

Employment and Earnings

Types of Work

1. There are three types of work to consider in ESA. These are:
 - General Work – this applies to the claimant
 - [Remunerative Work](#) – this applies to the partner
 - [Part Time Work](#) – this applies to the partner
2. ESA claimants are not allowed to do any work unless it is listed as one of the exceptions to [the General Work rule](#). These are where the claimant:
 - does [certain categories of work](#)
 - is receiving [certain medical treatment](#)
 - does [work in the first or last week of LCW](#)

Claimants who do certain categories of work

3. The [General Work rule](#) does not apply to
 - [councillors](#)
 - duties undertaken on not more than one full day or two half-days a week as:
 - a member of the DLA Advisory Board; or
 - a panel member with a disability qualification acting as a member of an Appeal Tribunal constituted under social security legislation
 - domestic tasks or care of a relative undertaken in the claimant's own home
 - foster parents and people providing respite care who receive payment
 - any activity undertaken during an emergency to:
 - protect another person; or
 - prevent serious damage to property or livestock
 - to do work which is exempt work:
 - [Permitted Work](#)
 - work done while test trading as a self-employed earner. Test trading allows a claimant to start a business but to be treated as in training for up to 26 weeks to establish if the business is viable. Further information on employed and self-employed earners can be found in the Decision Maker's Guide at [Chapter 49](#) and [Chapter 50](#)
 - [voluntary work](#)
 - work done in a work placement

Claimants receiving certain types of medical treatment

4. The [General Work rule](#) does not apply to work done by claimants who are receiving ESA(C) and who are receiving certain types of regular treatment including:
 - dialysis;
 - chemotherapy;
 - radiotherapy; or
 - total parenteral nutrition.

5. Claimants who have entitlement to ESA(C) and ESA(IR) may remain entitled to ESA(C) but lose their entitlement to ESA(IR) while they receive certain regular treatment.

Work in the first or last week of LCW

6. Claimants who work in the first or in the last week of LCW are treated as not entitled to ESA only on the actual day or days in that week on which they work.

Permitted Work

7. Permitted Work rules allow claimants to try some paid work as a stepping stone back into full-time employment, whilst still receiving ESA.

8. Claimants receiving any of the following benefits, because of illness or disability, may satisfy the Permitted Work rules:

- Employment Support Allowance (ESA)
- Incapacity Benefit (IB)
- Severe Disablement Allowance (SDA)
- National Insurance Credits (NIC)
- Income Support (IS)

9. There are four types of Permitted Work with different rules:

- [Supported Permitted Work \(SPW\)](#)
- [Permitted Work Lower Limit \(PWLL\)](#)
- [Permitted Work Higher Limit \(PWHL\)](#)
- [Permitted Work – Limited Capability for Work Related Activity \(LCWRA\)](#)

10. Permitted Work rules apply equally to both employed and self-employed earners. It is the net earnings which are taken into account when considering whether the work falls into the permitted work rules.

11. Form [PW1\(ESA\)](#) and leaflet DWP1019 are issued when a claimant enquires about permitted work. The completed PW1(ESA) may also be supported by a letter from the employer, indicating the future pattern of involvement and the earnings involved.

12. To clear the “To Do” task for hours worked per week, created when the number of hours worked in a week is populated in the Employment View, the BC NCO will have to assess if the work undertaken by the claimant fit within the permitted work limit. The NCO might have to refer to a DM Decision Maker for complex cases.

Supported Permitted Work (SPW)

13. To qualify for the Supported Permitted Work (SPW) category the claimant must satisfy the following criteria:

- the claimant must not earn more than the weekly SPW earnings limit;
- there is no limit to the number of hours the claimant works;
- there is no restriction on how long this type of work can be done;
- this claimant must be getting ongoing regular support by someone who is employed by a Public, Local Authority, community interest company or a Voluntary Organisation whose job is specifically to arrange work for people with disabilities; and

- the claimant must notify any changes in their employment, particularly if their support comes to an end. For more information see [DMG 41197 onwards](#).

14. The Support Permitted Work is fully disregarded for ESA(C) and ESA(IR) provided it remains within the set limits.

15. The support worker may be employed by the same employer as the claimant. This is acceptable, as long as the criteria for allowing SPW is met. It is not sufficient that the employer provides the support in the form of a buddy or mentor in the workplace.

