

Technical factsheet T1 – Conditions of entitlement

This factsheet explains the conditions a customer must satisfy to qualify for ESA Contribution Based (ESA(C)) and ESA Income Related (ESA(IR)) – including age limits, medical evidence requirements and residence conditions.

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General conditions

■ What is a condition of entitlement?

A condition of entitlement is a set of circumstances that the customer must satisfy to be able to qualify for Employment and Support Allowance (ESA). There are some conditions that are appropriate to all types of ESA and others that are specific only to a particular type.

■ What are the generic conditions of entitlement?

A customer must:

- be 16 years or over
- be under state pension age
- have Limited Capability for Work (LCW)
- be in Great Britain or be in Northern Ireland.

Also, the customer must:

- not be entitled to Income Support (IS)
- not be entitled to Jobseeker's Allowance (JSA)
- not be a member of a couple entitled to JSA joint claim
- not be entitled to Incapacity Benefit (IB) through linking rule (for more information on linking rules, see fact Sheet T4 – Linking Rules)
- make a valid application
- not be working, except in certain circumstances.

■ What is the state pension age?

Customers usually claim their pension on reaching state pension age which is 65 years for men. A woman's pension age is currently 60 but will be raised to 65. This will be phased in over time starting April 2010.

■ **Period of Limited Capability for Work (PLCW) – What is a PLCW? How many days of Limited Capability for Work are required to be entitled to ESA?**

A PLCW is a period formed by a continuous period of LCW of four consecutive days or more. In order to be entitled to ESA a customer must be unable to work for a PLCW.

Example 1

Mr John Tyler is unfit to work on Monday 27 October 2008 and remains unfit until Wednesday 29 October 2008. He has been unfit for only three days and this means he has failed to meet the conditions of entitlement and cannot be paid ESA.

■ **Regular Specified Treatment – What happens with customers undergoing regular specified treatment?**

Regular Specified Treatment is defined as one of the following:

- kidney dialysis
- chemotherapy or radiotherapy
- intravenous feeding.

There is an exception to the four consecutive days rule for these customers. It allows a customer to form a PLCW when they have a limited capability for work for at least two days in a period of seven consecutive days if they require Regular Specified Treatment.

This exception avoids penalising someone whose health condition requires ongoing treatment, which limits their ability to work for short periods of time.

■ **Medical evidence – What are the acceptable types of medical evidence and whose responsibility is it to provide these?**

A customer must provide evidence to support their claim to ESA. Medical evidence is proof of the customer's LCW and is usually in the form of a medical certificate. Customers self certify for the first seven days of their PLCW over the telephone. A PLCW lasting longer than this should be supported by a medical certificate from a medical practitioner from day eight.

If a claim to ESA links with a previous claim to ESA, the customer must provide medical evidence from day one of their current PLCW. If the customer is claiming ESA because Statutory Sick Pay (SSP) is coming to an end, they must provide medical evidence from the day after the last day that SSP is paid for.

All medical evidence should be original documents as photocopies cannot be accepted.

For more information on medical evidence, please see Fact Sheet T13 – Supporting Evidence.

Example 2

Mrs Zahida Begum was paid SSP from 28 April 2008 to 7 November 2008. On 11 November 2008 she claimed ESA from 8 November 2008. Although this is her first claim to ESA she is claiming because SSP is coming to an end. She must therefore provide medical evidence from 8 November 2008, which is the first day of her ESA claim.

■ Residence –

Does the customer need to be living in Great Britain?

The general rule is that to be entitled to ESA a customer must be present in GB and this is defined as England, Scotland and Wales. It includes the outlying islands such as the Isle of Wight, Isles of Scilly, Lundy, Anglesey, the Hebrides, and the island groups of Orkney and Shetland, but does not include the Isle of Man or the Channel Islands.

There is no residence condition to be satisfied for ESA(C), but persons coming from abroad have to pass the Habitual Residence test and have the right to reside in the UK in order to qualify for ESA(IR). Further details are provided in Factsheet T10.

