

Benefits and Work
Guides you can trust

Understanding Employment and Support Allowance

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Overview of Employment and Support Allowance (ESA)

On 27 October 2008, incapacity benefit and income support for people too sick or disabled to work were replaced by a single benefit: Employment and Support Allowance (ESA).

The same but different

In some ways the introduction of ESA is a big change. For example, the physical test for being awarded ESA is much tougher than the current test for incapacity benefit and the mental health test is completely different. In addition, successful ESA claimants are separated into two groups: those who are expected to undertake activities in return for their benefits and those who aren't.

In other ways, however, ESA will be familiar to many claimants. This is because most of the current rules and regulations for incapacity benefit and income support have simply been transferred over to ESA.

One thing that is undoubtedly true about ESA is that most things come in pairs.

The two types of ESA

Like jobseeker's allowance, ESA has two strands: a contributory strand and an income-related strand.

Contribution-based ESA

To get *contribution-based* ESA you have to have paid enough national insurance contributions or be a young person. The rules about contributions are very similar to the rules for incapacity benefit.

Income-related ESA

To get *income-related* ESA you don't need to have paid any contributions, but eligibility is means-tested, so your household must have a low enough income and not too much in the way of savings or other capital.

Some people, because of their circumstances, will also get additional amounts of money – called premiums – if they are eligible for income-related ESA.

ESA in a nutshell

To qualify for ESA you will first need to show that either you have paid enough national insurance contributions or that you are a young person or that your household income and savings are low enough. You will also need a medical certificate from your GP.

If you pass this test you will be allowed into a 13 week assessment phase while a decision is made about whether you qualify to move into the main phase.

In the assessment phase you will be subject to two medical tests.

If you fail the first test you won't be put in the main phase. You will have to claim JSA instead.

If you pass the first test but fail the second, you will move into the main phase of ESA and be placed in the work-related activity group. You will have to do things in return for your ESA.

If you pass both medical tests you will move into the main phase of ESA and be placed in the support group. You will get more money than claimants in the work-related activity group and you will not have to do anything in return for your ESA.

Some claimants can claim contribution based ESA with an income-related ESA top-up because, for example, they have paid enough national insurance contributions and they have a low household income and very little capital.

The two phases of ESA

As well as having two strands, ESA is divided into two phases: an 'assessment phase' and a 'main phase'.

Assessment phase

The assessment phase lasts for 13 weeks. You get paid the same amount you would receive if you were on jobseeker's allowance, including a lower rate if you are under 25.

Whilst you are in the assessment phase you will be subject to the Work Capability Assessment (WCA). The WCA includes two medical tests for all claimants.

Main phase

At the end of the assessment phase you will either have failed the medical tests and have to claim jobseeker's allowance or you will have passed. If you passed the first medical test but not the second you will be placed in the work-related activity group. If you passed both tests you will be placed in the support group.

In the main phase you get paid a basic allowance which is the same as the amount you would receive if you were on jobseeker's allowance, but at the 25 and over rate, regardless of your age. You also get an additional component, the amount depending on whether you passed one or both medical tests.

The two medical tests of ESA

As we said, everyone in the assessment phase of ESA has to have two medical tests, although in reality for some people these will be done on paper rather than at a face-to-face medical.

The two medical tests are the confusingly similarly named:

- limited capability for work assessment (LCWA); and the
- limited capability for work-related activity assessment (LCWRA)

Limited capability for work assessment (LCWA)

This is a points based test, similar to the medical test for incapacity benefit. You get points for having problems with different physical and mental activities, such as walking, sitting, remembering things and dealing with other people.

If you score 15 points or more you pass the test. Passing this test gets you into the work-related activity group, unless you pass the next test as well.

If you fail this test then you won't get awarded ESA at all, though you can appeal. Instead, you'll have to try to claim jobseeker's allowance.

Limited capability for work-related activity assessment (LCWRA)

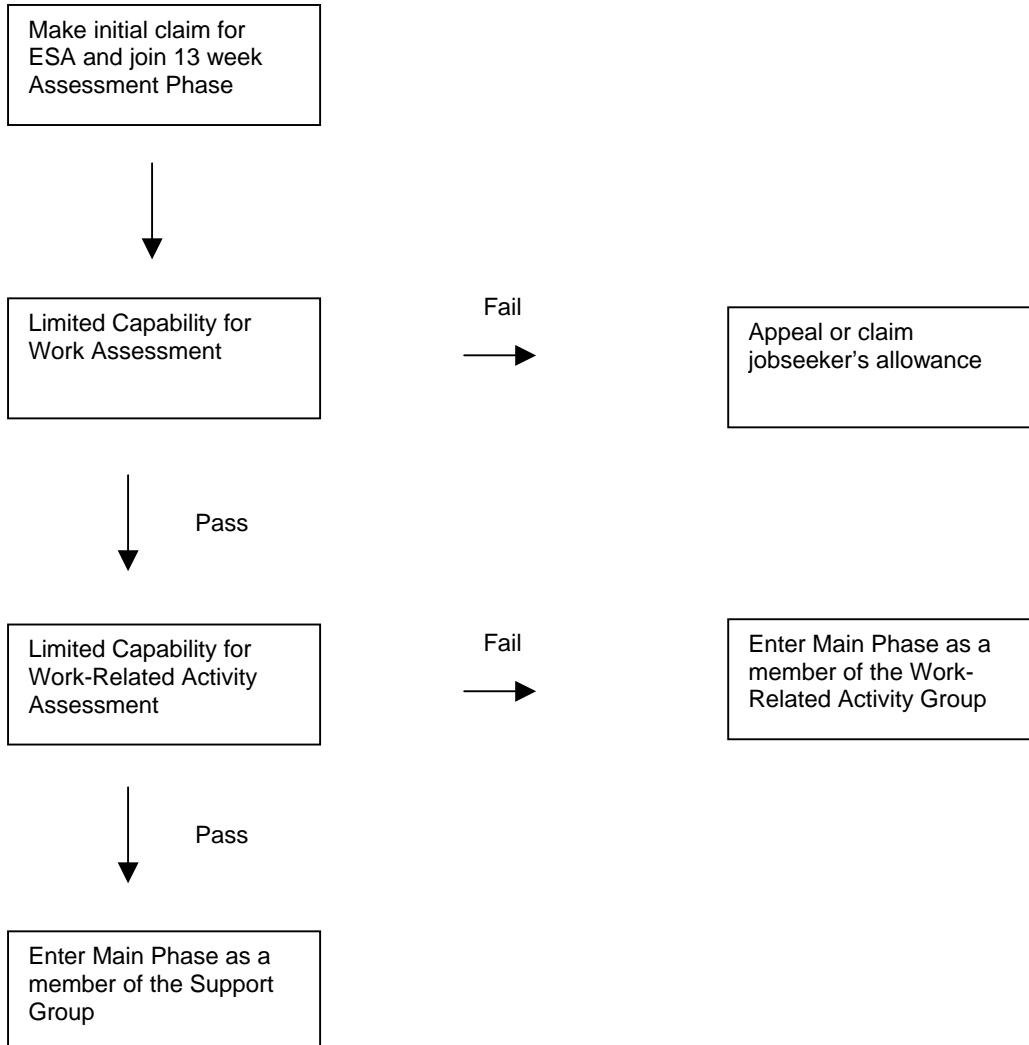
You can only take this test after you have passed the first test. There are no points. Instead, there are a series of 46 'descriptors'. If any single one of them applies to you then you have passed.

So, for example, if you can't raise either arm as if to put something in the top pocket of a coat or jacket you'll have passed the test.

Similarly, if you misinterpret what people say to the extent of causing distress to yourself on a daily basis you will pass the test.

If you pass this test you'll get membership of the more exclusive support group. Only around 10% of claimants are expected to get into the support group according to the DWP.

ESA medical tests



The two groups and two components of ESA

We've already mentioned the two groups in relation to the medical tests. As you can see in the chart above, claimants who get through the assessment phase of ESA and into the main phase are divided into a work-related activity group and a support group. One of the differences between these groups is the amount of money they get.

Work-related activity group

The people who pass the first test above but fail the second test go into the *work-*

related activity group (WRAG). This group is expected to include the vast majority of successful ESA claimants, around 90%.

Work-related activity group members get paid a basic allowance – currently £60.50 a week – plus a work-related activity component, currently £24.00 a week.

