

Employment and Support Allowance



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Aims and Objectives

Aims

To give delegates an understanding of ESA (employment and support allowance) and how to challenge ESA decisions

Objectives

To understand when someone might be entitled to ESA

To understand the process for challenging ESA decisions

Background

There are two types of employment and support allowance (ESA): contributory ESA is based upon the claimant's national insurance record and income related ESA is based upon the claimant (and their partner if they have one)'s income, capital and employment.

Where someone is employed (has a contract of employment), has done some work under their employment contract, and is earning above the lower earnings limit (currently £113 per week) they are entitled to statutory sick pay (SSP) from their employer for up to 28 weeks. If the employer is unable to pay SSP then they should issue a notice to the employee (SSP1) stating why SSP cannot be paid. Whilst someone is entitled to SSP they are treated as being a worker for working tax credit (WTC) purposes. They may also be entitled to top up benefits income support (IS), housing benefit (HB), council tax support, and Help with Housing Costs.

Where someone cannot get SSP, or their SSP has ended, and they are unable to work because of sickness, they should make a claim for ESA. This course is about ESA and will not cover cases where the claimant is making a claim for Universal Credit instead of income related ESA.

Claiming

A claim for ESA can be initiated by calling the DWP claim line 0800 055 6688 or by completing a form and sending it to the DWP. There can be problems with submitting a paper claim such as it getting lost in the post or there being a delay in the DWP receiving it. The latter could affect the date from which benefit is payable. A claim for ESA runs from the date the DWP receives the claim. If the claimant lives in a Live universal credit area, and they want to claim income related ESA they will need to claim universal credit instead.

When making an application for ESA, the claimant will need information about:

- Their name, address, date of birth and national insurance number
- The name, address and telephone number of their GP
- The information on their medical certificate
- Their landlord, rent, or mortgage (if they have one)
- Their income and savings
- Their employer's name, address and last date they worked

If the claim is made over the telephone then the DWP will send the claimant a statement of what was said for them to check for accuracy. They only need to return this if there are any errors on it.

Entitlement to ESA

In order to be entitled to ESA, the claimant needs to meet certain qualifying conditions:

- They must be aged over 16 and under pension age
- They must have limited capability for work

- The claimant must not be entitled to SSP, income support, or jobseeker's allowance
- The claimant must not be engaged in any work (other than permitted work)
- For income related ESA they must satisfy the means test
- For contributory ESA they must have paid or been credited with enough national insurance contributions

Contributory ESA

To be entitled to contributory ESA the claimant must have paid or been credited with sufficient national insurance in the relevant income tax years. Typically this will mean the following (this is a simplification of the national insurance rules):

- **First contribution condition** - in one of the last two complete tax years, you must have paid Class 1 or 2 contributions on relevant earnings at the lower earnings limit for at least 26 weeks. This means you must have worked for at least 26 weeks of the last two complete tax years; and
- **Second contribution condition** - in both of the last two complete tax years, you must have paid **or been credited with**, Class 1 or 2 contributions to the value of 50 times the lower earnings limit.
(from www.entitledto.co.uk)

Contributory ESA can only be paid for a maximum of 12 months unless the claimant is in the support group in which case it can be paid for so long as the claimant remains in that group.

Income Related ESA

To be entitled to income related ESA the claimant (and any partner) must satisfy the means test. Income related ESA can be paid in its own right or it can be paid as a top up to contributory ESA.

To qualify for income related ESA the claimant (and any partner) must:

- (1) Have income below their applicable amount (the amount of benefit they are assessed as needing).
- (2) Have capital or savings below £16,000. The first £6,000 is ignored and an assumed tariff income of £1 for every £250 (or part thereof) is applied to the amount of the benefit award
- (3) If the claimant has a partner, they cannot be claiming income related ESA, income support, income based JSA, universal credit, or pension credit
- (4) If the claimant has a partner, the partner cannot be working more than 24 hours per week
- (5) Not be in full time education unless also getting DLA or PIP
- (6) Not be in remunerative work unless it is permitted work
- (7) Not be subject to immigration control and must satisfy the habitual residence test

Backdating

A claim for ESA can be backdated for up to 3 months so long as the period is covered by a medical certificate. The claimant also needs to have met the conditions for ESA during that period. Backdating needs to be requested at the time of the claim and the claimant does not need to show good cause for having delayed their claim.

