

Derbyshire Welfare Rights Service

Employment and Support Allowance (ESA) – A Short Guide

ESA is a benefit which is payable if you are 16 or over but under the age for getting your State Retirement Pension, and you are unable to work owing to illness or disability (physical, mental or both).

You can claim if you are temporarily ill but going back to work, or if you are long-term sick.

If you get ESA you can do some 'permitted' work (see below) but if you exceed what is allowed you will lose ESA and will be regarded as fit for work.

There are two types of ESA:

Contribution-Based ESA (CESA) – This is payable if you have been working and you have paid sufficient National Insurance (NI), as an employee or as self-employed, over a set number of recent tax years.

Your other income - and your savings - do not affect CESA – except if you have an occupational or personal pension, in which case your CESA will be reduced if the pension exceeds £85 per week or you receive expenses as a councillor that exceed £140.00 weekly.

If your employer continues to pay you sick pay (not Statutory Sick Pay – see below) while you are ill, this does not affect CESA.

You can claim CESA even now that Universal Credit is in place for new claims – under the UC system it is referred to as 'new-style' ESA. It is a separate benefit from UC. You can claim UC to top up new-style ESA if your income is low.

Some severely disabled claimants can't claim Universal Credit or new-style ESA and can still claim CESA and Income-Related ESA – see below.

There is a time limit of 365 days on payment of CESA – but ONLY if you are in the 'Work-Related Activity' Group. See below for more details.

There is no time limit on the Support Group or on Income-Related ESA– see below for what the ESA groups are.

Income-Related ESA (IRESA) – NB new claims for IRESA may now only be made by some severely disabled claimants – see below

This is a 'means-tested' top-up benefit which you may be able to claim if you haven't paid enough National Insurance to get CESA, or as a top-up to CESA if your income is low.

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IRESA is affected by other income you may have (including CESA), and by any capital (savings and other assets, but not the home you live in) over £6000.

If you have over £16000 in capital you cannot get IRESA at all.

If you have a partner, their capital also counts towards this limit. If s/he works, his/her earnings will affect your IRESA and if s/he earns too much or works over 24 hours a week, you cannot get IRESA.

ESA and Universal Credit

Over the next few years, six 'means tested' benefits including Income-Related ESA will be replaced by Universal Credit. The UC 'full service' is in place across Derbyshire for new claims.

NB: if you claim Universal Credit it will not only replace IRESA you claim but also benefits for your family such as Child Tax Credit, and any Housing Benefit.

If you have an existing IRESA claim it may continue for some time but it will be moved over to Universal Credit between November 2020 and September 2024. See our leaflet 'Universal Credit – what is happening now and in the future', or contact the Helpline for advice.

You can still make a new claim for IRESA if you are a disabled person who receives a 'severe disability premium' (SDP) as part of your benefit.

You can't claim Universal Credit after 16/1/19 if you receive a 'severe disability premium' (SDP) as part of a claim for:

- Income Support
- Income-Based Jobseeker's Allowance
- Income-Related Employment and Support Allowance
- Housing Benefit

This also applies if you were entitled to benefit with an SDP up to one month before you make a new claim and your old benefit award has stopped but you still satisfy the SDP rules.

What is the severe disability premium?

If you are single, you qualify for the SDP if:

- you receive a 'qualifying' (disability) benefit such as:
 - Attendance Allowance
 - Disability Living Allowance (at the middle or higher rate for personal care)
 - Personal Independence Payment (at the 'standard' or 'enhanced' rate for daily living)
 - Armed Forces Independence Payment
 - Constant Attendance Allowance (part of the Industrial Injuries benefits scheme)

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- Exceptionally Severe Disablement Allowance (part of the industrial injuries scheme) - or the equivalent war pension
- **and** you don't have a 'non-dependant' (a grown-up member of your family) living with you – but that person won't affect your claim if they too are disabled and on a qualifying benefit, or if they are separately liable to pay for the accommodation (they are joint tenants with you, for instance)
- **and** nobody is paid a Carer's Allowance or the 'carer element' of Universal Credit for looking after you.

