

Housing Benefit and Council Tax Benefit Circular

Department for Work and Pensions

The Adelphi, 1 - 11 John Adam Street, London WC2N 6HT

HB/CTB A11/2008

ADJUDICATION AND OPERATIONS CIRCULAR

WHO SHOULD READ	All Housing Benefit (HB) and Council Tax Benefit (CTB) staff
ACTION	For information
SUBJECT	Amendments to Housing Benefit and Council Tax Benefit to take account of the introduction of Employment and Support Allowance from 27 October 2008. See SI 2008/1082

Guidance Manual

The information in this circular does affect the content of the HB/CTB Guidance Manual. Please annotate this circular number against *paragraph*

A2.430, A2.560, A2.562 – .566, A2.569, A2.570, A3.52, A4.1190, A4.1191, A5.504, A5.505, A5.602, A5.660, AW5.730 - .732, AW5.750, A5.846, A5, Annex A, A5, Annex D, A6.161, A6.186 - .188, A6.340, AW6.363, AW6.410, AW6.413, AW6.414, A7100, A7, Annex A, A7, Annex F,

BW1.42, BW1.201, BW1.767, BW1.770, BW1.774, BW1.777, BW1.781, BW1.830- .834, BW1.870, BP1.767, BP1.770, BP1.777, BP1.870, BW2.150, BW2.164, BW2, Annex B, paragraphs 4 & 6, BW2, Annex F, BP2.150, BP2.164, BP2.573, BP2, Annex F, BW3.32, BW3.33, BW3.41, BW3.140, BW3.180, BW3, Annex A, BP3.32, BP3.44,

C1.66, C2.30, C4.230, C4.350, C4.390, C5.00, C5.50, C5.100, C5.110, C5.111, C5.130, C5.150, C5.180, C5.202, C5.250, C5.430, C5.450, C5.470, C5.471, C5.472, C5.490, C5.500, C5.501, C5.520, C5.540, C5.580, C5.581, C5.605, C5.740, C5.741, C5.744, C5.780, C5.800.

Queries

If you

- want **extra copies of this circular/copies of previous circulars**, they can be found on the website at www.dwp.gov.uk/hbctb
- have any queries about the
 - **technical content of this circular**, contact Christine Watkins
Email: Christine.Watkins@dwp.gsi.gov.uk
 - **distribution of this circular**, contact Corporate Document Services Ltd Orderline
Email: orderline@cds.co.uk

Crown Copyright 2008

Recipients may freely reproduce this circular.

Contents

para

Housing Benefit and Council Tax Benefit: amendments to take account of the introduction of Employment and Support Allowance

Introduction	1
Background – ESA policy	5
Age condition	5
Personal allowances – ESA(C) and ESA(IR)	10
Components	13
Premiums	14
The changeover to the main phase.....	16
Waiting days.....	19
Paydays	20
The calculation of income and capital in ESA(IR)	21
Overall amounts	22
Credits only	23
Sanctions	24
Linking rules	27
Transitional arrangements	29
How ESA effects HB/CTB.....	30
HB/CTB for customers receiving ESA(IR) (with or without ESA(C))	32
HB and CTB for customers receiving ESA(C), without ESA(IR), or who are credits only cases.....	35
HB/CTB personal allowances for single customers aged 25 or over	36
HB/CTB personal allowances for single customers aged less than 25.....	37
HB/CTB personal allowances for couples - see also Appendix A.....	38
HB/CTB personal allowances for customers aged 60 or over.....	41
HB/CTB components – single customers aged less than 60	43
HB/CTB components, couples – both aged less than 60.....	45
Components – customers aged 60 or over who are claiming ESA(C) or credits only.....	54
HB/CTB Premiums.....	56

The effective date of change from assessment phase to main phase.....	65
General amendments.....	70
Persons who have attained the qualifying age for state pension credit.....	71
Remunerative work – non dependants	73
Persons from abroad	75
Eligible housing costs	77
Restrictions on unreasonable rents –‘Saved’ HB Regulation 13.....	79
Persons of prescribed description	81
Circumstances in which income of non-dependant is to be treated as customer’s	82
Treatment of childcare charges.....	84
Meaning of income.....	90
Calculation of income other than earnings - ESA(C) reduced because of a sanction	93
Diminishing notional capital rule.....	96
Continuing payments where State Pension Credit claimed	98
Full-time students to be treated as not liable to make payments in respect of a dwelling	99
Non-dependant deductions for HB customers where the non-dependant is receiving ESA.....	101
Non-dependant aged at least 25	101
Non-dependant aged less than 25	104
Non-dependants aged less than 25 who are lone parents	108
Effective date of change where the non-dependant is aged less than 25	109
Non-dependant deductions for CTB customers	112
Time and manner in which claims are to be made.....	115
Duty to notify changes of circumstances.....	120
Circumstances in which HB is to be made to a landlord	123
Recovery of overpayments/excess benefit from prescribed benefits.....	125
Amount of Alternative Maximum CTB (Second Adult Rebate) ..	126
Sums to be disregarded in the calculation of income other than earnings	128
Earnings disregards	129
Capital to be disregarded	133
Matters to be included in decision notice	135
ESA rates and the HB/CTB rates for ESA customers.....	Appendix A
Case studies	Appendix B

Housing Benefit and Council Tax Benefit: amendments to take account of the introduction of Employment and Support Allowance

Introduction

- 1 This circular provides you with
 - details of the policy for and calculation of Employment and Support Allowance (ESA), which will be introduced on 27 October 2008, and
 - guidance on the changes made to the Housing Benefit (HB) and Council Tax Benefit (CTB) Regulations to take account of the introduction of ESA
- 2 Guidance on the operational effects will be sent separately.
- 3 The changes to the HB/CTB regulations are in the Employment and Support Allowance (Consequential Provisions) Regulations 2008, SI 2008/1082.
- 4 Details of ESA can be found in the Employment and Support Allowance Regulations 2008 SI 2008/794.

Background – ESA policy

Age condition

- 5 ESA can be claimed up to 'pensionable age'. That age is currently 65 for men and 60 for women but will alter as the State Pension age is equalised. Therefore, before April 2010, women may claim ESA up to age 60 and men up to age 65. However, between April 2010 and 2020, the age limit for eligibility to ESA for women aged between 60 and 64 will rise incrementally until it is aligned with that of men (65). State Pension age may also rise in future beyond age 65 to age 68 for all, and eligibility for ESA will change accordingly.
- 6 The other age condition is that the customer must be aged at least 16.
- 7 There will be two elements of ESA, contributory (ESA(C)) and income-related (ESA(IR)). Customers can receive either ESA(C) or ESA(IR) or both. Each element will be payable in two stages. For the first 13 weeks, known as the assessment phase, a basic amount will be awarded.
- 8 During the assessment phase the customer will have a Work Capability Assessment (WCA) which will determine eligibility to benefit. If the WCA threshold is satisfied, from week 14 of entitlement (not including the waiting days) the customer will pass into the second of the two stages which is referred to as main phase. At this point an extra component will be awarded. This will be either a work-related activity component or a support component - the latter will be awarded to those whose physical or mental condition affects them more severely.

- 9 If the WCA threshold is not met, benefit will cease immediately and the customer will need to claim Income Support (IS), Jobseeker's Allowance (JSA) or Pension Credit. For customers who appeal, a new award of ESA is made at the assessment phase rate until the Appeal Tribunal makes its determination.

Personal allowances – ESA(C) and ESA(IR)

- 10 The basic rate of ESA payable in the assessment phase will depend on the customer's age - the under 25s and under 18s will receive a lower rate – see *Appendix A*.
- 11 From week 14 the basic rate will be the same for customers, irrespective of age. However, for ESA(IR) differing amounts will be paid for couples.
- 12 ESA(C) will be a single person benefit. Therefore, there will be no increases for partners or dependent children. But in ESA(IR) there will be rates for couples in the same way as JSA(IB) and IS. However, there will not be allowances for children as they are provided for by the Child Tax Credit system.