16. The extent and frequency of the support will vary according to the progress a person is making. Contact once every six months would be the very least amount of support expected. The supervision must be more than the normal supports put in place by employers.

17. The support worker will, at least initially, have close involvement in the day to day routine of the worker and be ongoing and at regular intervals according to each person's circumstances.

18. SPW is also work done as part of a treatment program done under medical supervision while the claimant is an in-patient, or is regularly attending as an out-patient of a hospital or similar institution. See DMG Volume 3 Chapter 13.

Permitted Work Lower Limit (PWLL)

19. PWLL allows a claimant to:

- earn no more than the PWLL earnings limit of £20.00 per week;
- carry out the work for as long as they are on the benefit or receiving credits.

20. The claimant may have more than one job but the overall earnings must not exceed the set limit of £20. **The PWLL of £20.00 is fully disregarded for ESA(C) and ESA(IR).**

21. Claimants move out of the PWLL category if their earnings in any week are more than £20. See [DMG 41196](#)

Permitted Work Higher Limit (PWHL)

22. Under PWHL a claimant can:

- work for less than 16 hours per week, on average;
- earn no more than the Permitted Work Higher earnings Limit [Note: The PWHL is usually increased on 1st October each year in line with the increase in the National Minimum Wage.]; and
- work during a fixed Permitted Work Period (PWP) of 52 weeks starting from the first date worked.

Permitted Work Higher Limit Subsequent (PWHLS)

23. PWHL is only allowed once during a claim but a claimant can do a further period if there has been a gap of at least 52 weeks from the end of the previous PWP and the beginning of the next, providing there has been continuous entitlement to ESA. This is known as PWHLS.

24. Where a PWP ends and the claimant reclaims within 12 weeks and is still working, the period where there is no entitlement to ESA is included in the calculation of the 52 week period.

25. If a re-claim for ESA is made more than 12 weeks after the end of a previous claim, the claimant will qualify for a further 52 week PWP, irrespective of whether the previous 52 week PWP is completed.

Example 1

- Claimant starts permitted work 03/05/2010
- PWHL period 03/05/2010 to 01/05/2011
- Claimant's ESA claim terminates 01/08/2010
- Claimant reclaims from 27/09/2010
- PWHL accepted from 25/10/2010
- Remaining PWHL period 27/09/2010 to 01/05/2011

In this example the claimant reclaimed benefit within 12 weeks, therefore they are restricted to the same PWHL period even though the work did not start until 25/10/2010.

Example 2

- Claimant starts permitted work 03/05/2010
- PWHL period 03/05/2010 to 01/05/2011
- Claimant's ESA claim terminates 30/07/2010
- Claimant reclaims from 27/09/2010
- PWHL work accepted from 25/10/2010
- New 52 week PWHL period 25/10/2010 to 23/10/2011

In this example there is more than 12 weeks between the end of the first claim and the beginning of second claim. Therefore the claimant qualifies for a new 52 week PWHL period.

26. The PWHL is fully disregarded for ESA(C) and ESA(IR).

27. PWHL and PWHLS are for fixed periods. The periods will not be altered for any reason, for example, holidays or sick leave.

28. The 52 week time period continues even where the work is not continuous and there are breaks. Once the permitted work has been accepted issue form [PW6](#)

29. Claimants who were previously in receipt of IB and completed 52 weeks PWHL may later claim ESA. Where they are still working they may complete a further 52 weeks PWHL while on ESA. This is because ESA does not link with IB and so the previous period of PWHL on IB has no effect on their ESA claim.

Permitted Work - Limited Capability for Work Related Activity (PWK (LCWRA))

30. Claimants in the Support Group can work for an indefinite period if they:

- work for less than 16 hours, on average; and
- earn no more than the Permitted Work Higher earnings Limit (PWHL).

31. **Permitted work LCWRA is fully disregarded for ESA(C) and ESA(IR) provided it remains within the limits.**

Permitted Work PCA Exempt (PWPCAE)

32. IB(IS) Reassessment started 28 Feb 2011, expected end date 2014.

33. The “exempt work” provisions in IB or SDA allow those claimants who are exempt from the PCA, that is, those who on the basis of a diagnosis are not required to go through the full PCA process in order to establish their entitlement to benefit, to work for less than 16 hours a week and earn not more than the permitted work higher limit for an unlimited period.