If you are part of a couple, SDP is payable where all of these conditions are met:

- You both receive a qualifying benefit
- **and** you don't have a 'non-dependant' (a grown-up member of your family) living with you but that person won't affect your claim if they too are disabled and on a qualifying benefit, or if they are separately liable to pay for the accommodation (they are joint tenants with you, for instance)
- **and** nobody is paid a Carer's Allowance or the 'carer element' of Universal Credit for looking after either of you

or one of you gets a qualifying benefit and the other is certified – or treated as certified – as severely sight-impaired or blind

or someone is paid a Carer's Allowance or the 'carer element' of Universal Credit for looking after only one of you

How can I tell if I get an SDP in my benefit?

Any letters from the DWP which show how your benefit is made up will include a sum of £66.95 a week (one SDP) or £133.90 a week (two SDPs) as part of your benefit assessment. Next to the figures it will usually say 'because you/your partner are severely disabled'.

If you are affected by this rule it also means that you may be able to claim other benefits such as Child Tax Credit if you have children and Housing Benefit if you are paying rent.

This also affects which type of CESA you may claim and the form on which you claim it – see information about claiming below.

Seek advice, as the rules are complicated and will change again on 27/1/2021.

Statutory Sick Pay (SSP) for employees

If you are an employee, you will usually get SSP if you are off work. This lasts for 28 weeks. You cannot claim ESA until your SSP period is at an end. You may be able to get either Universal Credit or Income Support (only if the above rule about the SDP applies) to top up your SSP.

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Your employer should send you an SSP1 form if you have been sick for more than 23 weeks, and you can use this to support your ESA claim. If you do not get an SSP1, don't delay making a claim, and seek advice.

Self-Employed?

If you are self-employed you cannot get SSP - claim CESA/new-style ESA right away and seek advice to find out if you are eligible to claim Universal Credit or another top-up benefit.

What if I am unemployed and I fall ill?

If you are on Jobseeker's Allowance and you become too ill to work, you may usually remain on Jobseeker's Allowance for a maximum of 13 weeks: seek advice as early on as you can.

If you are still unwell after this, your JSA claim will end. You may be able to claim:

- CESA/new-style ESA if you have paid sufficient National Insurance contributions
- Universal Credit as a top-up - or
- other benefits such as Income-Related ESA/Housing Benefit/Child Tax Credit if you are a disabled person who receives a 'severe disability premium' (SDP) as part of your benefit

Who can I claim for?

CESA/new-style ESA – You claim this for yourself, as it is based on your NI record. If you have a partner and s/he is also ill and unable to work, s/he may make a separate claim on his/her own NI record. You can get CESA even if your partner has other income, such as wages.

IRESA – NB see above – most people cannot now make a new claim for IRESA

If you are single, you can claim IRESA as a top-up to CESA, or an alternative to it if you have insufficient National Insurance contributions.

If you are a member of a couple, you claim for yourself and your partner – only one of you may claim, and remember that your claim is affected by any other income and savings you have and by working hours. If you have children, you will also need to find out about your entitlement to Child Benefit and Child Tax Credit. ESA does not include amounts for children.

Claiming

During the Coronavirus outbreak: please claim by telephone or online. You will not be required to hand in claim forms or attend the Jobcentre. DWP will contact you to further your claim.

Seek advice if you have problems claiming, especially if you can't claim by phone or online.

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To claim 'new-style ESA

Telephone: 0800 328 5644 (option 2)

Textphone: 0800 328 1344 (option 2)

NGT text relay (if you cannot hear or speak on the phone): 18001 then 0800 328 5644

Online claim: <https://www.apply-new-style-employment-support-allowance.dwp.gov.uk/eligibility-start>

If you already receive Universal Credit, contact your case manager on your UC Journal.

There is a printable form at

<https://www.gov.uk/government/publications/new-style-employment-and-support-allowance-esa-claim-form>

Under normal circumstances, you are usually required to attend initial meetings at the Jobcentre to give ID details and other details in support of your claim.

NB these requirements are suspended during the Coronavirus outbreak and interviews will take place by phone.

You can also make an online claim for Universal Credit to top up new-style ESA if your income is low.

If you do not wish to claim Universal Credit as well as new-style ESA, make this clear when you make your call.

If you can't claim Universal Credit because of the 'SDP' rule (see above), you can claim CESA and IRESA on form ESA1.

Printable IRESA form available from: <https://www.gov.uk/government/publications/employment-and-support-allowance-claim-form>

Alternatively, contact our Helpline to make a claim – we will send you the form; return it to us in the envelope provided and we will check it through, save a copy, and send the claim on for you.

