

EMPLOYMENT AND SUPPORT ALLOWANCE

LEGISLATION

Primary legislation:

The Welfare Reform Act 2007: Part 1

Secondary legislation:

The Employment and Support Allowance Regulations 2008

The Employment and Support Allowance (Transitional Provisions) Regulations 2008

The Employment and Support Allowance (Consequential Provisions) Regulations 2008, SI No.1082

The Employment and Support Allowance (Consequential Provisions) (No.2) Regulations 2008, SI No. 1554

The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008, SI 2008 No.1879

The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008, SI 2008 No.2428



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Assessment of whether a claimant has limited capability for work-related activity.**



GLOSSARY

AA – Attendance Allowance

CPAG – Child Poverty Action Group

CA – Carer’s Allowance

CTC – Child Tax Credit

DEL – Department for Employment and Learning

DLA – Disability Living Allowance

DfC – Department for Communities

ESA – Employment and Support Allowance

ESA(C) - Contribution-based Employment and Support Allowance

ESA(IR) – Income-related Employment and Support Allowance

HMRC – Her Majesty’s Revenue and Customs

JSA(IB) – Income-based Jobseeker’s Allowance

PC – Pension Credit

SDA – Severe Disablement Allowance

UC - Universal Credit

WTC – Working Tax Credit



INTRODUCTION

Employment and Support Allowance (ESA) was introduced on 27 October 2008. It replaced Incapacity Benefit and Income Support on grounds of illness or disability for new claimants.

ESA has two components:

- **Contribution-based ESA**

Contribution-based ESA (ESA(C)) replaces Incapacity Benefit.

In Great Britain, from 1 May 2012, the Work Related Activity Component of ESA(C) is only payable for twelve months (365 days). Those within the Support Group are unaffected. This change will come into effect in Northern Ireland in November 2016.

To qualify for ESA(C), a person must satisfy the main rules of entitlement and the National Insurance contribution conditions or the conditions relating to youth. ESA in Youth has now been abolished in Northern Ireland for new claimants, from 16 February 2016.

ESA(C) is only payable in respect of the person who has an illness or disability. Where a person has a partner or extra needs, eg because s/he has housing costs or because of caring responsibilities, s/he may also be entitled to Income-related ESA (ESA(IR)) as a top up to her/his income.

- **Income-related ESA**

Income-related ESA (ESA(IR)) replaces Income Support for a person claiming on the grounds of illness or disability.

It is means tested and is not based on a person's NICs. To qualify, a person will have to satisfy the main rules of entitlement and additional rules relating specifically to ESA(IR).

An adult dependant (ie the person's partner) can also be included in a claim for ESA(IR). Where a person has a partner, the total of their income and capital is taken into account when assessing the claim.

ESA is an adult only benefit. Therefore a person who has responsibility for a child(ren) or a qualifying young person(s) should make a claim for Child Tax Credit (CTC). If s/he is already in receipt of CTC, s/he should notify the change of circumstances as s/he may be entitled to an increase, eg if her/his income has reduced.

Common rules apply to both ESA(C) and ESA(IR) in terms of satisfying the conditions of having an illness or disability which prevents the person from undertaking work. There are then separate rules in relation to ESA(C) and ESA (IR).

It is generally no longer possible to make a new claim for Incapacity Benefit or Income Support on the grounds of illness or disability unless the claim for the benefit can be linked to a previous claim. A claim can be linked to a previous claim where a person:



- was entitled to Income Support, Incapacity Benefit or Severe Disablement Allowance for at least four consecutive days and the break in claim was for eight weeks or less;
- is a welfare to work beneficiary.

1. THE STRUCTURES OF ESA

ESA has rules which are:

- basic conditions relating to both ESA(C) and ESA(IR);
- specifically related to ESA(C);
- specifically related to ESA(IR);
- related to claiming.

2. BASIC CONDITIONS

To be entitled to ESA, a person must satisfy basic conditions and the conditions for either ESA(C) or ESA(IR).

To satisfy the basic conditions, a person must:

- be aged at least sixteen and under pensionable age (see below);
- have 'limited capability for work';
- be in Northern Ireland;
- not be entitled to Income Support, Statutory Sick Pay or Jobseeker's Allowance (JSA) (either alone or as part of a joint claim couple).

2.1 Pensionable age

To qualify for ESA, a person must be under pensionable age. A man's pensionable age is 65 and will rise to 66 before 2020. Until 6 April 2010, a woman's pensionable age was 60. Between 6 April 2010 and 6 April 2018, pensionable age for women will rise gradually to 66. A woman's pensionable age will depend on her date of birth but at the time of writing it is about 63.5 years of age.

2.2 Limited capability for work

Limited capability for work is assessed in three different ways. The first is the assessment phase of thirteen weeks, during which time the basic rate of benefit is payable. After the assessment phase, a person will be allocated to either:

- the support group where an additional payment (the support component) is made in both ESA(IR) and ESA(C), for those severely ill or who have a disability and are assessed as having limited capability for work-related activity; or the work-related



activity group where an additional payment (the work-related activity component) is made in both ESA(IR) and ESA(C), for those who are not assessed as having 'limited capability for work-related activity' and who comply with the requirements, eg to attend work-focused interviews and assessments.

2.2.1 Repeat claims

The automatic right to be treated as having limited capability for work on a repeat claim for ESA made more than six months after a decision that a claimant is fit for work was removed in Northern Ireland in April 2015.

A person making a repeat claim in these circumstances will only be entitled to ESA pending their work capability assessment where they provide evidence to suggest that their condition has substantially deteriorated or that they have a new health condition.

2.3 The assessment phase

This is normally a thirteen week period from the first day of entitlement. During the assessment phase, a person is assessed to establish whether s/he has 'limited capability for work' and whether s/he is entitled to the support or the work-related activity component of ESA.

The first part of the assessment phase is generally the questionnaire. This should be sent to the person about four weeks after claiming benefit. The questionnaire is called an ESA50. The completion and return of the form is extremely important. See 2.2.2 on failure to provide information in relation to limited capability for work.

Once a person has completed and returned the questionnaire, s/he is assessed to establish whether s/he has a limited capability for work. S/he is also assessed to establish whether s/he will be entitled to the support component or to the work-related activity component which are paid in addition to the basic allowance when the assessment phase has ended.

Where there is evidence that the person can be included in the support group (ie is entitled to the support component) without being called for a medical, a decision is made without any further assessment. This happens in relatively few cases. Most people are called for a work capability assessment which is explained in detail below in section 2.2.3.

The thirteen week assessment phase does not apply if:

- the ESA claim is linked to a previous ESA claim that had continued into the main phase. The additional component is payable immediately on the second claim;
- the ESA claim is linked to a previous ESA claim that had ceased before the assessment phase had ended. In this case, the assessment phase in the new claim ends when both assessment phases together equal thirteen weeks eg, the person's first ESA claim ended after four weeks. After six weeks, a second claim for ESA is made. The assessment phase in the second claim ends after nine weeks as the first four weeks in the initial claim can be linked to the second claim.



Note: if the person claiming is terminally ill, the support component or work-related activity component is payable immediately without the need to wait until the end of the assessment phase.

2.3.1 Information required by the Department for Communities

During the assessment phase, the Department for Communities (DfC) requires the person claiming to:

- submit medical evidence from a doctor (a self certification will suffice for the first seven days);
- complete a questionnaire (the DfC can waive this requirement if it believes it has other information);
- give any additional information the DfC may request.

2.3.2 Failure to provide information in relation to limited capability for work

A person is treated as not having limited capability for work if s/he fails without 'good cause' to:

- return a completed questionnaire and at least six weeks have passed since s/he was sent the first request for information and a further request was sent at least four weeks after the first request and at least two weeks have passed since the further request; or
- attend, or submit to a medical examination where s/he was given written notice of the time and place for the examination at least seven days in advance or unless s/he agreed to accept a shorter period of notice, whether in writing or otherwise.

To determine whether a person had good cause for failure to return a questionnaire, attend or submit to a medical, the DfC considers:

- whether s/he was outside Northern Ireland at the relevant time;
- her/his state of health at the relevant time;
- the nature of any disability which s/he may have.

