

# Chapter 20 - JSA and IS - conditions of entitlement

## Contents

### Entitlement to Jobseeker's Allowance and Income support

#### General rules on entitlement

Introduction.....	20001
JSA - basic conditions .....	20003
JSA - joint claims from 28.10.02 .....	20004
Claimant entitled to JSA(IB) on 27.10.02 .....	20006
Persons in receipt of a training allowance .....	20007
Definition of training allowance.....	20008
Under pension age .....	20010
JSA(Cont) - additional conditions .....	20015
JSA(IB) - additional conditions .....	20016
JSA joint claims .....	20017
IS - basic conditions .....	20022
JSA joint claims - exemptions .....	20023
Studying full-time.....	20025
Regular carer .....	20027
Incapable of work.....	20028
People in work living in a care home, Abbeyfield Home or an independent hospital .....	20030
Disabled worker .....	20040
Disabled students.....	20041
Deaf students .....	20042
Blind members .....	20043
Pregnant woman .....	20044
Refugee learning English .....	20045
Member required to attend court.....	20046

Meaning of tribunal.....	20047
Young person in training .....	20048
Member affected by a trade dispute.....	20049
Previous entitlement to a joint-claim.....	20050
Entitlement of a new joint-claim couple to a JSA .....	20063
One member does not satisfy prescribed conditions .....	20065
Polygamous marriage .....	20067
<b>People entitled to Income Support.....</b>	<b>20081</b>
Lone parents .....	20082
Lone parents from 24.11.08.....	20083
Special rules from 24.11.08 .....	20086
Lone parents from 26.10.09.....	20090
Special rules from 26.10.09 .....	20093
Lone parents from 25.10.10.....	20095
Special rules from 25.10.10 .....	20098
Definition of a child.....	20102
Treated as responsible for a child.....	20103
Lone foster parents .....	20104
People temporarily looking after another person.....	20110
Temporary absence .....	20111
Childminders .....	20113
Regular carers.....	20116
Regularly and substantially.....	20117
Substantially caring .....	20118
Awaiting outcome of claim to AA or DLA .....	20120
Recently ceased to care or no longer awaiting outcome of claims to AA or DLA.....	20122
People incapable of work .....	20134
Incapacity tests.....	20135
Treated as incapable.....	20136
Treated as capable .....	20138
Disabled workers.....	20152

People in work living in a care home, an Abbeyfield Home or an independent hospital .....	20153
People entitled to Mortgage Interest Run-on.....	20154
Disabled students.....	20155
Old student cases .....	20157
Hearing impaired students .....	20158
Visually impaired people.....	20159
Pregnant women .....	20160
Incapable of work by reason of pregnancy.....	20161
Expected week of confinement .....	20162
Parental leave.....	20163
Paternity leave .....	20164
Certain people in relevant education .....	20165
Second chance learning.....	20167
Refugee learning English .....	20174
People who claim asylum on or after 3.4.00 .....	20175
People required to attend court .....	20176
People affected by a trade dispute .....	20177
Certain persons subject to immigration control .....	20178
People in custody .....	20179
Member of a couple looking after children whilst partner temporarily abroad .....	20181
People appealing against a decision because of capability for work .....	20182
Young person in training .....	20189

### **The remunerative work exclusion**

<b>Remunerative work - introduction.....</b>	<b>20200</b>
JSA(Cont) .....	20201
JSA(IB) and IS .....	20202
Does the claimant have employment .....	20203
<b>Meaning of remunerative work</b>	
JSA(Cont).....	20210

JSA(IB) .....	20211
IS .....	20212
Savings provision .....	20213
Treated as in or not in remunerative work.....	20214
<b>Work done for payment or in expectation of payment .....</b>	<b>20230</b>
Work for no monetary reward.....	20231
Payment in kind .....	20232
Expectation of payment.....	20233
Self-employed earners .....	20234
Sale of goods .....	20235
Business start up .....	20236
Company directors .....	20238
<b>Establishing hours of work</b>	
Introduction.....	20250
JSA - carers and specified occupations .....	20252
IS - carers and specified occupations .....	20257
Counting the hours	
Flexible working schemes.....	20258
Overtime.....	20259
Breaks .....	20260
Night Duty.....	20261
Evidence of hours .....	20262
Company directors .....	20263
Musicians .....	20264
Self-employed .....	20265
Teachers .....	20276
Calculating average hours .....	20293
Identifying a recognizable cycle.....	20294
Permanent or indefinite contract .....	20295
Fixed term contracts and casual workers .....	20296
Supply teachers.....	20297
Extra work .....	20298

Probation.....	20299
Recognizable cycle established .....	20306
Periods when a person does not work .....	20307
Sickness, maternity leave, paternity leave, adoption leave and periods of unauthorised absence .....	20308
Holidays or periods of no work.....	20309
Calculating the number of hours for which a person is engaged in work .....	20311
Calculating the average hours.....	20315
JSA only - yearly cycle with school holidays or similar vacations.....	20316
IS only - yearly cycle with school holidays or similar vacations .....	20317
Ancillary school workers.....	20318
No recognizable cycle established	
Estimating future hours .....	20320
Averaging past hours .....	20322
Short-time workers.....	20327
Changes to the normal hours.....	20338
Seasonal workers.....	20339
Averaging the hours .....	20340
Agency and casual workers .....	20341
<b>People treated as in remunerative work</b>	
Introduction.....	20390
JSA(Cont).....	20391
JSA(IB) .....	20392
IS.....	20395
Absence from work without good cause .....	20397
Good cause.....	20399
Recognized, customary or other holiday .....	20410
Certain people affected by a trade dispute.....	20425
Payment on termination or interruption of employment.....	20435
<b>People treated as not in remunerative work</b>	
Introduction.....	20464

Childminders .....	20466
Charity or voluntary workers and volunteers .....	20467
Meaning of voluntary organization.....	20468
Meaning of volunteer.....	20469
Engaged on a training scheme	
JSA.....	20470
IS.....	20471
People receiving assistance under the self-employed route .....	20472
Meaning of self-employed route .....	20473
Engaged in specific occupations .....	20474
Councillors.....	20475
Meaning of councillor .....	20476
Foster parents and people providing respite care	
Foster parents .....	20478
People providing respite care.....	20479
Sports awards .....	20480
Meaning of sports award.....	20481
Disabled workers.....	20496
People affected by a trade dispute	
JSA(IB).....	20499
IS.....	20501
Caring for another person .....	20502
People living in a care home, Abbeyfield Home or an independent hospital.....	20504
Mortgage interest run-on .....	20530

## **People in relevant education**

### **What constitutes relevant education**

Introduction.....	20556
Definition of a child.....	20557
Definition of a qualifying young person.....	20558
Education and training condition .....	20559

16 year olds (15 year olds in Scotland) .....	20561
Extension period for 16 and 17 year olds.....	20562
Interruptions .....	20565
Reasonable cause.....	20568
School holidays .....	20569
Education received abroad.....	20576
Young person held in custody .....	20577
Cases of doubt .....	20578
Cases of doubt about recognized establishment or education .....	20579
Hours of attendance.....	20591
Evening courses.....	20592
Hours of study in education elsewhere .....	20598
Non-advanced	
JSA.....	20600
IS.....	20601
<b>People in relevant education eligible for Jobseeker's Allowance or Income Support</b>	
Introduction.....	20630
JSA .....	20631
Qualifying conditions .....	20633
IS .....	20634
Person is a parent .....	20646
Person is disabled .....	20647
Person is an orphan .....	20664
Acting in place of parents .....	20668
Someone claiming CHB or another benefit for the young person.....	20669
Foster parents .....	20670
Sponsors .....	20672
Local Authorities and voluntary organizations .....	20673
Person of necessity living away from parents .....	20686
Living away from .....	20689
Estranged.....	20690

Physical or moral danger.....	20693
Serious risk to physical or mental health.....	20694
Person living away from and cannot be supported by parents.....	20700
Chronically sick or disabled.....	20702
Substantially and permanently disabled.....	20703
Person leaving accommodation provided by the Local Authority.....	20725
Refugee learning English .....	20728
<b>School leavers</b>	
Introduction.....	20750
Person under 16.....	20752
Terminal dates.....	20763
England and Wales .....	20763
Scotland .....	20765
External examinations.....	20778
Period up to the terminal date .....	20779
Person starts work or training .....	20780
Age 20 .....	20790
<b>Waiting days</b>	
<b>Waiting days</b> .....	20901
Claimants who do not have to serve waiting days.....	20902
<b>Attendance and signing</b>	
<b>Introduction</b> .....	20909
<b>Attendance</b>	
Notice to attend .....	20911
Entitlement ends if claimant does not attend.....	20915
Entitlement ends when claimant attends on the right day but at the wrong time .....	20920
<b>Signing a declaration</b>	
A declaration.....	20926
Entitlement ends if claimant does not provide signed declaration.....	20930

<b>Good cause</b> .....	20935
Claimants who have good cause for failing to attend or attend on time .....	20938
Introduction.....	20943
Matters to take into account when determining whether the claimant has good cause for failing to attend or attending at the wrong time .....	20948
Meaning of caring responsibilities .....	20949
Meaning of employment.....	20950
Matters to take into account when determining whether the claimant has good cause for failing to provide a signed declaration.....	20952
<b>When entitlement ends</b> .....	20955
Fails to attend, or attends late .....	20956
Does not provide a signed declaration, or provides one on the wrong day .....	20957
 <b>Capability</b>	
 <b>Introduction</b>	
 <b>Treated as capable - short periods of sickness</b> .....	20961
Meaning of week .....	20962
Entitlement to JSA.....	20963
Unable to work because of some specific disease or disablement.....	20967
Already treated as capable twice or more in the jobseeking period or year .....	20975
NHS treatment abroad .....	20976
<b>Treated as capable - personal capability assessment</b> .....	20985
 <b>Capable of work</b>	
Meaning of capable of work .....	20988
Medical evidence.....	20997
Pension age.....	<b>Appendix 1</b>
Saving provision - 24 to 16 hour rule and disabled workers.....	<b>Appendix 2</b>
Recognised customary or other holiday .....	<b>Appendix 3</b>

People the Secretary of State has authorized as  
Employment Officers (DMG 20911) .....**Appendix 4**



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

### Entitlement to Jobseeker's Allowance and Income Support

#### General rules on entitlement

##### 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. MIRO.

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 **and**
5. are not in relevant education **and**
6. are in GB (except for certain temporary absences abroad) **and**
7. are under pension age **and**
8. satisfy
  - 8.1 the contribution-based conditions for JSA(Cont)<sup>3</sup> **or**
  - 8.2 the income based conditions for JSA(IB)<sup>4</sup>.

