

# Chapter F5: The limited capability for work and work-related activity element

## Contents

### When is the limited capability for work and work-related activity element included

Introduction.....	F5001
Joint claimants.....	F5010
Run on after death.....	F5015
Claimant qualifies for carer element.....	F5020

### When is the limited capability for work and work-related activity element not included .....

Relevant period .....	F5031
Claimant entitled to Employment and Support Allowance .....	F5032
Claimant subject to work search requirement.....	F5033

### Relevant period - exceptions

Claimant previously entitled to Universal Credit - limited capability for work and work-related activity element in payment .....	F5040
Claimant previously entitled to Universal Credit - relevant period did not end .....	F5045
Claimant previously assessed as having limited capability for work.....	F5046
Claimant is terminally ill.....	F5050
Claimant entitled to Employment and Support Allowance .....	F5051
Claimant not entitled during relevant period .....	F5070

### Appendix – Removal of limited capability for work element - savings

## Legislation Used in Chapter F5

<b>Abbreviation</b>	<b>Full Title</b>
UC Regs (NI) 16	The Universal Credit Regulations (Northern Ireland) 2016 No. 216
WR (NI) Order 15	The Welfare Reform (Northern Ireland) Order 2015 No. 2006
SS (Med Ev) Regs (NI) 76	The Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 No. 175
WR Act (NI) 07	Welfare Reform Act (Northern Ireland) 2007
UC, PIP, JSA & ESA (D&A) Regs (NI) 16	The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations (Northern Ireland) 2016 No. 221
UC (Misc Amdts etc) Regs (NI) 17	The Universal Credit (Miscellaneous Amendments and Transitional and Savings Provisions) Regulations (Northern Ireland) 2017 No. 146
UC, PIP, JSA & ESA (C&P) Regs (NI) 16	The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 No. 220
SS (Credits) Regs (NI) 75	Social Security (Credits) Regulations (Northern Ireland) 1975 No. 113
UC (TP) Regs (NI) 16	The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 No. 226
WR (NI) Order 15 (Comm No. 8 etc) Order 17	The Welfare Reform (Northern Ireland) Order 2015 (Commencement No. 8 and Transitional and Transitory Provisions) Order 2017 No. 190

# Chapter F5: The limited capability for work and work-related activity element

## When is the limited capability for work and work-related activity element included

### Introduction

F5001 **[See ADM Memo 4/26]** An award of Universal Credit includes the limited capability for work and work-related activity element where the claimant has limited capability for work and work-related activity<sup>1</sup>. But see F5030 et seq for when the element is not included.

**Note:** See ADM Chapter G3 (Limited capability for work and work-related activity) for guidance on when a claimant has limited capability for work and work-related activity<sup>2</sup>.

<sup>1</sup> WR (NI) Order 15, art 17(1) & (2)(b); UC Regs (NI) 16, reg 28(1);

<sup>2</sup> WR (NI) Order 15, art 17(4)(b); UC Regs (NI) 16, reg 28(3)

F5002 Where it is determined that a Universal Credit claimant has, or is treated as having, limited capability for work, their award cannot include a limited capability for work element<sup>1</sup> except where the savings provisions set out in the Appendix to this chapter apply.

**Note:** A determination that the claimant has limited capability for work continues to be relevant for the purposes of work-related requirements and income and work allowance deductions - see ADM Chapter G2 (Limited capability for work).

<sup>1</sup> WR (NI) Order 15, art 17(2); UC Regs (NI) 16, reg 28 - 30 & 38

### Example

Jessie has been entitled to Universal Credit since 6.10.17, and is in the all work-related requirements group. On 2.5.18 she sends in a fit note, and following the work capability assessment it is determined that she has limited capability for work. Jessie is moved to the work preparation requirements group, and has the limited capability for work-related work allowance, but the limited capability for work element is not included in her award.

F5003 – F5009

## Joint claimants

F5010 Where joint claimants<sup>1</sup> both have limited capability for work and work-related activity, only one limited capability for work and work-related activity element is awarded<sup>2</sup>.

