

Welfare Benefits – Updates for 2012

Chapter 1

Introduction to Welfare Benefits

Rates of pay for benefits

For the updated 2011 figures, see the Social Security Benefits Up-rating Order 2011 (SI 2011/821), Tax Credits Up-rating Regulations 2011 (SI 2011/1035/), DMG Memo 10/11 and further details at:

www.direct.gov.uk/prod_consum_dg/groups/dg_digitalassets/@dg/@en/documents/digitalasset/dg_193028.pdf

Note that in 2013 the Government intends to impose a weekly cap (currently £500 is suggested) on income derived from benefits, including child benefit, carer's allowance, jobseeker's allowance, income support, employment support allowance, housing benefit and council tax benefit.

Chapter 2

Introduction to Non Means-tested Benefits

2.2 National insurance contributions

For relevant 2011/12 figures, see the Social Security (Contributions) (Amendment No 2) Regulations 2011 (SI 2011/940) and the Social Security (Contributions) (Re-rating) Order 2011 (SI 2011/938).

Chapter 3

Jobseeker's Allowance

3.2.7 'Available for work'

Under the Allowance (Work Experience) (Amendment) Regulations 2011 (SI 2011/789), a claimant aged 18 or over may take up a work experience placement for between two and eight weeks, during which time he must still actively seek employment but will be treated as not in remunerative work.

Chapter 4

Limited Capability for Work

4.3.3 Non-contributory ESA

The Welfare Reform Bill 2011 includes a proposal to remove this benefit for new claimants.

4.4 Work capability assessment

Both tests have been significantly amended by the Employment and Support Allowance (Limited Capability for Work and Limited Capability for Work-Related Activity) (Amendment) Regulations 2011 (SI 2011/228), which introduce new descriptors and criteria applied to determine capability for work and for work-related activity. See new **Appendices 3 and 4**.

There is a useful summary in DMG Memo 06/11 at:

<http://www.dwp.gov.uk/docs/m-06-11.pdf>

4.5 Administration and payment of CESA

If the Welfare Reform Bill 2011 is passed, the Government intends from Spring 2012 to limit the payment of CESA to 12 months for claimants in the work-related activity group.

Chapter 5

Disability Benefits

5.2 Disability living allowance

The Government intends to replace this benefit with a Personal Independence Payment for all working-age claimants from 2013. Briefing notes and draft regulations may be found on the DfWP website at:

<http://www.dwp.gov.uk/policy/welfare-reform/legislation-and-key-documents/welfare-reform-bill-2011/personal-independence-payment-briefing/>

5.4.2.2 Lower rate

As to the interpretation of SI 2002/648, see *Secretary of State for Work and Pensions v DC* [2011] UKUT 235.

Chapter 7

Child Benefit

7.6.1 Rates of pay

In the 2011 Budget the Government announced that the rate of pay of child benefit will be frozen for three years.

Chapter 8

Carer's Allowance

8.5 Full-time education

For further analysis of the meaning of this condition, see *Secretary of State for Work and Pensions v ZC* [2011] UKUT 2, *Secretary of State for Work and Pensions v PW* [2011] UKUT 3 and the DMG Memo 04/11.

Chapter 10

Bereavement Benefits

The Government has launched a new Bereavement Service allowing people to contact their relevant local authority: see the link at:

<http://local.direct.gov.uk/LDGRedirect/index.jsp?LGSL=328&LGIL=8>

10.1.1 Lawfully married or in a valid civil partnership

This condition was discussed in *ES v Secretary of State for Work and Pensions* [2010] UKUT 200.

Chapter 11

Introduction to the Means-tested Benefits

In the Welfare Reform Bill 2011, the Government proposes a new Universal Credit to replace income support, income-based JSA, income-related ESA, working tax credit, child tax credit, housing benefit and council tax benefit. Details may be found at:

<http://services.parliament.uk/bills/2010-11/welfarereform.html>

11.2.1.1 Actual capital

Is a compensation payment to a claimant on the death of a parent under the Fatal Accidents Act 1976 ignored as capital under para 12 of Sch 10 to the Income Support (General) Regulations 1987? No, it is treated as capital of the claimant: see *CP v Secretary of State for Work and Pensions* [2011] UKUT 157.

