



## Time limiting of contributory Employment and Support Allowance from 30 April 2012

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Employment and Support Allowance (ESA) replaced incapacity benefits for people making new claims from October 2008. There are two forms: contributory ESA, for those with sufficient National Insurance contributions; and income-related ESA, which is means-tested. Claimants who satisfy the Work Capability Assessment may be placed in either the “Support Group”, if they are deemed to have a “limited capability for work-related activity”, or the “Work Related Activity Group” (WRAG).

The 2010 Spending Review announced that entitlement to contributory ESA for claimants in the WRAG would be limited to twelve months. The time limit takes effect on 30 April 2012. For some claimants, benefit will stop immediately. All recipients of contributory ESA in the WRAG, including Incapacity Benefit claimants “migrated” to ESA on reassessment, will be affected by the time limit. Savings of almost £1.5 billion a year are expected by 2015-16.

The Government argues that ESA for people in the Work Related Activity Group was never intended to be a long-term benefit, and that the change brings ESA closer into line with contribution-based Jobseeker’s Allowance, which is payable for six months only. It also points out that means-tested support will still be available for those affected. Of the 700,000 ESA claimants who will be affected by the time limit, around 60% are expected to have some entitlement to income-related ESA, but around 280,000 will lose ESA completely – because, for example, they have other income or savings, or a working partner.

The time limit is highly controversial. Welfare rights and disability organisations argue that it undermines the contributory principle and will increase poverty and financial distress for people with long-term conditions. During consideration of the *Welfare Reform Bill*, The Opposition did not reject time-limiting on principle but argued that the choice of twelve months was arbitrary. Government defeats in the Lords on time-limiting were overturned by the Commons, although some concessions were announced regarding people with cancer.

This note outlines how the time limit will affect ESA claimants and gives links to further sources. The DWP has produced [information on the changes for benefits advisers](#).

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## 1 What is Employment and Support Allowance?

**Employment and Support Allowance (ESA)** replaced incapacity benefits for people making new claims from October 2008. There are two forms of ESA:

- **contributory ESA**, for those with a sufficient National Insurance contribution record; and
- **income-related ESA**, which is means-tested (i.e. entitlement can be affected by other income and capital of the claimant and their partner).

To be eligible for ESA, a person must undergo a **Work Capability Assessment (WCA)**. This is a functional assessment which focuses not on an individual's condition but on the functional effects on that particular individual. The assessment looks at a range of different activities related to physical, mental, cognitive and intellectual functions to determine capability for work. Claimants are assessed during the first 13 weeks of their claim (or longer if necessary) – the “**assessment phase**” – to determine whether they have a “limited capability for work”, and also whether they are capable of engaging in “work-related activity”.

Claimants deemed to have both a “limited capability for work” and a “limited capability for work-related activity” are placed in the **ESA Support Group** and are not required to undertake any further activities in order to receive their benefit. Claimants with a “limited capability for work” but who are deemed capable of undertaking some “work-related activity” are placed in the **ESA Work-Related Activity Group (WRAG)**. As the name suggested, claimants in the WRAG may be expected to undertake “work-related activity” as a condition of receiving their benefit. This could include things such as voluntary work, work trials, or a training programme but claimants do not have to apply for jobs.

The introduction of ESA did not initially affect people already getting **incapacity benefits**, but 1.5 million of the remaining incapacity benefit<sup>1</sup> claimants are being **reassessed for ESA between now and 2014**. Those found eligible for ESA will be “migrated” to contributory ESA or income-related ESA as appropriate; the WCA will determine whether they are placed in the Support Group or the WRAG.

At August 2011 732,000 people in Great Britain were claiming ESA, but this is expected to increase to around 1.8 million by 2016/17, largely as a result of the migration of incapacity benefit claimants.<sup>2</sup>

For further background see Library briefings SN05574, [Employment and Support Allowance: an introduction](#); and SN05850, [The Work Capability Assessment for Employment and Support Allowance](#).

## 2 What is happening to contributory ESA?

As a result of provisions in the *Welfare Reform Act 2012*, from 30 April 2012 receipt of contributory ESA for claimants who are not in the Support Group will be limited to a maximum of 365 days.

