

# DMG Chapter 20: JSA and IS - conditions of entitlement

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# **Entitlement to Jobseeker's Allowance and Income Support 20001 - 20199**

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# General rules on entitlement 20001 - 20080

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## Introduction

20001 This Chapter contains guidance on the basic conditions of entitlement for JSA and IS plus detailed guidance on

1. the basic conditions for entitlement for JSA, including joint claims<sup>1</sup>
2. people entitled to claim IS
3. remunerative work

4. relevant education

5. housing costs run-on.

Where the rules differ between JSA and IS this is stated in the guidance.

1 JS Act 95, s 1(2B)

20002 JSA and IS each have their own conditions of entitlement but there are some general rules which apply to both

1. a person cannot be entitled to JSA or IS unless a valid claim is made<sup>1</sup>

2. a person under the age of 16 can never be entitled to JSA or IS<sup>2</sup>

3. an eligible child or a relevant child cannot be entitled to JSA(IB) or IS<sup>3</sup> unless they fall within DMG 30546 et seq or 30565 et seq.

4. to be entitled to JSA or IS a person must be in GB<sup>4</sup>. This means **lawfully** in GB. A person who

**4.1** has entered GB unlawfully **and**

**4.2** makes no representations to the UK Border Agency is not entitled to JSA or IS. A person who does make representations to the UK Border Agency could be a PFA.

5. a person, and where relevant their partner, satisfy the NINO provisions<sup>5</sup> (see DMG Chapter 02).

1 SS A Act 92, s 1(1) & (4); 2 JS Act 95, s 3(1)(f) & 3A(1)(e); SS CB Act 92, s 124(1)(a);

3 Children (Leaving Care) Act 2000, s 6; Children (Leaving Care) Act 2000 (Com No. 2 & Cons prov)  
Order,

Sch 1, para (a) & Sch 4, para (a); JSA Regs, reg 57; IS (Gen) Regs, reg 4ZA; 4 JS Act 95, s 1(2)(i);

SS CB Act 92, s 124(1); 5 IS (Gen) Regs, reg 2A(b); JSA Regs, reg 2A(b)

## **JSA - basic conditions**

20003 People are entitled to JSA<sup>1</sup> if they

1. are available for employment and ASE and have a current JSAg but see

**1.1** DMG 20007 where a person is in receipt of a training allowance

**1.2** DMG Chapter 21 where a person is participating in the first stage or the second stage of any of the EZ programmes **and**

2. are not in remunerative work **and**
3. are not involved in a TD<sup>2</sup>**and**
4. are capable of work<sup>3</sup>/do not have LCW **and**
5. are not in relevant education **and**
6. are in GB (except for certain temporary absences abroad) **and**
7. are under pension age (but see **Note 2** below) **and**
8. satisfy

**8.1** the contribution-based conditions for JSA(Cont)<sup>4</sup>**or**

**8.2** the income based conditions for JSA(IB)<sup>5</sup>.

**Note 1:** Special rules apply to share fishermen (see DMG Chapter 27) and joint claims for JSA. Member of reserve forces can be entitled to JSA whilst attending annual continuous training, which can include training outside of GB<sup>6</sup>.

**Note 2:** Where DMG 20003 **7.** would normally exclude a person from entitlement to JSA and that person is part of a mixed-age couple<sup>7</sup> who is excluded from entitlement to SPC and is restricted from claiming UC, the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition<sup>8</sup>. This allows new claims for JSA to be made and awards to continue.

1 JS Act 95, s 1(2); 2 s 14; 3 ESA (Trans Provs) Regs, reg 5; 4 s 1(2)(d); 5 s 1(2A);

6 JSA Regs, reg 14(1)(v); 7 WR Act 12 (Commencement No. 31 etc) Order 2018, art 2(2)(a); 8 art 8(2)

## **JSA - joint claims from 28.10.02**

20004 Where the context specifies “the claimant,” in the case of joint claims it should be read as a “claimant”. From and including 28.10.02 a joint claim to JSA must be made (other than in the circumstances described in DMG 20006) where one or both members of a couple are

1. born after 28.10.47<sup>1</sup>**and**
2. aged 18 or over **and**
3. there are no children in the household or the assessment **and**
4. neither are working 16 hours or more a week **and**
5. there is an element of JSA(IB) in their assessment.

**Note:** See the definition of a claimant in DMG Chapter 22.

20005

## **Claimant entitled to JSA(IB) on 27.10.02**

20006 Where a claimant is entitled to JSA(IB) on 27.10.02 they can continue to receive JSA(IB) **without** having to make a joint claim with their partner (only until the day their partner is required to attend a place specified by an Emp O in a notification given or sent to the partner) if<sup>1</sup>

**1.** they satisfy the conditions of entitlement for JSA(IB)<sup>2</sup>**and**

**2.** their partner does not satisfy all the following conditions of entitlement<sup>3</sup>

**2.1** being available

**2.2** having a JSAG

**2.3** ASE

**2.4** not being in remunerative work

**2.5** being capable

**2.6** not being in relevant education

**2.7** being under pension age

**2.8** being in GB.

1 JSA Regs, reg 3E(2)(l); 2 reg 3E(1)(a); 3 reg 3E(1)(c)

### **Example**

Josh and Meg are both 40 years old. Josh is getting JSA(IB) for himself and Meg and attends the Jobcentre on a Wednesday every fortnight. Meg receives a letter from the Jobcentre asking her to attend an interview on Thursday 14 November to make a joint claim for JSA.

Josh can continue to get JSA(IB) for himself and Meg until Thursday 14 November. From Friday 15 November he will only be able to get JSA(IB) as part of a joint claim couple with Meg.

## **Persons in receipt of a training allowance**

20007 A person who is in receipt of a training allowance, or would be if it was not prevented by

legislation<sup>1</sup>, is entitled to JSA(IB) without<sup>2</sup>

**1.** being available for employment **or**

**2.** having entered into a JSAG **or**

**3.** ASE.

But this does not apply to WBLfYP, 'Skillseekers', a qualifying young person or a child<sup>3</sup>.

1 Social Security (Breach of Community Order) Regulations 2001, S.I 2001 No. 1395; 2 JSA Regs, reg 170;

3 SS CB Act 92, s 142

### **Definition of training allowance**

20008 A training allowance is<sup>1</sup> an allowance payable

**1.** out of public funds by

**1.1** a government department **or**

**1.2** on behalf of

**1.2.a** the Secretary of State for Work and Pensions **or**

**1.2.b** Scottish Enterprise **or**

**1.2.c** Highlands and Islands Enterprise **or**

**1.2.d** Skills Development Scotland **or**

**1.2.e** the Young People's Learning Agency for England, the Chief Executive of Skills Funding  
**or**

**1.2.f** Welsh Ministers **and**

**2.** to people for

**2.1** their maintenance **or**

**2.2** a member of their family **and**

**3.** for the period, or part of the period, that they are taking part in a course of training or instruction

**3.1** provided by, or under arrangements made with, that department **or**

**3.2** approved by that department in relation to the person **or**

**3.3** so provided or approved by or on behalf of the

**3.3.a** Secretary of State for Work and Pensions **or**

**3.3.b** Scottish Enterprise **or**

**3.3.c** Highlands and Islands Enterprise **or**

**3.3.d** Skills Development Scotland **or**

**3.3.e** Welsh Ministers.

Examples of schemes which pay training allowances are Training for Work in Scotland, Work Based Learning - Skills Based in Wales and Employment Rehabilitation.

**Note:** An allowance paid directly or indirectly by the European Social Fund is paid out of public funds<sup>2</sup>. DMs will have to consider whether **2.** and **3.** are also satisfied.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 R(IS) 10/98

20009 A training allowance does not include

**1.** an allowance paid by a government department to, or for a person who is

**1.1** following a course of FTE (unless that course is arranged under prescribed legislation<sup>1</sup>) **or**

**1.2** training to be a teacher<sup>2</sup> **or**

**2.** an allowance paid by a LA or a voluntary organization<sup>3</sup> **or**

**3.** an allowance paid directly or indirectly from the public funds of a foreign country<sup>4</sup>.

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2; 2 JSA Regs, reg 1(3);  
3 R(P) 13/56; 4 R(P) 5/56

## **Under pension age**

20010 To be entitled to JSA a person must be under pension age<sup>1</sup>. Pension age is<sup>2</sup>

**1.** for a man - the 65th birthday **or**

**2.** for a woman

**2.1** born before 6.4.50 - the 60th birthday **or**

**2.2** born after 5.4.55 - the 65th birthday **or**



**2.3** born 6.4.50 to 5.4.55 inclusive - see Appendix 1 to this Chapter.

1 JS Act 95, s 1(2)(h); 2 Pensions Act 95, Sch 4, Part 1

20011 - 20014

### **JSA(Cont) - additional conditions**

20015 In addition to the conditions at DMG 20003 **1. - 7.**, to be entitled to JSA(Cont)<sup>1</sup> a person must

- 1.** satisfy contribution conditions (see DMG 21051 et seq) **and**
- 2.** not have earnings in excess of the prescribed amount (see DMG 21081 et seq) **and**
- 3.** not be entitled to IS.

1 JS Act 95, s 2

### **JSA(IB) - additional conditions**

20016 In addition to the conditions at DMG 20003 **1. - 7.**, to be entitled to JSA(IB)<sup>1</sup> a person must

- 1.** have no income, or an income which does not exceed the applicable amount **and**
- 2.** not be entitled to IS, SPC or ESA(IR) **and**
- 3.** not be a member of a family, one of whose members is entitled to IS or JSA(IB) **and**
- 4.** not have a partner who is entitled to SPC or ESA(IR) **and**
- 5.** not have a partner who is in remunerative work **and**
- 6.** be aged 18 or over. But in certain circumstances persons aged 16 or 17 may be entitled (see DMG Chapter 30) **and**
- 7.** if aged 16 or 17, be registered for employment and training.

1 JS Act 95, s 3

### **JSA joint claims**

20017 [See [DMG memo 12/23](#)] To claim JSA, both members of the joint claim couple are required<sup>1</sup> to

- 1.** be available for employment **and**
- 2.** have a JSAg **and**

**3.** be ASE **and**

**4.** not be engaged in remunerative work **and**

**5.** be capable of work/not have LCW **and**

**6.** not be receiving relevant education **and**

**7.** be under pensionable age **and**

**8.** be in GB.

They must both attend the New Jobseekers Interview, sign the claim form, accept equal responsibility for the claim and sign fortnightly (see DMG 20909 et seq).

**Note:** There are certain categories of members of the couple that are not required to satisfy paragraphs **1. - 8.** above<sup>2</sup>. (See DMG 20023).

1 s 1(2B)(b); 2 JSA Regs, Sch A1

20018 In addition to the conditions at DMG 20017, to be entitled to JSA<sup>1</sup> members of a joint claim couple must

**1.** have no income, or an income which does not exceed the applicable amount **and**

**2.** not have a member of the family of which the couple are members entitled to IS or, other than the couple, JSA(IB) **and**

**3.** not be entitled to SPC or ESA(IR) **and**

**4.** have at least one member who is over 18 and if only one member is over 18 the other member must

**4.1** have a Secretary of State's direction (see DMG 30770 et seq) **or**

**4.2** satisfy the conditions at DMG 30597 et seq.

1 JS Act 95, s 3A

20019 Members of a joint claim couple may choose which one of them should receive JSA<sup>1</sup>. If the members of a joint claim couple do not make the choice, the DM should decide who should receive JSA<sup>2</sup>.

1 s 3B(1); 2 s 3B(2)

20020 - 20021

## IS - basic conditions

20022 To be entitled to IS<sup>1</sup> a person must

1. be in GB (except in certain circumstances) (see DMG 070702) **and**
2. be aged 16 or over **and**
3. be under the qualifying age for SPC (see DMG 77032 and **Note 2** below) **and**
4. have no income or an income which does not exceed the applicable amount **and**
5. not be in remunerative work **and**
6. not have a partner in remunerative work **and**
7. not be in relevant education (unless in special circumstances) (see DMG 20630 et seq) **and**
8. be in a prescribed category (see DMG 20081 et seq) **and**
9. not be entitled to JSA or ESA **and**
10. not have a partner who is entitled to JSA(IB) or ESA(IR) **and**
11. not have a partner who is entitled to SPC.

**Note 1:** Special rules apply to share fishermen (see DMG Chapter 27).

**Note 2:** Where DMG 20022 **3.** would normally exclude a person from entitlement to IS and that person is part of a mixed-age couple<sup>2</sup> who is excluded from entitlement to SPC and is restricted from claiming UC, the member of the mixed-age couple who has attained the qualifying age for SPC is treated as satisfying the age-related condition<sup>3</sup>. This allows new claims for IS to be made and awards to continue.

1 SS CB Act 92, s 124; 2 WR Act 12 (Commencement No. 31 etc) Order 2018, art 2(2)(a); 3 art 8(2)

## JSA joint claims - exemptions

20023 Certain categories of members of a joint claim couple are not required to satisfy conditions in DMG 20017. These categories<sup>1</sup> are where one of the members **does** satisfy those conditions and the other member is

1. not in remunerative work **and**
2. under pension age **and**
3. a person who is

**3.1** a F/T student **or**

**3.2** a regular carer **or**

**3.3** incapable of work (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.4** treated as capable of work or entitled to SSP **or**

**3.5** has LCW **or**

**3.6** in employment living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**

**3.7** a disabled worker (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**

**3.8** a disabled student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.9** a deaf student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.10** blind (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.11** a pregnant woman **or**

**3.12** over the qualifying age for SPC **or**

**3.13** a refugee learning English **or**

**3.14** required to attend court or tribunal **or**

**3.15** a young person in training **or**

**3.16** affected by a TD.

1 JSA Regs, reg 3D(1)(c) & Sch A1

20024 A member that falls into any category in DMG 20023 for one or more days in a benefit week is treated as satisfying that category for the whole of that week<sup>1</sup>.

1 reg 3D(2)

## Studying full-time

20025 A member is exempt who, at the date of claim

**1.** is a qualifying young person **or**

**2.** is a F/T student **or**

**3.** if they satisfied **1.** and **2.** **and**

**3.1** have applied to an educational establishment to start a F/T course and the application has not been rejected **or**

**3.2** has a place on a F/T course of study due to start at the beginning of the next academic

**3.2.a** term **or**

**3.2.b** year<sup>1</sup>.

1 JSA Regs, reg 3D & Sch A1, para 2

20026 A member who falls into DMG 20025 and has applied to an educational establishment to commence a F/T course of study within one month of

**1.** the last day of studying on a previous course **or**

**2.** receiving exam results relating to a previous course of study

is exempt, but not if the course applied for is beyond a first degree course or a comparable course<sup>1</sup>.

1 JSA Regs, Sch A1, para 2

## Regular carer

20027 [See [DMG memo 12/23](#)] A member is exempt who is<sup>1</sup>

**1.** both entitled to and in receipt of CA<sup>2</sup> and caring for another person **or**

**2.** regularly and substantially (see DMG 20117 et seq) engaged in caring for another person and that person

**2.1** is in receipt of AA, the care component of DLA or CDP at the highest or middle rate or the daily living component of PIP or ADP at the standard or enhanced rate<sup>3</sup> **or**

**2.2** has claimed AA, DLA, CDP, ADP or PIP but

**2.2.a** only until the claim has been determined **or**

**2.2.b** up to 26 weeks from the date of claim whichever is the earlier **or**

**2.3** has

**2.3.a** made an advance claim for<sup>4</sup>**and**

**2.3.b** an award of **and**

**2.3.c** not completed the qualifying period for AA, the care component of DLA or CDP at the highest or middle rate or the daily living component of PIP or ADP at the standard or enhanced rate **or**

**3.** regularly and substantially engaged in caring for another person and that person

**3.1** is in receipt of AFIP<sup>5</sup> **or**

**3.2** has claimed AFIP but

**3.2.a** only until the claim has been determined **or**

**3.2.b** up to 26 weeks from the date of claim

whichever is the earlier<sup>6</sup>**or**

**3.3** has

**3.3.a** made an advance claim for **and**

**3.3.b** an award of

AFIP<sup>7</sup>.

**Note:** A member who is a regular carer can be treated so for a period of up to eight weeks from when this paragraph ceases to apply.

1 JSA Regs, Sch A1, paras 3, 4, & 5; 2 SS CB Act 92, s 70; 3 s 65(6)(a) & 72(3); WR Act 12, s 78; DACYP Regs, reg 11(5); DAWAP (Scot) Regs, reg 2; 4 SS (C&P) Regs, reg 13A; DACYP Regs, reg 24; DAWAP Regs, reg 5;

5 JSA Regs, Sch A1 para 3(a)(i); 6 Sch A1, para 3 (a)(iv); 7 Sch A1 para 3(a)(vii)

## **Incapable of work**

20028 A member can be exempt if they are

**1.** incapable of work<sup>1</sup> (revoked from 1.11.10 except where they are subject to the savings provisions in Appendix 7) **or**

**2.** treated as incapable of work<sup>2</sup> (revoked from 1.11.10 except where they are subject to the savings provisions in Appendix 7) **or**

**3.** treated as capable of work<sup>3</sup> because they

**3.1** became incapable of work because of misconduct **or**

**3.2** fail without good reason to submit to treatment **or**

**3.3** fail without good reason to observe any prescribed rules of behaviour **or**

**4.** entitled to SSP.

1 JSA Regs, Sch A1, para 6(a); SS CB Act 92, Part XXIIA; 2 JSA Regs, Sch A1, para 6(b); SS CB Act 92, s 171D

3 JSA Regs, Sch A1 para 6(c); SS CB Act 92, s 171E(1); SS (IW) (Gen) Regs, reg 18(1)

20029 See DMG 20135 - 20138 for guidance on incapacity tests, treated as incapable and treated as capable.

### **Limited capability for work**

20030 A member can be exempt if they have LCW, but they do not have to make a claim for ESA in order to satisfy the LCW exemption<sup>1</sup>. So where that member provides

**1.** a medical certificate<sup>2</sup>**or**

**2.** a self-certificate

**2.1** lasting less than 8 days **or**

**2.2** for any of the first 7 days of LCW **or**

**3.** such other evidence that the Secretary of State thinks is sufficient to show that the member has LCW<sup>3</sup> where it is unreasonable to require them to provide a medical certificate as in sub-paragraph **1.** above

they will not have to satisfy the joint-claim conditions for the period that the medical evidence covers.

**Note:** Self-certificate as in sub-paragraph **2.** above means a written declaration on a form approved by the Secretary of State which includes a declaration that the person has been unfit for work on a date or for a period and can also include a statement that they expect to continue to be unfit on subsequent days.

1 JSA Regs, Sch A1, para 6B; 2 SS (Med Ev) Regs, Sch 1, Pt 1; 3 WR Act 07, s 1(4)

**People in work living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)**

20031 People in employment who satisfy DMG 20504 - 20505 are treated as **not** engaged in remunerative work and are exempt<sup>1</sup>.

1 JSA Regs, Sch A1, para 7

20032 - 20039

**Disabled worker (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)**

20040 A disabled worker who satisfies DMG 20496 is treated as **not** in remunerative work and is exempt<sup>1</sup>.

1 JSA Regs, reg 53(h) & Sch A1, para 8

**Disabled students (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)**

20041 A member is exempt<sup>1</sup> if they are a student and

1. if they were the only claimant, would be entitled to a DP or SDP **or**
2. have been incapable of work for not less than 196 days.

Two or more separate periods of incapacity separated by a break of not more than 56 days are treated as one continuous period.

1 JSA Regs, Sch A1, para 9

**Deaf students (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)**

20042 A member who is a hearing impaired student can be exempt if, because of their impaired hearing they receive<sup>1</sup> in

1. England and Wales, a supplementary requirement to their mandatory student grant under relevant legislation<sup>2</sup>**or**
2. Scotland, an allowance or bursary which includes an amount for expenses incurred under relevant legislation<sup>3</sup>.

1 JSA Regs, Sch A1 para 10; 2 The Education (Mandatory Awards) Regs 95, Sch 2, para 10;

3 Students' Allowances (Scotland) Regs 91, reg 6; Education Authority Bursaries (Scotland) Regs 95



## **Blind members (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)**

20043 A member who is visually impaired can be exempt if they are<sup>1</sup>

- 1.** registered as blind in a register compiled by the LA under relevant legislation<sup>2</sup> **or**
- 2.** in Scotland, registered as blind in a register maintained by a regional or islands council.

People continue to be treated as so registered for a period of 28 weeks from the date registration ends.

**Note:** The person must be registered as blind not as partially-sighted. DMs should make enquiries of the relevant LA if there is any doubt.

1 JSA Regs, Sch A1 para 11; 2 National Assistance Act 48, s 29

## **Pregnant woman**

20044 A woman who is a member of a joint-claim couple can be exempt if she is incapable of work by reason of pregnancy<sup>1</sup> (see DMG 20161).

**Note:** Pregnancy itself is not an illness. If there is any doubt about the woman's condition seek medical evidence. This may be from the DM(IB) who determines the incapacity issue.

1 JSA Regs, Sch A1, para 12

## **Refugee learning English**

20045 A member can be exempt<sup>1</sup> if

- 1.** they are a refugee as in DMG Chapter 07 **and**
- 2.** they are attending a course for more than 15 hours a week in order to
  - 2.1** learn English **and**
  - 2.2** subsequently find work **and**
- 3.** they had been in GB for not more than twelve months on the day the course started.

1 JSA Regs, Sch A1, para 14

## **Member required to attend court**

20046 A member is exempt whilst they are required to attend court or tribunal as a<sup>1</sup>

- 1.** justice of the peace **or**

**2.** party to any proceedings **or**

**3.** witness **or**

**4.** juror.

1 JSA Regs, Sch A1, para 15

### **Meaning of tribunal**

20047 “Tribunal” means any tribunal listed in specific legislation<sup>1</sup>.

1 Tribunal and Inquiries Act 1992, Sch 1

### **Young person in training**

20048 A member, who is not a qualifying young person or child<sup>1</sup>, is exempt where they are undertaking youth training provided by, or through<sup>2</sup>

**1.** in England, Young People’s Learning Agency for England, the Chief Executive of Skills Funding **or**

**2.** in Wales, a National Council for education and training **or**

**3.** in Scotland, a local enterprise company.

People under 18 are eligible for WBLfYP and ‘Skillseekers’. 18 to 24 year olds may also be eligible. These courses may be known by other names.

1 SS CB Act 92, s 142; 2 JSA Regs, Sch A1, para 16

### **Member affected by a trade dispute**

20049 A member who

**1.** is affected by a TD **and**

**2.** would not be entitled to a single JSA because of the TD is exempt<sup>1</sup>. See DMG Chapter 32 for further guidance on TDs.

1 JSA Regs, Sch A1, para 17

### **Previous entitlement to a joint-claim**

20050 If joint-claim entitlement ends because of responsibility for one or more children, the couple must<sup>1</sup>

**1.** supply evidence of the change **and**

**2.** nominate which member is to become the claimant.

The addition of children is a change of circumstances and the JSA claim is no longer subject to joint-claim conditions and a replacement award of JSA should be made.

1 reg 3B; JS Act 95, s 1(4) & Sch 1, para 9A

20051 - 20062

## **Entitlement of a new joint-claim couple to a JSA**

20063 Where a claim for JSA becomes subject to joint-claim conditions because the child or all of the children they were responsible for have

- 1.** died **or**
- 2.** ceased to be a child or children for whom they are responsible **or**
- 3.** reached 16 and is not a qualifying young person

the JSA claim is treated as a claim made by both members of the couple.

20064 The JSA(IB) award shall end, and be replaced by a new award of joint-claim JSA if the DM<sup>1</sup>

- 1.** has sufficient information to decide whether a new award should be made **and**
- 2.** is informed of which member of the couple is to be the nominated member.

1 JSA Regs, reg 3C; JS Act 95, s 1(4) & 3B

## **One member does not satisfy prescribed conditions**

20065 A member of a joint-claim-couple is entitled to JSA without making a joint-claim if<sup>1</sup>

- 1.** that member satisfies all the relevant conditions but
- 2.** the other member does not satisfy the relevant conditions and falls into DMG 20066 **1.** - **11.**

1 JSA Regs, reg 3E

20066 The other member<sup>1</sup>

- 1.** fails to attend for a new claim as required by an Emp O for the purposes of specified legislation<sup>2</sup>**or**
- 2.** for a period determined by the Secretary of State

**2.1** is not available for employment

**2.2** is not ASE

**2.3** does not have a current JSAg **or**

**3.** is temporarily absent from GB **or**

**4.** is a PFA **or**

**5.** is subject to immigration control **or**

**6.** is over pensionable age **or**

**7.** is in work or has agreed to work for 16 hours or more but less than 24 hours per week **or**

**8.** has claimed MA or SMP **or**

**9.** is

**9.1** not within DMG 20066 **8. and**

**9.2** within

**9.2.a** eleven weeks of expected date of confinement **or**

**9.2.b** up to 28 weeks after pregnancy ends **or**

**10.** is paid benefit under a reciprocal agreement by another country **or**

**11.** is in receipt of SSP and who, immediately before he became incapable of work, was in remunerative work for 16 hours or more per week.

See DMG Chapter 24 for further guidance on applicable amounts in these cases.

1 JSA Regs, reg 3E; 2 C&P Regs, reg 6

## **Polygamous marriage**

20067 Members of a joint-claim couple can only be members of one joint-claim couple<sup>1</sup>. In this situation the member or members can nominate which joint-claim couple to be a member of. If none is nominated, the decision rests with the Secretary of State.