This list is not exhaustive. Other arguments can be raised, for example, problems with the post led to the person not receiving the form or the notice of the appointment.

2.3.3 Work capability assessment

During the assessment phase, the person undergoes a work capability assessment (WCA).

The results of the work capability assessment determine if s/he is entitled to ESA and, if so, whether s/he is entitled to be a member of the support group or will be a member of the work-related activity group from the beginning of week 14.

This affects the rate of benefit and whether a person has to take part in work-focused interviews and work-focused health-related assessments.



2.3.3.1 What is a work capability assessment?

The WCA is a face to face meeting, lasting up to 75 minutes. It explores how the person's illness or disability affects her/his ability to work and carry out day-to-day activity.

The WCA is made of three parts and the emphasis is placed on what a person can do rather than what s/he cannot do.

There are two distinct parts to a work capability assessment. These are:

- **The assessment of limited capability for work.** This is the basic medical, which is used by the DfC to determine if a person is entitled to ESA.
- **The assessment of limited capability for work-related activity.** This is a further medical, used to determine whether a person will be a member of the support group. People who are in the support group receive a higher rate of benefit and do not have to comply with conditionality requirements.

2.3.3.2 Who carries out the work capability assessment?

The assessment is carried out by specially trained healthcare professionals such as a doctor or a nurse or an occupational therapist who has been trained and approved by the DfC in the application of the statutory test.

2.3.3.3 Where is the work capability assessment carried out?

It is carried out at a Medical Examination Centre within reasonable travelling distance of the person's home. In exceptional circumstances, it can be carried out at a person's home.

2.3.3.4 Who does not have to attend the work capability assessment?

Some people do not have to attend the full work capability assessment. This includes a person who is terminally ill, ie her/his death is reasonably expected within six months, and a person who can be seen from the medical evidence to fall within the support group.

People who are terminally ill are fast-tracked to the support group of ESA and do not have to participate in work-focused health-related assessments or other work-related activity.

2.3.3.5 How is limited capability for work assessed?

A person has limited capability for work if:

- (a) 'her/his capability for work is limited by her/his physical or mental condition, and*
- (b) the limitation is such that it is not reasonable to require her/him to work'.*

The regulations state that the limited capability for work assessment is *'an assessment of the extent to which a person who has some specific disease or bodily or mental disablement is capable of performing the activities prescribed in Schedule 2 or is incapable by reason of such disease or bodily or mental disablement of performing those activities.'*



Schedule 2 of the ESA Regulations is called '*Assessment of whether a claimant has limited capability for work*'. It resembles the personal capability assessment (PCA) for Incapacity Benefit but there are significant differences. Those dealing with ESA need to be familiar with the schedule.

The schedule is made up of a list of activities broken down into a choice of descriptors which carry different points. The scores in the descriptors are 15, 9, and 6.

To be found to have a limited capability for work, the person must score at least 15 points from:

- the physical descriptors; or
- the mental health descriptors; or
- the physical and mental health descriptors.

Physical descriptors can only be satisfied by a person with a physical health condition, and mental descriptors can only be satisfied by a person with a mental health condition.

When a person's capability to perform any of the activities is being assessed, s/he is assessed as if s/he was:

- wearing any prosthesis which with s/he is fitted or,
- wearing or using any aid or appliance which is normally worn or used, or
- wearing or using any aid or appliance that could reasonably be expected to be worn or used, if it is not normally worn or used by the person.

The person's incapability to perform the activity must:

- arise from a specific bodily disease or disablement or a specific mental illness or disablement; or
- be a direct result of treatment provided by a registered medical practitioner for such a disease, illness or disablement.

This should allow the side effects of medication to be taken into consideration.

Where more than one descriptor specified for an activity applies to a person, only the highest scoring descriptor for that activity is awarded to her/him.

2.3.3.6 Exempt groups

A person is treated as having limited capability for work and is exempt from the assessment of limited capability for work if s/he is:

- terminally ill ie death can reasonably be expected within six months;
- likely to receive, receiving or recovering from all types of chemotherapy or radiotherapy;
- excluded from work due to having been given official notice that s/he has been in contact with or a carrier of an infectious disease;
- pregnant and either:
 - is within the maternity allowance period and entitled to maternity allowance or;



- is in the period between the six weeks before her due date (or the date of birth if earlier) and two weeks after the actual birth and she is not entitled to maternity allowance or Statutory Maternity Pay for that period or;
 - there is a serious risk to her health or the health of the unborn child if she does not refrain from work;
 - receiving one of the following treatments:
 - hemodialysis for chronic renal failure;
 - plasmapheresis or radiotherapy;
 - total parenteral nutrition for growth impairment of enteric functions;
- (Note:** In all three cases, the person must be receiving it for at least two days a week in the first week or at least one day a week after the first week. This can also cover recovering from such treatment);
- a hospital in-patient (overnight), this includes claimants attending a residential programme of rehabilitation for the treatment of drug or alcohol abuse;
 - entitled to the support component on the basis that s/he meets any of the eating and drinking descriptors in the test of 'limited capability for work-related activity.'

2.3.3.7 Exceptional circumstances and limited capability for work

A person found not to have limited capability for work is treated as having limited capability for work in exceptional circumstances. These are that, either:

- the person is suffering from a life threatening disease in relation to which:
 - there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure; and
 - in the case of a disease that is uncontrolled, there is reasonable cause for it not to be controlled by a recognised therapeutic procedure; or
- s/he suffers from some specific disease or bodily or mental disablement and, because of this disease or disablement, there would be a substantial risk to the mental or physical health of any person if s/he were found not to have limited capability for work. However, reasonable adjustments within the person's workplace and any medication prescribed to manage her/his condition must be taken into account.

2.3.3.8 Treated as having limited capability for work until a determination is made

A person is treated as having limited capability for work pending assessment as long as s/he submits medical certificates.

A person is also treated as having limited capability for work pending assessment if s/he is treated as not having limited capability for work because s/he failed to return the questionnaire or attend a medical examination without good cause.

In such circumstances, ESA is not paid until the person is assessed as having limited capability for work.



However, there are exceptions. A person is treated as having limited capability for work pending her/his assessment despite the previous finding that s/he did not have limited capability for work if:

- s/he is suffering from a new disease or disablement; or
- her/his disease or disablement has significantly worsened; or
- s/he had failed to return the questionnaire and has now returned it;
- s/he has an outstanding appeal against a decision that s/he does not have limited capability for work.

2.4 After the assessment phase

When the assessment phase has ended, usually after thirteen weeks, a person found to have limited capability for work is assessed for either the support group or work-related activity group.

The support component is paid at a higher rate than the work-related activity component and is intended to apply to those with the most severe conditions.

2.4.1 The support group

A person is allocated to the support group and has entitlement to the support component of ESA if:

- the assessment phase has ended; and
- s/he has 'limited capability for work-related activity'.

2.4.1.1 Limited capability for work-related activity

The Welfare Reform Act defines a person as having limited capability for work-related activity if:

- her/his capability for work-related activity is limited by her/his physical and mental condition; and
- the limitation is such that it is not reasonable to require her/him to undertake such activity.

Physical descriptors can only be satisfied by a person with a physical health condition, and mental descriptors can only be satisfied by a person with a mental health condition.

The system for determining limited capability for work is set out in the Employment and Support Allowance Regulations (NI) 2008.

A person will be found to have limited capability for work-related activity if one or more of the descriptors set out in Schedule 3 applies. These descriptors are statements describing the person's ability in certain activities. The test is similar to the structure of the limited capability for work assessment but the descriptors only apply to those who have the most extreme conditions. If at least one descriptor in the list of activities applies to a person, s/he will be a member of the support group.



In order for a person to qualify for the descriptor, it must apply to her/him for the majority of time or on the majority of occasions on which s/he tries to do the activity.

In determining whether a descriptor applies, a person is treated as if:

- wearing any prosthesis with which s/he is fitted or is wearing; or
- using any aid or appliance that is normally worn or used by her/him; or
- any aid or appliance that could reasonably be expected to be worn or used, if it is not normally worn or used by the person.

2.4.1.2 Treated as having limited capability for work-related activity

The following people are eligible for the support group:

- people who are terminally ill;
- people who:
 - are receiving any chemotherapy/radiotherapy treatment;
 - are pregnant and there is a serious risk to the woman or the unborn child if she carries out work-related activity;
 - are likely to receive specified chemotherapy/radiotherapy within six months of the decision.