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<sup>1</sup> This covers Incapacity Benefit, Severe Disablement Allowance, and Income Support payable on the basis of incapacity for work

<sup>2</sup> Source: [DWP Benefit Expenditure Tables](#)

The time limit will apply as follows:

- Any period of receipt of contributory ESA, including time spent the assessment phase, will count towards the 12 month time limit if the claimant is in the Work Related Activity Group.
- For those getting contributory ESA when the time limit is introduced on 30 April 2012, the time they have already spent on benefit will be taken into account, so for some people contributory ESA will stop immediately.
- For claimants moving from the ESA Support Group to the Work Related Activity Group, the 365 day period will not start until they move into the new group, provided they were not previously in the Work-Related Activity Group in their claim.
- The 12 month time-limit does not include any time spent in the Support Group or time spent in the assessment phase if the claimant moved from the assessment phase into the Support Group at the start of their claim.
- Where someone exhausted their entitlement to contributory ESA in the Work Related Activity Group and their condition subsequently deteriorates such that they become eligible for the Support Group, they can become entitled to contributory ESA again and will not be subject to time limiting (provided they remain in the Support Group).

ESA claimants whose entitlement to contributory ESA ends as a result of time-limiting may be able to claim income-related ESA, but it may not be payable if they or their partner have other income or savings, or their partner works more than 24 hours a week (see 5 below).

### **3 Why is contributory ESA being time-limited for some claimants?**

A DWP briefing note for welfare rights advisers on time-limiting ESA explains:

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, 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.<sup>3</sup>

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<sup>3</sup> DWP, [Changes to contribution-based Employment and Support Allowance: Welfare Reform Act 2012](#), March 2012

The Government said that the period of 12 months was chosen because it “strikes the best balance between allowing people with longer-term conditions to adjust to their health condition and providing a level of access that is appropriate for contributory benefits”,<sup>4</sup> but Ministers have also conceded that the decision had a “strong financial dimension” to it, and that it was “not based on an estimate of typical recovery time” for people with health conditions.<sup>5</sup>

Estimates of the savings from time-limiting have varied since the measure was first announced, but the latest estimates are that savings will be in the region of £330 million in 2012-13, rising to £1,475 million in 2015-16, before falling back slightly to £1,440 million in 2016-17.<sup>6</sup> The Department for Work and Pensions estimates that 700,000 people will be affected by the time limit by 2015-16.<sup>7</sup>

Welfare rights and disability organisations were strongly critical of the proposal to time limit contributory ESA which, they argued, would further undermine the contributory principle and, coming on top of other announced benefit cuts, increase poverty and cause financial distress for people with long-term health conditions or disabilities and their families.<sup>8</sup>

#### **4 What happened in the proceedings on the Welfare Reform Bill?**

The Opposition did not object to time limiting contributory ESA for people in the Work-Related Activity Group on principle, but argued that 12 months was too short a period.

In the Commons, the Opposition Work and Pensions Spokesman Stephen Timms moved an amendment in Committee to provide that contributory ESA for those in the WRAG to be payable for “a prescribed number of days, which must be at least 730.”<sup>9</sup> Mr Timms said that the amendment was justified for three reasons:

First, as with jobseeker’s allowance, to be justified, any time limit should be greater than most people need to get off the benefit. Secondly, only a small minority of those who enter the work-related activity group leave ESA within a year. The Government have yet to tell us how many, but I suspect that the figure is probably less than 20%, so it is a small minority. Thirdly, as an absolute minimum, the Government should make the time limit amendable by regulations, rather than writing “365 days” in the Bill.<sup>10</sup>

Mr Timms said it was “perfectly reasonable”, by analogy with contributory JSA, to time limit receipt of contributory ESA, but that it was “very important to set it at a duration that is fair, drawing on the evidence about what is a reasonable period in which people with health impairments can be expected to get back to work.” He said that there was “no evidence to

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<sup>4</sup> HC Deb 31 January 2011 cc585-586w

<sup>5</sup> See p36 of [Library Research Paper 11/48](#)

<sup>6</sup> Budget 2012, Table 2.2

<sup>7</sup> See DWP, *Time limit Contributory Employment and Support Allowance to one year for those in the Work-Related Activity Group: Impact Assessment*, Revised April 2011; *Time limiting contributory Employment and Support Allowance to one year for those in the work-related activity group: Equality Impact Assessment*, updated 10 October 2011

<sup>8</sup> See Library [Standard Note SN05853](#), *Time-limiting contributory Employment and Support Allowance*, 3 February 2011; and pp5-6 of [Library Research Paper 11/23](#)

<sup>9</sup> PBC Deb 3 May 2011 c628

<sup>10</sup> PBC Deb 3 May 2011 c629

justify a one-year limit”, which had been chosen “simply as a cost-saving measure and is arbitrary.”<sup>11</sup>

The amendment was defeated, but at Report Stage in the Lords the Government was defeated on two amendments relating to the ESA time limit tabled by the Crossbencher Lord Patel:

