

# Explanatory Memorandum for the Social Security Advisory Committee

The Jobseeker's Allowance Regulations 2012

For the meeting of the Social Security Advisory Committee on  
Wednesday 13 June 2012

# The Jobseeker's Allowance Regulations 2012<sup>1</sup>

1. The following explanatory memorandum sets out the proposals for how Jobseeker's Allowance (JSA) will be changed, the work-related requirements which will apply to claimants and the sanctions proposals. Draft regulations are also provided so that the Committee can see how the drafts attempt to reflect those proposals. We will continue to refine the draft regulations to ensure they reflect the policy fully and accurately and to improve the drafting where appropriate.
2. These regulations replace the Jobseeker's Allowance Regulations 1996 and re-introduce JSA as a contributory benefit. The regulations effectively remove all references to income-based JSA as a consequence of the introduction of Universal Credit (UC) which will replace the income-based JSA. Jobseeker's allowance will therefore become a contributory only benefit. (The existing 1996 regulations will continue in force for certain claimants and be revoked for claimants who are subject to the proposed 2012 regulations. The provisions for that are in separate regulations.)
3. With two main exceptions, the regulations for contributory JSA have been brought forward from the 1996 regulations with no change. In other words, the contributory JSA regulations have been consolidated in these regulations. There will be a number of minor updates to the existing provisions, but they are not intended to change the effect of the provisions e.g. these regulations will use gender neutral drafting. Most of these minor updates are not yet included in the draft regulations<sup>2</sup>. There are a number of benefits of consolidating, for example to make the regulations easier to read by renumbering all the amendments that have been made since 1996.

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<sup>1</sup> Section 33 of the Welfare Reform Act 2012 provides for the abolition of income-based JSA and income-related ESA. The proposed regulations, therefore, only apply to JSA & ESA when those benefits are contributory-only benefits. The existing (Decisions and Appeals) Regulations will, however, continue in force in relation to current-style JSA (which is both an income-based and contributions-based benefit) and current-style ESA (again an income-based and contributions-based benefit) until such a time as all claimants are claiming Universal Credit, new-style JSA (as a contributory-only benefit) and new-style ESA (as a contributory-only benefit).

The existing Decisions and Appeals Regulations will be revoked in so far as they apply to JSA & ESA, with savings for claimants still entitled to current-style JSA & ESA (including where certain groups of claimant are still able to claim current-style JSA or ESA after the launch of Universal Credit, as a result of the phased approach to migration).

Only one version of the Regulations will apply to a person at any one time.

<sup>2</sup> Part 3, Chapter 1, carries across existing provisions in JSA. We consider some of these to be unnecessary due to the Welfare Reform Act. We will continue to refine and strip out duplicate provisions.

4. As the Committee will be aware, there is no requirement to refer to the Committee regulations which are made for the purpose only of consolidating other regulations (paragraph 10 of Schedule 7 to the Social Security Administration Act 1992). These regulations are referred to the Committee because even though they are mainly consolidating, there are provisions which are not just consolidating.
5. The two main sets of provisions which are not just consolidating are in Part 2 of the draft regulations. They are the *work-related requirements* (also known as labour market conditionality), which include the work-search and work availability requirements, and the *sanctions regime* which flows from non-compliance with these requirements. These will change significantly so that they align with the Universal Credit regime. There are also new provisions about how the new work-related requirements and sanctions regimes work for a claimant who is entitled to both JSA and UC and for a claimant who moves from claiming JSA only to UC only (and vice versa). In this memorandum, references to 'conditionality' mean the requirements a claimant has to meet whilst they are receiving JSA. This can include things like attending work-focused interviews and carrying out a work preparation requirement.

## Conditionality and sanctions

6. Section 49 of the Welfare Reform Act 2012 introduces new provisions into the Jobseekers Act 1995. These provisions build on the changes to the JSA sanctions regime to be introduced in October 2012 (considered by the Social Security Advisory Committee in April 2012) by further aligning the JSA sanctions approach with Universal Credit and substantially aligning JSA conditionality requirements with those under Universal Credit.
7. By aligning the two regimes we intend to create a simpler system for claimants and advisers, allow for easier transitions between UC and JSA and cater for cases of dual entitlement to UC and JSA.

