

# Chapter R2 - JSA conditions of entitlement

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# Chapter R2: - JSA conditions of entitlement

## General rules on entitlement

### Introduction

R2001 This Chapter contains guidance on the basic conditions of entitlement for JSA plus detailed guidance on

1. remunerative work **and**
2. relevant education.

R2002

### JSA - basic conditions

R2003 People are entitled to JSA<sup>1</sup> if they

1. have accepted a claimant commitment<sup>2</sup> **and**
2. are not in remunerative work<sup>3</sup> **and**
3. are not involved in a TD<sup>4</sup> **and**
4. are capable of work<sup>5</sup>/do not have LCW **and**
5. are not in relevant education<sup>6</sup> **and**
6. are in GB (except for certain temporary absences abroad)<sup>7</sup> **and**
7. are under pension age<sup>8</sup> **and**
8. satisfy the contribution-based conditions<sup>9</sup>

*1 JS Act 95, s 1(2); 2 s 1(2)(b); 3 s 1(2)(e); 4 s 14; 5 ESA (Trans Provs) Regs, reg 5;*

*6 JS Act 95, s 1(2)(g); 7 s 1(2)(i); 8 s 1(2)(h); 9 s 1(2)(d)*

R2004 – R2007

### Definition of training allowance

R2008 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*

R2009 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

R2010 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*

R2011 - R2014

## **JSA - contribution conditions**

R2015 In addition to the conditions at DMG R2003 **1. - 7.**, to be entitled to JSA<sup>1</sup> a person must

1. satisfy contribution conditions **and**
2. not have earnings in excess of the prescribed amount

See ADM Chapter R1: Jobseeking periods and Jobseekers allowance contribution conditions for detailed guidance

*1 JS Act 95, s 2*

R2016 – R2199

## **Remunerative work - introduction**

R2200 Being in remunerative work affects entitlement to JSA<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)*

R2201 JSA 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)*

R2202

## **Does the claimant have employment**

R2203 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 ADM Chapter S2: Employed earnings).

R2204 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*

R2205 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.

R2206 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.

R2207 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.

R2208 - R2209

## Meaning of remunerative work

R2210 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 13, reg 42(1)*

R2211 – R2212

## Treated as in or not in remunerative work

R2213 A person engaged in remunerative work is not necessarily excluded from JSA. In certain circumstances a person who is **actually** in remunerative work may be **treated** as **not** being in remunerative work (see DMG R2464)<sup>1</sup>.

*1 JSA Regs 13, reg 44*

R2214 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 R2390).

*1 JSA Regs 13, reg 43*

R2215 – R2229

## Work done for payment or in expectation of payment

R2230 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 R2234).

*1 JSA Regs 13, reg 42(1)(a)*

## Work for no monetary reward

R2231 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 13, reg 63(4)*

## Payment in kind

R2232 “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 guesthouse 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 can still satisfy his claimant commitment **and**
2. the free meals and accommodation are notional earnings.

### Example 2

Gordon is given free meals and accommodation in a guesthouse 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

R2233 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

R2234 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 JSA Regs 13, reg 43*

R2235 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment 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

R2236 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

R2237 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 ADM Chapter S3: JSA & self-employed earners & share fishermen for further guidance.

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

R2238 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 were 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**

R2239 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 R2234 applies.

*1 R(IS) 5/95*

R2240 - R2249

## **Establishing hours of work**

### **Introduction**

R2250 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 R2278 for guidance on teachers.

*1 JSA Regs 13, reg 63(4)*

R2251 Hours worked as a carer or in certain specified occupations do not count for remunerative work purposes (see DMG R2464 et seq).

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

R2252 For JSA purposes, DMs should take no account of the hours worked

1. by anyone falling within DMG R2464<sup>1</sup> or
2. in caring for someone<sup>2</sup> who

- 2.1** is in receipt of “AA”, the care component of DLA or the daily living component of PIP **or**
- 2.2** has claimed “AA”, DLA or PIP but only for the period starting with the date of claim and ending
  - 2.2.a** when a decision is made on the claim **or**
  - 2.2.b** 26 weeks from the date of claim if this is earlier than the date in **2.2.a** above **or**
- 2.3** has claimed and has an award of
  - 2.3.a** “AA” **or**
  - 2.3.b** the care component of DLA<sup>3</sup> **or**
  - 2.3.c** the daily living component of PIP
 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>.