The rest of this leaflet refers to ESA rules only. If you need to claim Universal Credit, see our UC leaflets on the Derbyshire County Council website, or call the Helpline.

You can ask for your ESA claim to be backdated for a maximum of three months, if you were entitled to ESA during that time. You will need a note from your GP to prove that you were unable to work for that period.

You may be sent additional forms if you need to claim Income-Related ESA.

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You will also need to complete a questionnaire (form ESA50) which asks about your illness or disability, and you will usually have a face-to-face meeting with a medical professional (see below).

If you are terminally ill: Your claim will be 'fast tracked' and none of the following (waiting days, the assessment phase, any need for a medical examination) applies.

You are regarded as terminally ill if you suffer from a progressive disease and your death may reasonably be expected within six months. If you have been given a form DS1500 by your GP or specialist, give this to the Jobcentre; they will otherwise ask your GP for confirmation of your situation.

You should also make a claim for Personal Independence Payment.

Providing 'fit notes' for ESA

You will be asked to get 'fit notes' from your GP to support your ESA claim to cover every day (after the first seven days of illness) for which you claim, including any backdated period. You could lose benefit for any days not covered.

Jobcentre Plus will tell you when fit notes are no longer needed – usually after you have passed the 'Work Capability Assessment' – see below.

Waiting Days

There is usually a seven-day waiting period before your ESA claim can begin. There are some exceptions, such as if you have ended a previous claim within the last thirteen weeks.

Work-Focused Interviews

As part of your claim you may be required to attend compulsory 'Work-Focused Interviews' at the Jobcentre, including a 'Health and Work Conversation' at the beginning of your claim. Failure to attend or take part in these meetings could lead to sanctions on your benefit. For a summary of WFI and your rights and responsibilities, see our leaflet 'Work-Related Activity' and Benefits Sanctions for ESA Claimants'.

If you receive 'new-style' ESA, what you are expected to do in terms of 'work-related activity' will be recorded in a document called the Claimant Commitment which is agreed between you and the Jobcentre. Seek advice if you think that your Claimant Commitment does not reflect your individual situation or does not take your health problems fully in to account.

The 'Assessment Phase' of ESA

Initially, you will receive a basic payment of ESA while your claim is assessed.

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This amount is £58.90 weekly if you are under 25, or £74.35 if you are 25 or over (2020/21 figures) if you are claiming CESA.

If you claim IRESA, the amount you receive will depend upon what the law says you need to live on, less any income and savings taken in to account.

The 'assessment period' should normally last for 13 weeks. It will come to an end when a Decision Maker (DM) decides if:

- You are fit for work (and should claim Jobseeker's Allowance rather than ESA)
- You have 'limited capability for work' and should get ESA as part of the 'Work-Related Activity Group'
- You have 'limited capability for work-related activities' and should get ESA as part of the 'Support Group'

You have the right to dispute decisions about your fitness for work or which group you are placed in – see our fact sheets 'Challenging a Benefit Decision' and 'Employment and Support Allowance – challenging a decision that you are fit for work'.

If you are still on Assessment Rate ESA after 13 weeks, seek advice.

How is the decision made?

The decision on your claim is made by a Decision Maker (DM) at the Department for Work and Pensions. It is based upon the details that you give, and in most cases also upon an interview with a health professional (someone employed by a private company working with the DWP) to assess your situation.

You will be asked to complete a new form, a 'limited capability for work questionnaire' (form ESA50) and to attend the medical examination.

This is sometimes referred to as the Work Capability Assessment (WCA).

ESA50 asks detailed questions about your physical and mental health.

It is important to fill this questionnaire in detail (don't just tick boxes) and show how your illness or disability affects your daily life. See our leaflet on 'Completing the ESA50 Form'.

It is also very important to send in any supporting medical evidence that you may have from any health professional(s) who are helping you. If there is sufficient evidence in the ESA50 and any supporting letters, the DM may be able to make a decision without needing to ask you to attend a medical examination (see below).

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Medical examination

You may be asked to attend a medical examination by a health professional working for the DWP. This could be at an examination centre, or you may be able to request a home visit if you cannot get to a centre and you have evidence from your GP to show that you cannot attend.

The health professional should ask you relevant questions about your physical and/or mental health, and may undertake a physical examination.