If you get into this group, in return for your additional component, you are required to take part in certain work-related activities, which are set out in law. If you fail to do so your additional component is reduced by 50% for four weeks and then taken away altogether. You can only get it back by taking part in the required activities.

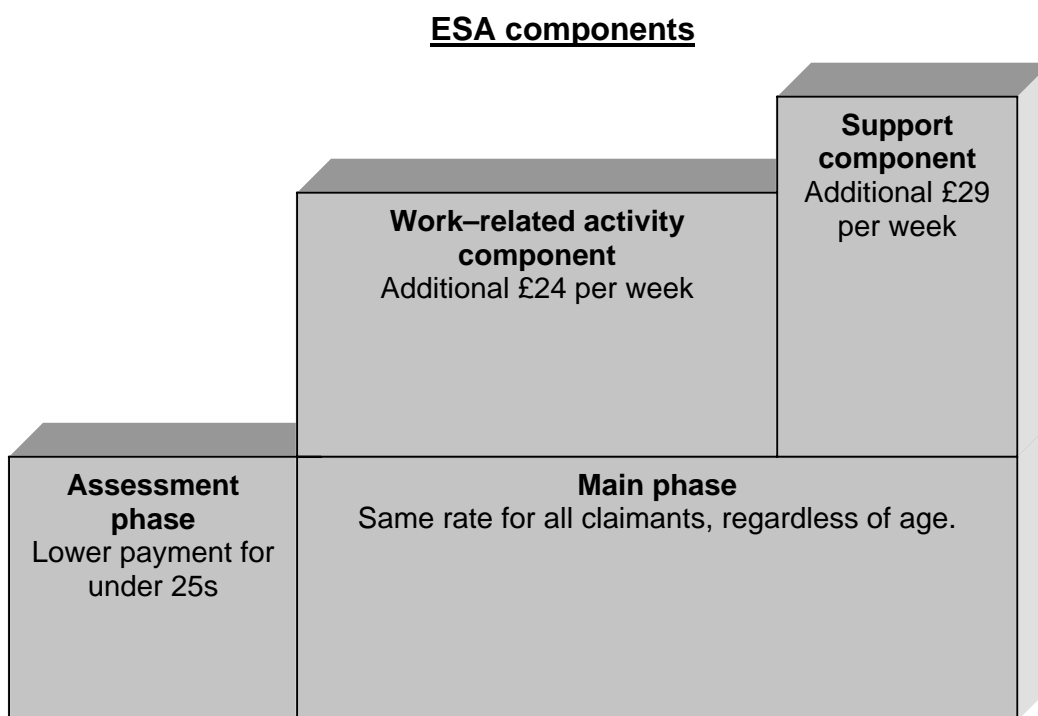
At the moment the activities you have to undertake mainly relate to attending and taking part in six work-focused interviews. In the future it is intended that the range of compulsory activities will increase, possibly to include treatment, training and work experience.

Support group

People who pass both of the medical tests above go into the support group. If you get into this group you get paid the basic allowance of ESA plus a support component of £29 a week.

If you are eligible for income-related ESA and you are in the support group you will also automatically get an extra payment called an enhanced disability premium, currently worth £12.60 a week for a single person.

Members of the support group don't have to undertake any work-related activities at all, because it is considered that they have the most serious health conditions or disabilities.



The two work interviews of ESA

We're straining our pairs here a little, as one of these is called an interview and one is called an assessment. But both are part of the process of looking at how you could move into work and neither are supposed to happen to people in the support group.

Work-focused health related assessment

This is an interview in which you are asked about what kinds of things you enjoy doing and what things help and hinder you in relation to moving into work. The results are written up into a report, which is passed on to the personal adviser who carries out your work-focused interviews.

The WFHRA usually happens at the same appointment at which you have your medical examination to decide whether you are eligible for ESA and, if so, which group you should be in. Usually there will be a short break after the medical examination and then the same health professional will carry out your WFHRA.

Failure to take part in a WFHRA will mean that your benefits get sanctioned in the same way as if you fail to take part in work-related activities.

Work-focused interviews

Every claimant who hasn't been selected for the support group by about week eight of the assessment phase has a work-focused interview. Those who get put into the work-related activity group in the main phase of ESA have another five work-focused interviews.

At these interviews you again discuss the barriers you face in moving into work and also draw up an action plan to overcome those barriers.

Who can claim ESA

Initially ESA is only for new claimants. However, the government says that all current incapacity claimants will be moved over to ESA between 2009 and 2013.

In addition, some people who claim after 27 October, but who have claimed incapacity benefit or income support in the past, will still be assessed for these benefits rather than ESA because of rules about linking to previous claims

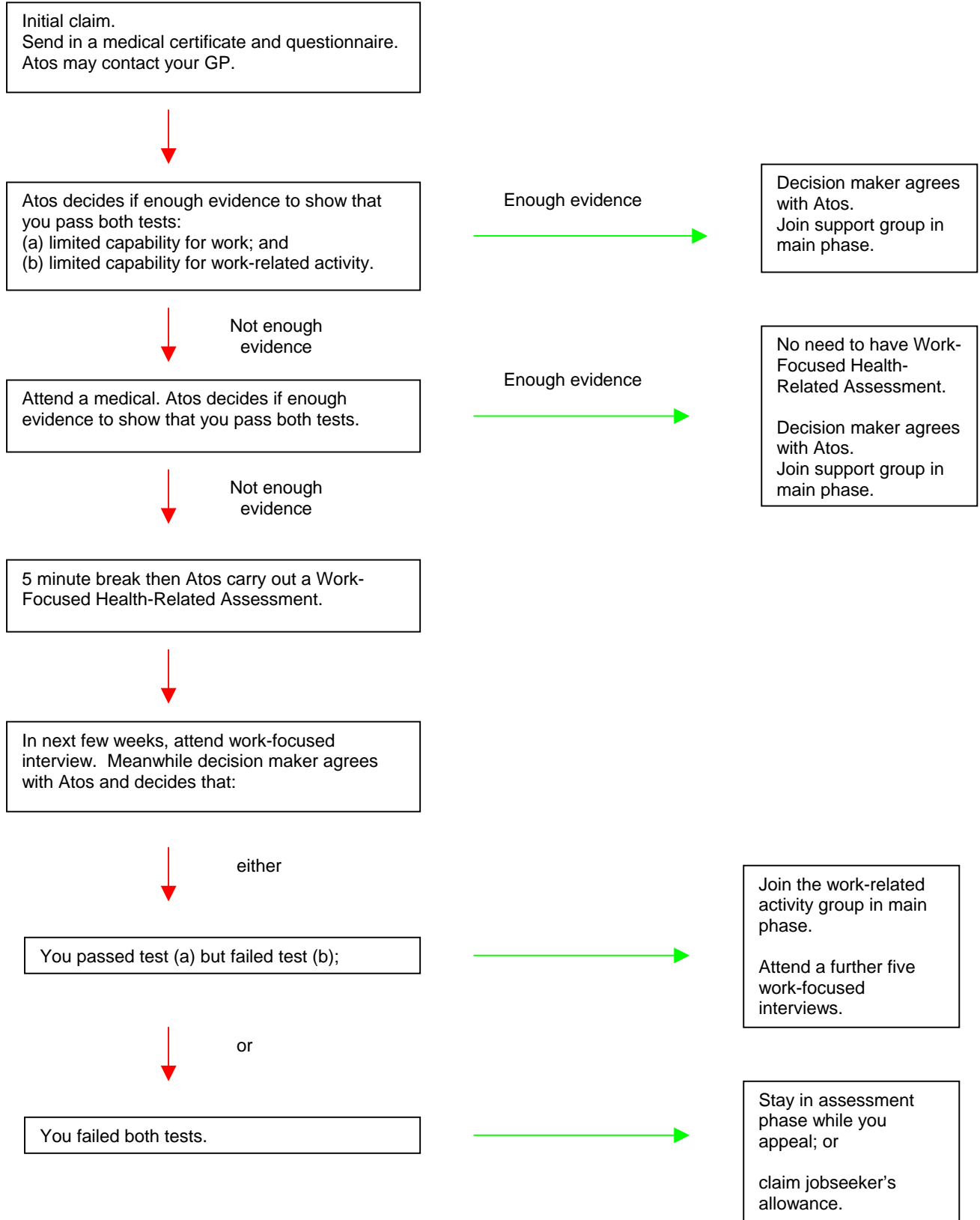
Appeals

You can appeal against a decision that you do not have limited capability for work. Whilst doing so they you claim ESA paid at the assessment phase rate.

