

Benefits and Work
Guides you can trust

Understanding Employment and Support Allowance

October 2013



Authors: Steve Donnison & Holiday Whitehead

Index

Overview of Employment and Support Allowance (ESA) -----	2
ESA route map -----	8
Stages of an ESA claim -----	8
Stages of an ESA medical assessment-----	11
Basic non-medical qualifying conditions -----	13
Three ways to pass two medical tests -----	15
Are you exempt from the limited capability for work assessment? -----	16
Do you score enough points under the limited capability for work assessment? -----	18
Are you covered by the limited capability for work exceptional circumstances rules?-----	23
Do any of the limited capability for work-related activity descriptors apply to you? -----	25
Are you covered by the limited capability for work-related activity exceptional circumstances rules? -----	28
Work-focused health-related assessment (WFHRA)-----	29
Work-focused (pathways to work) interviews-----	32
Mandatory Reconsiderations and appeal rights -----	35
Compulsory work-related activity -----	36
Work and ESA -----	38
Current incapacity claimants-----	39
Glossary of acronyms-----	41
ESA rates -----	42

Disclaimer

Every care has been taken to ensure that the content of this work is accurate and that legislation and caselaw used is current at the time of writing. However, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in this work can be accepted by the authors.

Copyright

© 2008 - 2013 Steve Donnison and Holiday Whitehead. All rights reserved. No part of this work may be reproduced or transmitted in any form or by any means (photocopying, electronic, recording or otherwise), except for personal, non-commercial use, without the prior written permission of the author.

Crown copyright

Crown copyright material is reproduced under licence with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

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, for new claimants, by a single benefit: Employment and Support Allowance (ESA).

From 28 January 2011, it was no longer possible either to make a fresh claim or to make a linked claim for incapacity benefit (IB) or income support (IS) as incapable of work.

From 28 February 2011, the DWP began retesting everyone on IB and IS using the work capability assessment to decide whether they are eligible for ESA or whether they need to try to claim jobseekers' allowance. This process is intended to end in 2014, with on average 11,000 IB and IS claimants being reassessed every week.

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 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 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. However, the government have now announced

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.

plans to time limit claims contribution-based ESA to one year from April 2012. This will be backdated so that claimants who have already received 12 months or more of contribution-based ESA will lose their entitlement immediately.

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.

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 is supposed to last for 13 weeks, though due to backlogs in medicals and decision making it often lasts much longer. 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 challenge it via the mandatory reconsideration and appeal process or 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. The two tests are carried out at the same medical assessment.

Some people with severe conditions will be found to have passed one or both these both of these medical tests just based on paper evidence.

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 challenge the decision via the mandatory reconsideration and appeal process. Instead, you'll have to try to claim jobseeker's allowance.

Limited capability for work-related activity assessment (LCWRA)

