either the work-related activity element or the support group element.

### **The Work Capability Assessment (WCA)**

The WCA replaces the current Personal Capability Assessment (PCA) and will be carried out by a health care professional who works for the DWP.

1. To determine whether the claimant has limited capability for work (i.e. will s/he remain on ESA).
2. To determine whether the claimant has limited capability for work-related activity (i.e. will s/he be placed in the support group or the work-related activity group).
3. To perform a work-focused health related assessment for those claimants who fall into the work-related activity group.

### **The Assessment of Limited Capability for Work (ALCW)**

The claimant must satisfy the DWP that s/he has limited capability for work. The assessment is based on three forms of evidence:

- A doctor's statement or other medical evidence;
- A medical questionnaire;
- Any additional information the DWP may request, e.g. a medical assessment by a doctor or a health care professional.

The ALCW is based on a points scoring system similar to the PCA, currently applied to most IB and IS claimants. Claimants are assessed

according to different areas of physical and mental activity. For each of these areas there is a series of 'descriptors', each of which carries a particular point score. Not all areas of activity are relevant to all claimants. In order to pass the test, and be designated as having limited capability for work, a claimant must score a total of 15 points or more from either the physical activities, the mental activities, or both.

There are some important differences between the ALCW and the old PCA, as follows:

- In the ALCW there are no longer any 'descriptors' carrying a score of 3 points which will make it more difficult for claimants to combine 'descriptors' in order to achieve the total of 15 points. As a result those who are registered partially sighted may struggle to pass on the grounds of visual impairment alone.
- The mental health section of the ALCW is much larger and more detailed than that of the PCA.
- The ALCW 'descriptors' previously listed on the form IB50, are not all listed on the new ESA50 questionnaire sent out to customers. The ESA50 form is still divided into sections on physical and mental activity but rather than containing a straightforward list of 'descriptors' each with its own tick box, these sections now comprise a list of the types of problems which a customer might experience, alongside general rather than specific tick boxes.

The last point is of particular importance as it shows that the ESA50 form is designed less to identify who has limited capability for work-related activity, and more to identify at an early stage any claimants who are obvious candidates for the 'support group' (see below).

All candidates not identified as candidates for the 'support group', will then be sent for a medical examination in order to complete the assessment of limited capability for work related activity. This group will comprise the vast majority of claimants.

### **Medical examinations**

The Government has contracted out the task of conducting medical examinations to a private company called ATOS Origin. ATOS will employ a variety of 'health care professionals' to perform examinations. The term 'health care professional' is not limited to GPs, and could include other experts such as Community Psychiatric Nurses or Physiotherapists. The

health care professionals have been equipped with a software tool which is intended to form the basis of the examination.

A claimant must be provided with adequate notice of a medical examination in writing. If having received notice s/he then fails to attend, or submit to, the examination without good cause, s/he will be treated as not having limited capability for work-related activity.

### **The Vision Section of the ALCW**

The section of the ALCW relating to problems with vision has changed from the version in the current PCA.

The assessment is of 'vision, including visual acuity and visual fields, in normal daylight or bright electric light, with glasses or other aid to vision if such aid is normally worn'.

The new 'descriptors' are as follows:

- (a) Cannot see at all - points score 15
- (b) Cannot see well enough to read 16 point print at a distance greater than 20cm - points score 15
- (c) Has 50% or greater reduction of visual fields - points score 15
- (d) Cannot see well enough to recognise a friend at a distance of at least 5 metres - points score 9
- (e) Has 25% reduction or more but less than 50% reduction of visual fields - points score 6
- (f) Cannot see well enough to recognise a friend at a distance of at least 15 meters - points score 6
- (g) None of the above apply - points score 0

### **Removal of exemption for people who are registered blind**

Under the current assessment for IB and IS, if you are registered blind you are exempt from the PCA. This exemption will no longer exist, which means that claimants who are registered blind will have to go through the whole assessment phase for ESA including the completion of the ESA50 questionnaire. They should not have any difficulty scoring the maximum 15 points, but will then have to undergo the assessment of capability for work-related activity.

## **The Assessment of Limited Capability for Work-Related Activity (ALCWRA)**

The Assessment of Limited Capability for Work-Related Activity (ALCWRA) is also based on a system of 46 'descriptors'. The claimant will pass the test if any one of the 'descriptors' applies to him/her. S/he will then be classed as having limited capability for work-related activity, and will go into the support group. The 'descriptor' will need to apply for the majority of the time, or on the majority of occasions, and it will be assumed that the claimant is describing their ability when wearing any prosthesis, or using any aid or appliance, which they normally make use of.

As mentioned above, the structure of the new system is such that the majority of claimants will have to undergo a medical examination in order to establish their limited capability for work-related activity, and therefore their entitlement to ESA.