**Note:** Special rules apply to share fishermen (see DMG Chapter 27) and joint claims for JSA. Serving members of the Forces are not entitled to JSA<sup>5</sup>.

*1 JS Act 95, s 1(2); 2 s 14; 3 s 1(2)(d); 4 s 1(2A); 5 SS (Ben) (Members of the Forces) Regs 75, reg 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.

*1 JS Act 95, s 1(4); JSA Regs, reg 3A(1)*

**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)(1); 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, SI 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 Learning and Skills Council for England **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 or SPC **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 **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 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 **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 **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**
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 20100 et seq) **and**
9. not be entitled to JSA **and**
10. not have a partner who is entitled to JSA(IB) **and**
11. not have a partner who is entitled to SPC.

Special rules apply to share fishermen (see DMG Chapter 27).

*1 SS CB Act 92, s 124*

## 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 **or**
  - 3.4 in employment living in a care home, Abbeyfield Home or an independent hospital **or**
  - 3.5 a disabled worker **or**
  - 3.6 a disabled student **or**
  - 3.7 a deaf student **or**
  - 3.8 blind **or**
  - 3.9 a pregnant woman **or**
  - 3.10 aged 60 or over **or**
  - 3.11 a refugee learning English **or**
  - 3.12 required to attend court or tribunal **or**
  - 3.13 a young person in training **or**
  - 3.14 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. & 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 Sch A1, para 2*

### Regular carer

- 20027 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 or the care component of DLA at the highest or middle rate<sup>3</sup> **or**
    - 2.2** has claimed AA or DLA 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 or the care component of DLA at the highest or middle rate.

**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 Sch A1, paras 3, 4, & 5; 2 SS CB Act 92, s 70; 3 s 72(3); 4 s 65(6)(a); SS (C&P) Regs, reg 13A*

## Incapable of work

20028 A member can be exempt if they are

1. incapable of work<sup>1</sup> **or**
2. treated as incapable of work<sup>2</sup> **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.

*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.

## People in work living in a care home, Abbeyfield Home or an independent hospital

20030 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*

20031 - 20039

## Disabled worker

20040 A disabled worker who satisfies DMG 20496 is treated as **not** in remunerative work and is exempt<sup>1</sup>. See Appendix 2 to this Chapter for the savings provision for disabled workers.

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

## Disabled students

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 Sch A1, para 9*

## Deaf students

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

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 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 a Learning and Skills Council **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 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 JSA Regs, 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 15 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 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. people temporarily looking after another person
4. regular carers
5. people incapable of work
6. disabled workers
7. people in work living in a care home, Abbeyfield Home or an independent hospital
8. people entitled to MIRO
9. disabled students
10. deaf students
11. blind people
12. pregnant women
13. parental leave
14. paternity leave
15. certain people in relevant education
16. young people in second chance learning
17. refugees learning English
18. people who claim asylum on or after 3.4.00 and who is granted refugee status on or before 14.6.07
19. people required to attend court or a tribunal
20. people affected by a TD
21. certain PFAs
22. people in custody
23. members of a couple looking after children whilst their partner is temporarily abroad
24. people appealing against a decision which embodies a determination of capability for work
25. people attending WBLfYP or 'Skillseekers' courses

26. students entitled to IS on 31.7.96.

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

**Note:** DMs should ensure that if the claimant no longer satisfies the prescribed category they must consider if the claimant satisfies any other of the prescribed categories.

## Lone parents

- 20082 **[See memo DMG 30/09]** New legislation<sup>1</sup> now means that the entitlement of LPs to IS where they do not satisfy any other prescribed category, will depend on the age of the claimant's youngest child. This legislation gradually reduces the qualifying age of the child on 3 different dates. For new claims from these dates then the impact of the new legislation is immediate. However, for those LPs already entitled to IS on the relevant dates, special rules apply to determine when the new legislation will affect them. The following guidance sets out the effect of the age change of the youngest child for both new and existing claims.

*1 SS (LP & Misc Amdts) Regs*

### Lone parents from 24.11.08

- 20083 For new claims from 24.11.08 people can get IS if they are

1. not a member of a
    - 1.1 couple **or**
    - 1.2 polygamous marriage **and**
  2. responsible for
    - 2.1 a single child aged under 12 **or**
    - 2.2 more than one child where the youngest is under 12
- who is a member of that person's household<sup>1</sup>.

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

- 20084 Where on 24.11.08 a person is already entitled to IS as a LP<sup>1</sup>, special rules apply relating to when the new provisions will affect them<sup>2</sup>. A LP will fall within these special rules where

1. the person was entitled to IS as a LP immediately before 24.11.08 **and**
2. the person does not satisfy any other of the prescribed categories for entitlement to IS<sup>3</sup> **and**
3. on 24.11.08 that person is responsible for a child (or youngest child) aged 11 or over who is a member of that person's household<sup>4</sup>.

*1 reg 2(1); SS (LP & Misc Amdts) Regs, reg 1(4); 2 Sch; 3 IS (Gen) Regs, Sch 1B;  
4 SS (LP & Misc Amdts) Regs, Sch, para 1(1)*

**Example 1**

Tom has been in receipt of IS as a LP since 2004. He has one child, Paul, who was born on 14.12.96. On 24.11.08, as Paul is aged over 11 and as Tom does not satisfy any of the other categories in DMG 20081, he will be subject to the new provisions.

**Example 2**

Hannah is a LP and has been in receipt of IS since June 2000. She has 2 children born on 6.5.94 and 23.9.96. On 24.11.08, her youngest child is aged over 11. However, Hannah is also looking after a foster child and so she will not be subject to the new Lone Parent Obligation provisions.

20085 If, on or after 24.11.08, a person makes a further claim to IS or the savings and transitional provisions as in DMG 30212 et seq apply to that person, they are not subject to these special rules<sup>1</sup>.

**Note:** If the savings and transitional provisions cease to apply, the special rules may apply again (see DMG 30217).

*1 SS (LP & Misc Amdts) Regs, Sch, para 1(2)*

**Special rules from 24.11.08**

20086 Where, on 24.11.08, a person is responsible for a child (or youngest child) who is a member of that person's household and whose 16th birthday is on or before 1.3.09, that person shall continue to be entitled to IS on grounds of being a LP as if the prescribed category of LP in the regulations had not been amended<sup>1</sup>.

*1 Sch, para 2*

20087 Where, on 24.11.08, a person is responsible for a child (or youngest child) who is a member of that person's household and whose 16th birthday is after 1.3.09, that person shall no longer be entitled to IS on the grounds of being a LP with effect from the earlier of

1. the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 2.3.09 **or**
2. the day on which the child is 16<sup>1</sup>.

*1 Sch, para 3*

20088 Where neither DMG 20086 or 20087 apply, the person will no longer be entitled to IS on the ground of being a LP where on 24.11.08 the person is responsible for a child (or youngest child) who is a member of that person's household and who is

1. aged 14 or aged 13 and whose 14th birthday occurs on or before 1.3.09, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 2.3.09**

2. aged 13 and whose 14th birthday occurs after 1.3.09, from the date the child reaches age 14
3. aged 12 or aged 11 and whose 12th birthday occurs on or before 5.7.09, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 6.7.09**
4. aged 11 and whose 12th birthday occurs after 5.7.09, **from the date the child reaches age 12<sup>1</sup>.**

*1 SS (LP & Misc Amdts) Regs, Sch, para 4*

20089 Where in DMG 20088, the person has claimed or is treated as having made a claim for CTC and the award has not been decided by the date specified in the bold text in DMG 20088 1. to 4., the dates in those sub-paragraphs will be extended by 4 weeks<sup>1</sup>.

*1 Sch, para 4(3)*

### **Lone parents from 26.10.09**

20090 For new claims from 26.10.09 people can get IS if they are

1. not a member of a
  - 1.1 couple **or**
  - 1.2 polygamous marriage **and**
2. responsible for
  - 2.1 a single child aged under 10 **or**
  - 2.2 more than one child where the youngest is under 10who is a member of that person's household<sup>1</sup>.

*1 reg 3*

20091 Where, on 26.10.09, a person is already entitled to IS as a LP, special rules apply relating to when the new provisions will affect them. A LP will fall within these special rules where

1. the person was entitled to IS as a LP immediately before 26.10.09
2. the person does not satisfy any other of the prescribed categories for entitlement to IS<sup>1</sup>
3. on 26.10.09 that person is responsible for a child (or youngest child) aged 9, 10 or 11, who is a member of that person's household<sup>2</sup>.

*1 IS (Gen) Regs, Sch 1B; 2 SS (LP & Misc Amdts) Regs, Sch, para 6(1)*

- 20092 If, on or after 26.10.09, a person makes a further claim to IS or the savings and transitional provisions as in DMG 30212 apply to that person, they shall not be subject to these special rules<sup>1</sup>. So where a person falls into one phase they cannot fall into a subsequent one.

