

# Chapter U1 – Employment and Support Allowance conditions of entitlement

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## Legislation Used in Chapter U1

Abbreviation	Full Title
WR Act (NI) 07	Welfare Reform Act (Northern Ireland) 2007
WR (2007 Act) (Comm No. 5) Order (NI) 2008	The Welfare Reform (2007 Act) (Commencement No. 5) Order (Northern Ireland) 2008
ESA (Trans Provs) Regs (NI)	The Employment and Support Allowance (Transitional Provisions) Regulations (Northern Ireland) 2008 No. 283
WR (NI) Order 15	The Welfare Reform (Northern Ireland) Order 2015
ESA Regs (NI) 16	The Employment and Support Allowance Regulations (Northern Ireland) 2016 No. 219
SS A (NI) Act 92	Social Security Administration (Northern Ireland) Act 1992
Pensions (NI) Order 95	Pensions (Northern Ireland) Order 1995
ESA (TP & HB) (EA) Regs (NI) 2010	The Employment and Support Allowance (Transitional Provisions and Housing Benefit) (Existing Awards) Regulations (Northern Ireland) 2010 No. 312
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
SS C&B (NI) Act 92	Social Security Contributions and Benefits (Northern Ireland) Act 1992
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
ESA Regs (NI) 08	The employment and Support Allowance Regulations (Northern Ireland) 2008 No. 280
Tax Credits Act 02	Tax Credits Act 2002

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SS Credits Regs (NI)	The Social Security (Credits) Regulations (Northern Ireland) 1975 No. 113
SS (Earnings Factor) Regs (NI) 1979	The Social Security (Earnings Factor) Regulations (Northern Ireland) 1979 No. 193
SS (Conts) Regs 2001	The Social Security (Contributions) Regulations 2001 No. 1004
SS (Crediting etc) Regs (NI)	The Social Security (Crediting and Treatment of Contributions and National Insurance Numbers) Regulations (Northern Ireland) 2001 No. 102
E&T Act (NI) 50	Employment and Training Act (Northern Ireland) 1950
SS (OB) Regs (NI)	The Social Security (Overlapping Benefits) Regulations (Northern Ireland) 1975 No. 94
CHB (General) Regs	The Child Benefit (General) Regulations 2006 No. 223
SS & CS (D&A) Regs (NI)	The Social Security and Child Support (Decisions and Appeals) Regulations (Northern Ireland) 1999 No. 162
SS (Benefit) (Members of Forces) Regs 1975	The Social Security (Benefit) (Members of the Forces) Regulations 1975 No. 493

# Chapter U1: Employment and Support Allowance conditions of entitlement

## Entitlement to Employment and Support Allowance

### Introduction

U1001 Employment and Support Allowance was introduced on 27.10.08<sup>1</sup> to replace

1. Incapacity Benefit
2. Severe Disability Allowance
3. Income Support on the grounds of disability<sup>2</sup>.

**Note:** See DMG Chapter 45 for guidance on Incapacity Benefit Reassessment.

*1 WR Act (NI) 07, Part 1; WR (2007Act) (Comm No. 5) Order (NI) 2008, art 2(2);  
2 ESA (Trans Provs) Regs (NI), reg 1(3)*

U1002 From 27.9.17, claims for and awards of Employment and Support Allowance under the provisions as in force before amendments to remove income-related Employment and Support Allowance will gradually be phased out. See ADM Chapter V8 for further details. Where Employment and Support Allowance is referred to in this Chapter, it means Employment and Support Allowance where the contribution conditions are satisfied<sup>2</sup>.

*1 WR Act (NI) 07, Part 1; WR (NI) Order 15, Sch 3 & Sch 12, Part 1; 2 ESA Regs (NI) 16, reg 14*

U1003 – U1004

### Scope of this Chapter

U1005 This Chapter contains guidance on

1. the conditions of entitlement for Employment and Support Allowance
2. waiting days
3. linking periods.

U1006 – U1009

# Conditions of entitlement

## General

U1010 Claimants are entitled to Employment and Support Allowance if they

1. satisfy the basic conditions<sup>1</sup> (see U1011) **and**
2. satisfy the contribution conditions<sup>2</sup> (see U1020 et seq) **and**
3. make a claim<sup>3</sup> (see ADM Chapter 02) **and**
4. satisfy the National Insurance number provisions<sup>4</sup> (see ADM Chapter 02).

**Note:** See ADM Chapter V2 (Duration of Employment and Support Allowance award) for guidance on where entitlement to Employment and Support Allowance is limited to the maximum number of days.

*1 WR Act (NI) 07, secs 1(2) & (3); 2 sec 1(2)(a) & Sch 1, Part 1;  
3 SS A (NI) Act 92, sec 1(1) & (4); 4 sec 1(1A)*

## Basic conditions

U1011 Claimants are entitled to Employment and Support Allowance<sup>1</sup> if they

1. have limited capability for work (see ADM Chapter U2) **and**
2. are aged 16 or over **and**
3. have not reached pensionable age (see U1013) **and**
4. are in Northern Ireland (except for certain temporary absences abroad) (see ADM Chapter C4) **and**
5. are not entitled to Jobseeker's Allowance.

**Note:** See ADM Chapter V2 for guidance on where entitlement to Employment and Support Allowance is limited to the maximum number of days.