### **Support Group**

Claimants in this group will not be expected to carry out any work-related activity, however they may volunteer to do so if they so wish. They will not be subject to any conditionality or sanctions of their benefit. It is the Government's intention to identify these claimants early on during the assessment phase by looking at all required evidence submitted with the initial application. Claimants in the support group will be paid the basic allowance, the support group element and any additional premiums that are applicable, such as the Severe Disability Premium.

### **Visual Impairment and Membership of the Support Group**

None of the 46 'descriptors' refer specifically to visual impairment. It may therefore be difficult for claimants who are visually impaired to get into the support group, unless they have additional health problems.

### **Work-Related Activity Group**

Claimants who are deemed to have limited capability for work-related activity will be paid the basic ESA allowance and the work-related activity element. In order to continue to receive the full ESA amount, claimants will be subject to a number of conditions including:

- Taking part in one or more work-focused health related assessments;
- Taking part in one or more work-focused interviews;
- Undertaking work-related activity.

## **Work-Focused Health Related Assessment**

This assessment will be carried out by a health care professional, with the aim of determining:

- A claimant's capability for work;
- What steps can be taken to improve the claimant's capability for work;
- What obstacles or difficulties the claimant may experience as a result of their condition;
- The views of the claimant on the impact of their conditions in relation to work and their work aspirations.

## **Work-Focused Interviews**

The interview(s) are to assess the following:

- The claimant's prospects for remaining in work or obtaining work;
- Encouraging the claimant to retain or obtain work;
- Identifying training, educational or rehabilitation opportunities;
- Identifying current or future work opportunities relevant to the claimant's needs or abilities.

## **Work-Related Activity**

Resources permitting, claimants will be required to participate in a specified amount of work-related activity. Examples of such activities may include Work Tasters, job search assistance, improving employability and managing health in work. The Government has stated that claimants will not be forced to undertake a particular activity resulting from a work-focused interview. However, this may change in the longer term.

## **Sanctions**

If a claimant fails to comply with any of the conditionality requirements described above without showing 'good cause', it could result in a reduction of the work-related activity element of their ESA. Initially a 50% reduction for 4 weeks then a 100% reduction thereafter. Sanctions will apply until the claimant meets the requirements set out, e.g. attends a work-focused interview. Once the claimant has complied, their full ESA will be re-instated. Only the work-related activity element can be sanctioned

not the basic ESA. The Government has said there will be safeguards in place so claimants will not be penalized. These will include regular contact with the claimant, ensuring the claimant's medical condition is considered, and offering home visits.

### **Good cause**

Following the breach of a requirement, the claimant will have a 5-day grace period in which to either comply or show 'good cause' for their failure to do so. The sanction will only apply at the end of this 5-day period, if the claimant is still in breach of the requirement.

Where the breach is a failure to attend a work-focused interview, factors that might constitute 'good cause' include:

- The claimant misunderstood the requirement due to learning, language or literacy difficulties or misleading information from the DWP;
- The claimant had an accident or sudden illness or relapse;
- The claimant had a physical or mental condition that prevented attendance.

Where the breach is a failure to take part in a work-focused health related assessment, factors that might constitute 'good cause' include:

- The claimant's state of health at the relevant time;
- The nature of the claimant's disability;
- The claimant's location at the time (e.g. whether s/he was outside Great Britain).

In the case of both the interview and the health assessment there is also a provision for 'any other matter, which the Secretary of State considers appropriate' to be considered as 'good cause'. This gives claimants a reasonable degree of scope for justifying a failure to comply. The problem will be showing this 'good cause' within the 5-day period, particularly if the notification of the breach arrives late.

### **Premiums**

ESA claimants may also be entitled to premiums on top of their personal allowance. These premiums can be paid in addition to the support/work-related activity element. They are paid as income-based ESA and are therefore subject to a means-test. For example, a claimant who qualifies for contribution-based ESA may also meet the qualifying conditions for one or more premium(s), but may not actually be paid it/them because they have savings over the prescribed limit.

The premiums are payable from day one of the ESA award. The claimant does not have to have completed the assessment phase. They are as follows:

### **Severe Disability Premium**

This is worth £50.35 a week (one qualifies) or £100.70 a week (two qualify). In order to qualify for this premium the claimant must:

- be in receipt of the middle or higher rate of the Disability Living Allowance (DLA) care component, or either rate of Attendance Allowance; **and**
- have no adult non-dependent living with her/him. (If the claimant lives with a partner, then the partner must also satisfy the DLA/Attendance Allowance qualifying conditions, or be registered blind, otherwise the severe disability premium cannot be paid. If the partner does qualify, then two lots of the severe disability premium can be paid); **and**
- not have anyone claiming Carer's Allowance for looking after her/him.

Note: there are some exceptions to the rules on non-dependents, please contact our **Welfare Rights Service** for more information.

