

International Issues

Chapter C3: Jobseekers Allowance

Contents

Introduction	C3001
Meaning of JSA	C3002
Presence in GB	C3005
Meaning of “in Great Britain”	C3006
Meaning of “Great Britain”	C3008
Absence from Great Britain	C3015
Temporary Absences	
Meaning of “temporary absence”	C3020
General meaning	C3021
Intention	C3023
Length of absence	C3026
Purpose of absence	C3032
The DM’s decision	C3035
Onus of proof	C3037
Change of circumstances	C3038
Job Interview	C3040
Territorial & Reserve forces- Annual Training	C3041
Treated as in Great Britain for four weeks	C3043
Treated as in Great Britain for eight weeks	C3045
Meaning of “appropriately qualified”	C3046
Temporary absence for NHS treatment	C3050
Absences in Northern Ireland or the Isle of Man	C3051
Absence from GB – Mariners and Continental Shelf Workers	
Mariners	C3055
Continental Shelf Workers	C3059
Meaning of “prescribed employment”	C3061

Meaning of “designated area”	C3062
Meaning of “prescribed area”	C3063
The effect of EU law on Jobseekers Allowance	
Introduction.....	C3080
EU law – Background	C3081
Countries where EU regulations apply	
The EU Member States	C3085
The European Economic Area.....	C3086
Meaning of “EEA State”	C3087
Personal Scope	C3090
Third Country Nationals	C3092
Meaning of “member of the family”	C3095
Deciding which EEA State’s legislation applies	C3100
Workers posted abroad.....	C3103
What type of benefit is JSA?	C3104
Effect of EU law – contribution conditions	C3105
Claims for JSA by persons residing in another EEA State	
Introduction.....	C3110
The General Rule.....	C3111
Exception to the General Rule	C3113
Exportability of JSA to other EEA states	C3120
Absent in more than one EEA State	C3125
Separate absences from Great Britain.....	C3126
Period of “exportable JSA	C3127
Entitlement to “exportable” JSA	C3130
Wholly unemployed.....	C3131
Entitlement to JSA.....	C3133
Purpose to seek employment.....	C3134
Registration and availability in the UK	C3136
Registration in another EEA state	C3145
Procedure and Conditions for the export of JSA	C3160

Procedure during period JSA is exported to the UK..... C3170

Absence from GB – agreements with other countries..... C3190

International Issues

Chapter C3: Jobseeker's Allowance

Introduction

- C3001 This Chapter contains guidance on the international aspects of entitlement to Jobseeker's Allowance as they apply from 29.4.13. In particular it deals with
1. Presence in GB and the effect of temporary absences
 2. The effect of the EU rules concerning the co-ordination of social security benefits on JSA.
 3. The use of insurance in other countries to satisfy the contribution conditions for JSA.

Meaning of JSA

- C3002 In this Chapter references to JSA are to be read as referring to "new style JSA" as defined in Chapter M1 (Universal Credit: Transition – Pathfinder).

C3003 – C3004

Presence in GB

- C3005 It is a condition of entitlement to JSA that the claimant be "in Great Britain"¹. However
1. This rule is in some circumstance overridden by EU law and reciprocal agreements with other countries **and**
 2. The Act allows regulations to be made which
 - 2.1 prescribe circumstances in which a claimant who is not in GB may nevertheless be entitled to JSA² **and**
 - 2.2 make provisions as to the circumstances in which a person is to be treated as being in GB or not being in GB³

1 JS Act 95, s 1(2)(i); 2 Sch 1, para 11(1); 3 Sch 1, para 11(2)

Meaning of "in Great Britain"

- C3006 To be "in" a place means to be physically there on the day or period in question. It is not the same as being resident in a place. A person may be resident in a place without being present there¹ and vice versa.

1 R(U) 18/60; R(P) 2/67

C3007 With regard to any particular day, a person should be regarded as present if they are in GB for part of a day: thus the day when a person arrives in GB and a day when they leave count as days when they are “in” GB.

Meaning of “Great Britain”

C3008 GB includes

1. England and Wales, and Scotland¹
2. adjacent islands including, Orkney, Shetland, the Hebrides, the Isles of Scilly, the Isle of Wight and Lundy and
3. the territorial waters of the UK adjacent to GB²

1 Union with Scotland Act 1706 preamble & Art 1; Union with England Act 1707 (Scottish Parliament), Art 1;

2 JS Act 95, s 35(1) (definition of “Great Britain”)

C3009 N Ireland¹, the Isle of Man² and the Channel Islands³ are not part of GB.

1 R(S) 5/85, para 9; 2 CSU 14/48; R(U) 8/81; 3 R(P) 2/64

C3010 - C3014

Absence from Great Britain

C3015 JSA can be paid during an absence from GB

1. during certain temporary absences
2. in another EEA country for up to three months
3. in the Isle of Man or Northern Ireland
4. if the person is a mariner or a continental shelf worker

C3016 – C3019

Temporary Absences

Meaning of “temporary absence”

C3020 There is no statutory definition of “temporary absence”. However the meaning of temporary absence has been considered by both the Commissioner and the Courts. On 16.3.94 the Court of Appeal decided an appeal involving disqualification for being absent from Great Britain¹. All previous case law on temporary absence must be read in the light of the Court’s decision.