You can also appeal against a decision that you do have limited capability for work but don't have limited capability for work-related activities.

ESA route map

There are various different ways of charting the route you will take when claiming ESA. This route map is very simplified. It doesn't take into account things like terminal illness and people who are exempt, for example. But it is the route most claimants will follow.



Stages of an ESA claim

The route map above is one way of trying to follow the complex process of claiming ESA. In this section we've set out in words the route that the DWP think people will follow to claim ESA. Again it's a simplified route, but it should help you to work out where you are in the process.

1. Make an initial claim for ESA over the telephone using an 0800 number.
2. You are sent a printed Customer Statement to check, sign and return. You may be asked to provide other evidence, such as proof of savings and income as well as a medical certificate.
3. Some claimants may be given 'early entry' to the work capability assessment, allowing them to be placed in the support group or work-related activity group without needing to attend a medical or complete a questionnaire. This may be, for example, because:
 - you are terminally ill
 - you are exempt because, for example, you are having certain types of chemotherapy
 - you have a very severe illness or disability and it is clear you qualify for the support group.

The DWP may contact your GP or another health professional for further evidence if they consider you may be eligible for early entry.

4. By day 11 your claim should be processed and you should receive your first payment on the due pay day.
5. By day 30 you should be sent a an ESA50 questionnaire. You will have six weeks to complete and return the questionnaire
6. If you are allocated to the support group or work-related activity group on the basis of your questionnaire and any supporting evidence, you should receive a decision letter informing you of this. If you have been placed in the work-related activity group you will still have to attend a work-focused health-related assessment at a Medical Examination Centre.
7. If you are not allocated to the support group or work-related activity group on the basis of the evidence already received, you will get an appointment for your medical examination, which will include a work-focused health-related assessment. You should be sent notice in writing of a medical examination at least 7 days in advance unless you agreed to accept a shorter period of notice in writing or otherwise. In practice Atos Healthcare will generally try to arrange medicals by telephone and may leave misleading messages warning you that your benefit may be affected if you do not return their calls.
8. You attend your examination at around day 43 of your claim, though this seems to be based on your returning the IB50 questionnaire within a few days.
9. You should receive a letter giving you a date to attend a work-focused interview. This interview may be as early as week eight of your claim, unless it is waived or deferred. For many people, the work-focused interview may

take place before their medical. If you have already been allocated to the support group you won't have to have a work-focused interview. If you haven't yet been allocated to the support group but it is considered likely that you will be, your interview will be deferred until a decision has been made.

10. You receive your outcome letter for the work capability assessment and a copy of your work-focused health related activity report. If you are found capable of work you can challenge the decision via revision and appeal. Whilst awaiting an appeal you can claim ESA at the assessment phase rate.
11. After 13 weeks, if you passed the work capability assessment, you will enter the main phase of ESA as a member of either the work-related activity group or the support group.
12. If by the end of 13 weeks a decision has not been made on eligibility, for example because you have been too ill to be assessed, the assessment phase can be extended. Where this happens, when the decision as to which group the you belong to is made, any back payments of an additional component owed from week 14 onwards will be made.
13. Claimants in the work-related activity group will have a further five work-focused interviews. Your benefits may be sanctioned if you fail to attend and take part in these interviews.
14. Claimants in the work-related activity group will be subject to at least one work-focused interview each time you have a further work capability assessment. It is intended that assessments will take place annually, though it may not always be necessary for claimants to attend further medicals. Claimants in the support group may have their eligibility reassessed from time to time.

Stages of an ESA medical assessment

There's yet another way of looking at how you will progress through the ESA claims process. This is from the point of view of Atos Healthcare doctors. Atos Healthcare are the multinational company with the contract to carry out medical assessments on behalf of the DWP.

The way that the assessments are carried out is, from a legal point of view, back to front. The law says that only people who pass the limited capability for work assessment can pass the limited capability for work-related activity assessment.

However, what Atos do is first try to identify those people who they consider pass the limited capability for work-related activity assessment. They attempt to assess these claimants on the paperwork alone, with additional calls to the claimant's health professionals if necessary. Only after this has been done do they carry out medical examinations on the remainder.

Clearly this saves time and money and prevents many people with serious conditions having to attend an unnecessary medical examination.

But it does also mean that by the time you get to a medical examination your chances of being assessed as eligible for the support group are very much slimmer. If you have a work-focused health related assessment at your medical then you can be sure that the doctor doesn't consider that you should be eligible for the Support Group. This is because claimants who are considered eligible for the support group do not have a work-focused health related assessment.

So, if you think you are eligible, it's important to get any supporting evidence in as early as possible – by the time you get to your medical it may already be too late. The assumption will be that senior Atos doctors have already looked at the paperwork in your case and decided that there isn't enough evidence to allow you into the support group.

As you'll see below, doctors not using the computerised system actually have to call their bosses and discuss the matter if they want to find you eligible for the support group at a medical – they can't just make the recommendation themselves.

1 Special rules check

Atos health professionals are told that when the claimant first contacts Jobcentre Plus they may state that they are terminally ill. Where they do, or where a claimant is considered to be potentially terminally ill, a referral is made to Atos Healthcare for advice.

Atos check to see if a form DS1500, used for Special Rules claims for disability living allowance and attendance allowance claims, has been issued. If it has, the claimant will be considered terminally ill.

If not, the claimant will be asked to obtain a DS1500. If they fail to do so Atos will telephone the claimant's GP or other health professional for further medical evidence.

Atos will then either advise the decision maker that the claimant is terminally ill, or that they satisfy one of the other support group criteria or limited capability for work criteria or that the claim should be treated in the normal way.

2 Pre-board check

After the special rules check, a pre-board check takes place unless the decision maker has already identified the claimant as having limited capability for work on the basis of the medical certification received.

The pre-board check identifies claimants who may be eligible for the support group or may meet the criteria for having limited capability for work without having an examination. It allows some claimants to be placed in the support or work-related activity group without having to attend a medical.

3 ESA50A check

Where the decision maker has identified a claimant as having limited capability for work based on medical certification, they may be sent an ESA50A to decide whether they also have limited capability for work-related activity. The ESA50A and any other medical evidence will be reviewed by an Atos doctor. If a recommendation on whether the claimant does, or does not, meet the criteria for inclusion in the support group cannot be made on the basis of the evidence, the claimant will be called to attend a limited capability for work-related activity only medical.

4 Medical examination

Where a decision cannot be made based on the evidence already obtained, the claimant will be asked to attend a limited capability for work/limited capability for work related activity medical.

It is worth noting that health professionals carrying out medical examinations without LiMA computer software are told that if it becomes clear in the course of the examination that the claimant may be in the support group they should interrupt the examination and, where appropriate, consult with a doctor at the their Customer Service Desk. It is not clear whether doctors using LiMA also have to do so.

Doctors who are using LiMA are also warned that this decision must be made before the examination is complete because of the way the LiMA software works:

If you progress beyond observed behaviour MSRS [Medical Services Referral System] will expect a WFHRA to be produced. This prompt to complete a WFHRA cannot be reversed. You must make your decision on possible Support Group entitlement before progressing beyond the observed behaviour screen. Always consider before moving beyond observed behaviour whether or not the claimant meets any one of the Support Group criteria.

5 Re-referral scrutiny

Where the claimant has previously had a medical examination and been found to have limited capability for work they will be re-referred to Atos after an appropriate period, based on the prognosis advised by the original examining doctor.

The Atos doctor will review the previous medical examination report and the current ESA50. They may then recommend that the case be 'satisfied' for a further period or send for further medical evidence from the claimant's GP or other practitioner before making a recommendation.

If there is evidence of functional improvement since the last medical examination the Atos doctor may advise that the claimant be called for a further medical.

A similar process applies to claimants in the support group.

Basic non-medical qualifying conditions

This section sets out what the basic, non-medical conditions of entitlement to ESA are. It covers issues such as age and capital. You can skip this bit if all you want to know about are the medical tests and how they work.

We only cover these issues very briefly. For more information, you can download detailed ESA factsheets from the dwp website at www.dwp.gov.uk

General conditions

As well as having limited capability for work, to be entitled to ESA, you have to be:

- At least 16 years old.
- Below pensionable age.
- Residing in Great Britain.