2.4.1.3 Medical examination

The policy intention is to ensure, as far as possible, access to the support group is paper based, through medical advice and medical certificates. In such cases the person is not required to attend a medical examination. However, where it is not clear from the evidence that a person should be in the support group, s/he is asked to attend a medical examination at which assessments for both limited capability for work and work-related activity are carried out.

2.4.1.4 Exceptional circumstances

A person found not to have limited capability for work-related activity is treated as having limited capability for work-related activity if s/he is suffering from some disease or disablement as a result of which s/he would be a substantial risk to the mental and physical health of any person if s/he was not found to have limited capability for work-related activity.

2.4.2 Work-related activity group

Those who are not eligible for the support group are allocated to the work-related activity group at the end of the assessment phase.

A person is allocated to the work-related activity group and therefore entitled to the work-related activity component if:

- the assessment phase has ended; and
- s/he is not eligible for the support group but has been assessed as having limited capability for work.



Further, to continue to receive the full amount of the work-related activity component, a person must, if required:

- take part in one or more work-focused health-related assessments (**Note:** The work-focused health-related assessment is suspended at present)); and
- take part in a series of work-focused interviews at which an action plan will be drawn up; and
- from some future date, as yet unspecified, undertake work-related activity.

Work-related activity was not made a requirement when ESA was introduced but it will become one of the conditional requirements as resources permit. Work-related activity is defined in the Welfare Reform Act (NI) 2007 as activity that makes it more likely that the person will obtain or remain in work or be able to do so.

These conditions do not apply to a person who is at least the pensionable age for a woman with the same date of birth as her/him (see section 2) or who becomes entitled to be a member of the support group.

2.4.2.1 Work-focused interview

A person who is in the work-related activity group is expected to take part in a series of work focused interviews with a personal adviser. The first of the interviews takes place about eight weeks after the date of claim. Guidance suggests that the person will have a further five work focused interviews at monthly intervals.

The interviews aim to get the person back into work or to keep her/him in work. The personal adviser discusses the type of work most suitable to the person and can refer her/him to training, employment or condition management support.

The legislation defines a work-focused interview as an interview for the purpose of any or all of the following:

- assessing the person's prospects for remaining in or obtaining work;
- assisting and encouraging her/him to remain in or obtain work;
- identifying training, education or rehabilitation opportunities, or other activities, which may make it more likely that s/he will obtain and remain in work;
- identify care and future work opportunities, including self employment, that are relevant to her/his needs and abilities.

Work-focused interviews can be deferred if they would not be of assistance or appropriate at that time.

Work-focused interviews can only be waived if they would not be of assistance because the person is likely to be starting or returning to work.

2.4.2.2 Taking part in a work-focused interview

The DfC must give a person notice of a work-focused interview. The interviews can be carried out in the person's home if the DfC decides that requiring her/him to attend elsewhere would cause undue inconvenience to or endanger her/his health.



A person is treated as having taken part in a work-focused interview if s/he attends at the correct time and place and provides the DfC with any requested relevant information. This is listed to include the person's educational qualifications and vocational training, work history, aspirations for future work, skills that are relevant to work, work-related abilities, her/his caring or childcare responsibilities, and any paid or unpaid work that s/he is undertaking.

A person must participate in discussions as the DfC considers necessary about such matters as:

- the activities that s/he is willing to undertake that will make retaining or obtaining work more likely;
- such activities as s/he has previously undertaken;
- any progress s/he has made towards retaining or obtaining work;
- any work-focused health-related assessments that s/he has taken part in;
- the person's opinion as to the extent to which the ability to retain or obtain work is restricted by her/his physical or mental condition.

2.4.2.3 Action plan

When a person attends a work-focused interview, s/he is given a written action plan containing a record of the interview and any work-related activity s/he has agreed to take.

2.4.2.4 Failure to take part in a work-focused interview

A person who is asked to take part in a work-focused interview but fails to do so must show good cause for that failure within five working days of the date on which the DfC notifies her/him of the failure. The DfC must decide whether the person did fail to attend and whether s/he showed good cause for her/his failure.

In deciding whether s/he did show good cause, the DfC can consider the following matters:

- the person misunderstood the requirement to take part in the work-focused interview due to learning, language or literacy difficulties or any misleading information given or sent by the DfC;
- the person had transport difficulties and no reasonable alternative was available;
- the person was attending an interview with an employer with a view to retaining or obtaining work;
- the person was pursuing employment opportunities as a self employed earner;
- the person was attending a medical or dental appointment and it would have been unreasonable in the circumstances to rearrange the appointment;
- the person was accompanying another person for whom s/he was caring to a medical or dental appointment and it would have been unreasonable for the other person to rearrange the appointment;



- the person, dependant or another person whom s/he cares for suffered an accident, sudden illness or relapse of a physical or mental condition;
- the person was attending a funeral of a relative or close friend on the day of the work-focused interview;
- the physical and mental condition of the person made it impossible to attend at the time and place fixed for the interview;
- the established customs and practices of the religion to which the person belongs prevented attendance on that day or at that time;
- any other matter which the DfC considers appropriate.

2.4.2.5 Sanctions

Once a person has passed the limited capability for work test and receives the work-related activity component, s/he is expected to attend work-focused interviews and work-focused health assessments as requested, although the latter is currently suspended. If s/he does not attend without good cause s/he can have sanctions applied to her/his benefit and her/his ESA is paid at a reduced rate.

There are two rates of sanction:

- if a person fails without good cause to take part in a work-focused interview, her/his ESA is reduced by 50 per cent of the work-related activity component, currently £14.53, for the first four benefit weeks;
- after four weeks, benefit is reduced by 100 per cent of the work-related activity component, currently £29.05.

The amount of ESA payable to a person cannot be reduced below £0.10p per week

Sanctions stop when the person does attend the work-focused interview or, alternatively, when s/he becomes entitled to be a member of the support group or reaches the pensionable age for a woman with the same date of birth as her/him (see section 2).

2.5 ESA and work

A person is treated as not entitled to ESA during any week in which s/he does any work unless it is work that is specifically allowed. Work is counted whether or not it is done in expectation of payment. If a person is treated as not entitled to ESA, s/he is also treated as not having limited capability for work.

The Regulations list types of work which do not exclude the person from entitlement to ESA such as work as a councillor, domestic tasks done in her/his own home or the care of a relative and also 'exempt work'.

2.5.1 Exempt work

A person can carry out the following types of work without it ending her/his entitlement to ESA:

- work done when receiving assistance in pursuing self employment (test trading);



- work as a volunteer;
- an unpaid work placement authorised by the DfC before it began.

A person can carry out the following types of work without it ending her/his entitlement to ESA (and if her/his earnings are within the permitted amounts the earnings will not count as income and will not affect either ESA(IR) or ESA(C)). These amounts will increase as the minimum wage increases:

- work earning up to £20 per week;
- work earning up to £115.50 per week which:
 - is part of her/his treatment programme and done under medical supervision; or
 - is supervised by someone from an organisation which provides or arranges work for people with disabilities;
- work for less than sixteen hours a week earning up to £115.50, either:
 - for up to 52 weeks; or
 - indefinitely if the person is in the support group.

These rules are more generous than those which applied before the introduction of ESA. A person receiving Income Support had her/his benefit reduced by earnings over a disregard of £20. **Note:** a higher, exempt work earnings disregard also applies for Housing Benefit.

2.6 Linking rules

A period of limited capability for work will be linked to an earlier one where the gap is twelve weeks or less.

Before 01 May 2012 it was possible to link different periods of no more than 104 weeks apart if certain conditions were fulfilled. However from May 2012, the 104 week linking rule applies only to housing costs for 'welfare to work or training beneficiaries.'

3. CONTRIBUTION-BASED ESA

A person must satisfy the basic conditions and:

- satisfy the National Insurance contribution conditions which are set out below; or
- satisfy the conditions relating to youth and must have applied pre February 2016.

It is possible for a person to get ESA(C) while her/his partner receives Income Support, Income-based JSA (JSA(IB)) (provided it is not a joint claim), Pension Credit or ESA(IR). In these circumstances, the amount of ESA(C) awarded will be assessed as income in the partner's claim.