1 R(S) 1/96

General meaning

C3021 “Temporary absence” does not mean “not permanent”¹. The decision maker must decide whether an absence is

1. merely temporary **or**
2. not merely temporary².

An absence should not be treated as temporary just because it is not permanent³.

1 R(S) 1/96; 2 R(I) 37/55; 3 R(S) 1/85

Example

A man aged 25 leaves GB to live in Egypt. He states that he intends to work there until he is 60 and then he will return to GB. Although the absence is not permanent it is too long to be regarded as temporary.

C3022 In deciding whether an absence is temporary the decision maker should consider

1. the claimant's intention **and**
2. the length of the absence **and**
3. the purpose of the absence¹.

1 R(S) 1/96; R(P) 1/90

Intention

C3023 A person's intention is always relevant when deciding whether an absence is temporary. But, it is not decisive. It is possible to decide that an absence is not temporary from the start. But if the decision maker decides that the absence is temporary then the person's intention should be looked at more closely the longer the absence lasts¹.

1 R(S) 1/96

C3024 Although a person may intend to return there may be circumstances which prevent it. However, it cannot be assumed that the absence is not temporary just because the person cannot return. The circumstance preventing the return may only last a short time, for example, a short illness.

C3025 If a person is prevented from returning for a substantial period the absence may not be temporary¹. A person who is permanently prevented from returning to GB is not temporarily absent from GB².

1 R(S) 10/83; 2 R(S) 1/96

Length of absence

C3026 The length of absence is a significant factor in deciding whether an absence is temporary¹. In general a temporary absence means that it will be for a limited period only. Only in exceptional cases can an absence which has lasted years rather than months be accepted as temporary.

1 R(S) 1/96

C3027 The nature of the absence may change the longer the absence from GB lasts.

C3028 When considering the length of the absence the decision maker should consider the total period of the absence. This includes

1. any period of absence before the decision maker's decision **and**
2. the intended or likely future period of absence¹.

1 R(S) 1/96

C3029 A person may have been absent from GB several times before the decision maker considers whether to disqualify. Although each of the absences may have been temporary, the total period of absences compared to the periods spent in GB may show that the absence now being considered is not temporary (see C3021)¹.

1 R(I) 54/51; R(I) 73/54

C3030 A person who visits GB regularly, but is residing in another country, may be temporarily absent from that country rather than temporarily absent from GB¹. This may apply to a seasonal worker who normally spends only part of the year in GB.

1 R(S) 10/83

C3031 An indefinite absence can still be temporary¹.

1 R(S) 1/96

Purpose of the absence

C3032 The reason for a person's absence from GB is an important factor.

C3033 An absence will probably be temporary if it is

1. for a holiday **or**
2. to visit relatives **or**
3. for a course of treatment.

C3034 An absence will probably not be temporary if the reason for the absence is for example, to live with relatives who have already emigrated.

The DM's decision

C3035 The DM must decide whether an absence is temporary by considering the facts at the date of decision. In some cases the person will have returned to GB before the DM's decision. The DM can look with hindsight and take this into account¹.

1 R(S) 1/96; R(S) 10/83; R(S) 1/85

C3036 The DM should not automatically decide that an absence is temporary just because the person has returned¹. For example, on leaving GB the person may have intended to live permanently in another country.

1 R(S) 1/85

Onus of proof

C3037 The burden of showing that an absence is temporary is on the claimant¹ who should prove that

1. the absence is or was temporary **and**
2. one of the other conditions for avoiding disqualification is satisfied.

1 R(S) 1/96

Change of circumstances

C3038 Although an absence may originally have been considered temporary, it may not remain so. Whether an absence from GB has ceased to be temporary may be considered at any time. A temporary absence will cease to be temporary overnight if a person decides to stay permanently outside GB. Other circumstances which make the ending of the absence uncertain may also mean that an absence which was temporary at the outset ceases to be temporary at some later date¹.

1 R(S) 1/85

C3039 Once the DM has decided that an absence is not temporary, that absence should not be treated as temporary (either from the start of the absence or a later date) just because

1. the claimant states an intention to return **or**
2. makes preparations to return¹.

1 R(P) 1/90

Job Interview

C3040 A claimant is treated as being in GB during a temporary absence abroad if¹

1. the absence is to attend a job interview **and**
2. the absence is for 7 consecutive days or less **and**
3. notice of the proposed absence (in writing if so required) is given to the Secretary of State before departure **and**
4. on their return, the claimant satisfies the Secretary of State that they attended for the interview in accordance with that notice

1 JSA Regs 13, reg 41(4)

Territorial & Reserve Forces – Annual Training

C3041 A claimant is treated as being in GB during any period of temporary absence **not exceeding 15 days** where¹

1. the claimant was entitled to JSA immediately before the period of absence **and**

2. the absence is for the purpose of taking part in annual continuous training as a member of the following territorial or reserve forces
 - 2.1 Royal Fleet Reserve.
 - 2.2 Royal Navy Reserve.
 - 2.3 Royal Marines Reserve.
 - 2.4 Army Reserve.
 - 2.5 Territorial Army.
 - 2.6 Royal Air Force Reserve.
 - 2.7 Royal Auxiliary Air Force
 - 2.8 The Royal Irish Regiment, to the extent that its members are not members of the regular armed forces.