34. Within the ESA regime, there is no equivalent to the PWPCAE group. Where prior to the effective date of a conversion decision, the claimant was undertaking work to which the PWPCAE rules applied, then, unless they are placed in the ESA support group (in which event they may work for less than 16 hours a week and earn not more than the permitted work higher limit for an unlimited period) they will immediately become subject to the normal ESA permitted work rules.

35. Given that there is no PWP for the PWPCAE group, it follows that no such period can have commenced prior to conversion, so in respect of any claimant to whom this change applies, the PWP will commence from the effective date of the conversion decision.

Permitted Work earnings limits

36. There is no requirement to check permitted work earnings but if there is any clear discrepancy between hours and earnings, wage slips can be requested from the claimant. Form [PW8](#) should be used to check earnings where necessary for PWLL and PWHL. Form [PW9](#) should be used to check supported PW where necessary.

37. Most adult workers, including part-time, casual, home workers and agency workers must be paid at least the National Minimum Wage (NMW).

38. More information and the current rates of NMW can be found on the [HMRC website](#).

The Department for Business Enterprise and Regulatory Reform (BERR) is responsible for policy decisions relating to the NMW, however, it is the responsibility of HM Revenue & R27. Customs (HMRC) to ensure that workers and employers based in the United Kingdom adhere to the rules governing the NMW.

39. A NMW Central Information Unit (CIU) based at HMRC Longbenton will coordinate any investigation into NMW irregularities.

[Click here for further information about disregards on Permitted Work earnings](#)

Averaging Earnings

40. There is provision for averaging earnings for the purposes of the Permitted Work test. When calculating the weekly amount of the claimant's earnings from either self-employment or employed earner's employment, DM's should apply the appropriate averaging criteria. When determining whether the earnings in a week are within the weekly earnings limit, reasonable expenses directly incurred because of the work may be taken into account. Follow the guidance in [DMG Chapter 41](#) when considering this issue.

41. Earnings from claimants engaged as childminders are calculated differently. They should be calculated by the DM in accordance with [DMG 50350](#)

Work does not fall within Permitted Work rules

Work has not commenced

42. If the work does not fall within the Permitted Work rules (e.g. earnings above Permitted Work earnings limits or working 16 hours or more) and the work has not commenced, take the following action:

Step	Action
1	issue DL/PW2 to the claimant
2	If there is evidence that DLA is in payment, notify DLAU so they can establish if there is a change in the claimants care/mobility needs
3	access dialogue JA110: Maintain Notepad to: <ul style="list-style-type: none">• record the decision; and• record the issue of the notification

Work has started

43. If the work does not fall within the Permitted Work rules and has already started, take action to stop payment.

44. Refer the claim to the DM on [form LT54](#) or, if it is a new claim, by assigning the case on CAM to consider revision or supersession of the award from the date the work commenced.

45. On return from the DM take the following steps:

Step	Action
1	notify the claimant on form ESA280 ;
2	take any overpayment action required;
3	access dialogue JA110: Maintain Notepad to:

	<ul style="list-style-type: none"> • record the decision; and • record the issue of the notification
4	if appropriate, consider the Job Grant before taking normal action to close the claim.

Recording Permitted Work on JSAPS

46. At the new claims stage, any information that the claimant has provided regarding their Permitted Work should be pushed from CAM to the relevant JSAPS dialogue after it has been verified.

47. If further changes are required to the Permitted Work after the information has already been pushed from CAM, or if Permitted Work starts after the new claim has been processed, take the following action on JSAPS:

Step	Action
1	<p>access the PERMITTED WORK screen, JA613639, of dialogue JA610: ESA Claim Maintenance and record:</p> <ul style="list-style-type: none"> • the type of Permitted Work, i.e. input: <ul style="list-style-type: none"> ○ [1] for PWLL; ○ [2] for SPW and PW(LCWRA); ○ [3] for PWHL; ○ [4] for PWHLS; • the start date of Permitted Work; • the end date (if known) of Permitted Work; <p>Note: JSAPS will automatically calculate the 'Week 52 date' if types [3] and [4] are entered.</p>
2	<p>access the CURRENT WORK screen, JA614640, of dialogue JA610: ESA Claim Maintenance to input:</p> <ul style="list-style-type: none"> • the person number [01]; • whether employed or self-employed; • the start date of employment; • whether the employer can be contacted; • the employer, their address and telephone number; • the employee reference and Department; • the job title; • the occupation type, e.g. councillor, child minder, etc; • [3] in the 'review type' for setting a review case control on JSAPS; • the 'review date', i.e. the date the review case control matures; <p>Note: review type [3] will set a case control to mature on the 'review date'. The 'review date' should be set as the date that a permitted work review is required. For further information on Permitted Work Reviews,</p>