*1 SS (LP & Misc Amdts) Regs, Sch, para 6(2)*

### Special rules from 26.10.09

- 20093 The person will no longer be entitled to IS on the grounds of being a LP where on 26.10.09 the person is responsible for a child (or youngest child) who is a member of that person's household and who is

1. aged 11 or aged 10 and whose 11th birthday occurs on or before 31.1.10, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 1.2.10**
2. aged 10 and whose 11th birthday occurs after 31.1.10, **from the date the child reaches age 11**
3. aged 9 and whose 10th birthday on or before 6.6.10, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 7.6.10**
4. aged 9 and whose 10th birthday occurs after 6.6.10, **from the date the child reaches age 10<sup>1</sup>.**

*1 Sch, para 7*

- 20094 Where in DMG 20093, the person has claimed or is treated as having made a claim for child tax credit and the award has not been decided by the date specified in the bold text in DMG 20093 **1. to 4.**, the dates in those sub paragraphs will be extended by 4 weeks<sup>1</sup>.

*1 Sch, para 7(3)*

### Lone parents from 25.10.10

- 20095 For new claims from 25.10.10 people can get IS if they are

1. not a member of a
  - 1.1 couple **or**
  - 1.2 polygamous marriage **and**
2. responsible for
  - 2.1 a single child aged under 7 **or**
  - 2.2 more than one child where the youngest is under 7who is a member of that person's household<sup>1</sup>.

*1 reg 4*

20096 Where, on 25.10.10, a person is already entitled to IS as a LP, special rules apply relating to when the new provisions will affect them. A LP will fall within these special rules where

1. the person was entitled to IS as a LP immediately before 25.10.10
2. the person does not satisfy any other of the prescribed categories for entitlement to IS<sup>1</sup>
3. on 25.10.10 that person is responsible for a child (or youngest child) aged 6, 7, 8 or 9, who is a member of that person's household<sup>2</sup>.

*1 IS (Gen) Regs, Sch 1B; 2 SS (LP & Misc Amdt) Regs, Sch, para 8(1)*

20097 If, on or after 25.10.10, a person makes a further claim to IS or the savings and transitional provisions as in DMG 30212 apply to that person, they shall not be subject to these special rules<sup>1</sup>. So where a person falls into one phase they cannot fall into a subsequent one.

*1 Sch, para 8(2)*

### Special rules from 25.10.10

20098 The person will no longer be entitled to IS on the grounds of being a LP where on 25.10.10 the person is responsible for a child (or youngest child) who is a member of that person's household and who is

1. aged 9 whose 9th birthday occurred before 25.10.10, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 25.10.10**
2. attains the age of 9 on 25.10.10, **from 25.10.10**
3. aged 8 whose 9th birthday occurs after 25.10.10, **from the day the child reaches age 9**
4. aged 7, or aged 6 and whose 7th birthday occurs on or before 2.1.11, **from the first day of the first benefit week in which the person would next have been required to take part in a Wfl on or after 3.1.11**
5. aged 6 whose 7th birthday occurs after 2.1.11, **from the date the child reaches age 7<sup>1</sup>.**

*1 Sch, para 9*

20099 Where in DMG 20098, the person has claimed or is treated as having made a claim for child tax credit and the award has not been decided by the date specified in the bold text in DMG 20098 **1. to 5.**, the dates in those sub-paragraphs will be extended by 4 weeks<sup>1</sup>.

*1 Sch, para 9(3)*

20100 - 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 20086 - 20099.

*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 under arrangements made with

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

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

*1 IS (Gen) Regs, Sch 1B, para 2; Children Act 89; Social Work (Scotland) Act 68*

20105 - 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" or the care component of DLA at the highest or middle rate<sup>4</sup> **or**
    - 2.2 has claimed "AA" or DLA **or**
    - 2.3 has
      - 2.3.a made an advance claim for<sup>5</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" or the care component of DLA at the highest or middle rate.

*1 IS (Gen) Regs, Sch 1B, para 4; 2 SS CB Act 92, s 70; 3 SS Fraud Act 2001, s 7; 4 s 72(3); 5 s 65(6)(a); SS (C&P) Regs, reg 13A*

### Regularly and substantially

- 20117 The words "regularly and substantially" should be given it's everyday meaning. Whether someone is regularly and substantially caring is a question of fact for the DM<sup>1</sup>.

**Note:** More than one person 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 When considering what amounts to caring, the DM should consider whether the carer performs duties that the disabled person needs help with because of their disability or oversees activities because of their disability. Domestic activities maybe included in caring but walking to and from the disabled person's home would not<sup>1</sup>.

*1 R(IS) 8/02*

## Awaiting outcome of claim to AA or DLA

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" or DLA is decided **or**
2. 26 weeks from the date of claim for "AA" or DLA.

*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" or DLA.

## Recently ceased to care or no longer awaiting outcome of claim to AA or DLA

20122 People who have recently ceased to care 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 Sch 1B, para 5 & 6*

20123 Circumstances in which DMG 20122 could apply are when

1. a different carer takes over **or**
2. the person being cared for moves elsewhere or dies.

20124 - 20133

## People incapable of work

20134 **[See memo DMG 30/09]** People can get IS if they are

1. incapable of work<sup>1</sup> **or**
2. treated as incapable of work<sup>2</sup> **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.

*1 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)*

**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

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.

- 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 reg 8(2); 2 reg 7; 3 reg 16*

20139 - 20151

### **Disabled workers**

- 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

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 Sch 1B, para 9A*

## Disabled students

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 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 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 Sch 1B, para 11*

## Hearing impaired students

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

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.

**Note:** When the accepted week of confinement begins before 6.4.03 **2.2** should read "ending seven 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 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 75A & 75B; 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.

## Certain people in relevant education

20165 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 **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)*

20166 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

20167 This is for young people who remain in education beyond the age of 20 up to the age of 21<sup>1</sup>. To satisfy this category, the person must

1. be under age 21 **and**

2. be undertaking a course of full-time non-advanced education<sup>2</sup> **and**
3. be accepted to attend, enrolled on or began the course before they were 19 **and**
4. have
  - 4.1 no parent or any person acting in place of a parent<sup>3</sup> **or**
  - 4.2 live away from their parent and any person acting in place of a parent<sup>3</sup> because
    - 4.2.a they are estranged from their parents and any person acting in place of a parent<sup>3</sup> **or**
    - 4.2.b they are in physical or moral danger **or**
    - 4.2.c there is a serious risk to their physical or mental health **or**
  - 4.3 they are living away from their parents and any person acting in place of their parents<sup>4</sup> where their parents or any person acting in place of their parents<sup>4</sup> are unable financially to support them and are
    - 4.3.a chronically sick or mentally or physically disabled<sup>5</sup> **or**
    - 4.3.b detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court **or**
    - 4.3.c prohibited from entering or re-entering Great Britain.

*1 IS (Gen) Regs, Sch 1B, para 15A; 2 CHB (Gen) Regs, reg 3(2)(a) or (b); 3 IS (Gen) Regs, reg 13(3)(a)(i); 4 reg 13(3)(a)(ii); 5 reg 13(3)(b)*

20168 - 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 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>.

*1 IS (Gen) Regs, reg 21ZB; Sch 1B, para 18A*

## 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 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 Sch 1B, para 20*

## Certain persons subject to immigration control

20178 Certain PSICs can get urgent cases payments<sup>1</sup>. (See DMG 24510).

*1 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 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 a Commissioner 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 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) and (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 AT decision, IS cannot be paid until the appeal is determined by the Commissioner.
- 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 a Learning and Skills Council **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

## Remunerative work - introduction

20200 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.

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

### 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)*

### Savings provision

20213 See Appendix 2 to this Chapter for people entitled to the 24 to 16 hours savings provision which came into force on 7.4.92<sup>1</sup>

*1 IS (Gen) Amdt No 4 Regs 91, reg 22-24*

### Treated as in or not in remunerative work

20214 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*

20215 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)*

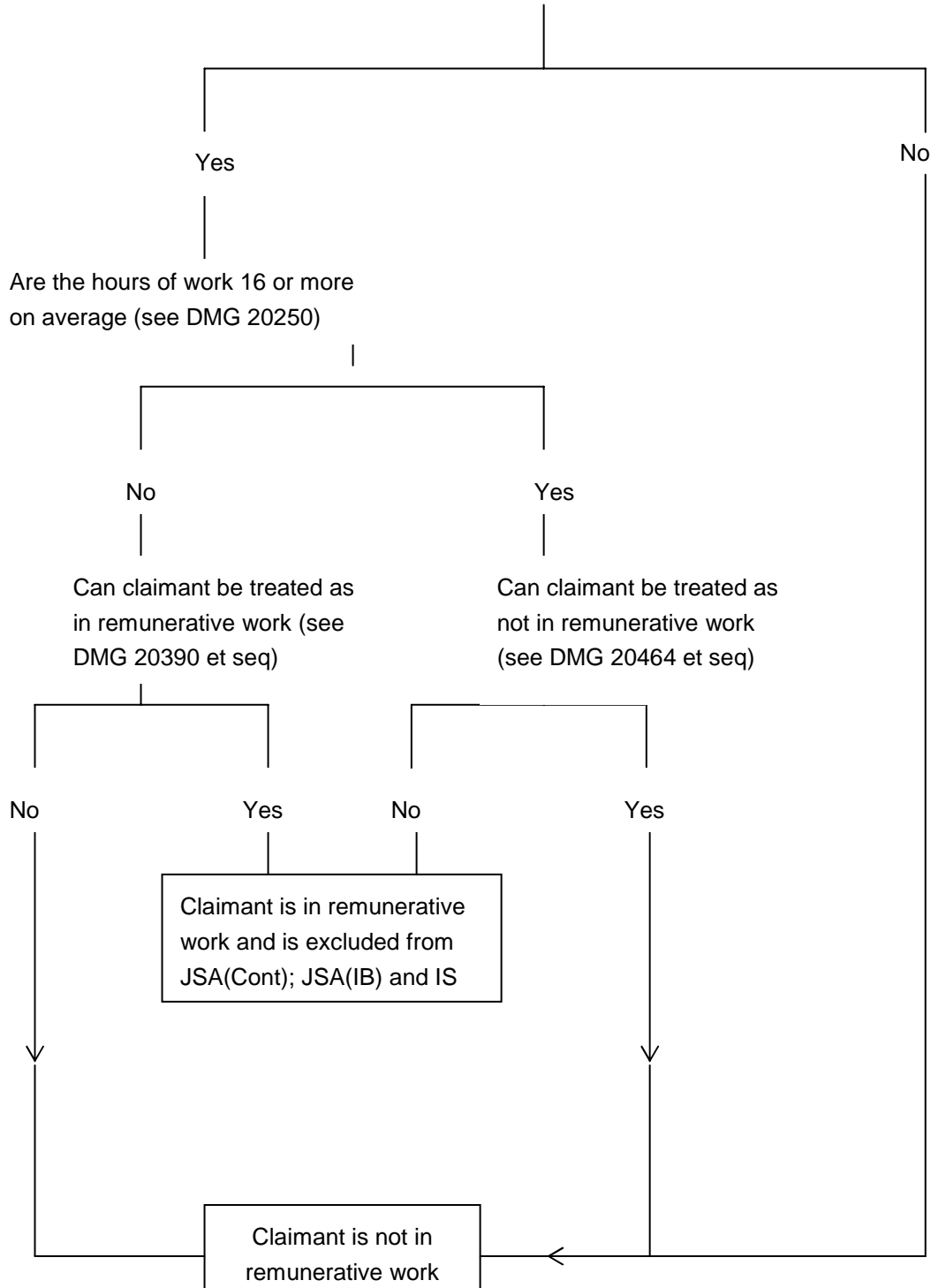
20216 The flow charts on the following pages show the link between a person being