1 JSA Regs, reg 3A(2); JS Act 95, s 1(4) & Sch 1, para 9A

20068 - 20080



# People entitled to Income Support 20081 - 20199

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[People appealing against a decision because of capability for work](#) 20182 - 20199

**[See DMG Memo 08/20]**

20081 [See [DMG memo 12/23](#)] People can receive IS for the whole of the benefit week provided they satisfy the conditions of entitlement and are in one of the following categories<sup>1</sup> for one or more days in that benefit week

- 1.** lone parents
- 2.** lone foster parents
- 3.** single claimant or lone parent looking after a child prior to adoption
- 4.** people temporarily looking after another person
- 5.** regular carers
- 6.** people incapable of work (revoked from 30.12.09 but see Appendix 5 for savings provisions)
- 7.** certain people in receipt of the daily living component of PIP
- 8.** disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
- 9.** people in work living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
- 10.** people entitled to housing costs run-on
- 11.** disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
- 12.** deaf students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
- 13.** blind people (revoked from 30.12.09 but see Appendix 5 for savings provisions)
- 14.** pregnant women
- 15.** parental leave
- 16.** paternity leave

17. parental bereavement leave
18. certain people in relevant education
19. young people in second chance learning
20. refugees learning English
21. people who claim asylum on or after 3.4.00 and who is granted refugee status on or before 14.6.07
22. people required to attend court or a tribunal
23. people affected by a TD
24. certain PFAs
25. people in custody
26. members of a couple looking after children whilst their partner is temporarily abroad
27. people appealing against a decision which embodies a determination of capability for work
28. people attending WBLfYP or 'Skillseekers' courses

*1 IS (Gen) Regs, reg 4ZA & Sch 1B*

**Note:** Just because the claimant no longer falls into any particular prescribed category, this in itself is not grounds for superseding the decision awarding IS. The DM must be satisfied that the claimant does not fall into any other category. This may mean that further enquiries will have to be made before the DM can be satisfied that no other prescribed category applies<sup>1</sup>.

*1 R(IS) 10/05*

## **Lone parents**

20082 Lone parent means<sup>1</sup> a person who

1. has no partner **and**
2. is responsible for and a member of the same household as
  - 2.1 a child **or**
  - 2.2 young person.

**Note:** The claimant's status as a lone parent is not affected by the presence of another adult, for



example when the claimant lives with parents.

The DM should accept that a claimant is a lone parent unless there is an indication that the person may have a partner. When members of a couple claim to be estranged while still living at the same address, the DM should consider whether they are members of the same household.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

20083 To be entitled to IS, where they do not satisfy any other prescribed category, the lone parent will have to be

**1.** responsible for and a member of the same household as

**1.1** a single child aged under 5 **or**

**1.2** more than one child where the youngest child is aged under 5 **or**

**2.** under the age of 18<sup>1</sup>.

**Note:** See Appendix 8 for savings and transitional provisions for certain lone parents following a full-time course and special commencement provisions for existing IS claimants.

*1 IS (Gen) Regs, Sch 1B, para 1*

20084 - 20101

### **Definition of a child**

20102 A child means a person under the age of 16<sup>1</sup>. A person will no longer be entitled to IS as a lone parent once their child, or youngest child, reaches the age set out in DMG 20083.

*1 SS CB Act 92, s 137(1)*

### **Treated as responsible for a child**

20103 To be a lone parent a person must be treated as responsible for a child (see DMG Chapter 22).

### **Lone foster parents**

20104 Single people or lone parents can get IS if they have a child placed with them<sup>1</sup>

**1.** by a LA or voluntary organization<sup>2</sup> **or**

**2.** in Scotland only, by any order or warrant<sup>3</sup>.

This only applies until the child reaches the age of 16.

## **Meaning of placed**

20105 For the purpose of DMG 20104, placed means the claimant must actually have a child living with them or accommodated by them for a continuous period of more than 24 hours. The DM should ensure that they make sufficient enquiries to satisfy themselves that a child is placed within the meaning of the legislation<sup>1</sup>.

*1 Children Act 89, ss 20, 22, 22A & 22C*

### **Example 1**

Person L is single and is a foster carer on call with the local authority to accept placement of new-born babies at short notice. These new-borns are also likely to be removed from the Person L at short notice due to their popularity for adoption. On 9 March, Person L has a two-week old baby placed with her. That child stays with her until 11 March and is then removed. She has no other children placed with her. For that week as she had a child placed with her for more than 24 hours she satisfies

the condition of having a child placed with her and therefore as she is in this category for at least one day in her benefit week, she will be entitled to IS for that week.

Person L then has no further placements for 3 weeks so cannot satisfy the condition of having a child placed with her and as she does not satisfy any of the other prescribed categories, her IS award is terminated.

### **Example 2**

Person M is a lone parent and local authority foster carer. Her own child is now 12 years old. She takes in a 6 year old child for respite day care for 10 hours per day for 2 days per week. She makes a claim for IS, however as the placement is not for a continuous period of more than 24 hours, she does not satisfy the condition of having a child placed with her. Her claim to IS is disallowed.

## **Residence orders**

20106 A residence order places parental responsibility on the person to whom it is made and puts them on a similar footing to a parent. A residence allowance may be paid at the LAs discretion to avoid hardship or to assist if the child has special needs, however payment of such an allowance does not mean that the child is looked after by the LA. So in this situation, the person is no longer fostering the child and so could not satisfy the criteria in DMG 20104 above.

### **Example**

Jennifer was fostering her 2 grandchildren aged 9 and 11 and was receiving a fostering allowance. She

claimed IS and was able to satisfy the criteria of being a lone foster parent and so was entitled to IS. Six months later, Jennifer is given a residence order for the 2 children and also awarded a residence allowance as the elder child has learning difficulties and requires extra attention. She is no longer fostering the children so she cannot satisfy the conditions for IS as a lone foster parent. As the children are over the relevant age for her to qualify for IS as a lone parent and none of the other prescribed categories are applicable, Jennifer is advised that she must claim either JSA or if she is sick, ESA.

## **Single person looking after children prior to adoption**

20107 Where the claimant is a single claimant or a lone parent they can get IS where they have a child placed with them prior to adoption by an adoption agency<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 2A; Adoption & Children Act 2002; Adoption and Children (Scotland) Act 2007*

20108 - 20109

## **People temporarily looking after another person**

20110 People can get IS if they are looking after

**1.** a child because the parent or usual carer is

**1.1** temporarily ill **or**

**1.2** temporarily absent from the home **or**

**2.** a member of the family who is temporarily ill<sup>1</sup>.

Seek medical evidence of the illness if there is any doubt.

*1 IS (Gen) Regs, Sch 1B, para 3*

## **Temporary absence**

20111 Treat an absence as temporary if the person intends or expects to return home. Examples of temporary absence include where the parent or usual carer

**1.** enters hospital

**2.** goes on holiday

**3.** works away on a short term contract.

20112 If an absence which started off as temporary becomes permanent consider whether the person left with the child has become a lone parent.

## Childminders

20113 Temporary absence as in DMG 20111 does not include where a child's parent or usual carer is working and absent from home for a set period each day. DMG 20110 does not apply to childminders employed to look after children during such absences.

20114 - 20115

## Regular carers

20116 People can get IS where they are<sup>1</sup>

**1.** both entitled to and in receipt of CA<sup>2</sup> or would be in receipt of CA but for the application of the loss of benefit provisions<sup>3</sup>, and caring for another person **or**

**2.** regularly and substantially engaged in caring for another person and that person

**2.1** is in receipt of "AA", AFIP, the care component of DLA or CDP at the highest or middle rate or the daily living component of PIP or ADP at the standard or enhanced rate<sup>4</sup> **or**

**2.2** has claimed "AA", DLA, CDP, ADP, AFIP or PIP<sup>5</sup> **or**

**2.3** has

**2.3.a** made an advance claim for<sup>6</sup> **and**

**2.3.b** an award which was made in respect of that claim **and**

**2.3.c** not completed the qualifying period for

"AA", the care component of DLA or CDP at the highest or middle rate or the daily living component of PIP or ADP at the standard or enhanced rate.

*1 IS (Gen) Regs, Sch 1B, para 4; 2 Sch 1B, para 4(b); SS CB Act 92, s 70; 3 SS Fraud Act 2001, s 7; 4 IS (Gen) Regs, Sch 1B, para 4(a)(i); SS Fraud Act 2001, s 72(3); 5 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii); 6 Sch 1B, para 4(a)(iia), (iia), (iib), (iv) & (v); SS Fraud Act 2001, s 65(6)(a); SS (C&P) Regs, reg 13A; UC, PIP, JSA & ESA (C&P) Regs, reg 33; DAYCP Regs, reg 24; DAWAP (Scot) Regs, reg 2,5 & 35*

## **Regularly and substantially**

20117 While for CA in DMG 20116 **1.** above, “regularly and substantially” has a specific legal definition of a minimum of 35 hours caring per week, there is **no** such minimum requirement for satisfying the requirement under DMG 20116 **2.** above. Here the words “regularly and substantially” should be given their everyday meaning. Whether someone is regularly and substantially caring is a question of fact for the DM<sup>1</sup>. If these conditions are fulfilled by more than one person, then both may be able to satisfy the carer provision at any given time.

*1 R(IS) 8/02*

## **Substantially caring**

20118 The DM should decide whether, taking into account the needs of the person cared for and the impact on the claimant’s own life, the claimant can be regarded as substantially engaged in caring. The DM should take into account

- 1.** the pattern of caring
- 2.** how long the caring lasts
- 3.** how disruptive the caring is to the claimant’s life
- 4.** the predictability of the needs of the person being cared for
- 5.** the kind of help provided
- 6.** the care accepted for DLA or AA purposes
- 7.** the proportion of the claimant’s life and the life of the person being cared for that is taken up by the care<sup>1</sup>.

*1 R(IS) 8/02*

20119 Assistance must be directly provided to the disabled person. When deciding what amounts to caring, the DM should consider whether the carer performs duties or oversees activities that the disabled person needs help with, due to their disability. Where care is provided to a child, this should be above the normal levels of care

provided to children. Care involves assistance or supervision directly arising from the disabled person’s needs. It includes, but need not be confined to, support for bodily functions. It can also include washing, shopping for food, cooking and other domestic tasks. Activities carried out for the disabled person in the margins of personal assistance, such as shopping for them, can also be taken into account. Travel to and from the disabled person’s home does not count as it does not involve providing direct assistance<sup>1</sup>. Likewise being on standby at the end of a phone is also too remote an activity.

## **Awaiting outcome of claim to AA, DLA, CDP, AFIP, PIP or ADP**

20120 Where DMG 20116 **2.2** applies the person can get IS until the earlier of<sup>1</sup>

- 1.** the date the claim for “AA”, DLA, CDP, AFIP, PIP or ADP is decided **or**
- 2.** 26 weeks from the date of claim for “AA”, DLA, CDP, AFIP, PIP or ADP.

**Note:** Where the person is already in receipt of DLA and applies for another component, this is not a new claim so they could not qualify again under this provision.

*1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)*

20121 The purpose of DMG 20120 is to help carers where there is a delay in deciding a claim for “AA”, DLA, AFIP or PIP.

## **Recently ceased to care or no longer awaiting outcome of claim to AA, DLA, AFIP or PIP**

20122 People who have recently ceased to care or whose claim to AA, DLA, AFIP or PIP has been decided, can also get IS where

- 1.** DMG 20116 applied **or**
- 2.** they would have applied if a claim to IS had been made

but only for a period of eight weeks from the date DMG 20116 ceased to apply<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 5 & 6*

20123 Circumstances in which DMG 20122 could apply are when for example a different carer takes over or the person being cared for moves elsewhere or dies.

20124 Where a person had satisfied **any** of the criteria in DMG 20116 or DMG 20120, they can continue to be entitled to IS for a period of 8 weeks from the date those criteria ceased to apply to that person<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 5*

20125 - 20133

## **People incapable of work, treated as incapable or entitled to SSP**

20134 People can get IS if they are

- 1.** incapable of work<sup>1</sup> (revoked from 30.12.09 but see Appendix 5 for savings provisions) **or**

**2.** treated as incapable of work<sup>2</sup> (revoked from 30.12.09 but see Appendix 5 for savings provisions) **or**

**3.** treated as capable of work<sup>3</sup> because they

**3.1** became incapable of work because of misconduct **or**

**3.2** fail without good cause to submit to treatment **or**

**3.3** fail without good cause to observe any prescribed rules of behaviour **or**

**4.** entitled to SSP<sup>4</sup>.

*1 IS (Gen) Regs, Sch 1B, para 7(a); SS CB Act 92, Part XXIIA; 2 IS (Gen) Regs, Sch 1B, para 7(b);  
SS CB Act 92, s 171D; 3 IS (Gen) Regs, Sch 1B, para 7(c); SS CB Act 92, s 171E(1);  
SS (IW) (Gen) Regs, reg 18(1); 4 IS (Gen) Regs, Sch 1B, para 7(d)*

**Note:** From 27.10.08, all new claims to IS on grounds of being incapable for work will be treated as a claim for ESA unless the linking rules apply. See DMG 45211 - 45213.

## **Incapacity tests**

20135 There are two incapacity tests: the OOT and the PCA. A person who satisfies the relevant incapacity test is incapable of work. See DMG Chapter 13 for detailed guidance.

## **Treated as incapable**

20136 People may be treated as incapable of work where<sup>1</sup>

- 1.** they are in hospital
- 2.** they have a particular medical condition
- 3.** they are terminally ill
- 4.** they are blind
- 5.** they are in receipt of the higher rate care component of DLA
- 6.** they are severely mentally ill
- 7.** they are paraplegic.

*1 SS (IW) (Gen) Regs, reg 10*

20137 People may also be treated as incapable where the PCA applies but it is not yet assessed where they

**1.** continue to send in medical evidence (see DMG Chapter 13) **and**

**2.** have not been found capable of work or treated as capable of work within the preceding six months because they failed to provide information or evidence or failed without good cause to attend a medical examination unless

**2.1** it is a different disease or disablement **or**

**2.2** it is the same disease or disablement but it has significantly worsened **or**

**2.3** in a case where they were found capable of work because they did not provide the information requested, they have now provided it<sup>1</sup>.

*1 SS (IW) (Gen) Regs, reg 28*

### **Treated as capable**

20138 Except where DMG 20134 **3.** applies, people treated as capable of work are not entitled to IS unless they can qualify on other grounds. People will be treated as capable if they

**1.** fail to attend or agree to a medical examination without good cause<sup>1</sup> **or**

**2.** fail without good cause to return the questionnaire within the permitted time<sup>2</sup> **or**

**3.** do work that is not permitted in the regulations<sup>3</sup>.

**Note:** In relation to work that is not permitted, if the person states that they are a volunteer the ordinary meaning of the phrase “engaged in voluntary work” should be applied. In one sense all work is voluntary because a person could walk away from a job at any time on giving notice. The fact that an employer cannot afford to pay a proper wage or declares the work to be voluntary does not mean that it is. However, a person could be a volunteer even though the arrangement was a formal one and the voluntary work they were involved in was long-standing and taxing.

*1 SS (IW) (Gen) Regs, reg 8(2); 2 reg 7; 3 reg 16*

### **Certain people in receipt of the daily living component of PIP**

20139 A person will satisfy entitlement conditions for IS where

**1.** they are in receipt of the daily living component of PIP or ADP at the enhanced rate **and**

**2.** immediately before receiving that benefit the person was entitled to and in receipt of IS because they were treated as incapable of work by virtue of

being in receipt of the highest rate care component of DLA<sup>1</sup>.



20140 - 20151

### **Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)**

20152 [ A disabled worker who satisfies DMG 20496 is treated as **not** engaged in remunerative work and can get IS<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 8*

### **People in work living in a care home, an Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)**

20153 People in employment who satisfy DMG 20504 - 20505 are treated as **not** engaged in remunerative work and can get IS<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 9*

### **People entitled to Mortgage Interest Run-on**

20154 People in employment who satisfy DMG 20530 - 20532 are treated as **not** engaged in remunerative work and can get IS<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 9A*

### **Disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)**

20155 F/T students can get IS if they<sup>1</sup>

- 1.** qualify for the DP or SDP under DMG Chapter 23 **or**
- 2.** have been incapable of work as in DMG 20134 for a continuous period of not less than 196 days.

*1 IS (Gen) Regs, Sch 1B, para 10(a) & (b)*

20156 Two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 10(b)*

## Old student cases

20157 Students can also get IS if<sup>1</sup>

**1.** immediately before 1.9.90 they were in receipt of IS under the former definition of disabled student **or**

**2.** on or after that date they make a claim for IS and at any time during the previous 18 months they were in receipt of IS because they

**2.1** satisfied the former definition of disabled student **or**

**2.2** were severely handicapped and in relevant education.

But this does not apply where IS has ceased for a continuous period of 18 months or more.

*1 IS (Gen) Regs, Sch 1B, para 11*

## Hearing impaired students (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20158 F/T students can get IS if they receive<sup>1</sup>

**1.** a supplementary requirement to their student support under relevant legislation<sup>2</sup> **or**

**2.** an allowance or bursary which includes an amount for expenses incurred under relevant legislation<sup>3</sup> **or**

**3.** a payment under relevant legislation<sup>4</sup> **or**

**4.** a grant under relevant legislation<sup>5</sup>

because of their impaired hearing.

*1 IS (Gen) Regs, Sch 1B, para 12; 2 The Education (Mandatory Awards) Regs 99, Sch 2, para 9; Students Awards Regs, (Northern Ireland) 1999, Sch 6, para 9; 3 Students' Allowances (Scotland) Regs 99, reg 4(1)(d); Education Authority Bursaries (Scotland Regs 95, reg 4(1)(d); 4 Education Act 62, s 2; Education & Libraries (Northern Ireland) Order 1986, Art 50(3); 5 Education (Student Support) Regs 2000, reg 13; Education (Student Support) Regs, (Northern Ireland) 2000, reg 13*

## Visually impaired people (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20159 People who are visually impaired can get IS if they are<sup>1</sup>

**1.** registered as blind (not as partially-sighted) in a register compiled by the LA under relevant legislation<sup>2</sup>  
**or**

**2.** in Scotland, registered as blind (not as partially-sighted) in a register maintained by a regional or islands council.

People continue to be treated as so registered for a period of 28 weeks from the date registration ends.

*1 IS (Gen) Regs, Sch 1B, para 13; 2 National Assistance Act 48, s 29*

## **Pregnant women**

20160 A woman can get IS if<sup>1</sup>

**1.** she is incapable of work by reason of pregnancy **or**

**2.** she is or has been pregnant, but only for the period

**2.1** beginning eleven weeks before the EWC **and**

**2.2** ending 15 weeks after the date pregnancy ended.

*1 IS (Gen) Regs, Sch 1B, para 14*

## **Incapable of work by reason of pregnancy**

20161 A pregnant woman is incapable of work if her pregnancy has given rise to a medical condition which, on the evidence, has made her incapable of work. Pregnancy itself is not an illness. If a woman claims IS and says she is incapable of work because of her pregnancy the IS DM should ask for medical evidence, usually a medical certificate. This can be obtained from the DM(IB) if the claimant has claimed IB.

### **Example 1**

Lynn, who is carrying twins, miscarries one of them five months into the pregnancy. Her doctor issues a sick note advising her to refrain from work due to pregnancy, until her baby is born. The IS DM accepts that, on the evidence, the woman is incapable of work by reason of pregnancy and awards IS.

### **Example 2**

Julia claims IS saying that she cannot go to work as she is pregnant and suffering from morning sickness. The IS DM asks for a medical certificate. Julia says the doctor has not issued her with a sick note but has advised her to drink flat coke and eat dry toast. The IS DM decides that Julia is not incapable of work by reason of pregnancy.

## Expected week of confinement

20162 The EWC<sup>1</sup> is a period of seven days beginning with midnight between Saturday and Sunday.

1 SS CB Act 92, s 171(1)

### Example

The EWC is week beginning 20.5.07. Eleven weeks before that is week beginning 4.3.07. The baby is born on 24.5.07. The woman can claim IS between 4.3.07 and 6.9.07.

## Parental leave

20163 A person can get IS<sup>1</sup> when they are taking parental leave<sup>2</sup> if they are

1. taking care of a child who is a member of their household **and**
2. entitled to take time off for this purpose **and**
3. not entitled to payment of any kind from their employer **and**
4. entitled to

**4.1** WTC **or**

**4.2** CTC payable at a rate higher than the family element<sup>3</sup> which is subject to calculations in prescribed legislation<sup>4</sup> **or**

**4.3** HB **or**

**4.4** CTB

on the day before that leave begins.

*1 Maternity and Parental Leave etc. Regs, Part III; 2 IS (Gen) Regs, Sch 1B, para 14A; 3 para 14A(1)(c);*

*4 Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002*

## Paternity leave

20164 A person can get IS if they are entitled to and taking paternity leave<sup>1</sup> and are<sup>2</sup>

1. not entitled to ordinary statutory paternity pay<sup>3</sup> or a payment of any kind from their employer in respect of that leave for the period to which the IS claim relates **and/or**
2. entitled to

## **2.1 WTC or**

**2.2** CTC payable at a rate higher than the family element<sup>4</sup> which is subject to calculations in prescribed legislation<sup>5</sup> **or**

## **2.3 HB or**

## **2.4 CTB**

on the day before that leave begins.

*1 Employment Rights Act 1996, s 80A & 80B; 2 IS (Gen) Regs, Sch 1B, para 14B; 3 SS CB Act 92, Part 12ZA;*

*4 IS (Gen) Regs, Sch 1B, para 14B(2)(b); 5 Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002*

### **Example 1**

Joe is entitled to and takes paternity leave from 9 April. His employer pays him half his weekly wage in respect of the paternity leave period. Joe was in receipt of WTC up to and including 8 April. Joe is entitled to IS for the period of his paternity leave.

### **Example 2**

Tony is entitled to and takes paternity leave from 9 April and claims IS from that date. As a favour to his employer, he delivers some flipchart paper to one of his customers on 14 April. His employer pays him his travelling costs and travel time.

Tony can still get IS. The payment from his employer is not in respect of the paternity leave.

## **Parental bereavement leave**

20165 A person can get IS if they

- 1.** are entitled to and taking PBL **and**
- 2.** satisfy either or both of the conditions in DMG 20166<sup>1</sup>.

1 IS (Gen) Regs, Sch 1B para 14C(1)

20166 The conditions are that the person

- 1.** is not entitled to

**1.1 PBP<sup>1</sup> or**

**1.2** a payment of any kind from their employer in respect of that leave for the period for which the claim for IS relates<sup>2</sup>

**2.** is entitled to

**2.1 WTC or**

**2.2** CTC payable at a rate higher than the family element<sup>3</sup> which is subject to calculations in prescribed legislation<sup>4</sup> **or**

**2.3 HB or**

**2.4 CTB**

on the day before that leave begins<sup>5</sup>.

1 SS CB Act 92, Part 12ZD; 2 IS (Gen) Regs, Sch 1B, para 14C(2)(a) & (3); 3 CTC Regs 2002; 4 Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002; 5 IS (Gen) Regs, Sch 1B, para 14C(2) (b) & (3)

## **Certain people in relevant education**

20167 A qualifying young person in relevant education (see DMG 20558 et seq) can get IS if<sup>1</sup> they are

**1.** a parent **or**

**2.** a disabled person (revoked from 30.12.09 but see Appendix 5 or savings provisions) **or**

**3.** a person with limited leave to enter or remain **or**

**4.** an orphan and there is no one acting in place of the parents **or**

**5.** of necessity living away from the parents and anyone acting in their place because.

**5.1** they are estranged from them **or**

**5.2** they are in physical or moral danger **or**

**5.3** there is a serious risk to their physical or mental health **or**

**6.** no longer living in accommodation provided by a LA and are of necessity living away from the parents and any person acting in their place **or**

**7.** living away from their parents and anyone acting in their place **and**

**7.1** the parents (and anyone acting in their place) are unable to support them financially because they are

**7.1.a** chronically sick or mentally or physically disabled **or**

**7.1.b** detained in custody or imprisoned **or**

**7.1.c** prohibited from entering or re-entering GB

**8.** a refugee learning English<sup>2</sup>.

**Note:** A person in relevant education shall be treated as satisfying the criteria for being a qualifying young person where they are in one of the categories above<sup>3</sup>. IS can therefore be paid to the end of the CHB extension period.

See DMG 20630 et seq for further guidance.

*1 IS (Gen) Regs, Sch 1B, para 15 & reg 13(2)(a)-(e); 2 reg 13(2)(h); 3 reg 13(1)-(2A)*

20168 DMG 20556 gives guidance on what relevant education is and when people who have finished relevant education can be treated as still receiving it.

## **Second chance learning**

20169 This is for young people who remain in education beyond the age of 20/21<sup>1</sup>. To satisfy this category

**1.** the person has enrolled on or been accepted for or is undertaking a course of full-time non-advanced education<sup>2</sup> **and**

**2.** the person<sup>3</sup>

**2.1** is under age 21 **or**

**2.2** is 21 and became that age while they were undertaking a course of full-time non-advanced education **and**

**3.** the person<sup>4</sup>

**3.1** has no parent or any person acting in place of a parent **or**

**3.2** has to live away from their parent and any person acting in place of a parent because

**3.2.a** they are estranged from their parents and any person acting in place of a parent **or**

**3.2.b** they are in physical or moral danger **or**

**3.2.c** there is a serious risk to their physical or mental health **or**

**3.3** is living away from their parents and any person acting in place of their parents where their parents or any person acting in place of their parents are unable financially to support them and are

**3.3.a** chronically sick or mentally or physically disabled **or**

**3.3.b** detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court **or**

**3.3.c** prohibited from entering or re-entering GB.

*1 IS (Gen) Regs, Sch 1B, para 15A; 2 Sch 1B, para 15A(2); 3 Sch 1B, para 15A(3); 4 Sch 1B, para 15A(4)*

20170 For the purposes of second chance learning, the meaning of “course of full-time non-advanced education”<sup>1</sup> means a course of full-time education which is not advanced<sup>2</sup> and which is not provided as a result of the persons employment or any office held and which is provided

**1.** at a school or college **or**

**2.** elsewhere but is approved by the Secretary of State as being such a course.

*1 IS (Gen) Regs, Sch 1B, para 15A(6); 2 reg 61(1)*

20171 - 20173

## **Refugee learning English**

20174 People can receive IS for up to nine months if<sup>1</sup>

**1.** they are a refugee (see DMG 070800) **and**

**2.** they are attending a course for more than 15 hours a week in order to

**2.1** learn English **and**

**2.2** subsequently find work **and**

**3.** they had been in GB for not more than twelve months on the day the course started.

*1 IS (Gen) Regs, Sch 1B, para 18*



## **People who claim asylum on or after 3.4.00**

20175 People who

- 1.** claimed asylum on or after 3.4.00 **and**
- 2.** were granted refugee status on or before 14.6.07

could receive IS for a period when they were waiting for their asylum claim to be determined<sup>1</sup>. From 14.6.07 only those people whose refugee status has been determined can receive IS<sup>2</sup>.

*1 IS (Gen) Regs, reg 21ZB; Sch 1B, para 18A; 2 HB v SSWP [2015] EWCA Civ 141; [2015] AACR 17*

## **People required to attend court**

20176 People can get IS whilst they are required to attend court or tribunal as a<sup>1</sup>

- 1.** justice of the peace **or**
- 2.** party to any proceedings **or**
- 3.** witness **or**
- 4.** juror.