- To extend the time limit for contributory ESA from one year to at least 2 years; and
- To exempt from the time limit claimants receiving treatment for cancer, or receiving benefit as a consequence of being diagnosed with cancer.<sup>12</sup>

The amendments were overturned by the Commons but when the Bill returned to the Lords on 14 February 2012, the Government accepted an Opposition amendment to enable the time limit to be increased beyond 365 days by secondary legislation.<sup>13</sup> The Minister for Welfare Reform, Lord Freud, also announced some concessions regarding people receiving treatment for cancer. These included:

- The presumption that those people should be in the ESA Support Group for the first six months, unless medical evidence suggested otherwise; and
- A review of guidance relating to the period of recovery from treatment to “ensure that individuals can remain in the support group for as long as appropriate.”

Further information can be found in Lord Freud’s contribution at [HL Deb 14 February 2012 cc743-744](#).

## 5 Who will qualify for income-related ESA?

A person whose entitlement to contributory ESA has ended because of time limiting may be able to claim income-related ESA, but it will depend on their family’s circumstances.

Entitlement to income-related ESA depends upon the claimant’s income and/or capital (ie savings, investments and other assets), and that of their partner, if they have one. A claimant may not qualify for income-related ESA if they and/or their partner have other income above a certain level, or capital in excess of £16,000.<sup>14</sup> Some forms of income and capital are however disregarded.

In addition, income-related ESA is not payable if a person has a partner who is in full-time work, defined as 24 hours or more a week.

The income-related ESA means-test and work rules are however complicated; anyone who wants to know how the rules would apply to them should seek specialist advice.

The Government estimates that 700,000 people will be affected by the time limit by 2015-16, of whom around 60 per cent will be fully or partially compensated by income-related ESA.

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<sup>11</sup> PBC Deb 3 May 2011 c637

<sup>12</sup> For further details see Library Standard Note SN06202, [Welfare Reform Bill 2010-12: amendments at the Lords Committee and Report stages](#), 27 January 2012

<sup>13</sup> See HL Deb 14 February 2012 c737; cc738-739

<sup>14</sup> For further information on how capital can affect means-tested benefits see p5 of [Library Research Paper 11/24](#)

The average loss for those not fully compensated by means-tested benefits is estimated at £52 a week, and for those with no entitlement to means-tested benefits, the average loss is £81 a week.<sup>15</sup> For those not qualifying for income-related ESA, the main reason (71% of cases) is that their partner works more than 24 hours a week.<sup>16</sup>

## **6 What if a person doesn't qualify for income-related ESA?**

People who do not qualify for income-related ESA will still be able to receive National Insurance credits to help maintain their NI contribution record and access back-to-work support through the Work Programme. However, "credits only" claimants will still have to complete a "limited capability for work" questionnaire (the ESA50), participate in the Work Capability Assessment and attend medical assessments, when required to do so.

Those not qualifying for income-related ESA may also, depending on their circumstances, see increases in other benefits such as tax credits and Housing Benefit. Claimants affected by the time limit should inform HM Revenue and Customs and/or their local authority of the change in their circumstances.

## **7 What if a person's condition gets worse?**

The time limit does not affect people in the ESA "Support Group", who can continue to get contributory ESA indefinitely. Where someone has been placed in the Work-Related Activity Group and their condition subsequently worsens, it may be advisable for them to contact a Citizens Advice Bureau or local welfare rights organisation to see if they are receiving the correct form of ESA. The DWP's FAQs on the ESA changes state:

### **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.<sup>17</sup>

On the possibility of moving from the ESA Work-Related Activity Group to the Support Group, the Disability Alliance *Disability Rights Handbook 2011-2012* states (p60):

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<sup>15</sup> DWP, *Time limit Contributory Employment and Support Allowance to one year for those in the Work-Related Activity Group: Impact Assessment*, Revised April 2011

<sup>16</sup> *Ibid*, Table 3, p9

<sup>17</sup> *Changes to contribution-based Employment and Support Allowance: Welfare Reform Act 2012*, March 2012



If you are placed in the [ESA] work-related activity group and your condition has recently got worse such that you now feel that you should be placed in the support group, you can ask for the decision to be superseded. You can do this at any time.

Contact your local Jobcentre Plus office and explain that your condition has recently got worse, and tell them which of the descriptors also now apply to you [...]. If you do this by phone, follow it with a letter to the office confirming your request. If you can, obtain medical evidence to back up your case, eg a letter from your doctor, consultant or specialist nurse, confirming the descriptor applies to you. Attach a copy of this evidence to your supersession request.