Linking

If the claim links to another claim for ESA within the last 12 weeks, then the periods of sickness are put together and the claim is treated as one claim with a break in it. For example, if Pratima's last claim for ESA ended on 10 May 2017 and today is 13 June 2017 the gap between them is less than 12 weeks and so they would be linked. This means that the claim would use the same tax years, and the same medical assessment to determine entitlement. For contributory ESA this also means that any ESA paid in the claim ending in May would be carried forward to the June claim for the purposes of determining the 12 months of entitlement. For example if Pratima had been paid 215 days of ESA up to 10 May 2017 she would only have 151 days left for the claim starting on 13 June 2017.

Amounts of ESA

During the assessment phase/work related activity group for claims on or after 3/4/17

Personal allowance	Single aged 16 - 24	£57.90
	Single aged 25+	£73.10
	Lone parent aged 16 – 17	£57.90
	Lone parent aged 18+	£73.10
	Couple both 16 – 17 (if responsible for a child or would be entitled to a means tested benefit if single)	£87.50
	Couple both 16 – 17 (where above does not apply)	£57.90
	Couple both aged 18+	£114.85

Work related activity group (claimed before 3/4/17) and support group (anytime)

Personal allowance + work related activity component		Personal allow	Work related comp	Support comp
	Single aged 16+	£73.10	£29.05	£36.55
	Lone parent aged 16+	£73.10	£29.05	£36.55
	Couple both 16 – 17 (if responsible for a child or would be entitled to a means tested benefit if single)	£114.85	£29.05	£36.55

	Couple both 16 – 17 (where above does not apply)	£73.10	£29.05	£36.55
	Couple both aged 18+	£114.85	£29.05	£36.55

Assessment phase

During the first 13 weeks of a new claim for ESA, the claim need only be supported by a fit note from the claimant's GP.

No ESA is payable for the first 7 days of a claim unless it links to another claim for benefit.

The assessment phase can be extended where there is a delay in completing the assessment phase (e.g. delay in available medical assessment appointments). Once the assessment is complete the claimant moves into the main phase of ESA.

Getting more money during the assessment phase

During the assessment phase, ESA is sometimes paid at a lower rate than in the main phase. The main phase rate of ESA can be paid during the first 13 weeks of an ESA claim where the claimant is terminally ill, where the claim links back to another claim and in the earlier claim the assessment phase had been completed, or the claimant is a lone parent who was previously getting income support which included the disability premium and that claim ended within the last 12 weeks.

During the assessment phase the claimant will be required to send in medical certificates from their GP confirming that they are unable to work because of ill health. These are called fit notes. If they do not send in a medical certificate after one has run out then their ESA will stop. Once the claimant is in the main phase they are no longer required to send medical certificate to the DWP in support of their claim unless they are challenging a decision that is waiting to go to an appeal tribunal.

ESA50 and Medical assessments

During the assessment phase the DWP will send the claimant a medical questionnaire to complete (ESA50). The questionnaire asks the claimant whether they are able to undertake specific tasks and the degree to which they are unable to undertake them.

Once the questionnaire is returned to the Medical Services team, they will decide whether it is appropriate for the claimant to attend a medical assessment. If the claimant does not require a medical assessment and has demonstrated on their form that they have limited capability for work (see below) then the DWP will move them into the main phase without a medical assessment at week 13.

If the claimant requires a medical assessment they will be asked to attend a medical assessment centre. This can be up to 1 hours travel time away from their home. If the claimant is unable to attend a medical assessment centre they need to contact

Medical Services to let them know. If they require a domiciliary assessment then they can ask for one so long as their request is supported by a letter from their GP or consultant stating why it is required.

Descriptors

The medical assessment is scored against a list of 17 activities or descriptors. Within each category of descriptor are a number of statements relating to the severity to which the descriptor cannot be undertaken. The less able a claimant is to undertake one of the 17 activities the more points they will score. If the claimant scores 15 points from the 17 descriptors then they are treated as having limited capability for work.

The 17 descriptors include the following activities:

Mobilising; standing and sitting; reaching; picking up and moving; manual dexterity; making self understood; communication; navigating safely; bowel/bladder control; consciousness; learning tasks; awareness of hazards; coping with change, getting about; coping with social engagement; appropriateness of behaviour.

If a claimant fails to attend a medical assessment without good cause, their benefit will be stopped.