*1 IS (Gen) Regs, Sch 1B, para 19*

## **People affected by a trade dispute**

20177 People can get IS if they are<sup>1</sup>

- 1.** affected by a TD **or**
- 2.** returning to work for the first 15 days following a TD.

See DMG Chapter 32 for further guidance on TDs.

*1 IS (Gen) Regs, Sch 1B, para 20*

## **Certain persons subject to immigration control**

20178 Certain PSICs can get IS<sup>1</sup>. (See DMG 24509).

*1 IS (Gen) Regs, Sch 1B, para 21*

## People in custody

20179 People in custody can get IS, but only to help with housing costs, where they are in custody pending trial or sentencing<sup>1</sup>. This does not apply to prisoners serving a custodial sentence.

*1 IS (Gen) Regs, Sch 1B, para 22*

20180 People on a

- 1.** home detention curfew **or**
- 2.** court-ordered curfew **or**
- 3.** restriction of liberty order **or**
- 4.** mandatory probation service programme

are not detained in custody.

## Member of a couple looking after children whilst partner temporarily abroad

20181 People can get IS where they are<sup>1</sup>

- 1.** a member of a couple and the other member is temporarily absent from the UK **and**
- 2.** treated as responsible for a child who is a member of the household.

*1 IS Gen Regs, Sch 1B, para 23*

## People appealing against a decision because of capability for work

20182 People can get IS if

- 1.** they are found to be not incapable of work
  - 1.1** under the OOT and their GP continues to provide evidence of incapacity for work<sup>1</sup> **or**
  - 1.2** under the PCA<sup>2</sup> **and**
- 2.** they have made and are pursuing an appeal against the decision that they are not incapable of work.

IS can be paid until the appeal is determined, which includes appeals to the UT where the claimant has been unsuccessful at the tribunal. It does not matter if the claim to IS was made after the incapacity determination. See DMG Chapter 24 for guidance on the amount payable.

*1 IS Gen Regs, Sch 1B, para 24; 2 Sch 1B, para 25*

20183

20184 When dealing with such cases DMs should consider the following

- 1.** a person who falls within a prescribed category for any day in a benefit week shall fall within that category for the whole of that week<sup>1</sup>
- 2.** backdating of a new IS claim can be considered where the claimant claims IS as soon as is practical after being notified of the decision that their entitlement to IB has ceased<sup>2</sup>
- 3.** where an existing IS award can be revised<sup>3</sup> the date of the revision shall be the date that the IB DM terminated the award of IB.

*1 IS (Gen) Regs, reg 4ZA(4); 2 SS (C&P) Regs, reg 19(6) & (7)(d); 3 SS CS (D&A) Regs, reg 3(7B) & (7C)*

20185

20186 IS cannot be paid under DMG 20182 where people are treated as capable of work, for example where they have failed to return the incapacity questionnaire. Where a claimant in these circumstances appeals against an FtT decision, IS cannot be paid until the appeal is determined by the UT.

20187 For the purposes of DMG 20182 the continued medical evidence of incapacity should be dated later than the date of the decision based upon the incapacity determination which the claimant has appealed against.

20188 See DMG Chapter 3 for guidance on the revision of IS decisions when incapacity decisions are appealed.

### **Young person in training**

20189 A person, who is not a qualifying young person or a child<sup>1</sup> can get IS where they are attending a course of youth training provided by, or through<sup>2</sup>

- 1.** in England, Young People's Learning Agency for England, the Chief Executive of Skills Funding **or**
- 2.** in Wales, a National Council for education and training **or**
- 3.** in Scotland, a local enterprise company.

People under 18 are eligible for WBLfYP and 'Skillseekers' courses. 18 to 24 year olds may also be eligible. Training courses may be known by other names.

*1 SS CB Act 92, s 142; 2 IS (Gen) Regs, Sch 1B, para 28*

20190 - 20199



# **The remunerative work exclusion 20200 - 20555**

## **Subpages**

- Renumerative work introduction 20200 - 20209
- Meaning of remunerative work 20210 - 20229
- Work done for payment or in expectation of payment 20230 - 20249
- Establishing hours of work 20250 - 20389
- People treated as in remunerative work 20390 - 20463
- People treated as not in remunerative work 20464 - 20555

# Remunerative work introduction 20200 - 20209

[JSA\(Cont\) 20201](#)

[JSA\(IB\) and IS 20202](#)

[Does the claimant have employment 20203 - 20209](#)

20200 [[See Memo DMG 13/20](#)] Being in remunerative work affects entitlement to JSA and IS<sup>1</sup>. In all cases, before the DM applies the law to establish how many hours a person is working, they must decide whether or not the work is continuing.

1 JS Act 95, s 1(2)(e); SS CB Act 92, s 124(1)(c)

## JSA(Cont)

20201 JSA(Cont) is a personal benefit and is not payable for a partner<sup>1</sup>. The remunerative work exclusion therefore applies only to the claimant.

1 JS Act 95, s 4(1)

## JSA(IB) and IS

20202 The remunerative work exclusion applies where the person engaged in remunerative work is the

1. claimant **or**
2. claimant's partner, if the claimant is a member of a couple.

## Does the claimant have employment

20203 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment has ended if someone has been engaged in remunerative work (see DMG 26523 et seq).

20204 DMs should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current **or**
2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

**2.1** there is an express agreement (written or verbal) **or**

**2.2** it is reasonable to assume that a long standing practice of re-employment will continue<sup>1</sup>.

1 R(JSA) 5/03

20205 Off-shore workers are an example of those workers who may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

### **Example**

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. Dennis claims JSA for a period when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

20206 It is a question of fact for the DM whether the work is continuing or not. DMs will need to consider such things as

- the type and nature of the work
- the frequency and length of the contracts/periods of work
- the process of securing the work
- the employment situation/opportunities in the area
- whether there is a continuing relationship between the claimant and the employer
- whether there is evidence of the relationship between the claimant and the employer having ended, e.g. the production of a P45.

This list is not prescriptive or exhaustive and other considerations may be equally valid in the circumstances of each case.

20207 DMs should also look at whether there is a mutual expectation between the person and the employer that they will resume after a period of no work. This mutual expectation should be more than just a hope of re-employment.

### **Example**

Carole has worked as a housekeeper at a holiday village in an east coast seaside resort for the past three

summer seasons (April to October). The village closes down between November and March so no work is available. There are very limited employment opportunities in the area in the winter months. Carole makes a claim for JSA in November. The DM establishes that Carole has to put in her application for the housekeeper post every February along with other candidates. While she is hopeful of securing further work for the following season she has no guarantee from the employer that she will be successful. The DM decides that as there is no mutual expectation of the work resuming then Carole does not have employment in the “off” season and therefore she is not in remunerative work.

20208 - 20209



# Meaning of remunerative work 20210 - 20229

[JSA\(Cont\) 20210](#)

[JSA\(IB\) 20211](#)

[IS 20212](#)

[Treated as in or not in remunerative work 20213 - 20229](#)

[Remunerative work exclusion – claimant](#)

[Remunerative work exclusion - partner](#)

## JSA(Cont)

20210 Remunerative work<sup>1</sup> is work for which payment is made, or which is done in expectation of payment and in which the claimant is engaged for not less than

1. 16 hours a week **or**
2. 16 hours a week on average where the hours of work fluctuate.

1 JSA Regs, reg 51(1)

## JSA(IB)

20211 Remunerative work<sup>1</sup> is work for which payment is made, or which is done in expectation of payment and

1. in which the claimant is engaged for not less than
  - 1.1 16 hours a week **or**
  - 1.2 16 hours a week on average where the hours of work fluctuate **or**
2. in which any partner of the claimant is engaged for not less than
  - 2.1 24 hours a week **or**
  - 2.2 24 hours a week on average where the hours of work fluctuate **or**
3. in which any non-dependant, or child or young person who is treated as receiving relevant education, is engaged for not less than

**3.1** 16 hours a week **or**

**3.2** 16 hours a week on average where the hours of work fluctuate

**4.** In the case of a joint claim, if a member starts remunerative work for 16 to 24 hours, they will be treated as a normal claimant and partner JSA claim, with the working member being the partner.

1 reg 51(1)

## IS

20212 Remunerative work<sup>1</sup> is work for which payment is made, or which is done in expectation of payment

**1.** in which a person is engaged for not less than

**1.1** 16 hours a week **or**

**1.2** 16 hours a week on average where the hours of work fluctuate **or**

**2.** in which any partner of the claimant is engaged for not less than

**2.1** 24 hours a week **or**

**2.2.** 24 hours a week on average where the hours of work fluctuate.

1 IS (Gen) Regs, reg 5(1) & (1A)

## Treated as in or not in remunerative work

20213 A person engaged in remunerative work is not necessarily excluded from JSA or IS. In certain circumstances a person who is **actually** in remunerative work may be **treated as not** being in remunerative work (see DMG 20464)<sup>1</sup>.

1 JSA Regs, reg 53; IS (Gen) Regs, reg 6

20214 Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work<sup>1</sup> (see DMG 20390).

1 JSA Regs, reg 52; IS (Gen) Regs, reg 5(3)-(5)

20215 The flow charts on the following pages show the link between a person being

**1.** engaged in remunerative work **and**

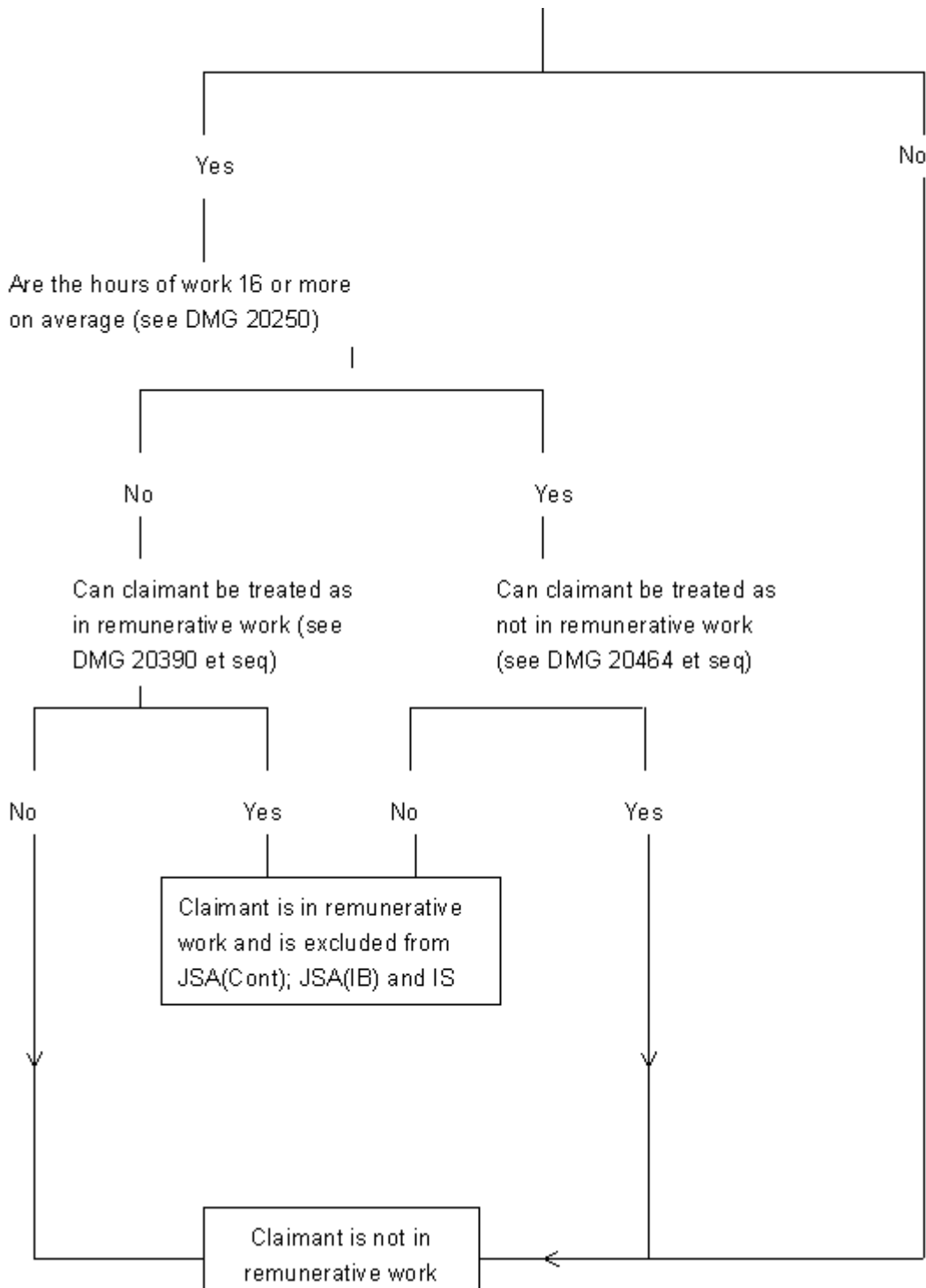
**2.** treated or not treated as being engaged in remunerative work **and**

3. excluded or not excluded from JSA(Cont), JSA(IB) or IS.

20216 - 20229

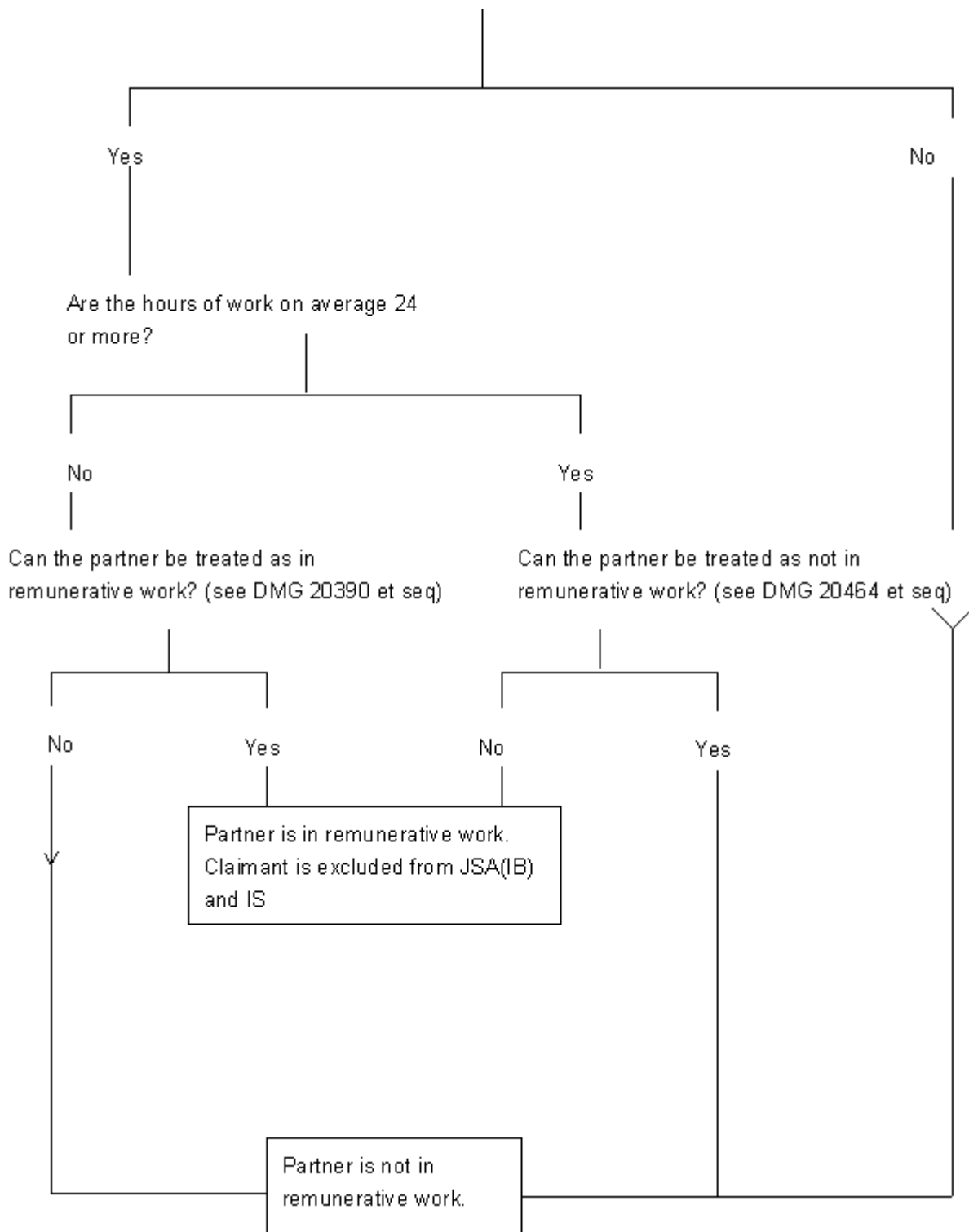
### Remunerative work exclusion – claimant

Is work done for payment or in expectation of payment?



### Remunerative work exclusion - partner

Is work done for payment or in expectation of payment? (see DMG 20230)



# Work done for payment or in expectation of payment 20230 - 20249

[Work for no monetary reward](#) 20231

[Payment in kind](#) 20232

[Expectation of payment](#) 20233

[Self-employed earners](#) 20234 - 20235

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[Company directors](#) 20239 - 20249

20230 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it **or**
2. it is done in expectation of payment<sup>1</sup>.

Remunerative does not mean profitable (see DMG 20234).

1 JSA Regs, reg 51(1); IS (Gen) Regs, reg 5(1); R(IS) 1/93

## Work for no monetary reward

20231 A person cannot be in remunerative work if the work done is neither paid nor done in expectation of payment. If the only “payment” is notional earnings<sup>1</sup> the work cannot be treated as remunerative.

1 JSA Regs, reg 105(13); IS (Gen) Regs, reg 42(6)

## Payment in kind

20232 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

### Example 1

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work but the DM should consider whether

- 1.** he is available for employment **and**
- 2.** the free meals and accommodation are notional earnings.

### **Example 2**

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

## **Expectation of payment**

20233 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date<sup>1</sup>. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

## **Self-employed earners**

20234 Where a person who has been a self-employed earner claims JSA, there are four questions to consider<sup>1</sup> to decide if the claimant is engaged as a self-employed earner.

- 1.** is the person still trading
- 2.** if the answer to **1.** is yes, is the person
  - 2.1** carrying out activities connected to the self-employment in the weeks to which the claim is related **or**
  - 2.2** to be treated as engaged in work<sup>2</sup> in a period of non-activity which is a normal incident of self-employment, whether as a part of a cycle of work or otherwise
- 3.** if the person is engaged in work, is it remunerative work, i.e. is the work for 16 hours or more per week
- 4.** if the person is not in remunerative work, are they in receipt of earnings to be taken into account and for what period they are to be taken into account.

1 R(JSA) 1/09; 2 IS(Gen) Regs, reg 5; JSA Regs, reg 52

20235 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment<sup>2</sup> derived from profit but it must be a realistic expectation of payment for work being done at the time. The DM need not make detailed forecasts of profitability.

Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why<sup>1</sup>.

1 CA, CAO v. Ellis (R(IS) 22/95)

## **Sale of goods**

20236 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

**Note:** Also that payment may be derived from takings.

## **Business start up**

20237 An allowance payable under certain schemes to assist people to become S/E is not payment for work<sup>1</sup>.

**Note:** That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA, CAO v. Smith; R(IS) 21/95

20238 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

## **Example**

Annie and her civil partner Rosie run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

## **Company directors**

20239 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director<sup>1</sup>. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner. In such cases DMG 20234 applies.

1 R(IS) 5/95

20240 - 20249





# Establishing hours of work 20250 - 20389

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[JSA - carers and specified occupations](#) 20252 - 20256

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## Introduction

20250 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count, although the question of notional earnings<sup>1</sup> would arise. See DMG 20278 for guidance on teachers.

<sup>1</sup> JSA Regs, reg 105(13); IS (Gen) Regs, reg 42(6)

20251 Hours worked as a carer or in certain specified occupations do not count for remunerative work purposes (see DMG 20464 et seq).

## **JSA - carers and specified occupations**

20252 [See [DMG memo 12/23](#)] For JSA purposes, DMs should take no account of the hours worked

**1.** by anyone falling within

**1.1** DMG 20464 **2.** to **7.** **or**

**1.2** DMG 20465 **1.** to **2.** and **4.**<sup>1</sup> **or**

**2.** in caring for someone<sup>2</sup> who

**2.1** is in receipt of “AA” or the care component of DLA or CDP at the highest or middle rate **or**

**2.2** has claimed “AA” or DLA or CDP **or**

**2.3** has claimed and has an award of

**2.3.a** “AA” **or**

**2.3.b** the care component of DLA or CDP at the highest or middle rate<sup>3</sup> for the period between the date of claim and date of award **or**

**3.** in caring for someone if the carer is in receipt of CA<sup>4</sup> **or**

**4.** in caring for someone who

**4.1** is in receipt of the daily living component of PIP or ADP at the standard or enhanced rate<sup>5</sup> **or**

**4.2** has claimed PIP or ADP<sup>6</sup> **or**

**4.3** has claimed and has an award of the daily living component of PIP or ADP at the standard or enhanced rate for the period between the date of claim and the date of award<sup>7</sup> **or**

**5.** in caring for someone who

**5.1** is in receipt of AFIP **or**

**5.2** has claimed and has an award of AFIP for the period between the date of claim and the date of award

*1 JSA Regs, reg 51(3)(b); 2 reg 51(3)(c); 3 SS CB Act 92, s 72(4); DACYP Regs, reg 11(5); 4 SS CB Act 92, s 70; 5 JSA Regs, reg 51(3)(c)(i);*

*6 reg 53(3)(c)(ii); 7 reg 53(3)(c)(v) & (va): DAWAP (Scot) Regs, reg 5*

20253 DMG 20252 **2.2** applies only until the earlier of<sup>1</sup>

**1.** the date the claim for “AA”, DLA, CDP, PIP, ADP or AFIP is decided **or**

**2.** 26 weeks from the date of claim for “AA”, DLA, CDP, PIP, ADP or AFIP.

*1 JSA Regs, reg 51(3)(c)(ii)*

20254 The purpose of DMG 20253 is to help carers where there is a delay in deciding a claim to “AA”, DLA, PIP or AFIP. The provision does not apply if a

**1.** claim for “AA”, DLA, PIP or AFIP is unsuccessful **and**

**2.** further claim is made solely so that the carer can continue to receive JSA.

20255 The guidance at DMG 20252 **2.** and DMG 20252 **3.** does not apply to carers who are employed earners<sup>1</sup>, for example nurses and care workers in care homes. The hours of such employees will count towards the remunerative work rule in the normal way.

*1 JSA Regs, reg 51(3)(c)*

20256 Hours worked in any other occupation by a person who satisfies DMG 20464 should be taken into account in the normal way.

## **IS - carers and specified occupations**

20257 For IS purposes, DM’s should take no account of the hours worked by anyone falling within DMG 20464 **1.** to **8.**<sup>1</sup>. Hours worked in any other occupation by a person who satisfies DMG 20464 **1.** to **8.** should be taken into account in the normal way.

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

### **Example**

Margery claims IS. She minds children in her home from Monday to Friday, 8am to 1pm. She also works in the evenings in a supermarket from 7pm to 10pm, 5 nights a week. The hours she spends childminding do not count for remunerative work purposes. Her total hours of work are 15 a week in the supermarket. She is not in remunerative work.

## **Counting the hours**

### **Flexible working schemes**

20258 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

## Overtime

20259 Overtime for which payment is made or expected counts towards the weekly total.

## Breaks

20260 Any time allowed by the employer for meals or refreshments counts towards the total hours worked provided earnings are paid or are expected to be paid for this time<sup>1</sup>.

*1 JSA Regs, reg 51(3)(a); IS (Gen) Regs, reg 5(7)*

## Night Duty

20261 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties **or**
2. the time on night duty is spent sleeping.

## Example

Edward makes a claim for JSA(IB). His wife, Michelle, works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than for her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The DM decides that Michelle is in remunerative work.

## Evidence of hours

20262 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

## Company directors

20263 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at DMG 20265 to establish any additional hours worked.

## Musicians

20264 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

## Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

## **Example 2**

A musician is engaged to perform music. The performances last for twelve hours a week. She practices the performances for ten hours a week. She is engaged in remunerative work.

## **Self-employed**

20265 Include all the hours necessary to run the business, for example, time spent in

1. trips to wholesalers and retailers
2. visits to potential customers
3. advertising or canvassing
4. cleaning the business premises
5. cleaning and maintaining items used in the business, for example a taxi or driving school car
6. providing estimates
7. book-keeping
8. research work, for example where the person is a writer.

20266 Where a S/E person is running a business which is

1. building up **or**
2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

20267 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

## **Example**

Peter, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of ten customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the DM concluded that he worked six hours a day, five days a

week, a total of 30 hours a week.

20268 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.

20269 - 20277

## Teachers

20278 The conditions of employment of most LA schoolteachers, except head teachers, are laid down in an Order<sup>1</sup> or Agreement<sup>2</sup>. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the DM is unsure whether a teacher is obliged to do a particular activity, consult the Order or Agreement.

*1 Education (School Teachers Pay and Conditions of Service) Order; 2 Scottish Joint Negotiating Committee for Teaching Staff in School Education Conditions of Service Agreement*

20279 Before either the Order or Agreement came into force, teachers were generally required by their contracts to carry out the duties now laid down<sup>1</sup>. Members of the teaching profession not covered by the Order or Agreement (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides that

1. they are not required to do such work **or**
2. any such work is included in the hours of work laid down in the contract.

*1 Sim v. Rotherham Metropolitan Borough Council [1986] 3WLR 851; R(U) 5/88*

20280 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person's own evidence if it seems reasonable. If a person states that the time spent on non-teaching duties is anything up to one third of the time spent teaching, accept this without question.

20281 It may be reasonable to accept a larger proportion than a third depending on the

1. teacher's experience
2. subjects being taught
3. method of teaching
4. amount of homework to be marked
5. number of pupils.

In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

20282 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

20283 - 20292

## Calculating average hours

20293 If the claimant or partner is engaged in work where the hours fluctuate, calculate the average weekly hours<sup>1</sup>.