### **Enhanced Disability Premium**

This is worth £12.60 a week for single claimants and £18.15 a week for claimants who are part of a couple. In order to qualify the claimant must either:

- qualify for the ESA support component; **or**
- be in receipt of the higher rate of the DLA care component.

### **Carer Premium**

This is worth £27.75 a week. In order to qualify for this, the claimant or her/his partner must be entitled to Carer's Allowance.

There is also a **pensioner premium** payable to some claimants who are aged 60 or over, or who have a partner who is aged 60 or over.

The rules regarding entitlement to premiums and the means-test are quite complicated. They have become more so with the introduction of the support and work-related activity components. We would suggest therefore, that you contact our **Welfare Rights Service** for a 'benefit check' if you think you may qualify.

## **Permitted Work**

ESA claimants will be able to do paid work without losing their entitlement to benefit, providing the work stays within certain prescribed rules known as the Permitted Work Rules. There are 3 types of permitted work:

- **Permitted Work Lower Limit**  
The claimant can work and earn up to £20 a week for an indefinite period.
- **Permitted Work Higher Limit**  
The claimant can work and earn up to £92.00 a week, providing her/his hours do not exceed 16 a week. Ordinarily this can only be done for a year, unless the claimant is in the support group, in which case there is no time limit.
- **Supported Permitted Work**  
The claimant can work and earn up to £92.00 a week, with no limit on the number of hours, providing the work is either done under medical supervision as part of a treatment programme, or is supervised by someone working for an organisation which specialises in arranging work for people with disabilities.

The above rules are the same as currently apply under IB, SDA and IS, however there is one significant change. Currently, while work done as permitted work does not affect entitlement to IB or SDA, any earnings above £20 are included in the means-test for IS. This means that claimants on IS, or who receive an IS top-up, are generally not much better off doing permitted work. Under the new system, however, any earnings which stay within the permitted work rules will be disregarded, so claimants could potentially be a full £92.00 a week better off by doing permitted work.

Please note, however, that at present there are no plans to extend this increase in the earnings disregard to Housing Benefit or Council Tax Benefit. This means that earnings from employment above £20 a week (or £36.05 a week in certain instances) may lead to a reduction in Housing Benefit and/or Council Tax Benefit. You should therefore seek further advice before starting permitted work.

### **Linking Rules**

Linking rules help to protect your entitlement to benefit if you stop claiming for a period, for example, because you take on a job, but then find you need to go back on to benefit. If you are able to make use of a linking rule, then you can go back on to benefit at the same rate you were on when you came off, providing there has not been any other change in your circumstances.

The ESA linking rules will be very similar to those for IB, SDA and IS. It will be possible to link periods on ESA in the following circumstances:

- If you reclaim, for whatever reason, within 12 weeks;
- If you reclaim within 104 weeks and meet the definition of a 'work or training beneficiary'. You count as a 'work or training beneficiary' if your previous period of limited capability for work lasted longer than 13 weeks and it ended because you came off ESA to start work or training. In these circumstances you will automatically be treated as having limited capability for work for the first 13 weeks of your new claim. If you were in the support group in your previous claim, you will also automatically go back into the support group. You will however have to undergo the WCA again after the first 13 weeks of your new claim;
- If you reclaim within 104 weeks and the day before reclaiming you were entitled to the disability element of Working Tax Credit.

### **Linking rules for claimants on Incapacity Benefit, Severe Disablement Allowance or Income Support**

There will be many people making claims for ESA whose previous period of incapacity for work was a period on IB, SDA or IS on the grounds of incapacity for work not ESA. The Government has confirmed that, in such cases, the claimant will be able to make use of any IB, SDA or IS linking rule that may still apply in order to go back on to IB, SDA or IS rather than having to go on to ESA. However, as with the ESA linking rules, IB, SDA and IS claimants who reclaim after a period in work or training are only

treated as incapable of work for the first 13 weeks of their reclaim. After this, they have to undergo re-assessment, unless they fall into an exempt category. The Government has indicated that after the introduction of ESA the assessment applied in such circumstances will be the new WCA rather than the old PCA.

### **Appeals**

The Government has indicated that claimants will have the right to appeal decisions on limited capability for work and on membership of the support group. The appeal process will be the same as that currently in place for IB/IS, which means claimants will be able to ask for a revision before going to full appeal. The time limits will also be the same, i.e. one month in which to request the revision and a further month (from the date of the revision decision) in which to request an appeal.

### **Further information**

To find out more visit [www.direct.gov.uk/disability](http://www.direct.gov.uk/disability), contact your local advice centre, Citizens Advice Bureau or Action's Welfare Rights Service.

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14 - 16 Verney Road  
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This is only a brief guide about how blind and partially sighted people will be affected by ESA. It is not a complete or exhaustive statement of law.

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