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 CHAPTER 23

# Jobseeker's allowance

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**CHAPTER 23****Jobseeker's allowance****Part 1: General****1 Attendance**

i A Commissioner decided that reg. 26(a) of the JSA Regs. 1996 was probably of no effect to terminate benefit. In the case in question the claimant had last attended and signed a declaration on 18th May. He missed his signing day on 1st June and then attended on 14th June. The DM ended entitlement from and including 19th May. The Commissioner decided that, as reg. 26(a) could have no effect, entitlement could only end from and including 1st June. R(JSA)6/03

The CA overturned the Commissioner's decision, finding that reg. 26(a) could and did have effect. The Court found that in this case entitlement ended on 19th May. They further found that that meant there was no entitlement for that day (so the claimant was last paid for 18th May).

ii The claimant was in receipt of JSA, and was notified under reg. 23 that he was required to attend an interview. The claimant failed to attend the interview, contending that he had not received the notification. The claimant was informed of the decision when he next signed on to register, by which time he was too late to exercise his right under reg. 27 to show good cause for failure to attend within 5 days. The Commissioner held that the tribunal were correct to treat the appeal against the refusal to backdate the claimant's fresh claim also as an appeal against the decision that entitlement under the previous award had ceased. He held that reg. 7 of the Interpretation Act was relevant, and that the service of a document is accepted unless the contrary can be proved. In particular, under reg. 23 notifications where the time of receipt is important, it was open for the claimant to prove that he had not received the notification at all. R(JSA) 1/04



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## Part 2: Jobseeking

### 1 Availability for work

i This case was the subject of an appeal to the CA in *Secretary of State for SS v. David*. It concerned a claimant's availability and whether his detention in police custody fell within reg. 13(3) of the JSA Act 1996 which provides that "A person may restrict his availability in any way providing that the restrictions are reasonable in the light of his physical or mental condition". The Commissioner decided that as the claimant was in police custody he was not free either in practical or legal terms to leave, so that any restriction on his availability was not only reasonable, but also inevitable. The CA allowed the appeal stating that the reference in reg. 13(3) to the claimant's "physical or mental condition" is confined to some personal disability. The provision applies prospectively only and specifically with regard to the completion of the jobseeker's agreement. The Court held that if the Commissioner's approach was accepted there would be no need for reg. 55 as such a person could invoke reg. 13(3). R(JSA) 3/01

ii The claimant "signed on" on the 14th June, but failed to do so on the 28th June. A decision was made that his "claim was closed" with effect from the 15th June. The claimant made fresh claim to JSA on the 12th July and also included information on the JSA5 that was subsequently accepted as showing that he had continued to satisfy the conditions of entitlement to JSA throughout the period from 15th June to the new claim. The request for backdating was refused and benefit awarded from the 12th July only. R(JSA) 2/04

The Commissioner held that where the claimant subsequently produces, within the time allowed, information or evidence showing continued entitlement to JSA until at least the date he failed to "sign on", the Secretary of State should revise the decision so as to make it effective from the date of the failure to "sign on" (regs. 25 & 26). Production of such information/evidence in respect of circumstances at the time of the decision, and that the claimant was entitled to JSA for the period from 15th June to 27th July. See also 17.11.2ii.

iii The claimant applied to vary the terms of his Jobseeker's agreement, which he said he had signed "under duress". He disagreed with having to be available on Saturdays in addition to Monday to Friday and also with the total number of weekly hours. The claimant's proposed changes were rejected apart from a maximum of 40 hours availability. The claimant signed an agreement restricting his availability to 8 hours a day Monday to Friday. The DM decided the claimant was not available and that the claimant's proposed variation would not satisfy the availability for work condition, but did direct a variation to 40 hours availability instead of 54. The claimant appealed. The tribunal upheld both decisions, but allowed the exclusion of customer service occupations from the types of job to be looked for. The Commissioner, in allowing the claimant's appeal, decided that the effect of reg. 7(2)(b) is that if a claimant has put restrictions on the hours or days of availability and their availability is not the same as, or is less restrictive than, the pattern of availability recorded in their Jobseeker's agreement, the claimant is not available for work - regardless of having reasonable prospects of securing employment on their pattern of availability. The Commissioner also decided the Secretary of State, or an AT, can direct that a varied agreement should take effect retrospectively. If the variation took effect before the date of the first decision under appeal - then the circumstances at the date of the decision under appeal were altered - and the claimant's pattern of availability should then have been tested against the pattern of availability recorded in the retrospectively varied Jobseeker's agreement. R(JSA) 2/07