*1 JSA Regs 13, reg 42(3)(b); 2 reg 42(3)(c); 3 SS CB Act 92, s 72(4); 4 s 70*

R2253

R2254 The purpose of DMG R2252 **2.2.b** is to help carers where there is a delay in deciding a claim to “AA” or DLA. The provision does not apply if a

- 1.** claim for “AA” or DLA is unsuccessful **and**
- 2.** further claim is made solely so that the carer can continue to receive JSA.

R2255 The guidance at DMG R2252 **2.** and DMG R2252 **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 13, reg 42(3)(c)*

R2256 Hours worked in any other occupation by a person who satisfies DMG R2464 should be taken into account in the normal way.

R2257

## Counting the hours

### Flexible working schemes

R2258 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**

R2259 Overtime for which payment is made or expected counts towards the weekly total.

## **Breaks**

R2260 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 13, reg 42(3)(a)*

## **Night Duty**

R2261 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.

## **Evidence of hours**

R2262 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**

R2263 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 R2265 to establish any additional hours worked.

## **Musicians**

R2264 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**

R2265 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.

R2266 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.

R2267 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.

R2268 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.

## Teachers

R2278 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*

R2279 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] 3 WLR 851; R(U) 5/88*

R2280 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.

R2281 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.

R2282 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.

R2283 - R2292

## Calculating average hours

R2293 If the claimant or partner is engaged in work where the hours fluctuate, calculate the average weekly hours<sup>1</sup>.

*1 JSA Regs 13, reg 42(2)*

## Identifying a recognizable cycle

R2294 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 13, reg 42(2)(b)(i); 2 reg 42(2)(b)(i)*

### **Permanent or indefinite contract**

R2295 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**

R2296 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**

R2297 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

- R2298 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

- R2299 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.

R2300 - R2305

## Recognizable cycle established

- R2306 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 13, reg 42(2)(b)(i); R(IS) 8/95*

## Periods when a person does not work

- R2307 Periods when a person does not work can fall into the following categories:

1. periods of absence because of sickness, maternity leave, paternity leave or adoption 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 R2203 - R2206.

### **Sickness, maternity leave, ordinary paternity leave, additional paternity leave, adoption leave and periods of unauthorised absence**

R2308 **[See memo ADM 06/20]** When someone is absent from work due to sickness, ordinary paternity leave, additional paternity leave<sup>1</sup>, adoption leave<sup>2</sup> or maternity leave<sup>3</sup> the DM should decide that they are not in remunerative work during such absences<sup>4</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>5</sup> (see DMG R2315).

*1 Employment Rights Act 1996, s 80A, 80B, 80AA & 80BB; 2 s 75A & 75B; 3 s 71-73;  
4 JSA Regs 13, reg 43(1); 5 JSA Regs, reg 43(1)*

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

R2309 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*

R2310 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

R2311 If the DM has decided that the claimant or partner is still in employment (see DMG R2203 - R2206) (and they are not absent from work due to sickness, maternity, adoption or paternity 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.

R2312 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.

R2313 If the claimant's or partner's hours of work fluctuate, the DM should take an average

1. as per DMG R2322 et seq if there is no cycle of work **or**
2. as per DMG R2315 et seq if there is a cycle of work.

R2314

## Calculating the average hours

R2315 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 or paternity 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 and paternity leave which are "other absences to be disregarded".

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

*1 JSA Regs, reg 42(2)(b)(i); 2 R(JSA) 5/03*

## Yearly cycle with school holidays or similar vacations

R2316 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 R2315).

*1 R(JSA) 5/03*

### **Example 1**

Jeff, a qualified teacher, has worked as a school tutor for children with special needs since October 2009. 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 2013. For the academic year 2012/2013 Jeff worked 520 hours.

**Note:** an academic year includes the summer holidays. By the time he claims JSA in October 2013 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 2013 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 2012/2013 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 2014 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*

R2317

### **Ancillary school workers**

R2318 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 R2316. 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.

R2319

## No recognizable cycle established

### Estimating future hours

R2320 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>.

*1 JSA Regs, reg 43(2)(a)*

R2321 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

R2322 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 43(2)(b)(ii)*

R2323 Include in the calculation at DMG R2322 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*

R2324 Examples of circumstances in which it may not be appropriate to use the five week period in DMG R2322 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 R2322 **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 R2320.

R2325 If the DM bases a weekly average of hours over a period of more or less than five weeks, as in DMG R2322 **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 R2322 **1.**, in which case it will include those five weeks **or**
2. less than the five week period in DMG R2322 **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.