*1 JSA Regs, reg 51(2); IS (Gen) Regs, reg 5(2)*

## Identifying a recognizable cycle

20294 See if there is any pattern of work over a period of time. This is known as a recognizable cycle<sup>1</sup>. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

### Example 1

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

### **Example 2**

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognizable cycle of 2 months.

### **Example 3**

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognizable cycle.

**Note:** A cycle may include weeks in which no work is done<sup>2</sup>.

*1 JSA Regs, reg 51(2)(b)(i); IS (Gen) Regs, reg 5(2)(b)(i); 2 JSA Regs, reg 51(2)(b)(i);*

*IS (Gen) Regs, reg 5(2)(b)(i)*

### **Permanent or indefinite contract**

20295 A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

### **Example**

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. She makes a claim to JSA during the Easter holidays. The DM decides that Julia's contract establishes a cycle from its outset.



## **Fixed term contracts and casual workers**

20296 A cycle may be established after one or two years where a claimant is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)<sup>1</sup>. DMs should decide each case on its facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle e.g. in the case of relief cover or occasional work. DMs should

consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

*1 R(JSA) 5/02*

### **Example**

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He makes a claim to JSA for the Christmas holiday stating that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is not entitled to JSA because on average he works 16 hours or more a week.

## **Supply teachers**

20297 Supply teachers are likely to be employed on intermittent contracts, each of varying lengths and separated by periods of non-employment. Every case should be considered on its own facts with a view to ascertaining whether or not a cycle exists. Therefore although it is possible that a supply teacher has a recognizable cycle of work, in practice, work as a supply teacher is unlikely to give rise to a cycle<sup>1</sup>.

*1 R(JSA) 5/03*

## **Extra work**

20298 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle<sup>1</sup>.

*1 R(JSA) 5/02*

### **Example**

Celeste is employed as a shop assistant by a students union. The terms of her employment contract are "Monday to Friday, 8.15 am to 1.15 pm term time only". Celeste agrees to do extra work stocktaking during the first week of the summer holidays. She makes a claim to JSA the day after she finishes the extra work. The DM decides that Celeste's contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

## Probation

20299 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

### Example

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a 6 month probationary period, specifies that he is expected to work during term times and not during school holidays. Harry makes a claim to JSA during the school summer holidays. The DM decides that he is in a recognizable cycle from the outset of the contract and, on average, works 16 hours or more a week. He is not entitled to JSA because he is in remunerative work.

20300 - 20305

## Recognizable cycle established

20306 Where there is a recognizable cycle calculate average hours over one complete cycle<sup>1</sup>. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences.

*1 JSA Regs, reg 51(2)(b)(i); IS (Gen) Regs, reg 5(2)(b)(i); R(IS) 8/95*

## Periods when a person does not work

20307 Periods when a person does not work can fall into the following categories:

1. periods of absence because of sickness, maternity leave, paternity leave, adoption leave or shared parental leave
2. periods of unauthorized absence “without good cause”
3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
4. periods during which someone can be properly regarded as on holiday.

**Note:** For periods during which someone is not working because they are between jobs they are not in remunerative work, see DMG 20203 - 20206.

## Sickness, maternity leave, paternity leave, additional paternity leave, adoption leave, shared parental leave, parental bereavement leave and periods of unauthorised absence

20308 When someone is absent from work due to sickness, paternity leave, additional paternity leave<sup>1</sup>, adoption leave<sup>2</sup>, shared parental leave or maternity leave<sup>3</sup> or parental bereavement leave<sup>4</sup> the DM

should decide that they are not in remunerative work during such absences<sup>5</sup>. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays<sup>6</sup> (see DMG 20315).

*1 Employment Rights Act 1996, s 80A, 80B, 80AA & 80BB; 2 s 75A & 75B; 3 s 71-73; 4 s80EA; 5 JSA Regs, reg 52(1); IS (Gen) Regs, reg 5(3A); 6 JSA Regs, reg 52(1); IS (Gen) Regs, reg 5(3)*

## **Holidays or periods of no work**

20309 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid<sup>1</sup>. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

- 1.** spread over a year in equal instalments **and**
- 2.** enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

*1 R(JSA) 5/03*

20310 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99<sup>1</sup>.

*1 Working Time Regulations 1998 No. 1833, reg 13*

## **Calculating the number of hours for which a person is engaged in work**

20311 If the DM has decided that the claimant or partner is still in employment (see DMG 20203 - 20206) (and they are not absent from work due to sickness, maternity, adoption, paternity leave or shared parental leave) they will need to calculate the number of hours for which the claimant or partner is engaged in work.

**Note:** If the claimant or partner is in a recognizable cycle but found not to be in remunerative work, the normal income rules apply. DMs should note that there cannot be a disregard for final earnings because the work is continuing.

20312 If the claimant or partner works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

20313 If the claimant's or partner's hours of work fluctuate, the DM should take an average

- 1.** as per DMG 20322 et seq if there is no cycle of work **or**

2. as per DMG 20315 et seq if there is a cycle of work.

20314

## Calculating the average hours

20315 Legislation<sup>1</sup> requires that in cycle cases where the hours of work fluctuate, the average should be calculated by taking into account periods in which the person does not work while disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity, adoption, paternity

leave or shared parental leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle<sup>2</sup>. Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity, adoption, paternity leave and shared parental leave which are “other absences to be disregarded”.

**Note:** DMs should no longer follow R(IS) 7/96.

*1 JSA Regs, reg 51(2)(b)(i); IS (Gen) Regs, reg 5(2)(b)(i); 2 R(JSA) 5/03*

## JSA only - yearly cycle with school holidays or similar vacations

20316 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, the DM should divide the total number of hours worked during the year by 52 weeks less any weeks of “other absence”<sup>1</sup> (see DMG 20315).

*1 R(JSA) 5/03*

### Example 1

Jeff, a qualified teacher, has worked as a school tutor for children with special needs since October 2005. He works on a sessional basis, completing a monthly return of the number of hours he has taught for which he is paid accordingly. He does not get paid for holidays, so claims JSA in October 2009. For the academic year 2008/2009 Jeff worked 520 hours.

**Note:** an academic year includes the summer holidays. By the time he claims JSA in October 2009 he has completed at least two cycles of academic work, so the DM decides that his employment has not ended. He has no paid holidays, so the total hours worked (520) are divided by the weeks in the cycle (52). This gives 10 hours a week, meaning that Jeff is not in remunerative work.

### Example 2

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2008 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday”. The academic terms cover 38 weeks but Megan receives her pay over the calendar year in twelve equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2007/2008 academic year she has four other such contracts

1. 7.5 hours a week for 12 weeks in the Autumn term
2. 8.5 hours a week for 10 weeks in the Spring term
3. 7.5 hours a week for 4 weeks in the Summer term
4. 5 hours a week for 6 weeks in the Summer term.

In June 2009 Megan claims JSA for the summer vacation.

The hours of work from all the contracts have to be added together, but should they be viewed as fluctuations in the cycle of work established by the main contract and averaged over the whole year, or only added in during the periods covered by the additional contracts?

The additional contracts are with the same employer as the main contract, involve the same type of work as the main contract and the work under them is done during the periods of work in the cycle established under the main contract. So the hours from them should be added to the hours from the main contract and taken into account over the whole cycle.

She is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The “holidays” should therefore be taken into account as periods of no work and included in the averaging.

Total number of hours is 824. Divided by 52 equals 15.8 (i.e. below 16)

Megan is not in remunerative work.

### **Example 3**

Emily is employed in a student’s union shop for 25 hours per week term-time only. The academic year covers 31 weeks. She has an annual cycle of work from September to September. Contractually she was entitled to 30 days paid holiday. This consisted of 18 days holiday plus 12 public holidays. Four of the

public holidays fell in term-time and Emily did not have to work for those days.

The total number of hours worked during the cycle was 755 (31 weeks x 25 hours - 20 hours of public holidays that fell in term-time).

The total number of paid holidays, 30 days or 6 weeks, should be subtracted from the number of weeks in the cycle, which gives 46 weeks. The number of hours

worked, 755, is divided by 46 giving an average of hours worked of 16.41. Emily is in remunerative work<sup>1</sup>.

*1 R(JSA) 3/04*

## **IS only - yearly cycle with school holidays or similar vacations**

20317 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, whether or not payment is made for any part of the holidays, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, exclude from the calculation of average hours any periods

- 1.** of school holidays or similar vacations when that person does no work **and**
- 2.** not part of school holidays or similar vacations, when the person is not required to work<sup>1</sup>.

*1 IS (Gen) Regs, reg 5(3B), R(IS) 15/01*

### **Example**

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2000 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday”. The academic terms cover 38 weeks, but Megan receives her pay over the calendar year in 12 equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 1999/2000 academic year she has four other such contracts:

- 1.** 7.5 hours a week for 12 weeks in the Autumn term
- 2.** 8.5 hours a week for 10 weeks in the Spring term
- 3.** 7.5 hours a week for 4 weeks in the Summer term

4. 5 hours a week for 6 weeks in the Summer term.

In June 2001 Megan claims IS for the summer vacation.

She is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The periods of school holiday are excluded from the calculation of average hours.

Total number of hours is 824. Divided by 38 equals 21.7 (i.e over 16). Megan is in remunerative work.

### **Ancillary school workers**

20318 Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at DMG 20316 or DMG 20317 as appropriate. Examples of ancillary school workers include

1. school meals services employees
2. domestic staff
3. clerical staff (such as secretaries and clerks)
4. laboratory workers
5. nursing assistants
6. school bus drivers.

20319

### **No recognizable cycle established**

#### **Estimating future hours**

20320 Where

1. a person has just started work or is about to start work **or**
2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work **or**
3. because of absences from work a recognizable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week<sup>1</sup>.

<sup>1</sup> JSA Regs, reg 51(2)(a); IS (Gen) Regs, reg 5(2)(a)

20321 Average the estimated hours over a period long enough to cover the expected pattern of work<sup>1</sup>. Consider the case where there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

### **Averaging past hours**

20322 Where the person has been in work before the date of claim, decision or application for supersession and a recognizable cycle has not been established calculate average weekly hours over

- 1.** the five weeks immediately before the date of claim or the date on which a superseding decision is made<sup>1</sup> **or**
- 2.** a longer or shorter period immediately before the date of claim, the date of decision or the date of application for supersession if the five week period in **1.** does not give a fair average.

**Note:** “Immediately before” in this context means the end of the last complete week before the date of claim, date of decision or date of application for supersession.

*1 JSA Regs, reg 51(2)(b)(ii); IS (Gen) Regs, reg 5(2)(b)(ii)*

20323 Include in the calculation at DMG 20322 any periods of non-working within the normal pattern of employment (rest periods)<sup>1</sup>. Do not include periods of non-working after the employment has ended.

1 R(IS) 12/95

### **Example**

Elizabeth works for six months from January to June 2006 for an average of more than 16 hours a week. The employment ended in June 2006 and she did no more work. This comes to light in 2007 and the DM supersedes on 1.3.07. When calculating the average hours the DM must use a period immediately before 1.3.07. The DM averages over the period January 2006 to 28.2.07 to get the most accurate result. The period of non-working after employment ended is not included in the calculation. Elizabeth was engaged in remunerative work for the period January to June 2006 because average hours of work were more than 16 a week.

20324 Examples of circumstances in which it may not be appropriate to use the five week period in DMG 20322 **1.** are where the

- 1.** five weeks contain a period of absence which distorts the average **or**
- 2.** five weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**



**3.** person is paid at intervals of longer than a week.

In either of the circumstances in **1.** or **2.** a period of less than five weeks as in DMG 20322 **2.** might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in DMG 20320.

20325 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in DMG 20322 **2.**, the alternative period must still be a period immediately before the date of claim or the date the superseding decision is made. It should be either

**1.** more than the five week period in DMG 20322 **1.**, in which case it will include those five weeks **or**

**2.** less than the five week period in DMG 20322 **1.**, in which case it will be a part of those five weeks immediately before the date of claim or the date on which a superseding decision is made.

### **Example**

Michael works for six months from January to June 2006 for an average of more than 16 hours a week. This comes to light in 2007 and the DM supersedes on 1.3.07. From June 2006 Michael's working pattern changed. He then worked on average for six hours a week up to 1.3.07. When recalculating average hours the DM uses a period immediately before 1.3.07. The DM averages over the period January 2006 to 28.2.07 to get the most accurate result. Michael is not engaged in remunerative work at any time during that period because average hours of work are less than 16 a week.

20326 The approaches outlined in DMG 20320 and DMG 20322 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

### **Short-time workers**

20327 Employers experiencing a fall in business may put their employees on short-time working. This can be

**1.** a reduction in hours worked each day **or**

**2.** no work on certain days of the week **or**

**3.** work restricted to certain weeks, for example week on, week off.

Follow the guidance in DMG 20320 - 20321 and estimate future hours<sup>1</sup> at the start of short-time working until average hours over a past period can be calculated<sup>2</sup>. Periods of no work should be included in the average.

*1 JSA Regs, reg 51(2)(a); IS (Gen) Regs, reg 5(2)(a); R(IS) 8/95; 2 JSA Regs, reg 51(2)(b)(i) & (ii); IS (Gen) Regs, reg 5(2)(b)(i) & (ii)*

## Changes to the normal hours

20338 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

**1.** represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

**2.** represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

**Note:** In this way a claimant normally entitled to JSA or IS could be excluded under the remunerative work rules. Likewise, a person normally excluded could become entitled if temporary circumstances such as illness, adverse weather conditions or breakdown of equipment caused a reduction in working hours.

**3.** means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller's hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

**3.1** the cycle of work if there is now a recognizable cycle<sup>1</sup> **or**

**3.2** the five week period or other more suitable period immediately before the date of application for supersession<sup>2</sup>.

*1 JSA Regs, reg 51(2)(b)(i); IS (Gen) Regs, reg 5(2)(b)(i); 2 JSA Regs, reg 51(2)(b)(ii); IS (Gen) Regs, reg 5(2)(b)(ii)*

## Seasonal workers

20339 The normal remunerative work rules apply to S/E seasonal workers.

## Averaging the hours

20340 Calculate average hours

**1.** if there is a recognizable cycle - over one complete cycle of work (this will usually be one year<sup>1</sup>). Include periods in which the person does no work, but exclude other absences such as holidays or sickness<sup>2</sup> **or**

**2.** if there is no recognizable cycle - over the five week period, or other more suitable period, immediately

before the date of claim, or the date a supersession decision is made<sup>3</sup>.

Include in the calculation time spent on all activities connected with the business.

*1 R(JSA) 1/03; 2 JSA Regs, reg 51(2)(b)(i); IS (Gen) Regs, reg 5(2)(b)(i);  
3 JSA Regs, reg 51(2)(b)(ii); IS (Gen) Regs, reg 5(2)(b)(ii)*

### **Example**

For the last 5 years Ethan has been a S/E seasonal worker as a travelling showman operating children's rides. His on-season runs for 7 months June to December and for this period he worked 60 hours per week. He did no work in the off-season from January to May. He stated that he retained all of the equipment necessary for his work to recommence and that he would resume work the following June. The DM decides that the claimant had a cycle of one year and that the hours should be averaged over the whole cycle. The average hours worked were over 30 and the DM decided that the claimant was in remunerative work.

### **Agency and casual workers**

20341 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

20342 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

20343 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

**Note:** See DMG Chapter 26 for guidance on when employment ends. If a claim is made after employment is terminated, the person will not be in remunerative work.

20344 - 20389

# People treated as in remunerative work 20390 - 20463

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## Introduction

20390 In JSA and IS people can be treated as in remunerative work even though they are absent from remunerative work. This rule does not apply where people are absent because they

1. are ill **or**
2. are pregnant and have a right to return to work **or**
3. have given birth to a child and have a right to return to work **or**
4. are on paternity leave **or**
5. are on adoption leave **or**
6. are on shared parental leave **or**
7. are on parental bereavement leave<sup>1</sup>.

1 JSA Regs, reg 52(1); IS (Gen) Regs, reg 5(3A)

## JSA(Cont)

20391 Treat claimants as in remunerative work for any period during which they are

1. absent without good reason<sup>1</sup> **or**

**2.** absent by reason of a recognized, customary or other holiday<sup>2</sup> **or**

**3.** covered by earnings received from remunerative work<sup>3</sup>.

1 JSA Regs, reg 52(1); 2 reg 52(1); 3 reg 52(3)

## **JSA(IB)**

20392 Treat the claimant or partner as in remunerative work for any period during which they are

**1.** absent without good reason<sup>1</sup> **or**

**2.** absent by reason of a recognized, customary or other holiday<sup>2</sup> **or**

**3.** covered by holiday pay<sup>3</sup>.

1 JSA Regs, reg 52(1); 2 reg 52(1); 3 reg 52(3)

20393 Treat a member of a joint-claim couple as engaged in remunerative work if they are involved in a TD<sup>1</sup>.

1 JSA Regs, reg 52(2A)

20394 In addition treat a partner as in remunerative work for the first seven days of stoppage of work or withdrawal of labour where they are

**1.** involved in a TD **and**

**2.** would not be entitled to JSA in their own right because of that dispute **and**

**3.** the claimant was not entitled to JSA(IB) when the partner became involved in the TD<sup>1</sup>.

1 JSA Regs, reg 52(2)

## **IS**

20395 Treat the claimant or partner as in remunerative work for any period during which they are

**1.** absent without good cause<sup>1</sup> **or**

**2.** absent by reason of a recognized, customary or other holiday<sup>2</sup> **or**

**3.** covered by earnings received from remunerative work<sup>3</sup> unless those earnings are disregarded<sup>4</sup> (see DMG 26583 et seq).

20396 In addition treat the claimant or partner as in remunerative work for the first seven days of stoppage where they are involved in a TD<sup>1</sup>.

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

## **Absence from work without good cause**

20397 If a person is absent from remunerative work **without** good cause the remunerative work exclusion will still apply. It cannot apply where the work is not remunerative as in DMG 20210 et seq.

20398 If a person is absent from remunerative work **with** good cause the remunerative work exclusion will not apply.

## **Good cause**

20399 "Good cause" is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause.

20400 Examples of good cause include where the absence is due to

- 1.** bereavement or sudden serious illness in the family **or**
- 2.** a disaster at home **or**
- 3.** suspension from work, whether or not on full pay **or**
- 4.** a requirement to attend court.

20401 - 20409

## **Recognized, customary or other holiday**

20410 A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday<sup>1</sup>. This is the case even if there is no permanent contract of employment. But this will not apply where the

- 1.** absence is not a holiday (see DMG 20309) **or**
- 2.** work is not remunerative as in DMG 20210 et seq **or**
- 3.** claimant goes on holiday after employment ends. But see DMG 20435 et seq where payments of

holiday pay lead to the person being treated as in remunerative work.

See Appendix 3 to this Chapter for guidance on what is a recognized, customary or other holiday.

1 JSA Regs, reg 52(1); IS (Gen) Regs, reg 5(3)

20411 - 20424

### **Certain people affected by a trade dispute**

20425 A person who is, or was, affected by a TD will be treated as engaged in remunerative work for the seven day period following the date on which the

1. stoppage of work due to a TD at the person's place of work began **or**
2. person first withdrew labour in furtherance of a TD.

20426 The seven day exclusion applies

1. in JSA(IB), where the partner is affected by a TD
2. in IS, where the claimant or partner is affected by a TD
3. in new or repeat claim only
4. even if the work in which the person was engaged immediately before the stoppage or withdrawal of labour was not remunerative.

20427 The seven day exclusion does not apply where a claimant's partner becomes involved in a TD during the currency of a claim.

#### **Example 1**

Jack claims IS because his partner, who works as a cleaner for ten hours a week, is affected by a TD. The seven day exclusion applies even though the partner's work was not remunerative.

#### **Example 2**

Joe is already in receipt of IS when his partner, who also works as cleaner for ten hours a week, becomes involved in a TD. The seven day exclusion does not apply because IS was already in payment when the partner was affected by the TD.

20428 - 20434

## **Payment on termination or interruption of employment**

20435 A person who was, or was treated as being engaged in remunerative work is excluded from JSA and IS for the period over which certain payments, paid on termination of that employment, fall to be taken into account<sup>1</sup>. Some payments are disregarded<sup>2</sup> (see DMG 26583 et seq). The relevant payments depend on which benefit is claimed.

1 JSA Regs, reg 52(3); IS (Gen) Regs, reg 5(5);

2 JSA Regs, reg 52(3A), Sch 6, para 1; IS (Gen) Regs, reg 5(5A), Sch 8, para 1

20436 - 20463



# People treated as not in remunerative work 20464 - 20555

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## Introduction

20464 In certain circumstances, a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

- 1.** engaged in childminding in the childminder's home<sup>1</sup> (IS only) **or**
- 2.** engaged by a charity or voluntary organization or is a volunteer<sup>2</sup> **or**
- 3.** engaged on a training scheme<sup>3</sup> **or**

4. receiving assistance under the S/E route<sup>4</sup> **or**
5. engaged in specific occupations<sup>5</sup> **or**
6. performing duties as a councillor<sup>6</sup> **or**
7. engaged as a foster parent or in providing respite care<sup>7</sup> **or**
8. engaged in caring for a former child under continuing care arrangements<sup>8</sup> **or**
9. engaged in an activity which attracts a sports award<sup>9</sup> **or**
10. engaged on Work Experience employment programme (JSA only)<sup>10</sup> **or**
11. participating in the MWA Scheme (JSA only)<sup>11</sup> **or**
12. participating in SAPOE (JSA only)<sup>12</sup>.

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

*1 IS (Gen) Regs, reg 6(1)(b); 2 JSA Regs, reg 53(a); IS (Gen) Regs, reg 6(1)(c); 3 JSA Regs, reg 53(b); IS (Gen) Regs, reg 6(1)(d); 4 JSA Regs, reg 53(bb); IS (Gen) Regs, reg 6(1)(dd); 5 JSA Regs, reg 53(d), IS (Gen) Regs, reg 6(1)(h); 6 JSA Regs, reg 53(e); IS (Gen) Regs, reg 6(1)(j); 7 JSA Regs, reg 53(f); IS (Gen) Regs, reg 6(1)(k); 8 IS (Gen) Regs, reg 6(1)(ka); JSA Regs, reg 53(fa); 9 JSA Regs, reg 53(i); IS (Gen) Regs, reg 6(1)(m); 10 JSA Regs, reg 53(k); 11 reg 53(l); 12 reg 53(m)*

20465 In addition, there are other circumstances where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is

1. disabled<sup>1</sup> (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
2. affected by a TD<sup>2</sup> **or**
3. caring for another person<sup>3</sup> (IS only) **or**
4. living in a care home, an Abbeyfield Home or an independent hospital<sup>4</sup> (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**
5. in receipt of IS by way of housing costs run-on<sup>5</sup>.

*1 JSA Regs, reg 53(h), IS (Gen) Regs, reg 6(4)(a); 2 JSA Regs, reg 53(g) & 53(gg); IS (Gen) Regs, reg 6(4)(b); 3 IS (Gen) Regs, reg 6(4)(c); Sch 1B, para 4; 4 JSA Regs, reg 53(c); IS (Gen) Regs, reg 6(4)(d); 5 IS (Gen) Regs, reg 6(5) & 6(6)*

## Example

Trevor is required at home to care for his disabled partner who gets AA. He also works 20 hours a week as a barman. Because he is a carer he is treated as not engaged in remunerative work and none of the hours count, not even those spent in bar work.

## Childminders

20466 For IS purposes, people who are childminders are treated as not being in remunerative work as long as the childminding is done in their home<sup>1</sup>. If the childminding is done in the employer's home the hours worked will count towards the remunerative work exclusion.

**Note:** For JSA purposes, **all** work as a childminder will count towards the remunerative work exclusion.

*1 IS (Gen) Regs, reg 6(1)(b)*

## Charity or voluntary workers and volunteers

20467 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organization or are volunteers **and**

**1.** the only payment

**1.1** received **or**

**1.2** due to be paid

is for expenses incurred **and**

**2.** they receive no remuneration or profit **and**

**3.** they are not treated as having notional earnings<sup>1</sup> (see DMG 28389 - 28391).

*1 JSA Regs, reg 53(a) & Sch 7, para 2; IS (Gen) Regs, reg 6(1)(c) & Sch 9, para 2*

## Meaning of voluntary organization

20468 A voluntary organization is a body, other than a public authority or LA, whose activities are not carried out for profit<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Meaning of volunteer

20469 A volunteer is a person

**1.** who is engaged in voluntary work for someone who is not a relative **and**

**2.** where the only payment that person receives or is due to be paid to that person is in respect of expenses they have reasonably incurred in connection with that work<sup>1</sup>.

*1 IS (Gen) Regs, reg 6(1)(c); JSA Regs, reg 53(a)*

## **Engaged on a training scheme**

### **JSA**

20470 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 20008 - 20009) is being paid (this includes Training for Work in Scotland and Work Based Learning - Skills Build in Wales where payments are treated as training allowances)<sup>1</sup>.

People in the

**1.** EO(S/E) **or**

**2.** VSO **or**

**3.** FTET **or**

**4.** ETFO

option of NDYP<sup>2</sup> are treated as not employed and as participating in arrangements or training under employment and training law<sup>3</sup> if they receive or are entitled to receive a training allowance (**NB:** this only applies for their participation in NDYP<sup>4</sup>).

*1 JSA Regs, reg 53(b); 2 reg 75(1)(a)(ii) & (b)(ii); 3 E & T Act 73, s 2; 4 New Deal (Misc Provs) Order 98*

### **IS**

20471 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 20008 - 20009) is being paid (this includes Training for Work in Scotland and Work Based Learning - Skills Build in Wales where payments are treated as training allowances)<sup>1</sup>. People in the S/E route of the ND for lone parents are eligible to receive a top-up payment or a payment to assist with expenses incurred as a result of participating on the scheme. Such payments are treated as a training allowance<sup>2</sup> for the purpose of IS and “training premium” for all other purposes. Whilst receiving such payments claimants are treated as not engaged in remunerative work<sup>3</sup>.

*1 IS (Gen) Regs, reg 6(1)(d); 2 New Deal (Lone Parents) (Miscellaneous Provisions) Order 2001 (S.I. 2001 No. 2915), reg 2(2)(a); 3 IS (Gen) Regs, reg 6(1)(d) & (dd)*

## People receiving assistance under the self-employed route

20472 People are treated as not being in remunerative work where they are receiving assistance under the S/E route<sup>1</sup> (see DMG 14001).