*1 WR (NI) Order 15, art 46; 2 art 17(3); UC Regs (NI) 16, reg 28(4)*

### Example

Fred and Kathy are entitled to Universal Credit. Fred has limited capability for work and work-related activity, so their award of Universal Credit includes the limited capability for work and work-related activity element. Their assessment period begins on the 20<sup>th</sup> of the month. Kathy provides medical evidence on 26.11.17 that her health condition has deteriorated after a stroke. Following application of the work capability assessment, the decision maker determines that she has limited capability for work and work-related activity. Fred and Kathy's award does not change.

F5011 – F5014

## Run on after death

F5015 Where

1. joint claimants are entitled to Universal Credit **and**
2. the award of Universal Credit includes the limited capability for work and work-related activity element for one member of the couple **and**
3. that member of the couple dies

the award of Universal Credit, including the limited capability for work and work-related activity element, remains in payment as if the person had not died for the assessment period in which the person dies and the following two assessment periods<sup>1</sup>.

*1 UC Regs (NI) 16, reg 39(a)*

### Example

Danny and Carmel are entitled to Universal Credit. Their award includes the limited capability for work and work-related activity element as Danny is terminally ill. Their assessment period begins on the 19<sup>th</sup> of the month. On 19.11.17 Danny dies. Carmel remains entitled to Universal Credit. Her award continues to include the limited capability for work and work-related activity element until it terminates on 18.2.18, after which she will be entitled to Universal Credit as a single claimant without being required to make a claim.

F5016 – F5019

## Claimant qualifies for carer element

F5020 Where the claimant satisfies the conditions for

1. the carer element **and**
2. the limited capability for work and work-related activity element

only the limited capability for work and work-related activity element can be included in the Universal Credit award for that claimant<sup>1</sup> (see F5023 for joint claimants). See ADM Chapter F6 for guidance on the conditions for including the carer element in an award of Universal Credit.

*1 UC Regs (NI) 16, reg 30(4)*

### Example

Francine is entitled to Universal Credit. She has limited capability for work and work-related activity, and also cares for her severely disabled father Milo. Francine's Universal Credit award includes the limited capability for work and work-related activity element, but not the carer element.

F5021 – F5022

F5023 Where joint claimants satisfy the conditions for the carer element and a limited capability for work and work-related activity element, F5020 does not apply. But see F5010 where joint claimants both have limited capability for work and work-related activity.

### Example 1

Paul and Maggie are entitled to Universal Credit. Paul has limited capability for work and work-related activity, and Maggie cares for their disabled son George. Paul and Maggie's Universal Credit award includes the limited capability for work and work-related activity element and the carer element.

### Example 2

Anton and Beth are entitled to Universal Credit. Both have limited capability for work and work-related activity. Beth also cares for her severely disabled father. Anton and Beth's Universal Credit award includes the limited capability for work and work-related activity element and the carer element.

F5024 – F5029

## When is the limited capability for work and work-related activity element not included

F5030 The limited capability for work and work-related activity element is not included in an award of Universal Credit until the first day of the assessment period following the assessment period in which the relevant period ends<sup>1</sup>. But see F5040 et seq for exceptions to this rule.

*1 UC Regs (NI) 16, reg 29(1)*

### Relevant period

F5031 The relevant period is three months beginning<sup>1</sup>

1. in relevant threshold cases<sup>2</sup> (where the claimant has weekly earnings at or above the relevant threshold and is entitled to Attendance Allowance, Disability Living Allowance, Child Disability Payment, Adult Disability Payment or Personal Independence Payment), on
  - 1.1 the first day of the award of Universal Credit **or**
  - 1.2 if later, the date on which the claimant applies for a limited capability for work and work-related activity element to be included in the award **or**
2. in any other case<sup>3</sup>, on the first day on which the claimant provides medical evidence of limited capability for work<sup>4</sup>.

