

# Chapter 32 - Trade disputes

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# Chapter 32 - Trade disputes

## General

32000 This Chapter gives guidance on trade disputes. It is in two parts. DMG 32003 - 32340 gives guidance on claims for JSA made by claimants who are involved in a TD and DMG 32500 et seq gives guidance on what DMs should consider when deciding entitlement to JSA(IB) and IS. Throughout this Chapter, unless otherwise specified, "claimant" includes a member of a joint-claim.

32001 - 32002





# Claimant involved in trade dispute

## Introduction

### Entitlement

32003 Claimants are not entitled to JSA for any week in which they

1. are not employed because of a stoppage of work caused by a TD at their place of work<sup>1</sup> **or**
2. withdraw their labour to help further a TD<sup>2</sup>.

*1 JS Act 95, s 14(1); 2 s 14(2)*

32004 A joint-claim couple are not entitled to a joint-claim JSA for any week in which

1. both members of that couple are not employed because of a stoppage of work caused by a TD at their place, or places, of work **or**
2. each member withdraws their labour to help further a TD.

However where only one member of a joint-claim couple is affected by the above they may still be entitled to joint-claim JSA<sup>1</sup>.

*1 s 15A(2) & (3)*

32005 A week is a period of seven days beginning with a Sunday<sup>1</sup>.

*1 s 35*

### Exceptions

32006 The TD provisions do not apply if claimants can show that during the stoppage of work<sup>1</sup> they

1. start work somewhere else (see DMG 32252 - 32260) **or**
2. have been made redundant<sup>2</sup> (see DMG 32264 - 32265) **or**
3. have returned to work for their employer but have then left for reasons other than the TD (see DMG 32266 -32274) **or**
4. are not directly interested in the dispute<sup>3</sup> (see DMG 32201 - 32222).

*1 s 14(3); 2 ER Act 96, s 139(1) & (2); 3 JS Act 95, s 14(1)*

32007 The DM is not concerned with the merits of a dispute or whether the behaviour of those involved is reasonable<sup>1</sup>.

*1 R(U)17/52(T); R(U)19/53; R(U)1/56; R(U)21/59; R(U)17/61; R(U)12/62*

## Trade disputes and sanctions

32008 If the DM is asked to consider whether claimants have lost employment

1. due to a TD **and**
2. for reasons which may lead to a sanction

the TD question should be considered first.

32009 If claimants can show that, although there is a stoppage of work, their employment has ended, the TD provisions will not apply. But doubts may arise on a sanction question<sup>1</sup>.

*1 JS Act 95, s 19*

32010 If claimants leave a job because they did not know that the vacancy was caused by a TD stoppage when they accepted it see DMG Chapter 34.

### When there is no trade dispute

32011 There is no TD where the stoppage of work is due only to a protest against the government or an Act of Parliament. But there is a TD where the dispute

1. involves government policy **and**
2. is between
  - 2.1 employer and employees **or**
  - 2.2 employees and employees **and**
3. is about the
  - 3.1 terms of employment **or**
  - 3.2 the employment of any person **or**
  - 3.3 the non-employment of any person.

### What the DM must establish

32012 Before deciding whether the claimant has lost employment because of a stoppage of work caused by a TD the DM must establish

1. the claimant's place of work (see DMG 32016 - 32057) **and**
2. that there was a TD at the place of work **and**
3. that there was a stoppage of work at the place of work **and**
4. that the stoppage was due to the TD **and**
5. that the claimant lost employment because of the stoppage of work.

32013 If all of the points at DMG 32012 **2.** to **5.** are proved the claimant will not be entitled to JSA unless they can show that DMG 32006 applies<sup>1</sup>.

*1 JS Act 95, s 14(1)*

32014 If claimants have no direct interest in the TD but have withdrawn their labour to help further the dispute they will not be entitled to JSA<sup>1</sup>.

*1 s 14(2)*

## **Evidence**

32015 Evidence is usually in the form of oral or written statements from the claimant or the employer. The DM should not rely on unchallenged newspaper reports<sup>1</sup>.

*1 R(U)6/61; R(U)11/63*



## Place of work

32016 As a general rule a place of work is the premises or place where a person is employed<sup>1</sup>.

*1 JS Act 95, s 14(4);*

32017 However, there is an exception to the general rule which helps claimants who work for a large company which is made up of more than one business in the same premises. In certain circumstances separate departments that would normally be classed as one place of work, can be treated as separate places of work (see DMG 32039 - 32057)<sup>1</sup>.

*1 s 14(5)*

32018 The DM must be satisfied that there is a TD at the place of work as defined in the general rule<sup>1</sup>. If not there is no need to consider the exception.

*1 s 14(4)*

### Burden of proof

32019 If there is a TD at the place of work within the general meaning, then claimants must prove that the exception applies to them.

32020 - 32021

### General rule

32022 When considering what the general meaning of place of work is, a reasoned, practical approach should be taken. This must be neither too literal nor too narrow.

32023 A place of work may be

1. a works of one or more buildings on one site **or**
2. a works where buildings are
  - 2.1 spread over two or more adjoining sites **and**
  - 2.2 integral parts of the business even if separated by a road, railway or river<sup>1</sup> **or**
3. a building site where several employers and employees are following various trades, even where this is not the employers' permanent place of business.

*1 R(U) 1/70*

### Example

Robin works as a repair welder in the paint trim and assembly plant of a motor company. The company consists of several plants on one large site which has two roads and a railway running through it. Car bodies made in the connected body plant are built into finished cars in the paint trim and assembly plant. Robin makes a claim for JSA when he loses work because of a strike by sewing machinists who

work in a trim shop at another plant on the site. The DM decides that the company's site is one place of work.

32024 If an employer's buildings are on sites that are some distance apart they are separate places of work.

32025 If a firm owns several works in different places, each works is a separate place of work.

32026 - 32027

### **Dock workers**

32028 Docks and shipyards are usually spread over a wide area. They are often made up of several docks, yards buildings or wharves owned or used by several employers.

32029 If a TD covers the whole area of the dock or shipyard, then there is a TD at the claimant's place of work.

32030 But if the dispute is limited to a particular yard or vessel the claimant's place of work must be established. For the TD provisions to apply there must be a dispute at the claimant's place of work.

32031 If claimants look for work only at one particular place, for example a dock or warehouse, then that is their place of work<sup>1</sup>. But if those claimants were to

1. look for work **or**
2. be required to work

at different parts of the dock or shipyard, then all of those parts will be the place of work<sup>2</sup>. Their place of work will not be limited to the building or vessel where they were working at the time the stoppage began.

*1 R(U) 26/57; 2 R(U) 8/71; R(U) 30/57*

#### **Example 1**

Vaughn is a dock pilot and is licensed to pilot vessels within the port of Milford Haven. He loses his employment when a national strike reduces shipping. The DM decides that the whole port is Vaughn's place of work.

#### **Example 2**

Fergal is employed by a firm of boilerscalers and worked for nine months on ships berthed at a dock in Liverpool. The DM decides that the dock is Fergal's place of work. The fact that the dock is not owned by his employers does not matter.

## Other similar jobs

- 32032 Consider such jobs as porters in markets or casual workers in the newspaper industry in the same way as dock workers.
- 32033 In the coal mining industry each pit or colliery is a separate place of work. But districts or other divisions of a colliery are not separate places of work.
- 32034 The reason the TD has to be at the claimants' place of work is so that they do not lose JSA only because of an economic consequence of a dispute somewhere else (but see DMG 32092 - 32099 on the extension of a dispute).
- 32035 The DM need not define exactly the place of work for people who normally travel around in their job, for example sales representatives, lorry drivers and street cleaners.

### Example

Una works as a cab washer at a garage where taxi drivers are in dispute with their employers. Because of the dispute with the taxi drivers Una is told there is no work for her. She makes a claim for JSA. The DM decides that, as Una works at the same place as the taxi drivers, there is a TD at her place of work.

- 32036 Where

1. claimants work in several places **and**
2. there is a TD at each of them

there is a TD at the place of work, even if there is a stoppage at only one of them.

32037 - 32038

## Modification to the general rule

- 32039 The general rule is that the place of work is the premises or place where the claimant is employed. But if
1. part of the premises or place in question is a separate department in which a separate branch of work is carried out **and**
  2. that separate branch of work is usually carried out as a separate business in separate premises or places

then the separate department is a separate place of work<sup>1</sup>.

*1 JS Act 95, s 14(5)*

- 32040 To benefit from this modification of the general rule claimants must show that
1. they are employed in a separate department on a separate branch of work **and**
  2. that separate branch of work is one that is usually carried on as a separate business in **separate** premises or at a **separate** place **and**

3. that separate branch of work is carried on in a separate department **on the same** premises or at the **same** place.

32041 There is no need to consider the modification if it is clear that

1. there is a TD at the place of work **and**
2. it is in the claimant's department as well as others.

32042 - 32044

### **Separate department**

32045 The DM must first decide whether the premises or place is divided into separate departments. Take into account

1. the organization, by the employer, of work and workers at the premises or place<sup>1</sup> **and**
2. the division of work and responsibilities between managers and supervisors **and**
3. the lay-out of the buildings, shops and machines.

The arrangements for payment of wages and salaries, or for accounting or costing should be ignored.

*1 R(U) 24/57*

32046 The actual organization by the employer at the premises or place in question should be accepted. It cannot be altered by claimants or the DM. If there is no departmental organization one cannot be invented.

#### **Example**

Richard is employed as a lorry driver by a firm of ship repairers. Apart from carrying materials for their own firm, the transport section also does haulage work for ship owners in the area. There is a stoppage of work at Richard's employer's premises. Owing to a shortage of work caused by the stoppage, Richard is laid off. He makes a claim for JSA. The DM decides that the transport section is a separate department.

32047 - 32049

### **Separate branch of work**

32050 A separate branch of work means more than just different work. In a large business the work is usually organized as a series of operations performed by specialists. Each operation is normally undertaken in different parts of the premises.

32051 Where one operation is made up of several processes, one process will not usually be a branch of work separate from the complimentary processes<sup>1</sup>.

*1 R(U) 4/62*



### **Example**

A firm of iron-founders usually produces castings at their own foundries. The enamelling department at the firm processes these castings, and either assembles them into complete appliances or puts them aside for the service department. Enamelling is an integrated process of the production and not a separate branch of work. The enamelling department is therefore not a separate place even though the process of enamelling castings is usually carried on as a separate business.

32052 The following are not separate branches of work

1. ancillary work, such as day to day maintenance and repair of machines and tools
2. general office work performed for production departments.

32053 - 32054

### **Commonly carried on as a separate business**

32055 Whether the separate branch of work is commonly carried on as a separate business at separate premises is a question of fact. The answer depends on current industrial organization. It is not enough for claimants to show that the branch of work

1. could be carried on as a separate business **or**
2. is carried on separately in isolated instances.

32056 Claimants must show that the branch of work

1. is carried on as a separate business **and**
2. is carried on separately to such an extent that it can be said to be normally carried on separately<sup>1</sup>.

*1 R(U) 5/61*

32057 The practice in other industries is not relevant.

### **Example 1**

Zelda is employed in the export despatch department of a firm of iron-founders. She loses her employment because of a stoppage of work caused by a TD in the foundry. Zelda makes a claim for JSA. The DM obtains evidence that the packing and despatching of manufactured products for export is highly specialised and that many firms carry on the business of export packers on behalf of customers of all kinds. There is also evidence that the packing and despatching of manufactured goods for export is usually carried on as a separate business. The DM decides that the TD was not at Zelda's place of work.

### **Example 2**

Shirley is employed in the despatch department of a home delivery mail order company. She loses her employment because of a stoppage of work caused by a

TD. Shirley makes a claim for JSA and the DM decides that the despatch department is not a separate place of work.

32058 - 32059

# Trade dispute

## Definition

- 32060 The statutory definition of TD covers
1. the people involved in the dispute **and**
  2. the reason for the dispute.

- 32061 A TD is any dispute
1. between
    - 1.1 employers and employees **or**
    - 1.2 employees and employees **and**
  2. that is connected with
    - 2.1 the employment or non-employment **or**
    - 2.2 the terms or conditions of employment

of any person whether or not they are employees of the employer with whom the dispute arises<sup>1</sup>.

*1 JS Act 95, s 35(1)*

- 32062 Disputes between two or more employers are not included in the definition.

## Parties to the dispute

- 32063 A TD can be between
1. an employer and their own employees **or**
  2. an employer and employees of a different employer **or**
  3. two or more groups of employees, whether employed by the same or different employers.

- 32064 Employees are persons classed as employed earners. They need not be in employment or under contract at the time of the dispute. It is enough that they are employees when working.

## Share fishermen

32065 When considering TD provisions for share fishermen

1. the owner of a fishing boat **or**
2. the managing owner, if there is more than one, is treated as the employer<sup>1</sup>.

*1 JSA Regs, reg 160*

32066 Any share fisherman, other than the owner, who does

1. any repairs or maintenance to the fishing boat or its nets or gear (including running repairs) **or**
2. any work in connection with
  - 2.1 laying up the boat, nets and gear at the end of a fishing season **or**
  - 2.2 preparing the boat, nets and gear for a season's fishing

is treated as an employee<sup>1</sup>.

*1 reg 160*

32067 It does not matter whether a TD is

1. in one place, a few places or is nationwide **or**
2. pursued by employers or employees acting on their own behalf, or represented by an employer's organization or trade union(s) **or**
3. supported, recognized or approved by the appropriate organisation or trade union **or**
4. between more than two parties (for example an employer and two opposing groups of employees).

32068 - 32069

## Reason for the dispute

32070 A TD must be connected with

1. the employment or non-employment **or**
2. the terms and conditions of employment of a person.

32071 Most disputes fall within this definition, including those connected with the way in which work is performed<sup>1</sup>. If

1. employees
  - 1.1 work to rule **or**
  - 1.2 go slow **or**
  - 1.3 ban overtime **and**

2. the employer threatens to
  - 2.1 lock them out **or**
  - 2.2 lay them off

there is a TD. Any resultant lock out or lay off is a stoppage of work due to a TD.