*1 JSA Regs, reg 53(bb); IS (Gen) Regs, reg 6(1)(dd)*

### Meaning of self-employed route

20473 Self-employment route means<sup>1</sup> assistance in pursuing S/E earner's employment whilst participating in

- 1.** an EZ programme **or**
- 2.** a programme provided or arrangements made under specified legislation<sup>2</sup>.

*1 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3);*

*2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2*

### Engaged in specific occupations

20474 People are treated as not being in remunerative work where they are

- 1.** a P/T member of a fire brigade<sup>1</sup> who
  - 1.1** in Scotland is a part-time fire-fighter employed by the Scottish Fire and Rescue Service<sup>2</sup> **and**
  - 1.2** in England and Wales is a P/T fire-fighter employed by a fire and rescue authority under relevant legislation<sup>3</sup> **or**
- 2.** auxiliary coastguards for coastal rescue activities<sup>4</sup> **or**
- 3.** working P/T in the crewing or launching of a lifeboat<sup>5</sup> **or**
- 4.** members of a reserve force<sup>6</sup>.

*1 JSA Regs, reg 4, 53(d)(ia) & (ib); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(aa) & (ab);*

*2 Fire (Scotland) Act 2005, s 1A; 3 Fire and Rescue Services Act 2004; 4 JSA Regs, reg 53(d)(ii); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(b); 5 JSA Regs, reg 53(d)(iii); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(c); 6 JSA Regs, reg 53(d)(iv); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(d)*

### Councillors

20475 People who perform duties as a councillor are treated as not being in remunerative work<sup>1</sup>.

## Meaning of councillor

20476 In England and Wales a councillor is a member of

1. a London Borough council **or**
2. a county or county borough council **or**
3. a district council **or**
4. a parish or community council **or**
5. the Common Council of the City of London **or**
6. the Council of the Isles of Scilly<sup>1</sup>.

1 SS CB Act 92, s 171F(2)(a)

20477 In Scotland a councillor is a member of

1. a regional council **or**
2. an islands council **or**
3. a district council<sup>1</sup>.

1 SS CB Act 92, s 171F(2)(b)

## Foster parents, people providing respite care and continuing care

### Foster parents

20478 People who receive payments from

1. a LA **or**
2. a voluntary organization **or**
3. in Scotland, a care authority

for fostering a child or young person are treated as not being in remunerative work<sup>1</sup>.

**Note:** See DMG 28380 for guidance on the income disregard of these payments.

## People providing respite care

20479 People who provide respite care are treated as not being in remunerative work<sup>1</sup> if

1. the person requiring care is being cared for in the claimant's home **and**
2. the person requiring care is not normally a member of the claimant's household **and**
3. the only payments received are specified payments<sup>2</sup> from a
  - 3.1 HA **or**
  - 3.2 LA **or**
  - 3.3 voluntary organization **or**
  - 3.4 a primary care trust **or**
  - 3.5 the person concerned under specified legislation<sup>3</sup>.

**Note:** See DMG 28384 - 28385 for guidance on the income disregard of these payments.

*1 JSA Regs, reg 53(f); IS (Gen) Regs, reg 6(1)(k); 2 JSA Regs, Sch 7, para 28; IS (Gen) Regs, Sch 9, para 27;  
3 NA Act, s 26(3A)*

## People providing continuing care

20480 LAs in Scotland have a duty to provide on-going care and assistance to eligible people who have ceased to be looked after by the LA. This is known as continuing care<sup>1</sup>. A claimant who is engaged in caring for a former child under the continuing care arrangements is treated as not being in remunerative work for IS and JSA purposes<sup>2</sup>.

*1 Children (Scotland) Act 1995, s 26A; 2 IS (Gen) Regs, reg 6(1); JSA Regs, reg 53*

## Sports awards

20481 People are treated as not being in remunerative work<sup>1</sup> if

1. they are engaged in an activity for which a sports award has been or is to be made<sup>2</sup> **and**
2. no other payment is made or expected to be made to them in respect of the activity<sup>3</sup>.

*1 JSA Regs, reg 53(i); IS (Gen) Regs, reg 6(1)(m); 2 JSA Regs, reg 53(i)(i); IS (Gen) Regs, reg 6(1)(m)(i)  
3 JSA Regs, reg 53(i)(ii); IS (Gen) Regs, reg 6(1)(m)(ii)*

## Meaning of sports award

20482 A sports award<sup>1</sup> is an award made by one of the Sports Councils named in National Lottery law<sup>2</sup> and out of sums allocated under that law.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)*

## Work experience

20483 Work experience is an opportunity for JSA claimants aged 18 and over to gain experience in the workplace for between two and eight weeks<sup>1</sup>.

*1 E & T Act 73, s 2*

## Mandatory work activity scheme

20484 The MWA Scheme is designed to provide work or work-related activity for up to 30 hours per week over a period of four consecutive weeks to improve a claimant's prospects of employment<sup>1</sup>. To be selected for participation the claimant must be at least 18 years of age and they are required to satisfy jobseeking conditions<sup>2</sup>.

*1 JSA (MWA) Regs 2011, reg 2(1); 2 reg 3*

20485 - 20495

## Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20496 People are treated as not being in remunerative work where they are mentally or physically disabled<sup>1</sup> and as a result of that disability

- 1.** earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn<sup>2</sup> **or**
- 2.** work 75 per cent or less of the hours that a person without that disability would reasonably be expected to do in the same work or in a similar job in the area<sup>3</sup>.

*1 JSA Regs, reg 53(h); IS (Gen) Regs, reg 6(4)(a); 2 JSA Regs, reg 53(h)(i); IS (Gen) Regs, reg 6(4)(a)(i);  
3 JSA Regs, reg 53(h)(ii); IS (Gen) Regs, reg 6(4)(a)(ii)*

20497 The person's own evidence of reduced earnings or hours should normally be accepted. However, if necessary, DMs should obtain further evidence for comparison purposes. This may include information from private employment agencies, social services departments or charities for the disabled.

20498 See Appendix 2 to this Chapter for guidance on protection for people adversely affected by the



change in the law from 7.10.91.

## **People affected by a trade dispute**

### **JSA(IB)**

20499 Where

- 1.** the claimant's partner is involved in a TD **and**
- 2.** the seven day exclusion period (see DMG 20394)

**2.1** does not apply **or**

**2.2** no longer applies

the claimant's partner is treated as not being in remunerative work<sup>1</sup>.

*1 JSA Regs, reg 53(g)*

20500 Claimants should be treated as not being in remunerative work<sup>1</sup> where

- 1.** they are

**1.1** a member of a joint-claim couple **and**

**1.2** involved in a TD **and**

- 2.** the seven day exclusion period (see DMG 20393)

**2.1** does not apply **or**

**2.2** no longer applies.

*1 JSA Regs, reg 53(gg)*

### **IS**

20501 Where the claimant or partner is involved in a TD and they are treated as not being in remunerative work because

- 1.** the seven day exclusion period (see DMG 20396)

**1.1** does not apply **or**

**1.2** no longer applies **and**

2. certain payments<sup>1</sup> are not or no longer taken into account

they are treated as not being in remunerative work<sup>2</sup>.

*1 IS (Gen) Regs, reg 35(1)(b), (c), (d) & (i); 2 reg 6(4)(b)*

## **Caring for another person**

20502 For IS purposes, people are treated as not being in remunerative work where they are<sup>1</sup>

**1.** regularly and substantially engaged in caring for another person and that person

**1.1** is in receipt of “AA”, the care component of DLA or CDP at the highest or middle rate, the daily living component of PIP or ADP at the standard or enhanced rate or AFIP<sup>2</sup> **or**

**1.2** has claimed “AA”, DLA, CDP, PIP, ADP or AFIP **or**

**1.3** has

**1.3.a** made an advance claim for **and**

**1.3.b** an award of **and**

**1.3.c** not completed the qualifying period for

“AA”, the care component of DLA or CDP at the highest or middle rate, the daily living component of PIP or ADP at the standard or enhanced rate or AFIP<sup>3</sup> **or**

**1.4** has

**1.4.a** made an advance claim for **and**

**1.4.b** an award of **and**

**1.4.c** completed the qualifying period for

“AA”, the care component of DLA or CDP at the highest or middle rate, the daily living component of PIP or ADP at the standard or enhanced rate or AFIP and the award is in payment **or**

**2.** both entitled to and in receipt of CA<sup>4</sup> and caring for another person.

**Note 1:** See DMG 20117 - 20119 for guidance on deciding whether or not a person is regularly and substantially caring.

**Note 2:** For JSA purposes, where people are caring for another person the hours spent in caring do not

count towards the remunerative work exclusion<sup>5</sup>. However, hours spent by a carer in any other occupation do count (see DMG 20252 et seq).

*1 IS (Gen) Regs, reg 6(4)(c) & Sch 1B, para 4; 2 SS CB Act 92, s 65(6)(a) & 72(3); DAYCP Regs, reg 11(5); DAWAP (Scot) Regs, reg 2; 3 SS (C&P) Regs, reg 13A; DAYCP Regs, reg 24; DAWAP (Scot) Regs, reg 5; 4 SS CB Act 92, s 70; 5 JSA Regs, reg 51(3)(c)*

20503 Where DMG 20502 **1.2** applies people are treated as not in remunerative work until the earlier of<sup>1</sup>

- 1.** the date the claim for “AA”, DLA, CDP, PIP, ADP or AFIP is decided **or**
- 2.** 26 weeks from the date of claim for “AA”, DLA, CDP, PIP, ADP or AFIP.

*1 IS (Gen) Regs, Sch 1B, para 4(a)(ii) & (iii)*

## **People living in a care home, Abbeyfield Home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)**

20504 People who

- 1.** are in employment **and**
- 2.** live in certain types of accommodation

are treated as not being in remunerative work<sup>1</sup>.

*1 JSA Regs, reg 53(c); IS (Gen) Regs, reg 6(4)(d)*

20505 DMG 20504 applies only to a person who

- 1.** lives in (whether permanently or temporarily) or is temporarily absent from
  - 1.1** a care home **or**
  - 1.2** an Abbeyfield Home **or**
  - 1.3** an independent hospital **and**
- 2.** requires personal care because of
  - 2.1** old age **or**
  - 2.2** disablement **or**
  - 2.3** past or present dependence on alcohol or drugs **or**

**2.4** past or present mental disorder **or**

**2.5** a terminal illness

See DMG Chapter 24 for guidance on the treatment of people in a care home, Abbeyfield Home or an independent hospital.

20506 - 20529

## **Housing costs run-on**

20530 People may be entitled to IS in respect of housing costs for a limited period after they start remunerative work if the

- 1.** remunerative work is expected to last for not less than five weeks **and**
- 2.** people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of JSA(IB), IS or ESA **and**
- 3.** people had, on the day before starting this work, included in the applicable amount, an amount in respect of housing costs **and**
- 4.** people remain liable to make payments in respect of those housing costs<sup>1</sup>.

For IS only, people who satisfy these conditions are treated as not being in remunerative work for the first four weeks of that work<sup>2</sup>.

*1 IS (Gen) Regs, reg 6(5); 2 reg 6(6)(a)*

20531 When determining the length of time benefit has been in payment, any periods of housing costs run-on will not be treated as part of the 26 week qualifying period<sup>1</sup>.

*1 JSA (Gen) Regs, reg 6(7)*

20532 See DMG 26009 for guidance on earnings disregard, DMG 28351 for income disregard, DMG 29605 for capital disregards, DMG 24391 for applicable amount, DMG 33349 for payment of housing costs run-on and DMG 02009 for claims.

20533 - 20555

## **People in relevant education 20556 - 20900**

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# People in relevant education eligible for Jobseeker's Allowance or Income Support 20630 - 20749

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## Introduction

20630 Despite being in FTE certain people are eligible to receive JSA or IS subject to the other conditions of entitlement. See DMG Chapter 30 for guidance on claims from young people in JSA, where special conditions of entitlement apply. See DMG 20003 for JSA basic conditions and DMG 20022 for IS.

## JSA

20631 In JSA young people are treated as not receiving relevant education where they are<sup>1</sup>

**1.** participating in a traineeship<sup>2</sup> **or**

**2.** a P/T student (see DMG Chapter 30) **and**

**2.1** satisfy the qualifying conditions in DMG 20633<sup>3</sup> **and**

**2.2** attend a course of non-advanced education.

20632 Young people who

- 1.** satisfied the conditions of DMG 20631.2 **and**
- 2.** have completed or terminated the course of P/T study

are also not treated as in relevant education<sup>1</sup>.

1 JSA Regs, reg 54(4)

### **Qualifying conditions**

20633 The qualifying conditions<sup>1</sup> in DMG 20631 **2.** are that

- 1.** during the whole of the three months immediately before first attending the course the young person

**1.1** was in receipt of JSA or IB **or**

**1.2** was in receipt of IS on grounds of incapacity for work (see DMG 20134) **or**

**1.3** was on a WBTfYP course **or**

- 2.** during the six months immediately before first attending the course the young person

**2.1** satisfied **1.1**, **1.2** or **1.3** for a total of three months (not necessarily continuously) **and**

**2.2** was in remunerative work (or other work where earnings led to disentitlement from the appropriate benefit) for the remainder of the six months **and**

**2.3** those periods fell wholly after the terminal date.

1 JSA Regs, reg 11(2)

### **IS**

20634 There are certain circumstances (see DMG 20646 - 20728) in which young people are entitled to IS even though they are treated as being in relevant education. These people are known as eligible persons<sup>1</sup> (see DMG 20167).

1 IS (Gen) Regs, reg 13(1)

20635 - 20645

### **Person is a parent**

20646 Young people can get IS if they are the parent of a child

**1.** who they are treated as responsible for (guidance on "responsible" is in DMG Chapter 22) **and**

**2.** who is treated as a member of the same household<sup>1</sup>.

**Note:** Pregnancy does not count for this purpose.

1 IS (Gen) Regs, reg 13(2)(a)

## **Person is disabled (revoked from 30.12.09 but see Appendix 5 for savings provisions)**

20647 A qualifying young person in relevant education is entitled to IS if, as well as satisfying the other conditions of entitlement, they

**1.** qualify for the DP or SDP<sup>1</sup> **or**

**2.** have been incapable of work for a continuous period of not less than 196 days (two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period<sup>2</sup>).

1 IS (Gen) Regs, reg 13(2)(b); 2 reg 13(2)(bb)

## **Person has limited leave to remain**

20648 IS may be payable to a person with limited leave to remain and who is in relevant education. A person will be eligible for IS under DMG 20167 **3.** where the person has

**1.** discretionary leave to remain where a person has claimed asylum. This means that the person is **not** subject to immigration control and so they **do** have recourse to public funds and will not therefore fall into the category in DMG 20167 **3.**. They should be treated as any UK national would in the same circumstances **or**

**2.** limited leave to remain as a student where the leave allows the person to attend a British educational establishment. This person would **not** have recourse to public funds (this will be noted on their UK visa) and so will fall into the category in DMG 20167 **3.**. However entitlement to IS is only for 42 days and only if the persons funds from abroad have temporarily stopped and are likely to resume shortly<sup>1</sup>.

1 IS (Gen) Regs, reg 13(2)(bc)

20649 - 20663

## **Person is an orphan**

20664 Young people can get IS if they have



**1.** no living parent **and**

**2.** no-one acting in place of the parents<sup>1</sup>.

1 reg 13(2)(c)

20665 The condition in DMG 20664 is not satisfied if the young person does not know

**1.** if the parents or person acting in their place are alive or dead **or**

**2.** where the parents or person acting in their place are living.

If the young person has had no contact with the parents or person acting in their place consider whether they are of necessity living away from them.

20666 Young people who satisfy DMG 20664 are eligible for IS in their own right for

**1.** themselves **and**

**2.** any dependants (who will often be younger brothers and sisters).

20667 If an orphaned young person

**1.** goes to live with a relative or other person **and**

**2.** that person takes over the role of parent

the young person will be regarded as dependent on that person and not entitled to IS. This is the case even where the young person has younger brothers and sisters.

### **Acting in place of parents**

20668 To determine if another person is acting in the place of a young person's parents, consider factors such as whether the person

**1.** provides supervision and financial, moral, social or other care and guidance **and**

**2.** provides shelter, food and clothing **and**

**3.** is responsible for any necessary disciplinary action

as would be appropriate for someone the same age as the young person.

### **Someone claiming CHB or another benefit for the young person**

20669 If someone other than the parent is claiming CHB or another benefit for the young person, that is a strong indication that the person is acting in place of the young person's parents<sup>1</sup>.

## Foster parents

20670 An LA may place a young person who is the subject of a care order with foster parents. Those foster parents will be acting in place of parents<sup>1</sup>. The conditions in DMG 20167 **4.** to **7.** will not be satisfied where a young person

- 1.** in relevant education claims IS **and**
- 2.** is living with foster parents.

1 IS (Gen) Regs, reg 13(3)(a)(i)

20671 When the care order expires, usually on the young person's 18th birthday, a young person may continue to live with their former foster parents. In these cases the former foster parents are not acting in place of parents. The DM should consider if any of the conditions in DMG 20167 are met.

### Example

Robin is 18 years old. Robin was the subject of a care order and the LA placed him with foster parents. The care order expired on his 18th birthday. Robin is estranged from his natural parents, he has not seen them for seven years. He continues to live with his former foster parents and is expected to make a contribution towards his upkeep. Robin is studying at the local college for his A levels. He claims IS.

The DM determines that Robin is in relevant education. The DM then considers whether any of the conditions in DMG 20635 are satisfied. The DM decides that Robin is entitled to IS during the period that he is in relevant education because

- 1.** Robin's former foster parents are not acting in place of parents **and**
- 2.** Robin is estranged from his natural parents and is of necessity living away from them.

## Sponsors

20672 A sponsor's duties are limited and not the same as those of a parent. Consider DMG 20668 if the sponsor may be acting in the place of a parent.

## Local Authorities and voluntary organizations

20673 A person acting in the place of a young person's parents includes

- 1.** an LA or voluntary organization<sup>1</sup> where, under certain provisions<sup>2</sup> the young person is being looked after by them **or**
- 2.** the person with whom the young person is placed<sup>3</sup> by the LA or voluntary organization, whether or not

payment is made **or**

**3.** for the purposes of DMG 20700 only, the person with whom the young person is placed irrespective of who made the arrangements<sup>4</sup>.

1 IS (Gen) Regs, reg 13(3)(a)(i); 2 reg 16(8); Army Act 55; Matrimonial Causes Act 73; Adoption (Scotland) Act 78; Family law Act 86; Children Act 89; Children (Scotland) Act 95; 3 IS (Gen) Regs, reg 13(3)(a)(ii); 4 reg 13(3)(a)(ii)

20674 LAs in England and Wales

**1.** look after young people<sup>1</sup> either

**1.1** under a care order<sup>2</sup> **or**

**1.2** where they are required to provide accommodation<sup>3</sup> **and**

**2.** have a duty to

**2.1** maintain them **and**

**2.2** make appropriate arrangements<sup>4</sup> for their accommodation, (which might include the young people living independently) **and**

**2.3** advise, assist and befriend them<sup>5</sup>.

1 Children Act 89, s 22; 2 s 31; 3 s 20; 4 s 23; 5 s 24(1)

20675 LAs may continue to advise, assist and befriend young people who are no longer being looked after by them<sup>1</sup>, for example by contributing to work or educational expenses<sup>2</sup>. If there is any doubt about whether the arrangements in DMG 20674 apply, check with the LA.

1 s 24(2); 2 s 24(7) & (8)

20676 - 20685

## **Person of necessity living away from parents**

20686 Young people can get IS if they have of necessity to live away from the parents or any person acting in their place (see DMG 20668) because<sup>1</sup>

**1.** they are estranged **or**

**2.** they are in physical or moral danger **or**

**3.** there is a serious risk to their physical or mental health<sup>1</sup>.

Normally accept the young person's own evidence but seek additional evidence if there is a doubt. (See also DMG 20700 & 20701).

1 IS (Gen) Regs, reg 13(2)(d); JSA Regs, reg 57(2)(f)

20687 Where a young person is the subject of a care order, the LA is acting in place of parents<sup>1</sup>. But some young people who are the subject of a care order may have to live in accommodation away from the LA, for example, there may be reasons why a young person cannot live in a home or a foster home and lives in a flat instead.

1 IS (Gen) Regs, reg 13(3)(a)(i); JSA Regs, reg 57(3)

20688 In these cases the LA is acting in place of parents because the care order still exists<sup>1</sup>. But the DM should consider the guidance at DMG 20689 - 20694 to determine if the young person is living away from the LA for any of the reasons in DMG 20686.

1 IS (Gen) Regs, reg 13(3)(a)(i); JSA Regs, reg 57(3)

### **Living away from**

20689 Living away from includes young people

- 1.** who have left the family home to live at another address **or**
- 2.** whose parents have left the young person
- 3.** who, although a care order still exists, live alone rather than with foster parents or in a community home.

### **Estranged**

20690 Estranged is not defined in legislation and should be given its ordinary, everyday meaning<sup>1</sup> of alienated in feeling or affection. Examples of when young people are estranged from their parents include where they

- 1.** have no intention or wish to live with them **or**
- 2.** have no wish for any prolonged physical or emotional contact with them **or**
- 3.** the parents feel the same way towards the young person.

A young person may be estranged even though the parent is providing some financial support. However, DMG 20686 **1.** will not be satisfied just because a young person says that estrangement exists. It must also be shown that the young person, of necessity, has to live away from the parents because of the

estrangement.

1 Cozens v. Brutus [1972] 3WLR 521

20691 **Estranged** includes estrangement from the community home or foster parents where the young person had been placed by the LA. The existence of the care order does not mean that the young person cannot be estranged from the LA. The DM should have regard to the young person's circumstances to determine if estrangement exists.

20692 For the conditions in DMG 20167 to be satisfied the young person has **of necessity** to live away from the LA. The DM should find out the reasons why the young person cannot live in accommodation provided by the LA.

### **Example**

Andrea is 16 and studying for GCSEs at her local college. Her natural father is dead and she is estranged from her mother. She is the subject of a care order but she lives alone in a flat. She claims IS. The DM establishes that Andrea lives alone in the flat because she was violent and aggressive to her foster families and to members of staff and residents at a community home.

The DM determines that Andrea is in relevant education. The DM then considers if any of the conditions in DMG 20635 are satisfied. On the facts of this case the DM awards IS during the period that Andrea is in relevant education because she is

- 1.** of necessity living away from her mother and the LA **and**
- 2.** estranged from her mother and the LA.

### **Physical or moral danger**

20693 DMG 20686 **2.** will apply if the young person would be in physical or moral danger living at home and because of this has to live away. This is a question of fact and the DM will need to determine the degree of risk in each case, taking into account that the danger

- 1.** need not be from the parents
- 2.** includes any form of physical or moral danger which causes the young person to live away from the parents<sup>1</sup>

the DM should accept evidence from the young person or representative unless there is stronger evidence to the contrary.

## Serious risk to physical or mental health

20694 DMG 20686 **3.** will apply if there is a serious risk to the physical or mental health of the young person<sup>1</sup> and because of that serious risk the young person has to live away from home. The risk must be serious and the DM will need to determine the degree of risk in each case. Examples of serious risk might include where the young person

- 1.** suffers from chronic bronchitis which is made worse by the damp conditions at the parent's home **or**
- 2.** has a history of mental illness which is made worse by the parent's attitude **and**

there is a serious risk that the young person's health will be adversely affected by staying in the parent's home.

1 R(SB) 8/82

20695 - 20699

## Person living away from and cannot be supported by parents

20700 Young people can get IS if

- 1.** they are living away from the parents and any person acting in their place (see DMG 20668) **and**
- 2.** the parents, or person acting in their place, are unable to support them financially **and**
- 3.** the parents, or person acting in their place, are
  - 3.1** chronically sick or mentally or physically disabled **or**
  - 3.2** detained in custody pending trial or awaiting sentence, or in prison **or**
  - 3.3** not allowed to enter or re-enter GB<sup>1</sup> (no specific prohibition order is necessary<sup>2</sup>).

**Note:** People who are not British citizens are not allowed to enter GB unless they have been given leave to do so. There does not have to be an order, or any other form of formal decision not allowing entry into GB<sup>3</sup>.

1 IS (Gen) Regs, reg 13(2)(e); 2 R(IS) 9/94; 3 R(IS) 9/94

## Where claimant has both parents

20701 When either the conditions at DMG 20686 or 20700 apply, take account of the fact that

- 1.** both parents have to satisfy the conditions, unless the young person has only one parent **and**
- 2.** the parents do not have to satisfy the same condition; for example, the father might be in prison (See

DMG 20700 **3.2**) and the claimant is estranged from their mother (See DMG 20686 **1.**) **and**

**3.1.** and **2.** apply where more than one person is acting in place of the parents, for example both grandparents.

### **Chronically sick or mentally or physically disabled**

20702 Accept a person as chronically sick or mentally or physically disabled if they

**1.** would satisfy the IS conditions for the award of HPP or DP<sup>1</sup> **or**

**2.** are substantially and permanently disabled<sup>2</sup> **or**

**3.** are entitled to ESA including a WRAC or support component<sup>3</sup>.

1 IS (Gen) Regs, reg 13(3)(b)(i); 2 reg 13(3)(b)(iii); 3 reg 13(3)(b)(iv)

### **Substantially and permanently disabled**

20703 The DM should accept people who are registered with an LA<sup>1</sup> as being disabled. If they have been refused registration and their condition has not worsened the DM should not accept them as disabled.

1 Chronically Sick & Disabled Persons Act 1970

20704 In any other case a decision should be made on the evidence available. Examples of disablement are

- loss of limb
- paraplegia
- paralysis
- mental illness
- polio victims
- suffers from rheumatoid arthritis who have substantial difficulty with day to day tasks.

This list is not exhaustive.

20705 - 20724

### **Person leaving accommodation provided by the Local Authority**

20725 Young people can get IS if they

1. have left accommodation provided for them by an LA<sup>1</sup> under specified legislation **and**
2. are of necessity, living away from their parents and any person acting in place of their parents<sup>2</sup>.

1 Children Act 89, Part III; Children (Scotland) Act 95, Part II; Children's Hearings Act 2011;

2 IS (Gen) Regs, reg 13(2)(dd)

20726 The young person does not need to have been in care. An LA can provide accommodation in a number of ways, for example by arranging independent living. A person who has moved from one type of accommodation to another may still have their accommodation provided by an LA.

