

# Changes to contribution-based Employment and Support Allowance

Welfare Reform Act 2012

May 2012

# Welfare Reform Act: Changes to contribution based Employment and Support Allowance

## Changes to Employment and Support Allowance

### How is Employment and Support Allowance changing?

The Welfare Reform Act 2012 included two changes to contribution-based Employment and Support Allowance which took effect on 30 April 2012.

These changes were:

To limit the amount of time people can receive contribution-based Employment and Support Allowance to 365 days if the claimant is in the Work Related Activity Group or assessment phase. The 365 day time-limit does not include any time spent in the Support Group or the time spent in the assessment phase if they moved from the assessment phase into the Support Group at the start of their claim.

To remove the special contribution conditions that allowed some young people to qualify for contribution-based Employment and Support Allowance without paying National Insurance contributions.

The 104 week linking rule has also been abolished by separate regulations.

### Why is contribution-based Employment and Support Allowance being time limited?

Employment and Support Allowance for people in the Work Related Activity Group was never intended to be a benefit for the long term, but an interim measure for those who are expected to move into work.

The Government expects people on benefit to take up the help and support available through Jobcentre Plus or the Work Programme to move off benefit and into work.

Introducing a limit on the length of time people in the Work Related Activity Group can claim contribution-based Employment and Support Allowance is more consistent with the rules for contribution-based Jobseeker's Allowance,

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which has a time-limit of six months, whilst recognising the different nature of Employment and Support Allowance recipients and the purpose of the benefit.

Those with limited or no means of supporting themselves and those who are most severely affected by their medical conditions will continue to receive Employment and Support Allowance support even after 365 days. If claimants are affected by the introduction of a time-limit they may be able to receive income-related Employment and Support Allowance.

### **Why have the Employment and Support Allowance 'Youth' provisions been abolished?**

Under the Employment and Support Allowance 'Youth' provisions, young people could qualify for contribution-based Employment and Support Allowance even though they had never paid any National Insurance contributions. The Government believes that was unfair to other groups and is no longer acceptable as the Government seeks to modernise the welfare system.

No such concession exists in Employment and Support Allowance for any other age group. Neither does any other contribution-based benefit have similar arrangements.

Young people will still be able to claim income-related Employment and Support Allowance if they are entitled to do so.

### **How will the time limiting of contribution-based Employment and Support Allowance affect claimants?**

People not in the Support Group that have received contribution-based Employment and Support Allowance for 365 days will have their entitlement to contribution-based benefit exhausted. Depending on their circumstances they may continue to receive income-related Employment and Support Allowance.

Time on contribution-based Employment and Support Allowance before the legislation came into force will still count towards the time limit. Claimants not in the Support Group who have already received 365 days contribution-based Employment and Support Allowance when the legislation came into force will immediately lose entitlement.

Any time claimants have spent in the Support Group will not count towards the 365 days, nor will their time in the assessment phase if they moved directly from the assessment phase into the Support Group.

If a claimant moved from the assessment phase into the Work Related Activity Group the time in the assessment phase will count towards the time limit. The 365 days count will also include any days spent in the assessment phase during an appeal.

### **How will the abolition of Employment and Support Allowance 'Youth' affect claimants?**

All new claims for Employment and Support Allowance will be subject to the same National Insurance contributory conditions as all other claimants.

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Claimants who are currently receiving Employment and Support Allowance 'Youth' who are not in the Support Group will be subject to the time-limiting provisions, and will cease to receive contribution-based Employment and Support Allowance after 365 days.

If claimants have already received contribution-based Employment and Support Allowance for 365 days when this change came into force and they are not in the Support Group they will immediately lose entitlement. However, dependent on any income and savings they may become entitled to income-related Employment and Support Allowance instead. Claimants will not have to make a new claim, but we may have to ask them for more information. We will write to claimants before their entitlement ends to tell them what to do to be considered for this.

Claimants currently receiving Employment and Support Allowance in the Support Group after qualifying under the youth provisions will not have their entitlement time limited.

### **What happens if a claimant has received 365 days contribution-based Employment and Support Allowance and is still in the Assessment Phase?**

Any time spent in the Assessment Phase will count towards the 365 day time-limit unless it is immediately followed by entitlement to the support component. This means that the 365 day time-limit will include claims that link to a previous claim or claims that use the same National Insurance contributions. It is therefore possible to reach the 365 day limit of contribution-based Employment and Support Allowance whilst still in the Assessment Phase. If this happens, a claimant's entitlement to contribution-based Employment and Support Allowance will stop. If they are entitled to income-related Employment and Support Allowance they will continue to receive this even if their contribution-based Employment and Support Allowance ends. If they are not entitled to income-related Employment and Support Allowance they will be awarded credits in order to maintain their National Insurance contributions record and be able to access the support available through the Work Programme as long as they continue to have limited capability for work.