	click here.
3	press F5 to access the EARNINGS screen, JA614641, of dialogue JA610: ESA Claim Maintenance to record relevant earnings. If earnings and hours are being averaged, go to Step 5; if not averaged go to Step 4;
4	<p>if earnings and hours are not averaged, record:</p> <ul style="list-style-type: none"> • the net pay in the 'Net Pay' field; • whether paid weekly, fortnightly, monthly, etc in the 'Payment Period' field; • the weekly hours worked; • [Y] in the 'Paid Employment' field; • [N] or [NV] in the 'Verified' field; • whether expenses are being reimbursed by the employer; • whether the claimant is contributing to an occupational pension; <p>Note: Validation is performed to ensure that the Permitted Work rules for type of Permitted Work entered are met.</p>
5	<p>if earnings are averaged (see section on Average Earnings), record:</p> <ul style="list-style-type: none"> • the payment period, i.e. weekly, fortnightly, monthly, etc • the details from the A15 or partners wage slips in the 'Payment Due Date', 'Total Hours Worked', 'Gross Pay', 'NI', 'Tax', 'Pensions Contributions' and 'Disgrd Expenses' columns; <p>Note: JSAPS will calculate the Net Pay (see section on Calculating the Net Wage). The 'Lowest Amount Earned' and 'Highest Amount Earned' fields will also be automatically populated. Validation is performed to ensure that the Permitted Work rules for the type of Permitted Work entered are met. When inputting the number of hours worked, round down in the claimant's favour where there are odd minutes.</p>
6	press ENTER to return to the PICKLIST EVIDENCE COMPLETE screen, JA611636 of dialogue JA610: ESA Claim Maintenance;
7	record the contributory and income related evidence as complete;
8	press F1 to check and accept the award evidence in dialogue JA200: Award and Decide ;
9	press F24 to go to dialogue JA405: Compute Payment ;
10	press END to issue revised notification;
11	if the Permitted Work falls into the PWLL or SPW categories, set a user case control in dialogue JA530: Case Controls for two years

	<p>ahead to review it;</p> <p>Note: if it is PWHL or PWHLS, an S306 case control is automatically created to mature 6 weeks prior to the Week 52 End date to notify that a claimant's fixed period of Permitted Work is due to end. Form PW7(ESA) should be issued to the claimant informing them that the period of permitted work is coming to an end.</p> <p>Also, an S317 case control is automatically created to notify that the PWHL has been updated (usually every October) and that manual re-assessment is required.</p>
12	Issue DL/PW1 ;
13	If there DLA is in payment, notify DLAU so they can establish if there is a change in the claimants care/mobility needs.

48. If any of the Permitted Work limits are exceeded, an S069 case control is set to terminate the claim. The last day of ESA entitlement will be the date on which the change occurs.

Notification of Permitted Work to HMRC

If a claimant starts any kind of permitted work, HMRC should be notified on clerical form [PW10](#)

Earnings Disregards for Housing Benefit/Council Tax Benefit (HB/CTB)

49. The Permitted Work limits also apply to HB/CTB for claimants claiming ESA(C), including credits only cases. It falls within the remit of Jobcentre Plus to decide which Permitted Work limit applies as this is needed for the claimants' ESA claim.

50. Local Authorities will be contacting Jobcentre Plus clerically to obtain the necessary information and it has been agreed that Jobcentre Plus will provide this information. Full details of this and the proforma to be used by Local Authorities can be found [here](#).

Remunerative Work

51. Remunerative work is work for which payment is made, or which is done in expectation of payment and in which the partner is engaged for not less than:

- 24 hours a week; or
- 24 hours a week on average where the hours of work fluctuate.