20727 Social Services should be contacted to confirm if the accommodation was provided by the LA under specified legislation. The LA should

1. have provided the accommodation **and**
2. not simply have helped the young person to find accommodation<sup>1</sup>.

1 The Childrens' Act 89

## **Refugee learning English**

20728 Young people can get IS for up to nine months if they

1. are a refugee **and**
2. are attending a course for more than fifteen hours a week so that they can learn English to get work **and**
3. had been in GB for not more than twelve months on the date the course started<sup>1</sup>.

1 IS (Gen) Regs, reg 13(2)(h)

20729 - 20749



## School leavers 20750 - 20900

[Introduction](#) 20750 - 20762

[Terminal dates](#) 20763 - 20789

[Age 20](#) 20790 - 20900

### Introduction

20750 A person who has completed F/T non-advanced education may be treated as still in relevant education for both JSA and IS until the next terminal date. The terminal date is defined in DMG 20763.

20751

### Person under 16

20752 A person who is under the age of 16 at the

1. date F/T non-advanced education ends **and**
2. terminal date next following the date in **1.**

will not be entitled to JSA or IS until the 16th birthday<sup>1</sup> and then only if the conditions in DMG Chapter 30 or DMG 20001 et seq are satisfied.

1 CHB (Gen) Regs, reg 7(2) Case 1

20753 - 20762

### Terminal dates

#### England and Wales

20763 A person continues to be treated as a qualifying young person and entitled to CHB where they have left relevant education or approved training up to and including

1. the week including the terminal date **or**
2. if they attain the age of 20 on or before that date, the week including the last Monday before they were 20<sup>1</sup>.

**Note:** In this context week is a CHB week; i.e. Monday to Sunday.

1 CHB (Gen) Regs, reg 7(2), Case 1.1

20764 For the purposes of DMG 20763 above the terminal dates are

1. the last day in February
2. the last day in May
3. the last day in August
4. the last day in November

whichever occurs first after they have ceased relevant education or approved training<sup>1</sup>.

1 CHB (Gen) Regs, reg 7(2), Case 1.2

### **Example**

Julie is 18 and is estranged from her parents and has been receiving IS while she was in relevant education. She leaves school on 6.7.11 so the terminal date in her case is 31.8.11. The terminal date falls in the CHB week 29.8.11 to 4.9.11 so Julie is a qualifying young person until 4.9.11. Her entitlement to IS will end when the IS week in which she ceased to be a qualifying young person and therefore ceased to be in that specific prescribed category of person (subject to her not satisfying any of the other prescribed categories) ends. Her BWE day is Wednesday so the benefit week in which Julie ceased to be a qualifying young person is 1.9.11 to 7.9.11. Her IS entitlement would therefore end on 7.9.11.

### **Scotland**

20765 In Scotland where a person

1. undertakes the Higher Certificate or Advanced Higher Certificate immediately before ceasing relevant education **and**
2. ceases relevant education earlier than they would have done had they taken the comparable examination in England and Wales

the terminal date is calculated by reference to the date that applies had they taken the examination in England and Wales<sup>1</sup>.

1 CHB (Gen) Regs, reg 7(2), Case 1.3

**Note:** In England, Wales and Scotland if a person leaves school and reaches 20 before the next terminal date see DMG 20790.

20766

20767 Leaving school is not necessarily the same as ceasing relevant education. Relevant education can cease when the hours of attendance reduce to twelve hours a week or less (see DMG 20591). In this case the date of leaving school is irrelevant.

20768 See DMG 20564 if a school leaver intends to resume relevant education at the same or another educational establishment.

20769 - 20777

### **External examinations**

20778 Where a person has ceased to receive relevant education **and**

- 1.** was entered for external examinations before relevant education ceased **and**
- 2.** was still entered for those examinations when relevant education ceased **and**
- 3.** the examinations are in connection with the education received

treat them as a qualifying young person up to the first terminal date, as described in DMG 20764 and 20765 above, after the last examination<sup>1</sup>.

1 CHB (Gen) Regs, reg 7(2), Case 2

### **Period up to the terminal date**

20779 In the period up to the terminal date young people are not entitled to JSA or IS because they are treated as

- 1.** a child or qualifying young person for CHB purposes<sup>1</sup> **and**
- 2.** receiving relevant education<sup>2</sup>

unless they come within the exceptions in DMG 20631.

1 SS CB Act 92, s 142; 2 JSA Regs, reg 54(2); IS (Gen) Regs, reg 12

### **Person starts work or training**

20780 CHB ceases when a young person starts work or WBTfYP but the terminal date still applies. If work or training ends before the terminal date is reached CHB can be reinstated on application.

20781 - 20789

## **Age 20**

20790 A person who reaches 20

**1.** whilst still receiving F/T non-advanced education **or**

**2.** before reaching the terminal date

is no longer treated as receiving relevant education but may be a student (see DMG Chapter 30).

20791 - 20900

Waiting days

# Waiting days 20901 - 20908

## Subpages

- [Waiting days 20901 - 20908](#)

# Waiting days 20901 - 20908

[Claimants who do not have to serve waiting days](#) 20902- 20908

20901 A claimant is not entitled to JSA for the first seven days of a JSP<sup>1</sup>. These seven days are called waiting days. This applies only to JSA, and not to IS.

1 JS Act 95, Sch 1, para 4; JSA Regs, reg 46(2)

## Claimants who do not have to serve waiting days

20902 [See [DMG memo 12/23](#)] Claimants (for joint-claim couples see DMG 20903) do not have to serve waiting days if<sup>1</sup>

**1.** their entitlement to JSA begins within twelve weeks of the end of their entitlement to

**1.1** IS **or**

**1.2** IB **or**

**1.3** ESA **or**

**1.4** CA **or**

**2.** they are young people who are only entitled to JSA because of a severe hardship direction by the Secretary of State (see DMG Chapter 30)<sup>2</sup> **or**

**3.** they claim JSA **and**

**3.1** an award cannot be made because the claimant or their partner has an existing award of IS or JSA<sup>3</sup> **and**

**3.2** the DM ends that award by supersession on the day immediately before the date the award on the new claim takes effect<sup>4</sup>.

1 reg 46(1); SS CS (D&A) Regs, reg 14A(4); 2 JS Act 95, s 3(1)(f)(ii) & 16(1);

3 SS CS (D&A) Regs, reg 14A(1); 4 reg 14A(2) & (3)

## Example

Dolores claims IS from Monday 10.11.14. On Monday 4.5.15 she starts full time work. The last day for which she is paid IS is Sunday 3.5.15. She is made redundant on Saturday 25.7.15, and claims and

satisfies the main conditions<sup>1</sup> to be entitled to JSA from and including Monday 27.7.15. Dolores has to serve seven waiting days and is not entitled to JSA from Monday 27.7.15 to Sunday 2.8.15. To be within twelve weeks of her entitlement to IS coming to an end, Dolores would have had to have claimed JSA and satisfied the main entitlement<sup>1</sup> conditions on Sunday 26.7.15.

1 JS Act 95, s 1(2)

20903 [See [DMG memo 12/23](#)] Joint claim couples claiming JSA do not have to serve waiting days if<sup>1</sup>

- 1.** they claimed JSA jointly within twelve weeks of either member of the couple being entitled to JSA, IS, IB, ESA or CA **or**
- 2.** one of them is a young person who is only entitled to JSA because of a Secretary of State severe hardship direction<sup>2</sup> (see DMG Chapter 30) **or**
- 3.** one member has already served waiting days in a JSP which is linked to the JSP of the joint claim couple **or**
- 4.** the member of a joint claim couple nominated to receive payment is in receipt of a training allowance.

1 JSA Regs, reg 46(1); 2 JS Act 95, s 3(1)(f)(ii) & 16(1)

20904 DMs should note that entitlement to JSA can exist even though nothing is payable. For example a claimant is entitled to

- 1.** JSA, but no JSA is payable because of sanction
- 2.** JSA(Cont) only, but has a pension that exceeds the allowable limit, so no JSA is payable
- 3.** JSA, but no JSA is payable because the claimant is a share fisherman who does not satisfy the additional conditions which have to be met.

### **Example**

Tony Harbottle claims IS from Monday 3.11.14. On Monday 18.5.15 he starts F/T work. The last day for which IS is paid is Sunday 17.5.15. Tony is dismissed for misconduct on Tuesday 21.7.15. He claims JSA from Wednesday 22.7.15 and is entitled but no JSA is payable because the DM imposes a sanction for 13 weeks from and including 22.7.15 because he lost his employment through misconduct. Tony does not have to serve waiting days.

20905 - 20908

## **Participation and signing 20909 - 20959**

### **Subpages**

- Participation 20911 - 20914
- Signing a declaration 20915 - 20918
- How is entitlement affected 20919 - 20934
- Good reason 20935 - 20954
- When entitlement ends 20955 - 20959



# Participation 20911 - 20914

[Notice to participate in an interview](#) 20911 - 20914

## Notice to participate in an interview

20911 If the Emp O gives or sends a notification to a claimant, including each member of a joint claim couple, to tell them to participate in an interview at a particular place at a particular day and time, the claimant has to do so<sup>1</sup>. This notification can be in writing, by telephone or by electronic means. An Emp O is any officer who acts on behalf of the Secretary of State<sup>2</sup>. The legislation allows other people to be authorized as Emp Os<sup>3</sup>. Appendix 4 gives details of the people the Secretary of State has authorized as Emp Os in relation to attendance

1 JS Act 95, s 8(1)(a); JSA Regs, reg 23 & 23A; 2 JS Act 95 s 8(3); JSA Regs, reg 4; 3 s 19(10)(a) & 20A(9)

20912 The following are the most common types of notification

**1. ES 40** - tells a claimant to

**1.1** attend at a particular Jobcentre Plus office to sign a declaration (for example ES24, ES20SF) on a

**1.1.a** regular basis (normally fortnightly) **and**

**1.1.b** particular signing day at a particular time **or**

**1.2** post in a declaration if they are a postal claimant on a

**1.2.a** regular basis (normally fortnightly) **and**

**1.2.b** particular day

**Note:** For guidance on the requirement to sign a claimant declaration see [20915](#).

**2. Claims pack** tells a claimant to participate at a particular Jobcentre Plus office or other place (for example an employer's premises) to make a claim on a particular day at a particular time.

**3. A computer generated letter** which tells a claimant to participate at a particular Jobcentre Plus office or other place (for example a community centre) to go to an interview with an Emp O to discuss, for example, job search or possible training schemes or employment programmes, on a particular day at a particular time.

**4. A telephone call** telling the claimant to participate at a particular Jobcentre Plus office or other place,

to go to an interview on a particular day at a particular time to discuss, for example, job search or possible training schemes or employment programmes.

### **Example 1**

Meg Gledhill, who has been in receipt of JSA(IB) for six months, starts a NDYP programme, and remains on 10p JSA per week.

She has a disagreement with the programme provider and leaves NDYP early. She attends the Jobcentre Plus office three weeks later. The DM is asked, amongst other things, to terminate the JSA award for the failure to attend the Jobcentre Plus office. The Jobcentre Plus office also suspend JSA whilst they make enquiries about whether the claimant is available and ASE.

The DM decides that disentanglement is not appropriate. The original notice to attend the Jobcentre Plus office was revoked when she started NDYP. No further notice to attend has been issued. The DM goes on to decide the claimant can be sanctioned as she did not have good reason for leaving early.

### **Example 2**

Rob Cowie claimed JSA, but received a letter saying he was not entitled to JSA because he had restricted his availability and had no reasonable prospects of finding work. He appealed the decision and won at the tribunal. He attends the Jobcentre Plus office again to ask about his arrears of benefit.

The DM is asked to terminate the JSA award for failure to attend as Rob stopped attending after getting the letter saying he was no longer entitled to JSA.

The DM decides that disentanglement is not appropriate as the notice to attend lapsed once Rob got the letter telling him he was not entitled to JSA.

20913 If the claimant, is able to prove that the notification has not been received<sup>1</sup> the notification cannot be treated as correctly served under the legislation<sup>2</sup>.

1 R(JSA) 1/04; 2 JSA Regs, reg 23 & 23A

# Signing a declaration 20915 - 20918

[A declaration](#) 20915 - 20918

## A declaration

20915 If the Secretary of State asks them<sup>1</sup>, claimants have to provide signed declarations (usually on form ES24) to the effect that since making a claim for JSA or since they last provided such a signed declaration

**1.** they have been

**1.1** available **or**

**1.2** satisfying the conditions necessary to be treated as available except for any period they have already told the Secretary of State about **and**

**2.** they have been

**2.1** ASE to the extent needed to give them their best chance of getting employment **or**

**2.2** satisfying the conditions necessary to be treated as ASE except for any period they have already told the Secretary of State about **and**

**3.** there has been no change to their circumstances which might affect entitlement to JSA or the amount of JSA payable, except for anything they have already told the Secretary of State about.

**Note:** Since 2021 the Secretary of State has invoked the discretion in legislation<sup>2</sup> to apply to all JSA(IB) claimants which means there is no longer a requirement for JSA(IB) claimants to sign a declaration.

1 JS Act 95, s 8(1)(b) and 8(1A)(a to d); 2 JSA Regs, reg 24(6)

20916 The declarations have to be provided on the day on which claimants are told in a notification to participate (see DMG 20911), or on any other day as the Secretary of State may say<sup>1</sup>. Usually claimants will only need to sign declarations on the days they are required to regularly participate as instructed by form ES40, or, if they are postal claimants, on the days they are told on form ES40 to sign their declarations.

1 JS Act 95, reg 24(10)

20917 References to the Secretary of State can also include a reference to people designated as Emp

Os<sup>1</sup>. Appendix 4 gives details of the people the Secretary of State has authorized as Emp Os in relation to providing evidence and information.

1 JS Act 95, reg 24(11)

20918

# How is entitlement affected 20919 - 20934

[Entitlement ends](#) 20919

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## Entitlement ends

20919 Entitlement to JSA will end when

### 1. the claimant

**1.1** fails to participate in an interview on the day and place specified in a relevant notification **and**

**1.2** fails to make contact with the Emp O in the manner set out in a relevant notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate in an interview<sup>1</sup> **or**

### 2. the claimant

**2.1** participates in an interview on the right day but at the wrong time **and**

**2.2** has been informed by the Emp O in writing that if they do not participate in an interview at the right time the next time they are required to then this may result in entitlement to JSA ceasing or not being payable for a period **and**

**2.3** fails to participate in an interview at the right time on the next occasion **and**

**2.4** fails to make contact with the Emp O in the manner set out in the relevant notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate in an interview at the right time<sup>2</sup> **or**

**3.** the claimant was required to provide a signed declaration and fails to do so on the day they were supposed to<sup>3</sup> and fails to make contact with the Emp O before the end of 5 working days after the day they fail to provide a signed declaration, or makes contact but fails to show good reason, those 5 days beginning with the first working day after the day they failed to provide a signed declaration<sup>4</sup>.

**Note:** For guidance on the requirement to sign a claimant declaration see [20915](#).

1 JSA Regs, reg 25(1)(a); 2 reg 25(1)(b); 3 reg 25(1)(c); 4 reg 27

## Definitions

20920 For the purposes of the guidance on failure to participate in an interview

ÿ “working day” means any day that the appropriate office is not closed<sup>1</sup>

ÿ “relevant notification” means a notification to the claimant of when and where they are to participate in an interview<sup>2</sup> but which is not a notification to attend an employment programme, training scheme, MWA Scheme or SAPOE<sup>3</sup>.

1 JSA Regs, reg 25(1A); 2 regs 23 & 23A; 3 reg 25(1A)

### Example 1

Nicky Robson makes a claim to JSA on Thursday at Littlehampton Jobcentre Plus office. He is given a notification (ES40) telling him to come to Littlehampton Jobcentre Plus office on the following Tuesday at 10am and every second Tuesday after that at 10am.

Nicky does not turn up at Littlehampton Jobcentre Plus office the following Tuesday and makes no further contact with the Jobcentre Plus office. His entitlement ends.

### Example 2

Alun Connor has been regularly going to Littlehampton Jobcentre Plus office every second Wednesday at 10:30 am to sign declarations as he was told to by a notification (ES40).

At his next regular signing day, Alun turns up at 2:30pm. He is subsequently sent a letter telling him that if he does not turn up at the correct time on the next occasion then his JSA could cease or it could not be payable for a period.

On his next regular Wednesday signing he does not turn up at all and has made no contact with the Emp O by the end of the following Wednesday.

Alun’s entitlement to JSA ends.

### Example 3

Tracy has been regularly going to Littlehampton Jobcentre Plus office on Tuesdays to sign declarations as she was told by a notification (ES40). She tells the Jobcentre Plus office that she will be on holiday the next time she is due to participate. Form ES 674 is completed and is noted with the date that she is to participate following her return home.

On her return from holiday Tracy does not turn up and makes no contact with the Jobcentre Plus office. Tracy's entitlement to JSA ends.

## Entitlement continues but a sanction is applicable

20921 Entitlement to JSA will continue but a sanction may be imposed for a period where either

**1.** the claimant (or in the case of a joint-claim couple, either member of the couple)

**1.1** fails to participate on the day and place specified in a relevant notification **and**

**1.2** makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate **and**

**1.3** fails to show good reason for that failure **or**

**2.** the claimant (or in the case of a joint-claim couple, either member of the couple)

**2.1** participates on the day and at the place specified in a relevant notification but fails to participate at the correct time **and**

**2.2** has been informed by the Emp O in writing that if they do not participate at the right time the next time they are required to participate then this may result in entitlement to JSA ceasing or a reduction being made to the award **and**

**2.3** fails to participate at the right time on the next occasion **and**

**2.4** makes contact with the Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day on which they fail to participate at the correct time **and**

**2.5** fails to show good reason for that failure<sup>1</sup>.

1 JSA Regs, reg 70A(3) and (4)

## Period of sanction

20922 Where a sanction is applicable as in DMG 20921 above, it will be a lower level sanction<sup>1</sup>. See DMG 34171 et seq for details of the sanction length and when sanction period begins<sup>2</sup>.

1 JSA Regs, reg 19A(2)(a); 2 reg 69A

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## One member of a joint-claim couple is sanctioned

20931 Where one member of a joint-claim couple are sanctioned, JSA is payable to the other member of the couple<sup>1</sup>.

1 JS Act 95, s 19A(10)

## Entitlement does not end

20932 Where the claimant has failed to sign a declaration in the manner set out in the notification<sup>1</sup>, entitlement to JSA will not end and will continue to be payable at the full rate if the claimant

**1.** makes contact with an Emp O in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day the claimant failed to provide a signed declaration **and**

**2.** shows good reason for that failure<sup>2</sup>.

**Note:** For guidance on good reason as it applies to this issue see DMG 20935 et seq.

1 JSA Regs, reg 24(6) & (10); reg 25(1)(c); 2 reg 27

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## Good reason 20935 - 20954

[Showing good reason](#) 20935 - 20954

### Showing good reason

20935 Entitlement does not end if claimants show good reason for failing to

**1.** comply with a notice **or**

**2.** provide a signed declaration on the day they were told to do so

before the end of the 5th working day after the day on which they failed to comply or did not provide the declaration<sup>1</sup>. A working day means any day on which the appropriate office is open to the public<sup>2</sup>.

Appropriate office means the Jobcentre Plus office or any other place which the claimant has been told to attend in a notice<sup>3</sup>.

1 JSA Regs, reg 27; 2 reg 25(1A); 3 reg 4

20936 Claimants have to show good reason **only**

**1.** during their signing time<sup>1</sup> and not for the rest of the day nor any day between the day they failed to attend and their actual attendance **or**

**2.** for the whole day on which they failed to provide a signed declaration<sup>2</sup>, not any days between the day they failed to provide a signed declaration and the day they actually do provide one.

**Note:** For guidance on the requirement to sign a claimant declaration see [20915](#).

1 JSA Regs, reg 27; 2 reg 24(6) & 27

### Example

Littlehampton Jobcentre Plus office opens Monday to Saturday every week. Lee Hancock attends Littlehampton Jobcentre Plus office every fortnight on Thursday at 11.30 am to sign a declaration. He did not attend last Thursday, when he was due to attend, but comes into the Jobcentre Plus office this Wednesday to sign his declaration. He explains that he did not come in last Thursday at 11.30am because his brother had phoned him on the Wednesday night to say that if he could get to London by 10.30 am on the Thursday, he may have the chance of a job. He had to leave early to get to London on time, and did not have time to call at or phone the Jobcentre Plus office before he left. He did not get back to Littlehampton until 6pm, by which time the office was closed. Lee has a letter from Niehaus Ltd to say that they did interview him for a job on the Thursday, but he did not get it because he did not have the necessary experience. Lee does not give any explanation as to why he did not come to the Jobcentre

Plus office or phone them on the Friday, Saturday, Monday or Tuesday. The DM accepts that Lee's reason for not attending last Thursday at 11.30am is good reason. Lee is not required to show good reason for his failure to come into or contact the Jobcentre Plus office on the Friday, Saturday, Monday or Tuesday. As he has shown good reason before the end of Wednesday, which is the 5th working day after he failed to attend, Lee's entitlement will not end.

20937 Additional evidence purporting to show good reason, which is received after the end of the fifth working day, cannot be taken into account when considering good reason.

However, information which is received late, but merely serves to verify or clarify evidence which was received within the time limit, can be taken into account.

### **Example 1**

The DM is not prepared to take at face value the claimant's statement that a public transport failure had prevented his attendance at the jobcentre because no details have been supplied. In response to a written enquiry, detailed evidence is received after the five days. This evidence confirms that the claimant's original statement was genuine, and can be taken into account because it merely verifies that the claimant did show good reason within the five days.

### **Example 2**

The claimant provides a statement that she did not attend at the jobcentre because she forgot. In response to a written enquiry, the claimant provides evidence that she had to look after the child of a friend who was ill. This evidence is received after the five days. The claimant is treated as available by the DM, however this cannot be taken into account in relation to the attendance question as she did not show good reason within the five days.

### **Example 3**

The claimant provides a statement that he could not attend the jobcentre because he had to attend a job interview thirty miles away from his home. The DM writes to the claimant asking for details of the interview time etc. The claimant provides details which clearly show that he could not have attended the jobcentre at the time and day specified in the written notice. The details are provided after the five days, but they merely verify the claimant's original statement. The claimant has shown good reason within the five days.

### **Example 4**

Jon Sargeant does voluntary work for the RSPCA on Tuesdays and Wednesdays. On Thursday he gets a letter asking him to go to the Jobcentre Plus office on Friday for an interview with an Emp O about job opportunities. He does not attend. Jon does not do voluntary work in the 48 hours starting from the date he got the letter, so he does not automatically have good reason.

20940 See DMG Chapter 21 for guidance on when claimants can be treated as available in the circumstances mentioned at DMG 20939 **1**. See DMG Chapter 21 for guidance on treating claimants as ASE in the circumstances mentioned at DMG 20939 **2**. See DMG Chapter 34 for guidance on good reason mentioned in DMG 20935

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## When entitlement ends 20955 - 20959

[Fails to participate, or participates late](#) 20956

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20955 When a DM has determined that claimants' entitlement to JSA will end as in DMG 20919, the DM then has to determine when entitlement ends.

### Fails to participate, or participates late

20956 Where claimants have failed to participate, or participated late having been given a warning and failed to make contact with an Emp O within 5 working days (see DMG 20919 **1.** and **2.**), entitlement ends on the **earlier** of

- 1.** the day after the last day for which claimants have provided information or evidence that shows that they continue to be entitled to JSA<sup>1</sup> **and**
- 2.** the day claimants were required to attend<sup>2</sup>.

But entitlement will not end earlier than the day after the day on which claimants last participated on time and on the correct day in accordance with a notice<sup>3</sup>, as long as that day falls before the date of the failure to participate or late participation.

1 JSA Regs, reg 26(a); R(JSA) 6/03; 2 reg 26(b); 3 reg 26

#### Example 1

Sally Crosby was required to go to Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

She participates on Thursday 6 March at the correct time and signs a declaration confirming that she has been ASE and available and that her circumstances have not changed since the last time she signed such a declaration.

Sally does not go to the Jobcentre Plus office on Thursday 20 March, and does not contact them again.

On Friday 28 March the DM considers ending entitlement (by this date Sally cannot show good reason within the necessary time).

The DM supersedes the award of JSA because there has been a relevant change of circumstances (i.e.

she has failed to participate without good reason).

**Entitlement ends on Friday 7 March (and no JSA is paid for this day). This is because**

- 1.** the date Sally was required to participate was Thursday 20 March
- 2.** the day after the last day for which she provided information showing she has continued to be entitled to JSA (by signing the declaration form ES24) was Friday 7 March
- 3.** the earlier of these two dates is Friday 7 March
- 4.** she did not participate on time and on the correct date in accordance with a notice on any date on or between Friday 7 March and Wednesday 19 March.

**Example 2**

John Still is required to go to Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

He participates on Thursday 6 March at the correct time and signs a declaration confirming that he has been ASE and available and that his circumstances have not changed since the last time he signed such a declaration.

John does not go to the Jobcentre Plus office on Thursday 20 March, but sends in booklet ES40 that he no longer wishes to claim from Monday 17 March, but giving no reason or explanation for this. The ES40 also confirms that he has been available and ASE and his circumstances have not changed for the period Friday 7 March to Sunday 16 March inclusive.

On Friday 28 March the DM considers ending entitlement (by this date John cannot show good reason within the necessary time).

The DM supersedes the award of JSA because there has been a relevant change of circumstances (i.e. he has failed to participate without good reason).

**Entitlement ends on Monday 17 March (and no JSA is paid for this day). This is because**

- 1.** the date John was required to participate was Thursday 20 March
- 2.** the day after the last day for which he provided information showing he continued to be entitled to JSA (by signing the declaration on the ES40) was Monday 17 March
- 3.** the earlier of these two dates is Monday 17 March
- 4.** he did not participate on time and on the correct date in accordance with a notice on any date on or between Friday 7 March and Wednesday 19 March.

### **Example 3**

Juan Valdes is required to go to Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

He goes on Thursday 6 March at the correct time and signs a declaration confirming that he has been ASE and available and that his circumstances have not changed since the last time he signed such a declaration.

Juan also goes to the Jobcentre Plus office on Wednesday 12 March at 9am in response to a letter asking him to attend for a restart interview at that time.

He does not go to the Jobcentre Plus office on Thursday 20 March and does not contact them again.

On Friday 28 March the DM considers ending entitlement (by this date Juan cannot show good reason within the necessary time).