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.

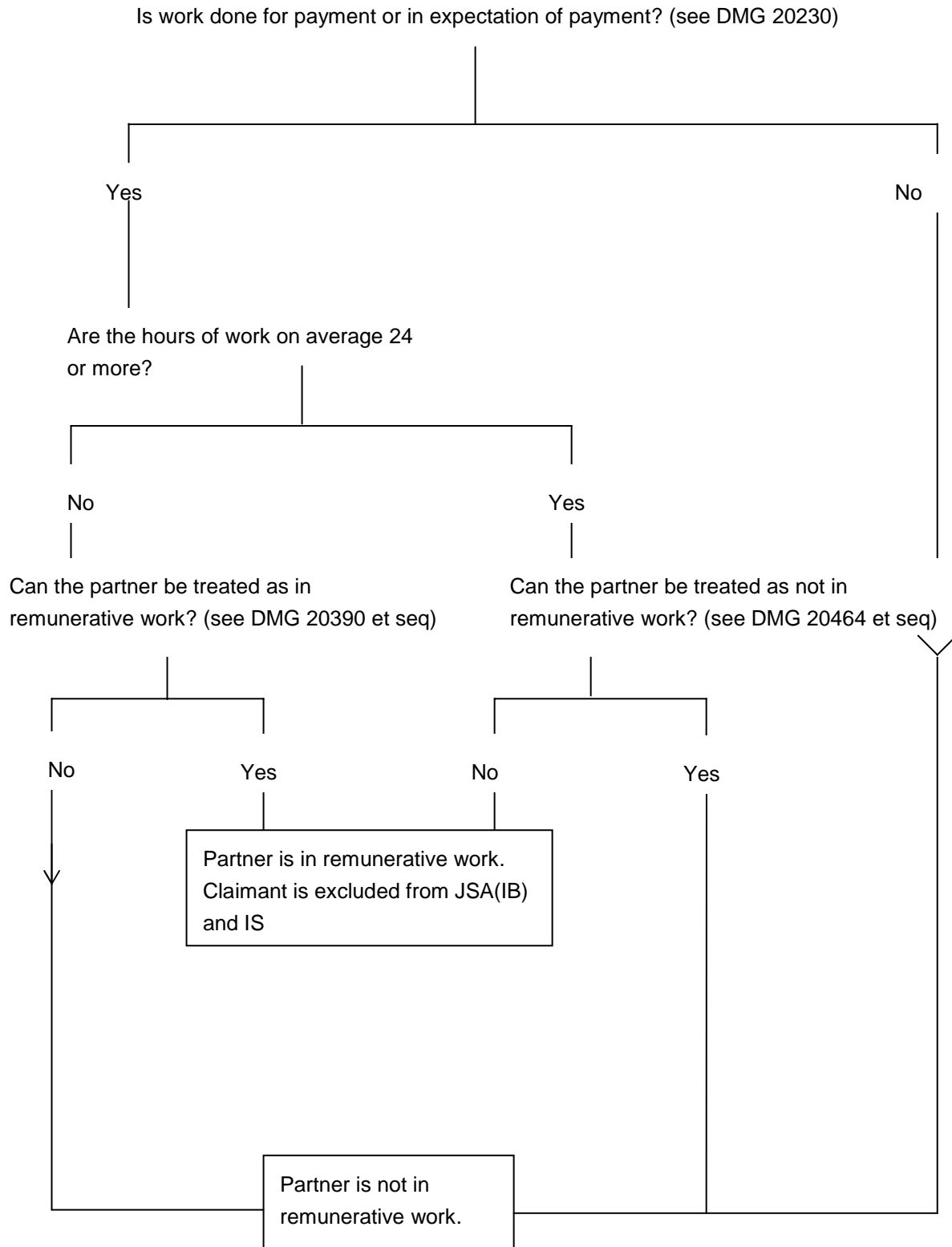
20217 - 20229

### Remunerative work exclusion – claimant

Is work done for payment or in expectation of payment?



### Remunerative work exclusion - partner



## Work done for payment or in expectation of payment

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 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

- 20235 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

- 20236 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*

- 20237 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**

20238 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*

20239 - 20249



## Establishing hours of work

### 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.

*1 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 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 at the highest or middle rate **or**
  - 2.2 has claimed "AA" or DLA **or**
  - 2.3 has claimed and has an award of
    - 2.3.a "AA" or
    - 2.3.b the care component of DLA 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>.

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

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

1. the date the claim for "AA" or DLA is decided **or**
2. 26 weeks from the date of claim for "AA" or DLA.

*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” 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.

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 headteachers, 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.

### **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)*

**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 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 20203 - 20206.

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

20308 When someone is absent from work due to sickness, 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 20315).

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

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 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 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>.

*I 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>.

*I 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>.

*1 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)*

20328 - 20337

## 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

### 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<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 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, 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 cause<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 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.

*1 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).

*1 IS (Gen) Regs, reg 5(3); 2 reg 5(3); 3 reg 5(5); 4 reg 5(5A); Sch 8, para 1*

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 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

### 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> **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 an activity which attracts a sports award<sup>8</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 JSA Regs, reg 53(i); IS (Gen) Regs, reg 6(1)(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> **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> **or**
5. in receipt of IS by way of MIRO<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 who without any legal obligation performs a service for another person without expectation of payment<sup>1</sup>.

*1 R(IS) 12/92*

## 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>.

**Note:** For people in the EO(S/E) option of NDYP see DMG 14133.

*1 JSA Regs, reg 53(b)*

### 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>.

**Note:** For people in the S/E route of the ND for lone parents see DMG 14410.

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

## 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 For the meaning of S/E route see DMG 14000.

## 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 a fire and rescue authority or a joint fire and rescue board as specified under certain legislation<sup>2</sup> **and**
  - 1.2 in England, and Wales a P/T fire-fighter employed by a fire and rescue authority **or**
2. auxiliary coastguards for coastal rescue activities<sup>3</sup> **or**

3. working P/T in the crewing or launching of a lifeboat<sup>4</sup> **or**
4. members of a territorial or reserve force<sup>5</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; 3 JSA Regs, reg 53(d)(ii); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(b);  
4 JSA Regs, reg 53(d)(iii); IS (Gen) Regs, reg 6(1)(h) & Sch 8, para 7(1)(c); 5 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>.

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

### 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 s 171F(2)(b)*

## Foster parents and people providing respite 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.

*1 JSA Regs, reg 53(f) & Sch 7, para 27; IS (Gen) Regs, reg 6(1)(k) & Sch 9, para 26*

## 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)*

## Sports awards

20480 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

20481 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)*

20482 - 20495

## Disabled workers

- 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 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" or the care component of DLA at the highest or middle rate<sup>2</sup> **or**
  - 1.2 has claimed "AA" or DLA **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" or the care component of DLA at the highest or middle rate<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" or the care component of DLA at the highest or middle rate 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 72(3); 3 s 65(6)(a); SS (C&P) Regs, reg 13A; 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" or DLA is decided **or**
2. 26 weeks from the date of claim for "AA" or DLA.

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

## People living in a care home, Abbeyfield Home or an independent hospital

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

## Mortgage interest run-on

20530 People may be entitled to IS in respect of mortgage or loan interest MIRO 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 mortgage or loan interest or other housing costs such as ground rent or service charge **and**
4. people remain liable to make payments on the loan<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 MIRO will not be treated as part of the 26 week qualifying period<sup>1</sup>.

*1 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 MIRO and DMG 02056 for claims.

20533 - 20555



# People in relevant education

## What constitutes relevant education

### Introduction

20556 With certain exceptions, a child or young person in GB shall be treated as receiving relevant or FTE<sup>1</sup> where that person is a child or qualifying young person within the meaning of specified legislation<sup>2</sup>. The exceptions are in DMG 20631 et seq.

*1 JSA Regs, reg 54(1) & (2); IS (Gen) Regs, reg 12; 2 SS CB Act 92, s 142*

### Definition of a child

20557 A child is a person under the age of 16<sup>1</sup>.

*1 JS Act 95, s 35(1); SS CB Act 92, s 142*

### Definition of a qualifying young person

20558 Where any of the conditions at DMG 20559 to 20566 below applies, the person is a qualifying young person and treated as in relevant education and unless certain conditions apply (see DMG 20630 et seq) they will not be entitled to JSA or IS. Where more than one of the conditions in DMG 20559 to 20566 below apply, the person remains a qualifying young person until the last of them ceases to be satisfied<sup>1</sup>. Where the person leaves relevant education or approved training they continue to be a qualifying young person until the terminal dates (see DMG 20763 et seq).