1 JSA Regs, reg 41(6)

C3042

Treated as in Great Britain for four weeks

- C3043 A claimant who is temporarily absent from GB is treated as being in GB for up to 4 weeks if¹
1. the claimant is in Northern Ireland and continues to satisfy the conditions of entitlement **and**
 2. the claimant was entitled to JSA immediately before the start of the temporary absence **and**
 3. the absence is not expected to last more than 52 weeks

1 JSA Regs 13, reg 41(2)

C3044

Treated as in Great Britain for eight weeks

- C3045 A claimant who is temporarily absent from GB is treated as being in GB for up to 8 weeks if¹
1. immediately preceding the start of the temporary absence, the claimant was entitled to JSA **and**
 2. the absence is not expected to last more than 52 weeks **and**
 3. the claimant continues to satisfy (or to be treated as satisfying) the other conditions of entitlement for JSA **and**
 4. the claimant is accompanying a child or young person who is a member of that claimant's family solely in connection with arrangements made for the

treatment of that child or young person for a disease or bodily or mental disablement **and**

5. the arrangements referred to in C3045.4. relate to treatment which is
 - 5.1 taking place outside GB **and**
 - 5.2 taking place during the period whilst the claimant is temporarily absent from GB **and**
 - 5.3 by, or under the supervision of, a person appropriately qualified to carry out that treatment

1 JSA Regs 13, reg 41(3)

Meaning of “appropriately qualified”

C3046 “Appropriately qualified” means¹ qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to or related to either of those two forms of treatment.

1 JSA Regs 13, reg 41(7)

C3047 – C3049

Temporary absence for NHS treatment

- C3050 A claimant is treated as being in GB during any temporary absence from GB if¹
1. the claimant was entitled to JSA immediately before the start of the temporary absence **and**
 2. the period of absence is for the purpose of the claimant receiving treatment in a hospital or other institution outside GB where the treatment is being provided
 - 2.1 under specific NHS legislation² or any equivalent Scottish provision **or**
 - 2.2 pursuant to arrangements made under specific NHS legislation³ or arrangements made pursuant to any equivalent Scottish provision

1 JSA Regs 13, reg 41 (5); 2 NHS Act 06, s 6(2), NHS (Wales) Act 06, s 6(2); 3 NHS Act 06 s 12(1) & Sch 4 para 18; NHS (Wales) Act 06, s 10(1) & Sch 3 para 18

Absences in Northern Ireland or the Isle of Man

- C3051 A person can still receive JSA whilst absent from GB in
1. the Isle of Man **or**
 2. Northern Ireland¹.

See C3190 for further guidance on reciprocal agreements.

1 SS (I of M) Order 77, Sch 1, Art 2; SS (NI Reciprocal Arrangements) Regulations 2016, Sch para 2; R(U) 8/81

Absence from GB - Mariners and Continental Shelf Workers

Mariners

C3055 A mariner is¹ a person employed under a contract of service on board any ship or vessel

1. as a master **or**
2. as a crew member **or**
3. in any other capacity on board when the employment in that other capacity is with the ship or vessel **or** the crew **or** any passengers or cargo or mail carried **and** the contract is entered into in the UK with a view to its performance (in whole or in part) while the ship or vessel is on its voyage.

1 SS (Mariners' Ben) Regs, reg 1(2)

C3056 This does not include a serving member of the forces¹ except those undergoing training or instruction in one of the following organisations or establishments

1. Royal Fleet Reserve.
2. Royal Navy Reserve.
3. Royal Marines Reserve.
4. Army Reserve.
5. Territorial Army.
6. Royal Air Force Reserve.
7. Royal Auxiliary Air Force
8. The Royal Irish Regiment, to the extent that its members are not members of the regular armed forces

for 72 consecutive hours or less²

1 SS (Conts) Regs, Sch 6, Part 1; 2 SS (Mariners' Ben) Regs, reg 1(2)

C3057 A claimant who

1. would be entitled to JSA but for the requirement that they be in GB **and**
2. is or has been employed as a mariner on board any ship or vessel or who is under contract to travel (at his employer's expense) to start such employment **and**
3. while so employed or under such contract to travel,
 - 3.1 has been left outside GB **and**

3.2 reports to the appropriate superintendent, consular officer or chief customs officer not later than

3.2.a **14 days** after being so left **or**

3.2.b where this is not reasonably practicable, as soon as reasonably practicable after being so left

will continue to be entitled to JSA¹ notwithstanding their absence from GB until the date established in accordance with C3058.

1 SS (Mariners' Ben) Regs, reg 4A(1)

C3058 The provisions in C3057 cease to apply to a claimant

1. when the person starts or resumes employment outside GB **or**
2. in any case where the person is not returned without undue delay to the place to which specific regulations² require them to be returned, on the occurrence of the delay **or**
3. In any other case when the person is returned to the place required by regs²

1 SS (Mariners' Ben) Regs, reg 4A (2); 2 Merchant Shipping (Repatriation) Regs 79, reg 6

Continental Shelf Workers

C3059 Where a claimant would be entitled to JSA but for the requirement that they be in GB, that claimant will continue to be entitled to JSA during an absence from GB if¹

1. the absence is due to the claimant being, or having been in prescribed employment in a prescribed area **or**
2. subject to C3060, the claimant is, in connection with prescribed employment,
 - 2.1 in a prescribed area **or**
 - 2.2 travelling between one prescribed area and another **or**
 - 2.3 travelling between a designated area and a prescribed area **or**
 - 2.4 travelling between Norway or a member state (including the UK) and a prescribed area.