R2326 The approaches outlined in DMG R2320 and DMG R2322 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**

R2327 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 R2320 - R2321 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 13, reg 42(2)(a); R(IS) 8/95; 2 JSA Regs 13, reg 42(2)(b)(i) & (ii)*

R2328 - R2337

### **Changes to the normal hours**

R2338 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 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 13, reg 42(2)(b)(i); 2 reg 42(2)(b)(ii)*

## Seasonal workers

R2339 The normal remunerative work rules apply to S/E seasonal workers.

## Averaging the hours

R2340 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 13, reg 42(2)(b)(i); 3 reg 42(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

R2341 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.

R2342 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

R2343 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

**Note:** See ADM Chapter S2: JSA and employed earners for guidance on when employment ends. If a claim is made after employment is terminated, the person will not be in remunerative work.

R2344 – R2389

## People treated as in remunerative work

### Introduction

R2390 **[See memo ADM 06/20] [See memo ADM 08/20]** 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<sup>1</sup>.

*1 JSA Regs 13, reg 43(1)*

R2391 Treat claimants 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>.

*1 JSA Regs 13, reg 43(1); 2 reg 43(1); 3 reg 43(3)*

R2392 - R2396

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

R2397 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 R2210 et seq.

R2398 If a person is absent from remunerative work **with** good cause the remunerative work exclusion will not apply.

### **Good cause**

R2399 "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.

R2400 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.

R2401 - R2409

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

R2410 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 R2309) **or**
2. work is not remunerative as in DMG R2210 et seq **or**
3. claimant goes on holiday after employment ends. But see DMG R2435 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 13, reg 43(1)*

R2411 - R2434

## Payment on termination or interruption of employment

R2435 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 13, reg 43(2); 2 reg 43(3), Sch 1, para 2*

R2436 – R2463

## People treated as not in remunerative work

### Introduction

R2464 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 by a charity or voluntary organization or is a volunteer<sup>1</sup> **or**
2. engaged on a training scheme<sup>2</sup> **or**
3. engaged in specific occupations<sup>3</sup> **or**
4. performing duties as a councillor<sup>4</sup> **or**
5. engaged as a foster parent or in providing respite care<sup>5</sup> **or**
6. engaged in an activity which attracts a sports award<sup>6</sup> **or**
7. engaged on Work Experience employment programme<sup>7</sup>.

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

*1 JSA Regs 13, reg 44(1)(a); 2 reg 44(1)(b); 3 reg 44(1)(c); 4 reg 44(1)(d);  
5 reg 44(1)(e); 6 reg 44(1)(f); 7 reg 44(g)*

R2465 – R2466

## Charity or voluntary workers and volunteers

R2467 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 paidis 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 13, reg 44(1)(a)*

## Meaning of voluntary organization

R2468 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 13, reg 2(1)*

## Meaning of volunteer

R2469 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 JSA Regs 13, reg 44(2)*

## Engaged on a training scheme

R2470 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG R2008 - R2009) is being paid.<sup>1</sup>

*1 JSA Regs 13, reg 44(b)*

R2471 - R2473

## Engaged in specific occupations

R2474 People are treated as not being in remunerative work where they are

1. working as a part-time firefighter<sup>1</sup>
  - 1.1 in England but live in Scotland **or**
  - 1.2 in Scotland but live in England **or**
2. auxiliary coastguards for coastal rescue activities<sup>2</sup> **or**
3. working P/T in the crewing or launching of a lifeboat<sup>3</sup> **or**
4. members of a territorial or reserve force<sup>4</sup>.

*1 JSA Regs 13, reg 44(1)(c)(i); Fire (Scotland) Act 2005, s 1A; 2 JSA Regs 13, reg 44(1)(c)(iii); 3 reg 44(1)(c)(vi); 4 reg 44(1)(c)(v)*

## Councillors

R2475 People who perform duties as a councillor are treated as not being in remunerative work<sup>1</sup>.

*1 JSA Regs 13, reg 44(1)(d)*

## Meaning of councillor

R2476 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)*

R2477 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 and people providing respite care**

### **Foster parents**

R2478 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.