iv *HS v Secretary of State for Work and Pensions (JSA)* [2009] UKUT 177 (ACC); [2010] AACR 10. The claimant's jobseeker's agreement stated that she was looking for clerical work with the only restrictions on availability referred to being related to days, hours and locality. The Jobcentre notified the claimant of a vacancy as a checkout operator. The claimant refused to apply for the job and so her jobseeker's allowance [2010] AACR 10

### 23.2.1

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was sanctioned on the grounds that she had, without good cause, failed to apply for a vacancy notified to her. The claimant appealed, arguing amongst other things that according to her jobseeker's agreement she need only look for clerical positions. The tribunal reduced the period of sanction but otherwise dismissed the appeal. The claimant appealed to the Upper Tribunal.

In dismissing the appeal, the Judge of the Upper Tribunal held that the true construction of the jobseeker's agreement was not that the claimant was restricting her availability to certain types of job but rather that those were the types of job which she had agreed to look for in order to be actively seeking work. See also 23.5.4.i.

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## Part 3: Other conditions of entitlement

### 1 Persons treated as engaged in remunerative work

i The claimant worked as a shop assistant for a student's union in term time only. The calculation of her hours of work to decide whether she was in remunerative work was based on her having a cycle of work of one year. It was argued that a cycle of work of one year could not be established until she has been employed for at least a year. The Commissioner held that if there is an indefinite contract of employment which expressly provided for a cycle of work, the cycle is established from the start of the contract. In this case, the claimant's contract was not for a fixed term, it was for fixed hours, was not casual and expressly provided that the claimant was to be employed during university terms and not in vacations. In these circumstances the contract provided for a cycle of work of one year which was established from the start of the contract. See also *Banks v. Secretary of State* for SS [2001] 1WLR 1411 reported as R(IS)15/01, 29.2.2 viii; R(IS) 8/95, 29.2.2 ii. R(JSA) 5/02

ii The Tribunal of Commissioners considered three appeals. Each of the claimants was employed in an academic institution for over 16 hours a week during term time. They claimed JSA during the summer vacation but their claims were disallowed and their appeals were dismissed by tribunals on the ground that they were in remunerative work as they worked for more than 16 hours a week. The tribunals relied on reg. 51(2)(c) which provided that the number of hours for which a person was engaged in work was to be determined, "where the person works at a school or other educational establishment or at some other place of employment and the cycle of work consists of one year but with school holidays or similar vacations during which he does no work, by disregarding those periods and any other periods in which he is not required to work." In *Banks v. Secretary of State* [2001] UKHL 33 (reported as R(IS) 15/01), the HL had held reg. 51(2)(c) to have the effect that the claimant was to be treated as being in remunerative work over the whole cycle of work (including school holidays during which no work duties were performed and in respect of which no wages were paid). The claimants appealed to the Commissioners on the ground that reg. 51(2)(c) gave rise to indirect discrimination on grounds of sex, contrary to Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of SS. R(JSA) 4/03 (T)

The Tribunal of Commissioners held that reg. 51(2)(c) worked to the disadvantage of some of the claimants to whom it applied because they were treated as engaged in remunerative work for the whole year of the cycle of work when they would not be so treated if reg. 51(2)(b)(i) (which applied to all other claimants with cycles of work) were applied to them and, accepting a concession made by the Secretary of State, it operated to the disadvantage of disproportionately more women than men. Council Directive 79/7/EEC was to be given effect by regarding reg. 51(2)(c) as having no effect with the consequence that reg. 51(2)(b)(i) applied to the claimants' cases. On the facts of the cases, one of the claimants was not engaged in remunerative work but the other claimants were engaged in remunerative work. For further synopsis see 19.1.2 xxv. See also R(IS) 15/01, 29.2.2 viii.

iii The Tribunal of Commissioners considered three appeals. Each of the claimants was employed in a teaching post with fluctuating hours during term-time and no work during school holidays or college vacations. At the beginning of the holidays or vacations there was an element of uncertainty as to the extent to which he or she would be employed the following term or, it was argued in two of the cases, whether he or she would be employed at all. They claimed JSA at the beginning of the summer holiday or vacation, but their claims were disallowed by AOs on the ground that they were engaged in remunerative work and their appeals were dismissed by tribunals. They appealed to the Commissioners. R(JSA) 5/03 (T)