Is a compensation payment paid as a result of a solicitor's negligence in failing to make a claim for personal injury by the claimant against a surgeon ignored as capital under para 12 of Sch 10 to the Income Support (General) Regulations 1987? Yes: see *KQ v Secretary of State for Work and Pensions* [2011] UKUT 102.

What if a claimant has two accounts with the same bank, one in credit but the other overdrawn – will only the net amount count? Yes, provided the bank's terms and conditions allow it to debit the account in credit compulsorily at any time with sums sufficient to clear the claimant's overdraft indebtedness: see *JRL v Secretary of State for Work and Pensions* [2011] UKUT 63.

11.7.1 Standard rate family premium (HB and CTB only)

The higher rate of family premium payable for a child aged under 1 year old has been abolished.

11.10 Living together as ‘husband and wife’ or ‘civil partners’

For a review of recent case law, see *SW v Secretary of State for Work and Pensions* [2011] UKUT 145.

11.11 Overpayment of benefits

Note that s 112(1A) of the Social Security Administration Act 1992 sets out the circumstances in which a criminal offence is committed by a claimant who fails to notify a change of circumstances. The details were considered by the court in *Coventry City Council v Vassell* [2011] EWHC 1542.

The Social Security (Electronic Communications) Order 2011 (SI 2011/1498) allows a claimant to notify a change of circumstances for certain benefits online to the DfWP.

In the Welfare Reform Bill 2011 there is provision that all overpayments of universal credit, jobseeker’s allowance, and employment and support allowance will be recoverable. All other benefits remain recoverable, as now, but only in circumstances in which there has been a misrepresentation or failure to disclose.

Chapter 12

Income Support, Income-related Employment and Support Allowance and Income-based Jobseeker’s Allowance: The ‘Top-up’ Benefits

12.2.2 Who may claim income support? (IS Regs 1987, reg 4ZA)

There is a provision in the Welfare Reform Bill 2011 lowering the qualifying age of the youngest child of a lone parent from 7 to 5.

12.14.3 Funeral payments

Is a prisoner who is not in receipt of a qualifying benefit and so unable to claim a funeral payment discriminated against for the purposes of Article 14 ECHR? No, held the Court of Appeal in *Stewart v Secretary of State for Work and Pensions* [2011] EWCA Civ 907.

12.16 Free school meals

Under the Education (Free School Lunches) (Prescribed Tax Credits) (England) (Amendment) Order 2011 (SI 2011/728), a child in a household receiving child tax credit with an income of less than £16,190 qualifies for free school meals.

(See also **Chapter 15**.)

Chapter 13

Housing Benefit

13.3.2.3 The room size test: special cases

From 1 January 2012, the shared accommodation rate applies to most single people aged under 35 (rather than 25): see the Housing Benefit (Amendment) Regulations 2011 (SI 2011/1736).

Chapter 14

Council Tax Benefit

In August 2011 the Government issued a Consultation Paper on a proposal to replace council tax benefit in England with 'localised support'. The link is at:

<http://www.communities.gov.uk/publications/localgovernment/localisingcounciltaxconsult>

Chapter 15

The Tax Credits

15.3.2 Being responsible for the child or qualifying young person

See the discussion of this condition in *CM v Secretary of State for Work and Pensions* [2010] UKUT 400.

15.5.1.2 Second condition

From April 2012, couples with a child or qualifying young person must work at least 24 hours a week between them, and one of them must work at least 16 hours a week.

15.5.2.7 A 50-plus element

The Government intends to abolish this element from April 2012.