You have also have to:

- Not be entitled to statutory sick pay.
- Not be entitled to income support or JSA.
- Not be in a couple entitled to joint-claim JSA.
- Not be entitled to incapacity benefit through the linking rules

ESA has a contributory and a non-contributory strand. So you will have to:

Satisfy the national insurance contribution conditions (or ESA in youth conditions); or
Satisfy the income and capital tests; or
Satisfy both.

Contribution-based ESA

Your entitlement to contribution-based ESA will be considered first and then any possible entitlement to income-related ESA.

You must have paid enough national insurance contributions to qualify for contribution-based ESA . In general, you need to have actually paid 25 x class 1 or 2 contributions in one of the last 3 tax years; and have paid or been credited with 50 x contributions in both the last 2 tax years.

The rules relating to deductions for pension and pension protection fund payments are similar to the current rules for incapacity benefit.

You can't receive contribution-based ESA if you are getting statutory maternity, paternity or adoption pay.

ESA in youth

Even if you haven't paid any national insurance contributions you may still be eligible for contribution-based ESA via the ESA in youth provisions.

To qualify, need to have been under 20 – or in some cases under 25 - when your period of limited capability for work began, have had limited capability for work for a period of at least 196 days and, for young people under 19, not be in full-time (21 or more hours a week) education.

Income-related ESA

The financial conditions for income-related ESA are very similar to those currently in place for income support for people incapable of work. Your capital must not be over £16,000.

You must not be entitled to pension credit.

You must not be receiving education, unless you are entitled to disability living allowance.

Your partner must not be working 24 hours or more and must not be entitled to:

- Income-related ESA
- Income based JSA
- Income support
- Pension credit

You must satisfy the right to reside test and habitual residence test and you must not be a person subject to immigration control, except in certain circumstances.

Income related ESA passports to full housing benefit and council tax benefit.

Additional premiums

Some people, because of their circumstances, will also get additional amounts of money – called premiums – if they are eligible for income-related ESA.

There is no disability premium payable in ESA. However, the following premiums are payable to eligible claimants receiving the income-related strand of ESA, both in the assessment phase and the main phase:

- Severe disability premium
- Enhanced disability premium
- Carer premium
- Pensioner premium
- Higher pensioner premium

Claimants in the support group are automatically entitled to the enhanced disability premium.

Backdating and linked claims

From October 27 2008 people who are incapable of work have to claim ESA.

However, backdating rules for IB and for IS allow some people to make a claim for IB or IS for up to 3 months after the introduction of ESA.

The 8 week linking rule is extended to 12 weeks under ESA and the 2 year welfare to work linking rule still applies.

Three ways to pass two medical tests

You already know that there are two medical tests in ESA:

- the limited capability for work assessment
- the limited capability for work-related activity assessment

What you also need to know is that there are three ways to pass each of these two tests.

Limited capability for work

The decision maker must decide if any of the three ways of passing this test apply to you. The three questions which the decision maker must answer, in the order they are applied are:

1. Are you exempt from the limited capability for work assessment?
2. Do you score enough points under the limited capability for work assessment?
3. Are you covered by the limited capability for work exceptional circumstances rules?

If the answer to all of these questions is no, that's the end of your assessment. You will not be eligible for ESA and will have to either appeal or claim JSA instead.

If the answer to any of these three questions is yes, then you will go on to be assessed under the limited capability for work-related activity assessment.

Limited capability for work-related activity assessment

Three similar questions must be answered in relation to limited capability for work-related activity:

1. Are you exempt from the limited capability for work-related activity assessment?
2. Do any of the limited capability for work-related activity descriptors apply to you?
3. Are you covered by the limited capability for work-related activity exceptional circumstances rules?

If the answer to any of these questions is yes then you will be placed in the support group.

If the answer to all three of these questions is no, then you will be placed in the work-related activity group.

The next six sections of this introductory guide set out the legal tests that stand behind each of the six questions.

Are you exempt from the limited capability for work assessment?

Some people do not have to show they score enough points to pass the limited capability for work assessment. These are people who are exempt from the test because of their condition.

The regulations do not actually use the term 'exempt' in relation to limited capability for work. Instead they first set out the circumstances in which 'a claimant is to be treated as having limited capability for work'. In effect, however, this amounts to an exemption.

There are very few exemptions compared to the range that are available in relation to the personal capability assessment for incapacity benefit. The exemptions under the new test relate only to terminal illness, chemotherapy, notifiable diseases and pregnancy.

You will be treated as having limited capability for work if any of the following circumstances apply:

a) you are terminally ill, i.e. you are suffering from a progressive disease and your death in consequence of that disease can reasonably be expected within 6 months;

(b) you are receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy or are recovering from such treatment and the Secretary of State is satisfied that the you should be treated as having limited capability for work;

(c) you have, or have been in contact with, a notifiable disease;

(d) you are pregnant and there is a serious risk of damage to your health or to the health of your unborn child if you do not refrain from work;

(e) you are pregnant and within the maternity allowance period and entitled to maternity allowance

(f) you are pregnant and within either six weeks of giving birth or have given birth in the last two weeks and you are not entitled to maternity allowance or statutory maternity pay.

Hospital in-patients and medical treatment

You will be treated as having limited capability for work on any day in which you are an in-patient in hospital.

You will also be treated as having limited capability for work on any day in which you are having, or having a day of recovering from having from having, regular weekly haemodialysis for chronic renal failure; regular weekly total parenteral nutrition for gross impairment of enteric function; or plasmapheresis or radiotherapy.

Do you score enough points under the limited capability for work assessment?

If you aren't exempt from the limited capability for work assessment, the next question is whether you score enough points.

The limited capability for work assessment is divided into 21 activities: 11 physical and 10 cognitive and intellectual.

In order to be found to have limited capability for work, you need to score 15 points from either the physical or mental health assessment or from a combination of the two. So, for example, 9 points from the physical health test and six from the mental health test would be sufficient for you to be found to have limited capability for work.

Only one descriptor from each activity, the highest scoring one that applies to you, counts towards your score. So if, for example both 2 (e) and 2(f) applied to you, then you would only score six points – not 12 - even though one is about standing and the other is about sitting. This is because both descriptors are from the same activity: Standing and sitting.

Limited capability for work, physical disabilities assessment

1. Walking with a walking stick or other aid if such aid is normally used.

- (a) Cannot walk at all. 15
- (b) Cannot walk more than 50 metres on level ground without repeatedly stopping or severe discomfort. 15
- (c) Cannot walk up or down two steps even with the support of a handrail. 15
- (d) Cannot walk more than 100 metres on level ground without stopping or severe discomfort. 9
- (e) Cannot walk more than 200 metres on level ground without stopping or severe discomfort. 6
- (f) None of the above apply. 0

2. Standing and sitting.

- (a) Cannot stand for more than 10 minutes, unassisted by another person, even if free to move around, before needing to sit down. 15
- (b) Cannot sit in a chair with a high back and no arms for more than 10 minutes before needing to move from the chair because the degree of discomfort experienced makes it impossible to continue sitting. 15
- (c) Cannot rise to standing from sitting in an upright chair without physical assistance from another person. 15
- (d) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person. 15
- (e) Cannot stand for more than 30 minutes, even if free to move around, before needing to sit down. 6
- (f) Cannot sit in a chair with a high back and no arms for more than 30 minutes without needing to move from the chair because the degree of discomfort makes it impossible to continue sitting. 6
- (g) None of the above apply. 0

3. Bending or kneeling.

- (a) Cannot bend to touch knees and straighten up again. 15

- (b) Cannot bend, kneel or squat, as if to pick a light object, such as a piece of paper, situated 15cm from the floor on a low shelf, and to move it and straighten up again without the help of another person. 9
- (c) Cannot bend, kneel or squat, as if to pick a light object off the floor and straighten up again without the help of another person. 6
- (d) None of the above apply. 0

4. Reaching.

- (a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket. 15
- (b) Cannot put either arm behind back as if to put on a coat or jacket. 15
- (c) Cannot raise either arm to top of head as if to put on a hat. 9
- (d) Cannot raise either arm above head height as if to reach for something. 6
- (e) None of the above apply. 0

5. Picking up and moving or transferring by the use of the upper body and arms (excluding all other activities specified in Part I of this Schedule).