If the claimant does not achieve 15 points then their benefit will stop at the end of the assessment phase. If they achieve 15 points and treated as having limited capability for work they are then assessed against a further list of descriptors to decide if they have limited capability for work related activity. If they satisfy one of the second set of descriptors they are placed into the support group. If they do not satisfy one of the descriptors then they are placed in to the work related activity group.

Work related activity group

If the claimant is accepted as having limited capability for work, but is not accepted as having limited capability for work related activity, then they are placed into the work related activity group of claimants. If their claim started before 3 April 2017, then they will be entitled to the work related activity component (an additional £29.05 per week) and an increase to their personal allowance if they are aged under 25. As part of being in the work related activity group the claimant will be expected to undertake activities in preparation for employment as directed by the Jobcentre staff.

Support group

If the claimant is accepted as having limited capability for work and is also accepted as having limited capability for work related activity then they are placed into the support group of claimants. This group of claimants will be largely left alone by the Jobcentre staff unless they initiate contact to help them back into work. Irrespective of when the claim started, an additional support component will be added to their entitlement from week 13 (£36.55 per week). If they get income related benefits (including income related ESA) then they will also be entitled to the enhanced disability premium which is £15.90 for a single person or £22.85 for a couple. If the

claimant is entitled to contributory ESA then they will continue to get it beyond 12 months providing they remain in the support group.

Treated as having limited capability for work

In order to successfully move from the assessment phase into the main phase of ESA, the claimant needs to score 15 or more points from the work capability assessment.

If the claimant is unable to reach 15 points they can be treated as nevertheless having limited capability for work if they:

- are terminally ill
- are receiving radiotherapy or chemotherapy to treat cancer (or will be within 6 months), or have done and DWP is satisfied they should be treated as having limited capability for work
- have been given official notice not to work because of being in contact with an infectious disease or contamination
- are pregnant and there would be a serious risk to the health of the claimant or their child if work was not refrained from
- are a hospital inpatient
- have had treatment for renal failure or for gross enteric function
- are pregnant or have recently given birth and are entitled to maternity allowance and are in the maternity allowance payment period
- are pregnant or just given birth but not entitled to maternity allowance or statutory maternity pay from 6 weeks before the birth until 2 weeks after the birth
- are unable to convey food (i.e. would meet the criteria in descriptor 15 of the limited capability for work related activity test)
- for contributory ESA the claimant is entitled to universal credit and has been found to have limited capability for work for that benefit
- for income related ESA the claimant is a full time student, and not a qualifying young person for child benefit purposes, and is entitled to income related ESA because they receive PIP, DLA, or armed forces independence payment

If the claimant does not reach 15 points and none of the above apply, they can still be treated as having limited capability for work if being found capable of work would pose a substantial risk to the mental or physical health of any person if the claimant were to be found not to have limited capability for work. There is a thorough article from CPAG about the application of the rule (regulation 29) <http://www.cpag.org.uk/content/making-exception>

Treated as having limited capability for work related activity

Certain claimants to be treated as having limited capability for work-related activity. A claimant is to be treated as having limited capability for work-related activity if:

- (a) the claimant is terminally ill; or
- (b) the claimant is— (i) receiving treatment by way of intravenous, intraperitoneal or intrathecal chemotherapy; or (ii) recovering from that

treatment and the Secretary of State is satisfied that the claimant should be treated as having limited capability for work-related activity; or
(c) in the case of a woman, she is pregnant and there is a serious risk of damage to her health or to the health of her unborn child if she does not refrain from work-related activity.

If the claimant does not meet any of the criteria in the descriptors for limited capability for work related activity, they can still be treated as having limited capability for work related activity if the claimant suffers from some specific disease or bodily or mental disablement; and by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if the claimant were found not to have limited capability for work-related activity. There is a thorough article from CPAG about the application of the rule (regulation 35) <http://www.cpag.org.uk/content/making-exception>

Work focused interviews

Work focused interviews are designed for a work coach to get a better understanding of the claimant's health problems, barriers, prospects of employment, and activities that could assist with improving chances of employment such as training or rehabilitation. The first work focused interview should be with a work coach from the DWP but subsequent work focused interviews could be with a work coach from a private sector or voluntary organisation.