1 SS Ben (PA) Regs, reg 11(1A)

C3060 The provision described in C3059.2. shall not apply where¹, under legislation administered by Norway or any EU country (other than the UK) benefit is payable to a person for the same contingency and for the same period for which JSA is claimed.

1 SS Ben (PA) Regs, reg 11(2B)

Meaning of “prescribed employment”

C3061 “Prescribed employment” means¹ any employment (whether or not under a contract of service) in any designated or prescribed area in connection with any activity mentioned in specific legislation².

1 SS Ben (PA) Regs, reg 11(1); 2 Oil and Gas (Enterprise) Act 1982, s 23(2)

Meaning of “designated area”

C3062 “Designated area” means¹ any area set out by Order in Council under specific legislation² as an area where the UK may explore the seabed, subsoil and exploit their natural resources.

1 SS Ben (PA) Regs, reg 11(1); 2 Continental Shelf Act 1964

Meaning of “prescribed area”

C3063 “Prescribed area” means¹

1. any area (outside the territorial seas of Norway or any EU country other than the UK) over which Norway or any EU country (other than the UK) exercises sovereign rights to explore the seabed and subsoil and exploit the natural resources **or**
2. any other area which is specified under a specific Act²

1 SS Ben (PA) Regs, reg 11(1); 2 Oil and Gas (Enterprise) Act 1982, s 22(5)

C3064 – C3079

The effect of EU law on Jobseekers Allowance

Introduction

C3080 Where EU law applies the UK domestic condition of entitlement for JSA requiring that the claimant be present in GB are modified. The following paragraphs

1. give an outline of how and when EU law applies
2. advise on which state is responsible when an “unemployment benefit” is claimed by a person residing outside GB
3. give advice on the circumstances where JSA payable in GB can be “exported” to another EEA State
4. give details of the procedures when JSA is exported to an EEA State
5. advise on how EU law applies to the contribution conditions for JSA.

EU Law - Background

C3081 There are two main kinds of EU legislation: regulations and directives. EU regulations apply directly and are part of UK law. Directives are binding upon each EU Member State but each country chooses how to implement them.

C3082 There are two current sets of EU regulations relating to the co-ordination of Social Security benefits across the Member States. These are

1. Regulation (EC) No. 883/2004 which sets out the main rules, **and**
2. Regulation (EC) No. 987/2009 which deals with the administrative procedures to be followed in implementing the main rules.

Note: For the EU Member States, these regulations replaced earlier regulations¹ with effect from 1.5.10. They applied to Switzerland from 1.4.12 and to Norway, Iceland and Liechtenstein from 1.6.12. The old regulations¹ continue to apply in certain transitional cases. See also C3092 to C3094 below concerning third country nationals.

1 Reg (EEC) 1408/71 & Reg (EEC) 574/72

C3083 EU provisions do not create a harmonized social security system common to all EU countries. EU provisions coordinate the national social security systems of EU countries so that a worker moving within the EEA may

1. be protected against the risks covered by EU provisions **and**
2. maintain rights acquired in one EEA country when moving to another country.

Countries where EU regulations apply

The EU Member States

C3085 The EU regulations relating to the co-ordination of social security (hereafter called “the EU co-ordination regs”) apply to the Member States of the European Union plus the EEA States (Iceland, Norway and Lichtenstein) and Switzerland The EU Member States are:-

1. Austria (joined the EU on 1.1.95)
2. Belgium
3. Bulgaria (joined the EU on 1.1.07)
4. Cyprus (joined the EU on 1.5.04)
5. Czech Republic (joined the EU on 1.5.04)
6. Denmark (excluding the Faroe Islands and Greenland)
7. Estonia (joined the EU on 1.5.04)
8. Finland (including the Aaland Islands) (joined the EU on 1.1.95)

9. France (including Guadeloupe, Martinique, Mayotte, Reunion, French Guiana, Saint Barthelemy and Saint Martin but excluding Monaco)
10. Germany
11. Greece
12. Hungary (joined the EU from 1.5.04)
13. Ireland
14. Italy (excluding the Vatican City and San Marino)
15. Latvia (joined the EU on 1.5.04)
16. Lithuania (joined the EU on 1.5.04)
17. Luxembourg
18. Malta (joined the EU on 1.5.04)
19. Netherlands (excluding for the purposes of this Chapter, the Dutch Antilles)
20. Poland (joined EU on 1.5.04)
21. Portugal (including Madeira and the Azores)
22. Romania (joined the EU on 1.1.07)
23. Slovakia (joined the EU on 1.5.04)
24. Slovenia (joined the EU on 1.5.04)
25. Spain (including the Balearic Islands, the Canary Islands and the Spanish enclaves of Ceuta and Melilla)
26. Sweden (joined the EU on 1.1.95)
27. United Kingdom (including Gibraltar but excluding the Isle of Man and for the purposes of this Chapter, the Channel Islands)

The European Economic Area

C3086 The EEA comprises the Member States of the EU plus Iceland, Liechtenstein and Norway.