**Note 1:** See ADM Chapter G1 (Work capability assessment) for guidance on relevant threshold cases

**Note 2:** Medical evidence includes a self-certificate for the first 7 days of limited capability for work.

*1 UC Regs (NI) 16, reg 29(2); 2 reg 29(2)(a) & 42(2); 3 reg 29(2)(b); 4 SS (Med Ev) Regs (NI) 76*

### Example 1

Davy is entitled to Universal Credit. His assessment period begins on the 5th of every month. Davy contacts the Department on 17.11.17 to say that he is unwell due to mental health problems. He sends in a doctor's statement signed on 2.12.17 which states that Davy is not fit for work due to anxiety and depression. Davy is referred for assessment and is found to have limited capability for work and work-related activity. The relevant period begins on 17.11.17, the date he first gave evidence of limited capability for work and ends on 16.2.18. The limited capability for work and work-related activity element is included in Davy's Universal Credit award from 5.3.18.



## Example 2

Petra has been entitled to Universal Credit since 11.11.17 after being made redundant. Her assessment period begins on the 11<sup>th</sup> of every month. She is admitted to hospital on 27.11.17 for emergency surgery and is discharged on 28.1.18. On 30.1.18 Petra sends in a hospital doctor's statement signed on the date of discharge, which states that she is not fit for work from 27.11.17 for at least three months. Petra continues sending in further doctor's statements. The relevant period begins on 27.11.17 and ends on 27.2.18. This falls in the assessment period beginning on 11.2.18.

Petra is treated as having limited capability for work while she continues to recover from the surgery, and the decision maker determines that she also has limited capability for work and work-related activity. The limited capability for work and work-related activity element is included in her Universal Credit award from 11.3.18.

## Claimant entitled to Employment and Support Allowance

F5032 Decision makers should note that the claimant may have provided medical evidence for the purposes of a claim for Employment and Support Allowance. See F5051 for guidance on the relevant period where the claimant is or was previously entitled to Employment and Support Allowance.

## Claimant subject to work search requirement

F5033 A claimant may provide evidence that they are not fit for work, including medical evidence, for a period of up to 14 days<sup>1</sup>. During that period

1. a work search requirement
  - 1.1 is not imposed **or**
  - 1.2 does not have effect **and**
2. the claimant **also** does not have to be able and willing to immediately take up work or attend an interview<sup>2</sup>.

See ADM Chapter J3 (Work-related requirements) for detailed guidance. The relevant period in F5031 does not begin if a determination about limited capability for work or limited capability for work and work-related activity is not required.

<sup>1</sup> UC Regs (NI) 16, reg 97(7)(b); <sup>2</sup> reg 97(1) & (2)

F5034 Where medical evidence is provided, the decision maker should clarify whether the claimant is

1. applying for
  - 1.1 a determination that they have limited capability for work **or**
  - 1.2 the limited capability for work and work-related activity element to be included in their Universal Credit award **or**
2. exempt from the work search requirement for a limited period.

F5035 – F5039

## Relevant period - exceptions

### Claimant previously entitled to Universal Credit - limited capability for work and work-related activity element in payment

F5040 [See ADM Memo 1/25] The guidance at F5030 does **not** apply where<sup>1</sup>

1. the claimant was previously entitled to an award of Universal Credit which included the limited capability for work and work-related activity element **and**
2. the claimant's previous award of Universal Credit terminated<sup>2</sup>
  - 2.1 immediately before the current award of Universal Credit, because the claimant
    - 2.1.a ceased to be **or**
    - 2.1.b became  
a member of a couple **or**
  - 2.2 within six months of the current award, because the claimant or joint claimants no longer met the income financial conditions<sup>3</sup>.

This means that, if the conditions for including a limited capability for work and work-related activity element in F5001 are satisfied, it can be paid from the first day of entitlement to Universal Credit.