*1 R(U) 5/87*

32072 Some issues that have led to a TD are

1. wages and hours of work<sup>1</sup>
2. redundancy and dismissal<sup>2</sup>
3. doing work taken over from another firm where there was a TD<sup>3</sup>
4. picketing<sup>4</sup>
5. a demand by fishermen for a registration system, work to be offered first to union members, together with the setting up of a joint council<sup>5</sup>
6. withholding a bonus from an employee due to absence from work<sup>6</sup>
7. disagreement between two trade unions over the division of duties<sup>7</sup>
8. whether workers can be asked to do each others jobs<sup>8</sup>
9. an increased work quote<sup>9</sup>
10. trade union membership<sup>10</sup>
11. taking part in a compulsory pension scheme<sup>11</sup>
12. the stopping of tea-breaks and altering of time-keeping rules<sup>12</sup>
13. a change of conditions based on religious beliefs<sup>13</sup>
14. safety of machines<sup>14</sup>
15. a dispute over duties and rights under legislation dealing with the conditions of employment<sup>15</sup>
16. an employer saying that the employees were not working as hard as they could<sup>16</sup>.

*1 CWU 18/49(KL); R(U) 19/53; R(U) 27/56, R(U) 30/59; R(U) 12/60; 2 CU 274/50(KL); R(U) 11/52, R(U) 25/53(T); R(U) 36/53; R(U) 29/59; 3 R(U) 19/51; 4 R(U) 2/53; R(U) 3/69; 5 R(U) 1/56; 6 R(U) 25/56; 7 R(U) 39/56; R(U) 36/58; R(U) 1/60(T); R(U) 14/64; 8 R(U) 6/61; 9 R(U) 32/57; 10 R(U) 12/60; R(U) 11/63; 11 R(U) 17/61; 12 R(U) 3/62; R(U) 4/62; 13 R(U) 12/62; 14 R(U) 3/71; 15 R(U) 5/77; 16 R(U) 5/87*

32073 As the DM is not concerned with the reasons for, or merits of, a TD the following do not matter

1. whether the dispute is about something illegal
2. which party has caused the dispute or stoppage

3. whether one party is acting unreasonably, without consultation, or against agreement or longstanding custom.

32074 A dispute can start as a personal matter between one or more workers and the employer. A stoppage of work can follow when other workers become involved<sup>1</sup>.

*1 R(U) 25/56; R(U) 12/62*

32075 The person causing the dispute does not have to be employed by the employer involved in the dispute. A TD at one firm can spread to another firm and cause a stoppage of work there.

32076 - 32079

## Identifying the reason for the dispute

32080 As there can be a dispute without a stoppage, the DM must distinguish between them. If there was a dispute at the claimant's place of work, the DM should collect information<sup>1</sup> to decide

1. what the dispute was about **and**
2. who was affected by it **and**
3. the background to it **and**
4. its development during the stoppage<sup>2</sup>.

*1 JS Act 95, s 14(1); 2 R(U) 25/56; R(U) 30/59; R(U) 6/61; R(U) 5/86*

## Meaning of dispute

32081 A dispute means that two or more parties do not agree on an issue. They try to persuade or force each other, and they resist each other. Disputes usually include

1. demands or proposals
2. objections
3. meetings
4. negotiations
5. other forms of mutually planned action or counter-action.

32082 A dispute and a stoppage are not the same thing. There can be a dispute without hostile action<sup>1</sup> (see DMG 32085), and before agreed procedures for settling differences are used<sup>2</sup>. Just because an employer's association or the employees' trade unions do not support the demands or proposals made, that does not mean that there is not a TD<sup>3</sup>.

*1 R(U) 21/59; 2 R(U) 36/58, R(U) 1/60(T); 3 R(U) 18/58*

32083 If workers at the claimants place of work refuse to accept a practice which has been accepted by their union's executive there is a TD<sup>1</sup>.

*1 R(U) 6/61*

32084 What the parties to the dispute do is often a better guide to the realities of the situation than what they say<sup>1</sup>.

*1 R(U) 11/63*

### **Hostile action**

32085 Hostile action includes

1. a strike
2. go-slow working or working to rule
3. an overtime ban
4. meetings held by workers.

**Note:** Claimants may say there is no dispute in spite of evidence to the contrary<sup>1</sup>.

*1 R(U) 36/58; R(U) 21/59*

32086 A dispute can exist without hostile action. But if there is hostile action it is usually an indication that there is a dispute.

32087 Although the employer and the workers may have differences, there is not dispute where there are only

1. complaints
2. grumblings
3. agitation by discontented workers
4. tentative talks about future terms of employment<sup>1</sup>.

Something more definite is needed before there is a dispute.

*1 R(U) 21/59*

32088 If

1. an employer wants to impose new terms of employment on workers **and**
2. instead of disputing the matter, the workers simply leave their jobs the loss of employment is not because of a stoppage of work due to a TD (see DMG 32121 - 32125).

32089 - 32090

## At place of work

32091 The TD must be at the claimant's place of work<sup>1</sup>.

*1 JS Act 95, s 14(1)*

32092 A TD can

1. start in one place and spread to another **or**
2. be brought to a place of work by pickets from somewhere else<sup>1</sup>.

*1 R(U) 1/74*

32093 If there is a TD at one place of work, and workers somewhere else strike in sympathy, the dispute spreads to the place of work of the striking workers. This is so even if they are not affected by the matter in dispute<sup>1</sup>.

*1 R(U) 15/55*

32094 If an employer locks workers out in support of another employer, the dispute has been extended<sup>1</sup>.

*1 R(U) 23/64*

32095 A stoppage in one place of work can cause a stoppage at another place of work where there is no dispute. If this is only because of an interruption in the supply of

1. materials **or**
2. service

then there is no dispute at the second place of work.

32096 Workers at the claimant's place of work may be prevented from working by strikers from another. The dispute can be

1. between the strikers and the non-strikers **or**
2. the strikers and their employers.

If the reason for the dispute is the employment, or non-employment, of some or all of the workers at the claimants' place of work there is a TD at the claimants' place of work.

32097 A TD can be on a national or regional level. It can be between

1. a trade union or group of unions **and**
2. an employer or employer's association.

32098 Even if the employers and workers at the different places of work affected by the dispute take no part in the negotiations, there can still be a TD at all of those places of work.



32099 In all cases the DM must consider whether a stoppage at a particular place of work is due to a TD, or is simply due to the effects of a stoppage somewhere else.

32100 - 32101



# Stoppage of work

## Meaning of stoppage of work

32102 All work does not have to have stopped for there to be a stoppage of work. As long as operations have been stopped or limited to more than just a negligible extent, there is a stoppage. So work which would have been done is not being done because of the stoppage.

32103 A stoppage may be in the form of

1. a strike by workers **or**
2. a lock-out by employers **or**
3. an interruption or dislocation of work due to
  - 3.1 an overtime ban **or**
  - 3.2 a meeting<sup>1</sup> **or**
  - 3.3 a stoppage at some other place of work.

*1 R(U) 36/53*

32104 The number of workers not working is not so important as the proportion not working. Where

1. a considerable number of workers stop work together **and**
2. an appreciable interval of time passes before
  - 2.1 they return to work **or**
  - 2.2 their places are filled by others

there will almost certainly be a stoppage of work<sup>1</sup>.

*1 R(U) 7/58*

32105 There can be a stoppage of work even if only one, or a few, workers stop work. Large numbers of workers do not have to be involved.

## Appreciable interval

32106 An appreciable interval does not have to be measured in days. It can be measured in

1. minutes **or**
2. hours **or**
3. days<sup>1</sup>.

*1 R(U) 12/62*

32107 There is no stoppage of work where an employer does all of the work and maintains output either by

1. getting replacements for workers who have stopped work **or**
2. reorganization.

32108 If work is held up while replacements are obtained or re-organisation takes place, there is a stoppage during the interval before work restarts. Where the employer

1. gets some replacements **or**
2. manages some reorganization but
  - 2.1 has to give up **or**
  - 2.2 postpone some parts of the work **or**
  - 2.3 reduce output

there is a stoppage of work<sup>1</sup>.

*1 R(U) 7/58*

32109 It is up to the DM to get enough information to show that there is a stoppage of work at the claimant's place of work.

32110 - 32113

## **Stoppage due to trade dispute**

32114 If the DM is satisfied that there is both

1. a TD **and**
2. a stoppage of work at the claimant's place of work

the DM must then decide whether the stoppage of work was due to the TD.

## **A move in the contest**

32115 To be due to a TD a stoppage of work must be a move in a contest between

1. an employer and employees, whether their own or not<sup>1</sup> **or**
2. employees and employees.

The aim of the stoppage is that work should be resumed on certain conditions<sup>2</sup>.

*1 R(U) 1/74; 2 R(U) 17/57*

32116 The stoppage of work is due to a TD if there

1. has been a refusal to work overtime, as a move in a dispute, somewhere at the place of work **and**

2. is a stoppage of work somewhere else at the same place of work as an economic consequence.

32117 Where a stoppage is not a move in a dispute but happens only because of a decision to

1. stop working altogether for an employer **or**
2. stop employing workers at all

it is not due to a TD. This is so even if the decision is taken because a TD exists<sup>1</sup>.

*1 R(U) 17/52(T)*

32118 A stoppage due to a TD means not only a stoppage of work, but a stoppage of work because either

1. employees are unwilling to work **or**
2. employers are unwilling to give work

so long as some matter in dispute is unsettled<sup>1</sup>.

*1 R(U) 19/51; R(U) 17/52(T)*

32119 - 32120

## **Significance of termination of employment**

32121 It is not usually significant that notice to end employment has been given by the employer or workers. Contracts of employment usually state that notice must be given.

32122 The fact that notice has been given does not mean that there is no intention to return to work on new terms. It may be clear from

1. the conduct of the parties **or**
2. the course of previous negotiations **or**
3. the number of workers and employers involved

that neither side intends, or can afford, a permanent ending of relations<sup>1</sup>. The termination of employment is a trial of strength, ending in a resumption of relations when the trial of strength is over<sup>2</sup>.

*1 R(U) 19/53; R(U) 19/51; 2 R(U) 17/52(T)*

32123 The fact that contracts have been terminated **as a move in the dispute** does not matter. All that matters is that workers were in employed earner's employment when employment was lost. Even if the employment of **some** workers has been unconditionally terminated it does not mean that the stoppage at the place of work is not due to a TD.

32124 Terminations are not to be affected by the TD rules if it is shown that the employer or the **whole body** of workers in dispute, are no longer willing to employ or to work for the other party **on any terms**. Such stoppages are due to the determination of one or both parties to have nothing further to do with the other<sup>1</sup>.

*1 R(U) 17/52(T)*

32125 But, if at any time during the stoppage either

1. the employer decides never to re-engage a particular employee or group of employees (this decision may itself be a move in the dispute, for example to coerce other workers) **or**
2. one employee, or group of employees, decide never to accept work again on any terms with that employer

this decision does not end the stoppage<sup>1</sup>.

*1 R(U) 1/65*

#### **Example 1**

Graham works in a machine shop. During a stoppage of work due to a TD his employers move the machinery from the machine shop to other premises where it could be operated by non-union workers. Graham's trade union say that the dispute ended when his employers said that the machinery was to be moved because, from that date, there was no work available to him. However, Graham's employers have stated that they have not closed the machine shop with the intention of not opening it again. When Graham makes a claim for JSA the DM decides that the stoppage of work due to the TD continued after the machinery was moved.

#### **Example 2**

Emma's employer gave her and her colleagues notice of the termination of their contracts. Emma and her colleagues were then offered new contracts of employment. The offer was not accepted and a stoppage of work resulted. Emma makes a claim for JSA. The DM decides that the stoppage of work was not due to her employer's intention to finally sever relations with the workers but to the workers' attitude to the notice. The DM also decides that Emma's stoppage of work was due to a TD.

32126 - 32129

## Stoppage no longer due to the dispute

32130 A stoppage of work may be due to a TD at the start. But a stoppage can continue even though the dispute has been settled. The DM should not give an adverse decision for weeks in which none of the days of stoppage were due to the dispute.

## Return to work delayed

32131 If a dispute is settled but claimants cannot return to work because

1. a different dispute starts **and**
2. the claimants have no direct interest in the new dispute

they have no longer lost work because of a stoppage caused by a TD.

32132 Claimants must prove that the stoppage of work is not caused by the TD<sup>1</sup>.

*1 CWU 18/49; R(U) 1/56*

32133 A stoppage sometimes carries on after the dispute is settled or after it has been determined to go back to work. A stoppage can still be due to the dispute if there is a delay before work

1. is started again **or**
2. can be said to be proceeding normally.

Whether the stoppage is still due to the dispute depends on the cause of the delay. It does not matter who is to blame for the delay<sup>1</sup>.

*1 R(U) 1/56*

32134 Delays in returning to work after the settlement of a dispute or a decision to return to work can be caused by the need to

1. carry out repair or maintenance work which has not been done or is needed because of disuse
2. heat furnaces or ovens, or otherwise re-start processes in stages
3. get fresh supplies of stocks or raw materials
4. bring back machinery or equipment from other premises, where it was moved during the stoppage.

32135 Whatever the cause of the delay in returning to work, the stoppage is still due to the dispute if

1. the cause of the delay was a natural and probable (not necessarily inevitable) result of the TD **and**
2. it could reasonably have been foreseen by the parties to the dispute<sup>1</sup>.

*1 R(U) 9/80 Appendix*

32136 Where industrial action leads to a situation in which decisions have to be taken for the best, claimants cannot successfully argue that a different decision would have let them return to work at an earlier date.

32137 Claimants can only successfully argue this if they are able to show that the decisions taken were unreasonable or unacceptable for some other reason<sup>1</sup>.

*1 R(U) 9/80*

32138 A stoppage is no longer due to a TD if

1. the delay is obviously extreme (for example because the repair work has been delayed unreasonably) **or**
2. some unrelated circumstances have clearly replaced the dispute as the reason why the stoppage is continuing.