Meaning of “EEA State”

C3087 For the sake of simplicity, for the purposes of the guidance below references to an “EEA State” means any Member State of the EU, plus Iceland, Liechtenstein, Norway **and Switzerland** and “EEA national” means a national of any of those countries.

C3088 - C3089

Personal Scope

C3090 The first step will be to establish whether the EU co-ordination regs¹ apply to the person concerned. With effect from 1.5.10, a person is within the scope of the EU co-ordination regs if² that person

1. is

1.1 a national of an EEA State, **or**

1.2 a stateless person or refugee residing in an EEA State

who is or has been subject to the legislation of one or more Member States

or

2. is a member of the family or a survivor of a person falling within C3090.1

1 Reg (EC) 883/0; 2 Reg (EC) 883/04, Art 2(1)

C3091 Also within the personal scope of EU co-ordination regs¹ are survivors of persons who have been subject to the legislation of one or more EEA States (regardless of the nationality of such persons), provided the survivor is

1. a national of an EEA State, **or**

2. a stateless person or refugee residing in one of the EEA States.

1 Reg (EC) 883/04, Art 2(2)

Third country nationals

C3092 The UK is not covered by the extension of rights to Third Country Nationals (TCNs) under Reg (EC) 883/04, which came in to force on 1.5.10. However TCNs will continue to be subject to the terms and limitations of Reg (EEC) 1408/71 as summarised below.

C3093 An amendment to EU Regulations¹ extended the provisions of Reg (EEC) 1408/71 to third country nationals (TCNs) from 1.6.03 provided those nationals were legally resident in the territory of a Member State, were insured workers, and were in a situation that involved more than one state. However the following states did not extend the terms of Reg (EEC) 1408/71 to TCNs:

Denmark

Iceland

Norway

Liechtenstein

Switzerland.

1 Reg (EC) 859/2003

C3094 Therefore a TCN who has worked will be able to export an award of JSA if he satisfies the same conditions that apply to an EEA national (and the UK is the competent state) **except** where he leaves GB to live in Denmark, Iceland, Norway,

Liechtenstein, or Switzerland. Of course, the TCN must be legally residing in both the UK and then the new state of residence that they move to.

Meaning of “member of the family”

C3095 Members of a person’s family are¹

1. the spouse,
2. children under 18, **and**
3. children over 18 who are dependent

1 Reg (EC) 883/04, Art 1(i)(2)

C3096 – C3099

Deciding which EEA State’s legislation applies

C3100 The EU co-ordination regs contain rules intended to avoid a conflict between the domestic laws of the Member States. The basic rules are¹

1. a person pursuing activity as an employed or self-employed person in a Member State is subject to the legislation of that Member State.
2. a civil servant is subject to the legislation of the Member State to which the administration employing him is subject.
3. a person receiving unemployment benefits in accordance with a specific provision in the EU co-ordination regs² from the Member State of residence is subject to the legislation of that Member State.
4. a person called up or recalled for military or civilian service by a Member State, is subject to the legislation of that Member State.
5. any other person to whom sub-paragraphs 1 to 4 do not apply is subject to the legislation of the Member State of residence. However this is subject to other rules in the EU co-ordination regs which guarantee benefits under the legislations of one or more Member States.

Note: but see C3103 for the legislation that applies to posted workers

1 Reg (EC) 883/04, Art 11(3); 2 Art 65

C3101 Except in relation to the benefits listed at C3102, for the purposes of C3100.1, a person receiving cash benefits because of, or as a consequence of, their activity as an employed or self-employed person shall be considered to be pursuing that activity¹.

1 Reg (EC) 883/04, Art 11(2)

C3102 C3101 does not apply to¹

1. invalidity benefits
2. old age or survivors’ pensions

3. pensions in respect of accidents at work or occupational diseases
4. sickness benefits in cash which are for treatment for an unlimited period.

1 Reg (EC) 883/04, Art 11(2)

Workers posted abroad

C3103 Where persons whose employer normally carries out its activities in the UK are posted by that employer to another EEA state, the legislation of the UK will continue to apply provided¹

1. they are not sent to replace another person **and**
2. the posting is not expected to last more than 24 months¹

1 Reg (EC) 883/04, art 12(1)

What type of benefit is JSA?

C3104 The EU Social Security Co-ordination Regs set out different rules depending upon the branch of social security involved (e.g. “sickness benefits”, “old-age benefits”, “family benefits”)¹. For JSA the rules relating to “unemployment benefits” apply.

1 Reg (EC) 883/04, Art 3

Effect of EU law – Contribution conditions

C3105 Periods of insurance, employment or self-employment in another EEA country may be used to help satisfy the contribution conditions for entitlement to Jobseeker's Allowance¹. However, such periods of self-employment completed under the legislation of another EEA country shall not be taken into account unless these periods were insurable for unemployment benefit in the EEA country concerned. There are 13 EEA countries, listed below, whose legislation provides cover for unemployment benefit for self-employed people. This means that for the countries listed the UK must use periods of self-employment for a claim to JSA even if such periods would not count for JSA had they been completed in the UK.

Note: For countries not listed, periods of self-employment cannot be used by the UK.