52. The remunerative work rule applies only to ESA (IR).

Part-time Work (Partner)

53. Part-time work is defined as work of less than an average of 24 hours per week done by the partner.

54. Part-time work may affect the amount of ESA(IR) awarded to the claimant and their partner.

55. To assess the effect of partner's part-time work on the claimant's claim, check:

- the part-time work details on the ESA claim at the new claims stage; or
- form [A15C](#)/payslips at the new claims stage;
- form [ESA88/A15C](#) if the part-time work starts during the life of the claim.

56. When a claimant is receiving ESA(C) only, any earnings received by their partner do not affect the ESA(C) element of the claim.

57. There are certain circumstances when a claimant's partner is not to be treated as engaged in remunerative work. This means that the hours worked by the partner are not taken into account if they are engaged in any of the following:

- childminding in their own home
- undertaking charitable or voluntary work if the only payment is for expenses incurred
- on a training scheme for which a training allowance is being paid
- working as a [councillor](#)
- fostering or providing respite care in their own home
- engaged in an activity which attracts a Sports Council Award
- test trading: people receiving assistance to become self-employed
- part-time fire-fighters
- Territorial Army or Reserve Forces members
- lifeboat crew members, manning or launching a lifeboat
- auxiliary coast guards involved in coast rescue duties

58. Earnings for partners who are engaged as childminders are calculated differently. They are calculated by the DM in accordance with [DMG 50350](#)

59. Share Fisherman also attract extra concessions

60. Where the partner has another occupation in addition to any of the above, the remunerative work rules apply in the normal way to the additional occupation.

61. The claimant's partner is treated as not being in remunerative work, **regardless** of the type of work undertaken when the partner is:

- regularly and substantially engaged in caring for another person who is in receipt of AA or the care component of DLA at the highest or middle rate
- involved in a trade dispute, unless certain payments, such as holiday pay, are being taken into account.
- living in a care home, Abbeyfield Home or an independent hospital.
- mentally or physically disabled and as a result they:
 - earn 75% or less of what a person without that disability working the same number of hours would reasonably be expected to earn; or
 - work 75% per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area.

62. Further information on employed and self-employed earners can be found in the Decision Maker's Guide at [Chapter 49](#) and [Chapter 50](#)

Calculating the Net Wage

63. Only net earnings are taken into account against ESA(IR), so it is important to calculate the correct amount of net pay received by the claimant and/or partner, by confirming that only allowable deductions have been made from their gross pay. For ESA purposes, the only deductions allowable from gross pay are:

- Income Tax
- NI contributions
- half of any occupational or personal pension contribution.

Example			
Payslip: Gerry		Week ending 31st August 2007	
Pay		Deductions	
Hours worked	15	Income tax	£15.89
Rate	£5.52	NI	£ 6.12
		Superannuation	£ 6.80
		Savings	£ 5.00
		Lottery	£ 1.00
		Total	£34.81
Gross pay:	£82.80	Net pay:	£47.99

64. In this example, the deductions for income tax, national insurance (NI) and half of the superannuation are allowable. Subtracting these allowable deductions from the gross wage leaves £57.39. This is the figure to be taken into account for ESA purposes.

Attribution of Earnings

65. To decide the period over which any earnings from employed earners employment are taken into account the DM needs to establish:

- the date of claim
- the first day of the claimant's benefit week
- the date on which the earnings are due to be paid
- the date on which the earnings are treated as paid and
- the period for which the payment is made

66. For example, a 4 weekly wage would affect ESA from the start of the benefit week in which it is due to be paid or treated as paid, forward for 4 weeks.

67. For further guidance see [DMG Chapter 49](#)

Payment in Lieu of Notice

68. An employer makes a payment in lieu of notice (PILON) when they end the employment without giving the agreed notice. The employer makes the payment instead of the employee working notice.

69. How PILON affects a claim for ESA depends on whether the work was remunerative or part time. Where the work was remunerative, the PILON received from an employer should be disregarded.

70. Part-time work is not remunerative. If the work for which PILON was made, was part-time and ended on or after the date of entitlement, PILON should be treated as earnings and taken into account in the normal way. If the part-time work ended before the date of entitlement, the PILON can be disregarded.

Disregards

71. The maximum disregard for the partner's part time earnings is £20.00 per week.

72. The maximum disregard will apply where the claimant does not have any earnings disregarded under the Permitted Work rules.