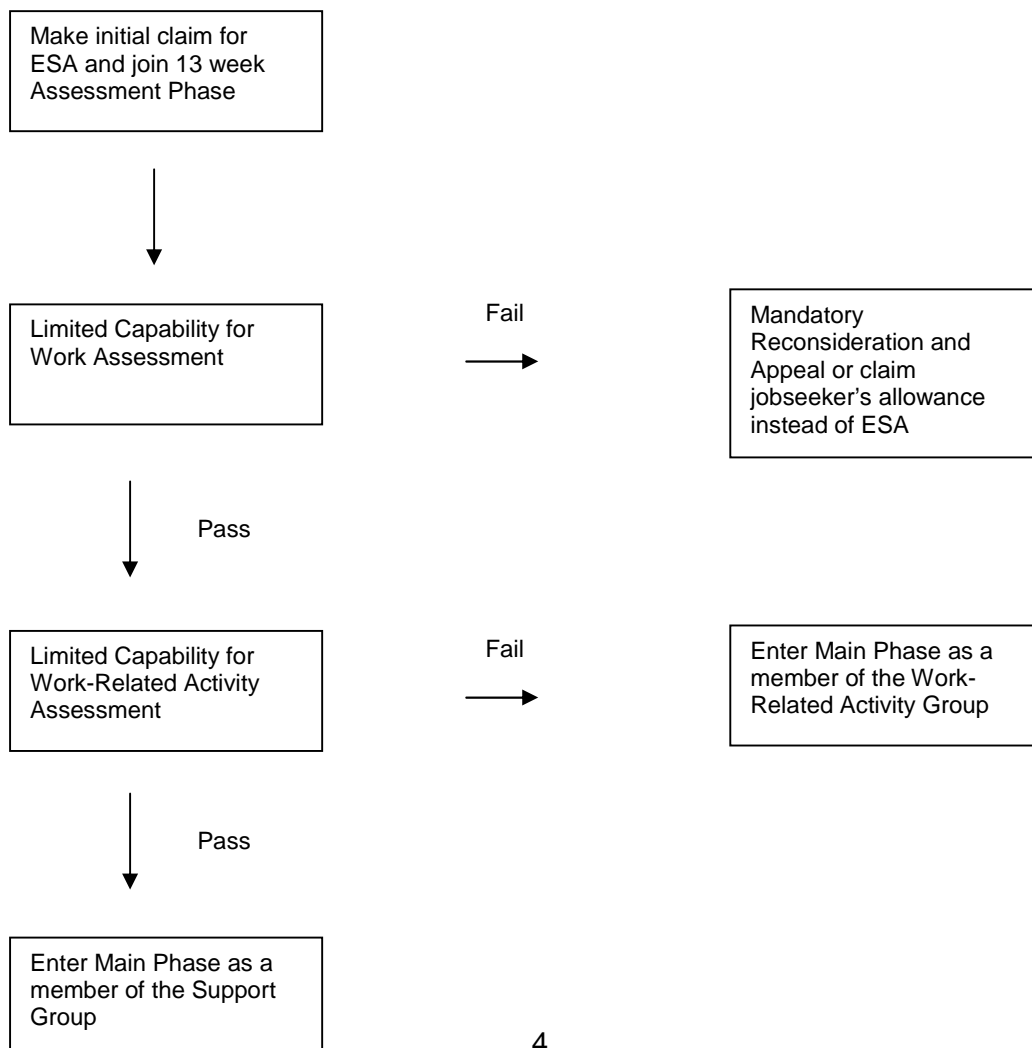
You can only take this test after you have passed the first test. There are no points. Instead, there are a series of 'descriptors'. If any single one of them applies to you then you have passed.

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.

Or, if you cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed then you'll have passed the test.

If you pass this test you'll get membership of the higher paying support group.

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 includes the majority of successful ESA claimants.

Work-related activity group members get paid a basic allowance, plus a work-related activity component.

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 without good cause, your ESA will be sanctioned. You can only get the full amount back by taking part in the required activities.

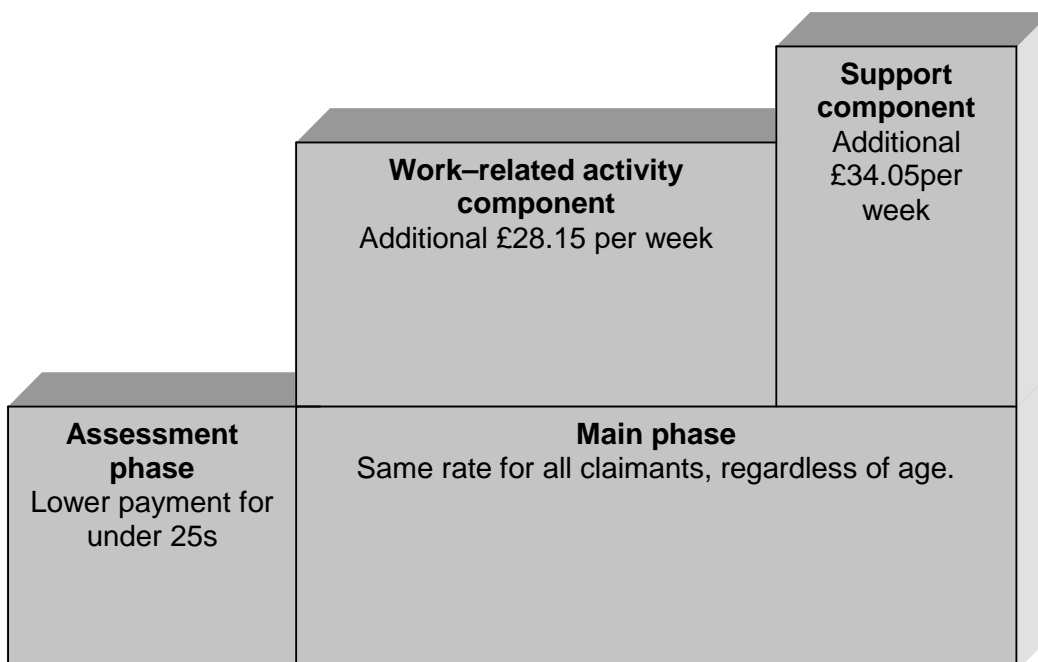
Support group

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.

