



## BRIEFING PAPER

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# Permitted work rules

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The “Permitted Work rules” allow people claiming Employment and Support Allowance or other incapacity benefits to undertake some paid work without it affecting their benefit. Until recently, most people could only undertake Permitted Work and benefit from the more generous earnings limit for a limited period of time, but from April 2017 this restriction was lifted. This briefing gives an overview of the Permitted Work Rules, and outlines the changes from April 2017. It also looks at how the introduction of Universal Credit will affect the work options for people with health conditions and disabilities.

## 1. Background

Incapacity benefits (Employment and Support Allowance, and its predecessors including Incapacity Benefit and Severe Disablement Allowance) are, by definition, payable to people whose ability to work is limited because of illness or disability. Provisions have however existed for many years enabling people in receipt of incapacity benefits to do some paid work without losing completely their entitlement to benefit. For example, regulation 10(d)(iii) of the *National Insurance Unemployment and Sickness Benefit Regulations 1948*<sup>1</sup> disqualified a person from sickness benefit if he failed “without good cause” -

to do no work for which remuneration is, or would, ordinarily be, payable unless it is work which is undertaken under medical supervision as part of his treatment while he is a patient in or of a hospital or similar institution, and his earnings in respect of that work do not exceed twenty shillings a week.

Originally the emphasis was on work considered to have “therapeutic” value, but in April 2002 new rules on “**Permitted Work**”<sup>2</sup> came into force. When the rules were introduced the Department for Work and Pensions explained:

The new more flexible permitted work rules have been developed to support the Government’s commitment to removing barriers to work for people with long term health problems who want to take steps back to work. They strengthen the aim of work as a stepping stone off benefit and into employment. They remove the requirement that the work must be therapeutic.<sup>3</sup>

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<sup>1</sup> SI 1948/1277

<sup>2</sup> Permitted Work is the usual term used, but the legislation refers to “Exempt work”

<sup>3</sup> DWP, [Permitted work: procedural information for disability organisations](#), November 2002, para 2

## 2 Permitted work rules

In a more recent statement, DWP outlines the benefits of Permitted Work as follows:

Work is generally good for physical and mental wellbeing. Permitted work can help claimants:

- learn new skills
- build their confidence
- start thinking about types of work they could do when they are able

We would like to encourage and support people with a disability, illness or health condition to stay in, or go back to work once they are able to.<sup>4</sup>

Under the previous therapeutic work rules, work could be undertaken for an indefinite period and there was less incentive to return to full-time work; there was concern that some people were, in effect, using the extra payment as a permanent top-up to their incapacity benefits. When Permitted Work replaced therapeutic work, the rules were changed so that for most people Permitted Work could not be undertaken indefinitely. **This restriction has now been lifted – see below for details.**

Further background to the introduction of the Permitted Work rules can be found in the Commons Library briefing [Working and claiming incapacity benefits: the 'Permitted Work Rules'](#).

## 2. Permitted Work rules before April 2017

There are a number of Permitted Work options, depending on the person's circumstances. Claimants need to inform the Department for Work and Pensions before starting any Permitted Work.

For people in receipt of Employment and Support Allowance, **until April 2017** the options were:

- **Permitted Work Lower Limit** - under this option a person could earn up to £20 a week for an unlimited period.
- **Permitted Work Higher Limit** – a person could work for a period of up to 52 weeks, provided the work was for less than 16 hours a week and earnings did not exceed £115.50 a week after deductions. Once a period started, even weeks when the person did not work counted towards the 52 week limit. After 52 weeks work there had to be a gap of at least 52 weeks before work could start again, whereupon another 52 weeks work was permitted.
- **Supported Permitted Work** – the work had to be supervised by someone who was employed by a public or local authority or voluntary organisation which provides or finds work for people with disabilities. There was no restriction on the hours the person could work and the work could be for an unlimited period, but the earnings limit was £115.50 a week. Supported Permitted Work is work done by people who have a long term disability that has a “significant impact on their ability to learn or sustain a traditional job which always, or for a number of years, prevent them from working more than a few hours each week”.
- **Work done as part of a treatment programme** done under medical supervision whilst someone was an in-patient or regularly attending as an out-patient of a hospital or similar institution also counted as Supported Permitted Work. There was

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<sup>4</sup> DWP, [Employment and Support Allowance changes from 3 April 2017](#), 9 March 2017

no restriction on the hours the person could work and the work could be for an unlimited period, but the earnings limit was £115.50 a week.

- A person on **Employment and Support Allowance ESA in the “support group”** (i.e. they were judged to have limited capability for work related activity) could work for an unlimited period, if the work was for less than 16 hours a week and earnings did not exceed £115.50 a week after deductions.

### 16 hour limit

Where the hours limit applies, the claimant cannot work for 16 hours or more a week. For the purposes of determining whether the person meets this requirement, if their working hours fluctuate their hours are averaged over the current week and the four preceding weeks, or if there is a “recognisable cycle” of work, over the period of that cycle.

### Earnings limit

The legislation states that the higher earnings limit shall be the equivalent of 16 hours at the standard rate of the National Minimum Wage (NMW), so when the NMW changes the Permitted Work earnings limit changes accordingly. From April 2017 the National Minimum Wage increased to £7.50 an hour, so the higher earnings limit increased from £115.50 to £120 a week.

For Permitted Work purposes, earnings are calculated in the same way as for income-related Employment and Support Allowance. Income tax, National Insurance contributions, half of any contributions to a private or occupational pension, and (in some cases) childcare costs are deducted when calculating earnings.

