**Limited Capability for Work &**

**Universal Credit**

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# Universal credit is now replacing Income Related Employment and Support Allowance across the country. While the DWP is planning to move existing claimants over to the new benefit system through ‘managed migration’, many claimants will find that they experience ‘a change in circumstance’ which will trigger a claim to Universal Credit. This is called ‘natural migration’.

# Some claimants who don’t have an existing benefit claim, and cannot work due to a health condition or disability, will now need to make a fresh claim for Universal Credit for support with their living costs. This is because no new claims can be made for IR Employment and Support Allowance due to the Universal Credit roll out.

# There is many similarities with the LCW element under UC and old style Employment and Support Allowance. For example, the assessment process is the same and the same descriptors of daily living activities are used for both.

# **I’m currently claiming Employment & Support Allowance and have been told that I now need to make a claim for Universal Credit. What do I do next?**

# You should double check that you have no other option than to make a claim for Universal Credit (you can do this using the THCAN ‘what triggers a Universal Credit claim?’ Fact sheet from the website) and that you do not fall into any group who is exempt from making a new claim. ***If you are receiving the Severe Disability Premium, you cannot make a claim for Universal Credit and should carry on claiming legacy benefits.*** You may be entitled to the severe disability premium if you are receiving IR ESA, the care component of Personal Independence Payment, and living alone with no one receiving Carer’s Allowance for you.

# If you are making a claim for Universal Credit because you failed your last Work Capability Assessment (‘WCA’) you should consider challenging the decision at the First Tier Tribunal - even if you want to claim Universal Credit whilst you await your appeal date. If you win your appeal, you can then request that your appeal decision is applied to your Universal Credit claim.

# If you are making a claim for Universal Credit due to a different change of circumstance and you have LCW/ LCWRA (and your assessment phase has ended), you are entitled to have this decision applied to your new Universal Credit claim immediately. If you were still within your 13 week assessment period, you will need to wait the till the total period of weeks between both your UC and ESA claims is 13 in total before you have the LCW element applied to your claim.

# *1 WR Act 07, Part 1; 2 UC (TP) Regs, reg 19(1) & (2); WR Act 12, s 21(1)(a); UC Regs, reg 27(1)(a) & (3)*

# **I am sick/disabled and unable to work. I am not currently claiming any benefits. What do I do next?**

# Make a claim for Universal Credit. Everyone who claims Universal Credit needs to agree to a claimant commitment which outlines the work requirements which are expected of you in order to receive your entitlement. Refusal to agree to a claimant commitment will close your claim so it’s advised that you accept your commitments (even if they have requested you to engage in work search or related activity) and request a review of the commitment afterwards. Unlike ESA, you are no longer classed as having ‘limited capability for work’ during your assessment period so your work coach can still ask you to partake in work search activities however it’s important to note that they do have discretion not to impose them whilst you are awaiting your assessment.

# After you have submitted your claim and accepted your commitments, ensure that you have submitted your fit note from your doctor. This can be submitted either at an appointment at the job centre or online at <https://www.gov.uk/send-fit-note>. This should trigger the WCA process and your claim will then be referred to the Health Assessment Advisory Service who will contact you via post to arrange an assessment date. Please note: until any LCW decision, you will be required to keep submitting fit notes accordingly.

# Whilst you wait for your assessment you will be sent a UC50 form in the post. You must fill this form out and send it back by the deadline given by the advisory service. If you need help filling out your form many advice centre’s within the borough can assist you. Find your nearest one at <http://thcan.org.uk/benefits-advice/>. If you think you’re going to be late returning your form, you should ensure that the DWP are aware of the delay and have granted you an extension.

# **It’s critical that you attend your work capability assessment.** If you cannot attend, you must inform the DWP and assessment service as soon as possible with the reason why and other dates that you are available. In certain circumstances (such as housebound claimants with serious mobility issues) you may be eligible for a home assessment. If you are suffering from a terminal illness, you should not need to attend an assessment at all. If you feel that you should have consideration under these special rules, you should inform the DWP and health advisory service as soon as possible.

# After you have attended your assessment, given in your completed form and your fit note, you should receive a decision from the DWP on whether you have LCW or LCWRA. Always remember that if you do not agree with the decision made, you can appeal to the First Tier Tribunal. If you need further advice regarding an appeal, please find your nearest advice centre at <http://thcan.org.uk/benefits-advice/>

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