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.

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.

ESA components



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 (WFHRA)

N.B. WFHRAs were suspended for two years from 19 July 2010 due to their having achieved only 'mixed results' and because of the increasing backlog of ESA medicals.

So, at the time of writing, you will **NOT be asked to take part in a WFHRA and it now seems unlikely that they will be reintroduced.**

The WFHRA is supposed to happen 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. If it does happen at the same appointment, there will be a short break after the medical examination and then the same health professional will carry out your WFHRA.

In reality, the WFHRA is often referred to as a 'second medical' by Atos when they fail to carry it out at the same time as your work capability assessment medical and instead have to book a second appointment with you.

The WFHRA 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, also known as Pathways to Work interviews.

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.

However, medicals are often carried out so late that many claimants have completed some, or all, of their WFIs before a decision has even been made about whether they are eligible for ESA and, if so, which group they should be in.

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.

Mandatory Reconsiderations and Appeals

If your decision was made before 28th October 2013 you may already have an appeal waiting to be heard. In this situation, if your appeal was against a decision that you do not have limited capability for work you may be able to claim ESA paid at the assessment phase rate or jobseeker's allowance.

If you appealed against a decision that you do have limited capability for work but don't have limited capability for work-related activities. Whilst doing so you will continue to receive ESA with a work-related activity component.

However, from 28th October 2013, the way a DWP decision can be challenged or disputed will change.

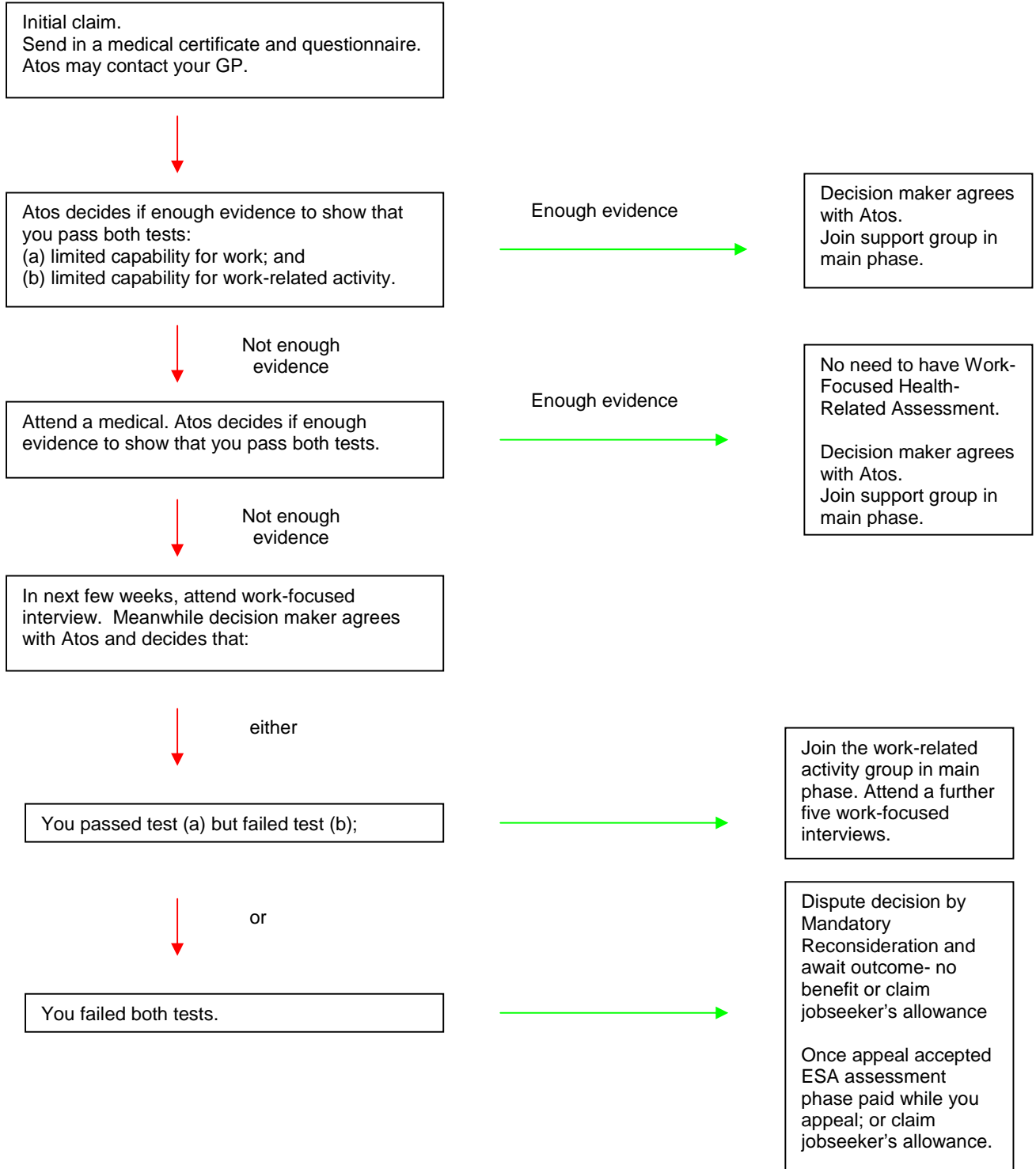
If your decision is dated 28th October 2013 or afterwards, you will be expected to challenge it by a process called Mandatory Reconsideration before you can appeal.