Attendance at a work focused interview is mandatory unless the claimant is in the support group, has reached pension age, is a lone parent responsible for a child under 1 or is only entitled to national insurance credits (probably because their contributory ESA has run out). The claimant must attend the interview at the right time and place and also participate in the interview. Taking part means answering questions that would enable the work coach to form a view about the best support available. Types of questions might include those about educational qualifications, previous work experience, future employment aspirations, work related skills, and childcare responsibilities. Failure to participate in the interview can lead to benefit being sanctioned.

If the work coach believes that the interview would not be of assistance because the claimant was about to start work then it can be waived. If the work coach believes that a work focused interview would not currently be of assistance then they can defer it to another date when it would be of more assistance.

As part of the first work focused interview the claimant should be given a written action plan setting out what work related activity they are expected to undertake. If at subsequent work focused interviews the claimant thinks that the action plan should be revised they can ask for it to be looked at again.

Sanctions

A sanction can be applied to a claimant's ESA if they fail to meet a compliance condition. These compliance conditions are:

Either fail to take part in a work focused interview or agree with their work coach to take part in a work focused interview at a later date; or

fail to do an activity specified in their action plan, or fail to do an alternative action notified by their work coach, or fail to agree with their work coach that they will do that activity at a later date

When a sanction is applied to an ESA claim, that claim is reduced by £73.10 per week. This will never result in the complete removal of a claimant's entitlement to ESA and they will continue to receive 10p per week. This should enable the claimant to retain entitlement to things like free prescriptions and housing benefit if they are entitled to them.

A sanction will be imposed for:

- 1 week for the first failure to meet compliance conditions
- 2 weeks if this is the second failure to meet compliance conditions within the last year (but not within 2 weeks of the last sanction)
- 4 weeks if this is the third or subsequent failure to meet compliance conditions within the last year (but not within 2 weeks of the last sanction)

Disqualification of ESA

A claimant can be disqualified from receiving ESA for 6 weeks if:

- their sickness comes about as a result of their own misconduct (e.g. breaking health and safety rules)
- they do not accept medical treatment, but only if it would improve the condition and there is not a good reason for refusing
- they act in such a way that they deliberately extend their period of sickness by slowing down recovery
- they leave home without leaving word where they can be found and do not have good cause for doing so

A disqualification of ESA will not apply if the claimant is a person in hardship. A person in hardship will instead have a reduction made to their ESA of 20%. A person in hardship is:

- someone who is pregnant (or a member of their immediate household is pregnant); or
- is aged under 18 (or if they have a partner they are both aged under 18); or
- the claimant or their partner are responsible for a child or young person who lives with them, spend significant time during the week caring for someone who gets attendance allowance, DLA care, PIP daily living component, or an Armed Forces Injury Payment (AFIP), or is someone who has received within the last 26 weeks, DLA care component, PIP daily living component, attendance allowance or AFIP

A person can also be considered a person in hardship if the decision maker decides that disqualification from ESA would cause hardship considering the resources available to the claimant and their immediate family.

Hardship payments

If the claimant is facing financial hardship as a result of their ESA being sanctioned they may be able to claim hardship payments. Payment must be applied for and is not automatic. It is for the claimant to prove that they, and their family if they have one, would suffer hardship. The rate of hardship payments are £43.86 per week. This is increased to £58.48 per week if the claimant is not getting the work related activity component and they (or a member of their family) are pregnant or seriously ill.

In deciding what is hardship the decision maker at the DWP should consider what resources are available to the claimant and their family and should exclude child benefit or child tax credit. The decision maker should then go on to decide whether there is a substantial risk that the claimant or their family would experience a significant reduction in or be without altogether, essential items such as food, heating or accommodation. The length of the sanction should also be considered by the decision maker as it may be easier to cope for 2 weeks than 8 weeks.

Treated as not having limited capability for work

A claimant will not have limited for capability for work even if they have been assessed as having it where:

- they are or were a member of the armed forces and are absent from duty because they are sick
- they are attending a training course for which they get a government training allowance
- within 6 months of the ESA claim they have been found not to have limited capability for work for a universal credit claim
- they have undertaken work (outside the parameters of permitted work) during the week
- They have failed to provide a fit note

Permitted work

Someone claiming ESA can do some work and continue to receive their full benefits providing it meets one of the below criteria:

- For an indefinite period, earning no more than £20 per week
- For an indefinite period, working less than 16 hours per week, earning no more than £120 per week (this figure is reviewed each year)
- For an indefinite period, working less than 16 hours per week, earning no more than £120 per week (this figure is reviewed each year) and done under the supervision of someone providing work opportunities for disabled people

The claimant should notify the DWP that they are undertaking permitted work. So long as the work is permitted work (i.e. meets one of the above criteria) then the amount of ESA and any housing benefit they get should not be reduced.