73. the claimant is engaged in Permitted Work, the maximum disregard that can apply to the combined earnings of both the claimant and partner is:

- £20.00 per week under PWLL; or
- £99.50 per week under PWHL, SPW or PWK(LCWRA). Please note that this is subject to a maximum disregard on the partner's part time earnings of £20.00 per week.

74. Where royalties or similar payments are paid to the claimant/partner a weekly disregard of £20 is applied. In cases where the claimant's partner is earning an overall £20 disregard will apply first to the claimant's permitted work and any remaining balance to the partner's earning.

[Note: The Permitted Work limit is usually increased on 1st October each year in line with the increase in the National Minimum Wage. An [S317 case control](#) is automatically created to notify that the PWHL has been updated and that manual re-assessment is required.]

Example 1

The claimant is engaged in PWLL, earning £18.00 per week. Their partner works part time and earns £50.00 per week. The partner's earnings can only be disregarded by £2.00 per week as the maximum disregard for PWLL is £20.00 per week. The remaining £48.00 per week is taken into account.

Example 2

The claimant is engaged in PWHL, earning £80.00 per week. Their partner works part time and earns £40.00 per week. The partner's earnings can only be disregarded by £19.50 per week as the maximum disregard for PWHL is £99.50 per week. The remaining £20.50 per week is taken into account.

Example 3

The claimant is engaged in SPW, earning £55.00 per week. Their partner works part time and earns £45.00 per week. The partner's earnings can be disregarded by £20.00 per week as the maximum disregard for SPW is £99.50. (The maximum disregard for a partner is £20.00). The remaining £25.00 per week is taken into account.

75. JSAPS automatically applies the appropriate earnings disregard to part-time earnings when assessing the claimant's ESA entitlement.

Averaging Earnings

76. Earnings that fluctuate must also be calculated to arrive at a weekly amount and may be calculated using the same rules as for averaging hours. If averaging the earnings is considered appropriate, average fluctuating earnings over:

- a complete cycle
- five weeks, if this provides an accurate average
- a different period if this provides a more accurate amount.

Self-Employment

77. A self-employed earner:

- works for themselves, rather than for someone else or a company;
- is gainfully employed in Great Britain other than as an employed earner;
- provides a service for a client;
- as a sole trader; or
- in partnership with another person;
- is responsible to the full extent of their assets for the debts of the business;
- is entitled to all the profits, or a share of the profits if in partnership;
- satisfies one of the following;
- pays a Class 2 National Insurance (NI) contribution. Depending on their earnings they may also pay a Class 4 contributions;
- have been granted a Small Earnings Exception by the Inland Revenue National Insurance Contributions Office; or
- have form 714, 715 or SC60 from the Inland Revenue because they are sub-contractors.

78. See, [DMG Chapter 50](#) for more information on self employment.

79. A claimant may state on their claim form that they, or their partner are self-employed, and declare how many hours they work. However, their perception of self employment may not match the definition of self employment for ESA purposes.

80. For ESA purposes, the number of hours a week spent in self employment must be established by asking the claimant:

- how involved they or their partner are in running the business;
- what position they hold, for example. sole proprietor or joint/part owner;
- the amount of time they or their partner spend;
- on a particular job or contract;
- purchasing stock;
- selling stock;
- advertising;
- travelling in connection with the business;
- supplying estimates;
- on supervising and management;
- keeping accounts;
- on research, for example, writers;
- cleaning and maintaining capital items;
- taking bookings;

- any other work connected with the business.

81. If the claimant's or partner's self employed hours of work vary, consider if there is a recognised work cycle. If there is a recognised cycle of work, average the hours over that period.

82. If there is no recognised cycle of work, find out if the pattern of work has recently changed and why. If the pattern of work has changed, or the claimant has only just started self-employment, average the hours they expect to work over a forward period. If the pattern of work has not changed, average their hours over:

- the five weeks before the date of claim, or
- a period, which accurately reflects the time the person worked before the claim.

83. Do not calculate over a past period if the claimant or partner has just started self-employment.

84. In addition weekly payments of Enterprise Allowance are not included as earnings from self-employment.

85. Where the claimant has ceased to be self employed a case control must be set of 8 weeks from the date the change in claimant circumstances occurred for the Customer Compliance Team to extract the appropriate information from the legacy system and initiate Customer Compliance investigation action.