- (a) Cannot pick up and move a 0.5 litre carton full of liquid with either hand. 15
- (b) Cannot pick up and move a one litre carton full of liquid with either hand. 9
- (c) Cannot pick up and move a light but bulky object, such as an empty cardboard box, requiring the use of both hands together. 6
- (d) None of the above apply. 0

6. Manual dexterity.

- (a) Cannot turn a "star-headed" sink tap with either hand. 15
- (b) Cannot pick up a £1 coin or equivalent with either hand. 15
- (c) Cannot turn the pages of a book with either hand. 15
- (d) Cannot physically use a pen or pencil. 9
- (e) Cannot physically use a conventional keyboard or mouse. 9
- (f) Cannot do up / undo small buttons, such as shirt or blouse buttons. 9
- (g) Cannot turn a "star-headed" sink tap with one hand but can with the other. 6
- (h) Cannot pick up a £1 coin or equivalent with one hand but can with the other. 6
- (i) Cannot pour from an open 0.5 litre carton full of liquid. 6
- (j) None of the above apply. 0

7. Speech.

- (a) Cannot speak at all. 15
- (b) Speech cannot be understood by strangers. 15
- (c) Strangers have great difficulty understanding speech. 9
- (d) Strangers have some difficulty understanding speech. 6
- (e) None of the above apply. 0

8. Hearing with a hearing aid or other aid if normally worn

- (a) Cannot hear at all. 15
- (b) Cannot hear well enough to be able to hear someone talking in a loud voice in a quiet room, sufficiently clearly to distinguish the words being spoken. 15
- (c) Cannot hear someone talking in a normal voice in a quiet room, sufficiently clearly to distinguish the words being spoken. 9
- (d) Cannot hear someone talking in a loud voice in a busy street, sufficiently clearly to distinguish the words being spoken. 6
- (e) None of the above apply. 0

9. Vision including visual acuity and visual fields, in normal daylight or bright electric light, with glasses or other aid to vision if such aid is normally worn.

- (a) Cannot see at all. 15

- (b) Cannot see well enough to read 16 point print at a distance of greater than 20cm. 15
- (c) Has 50% or greater reduction of visual fields. 15
- (d) Cannot see well enough to recognize a friend at a distance of at least 5 metres. 9
- (e) Has 25% or more but less than 50% reduction of visual fields. 6
- (f) Cannot see well enough to recognise a friend at a distance of at least 15 metres. 6
- (g) None of the above apply. 0

10(a) Continence other than enuresis (bed wetting) where claimant does not have an artificial stoma or urinary collecting device.

- (i) Has no voluntary control of the evacuation of the bowel. 15
- (ii) Has no voluntary control of the voiding of the bladder. 15
- (iii) At least once a month loses control of bowels so that the claimant cannot control the full evacuation of the bowel. 15
- (iv) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder. 15
- (v) Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel. 9
- (vi) At least once a month loses control of bladder so that the claimant cannot control the full voiding of the bladder. 6
- (vii) Risks losing control of bowels or bladder so that the claimant cannot control the full evacuation of the bowel or the full voiding of the bladder if not able to reach a toilet quickly. 6
- (viii) None of the above apply. 0

10(b) Continence where claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter.

- (i) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person. 15
- (ii) Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents. 15
- (iii) Has no voluntary control over the evacuation of the bowel. 15
- (iv) At least once a month, loses control of bowels so that the claimant cannot control the full evacuation of the bowel. 15
- (v) Occasionally loses control of bowels so that the claimant cannot control the full evacuation of the bowel. 9
- (vi) Risks losing control of bowels so that the claimant cannot control the full evacuation of the bowel if not able to reach a toilet quickly. 6
- (vii) None of the above apply. 0

10(c) Continence other than enuresis (bed wetting) where claimant has an artificial stoma.

- (i) Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person. 15
- (ii) Is unable to affix, remove or empty stoma appliance without causing leakage of contents. 15
- (iii) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder.. 15
- (iv) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at last once a month, loses control of bladder so that the claimant cannot control the full voiding of the bladder. 9

- (v) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, risks losing control of the bladder so that the claimant cannot control the full voiding of the bladder if not able to reach a toilet quickly. 6
bladder if not able to reach a toilet quickly. 6
(vi) None of the above apply. 0

11. Remaining conscious during waking moments.

- (a) At least once a week, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration. 15
(b) At least once a month, has an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration. 9
(c) At least twice in the six months immediately preceding the assessment, has had an involuntary episode of lost or altered consciousness, resulting in significantly disrupted awareness or concentration. 6
(d) None of the above apply. 0

Limited capability for work, cognitive and intellectual function assessment

12. Learning or comprehension in the completion of tasks.

- (a) Cannot learn or understand how to successfully complete a simple task, such as setting an alarm clock, at all. 15

(b) Needs to witness a demonstration, given more than once on the same occasion, of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it. 15

(c) Needs to witness a demonstration of how to carry out a simple task, before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person. 9

(d) Needs to witness a demonstration of how to carry out a moderately complex task, such as the steps involved in operating a washing machine to correctly clean clothes, before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a verbal prompt from another person. 9

(e) Needs verbal instructions as to how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable, within a period of less than one week, to successfully complete the task the following day without receiving a verbal prompt from another person. 6

(f) None of the above apply. 0

13. Awareness of hazard.

- (a) Reduced awareness of the risks of everyday hazards (such as boiling water or sharp objects) would lead to daily instances of or to near avoidance of:
(i) injury to self or others; or
(ii) significant damage to property or possessions,

to such an extent that overall day to day life cannot successfully be managed. 15

(b) Reduced awareness of the risks of everyday hazards would lead for the majority of the time to instances of or to near-avoidance of:

- (i) injury to self or to others; or
- (ii) significant damage to property or possessions

to such an extent that overall day to day life cannot successfully be managed without supervision from another person. 9

(c) Reduced awareness of the risks of everyday hazards has led or would lead to frequent instances of or to near avoidance of:

- (i) injury to self or to others; or
- (ii) significant damage to property or possessions

but not to such an extent that overall day to day life cannot be managed when such incidents occur. 6

(d) None of the above apply. 0

14. Memory and concentration.

(a) On a daily basis, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence. 15

(b) For the majority of the time, forgets or loses concentration to such an extent that overall day to day life cannot be successfully managed without receiving verbal prompting, given by someone else in the claimant's presence. 9

(c) Frequently forgets or loses concentration to such an extent that overall day to day life can only be successfully managed with pre-planning, such as making a daily written list of all tasks forming part of daily life that are to be completed.6

(d) None of the above apply. 0

15. Execution of tasks.

(a) Is unable to successfully complete any everyday task. 15

(b) Takes more than twice the length of time it would take a person without any form of mental disablement, to successfully complete an everyday task with which the claimant is familiar. 15

(c) Takes more than one and a half times but no more than twice the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar. 9

(d) Takes one and a half times the length of time it would take a person without any form of mental disablement to successfully complete an everyday task with which the claimant is familiar. 6

(e) None of the above apply. 0

16. Initiating and sustaining personal action.

(a) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks). 15

(b) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring verbal prompting given by another person in the claimant's presence for the majority of the time. 15

(c) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring verbal prompting given by another person in the claimant's presence for the majority of the time. 9

(d) Cannot, due to cognitive impairment or a severe disorder of mood or behaviour, initiate or sustain personal action without requiring frequent verbal prompting given by another person in the claimant's presence. 6

(e) None of the above apply 0

17. Coping with change.

(a) Cannot cope with very minor, expected changes in routine, to the extent that overall day to day life cannot be managed. 15

(b) Cannot cope with expected changes in routine (such as a pre-arranged permanent change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult. 9

(c) Cannot cope with minor, unforeseen changes in routine (such as an unexpected change of the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult. 6

(d) None of the above apply. 0

18. Getting about.

(a) Cannot get to any specified place with which the claimant is, or would be, familiar. 15

(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person on each occasion. 15

(c) For the majority of the time is unable to get to a specified place with which the claimant is familiar without being accompanied by another person. 9

(d) Is frequently unable to get to a specified place with which the claimant is familiar without being accompanied by another person. 6

(e) None of the above apply. 0

19. Coping with social situations.

(a) Normal activities, for example, visiting new places or engaging in social contact, are precluded because of overwhelming fear or anxiety. 15