## 23.3.1

The Tribunal of Commissioners held that where a contract of employment came to an end at the beginning of what would have been a period of absence from work even if the contract had continued, the person should be taken still to be in employment if it was expected that he or she would resume employment after that period, either because there was some express arrangement, though not necessarily an enforceable contract, or because it was reasonable to assume that a long standing practice of re-employment would continue. The extent to which a person was to be regarded as being on holiday for the purpose of reg. 52(1) should be determined by reference to his or her contractual entitlement to holiday. Where there was a cycle of one year, as would usually be the case for a term-time worker, the average number of hours of work for both teaching and non-teaching staff should be calculated under reg. 51(2)(b)(i) by dividing the total number of hours worked during the terms by 52 less the number of weeks of holiday to which the particular claimant was entitled, and the reasoning in R(IS) 15/94 and R(IS) 7/96 should no longer be followed. Where a claimant had a cycle of work under one contract, hours worked under additional contracts could either be aggregated so as to be brought into the calculation as fluctuations within the cycle of work established by the first contract or be aggregated only during the periods covered by the additional contracts, but, where the additional contracts were with the same employer and involved the same kind of work as the main contract, and where the additional work was performed during the periods of work within the cycle established by the main contract, the additional hours should be treated as fluctuations in the main contract and aggregated accordingly.

R(JSA) 3/04 iv A university Students Union employed the claimant during term-time, which amounted to 31 weeks per year, 25 hours per week. The claimant was entitled to 30 days paid holiday. Four of the holidays fell within term-time. The tribunal found that the claimant was not entitled to JSA during the vacation. In the appeal to the Commissioner the only issue in dispute was the calculation of the number of hours that the claimant worked per week. The Commissioner found that where the claimant had a recognisable cycle of work, the average number of hours worked when the claimant was not on holiday or allowed to be absent due to sickness, had to be ascertained. R(JSA) 5/03 applied. See 23.3.1.iii. Any days of paid holiday that fell within term-time had to be deducted from the total number of working days in term-time. All days of holiday entitlement under the claimant's contract of employment had to be deducted from the total number of weeks in the cycle. There is no statutory or general entitlement to be paid for public or bank holidays (*Campbell & Smith Construction Group Ltd v. Greenwood* [2001] IRLR 588 applied). The claimant's entitlement to be paid for those days arose under her contract and fell to be included in the total to be deducted from the total number of weeks in the cycle. The dividend for the averaging calculation was 775 hours, (the total working hours in term time), less 20 hours, (the 4 public holidays that fell within term-time), giving a figure of 755 hours. Even if the term-time public holidays were not taken into account, the claimant must be treated as having a holiday entitlement of 26 days, that is 18 ordinary plus 8 public holidays which, given a 5 day working week, equated to 5.2 weeks. The divisor was 46.8 giving an average of 16.13 hours per week and therefore the claimant was not entitled to JSA.

R(JSA) 1/06 v The claimant was employed for three days a week in seasonal employment. Each new contract was discrete and he applied for employment each year. His contract for 2002 was terminated on 2 November 2002 and he claimed JSA. The DM obtained information that he was entitled to 12.2 days holiday pay and decided that they were to be attributed to his working days only meaning he was not entitled to JSA until 25 December 2002. The claimant appealed and produced evidence that he had only been paid 11.115 days holiday pay but the tribunal used the figure from the employer and decided that this was to be taken into account over a period of four weeks and one day. The claimant appealed to the Commissioner. The main issue was the period over which the holiday pay should be calculated under reg. 94(2)(a). The Commissioner allowed the appeal and held that the claimant was not "within a recognisable cycle of work" as there was no arrangement to found an expectation that he would resume employment the following year. Also that reg. 94(2)(a) provides for the calculation of the weekly amount using the formula in reg. 97(1)(b)(iv) and to calculate this by reference to the claimant's working days produced a result that was artificial, less workable and harsh in its effect. The Commissioner concluded that the claimant was therefore to be treated as in remunerative work for 12 consecutive days.