## Claimant Commitment

8. We intend that, as for Universal Credit, to be entitled to the new contributory Jobseeker's Allowance claimants must accept a Claimant Commitment.
9. The Claimant Commitment will record the requirements placed upon a claimant in return for their payment of Jobseeker's Allowance. The Commitment will also explain what will happen if they do not comply with those requirements, clearly setting out the sanctions they could face.
10. Acceptance of the Claimant Commitment is central to ensuring a claimant understands the requirements placed upon them. If a claimant refuses to accept their Claimant Commitment then they will not be entitled to Jobseeker's

Allowance. Where a claimant refuses to accept their Claimant Commitment we will allow a 'cooling off' period to give the claimant the opportunity to reconsider their decision and to understand the consequences of their decision.

## Claimant Responsibilities – basic structure

11. We expect Jobseekers Allowance claimants to do all they reasonably can to move into work, more work or better paid work (as now, although most JSA claimants will be unemployed, some could be in part time work). To support this, the Welfare Reform Act 2012 introduces provisions for four basic types of work related requirement that claimants must meet. They are:

- **Work-focused interviews:** attend periodic interviews to discuss plans and opportunities for returning to work (immediately or in the future).
- **Work preparation:** actions to prepare for work – such as attending training courses, preparing a CV or taking part in the Work Programme.
- **Work search:** take all reasonable action and any particular specific actions to find work – such as applying for suggested vacancies or registering with a recruitment agency.
- **Work availability:** be available and willing to immediately take up work.

12. The intention is that work search and work availability requirements will be imposed on JSA claimants unless they fall into one of the exception categories set out in regulations (as required by new section 6F(1) of the Jobseekers Act 1995). However, the specific work (e.g. the type and hours of work) that a claimant is required to look and be available for will be tailored to the individual. The application of work-focused interview and work preparation requirements is discretionary.

13. Therefore, as well as supporting the personalisation of requirements, the legislation provides for considerable flexibility as to what regime is put in place for individuals and in general - for example the legislation does not specify how frequently claimants should attend interviews. This allows for our approach to develop and change over time. We are considering how the conditionality regime will work in relation to the special status of share fishermen.

## What work must JSA claimants search for and be available for

14. JSA claimants can be expected to look, and be available, for full time work of any type. However, where appropriate given the claimant's circumstances and capability this will be restricted e.g. by limiting work search and availability to certain types of job or certain hours of work.

15. Hours of work will be limited where:

- The claimant is the responsible carer for a child aged 5 to 13 (hours limited to school hours)
  - They have a physical or mental impairment
  - They have other caring responsibilities
16. The intention is that we can, if decided appropriate, permit the claimant to restrict availability for up to 3 months to a particular occupation and/or level of pay in line with current or previous work as long as they have a reasonable expectation of getting such a job. It may also be limited where the claimant has a physical or mental condition that warrants limitations to work of a particular nature. Claimants will be expected to seek work within 90 minutes travel time from their home unless they have caring responsibilities or a physical or mental condition.

## **Meeting work search and work availability requirements**

17. In order to meet a work availability requirement claimants must be available to immediately take up, (or attend an interview for) work/more work/better paid work unless:
- The claimant is in paid work in which case they are allowed up to 48 hours to attend an interview to take up a job.
  - The claimant has caring responsibilities (for a child or for a disabled person) in which case they will be allowed up to 48 hours to attend an interview and up to one month to take up a job. The easement will apply in this case only where we consider that the claimant has a reasonable prospect of obtaining paid work.
  - The claimant is carrying out voluntary work in which case they will be allowed up to 48 hours to attend an interview and up to one week to take up paid work.
18. We expect claimants to do all they reasonably can to give themselves the best prospects of moving into work. In line with this, in order to be treated as meeting the work search requirement, we propose that claimants are expected to have spent 35 hours a week (or their number of hours, if less, as agreed by the Secretary of State) looking or preparing for work. Claimants are required to spend their expected hours of work engaged in work-search with deductions for the time a claimant spends improving their employability by:
- carrying out paid work
  - carrying out voluntary work (for up to 50 per cent of their expected hours of work search)
  - carrying out a work preparation requirement.
19. There may also be a deduction applied if the claimant is subject to a temporary change of circumstances; for example the claimant falls ill and cannot reasonably be expected to meet the standard 35 hour requirement. With all these deductions, the claimant must have already done all that could reasonably be expected. We are continuing to develop processes and IT to support this and are keeping this requirement under review.

20. The Welfare Reform Act 2012 also enables advisers to specify particular work-search actions claimants are required to take (such as creating a CV or applying for a particular job).