Mandatory reconsiderations

Before the claimant can appeal against their decision they must ask for a mandatory reconsideration. A mandatory reconsideration is where the decision is looked at again by the Department for Work and Pensions. A recent freedom of information request revealed that the DWP have a general KPI to uphold 80% of mandatory reconsideration decisions. The request also revealed that in the last year the DWP had upheld 87% of their own decisions. The DWP have a turnaround time for dealing with mandatory reconsiderations.

An application for a mandatory reconsideration can be either made via the telephone or in a letter. Obviously if the request is made by telephone it is received more quickly than if it is sent by post. A mandatory reconsideration request must be made within 1 calendar month of the date of the decision being challenged. The date can be extended where a request has been made for a statement of reasons from the DWP by 14 days from the date of the statement of reasons. A request can be made out of time, but no later than 13 months after the original decision was made. If the request is made outside the one month time limit the decision maker at the DWP must accept that there was good cause. There is no right of appeal against a decision not to allow a late mandatory reconsideration. However one possible argument is that in refusing to allow the mandatory reconsideration, the decision maker has in fact reconsidered the decision. A mandatory reconsideration should identify the decision being challenged, and the grounds upon which it is being challenged.

Whilst a claimant is having a decision reconsidered about their limited capability for work they are not entitled to ESA. If the outcome of the mandatory reconsideration is to allow the decision then benefit will be reinstated, unless the decision related to failing to attend a medical assessment. In those cases, the DWP will usually suspend benefit pending attendance at a medical assessment even though they have accepted the claimant had good cause for not attending.

Once the DWP have looked at the decision they should send out 2 mandatory reconsideration decision letters.

Lodging an appeal

If the claimant wishes to appeal against the decision to an independent tribunal, they will need to complete an SSCS1 appeal form available from the HMCTS website <https://formfinder.hmctsformfinder.justice.gov.uk/sscs001-eng.pdf>.

The form needs to be completed in black ink and block capitals. The form, together with one of the mandatory reconsideration letters, is then sent to HM Courts and Tribunals Service. For England, the address is **HMCTS SSCS Appeals Centre, PO Box 1203, BRADFORD, BD1 9WP**.

Time limits and late appeals

The time limit for submitting the appeal to HMCTS is one month from the date of the mandatory reconsideration notice. If the appeal is lodged after 1 month then the appellant needs to explain why it is late. A tribunal will only allow a late application if they believe it to be in the interests of justice to do so. If the appeal is lodged more than 13 months after the date of the mandatory reconsideration notice then the matter is time barred and cannot be dealt with by the tribunal.

Continuing ESA payments – assessment phase rate

Once an appeal is lodged with the tribunal, so long as the claimant continues to send fit notes to the DWP and meet the other conditions for entitlement to ESA, their benefit will be paid at the assessment phase rate until a tribunal make a decision on their claim. This does not apply where the decision being appealed relates to not attending a medical assessment or being refused ESA on the grounds that within the last 6 months the claimant has been found to not have limited capability for work.

Receiving the appeal bundle

Once the appeal is received by HMCTS they will send a copy of it to the DWP. An appeal writer at the DWP will then prepare a decision maker's response. The DWP have 28 days to do this from when they are notified that an appeal has been lodged. The decision maker's response sets out the reasons why the DWP have made the decision they have and sets out what the DWP want the tribunal to find (i.e. uphold their decision). A copy of the response will be sent to the tribunal clerk and a copy sent to the appellant and any representative they have listed on their appeal form. If not all the relevant documents needed to deal with the appeal fairly are in the appeal bundle (for example previous medical assessments that have supported the appellant's claim) then a request can be made to a first tier tribunal judge asking that the DWP be directed to provide the missing material.