vi The Commissioner considered three appeals. The claimants were seasonal casual workers in a seaside resort with no continuing relationship with their employers; having to apply for a job at the beginning of each summer season in competition with others. They made claims to JSA in the out of season winter months. These claims were disallowed on the basis that the DM said they had established a cycle of work of a year by working for the same employer for more than one year in a row. When the hours worked during the summer season were averaged over the year they exceeded 16 per week. This meant they were held to be in remunerative work for the whole year and therefore not entitled to JSA. Considering R(JSA) 5/03, the tribunal found that the claimants had only a “hope” and not an “expectation” of being re-employed and could not therefore be in a cycle of work. The Secretary of State appealed. The Commissioner held that the tribunal did not err in law. A casual worker unable to get a job in winter months is not in remunerative work the whole year just because he has been able to get casual jobs in the summer of one or more previous years. Reg. 51(2) is subordinate to reg. 51(1) and there is no legal basis for proceeding backwards from the selection of an averaging period for calculating hours to distort the meaning of reg. 51(1) as if it contained a deeming provision making people count as engaged in work when they are not.

RS(JSA) 1/07

vii Claimant was a self-employed carpenter. He had a period of entitlement to JSA but then worked. Reclaimed JSA but his claim was disallowed on ground that he was in remunerative work as he had said that usual break between jobs or contracts was normally 12 weeks. Claim accepted from August 2007 when 12 weeks had elapsed since he last worked. Claimant appealed against disallowance of JSA but tribunal dismissed appeal. The nine issues accepted in CIS/166/94 are mainly relevant to the question of whether a person is “engaged in remunerative work or part-time employment” and not to whether a person is “employed”. The Judge broke down the framework for making decisions on such cases into 4 questions to ensure relevant issues are not overlooked. These are whether the person is still employed; whether in a particular week the claimant is engaged in remunerative work or part time employment; whether the work is for more or less than 16 hours per week and whether earnings are to be taken into account. See also 23.10.2 *i below*.

R(JSA) 1/09

## 2 Right to reside

i The claimant, a Dutch national with 3 dependant children, came to the UK in May 2004 and claimed IS in November 2004. The claim was disallowed because the claimant was not a “qualified person” and therefore did not have a right to reside. On appeal, the tribunal found that, although a single parent, the claimant had been looking for work since coming to the UK. However, they dismissed the appeal because the claimant was not a “worker” or self-sufficient. The Commissioner held that, until 30.4.06, a claimant of IS was not precluded from establishing a right to reside as a “workseeker”, providing they could show they were actively seeking work that was genuine and effective. Employment for at least 16 hours per week, which is the minimum required of a JSA claimant with caring responsibilities, would generally be taken to be “effective”. However, from 30.4.06, an EU citizen claiming a right to reside as a “workseeker” must claim JSA, with the consequent normal conditions to be available for and actively seeking work, but also to have a genuine chance of being engaged.

R(IS) 8/08

## Part 4: Young persons

*(at the time of going to print there was no recorded decision on this matter)*

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## Part 5: Sanctions

### 1 Length and period of a sanction

*(at the time of going to print there was no recorded decision on this matter)*

### 2 Misconduct

*(at the time of going to print there was no recorded decision on this matter)*

### 3 Leaving voluntarily

*(at the time of going to print there was no recorded decision on this matter)*

### 4 Refusing employment

i *HS v Secretary of State for Work and Pensions (JSA)* [2009] UKUT 177 (ACC); [2010] AACR 10. The claimant's jobseeker's agreement stated that she was looking for clerical work with the only restrictions on availability referred to being related to days, hours and locality. The Jobcentre notified the claimant of a vacancy as a checkout operator. The claimant refused to apply for the job and so her jobseeker's allowance was sanctioned on the grounds that she had, without good cause, failed to apply for a vacancy notified to her. The claimant appealed, arguing that according to her jobseeker's agreement she need only look for clerical positions and that the vacancy notified to her would cause her stress. The tribunal reduced the period of sanction but otherwise dismissed the appeal. The claimant appealed to the Upper Tribunal. [2010] AACR 10

In dismissing the appeal, the Judge of the Upper Tribunal held that in determining whether a claimant has good cause not to apply for a vacancy, the fact that the claimant may have restricted their availability to a certain type of work does not necessarily mean that the claimant has good cause but it is a factor to be considered particularly where there is a significant difference between the notified vacancy and the type of employment for which the claimant is said to be available. The tribunal had considered this and had not erred in law. See also 23.2.1.iv.

