

# Technical factsheet T4 – Linking rules and backdating

This factsheet explains the rules that apply for linking Employment and Support Allowance (ESA) claims as well as Incapacity Benefit (IB) claims.

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## Linking under Employment and Support Allowance (ESA)

### ■ What is the purpose of linking?

Linking provides reassurance for customers moving from benefits into work or training. It enables customers starting work or training to keep the same rate of benefits if the new claim links with the previous one.

### ■ What is meant by linking under Employment and Support Allowance (ESA)?

Two or more Periods of Limited Capability for Work (PLCW) that are separated by no more than a specified period are treated as one PLCW.

### ■ What are the two linking periods?

There are two specified linking periods that can apply to ESA claims. These are:

- **12 week linking:** Two or more PLCWs are treated as one PLCW if they are separated by no more than 12 weeks (84 days)
- **104 week linking:** The customer:
  - previously had one or more PLCW of more than 13 weeks
  - must have started work or training within one month of leaving benefit, and
  - has not been disallowed in their last claim due to the Work Capability Assessment (WCA) finding they did not have limited capability for work. This includes customers disallowed for Failing to Attend (FTA) or who have not returned their questionnaire.

#### **Example 1**

The customer claims ESA on 15 January 2009, his previous claim ended 27 November 2008.

The claims link because the gap between these claims is only six weeks and six days.

### **Example 2**

The customer claims ESA on 27 March 2009, his previous claim ended 31 December 2008.

The claims do not link because the gap between these claims is 12 weeks and one day. The date of entitlement will be 27 March 2009 and the PLCW will also start on 27 March 2009.

### **■ What are Waiting Days?**

A customer is not entitled to benefit for the first three days of a PLCW. These are known as Waiting Days. Waiting Days will not be appropriate when a claim links to a previous claim. If the new claim is within 12 weeks or less from the end of certain other benefit claims, waiting days will also not be appropriate.

### **■ Partners – How will linking rules change for a customer's partner?**

Linking does not apply to partners. If a customer and partner separate, unless the partner has a previous ESA claim in their own right, ESA linking rules would not apply. However, the linking rules for Housing Benefit/Mortgage payments may be applicable.

# Linking under Incapacity Benefit and Income Support

## ■ IB Linking – What are the linking rules under Incapacity Benefit?

There are three specified linking periods that can apply to IB claims. These are:

### **Eight weeks (56 days)**

Claims to IB may link if a new claim to IB is made not more than eight weeks after:

- Incapacity Benefit (IB)
- Maternity Allowance (MA)
- Statutory Maternity Pay (SMP), or
- Statutory Sick Pay (SSP).

#### **Example 4**

IB claimed 15 October 2008. Previous claim ended 19 August 2008.

The gap between these claims is exactly eight weeks, therefore, they link.

#### **Example 5**

New claim made from 06 October 2008. Previous claim to IB ended 6 September 2008.

This claim links as there are no more than eight weeks between the claims, therefore, the new claims is an IB claim.

### **104 weeks**

The following rules apply in order for the customer to qualify for the 104 week linking. The customer:

- previously has been incapable for work for more than 28 weeks<sup>1</sup>, and
- must have started work or training within one month of leaving benefit, and
- has not been disallowed in their last claim due to failure of the PCA or Not Incapable.

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<sup>1</sup> The 28 weeks can be made up of one or more periods of incapacity that are not separated by more than eight weeks and may include the qualifying period for IB paid under the Incapacity Benefit in Youth (IB(Y)) qualifying conditions

### **Example 6**

New claim from 4 December 2008. Previous claim 03 January 2006 to 13 March 2006 and 04 April 2006 to 31 July 2006 (failed PCA).

Although the periods link and the total is over 28 weeks the 104 week linking is not satisfied as the last claim was closed because the customer failed the Personal Capability Assessment (PCA).

### **Example 7**

New claim from 04 January 2009. Previous IB claim from 3 February 2007 to 20 April 2007 and 08 June 2007 to 04 October 2007 (customer returned to work 5 October 2007).

In this example the two spells of incapacity lasting 11 weeks and 17 weeks linked as they were separated by less than 56 days. As the two spells together total 28 weeks and the customer returned to work within one month the 104 week linking rules are satisfied.

## **Two years**

Claims to IB can link through:

- the disabled element of Working Tax Credit (WTC) and/or the higher rate of Child Tax Credit (CTC), and
- participation in Training for Work (TFW) or Work Based Learning for adults (WBLA) during a two year period.

## **■ Income Support – What linking rules apply to Income Support?**

A claim to Income Support on grounds of disability made after the appointed day would normally be treated as a claim to ESA. If however the previous claim to ESA ends within the last 104 weeks then linking rules may apply. However, each claim needs to be looked at individually as the rules are quite complex.

## Is my claim Employment and Support Allowance (ESA) or IB?

### ■ Rules – How do you determine if a claim is IB or ESA?

When a customer claims ESA, we will check if we have received claims for IB before 27 October 2008. If a claim exists, we will establish if the new customer claim links with the previous IB claim. If this is the case, normal IB claim processes would apply.

#### **Example 8**

Customer claiming from 5 November 2008. Last claimed IB from 12 April 2005 to 20 May 2008. The claim was closed due to the customer starting work on 21 May 2008.

This is an IB claim because the new claim links with the previous claim under IB rules. The 104 week linking rule applies. There are no Waiting Days.

#### **Example 9**

Customer has received SSP from 12 May 2008 to 26 November 2008 and wants to claim from 27 November 2008.

This is an ESA claim. There are no Waiting Days because their entitlement to ESA begins within twelve weeks of the end of their entitlement to SSP

#### **Example 10**

Customer is self-employed, has never claimed before and wants to claim from 2 December 2008.

This is an ESA claim because there are no claims linking to IB. There are waiting days because it's the first time the customer claims.

## Time for Claiming

### ■ What are the Time for Claiming rules under ESA?

There is a 3-month time limit for claiming ESA. A month is a calendar month. The time for claiming ESA follows the same principles as currently for IB. (i.e. it is the day for which benefit is claimed and the three months following).

### ■ WCA time limit – What if the WCA process is not completed within the 13 weeks period? When will the ESA components start and will there be any time for claiming?

The assessment phase is 91 days and the main phase commences from the 92nd day if the WCA has been completed. For those customers where the WCA is not completed within 91 days, they will continue to receive the assessment phase rate until the WCA is completed and LCW/LCWRA determined. Once the WCA is passed the main phase component will be paid from the 92nd day and they will receive any arrears that are due.

### ■ Terminally ill – How will customers who are terminally ill be paid?

Customers who are terminally ill (expected to live less than six months) will be fast-tracked to the main phase support group component and do not have to serve an assessment phase. The customer will receive the assessment phase rate of ESA until LCWRA is confirmed and will then receive the main phase support group component of ESA either:

- Paid from day 1 of the claim, or
- from the date of diagnosis if this occurs during the assessment phase, following a WCA referral to confirm the terminal illness.

## **Disclaimer**

This leaflet 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.