1 Reg (EC) 883/04, art 6, art 61

C3106 The countries that insure self-employed people against the risk of unemployment are:

1. Austria
2. Bulgaria
3. Czech Republic
4. Denmark
5. Finland

6. Hungary
7. Luxembourg
8. Malta
9. Poland
10. Romania
11. Slovakia
12. Slovenia
13. Sweden

C3107 To be helped by insurance in another EEA country the claimant must

1. be within the scope of EU co-ordination regs¹ **and**
2. not be entitled to contribution-based Jobseeker's Allowance by using only their UK contribution record **and**
3. have, as at the date of claim for JSA, last completed periods of insurance under UK legislation².

1 Reg (EC) 883/04 art 2; 2 art 61(2)

C3108 - C3109

Claims for JSA made by persons residing in another EEA State

Introduction

C3110 Where a person becomes unemployed in an EEA country it is necessary to decide which country will pay unemployment benefit.

The General Rule

C3111 In general unemployment benefit is paid by the country in which the person was last employed¹. That country is known as the "competent state".

1 Case 128/83 Caisse Primaire d'Assurance Maladie de Rouen v Guyot; Case 20/75 d'Amico Landesversicherungsanstalt Rheinland-Pfalz; R(U) 4/84

C3112 That person continues to be entitled to "unemployment benefit" from that country whilst looking for work in another EEA country. After three months in the other country that person must return to the competent state to continue being entitled to "unemployment benefit".

Exception to the general rule

C3113 An exception to the general rule applies where a person was residing in a different EEA country to that in which the person was employed or was paying contributions¹.

In this situation unemployment benefit can be claimed from either the country in which the person²

1. is residing **or**
2. last worked and paid contributions.

1 Reg (EC) 883/04, Art 65(2); case 454/93 Rijksdienst Voor Arbeidsvoorziening v Joop Th. M. Van Grestel; 2 Reg (EC) 883/04, Art 65(2)

Example 1

A person was employed in the UK but was residing in France. If that person registers with the employment services in France that country is responsible for paying unemployment benefit¹.

1 Case 128/83 Caisse Primaire d'Assurance Maladie de Rouen v Guyot

Example 2

A Dutch national was residing and working in Belgium, for the same company that had employed him in Holland. He continued to pay contributions to the Dutch authorities. On becoming unemployed he can choose to claim unemployment benefit from Belgium, the country in which he is residing¹.

1 Reg (EC) 883/04, Art 65(2); case 454/93 Rijksdienst Voor Arbeidsvoorziening v Joop Th. M. Van Grestel

C3114 The following are examples¹ of where a person resides in a different country from the one in which that person is working or is paying contributions. In each example unemployment benefit could be paid by the country in which the person is residing.

1. workers employed on board a vessel flying the flag of an EEA country
2. persons normally pursuing their activities in the territories of two or more Member States referred to in a specific article of the EU co-ordination regs
3. persons to whom an agreement between two or more Member States providing for exceptions to the normal rules determining which Member States legislation applies

where they resided during their last professional activity in a Member State other than the competent State.

1 AC decision U2 of 12.6.09

C3115 – C3119

Exportability of JSA to other EEA States

C3120 A person can remain entitled to Jobseeker's Allowance whilst absent from GB in another EEA country or Switzerland if

1. that person is within the scope of EU regulations¹ **and**
2. satisfies **all** the conditions set out in paragraph C3130.

1 Reg (EC) 883/04, Art 2

C3121 JSA paid in another EEA country is generally referred to as “exportable” JSA. This is because a person remains entitled to UK JSA and does not become entitled to unemployment benefit from the other EEA country.

C3122 EU provisions generally provide for free movement around the EEA. However, it is not contrary to the principle of freedom of movement¹ to

1. impose restrictions on the payment of “exportable” unemployment benefit²
and
2. limit the maximum period of exportable unemployment benefit to three months³.

*1 TFEU, Art 20 & 21; 2 Case 62/91, Gray v Adjudication Officer;
3 Case 272/90, Jan Van Noorden v Association pour L'Emploi dans
L'Industrie et le Commerce for Ardèche and Drôme*

C3123 - C3124

Absent in more than one EEA state

C3125 A person can “export” JSA to more than one EEA country **during the same period of absence** from GB, subject to the limit of three months.

Example

A person went to France to look for work and retained entitlement to UK Jobseeker’s Allowance. Later that person went to Germany to seek work. That person still remained entitled to UK Jobseeker’s Allowance

Separate absences from Great Britain

C3126 There is no limit on the number of times the export provisions can be used¹, though this is subject to the overall maximum of 3 months in any one period of unemployment.

1 Reg (EC) 883/04, Art 64;

Period of “exportable” JSA

C3127 If all the conditions for “exporting” are satisfied, JSA can be paid in another EEA country for the shortest of the following¹

1. for three months (see Note 1) from the date the person ceased to be available to the UK employment services **or**
2. until the end of entitlement to JSA

1 Reg (EC) 883/04, Art 64(2)

Note 1: The EU co-ordination regs provide¹ that, the competent institutions of the Member States may extend this three month period up to a maximum of 6 months However the UK will not be extending this period which therefore remains at three months.

Note 2: Where jobseeker returns to UK after the 3 months expired, JSA would be paid up to expiry date provided the jobseeker re-registered

1 Reg (EC) 883/04, Art 64(2)

C3128 A person is not entitled to JSA in another EEA country after the end of the period set out in paragraph C3127 above¹.