### 5 Neglect to avail

i The claimant was made redundant after 43 years of work, the last 20 years as a finance manager. He claimed and was awarded JSA but after two weeks started part time work as a control assistant for the ambulance service. He left this job within a month after working five shifts including training. He made a new claim to JSA which was awarded but after two months the award was superseded as the Secretary of State decided that under s. 19(1), (3) and (6)(b) of the Jobseekers Act 1995 JSA should not be paid for six weeks as the claimant had voluntarily left his employment without just cause. The claimant appealed against this decision but the AT dismissed the appeal so the claimant appealed to the Commissioner about the imposition of the sanction and its length. He argued that the job was one that he was not required to take during his "permitted period" of restriction of employment under reg. 16 of the Jobseeker's Allowance Regs. 1996 and that if he had been unemployed longer he could have made use of the trial period concession in reg. 74 of those regs. The Commissioner dismissed the appeal and held that the fact that the claimant could have declined the job did not give him just cause for voluntarily leaving the employment, the fact that the employment was a stop-gap until the claimant found something more suitable did not justify him leaving a job without reasonable prospects of obtaining other employment and the fact that he need not have taken the employment was relevant to the length of sanction imposed. In this case the claimant had not met all the conditions of the trial period rules in reg. 74 as he had left the job prematurely so in the circumstances the Commissioner considered that a six week sanction was reasonable. R(JSA) 1/08

**6 Jobseeker's direction**

*(at the time of going to print there was no recorded decision on this matter)*

**7 Losing an employment programme or training scheme through misconduct**

*(at the time of going to print there was no recorded decision on this matter)*

**8 Neglect to avail of an employment programme or training scheme**

*(at the time of going to print there was no recorded decision on this matter)*

**9 Refusing employment programme or training scheme**

R(JSA) 7/03 i The claimant was required to attend an employment programme provided by a private company. He wrote to the Jobcentre manager objecting to his personal details being passed to a private company. He refused to attend the programme and a sanction of two weeks was imposed. This decision was upheld by the appeal tribunal.

The Commissioner set aside the tribunal decision, finding it to be erroneous in law because the tribunal had not considered whether the claimant's objection to attending the programme could be considered as a conscientious objection. If not, they should have decided whether there was some fact or circumstance which would have caused a reasonable person in the claimant's position to act as he did, in order to decide whether he could be regarded as having "good cause" for refusing to attend the programme.

The Commissioner then decided that a principled objection is not the same as a conscientious objection. Attendance at the course would not have required the claimant personally to act in a way which was contrary to his ethical or moral principles, and so, applying the principles established by UB cases, his objection was not a conscientious objection.

There might be rare cases where "good cause" could result from a state of mind other than a conscientious objection, but the state of mind must exist independently of the refusal as a fact preventing attendance. This did not apply here, and so the claimant had not shown good cause.

The claimant could not escape sanctions because of any failure by the training provider to comply with the Data Protection Act, since there was no requirement in this part of the legislation that the requirement to attend should be reasonable.

The Commissioner found the claimant did not have good cause and a two week sanction was imposed.

See 13.3.1 iii.

R(JSA) 2/06 **10 Failure to attend training course**

i The claimant was in receipt of JSA. He was referred for a 13 week Intensive Activity Period employment programme under reg. 75(1)(iv) of the JSA Regs. 1996. The course commenced at 9.30 am on 21 March 2005 but the claimant failed to arrive on time, arriving over an hour late so he was informed he was unable to start the course due to his lateness. A DM imposed a two week sanction on the grounds that the claimant has failed, without good cause, to attend the course. The tribunal also dismissed his appeal on the basis that his late arrival at the course amounted to a failure to attend the course. The Commissioner upheld the tribunal decision that there was no good cause and that the tribunal was correct to construe the word "attend" as meaning "attend at the time prescribed by the course provider".