*1 WR Act (NI) 07, sec 1(3)*

U1012 A claimant is not entitled to Employment and Support Allowance if they are entitled to Statutory Sick Pay<sup>1</sup>. See ADM Chapter V1 (Employment and Support Allowance amounts) for further guidance.

*1 WR Act (NI) 07, sec 20(1)*

## Pensionable age

U1013 See DMG Chapter 75 for guidance on the meaning of pensionable age<sup>1</sup>.

*1 WR Act (NI) 07, sec 1(6); Pensions (NI) Order 95, Sch 2, Part 1, para 1*

U1014 – U1019

## Contribution conditions

U1020 In addition to the basic conditions (see U1011), to be entitled to Employment and Support Allowance<sup>1</sup> a claimant must satisfy the

1. contribution conditions (see U1025 et seq) **or**
2. conditions relating to youth for claims made before 17.2.16 (see U1047 et seq).

**Note:** See ADM Chapter V1 (Employment and Support Allowance amounts) for guidance on the effect on entitlement to Employment and Support Allowance where the claimant is entitled to statutory payments such as Statutory Sick Pay and Statutory Maternity Pay.

*1 WR Act (NI) 07, sec 1(2)(a) & Sch 1, Part 1*

U1021 From 28.11.16 entitlement to Employment and Support Allowance for claimants who are not in the support group is limited to a period of no more than 365 days<sup>1</sup>. This includes awards of Employment and Support Allowance made under

1. the youth conditions **and**
2. the Incapacity Benefit Reassessment rules<sup>2</sup>.

See ADM Chapter V2 for guidance on where this applies to Employment and Support Allowance awards, and DMG Chapter 45 for guidance on awards of Employment and Support Allowance made under the Incapacity Benefit Reassessment rules.

*1 WR Act (NI) 07, sec 1A; 2 Sch 4, para 7(2)(f);  
ESA (TP & HB) (EA) Regs (NI) 2010, Sch 2, para 2A*

U1022 – U1024

## Contribution conditions

### What the decision maker decides

U1025 There are two contribution conditions<sup>1</sup>. The decision maker decides whether the claimant is entitled to Employment and Support Allowance because the contribution conditions are satisfied including

1. the earnings factor derived from them
2. which are the relevant income tax years
3. the years in which the contributions must have been paid or credited
4. the commencement of a period of limited capability for work



5. the start of the relevant benefit year.

*1 WR Act (NI) 07, sec 1(2)(a) & Sch 1, Part 1*

## Reference to Her Majesty's Revenue and Customs

U1026 Entitlement to Employment and Support Allowance depends on the contribution conditions being satisfied. In practice the National Insurance contribution record is usually obtained and any decision is based on the assumption that the record is factually correct. However, where there is a dispute about the record, the matter must be referred by the decision maker to Her Majesty's Revenue and Customs for a formal decision<sup>1</sup>.

**Note 1:** See ADM Chapters 03, 04 and 06 for guidance on how decisions and appeals are handled after a reference to Her Majesty's Revenue and Customs.

**Note 2:** See ADM Chapter 01 where the dispute is about whether credits should be awarded.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, regs 42 & 43*

## Meaning of terms

U1027 When deciding whether the contribution conditions are satisfied, the decision maker should note that

1. "benefit year" means a period beginning with the first Sunday in January in any calendar year and ending with the Saturday immediately before the first Sunday in January in the following year<sup>1</sup>
2. "class 1 National Insurance contributions" and "class 2 National Insurance contributions" are the National Insurance contributions paid by employed earners and self-employed earners respectively<sup>2</sup>
3. "lower earnings limit" and "upper earnings limit" are lowest and highest amounts of earnings on which class 1 National Insurance contributions are paid in any tax year<sup>3</sup> (see Appendix for lower earnings limit)
4. "relevant benefit year" means the benefit year which includes the beginning of the period of limited capability for work which includes the relevant benefit week<sup>4</sup>
5. "tax year" is the period of 12 months beginning with 6 April each year<sup>5</sup>
6. "relevant benefit week" means the week in relation to which entitlement to Employment and Support Allowance is being considered<sup>6</sup>

7. “period of limited capability for work” means a period throughout which a person has, or is treated as having, limited capability for work, **excluding** periods which are outside the time for claiming (see ADM Chapter A2 for guidance on the time for claiming)<sup>7</sup>.

**Note 1:** See U1029 for guidance on when the meaning of “relevant benefit year” in 4. is modified.

**Note 2:** See U1050 for guidance on when the meaning of “period of limited capability for work” is modified.

*1 WR Act (NI) 07, Sch 1, Part 1, para 3(1)(a); SS C&B (NI) Act 92, sec 21(6);*

*2 WR Act (NI) 07, Sch 1, Part 1, para 3(1)(b); SS C&B (NI) Act 92, sec 1;*

*3 WR Act (NI) 07, Sch 1, Part 1, para 3(1)(e); SS C&B (NI) Act 92, sec 22 & 23;*

*4 WR Act (NI) 07, Sch 1, Part 1, para 3(1)(f); 5 Sch 1, Part 1, para 3(1)(g); 6 Sch 1, Part 1, para 5;*

*7 ESA Regs (NI) 16, reg 2; UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 27*

- U1028 The definition of period of limited capability for work in U1027 7. ensures that, when considering whether the contributions conditions in U1032 et seq are satisfied, the relevant benefit year is decided on the basis of the date from which Employment and Support Allowance is claimed, provided it falls within the three months time limit for claiming Employment and Support Allowance.