1 JS Act 95, s 1(2)(i)

C3129

Entitlement to “exportable” Jobseeker’s Allowance

C3130 To be entitled to JSA in another EEA country a person must satisfy all of the following conditions:

1. Wholly unemployed

The claimant must be wholly unemployed, before leaving the UK¹. This excludes persons “partially or intermittently unemployed” (see C3132)

2. Entitlement to JSA

Before leaving the UK the claimant must satisfy the contribution conditions for entitlement to JSA².

3. Purpose is to seek work

The person has gone to the other EEA country to look for work³.

4. "Registration" and availability in United Kingdom for four weeks

The person must have been registered as a person looking for work and have remained available for at least four weeks after becoming unemployed⁴.

Note: however the competent institution may authorise the person to go to another EEA state before the completion of the four weeks period⁵ and the Administrative Commission for the co-ordination of social security systems has recommended that such authorisation should be given to a person who is accompanying their spouse who has taken a job in an EEA state other than the UK provided that person satisfies all the other conditions in this paragraph.

5. "Registration" in the European Economic Area countries

The person must register (normally within seven days)⁶, as a person seeking work, with the employment services of each of the EEA countries in which

that person is looking for work and be subject to the control procedures there⁷.

*1 Reg (EC) 883/04, Art 64(1); 2 Art 64(1); 3 Art 64(1); 4 Art 64(1)(a); 5 Art 64(1)(a);
6 Case 20/75 d'Amico v Landesversicherungsanstalt Rheinland-Pfalz; R(U) 5/78;
7 Reg (EC) 883/04, Art 64(1)(b)*

Wholly unemployed

C3131 To be entitled to JSA in another EEA country a person must be "wholly unemployed". This means unemployed without **any** employment and does not include people who are "partially and intermittently unemployed".

C3132 In general partially unemployed means a person on short-time (not part-time) working. Intermittently unemployed means temporarily laid off. However the Administrative Commission on the co-ordination of social security has said¹ that the question of whether unemployment is whole or partial depends upon whether or not any contractual employment link exists or is maintained. The Commission has said that

1. if a person remains employed by an undertaking in a Member State other than the Member State of residence but his activity is suspended (although they could return to their post at any time), then that person shall be regarded as partially unemployed.
2. if a person no longer has any link with the Member State of employment (for example because the contractual link has terminated or expired) he shall be regarded as wholly unemployed.

1 AC Decision U3 of 12 June 2009

Entitlement to JSA

C3133 A person must be **entitled** to JSA before leaving GB. The contribution conditions can be satisfied on UK insurance alone, by means of assimilation under a reciprocal agreement with a non EEA country or by taking into account insurance in another EEA country.

Purpose is to seek employment

C3134 A person must be going to another EEA country to look for work. A person is not entitled to exportable JSA if on holiday, visiting a sick relative or accompanying a spouse or civil partner.

C3135 A claimant who has given up a job to accompany a spouse, or civil partner, or partner, to another EEA country will not normally be able to satisfy this condition. This because that person already had a job and the purpose in going abroad was not to look for work (but see the note to C3130.4 above).

Registration and availability in the UK

C3136 After becoming unemployed a person must have been registered as a person seeking work and have remained available for work for four weeks. Exceptionally a person may be entitled to "exportable" JSA without having been available for four weeks if the Secretary of State authorizes their departure before the end of the four weeks period.

C3137 The registration and availability conditions can be satisfied

1. by signing a declaration that they have been available for and actively seeking work
2. by otherwise declaring availability in connection with a claim to JSA **or**
3. by being registered for employment by registering at an Jobcentre Plus office **and**
4. in continuing to satisfy the condition of availability for at least four weeks (or such lesser time as may be authorized by the Secretary of State).

C3138 A person may be available for four weeks although JSA is not paid for the whole period¹. For example, because of leaving employment voluntarily or for misconduct.

1 Reg (EC) 883/04, Art 64(1)(a)

C3139 The period of four weeks must occur after the claimant became unemployed, but it does not need to be immediately before the departure. For example, a claimant who has been available for four weeks and then becomes incapable of work will have satisfied the condition if again becoming entitled to JSA a few days before departure.

C3140 – C3144

Registration in another EEA state

C3145 A person seeking work in another EEA country **must** register¹ with the employment services of that country. That person is also subject to the control procedures of that country².

*1 R(U) 5/87, Case 20/75 d'Amico Landesversicherungsanstalt Rheinland - Pfalz;
Reg (EC) 883/04, Art 64(1)(b); 2 Art 64(1)(a)*

C3146 If a person registers within seven days of the last date of being available for work in the UK, this condition is satisfied up to the date of registering.

C3147 The Secretary of State can extend the period of seven days¹. Where the Secretary of State extends the period for registering, the claimant is **not** disentitled for claiming late² for the period up to the date of registering. That person should normally also be accepted as available for and actively seeking work for that period.

1 Reg (EC) 883/04, Art 64(1)(b); 2 SS A Act 92, sec 1(1)(a)

C3148 A person is not entitled to JSA from the first day of absence from GB¹ until the day before registering, if that person

1. does **not** register within seven days (or a longer period allowed by the Secretary of State) **and**
2. does not return to the UK

within seven days (see C3150).

