

New Style Employment and Support Allowance only claims: Guidance

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Introduction

New Style Employment and Support Allowance (ESA) is paid to claimants:

- with limited capability for work due to a health condition or disability
- who are pregnant and not entitled to Maternity Allowance or Statutory Maternity Pay

Claimants can receive 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 (the 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 contributions paid by self-employed people count for New Style ESA as well as the Class 1 contributions paid by employees.

For more information, see New Style ESA contribution conditions. [National Insurance Credits](#) can also count for part of this. People who have never worked cannot get New Style ESA.

Persons who are eligible for New Style ESA can claim:

- New Style ESA only
- New Style ESA (in payment or with an underlying entitlement) and Universal Credit (dual claim)
- Universal Credit only

For dual New Style ESA and Universal Credit claims, see New Style Employment and Support Allowance and Universal Credit dual claims: Spotlight.

This guidance should be used alongside New Style Employment and Support Allowance only: Spotlight.

Statutory Sick Pay

Claimants who are receiving Statutory Sick Pay (SSP) are not entitled to New Style ESA until SSP expires.

The claimant must provide an SSP1 from their employers to confirm the reason why SSP has stopped and final date of payment.

Advanced claims for New Style ESA can be made from 3 months before SSP ends.

Employer's sick pay

Claimants receiving employer's sick pay may be entitled to receive New Style ESA at the same time.

Employer's sick pay is not treated as earnings and is not taken into account as part of New Style ESA.

Key features of New Style Employment and Support Allowance

Key features of New Style ESA are:

- New Style ESA is payable where claimants do not qualify for Universal Credit but satisfy the conditions of entitlement for contribution-based ESA (for example, claimants who do not qualify for Universal Credit because they have capital over £16,000 might still qualify for New Style ESA)
- when applying for a New Style benefit only, and no application to Universal Credit is made, existing Housing Benefit awards can continue
- if a claimant was previously receiving New Style Jobseeker's Allowance and was sick up to 13 weeks, the award will begin from the first day of sickness and not from the start of the New Style ESA claim
- people working over 16 hours per week not entitled to New Style ESA (see 'Claimants who work and receive New Style Employment and Support Allowance' below)
- a claimant's earnings and any income from Pensions and certain Health Insurances may impact the amount of New Style ESA the claimant receives (for example, if receiving a pension or health insurance, the first £85 per week is disregarded)

- 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 a claimant has limited capability for work and work-related activity and is placed in the Support Group
- unlike Universal Credit, New Style ESA counts towards taxable income
- New Style ESA and Universal Credit are 2 individual benefits and applications are made separately, claimants do not need to have made a claim for Universal Credit in order to make a claim for 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 credit even when they are also entitled to Universal Credit (dual claim) for which a Class 3 credit is normally awarded (Class 1 National Insurance 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 National Insurance credits are also awarded when a claimant meets the entitlement conditions for a New Style ESA only award but no benefit is being paid (for example, if an occupational pension has reduced entitlement to nil), in this case the New Style ESA claim will not be closed as there is underlying entitlement (however, no National Insurance contribution will be credited if the claimant's award of New Style ESA only has been sanctioned). Please note that this does not apply in the case of a dual claim
- New Style benefits are delivered on the JSA Payment system (JSAPS), while Universal Credit is delivered on the Universal Credit service
- 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 legacy ESA award

Claimants who work and receive New Style Employment and Support Allowance

A claimant who is entitled to New Style ESA and who is working (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. This is known as Permitted Work.

New Style ESA claimants can engage in Permitted Work for up to 16 hours a week and receive earnings up to the Permitted Work earnings limit a week.

The claimant must contact the service centre to obtain agreement before starting any Permitted Work, although in some circumstances agreement can be obtained retrospectively.

As long as net earnings do not exceed the Permitted Work earnings limit, these are fully disregarded. However, the claimant must continue to report earnings.

There are 2 categories of Permitted Work. See Permitted Work guidance for more information and the [Benefit Up-rating Schedule](#) for the Permitted Work earnings limit, which is updated annually.

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 other than Permitted Work or starts work which is Permitted Work but fails to follow the appropriate rules, the award of ESA will terminate. This applies to work of over 16 hours.

A claimant who has claimed New Style ESA only may wish to claim Universal Credit in the above circumstances if this has not already been considered previously.

Work Capability Assessment

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

For New Style ESA purposes and depending on the circumstances, claimants in the assessment phase will be treated as having limited capability for work (LCW) and may therefore be entitled to benefit (where appropriate) until the WCA is completed and as long as they provide medical evidence.

Claimants are required to attend Flexible Intervention ESA mandatory appointments following the new claim and are expected to undertake work preparation activity until the WCA has been completed.

Claimants can also be treated as having LCW because of their health condition (for example, being terminally ill, receiving or 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 limited capability for work and work-related activity (LCWRA) and if they are entitled to New Style ESA.

Following the WCA, if the claimant has been assessed as:

- LCW: they will also be required to attend subsequent Flexible Intervention ESA mandatory appointments
- LCWRA: they will be entitled to New Style ESA payments indefinitely subject to their next WCA and normal non-WCA entitlement conditions
- fit for work: New Style ESA will stop and they will be signposted to claim either New Style JSA or Universal Credit if further financial assistance is required

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.

Exceptions

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

If a claimant is pregnant and makes a claim for New Style ESA because they are not entitled to Maternity Allowance or Statutory Maternity Pay, they will not be required to attend a WCA.

Work-related requirements

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 they must accept as a condition of entitlement.

For more information, see the [Claimant Commitment hub](#).

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.

For more information, see [New Style Benefit Sanctions](#).

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.

Payment Pending Appeal

Payment Pending Appeal is when a claimant is found fit for work following a WCA and appeals against the decision. They will continue to receive New Style ESA at the LCW rate if they have provided a Statement of Fitness for work declaring they are not fit for work. See New Style Employment and Support Allowance only claims: [Spotlight](#).

Cost of Living Payment

Claimants who are receiving New Style ESA only are not entitled to a Cost of Living Payment unless they are also receiving Universal Credit (dual claim).

New Style Employment and Support Allowance appeal outcomes

Work Capability decisions from a decision maker must be added to the claimant's Universal Credit claim.

Successful New Style Employment and Support Allowance appeals

For dual claims only, if a claimant appeals against a New Style ESA outcome and that appeal is successful, a DWP appeal or Mandatory Reconsideration Outcome notification will be sent to the Universal Credit colleagues inbox: DWP UC Full Service.

The WCA decision should be amended to reflect the outcome where required and any under or overpayment action taken where appropriate.

New Style ESA processing staff will record on JSAPS that the notification has been sent to Universal Credit.