There will be specific changes to the legislation regarding contributory ESA included in the introduction of welfare reform in Northern Ireland. Under welfare reform changes, Contributory ESA will only be payable for 365 days from 28 November 2016.



In Northern Ireland, a supplementary payment to cover any financial loss from this change will be provided for one year, as long as the claimant continues to fulfil the necessary criteria.

3.1 National Insurance contribution conditions

In order to qualify for ESA(C) a person must satisfy both of the following National Insurance conditions.

First condition – Prior to 1 November 2010, a person must have paid Class 1 contributions (paid by employed earners and their employers) on earnings of 25 times the lower earnings limit, or 25 Class 2 contributions (paid by self-employed earners), or a mixture of the two, for one out of the last **three** complete tax years before the beginning of the relevant benefit year. The tax years run from April to April and the benefit year from January to December.

From 1 November 2010, the first condition is that a person:

- must have paid Class 1 contributions (paid by employed earners and their employers) on earnings of 26 times the lower earnings limit, or 26 Class 2 contributions (paid by self-employed earners), or a mixture of the two, for one out of the last **two** (as opposed to three) complete tax years before the beginning of the relevant benefit year (the tax years run from April to April and the benefit year from January to December); **and**
- must also have worked for a minimum of 26 weeks during one of the last two complete tax years. The 26 weeks need not be consecutive but must fall in a single tax year. A person cannot reach the earnings limit by working for less than 26 weeks in one of the tax years to satisfy this condition. These contribution rules will be the same for JSA(C).

The first condition is relaxed so that sufficient contributions paid in any one year are enough if the person was:

- entitled to Carer's Allowance in the last complete tax year before the relevant benefit year;
- working for more than two years before the first day of the period of limited capability for work and was entitled to a disability or severe disability element of WTC during that period;
- entitled to credited contributions because s/he had been in prison or detention and a conviction was subsequently quashed.

Second condition – the person claiming must have paid or been credited with Class 1 or 2 contributions on earnings of 50 times the lower earnings limit in each of the two complete tax years before the start of the relevant benefit year.

In addition, different periods of limited capability for work may be joined or linked to form a continuous period. This means a person is treated as having had a limited capability for work throughout the linking period. Different periods are linked where they are not more than twelve weeks apart.



In certain circumstances, the linking period can be up to 104 weeks, for example where a person is a Welfare to Work beneficiary or was in full time paid work and getting the disability element of WTC and was paid either WTC or CTC at above the family element for the day before stopping work. The new period of disability must begin straight after finishing work.

3.2 Condition relating to youth

From 16 February 2016, ESA(c) relating to youth has been abolished for new claimants. However, there will still be some existing claimants until 16 February 2017 at the latest.

Before April 2016, a person must:

- have been under 20 when the relevant period of limited capability for work began. The age limit is raised to 25 if the person was in education or training when turning 20 in specified circumstances. The age requirement does not apply if the claim can be linked to a previous youth related entitlement to ESA(C), which ended because of employment or training;
- have had limited capability for work for the previous 196 days. These days can fall before the sixteenth birthday. Days of entitlement to Statutory Sick Pay are treated as days of limited capability for work;
- not be in full-time education. This is defined as education of 21 hours or more a week for those aged under nineteen;
- not be a subject to immigration control;
- satisfy conditions of residence and presence in Northern Ireland. A person must be ordinarily resident and present in Northern Ireland and have been present for a period of 26 weeks out of the last year.

3.3 How much

The amount of ESA(C) is paid for the person claiming. There are no dependant additions.

3.3.1 Assessment phase

During the assessment phase, the first thirteen weeks, the amount of the ESA(C) is a basic allowance and is aged related.

Aged under 25	£57.90 per week
Aged 25 and over	£73.10 per week



3.3.2 After the assessment phase

After the assessment phase (usually from week 14 onwards) the amount is a basic allowance plus either the support component or work-related activity component. It is not age related.

Basic rate: £73.10.

Work-related activity component: £29.05. A person will therefore receive a total of £102.15 (basic £73.10 + work-related activity component £29.05).

Support component: £36.20. A person will therefore receive a total of £109.30 (basic £73.10 + support component £36.20).

Deductions are made from ESA(C) for the following payments:

- certain pension payments;
 - the deduction is 50 per cent of the excess weekly payment over £85.
- councillors allowances;
 - in excess of £104.00 per week (this may increase as minimum wage rates increase).

4. INCOME-RELATED ESA

ESA(IR) is paid to a person who has limited capability for work and satisfies all of the basic rules. It can be paid either in its own right, where a person does not have sufficient NIC, or as a top up to ESA(C).

Where the person claiming is a member of a couple, her/his partner is included in the claim and any income or capital s/he may have affects the claim.

4.1 General rules of entitlement

To be entitled to ESA(IR), the person claiming must satisfy the basic conditions set out above and:

- have no income or income which does not exceed the applicable amount. A person's income will be compared to the applicable amount to determine the amount of benefit s/he receives;
- have capital below £16,000. ESA(IR) is not payable to a person if s/he and/or partner have capital over £16,000. Personal possessions (other than those which would be considered an investment, eg an art collection) and the person's home will not normally be included as savings or capital. Any payment made to a person as the holder of a Victoria or George Cross medal will also be ignored. The surrender value of any insurance policies and certain other savings can be ignored in specific circumstances. Notional capital rules provide that a person will still be treated as possessing capital where s/he has deprived her/himself of this capital in order to secure or increase entitlement to ESA(IR);
- not be entitled to Pension Credit;



- not have a partner who is entitled to Income Support, JSA(IB), Pension Credit or ESA(IR);
- not be in remunerative work. A person will not be entitled to ESA(IB) if s/he does any work in any week unless it is work that is permitted when claiming (see section 2.4);
- not have a partner in remunerative work of 24 hours or more per week;
- not be receiving education. A person is in education if s/he is aged under 20 and in full-time non-advanced education or s/he is on a course that is classed as full time by the educational establishment. There is an exception to this rule and a person may be able to claim ESA(IR), even if receiving education, if s/he is entitled to Disability Living Allowance (DLA);
- not be subject to immigration control. A person will be a 'person subject to immigration control' if s/he is not an EEA national and:
 - requires leave to enter or remain but does not have it;
 - has leave to enter or remain but on the condition that s/he does not have recourse to public funds, which include ESA (IR);
 - has leave to enter or remain and is subject to a formal undertaking;
 - is appealing a decision about her/his immigration status;
- be habitually resident including having a right to reside. A person must be present in the United Kingdom (UK), habitually resident in the UK, Republic of Ireland, Channel Islands or Isle of Man (the Common Travel Area (CTA)) and have a right to reside. The test applies to all people claiming (but not partners or dependants) including British/Irish citizens returning from abroad to Northern Ireland.

Some groups are automatically treated as habitually resident, including:

- people who are treated as workers or selfemployed persons within specific pieces of European legislation and who are also citizens of the European Economic Area (ie Austria, Belgium, Bulgaria Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Iceland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK) and their dependants;
- refugees; and
- people who have been granted forms of leave outside of the immigration rules, known as humanitarian protection and discretionary leave.

Rules for A8, A2 and Croatian nationals

In May 2004, ten countries joined the European Union (EU). They are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Workers from these states (except Malta and Cyprus) were referred to as A8 nationals.

Citizens of Malta and Cyprus enjoyed the same rights as EEA nationals as soon as these two countries joined the EU.



Until 31 April 2011, A8 nationals had to register with the Home Office Workers Registration Scheme and have twelve months uninterrupted employment before they could enjoy full European law rights.

This rule has been abolished. 'A8' nationals are now EEA nationals with full European law rights.

Since January 2007, the EU also includes workers from Bulgaria and Romania, referred to as A2 nationals.

Until 31 December 2013 most A2 nationals had to comply with strict rules under the Home Office Worker's Authorisation Scheme and must have worked for twelve months in authorised work before obtaining full EU rights.

This rule has been abolished and from 1 January 2014 A2 nationals are now EEA nationals with full European law rights.

On 1 July 2013, Croatia joined the EU as an accession state.