*1 JSA Regs 13, reg 44(1)(e)*

### **People providing respite care**

R2479 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 13, reg 44(1)(f); 2 reg 60(2)(b) & (c); 3 NA Act, s 26(3A) Sports awards*

R2480 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 13, reg 44(1)(f); 2 reg 44(1)(f)(i); 3 reg 44(1)(f)(ii)*

## Meaning of sports award

R2481 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 13, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)*

## Work experience

R2482 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*

R2483 - R2553

# People in relevant education

## What constitutes relevant education

### Introduction

R2554 A person shall be treated as receiving relevant education if they are a qualifying young person, unless the person is participating in a Traineeship<sup>1</sup>, although there are certain exceptions (see ADM R2558).

*1 JSA Regs 13, reg 45(1)(a)*

### Definition of a qualifying young person

R2555 A qualifying young person<sup>1</sup> is a person who has reached age 16 but not the age of 20

1. up to but not including the 1 September following their 16<sup>th</sup> birthday **and**



2. up to but not including the 1 September following their 19<sup>th</sup> birthday, if they are enrolled in or accepted for approved training or a course of education and that training or course

**2.1** is not a course of advanced education **and**

**2.2** is provided at a school or college, or elsewhere if it is approved by the Secretary of State **and**

**2.3** means that the qualifying young person is spending on average, 12 hours per week during term time (excluding meal breaks) in receiving tuition, undertaking practical work, supervised study or taking exams.

*1 JSA Regs 13, reg 45(7)*

## What is approved training

R2556 Approved training means training as provided for in legislation<sup>1</sup> and which is approved by the Secretary of State<sup>2</sup>.

*1 E&T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 90; 2 JSA Regs 13, reg 45(9)*

## When is a person not a qualifying young person

R2557 A person is not a qualifying young person<sup>1</sup> where they

1. are aged 19 and have not started education or training or been enrolled or accepted for it before reaching age 19 **or**
2. satisfy the conditions in R2557 **2.** above and their education or training is provided through a contract of employment **or**
3. are receiving UC, ESA or JSA.

*1 JSA Regs 13, reg 45(8)*

## What is relevant education

R2558 Unless a person is participating in a Traineeship, relevant education<sup>1</sup> means undertaking

1. a full-time course of advanced education **and**
2. any other full-time course of study or training at an educational establishment for which a student loan, grant or bursary is provided for the persons maintenance (or would be available if applied for).

*1 JSA Regs 13, reg 45(1)(b)*

R2559 A course of advanced education<sup>1</sup> means

1. a course of study leading to
  - 1.1 a postgraduate degree or comparable qualification

- 1.2 a first degree or comparable qualification
- 1.3 a diploma of higher education
- 1.4 a higher national diploma **or**
- 2. any other course of study which is of a standard above advanced GNVQ or equivalent including a course which is of a standard above the advanced level of a general certificate of education or above the higher or advanced higher level of a Scottish national qualification.

*1 JSA Regs 13, reg 45(2)*

## What is a Traineeship

R2560 Traineeship means a course which

- 1. is funded (in whole or in part) by, or under arrangements made by, the
  - 1.1 Secretary of State under specified legislation **or**
  - 1.2 Chief Executive of Skills Funding **and**
- 2. lasts no more than 6 months **and**
- 3. includes training to help prepare the participant for work and a work experience placement **and**
- 4. is open to persons who on the first day of the course have reached the age of 16 but not 25.

*1 JSA Regs 13, reg 45(1A)*

## What is a student loan

R2561 A student loan<sup>1</sup> is a loan towards a student's maintenance which arises from specific legislation<sup>2</sup> and includes a young student's bursary in Scotland<sup>3</sup>.

*1 JSA Regs 13, reg 45(9); 2 Teaching & Higher Education Act 98, s 22; Education (Scotland) Act 80, s 73; Education (Student Support) (Northern Ireland) Order 98, art 3; 3 Students's Allowances (Scotland) Regs 07, reg 4(1)(c)*

## Undertaking a course

R2562 A person is to be regarded as undertaking a course<sup>1</sup>

- 1. throughout the period
  - 1.1 beginning on the date that the person starts undertaking the course **and**
  - 1.2 ending on the last day of the course or on such earlier date (if any) as the person abandons or is dismissed from that course **or**
- 2. where a person is undertaking a part of a modular course, for the period

- 2.1 beginning on the day which that part of the course starts **and**
- 2.2 ending
  - 2.2.a on the last day on which the person is registered with the provider of the course, or part of the course, as undertaking that part **or**
  - 2.2.b on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

*1 JSA Regs 13, reg 45(4)*

R2563 The period in R2562 2. above includes<sup>1</sup> any period

- 1. where a person is undertaking the course again for the purpose of retaking exams or a module that they have previously failed **and**
- 2. of vacation within the period on R2562 2. above or immediately following that period, except where a person has registered with the provider of the course, or part of the course, to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

*1 JSA Regs 13, reg 45(5)*

## **What is a modular course**

R2564 A modular course is one made up of two or more modules and for a person to be considered by the educational establishment to have completed the course, they must have completed a specified number of modules<sup>1</sup>.