32139

32140 The DM is not concerned with the merits of the dispute or whether the parties have acted reasonably (except as in DMG 32136 - 32137). But

1. if a dispute has been settled or abandoned **and**
2. the workers are willing to return to work on terms acceptable to the employer **and**
3. the employer prolongs the stoppage as an act of retaliation or as a disciplinary measure

the stoppage continues to be due to the dispute<sup>1</sup>. If at the end of that period, the workers refuse to work, the fact that both parties have prolonged the stoppage may indicate that the dispute is continuing and that the stoppage was due to the dispute during both periods.

*1 R(U) 17/52(T)*

32141 During a stoppage, disputes about further matters can replace, or be added to, the original cause of the dispute. If these further matters prolong the stoppage, it continues to be due to a TD<sup>1</sup>.

*1 R(U) 12/60*

32142 Sometimes different groups of workers at the same place of work are arguing for different things at the same time, and a stoppage follows. The stoppage may be due partly to each of the disputes. It depends on the extent to which the issues and events are connected.



**Example**

A national TD has caused a stoppage of work in the printing trade. When the dispute is settled, the workers at Simon's firm are ready to go back to work on the negotiated terms. However, by this time Simon's employer said that only non-union workers will be taken on. The stoppage continues because the workers are not prepared to give up their union membership. The DM decides that Simon continues to lose employment because of a stoppage of work due to a TD, though not the dispute which caused the original stoppage.

32143 - 32149



## **Not employed due to stoppage**

32150 If there is a stoppage of work due to a TD at the claimant's place of work, it must then be decided whether the stoppage caused the claimant not to be employed.

### **Direct result of stoppage**

32151 Claimants are not employed as a direct result of a stoppage where they

1. strike **or**
2. are locked out **or**
3. are prevented from working because of the action of violent pickets at their place of work<sup>1</sup>.

*1 R(U) 5/86(T) Appendix*

### **Indirect result of stoppage**

32152 Employment may be lost as an indirect result of a stoppage<sup>1</sup> even when it is one or more stages removed from the stoppage.

*1 R(U) 5/86(T) Appendix*

#### **Example**

All the workers in a factory are stood-off as an economic consequence of a strike at their place of work. The stand-off is not itself a move in the contest. But it has happened by reason of the stoppage which was caused by the strike due to a TD.

32153

### **Not in work immediately before stoppage**

32154 Claimants may lose employment because of a stoppage of work even though

1. the work is intermittent **or**
2. they are not actually at work when the stoppage begins (see DMG 32177).

32155 If claimants have an offer of employment

1. withdrawn **or**
2. postponed because of a TD

they are not yet employed to work at a place of work<sup>1</sup>.

*1 R(U) 23/64*

32156 - 32159

## **Significance of final termination of employment**

32160 Not being employed because of a stoppage is usually temporary. But there may be cases where the loss of employment is not expected to be temporary.

### **Example**

There is a stoppage of work caused by a TD at a clothing factory. Saleha is one of four employees who have their employment terminated because of the stoppage. All the other employees will be returning to work at the end of the stoppage. Saleha makes a claim for JSA. The DM decides that she has lost her employment because of the stoppage of work caused by the TD.

32161 So final termination of employment is not always significant when deciding whether employment has been lost due to a TD.

32162 When considering what effect final termination has on deciding whether a stoppage of work is due to a TD (see DMG 32121 - 32125).

## **Employment lost for other reasons**

32163 A person is presumed to have lost employment because of the stoppage where

1. the employment ends **and**
2. a stoppage of work due to a TD starts at the same time.

32164 But a person has not left work due to a stoppage of work if

1. the final date of employment was fixed before the dispute arose (for example a person has a fixed term contract) **and**
2. the termination was not connected to the reasons for the dispute **and**
3. the dispute did not affect the termination of the employment in any way.

32165 But the employment has been lost due to the stoppage if

1. the employment was due to end at a certain time **and**
2. it ends earlier because of the stoppage (even by only an hour).

32166 - 32167

## Left employment voluntarily before stoppage

32168 When claimants leave employment shortly before a stoppage of work begins the DM must establish whether they have

1. simply anticipated the stoppage **or**
2. left for some other reason.

32169 If the DM finds that the claimants only wanted to avoid the effects of losing work due to the stoppage then the employment was lost because of the stoppage<sup>1</sup> from the date on which they last worked.

*1 R(U) 30/55, R(U) 29/59*

32170 If a person genuinely leaves work for some other reason the employment has not been lost because of the stoppage.

32171 Where DMG 32168 - 32170 applies a sanction question may arise.

### Example 1

Desmond is a boilerman in a dockyard who leaves his employment four days before the start of an unofficial strike at his place of work. Desmond makes a claim for JSA. He gives no reason for leaving his employment. However, on the day he leaves strikes have started elsewhere though it is not certain that there would be a stoppage at his place of work. The DM decides that Desmond has left work in anticipation of a stoppage and has lost his employment due to a TD stoppage.

### Example 2

Rose is one of twelve workers given notice that they are to be made redundant. A dispute arises between the unions and Rose's employer about the redundancies and as a result the workers decide to strike. Rose leaves her employment, with the agreement of her employer, eleven days before her notice is due to run out. Rose leaves before there is a stoppage of work which starts later that same day. She makes a claim for JSA. The DM decides that Rose lost her employment due to a TD stoppage. This is because if Rose had not anticipated the stoppage, there would have been no reason for her not to work her notice.

32172 - 32174

## Employment suspended indefinitely before stoppage

### Suspended

32175 A worker is suspended when

1. the employer has no work for the person **and**
2. the worker is stood-off but not finally discharged.

### The 12-day rule

32176 The DM must apply the 12-day rule to decide whether a claimant's lack of employment is due to a TD where

1. employment is indefinitely suspended **and**
2. a trade dispute occurs at the place of work.

32177 Where a claimant's employment has been indefinitely suspended 12 working days or less before a stoppage of work at the premises where they usually work they have lost work due to the stoppage<sup>1</sup>.

*1 R(U) 20/57(T); R(U) 26/57*

32178 The presumption in the 12 day rule is that a claimant who

1. is suspended within 12 days of a stoppage **and**
2. would, but for the stoppage, have been re-employed after the date on which the stoppage began

has lost the employment which would have existed after that date<sup>1</sup>.

*1 R(U) 31/57*

32179 A period of suspension from work starts on the day after the last day of work. If before the stoppage a claimant

1. is suspended **and**
2. returns to work **and**
3. is suspended again

there are two separate periods of suspension. Apply the 12 day rule to the last period of suspension even where the claimant returns to work for only one day<sup>1</sup>.

*1 R(U) 29/57*

32180 Days of recognized or customary holiday are not counted when deciding the number of working days for which a claimant has been suspended<sup>1</sup>. For guidance on days of recognized or customary holiday see DMG Chapter 20.

*1 R(U) 21/57*

32181 - 32182

## When the 12 day rule does not apply

32183 The presumption of the 12 day rule can be disproved if there is definite evidence to the contrary<sup>1</sup>. If a claimant is suspended within 12 days of a stoppage they must show that it is very likely that

1. they did not lose work due to the stoppage **and**
2. they would not have been employed had there been no stoppage.

If it is doubtful whether they would have been employed had there been no stoppage, they have not discharged the burden of proof.

*1 R(U) 20/57(T), R(U) 21/57*

32184 If a claimant was suspended more than 12 days before the stoppage the DM should accept that employment was not lost because of the stoppage.

### Example 1

Gerald is suspended indefinitely twelve working days before the start of a stoppage of work at his place of work. Several other workers are suspended at the same time. Most of the other workers are re-engaged before the stoppage begins but Gerald is not. Gerald remains unemployed and makes a claim for JSA until after the stoppage is over. He then takes a job in another industry. The DM decides that Gerald has proved that he did not lose his employment because of the stoppage of work.

### Example 2

Laura is suspended indefinitely on the day before a stoppage of work at her place of work begins. She makes a claim for JSA. The DM obtains evidence that work on the order on which Laura had been working was completed. Laura starts work again two days after the stoppage. The DM decides that Laura has not proved that she has not lost work because of the stoppage. The DM makes this decision because the fact that the work on the order was finished does not mean Laura would have been dismissed. Also, the fact that Laura had been kept on until the day before the stoppage began strongly suggests that she was suspended because of the impending stoppage.

32185 - 32187

## Definite period of suspension before stoppage

- 32188 If
1. a claimant's employment is suspended for a definite period **and**
  2. during that suspension a stoppage of work begins **and**
  3. the stoppage prevents that claimant returning to work on the agreed date

the claimant has lost employment due to the stoppage from the date work should have been resumed<sup>1</sup>.

*I R(U) 12/61*

32189 This situation may arise where claimants are working

1. to a shift system **or**
2. to a rota system **or**
3. on short-time.

32190 If claimants work only on certain days of the week, the days on which no work is done should be treated as definite periods of suspension.

32191 If a stoppage begins on a day claimants would not normally work, they have lost employment due to a stoppage caused by a TD.

### **Example**

Tom works on Mondays, Tuesdays and Saturdays. He makes a claim for JSA on Wednesday 20.10.04, the day on which a stoppage of work due to a TD begins at his place of work. The stoppage ends on Saturday 30.10.04. The DM decides that Tom has lost employment due to a TD from Sunday 17.10.04 to Saturday 30.10.04.

32192 - 32194

## **Incapacity for work during stoppage**

32195 Claimants may be off work due to illness when a stoppage of work begins. If

1. they recover and claim JSA during the stoppage **and**
2. work would have been available if it were not for the stoppage

they have lost work due to the stoppage.

32196 But where they were given notice before the stoppage began and

1. they do not recover until after their employment was due to end **or**
2. it cannot be confirmed that they would have been employed on their recovery but for the stoppage

they have not lost employment due to the stoppage.

32197 The DM should establish

1. what the claimant's contract says about sickness absences **and**
2. what the employer's practice is for holding open the jobs of sick workers.

32198 Claimants may become ill during a stoppage of work due to a TD. If when recovered they

1. make a claim to JSA **and**



2. the stoppage of work due to a TD is continuing  
they will have lost employment because of the stoppage.

32199 - 32200



## Directly interested

- 32201 If claimants can show that they have no direct interest in the dispute they will not have lost employment because of a stoppage of work due to a TD<sup>1</sup>.  
*1 JS Act 95, s 14(1)*
- 32202 There is no statutory definition of the term “directly interested”. The question whether claimants are directly interested in a dispute must always depend on the particular facts and circumstances of each case<sup>1</sup>. Claimants may have a direct interest in a dispute and yet take no part in that dispute<sup>2</sup>.  
*1 R(U) 14/71; 2 R(U) 14/64, R(U) 4/65*
- 32203 Where it is almost automatic that claimants will be affected by the outcome of a TD they are treated as having a direct interest in that dispute<sup>1</sup>. If there has to be an intervening event between the outcome of the dispute and the terms of employment being affected, claimants are not directly interested in the dispute<sup>2</sup>.  
*1 R(U) 13/71, Watt v. The Lord Advocate 1979 S.C 120; 2 R(U) 8/72, R(U) 8/80*

### Example

The overlockers at Binita’s place of work are in dispute with the management over the rate of pay for overtime working. Binita is a clipper and is not directly involved in the dispute. However, any renegotiated overtime rate will apply to all of the workers at Binita’s place of work. Therefore Binita has a direct interest in the outcome of the dispute.

- 32204 If claimants are laid off because of a dispute this does not mean that they have a direct interest in that dispute. There must be a direct interest in the outcome of the dispute, not simply in its existence<sup>1</sup>.  
*1 Watt v. The Lord Advocate 1979 S.C 120*
- 32205 If claimants are laid off only because of the action of strike pickets that, on its own, does not mean that they are directly interested in the dispute<sup>1</sup>.  
*1 R(U) 3/69*
- 32206 It does not need to be the claimant's own pay or conditions that are the subject of the dispute. Where different groups of workers, belonging to different trade unions are employed by the same employer at the same place of work and there is a dispute between the employer and trade union A, workers belonging to trade union B are directly interested in that dispute if
1. whatever the outcome of the dispute the employer will apply it to workers in trade union B as well as those in trade union A **and**
  2. the application of the outcome of the dispute to all workers comes about automatically as a result of
    - 2.1 a collective agreement which is legally binding **or**
    - 2.2 a collective agreement which is not legally binding **or**

**2.3** established industrial custom and practice at the place of work concerned<sup>1</sup>.

*1 R(U) 1/84 Appendix*

32207 - 32209

32210 It is for claimants to show that whatever the outcome of the dispute the terms or conditions of their employment would not be affected almost automatically. It does not matter whether the outcome is likely to be to the advantage or disadvantage of the claimant<sup>1</sup>.

*1 R(U) 3/56*

32211 A dispute which starts off as personal, affecting only one person, can develop into a dispute about a matter of principle affecting many others<sup>1</sup>.

*1 R(U) 25/56*

32212 It is the nature of the interest which is important, not its degree<sup>1</sup>. For example workers may have a direct interest in a dispute about plans

1. to abolish their afternoon tea break<sup>2</sup>
2. to reduce the time allowance for unpenalised lateness by two minutes a day<sup>3</sup>.

Even though these matters are so insignificant that they could be ignored the workers still have a direct interest in the dispute.

*1 R(U) 3/62; R(U) 4/62; 2 R(U) 3/62; 3 R(U) 4/62*

32213 Workers are not directly interested in a dispute where an amendment of an agreement to which they are party would not affect their position either for the better or the worse<sup>1</sup>.

*1 R(U) 18/58*

32214 Workers are not directly interested in a dispute if their interest is only in an effect which is not, and does not become, the subject of a dispute. The subject and limit of the dispute must be identified before deciding whether a workers has a direct interest in it.