*1 CHB (Gen) Regs, reg 2(2)*

### Education and training condition

20559 This condition applies to a person who has not reached age 20<sup>1</sup> **and**

1. is undertaking a course of full-time education which is not advanced education or provided by virtue of his employment or any office held but which is provided
  - 1.1 at a school or college **or**
  - 1.2 elsewhere but is approved by HMRC Commissioners and the full-time education was being received there when that person was still a child **or**
2. is undertaking approved training that is not provided through a contract of employment **or**

3. having undertaken such a course/approved training as is mentioned in 1. or 2. above, has been accepted or is enrolled on a further such course/approved training.

*1 CHB (Gen) Regs, reg 3(1)-(3)*

20560 A person aged 19 can only satisfy the conditions in DMG 20559 1. and 2. above if

1. the education or training began **or**
2. the person was accepted or enrolled on the education or training before they were 19<sup>1</sup>.

*1 reg 3(4)*

### **16 year olds (15 year olds in Scotland)**

20561 A 16 year old (in Scotland also a 15 year old) who has left relevant education or training will still be a qualifying young person until the 31st August following their 16th birthday<sup>1</sup>.

*1 reg 4*

### **Extension period for 16 and 17 year olds**

20562 The extension period<sup>1</sup>

1. begins on the first day of the week after that in which the 16/17 year old ceased to be in education or training **and**
2. ends 20 weeks later.

**Note:** If the young person reaches age 18 before the period in 2. above, the extension period ends on the CHB payday after their 18th birthday.

*1 reg 5*

20563 This period applies to those aged 16 and 17 years

1. who have ceased to be in education or training **and**
2. who are registered for work, education or training with a qualifying body<sup>1</sup> **and**
3. who are not engaged in remunerative work **and**
4. whose extension period has not expired **and**
5. where the person who is responsible for the 16/17 year old
  - 5.1 was entitled to CHB for them immediately before the extension period began **and**
  - 5.2 has made a written request to the HMRC Commissioners within three months of the education or training ceasing for the payment of CHB during the extension period

and so are still a qualifying young person by virtue of being in the CHB extension period.

**Note:** Whilst the young person is under 18, CHB can be extended every time the conditions described in DMG 20562 and 20563 above are satisfied.

*1 CHB (Gen) Regs, reg 5(4); reg 5(4)*

20564 Where the 16/17 year old in a CHB extension period is orphaned or estranged<sup>1</sup> they still have to satisfy the conditions in DMG 20563 but it is unlikely that they will be able to satisfy the condition at DMG 20563 5.. Estranged or orphaned young people are therefore treated as satisfying this condition<sup>2</sup> (DMG 20563 5.) and will therefore still be entitled, subject to other conditions of entitlement, to IS. There is no requirement that these young people should transfer to JSA(IB) prior to being placed back in education.

*1 IS (Gen) Regs, Sch 1B, para 15; 2 reg 13(2A)(b); CHB (Gen) Regs, reg 5(2)(e) & (f)*

## Interruptions

20565 Up to the age of 20, where a person's education or training has been interrupted and immediately before it was interrupted they were a qualifying young person under the conditions in DMG 20559 to 20563 above, they will remain a qualifying young person for the duration of the interruption.

20566 Subject to the exception in DMG 20567 below, the condition in DMG 20565 above will only apply where the period of interruption is

1. one of up to six months duration, even if it began before the person was 16, but only to the extent that it is considered to be reasonable in the opinion of the HMRC Commissioners **and**
2. due to illness or disability and for a period that is considered reasonable in the opinion of the HMRC Commissioners<sup>1</sup>.

*1 reg 6(3)*

20567 Where the period of interruption is or is likely to be immediately followed by a period during which the person

1. has provision made to undertake non approved training **or**
2. is receiving advanced education **or**
3. is receiving education by virtue of his employment or any office held

then they will not satisfy the condition in DMG 20566 above<sup>1</sup>.

*1 reg 6(4)*

## Reasonable cause

20568 Examples of reasonable cause for interruption include

1. individual holidays, other than official holidays, during term-time
2. temporary closure of the educational establishment during term-time
3. authorized absence following contact with an infectious disease
4. illness or disability (mental or physical)
5. absence due to illness or death in the family
6. disruption of normal transport with no reasonable alternative available
7. change of educational establishment
8. authorized absences to follow a course of study elsewhere, for example
  - 8.1 to study at home for an examination **or**
  - 8.2 a field course **or**
  - 8.3 an educational cruise.

## School holidays

20569 Treat school holidays as a period of interruption due to a reasonable cause if the person intends to return after the holidays. If there is no intention to return see DMG 20763 et seq.

20570 - 20575

## Education received abroad

20576 Education received abroad should be treated in the same way as if it had been received in GB. This is important when considering whether a person who has recently arrived in GB is affected by the terminal date provisions.

## Young person held in custody

20577 Any young person under the statutory school leaving age who is held in custody in a

1. remand centre **or**
2. detention centre **or**
3. youth custody centre

will normally be in FTE.

### Cases of doubt

20578 If there is any doubt about whether a person is to be treated as receiving relevant education the DM should

1. immediately ask the DM (Child Benefit Centre's) for an opinion **and**
2. deal with the claim on the assumption that the opinion of the DM (Child Benefit Centre) will be adverse to the claimant<sup>1</sup> **and**
3. when the DM (Child Benefit Centre's) opinion is received, revise the decision at 2. if the person is not to be treated as receiving relevant education.

*1 SS CS (D&A) Regs, reg 13 & 15*

### Cases of doubt about recognized establishment or education

20579 In cases of doubt, the question of the recognition of

1. a particular establishment **or**
2. the education received by the claimant

should be referred to the F/T Education and Schools Advice section at Child Benefit Centre, who will make a determination on behalf of the Secretary of State. The DM is bound by the opinion of the F/T Education and School Advice section at Child Benefit Centre on recognition of an establishment or the education.

20580 - 20590

### Hours of attendance

20591 FTE is education which on average exceeds 12 hours per week during term time. In calculating the hours of attendance, only count time spent on<sup>1</sup>

1. receiving instruction or tuition **and**
2. undertaking supervised study **and**
3. examinations or practical work **and**
4. taking part in any exercise, experiment or project which is an integral part of the course. This may be on or off the premises as long as it is always led or supervised by a teacher appointed for the purpose.

Do not include meal breaks, or any time spent on unsupervised study or homework.

*1 CHB (Gen) Regs, reg 1(3)*

## Evening courses

20592 Include time spent on evening courses if it is a course of non-advanced education.

### Example

Lynn is 17 years old. She is studying for three A levels. She studies for two of them at school during the day and for the third one at an evening class in the local college. The DM calculates the total hours of attendance at both school and college.

20593 - 20597

## Hours of study in education elsewhere

20598 Where there are special reasons and study is done elsewhere, the method of study might be quite different from that at an educational establishment. For this reason, the twelve hour requirement in DMG 20591 **1.** is not binding but may be used as a guide in deciding if the education is F/T. Count all time spent on

1. all activities mentioned in DMG 20591 **and**
2. unsupervised study.

If the hours in **1.** and **2.** do not exceed twelve a week, the person should not be treated as receiving relevant education. The DM must consider all other cases on their merit.

20599

## Non-advanced

### JSA

20600 A course of non-advanced education is of a level **below** a course of advanced education. Advanced education is defined as<sup>1</sup>

1. a course leading to a
  - 1.1 postgraduate degree or comparable qualification **or**
  - 1.2 first degree or comparable qualification **or**
  - 1.3 diploma of higher education **or**
  - 1.4 higher national diploma **or**

2. any other course which is of a standard above
  - 2.1 advanced GNVQ or equivalent **or**
  - 2.2 GCE (A Level) **or**
  - 2.3 Scottish certificate of education (higher level) **or**
  - 2.4 Scottish certificate of sixth year studies.

*1 JSA Regs, reg 1(3)*

## **IS**

20601 A course of non-advanced education has the same meaning as in DMG 20600. But in addition advanced education is further defined as<sup>1</sup>

1. a course leading to a
  - 1.1 postgraduate degree or comparable qualification **or**
  - 1.2 first degree or comparable education **or**
  - 1.3 diploma of higher education **or**
  - 1.4 higher national diploma **or**
  - 1.5 higher national certificate **or**
  - 1.6 teaching qualification **or**
2. any other course which is a standard above
  - 2.1 advanced GNVQ or equivalent **or**
  - 2.2 GCE (A level) **or**
  - 2.3 Scottish National qualification (higher or advanced higher).

*1 CHB (Gen) Regs, reg 1(3)*

20602 A person following a course as in DMG 20600 or DMG 20601 is receiving advanced education and cannot be in relevant education.

20603 - 20629



## People in relevant education eligible for Jobseeker's Allowance or Income Support

### 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. taking part in the FTET of NDYP<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.

*1 JSA Regs, reg 76; 2 reg 54(5); 3 reg 54(3)*

20632 Young people who

1. satisfied the conditions of DMG 20631 **and**
2. have completed or terminated the course of P/T study

are also not treated as in relevant education<sup>1</sup>.

*1 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 20165).

*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 reg 13(2)(a)*

## Person is disabled

- 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 reg 13(2)(b); 2 reg 13(2)(bb)*

20648 - 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 IS (Gen) Regs, 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>.

*1 R(IS) 9/94*

## 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 20165 **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 20165 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.

*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 20165 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.

*1 R(IS) 9/94*

### **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*

20701 When applying the conditions at DMG 20700 **3.** 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 and mother chronically sick **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 disabled**

20702 Accept a person as chronically sick or disabled if they

1. would satisfy the IS conditions for the award of HPP or DP<sup>1</sup> **or**
2. qualify for the cost of supplying or maintaining a vehicle for disabled ex-service personnel<sup>2</sup> **or**
3. are substantially and permanently disabled<sup>3</sup>.