You may take someone with you if you need them to help or support you.

The health professional does not make the decision on your ESA entitlement, but the DM may rely considerably on their report, so it is very important to explain your full situation to the health professional.

NB - If you fail to attend a medical examination without good reason, your ESA claim could be stopped. If you cannot attend, tell your Jobcentre as soon as possible. Seek advice if your benefit is stopped.

The scoring system

Both the ESA50 and the medical examination are there to assess you in the light of 'work capability' criteria set in law: even if your own GP says you are not fit for work, it is possible to be found fit for work because the criteria, which are unique to ESA, are not met.

You must score 15 points in total to be found to have 'limited capability for work' and so get ESA.

If you are found to have 'limited capability for work' but not 'limited capability for work-related activities' you are placed in the Work-Related Activity Group for ESA – see below for details.

To be placed in the Support Group, you must also be found to have 'limited capability for work-related activities' – see below for details.

For the details of the ESA scoring system, see our leaflet *ESA – the Descriptors* which shows the criteria for 'limited capability for work' test and the 'limited capability for work-related activities' test.

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Exceptional Circumstances

Having trouble identifying 15 points to be placed in the Work Related Activity Group?

If you can't identify 15 points you might still be found to have limited capability for work if you have a 'specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or physical health of any person if you were found not to have a limited capability for work. The risk should be linked to the work, and any work considered should be work you could realistically do according to your education or skills (Regulation 29 of the ESA rules).

Can you easily score 15 points to be placed in the Work Related Activity Group but cannot identify a Support Group descriptor?

Regulation 35 of the ESA rules states that you might still be found to have limited capability for work related activity if you have a 'specific disease or bodily or mental disablement and consequently there would be a substantial risk to the mental or physical health of any person if you were found not to have a limited capability for Work Related Activity.

Found Fit for Work?

If you do not score sufficient points on the 'Work Capability Assessment' and there are no other grounds for considering that you have 'limited capability for work' under the ESA rules, you have the right to challenge the decision – but you must usually do so within one month.

For details of how to challenge a decision see our leaflets 'Challenging A Benefit Decision' and 'ESA - challenging a decision that you are fit for work'.

The 'Main Phase' of ESA

If you score 15 points or more on the physical and/or mental 'descriptors', you qualify for ESA and you go in to what is referred to as the 'main phase' of ESA.

You may also be accepted for ESA if you do not score sufficient points but there would be a serious risk to the health and safety of others if you were expected to work, or to undertake 'work-related activity'.

Work Related Activity Group

If you score 15 points or more, you are regarded as having 'limited capability for work' – which means that it is accepted that you have an illness or disability which means that you cannot work or be expected to look for work at the moment – however, you will be expected to do some 'work-related activity', which will be set by Jobcentre Plus.

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If you claimed before 3/4/17 and you are in the Work-Related Activity Group your CESA will increase by £29.55 weekly. In the 'main phase' you do not get less CESA if you are under 25 and so your CESA will be £103.90.

If you get IRESA, this should also be adjusted to reflect the fact that you are in the Work-Related Group (the £29.55 that you gain is effectively not counted as income)

Owing to a change in the rules, the increase of £29.55 is usually not payable if you made your claim on or after 3/4/17. There are some exceptions to this new rule; contact the Helpline if you are affected by this change.

What is Work-Related Activity?

'Work-Related Activity' is intended to help you prepare to go back to work when you are well enough.

You will usually be asked to attend 'Work-Focused Interviews' with Jobcentre Plus or an organisation working with them: you will not be expected to apply for jobs, but the interview will cover possible ways to get back to work, including education and training.

It is essential that you attend these interviews and participate in them – if you do not, and you have no good reason for doing so, your benefit may be reduced – see below.

You should also receive an 'action plan' which states the types of work-related activity you will be expected to undertake.

You may be offered a work placement (unpaid voluntary work experience). Any placement must be appropriate, given your condition. You cannot lose benefit for refusing one or for ending a placement.

You may also volunteer for the Work and Health Programme. This is usually run by private companies who work with Jobcentre Plus, and it is intended to help you prepare for and find work.

For a summary of WFI and your rights and responsibilities, see our leaflet 'Work-Related Activity' and Benefits Sanctions for ESA Claimants'.