**Example 1**

Eric is a surface worker at a coal mine. Some underground workers do not report for work on a Sunday night because of a dispute about the pay for that shift. Eric loses part of his weekly bonus as a result. Eric is not directly interested in the dispute because it is about rates of pay for underground work on a Sunday night, not the circumstances in which his bonus is withheld. Eric's loss of bonus is only an effect of the dispute.

**Example 2**

Roy is also a surface worker at a coal mine. Paul, an underground worker at the same coal mine, does not receive his bonus payment because he is absent from work. A dispute develops because of this and all the underground workers withdraw their labour as a result. Roy is directly interested in the dispute. This is because it is

about the conditions in which a bonus can be made and is of direct interest to all workers covered by the bonus agreement. Roy is one of those workers.

32215 - 32217

32218 Workers may have no direct interest in a dispute at the start of a stoppage. But during the stoppage new matters may become the subject of the dispute. Workers may then have a direct interest<sup>1</sup>.

*1 R(U) 12/60*

32219 A dispute can be about several things. Workers who are directly interested in some, but not all, of these matters, are directly interested in the dispute<sup>1</sup>.

*1 R(U) 17/61; R(U) 3/62; R(U) 4/62*

32220 If workers are directly interested in the dispute then their own views on the subject in dispute do not matter. It does not matter that they

1. are not members of the trade union involved in the dispute<sup>1</sup> **or**
2. disagree with fellow workers demands and wish to continue working<sup>2</sup> **or**
3. do not know what the dispute is about, nor that they have a direct interest in it<sup>3</sup>  
**or**
4. do not know that a dispute exists<sup>4</sup>.

*1 R(U) 22/57, R(U) 26/57; 2 R(U) 17/61; 3 R(U) 22/57; 4 R(U) 14/64*

32221 A TD can be about any condition of employment. Workers may have a direct interest in disputes about

1. pay<sup>1</sup> **or**
2. the method of working out bonus earnings<sup>2</sup> **or**
3. the conditions governing payment of bonus<sup>3</sup> **or**
4. superannuation<sup>4</sup> **or**
5. time allowed for unpenalised lateness<sup>5</sup> **or**
6. tea breaks<sup>6</sup> **or**
7. demarcation of duties<sup>7</sup> **or**
8. interchangeability<sup>8</sup> **or**
9. heating arrangements<sup>9</sup> **or**
10. free provision of protective clothing<sup>10</sup>.

*1 R(U) 3/56; R(U) 13/71; R(U) 14/71; R(U) 8/72; R(U) 1/74; R(U) 6/78; R(U) 8/80; R(U) 12/80; R(U) 1/84;  
2 R(U) 18/58; 3 R(U) 25/56; 4 R(U) 17/61; 5 R(U) 4/62; 6 R(U) 3/62; 7 R(U) 1/60(T); R(U) 14/64;  
8 R(U) 6/61; R(U) 9/80; 9 R(U) 4/65; 10 R(U) 5/77*

32222 Workers who have a direct interest in a dispute may be able to show that they have stopped having such an interest before the stoppage has ended.

32223 - 32224



# Start date of stoppage

## General rule

32225 A stoppage starts on the first day on which work is

1. stopped **or**
2. limited to more than just a minor extent.

32226 A stoppage can only begin on a day when work

1. is done **or**
2. would be done

but for the stoppage.

32227 A stoppage cannot begin on a day when work would not be done anyway. If a national or regional stoppage is arranged for a given date, and that day is a non-working day in some of the places of work affected, the stoppage at those places begins on the next working day.

32228 A stoppage cannot start on different dates for workers at the same place of work. Where different groups of workers at the same place of work stop work on different dates the stoppage begins on the date the first group refuses to work or is prevented from working. This may happen if

1. different groups decide to strike or are laid off on different dates **or**
2. there is shift, or staggered short time, working.

32229 If the premises is divided into separate places of work the stoppage in these separate places may begin on different dates.

32230 - 32232

## Direct interest acquired

32233 Workers who have no direct interest in the TD have not lost employment due to the stoppage. But if at a later date

1. a new matter becomes an issue in the dispute **and**
2. those workers have a direct interest in it

they will have lost employment due to the stoppage<sup>1</sup>. Any entitlement to JSA will end from the first day of the week in which they do have an interest in the dispute.

*1 CU 274/50(KL); R(U) 4/62*





## Not employed because of the stoppage

- 32234 The DM must decide whether the stoppage of work has caused claimants not to be employed on any day. If it has, they will not be entitled to JSA for any week which includes a day on which they were not employed for this reason<sup>1</sup>.

*1 JS Act 95, s 14*

### Week

- 32235 A week is a period of seven days beginning on a Sunday<sup>1</sup>.

*1 JS Act 95, s 35(1)*

- 32236 Even if

1. subject to DMG 32238 **5.** the employment would have finished anyway before the end of the stoppage<sup>1</sup> **or**
2. claimants would not normally have worked on every day during the stoppage, for example because they are
  - 2.1 a five-day week worker **or**
  - 2.2 on short time **or**
  - 2.3 a casual worker<sup>2</sup> **or**
3. claimants become incapable of work during the stoppage

they are not entitled to JSA.

*1 R(U) 11/52; R(U) 17/56; R(U) 29/59; R(U) 12/72(T); 2 R(U) 32/55, R(U) 12/80*

- 32237 But if

1. a stoppage of work that claimants are directly interested in, ends **and**
2. claimants cannot work because of a further dispute that they do not have a direct interest in

the stoppage of work caused by the second dispute will not have caused them not to be employed.

- 32238 When either

1. the stoppage comes to an end **or**
2. although the stoppage has not ended, it is no longer due to a TD **or**
3. claimants are no longer directly interested in the dispute **or**
4. claimants become genuinely employed somewhere else<sup>1</sup> **or**
5. claimants become redundant within the meaning of the relevant legislation<sup>2</sup> **or**
6. having genuinely resumed work with their employer, claimants then leave for reasons unconnected with the TD<sup>3</sup>

the stoppage of work will no longer have caused the claimants not to be employed. When either reason **1.** or **2.** applies, the same date is applied to all workers at the same place of work. If **3.** to **6.** apply the date may be different for each worker at the same place of work.

*1 JS Act 95, s 14(3)(a); 2 ER Act 96, s 139(1)(2); 3 s 14(3)(c)*

32239 A stoppage of work can end even though the dispute continues. Claimants cannot lose employment due to a stoppage of work if there is no stoppage in that week (but see DMG 32278 - 32284 if considering withdrawal of labour). But if, at a later date, there is another stoppage of work because of the same dispute, this stoppage will have caused them not to be employed<sup>1</sup>.

*1 R(U) 14/64*

32240 If workers refuse to work only on some days each week but work normally on other days, there is a series of stoppages. But the DM will be concerned with the weeks which include at least one day of stoppage.

## **Return to work delayed**

32241 In some cases a dispute is settled but return to work is prevented because of a different dispute that claimants have no direct interest in. In these cases as the claimants have no direct interest in the dispute, they have no longer lost work due to a stoppage caused by a TD.

32242 Claimants must prove that the stoppage is not caused by the TD<sup>1</sup>.

*1 CWU 18/49, R(U) 1/56*

32243 - 32244

# When disentitlement is not appropriate

## Direct interest ends

- 32245 Disentitlement to JSA will not be appropriate if claimants can show that they no longer have a direct interest in the dispute. Claimants must show that they can no longer be affected in any way by the outcome of the dispute.
- 32246 They will usually be able to prove this by showing that they have permanently stopped being a person who can be directly interested in the dispute.
- 32247 Resignation or dismissal during the dispute is not enough to show that there is no longer a direct interest in the dispute. If the reinstatement of a dismissed worker becomes an issue in the dispute, then it has not been shown that the worker has permanently ended relations with the employer.
- 32248 Even if claimants are able to show that they have permanently ended relations with the employer, they must also show that any settlement of the dispute does not affect their position in any way during the period before the employment ended.

### Example

There is a dispute about work at Sandra's place of work. As a result she resigns and makes a claim for JSA. When the dispute is settled Sandra will receive arrears of pay for the period before her employment ended. The DM decides that Sandra cannot show that any settlement would not affect her position before her employment ended.

- 32249 It is important to look in detail at claimants' reasons for resigning, or the employer's reasons for dismissing claimants, where it is alleged that
1. there has been a permanent ending of relations between claimants and the employer **and**
  2. the claimants' direct interest in the dispute has ended.

32250 - 32251

## Employed somewhere else

- 32252 If claimants can show that during a stoppage of work they have become genuinely employed somewhere else, they will no longer have lost employment due to the stoppage of work<sup>1</sup>. But a sanction question may arise<sup>2</sup>.

*1 JS Act 95, s 14(3)(a); 2 s 19(6) & 20A(2)*

## Employed

32253 “Employed” in this context means either employed earner's or self employment.

## Somewhere else

32254 This means somewhere other than where claimants worked when the stoppage started. The new work must be

1. at different premises **or**
2. in a separate department on the same premises if that department is a separate place of work.

## Genuinely

32255 Whether work is genuine is a question of fact to be decided by the DM. The decision must be based on available evidence.

32256 Work should be both genuine and taken up for an honest motive<sup>1</sup>.

*1 R(U) 6/74*

32257 If claimants show that the job was taken up for a proper reason, for example to have a job and earn a living, then it is genuine. If this has been shown, the work

1. does not have to be permanent **or**
2. taken with the intention of permanently ending relations with the previous employer.

32258 Work can be genuine even if

1. it turns out to be temporary **or**
2. claimants know it will be temporary from the start.

The probable, or expected, duration of the work is only one element in considering whether it is genuine. The fact that it turns out to last only a short time is not enough on its own to find that it was not genuine.

32259 Work is not genuine if the claimant

1. takes it **or**
  2. maintains to have taken work which is a sham
- simply to avoid disentitlement to JSA.

32260 Work which is done for a big employer is usually genuine. But work which is done for a small firm, owned by a friend, will often not be genuine. The DM must, in all cases, find out exactly the nature of the work and how claimants came to start it<sup>1</sup>.

*1 R(U) 6/74*

32261 - 32263

## Work ended due to redundancy

32264 If claimants can show that during a stoppage they have been made redundant they can claim JSA<sup>1</sup>. The redundancy must be within the meaning of the relevant legislation<sup>2</sup>.

*1 JS Act 95, s 14(3)(b); 2 ER Act 96, s 139(1)(2)*

32265 For guidance on whether work has ended due to redundancy within the meaning of the relevant legislation see DMG Chapter 34. If there is some doubt as to whether redundancy has resulted in the permanent ending of relations between the employer and the employee, for example because the redundancies were an issue in the dispute, refer the case to DMA Leeds.

## Genuinely returned to work, then left

32266 Claimants who can prove that during the stoppage they

1. genuinely returned to work as an employed earner for the employer **and**
2. then left for reasons other than the TD

will not have lost employment because of the stoppage<sup>1</sup>. This applies from the date that the claimant returned to work for the employer.

*1 JS Act 95, s 14(3)(c)*

## Resumed work with employer

32267 Claimants have resumed work with the employer if they have gone back to work for the same employer they worked for immediately before the stoppage began. It does not have to be the same job. Any work with that employer is enough.

32268 Claimants have not satisfied this condition if they have returned to work for a different employer at the same place of work where they worked when the stoppage began. Nor can they satisfy the “employed somewhere else” condition<sup>1</sup>.

*1 s 14(3)(a)*

32269 - 32270

## Subsequently left

32271 The word "left" includes leaving voluntarily and dismissal. It does not include suspension. For guidance on the difference between termination and suspension from work see DMG, Chapter 26.

## For a reason other than the trade dispute

32272 The main reason for leaving must not be the TD<sup>1</sup>. It does not matter that the dispute is a minor factor in the decision to leave if it seems likely that the claimants would have left for another reason in any event.

*1 JS Act 95, s 14(3)(c)*

32273 But if

1. the dispute is a major factor in the decision to leave **and**
2. it seems unlikely that claimants would have left if it had not been for the dispute

then it cannot be said that the claimants have left for reasons other than the TD.

32274 The circumstances in which claimants leave employment may give grounds for a sanction being imposed<sup>1</sup>.

*1 s 19(6) & 20A(2)*

32275 - 32277

## When the stoppage has ended

32278 Claimants have to prove that the stoppage of work has ended<sup>1</sup>.

*1 R(U) 1/56*

32279 A stoppage at a place of work ends when there has been a general return to work. If the dispute has not been settled

1. workers may return to work a few at a time **or**
2. their places may be gradually filled by others.

32280 In such cases the stoppage ends when the employers have got all of the workers they need, that is, when work is no longer stopped or curbed

1. by workers refusing to work on the employer's terms **or**
2. by the employer's refusal to employ the workers on their terms **or**
3. because work has to be reorganised due to
  - 3.1 circumstances directly resulting from the dispute **or**
  - 3.2 repairs, which are necessary because of the stoppage, have not been completed<sup>1</sup>.

*1 R(U) 25/57*

32281 The ending of a stoppage is a question of fact<sup>1</sup>.

*1 R(U) 5/86(T)*

32282 The date of the end of the stoppage is the last day of the stoppage. This is normally the day before work is

1. resumed **or**
2. sufficiently resumed.

32283 Settlement of the dispute, or an agreement to return to work, does not mean that the stoppage has ended. If the employer and workers at a particular place of work do not reach agreement on the terms of a return to work the stoppage has not ended at that place of work even though there has been

1. a national settlement **and**
2. a general return to work elsewhere<sup>1</sup>.

*1 R(U) 12/60*

32284 But a stoppage may end without settlement of the dispute if the number of workers

1. returning to work **or**
2. whose places are taken by others

is enough to enable work to carry on normally again at the place of work concerned.

32285

## Normal working

32286 Normal working need not be the same as it was immediately before the dispute or stoppage started, for example

1. working practices **or**
2. the amount of work available

may have changed in the interim period, even if the stoppage had not happened. This may be so particularly if the stoppage was lengthy.