Mandatory Reconsideration is an internal review of the decision and can be requested by telephone or letter, within 1 month of the date of the decision. If the decision after this process is unchanged or you still disagree with it; you can then lodge an appeal. You need the decision after a Mandatory Reconsideration to appeal and you must complete a specific form and send this directly to the Tribunal.

Our guides contain further, specific, advice on how best to deal with Mandatory Reconsiderations, time limits and what to do when you need to lodge an appeal.

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 describe claimants as following in order to claim ESA. Again it's a simplified route, but it should help you to work out where you are in the process.

Please note: the claims process is currently taking much longer than is set out here for many claimants, who may remain in the assessment phase for many months and have completed all their work-focused (Pathways) interviews before a decision is made.

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 an ESA50 questionnaire. You will have four 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.
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. 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 mandatory reconsideration and appeal. Whilst awaiting a mandatory reconsideration you cannot claim ESA. You could claim JSA, if you feel able to. 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 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 at least 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.

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.

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 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.

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 rules for incapacity benefit.

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

Contribution-based ESA is time-limited to 12 months for claimants in the work-related activity group. Support group claimants are not affected by this time-limit.

Income-related ESA

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

The 8 week linking under IB has been extended to 12 weeks under ESA and the 2 year welfare to work linking rule still applies. However, current incapacity benefit and income support claimants who are awaiting reassessment are no longer protected by any linking rules at all.

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 challenge the decision by Mandatory Reconsideration and 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 were 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 (*this will also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group*);

(b) You are receiving treatment for cancer by way of chemotherapy or radiotherapy; or
or
you are likely to receive such treatment within 6 months; or
you are recovering from such treatment; and
the decision maker is satisfied that you should be treated as having limited capability for work.

The presumption is that such treatment should also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group. It should only be in unusual circumstances, such as a claimant having only a single radiotherapy session that is unlikely to have any significant effect, that the exemption may not apply.

(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 (*this should also give you exemption from the limited capability for work-related activity assessment, allowing you to join the support group*);

(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 days in which you are an in-patient in hospital or recovering from in-patient treatment. The same applies if you are attending residential rehabilitation for the treatment of drug or alcohol addiction. This does not need to be medical treatment. It could, for example, be a residential centre run by a religious organisation.

The same applies to any week in which you are receiving, or recovering from receiving, certain regular treatments such as:

- haemodialysis;
- radiotherapy; or
- total parenteral nutrition.

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 17 activities: 10 physical and 7 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 1(b) and 1(c) applied to you, then you would only score 9 points – not 18 - even though one is about using steps and the other is about mobilising. This is because both descriptors are from the same activity.

Following changes to the law in January 2013, you can only score points for the physical health activities if the difficulties you have with them are caused by a physical health condition or physical disability, or are a direct result of treatment by a registered medical practitioner for that condition.

Likewise, you can only score points for the mental health activities if the difficulties you have with them are caused by a mental health condition or learning difficulty, or are a direct result of treatment by a registered medical practitioner for that condition.