*1 IS (Gen) Regs, reg 13(3)(b)(i); 2 reg 13(3)(b)(ii); 3 reg 13(3)(b)(iii)*

### **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*

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; 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

### 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>.

*1 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 reg 7(2), Case 1.2*

## 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 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 20630.

*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 A claimant is not entitled to JSA for the first three days of a JSP<sup>1</sup>. These three 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 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 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 6.11.06. On Monday 7.5.07 she starts full time work. The last day for which she is paid IS is Sunday 6.5.07. She is made redundant on Saturday 28.7.07, and claims and satisfies the main conditions<sup>1</sup> to be entitled to JSA from and including Monday 30.7.07. Dolores has to serve three waiting days and is not entitled to JSA for Monday 30.7.07, Tuesday 31.7.07 and Wednesday 1.8.07. 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 29.7.07.

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

- 20903 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 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 6.11.06. On Monday 7.5.07 he starts F/T work. The last day for which IS is paid is Sunday 6.5.07. Tony is dismissed for misconduct on Tuesday 17.7.07. He claims JSA from Wednesday 18.7.07 and is entitled but no JSA is payable because the DM imposes a sanction for 20 weeks from and including 18.7.07 because he lost his employment through misconduct. Tony does not have to serve waiting days.

20905 - 20908

# Attendance and signing

## Introduction

- 20909 The guidance on attendance and signing applies only to JSA and not to IS.
- 20910 Claimants' entitlement to JSA (including the entitlement of a joint claim couple to joint claim JSA) ends if

1. they do not
  - 1.1 attend on the day (see DMG 20911 - 20915) **or**
  - 1.2 attend on time (see DMG 20920 - 20921) **or**
  - 1.3 sign a declaration (see DMG 20926 - 20930)as required by the Emp O<sup>1</sup> **and**
2. they do not show good cause within 5 working days<sup>2</sup> (see DMG 20935 - 20952).

**Note:** A joint claim couple's entitlement ends even where only one of them does not attend, attend on time or sign a declaration.

Where one member of a joint claim couple is awarded an exemption the Emp O will not require that person to attend.

Guidance on when entitlement ends<sup>3</sup> is at DMG 20955 - 20958.

*1 JSA Regs 96, reg 25; 2 reg 27; 3 reg 26*



# Attendance

## Notice to attend

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 attend 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 and DMG Chapter 14, Annexes 5 and 7 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 9(13); JSA Regs, reg 4; 3 s 19(10)(a) and 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
2. **Claims pack** tells a claimant to attend 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 attend 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 attend 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 disentitlement 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 cause 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 disentitlement 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*

20914

## Entitlement ends if claimant does not attend

- 20915 Claimants are no longer entitled to JSA if<sup>1</sup>
1. they do not attend on the day and at the place mentioned in a notification<sup>2</sup>  
**and**
  2. the notification does not tell them to attend an employment programme or training scheme<sup>3</sup> **and**
  3. they do not show good cause within a certain time for not attending<sup>4</sup>.

See DMG 20935 - 20950 for guidance on good cause.

See DMG Chapter 34 for the meaning of employment programme and training scheme<sup>5</sup>.

*1 JS Act 95, s 8(2)(a); 2 JSA Regs, reg 25(1)(a); 3 reg 25(1)(a); 4 reg 27; 5 reg 25(2) & 75*

### 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.

Nicky's entitlement to JSA will end because

1. he has failed to attend on the day and at the place mentioned in a notification **and**
2. the notification did not tell him to attend an employment programme or training scheme **and**
3. he does not show good cause.

### Example 2

Alun Connor has been regularly going to Littlehampton Jobcentre Plus office to sign declarations as he was told to by a notification (ES40).

He gets a computer generated letter through the post telling him to go to see an Emp O at Littlehampton Jobcentre Plus office on Friday at 11.30 am to discuss possible employment programme and training scheme opportunities.

Alun does not turn up and makes no contact with the Jobcentre Plus office to explain why not. Alun's entitlement to JSA will end because

1. he has failed to attend on the day and at the place mentioned in a notification **and**
2. the notification did not tell him to attend an employment programme or training scheme - only to attend to discuss opportunities of going on one **and**
3. he does not show good cause.

### 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 attend. Form ES 674 is completed and is noted with the date that she is to attend 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 will end because

1. she has failed to attend at the place mentioned in a notification **and**
2. the notification did not tell her to attend an employment programme or training scheme **and**
3. she does not show good cause.

20916 - 20919

## Entitlement ends when claimant attends on the right day but at the wrong time

20920 Claimants are no longer entitled to JSA if<sup>1</sup>

1. they do not attend at the time and place they are told to in a notification (this will usually be form ES40)<sup>2</sup> **and**
2. the Emp O then warns them in writing that if they do not attend on time the next time they are required to attend, their entitlement to JSA may end<sup>3</sup> **and**
3. they fail to attend at the correct time and place the next time a notification tells them to attend<sup>4</sup> **and**
4. they do not show good cause within a certain time for not attending on time<sup>5</sup>.  
See DMG 20935 - 20950 for guidance on good cause.

*1 JS Act 95, s 8(2)(a); 2 JSA Regs, reg 25(1)(b)(i); 3 reg 25(1)(b)(i); 4 reg 25(1)(b)(ii); 5 reg 27*

20921 A claimant's entitlement to JSA will usually end because they have attended at the wrong time at least twice for their regular attendance at the Jobcentre Plus office to sign a declaration (form ES24). But claimants may also attend at the wrong time when attending to make a claim or when going to an interview with an Emp O.

### Example

Patricia regularly attends late at Littlehampton Jobcentre Plus office. She is supposed to attend at 9 am every fortnight on a Thursday. One Thursday she does not get to the Jobcentre Plus office until 10 am because she says she had a late night and could not get up on time. The member of staff who sees her gives her a letter which warns her that if she comes at the wrong time the next time she is required to attend at a particular time then she may lose entitlement to JSA.

On Saturday morning of the same week, she gets a letter through the post telling her to go to an interview at Littlehampton Jobcentre Plus office with an Emp O on Wednesday next week at 11 am to talk about her efforts to find a job. Patricia goes to see the Emp O on Wednesday, but does not arrive until 1.30 pm. She does not give any acceptable reason for being late. Her entitlement to JSA will end. If she makes a new claim on the Wednesday see DMG Chapter 2<sup>1</sup>.

*1 SS (C&P) Regs, reg 6(4C)*

20922 - 20925

## Signing a declaration

### A declaration

20926 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.

*1 JS Act 95, s 8(1)(b) and 8(1A)(a to d); JSA Regs, reg 24(6)*

20927 The declarations have to be provided on the day on which claimants are told to attend in a notification (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 regularly attend the Jobcentre Plus office 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 reg 24(10)*

20928 References to the Secretary of State can also include a reference to people designated as Emp Os<sup>1</sup>. Appendix 4 and DMG Chapter 14, Annex 7 gives details of the people the Secretary of State has authorized as Emp Os in relation to providing evidence and information.

*1 reg 24(11)*

20929

## Entitlement ends if claimant does not provide signed declaration

20930 Claimants are no longer entitled to JSA if<sup>1</sup>

1. they do not provide a signed declaration on the day they were supposed to<sup>2</sup>  
**and**
2. they do not show good cause within a certain time for not providing the declaration on the day they were supposed to<sup>3</sup>.

See DMG 20935 - 20936, DMG 20943 - 20945 and DMG 20952 for guidance on good cause.

*1 JS Act 95, s 8(2)(a); 2 JSA Regs, reg 25(1)(c); 3 reg 27*

20931 - 20934

## Good cause

20935 Entitlement does not end if claimants show good cause 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 JS Act 95 s 8(2)(c); JSA Regs, reg 27(1); 2 reg 27(2); 3 reg 4*

20936 Claimants have to show good cause **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.

*1 reg 27(1); 2 reg 24(6) & 27(1)*

### 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 cause. Lee is not required to show good cause for his failure to come into or contact the Jobcentre Plus office on the Friday, Saturday, Monday or Tuesday. As he has shown good cause 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 cause, which is received after the end of the fifth working day, cannot be taken into account when considering good cause.

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 cause 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 cause 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 cause within the five days.

## **Claimants who have good cause for failing to attend or attend on time**

20938 Claimants have good cause<sup>1</sup> for failing to attend or failing to attend on time if

1. they<sup>2</sup>
  - 1.1 have caring responsibilities or do voluntary work<sup>3</sup> (see DMG Chapter 21) **and**
  - 1.2 can and will take employment if they are given 48 hours or one week's notice<sup>4</sup> (see DMG Chapter 21) **and**
  - 1.3 have to attend less than 48 hours from the time they received the notice **or**
2. they<sup>5</sup>

- 2.1** are providing a service<sup>6</sup> (see DMG Chapter 21) **and**
- 2.2** can and will take employment if they are given 24 hours notice (see DMG Chapter 21) **and**
- 2.3** have to attend less than 24 hours from the time they received the notice.

*1 JS Act 95, s 8(2)(d)(ii); 2 JSA Regs, reg 30(a); 3 reg 5(1); 4 reg 5(1); 5 reg 30(b); 6 reg 5(2)*

### Example

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 cause.