Components

- 13 From week 14 the relevant component will be added provided that the customer has a limited capability for work, which will be decided by the WCA. The support component will be payable at a higher rate than the work-related activity component. The component will be paid on a single basis, ie there will be no couple rate in ESA(C) or ESA(IR). However if both members of a couple are entitled to ESA(C) in their own right they will each be entitled to a component, provided each of them satisfies the WCA.

Example

Couple both aged over 25, both claiming ESA(C). Each is entitled to the work-related activity component.

Each will receive

- a personal allowance of £60.50, and
- a work-related activity component of £24.00

making a total of £84.50 each or £169.00 for the couple.

If one is entitled to ESA(IR), that person will be entitled to

- the couple rate personal allowance of £94.95
- a work-related activity component of £24.00

making a total of £118.95 for the couple.

The ESA(C) of the other member of the couple (£84.50) will be deducted from that amount. So in this case, the couple will receive £34.45 ESA(IR) and £84.50 ESA(C).

Premiums

- 14 Premiums will only be awarded in ESA(IR). The Disability Premium will not be a part of the structure of ESA. However, other premiums currently payable in income-related benefits will still be available. The only change made to the qualifying conditions for the other premiums is in respect of the Enhanced Disability Premium. Customers entitled to the support component will be automatically entitled to the Enhanced Disability Premium. See *Appendix A* for the premiums payable and the amounts.
- 15 In ESA, the two pensioner premiums and the higher pensioner premium have been amalgamated into a single pensioner premium. This single pensioner premium will be payable from the start of the claim, if the customer is aged at least 60. However, once the main phase is reached and a component is awarded the pensioner premium will be reduced by the amount of the component awarded.

Example

Single man, aged 62 claims ESA on 10 November 2008 and is awarded ESA(IR) from that date. During the assessment phase he is awarded

- the basic amount £60.50, and
- the pensioner premium £63.55

which totals £124.05.

He subsequently satisfies the WCA and is awarded the work-related activity component of £24.00 from 9 February 2009. The pensioner premium is reduced by the amount of the component. The calculation will then be

- basic amount £60.50, and
- the work-related activity component, £24.00, and
- pensioner premium £39.55 (£63.55 - £24.00).

Total £124.05.

The changeover to the main phase

- 16 The basic rate will be paid for exactly 13 weeks. This means that during the 14th week there may be a split week payment to transfer the customer from the assessment phase to the main phase. The split week will be comprised of a proportion of the assessment phase rate added to a proportion of the main phase rate.
- 17 If the decision that the person has limited capability for work is made after the 13 weeks have elapsed, the appropriate component will be 'backdated' to the start of the 14th week.

- 18 Although normally 13 weeks the assessment phase may be shorter, but not longer. For example, a terminally ill customer will receive the support component from the outset of their claim. Also where a customer, who has already served part of the assessment phase, leaves ESA and then reclaims within 12 weeks they will return to the point at which they left.

Example

Customer claims and is awarded ESA from 15 December 2008. Their claim ends on 18 January 2009. They have then served five weeks of the assessment period.

They claim ESA again on 16 February 2009, this is within 12 weeks of the earlier claim ending, therefore, they will need to serve a further eight weeks before reaching the main phase (if they have a limited capability for work).

Waiting days

- 19 There will be three waiting days for both elements of ESA, although customers will not always need to serve these, for example if they have already been served in a previous claim which links to the new one, if they move to ESA from IS, or if they are terminally ill.

Paydays

- 20 The payday for both elements will be determined by the National Insurance number, as is the case for Incapacity Benefit (IB). Payment will be fortnightly, in arrears.

The calculation of income and capital in ESA(IR)

- 21 The income and capital rules for calculating ESA(IR) will be based on those for calculating IS. If a customer is a member of a couple, the income and capital of the partner will normally be treated as belonging to the customer. This is because entitlement to ESA(IR) is based on the financial position of the customer and members of their household.

Overall amounts

- 22 When the contributory element is the same as the income-related element, the contributory element will take precedence and will be awarded – as is the case in JSA. If a customer or couple has no other income, or income below the total of their weekly requirements (the applicable amount), they will receive ESA(IR) to bring their income up to their weekly requirements.

Example

Married couple both aged less than 60. The man is the ESA customer and is entitled to ESA(C) of £60.50. His wife works part time earning £50 a week. The ESA(IR) calculation in the assessment phase will be

Couple rate personal allowance	£94.95
Less income of	
• ESA £60.50, and	
• net earnings £30 (£20 disregard applies in ESA(IR))	
• total income	£90.50

ESA(IR) of £4.45 will be awarded in addition to the ESA(C) of £60.50.

Credits only

- 23 Some customers who have limited capability for work will not be entitled to ESA(C) because they do not satisfy the National Insurance contribution conditions nor to ESA(IR) because they have other income which exceeds their applicable amount. Such customers will be entitled to National Insurance credits only for each week of limited capability for work to protect their entitlement to the State Pension and other contributory benefits. They will be required to satisfy the WCA. As such decisions will be made on which component would have been added had ESA been payable. You will be informed of that decision.

Sanctions

- 24 After around eight weeks in the assessment phase customers will be required to attend and participate in a Work-Focused Interview. If the customer fails to attend or participate in an interview their benefit, either ESA(IR) or ESA(C) may be sanctioned (reduced), but the sanction will not be imposed until the first week of the main phase (week 14).
- 25 In the main phase only those receiving the work-related activity component will be required to attend work-focused interviews. Therefore, a sanction for failure to attend or participate will apply only to that group. The maximum sanction is the same value as the work-related activity component (£24.00 a week).
- 26 If ESA(IR) is reduced because of work-related activity breaches the sanction will reduce the level of entitlement of ESA(IR), but will not extinguish it.

Linking rules

- 27 ESA has two linking rules. The short linking rule allows a customer to leave benefit for up to 12 weeks and return in the same position as when they left. For example, if a customer leaves ESA after six weeks and returns five weeks later they will only need to serve another seven weeks before entering the main phase.

- 28 The second linking rule allows a customer, after 13 weeks of a claim, to leave benefit for up to 104 weeks and return to the same benefit position as when they left. The rule applies only if the customer enters work or training. It also protects the benefit position of people entitled to the disability element of Working Tax Credit for up to two years.

Transitional arrangements

- 29 When introduced ESA will only apply to new claims. The migration of existing recipients of IS on grounds of incapacity or disability, IB and SDA will not begin immediately and will be phased. The exact timescales have not yet been decided but it is likely that the two schemes will run concurrently for several years.

Note: Some new claims after A day (27 October 2008) will link with previous claims for IS/IB, and the ESA claim will be treated as a claim for those benefits.

How ESA affects HB/CTB

- 30 Amendments have been made to the
- Housing Benefit Regulations 2006 (the HB Regulations)
 - Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (the HB(SPC) Regulations)
 - Council Tax Benefit Regulations 2006 (the CTB Regulations)
 - Council Tax Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006 (the CTB(SPC) Regulations)
 - Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006, and
 - Housing Benefit and Council Tax Benefit (Decisions and Appeals) Regulations 2001
- so that
- in line with the IS provisions, customers receiving ESA(IR) will be entitled to maximum eligible help with their rent/council tax
 - an award of ESA will have broadly the same effect on HB/CTB as an award of the benefits it replaces, and
 - whenever possible, the structure of HB/CTB is aligned with that of ESA
- 31 The amendments are in The Employment and Support Allowance (Consequential Provisions) Regulations 2008, SI 2008/1082 – the ESA(CP) Regulations.

HB/CTB for customers receiving ESA(IR) (with or without ESA(C))

- 32 Like recipients of IS, JSA(IB) and State Pension Credit (SPC) (guarantee credit), customers receiving ESA(IR) will be entitled to full eligible HB/CTB. You will be advised by Jobcentre Plus that ESA(IR) has been awarded and from when.