86. In JA530: Case Controls :

- Insert type 'U' for user set.
- Insert reason as 'Customer Compliance Risk D.'
- Insert section as type '7' for visits.

Gainful employment

87. If the claimant is self employed and is not excluded from receiving ESA under the PWK rules, a decision must be made about whether they are gainfully employed.

88. This also applies where ESA (IR) is claimed and the partner is self employed.

89. Although a self employed earner may not be working, this does not necessarily mean they are not gainfully employed. They could be undertaking activities in connection with the business, for example:

- paperwork;
- enquiries;
- estimates;
- advertising.

90. The object of looking at gainful employment is to determine:

- whether there has been a change in the normal pattern of trading;
- which earnings assessment period to use when calculating the claimant's or partner's income from the business;
- how business capital assets are treated if the claimant or partner has ceased work temporarily.

91. When making a decision about whether the claimant or partner is classed as being in gainful employment, consideration should be made as to whether the business is without work.

Company Directors

92. Directors:

- are employees of a company;
- are not personally responsible for company debts;
- receive a salary from the company.

93. As a result, directors are not classed as self-employed earners, and therefore should be treated as an employee.

94. The claimant should have annotated their ESA claim form as to whether they are a company director or not.

95. Where the company director is the only or major shareholder of the company, business assets will need to be considered.

96. Further information on Company Directors can be found in [DMG Chapter 49](#).

Voluntary Workers

97. Claimants can do unlimited, unpaid work. Voluntary work will not affect ESA.

98. If a claimant states they have started or are thinking of starting voluntary work, explain that the DM determines whether the work is permitted and obtain the following information:

- the name of the body or person for whom they perform or intend to perform the work;
- whether the work is being done for a member of their family;
- the date the voluntary work will or has commenced;
- a brief description of the work undertaken;
- the number of hours and days worked;
- full details of any payments, expenses or meals provided. NB Any reimbursement of meal expenses incurred as a result of voluntary activity are disregarded; and
- details of any other work being undertaken (either voluntary or paid).

99. Obtain details by:

- letter;
- telephone; or
- interview.

100. If you obtain the details by telephone, record them on a form A6, noted 'not for destruction', with a statement that the details have been read back and confirmed by the claimant.

101. Refer the details to the DM using [form LT54](#) or, if it is a new claim, by assigning the case on CAM.

102. If the DM has doubts about allowing benefit to continue, they may ask you to see the claimant and obtain further details. Explain to the claimant why the DM has doubts.

103. If the DM accepts that the work is voluntary work send a letter to the claimant advising them that:

- they can continue to get their benefit
- they must advise the Department if they;
 - work longer hours
 - the work changes in any way
 - stop work.

104. A claimant can do a combination of voluntary and Permitted Work.

Recording Part Time or Voluntary Work on JSAPS

105. At the new claims stage, any information that the claimant has provided regarding their partner's part time work should be pushed from CAM to the relevant JSAPS dialogue after it has been verified.

106. If further changes are required to the part time work after the information has already been pushed from CAM, or if part time work starts after the new claim has been processed, take the following action on JSAPS:

Step	Action
1	<p>Access the CURRENT WORK screen, JA614640, of dialogue JA610: ESA Claim Maintenance to record:</p> <ul style="list-style-type: none"> • the person number, i.e. the partner who is doing the part time or voluntary work; • whether employed or self-employed; • Trade Dispute involvement; • the start date of employment; • whether the employer can be contacted; • the employer, their address and telephone number; • employee reference and Department; • the job title; • [13] in the 'Occupation Type' field to indicate voluntary work; • [1], [2] or [3] in the 'review type' for sending A15 review form to employer, A15C Declaration form to the claimant or setting review case control on JSAPS respectively; • the 'review date', i.e. the date that the A15 or A15C is sent or the date that the case control matures; • the number of weeks/months that the employer is to supply information for if A15 is to be sent. This should only be completed if the 'review type' is set to [1]; • the 'review period', i.e. the period that the employer is to supply information for. This should only be completed if the 'review type' is set to [1].
2	<p>Press F5 to access the EARNINGS screen, JA614641, of dialogue JA610: ESA Claim Maintenance to record relevant earnings. If earnings are being averaged, go to Step 4; if not averaged go to Step 3</p>
3	<p>If earnings are not averaged, record:</p> <ul style="list-style-type: none"> • the net pay in the 'Net Pay' field; • whether paid weekly, fortnightly, monthly, etc in the 'Payment Period' field; • the weekly hours worked;

