

ESA, IB, IS, JSA AND SDA: CHANGES FROM 1.11.10

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INTRODUCTION

- 1 This memo gives guidance on some changes introduced by
 1. the ESA (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010¹ (*ESA (TP, HB & CTB) (EA) (No. 2) Regs*) and

2. the ESA (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) (Amendment) Regulations 2010² (*ESA (TP, HB & CTB) (EA) (No. 2) (Amdts) Regs*).

1 SI 2010 No. 1907; 2 SI 2010 No. 2430

- 2 Changes coming into force on 1.11.10 affect
 1. repeat claims for IB, SDA and IS
 2. the conditions of entitlement to the DP for IS claimants
 3. the provision that a person claiming JSA is treated as not having LCW
 4. third party deductions
 5. the linking provisions for WTBs.
- 3 Changes coming into force on 31.1.11 affect
 1. repeat claims for IB, SDA and IS (further changes)
 2. waiting days
 3. short periods of sickness for JSA claimants
 4. NHS treatment abroad for JSA claimants
 5. the linking rules affecting entitlement to the DP for joint-couple JSA claimants who are WtWBs.
- 4 Guidance on the remainder of the Regulations, i.e. reassessment of existing awards of IB, SDA and IS, will be given as part of the February 2011 DMG amendment package.

REPEAT CLAIMS FOR IB, SDA AND IS

Changes from 1.11.10

- 5 From 1.11.10¹, a repeat claim for
 1. IB **or**
 2. SDA **or**
 3. IS on the grounds of disability

remains a claim for those benefits if it is made within the linking periods as in [DMG 45214 1. - 3.](#) and is made in respect of a period on or after 28.10.08, but commencing before 31.1.11². But see paragraph 8 for claims where the linking rules do not apply.

Note: see [DMG 45205](#) for the meaning of IS on the grounds of disability.

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

2 ESA (Trans Provs) Regs, reg 2(2)(a)-(c)

- 6 If an advance claim for IB, SDA or IS on the grounds of disability is made for a period beginning on or after 31.1.11, an award of that benefit cannot be made and the claim is treated as one for ESA. See [DMG 02425](#) for guidance on advance claims.

Example

Terry's entitlement to IB ended following his return to work on 8.6.09. He makes a repeat claim to IB as a WtWB on 14.1.11 for a period beginning on 2.2.11, as he expects to be admitted to hospital on that date. The DM treats the IB claim as a claim for ESA.

Changes from 31.1.11

- 7 From 31.1.11, the provisions enabling repeat claims for

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

are revoked¹ and the guidance in [DMG 45213 1. - 3.](#) and paragraph 5 of this memo should no longer be followed. Claims for these benefits will be treated as claims for ESA². But see paragraph 8 for claims where the linking rules do not apply.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 24; ESA (Trans Provs) Regs, reg 2(2)(a)-(c); 2 reg 2(1)

- 8 The guidance in [DMG 45213 4. - 5.](#) continues to apply. This means that claimants who are entitled to

1. IB or SDA can still make a new or repeat claim for IS on the grounds of disability¹ - see [DMG 45213 example 2](#) or
2. IS on the grounds of disability can still make a new or repeat claim for IB², for example under the modification of the benefit year rules in [DMG 56014](#).

1 reg 2(2)(d); 2 reg 2(2)(e)

IS CLAIMANTS - CHANGES TO DP

- 9 The conditions of entitlement to the DP paid to IS claimants on the grounds of IfW are amended from 1.11.10¹. The guidance about the DP payable to claimants on the grounds that they have been incapable of work for specified periods² (see DMG 23127 4.) is amended as in paragraph 10 below.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 23A; 2 IS (Gen) Regs, Sch 2, para 12(1)(b)

- 10 From 1.11.10, an IS claimant can only qualify for the DP where they are
1. entitled to SSP and have been so entitled for a continuous period of not less than 196 days **and**
 2. terminally ill.

Two or more periods of SSP entitlement separated by not more than 56 days are treated as a continuous period¹. See paragraph 12 for when the existing DMG 23127 4. continues to apply.

1 Sch 2, para 12(1)(b)

- 11 The provisions about
1. the linking rules for WtWBs¹ (DMG 23145) **and**
 2. the condition for paying the DP to claimants who were entitled on the grounds of IfW and who start a training course² (DMG 23156)

are revoked from 1.11.10. This guidance is **cancelled** and should no longer be followed. But see paragraph 12 where DMG 23145 and 23156 continues to apply. See DMG 13640 - 13642 for guidance on the meaning of WtWB.

1 Sch 2, para 12(1A); 2 Sch 2, para 12(5)

Exceptions

- 12 The existing guidance at DMG 23127 4., 23145 and 23156 continues to apply where a person is or becomes entitled to IS on the grounds that they are or treated as incapable of work¹. See DMG 20134 et seq and Appendix 5 for guidance on IS on the grounds of IfW, and DMG 45213 and paragraphs 5 - 8 above for guidance on claims for IS on the grounds of disability (which includes IfW).

1 Sch 1B, para 7(a) or (b); SS CB Act 92, Part XIII; ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 23A(4)

JSA CLAIMANT TREATED AS NOT HAVING LCW

- 13 DMG 42281 explains that a person who claims JSA and has a reasonable prospect of employment is treated as not having LCW throughout the period of the JSA claim, even if it has been determined that they have, or are treated as having, LCW¹. From 1.11.10 this provision is revoked².