There is a general disqualification for entitlement to ESA for periods of absence abroad from GB. However, both ESA(C) and ESA(IR) may be paid for periods of temporary absence abroad. In some cases ESA(C) can be paid for longer periods, but only if the customer is in, or living in, another European Economic Area (EEA) country or Switzerland. ESA(IR) cannot be paid to customers living abroad. Further details are provided in Factsheet T10.

■ Which entitlement is considered first – ESA(C) or ESA(IR)?

For all ESA claims, entitlement to ESA(C) is considered as this is a contributory benefit and will take precedence over entitlement to ESA(IR). In addition to the generic qualifying conditions, there are additional conditions specific to an ESA(C) claim.

ESA Contribution Based (ESA(C)) conditions

■ What are the additional qualifying conditions for ESA(C)?

To qualify for ESA(C) the customer must have paid sufficient National Insurance Contributions (NICs) in specified Tax Years. These are known as Relevant Income Tax Years (RITYs).

The customer must have paid class 1 or class 2 NI contributions for one of the last three complete tax years, and paid or been credited with class 1 or class 2 contributions in the last two complete tax years before the current benefit year. Regulation 8(2) ESA Regulations allows for some relaxation of these conditions.

NICs are generally paid by people who are employed or self-employed providing they are aged 16 or over but under State Pension age.

If someone in employment earns over a certain amount a percentage deduction will be made for NICs. Self-employed earners pay a flat weekly contribution. If their profits are over a certain amount at the end of the tax year (determined by HMRC), they are obliged to pay a percentage of their profits.

If sufficient NICs have been paid in the RITY a customer could qualify for contributory benefits.

■ Credited contributions – What is meant by credited contributions?

When a customer claims IB, JSA or ESA they are unable to work and pay their NICs. A customer is treated as having paid a contribution for each complete week that they satisfy the qualifying conditions of these benefits.

The NI contribution is credited to their NI record. A complete week for credit purposes is from midnight Saturday to midnight Saturday the following week. A credit is equal to the contribution rate equal to the Lower Earnings Limit (LEL) for the Year in which it is awarded. These credits contribute towards entitlement to State Retirement Pension. Carers Allowance also attracts an NI Credit. For more information on Carers Allowance, see Fact Sheet T17 – Carers.

■ Credits Only – What are the Credits Only cases?

Cases known as Credits Only are for those customers who:

- do not satisfy the contribution conditions for ESA(C), and

- are not entitled to ESA(IR).

If a customer claims but does not receive ESA they are credited with NICs for each complete week that they have LCW. These credits may help them to qualify for ESA(C) at a future date. These credits also contribute towards entitlement to State Retirement Pension.

ESA Income Related (ESA(IR)) conditions

■ What are the conditions of entitlement for ESA(IR)?

In addition to the generic conditions of entitlement for Employment and Support Allowance, in order to qualify for ESA(IR) the customer and/or partner must also satisfy the following conditions:

- Not have capital in excess of the current maximum.
- Not be receiving education or be a student i.e. in advanced education.
- Has no income or an income less than the applicable amount (see below).
- Not be entitled to State Pension Credit (SPC).
- If the customer has a partner then the partner cannot be entitled to ESA(IR), SPC, IS or income-based JSA.
- Not be engaged in work, or remunerative work, other than in prescribed exceptions.
- If the customer has a partner then the partner cannot be in remunerative work.
- Must be Habitually Resident in the UK.
- Must have a Right to Reside.
- Not be a Person Subject to Immigration Control (PSIC), except in certain circumstances.

■ What is meant by remunerative work?

For the purposes of ESA, remunerative work is defined as any work which the customer or partner does either for, or in expectation of, payment.

There are some exceptions to the work and remunerative work rule. They are:

- partners who are in a Special Occupation
- work that falls into a Permitted Work Category
- councillors
- customers undertaking Test Trading
- voluntary work
- work done in preparation for a work placement.

The remunerative work rule states that if the partner works 24 hours or more on average per week, there will be no entitlement to ESA(IR).

