

Chapter 45 - Advance awards of ESA(IR), transitional issues and migration

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Chapter 45 – Advance awards of ESA(IR), transitional issues and migration

Introduction

45001 This Chapter contains guidance on

1. advance awards of ESA(IR) (see DMG 45011 et seq)
2. transitional issues (see DMG 45201 et seq)
3. migration (see DMG 45301 - 45302).

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

45002 - 45010

Advance awards of ESA(IR)

General

45011 DMs may make advance awards of ESA(IR) when certain conditions are met. These advance awards are unique to ESA(IR)¹. DMs should not confuse them with other advance claims and awards², including other advance awards of ESA(IR) (see DMG Chapter 02 for full guidance).

1 WR Act 07, s 5; ESA Regs, reg 146; 2 SS (C&P) Regs, reg 13

When to make an advance award of ESA(IR)

45012 DMs may make an advance award of ESA(IR)¹ when the claimant

1. is not entitled to ESA(IR) because income exceeds the applicable amount **and**
2. would be entitled to ESA(IR) if there was entitlement to
 - 2.1 the support component **or**
 - 2.2 the WRAC **and**
3. is not entitled to ESA(Cont).

1 WR Act 07, s 5(1)

45013 Where DMG 45012 applies and DMG 45015 is satisfied

1. the claim is treated as made for a period from the relevant day¹ (see DMG 45016) **and**
2. the DM may award ESA(IR) from the relevant day².

1 ESA Regs, reg 146(1)(a); 2 reg 146(1)(b)

45014 Where DMG 45013 applies the DM should make a decision on the original claim. That decision will be that the claimant

1. is not entitled to ESA from the date of claim **and**
2. is entitled to ESA(IR) from the relevant day.

When making that decision the DM will not be able to specify the amount of the claimant's ESA(IR) entitlement. However, the DM does not need to make another decision in order for the claimant to receive payment under the award from the relevant day.

45015 For an advance award of ESA(IR) to be made

1. the DM must be of the opinion that unless there is a change of circumstances the claimant satisfies
 - 1.1 the basic conditions except having LCW **and**
 - 1.2 the additional conditions for ESA(IR)when ESA(IR) becomes payable under the award¹ **and**
2. claimants must be treated as having LCW because they
 - 2.1 are terminally ill **or**
 - 2.2 receive treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy or are recovering from that treatment **or**
 - 2.3 suffer from a specific disease **or**
 - 2.4 are a carrier or have been in contact with a person suffering from a relevant disease **or**
 - 2.5 are pregnant and satisfy certain conditions **or**
 - 2.6 are a hospital in-patient **or**
 - 2.7 receive regular treatment **or**
 - 2.8 have exceptional circumstances **or**
 - 2.9 may have entitlement to ESA(IR) while in education because they receive DLAfor the period before ESA(IR) becomes payable under the award².

Note 1: See DMG Chapter 41 for guidance on the basic conditions and the additional conditions for ESA(IR).

Note 2: See DMG Chapter 42 for guidance on being treated as having LCW.

Note 3: Claimants are terminally ill if they are suffering from a progressive disease and their death in consequence of that disease can reasonably be expected within six months³.

1 ESA Regs, reg 146(3)(a); 2 reg 146(3)(b); 3 reg 2(1)

Example 1

Tanya makes a claim for ESA. She is not entitled to ESA(Cont). She receives a LRP which exceeds her applicable amount. However, the DM is satisfied that Tanya would be entitled to ESA(IR) if she had entitlement to the support component or the WRAC. She is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 2

Paul makes a claim for ESA. He is not entitled to ESA(Cont). His partner Alison works part-time. The amount of Alison's earnings that are taken into account exceed Paul's applicable amount. The DM is not satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the WRAC. However, the DM is satisfied that Paul would be entitled to ESA(IR) if he had entitlement to the support component. Paul is also treated as having LCW before the period ESA(IR) would become payable. The DM makes an advance award of ESA(IR).

Example 3

Samantha makes a claim for ESA on 1.12.08. She is not entitled to ESA(Cont). Her civil partner Ella works part-time. The amount of Ella's earnings that are taken into account is £135.00. They exceed Samantha's applicable amount of £94.95 and would still do so even if Samantha had entitlement to the support component of £29.00 or the WRAC of £24.00. The DM does not make an advance award.

Meaning of relevant day

- 45016 The relevant day is the day after the end of a period of 13 weeks beginning on the first day on which the claimant would be entitled to ESA(IR) if the claimant did not have income which exceeded the applicable amount¹.