20939 Claimants have good cause<sup>1</sup> for failing to attend or failing to attend on time or at the right place if they

- 1.** are treated as available on the day on which they failed to attend because they were<sup>2</sup>
  - 1.1** full time students on an employment related course which had been approved by an Emp O before the course started<sup>3</sup>
  - 1.2** attending a residential work camp<sup>4</sup>
  - 1.3** temporarily absent from GB because they were taking a child or young person who is a member of their family abroad for treatment<sup>5</sup>
  - 1.4** engaged in<sup>6</sup>
    - 1.4.a** crewing or launching a lifeboat
    - 1.4.b** performing duty as a P/T member of a fire brigade
    - 1.4.c** performing duties for the benefit of others during an emergency
  - 1.5** a member of a couple looking after a child who is a member of their family, while the other member is temporarily absent from the UK<sup>7</sup>
  - 1.6** following an Open University course and attending, as a rule of that course, a residential course<sup>8</sup>
  - 1.7** temporarily looking after a child F/T because the person who normally looks after the child is<sup>9</sup>
    - 1.7.a** ill
    - 1.7.b** temporarily absent from home
    - 1.7.c** looking after a member of the carer's family who is ill

- 1.8 following a course provided by Venture Trust Ltd that is funded by the Secretary of State for Home Affairs<sup>10</sup>
- 1.9 treated as capable of work for a short period of sickness<sup>11</sup>
- 1.10 temporarily absent from GB to attend an interview for employment and had notified an Emp O in advance, and in writing if required<sup>12</sup>
- 1.11 members of a couple who were both absent from GB, and a premium as in DMG Chapter 21 was payable for the partner<sup>13</sup>
- 1.12 dealing with
  - 1.12.a a death or serious illness of a close relative or close friend<sup>14</sup>
  - 1.12.b a domestic emergency affecting them or a close relative or close friend<sup>15</sup>
  - 1.12.c a funeral of a close relative or close friend<sup>16</sup>
  - 1.12.d the death of someone for whom they had caring responsibilities<sup>17</sup>
- 1.13 a claimant with caring responsibilities for a child<sup>18</sup> **and**
  - 1.13.a there is a death or serious illness of a close relative or close friend of the claimant **or**
  - 1.13.b there is a domestic emergency affecting the claimant, a close relative of the claimant or a close friend of the claimant
- 1.14 are required to attend a court or tribunal<sup>19</sup> as a
  - 1.14.a justice of the peace **or**
  - 1.14.b party to any proceedings **or**
  - 1.14.c witness **or**
  - 1.14.d juror
- 1.15 held in police detention (legal custody in Scotland) under specified legislation for a maximum of 96 hours before being released<sup>20</sup>
- 1.16 looking after a child for whom they have caring responsibilities during the child's school holidays or vacation similar to a school holiday<sup>21</sup>
- 1.17 looking after a child for whom they have caring responsibilities at a time when
  - 1.17.a the child is excluded from school or other educational establishment **and**
  - 1.17.b the child is not receiving education arranged by a local education authority (in Scotland, an education authority) **and**
  - 1.17.c it is not reasonable for the claimant to make other arrangements to allow for care of the child<sup>22</sup>

2. fail to attend on a day that falls in a week when they were treated as ASE because they<sup>23</sup>
  - 2.1 had given notice to an Emp O (in writing if it was required) that they did not intend to ASE and for at least one day intended to live away from home<sup>24</sup>
  - 2.2 were attending an Outward Bound course<sup>25</sup>
  - 2.3 were blind and attending a training course in the use of guide dogs<sup>26</sup>.

**Note:** There are now no courses provided by Venture Trust Ltd which are funded by the Secretary of State for Home Affairs.

*1 JS Act 95, s 8(2)(d)(ii); 2 JSA Regs, reg 30(c); 3 reg 14(1)(a); 4 reg 14(1)(b); 5 reg 14(1)(c); 6 reg 14(1)(d); 7 reg 14(1)(e); 8 reg 14(1)(f); 9 reg 14(1)(g); 10 reg 14(1)(k); 11 reg 14(1)(l); 12 reg 14(1)(m); 13 reg 14(1)(n); 14 reg 14(2)(a); 15 reg 14(2)(b); 16 reg 14(2)(c); 17 reg 14(2)(d); 18 reg 14(2ZA); 19 reg 14(1)(r); 20 reg 14(1)(s); 21 reg 14(1)(t); 22 reg 14(1)(u); 23 reg 30(d); 24 reg 19(1)(p); 25 reg 19(2)(b); 26 reg 19(2)(c)*

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**.

20941 - 20942

## Introduction

20943 There are certain matters which DMs should take into account<sup>1</sup> when determining whether or not the claimant has good cause for

1. failing to attend or attending at the wrong time<sup>2</sup> (see DMG 20948 - 20950) **or**
2. failing to provide a signed declaration, or providing it on a day other than the day they were told to provide it<sup>3</sup> (see DMG 20952).

*1 JS Act 95, s 8(2)(d)(i); 2 JSA Regs, reg 28; 3 reg 29*

20944 Claimants may give different reasons from those mentioned in DMG 20948 - 20952. DMs should consider them and determine whether to take them into account and whether they constitute good cause.

20945 Good cause means some fact that looking at all the circumstances (including the information which claimant received or might have obtained), would probably have caused a reasonable person of the claimant's age and experience to act (or fail to act) as the claimant did<sup>1</sup>.

*1 CS 371/49(KL); R(SB) 6/83*

**Example**

John is sentenced by a Court to do a programme requirement as part of a community order (see DMG Chapter 21, Appendix 3). This requires him to be on a training course at the same time and on the same day he is due to attend the Jobcentre Plus office. He attends the training course, but fails to attend the Jobcentre Plus office. John has good cause for failing to attend. But the DM considers whether he is available for work.

20946 - 20947

**Matters to take into account when determining whether the claimant has good cause for failing to attend or attending at the wrong time**

- 20948 DMs should take the following into account<sup>1</sup> when determining whether or not claimants have good cause for not attending or attending at the wrong time
1. whether they misunderstood that they had to attend at a particular time on a particular day because<sup>1</sup>
    - 1.1 they have problems with
      - 1.1.a the language **or**
      - 1.1.b reading and writing **or**
      - 1.1.c learning **or**
    - 1.2 they were given misleading information by an Emp O
  2. whether<sup>2</sup>
    - 2.1 they were
      - 2.1.a going to a medical or dental appointment **or**
      - 2.1.b accompanying someone for whom they have caring responsibilities to a medical or dental appointment **and**
    - 2.2 it would have been unreasonable, in the circumstances, to rearrange the appointment
  3. any difficulty with the claimants' normal transport, and whether there was any reasonable alternative<sup>3</sup>
  4. the established customs and practices of the religion, if any, to which the claimants belong<sup>4</sup>
  5. whether they were attending interviews for employment<sup>5</sup>.

*1 JSA Regs, reg 28(1)(a); 2 reg 28(1)(b); 3 reg 28(1)(c); 4 reg 28(1)(d); 5 reg 28(1)(e)*

## Meaning of caring responsibilities

- 20949 DMs should follow the guidance in DMG Chapter 21 for the meaning of caring responsibilities.

## Meaning of employment

- 20950 In DMG 20948 **5**, employment means employed earners employment unless the claimant is in a permitted period and meets the conditions in DMG Chapter 21. In such a case for the permitted period, employment means employed earner's employment or self employment<sup>1</sup>.

*1 JSA Regs, reg 28(2), 20(2) & 16*

20951

## Matters to take into account when determining whether the claimant has good cause for failing to provide a signed declaration

- 20952 DMs should take the following into account when determining whether or not claimants have good cause for not providing a signed declaration, or providing one on a day later than the day they were told to provide one

1. whether there were problems or delays with the post<sup>1</sup> **and**
2. whether they misunderstood that they had to provide a signed declaration, and that they had to provide it on a particular day because<sup>2</sup>
  - 2.1 they have problems with
    - 2.1.a the language **or** 2.1.b reading and writing **or**
    - 2.1.c learning **or**
  - 2.2 they were given misleading information by an Emp O.

*1 JSA Regs, reg 29(a); 2 reg 29(b)*

20953 - 20954



## When entitlement ends

20955 When a DM has determined that claimants' entitlement to JSA will end because they have without good cause

1. failed to attend on a specified day **or**
2. not attended on time **or**
3. not provided a written declaration **or**
4. not provided a written declaration on the correct day

the DM then has to determine when entitlement ends.

### Fails to attend, or attends late

20956 Where claimants have failed to attend, or attended late having been given a warning, 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 attended 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 attend or late attendance.

*1 JSA Regs, reg 26(a); R(JSA) 6/03; 2 reg 26(b); 3 reg 26*

#### Example 1

Sally Crosby attends Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

She attends 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 attend 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 cause 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 attend without good cause).

**Entitlement ends on Friday 7 March (and no JSA is paid for this day). This is because**

1. the date Sally was required to attend 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 attend 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 attends Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

He attends 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 attend 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 cause 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 attend without good cause).

### **Entitlement ends on Monday 17 March (and no JSA is paid for this day). This is because**

1. the date John was required to attend 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 attend 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 attends Littlehampton Jobcentre Plus office every other Thursday at 10.30am to sign a declaration.

He attends 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 attends 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 attend 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 cause 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 attend without good cause).

**Entitlement ends on Thursday 13 March (and no JSA is paid for this day). This is because**

1. the date Juan was required to attend 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** attend on time and on the correct date in accordance with a notice on Wednesday 12 March, which is before his failure to attend. So entitlement cannot end earlier than the day after this day.

**Example 4**

Joan Sharpe attends Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

She attends 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 attend the Jobcentre Plus office on Tuesday 20 May. She attends the office on Friday 23 May and explains why she failed to attend. The officer takes a declaration (ES24) covering the period Wednesday 7 May to Tuesday 20 May.

The DM determines that good cause was shown. There is no break in entitlement.

**Example 5**

Paul Shipley attends Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

He attends 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 attend the Jobcentre Plus office on Tuesday 20 May. He attends the office on Friday 23 May and explains why he failed to attend. The officer takes a declaration (ES24) covering the period Wednesday 7 May to Tuesday 20 May.

The DM determines that good cause was not shown for the failure to attend. 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 attend without good cause).

**Entitlement ends on Tuesday 20 May (and no JSA is paid for this day). This is because**

1. the date Paul was required to attend 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 attend 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 attends Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

She attends 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 attend 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 attend without good cause).

Gail attends the office on Thursday 5 June and explains why she failed to attend. She asks to claim for the period before she failed to attend 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 attend 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 attends Littlehampton Jobcentre Plus office every other Tuesday at 10am to sign a declaration.

