

Notes to flow chart on Universal Credit and young disabled people in education

This flow chart is aimed at parents who have a disabled young person aged 16 or above in education. It will help you work out whether your child would be likely to qualify for Universal Credit (UC) while on their course. It applies to young people in England, Wales, and Scotland. Similar rules may apply in Northern Ireland, but you should seek local advice to confirm this. You should also seek individual advice if your child is on a training course or an apprenticeship.

Different rules apply to students who either have children of their own or a partner, some students who are without parental support (e.g. they are orphaned or estranged from their parents) and students waiting to return to a course after taking time out for illness or caring responsibilities. Seek individual advice if any of the above apply to your young person.

Abbreviations used in this flow chart

DLA – Disability Living Allowance

PIP – Personal Independence Payment

ADP – Scottish Adult Disability Payment

CDP – Scottish Child Disability Payment

LCW – limited capability for work

LCWRA – limited capability for work and work related activity

UC – Universal Credit

DWP – Department for Work and Pensions

What is advanced education?

This is any course of education that is above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher). This includes university degrees or equivalent, such as HNDs, HNCs, NVQ level 4 and above, SVQ level 4 and above.

What is non-advanced education?

This is any course of education that isn't advanced e.g. school or non-advanced college courses such as a BTEC. It also includes courses that don't lead to any qualification such as a life skills course. Non-advanced education usually takes place at a school or a college, but education provided elsewhere e.g. at home, can count too so long as it is approved by UC.

When is a course considered full-time?

In non-advanced education a course is full-time it involves an average of more than 12 hours a week of tuition, practical work and supervised study. For advanced education – it will usually depend on whether or not the course is described as full-time by the course provider.

What sort of student funding is classed as a maintenance loan or grant?

This will include grants and loans to cover living costs such as those made by Student Finance in England or the Student Awards Agency in Scotland. It does not include a 16-19 bursary or an Educational Maintenance Allowance (EMA), but it does include a bursary maintenance allowance in Scotland.

What is limited capability for work (LCW)?

This means you've had a DWP assessment known as a work capability assessment and it's been accepted by the DWP that you have a limited capability for work. UC claimants with LCW aren't obliged to look for work but may still be asked to take part in work related activities like training and work focussed interviews.

What is a limited capability for work- and work-related activity (LCWRA)?

This means you've had a DWP assessment known as a work capability assessment and it's been accepted by the DWP that you not only have a limited capability for work but also have a limited capability for work related activity such as training. UC claimants with LCWRA cannot be asked to look for work or take part in other training activities. They also receive an additional UC payment known as the LCWRA (or health) element.

What is a 'credits only' claim for new style Employment and Support Allowance?

A 'credits only' claim for new style Employment and Support Allowance refers to a process where your child (or you acting as their appointee) completes an application for a benefit called new style ESA despite knowing that they will be refused this contributory benefit. Although your child will be refused ESA itself, the DWP should still organise a work capability assessment to decide whether your child has LCW/LCWRA.

Establishing LCW (or LCWRA) in advance of a UC claim is a good idea as it can help a young person qualify for UC while on a course in several different scenarios – e.g. if they return to education after a break in their studies, if they move from full-time to part-time study or if they remain in full-time non advanced education beyond the 31st August after their 19th birthday. It can take several months to get a decision back on a credits only claim, so the earlier you do this the better. You cannot make a credits only claim for ESA before your child turns 16.

Why is it easier for a young person in non-advanced education to get Universal Credit after they've passed the 31 August after their 19th birthday?

Where someone is in full-time non advanced education has not yet reached the 31st August after their 19th birthday, they are not entitled to Universal Credit unless they fall into an exempt group (e.g. they get a disability benefit such as PIP and also established LCW/LCWRA BEFORE their current period of receiving education).

The situation is different once someone in non-advanced reaches the 1st September after their 19th birthday. These older students in non-advanced education don't need to show they are in an exempt group. From that age onwards the only way they can lawfully be refused UC as a student, is if the DWP argue that their course is not compatible with any work-related conditions attached to their claim. If the DWP agree that there is no incompatibility between a course and their UC claim, being on a course won't stop your child from getting UC.

19-year-olds who started their non-advanced course after their 19th birthday

Similar rules apply to any 19-year-old who was accepted or enrolled onto their course at some point after their 19th birthday. These 19-year-olds also don't need to show they are in an exempt group and can only be refused UC if their course is incompatible with any work-related conditions attached to their UC claim.

Is it true that establishing a limited capability for work only helps a young person in education to get Universal Credit, if it happens before they started their most recent period of receiving education.

It depends on the student's circumstances. If they are in one of three groups:

- part-time students,
- students who have passed the 31st of August after their 19th birthday and who remain in full time non advanced education or
- students who were accepted onto their non-advanced course after they turned 19

establishing a limited capability for work can help even if this was done during their current course. If you are in one of these groups and you have established LCWRA, then regardless of when this happened the DWP are not allowed to apply work related conditions to your claim. If you have no work-related conditions, then your course cannot be incompatible with your claim. This in turn means you cannot be refused UC as someone receiving education.

However, for other students, establishing LCW only helps you get Universal Credit if this was done prior to your current period of receiving education.

When will my child be treated as having had a break in receiving education?

Most students in full time non-advanced education who haven't passed the 31 August after their 19th birthday or who are in full-time advanced education (regardless of their age) can't get Universal Credit. However, a disabled student in one of these groups can get UC if they get a qualifying disability benefit such as DLA, PIP or ADP AND also established that they had a limited capability for work at some point before they started 'receiving education'.

This means that your disabled child should be able to get Universal Credit despite their course, if you can show that they have had a break in 'receiving education' and they established LCW/LCWRA at some point before their most recent period of 'receiving education' started. However, sometimes it can be difficult to predict whether UC are likely to accept that your child has established LCW/LCWRA before their current period of receiving education began rather than during it.

You should be able to argue that your child has had a break in receiving education if - at some point following the 31st August after their 16th birthday – they either gave up a course or were dismissed from it and there was then a gap before they were accepted or enrolled onto another non-advanced course. If they start or are accepted onto a new course at a later date, they will have had a break in 'receiving education'. So long as they established LCW/LCWRA prior to their new course starting (they don't have to do this during the gap between courses, it still counts if they established LCW/LCWRA while on their original course) they should be able to get UC.

Your child should also be treated as having a break in receiving education if they move from a non-advanced course to an advanced course such as a university degree. This is because they are treated as being out of education during the summer holidays between their non-advanced course ending and their advanced course starting. So long as establish LCW/LCWRA at some point before their advanced course starts, they will be eligible to get UC.

The situation is more complex where someone is in full time non-advanced education and they move from one non-advanced course to another, with no break other than the summer holidays.

The reason for this is that young people who are in full time non-advanced education are treated as receiving education not only while they are on their course, but also during any period when they have been accepted or enrolled onto another non-advanced course that they are waiting to start. For example, a young person who moves from school to a non-advanced college course is treated as receiving education while on their school course, and during the summer holidays (assuming they were accepted onto their college course before their school course ended) as well as once they start their new course. In this scenario the DWP are likely to argue that they have remained in one single period of 'receiving education' throughout this whole time.

The situation will also be different if there was a delay in them being accepted onto their new course, for example, where someone leaves their school course and there is then a gap of some weeks during the summer before they are accepted onto a new college course. Where this applies it should be possible to argue that there has been a break in them receiving education. If they had established LCWRA prior to the date they were accepted onto their new course they should be exempt from the normal student restrictions.

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