- 33 The existing regulations allow full eligible HB/CTB to be awarded to recipients of the income-related benefits by providing that they have the whole of their income and capital disregarded. Receipt of ESA(IR) has been added to those provisions. See the *ESA(CP) Regulations*
- Regulation 24(b) which inserts a reference to ESA(IR) into the HB Regulations, Schedule 4 (sums to be disregarded in the calculation of earnings), para 12
 - Regulation 25(a) which inserts a reference to ESA(IR) into the HB Regulations, Schedule 5 (Sums to be disregarded in the calculation of income other than earnings, para 4, and
 - Regulation 26(a) which inserts a reference to ESA(IR) into the HB Regulations, Schedule 6 (Capital to be disregarded), para 5
- 34 The CTB equivalents are in ESA(CP) Regulation 61(b), 62(a) and 63(a). There are no equivalent amendments for HB(SPC) or CTB(SPC) as recipients of ESA(IR) cannot have their HB/CTB claim processed using those regulations.

HB and CTB for customers receiving ESA(C), without ESA(IR), or who are credits only cases

- 35 See also
- *Appendix A, Table of the ESA rates and the HB/CTB rates for ESA customers, and*
 - *Appendix B, Case studies*

HB/CTB personal allowances for single customers aged 25 or over

- 36 The HB/CTB personal allowance is the same as it is in ESA. Please note that the rate is also the same as it is for non-ESA customers— see *Appendix A*.

HB/CTB personal allowances for single customers aged less than 25

- 37 HB/CTB will follow the same rules as ESA. Therefore, during the assessment phase, single people aged less than 25 will receive a lower personal allowance than someone aged 25 or over. However, once the main phase starts all HB/CTB recipients will receive the allowance for those aged 25 or over, irrespective of their age. DWP will notify you when the main phase is reached.

Example 1

Customer aged 22 is awarded weekly ESA(C) of £47.95 from the start of the claim (that is, after serving the three waiting days, unless they are exempt from serving waiting days). The HB/CTB personal allowance will be the same rate.

He satisfies the WCA and is entitled to a component from week 14. His ESA personal allowance will increase to the rate for a customer aged 25 or over, ie £60.50. The HB/CTB personal allowance will increase to £60.50 from the Monday following the increase in the ESA personal allowance, unless the ESA personal allowance increases on a Monday in which case the HB/CTB personal allowance will increase at the same time.

Example 2

Customer aged 24 claims ESA but is not entitled to a payment as he has insufficient National Insurance contributions and has other income meaning that he has no entitlement to ESA(IR). The HB/CTB personal allowance will be £47.95.

He satisfies the WCA and is entitled to a component from week 14. No ESA is payable, but the HB/CTB personal allowance will increase to the aged 25 and over rate of £60.50. – See *ESA(CP) regulation 23(a)*, for HB and *regulation 59(a)* for CTB.

HB/CTB personal allowances for couples - see also *Appendix A*

- 38 The HB personal allowances will be based on age, with 18 being the threshold for the higher rate – as is currently the case.
- Both members less than 18 - during the assessment phase the lower couple rate (£72.40) should be awarded. Once the main phase starts if the HB customer and the ESA customer are the same person, the higher rate of £94.95 will be awarded. (If the HB customer is not the ESA customer the non-ESA rules will apply and the personal allowance will be £72.35 throughout the claim.)
 - At least one member is aged 18 or over - the higher rate will be awarded from the start of the claim.
 - Both members aged 18 or over – the higher rate will be awarded from the start of the claim.
- 39 As CTB cannot be awarded to customers less than 18, for CTB there is only one (the higher) rate (£94.95) for couples.
- 40 The HB amendments are in ESA(CP) Regulation 23(a) and the CTB amendments are in 59(a). There are no CTB amendments for couples as the rates are the same as those in the rules for non-ESA customers.

HB/CTB personal allowances for customers aged 60 or over

- 41 ESA will be payable to men up to age 65 and women up to age 60, although the maximum age for women will equalize over the period April 2010 to March 2020 in line with the equalisation of State Pension qualifying age. This means that men in the age group 60-64 will have the choice of whether to claim ESA and HB/CTB or SPC and HB/CTB whereas women may only claim SPC and HB/CTB.
- 42 If a man over 60 claims ESA and either ESA(C) or credits only are awarded the HB/CTB claim should be processed using the HB/CTB (SPC) Regulations. The personal allowances in those regulations are higher than in the working age provisions and have not been amended as a consequence of the introduction of ESA.

HB/CTB components – single customers aged less than 60

- 43 If the customer meets the WCA threshold, a work-related activity component or a support component will be awarded in ESA. The decision on whether a component is awarded, and which one, will be made by a decision maker acting on behalf of the Secretary of State. DWP will advise you of that decision.
- 44 ESA(C) will be taken into account as income in the HB/CTB calculation. Therefore, so that no one loses the whole value of their ESA component, the same component will be awarded in HB/CTB at the same time that it is awarded in ESA.

Example 1

Single customer aged 50 is awarded ESA(C) at the basic rate of £60.50. The HB/CTB personal allowance will also be £60.50.

From week 14 the work-related activity component is awarded. The ESA(C) increases by £24 to £84.50.

From week 14, the work-related activity component will also be added to the HB/CTB personal allowance to bring the weekly applicable amount to £84.50.

Example 2

Single customer aged 20 is awarded ESA(C) at the basic rate of £47.95. The HB/CTB personal allowance will also be £47.95.

From week 14 the work-related activity component is awarded. The ESA basic allowance will increase to £60.50 (the age 25 or over rate) and the work-related activity component (£24.00) added making the total £84.50.

From week 14 the work-related activity component will also be added to the HB/CTB personal allowance which will also increase to the age 25 or over rate.

HB/CTB components, couples – both aged less than 60

- 45 There will be no couple rate component in ESA(C) or ESA(IR). The same rule will apply in HB/CTB.

Example

Couple, when the HB/CTB customer is the ESA customer who is entitled to ESA(C) and the partner has too much income for them to be entitled to ESA(IR).

The HB/CTB personal allowance will be £94.95 and ESA(C) of £60.50 will be taken into account as income.

The customer satisfies the WCA and is awarded a work-related activity component from week 14. The ESA(C) increases by £24 to £84.50.

The work-related activity component will be added to the HB/CTB personal allowance which will increase to £118.95.

- 46 If the HB/CTB customer is not an ESA customer but the partner is, the component appropriate to the partner should be added to the HB/CTB personal allowance.

Example

Couple both aged over 18. The HB/CTB customer is working, the partner claims ESA.

The HB/CTB personal allowance will be £94.95 and the partner's assessment phase rate of ESA(C) of £60.50 will be taken into account as income, as well as the customer's earnings.

The partner becomes entitled to the support component £29.00 and the ESA(C) is increased to £89.50 which will be taken into account as income in the HB/CTB assessment.

The support component will be added to the HB/CTB personal allowance, which will increase to £123.95 - **but see paragraph 59.**

- 47 When both members of a couple are ESA customers and both have entitlement to a component, the component appropriate to the HB/CTB customer should be added to the HB/CTB personal allowance. This will be the case even if the HB/CTB customer is entitled to the work-related activity component and the partner is entitled to the, higher, support component.

Example

Couple, both aged over 18.

During the assessment phase the personal allowance is £94.95.

The HB/CTB customer satisfies the WCA and is awarded a work-related activity component. The same component will be added to the HB/CTB personal allowance at the same time.

The partner is subsequently awarded a support component. The partner's ESA(C) will increase and that increased amount will be taken into account as income in the HB/CTB calculation.

However, the work-related activity component will remain appropriate in the HB/CTB applicable amount as that is the component appropriate to the HB/CTB customer.

- 48 In this situation the couple would be better off if they swapped who was the HB/CTB customer. You should advise them that this will be the case.

