

[Employment and support allowance and studying]

Employment and support allowance and studying is one of a series of Child Poverty Action Group in Scotland factsheets giving guidance to advisers who are working with people who are studying or thinking about doing a course of education. Child Poverty Action Group promotes action for the prevention and relief of poverty among children and families with children.

This factsheet provides information about employment and support allowance, a new benefit that was introduced in October 2008, as it applies to students. For more detailed information, including the handbooks mentioned in this factsheet, see *'Further information and advice'*. See also CPAG in Scotland's factsheet 'Benefits for disabled students'.

Basic facts

- Employment and support allowance (ESA) is a benefit for people who have 'limited capability for work'.
- ESA has an income-related part based on a means test and a contributory part based on national insurance (NI) contributions.
- Part-time students are eligible for both income-related and contributory ESA.
- Full-time students are eligible for contributory ESA, but can only claim income-related ESA if they are getting disability living allowance (DLA).
- Some students can get contributory ESA in youth, even without having paid any NI contributions, if they claim before age 20, or sometimes 25.

What is employment and support allowance

Employment and support allowance (ESA) is a benefit for people who have limited capability for work because of illness or disability. People already claiming incapacity benefit or income support on incapacity or disability grounds when ESA was introduced continue to receive these benefits, although the Government is transferring these claimants to the ESA system between 2011 and 2014.

ESA has two types - **contributory** and **income-related**. It is possible to receive one or both types of ESA.

Contributory ESA is for people who have paid national insurance (NI) contributions, or whose period of limited capability for work starts when they are young.

Income-related ESA is means-tested and is for people who are on a low income.

Who is eligible

To qualify for ESA you must meet certain **basic conditions**: you must be 16 or over (and under pension age); you must be in Great Britain; and you must not work, although some 'permitted work' is allowed (see CPAG's *Welfare Benefits and Tax Credits Handbook* for details). You must also have limited capability for work and satisfy the conditions for either contributory or income-related ESA or both (see below).

Contributory ESA

This type of ESA is not means tested, so it will not be affected by any loans or grants you are eligible for. However, getting it may affect the amount of loan or bursary you can get. To qualify, you must meet one of the conditions below.

Condition 1 NI contributions

You can claim after three days ill health if you have paid enough NI contributions. To be eligible, you would usually have to have been working and paying NI contributions for the past 2 or 3 years. See CPAG's *Welfare Benefits and Tax Credits Handbook* for details.

You can continue to get contributory ESA based on NI contributions if you are a full-time student, as long as you still satisfy the medical test. Starting a course may trigger the DWP to ask you to undergo a medical re-assessment, to check that you still qualify.

Condition 2 ESA in youth

You are ill or disabled at a young age, so have not had the chance to build up NI contributions. You can claim after 196 days (28 weeks) of limited capability for work (send in a medical certificate from your doctor to cover this period). You must satisfy the UK residence and presence test and not be a 'person subject to immigration control' (see CPAG's *Welfare Benefits and Tax Credits Handbook* for details).

Your claim must start no later than the end of a continuous period of 28 weeks of limited capability for work that began before your 20th birthday.

You can continue to get contributory ESA in youth if you are a full-time student aged 19 or over, as long as you still satisfy the medical test. Starting a course may trigger the DWP to ask you to undergo a medical re-assessment, to check that you still qualify.

If you are under 19 and in 'full-time education', you cannot get ESA in youth unless your course is not counted because it is designed for people with disabilities. You are treated as being in full-time education if you attend a course of education for 21 hours or more a week. Count classes, lectures, seminars and periods of supervised study. Do not count lunch breaks, private unsupervised study or work at home. You continue to be regarded as being in full-time education during any temporary interruption of your studies. Disabled students should ignore any hours of tuition that would not be received by someone of the same age who is not disabled. Any such special teaching does not count towards the 21 hours.

You can claim ESA in youth from age 16. You can serve the 28-week qualifying period before you reach age 16, so your benefit can start from your 16th birthday. To satisfy the qualifying period, ask your doctor for a backdated medical certificate.

Example

Rowan has a learning disability and starts a course designed for people with disabilities in August 2011, aged 17. She telephones to start her claim for ESA on 31 August 2011 and provides a medical certificate for the 28 week period from the beginning of March to the end of August 2011. Her course does not affect her ESA because all the hours are ignored, as they are not suitable for non-disabled people. She is awarded ESA in youth from 31 August 2011.