### **Lifting work search and work availability requirements**

21. We intend that work search and work availability requirements will always apply to JSA claimants unless the claimant faces a temporary circumstance which means they cannot reasonably be expected to comply or are exempted.

22. These circumstances include:

- The claimant is attending a court or tribunal as a party to any proceedings or a witness.
- The claimant is sick, for 2 periods of no more than 2 weeks, in any annual period. The claimant may self certify for a period of up to 7 days but will need a medical certificate for longer periods.
- The claimant is temporarily absent from GB such as because they are receiving medical treatment, attending a job interview or taking a child abroad for treatment.
- It is within six months of the claimant suffering a bereavement where the deceased person is their partner, child or the person they were caring for.
- The claimant is a victim of domestic violence and is within six months of the incident being reported, for a period of three months.
- The claimant is in structured recovery orientated drug or alcohol treatment for up to six months, or until the treatment ends, whichever is sooner.
- The claimant is a person to whom section 82 of the Serious Organised Crime and Police Act 2005 applies for a period of three months.

### **Circumstances where work related requirements may be switched off**

There are some circumstances where it might be appropriate to switch off work related requirements if it would be unreasonable to impose them. These are broad provisions to be applied on a discretionary basis.

- The claimant has temporary child care responsibilities
- The claimant is subject to a temporary circumstance
- The claimant is carrying out a public duty
- The claimant is carrying out any work preparation requirements.

## **Sanctions**

23. Benefits and other support to help a claimant prepare for work (or move into work or into more work) are conditional on claimants meeting certain requirements. Sanctions play an important role in underpinning this conditionality by encouraging claimants to meet the requirements. We know that compliance with requirements, for example active job search and engagement with advisers, increases the chances that claimants find work more quickly than they would

otherwise<sup>3</sup>. In addition where claimants are informed about the consequences of failure and what sanctions may be imposed, we know that this has a positive effect on claimant behaviour. DWP research suggests that:

- 40% of claimants say they are more likely to look for work due to a threat of a sanction;
- Of those who are sanctioned the vast majority receive just one sanction during their claim and most say they would not repeat the behaviour which led them to being sanctioned<sup>4</sup>

24. The UC sanctions regime that we are generally replicating in JSA is designed to drive engagement with requirements by providing:

- clarity about the consequences of non compliance;
- a clear and robust deterrent against non compliance;
- and tougher sanctions for repeated non-compliance.

25. Our intention is that the sanctions approach will feature three levels of sanction (the lowest level sanctions in UC will not apply to claimants in receipt of JSA). The level of sanction a particular claimant will receive will depend on the nature of their failure.

26. Where the Secretary of State has determined that a sanction will apply it will take effect from the first day of the benefit week in which the failure occurred unless the claimant has already been paid for that period at the time the decision to sanction is made, in which case the sanction is to be applied from the first day of the benefit week after the one for which the claimant was last paid JSA. The sanction or sanctions applicable to a claimant will run consecutively to form a total outstanding reduction period (up to a maximum of 3 years).

27. After a first failure the length of sanction applied for subsequent failures of the same type will increase. We will notify claimants of the consequences of any further failures.

### **High level sanctions**

28. High level sanctions will apply to claimants for failure to meet the most important work-related requirements, which are:

- Failure to undertake Mandatory Work Activity without good reason;
- Failure to apply for a particular vacancy without good reason;
- Failure to take up an offer of paid work without good reason;

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<sup>3</sup> Peters and Joyce (2006) A review of the JSA sanctions regime: summary findings, DWP Research Report 313.