32287 Normal working means working which would be regarded as normal on the particular day in question.

32288 A stoppage of work cannot end on different days for different workers at the same place of work<sup>1</sup>.

*1 R(U) 17/56*

### Example 1

There is a stoppage of work at the factory where Samantha works. She then returns to work to do her own job but no other workers return to work. Samantha's return to work does not bring the stoppage to an end.

### Example 2

There is a trade dispute at a factory involving the coppersmiths. The coppersmiths' labourers then withdraw their labour in support of the coppersmiths. However, a few days later the labourers return to work but the coppersmiths do not return to work for a further two weeks. The stoppage of work did not end until the date on which the coppersmiths returned to work.

32289 If premises are divided into separate departments which are separate places of work, stoppages in these separate places can end on different dates.

## Gradual return to work

32290 It can be difficult to decide on what date work can be said to have returned to normal in cases where there is a gradual return to work, for example where

1. it is normal for the number of workers to vary a lot depending on trading conditions **or**
2. business has been lost because of the stoppage **or**
3. fewer people are needed to do the same amount of work as before the stoppage (possibly because of previous over-staffing) **or**
4. the stoppage was so long, it is no longer possible to say what is normal working because of industrial or other changes happening during the stoppage.



32291 When this happens the stoppage will have ended when the employers have got all the workers they need to perform the work available.

32292 If the employer cannot say definitely when they have got all the workers they need, the stoppage will have ended when more than 90% of the workforce has gone back to work<sup>1</sup>. Cases of doubt should be referred to DMA Leeds.

*1 R(U) 5/86*

32293 - 32294

## Closure of business

32295 If

1. the employer

1.1 closes the business **and**

1.2 cuts all relations with the workers **and**

2. the only reason for the closure is the TD

claimants who have lost employment because of the closure have permanently lost it due to a stoppage caused by the dispute<sup>1</sup>. This means they will not be entitled to JSA until they have had another job.

*1 R(U) 15/80*

32296 But usually it is some reason other than the TD that leads to closure, such as financial difficulties. In these cases, once the closure is complete, the stoppage is no longer due to the TD.

32297 In deciding whether there is a closure in this situation, the DM should consider the

1. nature **and**

2. extent **and**

3. characteristics

of the business. If the main reason for the company's existence has gone, and the company has lost, or given up, its essential function and taken on no other function, there is a closure<sup>1</sup>. This is so even if work is continuing to dispose of the assets.

*1 R(U) 15/80*

### Example

A company makes and sells goods. The employer has dismissed the productive workforce. He will never re-employ or replace them. All trading procedures such as looking for new work, selling and quoting for goods, has ended. The company is no longer "in business" - even if work continues to dispose of its assets.

32298 It may only be possible to decide the date of closure with hindsight. If the employer has in effect withdrawn from the contest, continued picketing does not mean that the company has not closed.

32299 Where the DM thinks that permanent closure was due only to the TD and that an adverse decision may be appropriate, the case should be referred to DMA Leeds.

32300 - 32301

### **Permanent reduction in trade**

32302 A stoppage does not come to an end automatically where employers decide that in future they will only trade on a smaller scale. But once

1. all the necessary arrangements have been made **and**
2. business is being carried on at the reduced level

the stoppage is no longer due to the dispute.

## Withdrawal of labour

32303 Workers who

1. have not lost employment because there is a stoppage due to a TD **but**
2. nevertheless withdraw their labour to help further that dispute

are not entitled to JSA for any week that includes a day on which labour is withdrawn<sup>1</sup>.

*1 JS Act 95, s 14(2)*

32304 Claimants may have withdrawn their labour if they

1. have previously been found to have lost employment because of a stoppage of work caused by a TD **and**
2. make a new claim after the stoppage has ended.

32305 Claimants who withdraw their labour in furtherance of a TD in which they have no direct interest may later acquire such an interest. In these cases they will have lost employment because of a stoppage of work caused by a TD<sup>1</sup>.

*1 s 14(1)*

32306

### **Labour**

32307 Labour includes both self-employed and employed-earner's employment.

### **When has labour been withdrawn**

32308 Claimants will have withdrawn their labour if

1. they do not attend for work **or**
2. having turned up for work, they then refuse to do any (or only a small amount) of the work which is normally their own, even where their employer lays them off **or**
3. having been laid off they then refuse to return to work when it becomes available. In this case claimants will have withdrawn their labour from the date on which they refused to return to work.

32309 Claimants will still have withdrawn their labour, even if the employer terminates their contract of employment as a move in the dispute.

32310 - 32311

32312 Whether claimants have withdrawn their labour is a question of fact. The DM should consider, amongst other things

1. what claimants were asked to do **and**
2. what duties they had to perform under the terms of their contracts **and**
3. what, if anything, they did in fact do **and**
4. what they were prepared to do.

If claimants refuse only to work overtime, or refuse to perform only a small portion of their own duties, they have not withdrawn their labour. Cases of doubt should be referred to DMA Leeds.

32313 If claimants work for part of the day and then stop work, they will have withdrawn their labour for that day.

32314 Withdrawal of labour is a voluntary act. Claimants who are prevented from working by picket violence, or the threat of it, have not withdrawn their labour.

### **To help further a trade dispute**

32315 The withdrawal of labour must be to help further a TD. The dispute does not need to be at the claimant's place of work. Nor does there need to be a stoppage of work, either at the claimant's or any other place of work.

### **Period of withdrawal**

32316 Claimants will not be entitled to JSA from the first day of the week in which, on any day, they withdrew their labour. This will be a Sunday.

32317 If claimants then resign, or are dismissed by their employer, the DM must establish whether that is merely a move in the dispute.

32318 If claimants can show that

1. their employment has been unconditionally ended **and**
2. the employer or the claimants concerned are no longer willing to employ or be employed by the other

an adverse decision should not be given.

32319 Where the re-instatement of a worker becomes an issue in the dispute, it cannot be said that that person has permanently ended relations with the employer.

32320 - 32322

## Statutory sick pay

32323 If an employer and an employee disagree about whether there is entitlement to SSP, a DM will make a decision.

32324 There is no entitlement to SSP<sup>1</sup> if on the relevant date there is a stoppage of work due to a TD at the claimant's place of work.

*1 SS CB Act 92, Sch 11, para 1 & 2(g)*

32325 This rule will not apply if the claimant can show that at no time, on or before the relevant date, did they have a direct interest in the TD in question<sup>1</sup>.

*1 Sch 11, para 7*

## Relevant date

32326 The relevant date is the date on which a period of entitlement to SSP would begin if it were not for the TD provision<sup>1</sup>

*1 Sch 11, para 3*

32327 The DM dealing with the SSP question may not be experienced in deciding TD questions. The DM dealing with the SSP question can ask a SDM to decide whether, on the relevant date, there was

1. a stoppage of work due to a TD at the claimant's place of work **and**
2. if so, whether the claimant has proved that at no time on or before that date did they have a direct interest in the TD.

32328 - 32329

## Stoppage of work due to a trade dispute at the place of work

32330 The DM deciding the TD question will only need to consider whether there was a stoppage of work due to a TD at the claimant's place of work on the date referred by the DM deciding the SSP question.

32331 When considering whether there was a stoppage of work due to a TD see DMG 32016 - 32118.

32332 The question whether a claimant has lost employment due to the stoppage does not arise for SSP purposes.

## Direct interest

32333 In deciding whether claimants have, or had, a direct interest in the TD in question, follow the guidance in DMG 32201 - 32222.

32334 Claimants must prove that at no time on or before the relevant date did they have a direct interest in the dispute.

32335 Once claimants have had a direct interest it cannot assist their claim if their interest ended before the relevant date. But if claimants have not had a direct interest in the dispute, up to and including the relevant date, it does not matter if they later acquire a direct interest. It is only the position up to and including the relevant date that matters.

32336 - 32337

## Other benefits

32338 There are other benefits where entitlement depends on whether the claimant, or their partner, is involved in a TD.

32339 The DM determining entitlement to these benefits may not be experienced in deciding TD questions. They may ask the DM who is experienced in deciding TD questions for

1. a decision **or**
2. an opinion

as to whether the claimant, or their partner, is involved in a TD.

32340 If such a question is referred to the DM who is experienced in deciding TD questions, they should

1. make their decision **or**
2. give their opinion

using the guidance in DMG 32003 - 32335.

32341 - 32499





# Amount of JSA(IB) or Income Support payable

## Amount of JSA(IB)

### The law

32500 Special rules apply when working out JSA(IB) if a member of the claimant's family cannot get JSA because of a TD<sup>1</sup>. Note that the rules do not apply

1. if that member is
  - 1.1 a child **or**
  - 1.2 a young person **or**
  - 1.3 incapable of work **or**
  - 1.4 in the maternity period<sup>2</sup> **and**
2. from the date that member returns to work for the same employer even if the TD has not ended<sup>3</sup>.

*1 JS Act 95, s 15 & s 15A; 2 JSA Regs, reg 171; 3 JS Act 95, s 15(4) & s 15A(5)*

### About the guidance

32501 Guidance on

1. whether partners
  - 1.1 are incapable of work is at DMG 32510 - 32514
  - 1.2 are in the maternity period is at DMG 32530 - 32534
  - 1.3 cannot get JSA because of being involved in a TD is at DMG 32550 - 32554
2. when to assume the applicable amount is reduced or disregarded is at DMG 32580 - 32584
3. how to work out JSA(IB) if partners or a member of a joint-claim couple cannot get JSA because of being involved in a TD is at DMG 32600 - 32608
4. how to work out JSA(IB) if members of the claimants family cannot get JSA because of being involved in a TD is at DMG 32665 - 32750.

32502 - 32509



# Is the person incapable of work

## About the guidance

32510 DMs should use this guidance to consider if

1. **partners** who are involved in a TD are incapable of work if a claim for **JSA** is made **and**
2. **claimants or partners** who are involved in a TD are incapable of work if a claim for **IS** is made.

## When a person is incapable of work

32511 The rules on whether a person is incapable of work for JSA or IS are the same as for IB or SDA purposes<sup>1</sup>. So DMs should decide a person involved in a TD is incapable of work if that person is getting IB or SDA.

*1 JS Act 95, Sch 1, para 2; SS CB Act 92, Part X11A*

32512 The rules on whether a person is incapable of work for SSP purposes are not the same rules as for IB or SDA.

## Not in receipt of IB or SDA

32513 If the person involved in a TD is not getting IB or SDA, the DM has to consider whether the person is incapable of work. DMG Chapter 13 gives guidance on when a person is incapable of work.

## In receipt of SSP

32514 If the person involved in a TD is getting SSP, the DM has to consider whether the person is incapable of work. DMG Chapter 13 gives guidance on when a person is incapable of work.

32515 - 32529



# Is the person in the maternity period

## About the guidance

32530 DMs should use this guidance to consider whether

1. **partners** who are involved in a TD are in the maternity period if a claim for **JSA** is made **and**
2. **claimants or partners** who are involved in a TD are in the maternity period if a claim for **IS** is made.

## When a person is in the maternity period

32531 A person who is pregnant is in the maternity period

1. from the start of the sixth week before the EWC
2. to the end of the seventh week after the week of the ADC<sup>1</sup>.

*1 JSA Regs, reg 171(b)(ii); SS CB Act 92, s 126(2)*

### Example

Monica cannot get JSA because she is involved in a TD from 26.10.06 to 1.4.07. She claims IS from 2.11.06 until she returns to work on 2.4.07. She is pregnant. Her expected date of confinement is 26.12.06, the EWC is 24.12.06 to 30.12.06. She has the baby on 9.1.07, the week of the ADC is 7.1.07 to 13.1.07. Monica is not in the maternity period from 2.11.06 to 11.11.06 or from 4.3.07 to 1.4.07. The maternity period is from 12.11.06 to 3.3.07.

## Meaning of week

32532 Week means

1. for **JSA(IB)** a period of seven days<sup>1</sup> **and**
2. for **IS** a period of seven days starting with midnight between Saturday and Sunday<sup>2</sup>.

*1 JSA Regs, reg 1(3); 2 SS (C&P) Regs, reg 2(1); SB CB Act 92, s 122*

## Evidence

32533 Claimants or partners can get evidence of the EWC from their doctor. Evidence of the expected date of confinement may already be held if MA has been claimed.

## **Person pregnant but not in the maternity period**

32534 A person who is pregnant and not in the maternity period may be incapable of work. In such cases the DM should consider whether the person is incapable of work (see DMG 32510 - 32514).

32535 - 32549

# Can the person get JSA

## About the guidance

32550 DMs should use this guidance to consider if

1. either **member of a joint-claim couple** or **members of a claimant's family** who are involved in a TD cannot or could not get JSA if a claim for **JSA** is made **and**
2. **claimants or partners** who are involved in a TD cannot or could not get JSA if
  - 2.1 the claimant claims **IS and**
  - 2.2 the DM has determined claimants or partners are not
    - 2.2.a incapable of work (see DMG 32510 - 32514) **and**
    - 2.2.b in the maternity period (see DMG 32530 - 32534).

## The law

32551 A person cannot get JSA if the DM considers that person is involved in a TD<sup>1</sup>.

*1 JS Act 95, s 14*

32552 A couple claiming a joint-claim JSA cannot get that benefit if the DM considers that both members of that couple are involved in a TD<sup>1</sup>.

*1 JS Act 95, s 15A(2)*

## Can the person get JSA

32553 The DM may take into account the opinion of the Decision Making and Appeals Regional Team and/or Decision Making and Appeals Benefit Manager on whether a person is involved in a TD.

32554 DMs can assume the applicable amount is reduced or disregarded if they cannot determine immediately whether a person is involved in a TD (see DMG 32580 - 32584).

32555 - 32579





# Assuming the applicable amount

## About the guidance

- 32580 DMs should use this guidance to determine whether they should assume the applicable amount is reduced or disregarded if
1. the DM considers partners or a member of a joint-claim couple (JSA(IB)) and claimants or partners (IS)
    - 1.1 are not incapable of work (see DMG 32510 - 32514) **and**
    - 1.2 are not in the maternity period (see DMG 32530 - 32534) **and**
  2. they have not returned to work for the same employer even if the TD has not ended **and**
  3. the DM cannot decide immediately if they cannot or could not get JSA because of being involved in a TD.

