

# Technical factsheet T11 – Young People

This factsheet explains ESA in youth (ESA(Y)), the qualifying rules, different age groups and other issues such as the relationship with education and housing benefits. Income related ESA entitlement is covered in technical factsheet T1.

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## Conditions of entitlement

### ■ What is ESA(Y)?

Some customers have never been in a position to qualify for ESA Contribution based (ESA(C)) via their National Insurance Contributions (NIC) because of their medical history. They may have not worked for long periods, indeed in some case have never worked, and their NIC record is adversely affected as a result. In cases like these, special qualifying conditions can apply. These cases are automatically identified by the system.

ESA(Y) is a set of rules which allow certain young people to qualify for ESA(C). These rules apply to young people who:

- have been incapacitated in youth, and
- are unable to work because of illness or disability, and
- have not paid enough NIC to be able to get ESA Contributory (ESA(C)) under the normal rules, and
- satisfy certain residence and presence conditions in Great Britain (GB).

### ■ What are the main groups that can receive ESA(Y)?

The two main groups of customers considered for ESA(C) under Youth Rules are:

- aged 16 to 19 and have Limited Capability for Work (LCW)
- aged 20 and under 25 in certain prescribed circumstances and who have LCW.

In very rare cases, a person may qualify if they are 25 or over.

### ■ What are the conditions of entitlement to ESA(C) under Youth Rules?

To be eligible for ESA(C) under Youth Rules the young person must:

- be aged 16 -19 inclusive or satisfy the age exception rule if aged 20 and under 25
- not be entitled to ESA(C) under the Contribution Conditions
- have medical evidence to support their claim, and
- have satisfied the nationality test, residence and presence conditions on the date of entitlement – the 197th day of LCW.

The Benefit Delivery Officer (BDO) must check that a customer does not qualify for ESA(C) under the Contribution Conditions before considering ESA(C) under Youth Rules, and that they have had LCW for a continuous period of at least 196 days. This forms a Qualifying Period (QP).

## ■ How does a young customer satisfy the Qualifying Period condition?

For the terms of a Qualifying Period (QP) to be satisfied:

- the young person must have had LCW for a continuous period of at least 196 days
- a break of one day or more requires a new 196 days to be applied
- at least one day in the period must fall before their 20th birthday, and
- if aged 16 and under 19, the young person must not be in Full Time Education during the period.

The first day of the Qualifying Period will be the LCW date except when the customer claims ESA from their 16th birthday. In these cases the first day of the Qualifying Period is 196 days prior to the customer's 16th birthday. This is the only instance when ESA can be considered before the customer is age 16.

The Qualifying Period can include:

- a continuous spell of Statutory Sick Pay (SSP)
- a continuous spell of ESA credits or entitlement to ESA Income Related (ESA(IR)), or
- a combination of SSP, ESA credits and or ESA(IR).

| <b>Example 1 – Determining the Qualifying Period</b> |                                                     |                                    |                                                                |
|------------------------------------------------------|-----------------------------------------------------|------------------------------------|----------------------------------------------------------------|
| <b>Customer's DOB</b>                                | <b>First day of sickness</b>                        | <b>Qualifying Period</b>           | <b>Date of entitlement</b>                                     |
| 15 August 1990                                       | 22 January 2007                                     | 22 January 2007 to 5 August 2007   | 06 August 2007                                                 |
| 22 August 1988                                       | 10 August 2007                                      | 10 August 2007 to 21 February 2008 | 22 February 2008 (at least one day falls before 20th Birthday) |
| 11 February 1991                                     | SSP paid 6 June 2007 to 18 December 2007 (196 days) | 6 June 2007 to 18 December 2007    | 19 December 2007 (QP can contain continuous periods of SSP)    |
| 08 May 1992 (age 16 on 8 May 2008)                   | 25 October 2007 to 7 May 2008                       | 25 October 2007 to 7 May 2008      | The customer's 16th Birthday – 8 May 2008                      |

## ■ What medical evidence needs to be provided?

The customer must provide medical evidence to substantiate their claim. This requirement applies to all claims to ESA whether they be Contributory(C) or Income Related (IR).