(b) Normal activities, for example, visiting new places or engaging in social contact, are precluded for the majority of the time due to overwhelming fear or anxiety. 9

(c) Normal activities, for example, visiting new places or engaging in social contact, are frequently precluded, due to overwhelming fear or anxiety. 6

(d) None of the above apply. 0

20. Propriety of behaviour with other people.

(a) Has unpredictable outbursts of, aggressive, disinhibited, or bizarre behaviour, being either:

- (i) sufficient to cause disruption to others on a daily basis, or
- (ii) of such severity that although occurring less frequently than on a daily basis, no reasonable person would be expected to tolerate them. 15

(b) Has a completely disproportionate reaction to minor events or to criticism to the extent that the claimant has an extreme violent outburst leading to threatening behaviour or actual physical violence. 15

(c) Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient in severity and frequency to cause disruption for the majority of the time. 9

(d) Has a strongly disproportionate reaction to minor events or to criticism, to the extent that the claimant cannot manage overall day to day life when such events or criticism occur. 9

(e) Has unpredictable outbursts of aggressive, disinhibited or bizarre behaviour, sufficient to cause frequent disruption. 6

(f) Frequently demonstrates a moderately disproportionate reaction to minor events or to criticism but not to such an extent that the claimant cannot manage overall day to day life when such events or criticism occur. 6

(g) None of the above apply. 0

21. Dealing with other people.

(a) Is unaware of impact of own behaviour to the extent that:

- (i) has difficulty relating to others even for brief periods, such as a few hours; or
- (ii) causes distress to others on a daily basis. 15

(b) The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress on a daily basis. 15

(c) Is unaware of impact of own behaviour to the extent that:

- (i) has difficulty relating to others for longer periods, such as a day or two, or
- (ii) causes distress to others for the majority of the time. 9

(d) The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress to himself for the majority of the time. 9

(e) Is unaware of impact of own behaviour to the extent that:

- (i) has difficulty relating to others for prolonged periods, such as a week; or
- (ii) frequently causes distress to others. 6

(f) The claimant misinterprets verbal or non-verbal communication to the extent of causing himself or herself significant distress on a frequent basis. 6

(g) None of the above apply. 0

Are you covered by the limited capability for work exceptional circumstances rules?

Some people who are not exempt and who fail to score enough points under the limited capability for work assessment still can still pass the test. This is because they are covered by the exceptional circumstances regulations.

These apply if:

- a) you are suffering from a severe life threatening disease in relation to which:
 - (i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and
 - (ii) in the case of a disease that is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure.

- (b) you suffer from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if you were found not to have limited capability for work.

Are you exempt from the limited capability for work-related activity assessment?

If you pass the limited capability for work assessment you will go on to be assessed under the limited capability for work-related activity assessment.

Once again, the first question is whether you are exempt from assessment.

The following claimants are treated as having limited capability for work-related activity and will be assigned to the support group:

- a) you are terminally ill, i.e. you are suffering from a progressive disease and your death in consequence of that disease can reasonably be expected within 6 months;
- (b) you are receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy or are recovering from such treatment and the Secretary of State is satisfied that the you should be treated as having limited capability for work-related activity;
- (c) you are pregnant and there is a serious risk of damage to your health or to the health of your unborn child if you do not refrain from work-related activity.

Do any of the limited capability for work-related activity descriptors apply to you?

If you are not exempt from the limited capability for work-related activity assessment, the next question is whether any of the descriptors in the assessment apply to you.

If any one of the descriptors applies for the majority of the time or for the majority of the times that you attempt it, then you will be eligible for the support group. Any aid, appliance or prosthesis that you normally use will be taken into account when assessing you.

Limited capability for work-related activity test.

1. Walking or moving on level ground

Cannot—

- (a) walk (with a walking stick or other aid if such aid is normally used);
- (b) move (with the aid of crutches if crutches are normally used); or
- (c) manually propel the claimant's wheelchair;

more than 30 metres without repeatedly stopping, experiencing breathlessness or severe discomfort.

2. Rising from sitting and transferring from one seated position to another

Cannot complete both of the following:

- (a) rise to standing from sitting in an upright chair without receiving physical assistance from another person; and
- (b) move between one seated position and another seated position located next to one another without receiving physical assistance from someone else.

3. Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule)

Cannot pick up and move 0.5 litre carton full of liquid with either hand.

4. Reaching

Cannot raise either arm as if to put something in the top pocket of a coat or jacket.

5. Manual dexterity

Cannot—

- (a) turn a "star-headed" sink tap with either hand; or
- (b) pick up a £1 coin or equivalent with either hand.

6. Continence

(a) Continence other than enuresis (bed wetting) where the claimant does not have an artificial stoma or urinary collecting device—

- (a) Has no voluntary control over the evacuation of the bowel;

- (b) Has no voluntary control over the voiding of bladder;
- (c) At least once a week, loses control of bowels so that the claimant cannot control the full evacuation of the bowel;
- (d) At least once a week, loses control of bladder so that the claimant cannot control the full voiding of the bladder;
- (e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour; or
- (f) At least once a week, fails to control full-voiding of the bladder, owing to a severe disorder of mood or behaviour.

(b) Continence where the claimant uses a urinary collecting device, worn for the majority of the time including an indwelling urethral or suprapubic catheter—

- (a) Is unable to affix, remove or empty the catheter bag or other collecting device without receiving physical assistance from another person;
- (b) Is unable to affix, remove or empty the catheter bag or other collecting device without causing leakage of contents;
- (c) Has no voluntary control over bowel evacuation;
- (d) At least once a week loses control of bowels so that the claimant cannot control the full evacuation of the bowel; or
- (e) At least once a week, fails to control full evacuation of the bowel, owing to a severe disorder of mood or behaviour.

(c) Continence other than enuresis (bed wetting) where claimant has an artificial stoma—

- (a) Is unable to affix, remove or empty stoma appliance without receiving physical assistance from another person;
- (b) Is unable to affix, remove or empty stoma appliance without causing leakage of contents;
- (c) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, has no voluntary control over voiding of bladder;
- (d) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, loses control of the bladder so that the claimant cannot control the full voiding of the bladder; or
- (e) Where the claimant's artificial stoma relates solely to the evacuation of the bowel, at least once a week, fails to control the full voiding of the bladder, owing to a severe disorder of mood or behaviour.

7. Maintaining personal hygiene

- (a) Cannot clean own torso (excluding own back) without receiving physical assistance from someone else;
- (b) Cannot clean own torso (excluding own back) without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot clean own torso (excluding back) without receiving regular prompting given by someone else in the claimant's presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to clean own torso (excluding own back) without receiving—
 - (i) physical assistance from someone else; or
 - (ii) regular prompting given by someone else in the claimant's presence.

8. Eating and drinking

- (a) Conveying food or drink to the mouth.

- (a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
- (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving —
 - (i) physical assistance from someone else; or
 - (ii) regular prompting given by someone else in the claimant's presence.

(b) Chewing or swallowing food or drink

- (a) Cannot chew or swallow food or drink;
- (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to—
 - (i) chew or swallow food or drink; or
 - (ii) chew or swallow food or drink without regular prompting given by another person in the physical presence of the claimant.

9. Learning or comprehension in the completion of tasks

- (a) Cannot learn or understand how to successfully complete a simple task, such as the preparation of a hot drink, at all;
- (b) Needs to witness a demonstration, given more than once on the same occasion of how to carry out a simple task before the claimant is able to learn or understand how to complete the task successfully, but would be unable to successfully complete the task the following day without receiving a further demonstration of how to complete it; or
- (c) fails to do any of the matters referred to in (a) or (b) owing to a severe disorder of mood or behaviour.

10. Personal action—

- (a) Cannot initiate or sustain any personal action (which means planning, organisation, problem solving, prioritising or switching tasks);
- (b) Cannot initiate or sustain personal action without requiring daily verbal prompting given by someone else in the claimant's presence; or
- (c) Fails to initiate or sustain basic personal action without requiring daily verbal prompting given by some else in the claimant's presence, owing to a severe disorder of mood or behaviour.