### Modification of the meaning of relevant benefit year

- U1029 Where U1030 applies the meaning of “relevant benefit year” at DMG U1027 4. is modified so that it is any benefit year which includes all or part of the period of limited capability for work which includes the relevant benefit week<sup>1</sup>.

*1 ESA Regs (NI) 16, reg 14(1)*

- U1030 The modification in U1029 applies to a claimant who<sup>1</sup>

1. does not satisfy
  - 1.1 the first or second contribution conditions **or**
  - 1.2 both conditions **and**
2. would satisfy the conditions in 1. if that modification applied.

*1 ESA Regs (NI) 16, reg 14(2)*

- U1031 This enables a claimant to become entitled to Employment and Support Allowance on a further claim in a subsequent benefit year where

1. they now satisfy the contribution conditions **and**
2. an earlier Employment and Support Allowance claim was disallowed because they did not satisfy one or both of the contributions conditions when the period of limited capability for work began.

## The first contribution condition

U1032 The first contribution condition is satisfied<sup>1</sup> if

1. the claimant has actually paid class 1 or class 2 National Insurance contributions in respect of any one of the last two complete tax years before the beginning of the relevant benefit year **and**
2. those contributions have been paid before the relevant benefit week **and**
3. the claimant's earnings for that year as determined in accordance with U1033 must be at least 26 times the lower earnings limit for that year.

*1 WR Act (NI) 07, Sch 1, Part 1, para 1(1)*

U1033 For the purposes of U1032 3. the earnings are the aggregate of the claimant's

1. relevant earnings for that year on which class 1 National Insurance contributions have been paid or treated as paid **and**
2. earnings factors derived from class 2 National Insurance contributions<sup>1</sup>.

*1 WR Act (NI) 07, Sch 1, Part 1, para 1(2)*

U1034 In U1033 1., a claimant's relevant earnings are the amount of earnings at the lower earnings limit for the year in which the first contribution condition is satisfied. Earnings which exceed the lower earnings limit are disregarded<sup>1</sup>.

*1 WR Act (NI) 07, Sch 1, para 1(3); ESA Regs (NI) 16, reg 8*

## Relaxation of the first contribution condition

U1035 **[See ADM Memo 15/23]** The first contribution condition is taken to be satisfied<sup>1</sup> if

1. the claimant has paid class 1 or 2 contributions for any one tax year before the relevant benefit week<sup>2</sup> **and**
2. the claimant has
  - 2.1 earnings at the lower earnings limit in that tax year on which class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the lower earnings limit for that year, are not less than the lower earnings limit multiplied by 26<sup>3</sup> **or**
  - 2.2 earnings factors in that tax year derived from class 2 contributions multiplied by 26<sup>4</sup> **and**
3. the claimant
  - 3.1 was entitled to Carer's Allowance in the last complete tax year immediately before the relevant benefit year in which the first day of limited capability for work occurred<sup>5</sup> **or**

- 3.2** had been engaged in qualifying remunerative work<sup>6</sup> for a period of more than 2 years immediately before the first day of limited capability for work and was entitled to the disability element, or the severe disability element, of Working Tax Credit throughout that period<sup>7</sup> **or**
- 3.3** is entitled to be credited with earnings or contributions following release from prison where a conviction is quashed<sup>8</sup>, or would be if an application was made, in respect of any week in any tax year preceding the relevant benefit year<sup>9</sup> **or**
- 3.4** is entitled to be credited with earnings equal to lower earnings limit on the grounds that they
- 3.4.a.** are a spouse or civil partner of a member of Her Majesty's Forces **and**
- 3.4.b.** accompanied that member of Her Majesty's forces on an assignment outside the United Kingdom or treated as such by the Department<sup>10</sup>.

*1 WR Act (NI) 07, Sch 1, Part 1, para 1(4)(b); ESA Regs (NI) 16, reg 9; 2 reg 9(1)(a); 3 reg 9(1)(b)(i); 4 reg 9(1)(b)(ii); 5 reg 9(2)(a); 6 ESA Regs (NI) 08, reg 2; Tax Credit Act 02, Part 1; 7 ESA Regs (NI) 16, reg 9(2)(b); 8 SS (Credits) Regs (NI), reg 9D; 9 ESA Regs (NI) 16, reg 9(2)(c); 10 reg 9(2)(d); SS (Credits) Regs (NI), reg 9E*

## The second contribution condition

U1036 The second contribution condition is satisfied<sup>1</sup> if

- 1.** in the last two complete relevant income tax years before the beginning of the relevant benefit year the claimant has
  - 1.1** paid or been credited with class 1 or class 2 National Insurance contributions **or**
  - 1.2** been credited with earnings **and**
- 2.** the earnings factor in each of those years is not less than 50 times the lower earnings limit for those last two complete relevant income tax years.

*1 WR Act (NI) 07, Sch 1, Part 1, para 2(1)*

U1037 For the purposes of U1036 **2.** the earnings factor is the aggregate of the claimant's earnings factors derived<sup>1</sup> from

- 1.** the amount of earnings which did not exceed the upper earnings limit for the last two complete relevant income tax years in U1036 **1.** on which class 1 National Insurance contributions have been paid or treated as paid **and**

2. class 2 National Insurance contributions.