He attends 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 attend 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 attend without good cause).

David attends the office on Tuesday 8 July and explains why he failed to attend. He asks to claim for the period before he failed to attend 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, 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 attended 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 attend or late attendance.

*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 cause within the necessary time).

### **Entitlement ends on Friday 7 March. This is because**

1. the date on which Lynn 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 attend 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 cause 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 attend 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



# Capability

## Introduction

20960 Claimants are not entitled to JSA unless they are capable of work or can be treated as capable of work<sup>1</sup>. The guidance on capability applies only to JSA and not IS.

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



## Treated as capable - short periods of sickness

- 20961 Claimants can be treated as capable of work for up to two weeks if
1. they have<sup>1</sup>
    - 1.1 been awarded JSA **or**
    - 1.2 had a sanction imposed on them **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, SDA or IS<sup>4</sup> **and**
  5. the first day they are unable to work **does not** fall within
    - 5.1 12 weeks of entitlement to ESA **or**
    - 5.2 8 weeks of any entitlement they had to
      - 5.2.a IB, SDA or SSP<sup>5</sup> **or**
      - 5.2.b IS if they were entitled to a DP for themselves because of their period of incapacity<sup>6</sup> **and**
  6. they have not already been treated as capable twice in the JSP or year (see DMG 20975)<sup>7</sup>.

*1 JSA Regs, reg 55(1)(a); 2 reg 55(1)(b); 3 reg 55(1)(c); 4 reg 55(1); 5 reg 55(4)(a)  
6 reg 55(4)(b); 7 reg 55(3)*

### 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 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 reg 55(2) & reg 55A(2)*

20969 - 20974

## Already treated as capable twice or more in the jobseeking period or year

- 20975 A claimant can only be treated as capable on two occasions in any one JSP. But if the JSP lasts for more than a year, then the claimant can be treated as capable 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 4.11.96 and ends on Friday 4.12.98. The claimant can be treated as capable twice in the year from Monday 4.11.96 to Monday 3.11.97, twice in the year from Tuesday 4.11.97 to Tuesday 3.11.98 and twice in the year from Wednesday 4.11.98.

## NHS treatment abroad

- 20976 In England and Wales claimants can be treated as capable of work if
1. they have<sup>1</sup>
    - 1.1 been awarded JSA **or**
    - 1.2 had a sanction imposed on them **and**
  2. they are temporarily absent from GB for the purpose of receiving NHS treatment abroad<sup>2</sup> (see DMG chapter 7) 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 IB, ESA, SDA or IS 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 reg 55A(1)(a); 2 reg 55A(1)(b); 3 reg 55A(1)(c); 4 reg 55A(1)(d); 5 reg 55A(1)*

20977 - 20984



## Treated as capable - personal capability assessment

- 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

### 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 XIII; 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

## Pension age

<b>Period within which woman's birthday falls reached</b>	<b>Day pension age reached</b>
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

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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

# Savings provision - 24 to 16 hour rule and disabled workers

### Introduction

- 1 From **7.4.92** the definition of remunerative work changed and the number of hours that counted as remunerative work reduced from 24 to 16 a week<sup>1</sup>. This brought IS (FamC and now WFTC) into line with DWA and now DPTC. Claimants are protected from this change and retain the old 24 hour rule<sup>2</sup> if they satisfy the RQC. This protection is carried forward into JSA(IB) for those claimants who would previously have qualified for IS.

*1 IS (Gen) Regs, reg 5; 2 JSA Regs, reg 51(4) & (5); IS (Gen) Amdt No 4 Regs 1991, reg 22-24*

- 2 From **7.10.91** some disabled claimants were adversely affected by changes in the definition of those disabled persons who are not treated as in remunerative work (see DMG 20465)<sup>1</sup>. Such claimants are protected from the change and retain the old rule<sup>2</sup> if they satisfy the RQC. This protection is also carried forward into JSA(IB) for those claimants who would previously have qualified for IS.

*1 IS (Gen) Regs, reg 6(4)(a); 2 JSA Regs, reg 51(4) & (5); IS (Gen) Amdt No 4 Regs 91, reg 22-24*

### Definitions

- 3 For the purpose of the guidance in paragraphs 5 - 13 the following definitions apply.

#### Old remunerative work rule

- 4 Remunerative work was work of 24 hours a week or more.

#### New remunerative work rule

- 5 Remunerative work was work of 16 hours a week or more.

#### Old disabled worker rule

- 6 The remunerative work exclusion did not apply to people who
1. were mentally or physically disabled **and**
  2. as a result of that disability their earning capacity was reduced to 75 per cent or less of what they would be reasonably expected to earn if they were not disabled.

### **New disabled worker rule**

- 7 The remunerative work exclusion does not apply to people who
1. are mentally or physically disabled **and**
  2. as a result of that disability
    - 2.1 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 **or**
    - 2.2 work 75 per cent or less of the hours that a person without that disability could reasonably be expected to do
- in the same work or in a similar job in the area.

### **Date of change**

- 8 The date of change is, for the
1. remunerative work rule - 7.4.92 **or**
  2. disabled workers rule - 7.10.91.

### **Permitted period**

- 9 The permitted period is, where JSA(IB) or IS ceases
1. because the claimant or partner starts remunerative work - twelve weeks **or**
  2. for any other reason - eight weeks.

### **Relevant qualifying condition**

- 10 To qualify for protection the RQC is
1. for a person whose hours of work amount to 16 or more per week<sup>1</sup>, that the person is
    - 1.1 engaged in work for at least 16 hours a week but less than 24 **or**
    - 1.2 where hours of work fluctuate, engaged on average for at least 16 hours a week but less than 24 **or**
  2. for a disabled worker<sup>2</sup>, that the person
    - 2.1 is engaged in work **and**
    - 2.2 is mentally or physically disabled **and**
    - 2.3 by reason of that disability has an earning capacity of no more than 75 per cent of what that person could reasonably be expected to earn if that disability did not exist.

*1 IS (Gen) Amdt No 4 Regs 91, reg 22(6)(a); 2 reg 22(6)(b)*

- 11 Where a specific date is mentioned it should be read for individual claimants as the first day of the first benefit week which occurs on or after that date.

### **Who qualifies for protection**

- 12 Providing the RQC is satisfied a person can qualify for protection in one of four ways (see paragraphs 6 - 9).

### **Satisfies relevant qualifying condition in the week before the change**

- 13 If a person was in receipt of IS and satisfied the RQC in the week immediately before

1. 7.4.92 in the case of work between 16 and 24 hours per week **or**
2. 7.10.91 in the case of a disabled worker

the claim should continue to be assessed under the old rules<sup>1</sup>.

*1 IS (Gen) Amdt No 4 Regs, reg 22(2)*

### **Satisfies relevant qualifying condition in one of eight weeks before the change**

- 14 The claim should continue to be assessed under the old rules if a person did not satisfy the RQC in the week immediately before but did satisfy it in at least one of the eight weeks immediately before

1. 7.4.92 in the case of work between 16 and 24 hours per week **or**
2. 7.10.91 in the case of a disabled worker.

**Note:** This provision applies only where the person or partner was entitled to IS in the week in which the RQC was satisfied **and** within a period of eight weeks the person or partner again satisfies the RQC and becomes entitled to IS<sup>1</sup>.

*1 reg 22(3)*

### **Starts work just before the change**

- 15 The claim should still be assessed under the old rules if IS ceased for a period of twelve weeks or less<sup>1</sup> because a person or their partner started remunerative work and that period began before and ended after

1. 7.4.92 in the case of work between 16 and 24 hours per week **or**
2. 7.10.91 in the case of a disabled worker.

**Note:** This provision only applies where the person or partner was in receipt of IS and satisfied the RQC in the week immediately before starting remunerative work and immediately after finishing remunerative work<sup>2</sup>.

*1 IS (Gen) Amdt No 4 Regs, reg 22(4); 2 reg 22(4)*

### Starts training course just before the change

16 The claim should still be assessed under the old rules where a person or their partner was entitled to IS immediately before starting a training<sup>1</sup> or rehabilitation course<sup>2</sup> which had started but not ended before

1. 7.4.92 in the case of work between 16 and 24 hours per week **or**
2. 7.10.91 in the case of a disabled worker.

**Note:** This provision applies only where the person or partner was in receipt of IS and satisfied the RQC in the week immediately before the start of the training or course and eight weeks or less after the end of the training or course<sup>3</sup>.

*1 E&T Act 73, s 2; Enterprise & New Towns (Scotland) Act 90, s 2; 2 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 90, s 2; 3 IS (Gen) Amdt No 4 Regs, reg 22(5)*

### When protection ends

17 Protection is personal to the individual and only ends when that person

1. no longer satisfies the RQC **or**
2. or their partner is no longer entitled to JSA(IB) or IS

for a period of more than eight weeks<sup>1</sup>. Protection is not affected when a partner with protection becomes the claimant or when a claimant with protection becomes the partner of another claimant.

*1 reg 23(1)*

18 Protection continues after some other short breaks in entitlement. These are

1. any period within the permitted period where JSA(IB) or IS ceases because the person or partner is in remunerative work
2. any period during which the person or partner is on a training or rehabilitation course
3. a period of up to eight consecutive weeks following the end of a training or rehabilitation course<sup>1</sup>.

*1 reg 23(2)*

## Supersession where protection ceases

- 19 A decision based upon a protection determination should be superseded when
1. the person with protection gives up work or reduces their hours to less than 16 **and**
  2. JSA(IB) or IS continues in payment.
- 20 Where protection is lost as in paragraph 12 and the person subsequently starts remunerative work
1. supersede the award of JSA(IB) or IS on the grounds that there has been a relevant change of circumstances **and**
  2. make a specific determination on the question of protection **and**
  3. record the determination accordingly.



## Appendix 3

### Recognized customary or other holiday

#### 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.

*1 R(U) 3/53*

#### 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**

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).

**Note:** See also DMG Chapter 14, Annexes 5 and 7