Nationals of Croatia currently have to comply with a Workers Authorisation Scheme which is very similar to that which applied to Bulgarian and Romanian nationals. Most Croatian nationals will need permission to work in the UK and will only have full EU rights after twelve months of authorized work.

These restrictions will continue to apply to Croatian nationals until at least 30 June 2018

The right to reside is complex and subject to constant change. If in doubt, phone Law Centre (NI) advice line.

4.2 Who can claim?

A person making a claim for ESA(IR) can only claim for her/himself and partner. S/he cannot claim for dependent children and qualifying young people. Instead s/he must claim CTC.

4.3 How much?

The amount of ESA(IR) payable is calculated by subtracting a person's resources (ie income) from her/his needs (ie the weekly amount the person claiming and her/his partner are considered to need, weekly, to live on).

4.3.1 Needs

In calculating a person's needs, three elements are taken into account:

- personal allowances;
- premiums (if any);
- housing costs (for owner-occupiers).



4.3.1.1 Personal allowances

Personal allowances are fixed amounts which cover basic weekly living expenses including food, fuel, clothing, laundry, etc. The amount paid depends on age and whether single, a lone parent or one of a couple.

Where a person has a dependent child(ren) or a qualifying young person(s) s/he should make a claim for CTC. If the person has already claimed CTC then s/he should notify the change of circumstances.

Status	Age	Amount (£)	
		Assessment Phase	Main Phase
Couple	both 18 or over	114.85	114.85
	one aged 18 or over, partner under 18 and entitled to Income Support, JSA(IB) or ESA(IR)	114.85	114.85
	both under 18, both entitled to Income Support or JSA(IB)	87.50	114.85
	both under 18 and one is responsible for a child	87.50	114.85
	one aged 25 or over, partner under 18 and not entitled to Income Support or JSA(IB)	73.10	73.10
	one 18-24, partner under 18 and not entitled to Income Support or JSA(IB)	57.90	73.10
	both under 18 in any other circumstances	57.90	73.10
	Lone parent	aged 18 or over	73.10
	aged under 18	57.90	57.90
Single	aged 25 or over	73.10	73.10
	aged under 25	57.90	57.90



4.3.1.2 Premiums

Premiums are paid on top of personal allowances in recognition of extra expenses due to caring responsibilities, age and disability.

❑ Carer premium

This premium is paid where the person claiming or partner is entitled to Carer's Allowance (CA). This applies even if the person (or partner) is not actually in receipt of CA because another benefit (eg ESA(C)) is in payment which overlaps with CA. An extra statutory payment to compensate her/him for not getting CA also counts.

If a person stops getting or being treated as getting CA, or the person whom s/he is getting CA for dies, entitlement to the carer premium continues for a further eight weeks.

Amount paid

single person	£34.60
couple one of whom gets or would get CA	£34.60
couple both of whom get or would get CA	£69.20

The rate is the same during the assessment phase and the main phase.

❑ Enhanced disability premium

This premium is paid where a person qualifies for the support component of ESA or where a person or her/his partner who is under the qualifying age for PC is in receipt of the highest rate care component of DLA.

Amount paid

single adult	£15.75
couple	£22.60

The rate is the same during the assessment phase and the main phase.

❑ Severe disability premium

The circumstances in which the severe disability premium is paid are as follows:

- a single person receives a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; and
 - no-one is receiving CA for her/him; and
 - s/he has no non-dependants aged eighteen or over normally residing with her/him;
- the person applying and partner both receive a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or s/he gets one of these benefits and partner receives Attendance Allowance; and



- someone is receiving CA for one of them, but not the other; and
- they have no non-dependants aged eighteen or over normally residing with them (couple lower rate);
- the person applying and partner both receive a qualifying benefit - DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or s/he gets one of these benefits and partner receives Attendance Allowance; and
 - no-one is receiving CA for either the applicant or partner; and
 - they have no non-dependants aged eighteen or over normally residing with them (couple higher rate).

Amount paid

single person	£61.85
couple (lower rate)	£61.85
couple (higher rate)	£123.70

The rate is the same during the assessment phase and the main phase.

Note: A person claiming who receives one of the qualifying benefits and has a partner who is registered blind or is treated as blind because s/he came off the register in the last 28 weeks is treated as having no partner and therefore as a single person.

The following people do not count as non-dependants:

- anyone getting Attendance Allowance, the highest or middle rate of the care component of DLA, Constant Attendance Allowance or Exceptionally Severe Disablement Allowance for her/himself;
- anyone under eighteen (or under 20 if still in full-time education) who is treated as part of the person's household for benefit purposes;
- any member of the person's family for benefit purposes (eg her/his partner);
- a person who is registered as blind, or treated as blind;
- anyone engaged by a voluntary organisation or charity to care for the person applying, where a charge is made for that care. This does not apply to people engaging their own carers under direct payments legislation;
- anyone who normally lives elsewhere;
- anyone (other than a close relative) who is liable to make payments on a commercial basis to the person or her/his partner in order to live in the home;
- anyone (other than a close relative) to whom the person applying is liable to make such payments in order to remain in the home;
- anyone (other than a close relative) who jointly occupies the home and is a joint owner or is jointly liable with the applicant to make payments in respect of occupation of the home.



For any of the three categories above, a close relative can also be disregarded as a non-dependant where:

- the joint ownership or liability began before 11 April 1988; or
- the joint ownership or liability began on or before the date the person first lived in the house.

□ Pensioner premium

This premium is paid where a person or her/his partner is at least the qualifying age for Pension Credit. It is paid at different amounts which depend on which component has been awarded.

Amount paid

Single

Assessment phase	£78.10
Work-related component	£49.05
Support component	£41.90

Couple

Assessment phase	£116.00
Work-related component	£86.95
Support component	£79.80

4.3.1.3 Housing costs

Some housing costs for owner-occupiers are taken into account in assessing the needs for ESA(IR).

The amount is a weekly one representing mortgage interest, interest on loans for repairs or improvements, co-ownership payments, ground rent and service charges and some other housing costs. The level of support for mortgage interest and repairs and improvements is restricted to total loans below £200,000 for most claims made after 4 January 2009 (£100,000 in most other cases). Any loan to adapt the home for a person with a disability is ignored when working out if total housing costs exceed this limit.

There are complex rules covering which housing costs are eligible for help. Contact Law Centre (NI) for further advice.

In most cases, housing costs are not included until a person has been claiming ESA(IR) for a period – known as the qualifying period. What the period is depends on when the person claimed and when the loan was taken out. In some cases, there is no qualifying period, eg if the claimant’s partner is at least the qualifying age for PC.



The rules of entitlement to housing costs changed on 1 April 2016. Most people making a claim for ESA(IR) on or after this date do not receive any housing costs for the first 39 weeks. After the 39 weeks, full housing costs are included in a person's claim.

Prior to 5 January 2009, most people making a claim for ESA(IR) did not receive any housing costs for the first thirteen weeks. After the thirteen weeks, full housing costs were included in a person's claim.

Prior to 5 January 2009, there were different rules for help with housing costs for loans taken out either before or after 2 October 1995 (see below). These had longer qualifying periods. A person waiting to receive housing costs under these rules should have been automatically transferred over to the new shorter qualifying period, with payment starting immediately for a person who had been on benefit for fourteen or more weeks.

□ Person in a qualifying period but not in receipt of IS, JSA or ESA

Between 5 January 2009 and 5 January 2010, the rules operated in an unfair way. Where a person made a claim for ESA(IR) and was not entitled to any ESA (either ESA(IR) or ESA(C)) as her/his income was too high until housing costs could be included, the relevant old rules for qualifying periods (see below) applied. This has been corrected from 5 January 2010.

□ Old rules - Loans taken out from 2 October 1995

If the thirteen-week qualifying period does not apply, a person with a loan taken out on or after 2 October 1995 does not get housing costs for the first 39 weeks of a claim. Full housing costs are awarded after 39 weeks. There are exceptions where the rules in relation to a loan taken out before 2 October 1995 apply (see below), eg where the person is a carer or is in prison awaiting trial or sentence.

□ Old rules - Loans taken out before 2 October 1995

If the thirteen-week qualifying period does not apply, a person with a loan taken out before 2 October 1995 does not get housing costs for the first eight weeks of a claim, and only 50 per cent for the next eighteen weeks. Full housing costs are awarded after 26 weeks.