**Note:** See U1039 for guidance on when earnings exceed the upper earnings limit.

*1 WR Act (NI) 07, Sch 1, Part 1, para 2(2)*

## The first and second contribution condition

U1038 Where

1. class 1 National Insurance contributions have been paid or treated as paid in any tax year from 1987/88 and
2. the amount paid, plus any class 2 or class 3 National Insurance contributions paid or credited, is not enough to make the year a qualifying year by
  - 2.1 £25.00 or less for the first contribution condition **or**
  - 2.2 £50.00 or less for the second contribution condition

the earnings factor is increased by the amount required to make the year a qualifying year<sup>1</sup>.

*1 SS (Earnings Factor) Regs (NI) 1979, Sch 1, para 4*

## Earnings exceeding the upper earnings limit

U1039 For the purposes of U1038 1. where class 1 National Insurance contributions have been paid or treated as paid, the earnings factor is calculated on earnings that did not exceed the upper earnings limit<sup>1</sup>.

*1 WR Act (NI) 07, Sch 1, Part 1, para 2(3)*

## Late payment of contributions

U1040 The decision maker determines whether the contribution conditions for Employment and Support Allowance are satisfied. Contributions paid after the due date are generally treated as paid on the date of payment. However, there are circumstances in which contributions may be accepted as having been paid on an earlier date<sup>1</sup>. The decision maker will need to liaise with Her Majesty's Revenue and Customs.

*1 SS (Conts) Regs 2001, regs 60-65; SS (Crediting etc) Regs (NI), reg 4*

U1041 If there is an existing decision, the decision maker may need to consider revising or superseding it. A change of circumstances will occur on the date it is accepted that late contributions are treated as having been paid<sup>1</sup>. See ADM Chapter 03 for full guidance on revision and Chapter 04 for full guidance on supersession.

*1 SS (Crediting etc) Regs (NI), reg 4-8*

## Effect on second contribution condition

U1042 For the purposes of the second contribution condition, any Class 1 or 2 contributions paid after the end of the benefit year immediately before the relevant benefit year are treated as

1. not paid before the end of a 42 day penalty period beginning on the date payment is made and
2. paid only on the day after the end of the 42 day period<sup>1</sup>.

**Note:** See U1070 for the meaning of benefit year and relevant benefit year.

*1 SS (Crediting etc) Regs (NI), reg 4(8)(b)*

U1043 This has the effect that, where the second contribution condition is not satisfied at the date of claim, there can be no entitlement to Employment and Support Allowance for the whole of that 42 day period. Once the 42 day period ends, the claimant must serve the seven waiting days before entitlement can begin.

### Example

Gary claims Employment and Support Allowance on 12.5.20 after giving up his self-employment due to ill health. For Gary the benefit year is the year beginning on 5.1.20, and the relevant income tax years are 2017/2018 and 2018/2019. The first contribution condition is met for the year 2017/2018. Gary has not paid his Class 2 contributions for the year 2018/2019, so the second contribution condition is not met and the claim is disallowed. Gary pays his Class 2 contributions for the year 2018/2019 on 16.6.20, and makes a further claim for Employment and Support Allowance. His claim is disallowed for the penalty period 16.6.20 - 27.7.20, and he is awarded Employment and Support Allowance from 4.8.20 after serving seven waiting days.

## Class 2 National Insurance contributions

### Contributions paid by due date

U1044 The deadline for the payment of class 2 National Insurance contributions from the 2015/16 tax year onwards is 31 January of the following calendar year; for example, class 2 National Insurance contributions due in the 2015/2016 tax year are due to be paid by 31.1.2017. This date falls after the start of the benefit year for Employment and Support Allowance, which means there is a possibility of a claim for these benefits being made in circumstances where entitlement relies on as yet unpaid contributions, and consequently being disallowed.

U1045 A decision to disallow claims to Employment and Support Allowance may be revised<sup>1</sup> at any time where

1. on or after the date of the decision a contribution that is paid by the due date is treated as paid<sup>2</sup> before the relevant benefit week **and**
2. as a result, the person now satisfies the contribution conditions.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 17(3); 2 SS (Crediting etc) Regs (NI), reg 7A*

### Example

A claim to Employment and Support Allowance is made on 21.1.18 in respect of a period of limited capability for work starting on 14.1.18. Entitlement relies on satisfaction of the contribution conditions for the tax years 2015/2016 and 2016/2017. The claimant started self-employment in April 2015. The claimant has previously paid his class 2 National Insurance contributions for 2015/16, but, at the point of claim, has not yet filed his self assessment return for 2016/2017. His class 2 liability for this year has not yet been established and no class 2 National Insurance contributions have been paid. As a result, whilst the first contribution condition is satisfied, the second contribution condition is not, and his claim to Employment and Support Allowance is disallowed. The Department is subsequently notified that the claimant has paid his class 2 National Insurance contributions for 2016/2017 on 31.1.18. These are treated as having been paid before 14.1.18. Both contribution conditions are now satisfied and the original decision to disallow Employment and Support Allowance is revised in the claimant's favour.