<sup>4</sup> Peters and Joyce

- By reason of misconduct, or voluntarily without good reason, ceases paid work;
  - By reason of misconduct, or voluntarily without good reason, loses pay.
29. These sanctions will apply to the types of failure that in JSA currently receive a variable length sanction of between 1- 26 weeks (with the exception of failure to comply with Mandatory Work Activity which is currently a fixed 13 or 26 week sanction). As the revised sanctions will be for fixed periods it will provide greater clarity for claimants about the consequences of not meeting requirements.
30. The high level sanction periods will usually be the following fixed periods set out below:
- 91 days for a first failure;
  - 182 days for a second failure committed within 365 days of the previous failure; and
  - 1095 days (3 years) for a third or subsequent failure committed within 365 days of the previous failure where that previous failure resulted in a 182 day sanction. 3 year sanctions will apply only in the most extreme cases where claimants have repeatedly and without good reason breached their most important requirements, and they have not changed behaviour after receiving previous sanctions. We intend that a sanction remaining after a claim to JSA will be applied to subsequent claims to Universal Credit.
31. There will be exceptions to the fixed periods for pre-claim failures. These are failures which occur before a claimant applies for JSA and which relate to ceasing paid work or losing pay due to misconduct; voluntarily and without good reason leaving paid work or losing pay; or for no good reason failing to take up an offer of paid work. In these cases, where the employment was for a fixed period, the sanction will reflect the length the employment was expected to last. . In all other cases the sanction will be reduced by the period between the failure and the date the employment was expected to end minus the number of days between the date of failure and the date of claim.
32. Where a failure occurs before a claim is made to JSA, it will not affect future sanction durations. To provide an example - a claimant leaves his job voluntarily and without good reason and makes a claim to JSA immediately. The Decision Maker determines that a 91 day sanction is appropriate. Three months later he commits another failure at the same level and the Decision Maker determines that a sanction should be imposed. The sanction will be for 91 days as pre-claim failures will not count for the purposes of escalation.
33. In addition if a claimant commits multiple failures within the same compliance period (expected to be a two weekly period) then the sanction will not escalate to the next level. This rule will help to ensure claimants do not accumulate lengthy sanctions for failures which occur within the same compliance period.



### **Medium level sanctions**

34. Medium level sanctions will apply when a claimant fails to undertake all reasonable work search action or fails, without good reason, to be able and willing immediately to take up work (or more paid work or better paid work). These are important labour market requirements and therefore the sanction for failure to meet these requirements is 28 days for a first failure which rises to 91 days for a second and subsequent failure (including if the subsequent failures occurred during a future claim to JSA) within 52 weeks of the previous failure.

### **Low level sanctions**

35. Low level sanctions will apply when claimants fail to comply with requirements which are designed to help them move into or prepare for work without good reason:

- Failure to undertake particular, specified work search action without good reason<sup>5</sup>;
- Failure to comply with a work preparation requirement without good reason;
- Failure to comply with a work-focused interview requirement without good reason;
- Failure to comply with a requirement to provide evidence or confirm compliance with a work-related requirement without good reason;
- Failure to comply with a requirement relating to interviews which are not work-focused interviews and verification of compliance including the provision of information and evidence.

36. The duration of low level sanctions will be the sum of:

- an open ended period which starts from the date of the sanctionable failure and ends when the claimant meets a compliance condition or the award is terminated; and
- a fixed period of 7 days for a first failure, 14 days for a second failure at the same level within 365 days of a first and 28 days for a third or subsequent failure at the same level within 365 days of the previous failure.

37. In most cases the compliance condition will be the activity the claimant originally failed to do but where this is no longer appropriate, for example, if he failed to attend a training course which is no longer running, then he can be required to meet an alternative requirement. The open ended reduction period is intended to encourage claimants to quickly re-engage with specific requirements and the fixed component will ensure there is always a consequence for failure to comply.

### **Other features of the approach**

38. The sanctions approach will be consecutive. This means that where a claimant is subject to one sanction, fails another requirement and receives a further sanction, the claimant's award amount will be reduced for the entire duration of both

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<sup>5</sup> All failures to comply with specific work search requirements will be sanctioned at the low level, with the exception of failures to apply for a particular vacancy which will be subject to a high level sanction

sanctions (up to a maximum of 3 years). This approach is intended to ensure that claimant failures always carry consequences and that there is a deterrent against further non-compliance for sanctioned claimants.

39. It would be wrong for a sanctioned claimant to be able to avoid their sanction by terminating their award and then re-claiming within the period of any sanction. The regime is therefore designed to ensure that, where a claimant's award is terminated and they subsequently re-claim and receive a new award of JSA during the period of the sanction, any outstanding reduction period will be applied to the new award.

40. We do though want to encourage and reward claimants for moving into work. Therefore where a claimant moves into work at or above his/her conditionality threshold level for 182 days or more after their last sanctionable failure then his/her outstanding sanction will be terminated. The threshold level is calculated by establishing the number of hours a claimant can reasonably be expected to work and then multiplying the expected hours of work by the relevant National Minimum Wage for the age of the claimant. The 182 days does not have to be a continuous period so the claimant will be able to terminate the sanction where they have several short periods of work.