Limited capability for work, physical disabilities assessment

1. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.

(a) Cannot either

(i) mobilise more than 50 meters on level ground without stopping in order to avoid significant discomfort or exhaustion

or

(ii) repeatedly mobilise 50 meters within a reasonable timescale because of significant discomfort or exhaustion. **15 points**

(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail. **9 points**

(c) Cannot either

(i) mobilise more than 100 meters on level ground without stopping in order to avoid significant discomfort or exhaustion

or

(ii) repeatedly mobilise 100 meters within a reasonable timescale because of significant discomfort or exhaustion. **9 points**

(d) Cannot either

(i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion

or

(ii) repeatedly mobilise 200 meters within a reasonable timescale because of significant discomfort or exhaustion. **6 points**

(e) None of the above apply. **0 points**

2. Standing and sitting.

(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person. **15 points**

(b) Cannot, for the majority of the time, remain at a work station, either:

(i) standing unassisted by another person (even if free to move around) or;

(ii) sitting (even in an adjustable chair); or

(iii) a combination of (i) and (ii),

for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion. **9 points**

(c) Cannot, for the majority of the time, remain at a work station, either:

(i) standing unassisted by another person (even if free to move around) or;

(ii) sitting (even in an adjustable chair)); or

(iii) a combination of (i) and (ii),

for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion. **6 points**

(d) None of the above apply **0 points**

3. Reaching.

(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket. **15 points**

(b) Cannot raise either arm to top of head as if to put on a hat. **9 points**

(c) Cannot raise either arm above head height as if to reach for something. **6 points.**

(d) None of the above apply. **0 points**

4. Picking up and moving or transferring by the use of the upper body and arms.

(a) Cannot pick up and move a 0.5 litre carton full of liquid. **15 points**

(b) Cannot pick up and move a one litre carton full of liquid. **9 points**

(c) Cannot transfer a light but bulky object such as an empty cardboard box. **6 points**

(d) None of the above apply. **0 points**

5. Manual dexterity.

(a) Cannot either:

(i) press a button, such as a telephone keypad or;

(ii) turn the pages of a book

with either hand. **15 points**

(b) Cannot pick up a £1 coin or equivalent with either hand. **15 points**

(c) Cannot use a pen or pencil to make a meaningful mark. **9 points**

(d) Cannot single-handedly use a suitable keyboard or mouse. **9 points**

(e) None of the above apply. **0 points**

6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used, unaided by another person.

(a) Cannot convey a simple message, such as the presence of a hazard. **15 points**

(b) Has significant difficulty conveying a simple message to strangers. **15 points**

(c) Has some difficulty conveying a simple message to strangers. **6 points**

(d) None of the above apply. **0 points**

7. Understanding communication by—

**(a) verbal means (such as hearing or lip reading) alone,
(b) non-verbal means (such as reading 16 point print or Braille) alone, or
(c) a combination of (a) and (b),
using any aid that is normally, or could reasonably be, used, unaided by
another person.**

(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape. **15 points**

(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment. **15 points**

(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment. **6 points**

(d) None of the above apply. **0 points**

8. Navigation and maintaining safety, using a guide dog or other aid if either or both are normally, or could reasonably be, used

(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment. **15 points**

(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment. **15 points**

(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment. **9 points**

(d) None of the above apply. **0 points**

9. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally, or could reasonably be, worn or used.

(a) At least once a month experiences

(i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or

(ii) substantial leakage of the contents of a collecting device; sufficient to require cleaning and a change in clothing. **15 points**

(b) The majority of the time is at risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly. **6 points**

(c) None of the above apply. **0 points**

10. Consciousness 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 points**

(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration. **6 points**

(c) None of the above apply. **0 points**

**Limited capability for work, cognitive and intellectual function
assessment**

11. Learning tasks.

(a) Cannot learn how to complete a simple task, such as setting an alarm clock. **15 points**

(b) Cannot learn anything beyond a simple task, such as setting an alarm clock. **9 points**

- (c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes. **6 points**
- (d) None of the above apply. **0 points**

12. Awareness of everyday hazards (such as boiling water or sharp objects).

- (a) Reduced awareness of everyday hazards leads to a significant risk of:
 - (i) injury to self or others; or
 - (ii) damage to property or possessions,such that they require supervision for the majority of the time to maintain safety. **15 points**
- (b) Reduced awareness of everyday hazards leads to a significant risk of:
 - (i) injury to self or others; or
 - (ii) damage to property or possessions,such that they frequently require supervision to maintain safety. **9 points**
- (c) Reduced awareness of everyday hazards leads to a significant risk of:
 - (i) injury to self or others; or
 - (ii) damage to property or possessions,such that they occasionally require supervision to maintain safety. **6 points.**
- (d) None of the above apply. **0 points**

13. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).