Preparing for the appeal

Upon receipt of the decision maker's submission, the appellant (and/or their named representative) should submit their counter argument and any evidence that they have not already submitted. They should also set out what they are asking the tribunal to find (i.e. that they should have limited capability for work). The appellant's submission should arrive with the Tribunal Service not less than 7 days before the

date of the hearing. For paper hearings it can be difficult to ascertain the hearing date as it is not notified to the appellant. Any relevant case law that is cited should be included with the appellant's submission. However, the appellant (or their representative) should be mindful of not patronising the tribunal. Including well established and accepted case law to support a case is more likely to antagonise a tribunal who deal with ESA appeals on a regular basis than win them over.

Gathering evidence

The crucial date for appeals is the date upon which the decision was made. This is all the tribunal can consider: was the decision made on that date correct. Although information and evidence produced subsequently can be used it needs to bare relevance to the date of the decision. For example this could be a letter from a GP who was treating the appellant at the time but is writing some months later, or it could be a GP who was not treating the appellant at the time but has seen them now and is able to comment on what their condition was likely to be at the time. It is always good to include with any additional evidence any letter sent requesting it. This can show the tribunal that words have not been put into the mouth of the person writing the evidence.

If written evidence differs from that in the bundle, it should be explained why this is the case. Different tribunals have reached different decisions about the validity of medical evidence from both sides. Case law exists that both implies doctors can be "un-impartial", and also that GPs are more likely to be aware of a patients ongoing health problems than a Healthcare Professional carrying out an assessment for benefit purposes. These decisions can be found in CDLA/1850/2001, R(DLA)3/99, CDLA/2710/2010 and others. It may also be relevant to look at the qualification of the DWP Healthcare Professional, for example how much knowledge of acute mental health conditions does a Physiotherapist have?

Case Law

In terms of case law, tribunals are bound by decisions made by a higher court or tribunal. This means upper tier tribunal decisions are binding upon them (and Commissioner's decisions, Commissioners preceded the Upper Tier Tribunal). A panel of UTT judges/commissioner's decision should take precedence over a single UTT judge/commissioner's decision, reported decisions are to be preferred to unreported decisions, and where there are two conflicting single UTT judge/commissioner decisions it is for the tribunal judge to decide which they prefer.

Appeal tribunal make up

Appeal tribunals for ESA will consist of 2 members, One who is legally qualified and one who is medically qualified. They will ask questions of the appellant and make a

note of the appellant's answers. The DWP also have the right to send a presenting officer to the tribunal hearing. They are independent of the tribunal and can also ask questions of the appellant when invited to do so by the tribunal judge.

Appeal Types – Paper and Oral

There are 2 types of appeal hearing: paper hearings and oral hearings. In paper hearings the tribunal look at the appeal bundle and any additional paperwork and make a decision about the case. In oral hearings, the claimant gets to attend the tribunal and put their case in person. They can also take any witnesses they wish to speak up for them. Statistically the chances of success at an appeal hearing are increased if the appellant attends in person.

Outcome of tribunal and payment

If the outcome of the tribunal hearing is successful, then any money that would now be due because of winning (for example the support component amount or an increase to the personal allowance) will be paid to the claimant by the DWP. However, if the DWP challenge the tribunal's decision they can continue to withhold benefit until the outcome of their challenge.

Appeal to Second Tier Tribunal

If the claimant's appeal at tribunal is unsuccessful they can consider appealing against the tribunal's decision but only on a point of law. In order to consider whether there is a point of law the claimant needs to request, within one month of the date of the tribunal decision, a statement of reasons from the tribunal. They can also request a copy of the record of proceedings. Legal Aid is available for Law Centres challenging tribunal decisions The details of this are at <http://www.lawcentres.org.uk/lcn-s-work/welfare-benefits-upper-tribunal-service>

ESA Descriptors

Part 1: Physical disabilities

Activity 1: Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used.

(a) Cannot either:

- i) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion;
- ii) or repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

15 Points

b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.

9 Points

(c) Cannot either:

- (i) mobilise more than 100 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or
- (ii) repeatedly mobilise 100 metres within a reasonable timescale because of significant discomfort or exhaustion.

9 Points

(d) Cannot either:

- (i) mobilise more than 200 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or
- (ii) repeatedly mobilise 200 metres within a reasonable timescale because of significant discomfort or exhaustion.

6 Points

(e) None of the above apply.