1 R(S) 1/66

C3149 A person who does **not** register with the employment service of the other country is not entitled to exportable JSA¹. A person is not entitled to exportable JSA even if the failure to register

1. is because of incorrect information given by the DWP **or**
2. because the authorities in the other country refused to allow the claimant to register².

1 R(U) 5/78; Case 20/75 d'Amico v Landesversicherungsanstalt Rheinland - Pfalz; 2 R(U) 5/78

C3150 A person is still entitled to JSA¹ if that person

1. does not find work in the other EEA country **and**
2. returns to the UK within seven days without having registered with the employment services of the other State.

1 CU/13/77, [1978] CMLR 174; CU/251/78, [1979] 1 CMLR 445

C3151 – C3159

Procedures and conditions for the export of JSA

C3160 In order for a claimant to continue to be entitled to JSA whilst abroad, certain procedures have to be followed. The claimant must inform the DWP prior to departure and request a document certifying that he retains entitlement whilst looking for work in the other EEA state¹.

1 Reg (EC) 987/09, Art 55(1)

C3161 The DWP will¹

1. inform the claimant about their obligations **and**
2. provide the certificate referred to in C3160.

1 Reg (EC) 987/09, Art 55(1)

C3162 That certificate will include the following information¹

1. the date on which the claimant ceased to be available to the UK's employment services

2. the period within which the claimant must register with the employment services of the other EEA state (this will normally be within 7 days of the date the claimant ceased to be available to the UK's employment services but in exceptional cases this period can be extended)
3. the maximum period that entitlement to JSA may be retained whilst the claimant is seeking work abroad (i.e. 3 months)
4. the circumstances that are likely to affect entitlement to JSA.

1 Reg (EC) 987/09, Art 55(1)

C3163 The unemployed person must register as a person seeking work with the employment services of the Member State to which they go and should provide the certificate referred to in C3160 to the institution of the host member state. However, if the claimant fails to provide the certificate the host Member State will contact the DWP in order to obtain the necessary information.

C3164 The employment services of the host Member State will inform the unemployed person of their obligations.

C3165 The institution of the host Member State will immediately send a document to the DWP containing

1. the date on which the unemployed person registered with the employment services **and**
2. the unemployed person's new address.

C3166 The institution of the host member state will arrange for checks to be carried out, based on its own procedures for unemployment benefits¹. Where necessary, it will immediately inform the DWP if any circumstances arise which are likely to affect entitlement to JSA¹ and will notify the DWP monthly of subsequent registrations².

1 Reg (EC) 987/09, Art 55(5); 2 Art 55(4)

C3167 Exportable JSA is paid by the UK in accordance with UK legislation

1 Reg (EC) 883/04, Art 64(1)(d)

C3168 Any requirement to attend at an office of the Department for Work and Pensions is satisfied if the person

1. attends at an equivalent office in the other country **or**
2. complies with the control procedures in the other country.

C3169

Procedures during period an unemployment benefit is exported to the UK

C3170 The UK carries out checks where an unemployment benefit has been exported from another EEA country to the UK. UK DMs **cannot** decide whether there is entitlement to the other country's unemployment benefit.

C3171 Where there is a doubt about continued entitlement the authorities in the other country are informed. If appropriate, payment of the unemployment benefit is suspended.

C3172 – C2189

Agreements with Non-EEA countries

C3190 A person can still receive JSA whilst absent from GB in

1. the Isle of Man **or**
2. Northern Ireland¹.

1 SS (I of M) Order 77, Sch 1, Art 2; SS (NI Reciprocal Arrangements) Regulations 2016, Sch para 2) 8/81

C3191 There are agreements between the UK and Canada¹, Guernsey², the Isle of Man³, New Zealand⁴ and Yugoslavia⁵ which include JSA⁶. Those agreements may (subject to satisfying the qualifying conditions) allow insurance, residence or employment in that country to count towards satisfying the contribution conditions for entitlement to JSA.

1 The Social Security (Canada) Order 1995; 2 SS (Jersey & Guernsey) Order 94; 3 SS (I of M) Order 77; 4 The Social Security (New Zealand) Order 1983 5 The Family Allowances, National Insurance and Industrial Injuries (Yugoslavia) Order 1958; 6 SS (RA) Order 1996

Note: Following the break-up of Yugoslavia the reciprocal agreement between the UK and Yugoslavia should be treated as separate agreements between the UK **and**

1. Serbia
2. Bosnia and Herzegovina
3. Croatia
4. the former Yugoslav republic of Macedonia
5. Montenegro **and**
6. Kosovo

C3192 In the agreements with the following countries the unemployment benefit paid by that country is taken into account in deciding the maximum period for which JSA can be paid

1. Guernsey¹
2. Isle of Man²
3. New Zealand³ **and**
4. Northern Ireland⁴.

*1 SS (Jersey & Guernsey) Order 94, Sch, Art 16(3); 2 SS (I of M) Order 77, Sch 1, Art 2(1);
3 SS (New Zealand) Order 83, Sch, Art 6(3); 4 SS (NI Reciprocal Arrangements) Regulations 2016, Sch, para 2*

Example

A person who was unemployed and receiving UB in New Zealand moved to GB and became entitled to JSA. That person had received UB for three months in New Zealand. The maximum period of entitlement to JSA is also three months.

The content of the examples in this document (including use of imagery) is for illustrative purposes only