- 49 If when the HB/CTB claim is made, the HB/CTB customer is in the assessment phase but the partner is already entitled to a component you should award the component appropriate to the partner. But if the HB/CTB customer subsequently becomes entitled to an ESA component, the HB/CTB should include the component appropriate to the customer. This may mean that you will need to change the component you awarded originally, or advise the couple that they would be better off if they swapped who was the HB/CTB customer.

Example

Couple claim, customer is in the assessment phase, partner already entitled to a support component.

From the start of the HB/CTB claim, the couple would be entitled to the couple rate personal allowance and the support component.

If the HB/CTB customer becomes entitled to a work-related activity component, the support component would be replaced by the work-related activity component in the HB/CTB calculation.

- 50 The component is normally awarded from week 14 but may be awarded earlier if
- the customer is terminally ill, or
 - the claim links to an earlier ESA claim
- 51 You should award the same component in HB/CTB and from the same start date as ESA.

Example

An ESA customer reclaims. The claim links to an earlier claim in which 10 weeks of the assessment phase were served.

The customer satisfies the WCA and is entitled to the work-related activity component which will be awarded after three weeks because 10 weeks of the assessment phased had been served in the earlier linked ESA claim.

You should award the same component from the same start date.

- 52 The relevant HB amendments are made by
- ESA(CP) Regulations 11 and 12, which provide that the applicable amount for a single person, a couple or members of a polygamous marriage may include either a work-related activity component or a support component, and
 - ESA(CP) Regulation 23(d) which sets out which component should be awarded and the amount of each one
- 53 The CTB equivalents are in ESA(CP) Regulations 48, 49 and 59(d).

Components – customers aged 60 or over who are claiming either ESA(C) or credits only

- 54 Because ESA can be awarded to men up to age 65, there may be situations when a man (either single or with a partner) aged 60 – 64 claims ESA(C) and HB/CTB. If this happens the claim should be determined using the HB/CTB(SPC) Regulations.
- 55 The HB/CTB(SPC) regulations have not been amended to allow an award of a component. This is to align the HB/CTB provisions with those of ESA(IR) which are that there is no overall increase in income when entitlement to a component begins, see *Appendix B, Case study 6* for an example. Therefore, you cannot award a component to a HB/CTB customer aged 60 or over.

HB/CTB Premiums

- 56 All the HB/CTB premiums currently payable will apply to ESA customers claiming HB/CTB except there will be no Disability Premium when the ESA customer is the HB/CTB customer – see *Appendix A* for the premiums and their rates.

Example 1

Single customer registered blind claims and is awarded ESA(C).
The Disability Premium cannot be awarded in HB/CTB.

Example 2

Couple. ESA customer is the HB/CTB customer. Partner has Disability Living Allowance (DLA).
Because the HB/CTB customer is the ESA customer, the Disability Premium cannot be awarded.

If the couple were to swap so that the person who is not the ESA customer becomes the HB/CTB customer, the Disability Premium would be payable at the couple rate – as DLA is in payment. This is because the qualifying conditions for a Disability Premium have not been amended for HB/CTB customers who are not ESA customers.

- 57 If you receive a HB/CTB claim for a couple, only one of whom is an ESA customer, you should consider whether they would be better off if the other member of the couple were to claim HB/CTB and advise them accordingly.
- 58 The provisions excluding ESA HB/CTB customers from entitlement to the Disability Premium are in ESA(CP) Regulation 23(b), for HB and 59(b), for CTB.
- 59 No component should be awarded if a non-ESA HB/CTB customer who is a member of a couple already has a Disability Premium awarded at the couple rate, if their partner is an ESA customer entitled to a component. This situation will arise because a non-ESA customer will be entitled to a Disability Premium at the couple rate, for example because they have DLA. Adding a component for the partner in this situation would be double provision.

Example

HB/CTB customer is working and has DLA.
The partner is receiving main phase ESA(C) which includes the work-related activity component.
As the HB/CTB customer is not the ESA customer the Disability Premium couple rate will be appropriate. However, no component can be awarded.
The partner's ESA(C) will be taken into account in full in the HB/CTB assessment.

- 60 The provision excluding a non-ESA customer from receiving a component when entitled to the Disability Premium is in ESA(CP) Regulation 23(d), for HB and 59(d), for CTB.
- 61 ESA provisions include an enhancement allowing automatic entitlement to the Enhanced Disability Premium for customers getting the support component. The HB/CTB provisions have been amended so that the same rule applies.

Example

Single customer aged 30 claims ESA(C) and is entitled to the support component.

During the assessment phase the HB/CTB personal allowance will be the basic rate of £60.50.

From the start of the main phase, the support component of £29.00 and the Enhanced Disability Premium of £12.60 will be added making the total weekly applicable amount £102.10

- 62 If the customer is a member of a couple, the couple rate EDP would be awarded.
- Note:** The enhancement applies only when the customer is entitled to the support component. It does not apply if the partner is the only member of the couple who is entitled to the support component.
- 63 If the partner is the only member of a couple entitled to a support component you should advise the HB/CTB customer to make their partner the HB/CTB customer in order to receive the Enhanced Disability Premium.
- 64 The relevant amendments are in ESA(CP) Regulation 23(c), for HB and 59(c), for CTB. There are no amendments to the HB/CTB(SPC) provisions as the Enhanced Disability Premium is only appropriate to customers/partners aged less than 60.

The effective date of change from assessment phase to main phase

- 65 A split week payment may be made at the end of the assessment phase containing, for example, four days ESA(C) at the assessment phase rate and three days at the main phase rate. This depends on
- the day the claim is first made
 - whether the waiting days must be served, and
 - the customer's ESA payday
- 66 The effective date of awarding the component in HB/CTB and taking the ESA component into account is
- the start of the first benefit week following the date entitlement to an ESA component begins, if this is not a Monday, or
 - if entitlement to an ESA component begins on a Monday, that same Monday

Example

ESA(C) awarded from 20 November 2008. The payday is Tuesday.

The assessment phase will end on 18 February 2009 and a component awarded from 19 February 2009.

On 24 February the customer will receive two days (17 and 18 February) at the assessment phase rate and five days at the main phase rate.

You should award the component in HB/CTB from 23 February 2009 and take the weekly amount of the component into account from that date.

The effect will be that you will disregard the split week payment and you will do only one recalculation.

- 67 The provision is in ESA(CP) Regulation 3(b) which inserts paragraphs (17) and (18) into Regulation 8 of the HB/CTB (Decisions and Appeals) Regulations 2001.
- 68 There may be occasions when the decision to award a component is made after 13 weeks have elapsed, for example because the WCA has been delayed, or the customer wins an appeal against a decision that they do not have a limited capability for work. If this happens, the component will be 'backdated' to the start of week 14. You should do the same.

Example

The same customer as in the example in paragraph 66 above fails the WCA but appeals against the decision. Provided the appeal is made within three months of the ending of entitlement, the assessment phase rate of ESA will be put into payment until the appeal is decided. The assessment phase rate of HB/CTB must also continue meaning a component cannot be awarded in HB/CTB.

On 18 March 2009 the Appeal Tribunal decides that the WCA threshold is satisfied. The outcome is

- a 'backdated' award of an ESA component from 19 February 2009
- the first payment of the component will be due on 24 February 2009

You will need to

- award the same component in HB/CTB, and
- take the full weekly amount of the component into account from 23 February 2009

- 69 The provision allowing you to do this is in ESA(CP) Regulation 3(b) which inserts new paragraphs (17) and (18) into Regulation 8 of the HB/CTB (Decisions and Appeals) regulations 2001.

General amendments

- 70 There are many well established rules in the HB/CTB provisions that have been extended to ESA. The rules cover provisions such as dates of claim, and the method of claiming where IS or JSA has also been claimed. Carrying the rules forward means that an award of ESA will have the same effects on HB/CTB as an award of the benefits it will replace, and will provide alignment with the effects of an award of JSA, IS or SPC on HB/CTB.