Normally, to claim contributory ESA after age 20 you must have paid enough NI contributions, but there is an age exception for students. You can claim if you are under 25, and finish or give up a course that you started before your 20th birthday, and you have had limited capability for work for 28 weeks. You must meet specific rules that are set out in full in CPAG's Benefits for Students in Scotland Handbook.

IMPORTANT Proposed changes to contributory ESA

The Government plans to abolish ESA in youth from April 2012. Also from April 2012, they plan to time-limit contributory ESA (including ESA in youth) to one year for those in the work-related activity group (see *Limited capability for work*, below, for what this means). Those in the support group can continue to get contributory ESA. If your contributory ESA stops you may be able to claim income-related ESA instead.

Income-related ESA

This type of ESA is means tested, so any student funding you receive may count as income and reduce your entitlement. You claim this together with your partner, if you have one, and any income they have will also affect how much you can get.

You are eligible if you are a part-time student and have limited capability for work and meet the other basic conditions. If you are a full-time student, **you are only eligible if you get disability living allowance (DLA)**.

Income-related ESA: full-time student definition

In **further education** (FE) you are full-time if:

- you are under 19, or are 19 but were under 19 when you were accepted on, enrolled on or started the course, and your course is more than 12 hours a week during term time. These 12 hours include classes and supervised study, but not meal breaks or unsupervised study either at home or at college. If you fit these rules, you are termed a '**qualifying young person**'; or
- You are 20 or over, or are 19 and were already 19 when you were accepted on, enrolled on or started the course, and you are doing more than 16 hours of classes/workshops per week. If you are not doing more than 16 hours of classes/workshops, you are full-time if you are doing more than 21 hours per week when all study requirements are included.

In **higher education** you are full time if the college or university says that the course is full time.

Example

Lewis is 26 and recently disabled. He has not paid enough NI contributions to get contributory ESA. He claims income-related ESA only. He starts a full-time course of study in January 2012. His income-related ESA stops because he does not get DLA. He can reclaim income-related ESA when his course ends or if he is awarded DLA.

As well as being a student who is eligible to claim, to qualify for income-related ESA you must satisfy the basic ESA conditions (see above) and the additional conditions for income-related ESA. These are: your income is low enough (and your partner's, if you have one); your savings and other capital are no more than £16,000 (and your partner's, if you have one); any partner you have is not working full-time; you satisfy the habitual residence and right to reside tests, and you are not a person subject to immigration control. See CPAG's *Welfare Benefits and Tax Credits Handbook* for details.

Limited capability for work

One of the basic rules of entitlement to ESA is that you must be assessed as having 'limited capability for work'. This means that because of your mental or physical condition it is unreasonable to require you to work. This is normally assessed at a medical known as the 'work capability assessment'. The work capability assessment also assesses whether you have 'limited capability for work-related activity'. If you do, then you are placed in the support group, and your ESA includes an extra amount called a 'support component'. This is paid to the most disabled people. If you do not have limited capability for work-related activity, you are placed in the work-related activity group and your ESA includes a 'work-related activity component'. If you are in the work-related activity group you are expected to attend work-focused interviews and undertake work-related activity, and failure to engage may result in reduction of benefit.

Full-time students who get DLA and who are claiming income-related ESA are treated as having limited capability for work so do not have to satisfy this part of the work capability assessment. However this does not apply to all full-time students. If you are a qualifying young person (see above) and claiming income-related ESA then you will have to be assessed. Similarly, if you are claiming contributory ESA (including ESA in youth), you still have to have your limited capability for work assessed - even if you get DLA. All students, unless they get the support component, do have to attend work-focused interviews and may be required to take part in work-related activity.

If you fail the medical you can appeal the decision, and continue to get some ESA. Many decisions are overturned at appeal, especially if you get help from a citizens advice bureau or other organisation, so it is well worth doing this if you disagree with the decision.

Amount of benefit

You are paid a limited amount of ESA during an initial 'assessment phase' (in most cases, this is 13 weeks) and are paid more after this, in the 'main phase'.

