

Extra-statutory payments for claimants moving from Northern Ireland to Great Britain

Introduction

1. This guidance relates to extra-statutory payments of ESA for claimants who move from Northern Ireland (NI) to Great Britain (GB).

Note: Equivalent guidance will be issued by the Department for Social Development in NI for claimants who move from GB to NI.

Background

2. Reciprocal Arrangements (RA) between GB and NI operate to provide a single system of social security across the UK.

3. Currently, ESA is not included in the RA between GB. This means that claimants moving between GB and NI have to make a new claim on arrival in their new location, rather than simply reporting a change of circumstances as would be the case, for example, if they were to move from England to Scotland.

4. This can result in one or more of the following;

- a total loss of benefit if an ESA(C) claimant is unable to satisfy the contribution conditions in their new location
- an interruption in benefit if the claimant has to serve waiting days or;
- a reduction in benefit where for example a claimant is put back in the assessment phase or
- loss of any entitlement a claimant had in NI to a Transitional Addition under IB Reassessment

5. On 6 July 2012, Ministers in both NI and GB agreed that the RA should be amended to include ESA (C) and that until then, extra-statutory payments could be made, where appropriate, to claimants who move between NI and GB to prevent them being worse off in their new location.

6. On 15 January, Ministers also agreed that the RA should be amended to include income-related ESA (ESA(IR)) and that in the interim, extra-statutory payments could again be made to prevent a claimant being worse off in their new location than they would have been had they remained in their former location.

7. Entitlement to a statutory award of ESA must always be considered before any extra-statutory payments are made.

8. An extra-statutory payment may be for the full amount of ESA or for the difference between a claimant's previous statutory entitlement in NI and their statutory entitlement in GB.

Action to take

9. A claim in which an extra-statutory payment may be made due to the omission of ESA from the RA between GB and NI, should be taken in CAM as normal. The claim should then be pushed from CAM to JSAPS.

10. When the claim is received in the benefit centre, the following action should be taken:

- establish whether the claim is a continuation of the claim in NI or whether 12 week linking applies
- establish the rate of ESA, including any components and any TA awarded under IB Reassessment (IBR)
- in ESA(C) cases, establish the number of days for which ESA has been paid in NI
- delete record from JSAPS and rebuild as a clerical case (noting CAM notepad that it is a case where an extra-statutory payment is payable due to the omission of ESA from the Reciprocal Arrangements between GB and NI and that it has been deleted from JSAPS).

Note: Ensure that an immediate referral for a WCA is only made where appropriate. Where possible, WCA evidence from NI should be brought forward and a review date set.

Referral of cases

11. Where it is identified that an extra-statutory payment may be appropriate, a referral should be made to the Special Payments Unit (SPU), Admin Team, Glasgow Northgate Benefit Centre.

12. The referral should be made using [Ex-Stat Referral Form \(NI\)](#) which can be emailed to the SPU Admin Team at JCP Clyde and Fife BCD SPU Admin Team.

Payments

13. Any payment that is authorised by the SPU, whether it is a one-off or continuing payment, should be made clerically.

Maintenance of Cases

14. Claimants who receive an extra-statutory payment of ESA (C) and/or ESA(IR) are subject to the same rules as those receiving a statutory award. These include:-

- serving any balance of the assessment phase, where appropriate
- time limiting in ESA(C) for those claimants who are not in the Support Group (SG)
- the erosion of any TA awarded under IBR

Termination of payments

15. Any extra-statutory payment made due to the omission of ESA from the RA should be terminated from whichever is the earliest of the following dates:

- the day on which the relevant amendments to the RA comes into force, from which date the claimant will become entitled to ongoing awards of ESA on a statutory basis or,
- when a claimant ceases to satisfy the conditions of entitlement to ESA, for example when it has been determined that they do not have limited capability for work or
- when a claimant who is in the Work Related Activity Group (WRAG) has had ESA (C) only for 365 days. In some cases, the 365 days might be an aggregate of the number of days of entitlement in NI plus the number of days in respect of which extra-statutory payments have been made in GB.

Cases where an extra-statutory payment of ESA (C) should be considered

Note: An extra-statutory payment of ESA(C) can be considered for claims that are made prior to 6 July 2012 (see paragraph 5), if the criteria are satisfied

16. An extra-statutory payment should be considered in any case where:

- a claimant on ESA(C) moves from NI to GB
- the periods of LCW in NI and GB are/were continuous, or treated as continuous, (they are separated by no more than 12 weeks) and
- the circumstances in paragraphs 19 to 26 apply

17. Where the periods of LCW in NI and GB are continuous, the extra-statutory payments in GB should start from the day after the last day for which ESA was paid in NI.

18. Where the periods of LCW in NI and GB are not continuous but are separated by no more than 12 weeks, the extra-statutory payments should start from the first day of LCW in GB.