Persons who have attained the qualifying age for state pension credit

- 71 The working age regulations have been amended so that if the customer or partner is receiving ESA(IR) the working age provisions will apply to them - as is the case for recipients of IS or JSA(IB). See ESA(CP) Regulation 6, for HB and 44, for CTB.
- 72 The pensioner provisions have been amended so that they cannot apply when either the customer or partner is receiving ESA(IR), again as is the case for IS or JSA(IB). See ESA(CP) Regulation 30, for HB(SPC) and 67, for CTB(SPC). However, as is the case with JSA(C), the pensioner provisions will apply when the customer or partner is receiving ESA(C) or is a credits only case and is aged 60 or over.

Remunerative work – non-dependants

- 73 Whether someone is or is not in remunerative work is relevant to the HB/CTB calculation in relation to non-dependants of the HB/CTB customer. Currently, the provision is that where a non-dependant is on IS or JSA(IB) for more than three days in any benefit week they cannot not be treated as engaged in remunerative work and means (if they are aged at least 25) they have the lower standard non-dependant deduction made in respect of them.
- 74 Receipt of ESA(IR) for more than three days a week has been added to the provision. The effect will be that non-dependants receiving ESA(IR) may also attract the lowest rate deduction in HB and a nil deduction in CTB. See ESA(CP) Regulation 7, for HB, 31, for HB(SPC), 45, for CTB and 68, for CTB(SPC). See also the section later in this circular on non-dependant deductions.

Persons from abroad

- 75 Persons from abroad are generally excluded from receiving HB/CTB. However, recipients of IS or JSA(IB) are not excluded. Recipients of ESA(IR) will similarly not be excluded. See ESA(CP) Regulation 8, for HB and 46 for CTB. All the other provisions for persons from abroad remain unchanged and will apply to ESA customers in the same way they apply to all other customers.
- 76 There are no amendments to the HB(SPC) or the CTB(SPC) provisions, as customers receiving ESA(IR) cannot have their claim dealt with using those regulations.

Eligible housing costs

- 77 HB can be met for certain specified payments. But it cannot be payable if the customer is on IS or JSA(IB) which includes an amount to cover housing costs. Receipt of ESA(IR) has been added so that those recipients are treated in the same way as recipients of IS or JSA(IB).
- 78 HB can continue for four weeks if the customer becomes entitled to IS/JSA(IB) which includes an amount for housing costs. This may happen where they buy a home they formerly rented. That provision has been extended to include entitlement to ESA(IR). See ESA(CP) Regulations 9(a) and (b). There is no amendment to the HB(SPC) as customers receiving ESA(IR) cannot have their claim dealt with using those regulations.

Restrictions on unreasonable rents –‘Saved’ HB Regulation 13

- 79 Provisions allow you to consider whether to reduce the eligible rent when the property is too large or the rent is unreasonably high. However, there are exceptions for people who are incapable of work or treated as incapable of work as defined in the Contributions and Benefits Act 1992, ie people receiving IB or who would be if they had sufficient National Insurance Contributions (credits only cases). ESA(C) recipients and ESA credits only cases have been added to the exceptions.
- 80 See ESA(CP) Regulation 2. As the regulation is ‘saved’ it is relevant to working age and pensioner HB claims.

Persons of prescribed description

- 81 A person aged 16 – 20 must be referred to as a ‘young person’ within all of the HB/CTB regulations. The term is used to define those who may be treated as a member of the customer’s family for the purposes of calculating the weekly amount of income at or below which a customer may receive full eligible help with their rent and council tax. There is an exception, which is that a person who is on IS or JSA(IB) shall not be a ‘young person’, and so will not be included in the calculation of the applicable amount. ESA(IR) has been added to that exception. See ESA(CP) Regulation 10, for HB, 32, for HB(SPC), 47, for CTB and 69, for CTB(SPC).

Circumstances in which income of non-dependant is to be treated as customer’s

- 82 You may assess HB/CTB entitlement using the non-dependant’s income and capital rather than the customer’s if you consider that the customer and non-dependant have made arrangements to maximise benefit. However, you cannot do so if the customer is on IS or JSA(IB). ESA(IR) has been added to the provision so that you are also precluded from using the power when the customer is on that benefit.
- 83 See ESA(CP) Regulation 13, for HB and 50, for CTB. The HB(SPC) or CTB(SPC) regulations have not been amended as the customer could not be on ESA(IR) and have their claim processed using the pensioner provisions.

Treatment of childcare charges

- 84 Under the existing system customers may also become entitled to the childcare charges disregard from earnings or other income (currently up to £300 a week for two or more children) if they have a Disability Premium or when they start to receive any of the three rates of IB; that is
- long-term, payable after 52 weeks of incapacity
 - short-term at the higher rate, payable after 28 weeks of incapacity where the customer is terminally ill, or
 - short-term, payable from week 1 until either of the other two rates become payable
- 85 Because the Disability Premium cannot be awarded in HB/CTB to ESA customers an alternative is required for ESA customers so they may receive the childcare costs disregard from income or earnings in line with their counterparts who have the same circumstances but are getting IB. The alternative for the Disability Premium and for either of the two higher rates of IB is receipt of either component. This will not produce an exact match with the current provisions as the structure of ESA is different.
- 86 The alternative for receipt of short-term IB is entitlement to the assessment phase of ESA. This is because such people would be at the start of a period of incapacity.
- 87 The amendments to enable the childcare charges disregard in the HB working age provisions are in ESA(CP) Regulation 14
- Regulation 14(a) allows recipients of ESA and credits only cases to be treated as being in remunerative work
 - Regulation 14(b) adds a reference to ESA so that the disregard may only apply where the person was actually in remunerative work before claiming ESA
 - Regulation 14(c) adds to the provisions for determining whether the other member of a couple is incapacitated
 - receipt of either of the components or being deemed entitled to one of the components
 - a provision so that even if no ESA is awarded to the other member because of a sanction, the other member would remain treated as being incapacitated
 - a provision equivalent to that for IB that the customer must have been incapacitated for 196 days, and that breaks of 12 weeks or less will mean that two periods would be treated as continuous
 - a requirement that the other member of a couple is receiving one of the components. Normally such people would be included in the first amendment made by regulation 14(c). However this would not be the case if the customer is entitled to a couple rate Disability Premium because they are not the ESA customer – see the section on components and couples
 - Regulation 14(d) adds a provision allowing the conditions to be re-satisfied if the customer ceases being incapacitated but becomes incapacitated again and the break is 12 weeks or less

- 88 The short linking rule in the provisions above is currently eight weeks. However the short (8 week) linking rule in IB will be extended to 12 weeks in ESA to align with the rules in JSA. The existing IB provisions allow a customer to leave benefit for up to eight weeks and return in the same benefit position as when they left. Therefore, to align with IB and ESA the short linking rule has been extended in HB/CTB. The effect will be that the childcare disregard applies immediately if
- the customer satisfied the conditions for the disregard before leaving HB/CTB, and
 - satisfies the conditions on return to HB/CTB, and
 - the gap is less than 12 weeks
- 89 The equivalent
- CTB provisions are in ESA(CP) regulation 51
 - HB(SPC) provisions are in ESA (CP) regulation 34, and
 - CTB(SPC) provisions are in ESA(CP) regulation 71

Meaning of income

- 90 There has been no need to amend the provisions determining income for working age customers because all income is counted as such unless it is partially or wholly disregarded. We have not provided for a disregard of ESA(C), therefore it will be taken fully into account.
- 91 Also there is no amendment to the provisions for determining income in the pensioner regulations as social security benefits are already listed – ESA(C) is a social security benefit. However there is a provision that the reduced amount of IB must be taken into account if the reduction is due to occupational and personal pensions or LA councillors' allowances. The same deductions will apply to ESA(C), therefore ESA(C) has been added to that provision.
- 92 There is no amendment to the working age HB and CTB regulations as the provision applies only to pensioners. See ESA(CP) Regulation 33, for HB(SPC) and 70, for CTB(SPC).