1 ESA Regs, reg 146(2)

Example

Sergio makes a claim for ESA(IR) on 24.11.08. His wife Marta has part-time earnings which exceed his applicable amount until either the support component or the WRAC becomes payable. The DM decides that the relevant day for Sergio's advance award is 26.2.09.

Applicable amount when ESA(IR) becomes payable under an advance award

- 45017 When ESA(IR) becomes payable under an advance award, claimants do not have to serve another assessment phase as it will have been served already. Instead, they will enter the main phase when the award of ESA(IR) becomes payable. That is the date on which the claimant would have been entitled to main phase if income had not exceeded the applicable amount before the relevant day¹.

Note: See DMG Chapter 44 for full guidance on the assessment phase and the main phase.

1 reg 146(4)

Changes of circumstances

45101 Except for income exceeding the applicable amount, claimants have to continue to satisfy the conditions of entitlement for ESA(IR) until the relevant day (see DMG 45016). If there is a change of circumstances which means that the claimant no longer satisfies one of those conditions of entitlement, the DM should supersede the advance award (see DMG Chapter 04 for full guidance).

Note: See also DMG Chapter 03 for guidance on revision.

45102 Also, if there is a change of circumstances which means that the claimant's income no longer exceeds the applicable amount, the DM should

1. supersede the advance award **and**
2. decide entitlement to ESA(IR) in the normal way (see DMG Chapter 04 for full guidance).

However, DMs should note that the assessment phase does not start again. Instead, claimants receive the assessment phase rate of ESA(IR) until the day before the relevant day.

Example

Cecilia makes a claim for ESA(IR) on 15.12.08. Her civil partner Alison has an income from a credit insurance policy which necessitates an advance award. The DM decides that the relevant day is 19.3.09. On 2.2.09 Cecilia reports that Alison received the final payment from the credit insurance policy on 31.1.09. Cecilia's entitlement to ESA(IR) at the assessment phase rate begins the day after the final payment from the credit insurance policy is taken into account under the attribution rules (see DMG Chapter 48) and ends on 18.03.09.

Waiting days

45103 Where a claimant has to serve waiting days, there is no entitlement to ESA for the first three days of a PLCW¹ (see DMG Chapter 41). When an advance award of ESA(IR) is made, the period before the relevant day (see DMG 45016) is a PLCW. Therefore, claimants do not have to serve waiting days when ESA(IR) becomes payable under the advance award.

1 WR Act 07, Sch 2, para 2; ESA Regs, reg 144(1)

Linking

45104 DMG Chapter 41 gives guidance on linking rules. These rules also apply to advance awards of ESA(IR) under DMG 45012.

45105 - 45200

Transitional issues

[See memo DMG 30/09] [See memo DMG 48/08][See memo DMG 12/09]

When transitional issues apply

45201 Transitional issues apply where

1. a claim for
 - 1.1 IB or
 - 1.2 IS on the grounds of disabilityis made in respect of a period which begins on or after the appointed day¹ or
2. a claim for ESA is made by a person who
 - 2.1 has an existing award or
 - 2.2 had an existing award and DMG 45214 applies² or
3. a claim for ESA is made for a period before the appointed day³.

Note: There is also transitional protection on being capable of work for JSA purposes⁴.

1 ESA (Trans Provs) Regs, reg 2; 2 reg 3; 3 reg 4; 4 reg 5

45202 A claim as in DMG 45201 1. - 3. can be made on or after 27.7.08¹. If a claim is made

1. before 27.7.08 or
2. for a period before 27.7.08

the DM should not accept that a valid claim has been made. Where this occurs a further claim will be required for entitlement to be considered again.

1 reg 1(2)

Meaning of terms

The appointed day

45203 The appointed day means the day ESA is introduced¹. The appointed day is 27.10.08².

1 WR Act 07, Sch 4, para 11; 2 WR Act 07 (Commencement No. 6 and Consequential Provisions) Order 2008, art 2(4)

Existing award

45204 An existing award¹ is an award of

1. IB (including IB under transitional provisions²)
2. SDA
3. IS made to a person who is
 - 3.1 a disabled worker³ who
 - 3.1.a earns 75% or less of what a person without that disability working the same number of hours would reasonably be expected to earn **or**
 - 3.1.b works 75% or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area **or**
 - 3.2 a qualifying young person who is in relevant education and who
 - 3.2.a qualifies for the DP or SDP⁴ **or**
 - 3.2.b has been incapable of work or treated as incapable of work or treated as capable of work by virtue of disqualification or entitled to SSP for a continuous period of not less than 196 days (two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period)⁵ **or**
 - 3.3 incapable of work⁶ **or**
 - 3.4 treated as incapable of work⁷ **or**
 - 3.5 a disabled student⁸ **or**
 - 3.6 a deaf student⁹ **or**
 - 3.7 blind¹⁰.