In most cases, one of the following three main types of medical evidence will be received with the claim:

- Med 3 – issued by the GP to the customer noting the reason for the LCW and duration of it
- Med 5 – issued by the GP to customer noting previous gaps in dates of LCW, or
- Med 10 – issued by a hospital noting LCW and dates of admission and discharge from hospital.

Other types of acceptable medical evidence are:

- a doctor's statement on private note paper if it states the diagnosis and period of LCW, the doctor's name and address of the surgery and that the person is incapable of work
- a certificate of inpatient treatment other than a Med 10 (it must be signed by a doctor if it gives a date that the customer can start work)
- a certificate of outpatient treatment at a hospital. The certificate must be signed by a doctor at the hospital, a dental consultant or a senior dental officer, and
- a form CF73 issued by a psychiatric hospital.

## ■ What are the residence and presence conditions?

All ESA customers claiming ESA(C) under Youth Rules are subject to a residence and presence condition.

- This test determines whether or not the customer's right to remain in Great Britain (GB) is subject to limitation or condition.
- This refers to any time limit on the length of stay in GB and any conditions to the individual's terms of residence, for example, the right to take up employment.
- For this purpose the meaning of GB is England, Scotland and Wales.

To qualify for ESA(C) under Youth Rules a customer must satisfy all the following:

- be in GB on the date of claim to ESA
- have lived in GB or Northern Ireland for at least 26 weeks out of the 52 weeks immediately before that date (Date of Claim), or
- be ordinarily resident in GB.

Ordinarily resident is commonly defined as someone who:

- normally resides in a particular place apart from temporary periods of absence, accidental or intentional, and
- is resident according to how a person's life is normally ordered.

A customer will be treated as satisfying the residence and presence condition for any period abroad if they are an immediate family member of, and living with, a person serving in Her Majesty's Forces.

## Age groups

### ■ What are the qualifying rules for people in the 16-19 year range?

If ESA(C) under Youth Rules is claimed between the age of 16 and under 20, the customer must have had LCW for a continuous period of at least 196 days and not be in full -time non-advanced education (FTE).

However, if the customer regularly attends an educational course specifically designed for disabled people, ESA(C) under Youth Rules may still be awarded. The decision on these cases will be made by the Benefits Delivery Expert (Decision Making and Appeals) (BDE (DMA)) on form LT54.

### ■ What are the qualifying rules for people in the 20-24 year range?

If LCW begins between age 20 and under 25, in order to qualify for ESA(C) under Youth Rules the customer:

- must have had LCW for a continuous period of at least 196 days, one day of which must fall before their 25th birthday
- must have medical evidence for the whole of the Qualifying Period
- must be registered on a course of full-time advanced or secondary education or vocational or work-based training
- the education or training must have begun on or before a day at least three calendar months before their 20<sup>th</sup> birthday
- must have attended one or more such courses immediately after registration and before the 197th day of LCW, and
- attendance has ended no earlier than the beginning of the last two tax years before the benefit year which would have governed a claim to ESA(C) had they been eligible for it.

The Relevant Income Tax Years (RITYs) used to determine the last two complete tax years will be those applicable to the first day of the QP or the first day of the LCW, known as a Period of Limited Capability for Work (PLCW). If the customer is unable to attend the course or training due to a temporary interruption such as an illness or domestic emergency, they are treated as having attended. A customer can change courses of education/training, or go from education to training, (or from training to education) and the Age Exception rule will still apply. Natural gaps between training and/or education are acceptable and mean that the Age Exception Rule can still be considered.