Calculation of income other than earnings – ESA(C) reduced because of a sanction

- 93 ESA can be sanctioned when, for example, the customer fails to attend a work-focused interview. The sanction is a reduction in the weekly amount payable for a set period and can be applied to either element of ESA. The level of ESA(C) will be taken fully into account as income in the HB/CTB calculation. Therefore, if ESA(C) were reduced because of a sanction, and the HB/CTB were re-assessed to take into account the reduced amount, the subsequent increase in HB/CTB would offset the effect of the sanction.

- 94 To prevent this from happening you should take the full, unsanctioned weekly rate of ESA(C) into account in the HB/CTB calculation for the duration of the sanction period. See ESA(CP) Regulation 15, for HB and 52, for CTB. There is no amendment to the HB(SPC) or the CTB(SPC) regulations as there is an existing provision which would mean that the full unsanctioned weekly rate of ESA(C) would be taken into account – see existing HB(SPC) Regulation 29(3) and CTB(SPC) Regulation 19(3).
- 95 Please note that a conditionality sanction will never
- remove entitlement to ESA(IR)
 - be imposed during the assessment phase
 - be imposed if the support component is awarded
 - be greater than the value of the work-related activity component

Diminishing notional capital rule

- 96 A customer must be treated as possessing capital if they have deprived themselves of it for the purpose of getting HB/CTB or increasing their HB/CTB. Provisions include a mechanism for reducing the notional capital by the weekly amount of IS, JSA(IB) or SPC (guarantee credit, savings credit or both) not paid because the regulation had been applied. An equivalent provision for people who have claimed ESA(IR) has been added.
- 97 The relevant regulation also contains definitions of 'part week' for the purposes of the diminishing notional capital rule. The definitions refer to periods for which IS and JSA(IB) are paid, therefore we have added references to ESA(IR). See ESA(CP) Regulation 16, for HB, 35 for HB(SPC), 53, for CTB and 72 for CTB(SPC).

Continuing payments where State Pension Credit claimed

- 98 Maximum HB/CTB may continue in payment for four weeks following the cessation of IS/JSA(IB) whilst a claim for SPC is being determined. It applies if the person has attained the qualifying age for SPC (currently 60) or, if JSA(IB) continued beyond that age, has attained the age of 65. Entitlement to ESA(IR) has been added so that continuing payments may apply when the person is leaving ESA(IR) for SPC. See ESA(CP) Regulation 36, for HB(SPC) and 74 for CTB(SPC).

Full-time students to be treated as not liable to make payments in respect of a dwelling

- 99 The general rule is that a full time student is excluded from HB/CTB. However, there are exceptions, for example students receiving IS or JSA(IB). Receipt of ESA(IR) has been added to the exceptions.

- 100 Students receiving IB or people being treated as incapable of work under the provisions of the Contributions and Benefits Act 1992 (credits only cases) are also exempt from the general exclusion. We have added receipt of ESA(C) or people treated as having limited capability for work under the provisions of the Welfare Reform Act 2007 (ESA credits only cases) to the exemption. See ESA(CP) Regulations 17(a) and (b) for HB and 54(a) and (b), for CTB.

Non-dependant deductions for HB customers where the non-dependant is receiving ESA

Non-dependant aged at least 25

- 101 If the non-dependant is receiving ESA credits only, they must have too much income/capital to be entitled to ESA(IR). Therefore, the deduction will be based on that other income.
- 102 If the non-dependant is receiving ESA(C) they will attract the lower rate standard deduction.
- 103 If the non-dependant is receiving ESA(IR) they will also attract the lower standard deduction, as is the case for non-dependants receiving IS or JSA(IB). See Regulation 18 and Regulation 37.

Non-dependant aged less than 25

- 104 If the non-dependant is receiving ESA credits only, they must have too much income/capital to be entitled to ESA(IR). Therefore, the deduction will be based on that other income.
- 105 If the non-dependant is receiving ESA(C) they will attract the lower rate standard deduction.
- 106 If the non-dependant is receiving ESA(IR), assessment phase they will attract a nil deduction. This is because during the assessment phase ESA recipients aged less than 25 receive a lower personal allowance than those aged at least 25.
- 107 When the non-dependant reaches main phase ESA(IR) they will attract the lower standard deduction. This is because they will be receiving the same weekly personal allowance as a non-dependant aged at least 25. See ESA(CP) Regulation 18, for HB and 37 for HB(SPC).

Non-dependants aged less than 25 who are lone parents

- 108 The provisions set out above for non-dependants aged less than 25 will also apply when the non-dependant is a lone parent. The effect is that a lone parent aged less than 25 receiving main phase ESA(IR) will attract a deduction whereas their counterparts getting IS would not.

Effective date of change where the non-dependant is aged less than 25

- 109 When the decision to award main phase ESA to a non-dependant aged less than 25 is made before the end of the assessment phase, the effective date will be determined using the normal rules and will be the start of the benefit week following the date the non-dependant receives the main phase rate.
- 110 However, the award of the main phase component and the increased personal allowance to a non-dependant aged less than 25 may be delayed and then backdated to week 14 of the ESA(IR) claim. For example, the customer wins an appeal against a decision that they have not satisfied the WCA.
- 111 During the period before the appeal is heard assessment phase rate of ESA may continue in payment. Therefore, the nil rate deduction should continue. However, if the appeal decision is to award main phase ESA(IR), the date of change will be the date the decision to award main phase ESA is made. You should not apply the deduction for the non-dependant retrospectively as this would cause an overpayment through no fault of the customer. See Regulation 3(b) which inserts a new paragraph (16) into Regulation 8 of the HB/CTB (Decisions and Appeals) Regulations 2001.

Example

The ESA customer is aged 23 and is a non-dependant of an HB/CTB customer. The customer is receiving the assessment phase rate of ESA(IR) which is due to end on 12 February 2009.

The decision to award main phase ESA(IR) is delayed until 11 March 2009.

The increased personal allowance and component are awarded from 13 February 2009.

The effective date for the HB/CTB customer is the date the decision is made, ie 11 March 2009.

The non-dependant deduction will be made from the start of the following benefit week.

Non-dependant deductions for CTB customers

- 112 If the non-dependant is receiving ESA credits only, they must have too much income/capital to be entitled to ESA(IR). Therefore, the deduction will be based on that other income.
- 113 If the non-dependant is receiving ESA(C) they will attract the lower standard rate deduction.
- 114 If the non-dependant is receiving ESA(IR), irrespective of their age, a non-dependant deduction will not be appropriate. This is in line with the provisions for when a non-dependant is receiving IS or JSA(IB). See ESA(CP) Regulation 55, for CTB and 73 for CTB(SPC).

Time and manner in which claims are to be made

- 115 The regulations contain provisions for how, when and where a HB/CTB claim is made. They provide that
- a HB/CTB claim may be sent to the DWP office where the customer is also claiming IS/IB/SPC or JSA
 - if a customer has claimed IS, JSA(IB) or is receiving a SPC (guarantee credit) and makes their HB/CTB claim within one month of the date the IS, JSA(IB) or SPC was made, the HB/CTB claim is treated as made on the day the IS, JSA(IB) or guarantee credit entitlement began
 - the three JSA(IB) waiting days shall be treated as days of entitlement to JSA(IB)
 - the HB/CTB claim is to be treated as made on the date a customer first becomes liable to pay rent provided that the customer is on IS, JSA(IB) or a guarantee credit and the HB/CTB claim is made within one month of the start of the rent/council tax liability
- 116 References to ESA have been added to bring its effects in to line with those of IS, JSA(IB) and SPC. One effect being that you may treat the person as being on ESA(IR) for the three waiting days, where those days immediately precede payment of ESA(IR). See ESA(CP) Regulation 5(3) and 19, for HB, 29(3) and 38, for HB(SPC), 43(3) and 56, for CTB and 66(3) and 75, for CTB(SPC).
- 117 There will be customers who are not entitled to ESA(C) during the assessment phase because
- they do not satisfy the National Insurance contribution conditions, and
 - have too much other income to be entitled to ESA(IR)
- but they will become entitled to ESA(IR) from week 14 when a component is awarded.
- 118 The date of claim for such people will be determined by using the existing HB regulation 83(10)/CTB regulation 69(12). It provides that where the customer is not entitled to HB/CTB in the benefit week immediately following the date of claim, but the relevant authority is of the opinion that unless there is change of circumstances the customer will be entitled not later than 13 weeks ahead, you may treat the claim as made in the week before entitlement begins.
- 119 This provision should not be needed very often as most customers who have too much income to qualify for ESA(IR) but too little to exclude them from main phase ESA(IR) are likely to be entitled to standard HB/CTB during the assessment phase.