### Contributions refunded

U1046 A decision to award Employment and Support Allowance may be revised<sup>1</sup> at any time where contributions are repaid or returned to the contributor where this means the person no longer satisfies the contribution conditions of entitlement to the benefit.

*1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 17(4) & 17(5)*

### Example

Employment and Support Allowance is awarded in January 2018 to a claimant who is self-employed. The award was based on class 2 National Insurance contributions paid in respect of 2015/16 and 2016/17 tax years. Class 2 National Insurance contributions for 2016/17 were paid on the basis of profits declared on a self assessment return filed on 31.1.18. In March 2018 Her Majesty's Revenue and Customs adjusts the declared profits for 2016/17 to a figure below which no liability for class 2 National Insurance contributions actually arose. Her Majesty's Revenue and Customs informs the claimant of this and they pursue and accept a refund of

class 2 National Insurance contributions. These are removed from the claimant's National Insurance record. As a consequence of this the claimant does not satisfy the contribution conditions for Employment and Support Allowance. The decision to award Employment and Support Allowance is revised so as to disallow the award.



## Condition relating to youth

### Introduction

U1047 Since 17.2.16 no further claims can be made for Employment and Support Allowance under the youth conditions<sup>1</sup>. The guidance at U1048 - U1083 is retained for the purposes of existing awards.

**Note:** See ADM Chapter V2 for guidance on where Employment and Support Allowance entitlement under the youth conditions is limited to a maximum number of days.

*1 WR Act (NI) 07, sec 1(3A)*

### Conditions of entitlement

U1048 The conditions for receiving Employment and Support Allowance relating to youth, including the age conditions, are set out in U1051. In some circumstances the upper age condition can be extended (see U1052). In some circumstances a claimant who does not satisfy the upper age condition can be entitled to Employment and Support Allowance because of previous entitlement to Employment and Support Allowance relating to youth (see U1081).

U1049 The conditions of entitlement<sup>1</sup> for Employment and Support Allowance relating to youth are that

1. the claimant is aged under 20 (or under 25 in the circumstances described in U1052) when the relevant period of limited capability for work began (see U1050)
2. the claimant is not receiving full time education (see U1058 et seq)
3. the claimant satisfies the conditions of residence and presence in Northern Ireland and is not a person subject to immigration control<sup>2</sup> (see ADM Chapter C4)
4. there has been a day in the relevant period of limited capability for work which was
  - 4.1 a day on which the claimant was aged at least 16 **and**
  - 4.2 preceded by a period of 196 consecutive days throughout which the claimant had limited capability for work.

*1 WR Act (NI) 07, Sch 1, Part 1, para 4(1); 2 ESA Regs (NI) 16, regs 12(1), 13*

U1050 When considering whether a claimant satisfies the conditions of entitlement at U1049, the decision maker should note that

1. the relevant period of limited capability for work means the period of limited capability for work which includes the relevant benefit week<sup>1</sup>
2. the effect of U1049 1. is that a claimant who is entitled to Employment and Support Allowance in a period of limited capability for work does not lose entitlement on becoming 20 (or where relevant 25) in the same period of limited capability for work
3. although Statutory Sick Pay days are not part of a period of limited capability for work (see ADM Chapter U2) a claimant may satisfy the relevant age conditions on a day in a period of entitlement to Statutory Sick Pay immediately preceding the relevant period of limited capability for work which means that any days of entitlement to Statutory Sick Pay immediately preceding the relevant period of limited capability for work are treated as days of limited capability for work for the purposes of Employment and Support Allowance for those satisfying the condition relating to youth<sup>2</sup>
4. for the purposes of U1049 4.
  - 4.1 consecutive days may be made up of days of limited capability for work which form part of a period of limited capability for work and days of limited capability for work which do not **and**
  - 4.2 linking provisions cannot be used to meet this condition when days of limited capability for work are not consecutive<sup>3</sup>
  - 4.3 periods of incapacity for work **cannot** be treated as forming part of a period of limited capability for work
5. the definition of period of limited capability for work at U1024 7. does not apply. For the purposes of U1049, a period of limited capability for work is a period throughout which the claimant has, or is treated as having, limited capability for work<sup>4</sup>.

*1 WR Act (NI) 07, Sch 1, Part 1, para 4(2) & 5; 2 ESA Regs (NI) 16, reg 29; 3 reg 10(6); 4 reg 3(2)*

U1051 An example of where U1050 4.1 may apply is where days for which a claimant is not entitled to Employment and Support Allowance because of a late claim do not form part of a period of limited capability for work (see ADM Chapter U2) but may count towards the 196 day condition if there is sufficient evidence of limited capability for work.

## Extension of upper age limit to 25

U1052 The upper age condition can be extended to 25<sup>1</sup> if a claimant

1. registered on a course of
  - 1.1 full-time advanced or secondary education (see U1056) **or**
  - 1.2 training (see U1057)at least 3 months before the claimant's 20th birthday<sup>2</sup> **and**
2. attended one or more such courses in the academic term after registration during the period in U1053<sup>3</sup>.

*1 ESA Regs (NI) 16, reg 10(1); 2 reg 10(2)(a); 3 reg 10(2)(b)*

U1053 For the purposes of U1052 **2.** the period is one which

1. began on or before a day at least 3 months before the claimant's 20th birthday<sup>1</sup> **and**
2. ended no earlier than the beginning of the last two complete tax years before the relevant benefit year which would have applied if the claimant was entitled to Employment and Support Allowance because the first and second contribution conditions were satisfied<sup>2</sup>.