*1 UC Regs (NI) 16, reg 29(3)(a); 2 reg 29(4); 3 WR (NI) Order 15, art 10(1)(b) or (2)(b)*

#### Example

Terry and Eileen are entitled to Universal Credit including the limited capability for work and work-related activity element for Eileen who has limited capability for work. Their assessment period begins on the 26<sup>th</sup> of every month. On 9.9.18 Terry leaves the benefit unit, and Eileen notifies the Department. Eileen is awarded Universal Credit for herself. Her award includes the limited capability for work and work-related activity element from 26.8.18, the date her Universal Credit award begins.

F5041 – F5044

## Claimant previously entitled to Universal Credit - relevant period did not end

F5045 Where

1. the claimant was previously entitled to an award of Universal Credit **and**
2. the claimant's previous award of Universal Credit terminated<sup>1</sup>
  - 2.1 immediately before the current award of Universal Credit, because the claimant
    - 2.1.a ceased to be **or**
    - 2.1.b becamea member of a couple **or**
  - 2.2 within six months before the current award began, because the claimant or joint claimants no longer met the income financial conditions<sup>2</sup> **and**
3. a relevant period as in F5031 had begun, but had not ended before the previous award ended

the relevant period for the current award ends on the date it would have ended in relation to the previous award<sup>3</sup>.

**Note:** See ADM Chapters H3 (Earned income: employed earnings) and H4 (Earned income: self-employed earnings) for guidance on the income financial conditions. See ADM Chapter A2 (Claims) for guidance on where the claimant or joint claimant makes a claim as in **2.2**.

<sup>1</sup> UC Regs (NI) 16, reg 29(4); <sup>2</sup> WR (NI) Order 15, art 10(1)(b) or (2)(b);

<sup>3</sup> UC Regs (NI) 16, reg 29(3)(b)

### Example 1

Karina claimed Universal Credit on 16.12.17 and provided medical evidence on the same date. She is awarded Universal Credit. On 21.1.18 she moves in with her partner Henry, who is already entitled to Universal Credit. His assessment period begins on the 14th of the month. Karina's award of Universal Credit is terminated from 16.1.18. Karina and Henry are entitled to Universal Credit as joint claimants from 14.1.18. The relevant period ends on 15.3.18. Following application of the work capability assessment, the decision maker determines that Karina has limited capability for work and work-related activity. Their award of Universal Credit includes the limited capability for work and work-related activity element from 14.4.18.

### Example 2

Mack claims Universal Credit and provides medical certificates from 18.2.18. The relevant period is due to end on 17.5.18. He is referred for the work capability assessment. Before the relevant period ends, he returns to work from 7.4.18. His earnings exceed the income limit and his award of Universal Credit is terminated. He notifies on 15.9.18 that the job ended on 12.9.18, and again provides medical evidence. If he is found to have limited capability for work and work-related activity, he does not have to serve a relevant period before the limited capability for work and work-related activity element is included in his award of Universal Credit from 18.8.18, the first day of the assessment period for the new award.

## Claimant previously assessed as having limited capability for work

F5046 The guidance at F5030 does **not** apply where

1. the decision maker had previously determined that the claimant had or was treated as having limited capability for work **and**
2. following a further work capability assessment, it is determined that the claimant now has limited capability for work and work-related activity<sup>1</sup>.

*1 UC Regs (NI) 16, reg 29(6)*

### Example 1

Muriel claims Universal Credit on 3.10.17 and sends in medical evidence. Following application of the work capability assessment, the decision maker determines that Muriel has limited capability for work. On 31.7.18 Muriel notifies that she had a road traffic accident on 15.6.18 which has significantly affected her mobility. After a further work capability assessment, the decision maker determines that Muriel has limited capability for work and work-related activity. Muriel's award of Universal Credit is superseded to include the limited capability for work and work-related activity element from 3.7.18, the first day of the assessment period in which Muriel notified her mobility problems.

### Example 2

Lucy has been entitled to Universal Credit since 12.1.21, and has limited capability for work. Her award does not include the limited capability for work element. She is sent for a routine work capability assessment, and on 4.7.23 the decision maker determines that Lucy has limited capability for work and work-related activity. Her award of Universal Credit includes the limited capability for work and work-related

activity element from the beginning of the assessment period in which the determination is made, i.e. 12.6.23.