Duty to notify changes of circumstances

- 120 The general provision is that a customer is required to report to you any change of circumstances that they might reasonably be expected to know would affect their HB/CTB. The exception is that people on IS or JSA(IB) do not need to report changes which affect IS or JSA(IB). ESA(IR) has been added to the references to IS and JSA(IB). See ESA(CP) Regulation 20, for HB and 57(a), for CTB.

- 121 There is no amendment to the HB(SPC) or CTB(SPC) regulations as a customer receiving IS/JSA(IB)/ESA(IR) could not have their claim processed using those regulations.
- 122 There is also a provision that a customer receiving alternative maximum CTB must report if any of the adults in the dwelling cease to be in receipt of IS or JSA(IB) and the date this occurs. ESA(IR) has been added so that such a customer must report that receipt of ESA(IR) has ceased and the date it happened. See ESA(CP) Regulation 57, for CTB and 76, for CTB(SPC).

Circumstances in which HB is to be made to a landlord

- 123 One of the conditions for when HB must be paid to the landlord is when, under regulations made under the Social Security Administration Act 1992, an amount of IS or JSA is being paid to the landlord to clear arrears of rent. When ESA is being paid to the landlord in the same circumstances has been added – see ESA(CP) Regulation 21.
- 124 The HB(SPC) provisions do not include payments to clear arrears from IS or JSA, therefore, there is no amendment to the pensioner provisions.

Recovery of overpayments/excess benefit from prescribed benefits

- 125 The regulations specify the Social Security benefits from which HB/CTB overpayments may be recovered. The list includes IS, JSA and SPC. ESA (both types) has been added to the list. The effect is that you will be able to make a recovery of HB/CTB from ESA(C) or ESA(IR), in line with the existing provisions for IS and IB. See ESA(CP) Regulation 22, for HB, 39, for HB(SPC), 58, for CTB and 77, for CTB(SPC).

Amount of Alternative Maximum CTB (Second Adult Rebate)

- 126 Certain categories of people are listed as attracting a reduction of the council tax due when they are living with the person liable for the council tax. The list includes adults receiving IS/JSA(IB). Receipt of ESA(IR) has been added to the list. See ESA(CP) Regulation 60, for CTB and 80, for CTB(SPC).
- 127 Please note that the provisions contained in Regulation 3 of the Council Tax (Discount Disregards) Order 1992 will be amended so that the discount for Severe Mental Impairment may apply to ESA customers as well as to Incapacity Benefit customers.

Sums to be disregarded in the calculation of income other than earnings

- 128 Concessionary payments to compensate for the non-payment of IS/JSA(IB) are disregarded. Non-payment of ESA(IR) has been added to the existing provision. See ESA(CP) Regulation 25(b), for HB and 62(b), for CTB. There is no equivalent provision in the HB(SPC) and CTB(SPC) Regulations. Instead all such payments are treated as capital and disregarded for up to a year – see *Capital to be disregarded*.

Earnings disregards

- 129 Currently, receipt of a Disability Premium enables certain disabled HB/CTB customers to receive higher earnings disregards which are
- entitlement to the £20 weekly earnings disregard
 - an additional earnings disregard applicable to, amongst others, disabled customers who are working for 16 or more hours per week
- 130 Because the Disability Premium cannot be awarded in HB/CTB to ESA customers an alternative is required for ESA customers. The alternative is receipt of either of the components. This will not produce an exact match with the current provisions as the structure of ESA is different.
- 131 The amendments enabling the £20 earnings disregard to apply to an ESA customer are in ESA(CP) Regulation 24(a), for HB, 40, for HB(SPC), 61(a), for CTB and 78, for CTB(SPC). They insert receipt of either of the components into the list of qualifying conditions for receipt of the £20 earnings disregard into each of the respective schedules.
- 132 The amendments enabling the additional earnings disregard are in ESA(CP) Regulation 24(c), for HB and 61(c), for CTB. They add respectively receipt of either of the components to the provisions requiring entitlement to a Disability Premium in Schedule 4 para 17 of the HB Regulations and Schedule 3 para 16(2) of the CTB Regulations. As the Disability Premium cannot be awarded to customers aged 60 or over, there is no equivalent amendment to the HB(SPC) or CTB(SPC) regulations.

Capital to be disregarded

- 133 A payment of arrears of or compensation in respect of specified benefits is disregarded for up to 52 weeks after it is received. The benefits include an income-related benefit. ESA(IR) has been added to the provision. See ESA(CP) Regulation 26(b), for HB, 41(a), for HB(SPC), 63(b), for CTB and 79(a), for CTB(SPC).
- 134 Under the HB(SPC) and CTB(SPC) capital disregards rules, payments of benefit of £5,000 or more are disregarded for up to one year. The list of benefits includes IS and JSA. ESA has been added to the list. See ESA(CP) Regulation 41(b), for HB(SPC) and 79(b), for CTB(SPC).

Matters to be included in decision notice

- 135 The information to be included in a decision notice depends on the type of claim. So that ESA customers receive the equivalent information sent to IS/JSA(IB) customers, ESA(IR) has been added to the list of matters to be included in a decision notice when
- the customer is on IS/JSA(IB)
 - the customer is not on IS/JSA(IB)
 - no award of HB/CTB is made, and
 - alternative maximum CTB is payable – when one of the matters included is whether any second adult is on IS/JSA(IB)/SPC

See ESA(CP) Regulation 27, for HB, 64, for CTB and 81,for CTB(SPC).

ESA rates and the HB/CTB rates for ESA customers

Employment and Support Allowance rates	ESA rates	HB rates	CTB rates
Single person ESA(IR) and ESA(C)			
under 25 - assessment phase	£47.95	£47.95	£47.95
25 or over	£60.50	£60.50	£60.50
Any age - main phase	£60.50	£60.50	£60.50
Lone parent ESA(IR) and ESA(C)			
Under 18 - assessment phase	£47.95	£47.95	£47.95
18 or over	£60.50	£60.50	£60.50
Any age – main phase	£60.50	£60.50	£60.50
Couple ESA(IR)¹			
Both under 18	£47.95	£72.35	
One 18 or over, the other under 18	£94.95	£94.95	
Both 18 or over	£94.95	£94.95	£94.95
Both under 18, with responsibility for a child	£72.35		
One under 18, one aged 18 – 24	£47.95		
One under 18, one aged 25 or over	£60.50		
Both under 18, main phase	£60.50		
One under 18, one 18 or over, main phase	£60.50		
Both under 18, responsible for a child, main phase	£94.95		
HB/CTB customer entitled to main phase, any age		£94.95	£94.95

¹ESA(C) not listed as it is a single person benefit

Premiums ESA(IR)²			
Pensioner premium			
single, assessment phase	£63.55		
single, entitled to work-related activity component	£39.55		
single, entitled to support component	£34.55		
couple, assessment phase	£94.90		
couple, entitled to work-related activity component	£70.40		
couple, entitled to support component	£65.40		
Severe Disability Premium			
single	£50.35	£50.35	£50.35
Couple, one qualifies	£50.35	£50.35	£50.35
Couple, both qualify	£100.70	£100.70	£100.70
Carer premium	£27.75	£27.75	£27.75
Enhanced Disability Premium			
single	£12.60	£12.60	£12.60
couple	£18.15	£18.15	£18.15
Components ESA(IR) and ESA(C)			
Work-related activity component ³	£24.00	£24.00	£24.00
Support component ³	£29.00	£29.00	£29.00

²Premiums are not awarded in ESA(C)

³Only appropriate in working age HB/CTB claims

Case studies

Example 1 – Single customer registered as blind

Single customer aged 30, registered as blind. His weekly income is earnings £200. He has savings of £7,000. The weekly rent is £100 and council tax is £25.