If someone moves from the Work-Related Activity Group to the Support Group, they can be paid contributory ESA even if they have already exhausted their entitlement to contributory ESA in the WRAG.

A person will however only qualify for the ESA Support Group if one of the “descriptors” for limited capability for work-related activity applies to them. The DWP publication [A guide to Employment and Support Allowance – The Work Capability Assessment](#) (ESA214, June 2011) gives details of the limited capability for work-related activity descriptors (see pp24-27).

Disability Rights UK also has a factsheet, [Employment and support allowance overview](#) (23 April 2012), which outlines the tests.

## **8 What about people moving from Incapacity Benefit to ESA?**

People moving from incapacity Benefit to contributory ESA in the Work-Related Activity Group following reassessment will be affected by the time limit in the same way as people claiming ESA for the first time. The 365 days will start from the date their award is converted to contributory ESA.

## **9 What about ESA claimants who are living abroad?**

ESA claimants living abroad will be affected by the time limit in the same way as claimants in Great Britain. However, they will not be able to claim income-related ESA when their contributory ESA ends, as income-related ESA is not payable to people living abroad.

## **10 Can someone qualify for contributory ESA for a second time?**

Yes, in certain circumstances.

A person whose contributory ESA has ceased because of time limiting can qualify for contributory ESA again indefinitely if their condition subsequently deteriorates such that they are now eligible for the Support Group (see 7 above), provided that they continued to have a “limited capability for work” over the intervening period.

A claimant could also qualify for a further 12 months of contributory ESA in the Work-Related Activity Group if they leave benefit for more than 12 weeks and can satisfy the National Insurance contribution conditions afresh, but only if they can do so without using the NI



record for the same two tax years used to determine the previous claim. So, for example, a person may be able to qualify for contributory ESA in the WRAG for a second 12 month period if they left benefit, started work again and paid sufficient NI contributions. The ESA “linking rules” have been amended to allow people to re-qualify for contributory ESA in this way.

## **11 What is DWP doing to inform people about the change?**

Information on what DWP has been doing to inform ESA claimants about the change, and about what claimants may need to do, is given in a briefing, [Employment and Support Allowance \(ESA\) Legislative Changes 2012 for claimants in Great Britain: An introduction](#) (March 2012), available at the [“Advisers and intermediaries”](#) section of the DWP website.

## **12 Where can I get further information?**

Further information on [Changes to contribution-based Employment and Support Allowance](#), including FAQs, is available at the DWP website (last updated 12 March 2012).

More detailed background to the changes, including the reactions of welfare rights and disability groups and coverage of the relevant debates during the passage of the *Welfare Reform Bill 2010-12*, is given in the following Library briefings:

- Library Standard Note SN05853, [Time-limiting contributory Employment and Support Allowance](#), 3 February 2011
- Section 2.1 of Library Research Paper 11/23, [Welfare Reform Bill: reform of disability benefits, Housing Benefit, and other measures](#)
- Section 3.4 of Library Research Paper 11/48, [Welfare Reform Bill: Committee Stage Report](#)
- Section 5.2 of Standard Note SN06202, [Welfare Reform Bill 2010-12: amendments at the Lords Committee and Report stages](#).

DWP also produced the following Impact Assessments on time-limiting contributory ESA:

- [Time limit Contributory Employment and Support Allowance to one year for those in the Work-Related Activity Group: Impact Assessment](#), Revised April 2011
- [Time limiting contributory Employment and Support Allowance to one year for those in the work-related activity group: Equality Impact Assessment](#), updated 10 October 2011

## **13 What is happening in Northern Ireland?**

Social security in Northern Ireland is a devolved matter, but there is a long-standing policy of maintaining “parity” with Great Britain.

In response to a Parliamentary Question last month on what assessment the Secretary of State for Northern Ireland had made of the effect of the *Welfare Reform Act* on poverty in Northern Ireland, the Minister of State for Northern Ireland, Hugo Swire, said:

Except for the technical provisions set out in section 149 of the Welfare Reform Act 2012 this statute does not extend to Northern Ireland. Social security, child support and pensions are transferred matters which are the responsibility of the Minister for Social Development in the Northern Ireland Executive.

I understand that the Minister for Social Development intends shortly to introduce a Welfare Reform Bill to the Northern Ireland Assembly following the consultation that is required under section 87 of the Northern Ireland Act 1998 to provide single systems of social security, child support and pensions for the United Kingdom.

The assessments requested by the hon. Member are, therefore, matters for the Minister for Social Development.<sup>18</sup>

The *Welfare Reform Bill* has not yet been introduced in the Northern Ireland Assembly.

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<sup>18</sup> HC Deb 21 March 2012 c696w