11. Communication—

- (a) None of the following forms of communication can be achieved by the claimant—
 - (i) speaking (to a standard that may be understood by strangers);
 - (ii) writing (to a standard that may be understood by strangers);
 - (iii) typing (to a standard that may be understood by strangers)
 - (iv) sign language to a standard equivalent to Level 3 British Sign Language;

- (b) None of the forms of communication referred to in (a) are achieved by the claimant, owing to a severe disorder of mood or behaviour;
- (c) Misinterprets verbal or non-verbal communication to the extent of causing distress to himself on a daily basis; or
- (d) Effectively cannot make himself understood to others because of the claimant's disassociation from reality owing to a severe disorder of mood or behaviour.

Are you covered by the limited capability for work-related activity exceptional circumstances rules?

Finally, some people who are not exempt and to whom none of the limited capability for work related-activity descriptors apply are still eligible for the support group. This is because the exceptional circumstances rule applies to them.

You will be treated as having limited capability for work-related activities if:

you suffer from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if you were found not to have limited capability for work-related activity.

Work-focused health-related assessment

Purpose

The purpose of a work-focused health-related assessment is to assess

- (a) the extent to which you still have capability for work,
- (b) the extent to which your capability for work may be improved by the taking of steps in relation to your physical or mental condition.

Steps may include such things as a condition management programme for someone with a back problem or cognitive behavioural therapy for someone with social phobia.

A work-focused health-related assessment will normally take place at the same time as your medical. However, where this is not possible you can be obliged to attend a separate work-focused health-related assessment. Claimants who are assessed as having limited capability for work-related activities are not obliged to take part in a work-focused health-related assessment.

Claimants over 60 years of age will also not be required to attend a work-focused health-related assessment.

The health professional will complete a form, usually using computer software, which has boxes for answers to the following questions:

- 1 How do you see your future, from a health and work point of view?
- 2 What activities do you currently enjoy, thinking particularly about what may help your health and work prospects?
 - 2.1 What activities would you like to do in the future, thinking particularly about what may help your health and work prospects?
- 3 What do you feel would help you to achieve your future plans in relation to work?
- 4 What impact do you feel your health has on your daily life?
 - 4.1 Do you receive any help or support from other people with regard to your daily life?
 - 4.2 What sort of caring responsibilities do you have, e.g. children or older relatives?
- 5 What impact do you feel your medication has on your daily life?
 - 5.1 What impact do you feel your overall treatment has on your daily life?
- 6 Are you trying other ways to help yourself get better or move towards work?
- 7 Can you tell me about any other help that you have had in the past or are currently awaiting that would help you get back to work? (Include investigations undertaken and pending, appointments awaited, any management plan from GP or specialist, support and aids.)

8 Do you feel that you have the right support that you need to help you find work? For example, equipment or transport.

9 Is there anything that you think would help you to move towards work, or work related activity?

9.1 Is there anything that you think would help you to return to your most recent employment?

10 Summary of the assessment.

Without further intervention the overall condition is likely to

- become more significant
- improve
- fluctuate
- be severe
- be enduring
- unable to predict.

Health and workplace interventions that may assist a return to work include:

In my opinion a return to work could be considered

- within 6 months
- more than 6 months

A copy of the work-focused health-related assessment report will be sent to you and to the personal adviser who carries out your five subsequent WFIs. A copy will also be given to your GP with your consent.

Deferral

A work-focused health-related assessment can be deferred where it appears to a health care professional that the claimant may qualify as having limited capability for work-related activity.

Failure to take part

Failure to take part in a work-focused health-related assessment without good cause will lead to an initial sanction of 50% of the amount of the work-related activity component for four weeks. After four weeks the sanction will increase to 100% of the amount of the work-related activity component.

You must show good cause within 5 working days of the date of notification that you failed to take part. When deciding whether you had good cause, the decision maker must consider:

- (a) whether you were outside Great Britain at the time of the notification;
- (b) your state of health at the time of the work-focused health-related assessment;
- (c) the nature of any disability which you have; and
- (d) any other matter which the Secretary of State considers appropriate.

Challenging a work-focused health-related assessment

There is no appeal against the findings in the WFHRA, although it may be possible to challenge the findings by way of the Data Protection Act if you believe that the data contained in the report is inaccurate.

This would probably not apply to matters of opinion, e.g. the doctor considers you will be capable of work within six months. It would apply to matters of fact, e.g. the doctor said you drive a manual car but in fact you drive an automatic. It would also apply to what was said at the interview, e.g. the doctor has written that you said your medication had no impact on your daily life whereas you say that what you told the doctor is that it makes it very hard for you to concentrate. Clearly in this last case the lack of any evidence other than the doctor's written record may cause difficulties.

It should also be borne in mind that the process of successfully mounting a challenge under the DPA would probably take considerably longer than the five months in which the WFIs are carried out. However, when negotiating your action plan with your personal advisor, the fact that you are challenging the WFHRA may be a useful one to raise.

Work-focused interviews

Claimants in the work-related activity group are subject to a series of five further work-focused interviews after their initial work-focused interview in the assessment phase.

Who carries out the WFI

Work-focused interviews are carried out by a personal adviser. In some areas of the country this is a Jobcentre Plus employee. But in two thirds of the country the personal adviser is employed by either a charity or a private sector company. These organisations receive small payments for each work-focused interview they carry out and for drawing up an action plan. However, the main income they generate is from moving claimants off ESA and into full-time paid employment.

Notification of a work-focused interview

You should be told about the system of work-focused interviews in writing or by telephone and should receive a further reminder prior to each interview to remind you that it is due.

The interview can be held in your home if requiring the claimant to attend elsewhere would cause 'undue inconvenience' or endanger your health.

Waiving a work-focused interview

A personal adviser can waive a work-focused interview where you are very close to employment and an interview would not be of any assistance because you are likely to be starting or returning to work.

Deferring a work-focused interviews

Personal advisors can defer an interview where it would not be of assistance to you or appropriate in the circumstances. The kind of issues personal advisers should take into account include:

- a worsened fluctuating condition
- a period in hospital
- inability to attend because of an illness
- transport problems on the day
- recent bereavement
- caring responsibilities (e.g., for someone severely disabled or terminally ill)
- you are in the late stages of pregnancy

The length of a waiver, whether for a few days or for months, is also decided by the personal adviser. There are no rights of appeal in relation to deferrals or waivers, but there are rights of appeal against a sanction being imposed.

The purpose of a work-focused interview

The purpose of a work-focused interview is to:

- (a) assess your prospects for remaining in or obtaining work;
- (b) assist or encourage you to remain in or obtain work;
- (c) identify activities that you may undertake to make it more likely that you will remain in or obtain work or be able to do so;

- (d) identify training, educational or rehabilitation opportunities for you which may make it more likely that you will remain in or obtain work or be able to do so;
- (e) identify current or future work opportunities, including self-employment opportunities, for you that are relevant to your needs and abilities.

Claimant's duties at a work-focused interview

In order not to have your benefits sanctioned, you are obliged to discuss:

- (1) any activity that you are willing to undertake which may make it more likely that you will obtain or remain in work or be able to do so;
- (2) any such activity that you may have previously undertaken;
- (3) any progress you may have made towards remaining in or obtaining work. This will include:
 - (a) your educational qualifications and vocational training;
 - (b) your work history;
 - (c) any paid or unpaid work that you are undertaking;
 - (d) your aspirations for future work;
 - (e) your skills that are relevant to work;
 - (f) your work-related abilities;
 - (g) your opinion as to the extent to which your physical or mental condition restricts your ability to remain in or obtain work;
 - (h) your caring or childcare responsibilities.
- (4) any work-focused health-related assessment you may have taken part in.

You must also assist in the completion of an action plan which will include a record of the interview and a record of any activity you have agreed that you are willing to take which may make it more likely that you will obtain or remain in work.

Good cause for failure to take part in a work-focused interview

You must show good cause for failure to take part in a work-focused interview within 5 working days of the failure taking place. The decision maker must take the following issues into account when deciding if there was good cause:

- (a) that you misunderstood the requirement to take part in the work-focused interview due to your learning, language or literacy difficulties or any misleading information given or sent to you by the Secretary of State;
- (b) that you had difficulties with your normal mode of transport and that no reasonable alternative was available;
- (c) that you were attending an interview with an employer with a view to remaining in or obtaining work;
- (d) that he was pursuing work as a self-employed earner;
- (e) that you were attending a medical or dental appointment and that it would have been unreasonable in the circumstances for you to re-arrange the appointment;

(f) that you were accompanying a person for whom you have caring responsibilities to a medical or dental appointment and it that it would have been unreasonable for that person to rearrange the appointment;

(g) that you, a dependant of yours or a person for whom you provide care suffered an accident, sudden illness or relapse of a physical or mental condition;

(h) that you were attending the funeral of a relative or close friend on the day that you were required to take part in the work-focused interview;

(i) that your physical or mental condition made it impossible for you to attend at the time and place fixed for the interview;

(j) that your failure to take part in a work-focused interview at that time resulted from a religious objection;

Sanctions

Sanctions are not administered by personal advisers but by DWP decision makers. Decisions, however, will be based on information provided by personal advisers.