If weekly earnings exceed the Permitted Work limit, the person is not entitled to ESA for that week and **any** benefit paid will have been overpaid. There is no tapering arrangement.

For these purposes, “earnings” will usually mean actual earnings for that week. Earnings are not automatically averaged over a particular period in order to determine whether the person has remained within the earnings limit each week. However, the regulations provide for the usual method for calculating weekly income to be modified in certain circumstances. Regulation 94(6) of the [Employment and Support Allowance Regulations 2008](#)<sup>5</sup> provides that:

Where the amount of the claimant’s income fluctuates and has changed more than once, or a claimant’s regular pattern of work is such that the claimant does not work every week, the foregoing paragraphs may be modified so that the weekly amount of the claimant’s income is determined by reference to the claimant’s average weekly income—

(a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);

(b) in any other case, over a period of 5 weeks or such other period as may, in the particular case, enable the claimant’s average weekly income to be determined more accurately.

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<sup>5</sup> SI 2008/794 as amended

### 3. Changes from 3 April 2017

From April 2017, new Employment and Support Allowance claimants placed in the “Work Related Activity Group” (WRAG) are no longer be eligible for the additional Work-Related Activity Component, worth £29.05 a week. The corresponding limited capability for work element in Universal Credit HAS also been abolished for new claims. The changes only affect new claims from that date – people already getting the ESA Work-Related Activity Component or the UC limited capability for work element at April 2017 will continue to receive it.<sup>6</sup>

Alongside these changes, the Government announced a package of measures to provide additional help people with health conditions and disabilities get into work. This included a relaxation of the Permitted Work rules. As a result, **from April 2017 people undertaking Permitted Work who would previously been restricted to the 52 week period (i.e. in the category covered by the second bullet point in section 2 above) can now undertake Permitted Work at the higher earnings limit for an indefinite period.** DWP’s Explanatory Memorandum accompanying the regulations which removed the 52 week restriction states:

#### **What is being done and why**

7.1 When the Welfare Reform and Work Act 2016 was going through its parliamentary stages, concerns were expressed that the rules which allow claimants to do a certain amount permitted work and retain all their ESA are unnecessarily restrictive. As a consequence it is intended to abolish the rule which limits such work to a maximum of 52 weeks. Affected ESA claimants also have to wait a year to restart permitted work after completing a 52 week period of permitted work. These limitations will be removed to improve work incentives. In the 2015 calendar year there were 8,900 permitted work starts for people in the work related activity group (WRAG). The changes would also apply to people claiming Incapacity Benefit (IB), Severe Disablement Allowance (SDA), and Housing Benefit (HB).<sup>7</sup>

The changes only affect people who would have been limited to 52 weeks at the Permitted Work higher limit. The rules for the other Permitted Work groups outlined in section 2 above are unchanged.

### 4. Universal Credit

The removal of the 52 week limit on Permitted Work was welcomed by disability organisations, although for some claimants the advantages may be short lived. This is because of the introduction of Universal Credit.

Universal Credit is replacing means-tested benefits and tax credits for people of working age. When UC is fully introduced (March 2022 at the earliest), income-related ESA will no longer exist. Contributory ESA – which is non-means-tested and which depends on the person’s National Insurance record – will continue to exist as a separate benefit (“new-style ESA”), alongside UC. However, as a result of a change introduced by the Coalition

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<sup>6</sup> For further details see Commons Library briefing CBP-7649, [Abolition of the ESA Work-Related Activity Component](#)

<sup>7</sup> [Explanatory Memorandum for the Employment and Support Allowance \(Exempt Work & Hardship Amounts\) \(Amendment\) Regulations 2017; SI 2017/205](#)

Government in 2012, receipt of contributory ESA is now limited to 12 months for claimants in the Work-Related Activity Group.<sup>8</sup>

There are **no Permitted Work rules under Universal Credit**. There is no limit to the number of hours people can work under UC. For claimants with a “limited capability for work” (i.e. who would currently qualify for ESA), their maximum UC award will be reduced if they have monthly earnings in excess of their “work allowance.” This is £397 a month, or £192 if the UC award includes a housing costs element. For every £1 of net earnings in excess of the work allowance, the maximum UC award is reduced by 63p.

In addition, since April 2017 new Universal Credit claimants assessed as having a “limited capability for work” (but not having a “limited capability for work-related activity”) have no longer had a limited capability for work element included in their maximum UC award (in line with the corresponding changes to ESA mentioned in section 3 above). For claimants in this group, their maximum UC award will not include any additional amount in respect of their health condition or disability, since UC does not include any of the disability premiums currently payable with means-tested “legacy” benefits.<sup>9</sup>

## 5. Further information

Disability Rights UK Factsheet F35, [Permitted Work](#), 6 April 2017

DWP, [Decision Maker’s Guide: Chapter 41](#) (see para 41187 onwards)

DWP, [Decision Maker’s Guide Memo DMG 7/17, ESA, IB & SDA: Exempt work and ESA Hardship](#)

Information on Permitted Work can also be found in hard copy guides including the Child Poverty Action Group’s [Welfare benefits and tax credits handbook](#) and Disability Rights UK’s [Disability Rights Handbook](#).

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<sup>8</sup> See Commons Library briefing SN06305, [Time limiting of contributory Employment and Support Allowance from 30 April 2012](#)

<sup>9</sup> For further information on the structure of support for disabled people under UC (before abolition of the limited capability for work element was announced) see section 6 of Commons Library briefing SN06548, [Draft Universal Credit Regulations 2013](#)

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