Chapter 16

Immigration Tests for Welfare Benefits

16.4.1 Attendance allowance, disability living allowance and carer's allowance

The Social Security (Disability Living Allowance, Attendance Allowance and Carer's Allowance) (Miscellaneous Amendments) Regulations 2011 (SI 2011/2426) put into effect the ECJ decision of *Commission of the European Communities v The European Parliament and Council of the European Union* [2007] ECR I-8695.

16.4.8 Non-contributory ESA for youths

In *Stewart v Secretary of State for Work and Pensions* (Case C-503/09) [2007] the ECJ held:

- (a) the benefit is an invalidity benefit within the meaning of Regulation (EEC) No 1408/71 if it is clear that, on the date on which the claim is made, the claimant has a permanent or long-term disability;
- (b) art 10(1) of Regulation No 1408/71 precludes a Member State from making the award of the benefit subject:
 - (i) to a condition of past presence of the claimant in that State to the exclusion of any other element enabling the existence of a genuine link between the claimant and that Member State to be established, or
 - (ii) to a condition of presence of the claimant in that State on the date on which the claim is made.

16.7.1.3 The right to reside test

In *Patmalniece v Secretary of State for Work and Pensions* [2011] UKSC 11, the Supreme Court upheld the test as lawful. However, on 29 September 2011 the European Commission issued a press release stating that the 'right to reside' test contravenes EU law and should be disapplied. The UK Government was given two months to respond. See the link at:

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/1118&format=HTML&aged=0&language=EN>

Appendix 3

Limited Capability for Work (ESA) Assessment

SCHEDULE 2 ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK

Regulation 19(2) and (3)

Part 1 Physical Disabilities

<i>(1) Activity</i>	<i>(2) Descriptors</i>	<i>(3) Points</i>
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; or (ii) repeatedly mobilise 50 metres within a reasonable timescale because of significant discomfort or exhaustion.	15
	(b) Cannot mount or descend two steps unaided by another person even with the support of a handrail.	9
	(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
	(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
	(e) None of the above apply.	0
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. (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	15

			move away in order to avoid significant discomfort or exhaustion.	
			(c) Cannot, for the majority of the time, remain at a work station, either:	6
			(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.	
			(d) None of the above apply.	0
3	Reaching.	3	(a) Cannot raise either arm as if to put something in the top pocket of a coat or jacket.	15
			(b) Cannot raise either arm to top of head as if to put on a hat.	9
			(c) Cannot raise either arm above head height as if to reach for something.	6
			(d) None of the above apply.	0
4	Picking up and moving or transferring by the use of the upper body and arms.	4	(a) Cannot pick up and move a 0.5 litre carton full of liquid.	15
			(b) Cannot pick up and move a one litre carton full of liquid.	9
			(c) Cannot transfer a light but bulky object such as an empty cardboard box.	6
			(d) None of the above apply.	0
5	Manual dexterity.	5	(a) Cannot either:	15
			(i) press a button, such as a telephone keypad; or	
			(ii) turn the pages of a book with either hand.	
			(b) Cannot pick up a £1 coin or equivalent with either hand.	15
			(c) Cannot use a pen or pencil to make a meaningful mark.	9
			(d) Cannot use a suitable keyboard or mouse.	9
			(e) None of the above apply.	0
6	Making self understood through speaking, writing, typing, or other means normally used, unaided by another person.	6	(a) Cannot convey a simple message, such as the presence of a hazard.	15
			(b) Has significant difficulty conveying a simple message to strangers.	15
			(c) Has some difficulty conveying a simple message to strangers.	6
			(d) None of the above apply.	0
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.	7	(a) Cannot understand a simple message due to sensory impairment, such as the location of a fire escape.	15
			(b) Has significant difficulty understanding a	15