	<ul style="list-style-type: none"> • whether or not employment is paid in the 'Paid Employment' field. This should be set to [N] for voluntary work; • [N] or [NV] in the 'Verified' field; • whether expenses are being reimbursed by the employer; • whether the claimant is contributing to an occupational pension
4	<p>If earnings are averaged (see section on Average Earnings), record:</p> <ul style="list-style-type: none"> • the payment period, i.e. weekly, fortnightly, monthly, etc • the details from the A15 or partners wage slips in the 'Payment Due Date', 'Total Hours Worked', 'Gross Pay', 'NI', 'Tax', 'Pensions Contributions' and 'Disgrd Expenses' columns. <p>Note: JSAPS will calculate the Net Pay (see section on Calculating the Net Wage). The 'Lowest Amount Earned' and 'Highest Amount Earned' fields will also be automatically populated.</p>
5	Press ENTER to return to the PICKLIST EVIDENCE COMPLETE screen, JA611636 of dialogue JA610: ESA Claim Maintenance
6	Record the contributory and income related evidence as complete
7	Press F1 to check and accept the award evidence in dialogue JA200: Award and Decide
8	Press F24 to go to dialogue JA405: Compute Payment
9	Press END to issue a revised notification

Councillors

107. People who perform duties as a councillor are treated as not being in remunerative work, however councillors' allowances affect ESA.

See also [claimants who do certain categories of work](#).

108. Councillor's allowances are not treated as earnings, they are Prescribed Payments. The allowances must be converted into a weekly equivalent.

109. In the case of an attendance allowance paid to councillors, the weekly amount is the amount paid in respect of attendances undertaken in the week in question.

110. In the case of a basic allowance or a special responsibility allowance paid to councillors, calculate the weekly amount as follows:

- Where payments are made annually, divide by 52.
- Where payments are made quarterly, divide by 13.

- Where payment is made for a month, multiply by 12 and divide by 52.
- Where payment is made for 2 or more months but not quarterly or annually, divide the payment by the number of months it covers, multiply the result by 12 and divide by 52.

111. In any other case, divide the payment by the number of days it covers and multiply by 7.

112. Where any calculation under ESA Regs 794/2008 reg 3 results in a fraction of a penny that fraction is, if it would be to the claimant's advantage, to be treated as a penny, otherwise it must be disregarded.

113. The net amount of any such allowances that the claimant receives in excess of the limit is deducted from any entitlement to ESA(C).

114. The limit of councillor's allowance is calculated by multiplying the rate of the National Minimum Wage by 16 and rounding where less than 50p up to the nearest 50p and less than £1 but more than 50p up to the nearest £1.

115. For ESA (IR) there is a £20 disregard.

Expenses

116. Payments for expenses paid by an employer which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings. These can include:

- payment for travelling expenses between home and work;
- expenses for the care of a member of the claimant's family;
- school fees for a claimant's child;
- child care costs when not paid in vouchers or cheques.

117. Payments for expenses paid by an employer which are wholly, exclusively and necessarily incurred in the performance of the duties of the employment are **not** earnings and are fully disregarded. These can include:

- payments made for travelling expenses and overnight accommodation so that the employee can attend a meeting;
- a mileage allowance to run a car for business purposes.

118. If an employer pays for an expense from which the employee gets some private benefit you should divide the payment into:

- private use, **and**
- business use

119. Treat the 'private use' part as earnings. The rest, which is wholly, exclusively and necessarily incurred for business purposes, is disregarded.

Evidence shows the claimant is receiving less than the National Minimum Wage (NMW)

120. If the information from correspondence indicates that the claimant is receiving earnings that are less than the NMW, take a photocopy of the correspondence and send with a covering minute to:

NMW Central Information Unit
 Room BP7201
 Norham House
 Benton Park View
 Longbenton
 Newcastle

NE98 1ZZ

121. The covering minute should contain the claimant's:

- Name;
- National Insurance Number;
- Employers name and address;
- Date work commenced;
- Details of wage/salary being paid;
- Hours worked

122. If in doubt about whether to refer a case for investigation, seek advice from HMRC by contacting the NMW Central Information Unit by telephone on 0191 2256269.