If a decision is made on the Work Capability Assessment after a claimant has already received 365 days of contribution-based Employment and Support Allowance and their entitlement has therefore already ceased and they are not placed in the Support Group, they may be entitled to arrears of the Work Related Activity Component for a period before their contribution-based Employment and Support Allowance terminated. In this situation the arrears will be paid as necessary but then they will not be entitled to any further contribution-based Employment and Support Allowance without re-qualifying.

## **What happens if a claimant is in the Assessment Phase, their Employment and Support Allowance ends because of time limiting, and they are then assessed as eligible for the Support Group?**

Any time spent in the Assessment Phase does not count towards the 365 day time-limit if this is immediately followed by entitlement to the support component.

When a claimant moves into the Support Group we will pay them contribution-based Employment and Support Allowance from the date this was decided, including payment of the support component. We will also pay them arrears for the time they were in the Assessment Phase and were not receiving contribution-based Employment and Support Allowance because their benefit was time-limited, this will include any arrears associated with the support component as necessary.

When the claimant moves into the Support Group the time they spent in the Assessment Phase immediately before placement in the Support Group will not count towards the 365 days time-limit (although previous periods spent in the Assessment Phase may still count). If they move out of the Support Group in the future and are placed in the Work Related Activity Group, the 365 days will re-start from the point it previously stopped.

## **Benefits and Alternative Support**

### **What other benefits can people claim when their contribution-based Employment and Support Allowance ends?**

Only claimants who have alternative resources available to them will not qualify for income-related Employment and Support Allowance. Alternative resources could be things like savings, private pensions, works pensions etc. If a claimant believes they do not have other sources of income they should submit a claim for income-related benefit.

People who do not qualify for income-related Employment and Support Allowance after their time-limited contribution-based Employment and Support Allowance ends will still be able to receive National Insurance credits so they can maintain their National Insurance contribution record and access the support offered from the Work Programme. Depending on their circumstances they may also be able to claim other benefits, however, any benefit entitlement will depend on individual circumstances.

The [Benefits Adviser Online](#) can be used to check entitlement to other benefits.

## How does a claimant qualify for income-related Employment and Support Allowance?

People receiving contribution-based Employment and Support Allowance can ask to be considered for income-related Employment and Support Allowance at any time. Income-related Employment and Support Allowance is a means tested benefit based on the income they have. People may get income-related Employment and Support Allowance if, amongst other things:

- their income is below a certain level. This depends on their individual circumstances
- they have savings and investments of less than £16,000
- they must be resident in Great Britain. Great Britain means England, Scotland and Wales and generally the adjacent islands such as Lundy, Orkney, Shetland, the Scillies, and the Isle of Wight
- their partner (if they have one) works for less than 24 hours a week

Some forms of income and savings may be disregarded when calculating entitlement to income-related Employment and Support Allowance.

## Will this change affect claimants' other benefits?

This change will only affect contribution-based Employment and Support Allowance for people who are not in the Support Group.

People will keep any entitlement to Disability Living Allowance, provided they continue to meet the qualifying conditions.

Where people are entitled to Carer's Allowance but this has not been in payment because contribution-based Employment and Support Allowance was in payment at the same or higher amount, Carer's Allowance should become payable as soon as entitlement to contribution-based Employment and Support Allowance terminates. However, any benefit entitlement will depend on individual circumstances. People should notify Carer's Allowance Unit of any change of circumstances. Their address is:

Carer's Allowance Unit

Palatine House

Lancaster Road

Preston

PR1 1HB

Telephone 0845 608 4321 or textphone: 0845 604 5312.

You can contact these numbers between 8.30 am and 5.00 pm Monday to Thursday, and between 8.30am and 4.30pm on Fridays.

Housing Benefit and/or Council Tax Benefit may be affected if someone's benefit changes as the amount of help they receive for rent and/or council tax will depend on their new level of income. Claimants should inform their local council of any changes that could affect their Housing Benefit and Council Tax Benefit.