### Example 3

Darren has been entitled to Universal Credit since 12.1.21, and has limited capability for work. His award does not include the limited capability for work element. On 4.7.23 Darren notifies that his condition has deteriorated, and he is referred for the work capability assessment. On 27.11.23 the decision maker determines that Darren has limited capability for work and work-related activity. Darren's award of Universal Credit is superseded to include the limited capability for work and work-related activity element from the beginning of the assessment period in which the determination is made, i.e. 12.6.23.

F5047 – F5049

## Claimant is terminally ill

F5050 The guidance at F5030 does **not** apply where the claimant is terminally ill<sup>1</sup>. A claimant is terminally ill where they are suffering from a progressive disease where, as a result, death can reasonably be expected within 12 months<sup>2</sup>. This means that, if the conditions in F5001 are satisfied, the limited capability for work and work-related activity element can be paid from

1. in the case of a decision on a claim, or where a decision awarding Universal Credit is revised<sup>3</sup>, the first day of entitlement to Universal Credit **or**
2. in the case where a decision awarding Universal Credit is superseded, the first day of the assessment period in which
  - 2.1 the application for supersession is made **or**
  - 2.2 the decision maker made the decision on their own initiative<sup>4</sup>.

**Note 1:** Terminal illness is known as end of life in operational instructions and communications.

**Note 2:** See ADM Chapter A2 for guidance on claims, Chapter A3 for guidance on revision, and Chapter A4 for guidance on supersession.

*1 UC Regs (NI) 16, reg 29(5)(a); 2 reg 2; 3 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 5;  
4 reg 26 & 35(9)(b)*

## Claimant entitled to Employment and Support Allowance

- F5051 The guidance at F5030 does **not** apply where<sup>1</sup> the claimant
1. is entitled to Employment and Support Allowance including the support component<sup>2</sup> **or**
  2. was entitled to Employment and Support Allowance on the day before the award of Universal Credit began, and the Employment and Support Allowance award has terminated due to entitlement exceeding the relevant maximum number of days<sup>3</sup>.

This includes where entitlement to Employment and Support Allowance is awarded retrospectively to a date before the Universal Credit award begins. See ADM Chapter V1 for guidance on Employment and Support Allowance and entitlement to the support component.

**Note:** See Chapter M6 (Effects of transition to Universal Credit) for detailed guidance on the relevant period where the claimant is or would have been entitled to old style Employment and Support Allowance on the date of the Universal Credit claim, and it had previously been determined that they had limited capability for work and work-related activity<sup>4</sup>.

*1 UC Regs (NI) 16, reg 29(5)(b); 2 WR Act (NI) 07, sec 2(2) & (3); 3 sec 1A;  
4 UC (TP) Regs (NI) 16, reg 19, 20 & 22*

### Example 1

Floyd is entitled to Employment and Support Allowance. His award ends on 15.5.18 as he has been entitled for 365 days. Floyd claims Universal Credit from 16.5.18. At the date of his Universal Credit claim, the decision maker has not yet determined whether Floyd has, or is treated as having, limited capability for work. After application of the work capability assessment, the decision maker determines that Floyd has limited capability for work and work-related activity. He is entitled to the limited capability for work and work-related activity element from 16.5.18.

### Example 2

Louise has been entitled to Employment and Support Allowance since 4.5.18 and claims Universal Credit on 12.8.18. At the date of her Universal Credit claim, the decision maker has not yet determined whether Louise has, or is treated as having, limited capability for work. After application of the work capability assessment, the decision maker determines that Louise does not have limited capability for work, and

terminates the Employment and Support Allowance award from 24.9.18. Louise appeals against the Employment and Support Allowance decision.

On 27.11.18 the appeal tribunal allows Louise's appeal, and awards her the support component from 10.8.18. The decision maker revises the Universal Credit award to include the limited capability for work and work-related activity element from 12.8.18.