The DM supersedes the award of JSA because there has been a relevant change of circumstances (i.e. he has failed to participate without good reason).

### **Entitlement ends on Thursday 13 March (and no JSA is paid for this day). This is because**

- 1.** the date Juan was required to participate was Thursday 20 March
- 2.** the day after the last day for which he provided information showing that he continued to be entitled to JSA (by signing the declaration form ES24) was Friday 7 March
- 3.** the earlier of these two dates is Friday 7 March
- 4.** Juan **did** participate on time and on the correct date in accordance with a notice on Wednesday 12 March, which is before his failure to participate. So entitlement cannot end earlier than the day after this day.

### **Example 4**

Joan Sharpe is required to go to Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

She goes on Tuesday 6 May at the correct time and signs a declaration confirming that she has been ASE and available and that her circumstances have not changed since the last time she signed such a declaration.

Joan does not go to the Jobcentre Plus office on Tuesday 20 May. She does go to the office on Friday 23 May and explains why she failed to participate. The officer takes a declaration (ES24) covering the period Wednesday 7 May to Tuesday 20 May.

The DM determines that good reason was shown. There is no break in entitlement.

### **Example 5**

Paul Shipley is required to go to Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

He goes on Tuesday 6 May at the correct time and signs a declaration confirming that he has been ASE and available and that his circumstances have not changed since the last time he signed such a declaration.

Paul does not go to the Jobcentre Plus office on Tuesday 20 May. He goes to the office on Friday 23 May and explains why he failed to participate. The officer takes a declaration (ES24) covering the period Wednesday 7 May to Tuesday 20 May.

The DM determines that good reason was not shown for the failure to participate. There are no other doubts about entitlement for the period 7 May to 20 May.

The DM supersedes the award of JSA because there has been a change in circumstances (i.e. that he has failed to participate without good reason).

### **Entitlement ends on Tuesday 20 May (and no JSA is paid for this day). This is because**

- 1.** the date Paul was required to participate was Tuesday 20 May
- 2.** the day after the last day for which he provided information showing he has continued to be entitled to JSA (by signing the declaration on ES24) was Wednesday 21 May
- 3.** the earlier of these two dates is Tuesday 20 May
- 4.** he did not participate on time and on the correct date in accordance with a notice on any date on or between Wednesday 7 May and Monday 19 May.

### **Example 6**

Gail Rogers is required to go to Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

She goes on Tuesday 6 May at the correct time and signs a declaration confirming that she has been ASE and available and that her circumstances have not changed since the last time she signed such a declaration.

Gail does not go to the Jobcentre Plus office on Tuesday 20 May. On Wednesday 28 May the DM terminates the award of JSA from and including 7 May due to a relevant change of circumstances (i.e. that she failed to participate without good reason).

Gail goes to the office on Thursday 5 June and explains why she failed to participate. She asks to claim for the period before she failed to participate and completes a backdated claim form for the period 7 May to 4 June. That request for backdating must also be treated as an application for revision of the decision to terminate JSA from 7 May. The backdated claim form provides information showing that she continues to be entitled to JSA from 7 May to and including 20 May. There are no other doubts on entitlement for the period 7 May to 20 May.

Because the application to revise is within one month of the decision to terminate, the DM revises the decision to terminate JSA from 7 May. JSA is terminated from

and including 20 May. This is because the day after the last day she has provided evidence showing that she has continued to be entitled to JSA is 21 May and she failed to participate on 20 May. The earliest of these two days is 20 May.

The period of the backdated claim for the period 20 May to 4 June should be considered in the normal way.

### **Example 7**

David Brown is required to Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

He goes on Tuesday 6 May at the correct time and signs a declaration confirming that he has been ASE and available and that his circumstances have not changed since the last time he signed such a declaration.

David does not go to the Jobcentre Plus office on Tuesday 20 May. On Wednesday 28 May the DM terminates the award of JSA from and including 7 May due to a relevant change of circumstances (i.e. that he failed to participate without good reason).

David goes to the office on Tuesday 8 July and explains why he failed to participate. He asks to claim for the period before he failed to participate and completes a backdated claim form for the period 7 May to 4 June. The backdated claim form provides information showing that he continues to be entitled to JSA from 7 May to and including 20 May. There are no other doubts on entitlement for the period 7 May to 20 May.

That request for backdating must be treated as an application for supersession of the decision to terminate JSA from 7 May because it is outside of the one month time limit for revising and cannot be admitted. For the purposes of this example, the time limit for revising cannot be extended.

No arrears are payable because of the effective date rule (see DMG Chapter 04). The backdated claim should now be considered in the normal way.



## Does not provide a signed declaration, or provides one on the wrong day

20957 Where a claimant has failed to provide a signed declaration, or provided it on the wrong day (see DMG 20919 **3.**), entitlement ends on the **earlier** of

- 1.** the day after the last day for which the claimant has provided information or evidence which establishes entitlement to JSA<sup>1</sup> **and**
- 2.** the day on which the claimant should have provided the signed declaration<sup>2</sup>. But entitlement will not end earlier than the day after the day on which the claimant last participated on time and on the correct day in accordance with a notice<sup>3</sup>, as long as that day falls before the date of the failure to participate or late participation.

**Note 1:** See DMG 20932 where the claimant has contacted the Emp O within 5 working days and provides good reason.

**Note 2:** For guidance on the requirement to sign a claimant declaration see [20915](#).

1 JSA Regs, reg 26(a); R(JSA) 6/03; 2 JSA Regs, reg 26(c); 3 reg 26

### Example 1

Lyn Wheatley sends in a declaration to Littlehampton Jobcentre Plus office every other Thursday.

She posts in her declaration on Thursday 6 March confirming that she has been ASE and available and that her circumstances have not changed since the last time she signed such a declaration.

Lyn does not send in a declaration to the Jobcentre Plus office on Thursday 20 March, and does not contact them again.

On Friday 28 March the DM considers ending entitlement (by this date Lyn cannot show good reason within the necessary time).

### Entitlement ends on Friday 7 March. This is because

- 1.** the date on which Lyn was required to provide the signed declaration was Thursday 20 March
- 2.** the day after the last day for which she provided information establishing her entitlement to JSA (by signing the declaration form ES24) was Friday 7 March
- 3.** the earlier of these two dates is Friday 7 March
- 4.** she did not participate on this and on the correct date in accordance with a notice on any date or on between Friday 7 March and Wednesday 19 March.

### Example 2

Zack Evans sends in a declaration to Littlehampton Jobcentre Plus office every other Thursday.

He posts in his declaration on Thursday 6 March confirming that he has been ASE and available and that his circumstances have not changed since the last time he signed such a declaration.

Zack does not send in a declaration to the Jobcentre Plus office on Thursday 20 March, but sends in booklet ES40 saying that he no longer wishes to claim from Monday 17 March, but giving no reason or explanation for this. The ES40 also confirms that he has been available and ASE and his circumstances have not changed for the period Friday 7 March to Sunday 16 March inclusive.

On Friday 28 March the DM considers ending entitlement (by this date Zack cannot show good reason within the necessary time).

**Entitlement ends on Monday 17 March. This is because**

- 1.** the date Zack was required to provide the signed declaration was Thursday 20 March
- 2.** the day after the last day for which he provided information establishing his entitlement to JSA (by signing the declaration on form ES40) was Monday 17 March
- 3.** the earlier of these two dates is Monday 17 March
- 4.** he did not participate on time and on the correct date in accordance with a notice on any date on or between Friday 7 March and Wednesday 19 March.

20958 Providing a declaration means

- 1.** posting it in on the day the claimant is told to do so by the notice (booklet ES40) **or**
- 2.** otherwise delivering it (for example by hand) to the relevant Jobcentre Plus office so that it arrives no later than it would have done had it been sent by post on the correct day.

20959

## Limited capability for work 20960 - 20999

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# Treated as capable or not having limited capability for work 20961 - 20984

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## Short periods of sickness

**[See DMG Memo 06/20]**

20961 Claimants can be treated as capable of work/not having LCW for up to two weeks if

- 1.** they have been awarded JSA<sup>1</sup> **and**
- 2.** they prove to the DM that they are unable to work because of some specific disease or disablement (see DMG 20967 - 20968)<sup>2</sup> **and**
- 3.** they would satisfy the requirements for entitlement to JSA (other than availability, ASE, capability and not having LCW) if it was not for their disease or disablement (see DMG 20963)<sup>3</sup> **and**
- 4.** they **have not** stated in writing that they
  - 4.1** intend to claim **or**
  - 4.2** have claimed

IB, ESA, UC, SDA or IS<sup>4</sup> **and**

**5.** they have not already been treated as capable/not having LCW twice in the JSP or year (see DMG 20975)<sup>5</sup> **and**

**6.** the first day they are unable to work **does not** fall within eight weeks beginning with the day the person ceased to be entitled to SSP<sup>6</sup> **and**

**7.** they are not temporarily absent from GB due to receiving hospital treatment outside GB<sup>7</sup> **and**

**8.** they are not already in an extended period of sickness<sup>8</sup> (see DMG 20972 below) **and**

**9.** the first day of the short period of sickness does not begin immediately after the last day of the extended period of sickness<sup>9</sup> (see DMG 20977 below). .

1 JSA Regs, reg 55(1)(a); 2 reg 55(1)(b); 3 reg 55(1)(c); 4 reg 55(1); 5 reg 55(3); 6 reg 55(4);  
7 reg 55(5); 8 reg 55(6)(a); 9 reg 55(6)(b)

### **Example**

Freda is entitled to IB from Monday 4.9.06 until Sunday 10.12.06. She starts work on Monday 11.12.06, but is made redundant on Friday 5.1.07. Freda claims and is entitled to JSA from and including Saturday 6.1.07. On Tuesday 6.2.07, the day she is due to attend the Jobcentre Plus office, she phones to say that she has flu and cannot come in. She attends the Jobcentre Plus office on Friday 9.2.07, and fills in a written declaration that she was unable to work because of flu from Saturday 3.2.07 until and including Thursday 8.2.07.

Freda cannot be treated as capable of work. Although she satisfies the conditions at DMG 20961 **1.** to **4.** and **6.**, the first day she was unable to work (3.2.07) falls within

eight weeks of entitlement to IB (10.12.06), so DMG 20961 **5.** is not satisfied. If Freda had first been unable to work on Sunday 4.2.07 she would have satisfied all the conditions, and could have been treated as capable.

### **Meaning of week**

20962 Week means a period of seven days<sup>1</sup> starting on any day.

1 JSA Regs, reg 1(3)

### **Entitlement to JSA**

20963 The following claimants will satisfy the requirement in DMG 20961 **3** and DMG 20976 **4.**

1. Claimants to whom JSA would not be payable because of a sanction<sup>1</sup> under relevant legislation<sup>2</sup>
2. Claimants to whom JSA would not be payable because their pension becomes more than the prescribed amount<sup>3</sup>
3. Claimants to whom JSA would not be payable because they are share fishermen and have not satisfied the additional conditions to receive JSA<sup>4</sup>.

1 JSA Regs, reg 55(1)(c) & reg 55A(1)(d); 2 JS Act 95, s 19(5) & (6), 20A(2); 3 s 4(1); JSA Regs, reg 81; 4 reg 161

### **Example**

Grace is awarded JSA (Cont) at a reduced rate because she gets an occupational pension. She gets flu and is unable to work. In the same week her pension increases above the level at which she gets paid JSA (Cont). Although JSA is no longer payable to her because her pension is more than the prescribed amount, Grace would be entitled to JSA were it not for her sickness so she can be treated as capable for two weeks.

20964 - 20966

### **Unable to work because of some specific disease or disablement**

20967 See DMG Chapter 13 for guidance on “some specific disease or disablement”.

20968 Claimants can prove that they are unable to work because of some specific disease or disablement by providing written declarations that they have been unfit for work from a certain date or for a period<sup>1</sup>. These written declarations have to be made on a form approved by the Secretary of State, and can only be made for a past period.

1 JSA Regs, reg 55(2) & reg 55A(2)

20969

### **Already treated as capable/not having limited capability for work twice or more in the jobseeking period or year**

20970 A claimant can only be treated as capable/not having LCW on two occasions in any one JSP. The two occasions must be separated by at least one day to be separate periods. But if the JSP lasts for more than a year, then the claimant can be treated as capable/not having LCW twice in every year. Years are calculated from the first day of the JSP<sup>1</sup>.

1 JSA Regs, reg 55(3)

## Example

The JSP begins on Monday 4.1.10 and ends on Friday 3.2.12. The claimant can be treated as capable twice in the year from Monday 4.1.10 to Tuesday 3.1.11, twice in the year from Wednesday 4.1.11 to Tuesday 3.1.12 and twice in the year from Wednesday 4.1.12.

20971 When calculating the two occasions when the short period of sickness can apply, any occasion where the claimant initially satisfies the conditions for the short period of sickness, but the sickness continues beyond 2 weeks so that they satisfy conditions for the extended period of sickness, (see DMG 20972 et seq) shall be disregarded as a short period of sickness<sup>1</sup>.

1 JSA Regs, reg 55 (7)

## Extended period of sickness

[\[See DMG Memo 06/20\]](#)

20972 In addition to the two short periods of sickness (see DMG 20961), a claimant can also be treated as capable of work/not having LCW for an extended period of sickness of up to 13 weeks.

20973 This extended period of sickness applies to a person who<sup>1</sup>

1. has been awarded JSA
2. proves to the DM that they are unable to work because of some specific disease or disablement **and**
3. either
  - 3.1 declares that they have been unable to work or expects to be unable to work for more than 2 weeks but does not expect to be unable to work because of that disease or disablement for more than 13 weeks **or**
  - 3.2 is a person who has already had 2 short periods of sickness within the current JSP or 12 months where the JSP exceeds 12 months
4. during this period, satisfies the requirements for entitlement to JSA other than those to be available for and actively seeking employment and capable of work or not having LCW **and**
5. has not stated in writing that they propose to claim or have claimed ESA or UC for that period.

1 JSA Regs, reg 55ZA(1)

20974 The evidence required where

1. DMG 20973 3.1 applies<sup>1</sup> is a doctors statement or other evidence<sup>1</sup> for IfW or LCW purposes<sup>2</sup> and any

other additional information as the Secretary of State requires **or**

**2.** where paragraph DMG 20973 **3.2** applies<sup>3</sup>, is a written declaration in a form approved by the Secretary of State (JSA28) that they have been unfit for work from a certain date or for a specified period.

1 JSA Regs, reg 55ZA(2); 2 SS (Med Ev) Regs; 3 JSA Regs, reg 55ZA(3)

20975 Where a claimant satisfies the criteria in paragraph DMG 20974-74 above, they shall be treated as capable of work/not having LCW for a continuous period beginning on the first day on which the claimant is unable to work and ending on

1. the last day he is unable to work **or**

2. if that period of sickness exceeds 13 weeks, the day which is 13 weeks after the first day on which the claimant is unable to work<sup>1</sup>.

1 JSA Regs, reg 55ZA(4)

20976 A claimant can only have one extended period of sickness in any period of 12 months starting on the first day on which the claimant is unable to work as described in paragraph DMG 20975<sup>1</sup>.

1 JSA Regs, reg 55ZA(5)

## **How the two types of sickness can be used**

20977 The claimant will be able to make use of both the short period of sickness and the extended period of sickness so that they can have two periods of up to two weeks and one period of up to 13 weeks in any JSP/12 month period. Where a claimant's sickness begins as a short period of sickness not exceeding 2 weeks but the sickness continues beyond 2 weeks, then the claimant can make use of the extended period of sickness up to the maximum period of 13 weeks. A claimant cannot start a short period of sickness immediately after the last day on which an extended period of sickness applied<sup>1</sup>.

1 JSA Regs, reg 55(6)(b)

### **Example 1**

Person L is in receipt of JSA and on 16 April she provides a medical certificate to say she is unable to work due to influenza for a period of 2 weeks. She is treated as capable of work for the period 16 - 29 April and as satisfying the conditions for the short period of sickness.

During this 2 week period, person L contracts pneumonia and she provides a medical certificate for a further 8 weeks. She is then able to satisfy the conditions for the extended period of sickness for the whole period of sickness from 16 April to 24 June (10 weeks).



Person L has now used her extended period of sickness and could only now use the two short periods of sickness if she has any further sickness in her current JSP/12 month period.

## **Example 2**

Person P is in receipt of JSA and on 12 June he provides a medical certificate to say he is unable to work due to a fractured leg for a period of 13 weeks. He is treated as capable of work for the period 12 June to 10 September and as satisfying the conditions for the extended period of sickness.

He is due to return to normal jobseeking activity on 11 September. However he gets an ear infection which leaves him feeling dizzy and unable to sit or stand for anything other than short periods. His doctor prescribes antibiotics and recommends bed rest for 2 weeks. Although he still has 2 short periods of sickness available to use, as this short period would begin directly after the extended period of sickness ends and he has used the full 13 weeks allowable period of sickness on the extended period of sickness then he cannot remain on JSA and is advised to make a claim for ESA from 11 September.

20978 Where the extended period of sickness applies to a claimant, the short period of sickness cannot apply during that same period<sup>1</sup>.

1 JSA Regs, reg 55(6)(a)

## **Sickness type**

20979 Where during an extended period of sickness, the type of disease or disablement that the claimant is suffering from changes, the claimant can still continue to satisfy the conditions for the extended period of sickness up to the maximum period of 13 weeks<sup>1</sup>.

1 JSA Regs, reg 55ZA(1)

## **Medical evidence**

20980 Where the period for which a person is sick extends beyond two weeks and the person satisfies the other conditions for the extended period of sickness, the claimant will have to provide a doctors statement or other evidence for IfW or LCW purposes and any other additional information as the Secretary of State requires<sup>1</sup>.

1 JSA Regs, reg 55ZA(3A)

## **When the extended period of sickness will not apply**

20981 The extended period of sickness will not apply to a claimant where<sup>1</sup>

1. the first day they are unable to work falls within 8 weeks beginning with the day the claimant ceased to be entitled to SSP or

2. the claimant is temporarily absent from GB for the purpose of receiving NHS treatment abroad.

1 JSA Regs, reg 55ZA(6)

## **NHS treatment abroad**

20982 In England and Wales claimants can be treated as capable of work/not having LCW if

- 1.** they have been awarded JSA or a joint-claim JSA<sup>1</sup> **and**
- 2.** they are temporarily absent from GB for the purpose of receiving NHS treatment abroad<sup>2</sup> (see DMG Chapter 07) **and**
- 3.** they prove to the DM that they are unable to work because of some specific disease or disablement<sup>3</sup> (see DMG 20967 - 20968) **and**
- 4.** they would satisfy the requirements for entitlement to JSA (other than availability, ASE, capability and not having LCW) if it was not for their disease or disablement<sup>4</sup> **and**
- 5.** they **have not** stated in writing, before a period of temporary absence abroad begins, that they have claimed ESA immediately before the beginning of the period of absence<sup>5</sup>.

**Note:** This legislation only applies in England and Wales and there is no equivalent for Scotland.

1 JSA Regs, reg 55A(1)(a); 2 reg 55A(1)(b); 3 reg 55A(1)(c); 4 reg 55A(1)(d); 5 reg 55A(1)

20983 - 20984

## Treated as capable - personal capability assessment (incapacity for work) 20985 - 20987

20985 The DM should treat claimants as capable of work if<sup>1</sup>

**1.** they are

**1.1** incapable of work under the PCA (see DMG Chapter 13) **or**

**1.2** treated as incapable of work because they have a severe condition<sup>2</sup> or there are exceptional circumstances<sup>3</sup> **and**

**2.** they have

**2.1** worked or been in education or done training, or other activities, in preparation for work while suffering from the same illness or disability which led to the finding of incapacity **and**

**2.2** since then the illness or disability has not got worse and they are not suffering from a different illness or disability which might affect their capability for work **or**

**3.** they can show that they have reasonable prospects of getting employment (see DMG Chapter 21).

1 SS (IW) (Gen) Regs, reg 17A; 2 reg 10; 3 reg 27

### Example

Joe, who is blind, works as a switchboard operator for a small building supplies company. He breaks his leg and is unfit to work, due to complications for 16 months. He is claiming IB and is treated as incapable of work under the PCA as he is blind. His employer sacks Joe after ten months and finds someone else to replace him. After 16 months his doctor tells him that his leg is fully healed and he can go back to work. Joe attends the Jobcentre Plus office and claims JSA.

He is treated as incapable of work under PCA, but he worked whilst blind and his blindness has not worsened. Also, his broken leg has now healed and no longer affects his capability for work. The DM treats him as capable.

20986 - 20987

# Capable of work 20988 - 20999

[Meaning of capable of work 20988 - 20996](#)

[Medical evidence 20997 - 20999](#)

## Meaning of capable of work

20988 The DM has to apply the tests of incapacity as applied in IB claims<sup>1</sup> to determine whether or not someone is capable of work<sup>2</sup> (see DMG Chapter 13). The rules about treating people as incapable also apply for example, where the claimant is pregnant and within six weeks of her EWC, or where the claimant is a hospital in-patient. There are some differences for JSA, which are discussed at DMG 20961 - 20985 and DMG 20997.

1 SS CB Act 92, part XIIA; 2 JS Act 95, Sch 1, para 2

20989 - 20996

## Medical evidence

20997 For JSA claimants do not have to provide medical evidence to show that they are capable of work, unless there is a doubt about this<sup>1</sup>.

1 SS (IW) (Gen) Regs, reg 6(3)(a)

20998 - 20999

Appendix 1

## Appendix 1 - Pension age

### Period within which woman's Day pension age reached birthday falls reached

6.4.50 - 5.5.50	6.5.2010
6.5.50 - 5.6.50	6.7.2010
6.6.50 - 5.7.50	6.9.2010
6.7.50 - 5.8.50	6.11.2010
6.8.50 - 5.9.50	6.1.2011
6.9.50 - 5.10.50	6.3.2011
6.10.50 - 5.11.50	6.5.2011
6.11.50 - 5.12.50	6.7.2011
6.12.50 - 5.1.51	6.9.2011
6.1.51 - 5.2.51	6.11.2011
6.2.51 - 5.3.51	6.1.2012
6.3.51 - 5.4.51	6.3.2012
6.4.51 - 5.5.51	6.5.2012
6.5.51 - 5.6.51	6.7.2012
6.6.51 - 5.7.51	6.9.2012
6.7.51 - 5.8.51	6.11.2012
6.8.51 - 5.9.51	6.1.2013
6.9.51 - 5.10.51	6.3.2013

6.10.51 - 5.11.51	6.5.2013
6.11.51 - 5.12.51	6.7.2013
6.12.51 - 5.1.52	6.9.2013
6.1.52 - 5.2.52	6.11.2013
6.2.52 - 5.3.52	6.1.2014
6.3.52 - 5.4.52	6.3.2014
6.4.52 - 5.5.52	6.5.2014
6.5.52 - 5.6.52	6.7.2014
6.6.52 - 5.7.52	6.9.2014
6.7.52 - 5.8.52	6.11.2014
6.8.52 - 5.9.52	6.1.2015
6.9.52 - 5.10.52	6.3.2015

6.10.52 - 5.11.52	6.5.2015
6.11.52 - 5.12.52	6.7.2015
6.12.52 - 5.1.53	6.9.2015
6.1.53 - 5.2.53	6.11.2015
6.2.53 - 5.3.53	6.1.2016
6.3.53 - 5.4.53	6.3.2016
6.4.53 - 5.5.53	6.5.2016
6.5.53 - 5.6.53	6.7.2016

6.6.53 - 5.7.53 6.9.2016

6.7.53 - 5.8.53 6.11.2016

6.8.53 - 5.9.53 6.1.2017

6.9.53 - 5.10.53 6.3.2017

6.10.53 - 5.11.53 6.5.2017

6.11.53 - 5.12.53 6.7.2017

6.12.53 - 5.1.54 6.9.2017

6.1.54 - 5.2.54 6.11.2017

6.2.54 - 5.3.54 6.1.2018

6.3.54 - 5.4.54 6.3.2018

6.4.54 - 5.5.54 6.5.2018

6.5.54 - 5.6.54 6.7.2018

6.6.54 - 5.7.54 6.9.2018

6.7.54 - 5.8.54 6.11.2018

6.8.54 - 5.9.54 6.1.2019

6.9.54 - 5.10.54 6.3.2019

6.10.54 - 5.11.54 6.5.2019

6.11.54 - 5.12.54 6.7.2019

6.12.54 - 5.1.55 6.9.2019

6.1.55 - 5.2.55 6.11.2019

6.2.55 - 5.3.55 6.1.2020

6.3.55 - 5.4.55 6.3.2020





**Appendix 2 - Spare**

## Appendix 3 - Recognized customary or other holiday

[Express agreement](#)

[Implied agreement](#)

[Period of observance](#)

[Practise within the establishment concerned](#)

[Comparison with practise at other establishments](#)

[Dissension among employees](#)

[Holiday during closure](#)

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[Shift workers](#)

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[Seeking other employment during holiday](#)

[Other holidays](#)

### Recognized or customary holiday

1 Recognized or customary holidays<sup>1</sup> are days which employers and employees have agreed shall be non working days. They become a normal and recurring event in the employment and are an implied term of a contract of service. They can only be changed by further agreement<sup>2</sup>. This does not mean that every agreed non working day is a recognized or customary holiday<sup>3</sup>. There may be other reasons for employees not having to work.

1 R(SB) 7/84; 2 R(U) 11/53; 3 R(U) 8/64; R(SB) 7/84

2 Agreements about recognized or customary holidays may be express or implied. They can be changed or replaced by further agreement. This may be either permanently or for once only<sup>1</sup>. There may be more than one agreement involved. For example, an express agreement may provide for certain holidays. An implied agreement may then provide for extra holidays.

### **Express agreement**

3 An express agreement can be written or oral. It may cover all details or may leave some to be settled for each holiday, for example, the precise dates of the holiday.

### **Implied agreement**

4 If there is no express agreement for the days being considered, consider whether there is an implied agreement. An implied agreement is where the employer and employees have come to recognize and accept the days as being days of holiday.

### **Period of observance**

5 A day may have been observed as a non working holiday for many years. The effect is that there is an implied agreement that it is a day of recognized or customary holiday. That inference stands unless there is evidence to disprove it. The period of observance may also be short. For example, a holiday may be of very recent origin. Even so, the recognition of it as a holiday may be proved. A long period of observance makes it easier to establish that a day has been recognized. But it does not in itself create a recognized or customary holiday<sup>1</sup>.