■ **ESA(IR) capital rule – What is the maximum capital allowed?**

If a customer and/or partner has capital of over £16,000 they will be excluded from ESA(IR). To satisfy the qualifying conditions relating to capital the law states that customers must have no more than £16,000 capital. If a customer and/or their partner have capital between the lower capital limit (£6,000 for customers aged under 60 and £10,000 for customers who are permanently resident in a care home) and the Upper Capital Limit (£16,000) then their ESA(IR) will be reduced.

■ **ESA(IR) tariff income – How will capital reduce ESA(IR)?**

Tariff Income (TI) is a weekly amount of income that the customer or their partner is treated as having.

It is dependent upon the amount of Capital they have between the Upper and Lower Capital Limits.

TI is calculated at £1 for each £250 or part of £250 over the Lower Capital Limit up to the Upper Capital Limit.

TI is applied when a customer and any partner, has capital between:

- The Lower Capital Limit, which is £6000 or £10,000 if living in a residential care home.
- The Upper Capital Limit, which is £16,000.

The effect TI has on an ESA (IR) claim is:

- Capital that a customer and any partner holds, which is between the appropriate Lower and Upper Limit will attract a TI
- the amount of the TI is deducted from the customer's applicable amount, and
- the balance is then paid to the customer.

Example 3

Eric and Amy Lewis both aged 55 have joint Capital of £12,250. Calculate the tariff income.

Answer: $(£12,250 - £6,000)/250 = £25$ per week (which is deducted from the customer's weekly payment)

Example 4

Mohammed Sharif has total Capital of £11,000. He is 59 years old. Calculate the tariff income.

Answer: $(£11,000 - £6,000)/250 = £20$ per week (which is deducted from the customer's weekly payment)

■ **ESA(IR) income –**

What is meant by income? What are the rules?

Income is categorised as earned income or other income. Income means any source of money received by the customer or their partner. Earned income is a customer's or partner's earnings. The most common types include:

- Occupational pensions and annuities
- Tax Credits
- Income from boarders
- Income from sub-tenants
- Child Maintenance payments.

■ **ESA(IR) other income –**

What effect can other income have on a claim to ESA(IR)?

ESA(IR) is income related which means we must consider all income that the customer and partner receive.

Other Income can be:

- taken fully into account
- partially disregarded, or
- fully disregarded.

If the income, with the appropriate disregard is higher than the applicable amount there will be no entitlement to ESA(IR).

There are a number of income-related benefits:

- IS
- Income-based JSA
- State Pension Credit
- ESA(IR).

The customer and partner cannot be in receipt of more than one income-related benefit.

■ What is the Habitual Residency Test?

This test applies if the customer has lived or worked abroad. The habitual residence decision is based on criteria such as:

- why the customer has come to the UK
- how long they have been here
- how long they intend to stay, and
- whether or not they have any links here.

The test is only applied to the customer and not their partner or dependants. Customers who fail to satisfy the Habitual Residency Test (HRT) are classed as Persons From Abroad (PFA). These people are not normally entitled to ESA but can qualify for ESA at a reduced rate if they satisfy certain conditions.

■ ESA(IR) and education – Can the customer be in education?

The customer must not be in relevant non-advanced education to qualify for ESA(IR).

Relevant education

Relevant education refers to:

- full-time education or
- non-advanced education or
- education at a recognised Educational Establishment.

Non-advanced education

Non-advanced education refers to education of a standard up to and including:

- non-advanced education up to (GCE) A Level
- Advanced General NVQ / SVQ
- Scottish Certificate of Higher Education
- Ordinary National Diplomas or BTEC.

Disclaimer

This factsheet is only a guide and does not cover every circumstance. We have done our best to make sure that the information in this leaflet is correct as of December 2008. It is possible that some of the information is over simplified, or may become inaccurate over time, for example because of changes to the law. Names in the examples have been used for illustrative purposes only. The rates mentioned in these factsheets are applicable to December 2008 and may change thereafter.