F5052 Where entitlement to the Employment and Support Allowance support component begins after the award of Universal Credit, the limited capability for work and work-related activity element is included in the Universal Credit award from the first day of the assessment period in which entitlement to the support component begins<sup>1</sup>.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 1, para 31(1) &(2)(a)(iii)*

### Example

Noel claims Employment and Support Allowance from 18.8.22 on 9.9.22. He claims Universal Credit on 15.9.22.

Following application of the work capability assessment, on 27.2.23 the decision maker determines that Noel has limited capability for work and limited capability for work and work-related activity, and the decision awarding Employment and Support Allowance is superseded to include the support component from 23.11.22. The limited capability for work and work-related activity element is included in his award of Universal Credit from 15.11.22, the first day of the assessment period in which the award of Employment and Support Allowance was increased to include the support component.

F5053 – F5069

## Claimant not entitled during relevant period

F5070 Where a claimant or joint claimants would satisfy the income financial condition<sup>1</sup> if it were not for the requirement to serve a relevant period, the claimant's or joint claimants' income during the relevant period is treated as if it were an amount that allows the claimant or joint claimants to be entitled to the prescribed minimum amount of one penny<sup>2</sup>. See ADM Chapter E1 (Introduction and entitlement) for guidance on when the prescribed minimum amount applies.

*1 WR (NI) Order 15, art 10(1)(b) or (2)(b); 2 UC Regs (NI) 16, reg 17 & 29(7)*

### Example

Julian and Adele claim Universal Credit on 1.6.18, and Adele sends in doctor's statements. Julian works part-time for 20 hours a week, earning £536.46 a month. Universal Credit entitlement would be £498.89, so Julian's earnings mean that the

income financial condition is not satisfied. The decision maker makes a determination that Adele has limited capability for work and work-related activity. If the limited capability for work and work-related activity element was in payment, they would be entitled to Universal Credit of £612.68 before taking income into account. The decision maker treats them as entitled to Universal Credit of 1p during the relevant period, and then awards Universal Credit including the limited capability for work and work-related activity element from the next assessment period.

F5071 – F5999

# Appendix

## Removal of limited capability for work element - savings

### Introduction

- 1 The limited capability for work element may be included in a Universal Credit award where
1. an award of Universal Credit is made to a claimant in the circumstances in paragraphs 3 and 10 - 15 **and**
  2. the claimant continues
    - 2.1 to be entitled to Universal Credit **and**
    - 2.2 to have limited capability for work<sup>1</sup>.

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 1*

### Meaning of continuous entitlement to Universal Credit

- 2 In paragraph 1 2.1, continuous entitlement to Universal Credit includes where<sup>1</sup>
1. an award of Universal Credit is terminated **and**
  2. a further award is made **and**
    - 2.1 immediately before the further award begins, the previous award ended on formation or separation of a couple **or**
    - 2.2 within the six months before the further award begins, the previous award ended because the claimant or joint claimants failed to satisfy the income condition of entitlement<sup>2</sup>.

**Note:** See ADM Chapter A2 (Claims) for detailed guidance on the date a claim for Universal Credit is made or treated as made<sup>3</sup>.

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 1(2); 2 WR (NI) Order 15, art 10(1)(b) & (2)(b); 3 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 1(4); UC, PIP, JSA & ESA (C&P) Regs (NI) 16*

### Example 1

Bella and Peter are single claimants who both have awards of Universal Credit including the limited capability for work element. Bella's award included the limited capability for work element from October 2017 and Peter's award included the limited

capability for work element from January 2018. They move in together, and their awards of Universal Credit as single claimants end on 26.5.18. Their new award of Universal Credit from 27.5.18 as joint claimants includes one limited capability for work element for Bella.

### **Example 2**

Rosie and Geoff are Universal Credit joint claimants from December 2017. Rosie has the limited capability for work element included in their award as she had been entitled to National Insurance credits due to limited capability for work prior to claiming Universal Credit. An Appeal Tribunal in March 2018 (in respect of a previous Employment and Support Allowance claim) finds Geoff to have limited capability for work, but their award already includes the limited capability for work element, so no further limited capability for work element can be included.