*1 ESA Regs (NI) 16, reg 10(3)(a); 2 reg 10(3)(b)*

U1054 When considering U1052 decision makers should note that a claimant is attending a course on any day on which the course is interrupted by an illness or domestic emergency<sup>1</sup>.

*1 ESA Regs (NI) 16, reg 10(4)*

U1055

## Full-time advanced or secondary education

U1056 When considering whether U1052 **1.1** is satisfied, the decision maker should note that<sup>1</sup>

1. "advanced education" means education for the purposes of
  - 1.1 a course in preparation for
    - 1.1.a a degree **or**
    - 1.1.b a diploma of higher education **or**
    - 1.1.c a higher national diploma **or**

- 1.1.d a higher national diploma of the BTEC or the Scottish Qualifications Authority **or**
- 1.1.e a teaching qualification **or**
- 1.2 any other course which is of a standard above
  - 1.2.a ordinary national diploma **or**
  - 1.2.b a diploma of the BTEC **or**
  - 1.2.c a higher or advanced higher national certificate of the Scottish Qualifications Authority **or**
  - 1.2.d a general certificate of education (advanced level)
- 2. “full-time” includes part-time where a claimant’s disability prevents attendance at a full-time course
- 3. “secondary education” means a course of education below a course of advanced education by attendance at
  - 3.1 an establishment recognized by the Department as being, or comparable to, a university, college or school **or**
  - 3.2 another establishment where the Department is satisfied that education is equivalent to that given in an establishment at 3.1.

**Note:** There is no specific requirement as to hours. If there is a doubt as to whether or not a course is full-time evidence should be obtained from the education authorities.

*1 ESA Regs (NI) 16, reg 10(5)*

## Training

- U1057 When considering whether U1052 1.2 is satisfied the decision maker should note that “training” means<sup>1</sup>
- 1. training in pursuance of arrangements made under prescribed legislation<sup>2</sup> **or**
  - 2. any training received on a course which a person attends for 16 hours or more a week for the primary purpose of being taught occupational or vocational skills.

*1 ESA Regs (NI) 16, reg 2; 2 E&T Act (NI) 50, sec 1 or 3*

## Full-time education condition

- U1058 For the purpose of U1051 2. a claimant is treated as receiving full-time education for any period during which the claimant

1. is aged 16 or over but under 19 **and**
2. attends a course of education for 21 hours or more a week<sup>1</sup>.

*1 ESA Regs (NI) 16, reg 13(1)*

U1059 In determining the duration of a period of full-time education any temporary interruption of that education may be disregarded<sup>1</sup>.

*1 ESA Regs (NI) 16, reg 13(3)*

U1060 A claimant who is 19 years of age or over is not treated as receiving full-time education<sup>1</sup>. This applies whether or not the claimant is undergoing full-time education. Decision makers should note that a claimant is over 19 from and including the 19th birthday.

*1 ESA Regs (NI) 16, reg 13(4)*

### Calculation of hours of attendance

U1061 In calculating the number of hours of attendance at a course of education, the decision maker should take into account time spent in following the particular course, not the time spent at a particular place of education.

U1062 The decision maker should **include** time spent on

1. classroom instruction suitable for people of the same age with no disabilities (see U1066 et seq)
2. supervised study
3. examinations
4. practical work
5. taking part in any exercise, experiment or project which is part of the course.

U1063 The decision maker should **exclude** time spent on

1. any instruction or tuition which is not suitable for claimants of the same age who do not have a disability<sup>1</sup> (see U1066 et seq)
2. unsupervised private study whether
  - 2.1 at home **or**
  - 2.2 on the premises of the educational establishment
3. morning assemblies
4. normal meal and relaxation breaks.

*1 ESA Regs (NI) 16, reg 13(2)*

U1064 – U1065

### **Instruction or tuition which is “not suitable”**

U1066 The words “instruction” or “tuition” cover the content as well as the method. Instruction or tuition which is not suitable for ordinary students includes

1. the teaching of special skills required by people with disabilities **and**
2. the methods of teaching, where these would not be suitable for people of the same age who do not have a disability<sup>1</sup>.

*1 R(S) 2/87*

U1067 A course of education includes

1. attendance at an ordinary school or college including grammar, comprehensive and 6th form college
2. attendance at a special school or training centre designed specifically for people with disabilities
3. home tuition arranged by the education authority.

U1068 People attending special schools may be in full-time education. Similarly students attending ordinary schools may not be in full-time education.

U1069 The decision maker should consider the circumstances of each claimant to decide whether

1. the course content and method of teaching for each subject is suitable for people without disabilities **and**
2. the course amounts to 21 or more hours a week.

U1070 For the purposes of U1069 **1.** it may be clear that the entire course content is either

1. suitable **or**
2. not suitable

for people with no disabilities of the same age as the claimant. Many claimants may receive a mixture of **1.** and **2.** The decision maker should consider each lesson to determine whether the content is or is not suitable for people without disabilities.

U1071 Examples of what the decision maker should exclude when calculating the time spent on the course include

1. activities connected with the student's disability (life skills or independence training)

2. curriculum levels intended for a younger person.