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## Part 6: Membership of the family

### 1 Shared care

i The claimant was in receipt of JSA. He was separated from his wife and had a joint residence order dividing the care of their children between the two of them. The amount of JSA payable to the claimant did not include any additional amount in respect of the children. This was because he was not in receipt of CHB, which was being paid to the mother, and was therefore not treated as responsible for them. The claimant appealed on the basis that he had been indirectly discriminated against on the grounds of sex. He argued that the majority of men who shared care of their children could not obtain child additions in JSA because they were not in receipt of CHB whereas only a small percentage of women who similarly shared care could not obtain child additions for the same reasons. The CA decided that the rule of entitlement to child additions for JSA discriminates in favour of women and that reg. 77 should not be applied in respect of his children. The claimant was a substantial minority carer and entitled to an addition in respect of a child who is a member of his household for whom he is responsible.

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## Part 7: Amounts

### 1 Deductions in respect of earnings

(at the time of going to print there was no recorded decision on this matter)

### 2 Payments by way of pensions

R(JSA) 1/01 i The claimant received annual payments from his employer under a contractual redundancy arrangement. The question was whether these had to be counted as “pension payments” for the purpose of s. 4(1) of the Jobseeker’s Act 1995 and were subject to the offset rules in reg. 81 of the JSA Regs. 1996. The Commissioner held that:

1. the payments were made by virtue of a contractual redundancy arrangement between the claimant and his new (private) employer to replace benefits under the Civil Service Compensation Scheme;

2. the payments were undoubtedly periodical payments within the definition of “pension payments” in s. 35(1) of the Act;

3. applying *Westminster City Council v. Haywood* [1998] Ch. 377, the fact that the contract referred only to compensation in the event of redundancy and not to pension benefits on eventual retirement does not take the payments outside the definition of an “occupational pension scheme”.

R(JSA) 2/01 ii The claimant was refused JSA because he received pension payments exceeding his weekly entitlement. The Commissioner said that the tribunal erred because they had no information and made no findings about the source of the payments. The source in this case was the Civil Service Compensation Scheme and that is an occupational pension scheme within the definition of s. 4 of the Jobseeker's Act 1995.

R(JSA) 6/02 iii The claimant’s redundancy package included a compensation payment calculated as monthly “drip feed” payments for a maximum of twenty months. The question was whether these payments fell within the definition of “pension payments” in s. 35(1) of the Jobseeker’s Act 1995 and were subject to the offset rules in reg. 81 of the JSA Regs. 1996. The Commissioner held that a periodical payment made following termination of employment is not prevented from being a “pension payment” by being payable under a

1. redundancy compensation scheme separate from any pension scheme, or

2. contractual arrangement from the employer’s own resources rather than out of a separate fund.

The “drip feed” arrangement in this case was sufficiently defined to count as a “scheme or arrangement” and the payment arose by reason of, and was calculated according to, the employee’s service. The “drip feed” payments therefore counted as “pension payments” for the purposes of JSA.

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Part 8: Income and capital - general