## The law

- 32581 The applicable amount is reduced or disregarded if certain people cannot or could not get JSA because of being involved in a TD<sup>1</sup>. The DM can assume the applicable amount is reduced or disregarded if that question cannot be decided immediately<sup>2</sup>.

*1 JS Act 95, s 15(2)(a) & (b) & 15A(5); SS CB Act 92, s 126(3);  
2 SS CS (D&A) Regs, reg 13(2)(a)(i) & 15(a)(i)*

- 32582 The decision should be revised or superseded when the DM can decide the question<sup>1</sup>.

*1 regs 3 & 6*

## The effect of the law

- 32583 The effect of the law is the same as the DM deciding
1. partners or a member of a joint-claim couple if a claim for JSA is made **and**
  2. claimants or partners if a claim for IS is made
- cannot or could not get JSA because of being involved in a TD.

## **Appeals**

32584 Whilst there is a right of appeal against the outcome decision, there is no right of appeal against the DM's assumption as to the applicable amount. If the only reason for the appeal is this issue, the appeal should go to TS but it will be struck out by the clerk. If an appeal is made you should refer to DMG Chapter 06 and the CAP Code.

32585 - 32599

# Special rules for JSA(IB)

## About the guidance

- 32600 This guidance and the guidance at DMG 32665 - 32750 sets out the special rules which apply when working out JSA(IB) if
1. the DM has determined the partner or one member of a joint-claim couple
    - 1.1 cannot or could not get JSA because of being involved in a TD **and**
    - 1.2 is not incapable of work **and**
    - 1.3 is not in the maternity period **and**
  2. the partner or the member of the couple has not returned to work for the same employer after being involved in a TD.

## Applicable amount

- 32601 The applicable amount for a couple is reduced by one half if
1. the claimant is a member of a couple or joint-claim couple **and**
  2. the partner or the other member of the joint-claim couple cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

Any part of the applicable amount which is for the partner or member of the couple who is involved in a TD is disregarded<sup>2</sup>.

*1 JS Act 95, s 15(2)(b) & 15A(4); 2 s 15(2)(a) & 15A(5)*

- 32602 The amount of the reduction is rounded down to the nearest multiple of 5p if one half of the applicable amount for the couple is not a multiple of 5p<sup>1</sup>.

*1 s 15(3)*

- 32603 Claimants are awarded
1. the personal allowance for a couple and any relevant premiums, such as
    - 1.1 DP **or**
    - 1.2 EPP **or**
    - 1.3 HPP **or**
    - 1.4 PP **or**
    - 1.5 SDP at the higher rate.

The total of the personal allowance and any premiums is reduced by one half. The amount of the reduction is rounded down to the nearest multiple of 5p if it is not a multiple of 5p.

2. any personal premiums, such as
  - 2.1 CP **or**
  - 2.2 SDP at the lower rate
3. if the claimant or partner is responsible for a child or young person who is a member of the household
  - 3.1 FP **and**
  - 3.2 the personal allowance for that child or young person **and**
  - 3.3 DCP where appropriate **and**
4. housing costs if DMG 32700 applies.

32604 Claimants cannot get

1. any premiums which a partner or the other member of a joint-claim couple may get, such as
  - 1.1 CP **or**
  - 1.2 SDP at the lower rate **or**
2. the personal allowance or any premiums for a partner or the other member of a joint-claim couple who the claimant has married polygamously if that partner
  - 2.1 is not included in the personal allowance for the couple **and**
  - 2.2 cannot or could not get JSA because of being involved in a TD.

## Income

32605 The following payments are treated as income

1. refunds of tax under the PAYE scheme
  - 1.1 which are available to the claimant's partner or the other member of a joint-claim couple and that person cannot or could not get JSA because of being involved in a TD **or**
  - 1.2 would be available to such a partner or a member of a joint-claim couple if that person applied for it<sup>1</sup> **and**
2. payments which the claimant or members of the claimant's family get or can get because the claimant's partner or the other member of a joint-claim couple cannot or could not get JSA because of being involved in a TD<sup>2</sup>.

**Note:** Unlike the normal rules, refunds of tax are not income treated as capital<sup>3</sup>.

*1 JS Act 95, s 15(2)(c)(i) & 15A(5); 2 s 15(2)(c)(ii) & 15A(5)(d); 3 JSA Regs, reg 110(2)*

## Weekly amount of JSA(IB)

32606 The amount of JSA(IB) which claimants can get for a week if the partner or the other member of a joint-claim couple cannot or could not get JSA in that week because of being involved in a TD is

1. nil if the weekly amount of JSA(IB) is equal to or less than the prescribed sum<sup>1</sup> (see Appendix 1 to this Chapter) **or**
2. the difference between the
  - 2.1 weekly amount of JSA(IB) **and**
  - 2.2 prescribed sumif 1. does not apply<sup>2</sup>.

*1 JS Act 95, s 15(2)(d)(i); 2 s 15(2)(d)(ii)*

## JSA(IB) for part-weeks

32607 The amount of JSA(IB) which claimants can get for a part-week if the partner or the other member of a joint-claim couple cannot or could not get JSA in that part-week because of being involved in a TD is

1. nil if the amount of JSA(IB) for the part-week is equal to or less than the amount of the prescribed sum (see Appendix 1 to this Chapter) for the same number of days as there are in the part-week **or**
2. the difference between the
  - 2.1 amount of JSA(IB) for the part-week **and**
  - 2.2 the prescribed sumif 1. does not apply<sup>1</sup>.

*1 s 15(5); JSA Regs, reg 155*

32608 To work out the amount of the prescribed sum for the part-week

1. divide the prescribed sum by seven **and**
2. multiply that figure by the number of days in the part-week.

32609 - 32619



# Amount of Income Support

## The law

- 32620 Special rules apply when working out IS if claimants or members of their family cannot get JSA because of a TD<sup>1</sup>. Note that the rules do not apply
1. if the person is
    - 1.1 a child **or**
    - 1.2 a young person **or**
    - 1.3 incapable of work **or**
    - 1.4 in the maternity period<sup>2</sup> **and**
  2. from the date claimants or members of their family return to work for the same employer even if the dispute has not ended<sup>3</sup>.

*1 SS CB Act 92, s 126; 2 s 126(1); 3 s 127(a)*

- 32621 Special rules also apply when working out what IS claimants can get if
1. a person returns to work after a period when DMG 32620 would have applied to that person **and**
  2. that person returns to work for the same employer even if the TD has not ended.

The special rules apply for 15 days from the date the person returns to work. Those rules are different from the rules used if DMG 32620 applies. Any IS paid for the 15 day period is recoverable<sup>1</sup>.

*1 s 127*

## About the guidance

- 32622 Guidance on
1. whether claimants or partners
    - 1.1 are incapable of work is at DMG 32510 - 32514
    - 1.2 are in the maternity period is at DMG 32530 - 32534
    - 1.3 cannot get JSA because of being involved in a TD is at DMG 32550 - 32556
  2. when to assume the applicable amount is reduced or disregarded is at DMG 32580 - 32584

3. how to work out IS if claimants or partners cannot get JSA because of being involved in a TD is at DMG 32635 - 32652 and DMG 32665 - 32750
4. how to work out IS when claimants or partners have returned to work for the same employer after being involved in a TD is at DMG 32755 - 32817.

32623 - 32634



# Special rules for Income Support

## About the guidance

- 32635 This guidance and the guidance at DMG 32665 - 32750 sets out the special rules which apply when working out IS if the DM has determined claimants or partners
1. cannot or could not get JSA because of being involved in a TD (see DMG 32550 - 32556) **and**
  2. are not incapable of work (see DMG 32510 - 32514) **and**
  3. are not in the maternity period (see DMG 32530 - 32534).
- 32636 DMs should use the guidance at DMG 32755 - 32817 to consider what IS claimants can get if claimants or partners have returned to work for the same employer after being involved in a TD.

## Applicable amount

### Single claimant

- 32637 All the applicable amount is disregarded if the claimant
1. is not a member of a family **and**
  2. cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

Claimants cannot get IS if all the applicable amount is disregarded.

*1 SS CB Act 92, s 126(3)(a)*

### Claimant a Lone parent

- 32638 Any part of the applicable amount for the claimant is disregarded if the claimant
1. is not a member of a couple **and**
  2. cannot or could not get JSA because of being involved in a TD **and**
  3. is a member of a family<sup>1</sup>.

*1 s 126(3)(b)*

- 32639 Lone parents
1. are **not** awarded the personal allowance for themselves or any premiums, such as
    - 1.1 CP **or**
    - 1.2 DP **or**

- 1.3 EPP **or**
  - 1.4 HPP **or**
  - 1.5 FP(LP) **or**
  - 1.6 PP **or**
  - 1.7 SDP
2. are awarded
- 2.1 FP **and**
  - 2.2 the personal allowance for any child or young person who
    - 2.2.a they are responsible for **and**
    - 2.2.b is a member of their household **and**
  - 2.3 DCP where appropriate **and**
  - 2.4 housing costs if DMG 32700 applies.

### **One member of a couple involved in a trade dispute**

32640 The applicable amount for a couple is reduced by one half if

- 1. the claimant is a member of a couple **and**
- 2. one member of the couple cannot or could not get JSA because of being involved in a TD.

Any part of the applicable amount which is for the member who is involved in a TD is disregarded<sup>1</sup>.

*1 SS CB Act 92, s 126(3)(c)*

32641 The amount of the reduction is rounded down to the nearest multiple of 5p if one half of the applicable amount for the couple is not a multiple of 5p<sup>1</sup>.

*1 s 126(4)*

32642 Claimants are awarded

- 1. the personal allowance for a couple and any relevant premiums, such as
  - 1.1 DP **or**
  - 1.2 EPP **or**
  - 1.3 HPP **or**
  - 1.4 PP **or**
  - 1.5 SDP at the higher rate.

2. any premiums for the member of the couple who is not involved in a TD, such as
  - 2.1 CP **or**
  - 2.2 SDP at the lower rate
3. if the claimant or partner is responsible for a child or young person who is a member of the household
  - 3.1 FP **and**
  - 3.2 the personal allowance for that child or young person **and**
  - 3.3 DCP where appropriate **and**
4. housing costs if DMG 32700 applies.

32643 Claimants cannot get

1. any premiums for the member who is involved in a TD, such as
  - 1.1 CP **or**
  - 1.2 SDP at the lower rate
2. the personal allowance or any premiums for a partner who the claimant has married polygamously if that partner
  - 2.1 is not included in the personal allowance for the couple **and**
  - 2.2 cannot or could not get JSA because of being involved in a TD.

**Both members of a couple involved in a trade dispute - without child or young person**

32644 All the applicable amount is disregarded if

1. the claimant is a member of a couple **and**
2. both members of the couple cannot or could not get JSA because of being involved in a TD **and**
3. neither member of the couple is responsible for a child or young person who is a member of the household<sup>1</sup>.

Claimants cannot get IS if all the applicable amount is disregarded.

*1 SS CB Act 92, s 126(3)(d)(i)*

## **Both members of a couple involved in a trade dispute - with a child or young person**

- 32645 The applicable amount for a couple is disregarded if
1. the claimant is a member of a couple **and**
  2. both members of the couple are involved in a TD **and**
  3. either member of the couple is responsible for a child or young person who is a member of the household<sup>1</sup>.

Any part of the applicable amount which is for either member of the couple is also disregarded<sup>2</sup>.

*1 SS CB Act 92, s 126(3)(d)(i); 2 s 126(3)(d)(ii)*

- 32646 Claimants are **not** awarded
1. the personal allowance for a couple **or**
  2. any premiums for the couple, such as
    - 2.1 DP **or**
    - 2.2 EPP **or**
    - 2.3 HPP **or**
    - 2.4 PP **or**
    - 2.5 SDP at the higher rate **or**
  3. any premiums for either member of the couple, such as
    - 3.1 CP **or**
    - 3.2 SDP at the lower rate **or**
  4. the personal allowance or any premiums for a partner who the claimant has married polygamously if that partner
    - 4.1 is not included in the personal allowance for the couple **and**
    - 4.2 cannot or could not get JSA because of being involved in a TD.

- 32647 Claimants are awarded
1. FP **and**
  2. the personal allowance for the child or young person **and**
  3. DCP where appropriate **and**
  4. housing costs if DMG 32700 applies.

## Income

32648 The following payments are treated as income

1. refunds of tax under the PAYE scheme
  - 1.1 which are available to claimants or partners who cannot or could not get JSA because of being involved in a TD **or**
  - 1.2 would be available to such claimants or partners if they applied for it<sup>1</sup>  
**and**
2. payments which claimants or members of their family get or can get because they or their partners cannot or could not get JSA because of being involved in a TD<sup>2</sup>.

**Note:** Unlike the normal rules, refunds of tax are not income treated as capital<sup>3</sup>.

*1 SS CB Act 92, s 126(5)(a)(ii); 2 s 126(5)(a)(i); 3 IS (Gen) Regs, reg 48(2)*

## Amount of IS

### Weekly amount of IS

32649 The amount of IS claimants can get for a week if they or their partners cannot or could not get JSA in that week because of being involved in a TD is

1. nil if the weekly amount of IS is equal to or less than the relevant sum (see Appendix 2 to this Chapter)<sup>1</sup> **or**
2. the difference between the
  - 2.1 weekly amount of IS **and**
  - 2.2 relevant sumif 1. does not apply<sup>2</sup>.

*1 SS CB Act 92, s 126(5)(b)(i); 2 s 126(5)(b)(ii)*

### IS for part-weeks

32650 The amount of IS claimants can get for a part-week if they or their partners cannot or could not get JSA in that part-week because of being involved in a TD is

1. nil if the amount of IS for the part-week is equal to or less than the amount of the relevant sum (see Appendix 2 to this Chapter) for the same number of days as there are in the part-week **or**
2. the difference between the amount of

**2.1** IS for the part-week **and**

**2.2** the relevant sum for the same number of days as there are in the part-week

if **1.** does not apply<sup>1</sup>.