The exact amount of ESA you are paid depends on, among other things

- whether you are claiming contributory ESA or income-related ESA;
- whether you are in the 'assessment phase' or the 'main phase';
- which of the two possible additional components you get after the assessment phase. These are a 'support component' for the most disabled, and a 'work-related activity component' for everyone else.

ESA is worked out as follows.

Contributory ESA

In the assessment phase you get a basic allowance. In the main phase of ESA, your basic allowance increases if you are under 25, and an additional component is added to it - either of the work-related activity component or the support component.

Contributory ESA, weekly rates

April 2011

Assessment phase, basic allowance (under 25)	£53.45
Assessment phase, basic allowance (25 or over)	£67.50
Main phase, basic allowance (16 or over)	£67.50
Main phase, support component	£32.35
Main phase, work-related activity component	£26.75

Income-related ESA

The amount of income-related ESA you get depends on the circumstances of yourself and, if you have one, your partner. The amount also depends on your income and capital. Most student funding will be taken into account as income, eg, student loan, further education bursary. For more information, see CPAG's *Benefits for Students in Scotland Handbook*.

Example

Doreen is 19 and has cerebral palsy. She gets DLA low rate care component and lives with her parents. In January 2012 she starts a full-time NC course. She claims ESA. She is eligible for contributory ESA in youth and income-related ESA.

Assessment phase

During the assessment phase (the first 13 weeks) Doreen gets contributory ESA of £53.45 (the basic allowance rate for under 25-year-olds). Her income-related ESA amount would also be £53.45, but because she already gets this amount paid as contributory ESA, her income is too high to get any income-related ESA.

Main phase

Doreen is assessed as having limited capability for work, and as being in the work-related activity group. In the main phase of her claim (from the start of week 14) she is eligible for a basic allowance of £67.50 and a work-related activity component of £26.75. She gets £94.25 contributory ESA in youth. Again, she is not eligible for any income-related ESA, because her income from contributory ESA is the same as her amount of income-related ESA would be.

Note: *if Doreen had not been eligible for contributory ESA, she would have received income-related ESA only of £53.45 in the assessment phase and £94.25 in the main phase. This is the same amount of money, but unlike contributory ESA is means tested, so may be affected if she gets other income, eg, a student loan.*

Claiming ESA

You start your claim by phoning the national Jobcentre Plus contact centre number on 0800 055 6688 (although paper claim forms should also be available if it is not suitable for you to use the telephone). Both contributory and income-related ESA can be backdated for up to three months, if you satisfied the conditions of entitlement during that time.

You will usually be interviewed after you claim. You need to send a medical certificate from your doctor until you are assessed under the work capability assessment. If you need to serve a 28-week qualifying period before you can get ESA, ask your doctor for a backdated medical certificate and provide this with your claim.

Either member of a couple can make a claim for income-related ESA for both, but whoever claims must be eligible in her/his own right. You claim contributory ESA for yourself only.

Other benefits and tax credits

You cannot get ESA if you are getting statutory sick pay (SSP) from an employer. SSP runs out after 28 weeks, after which you can claim ESA.

You cannot get ESA if you are getting income support (IS) or jobseeker's allowance (JSA). You can claim contributory ESA if your partner is getting IS or JSA. You are excluded if you get joint claim JSA. You cannot get income-related ESA if your partner gets IS, income-based JSA or pension credit.

Income-related ESA passports you to maximum housing benefit and council tax benefit, maximum child tax credit, free school meals, health benefits and social fund payments. ESA can mean you qualify for the disability element of working tax credit if you go back to work.

Further information and advice

Child Poverty Action Group in Scotland

0141 552 0552 advice line for advisers on benefits and tax credits

Monday to Friday, 10 am to 12 pm

CPAG's advice line is only for advisers. If you are a student or thinking of doing a course of education and are in need of advice, contact your local college/ university student welfare services, or your local citizens advice bureau.

E-mail: advice@cpagscotland.org.uk

e-mail advice for advisers on benefits and tax credits.

Web:

for more information about

- CPAG in Scotland's Benefits for Students Project and more leaflets go to www.cpag.org.uk/scotland/studentbenefitsproject
- CPAG's *Benefits for Students in Scotland Handbook* go to <http://scottishhandbooks.cpag.org.uk/>
- CPAG's *Welfare Benefits and Tax Credits Handbook*, go to www.cpag.org.uk

**CHILD
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in SCOTLAND

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