In May 2018, Rosie and Geoff separate, and both claimants are entitled to Universal Credit as single claimants from the day after their joint Universal Credit award ended. Rosie's award includes the limited capability for work element, but Geoff's does not, because the previous Universal Credit award did not include the limited capability for work element in respect of him.

### **Example 3**

Catherine has been entitled to Universal Credit which includes the limited capability for work element since 14.11.17. On 20.1.18 Catherine finds work, and her earnings after application of the work allowance and taper exceed her Universal Credit entitlement, so her award terminates from 14.1.18. Her job ends on 6.7.18, and Catherine reclaims and is awarded Universal Credit from 7.7.18. She sends in fit notes with a different health condition and after the work capability assessment she is found to have limited capability for work. Catherine's Universal Credit award includes the limited capability for work element from 7.7.18.

## **Employment and Support Allowance decision changed on revision or appeal**

- 3 The limited capability for work element is awarded where<sup>1</sup>
  1. a Universal Credit claimant lodges an appeal or requests a mandatory reconsideration of a decision about entitlement to Employment and Support Allowance, where the Employment and Support Allowance claim was made or treated as made before 3.4.17 **and**

2. on or after 3.4.17 the decision maker revises the decision awarding Universal Credit to include the limited capability for work element<sup>2</sup>.

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 2; 2 WR (NI) Order 15 (Comm No. 8 etc) Order 17, art 24*

**Note:** See ADM Chapter M6 (Effects of transition to Universal Credit) paragraph M6315 et seq for guidance on revising Universal Credit awards following a request for revision of, or an appeal against, a decision on entitlement to Employment and Support Allowance.

### Example 1

Steve's award of income-related Employment and Support Allowance from 12.9.16 is terminated on 22.2.18 after the decision maker determines that Steve does not have limited capability for work. He claims and is awarded Universal Credit from 23.2.18. Steve then decides to dispute the Employment and Support Allowance disallowance. The decision is not revised following a mandatory reconsideration, and Steve appeals to the Appeal Tribunal. The Appeal Tribunal allows the appeal on 10.10.18, finding that Steve has limited capability for work. Steve is awarded arrears of the Employment and Support Allowance work-related activity component up to 22.2.18, and the Universal Credit awarding decision is revised to include the limited capability for work element from the first day of the Universal Credit award, 23.2.18.

### Example 2

Connie is awarded income-related Employment and Support Allowance from 12.4.17, but the award is terminated from 7.8.18 when the decision maker determines that she does not have limited capability for work. Connie claims Universal Credit from 22.8.18, and in the meantime disputes the Employment and Support Allowance disallowance. On 8.11.18 the Employment and Support Allowance disallowance is revised following mandatory reconsideration, and Connie is found to have limited capability for work. Connie is paid income-related Employment and Support Allowance up to 21.8.18, but this does not include the work-related activity component as the Employment and Support Allowance claim was made after 3.4.17. The Universal Credit award cannot be revised to include the limited capability for work element.

## Claimants entitled to Employment and Support Allowance before 3.4.17

- 4 The limited capability for work element does not apply where the claimant
  1. was entitled to Employment and Support Allowance immediately before 3.4.17  
**and**

2. remains entitled to Employment and Support Allowance throughout the period beginning on 3.4.17 and ending on the date on which the Universal Credit claim is made or treated as made<sup>1</sup>.

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 3*

**Note:** See ADM Chapter M6 (Effects of transition to Universal Credit) paragraph M6190 et seq for detailed guidance on transition to Universal Credit from Employment and Support Allowance where the claimant has limited capability for work.

### **Example 1**

Geoffrey has been entitled to old style Employment and Support Allowance since 8.9.16, and his award includes the work-related activity component. On 16.5.18 he joins his partner Arthur who has been entitled to Universal Credit as a single unemployed claimant since 2.10.17. Geoffrey and Arthur are awarded Universal Credit as a couple from 2.5.18 including the limited capability for work element. Geoffrey's award of old style Employment and Support Allowance is terminated from 2.5.18.