0 Points

Activity 2: Standing and sitting

(a) Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

15 Points

(b) Cannot, for the majority of the time, remain at a work station, either:

- (i) standing unassisted by another person (even if free to move around); or
- (ii) sitting (even in an adjustable chair) for more than 30 minutes, before needing to move away in order to avoid significant discomfort or exhaustion.

9 Points

- (c) Cannot, for the majority of the time, remain at a work station, either:
- (i) standing unassisted by another person (even if free to move around); or
 - (ii) sitting (even in an adjustable chair) for more than an hour before needing to move away in order to avoid significant discomfort or exhaustion.

6 points

- (d) None of the above apply

0 Points

Activity 3: Reaching

- (a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.

15 Points

- (b) Cannot raise either arm to top of head as if to put on a hat.

9 Points

- (c) Cannot raise either arm above head height as if to reach for something.

6 Points

- (d) None of the above apply.

0 Points

Activity 4: Picking up and moving or transferring by the use of the upper body and arms

- (a) Cannot pick up and move a 0.5 litre carton full of liquid.

15 Points

- (b) Cannot pick up and move a one litre carton full of liquid

9 Points

- (c) Cannot transfer a light but bulky object such as an empty cardboard box.

6 Points

- (d) None of the above apply

0 points

Activity 5: Manual dexterity

- (a) Cannot either:

- (i) press a button, such as a telephone keypad; or
- (ii) turn the pages of a book with either hand.

15 Points

(b) Cannot pick up a £1 coin or equivalent with either hand.

15 Points

(c) Cannot use a pen or pencil to make a meaningful mark.

9 Points

(d) Cannot use a suitable keyboard or mouse.

9 Points

(e) None of the above apply.

0 Points

Activity 6: Making self understood through speaking, writing, typing, or other means normally used, unaided by another person

(a) Cannot convey a simple message, such as the presence of a hazard.

15 Points

(b) Has significant difficulty conveying a simple message to strangers.

15 Points

(c) Has some difficulty conveying a simple message to strangers.

6 Points

(d) None of the above apply.

0 points

Activity 7: Understanding communication by both verbal means (such as hearing or lip reading) and non-verbal means (such as reading 16 point print) using any aid it is reasonable to expect them to use, unaided by another person

(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

15 Points

(b) Has significant difficulty understanding a simple message from a stranger due to sensory impairment.

15 Points

(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.

6 Points

(d) None of the above apply.

0 Points

Activity 8: Navigation and maintaining safety, using a guide dog or other aid if normally used

(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.

15 Points

(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.

15 Points

(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.

9 points

(d) None of the above apply.

0 Points

Activity 9: Absence or loss of control leading to extensive evacuation of the bowel and/or bladder, other than enuresis (bed-wetting) despite the presence of any aids or adaptations normally used

(a) At least once a month experiences:

(i) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder; or

(ii) substantial leakage of the contents of a collecting device sufficient to require cleaning and a change in clothing.

15 Points

(b) At risk of loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder, sufficient to require cleaning and a change in clothing, if not able to reach a toilet quickly.

6 Points

(c) None of the above apply.

0 Points

Activity 10: Consciousness during waking moments

(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.

15 Points

(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.

6 Points

(c) None of the above apply.

0 Points

Part 2: Mental, cognitive and intellectual function assessment

Activity 11: Learning tasks

(a) Cannot learn how to complete a simple task, such as setting an alarm clock.

15 Points

(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.

9 Points

(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.

6 Points

(d) None of the above apply.

0 Points

Activity 12: Awareness of everyday hazards (such as boiling water or sharp objects)

(a) Reduced awareness of everyday hazards leads to a significant risk of:

(i) injury to self or others; or

(ii) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.

15 Points

(b) Reduced awareness of everyday hazards leads to a significant risk of

(i) injury to self or others; or

(ii) damage to property or possessions such that they frequently require supervision to maintain safety.

9 Points

(c) Reduced awareness of everyday hazards leads to a significant risk of:

(i) injury to self or others; or

(ii) damage to property or possessions such that they occasionally require supervision to maintain safety.

6 Points

(d) None of the above apply.

0 Points

Activity 13: Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks)

(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.

15 Points

(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.

9 Points

(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.

6 Points

(d) None of the above apply.

0 Points

Activity 14: Coping with change

(a) Cannot cope with any change to the extent that day to day life cannot be managed.

15 Points

(b) Cannot cope with minor planned change (such as a pre-arranged change to the routine time scheduled for a lunch break), to the extent that overall day to day life is made significantly more difficult.