19. Where the claimant was entitled to main phase ESA(C) when they left NI and, having made a new claim in GB, is entitled to ESA(C) and has reserved waiting days and re-served all or part of the assessment phase :

- bring forward the WCA evidence from NI and set the appropriate review date

- where the claimant was not in the SG, determine the number of days of entitlement to ESA(C) already received in NI
- refer to SPU using the [Ex-Stat Referral Form \(NI\)](#) for authority to make:-

(i) an extra-statutory payment of ESA (C) for the 3 waiting days, including the main phase component to which the claimant was entitled whilst in NI and any entitlement they had to a TA

(ii) an extra-statutory payment equivalent to the weekly main phase component to which the claimant was entitled whilst in NI, plus any entitlement they had to a TA in NI, for the 13 week period during which they have received ESA at the assessment phase rate.

(iii) an extra-statutory payment in respect of any entitlement they had to a TA in NI for the period from week 14 of the GB award onwards

- arrange to terminate entitlement to ESA(C) on day 365 as appropriate

20. Where the claimant was entitled to ESA at the assessment phase rate when they left NI and, having made a new claim in GB, is entitled to ESA(C) and has re-served waiting days and has re-served all or part of the assessment phase, the following action should be taken:

- where the claimant was not in the SG, determine the number of days of entitlement to ESA(C) already received in NI and,
- refer to SPU for authority to pay

(i) an extra-statutory payment of ESA(C) at the assessment phase rate for the 3 waiting days and,

(ii) where it is determined that the claimant has LCW, an extra-statutory payment equivalent to the relevant component from the start of week 14 (the total of the number of weeks in GB and NI awards), until the day from which the component became payable in GB on a statutory basis

- arrange to terminate entitlement to ESA(C) on day 365 as appropriate

21. Where the claimant was entitled to main phase ESA(C) when they left NI but, having made a new claim in GB, is not entitled to ESA(C), take the following action;

- bring forward the WCA evidence from NI and set the appropriate review date
- where the claimant was not in the SG determine the number of days of entitlement to ESA(C) already received in NI

- refer to SPU, using the [Ex-Stat Referral Form \(NI\)](#) for authority to make an extra-statutory payment equivalent to the rate of ESA(C) to which the claimant was entitled whilst in NI, including any entitlement they had to a TA
- arrange to terminate payments of ESA(C) on day 365, as appropriate

22. Where the claimant was in assessment phase when they left NI but, having made a new claim in GB, is not entitled to ESA(C), the following action should be taken:

- bring forward the WCA evidence, if any, from NI
- make a WCA referral if claimant has not undergone a WCA
- determine the number of days of entitlement to ESA(C) already served in NI
- refer to SPU for authority to pay extra-statutory payments of ESA(C) at the assessment phase rate for the remainder of the assessment phase
- if following the application, it is established that the claimant has LCW/LCWRA, the extra-statutory payments payable from week 14 (the total of the number of weeks of the NI and GB awards) should be increased by an amount equivalent to the amount of the relevant component
- arrange to terminate payments of ESA (C) on day 365 as appropriate

23. Where, exceptionally, the claimant was entitled to ESA at the assessment phase rate pending the outcome of an appeal when they left NI but is not entitled to ESA(C) on arrival in GB:

- refer to SPU for authority to pay extra-statutory payments of ESA(C) at the assessment phase rate until the outcome of the appeal is known (the appeal will need to be heard in NI until the RA have been amended to include ESA).
- do not submit the case for a further WCA

24. If the claimant wins their appeal:

- award arrears of the relevant component plus any TA for the period in NI on a statutory basis and,
- refer to SPU to authorise an extra-statutory payment for the arrears of the relevant component, plus any TA, for the period in GB followed by continuing extra-statutory payments at the main phase rate, plus any TA.
- arrange to terminate payments on day 365 as appropriate.

Further payments after extra-statutory payments have ceased due to 365 days time limiting

25. A claimant whose extra-statutory payments of ESA (C) have terminated due to the 365 days time limit, can become re-entitled to a statutory award of

ESA if they make a claim and there is a break of more than 12 weeks in the new PLCW. They must also satisfy the first and second contribution conditions using new RITYs.

26. A claimant whose extra-statutory payments of ESA (C) have terminated due to the 365 days time limit and who cannot qualify for a statutory award of ESA, can be considered for a further extra-statutory payment if they now have LCWRA. They must also have had LCW continuously since their extra-statutory payments exhausted.

27. Where the claim links to the exhausted award of extra-statutory payments, no further payments can be made until a further WCA has been undertaken to determine whether the claimant has LCWRA. This is because the claimant has already received the maximum amount of ESA(C) whilst in the WRAG using the same RITYS.