In-work calculation

HB/CTB applicable amount		£60.50
Disability Premium		£25.85
	Total	£86.35

Income

Earnings (£20 disregard)	£180		
Tariff Income	£4		
		Total	£184.00
		Excess income	£97.65

Rent £100 – (£97.65 x 65%)	£63.47	HB	£36.53
CT £25 – (£97.65 x 20%)	£19.53	CTB	£5.47

HB/CTB customer stops work and claims ESA

HB/CTB applicable amount (no Disability Premium)	£60.50
--	--------

Income

ESA(C) £60.50			
Tariff income £4		£64.50	
		Excess income	£4.00

Rent £100 – (£4.00 x 65%)	£2.60	HB	£97.40
CT £25 – (£4.00 x 20%)	£0.80	CTB	£24.20

The customer reaches the ESA main phase, work-related activity component awarded

HB/CTB applicable amount	£60.50	
Work-related activity component	£24.00	
	Total	£84.50

Income

ESA(C) £60.50 +

work-related activity component £24.00 = £84.50

Tariff income	£4.00	Total	£88.50
---------------	-------	--------------	--------

		Excess income	£4.00
--	--	----------------------	--------------

Rent £100 – (£4.00 x 65%) £2.60		HB	£97.40
---------------------------------	--	-----------	---------------

CT £25 – (£4.00 x 20%) £0.80		CTB	£24.20
------------------------------	--	------------	---------------

Example 2 – Couple, customer is registered as blind

Couple, both aged less than 60, the HB/CTB customer is registered as blind and has part time earnings of £110. Partner's income is £130 personal pension. The weekly rent is £100 and council tax £25.

In-work calculation

HB/CTB applicable amount		£94.95
Disability Premium		£36.85
	Total	£131.80

Income

Earnings (£20 disregard)	£90		
Personal pension	£130		£220.00
		Excess income	£88.20
Rent £100 – (£88.20 x 65%)	£57.33	HB	£42.67
CT £25 – (£88.20 x 20%)	£17.64	CTB	£7.36

HB/CTB customer stops work and claims ESA

HB/CTB applicable amount (no Disability Premium)	£94.95
--	---------------

Income

ESA(C) £60.50			
Partner's income £130			£190.50
		Excess income	£95.55
Rent £100 – (£95.55 x 65%)	£62.10	HB	£37.90
CT £25 – (£95.55 x 20%)	£19.11	CTB	£5.89

The customer reaches the ESA main phase, work-related activity component awarded

HB/CTB applicable amount	£94.95
Work Related Activity Component	£24.00
	Total
	£118.95

Example 3 – single customer aged over 25

Single customer aged 55 has a weekly private pension of £50. Weekly rent £120 and Council Tax £25. Claims ESA and HB/CTB on 27 October 2008, ESA payday is Tuesday.

HB/CTB Calculation

Personal allowance		£60.50		
<u>Income</u>				
Private pension	£50.00			
ESA(C)	£60.50		£110.50	
				Excess income £50.00
Rent £120 – (£50.00 x 65%)	£32.50		HB	£87.50
CT £25.00 – (£50.00 x 20%)	£10		CTB	£15.00

The customer satisfies the Work Capability Assessment and the work-related activity component is awarded from 28 January 2009.

HB/CTB calculation

Personal allowance		£60.50		
Work-related activity component		£24.00		
			Total	£84.50

Income

Private pension	£50.00			
ESA(C) £60.50 +				
Work-related activity component	£24.00	= £84.50		£134.50
			Excess income	£50.00

As the excess figure remains the same, so do the HB and the CTB.

The effective date of the change in HB/CTB will be 2 February 2009.

Example 4 – same customer as example 3 but the support component is awarded

HB/CTB Calculation

Personal allowance		£60.50	
Income			
Private pension	£50.00		
ESA(C)	£60.50		£110.50
		Excess income	£50.00
Rent £120 – (£50.00 x 65%)	£32.50	HB	£87.50
CT £25.00 – (£50.00 x 20%)	£10	CTB	£15.00

The customer satisfies the Work Capability Assessment and as a result of having limited capability for work-related activity the support component is awarded from 28 January 2009. Because the support component has been awarded the customer has automatic entitlement to the Enhanced Disability Premium.

HB/CTB calculation

Personal allowance		£60.50
Support component		£29.00
Enhanced Disability Premium		£12.60
	Total	£102.10

Income

Private Pension	£50.00	
ESA(C) £60.50 +		
Support component £29.00 =	£89.50	Total
		£139.50
	Excess income	£37.40

Rent £120 – (£37.40 x 65%)	£24.31	HB	£95.69
CT £25 – (£37.40 x 20%)	£7.48	CTB	£17.52

The effective date will again be 2 February 2009.

Example 5 – Couple, both over 18 but under 60, man claims ESA(C) and HB/CTB on 8 January 2009. Partner is working and earning £150 a week. The claim links to an earlier ESA(C) claim when 6 weeks of the assessment phase were served. The weekly rent is £120 and council tax £25.

HB/CTB calculation

Personal allowance £94.95

Income

ESA(C)	£60.50	
Partner's earnings £150 - £10 disregard	£140.00	£200.50
	Excess income	£105.55
Rent £120 – (£105.55x 65%) £68.60	HB	£51.40
CT £25 – (£105.55 x 20%) £21.11	CTB	£3.89

The effective date is 12 January 2009

The customer is awarded the work-related activity component from 26 February 2009. This is because the claim links to an earlier claim where 6 weeks of the assessment phase were served.

HB/CTB calculation

Personal allowance	£94.95
Work-related activity component	£24.00
	Total £118.95

Income

ESA(C) £60.50 +		
Work-related activity component £24.00 =		£84.50
Partner's earnings £150 - £20 disregard		
	£130.00	Total £214.50
	Excess income	£95.55

Rent £120 – ($£95.55 \times 65\%$) £62.10	HB	£57.90
CT £25 – ($£95.55 \times 20\%$) £19.11	CTB	£5.89

The HB/CTB increases because the £20 weekly earnings disregard applies once the customer becomes entitled to a component. The effective date will be 2 March 2009.

Example 6 – Couple, both aged 62. Man claims ESA(C) and HB/CTB on 15 December 2008. His wife is receiving weekly State Retirement Pension of £90.70 and a weekly occupational pension of £55. Weekly rent is £125 council tax £20.

HB/CTB calculation

Personal allowance £189.35

Income

ESA(C)	£60.50		
Wife's State pension	£90.70		
Wife's occupational pension	£55.00	£206.20	
		Excess income	£16.85
Rent £125 – (£16.85 x 65%)	£10.95	HB	£114.05
CT £20 – (£16.85 x 20%)	£3.37	CTB	£16.63

From 16 March he becomes entitled to the support component.

HB/CTB calculation

Personal allowance £189.35

(No component is awarded and the Enhanced Disability Premium does not apply to customers aged 60 or over.)

Income

ESA(C)	£60.50		
support component	£29.00		
Wife's State Pension	£90.70		
Wife's occupational pension	£55.00	£235.20	
		Excess income	£45.85
Rent £125 – (£45.85 x 65%)	£29.80	HB	£95.20
CT £20 – (£45.85 x 20%)	£9.17	CTB	£10.83

The effective date will be the 16 March 2009.