9 Points

(c) Cannot cope with minor unplanned change (such as the timing of an appointment on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.

6 Points

(d) None of the above apply.

0 Points

Activity 15: Getting about

(a) Cannot get to any specified place with which the claimant is familiar.

15 Points

(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.

9 Points

(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.

6 Points

(d) None of the above apply.

0 Points

Activity 16: Coping with social engagement due to cognitive impairment or mental disorder

(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.

15 points

(b) Engagement in social contact with someone unfamiliar to the claimant is always precluded due to difficulty relating to others or significant distress experienced by the individual.

9 Points

(c) Engagement in social contact with someone unfamiliar to the claimant is not possible for the majority of the time due to difficulty relating to others or significant distress experienced by the individual.

6 Points

(d) None of the above apply.

0 Points

Activity 17: Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder

(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

15 Points

(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

15 Points

(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

9 Points

(d) None of the above apply.

0 Points

Assessment of whether a claimant has limited capability for work related activity

Activity 1: Mobilising unaided by another person with or without a walking stick, manual wheelchair or other aid if such aid can reasonably be used

Cannot either:

- (a) mobilise more than 50 metres on level ground without stopping in order to avoid significant discomfort or exhaustion; or
- (b) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.

Activity 2: Transferring from one seated position to another

Cannot move between one seated position and another seated position located next to one another without receiving physical assistance from another person.

Activity 3: Reaching

Cannot raise either arm as if to put something in the top pocket of a coat or jacket.

Activity 4: Picking up and moving or transferring by the use of the upper body and arms (excluding standing, sitting, bending or kneeling and all other activities specified in this Schedule)

Cannot pick up and move a 0.5 litre carton full of liquid.

Activity 5: Manual dexterity

Cannot either:

- (a) press a button, such as a telephone keypad; or
- (b) turn the pages of a book with either hand.

Activity 6: Making self understood through speaking, writing, typing, or other means normally used

Cannot convey a simple message, such as the presence of a hazard.

Activity 7: Understanding communication by hearing, lip reading, reading 16 point print or using any aid if reasonably used

Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.

Activity 8: Absence or loss of control over extensive evacuation of the bowel and/or voiding of the bladder, other than enuresis (bed-wetting), despite the presence of any aids or adaptations normally used

At least once a week experiences:

- (a) loss of control leading to extensive evacuation of the bowel and/or voiding of the bladder;
- or

(b) substantial leakage of the contents of a collecting device sufficient to require the individual to clean themselves and change clothing.

Activity 9: Learning tasks

Cannot learn how to complete a simple task, such as setting an alarm clock, due to cognitive impairment or mental disorder.

Activity 10: Awareness of hazard

Reduced awareness of everyday hazards, due to cognitive impairment or mental disorder, leads to a significant risk of:

- (a) injury to self or others; or
- (b) damage to property or possessions such that they require supervision for the majority of the time to maintain safety.

Activity 11: Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks)

Cannot, due to impaired mental function, reliably initiate or complete at least two sequential personal actions.

Activity 12: Coping with change

Cannot cope with any change, due to cognitive impairment or mental disorder, to the extent that day to day life cannot be managed.

Activity 13: Coping with social engagement, due to cognitive impairment or mental disorder

Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.

Activity 14: Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder

Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.

Activity 15: Conveying food or drink to the mouth

- (a) Cannot convey food or drink to the claimant's own mouth without receiving physical assistance from someone else;
- (b) Cannot convey food or drink to the claimant's own mouth without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot convey food or drink to the claimant's own mouth without receiving regular prompting given by someone else in the claimant's physical presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to convey food or drink to the claimant's own mouth without receiving:

- (i) physical assistance from someone else; or
- (ii) regular prompting given by someone else in the claimant's presence.

Activity 16: Chewing or swallowing food or drink

- (a) Cannot chew or swallow food or drink;
- (b) Cannot chew or swallow food or drink without repeatedly stopping, experiencing breathlessness or severe discomfort;
- (c) Cannot chew or swallow food or drink without repeatedly receiving regular prompting given by someone else in the claimant's presence; or
- (d) Owing to a severe disorder of mood or behaviour, fails to:
 - (i) chew or swallow food or drink; or
 - (ii) chew or swallow food or drink without regular prompting given by someone else in the claimant's presence.