1 R(SB) 7/84 (App)

#### **Example 1**

A factory closes for two weeks in August. The first week is a holiday with pay covered by express agreement. The second week is not. The factory have been doing this for the past five years.

The 2<sup>nd</sup> week is recognized as a holiday by the employer and employees. There is no evidence to the contrary. The employees are on recognized or customary holiday for the full two weeks. They are still in employment for that period.

#### **Example 2**

A mill closes for Easter Monday and Tuesday. These are paid holidays by express agreement. It also closes on Good Friday, but this is not covered by the agreement and is not paid. This has happened for the past five years.

Employees who have to work on holidays get paid time and a half. Those working on Good Friday only get ordinary time. There is no pressure for pay at the rate for working on a holiday. Good Friday is not a holiday in the district generally. It is not a day of recognized or customary holiday.

#### **Example 3**

A pottery is closed on Easter Monday, which is a paid holiday by express agreement. It is also closed on

Good Friday and Saturday. These are not covered by the agreement and are not paid. The pottery has closed on these days for the past 30 years.

It is the practice for the employees to ask for these days off each year. This request has always been granted by the employer.

Good Friday and Saturday are days of recognized or customary holiday.

#### **Example 4**

Rhona works for four hours each evening, Monday to Friday. For several years her employer has closed down at 5pm on the Friday before the September holiday. Rhona is on a recognized or customary holiday on that day.

#### **Example 5**

Ivor's standard working week is Monday to Friday, with some liability to work on Saturday. He has not worked on a Saturday for 18 months but other employees have.

It has been the custom and practice for many years to close the factory on the Saturday of the week before the annual summer holidays. That Saturday is a recognized day of holiday.

### **Practise within the establishment concerned**

6 There may be an agreement or practise observed at the claimant's place of employment. The DM should always take this into account when determining whether there is a holiday.

7 As well as considering a claimant's own position, consider the arrangements for the

**1.** establishment as a whole **and**

**2.** various departments and grades of workers involved.

8 A day may be said to be a general holiday. But a lot of employees may carry on their ordinary work at ordinary pay. Such a day cannot be a general holiday. It could be that employees take their holidays at different times. This may be as individuals or in groups. It may be under a rota system or by individual arrangement. A holiday taken in these circumstances is a recognized or customary holiday for the employees concerned.

9 Employees who are not working may not be on holiday. For example, they may have been laid off due to shortage of work. Other employees may have to work, even during a general holiday, for example, maintenance and repair workers. This does not stop it being a day of recognized or customary holiday for those who are not working. Those employees who have to work may get extra pay, or time off in lieu, for working. The effect is that the day is a holiday for those not working. But there may be another reason for the extra pay. For example, it may be payment for doing different work or for doing extra work.

10 There may be no extra pay. That does not necessarily mean that the day is not a recognized or customary holiday. But it is important if the employees are normally entitled to extra pay for work during holidays. Without evidence to the contrary, the inference would be that the day is not a holiday<sup>1</sup>.

1 R(U) 11/53; R(SB) 7/84 (App)

### **Comparison with practise at other establishments**

11 There may be no agreement or practise observed at the claimant's place of employment. Or there could be some doubt about the position. It may then be helpful to consider the practise in other firms in the district. It might also be helpful to consider the practise within the same industry. The practise might be more definite at other firms. That practise can then be regarded as a sign of what might be expected at the claimant's place of employment. If there is little or no evidence about where the claimant works the question may have to be decided by looking at what happens elsewhere.

#### **Example 1**

A factory closes for 2 weeks in August. The first week is a holiday with pay covered by an agreement. The second week is not. The second week is recognized as a holiday by the employer and employees.

The practise is the same elsewhere in the industry but the position is no more definite. The practise elsewhere is of no help in this case.

#### **Example 2**

A mill closes for Easter Monday and Tuesday. These are paid holidays by express agreement. It also closes on Good Friday, but this is not covered by the agreement and is not paid.

Good Friday is not a holiday in the district generally. That is a sign that Good Friday is not a day of recognized or customary holiday.

### **Dissension among employees**

12 All employees may take the same period of holiday, determined by agreement between the employer and the majority of the employees. Any revision of such an agreement must also be between the employer and the majority of the employees. A minority of the employees cannot make such an agreement or alter it. They are bound by the terms of any agreement made by the majority<sup>1</sup>. This applies even if days of holiday agreed by the majority are not wanted by an employee.

1 R(U) 3/53

13 An agreement, or reviewed agreement, may be made between the employer and the employees representatives. For example, between the employer and a trade union. The representatives are assumed to have the backing of the majority of the employees. A recognized or customary holiday may be waived by an agreement between the employer and employees. They may agree that some days are

to be worked and not taken as holiday.

14. If the majority of the employees still take the holiday the agreement to work is ineffective. The days stay days of recognized or customary holiday for

**1.** those who want the holiday **and**

**2.** those who want to work but do not because the other employees are away.

### **Holiday during closure**

15 A day of recognized or customary holiday may fall when no work would be available because of short time working<sup>1</sup>. Such days are still days of holiday.

1 R(U) 12/54; R(U) 16/54; R(U) 2/64

16 Employees are on holiday where a period of shortage of work is part of a holiday<sup>1</sup>

**1.** arranged **or**

**2.** extended **or**

**3.** altered

by agreement between the employer and employees.

1 R(U) 3/53

17 Employers may lay employees off or extend an existing holiday for economic reasons. They may refer to the period of lay off or extension as being a holiday. There is no express or implied agreement by which the days are days of recognized or customary holiday<sup>1</sup>. But they may be other holidays.

1 R(U) 11/53; R(SB) 7/84

18 The practice may be continued for a number of years. The days might then become days of recognized or customary holiday. This could be as a result of an express agreement to that effect. It could also be by implied agreement based on the actions of those involved<sup>1</sup>.

1 R(U) 11/53; R(SB) 7/84

### **Dates of holiday**

19 The exact dates of a holiday may be in doubt. If so consider the terms of the express or implied agreement covering it.

20 An agreement may refer to a public or religious holiday whose date changes from year to year, for

example Easter or the August bank holiday. Such a reference usually recognizes that these holidays will fall on different dates in different years.

21 The Boxing Day bank holiday is the first week day after Christmas Day. It may fall on 26 December or, when Christmas Day is a Saturday, on 27 December. An agreement may say that the holiday is 25 and 26 December, rather than Christmas Day and the bank holiday. When Boxing Day falls on 27 December it is not a holiday under such an agreement.

22 A public or religious holiday may fall at a weekend or other non working day. Another day may then be substituted as the day of holiday. In such a case the substituted day is the day of holiday. The original day is not a day of holiday<sup>1</sup> (except where it becomes a holiday by implied agreement).

1 R(U) 16/55

23 A substitution can only be made by agreement between employer and employees. It may be covered by a standing agreement or agreed as and when necessary. The employer cannot substitute one day for another without agreement.

24 An agreement about annual holidays may

1. state the dates of the holiday **or**
2. authorize the employer alone to decide the dates each year **or**
3. allow for the dates to be decided each year by negotiation and agreement.

25 No matter how the dates are fixed, they can be changed later by further agreement<sup>1</sup>.

1 R(U) 3/53

## **Shift workers**

26 Shift workers may be off work for different lengths of time when their employer closes for holidays. Even so, they are on holiday for the whole of the holiday period<sup>1</sup>.

1 R(U) 20/52

## **Example**

A holiday in a steel works lasts from Monday evening until Thursday morning. Day shift workers are on holiday for two shifts, Tuesday and Wednesday. Night shift workers are on holiday for three shifts, Monday, Tuesday and Wednesday nights.

The night shift is from 10pm to 6am. A night shift worker starts work again at 10pm on Thursday. He is on holiday on Tuesday, Wednesday and Thursday.

## **Claimant with two employments**

27 A day of recognized or customary holiday must be in connection with the claimant's employment as a whole. A claimant may sometimes have two jobs. Benefit may then be claimed for a day which is a holiday in only one job. The DM should

**1.** take account of both employments **and**

**2.** consider whether either job represents a substantial part of the claimant's whole employment.

28 If the job without the holiday represents a substantial part, the claimant is not on holiday. This is so even though the day is a holiday in the other employment. If one employment is not a substantial part of the whole, there may be a day of recognized or customary holiday in the other<sup>1</sup>.

1 R(U) 7/63

## **Seeking other employment during holiday**

29 A person may be free to look for other work during holidays. This does not prevent the days in question being days of recognized or customary holiday<sup>1</sup>.

1 R(U) 2/51

## **Other holidays**

30 The term other holiday is not defined. So it has to be given its ordinary everyday meaning. The word holiday is also not defined. But for many years it has been used and considered in the term recognized or customary holiday. It has gained a specific meaning by doing so.

31 The specific meaning is a day which is a non working day by agreement between employers and workers. Such a day is a holiday no matter what use workers make of it. How they actually spend the time they have at their disposal is not normally relevant. An exception is where the employee is absent from work with good cause. See DMG 20397 et seq for guidance on absence with good cause.

32 A holiday can include a person's individual holidays as well as time off as annual leave. It may be with pay or without pay. Other holidays are often without pay.

### **Example 1**

Heidi works at a factory that closes for Easter Monday and Tuesday. These are paid holidays by express agreement and are recognized or customary holidays. Good Friday is not a holiday in the district generally. The factory does not close on Good Friday. Employees working on Good Friday are paid at ordinary time.

Heidi has problems arranging a childminder for Good Friday. She asks her employer if she can take it as a day off. the employer agrees but says that it will be without pay. Good Friday is an "other" holiday for



Heidi.

### **Example 2**

Arnold works at a pottery that closes for two weeks in July every year. Both weeks are holidays with pay covered by an express agreement. they are both recognized or customary holidays.

At the end of the first week, the management and workforce agree that for economic reasons, the holiday should be extended to three weeks. the third week is without pay and is an “other” holiday for Arnold.

### **Example 3**

Stephen works at a firm of accountants. He has taken all his holiday entitlement and will not be due to any more until the New Year. In early December, Stephen wins an all expenses paid two week holiday, which must be taken before the end of the year. His employer agrees to let him have time off, without pay, to take the holiday. The time he is allowed off is an “other” holiday for Stephen.

## **Appendix 4 - People the Secretary of State has authorized as Employment Officers (DMG 20911)**

### ONE

Designation of employment officers and employment zone programme advisers who are persons designated to use and supply Social Security information in connection with employment zones for the purposes of the Employment Zones Regulations 2003

### **ONE**

The Secretary of State has authorized people who work for

- LA's who **are participating** in the ONE service
- Action for Employment Ltd
- Deloitte Consulting PLC
- The Reed Partnership Ltd

where they are employed to give training or employment advice to claimants as part of the ONE service as Emp Os. They can specify the time and place at which a claimant may be required to attend (see DMG 20911).

### **Designation of employment officers and employment zone programme advisers who are persons designated to use and supply Social Security information in connection with employment zones for the purposes of the Employment Zones Regulations 2003**

By this Order, made for the purposes of sections 60 and 72 of the Welfare Reform and Pensions Act 1999 (c. 30) and sections 8(3) and 19(10)(a) of the Jobseekers Act 1995 (c. 18) and under the powers conferred upon the Secretary of State by those sections of those Acts of Parliament and all other powers enabling him in that behalf:

**1.** With effect from 23 April 2007, I hereby designate as an employment officer and employment zone programme adviser who is designated to use and supply social security information, any employee of

a) Pertemps Employment Alliance Limited;

b) Reed in Partnership PLC;

c) Working Links (Employment) Limited;

d) WorkDirections UK Limited;

e) The Wise Group;

f) TNG Workzone Limited **and**

g) Pelcombe Training Limited

for the limited purpose of performing those functions listed in paragraph 2 in the course of the operation of an employment zone programme operated under the Employment Zones Regulations 2003 (S.I. 2003/2438).

**2.** The functions of a person designated as an employment officer who is an employment zone programme adviser by this Order are those of:

a) specifying the time and place at which a claimant may be required to attend to participate in the employment zone programme;

b) requiring a claimant to provide information and evidence;

c) notifying a claimant of a situation in employment;

d) giving a jobseeker's direction; **and**

e) giving notices under regulation 4 of the Employment Zones Regulations 2003.

# Appendix 5 - Savings provisions - prescribed categories of person

[Introduction](#)

[Relevant provisions](#)

[Savings provisions](#)

## Introduction

1 From 30.12.09, amending legislation<sup>1</sup> revoked a number of the prescribed categories which allow entitlement to IS. A person claiming IS on or after 30.12.09 can no longer become entitled to IS based solely on one of the 4 categories listed in paragraph 2 below. However, these revoked categories remain in force for the purposes of the savings provisions contained in the regulations. This appendix contains guidance on when the savings provisions will apply.

1 IS (Prescribed Categories of Person) Regs (SI 2009/3152)

## Relevant provisions

2 The relevant provisions are those where a person was entitled to IS by virtue of being

1. in relevant education and have a disability<sup>1</sup>
2. incapable of work or treated as incapable of work<sup>2</sup>
3. disabled or deaf students<sup>3</sup>
4. blind<sup>4</sup>.

These relevant provisions remain in force but only for certain situations.

1 IS (Gen) Regs. reg 13(2)(b) & (bb); 2 Sch 1B, para 7(a) & (b); 3 Sch 1B, para 10 & 12;  
4 Sch 1B, para 13

## Savings provisions

3 A relevant provision will continue to apply (and so the claimant remains entitled to IS on that particular ground) where that person

1. was entitled to IS on the basis of one of the relevant provisions in paragraph 2 above immediately before 30.12.09<sup>1</sup> (see paragraph 4 below) **or**

**2.** made a claim for IS<sup>2</sup>

**2.1** as a WtWB **or**

**2.2** on the grounds of disability where the claimant

**2.2.a** was previously entitled to IS on the grounds of disability for a period of 4 or more consecutive days **and**

**2.2.b** ceased to be entitled to IS on the grounds of disability not more than 8 weeks before the start of the claim **or**

**2.3** on the grounds of disability and is entitled to IB or SDA **or**

**3.** had an award of IS<sup>3</sup>

**3.1** which was terminated on or after 27.10.08 as a result of official error **and**

**3.2** the person satisfied one of the relevant provisions as in paragraph 2 above immediately before the award was terminated **and**

**3.3** the award was subsequently revised because of the official error.

1 IS (Prescribed Categories of Person) Regs, reg 2(2)(a); 2 reg 2(2)(b); 3 reg 2(2)(c) & (4)

### **Example**

Amanda was awarded IS because she was a lone parent. She was then registered blind on 1.10.09. On her son's birthday on 5.12.09 she ceased to be entitled on the grounds of being a lone parent and her award was terminated without any consideration being given to whether Amanda may be entitled to IS on any other grounds. On 6.1.10 the decision to terminate her award is revised for official error as a relevant provision (being registered blind) applied to her immediately before the award was terminated.

4 Paragraph 3 **1.** above can only apply where, before 30.12.09 the Secretary of State

**1.** has determined that one of the relevant provisions in paragraph 2 above applies to the claimant<sup>1</sup> **or**

**2.** in IfW cases<sup>2</sup>

**2.1** was provided with or was satisfied as to evidence or information as required<sup>3</sup> **or**

**2.2** was provided with medical evidence as required and has not, within the previous 6 months, made a determination that the person was capable or treated as capable of work<sup>4</sup> **or**

**3.** where the conditions described in paragraph 4 **2.** above do not apply<sup>5</sup>,

**3.1** receives notification from the claimant that a relevant provision applies to them **and**

**3.2** determines on or after 30.12.09 that the specific provision does apply to the claimant.

1 IS (Prescribed Categories of Person) Regs, reg 2(3)(a); 2 reg 2(3)(b); 3 SS (IW) (Gen) regs, reg 6;  
4 reg 28; 5 IS (Prescribed Categories of Person) Regs, reg 2(3)(c)

### **Example 1**

Sam is a lone parent and has one child aged 10 who will be 11 on 6.2.10. She has been in receipt of IS for 5 years. Under lone parent provisions, Sam is called into the Jobcentre on 5.10.10 and is advised that due to the age of her only child, she will no longer be entitled to IS from 6.2.10. However, Sam tells the DM that 4 months ago she was diagnosed with kidney disease and she has been on dialysis since and is therefore incapable of work. She sent evidence of her condition to the local office on 16.10.09 but this was not passed to the DM at the time. The DM decides that she satisfies the prescribed condition for incapacity for work and can therefore remain on IS.

### **Example 2**

On 4.11.08, Lisa's award of IS was terminated on the basis that her only child was 15 and she was no longer entitled a lone parent. However, Lisa also suffered from severe depression and was incapable of work but as the claimant was categorised as a lone parent this information had been overlooked. On 23.10.09, the Secretary of State looked again at the case and decided that the decision to terminate Lisa's IS was not correct as they accept the evidence of incapacity and that termination was therefore made as a result of official error. The Secretary of State therefore revised the decision to award IS.

# Appendix 6 - Savings provisions - disabled workers

[Introduction](#)

[Background](#)

[Savings provisions](#)

## Introduction

1 From and including 25.1.10, amending legislation<sup>1</sup> removed the provisions allowing certain disabled workers and certain employed persons living in residential accommodation who are in full time remunerative work to be exempted from satisfying certain conditions that would otherwise mean that they would not be entitled to IS/JSA. The regulations revoking these provisions also contained savings provisions and this Appendix gives guidance on when those savings provisions should be applied.

1 Social Security (Miscellaneous Amendments) (No. 5) Regs 2009 (2009/3228)

## Background

2 From and including 25.1.10, disabled workers in full time remunerative work and people in work living in a care home, Abbeyfield Home or an independent hospital are removed from the list of

1. prescribed persons entitled to IS
2. those who are treated as not engaged in remunerative work for IS/JSA
3. categories of members of joint-claim couples where one member is not required to satisfy the joint-claim conditions for JSA<sup>1</sup>.

1 reg 4(1)

## Savings provisions

3 Where the provisions in paragraph 2 above apply to an IS or JSA claimant for a period including 24.1.10, they shall continue to be entitled under those provisions until they first cease to

1. fall within that provision **or**
2. be entitled to IS/JSA

whichever date is the earlier<sup>1</sup>.





# Appendix 7 - Savings provisions - JSA joint-claim couple exemptions

[Introduction](#)

[Background](#)

[Savings provisions](#)

## Introduction

1 From and including 1.11.10, amending legislation<sup>1</sup> removed some of the provisions allowing one of a joint-claim couple to not be required to satisfy the conditions set out in DMG 20017. The regulations revoking these provisions also contained savings provisions and this Appendix gives guidance on when those savings provisions should be applied.

1 Social Security (Miscellaneous Amendments) (No. 5) Regulations 2010 (2010/2429)

## Background

2 The revoked provisions are those where a member of a joint-claim couple was exempted from satisfying the usual conditions by virtue of being

1. incapable of work or treated as incapable of work<sup>1</sup>
2. a disabled or deaf student<sup>2</sup>
3. blind<sup>3</sup>.

1 JSA Regs, Sch A1, para 6(a) & (b); 2 paras 9 & 10; 3 para 11

3 From 1.11.10, a member of a joint-claim couple entitled to JSA who is not already entitled on the basis of one of the revoked provisions in paragraph 2 above will no longer be able to use one of these provisions to gain entitlement to JSA (but see paragraph 4 below).

## Savings provisions

4 Where one of the revoked provisions in paragraph 2 above applied to a joint-claim couple immediately before 1.11.10, it will continue to apply as if that provision had not been revoked or amended, where immediately before 1.11.10

1. the couple were entitled to JSA **and**

**2.** that provision in paragraph 2 above applied to a member of that couple<sup>1</sup>.

1 SS (Miscellaneous Amendments) (No. 5) Regulations 2010, reg 4(3) & (10)

5 The savings provisions in paragraph 4 above will cease to apply to a joint-claim couple when any award of JSA to which they were entitled immediately before 1.11.10 is subsequently terminated<sup>1</sup>.

1 SS (Miscellaneous Amendments) (No. 5) Regulations 2010, reg 4(4)

# Appendix 8 - Lone parent obligations - transitional and saving provisions (DMG 20082)

## [Introduction](#)

### [Savings and transitional provisions for certain lone parents following a full-time course](#)

### [Existing IS claimants - special commencement provisions](#)

## Introduction

1 Changes were introduced from 21.5.12 by The Social Security (Lone Parents and Miscellaneous Amendments) Regulations 2012 (S.I. 2012/874)<sup>1</sup> to enable a lone parent to qualify for IS on the sole basis of being a lone parent by virtue of their youngest child being aged under 5. Certain savings and transitional provisions were put in place at this time which apply to

1. lone parents following a full-time course **and**
2. existing IS claimants.

1 SS (LP & Misc Amdts) Regs 12

2 The savings and transitional provisions are reproduced in this Appendix.

## Savings and transitional provisions for certain lone parents following a full-time course

3 This guidance applies to a lone parent if

1. the lone parent<sup>1</sup>

**1.1** immediately before 21.5.12 was entitled to IS as a lone parent **and**

**1.2** no other prescribed category of person<sup>2</sup> applies to them **and**

**1.3** on or after 21.5.12 the lone parent is responsible for a single child or youngest child aged 5 or over **and**

2. immediately before 21.5.12 and on or after that day the lone parent is also<sup>3</sup>

**2.1** a full-time student<sup>4</sup> attending or undertaking a full-time course of advanced education, a full-

time course of study or a sandwich course<sup>5</sup> **or**

**2.2** following a full-time course of training or instruction under

**2.2.a** arrangements made by the Secretary of State **or**

**2.2.b** a scheme of approved training<sup>6</sup>.

1 SS (LP & Misc Amdts) Regs 12, reg 7(2); 2 IS (Gen) regs, Sch 1B; 3 SS (LP & Misc Amdts) Regs 12, reg 7(3);

4 IS (Gen) Regs, reg 2(1); 5 reg 61; 6 E&T Act 73, s 2

4 Where a lone parent satisfies the conditions in paragraph 3 above

**1.** the definition of lone parent as it was in force when the lone parent began that period of study or approved training, remains in force for them so long as that

lone parent remains a full-time student (in the case of student covered by paragraph 3.**2.1** above) or follows that full-time course (in the case of a student covered by 3.**2.2** above) **and**

**2.** during this period the lone parent will still be required to take part in a Wfl every 13 weeks<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, reg 7(5)

5 Where a lone parent makes a further claim to IS on or after 21.5.12, the savings and transitional provisions as described in paragraphs 3 and 4 above will **not** apply<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, reg 7(4)

## **Existing IS claimants - special commencement provisions**

### **Who do the special provisions apply to**

6 Where a lone parent

**1.** has attained age 18 **and**

**2.** was entitled to IS as a lone parent immediately before 21.5.12 **and**

**3.** does not fall within any of the other prescribed categories of person **and**

**4.** on 21.5.12 was responsible for and a member of the same household as a single child or youngest child who is aged 5 or 6 or who will reach age 5 before 19.11.12

the guidance in paragraphs 8 - 14 below will apply<sup>1</sup>.

7 If on or after 21.5.12

**1.** the lone parent makes a further claim to IS **or**

**2.** the guidance at paragraphs 3 - 5 above (savings and transitional provisions) applies

these special commencement provisions will not apply<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 1(2)

### **Child reaches age 6 before 21.5.12**

8 Where a lone parent is responsible for a single child or a youngest child who is 6 before 21.5.12, they will cease to be entitled to IS solely on the grounds of being a lone parent on the first day of the benefit week in which a requirement to take part in a Wfl would normally have next arisen on or after 21.5.12<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 2

### **Child reaches age 6 after 20.5.2 and before 20.8.12**

9 Where, on 21.5.12, the lone parent is responsible for and a member of the same household as a single child or youngest child who will be 6 after 20.5.12 and before 20.8.12, they will no longer be entitled to IS solely on the grounds of being a lone parent at the end of the benefit week in which the child reaches age 6<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 3

### **Child reaches age 5 after 19.8.11 or will reach age 5 before 20.8.12**

10 Where on 21.5.12 the lone parent is responsible for and a member of the same household as a single child or youngest child who became age 5 after 19.8.11 or will be 5 before 20.8.12, they will no longer be entitled to IS solely on the grounds of being a lone parent on the first day of the benefit week that the lone parent would have normally been required to take part in a Wfl on or after 21.8.12<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 4

### **Child reaches age 5 after 19.8.12 and before 19.11.12**

11 Where, on 21.5.12, the lone parent is responsible for and a member of the same household as a single child or youngest child who will become age 5 after 19.8.12 and before 19.11.12, they will no longer be entitled to IS solely on the grounds of being a lone parent at the end of the benefit week in which the child reaches age 5<sup>1</sup>.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 5

## **Child tax credit claim not decided at time of voluntary interview**

12 Where<sup>1</sup>

- 1.** a lone parent has been invited in writing to attend a voluntary interview appointment (see paragraph 15 below) during the 2 months before the relevant day (for meaning of “the relevant day” see end of this paragraph) **and**
- 2.** at the time of the voluntary interview appointment the lone parent has claimed or is treated as having made a claim to CTC **and**
- 3.** the Secretary of State is not satisfied that a decision has been made on that claim at the time of the voluntary interview appointment

the age change (of the single or youngest child reducing to under 5) comes into effect at the end of the period of 4 weeks beginning with whichever of the provisions in paragraphs 8 - 11 above would have applied to the lone parent had this paragraph not applied. This date is known as “the relevant day”.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 6

## **Meaning of voluntary interview appointment**

13 Where a lone parent falls within the special commencement provisions as set out in paragraphs 6 - 12 above, they are invited to attend a voluntary interview in order to discuss the changes to their IS entitlement as a result of the change in the eligibility criteria for being entitled to IS as a lone parent<sup>1</sup>.

**Note:** Voluntary interview appointments will no longer be arranged where the lone parents youngest child reaches age 5 on or after 19.11.12.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 1(3)

## **No voluntary interview**

14 Where a lone parent<sup>1</sup>

- 1.** meets the conditions set out in paragraph 8 above **and**
- 2.** has not been invited to attend a voluntary interview appointment during the 2 month period before the day the new lone parent definition is due to apply to claimant (paragraphs 8 - 11 above) (“the relevant day”)

the new definition of lone parent will take effect at the end of the period of 6 weeks beginning with the date the lone parent is invited in writing to attend a voluntary interview appointment.

1 SS (LP & Misc Amdts) Regs 12, Sch, para 7

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

only