*1 ESA Regs, reg 31; 2 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 1(2), 3 and 25(1);
ESA (TP, HB & CTB) (EA) (No. 2) (Amdt) Regs, reg 3*

- 14 For periods before that date, the guidance is **amended** to say that it only applies in cases where

1. a person claims JSA **and**
2. a determination that the claimant has, or is treated as having, LCW was made before the JSA claim.

- 15 Where

1. the claim for JSA was made following a determination that the claimant does not have, or is treated as not having, LCW **and**
2. an appeal against the decision embodying that determination is allowed

the ESA award can be reinstated, the JSA award removed following revision¹, and payment of JSA offset against arrears of ESA in the normal way.

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

- 16 The guidance at DMG 42281 and Memo DMG 33/10 paragraph 43 is **cancelled** and should no longer be followed.

AMOUNT DEDUCTED FOR CURRENT CHARGES

- 17 Legislation is amended relating to the guidance in DMG 46155, 46285 and 46614. This legislation clarifies that any housing costs included in the applicable amount should not be taken into consideration when deciding whether third party deductions exceed 25% of the family's applicable amount¹.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 4, para 1; SS (C&P) Regs, Sch 9, para 8(4)(a)(iv)

WORK OR TRAINING BENEFICIARIES - LINKING RULES

18 The LCW linking rules in DMG 42321 are amended¹ from 1.11.10 so that a person who is

1. a WTB² **and**
2. satisfies the conditions in DMG 42321

is treated as having LCW from the first day of the claim within the linking term, rather than for 13 weeks from the date of the ESA claim³. See DMG 42317 for the meaning of WTB.

1 ESA (TP, HB & CTB) (EA) (No. 2) (Amdt) Regs, reg 22(2); 2 ESA Regs, reg 148(1); 3 reg 149(1)

19 The LCWRA linking rules in DMG 42322 are amended¹ from 1.11.10 so that a person who

1. is a WTB² **and**
2. was a member of the support group³ when the most recent past PLCW ended

is treated as having LCWRA from the first day of the claim within the linking term, rather than for 13 weeks from the date of the ESA claim⁴.

Note: A claimant is a member of the support group if it is determined that they have, or are treated as having, LCWRA.

*1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 23(2); 2 ESA Regs, reg 148(1); 3 WR Act 07, s 24(4);
4 ESA Regs, reg 150*

20 The changes in paragraphs 18 - 19 above only apply to

1. claims for ESA made on or after 1.11.10, whether or not that claim is in respect of a period before that date¹ **and**
2. an advance claim for ESA as in DMG 02426 et seq made before 1.11.10 in respect of a period beginning on or after that date².

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 22(4)(a) & 23(3)(a); 2 reg 22(4)(b) & 23(3)(b); SS (C&P) Regs, reg 13

WAITING DAYS

21 DMG 41101 explains that a claimant is not entitled to ESA for the first three days of a PLCW, unless entitlement to ESA begins within 12 weeks of the end of their

entitlement to specified benefits¹. These are known as waiting days. From 31.1.11, IB and SDA are added to the list of specified benefits at DMG 41103 1.²

*1 WR Act 07, Sch 2, para 2; ESA Regs, reg 144(1); 2 reg 144(2)(a);
ESA (TP, HB & CTB) (EA) (No. 2) Regs, reg 25(2)*

SHORT PERIODS OF SICKNESS - JSA

22 DMG 20961 sets out the criteria where a person in receipt of JSA can remain on JSA while they are sick and be treated as not having LCW for up to two weeks. Of these criteria, one requires that the first day of the period they are unable to work does not fall within

1. 12 weeks of entitlement to ESA **or**
2. 8 weeks of any entitlement they had to
 - 2.1 IB, SDA or SSP **or**
 - 2.2 IS if they were entitled to a DP for themselves because of their period of LCW¹.

1 JSA Regs, reg 55(4)

23 From 31.1.11, the criteria in paragraph 22 above is amended¹ so that the whole of sub-paragraph 2. will read

- “2. 8 weeks of the person's entitlement to SSP”.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 4, para 1A(1)

NHS TREATMENT ABROAD - JSA

24 DMG 20976 gives guidance on when a claimant can continue to remain entitled to JSA when they are receiving NHS funded treatment abroad. Of these criteria, one requires that they have not stated in writing before the temporary absence abroad for treatment begins, that they have claimed IB, ESA, SDA or IS immediately before the beginning of the temporary absence¹. From 31.1.11, the references to IB, SDA and IS are omitted².

1 JSA Regs, reg 55A(1); 2 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 4, para 1A(2)

JSA JOINT-CLAIM COUPLE - DP LINKING RULE FOR WTWB

- 25 From 31.1.11, the rule allowing a member of a joint-claim couple who is a WtWB to satisfy the condition of entitlement to the DP that they have been incapable of work for a continuous specified period, where a break in that period is no more than 104 weeks, is revoked¹.

1 ESA (TP, HB & CTB) (EA) (No. 2) Regs, Sch 4, para 1A(3); JSA Regs, Sch 1, para 20H(2)

ANNOTATIONS

Please annotate the number of this memo (Memo DMG 51/10) against the following DMG paragraphs and supplementary guidance:

20961; 20976; 23127, 23145, 23156; 41103; 42321; 42322; 45213; 46155; 46285; 46614 and Memo DMG 33/10 paragraph 43.

CONTACTS

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in [Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds](#).

DMA Leeds: November 2010