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Entitlement to working tax credits and child tax credits may also continue, depending on an individual's circumstances at the time and new levels of income. People must tell HM Revenue & Customs if they are receiving tax credits and any of their circumstances change. This includes any changes to their partner's circumstances, if they have a partner.

We have amended regulations so that, if parts of your award of tax credits are dependent upon receiving contribution-based Employment and Support Allowance, you may still be able to qualify if you remain entitled to National Insurance credits on the basis of having limited capability for work after your entitlement to contribution-based Employment and Support Allowance has terminated under the time limit.

### **Why have some claimants received a letter explaining that they can claim either Pension Credit or Employment and Support Allowance?**

There will be a small proportion of male claimants aged between 60 and 64 who may have received a letter regarding eligibility for Pension Credit asking them if they wish to be assessed for income related Employment and Support Allowance. These claimants can receive contribution-based Employment and Support Allowance and Pension Credit at the same time but cannot claim income-related Employment and Support Allowance and Pension Credit at the same time. If claimants are unsure which to claim, they should contact Jobcentre Plus or the Pension Service for more information.

### **If a claimant receives National Insurance credits only, will they still need to attend medical assessments?**

Claimants can receive National Insurance credits awarded on the grounds of limited capability for work following exhaustion of contribution-based Employment and Support Allowance entitlement. This will allow them to maintain their National Insurance contribution record. Claimants will still be required to complete a limited capability for work questionnaire (ESA50) and participate in the Work Capability Assessment where necessary.

### **If someone has claimed contribution-based Employment and Support Allowance for 365 days will they be able to re-qualify?**

Claimants may be able to re-qualify for a further 365 days of Employment and Support Allowance if they leave benefit for more than 12 weeks and, on a repeat claim, they meet the National Insurance conditions in full.

Contribution-based Employment and Support Allowance is not time limited for claimants in the Support Group. If someone's contribution-based Employment and Support Allowance ceases as a result of time limiting and their health deteriorates to such a degree that they move to the Support Group, then, as long as they have continued to have limited capability for work, they will, on a repeat claim, automatically qualify for a further award of contribution-based

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Employment and Support Allowance. This award will continue for as long as they remain in the Support Group. If they are later placed in the Work Related Activity Group, their award will end, unless they re-qualify using new National Insurance contributions.

### **What are you doing to support vulnerable claimants?**

Only claimants who have alternative resources available to them will not qualify for income-related Employment and Support Allowance.

We have designed the process to support vulnerable claimants. The process includes consideration of additional telephone contact and safeguarding visits for vulnerable claimants. People affected by the changes to contribution-based Employment and Support Allowance will also have access to our existing face-to-face services and we will make reasonable adjustments as appropriate.

## Changes to health conditions

### **Can claimants appeal a decision to place them in the Work Related Activity Group?**

A valid appeal can generally only be made within one month of receiving a decision. An appeal against the decision that a claimant is in the Work Related Activity Group, would therefore generally need to be made within one month of that decision being received. If an appeal is submitted outside the time limit, there must be special reasons for doing so and a decision will be made as to whether to accept the appeal as valid.

If a claimant wished to appeal, the appeal must be in writing. Claimants can fill in the form in leaflet **GL24** "If you think our decision is wrong" or can write to us. They must tell us which decision their appeal is against and give their reasons for the appeal.

People can get a copy of leaflet **GL24** "If you think our decision is wrong" from:

- Jobcentre Plus,
- our website at [www.direct.gov.uk](http://www.direct.gov.uk) by searching "GL24" and following the links
- an advice centre, like the Citizens Advice Bureau.

The appeal should be sent to the address at the top of the original decision letter. When we receive a valid appeal, we will look at the decision again. If we cannot change the decision, the appeal will be heard by an independent appeal tribunal. We will contact the claimant during this process to let them know what happens next.

### **How does time limiting affect me if I am appealing?**

Any time spent in the Assessment Phase will count towards the 365 day time-limit unless it is immediately followed by the support component.



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If you are appealing a decision that you are fit for work you may receive Employment and Support Allowance at the Assessment phase rate and your contribution-based Employment and Support Allowance will be subject to time-limiting. You will also be subject to time-limiting if you are appealing against a decision to place you in the Work Related Activity Group.

If you move into the Support Group following your appeal, your Employment and Support Allowance will not be time-limited. This means the time you spent appealing, and the Assessment Phase immediately before this, will not count towards your 365 day time-limit if you move out of the Support Group in the future. We will also pay you arrears for the time you were appealing, including any time that you were not receiving contribution-based Employment and Support Allowance because it was time-limited.

