

## **New Style Employment and Support Allowance Only claims**

### **Definition of New Style Employment and Support Allowance (ESA)**

New Style ESA is paid to people with limited capability for work because of illness or disability.

### **Entitlement to New Style Employment and Support Allowance**

Claimants can get New Style ESA if they have worked and paid enough National Insurance contributions. This is usually in the 2 tax years before the current benefit year. (A benefit year starts on the first Sunday in January and ends on the first Saturday in the following year).

The contribution conditions for New Style ESA are similar to those that apply to New Style Jobseeker's Allowance, except that the Class 2 National Insurance (NI) contributions paid by self-employed people count for New Style ESA as well as the Class 1 NI contributions paid by employees.

For more information about this, see links to New Style ESA contribution conditions. National Insurance Credits ([link to gov.uk page](#)) can count for part of this. Someone cannot get New Style ESA if they have never worked.

### **Key features of New Style ESA**

- New Style ESA is payable even where claimants do not qualify for Universal Credit, but satisfy the conditions of entitlement for contribution-based ESA. For example, claimants who don't qualify for Universal Credit, because they have capital over £16,000 might still qualify for New Style ESA.
- If applying for a New Style benefit only, and no application to Universal Credit is made, existing Housing Benefit and Tax Credit awards can continue. This might be particularly important for Tax Credit claimants who have more than £16,000 in savings who would not be eligible for Universal Credit
- They are not entitled to New Style ESA if they work over 16 hours a week. (see claimants who work and receive ESA)
- A claimant's earnings and any income from Pensions and Medical Insurance may impact the amount of New Style ESA the claimant receives.
- Entitlement to New Style ESA is normally limited to 365 days in any one period of limited capability for work. However, the limit does not apply for any period where they have limited capability for work and work-related activity and placed in the Support Group.
- Unlike Universal Credit, New Style ESA counts towards taxable income.
- Claimants who want to apply for New Style ESA Only will have to do so separately to Universal Credit. Claimants don't need to have made a claim to Universal Credit in order to make a claim to New Style ESA.

- New Style ESA will not be treated as a source of income for Universal Credit purposes if it is not awarded and paid.
- Claimants will be credited with a Class 1 National Insurance (NI) credit. This is true even when they are entitled to Universal Credit (Dual Claim) for which a Class 3 NI credit is normally awarded. Class 1 NI credits count towards the State Pension, Bereavement Benefits and contribution-based benefits, whereas Class 3 NI credits only count towards the State Pension and Bereavement Benefits.
- Class 1 NI credits are also credited when a claimant meets the entitlement conditions for a New Style award but no benefit is being paid - for example, if an occupational pension has reduced their entitlement to nil. However, no NI contribution will be credited if the claimant's award of New Style benefit has been sanctioned.
- New Style benefits are delivered on the JSA Payment system (JSAPS), while Universal Credit is delivered on the Universal Credit system
- A claimant can choose to claim New Style ESA on its own (whether or not they would be entitled to Universal Credit).
- New Style ESA is paid fortnightly in arrears according to the claimant's National Insurance number in the same way as the old style ESA award.

### **Claimants who work and receive New Style ESA**

A claimant who is entitled to New Style ESA who does any work (other than voluntary work) will normally be treated as not having limited capability for work and will lose their whole entitlement accordingly. However, there are some types of work that New Style ESA claimants can do without losing their benefit entitlement and is known more commonly as permitted work.

New Style ESA claimants may undertake permitted work for up to 16 hours per week and receive earnings up to £140.00 per week. Before starting any Permitted Work it must be agreed in advance. As long as their net earnings do not exceed the Permitted Work earnings limit of £140, the earnings are fully disregarded. However, the claimant must continue to report it.

There are 2 categories of permitted work. See Permitted Work guidance for more details.

If a claimant starts part-time work or self-employment of less than 16 hours per week on average, they are required to self-report earnings and hours of work for their New Style ESA claim.

New Style ESA retains the old style ESA earnings, pension and payment rules which are different from those for Universal Credit.

If a New Style ESA claimant starts work which is other than permitted work, or starts work which is permitted work but fails to follow the appropriate rules, their award of ESA will terminate.

A claimant who has only claimed New Style ESA may wish to claim Universal Credit in the above circumstances.

### **Claimant Commitment**

Like Universal Credit, it is a condition of entitlement for New Style ESA that the claimant accepts a claimant commitment, although exceptions can be made if:

- the claimant lacks the capacity to accept the claimant commitment
- there are exceptional circumstances for which it would be unreasonable to expect the person to accept a claimant commitment

The claimant commitment explains what the claimant must do to meet their work-related requirements and the consequences of not doing so.

These requirements can be suspended for 13 weeks for victims of domestic abuse. See Domestic violence and abuse.

Other exceptions to requirements being imposed include circumstances where a claimant is temporarily sick or recently bereaved. These exceptions are the same as for Universal Credit. See Claimant Commitment hub.

The sanctions for New Style ESA are similar to those for Universal Credit although there are some differences in the number of sanction levels for each benefit.

Any failure to follow the work-related requirements for New Style ESA can result in a benefit sanction unless good reason for the failure is shown. Legacy systems do not currently allow for New Style ESA claimants to be sanctioned if they fail to meet their claimant commitment; therefore, no further action can be taken and the claimants must continue to be paid.

Appropriate action will be applied to non-compliant NSESA claims as soon systems allow, therefore no failure to undertake a work-related requirement or to attend (FTA) action is to be taken.

### **Work-related requirements of New Style ESA**

The work-related requirements for New Style ESA claimants are the same as those for Universal Credit claimants who have limited capability for work (LCW) or limited capability for work and work-related activity (LCWRA). Like Universal Credit, some claimants will not have any work-related requirements.

The details of what a claimant must do to meet their work-related requirements (and the consequences of not doing so) are set out in their claimant commitment which the claimant must accept as a condition of entitlement.

A Work Capability Assessment (WCA) must be completed for New Style ESA claimants in exactly the same way as for Universal Credit.

For New style ESA purposes, claimants in the assessment phased are (depending on the circumstances) treated as having LCW (and may therefore be entitled to benefit where appropriate) until the WCA is completed, as long as they

provide medical evidence. Claimants can also be treated as having LCW because of their health condition (for example terminally ill, waiting for/receiving/recovering from chemotherapy or radiotherapy) and will not have to provide fit notes or attend a WCA.

For other claimants, once the WCA is completed, a decision maker will decide if the claimant has LCW or LCWRA and if they are entitled to New Style ESA. New Style ESA ends if the claimant is found fit for work.

If a claimant makes a repeat claim for New Style ESA having been previously found fit for work at a WCA, New Style ESA will only be paid if the claimant has developed a new condition or an existing condition has deteriorated significantly.

### **New Style ESA – effect on waiting days**

Seven waiting days may be applied at the start of an award of New Style ESA unless the claim is made within 12 weeks of the termination of a prescribed working-age benefit, or if no other exceptions apply. NS ESA claims for COVID-19 do not have to serve waiting days. Any past or current entitlement to Universal Credit has no effect on the application of waiting days in New Style ESA.