*1 SS CB Act 92, s 126(6); IS (Gen) Regs, reg 77*

32651 To work out the amount of the relevant sum for the part-week

**1.** divide the relevant sum by seven **and**

**2.** multiply that figure by the number of days in the part-week.

32652 DMG 32650 does not apply to any part of a week when claimants or partners are not involved in a TD. So it would not apply when working out what IS claimants can get for four days in a week if they

**1.** or their partners cannot or could not get JSA because of being involved in a TD for three days in that week **and**

**2.** can get IS for all of that week.

32653 - 32664

# Special rules for JSA(IB) or Income Support

## About the guidance

### JSA(IB)

32665 DMs should use this guidance to consider what JSA(IB) claimants can get if the DM has determined one or more members of the claimant's family cannot or could not get JSA because of being involved in a TD. DMs should also use the guidance at DMG 32600 - 32608 to work out what JSA(IB) claimants can get if

1. the DM has determined the partner or the other member of a joint-claim couple
  - 1.1 cannot or could not get JSA because of being involved in a TD **and**
  - 1.2 is not incapable of work **and**
  - 1.3 is not in the maternity period **and**
2. that person has not returned to work for the same employer after being involved in a TD.

### IS

32666 DMs should use this guidance and the guidance at DMG 32635 - 32652 to determine what IS claimants can get if the DM has determined claimants or partners

1. cannot or could not get JSA because of being involved in a TD **and**
2. are not incapable of work **and**
3. are not in the maternity period.

32667 DMs should use the guidance at DMG 32755 - 32817 to determine what IS claimants can get if claimants or partners have returned to work for the same employer after being involved in a TD.

### The guidance

32668 In this guidance people or a person who cannot or could not get JSA because of being involved in a TD refers to

1. for JSA(IB) any member of the claimant's family **and**
2. for IS claimants and partners

who cannot or could not get JSA because of being involved in a TD, unless otherwise stated.

32669 - 32674

## Conditions of entitlement

### Members of a joint-claim couple who do not have to satisfy certain conditions of entitlement

32675 For **JSA**, a member of a joint-claim couple who cannot or could not get JSA because of being involved in a TD does not have to satisfy certain conditions of entitlement if the other member of the couple is not also involved in a TD<sup>1</sup>. The member involved in a TD does not have to

1. be available for employment<sup>2</sup>
2. enter into a JSAg<sup>3</sup>
3. be ASE<sup>4</sup>
4. be capable of work<sup>5</sup>
5. live in GB<sup>6</sup>.

The member involved in a TD can be in relevant education<sup>7</sup>.

*1 JSA Regs, reg 3D(1)(c), Sch A1 para 17; JS Act 95, s 1(2B)(b); 2 s 1(2)(a); 3 s 1(2)(b); 4 s 1(2)(c); 5 s 1(2)(f); 6 s 1(2)(h)-(i); 7 s 1(2)(g)*

### Treated as engaged in remunerative work

32676 For **JSA**, partners or the other member of a joint-claim couple who cannot or could not get JSA because of being involved in a TD are treated as engaged in remunerative work for seven days from the date

1. the stoppage of work at their place of work started **or**
2. they first withdrew their labour in furtherance of a TD if there is no stoppage of work

if JSA(IB) was not awarded for the period immediately before they stopped work or withdrew their labour<sup>1</sup>.

*1 JSA Regs, reg 52(2) & (2A)*

32677 For **IS**, claimants or partners who cannot or could not get JSA because of being involved in a TD are treated as engaged in remunerative work for seven days following the date

1. the stoppage of work at their place of work started **or**
2. they first withdrew their labour in furtherance of a TD if there is no stoppage of work

if IS was not awarded for the period immediately before they stopped work or withdrew their labour<sup>1</sup>.

*1 IS (Gen) Regs, reg 5(4)*



32678 Partners or a member of a joint-claim couple (JSA(IB)) or claimants or partners (IS) are treated as engaged in remunerative work for seven days each time they stop work or withdraw their labour. This does not apply if the stoppage or withdrawal

1. is part of a series of stoppages or withdrawals **and**
2. the same TD is involved.

32679 For **JSA**, the seven days starts with the first date of the first stoppage of work or withdrawal of labour if the stoppage or withdrawal

1. is part of a series **and**
2. involves the same TD.

So claimants who stop work on Friday of each week because of the same TD are treated as engaged in remunerative work for a period of seven days from the first Friday they stop work.

32680 For **IS**, the seven days starts with the first date following the first stoppage of work or withdrawal of labour if the stoppage or withdrawal

1. is part of a series **and**
2. involves the same TD.

So claimants who stop work on Friday of each week because of the same TD are treated as engaged in remunerative work for a period of seven days from the Saturday following the first Friday they stop work.

### **Not treated as engaged in remunerative work**

32681 Partners or a member of a joint-claim couple (JSA(IB)) or claimants or partners (IS) are not treated as engaged in remunerative work for any period when they cannot or could not get JSA because of being involved in a TD<sup>1</sup>. This does not apply to any period when

1. DMG 32675 - 32678 applies **or**
2. they do any other work and that work is remunerative work<sup>2</sup> **or**
3. for **IS** they are treated as engaged in remunerative work because of their earnings<sup>3</sup>.

*1 JSA Regs, reg 53(g) & 53(gg); IS (Gen) Regs, reg 6(4)(b); 2 JSA Regs, reg 51; IS (Gen) Regs, reg 5; 3 reg 5(5)*

### **Prescribed categories of person**

32682 For **IS**, prescribed categories of person include claimants and partners

1. who cannot or could not get JSA because of being involved in a TD **and**
2. for 15 days from the date they return to work if they

- 2.1 have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
- 2.2 are not in remunerative work (see DMG 32757)<sup>1</sup>.

*1 SS CB Act 92, s 124(1)(e); IS (Gen) Regs, reg 4ZA & Sch 1B, para 20*

32683 - 32684

## Capital treated as income

### Payment from the local authority under child care law

- 32685 A payment of capital made by the LA under child care law<sup>1</sup> is not disregarded<sup>2</sup>. The payment is capital which is treated as income if paid to a person who cannot or could not get JSA because of being involved in a TD<sup>3</sup>.

*1 Children Act 1989, s 17, 23B, 23C or 24A; Social Work (Scotland) Act 1968, s 12, 24 & 26; 2 JSA Regs, Sch 8, para 22; IS (Gen) Regs, Sch 10, para 17; 3 JSA Regs, reg 104(3); IS (Gen) Regs, reg 41(3)*

- 32686 Capital treated as income is disregarded indefinitely when working out what capital a person has<sup>1</sup>.

*1 JSA Regs, reg 108(2) & Sch 8, para 25; IS (Gen) Regs, reg 46(2) & Sch 10, para 20*

32687 - 32689

## Income not treated as capital

### Advance of earnings or loan from employer

- 32690 An advance of earnings or a loan from an employer is income which is taken into account as income if the person receiving it
1. is employed as an employed earner by that employer **and**
  2. cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 110(5) & (6); IS (Gen) Regs, reg 48(5) & (6)*

### Charitable or voluntary payments

- 32691 A charitable or voluntary payment is income which is taken into account as income if it is
1. not made or due to be made regularly **and**
  2. paid to people who cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

For **IS**, this also applies if the payment is made to a member of the family of a person who cannot or could not get JSA because of being involved in a TD<sup>2</sup>.

*1 JSA Regs, reg 110(9) & (10)(a); IS (Gen) Regs, reg 48(9) & (10)(a); 2 reg 48(9) & (10)(a)*

## Holiday pay

- 32692 Holiday pay which is payable more than four weeks after the end or interruption of employment is taken into account as earnings if it is paid to a person who cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 110(3) & 98(1)(c); IS (Gen) Regs, reg 48(3) & 35(1)(d)*

32693 - 32699

## Applicable amount

### Housing costs

- 32700 A member of the family who is not involved in a TD is treated as wholly responsible for any housing costs if the other members of the family are people who cannot or could not get JSA because of being involved in a TD. Housing costs are not payable if all members of the family are involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 83(f); reg 84(1)(g); Sch 2, para 2(2); IS (Gen) Regs, reg 17(1)(e); reg 18(1)(f); Sch 3, para 2(2)*

32701 - 32704

## Income disregarded

### Payments from trade union

- 32705 Payments made by a trade union in any one week and paid to a person who cannot or could not get JSA because of being involved in a TD are disregarded up to the amount of the

1. prescribed sum (see Appendix 1 to this Chapter) for **JSA(IB) and**
2. relevant sum (see Appendix 2 to this Chapter) for **IS**<sup>1</sup>.

**Note:** That for **IS**, a different disregard can apply<sup>2</sup>.

*1 JSA Regs, reg 103(2) & Sch 7, para 36; IS (Gen) Regs, reg 40(2) & Sch 9, para 34; 2 Sch 9, para 34*

- 32706 For **IS**, if the claimant and partner get a payment from a trade union in any one week the amount of the payment made to the partner which is disregarded is

1. nil if all of the relevant sum has been disregarded from the payment made to the claimant **or**
2. the difference between
  - 2.1 the relevant sum **and**

**2.2** the amount disregarded from the payment made to the claimant if **1.** does not apply<sup>1</sup>.

*1 Sch 9, para 34*

32707 The disregard does not apply to any payments made by the trade union on behalf of another organization. So the disregard would not apply to payments made

1. by the trade union **and**
2. from money given to the union by the LA to pay to those members.

32708 - 32714

## **Income not disregarded**

### **Charitable or voluntary payments**

32715 £20 of a charitable or voluntary payment which is made or due to be made regularly is not disregarded when working out what income a claimant has if it is paid to a person who cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 103(2) & Sch 7, para 15(3)(b)(i); IS (Gen) Regs, reg 40(2) & Sch 9, para 15(3)(b)*

32716 For **JSA(IB)**, £20 of a charitable or voluntary payment which is made or due to be made regularly is not disregarded if

1. it is paid to a member of the family of a person who cannot or could not get JSA because of being involved in a TD **and**
2. the payment is made because that person is involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 103(2) & Sch 7, para 15(3)(b)(ii)*

### **Income in kind**

32717 Income in kind is not disregarded when working out what income a claimant has if the payment in kind is made to a person who cannot or could not get JSA because of being involved in a TD<sup>1</sup>.

*1 reg 103(2) & Sch 7, para 22(1)(a); IS (Gen) Regs, reg 40(2) & Sch 9 para 21(1)*

32718 For **JSA(IB)** income in kind is not disregarded if

1. the payment in kind is made to a member of the family of a person who cannot or could not get JSA because of being involved in a TD **and**
2. the payment is made because that person is involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 103(2) & Sch 7, para 22(1)(b)*

32719 DMG 32717 and 32718 do not apply if the payment in kind is made under the

1. Macfarlane Trust **or**
2. Macfarlane (Special Payments) Trust **or**
3. Macfarlane (Special Payments) (No. 2) Trust **or**
4. Fund **or**
5. Eileen Trust **or**
6. Independent Living Funds<sup>1</sup>.

*1 JSA Regs, reg 103(2) & Sch 7, para 22(2); IS (Gen) Regs, reg 40(2) & Sch 9, para 21(2)*

32720 The DM should work out the value of any payment in kind.

### **Payment from local authority under child care law**

32721 A payment of income made by the LA under child care law<sup>1</sup> is not disregarded when working out what income a claimant has if it is paid to a person who cannot or could not get JSA because of being involved in a TD<sup>2</sup>. See DMG 32685 - 32686 if a payment of capital is made by the LA.

*1 Children Act 1989, s 17, 23B, 23C or 24A; Social Work (Scotland) Act 1968, s 12, 24 & 26; 2 JSA Regs, reg 103(2) & Sch 7, para 29; IS (Gen) Regs, reg 40(2) & Sch 9, para 28*

32722 - 32724

### **Notional income**

#### **About the guidance**

32725 This guidance applies to payments in kind made to a third party. It does not apply if the payment in kind is made to a third party under the

1. Macfarlane Trust **or**
2. Macfarlane (Special Payments) Trust **or**
3. Macfarlane (Special Payments) (No. 2) Trust **or**
4. Fund **or**
5. Eileen Trust **or**
6. Independent Living Funds<sup>1</sup>.

*1 JSA Regs, reg 105(10); IS (Gen) Regs, reg 42(4)*

### **Payment of benefit or pension in kind**

32726 People who cannot or could not get JSA because of being involved in a TD are treated as having as income a payment in kind if the

1. payment in kind is
  - 1.1 made under SS law<sup>1</sup> **or**
  - 1.2 WDisP **or**
  - 1.3 WWP **or**
  - 1.4 War Widower's Pension **and**
2. payment
  - 2.1 is made to a third party for the person involved in a TD **and**
  - 2.2 for **JSA(IB)**, would normally be made to that person **and**
  - 2.3 for **IS**, is not for a member of the third party's family<sup>2</sup>.

*1 JS Act 95; SS CB Act 92; 2 JSA Regs, reg 105(10)(a)(i); IS (Gen) Regs, reg 42(4)(a)(i)*

### **Payment in kind not benefit or pension**

32727 People who cannot or could not get JSA because of being involved in a TD are treated as having as income a payment in kind if the

1. payment in kind is not
  - 1.1 made under SS law<sup>1</sup> **or**
  - 1.2 WDisP **or**
  - 1.3 WWP **or**
  - 1.4 War Widower's Pension **and**
2. payment
  - 2.1 is made to a third party for the person involved in a TD **and**
  - 2.2 for **IS**, is not for a member of the third party's family **and**
3. payment in kind
  - 3.1 is
    - 3.1.a a food **or**
    - 3.1.b ordinary clothing or footwear **or**
    - 3.1.c household fuel

which is used by the person involved in a TD or any member of that person's family **or**
  - 3.2 is used to pay
    - 3.2.a for household fuel **or**
    - 3.2.b rent for which HB is payable **or**

**3.2.c** housing costs which are included in the applicable amount which the person involved in a TD or any member of that person's family has to pay **or**

**3.3** is used to pay

**3.3.a** the CT **or**

**3.3.b** water charges

which the person involved in a TD has to pay<sup>2</sup>.