U1072 Where

1. people are following the normal subject curriculum for people of that age with no disabilities **and**
2. the time spent is 21 or more hours

there is no entitlement to Employment and Support Allowance even though the number of subjects undertaken is limited by the disability.

U1073 It will be clear in some cases that the method of teaching is not suitable for people of the same age without disabilities, for example

1. a profoundly deaf person using radio links or sign language **or**
2. a blind person using Braille.

U1074 In deciding whether the claimant is receiving full-time education, the decision maker should exclude time spent on instruction

1. which is slower **or**
2. where the hours for each subject are far greater

than would be necessary for people without disabilities.

U1075 – U1080

### **Over the upper age limit but previously entitled**

U1081 People who do not satisfy the upper age condition (see U1049 and U1052) may still be entitled to Employment and Support Allowance if

1. they previously ceased to be entitled to Employment and Support Allowance as a claimant satisfying the condition relating to youth<sup>1</sup> **and**
2. their previous entitlement was not ended by a determination that they did not have limited capability for work<sup>2</sup> (apart from a determination under **5.**) **and**
3. the linking rules do not apply<sup>3</sup> **and**
4. they are aged<sup>4</sup>
  - 4.1 20 or over **or**
  - 4.2 25 or over if U1052 et seq applies **and**
5. their previous entitlement ended with a view to taking up employment or training<sup>5</sup> **and**

6. their earnings factor from employment or employments pursued between the termination of the previous entitlement and the beginning of the period of limited capability for work was less than 25 times the lower earnings limit in any of the last 3 complete tax years before the relevant benefit year<sup>6</sup> **and**
7. they
  - 7.1 in the last two complete tax years before the relevant benefit year had
    - 7.1.a paid **or**
    - 7.1.b been credited with earnings equivalent to 50 times the lower earnings limit in each of those years and, in the last tax year, at least one credit was in respect of the disability element or severe disability element of Working Tax Credit **or**
  - 7.2 make a claim for Employment and Support Allowance within a period of 12 weeks after the day the employment in 6. ended<sup>7</sup>.

**Note 1:** "Training" has the same meaning as in U1057.

**Note 2:** See U1111 for guidance on the linking rule.

*1 ESA Regs (NI) 16, reg 11(1)(a); 2 reg 11(1)(b); 3 reg 11(1)(c); 4 reg 11(1)(d);  
5 reg 11(2)(a); 6 reg 11(2)(b); 7 reg 11(2)(c)*

### **Employment and Support Allowance for claimant satisfying the condition relating to youth and overlapping benefits**

- U1082 For the purpose of overlapping benefits Employment and Support Allowance is a contributory benefit<sup>1</sup>. This applies even though Employment and Support Allowance for those satisfying the condition relating to youth is not based on contribution conditions.

*1 SS (OB) Regs (NI), reg 2(1); SS C&B (NI) Act 92, Part II*

### **Employment and Support Allowance for claimant satisfying the condition relating to youth and Child Benefit**

- U1083 A claimant is not entitled to Child Benefit for any week in which that claimant is entitled to Employment and Support Allowance under the provisions for people incapacitated in youth<sup>1</sup>.

**Note:** See ADM Chapter D1 if an offset is appropriate.

*1 CHB (Gen) Regs, reg 8(2)*



## Members of Her Majesty's Forces

U1084 Members of Her Majesty's Forces<sup>1</sup> are not entitled to Employment and Support Allowance unless they are<sup>2</sup> members of

1. any prescribed territorial or reserve force<sup>3</sup> not undergoing training or instruction continuously for longer than 72 hours **or**
2. the Royal Irish Regiment who are **not** also serving as members of any regular naval, military or air forces
  - 2.1 on the full time permanent staff **or**
  - 2.2 serving or undergoing training or instruction continuously for longer than 72 hours.

**Note:** See U1106 et seq for the meaning of member of Her Majesty's Forces.

*1 ESA Regs (NI) 16, reg 2; 2 SS (Conts) Regs 2001, Sch 6;*

*3 SS (Benefit) (Members of Forces) Regs 1975, reg 2*

U1085 – U1099

## Waiting days and linking rule

### No entitlement to Employment and Support Allowance

U1100 **[See ADM Memo 3/20 & ADM Memo 22/20]** A claimant is not entitled to Employment and Support Allowance for the first seven days of a period of limited capability for work<sup>1</sup>. These seven days are called waiting days.

*1 WR Act (NI) 07, Sch 2, para 2; ESA Regs (NI) 16, reg 85(1)*

U1101 However, claimants do not have to serve waiting days where U1103 et seq applies or there is a linking period of limited capability for work (see U1111).

**Note:** See ADM Chapter U2 for guidance on people undergoing certain treatment and the effect on waiting days.

U1102 Decision makers should note that waiting days have to be served even if the claimant is or has been entitled to Universal Credit, and it has already been determined that they have limited capability for work.

#### Example

Vanessa claims Universal Credit on 7.9.20 providing doctor's statements, and following the work capability assessment the decision maker determines that she has limited capability for work related activity. Vanessa's Universal Credit award begins on 7.9.20, and includes the limited capability for work related activity element from 7.12.20.