- (a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions. **15 points**
- (b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time. **9 points**
- (c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions. **6 points**
- (d) None of the above apply. **0 points**

14. Coping with change

- (a) Cannot cope with any change to the extent that day to day life cannot be managed. **15 points**
- (b) Cannot cope with minor planned change (such as a pre-arranged 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 points**
- (c) Cannot cope with minor unplanned change (such as 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 points**
- (d) None of the above apply. **0 points**

15. Getting about

- (a) Cannot get to any place outside the claimant's home with which the claimant is familiar. **15 points**
- (b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person **9 points**
- (c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person. **6 points**
- (d) None of the above apply. **0 points**

16. Coping with social engagement due to cognitive impairment or mental disorder

- (a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual. **15 points**

(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual. **9 points**

(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual. **6 points**

(d) None of the above apply. **0 points**

17. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder

(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. **15 points**

(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. **15 points**

(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace. **9 points**

(d) None of the above apply. **0 points**

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.

This regulation will not apply, however, if the risk could be reduced by a significant amount by:

- reasonable adjustments being made in your workplace; or
- by your taking medication to manage your condition that has been prescribed by a registered medical practitioner who is treating you.

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 for cancer by way of chemotherapy or radiotherapy;
or
you are likely to receive such treatment within 6 months; or
you are recovering from such treatment; and
and the decision maker is satisfied that 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. Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid is normally, or could reasonably be, worn or used.

Cannot either

(i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion

or

(ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

2. Transferring from one seated position to another.

Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

3. Reaching.

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

4. 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 a 0.5 litre carton full of liquid.

5. Manual dexterity.

Cannot either:

(a) press a button, such as a telephone keypad or;

(b) turn the pages of a book

with either hand.

6. Making self understood through speaking, writing, typing, or other means which are normally, or could reasonably be, used, unaided by another person.

Cannot convey a simple message, such as the presence of a hazard.

7. Understanding communication by—

(a) verbal means (such as hearing or lip reading) alone,

(b) non-verbal means (such as reading 16 point print or Braille) alone, or

(c) a combination of (a) and (b),

using any aid that is normally, or could reasonably be, used, unaided by another person.

Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

8. Absence or loss of control whilst conscious leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting), despite the wearing or use of any aids or adaptations which are normally, or could reasonably be, worn or used.

At least once a week experiences

- (i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or
- (ii) substantial leakage of the contents of a collecting device; sufficient to require cleaning and a change in clothing.

9. Learning tasks.

Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.

10. Awareness of everyday hazards (such as boiling water or sharp objects).

Reduced awareness of everyday hazards leads to a significant risk of:

- (i) injury to self or others; or
- (ii) damage to property or possessions, such that they require supervision for the majority of the time to maintain safety.

11. Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).

Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

12. Coping with change

Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.

13. Coping with social engagement due to cognitive impairment or mental disorder

Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.

14. Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder

Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that *would be unreasonable in any workplace*.

15. 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.

16. 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.

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 (WFHRA)

N.B. WFHRAs were suspended for two years from 19 July 2010 due to their having achieved only 'mixed results' and because of the increasing backlog of ESA medicals.

So, at the time of writing, you will **NOT** be asked to take part in a WFHRA and it now seems unlikely they will be reintroduced

Most claimants, except those who are likely to be placed in the support group, have a work-focused health-related assessment (WFHRA). This is supposed to happen just a few minutes after your work capability assessment medical, but because of a large backlog it often happens at a later date. If you are told at your work capability assessment medical that you have to return at a later date for a 'second medical', this isn't about your eligibility for ESA at all, instead it's a WFHRA.

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.

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 work-focused interviews. 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 (DPA) 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 (pathways to work) interviews

Claimants in the work-related activity group are subject to a series of five further work-focused interviews – also known as pathways to work 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 you 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 a challenge via mandatory reconsideration and 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.

You must also complete any specific work-related activities which are listed in your action plan and which the personal adviser directs that you undertake.