41. In certain cases, no reduction will be applied. These include where a claimant:

- Fails to accept or apply for paid work that arises as a result of a trade dispute;
- Takes voluntary redundancy;
- Voluntarily leaves the Armed Forces;
- Has been laid off or kept on short time working; or
- Voluntarily leaves work or reduces pay during a trial period

42. These exemptions broadly mirror the current JSA rules.

43. In line with the approach to be taken for UC, where a claimant is in receipt of a JSA conditionality sanction and a fraud loss of benefit sanction is also imposed the conditionality sanction is suspended for the duration of the fraud sanction. When the fraud sanction expires the conditionality sanction will resume, this approach ensures that claimants will serve the full duration of both sanctions without both amounts being deducted at the same time.

### **Daily reduction amount**

44. The intention is to apply daily reduction amounts in line with the approach for UC. However, we are currently exploring whether the IT functionality will support this approach. We intend that for high, medium and low level sanctions the daily reduction amount will be calculated at a rate equivalent to an award of JSA. Therefore if a 7 day sanction is applied the amount of the reduction will be equivalent to a one week award of Jobseeker's Allowance.

## **Safeguards**

45. The sanctions regime will incorporate a range of safeguards for claimants, these include:

### *Reasonable requirements*

46. The requirements placed on claimants will be reasonable, taking into account his/her capability and circumstances, for example health conditions, disability and caring responsibilities. For example a lone parent or lead carer with a child under the age of 13 will be able to restrict his/her availability for work to jobs that can fit around school hours. An adviser should only require a claimant to apply for or accept a job if it is in line with the type of work the claimant must be available for (including any restrictions that are appropriate). Ensuring that the requirements placed on claimants are reasonable will help to prevent sanctions being applied inappropriately.

47. We believe that our advisers are up to the task of setting requirements, taking account of claimants' needs. We are positioning Jobcentre Plus Advisory Services as a profession with a clear career path, accredited learning and ongoing professional development.

48. Advisers have access to a learning framework – endorsed by Edexcel, the UK's largest qualification awarding body – which will be updated as appropriate. And a range of supporting products, including guidance, assessment tools and management frameworks, have been produced to help aid understanding and delivery of a more personalised service.

### *Good Reason*

49. As now, claimants will have an opportunity to explain why they failed to meet the requirement (show good reason). The Department will continue to ensure that claimants know they can explain the reasons for any failure. The claimant will be expected to provide clear evidence within a specified period

### *Vulnerable claimants*

50. We will continue to visit claimants who may be considered vulnerable such as those with a mental health condition or a learning disability before applying a sanction to help us understand why the claimant did not meet the requirement. This will inform our decision on whether there was a good reason for the failure. Claimants will also continue to be able to request further information about the decision to sanction, request a reconsideration and appeal the decision.

51. Where a sanctioned claimant's circumstances change so that they are placed in the no work-related requirements group because of limited capability for work and work-related activity, we will no longer apply a reduction to the claimant's award. In this situation the sanction amount will change to zero and run down to expiry.

### *Appeal*

52. Claimants will be able to appeal any decision to reduce their benefit to the First Tier Tribunal within one month of being notified of the decision to sanction.

Sanction	Applicable to:	Duration		
		1st failure	2nd failure	3rd or subsequent failure
<b>High Level</b> e.g. failure to take up an offer of paid work	Claimants subject to all work-related requirements	91 days	182 days	1095 days
<b>Medium Level</b> e.g. failure to undertake all reasonable action to obtain work	Claimants subject to all work-related requirements	28 days	91 days	
<b>Low Level</b> e.g. failure to undertake particular, specified work preparation action	Claimants subject to all work-related requirements Claimants subject to work preparation and work-focused interview requirements	Open ended until re-engagement plus		
		7 days	14 days	28 days

## Dual entitlement to JSA and UC

53. Where a claimant has entitlement to both Universal Credit and Jobseeker's Allowance they will only be subject to the conditionality regime in Universal Credit. This means they will have a single claimant commitment and be subject to the same requirements across both claims.

54. A feature of Universal Credit is that household earnings may lift a claimant out of conditionality requirements. In cases of dual entitlement this will also be the case and so a partner's earnings might remove the requirement for a claimant to meet work search requirements for both their Universal Credit and Jobseeker's Allowance claim.

55. In cases of dual entitlement sanctions will be applied to the Universal Credit award. This includes any new sanctions applied during the dual entitlement or any sanctions which were already applied when the claimant became dual entitled. The numbers of people with dual entitlement who also face a sanction are likely to be very low but if it appears that the rules are being manipulated by claimants then we will look at this interaction again.

56. Where a claimant who has an existing sanction claims either UC or JSA, we intend that the unexpired sanction is carried across to the new benefit.