On 13.10.20 Vanessa claims Employment and Support Allowance from 7.9.20. Vanessa is treated as having limited capability for work and limited capability for work related activity. Her award of Employment and Support Allowance begins on 14.9.20 after serving waiting days, and includes the support component from 14.12.20. Her award of Employment and Support Allowance is taken into account as unearned income for the purpose of her entitlement to Universal Credit.

## Claimants who do not have to serve waiting days

U1103 [See ADM Memo 15/23] Claimants do not have to serve waiting days<sup>1</sup> if

1. their entitlement to Employment and Support Allowance begins within twelve weeks of the end of their entitlement to
  - 1.1 Income Support **or**
  - 1.2 State Pension Credit **or**
  - 1.3 Jobseeker's Allowance **or**
  - 1.4 Carer's Allowance **or**
  - 1.5 Statutory Sick pay **or**
  - 1.6 Maternity Allowance **or**
  - 1.7 Incapacity Benefit **or**
  - 1.8 Severe Disablement Allowance **or**
2. they are terminally ill<sup>2</sup> (see U1105) and have made
  - 2.1 a claim expressly for that reason **or**
  - 2.2 an application for supersession or revision<sup>3</sup> which contains a statement that they are terminally ill **or**
3. they have been discharged from being a member of Her Majesty's Forces (see U1106 et seq) and three or more days immediately before that discharge were days of sickness from duty which were recorded by the Secretary of State for Defence<sup>4</sup> **or**
4. they are awarded Employment and Support Allowance after
  - 4.1 entitlement has previously terminated because it exceeded the maximum number of days **and**
  - 4.2 their health condition has deteriorated<sup>5</sup> (see ADM Chapter V2).

<sup>1</sup> ESA Regs (NI) 16, reg 85(2)(a); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 47(5) & (6);

<sup>2</sup> ESA Regs (NI) 16, reg 85(2)(b); <sup>3</sup> SS & CS (D&A) Regs (NI); UC, PIP, JSA & ESA (D&A) Regs (NI) 16;

<sup>4</sup> ESA Regs (NI) 16, reg 85(2)(c); <sup>5</sup> WR Act (NI) 07, sec 1B; ESA Regs (NI) 16, reg 85(2)(d)

### Example

Dolores was entitled to Income Support until 26.10.17. She then claims and satisfies the conditions of entitlement to Employment and Support Allowance from and including 19.1.18. Dolores has to serve three waiting days and is not entitled to Employment and Support Allowance on 19.1.18, 20.1.18 and 21.1.18. To be within

twelve weeks of her entitlement to Income Support coming to an end, Dolores would have had to have claimed Employment and Support Allowance and satisfied the entitlement conditions on 18.1.18.

- U1104 Decision makers should note that entitlement to Employment and Support Allowance can exist even though nothing is payable. An example of when this may happen is where people are entitled to Employment and Support Allowance only but they have a pension payment that exceeds the allowable limit so no Employment and Support Allowance is payable.

## Meaning of terminally ill

- U1105 **[See ADM Memo 6/22]** For the purposes of U1103 **2.** people are terminally ill<sup>1</sup> if
1. they are suffering from a progressive disease **and**
  2. their death in consequence of that disease can reasonably be expected within twelve months.

*1 ESA Regs (NI) 16, reg 2*

## Meaning of member of Her Majesty's Forces

- U1106 A member of Her Majesty's Forces<sup>1</sup> is a person
1. over 16 years old **and**
  2. who gives full-pay service (see U1109) as a member of certain named establishments or organisations<sup>2</sup> (see U1107).

*1 ESA Regs (NI) 16, reg 2; 2 Sch 1, Part 1*

- U1107 For the purposes of U1106 **2.** a member of certain named establishments or organisations means<sup>1</sup> any member of the
1. regular naval, military or air forces of the Crown
  2. Royal Fleet Reserve
  3. Royal Naval Reserve
  4. Royal Marines Reserve
  5. Army Reserve
  6. Territorial Army
  7. Royal Air Force Reserve

8. Royal Auxiliary Air Force
9. Royal Irish Regiment.

*1 ESA Regs (NI) 16, Sch 1, Part 1*

U1108 However, a person who is

1. recruited locally overseas in certain circumstances<sup>1</sup> **or**
2. a deserter **or**
3. a person to whom U1106 1. or 2. applies<sup>2</sup>

is not a member of Her Majesty's Forces.

*1 ESA Regs (NI) 16, Sch 1, Part 2; 2 reg 2; 2 SS (Benefit) (Members of Forces) Regs 1975, reg 2*

### **Meaning of full-pay service**

U1109 A member of the armed forces is giving full-pay service if normal salary continues to be paid from

1. a civilian employer **or**
2. one of the branches of the armed forces.

U1110 A person on unpaid leave or less than normal salary is not giving full-pay service.

### **Linking periods of limited capability for work**

U1111 Claimants do not have to serve waiting days if there is a linking period of limited capability for work. There is a linking period of limited capability for work when a period of limited capability for work is separated from another such period by not more than 12 weeks<sup>1</sup>.

*1 ESA Regs (NI) 16, reg 86*

U1112 – U1999

# Appendix

## Lower earnings limit

<b>From</b>	<b>Amount</b>
6.4.13	£109
6.4.14	£111
6.4.15	£112
6.4.16	£112
6.4.17	£113
6.4.18	£116
6.4.19	£118
6.4.20	£120
6.4.21	£120

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