*1 JS Act 95; SS CB Act 92; 2 JSA Regs, reg 105(10)(a)(ii); IS (Gen) Regs, reg 42(4)(a)(ii)*

32728 The income the person involved in a TD is treated as having is the

1. value of the food, clothing, footwear or household fuel **or**
2. cost of household fuel bought with the payment in kind **or**
3. the amount of rent, housing costs, CT or water charges paid for with the payment in kind<sup>1</sup>.

The DM should work out the value of food, clothing, footwear or household fuel.

*1 JSA Regs, reg 105(10)(a)(ii); IS (Gen) Regs, reg 42(4)(a)(ii)*

### **Example**

Robert is a pensioner. He receives a food parcel each week from a local pensioner's club. The food collected is for the people who are on strike at a local factory. His daughter Lulu lives with him. She is one of the strikers and the parcel is for her.

The food is used by Lulu, her husband, their children and her father.

The cost of the food in the parcel if bought at the local supermarket is £20.00.

Robert uses a fifth of the food from the parcel.

Robert also receives £5.00 vouchers each week which have to be used to pay his gas bills. The vouchers are for Lulu because she is on strike and cannot afford to pay her father anything towards the gas bills he has to pay.

Lulu cannot get JSA because she is involved in a TD. Her husband is getting JSA.

The DM determines Lulu is treated as having notional income of £16.00 a week because.

1. she cannot get JSA as she is involved in a TD **and**
2. the food parcel is a payment in kind made to her through a third party, her father, which is for her **and**

3. the food parcel is not a payment of benefit under SS law, WDisP, WWP or War Widower's Pension.
4. the food parcel is made up of food given by local people **and**
5. some of the food is used by Lulu, her husband and their children **and**
6. the amount of notional income is the value of the food used by Lulu, her husband and their children, which is  $\frac{4}{5}$  of £20.00 = £16.00.

Lulu is not treated as having notional income of £5.00 for the vouchers because her father and not Lulu has to pay the gas bills.

### Meaning of ordinary clothing or footwear

32729 Ordinary clothing or footwear means clothing or footwear for normal daily use but not

1. school uniforms **or**
2. clothing or footwear used only for sporting activities<sup>1</sup>.

*1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 42(9)*

32730 Ordinary clothing or footwear for normal daily use is what people in general wear on a daily basis. So it does not include clothing or footwear which

1. people in general do not wear, such as orthopaedic shoes a disabled person might wear **or**
2. is not worn on a daily basis, such as wellington boots.

### Payment made to person involved in a trade dispute

32731 People who cannot or could not get JSA because of being involved in a TD are treated as having as income a payment in kind which is

1. made to them **and**
2. for a third party, but not if the third party is the claimant or any member of that claimant's family<sup>1</sup>.

*1 JSA Regs, reg 105(10)(b); IS (Gen) Regs, reg 42(4)(b)*

32732 The income people involved in a TD are treated as having is the value of the payment in kind

1. kept by them **or**
2. used by them **or**
3. used by them for the claimant or any member of the claimant's family<sup>1</sup>.



The DM should work out the value of the payment in kind which is kept or used.

*1 JSA Regs, reg 105(10)(b); IS (Gen) Regs, reg 42(4)(b)*

32733 - 32744

## When IS is paid

32745 IS is paid in advance to claimants who cannot or could not get JSA because of being involved in a TD if they

1. are getting RP<sup>1</sup> **or**
2. are over pension age and they
  - 2.1 are not getting IB or SDA **and**
  - 2.2 were getting IS before the TD started<sup>2</sup> **or**
3. are getting WB and they
  - 3.1 are not supplying **and**
  - 3.2 do not have to supplyevidence that they are incapable of work<sup>3</sup>.

If this does not apply IS is paid in arrears<sup>4</sup>.

*1 SS (C&P) Regs, reg 26(1) & Sch 7, para 2(a); 2 reg 26(1) & Sch 7, para 2(b); 3 reg 26(1) & Sch 7, para 2(c); 4 reg 26(1) & Sch 7, para 1*

32746 - 32749

## When the award ends

32750 An award ends if the conditions of entitlement are not met or income is more than the applicable amount or capital exceeds the prescribed amount. The award of JSA(IB) or IS also ends if

1. the claimant is a member of a couple **and**
2. the partner (JSA(IB)) or the claimant or partner (IS) cannot or could not get JSA because of being involved in a TD when the claim was made **and**
3. the person involved in a TD returns to work for the same employer<sup>1</sup>.

**Note:** This applies even if the work the person returns to is not remunerative.

*1 reg 17(1)(A)*

32751 - 32754



# Special rules - return to work

## General

### About the guidance

32755 This guidance sets out the special rules which apply to determine what IS claimants can get when claimants or partners return to work for the same employer after being involved in a TD. There are no special rules for JSA(IB).

### When the rules apply

32756 Special rules apply for 15 days from the date claimants or partners return to work if

1. they have returned to work for the same employer after being involved in a TD even if the dispute has not ended **and**
2. the DM considers claimants or partners
  - 2.1 were not incapable of work (see DMG 32510 - 32514) or in the maternity period (see DMG 32530 - 32534) **and**
  - 2.2 cannot or could not get JSA because of being involved in a TD (see DMG 32550 - 32556)immediately before they returned to work **and**
3. they are not in remunerative work<sup>1</sup>.

*1 SS CB Act 92, s 127(a) & (b)*

### Not in remunerative work

32757 People are not in remunerative work for 15 days from the date they return to work if they

1. return to work for the same employer after being involved in a TD **and**
2. are a member of a couple, the other member is not in remunerative work<sup>1</sup>.

*1 s 127(b)*

## Assuming the applicable amount

32758 DMs cannot assume the applicable amount is reduced or disregarded if they cannot determine immediately whether claimants or partners were involved in a TD before the return to work. Such an assumption can only be made if claimants or partners have not returned to work (see DMG 32580 - 32584).

32759 - 32779

## Special rules

### Prescribed categories of person

32780 Prescribed categories of person include claimants and partners

1. who cannot or could not get JSA because of being involved in a TD **and**
2. for 15 days from the date they return to work if they
  - 2.1 have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
  - 2.2 are not in remunerative work (see DMG 32757)<sup>1</sup>.

*1 SS CB Act 92, s 124(1)(e); IS (Gen) Regs, reg 4ZA & Sch 1B, para 20*

### Capital treated as income

32781 A payment of capital made by the LA under child care law<sup>1</sup> is not disregarded<sup>2</sup>. The payment is capital which is treated as income if it is paid

1. to claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
2. during the 15 day period starting with the date they return to work<sup>3</sup>.

See DMG 32788 if a payment of income is made by the LA.

*1 Childrens Act 89, s 17, 23B, 23C or 24A; Social Work (Scotland) Act 68, s 12, 24 & 26;*

*2 IS (Gen) Regs, Sch 10, para 17; 3 reg 41(3)*

32782 A refund of tax which

1. claimants or partners have paid under the PAYE scheme **and**
2. Is paid to them during the 15 day period starting with the date they return to work after being involved in a TD

is capital which is taken into account as income<sup>1</sup>.

*1 IS (Gen) Regs, reg 41(4)*

32783 Capital which is treated as income is disregarded indefinitely when working out what capital a person has<sup>1</sup>.

*1 reg 46(2) & Sch 10, para 20*

### **Income not treated as capital**

32784 An advance of earnings or a loan from an employer is income which is taken into account as income if given

1. to claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
2. during the 15 day period starting with the date they return to work<sup>1</sup>.

*1 IS (Gen) Regs, reg 48(5) & (6)*

32785 A charitable or voluntary payment is income which is taken into account as income if it is

1. not made or due to be made regularly **and**
2. paid to
  - 2.1 claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **or**
  - 2.2 a member of their family **and**
3. paid during the 15 day period starting with the date claimants or partners return to work<sup>1</sup>.

*1 reg 48(9) & (10)(a)*

32786 Holiday pay which is payable more than four weeks after the end or interruption of employment is taken into account as earnings if it is paid

1. to claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
2. during the 15 day period starting with the date they return to work<sup>1</sup>.

*1 reg 48(3) & 35(1)(d)*

## Income not disregarded

32787 £20 of a charitable or voluntary payment which is made or due to be made regularly is not disregarded when working out what income a claimant has if it is paid

1. to claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
2. during the 15 day period starting with the date they return to work<sup>1</sup>.

*1 reg 40(2) & Sch 9, para 15(3)(b)*

32788 A payment of income made by the LA under child care law<sup>1</sup> is not disregarded when working out what income a claimant has if it is paid

1. to claimants or partners who have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD **and**
2. during the 15 day period starting with the date they return to work<sup>2</sup>.

See also DMG 32781 if a payment of capital is made by the LA.

*1 Children Act 1989, s 17, 23B, 23C or 24A; Social Work (Scotland) Act 1968, s 12, 24 & 26;  
2 IS (Gen) Regs, reg 40(2) & Sch 9, para 28*

## Amount of IS

32789 The amount of IS which is paid is

1. nil if
  - 1.1 the amount awarded by the DM is less than £5 **and**
  - 1.2 IS is not paid with another benefit, such as RP<sup>1</sup> **or**
2. the amount awarded if 1. does not apply.

*1 SS (C & P) Regs, reg 26(4)*

## When IS is paid

32790 IS is paid

1. in advance only for the 15 day period if claimants have returned to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD<sup>1</sup> **or**

2. in advance if
  - 2.1 DMG 32745 **1.**, **2.** or **3.** applies to the claimant<sup>2</sup> **and**
  - 2.2 the claimant has not returned to work for the same employer after a period when the claimant cannot or could not get JSA because of being involved in a TD **or**
3. in arrears if **1.** and **2.** do not apply<sup>3</sup>.

*1 SS (C&P) Regs, reg 26(1) & Sch 7, para 2(d); 2 reg 26(1); Sch 7, para 2(a), 2(b) & 2(c);  
3 reg 26(1) & Sch 7, para 1*

32791 - 32809

## Recoverable IS

### General

32810 Any IS paid for the 15 day period is recoverable as it is awarded because claimants or partners return to work for the same employer after a period when they cannot or could not get JSA because of being involved in a TD. The IS paid is recoverable from

1. the claimant **or**
2. the other member of a couple if the claimant is a member of such a couple<sup>1</sup>.

*1 SS CB Act 92, s 127(c)*

### Deduction from earnings

32811 The DM can recover by deductions from earnings any IS which is recoverable. A deduction notice is sent to the employer which includes details of the recoverable amount and the protected earnings. The protected earnings is the amount of earnings below which the employer cannot make a deduction. The DM determines the protected earnings<sup>1</sup>.

*1 SS (POR) Regs, Part VIII*

### Protected earnings

32812 The DM should decide the amount of the protected earnings if IS is awarded for the 15 day period and include in the decision

1. the amount of IS awarded **and**
2. a statement which says
  - 2.1 any IS paid on the award is recoverable **and**

- 2.2 why it is recoverable (see DMG 32810)<sup>1</sup> **and**
- 3. the amount of the protected earnings **and**
- 4. a statement which tells claimants that they should tell the DM within ten working days of<sup>2</sup>
  - 4.1 stopping work - their address and the date they stopped work if
    - 4.1.a a deduction notice has been sent to their employer **and**
    - 4.1.b all of the IS which was paid on the award for the 15 day period has not been paid back **and**
  - 4.2 starting remunerative work again - their employer's name and address if they start work for the employer in 4.1 or some other employer<sup>3</sup>.

*1 SS CB Act, s 127; 2 SS (POR) Regs, reg 28; 3 reg 19(1) & (2)*

- 32813 The protected earnings is £27 plus the claimant's weekly applicable amount less any
- 1. housing costs and TE included in the applicable amount **and**
  - 2. CHB which is taken into account when working out the claimant's income<sup>1</sup>.

*1 SS (POR) Regs, reg 19(3), (4) & (5)*

- 32814 The DM can revise or supersede the protected earnings if the original decision
- 1. is not legally correct **or**
  - 2. was made in ignorance of a material fact **or**
  - 3. is based on a material fact which is not correct.

## **IS increased**

- 32815 The award of IS for the 15 day period may be increased on
- 1. revision or supersession by a DM or a FtT **or**
  - 2. appeal to the UT or Court of Appeal or Court of Session or House of Lords.
- 32816 If the award of IS is increased the decision at DMG 32812 should be read as if the
- 1. amount of IS awarded on revision, supersession or appeal is the recoverable amount **and**
  - 2. protected earnings is the figure produced if those earnings are revised or superseded<sup>1</sup>.

*1 reg 23*

- 32817 The DM should revise or supersede the protected earnings if the reasons for the increased award of IS are also grounds to revise or supersede the protected earnings (see DMG 32814).

32818 - 32999



# Appendix 1

## Prescribed sum

<b>From</b>	<b>£</b>
7.10.96	26.00
then from the first day of the first benefit week (see DMG 25052) on or after	
7.4.97	26.50
6.4.98	27.00
12.4.99	27.50
10.4.00	28.00
9.4.01	28.50
8.4.02	29.00
7.4.03	29.50
12.4.04	30.00
11.4.05	30.50
10.4.06	31.00
9.4.07	32.00



# Appendix 2

## Relevant sum

From	£
the first benefit week (see DMG 25053) on or after	
11.4.88	17.70
10.4.89	18.50
9.4.90	19.50
8.4.91	21.00
6.4.92	22.50
12.4.93	23.50
11.4.94	24.50
10.4.95	25.00
8.4.96	26.00
7.4.97	26.50
6.4.98	27.00
12.4.99	27.50
10.4.00	28.00
9.4.01	28.50
8.4.02	29.00
7.4.03	29.50
12.4.04	30.00
11.4.05	30.50
10.4.06	31.00
9.4.07	32.00

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