*1 JSA Regs 13, reg 45(9)*

## **Person not regarded as undertaking a course**

R2565 A person is not to be regarded as undertaking a course<sup>1</sup> for any part of the period described in paragraph R2564 above where the person

- 1. has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person **or**
- 2. has recovered from that illness or ceased caring for that person within the past year but has not yet resumed the course **and**
- 3. is not eligible for a grant or student loan.

*1 JSA Regs 13, reg 45(6)*

## Being treated as a qualifying young person

R2566 Where a person does not satisfy the criteria of a qualifying young person as in R2556 and is not undertaking a course of relevant education as described in R2559, they can be treated as receiving relevant education if the claimant is undertaking a course of study or training that is not compatible with any work related requirement that has been imposed by the Secretary of State<sup>1</sup>.

*1 JSA Regs 13, reg 45(3)*

R2567 – R2700

## Waiting days

R2701 A claimant is not entitled to JSA for the first 7 days of a JSP<sup>1</sup>. These 7 days are called waiting days<sup>2</sup>.

*1 JS Act 95, Sch 1, para 4; 2 JSA Regs 13, reg 36(2)*

## Claimants who do not have to serve waiting days

R2702 Claimants do not have to serve waiting days<sup>1</sup> if their entitlement to JSA began within 12 weeks of the end of their entitlement to

1. IS or
2. IB or
3. ESA or
4. CA.

*1 JSA Regs 13, reg 36(1)*

R2703 – R2959

## Limited capability for work

### Introduction

R2940 Claimants are entitled to JSA if they do not have LCW or are not treated as not having LCW<sup>1</sup>.

*1 JS Act 95, s 1(2)(f) & Sch 1, para 2(1); SS CB Act 92, Part XIII A*

## Treated as capable/not having limited capability for work

R2941 A claimant can be treated as capable of work/not having LCW for certain specified periods while their JSA award continues. These periods are 2 short periods of sickness and one extended period of sickness.

### Short periods of sickness

R2942 [See ADM Memo 04/20] A person who

1. has<sup>1</sup>
  - 1.1 been awarded JSA **or**
  - 1.2 had certain types of sanction imposed on them<sup>2</sup> **and**
2. they prove to the DM that they are unable to work because of some specific disease or disablement<sup>3</sup> **and**
3. during the period of their disease or disablement, satisfies the requirements for entitlement to JSA (other than capability and not having LCW)<sup>4</sup>

is to be treated as capable of work/not having LCW for a period not exceeding two weeks beginning on the day on which the conditions in **1.** to **3.** above are satisfied. However, where the claimant has stated in writing that they intend to claim or have made a claim for ESA or UC for that period of sickness, then the provisions of this paragraph will not apply and entitlement to JSA will cease.

*1 JSA Regs 13, reg 46(1)(a); 2 JS Act 95, s 6J(2),(3) & 6K(2); 3 JSA Regs 13, reg 46(1)(b); 4 reg 46(1)(c)*

### Evidence of incapacity/limited capability for work

R2943 The claimant must make a declaration in writing, in a form approved by the Secretary of State, that they have been unfit for work from a date, or for a period they have specified in that declaration<sup>1</sup>.

*1 JSA Regs 13, reg 46(2)*

R2944 - R2953

### Already treated as capable/not having limited capability for work twice or more in the jobseeking period or year

R2954 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 13, reg 46(3)*

## Example

The JSP begins on 4.1.14 and ends on 3.2.16. The claimant can be treated as capable twice in the year from 4.1.14 to 3.1.15, twice in the year from Wednesday 4.1.15 to 3.1.16 and twice in the year from 4.1.16.

- R2955 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 ADM R2957 et seq) shall be disregarded as a short period of sickness<sup>1</sup>.

*1 JSA Regs 13, reg 46(7)*

## When do these treated as provisions not apply

- R2956 The treated as provisions as described in R2961 above will not apply where
1. the first day that they are unable to work falls within 8 weeks after the day the person ceased to be entitled to SSP<sup>1</sup> **or**
  2. the claimant is temporarily absent from GB<sup>2</sup>.