### **What should a claimant do if their illness or disability gets worse or if they get a new illness or disability?**

If someone's illness or disability has deteriorated, and they feel they would meet the criteria for the Support Group, they will need to contact the office that normally deals with their benefit.

Depending on the claimants circumstances they will either undertake a review of entitlement or ask them to make a new claim. The claimant may be asked to provide medical evidence and may need to attend a new Work Capability Assessment.

A new decision on entitlement will be made and this may result in an award of Employment and Support Allowance and the claimant will be placed in either the Work Related Activity Group or Support Group, it could also result in a disallowance and they could be found fit for work.

### **How will this change affect claimants who have a fluctuating condition and move between the Work Related Activity Group and Support Group?**

During a claim for contribution-based Employment and Support Allowance there will be a limit of 365 days benefit for those not in the Support Group. Time spent in the assessment phase will count towards the 365 day time limit unless it is immediately followed by entitlement to the support component. Any time spent in the Support Group will not count towards the 365 day time-limit. This means a claimant will be able to get contribution-based Employment and Support Allowance for up to 365 days in the Work Related Activity Group and at any time whilst in the Support Group. If someone moves into the Support Group from the Work Related Activity Group they will be paid contribution-based benefit, even if they have already had 365 days in the Work Related Activity Group.

Claimants may also qualify for income-related Employment and Support Allowance.

# Changes to Employment and Support Allowance linking rules

## How are the Employment and Support Allowance linking rules being changed?

Previously, claimants could have their rate of Employment and Support Allowance protected for up to 104 weeks when they left benefit to take up work or training. Because of time limiting this rule would mean that some people would be unable to reclaim contribution-based Employment and Support Allowance despite having worked and paid National Insurance contributions. Linked periods of capability for work used the same relevant income tax years. Therefore, under the linking rules, a claimant would be unable to use other tax years to qualify for a further award of contribution-based Employment and Support Allowance. The 104 week linking rule has therefore been abolished.

## What does the abolition of the 104 week linking rule mean for claimants?

Previously, where someone left Employment and Support Allowance and started work or training within one month their benefit would be reinstated at the same rate as previously paid if they returned to Employment and Support Allowance within 104 weeks.

Unfortunately, the 104 week linking rule would prevent some people who had left benefit and paid National Insurance contributions, for example by working, from re-qualifying for a further 365 days of contribution-based Employment and Support Allowance. The 104 week linking rule has therefore been abolished.

The 12 week linking rule which protects claimants' benefit for breaks of up to 12 weeks is not affected by this change.

Claimant's entitlement to benefit will depend upon their circumstances and their National Insurance contribution record. They should notify us of any change of circumstances even if it is just to update us with their new telephone number.

## Is the 12 week linking rule affected by these changes?

The 12 week linking rule which protects claimants' benefit for breaks of up to 12 weeks is not affected by this change. This means that someone who becomes sick again within 12 weeks of leaving Employment and Support Allowance will need to re-claim Employment and Support Allowance, rather than Statutory Sick Pay, and if subject to the time limit will receive any balance of their 365 day entitlement.

# Changes to Employment and Support Allowance and Back to Work Support

## How will this change affect a claimant's back to work support?

All Employment and Support Allowance claimants over 18, including those receiving contribution-based Employment and Support Allowance, have access to a range of employment support including the Work Programme. If payment of a claimant's benefit comes to an end due to time-limiting they can continue to access support. If already on the Work Programme they can continue to receive support from the provider as a National Insurance credits only case if they have no entitlement to income-related Employment and Support Allowance.

## Claimants living outside Great Britain

### How will claimants living in Northern Ireland be affected by these changes?

Responsibility for Employment and Support Allowance is devolved to the Northern Ireland Assembly. Claimants living in Northern Ireland will need to contact the office in Northern Ireland that normally deals with their benefit.

### Will claimants living abroad be affected by these changes?

Claimants living abroad and receiving contribution-based Employment and Support Allowance will be affected by these changes. More information for claimants living abroad is available at: [www.dwp.gov.uk/international/](http://www.dwp.gov.uk/international/)

Additional information for claimants can be found at [www.direct.gov.uk](http://www.direct.gov.uk) and on the DWP adviser site at [www.dwp.gov.uk/adviser/](http://www.dwp.gov.uk/adviser/)