### **Example 2**

Billy's award of old style Employment and Support Allowance from 4.1.17 was terminated from 21.3.17 when he failed without good cause to return the questionnaire. He claims and is awarded income-related Employment and Support Allowance from 18.4.17, sending the questionnaire in with his repeat claim. After the work capability assessment, the decision maker determines that Billy has limited capability for work, but not limited capability for work-related activity. Billy's award of Employment and Support Allowance includes the work-related activity component from 3.5.17 under the Employment and Support Allowance savings rules where linked periods of limited capability for work begin before 3.4.17. On 14.8.18 Billy moves in with his partner Tricia, who has been entitled to Universal Credit as a single unemployed claimant since 9.3.18. Although Billy is treated as having limited capability for work under transition rules (see M6192) for the purposes of work-related requirements, Tricia and Billy's award of Universal Credit from 9.8.18 does not include the limited capability for work element. This is because Billy was not entitled to Employment and Support Allowance immediately before 3.4.17, and unlike Employment and Support Allowance, Universal Credit does not have linked periods of limited capability for work rules.

## **Credits only claimants**

- 5 The limited capability for work element is awarded where<sup>1</sup>

1. immediately before 3.4.17, the Universal Credit claimant
  - 1.1 was entitled to be awarded National Insurance credits on the basis that they had, or would have had, limited capability for work<sup>2</sup> **and**
  - 1.2 was not entitled to Employment and Support Allowance **and**
2. the entitlement to credits in 1.1 continues to apply for each week for the period beginning with 3.4.17 and ending on the date on which the Universal Credit claim is made or treated as made.

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 4; 2 SS (Credits) Regs (NI) 75, reg 8B(2)(a)(iv), (iva) & (v)*

### Example

Philip is awarded contribution-based Employment and Support Allowance and following the work capability assessment, it is determined that he has limited capability for work but not limited capability for work and work-related activity. His award ends on 28.2.18 as he has been entitled for 365 days and he is not a member of the support group. He is not entitled to income-related Employment and Support Allowance as his wife Helena is in full-time employment but he remains entitled to National Insurance credits. Helena is made redundant from 1.11.18, and she and Phillip claim Universal Credit as joint claimants. Phillip is treated as having limited capability for work under transition rules (see M6220), and the award of Universal Credit from 1.11.18 includes the limited capability for work element from the beginning of the first assessment period.

## Claimants with incapacity for work - Incapacity Benefit, Income Support, Severe Disablement Allowance or National Insurance credits

- 6 The limited capability for work element is awarded to a Universal Credit claimant who, throughout the period beginning immediately before 3.4.17 and ending on the date the Universal Credit claim was made or treated as made, was entitled to<sup>1</sup>
  1. Income Support on the grounds of incapacity for work or disability **or**
  2. Incapacity Benefit **or**
  3. Severe Disablement Allowance **or**
  4. National Insurance credits on the basis of incapacity for work.

**Note:** See ADM Chapter M6 (Effects of transition to Universal Credit) for detailed guidance on the consequences for Universal Credit claimants who are entitled as in 1. - 4..

*1 UC (Misc Amdts etc) Regs (NI) 17, Sch 2, para 5; UC (TP) Regs (NI) 16, reg 23 - 25 & 27 - 28*

**Example**

Tom is entitled to National Insurance credits and is incapable of work from 3.2.17. He is also entitled to the lowest rate care and lower rate mobility components of Disability Living Allowance. His partner Alice takes voluntary redundancy, and three months later the couple claim Universal Credit on 24.10.17. Tom will reach pensionable age on 22.1.18. Tom is treated as having limited capability for work, and the limited capability for work element is included in Tom and Alice's Universal Credit award from the beginning of the first assessment period starting on 31.10.17.

**The content of the examples in this document (including use of imagery) is for illustrative purposes only**