□ Loans for repairs and improvements

A person can get help with loans for repairs or improvements to maintain the current home, or any part of the building in which it is contained, in a habitable condition. Loans towards the cost of necessary survey work should also be included.

Help towards the interest payments on a loan is payable for any of the following:

- provision of a bath, shower, toilet, wash basin and the necessary plumbing and hot water;
- repairs to heating system;
- damp-proof measures (this may include repairs to a roof);
- provision of ventilation and natural lighting;



- provision of drainage facilities;
- provisions of facilities for preparing and cooking food (but not for storing it);
- provision of home insulation;
- provision of electric lighting and sockets;
- provision of storage facilities for fuel or refuse;
- repairs of unsafe structural defects;
- adaptations for a person with a disability;
- providing separate sleeping accommodation for children of different sexes aged ten or over who are part of the family. It can be argued that this should apply if:
 - both of the children will be ten in the near future; or
 - the children were not aged ten when the loan was taken out but are by the time a claim for ESA(IR) is made.

If the loan is also for other repairs and improvements, housing costs will only be paid for the proportion which relates to any of the items listed above. The amount payable is calculated as for mortgages (ie qualifying periods and similar interest rates apply).

□ Reduction in payments

The amount for housing costs payable may be reduced if:

- a person moves into more expensive accommodation while on ESA(IR), Income Support, JSA or Pension Credit or during a short break between periods on any of those benefits;
- a person occupies accommodation too big for her/him and family;
- the area where the accommodation is located is more expensive than other areas where suitable accommodation is available or the outgoings are higher than on other properties in the area suitable to a person's needs;
- a person has non-dependants living in the house (ie people for whom the person is not claiming benefit). A deduction is made for each non-dependant in the home. If a non-dependent couple is residing with the person, only one non-dependant deduction will be made.



Circumstances	Weekly rate of non-dependant deductions
£420.00 or more	£94.50
£338.00 - £419.99	£86.10
£253.00 - £337.99	£75.60
£195.00- £252.99	£46.20
£133.00 - £194.99	£33.65
Less than £133.00	£14.65

These income levels only apply to non-dependants in full-time paid work but see below if also on PC. Full-time paid work is paid employment of sixteen hours or more a week.

Gross income is gross wages (before tax and National Insurance deductions) and most other income. Income which is disregarded includes DLA, Attendance Allowance and payments from the Macfarlane Trusts, the Eileen Trust, MFET Limited, the Independent Living Fund and the Fund.

Where a non-dependant is not in full-time paid work, a weekly deduction of £14.65 will usually apply. Exceptions to this rule provide that in certain cases no deductions will be applied (see below). A weekly deduction of £14.65 will be made where a person is on Income Support, JSA(IB) or ESA and aged 25 or over.

A person will not cause a deduction to be made from housing costs if s/he is:

- aged sixteen or seventeen; or
- aged under 25 and on Income Support, JSA(IB), ESA(IR) in the assessment phase;
- receiving Pension Credit; or
- a close relative and a co-owner or joint tenant with the person or partner; or
- a full-time student during period of study. This only applies during the summer vacation if the student is not in full-time paid work; or
- receiving training allowance for a Youth Training Programme; or
- normally living elsewhere or in prison or hospital for more than 52 weeks.

No deduction will be made from housing costs for non-dependants regardless of the circumstances of the non-dependants themselves where the person applying or partner is:

- blind or treated as blind for purposes of higher pensioner or disability premium; or
- getting Attendance Allowance or the care component of DLA.



□ Other matters

From October 2010 the standard interest rate used to calculate support for mortgage interest payments is set at a level equal to the Bank of England's published monthly Average Mortgage Rate. At time of writing the standard interest rate is 3.63%.

If the rate of interest a person pays is higher than the standard rate, then s/he will have to meet the shortfall.

For the majority, mortgage interest payments will be paid direct to the building society, or other lender, rather than to the person.

A person does not have to go through a new waiting period if there is a break in claiming ESA(IR) for a short period. In effect, a person is treated as entitled to ESA(IR) even if not actually entitled to the benefit. Where the break in claim is for twelve weeks or less, the two periods are linked and a person does not have to wait. Instead, s/he requalifies for help with housing costs immediately. This can apply where a person was on Income Support, JSA(IB) or Pension Credit during any period or would have been getting one of these benefits or ESA(IR) except for income or capital being too high in specific circumstances.

Longer linking periods apply in certain circumstances. For example, a longer period of 104 weeks applies to certain welfare to work beneficiaries and a period of 52 weeks applies if a person or partner:

- stopped getting ESA(IR) due to an increase in hours or starting work; or
- is in certain training-for-work schemes or on an employment scheme option; and
- as a result is treated as being in full-time work or earnings or income are too high for benefit.

A person who was receiving help prior to 2 October 1995 with certain housing costs that can no longer be met may still continue to receive it if s/he satisfies conditions. These include:

- interest on ineligible loans (eg a loan for a car or a business debt which is secured on a home) where a partner has left and cannot or will not pay, or has died, or will not be covered by ESA(IR). A person who was receiving help with these costs prior to 2 October 1995 may still continue to receive it under transitional protection rules if s/he satisfies conditions;
- help with accumulated arrears of interest is not provided.

Transitional protection has been introduced to cover certain groups of people with existing claims who would otherwise be worse off as a result of these changes.

□ Mortgage interest run-on

A person will continue to receive help with housing costs for a period of four weeks where:

- s/he or partner has been receiving ESA(IR), Income Support or JSA(IB) for a continuous period of 26 weeks; and



- s/he or partner takes up a full-time job or increases the hours of work to full-time (a person counts as in full-time work if s/he works sixteen hours or more per week; a partner counts as in full-time work if s/he works 24 hours or more per week); and
- that work is expected to last for at least five weeks; and
- current ESA(IR) entitlement includes housing costs; and
- s/he or partner will remain liable for the housing costs.
- The amount is paid as Income Support and will be the lowest of either:
 - the amount of housing costs payable in the week before starting full-time work; or
 - the amount of ESA(IR) entitlement in the week before starting full-time work.

A person should notify the local office that s/he or her/his partner has started full-time work. Payment should then be made automatically to the person and not the lending agency. All income and capital are ignored in calculating the amount of housing costs.

4.3.2 Resources

Resources are the income of a person from all sources and include part-time earnings, most other benefits and maintenance payments.

However, Attendance Allowance, DLA (any component) Constant Attendance Allowance, Social Fund payments, Exceptionally Severe Disablement Allowance, Child Benefit, CTC and Housing Benefit do not count as resources. Where a person is a member of a couple, her/his partner's income is added to hers/his.

4.3.2.1 Part-time earnings

Net earnings (ie earnings after deductions of tax, National Insurance and half of any contribution paid towards a personal or occupational pension) will be taken into account in full, less any amount which is to be disregarded (see 4.3.2.2).

No deductions can be made for travel, childcare or other expenses. Also, any payments made by the employer for travel costs to work or childcare expenses will be treated as earnings.

Any other work-related expenses paid by the employer are treated as wages unless they are exclusively and necessarily incurred in the performance of the duties of employment.

Payments of reasonable expenses to volunteers will be ignored provided no additional payments are being made.

4.3.2.2 Earnings disregards

The following earnings disregards apply to the person claiming while doing work s/he may do while claiming ESA(IR) (see section 2.4) and where her/his partner is not in full-time paid work. This should not be confused with exempt work (see section 2.4.1) where the earnings disregards are more generous.

A person will have £20 of her/his earnings disregarded where:

- the person claiming is undertaking work as:



- a councillor;
- a member of a DLA advisory board or a tribunal;
- the result of an emergency to protect another person, property or livestock;
- a self-employed person while receiving assistance under the Employment and Training Act 1973.
- the person's partner is working and not in full-time work because s/he is:
 - child minding in her/his own home;
 - receiving specified assistance to become self-employed;
 - an auxiliary coastguard, part-time firefighter or life boat crew member or a member of the Territorial Army;
 - undertaking work as a councillor;
 - a carer;
 - earning or working a number of hours which have been reduced by 25 per cent or more due to a physical or mental disability;
 - involved in a trade dispute (or is within fifteen days of the end of the trade dispute);
 - working while in a care home or independent hospital;
 - in part-time employment (under 24 hours) or would be treated as not in full-time paid work for Income Support purposes.