### **Example 2**

|                          |                  |
|--------------------------|------------------|
| Customers date of birth  | 4 February 1984  |
| Customers 20th birthday  | 4 February 2004  |
| Customers 25th birthday  | 4 February 2009  |
| Advanced education began | 9 September 2003 |
| Last day of course       | 1 June 2006      |
| First day of sickness    | 30 October 2008  |

### **What is the last day of the Qualifying Period?**

13 May 2009

### **What is the date of entitlement?**

14 May 2009

### **What benefit is the customer eligible for?**

Customer will qualify for ESA(C) because:

- education began at least three months before the 20th birthday
- at least one day of the QP period falls before the 25th birthday, and
- RITYs for the first day of sickness are 2005/06 and 2006/07 and the education ceased during these years.

## **■ What is the restoration rule?**

When a customer makes a new claim to ESA which does not link to a previous ESA claim, there are two exceptional circumstances where the current age limitations do not apply and a customer over age 25 may be considered for ESA(C) under Youth Rules.

If either of the two exceptions are satisfied a customer is entitled to ESA(Y):

- The LCW begins on the first day of the customer's new Qualifying Period.
- Waiting Days are not imposed.

## ■ What is the first exception?

The first exception is regarding employment or training. All of the following criteria must apply:

- The previous claims to ESA(C) made under Youth Rules, must not have ceased due to failing the Work Capability Assessment (WCA).
- The previous entitlement to ESA must have ceased because of a return to work, or to start a training course. The customer can have more than one spell of employment or a combination of both employment and training before making a new claim.
- The Earnings Factor (EF) was below 25 x the Lower Earnings Limit (LEL) in any of the last three complete Tax Years before the Benefit Year in which they are now claiming.
- In the last two complete Tax Years they have been paid or credited with earnings equal to 50 x LEL with the customer being awarded one WTC with Disability Elements in the last Tax Year.

If in the last two complete Tax Years the customer has not paid or been credited with earnings equal to 50 x LEL with the customer being awarded at least one WTC with Disability Elements in the last Tax Year, the first exception may still apply if:

- in the last year they have been getting a Disability Element of WTC or are paid WTC or Child Tax Credit (CTC) at a higher rate than the Family Element, or
- the customer makes a claim to ESA within 12 weeks of ceasing employment or training.

## ■ What is the second exception?

The second exception is regarding people returning from abroad.

When the customer returns from an unlimited period abroad:

- the previous claim to ESA(C) made under the Youth Rules must not have ceased due to failing the WCA
- the previous entitlement must have ceased solely because of going abroad for any purpose or length of time
- the customer must have LCW from the day they return from abroad
- a new Qualifying Period is served from the day they return
- the residence and presence conditions are satisfied from the 197th day, and
- ESA(C) under the Youth Rules was paid for any period of time in the last Tax Year which falls before the Benefit Year relevant to the first day of the new QP.

**Example 3**

|                                                         |                         |
|---------------------------------------------------------|-------------------------|
| Date of Entitlement to ESA(C) awarded under Youth Rules | 5 November 2008         |
| Goes abroad last date of entitlement ESA                | 20 March 2009           |
| Returns to GB                                           | 6 February 2010         |
| Reclaims ESA from                                       | 6 February 2010         |
| Medical evidence held from                              | 6 February 2010         |
| New Qualifying Period                                   | 6 Feb to 20 August 2010 |
| ESA(C) awarded from                                     | 21 August 2010          |

## Other issues

### ■ How is ESA(Y) affected by full time education?

ESA(C) under Youth Rules is not payable to a customer aged 16 and under 19 in full-time non-advanced education (FTE).

Customers aged over 16 and under 19 are treated as being in FTE if they regularly attend a course of non-advanced education for 21 hours per week or more, and the education is suitable for a non-disabled person of a similar age.

### ■ HB/CTB – Can full time students claim HB/CTB?

The general rule is that a full time student is excluded from Housing Benefit (HB) / Council Tax Benefit (CTB). However, there are exceptions, for example students receiving Income Support (IS) or Jobseekers Allowance (IB). Receipt of ESA(IR) has been added to the exceptions. 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. 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) have been added to the exemption.

### ■ Why is there a young person's rate in the assessment phase but not in the main phase?

In the assessment phase rates are the same as basic JSA (personal allowance) rates. Once on the main phase, customers will receive the same rates regardless of their age.

## 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.