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

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

IS on the grounds of disability

45205 **[See memo DMG 12/09]** IS on the grounds of disability¹ means an award of IS made to a person in DMG 45204 **3. except 3.1.**

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

45206 - 45210

Claim treated as claim for ESA

[See memo DMG 12/09]

45211 Unless DMG 45213 applies a claim for

1. IB **or**
2. SDA **or**
3. IS on the grounds of disability

made in respect of a period which begins on or after the appointed day is to be treated as a claim for ESA¹. This means that, unless DMG 45214 applies, there can be no new claim for IB, SDA or IS on the grounds of disability made for a period on or after the appointed day.

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

45212 DMs should note that an existing award of IS to a claimant who is a disabled worker is **not** an award of IS on the grounds of disability. This means that a repeat claim for IS from a disabled worker is not treated as a claim for ESA whether or not the claim links as in DMG 45214 **3.**

45213 DMG 45211 applies whenever the claim is made¹. However, this does not apply where the DM treats the claim as a claim in the alternative².

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

45214 However, where there had been an existing award and there is a claim

1. for IB or SDA where the linking rules apply¹ **or**
2. from a WtWB² **or**
3. for IS on the grounds of disability where the claimant
 - 3.1 was previously entitled to IS on the grounds of disability for a period of 4 or more consecutive days **and**
 - 3.2 ceased to be entitled to IS on the grounds of disability not more than 8 weeks before the start of the claim³ **or**
4. for IS on the grounds of disability from a claimant who is entitled to IB or SDA⁴ **or**
5. for IB from a claimant who is entitled to IS⁵

made on or after the appointed day, that claim remains a claim for IB, SDA or IS on the grounds of disability⁶.

Note: See DMG Chapters 13 and 56 for guidance on IB and WtWB linking rules.

1 SS CB Act 92, s 30C(1)(c); ESA (Trans Provs) Regs, reg 2(2)(a); 2 SS (IW) (Gen) Regs, reg 13A; ESA (Trans Provs) Regs, reg 2(2)(b); 3 reg 2(2)(c); 4 reg 2(2)(d); 5 reg 2(2)(e); 6 reg 2(2)

Example 1

Ravi makes a claim for IB on 17.11.08. The DM establishes that Ravi's previous claim for IB ended on 30.4.08 and that he was a WtWB. The DM decides the claim for IB rather than treat it as a claim for ESA.

Example 2

Sue has been in receipt of IB for several years. She is not entitled to IS because her partner Mark is in remunerative work. Mark is made redundant in November 2008, and Sue claims IS on the grounds of disability. The DM makes a determination that Sue's claim is not treated as a claim for ESA, and decides the claim for IS accordingly.

People not entitled to claim ESA**Person who has an existing award**

45215 A person who has an existing award is excluded from making a claim for ESA¹. This applies from 27.7.08².

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

Person who claims ESA

45216 Where

1. a claim for ESA is made **and**
2. DMG 45214 would apply if the claim had been for an existing award (see DMG 45204)

the DM should treat the claim as a claim for the relevant existing award¹. This applies from 27.7.08².

1 reg 3(2); 2 reg 1(2)

Example

Dawn makes a claim for ESA on 3.11.08. Her previous claim for IB ended on 21.9.08. The DM treats the claim as a claim for IB.

Claim for ESA for period before the appointed day

45217 From 27.7.08¹ where

1. a person
 - 1.1 purports to make a claim for ESA before the appointed day² **or**
 - 1.2 makes a claim for ESA on or after the appointed day³for a period beginning before the appointed day **and**
2. it appears to the DM that the person would be entitled to IB or IS on the grounds of disability if they made a claim for it⁴

the DM may treat the purported claim or claim as a claim in the alternative for IB or IS on the grounds of disability⁵.

Note: See DMG Chapter 02 for full guidance on claims in the alternative.

1 ESA (Trans Provs) Regs, reg 1(2); 2 reg 4(a)(i); 3 reg 4(a)(ii); 4 reg 4(b); 5 reg 4

45218 - 45300

Migration

45301 Although ESA replaces

1. IB **and**
2. IS on the grounds of disability

for new claimants on 27.10.08¹, people entitled to those benefits when ESA is introduced, or who have entitlement to them under linking rules, will continue to receive them until they migrate to ESA at a later date.

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

45302 Full guidance on migration will be given

1. nearer the time it commences **and**
2. in advance of it commencing.

45303 - 45999