4.3.2.3 Other income

Other income, including other benefits, falls into one of three types. The main categories of income are set out below.

Treatment for ESA(IR) - count in full:

- Bereavement Allowance (although a bereavement payment is treated as capital) and Widow's Pension;
- CA;
- ESA(C);
- Incapacity Benefit;
- Industrial Injuries Benefits (except those disregarded in full, see below);
- Maternity Allowance;
- net SSP (ie less tax, National Insurance and half of any pension contributions);
- net Statutory Maternity Pay (ie less tax, National Insurance and half of any pension contributions);
- net Statutory Adoption Pay;
- net Statutory Paternity Pay;
- WTC;



- JSA(C);
- Retirement Pensions;
- Severe Disablement Allowance.

Treatment for ESA(IR) purposes - ignore first £10:

- War Disablement Pension;
- War Widow(er)s or Surviving Civil Partner's Pension;
- Widowed Mother's and Widowed Parent's Allowance;
- a pension from Germany or Austria paid to victims of Nazi persecution; and
- extra statutory payments made in lieu of those payments already listed or similar payments made by another country.

Only £10 in total can be ignored. However, the £10 ignored is additional to the total disregard of any Mobility Supplement, Attendance Allowance or Constant Attendance Allowance paid as part of a War Disablement Pension.

Treatment for ESA(IR) purposes: ignore in full

- AA;
- any extra statutory payment paid in compensation for non-payment of Income Support, JSA(IB), ESA(IR), DLA, Attendance Allowance, Constant Attendance Allowance or Mobility Supplement.
- Child Benefit;
- CTC;
- DLA;
- Education Maintenance Allowance;
- foster fees;
- Guardian's Allowance;
- Housing Benefit
- income frozen from abroad;
- income in kind;
- Job Start Allowance;
- payments under the Personal Social Services (Direct Payments) NI Order 1996;
- payments under Sections 18, 35 and 36 of the Children (NI) Order 1995;
- payments from Independent Living Fund and Skipton Fund;
- Social Fund payments.

Any child care expenses reimbursed to the person claiming in respect of her/his participation in a DfC approved scheme supporting its objectives are also ignored.



Charitable or other voluntary payments made regularly are ignored except where a person is involved in a trade dispute or within the first fifteen days following her/his return to work after a trade dispute.

Regular personal injury payments derived from lump sums held in trust or in an annuity or from an agreement or court order are disregarded in full, regardless of what the payment is intended for.

Other sources of income may be disregarded in part or in full. For a complete list see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook* or Schedule 8 of the Employment and Support Allowance Regulations (Northern Ireland) Regulations 2008.

Maintenance

Most child maintenance is ignored completely. Most other maintenance counts in full.

Income from capital

ESA(IR) is not payable where a person and/or partner have capital over £16,000. The threshold above which capital will be deemed to generate income is £6,000.

The first £6,000 is ignored and an income of £1 per week will be assumed for every £250 or part of £250 in excess of £6,000.

A person who is permanently resident in residential care, nursing home or other type of residential accommodation and has capital in excess of £16,000 will not be entitled to ESA(IR). The first £10,000 of any capital is ignored and an income of £1 per week will be assumed for every £250 or part of £250 in excess of £10,000.

Notional income

A person will still be treated as possessing income which s/he has deprived her/himself of for the purpose of securing entitlement or increasing entitlement to ESA(IR).

This may include an assumption of income where work is undertaken for which a person does not receive any payment or any proper payment. In making such a decision, the Social Security Agency will consider what would be a reasonable payment and also the circumstances of the person for whom the work is undertaken.

5. CLAIMING ESA

A person can make a claim for ESA over the phone or on an approved form. Phone calls are recorded and there is generally no need for a signature. People with speech or hearing difficulties can use a text phone facility. People who cannot use a phone can make a claim via a representative or interpreter or in person at most Jobs and Benefits Offices.

Only one claim is necessary for both ESA(IR) and ESA(C).

The person can self-certify for the first seven days of the claim but must produce a medical certificate from her/his doctor after that date. If the claim is made over the



phone, the person can self-certify over the phone. However, if the claim is made in writing, the person must self certify on an approved form.

The ESA branch assesses if the basic conditions are met and if so ESA is paid pending assessment of limited capability.

A person receives an ESA questionnaire about four weeks after the date of claim and must complete and return this. ESA branch uses the information on this form to determine whether the person needs to attend a work capability assessment.

Only people with the most severe conditions are exempt from the work capability assessment. Those who are not exempt on the basis of the initial evidence must participate in a work capability assessment.

ESA branch is based at James House, Ormeau Road, Belfast. Phone claims should be made on 0800 085 6318.

6. PAYMENT OF ESA

ESA is generally paid fortnightly in arrears.

ESA is not paid for the first seven waiting days of the period of limited capability of work.

ESA(C) is taxable but ESA(IR) is not.

7. CHALLENGING DECISIONS

The general rules on revision, supersession and appeals apply to ESA. Some decisions cannot be appealed including:

- which partner should claim ESA;
- treating a claim for Maternity Allowance as a claim for ESA;
- the time and manner of payment of ESA.

Where a person has been found to have a limited capability for work, is treated as having limited capability for work or is found to have limited capability for work-related activity, the DfC can look at the decision again for example where:

- the DfC wishes to determine whether there has been a relevant change of circumstances in that person's physical or mental condition;
- the DfC wishes to determine whether the previous decision was made in ignorance or based on a mistake as to some material fact or;
- at least three months have passed since the date on which the person was determined to have limited capability for work or to be treated as having limited capability for work.



7.1 Claiming ESA while appealing

If a person is appealing a decision that s/he does not have limited capability for work, s/he can receive ESA and is treated as having limited capability of work until the appeal is decided. The assessment phase for these people lasts until the appeal is determined (so neither additional component is paid).

8. ESA AND OTHER BENEFITS

8.1 Universal Credit and ESA

ESA (IR) is one of the benefits that are expected to be replaced by Universal Credit (UC) when it is introduced in Northern Ireland.

UC is intended to replace a number of existing benefits and tax credits, including ESA. Claimants, whether in work or out of work, will claim one central means-tested benefit: UC.

Existing claimants of ESA will be able to stay on the benefit (as long as existing conditions are met) until they are moved onto (migrated) UC.

UC is likely to begin a phased introduction in Northern Ireland sometime during the spring of 2017.

8.2 ESA and other benefits

In general, the relationship between other benefits and either ESA(C) or ESA(IR) is similar to the relationship that exists between other benefits and Incapacity Benefit or Income Support.

The main effects are:

- people receiving ESA(IR) are passported onto maximum Housing Benefit;
- people receiving only ESA(C) have this counted as income for Housing Benefit;
- if ESA(C) is reduced because of a sanction, the full unsanctioned amount is taken into account as income for Housing Benefit;
- the Housing Benefit applicable amount includes the support or work-related activity component from the date this is included in the ESA. Higher earnings disregards apply for Housing Benefit where a person is doing exempt work;
- there is no disability premium within Housing Benefit for those receiving ESA (but it continues for those not receiving ESA) or who have or are treated as having limited capability for work (eg where the person is claiming National Insurance credits only);
- the personal allowances for Housing Benefit during the period of the assessment phase for ESA can be less than for those not receiving ESA.



9. THE BENEFIT CAP

The benefit cap applies in Northern Ireland from 31 May 2016.

9.1 What is the benefit cap?

The benefit cap limits the amount, in total, that claimants can receive from a list of specified benefits including ESA (WRAG only). The cap for single claimants is currently £350 a week and £500 for couples with, or without, dependent children, and lone parent families. Most benefit income is taken into account:

- Bereavement Allowance;
- Child Benefit;
- Child Tax Credit;
- Employment and Support Allowance;
- Guardian's Allowance;
- Housing Benefit;
- Incapacity Benefit;
- Income Support;
- Jobseeker's Allowance;
- Maternity Allowance;
- Severe Disablement Allowance;
- Widowed Parent's Allowance;
- Widowed Mothers Allowance;
- Widows Pension.