Where you fail to attend or participate in a work-focused interview without good cause there will be an initial sanction of 50% of the amount of the work-related activity component for the first four weeks following the benefit week in which the failure took place. After four weeks the sanction will increase to 100% of the amount of the work-related activity component.

The sanction cannot be increased above 100%.

The sanction will end on the first day of the benefit week in which you part in a work-focused interview.

Safeguards before a sanction is imposed

The DWP say that sanctions will be used sparingly and only as a last resort. Guidance to DWP decision makers sets out the steps that should be taken prior to sanctions being imposed. These include:

- visiting claimants with whom there has been no verbal contact prior to the work-focused interview;
- visiting claimants, with their representative if appropriate, with a stated mental health condition or learning disability if a sanction is to be imposed.

Appeal rights

It is still not certain precisely what appeal rights there will be under ESA. However the DWP have said that any decision which may have financial implications will be appealable in the normal way.

Failure to attend WCA without good cause – appealable

Found not to have limited capability for work – appealable

Found to have limited capability for work but not found to have limited capability for work-related activities – appealable.

Imposition of a sanction for failure to attend WFHRA without good cause – appealable.

Imposition of a sanction for failure without good cause to attend or participate in a WFI – appealable.

While you're appealing

Whilst appealing a decision that you are capable of work, you will have to claim ESA at the assessment rate – there does not appear to be any option to claim JSA whilst appealing.

Legally, when you appeal a decision that you do not have limited capability for work and opt to remain on ESA, this counts as a fresh claim and you are placed in the assessment phase of ESA until your appeal is decided. This means you will only be entitled to be paid at the assessment rate whilst your appeal is waiting to be decided.

You will be required to provide sick notes whilst in the assessment phase.

Compulsory work-related activity

The Act contains provisions for the introduction of mandatory work related-activities and the government has stated that it intends to 'require claimants to participate in work-related activity in the future as resources allow.'

The intention is that claimants will have to participate in a minimum amount of work-related activity in a given period. For example, one activity in the next month.

Work related-activities may include may include such things as:

- Work trials
- Voluntary work
- Permitted work
- Preparation for self-employment
- Condition management programmes
- NHS Expert Patients Programmes
- Basic skills programmes
- Activities to stabilise health conditions (including mental health problems) for example use of cognitive behavioural therapy.

Condition management programmes

Condition management programmes will be particularly aimed at claimants who have the 3 main medical conditions experienced by incapacity claimants:

- Moderate mental health conditions
- Cardio-respiratory conditions
- Musculo-skeletal conditions

The DWP says that:

"The programmes will not replace NHS treatment but are aimed at helping patients to understand and manage their condition using 'cognitive behaviour therapy' based interventions and other validated techniques

The programmes will last between 6 and 13 weeks and can be individually or group-based dependent on which approach best suits the customer. They will deal with issues such as:

- Response to pain
- Understanding and fear about the nature of their illness
- Meaningful inclusive activities
- Depressed thinking
- Physical de-conditioning

Participation in the Condition Management Programmes is entirely voluntary and will not affect benefit entitlement in any way

Programmes are being offered by local Primary Care Trusts and Local Health Boards following referral by the customer's personal adviser but the customer's GP will (with the customer's consent) be kept informed of progress."

Expert patient programme

The Department of Health says that:

“The Expert Patients Programme is delivered locally by a network of trainers and around 1400 volunteer tutors with long-term conditions.

The programme focuses on five core self-management skills:

- problem solving
- decision making
- resource utilisation
- developing effective partnerships with healthcare providers
- taking action

The programme offers a tool-kit of fundamental techniques that patients can undertake to improve their quality of life, living with a long-term condition.

The course enables patients to develop their communication skills, manage their emotions, manage daily activities, interact with the healthcare system, find health resources, plan for the future, understand exercising and healthy eating, and manage fatigue, sleep, pain, anger and depression.”

Sanctions

Claimants will be expected to discuss and agree with their PA what WRA they will undertake. Claimants cannot, however, be forced to undertake any specific activity. So it could not, for example, be mandatory for a claimant to attend a cognitive behavioural therapy session to avoid having their benefits sanctioned. But a claimant would be obliged to undertake some sort of WRA in order to avoid a benefit sanction.

If the claimant does not carry out the activity discussed with their PA, but does something else instead, then a PA can choose to accept that this other activity meets the requirement. However, the PA also has the power to decide retrospectively that the substitute activity does not count as a WRA and the claimant will then be liable to a sanction.

The sanctions regime will be the same as that relating to WFIs.

Work and ESA

The rules relating to work and ESA are similar to those that apply to incapacity benefit and income support as incapable of work.

Work which you can still do whilst claiming ESA includes:

- work as a councillor;
- work as a disability member of an appeal tribunal or as a member of the Disability Living Allowance Advisory Board;
- domestic tasks in your own home or that of a relative you are caring for;
- work during an emergency or to prevent serious damage to property or livestock;
- voluntary work;
- permitted work.

Permitted work

The rules relating to permitted work under ESA are similar to those for income support and incapacity benefit – though see disregards below.

There is, however, no PCA exempt permitted work for ESA. But claimants in the support group can do higher limit permitted work indefinitely.

If you are doing permitted work then the amount of your income that can be ignored for the purpose of calculating your entitlement to ESA will be the earnings limit for the type of permitted work you are doing, either £20 or £92.00. If your earnings are lower than the limit for the permitted work you are doing, the unused disregard can be applied to your partners earnings.

However, there is no corresponding change in the HB/CTB disregard.

Current incapacity claimants

Initially ESA only applies to new claimants. It appears to be the government's intention to 'migrate' existing incapacity benefit and income support claimants over to ESA over a period of years. However, there continues to be confusion and conflicting information from the DWP about when and how this will happen.

At present, the first claimants to be migrated are likely to be young people under 25, who may be migrated in 2009. Other current claimants may be migrated between 2010 and 2013.

However, guidance given to decision makers suggests that no claimants will be migrated until 2012.

An undertaking has been given that no current claimants will lose out in cash terms when they are migrated onto ESA.

Glossary of acronyms

CMP	Condition Management Programme
EPP	Expert Patient Programme
ESA	Employment and Support Allowance
LCW	Limited Capability for Work
LCWRA	Limited Capability for Work-Related Activity
RTWC	Return to Work Credit
SC	Support Component
WCA	Work Capability Assessment
WFHRA	Work-Focused Health-Related assessment
WFI	Work-Focused Interview
WRA	Work-Related Activity
WRAC	Work-Related Activity Component
WRAG	Work-Related Activity Group

ESA rates

Under ESA there are no age-related additions and there are no additions for dependants.

Income-related ESA does include a rate for couples, the amount being dependant on age.

Assessment phase rates (13 weeks)

Aged 16-24	47.95
Aged 25 or over	60.50

Main phase rates contribution based

Basic allowance	60.50
WRA component	24.00
Support component	29.00

Main phase rates income-related

Basic allowance	60.50
Couple, both under 18, up to	72.35
One or both 18 or over, up to	94.95

WRA component	24.00
Support component	29.00

Premiums – assessment and main phase

Carer's	27.75
Severe disability	50.35
Enhanced disability (single)	12.60
Enhanced disability (couple)	18.15
Pensioner premium (single)	63.55
Pensioner premium (couple)	94.40

Both work-related activity and support components are paid at a flat rate per claimant, no couple rate.

No disability premium paid with ESA in assessment or main phase.

Claimants in the support group receiving income-related ESA will automatically receive the enhanced disability premium.

Housing costs (mortgage interest) are paid under ESA as for income support.

Pension payments

For contribution based ESA the rules relating to pensions are very similar to incapacity benefit. ESA may be reduced where you receive payments over £85 a week. However, for ESA there is no exception for people in receipt of higher rate DLA care component.