Sanctions – loss of benefit

If you fail, without good cause, to attend a Work Focused Interview or you fail to undertake other work-related activity, your benefit may be reduced. You may only be left with the 'work-related' component of your benefit, i.e. £29.55 weekly for between one and four weeks.

If you claimed after 3/4/17 or you have other income, you could get as little as a minimum 10p a week Income-Related ESA.

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You may dispute a decision to sanction your ESA. There is usually a time limit of a month for doing so. See our leaflet '[Challenging A Benefit Decision](#)'.

Always seek advice if you are sanctioned

Time limit on Work-Related Claims – Contribution Based ESA

If you get CESA *only* and you are in the Work-Related Activity Group, you will only be paid CESA for 365 days. After this, you may still be regarded as having 'limited capability for work', and you will still be subject to the WCA, and you will receive National Insurance Credits.

The time limit does not apply if you are in the Support Group, or if you receive Income-Related ESA.

If your CESA is due to stop after 365 days, seek advice: you cannot challenge the time limit if it has been applied correctly but you should check:

- Whether you should be in the support Group (either because your condition has grown worse or because the original decision was wrong)
- If you qualify for income-related ESA
- If you can claim CESA again because you have paid national Insurance in recent tax years that are different from those on which you first claimed.

Support Group

If you are found to have not just 'limited capability for work' but also 'limited capability for work-related activity', you should be placed in the Support Group.

See the separate leaflet 'ESA- the Descriptors' for details. Instead of scoring points, one of the descriptors must apply to you, or you will need to show that there is a serious risk to your physical and mental health if you were expected to undertake 'work-related activities'.

If you get CESA only, your basic ESA will be increased by £39.20 a week – total £113.55 a week.

If you get IRESA, this should also be adjusted to reflect the fact that you are in the Support Group (the £39.20 that you gain is effectively not counted as income)

If you did not get IRESA or Universal Credit prior to being placed in the Support Group, seek advice to check if you qualify now.

If you are in the Support Group, you are not compelled to undertake any work-related activity. You can volunteer to do this, or do permitted work or voluntary work (see below).

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If you are placed in the Work-Related Activity Group and think you should be in the Support Group you can dispute this decision – seek advice.

Can I try working when on ESA?

It is possible to try 'permitted work' while on ESA. If you stay within the set limits, you will not lose ESA or any other benefits connected with it, such as Housing Benefit.

You can work under 16 hours a week, and earn under £140.00 a week.

You can also do 'supported permitted work', in which you need to be supervised by someone who is employed by a local authority/voluntary organisation whose job it is to find work for people with disabilities

Remember – If you exceed the limits for permitted work you may be found fit for work and you may lose ESA.

Voluntary work – You can do voluntary work without a time limit (unpaid apart from reasonable expenses such as travel, meals, childcare and others) as long as the work is not for a relative.

Do I need permission before I start work? No, but it's always best to tell Jobcentre Plus what Permitted Work or voluntary work you want to do, to avoid misunderstandings. There is also a general duty on you to report changes in your circumstances.

Other tasks, such as caring for a relative, ordinary housework in your own home, and action you take during an emergency do not count as work.

It is also possible to work as a Councillor, or undertake a 'work trial' via Jobcentre Plus, or do self-employed work while you are 'test-trading'. Seek advice before trying any of these as earnings limits and time limits may apply.

ESA and other benefits

It may be possible to claim other benefits as well as ESA – if you are on Income-Related ESA or you are on CESA and you have a low income, you may be able to claim Housing Benefit, help with Council Tax payments and help with health costs. NB many new claims for means-tested help will now be for Universal Credit.

You should also look at our information on Personal Independence Payment (PIP), which is a separate benefit from ESA. Claiming PIP does not reduce your entitlement to ESA or other benefits, and can make you better off by helping with the increased costs caused by illness and disability. You can claim PIP even if you are working.

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If you find work that you would like to do and you wish to stop claiming ESA, seek advice to see if you qualify for 'in-work' benefits.

Additional information can be found on our website, visit www.derbyshire.gov.uk/welfarebenefits

To keep up-to-date with benefit changes in Derbyshire go to
www.derbyshire.gov.uk/benefitnews

Benefits Helpline – 01629 531535 or email
welfarebenefits@derbyshire.gov.uk

Monday, Tuesday, Thursday, Friday
11.00am – 4.00pm