Where a person's benefit entitlement exceeds the cap, the reduction will be from the person's Housing Benefit award.

9.2 Exemptions to the benefit cap

The cap will not apply where the person claiming or her/his partner is receiving one of the following benefits:

- Disability Living Allowance (including if received for a dependent child);
- Working Tax Credit;
- Attendance Allowance;
- Industrial Injuries Disablement Benefits;
- Employment and Support Allowance, if paid with the support component;
- War Widow's or War Widower's Pension;
- Carer's Allowance.



The cap will also not apply where the person claiming or her/his partner had in at least 50 out of the last 52 weeks been in employment and not entitled to Income Support, JSA or ESA. In these circumstances, the cap will not apply for 39 weeks from the day after the last day of employment.

Two additional exemptions apply in Northern Ireland as part of the welfare reform mitigations.

The first ensured that those in receipt of Carer's Allowance were exempt from the cap but this has now been inserted into the legislation.

The second one ensures that any families with children not exempt under the above provisions will receive a supplementary payment to compensate for any deduction made as a result of the cap being applied. This applies for up to four years.

10. LEGISLATION

Primary legislation:

The Welfare Reform Act 2007: Part 1

Secondary legislation:

The Employment and Support Allowance Regulations 2008

The Employment and Support Allowance (Transitional Provisions) Regulations 2008

The Employment and Support Allowance (Consequential Provisions) Regulations 2008, SI No.1082

The Employment and Support Allowance (Consequential Provisions) (No.2) Regulations 2008, SI No. 1554

The Employment and Support Allowance (Consequential Provisions) (No. 3) Regulations 2008, SI 2008 No.1879

The Employment and Support Allowance (Miscellaneous Amendments) Regulations 2008, SI 2008 No.2428

11. FURTHER INFORMATION

Welfare Benefits and Tax Credits Handbook, 18th Edition, CPAG, 2016/2017, £61.

Child Poverty Action Group Tools for advisers: Employment and Support Allowance

www.cpag.org.uk/esa



Department for Work and Pensions, Employment and Support Allowance – latest information for advisers and healthcare professionals

www.dwp.gov.uk/esa

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APPENDIX 1:

Employment and Support Allowance Regulations 2008

Schedule 2 – Assessment of whether a claimant has limited capability for work

Part 1: Physical disabilities

Activity	Descriptors	Points
1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.	(a) Cannot either: (i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(c) Cannot either: (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.	9
	(d) Cannot either: (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.	6
	(e) None of the above apply.	0



2. Standing and sitting.	(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.	15
	(b) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair); or (iii) a combination of (i) and (ii) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.	9
	(c) Cannot, for the majority of the time, remain at a work station, either: (i) standing unassisted by another person (even if free to move around); or (ii) sitting (even in an adjustable chair) or (iii) a combination of (i) and (ii) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.	6
	(d) None of the above apply.	0
3. Reaching.	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
	(b) Cannot raise either arm to top of head as if to put on a hat.	9
	(c) Cannot raise either arm above head height as if to reach for something.	6
	(d) None of the above apply.	0
4. Picking up and moving or transferring by the use of the upper body and arms.	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
	(b) Cannot pick up and move a one litre carton full of liquid.	9
	(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
	(d) None of the above apply.	0



5. Manual dexterity.	(a) Cannot either: (i) press a button, such as a telephone keypad; or (ii) turn the pages of a book with either hand.	15
	(b) Cannot pick up a £1 coin or equivalent with either hand.	15
	(c) Cannot use a pen or pencil to make a meaningful mark.	9
	(d) Cannot single-handedly use a suitable keyboard or mouse.	9
	(e) None of the above apply.	0
6. Making self understood through speaking, writing, typing, or other means normally, or could reasonably be, used, unaided by another person.	(a) Cannot convey a simple message, such as the presence of a hazard.	15
	(b) Has significant difficulty conveying a simple message to strangers.	15
	(c) Has some difficulty conveying a simple message to strangers.	6
	(d) None of the above apply.	0
7. Understanding communication by: (i) verbal means (such as hearing or lip reading) alone, (ii) non-verbal means (such as reading 16 point print or Braille) alone, or (iii) a combination of (i) and (ii) using any aid that is normally, or could reasonably be, used, unaided by another person.	(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
	(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.	15
	(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
	(d) None of the above apply.	0
8. Navigation and maintaining safety, using a guide dog or other aid if either or both are	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15



normally, or could reasonably be, used.	(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
	(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
	(d) None of the above apply.	0
9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the wearing or use any aids or adaptations which are normally, or could reasonably be, worn or used.	(a) At least once a month experiences: (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.	15
	(b) The majority of the time, is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.	6
	(c) None of the above apply.	0
10. Consciousness during waking moments.	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
	(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
	(c) None of the above apply.	0



Part 2: Mental, cognitive and intellectual function assessment

Activity	Descriptors	Points
11. Learning tasks.	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
	(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
	(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
	(d) None of the above apply.	0
12. Awareness of everyday hazards (such as boiling water or sharp objects).	(a) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.	15
	(b) Reduced awareness of everyday hazards leads to a significant risk of (i) injury to self or others; or (ii) damage to property or possessions such that they frequently require supervision to maintain safety.	9
	(c) Reduced awareness of everyday hazards leads to a significant risk of: (i) injury to self or others; or (ii) damage to property or possessions such that they occasionally require supervision to maintain safety.	6
	(d) None of the above apply.	0
13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
	(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9



	(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
	(d) None of the above apply.	0
14. Coping with change.	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
	(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.	9
	(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	6
	(d) None of the above apply.	0
15. Getting about.	(a) Cannot get to any place outside the claimant's home with which the claimant is familiar.	15
	(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
	(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
	(d) None of the above apply.	0
16. Coping with social engagement due to cognitive impairment or mental disorder.	(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
	(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant	9



	distress experienced by the individual.	
	(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.	6
	(d) None of the above apply.	0
17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
	(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
	(d) None of the above apply.	



APPENDIX 2:

Employment and Support Allowance Regulations 2008

Schedule 3 – Assessment of whether a claimant has limited capability for work related activity

Activity	Descriptors
<p>1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.</p>	<p>Cannot either: (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.</p>
<p>2. Transferring from one seated position to another.</p>	<p>Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.</p>
<p>3. Reaching.</p>	<p>Cannot raise either arm as if to put something in the top pocket of a coat or jacket.</p>
<p>4. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule).</p>	<p>Cannot pick up and move a 0.5 litre carton full of liquid.</p>
<p>5. Manual dexterity.</p>	<p>Cannot either: (a) press a button, such as a telephone keypad; or (b) turn the pages of a book with either hand.</p>



<p>6. Making self understood through speaking, writing, typing, or other means normally, or could reasonably be used unaided by another person.</p>	<p>Cannot convey a simple message, such as the presence of a hazard.</p>
<p>7. Understanding communication by (i) verbal means (such as hearing or lip reading) alone, or (ii) non-verbal means (such as reading 16 point print or Braille) alone, or (iii) a combination of (i) and (ii) using any aid that is normally, or could reasonably be, used, unaided by another person.</p>	<p>Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.</p>
<p>8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations normally, or could reasonably be, worn or used.</p>	<p>At least once a week experiences: (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or (b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.</p>
<p>9. Learning tasks.</p>	<p>Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.</p>
<p>10. Awareness of hazard.</p>	<p>Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of: (a) injury to self or others; or (b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.</p>



<p>11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).</p>	<p>Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.</p>
<p>12. Coping with change.</p>	<p>Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.</p>
<p>13. Coping with social engagement, due to cognitive impairment or mental disorder.</p>	<p>Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.</p>
<p>14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.</p>	<p>Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.</p>
<p>15. Conveying food or drink to the mouth.</p>	<p>(a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else; (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving: (i) physical assistance from someone else; or (ii) regular prompting given by someone else in the claimant's presence.</p>
<p>16. Chewing or swallowing food or drink.</p>	<p>(a) Cannot chew or swallow food or drink; (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort; (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or</p>



	<p>(d) Owing to a severe disorder of mood or behaviour, fails to:</p> <ul style="list-style-type: none">(i) chew or swallow food or drink; or(ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.
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