28. If, following the WCA:-

- it is determined that the claimant has LCW and LCWRA, extra-statutory payments should be considered which include the SG component, from the first day of the latest PLCW. Any extra-statutory transitional addition previously in payment should be brought forward and eroded as normal.
- it is determined that the claimant has LCW but does not have LCWRA, no further extra-statutory payments can be considered. The claimant remains entitled to credits only.

29. If the new claim does not link to the exhausted award of extra-statutory payments and the claimant satisfies the contribution conditions, statutory ESA should be awarded in the normal way if all other conditions of entitlement are satisfied. No further extra-statutory payments need be considered.

30. If the new claim does not link to the exhausted extra-statutory payments and the claimant does not satisfy the contribution conditions and following the WCA, it is determined that the claimant has LCW and LCWRA, a further extra-statutory payment of ESA (C) should be considered. This should include the SG component from the first day of the latest PLCW.

31. If the claimant does not satisfy the contribution conditions and has LCW but not LCWRA, no further extra-statutory payments can be considered and the claimant remains entitled to credits only

ESA(IR)

Note. An extra-statutory payment of ESA(IR) should not be considered in any case for a period before 15 January 2014

32. The circumstances in which a claimant moving from NI to GB may be entitled to an extra-statutory payment of ESA(IR), are likely to be different than in ESA (C) cases.

33. This is because they are likely to be, or become, entitled to statutory ESA(IR) in the normal way.

34. However, there may be a need for an extra-statutory payments to be considered where:

- the periods of LCW in NI are/were continuous (they are separated by no more than 12 weeks) and,
- the circumstances in paragraphs 37-39 apply

35. Where the claimant was part-way through the assessment phase when they left NI and they have had to re-serve waiting days and the whole of the assessment phase:

- bring forward any WCA evidence from NI, make a determination about the claimant's LCW and set appropriate review dates
- if the claimant has not undergone a WCA, make a WCA referral and,
- refer to SPU for authority to pay:

(i) an extra-statutory payment for the three waiting days that they have had to re-serve and

(ii) an extra-statutory payment equivalent to the main phase component rate for the period from the date they would have qualified for this component had they remained in NI to the date they now qualify in their claim in GB. **See Example 1**

Example 1

Claimant moves from NI to GB on 18 July 2014. Entitlement to ESA(IR) started 7 June 2014 at which point they have served six weeks (42 days) of their assessment phase. Day 91 would have been 5 September 2014 had they remained in NI.

Claimant re-applies for ESA(IR) in GB from 19 July and has to re-start the assessment phase and re-serve 3 waiting days for the period 19-21 July. Day 91 is now 20 October 2014.

As the periods of LCW in NI and GB are separated by no more than 12 weeks an extra-statutory payment should be made at the assessment phase rate for the three waiting days 19-21 July.

If it is determined that the claimant has LCW, they will become entitled to the main phase rate of ESA(IR) on a statutory basis from 21 October 2014. Extra-statutory payments should be made equivalent to the rate of the appropriate component for the period 6 September 2014 (the day they would have been entitled to the main phase rate had they remained in NI) to 20 October 2014

36. Where the claimant was already in the main phase when they left NI and they have re-served waiting days and re-served all, or part of, the assessment phase again:

- bring forward the WCA evidence from NI and set the appropriate review dates and,
- refer to SPU for authority to pay
- extra statutory payments at the main phase rate, plus any TA, for the three waiting days the claimant has ad to re-serve
- (ii) an extra-statutory payment at the main phase rate, plus any TA, for the period before they qualified for the component in GB
- ongoing extra-statutory payments in respect of any TA for the period from the date they qualified for the component in GB. **See Example 2**

Example 2

Claimant moves from NI to GB on 18 July 2014. their entitlement to ESA(IR) started on 7 April 2013 under IB(R). Therefore they are already receiving the main phase rate and receiving the Work Related Activity Component (WRAC).

The claimant makes a new claim for ESA(IR) in GB and has to serve a further 3 waiting days for the period 19-21 July and re-start the assessment phase on 22 July 2014. Day 91 is 20 October 2014.

As the periods of LCW in NI and GB are separated by no more than 12 weeks, an extra-statutory payment should be made at the main phase rate plus the TA, for the three waiting days 19-21 July 2014-04-23

The claimant will become entitled to the main phase rate of ESA(IR) under the GB award from 21 October 2014.

Extra-statutory payments should be made equivalent to the WRAC plus the TA, for the period 22 July 2014 to 20 October 2014. Also ongoing extra-statutory payments should be made equivalent to the rate of the TA, from 21 October 2014.

37. Where, exceptionally, the claimant was entitled to ESA(IR) at the assessment phase rate pending the outcome of an appeal when they left NI:

- refer to SPU for authority to pay extra-statutory payments of ESA(IR) at the assessment phase until the outcome of the appeal is known which will need to be heard in NI until the RA have been amended to include ESA .
- do not impose waiting days
- do not refer for a further WCA