			simple message from a stranger due to sensory impairment.	
			(c) Has some difficulty understanding a simple message from a stranger due to sensory impairment.	6
			(d) None of the above apply.	0
8	Navigation and maintaining safety, using a guide dog or other aid if normally used.	8	(a) Unable to navigate around familiar surroundings, without being accompanied by another person, due to sensory impairment.	15
			(b) Cannot safely complete a potentially hazardous task such as crossing the road, without being accompanied by another person, due to sensory impairment.	15
			(c) Unable to navigate around unfamiliar surroundings, without being accompanied by another person, due to sensory impairment.	9
			(d) None of the above apply.	0
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.	9	(a) At least once a month experiences:	15
			(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.	
			(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
			(c) None of the above apply.	0
10	Consciousness during waking moments.	10	(a) At least once a week, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	15
			(b) At least once a month, has an involuntary episode of lost or altered consciousness resulting in significantly disrupted awareness or concentration.	6
			(c) None of the above apply.	0.

Part 2
Mental, Cognitive and Intellectual Function Assessment

11	Learning tasks.	11	(a) Cannot learn how to complete a simple task, such as setting an alarm clock.	15
			(b) Cannot learn anything beyond a simple task, such as setting an alarm clock.	9
			(c) Cannot learn anything beyond a moderately complex task, such as the steps involved in operating a washing machine to clean clothes.	6
			(d) None of the above apply.	0
12	Awareness of everyday hazards (such as boiling water or sharp objects).	12	(a) Reduced awareness of everyday hazards leads to a significant risk of:	15
			(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.	
			(b) Reduced awareness of everyday hazards leads to a significant risk of	9
			(i) injury to self or others; or	
			(ii) damage to property or possessions such that they frequently require supervision to maintain safety.	
			(c) Reduced awareness of everyday hazards leads to a significant risk of:	6
			(i) injury to self or others; or	
			(ii) damage to property or possessions such that they occasionally require supervision to maintain safety.	
			(d) None of the above apply.	0
13	Initiating and completing personal action (which means planning, organisation, problem solving, prioritising or switching tasks).	13	(a) Cannot, due to impaired mental function, reliably initiate or complete at least 2 sequential personal actions.	15
			(b) Cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions for the majority of the time.	9
			(c) Frequently cannot, due to impaired mental function, reliably initiate or complete at least 2 personal actions.	6
			(d) None of the above apply.	0
14	Coping with change.	14	(a) Cannot cope with any change to the extent that day to day life cannot be managed.	15
			(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
			(c) Cannot cope with minor unplanned change (such as the timing of an appointment	6

			on the day it is due to occur), to the extent that overall, day to day life is made significantly more difficult.	
			(d) None of the above apply.	0
15	Getting about.	15	(a) Cannot get to any specified place with which the claimant is familiar.	15
			(b) Is unable to get to a specified place with which the claimant is familiar, without being accompanied by another person.	9
			(c) Is unable to get to a specified place with which the claimant is unfamiliar without being accompanied by another person.	6
			(d) None of the above apply.	0
16	Coping with social engagement due to cognitive impairment or mental disorder.	16	(a) Engagement in social contact is always precluded due to difficulty relating to others or significant distress experienced by the individual.	15
			(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
			(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
			(d) None of the above apply.	0
17	Appropriateness of behaviour with other people, due to cognitive impairment or mental disorder.	17	(a) Has, on a daily basis, uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
			(b) Frequently has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	15
			(c) Occasionally has uncontrollable episodes of aggressive or disinhibited behaviour that would be unreasonable in any workplace.	9
			(d) None of the above apply.	0.

Appendix 4

Limited Capability for Work-related Activity (ESA) Assessment

SCHEDULE 3 ASSESSMENT OF WHETHER A CLAIMANT HAS LIMITED CAPABILITY FOR WORK RELATED ACTIVITY

Regulation 34(1)

<i>Activity</i>	<i>Descriptors</i>
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.
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.
3 Reaching.	Cannot raise either arm as if to put something in the top pocket of a coat or jacket.
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.
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.
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.
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.
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.
9 Learning tasks.	Cannot learn how to complete a simple task, such as

10 Awareness of hazard.	setting an alarm clock, due to cognitive impairment or mental disorder.
	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.
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 2 sequential personal actions.
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.
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.
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.
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.
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.