*1 JSA Reg 13, reg 46(4); 2 reg 41(5); reg 46(5)*

## Extended period of sickness

- R2957 **[See ADM Memo 04/20]** In addition to the 2 short periods of sickness, there is also an extended period of sickness of up to 13 weeks that can be taken.

### Conditions

- R2958 This extended period of sickness applies<sup>1</sup> to a person who
1. has
    - 1.1 been awarded JSA **or**
    - 1.2 had certain types of sanction imposed on them<sup>2</sup> **and**
  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 because of that disease or disablement for more than 2 weeks but does not expect to be unable to work 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 **and**

4. would, during this period, satisfy the requirements for entitlement to JSA other than those to be 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 13, reg 46A(1); 2 JS Act 95, s 6J(2) or (3); s 6K(2)*

### **Evidence of incapacity/limited capability for work**

R2959 The evidence required for this extended period of sickness where

1. ADM R2958 **3.1** applies<sup>1</sup>, is a doctor's statement or other evidence for IfW or LCW<sup>2</sup> purposes and any other additional information as the Secretary of State requires **or**
2. ADM R2958 **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 13, reg 46A(2); 2 SS (Med Ev) Regs; 3 JSA Regs 13, reg 46A(3)*

### **Duration of extended period of sickness**

R2960 Where a claimant satisfies the conditions above<sup>1</sup>, 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.

*1 JSA Regs 13, reg 46A(4)*

R2961 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 ADM R2960 above<sup>1</sup>.

*1 JSA Regs 13, reg 46A(5)*

### **How the two types of sickness period can be used**

R2962 A claimant will be able to make use of both the short periods of sickness and the extended period of sickness. In any JSP/12 month period they can have two periods of up to 2 weeks and one period of up to 13 weeks where they are sick but can remain in receipt of JSA. Where a claimant's sickness begins as a short period of sickness but extends beyond that time, they can make use of the extended period of sickness up to the maximum overall period of 13 weeks. A claimant cannot start a short period of sickness immediately after an extended period of sickness has ended<sup>1</sup>.

*1 JSA Regs 13, reg 46(6)(b)*

R2963 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 13, reg 46(6)(a)*

## Sickness type

R2964 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 13, reg 46A(1)*

## Medical evidence

R2965 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 13, reg 46A(3A)*

## When the extended period of sickness will not apply

R2966 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 purposes of receiving NHS treatment abroad.

*1 JSA Regs 13, reg 46A(6)*

R2967 – R2976

## NHS treatment abroad

R2977 A claimant can be treated as capable of work/not having LCW if

1. they have<sup>1</sup>
  - 1.1 been awarded JSA **or**
  - 1.2 had a certain type of sanction imposed on them **and**
2. they are temporarily absent from GB for the purpose of receiving NHS treatment abroad<sup>2</sup> (see ADM Chapter C3) **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 R2967 - R2968) **and**



4. they would satisfy the requirements for entitlement to JSA (other than capability/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>.

*1 JSA Regs 13, reg 47(1)(a); 2 reg 47(1)(b); 3 reg 47(1)(c); 4 reg 47(1)(d); 5 reg 47(1)*

## **Evidence of incapacity/limited capability for work**

R2978 The claimant must make a declaration in writing, in a form approved by the Secretary of State, that they have been unfit for work from a date, or for a period they have specified in that declaration<sup>1</sup>.

*1 JSA Regs 13, reg 47(2)*

R2979 - R2984

## **Treated as capable - personal capability assessment (incapacity for work)**

R2985 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.

*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.

## **Treated as not having limited capability for work (employment and support allowance)**

R2986 A claimant who

1. claims JSA **and**
2. can show they have a reasonable prospect of obtaining employment

is to be treated as not having LCW (see DMG Chapter 42) throughout the period of that claim<sup>1</sup>. This applies even where it has been determined that the claimant has LCW or is to be treated as having LCW<sup>2</sup>.

*1 ESA Regs, reg 31(1); 2 reg 31(2)*

R2987

## **Capable of work**

### **Meaning of capable of work**

R2988 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).

*1 SS CB Act 92, part XIII A; 2 JS Act 95, Sch 1, para 2*

R2989 - R2996

### **Medical evidence**

R2997 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)*

R2998 - R2999

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