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 you were 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.

Initially you will receive an open ended sanction, followed by a fixed period sanction once you have complied with the instructions relating to your work-focused interviews. The fixed period sanction will be one week for a first failure, two weeks for a second failure and four weeks for a third and subsequent failures in a 52 week period.

During the period of the sanction you will lose all of your personal allowance, but your work-related activity component will not be affected.

Safeguards before a sanction is imposed

The DWP say that sanctions are 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.

Mandatory Reconsiderations and appeal rights

The following decisions can be challenged under ESA by both routes.

Failure to attend WCA without good cause

Found not to have limited capability for work

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

Imposition of a sanction for failure to attend WFHRA without good

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

While you are waiting for a decision on a Mandatory Reconsideration request

You cannot be paid ESA during this time; but may wish to claim JSA if you are able. This can later be changed to ESA once an appeal is accepted.

While you're appealing

Whilst appealing a decision that you are capable of work, you may be able to claim ESA at the assessment rate or to claim JSA.

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

Compulsory work-related activity

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

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

Sanctions

A personal advisor can direct that you must undertake a specific work-related activity if it is listed in your action plan – although any activity that amounts to treatment should not be compulsory. Failure to carry out an activity as directed may result in your ESA being sanctioned.

The sanctions regime will be the same as that relating to work-focused interviews

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 usually 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

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.”

Work and ESA

Work which you can still do whilst claiming ESA includes:

- voluntary work;
- permitted work.
- 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;

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 £95.00. 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 housing benefit/council tax benefit disregard.

Current incapacity claimants

All existing incapacity benefit and income support claimants who are incapable of work will be subject to the work capability assessment (WCA) for ESA between March 2011 and March 2014.

In general, you will begin the conversion process on the scheduled review date for your personal capability assessment. This means that most claimants will already know, at least roughly, the date on which they should be assessed using the WCA. However the new regulations give the DWP the right to call anyone for transfer at any time, so there will be no legal grounds for challenging a decision to convert you earlier. The DWP state that some adjustments to conversion dates may need to be made in order to ensure a steady supply of claimants for conversion.

Claimants who do not have a review date, for example because they are exempt from the personal capability assessment will be assessed in the first 12 months of the conversion process.

Severe disablement allowance (SDA) claimants are likely to be converted last.

Claimants who receive national insurance credits only will not even begin to be migrated until after March 2014.

Claimants who reach pensionable age before the end of March 2014 will not be migrated to ESA, they will stay on their current benefits. The DWP say this is to avoid people having to make two changes of benefit in a short period of time.

In total, around 1.5 million claimants will go through the migration process, excluding credits only claimants, with an average of 11,000 cases a week being assessed once the programme is fully operational.

The intention is that when the entire process of conversion is completed, there will be no claimants left on incapacity related benefits other than ESA, with the exception of SDA claimants who are over pensionable age.

If you are a current incapacity benefit claimant, the first point at which you will know that you are about to be converted is when you receive a notice from the DWP informing you that you are to become subject to the work capability assessment.

If you have a very severe condition you may then be found eligible for ESA based simply on information already held by the DWP.

However, the majority of claimants will have to complete an ESA50 form and many will also have to have a medical assessment before a decision is made.

Once enough information has been collected, a decision maker will decide whether you qualify for ESA, and if so which group you will be placed in, or whether you have failed to meet the criteria set out in the WCA.

The actual date on which the change to your benefits happens, however, will not be the date of the decision but a date between two and four weeks later. The DWP call this a "safe date" or an "effective date". They say it is so that claimants can adapt to their new circumstances and so that continuity of payment can be maintained.

Claimants who were previously getting incapacity benefit or SDA will have their benefit converted to contribution-based ESA if they pass the WCA. Claimants who were getting income support will have their benefit converted to income-related ESA if they pass the WCA.

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	56.25
Aged 25 or over	71.00

Main phase rates contribution based

Basic allowance	71.00
WRA component	28.15
Support component	34.05

Main phase rates income-related

Basic allowance	71.00
Couple, both under 18, up to	84.95
One or both 18 or over, up to	111.45

WRA component	28.15
Support component	34.05

Premiums – assessment and main phase

Carer's	32.60
Severe disability	58.20
Enhanced disability (single)	14.80
Enhanced disability (couple)	21.30
Pensioner premium (single)	71.70
Pensioner premium (couple)	106.45

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.