*(at the time of going to print there was no recorded decision on this matter)*

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## Part 9: Employed earners

### 1 Earnings of employed earners

- R(JSA) 2/03 i The claimant worked as a trainer in a child care centre. She worked during term-time only, for 12 hours per week. A claim for JSA(Cont) was made when she finished work for the autumn half term holiday. The claim for JSA(Cont) was refused because the decision maker decided that the claimant's income exceeded her applicable amount. The claimant appealed against this decision, arguing that she was not an employed earner during the half term holiday and that earnings should therefore have been disregarded under para. 2(b) of Sch. 6 to the JSA Regs. The Tribunal decided that the claimant was an employed earner and dismissed the appeal. The claimant appealed to the Commissioner. The Commissioner decided that the employment had not terminated and the claimant was to be regarded as in part-time employment during the half-term. This was because where a claimant has a cycle of work consisting of one year, which includes holidays or similar vacations, the person is to be regarded as engaged in employment (whether remunerative or part-time), during the whole of the cycle of work, including the holidays or vacations. The disregard at para. 2(b) of Sch. 6 did not therefore apply. As the claimant was treated as in part-time employment during the week of her claim, any earnings which would be attributed to that period would have to be taken into account in accordance with regs. 80(1) and 94(2) of the JSA Regs.
- R(JSA) 8/03 ii The claimant was a supply teacher. During the academic year 2000 - 2001 she worked for a number of schools within one local authority area for an average of 13.3 hours per week. She was paid an hourly rate and received her payments on the 25th of each month. She worked on 17th July and then claimed contribution-based jobseeker's allowance from 18th July (the start of the summer holidays). The Secretary of State decided that the claimant was not entitled to jobseeker's allowance. He accepted that she was not in remunerative work, but decided that her earnings were sufficient to disentitle her to benefit. The claimant's appeal was dismissed. The tribunal followed R(IS) 10/95 and held that each monthly payment of earnings received had to be taken into account over the period of a month. Thus each of the monthly payments received in June, July and August 2001 disentitled the claimant from benefit for the following month. The claimant appealed to the Commissioner, with the support of the Secretary of State, on the grounds that the tribunal erred in failing to disregard the earnings under regulation 99(2) and paragraph 2 of Schedule 6 to the Jobseeker's Allowance Regulations 1996. The Commissioner held that unless a regular pattern of work had been established a supply teacher will have ceased to be in part-time employment during school holidays. The decision of the tribunal was set aside and the Commissioner substituted his own decision that the claimant's earnings from part-time employment be disregarded from 18th July 2001.
- R(JSA) 1/06 iii The claimant was employed for three days a week in seasonal employment. Each new contract was discrete and he applied for employment each year. His contract for 2002 was terminated on 2 November 2002 and he claimed JSA. The decision maker obtained information that he was entitled to 12.2 days holiday pay and decided that they were to be attributed to his working days only meaning he was not entitled to JSA until 25 December 2002. The claimant appealed and produced evidence that he had only been paid 11.115 days holiday pay but the tribunal used the figure from the employer and decided that this was to be taken into account over a period of four weeks and one day. The claimant appealed to the Commissioner. The main issue was the period over which the holiday pay should be calculated under regulation 94(2)(a). The Commissioner allowed the appeal and held that the claimant was not "within a recognisable cycle of work" as there was no arrangement to found an expectation that he would resume employment the following year. Also that regulation 94(2)(a) provides for the calculation of the weekly amount using the formula in regulation 97(1)(b)(ivb) and to calculate this by reference to the claimant's working days produced a result that was artificial, less workable and harsh in its effect. The Commissioner concluded that the claimant was therefore to be treated as in remunerative work for 12 consecutive days.

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## Part 10: Self-employed earners

### 1 Seasonal worker - “calculation of average earnings”

i The claimant worked as a self-employed seasonal worker and had done so for several years. His working season lasted from early July to early November each year. In November 1999 the claimant made a claim to JSA. The DM decided that the claimant was gainfully employed throughout the year from July 1999. As a result, the claimant's earnings from self employment fell to be calculated under reg. 95(1)(a) of the JSA Regs. 1996. The earnings were therefore calculated by means of a weekly average over the whole year. The claimant appealed against this decision arguing that he should not have been treated as gainfully employed as there was some doubt as to whether he would be granted a license to trade the following year. The tribunal allowed the appeal, but only to the extent of reducing the amount of earnings to be taken into account. The claimant appealed to the Commissioner who held, following CIS/422/95 that in the case of a seasonal worker there is likely to be a cycle of work of one year, and that if the claimant was gainfully employed for on average less than 16 hours per week over the year he would not be excluded from JSA on the grounds of being in remunerative work (*see* 23.3.1ii), but his earnings would need to be calculated with reference to his average weekly earnings over the whole year in accordance with reg. 95 of the JSA Regs. The Commissioner also held that the tribunal did not err in law in concluding that that claimant was gainfully employed as a self-employed earner on the grounds that since the claimant had always been granted a licence in previous years it was likely that one would be granted again. R(JSA) 1/03

### 2 Self-employed earnings if claimant engaged in part-time or remunerative work

i Claimant was a self-employed carpenter. He had a period of entitlement to JSA but then worked. Reclaimed JSA but his claim was disallowed on the ground that he was in remunerative work as he had said that usual break between jobs or contracts was normally 12 weeks. Claim accepted from August 2007 when 12 weeks had elapsed since he last worked. Claimant appealed against disallowance of JSA but tribunal dismissed appeal. Secretary of State relied on CIS/166/94 which held that earnings from self-employed are taken into account as long as claimant remained in gainful employment. Further appeal allowed and held that JSA regs, Sch. 6, para. 4 uses two distinct concepts “engaged in remunerative work or part-time employment” and being “employed” and that this is less confusing than term “gainfully employed” used in CIS/166/94. The nine issues accepted in CIS/166/94 are mainly relevant to the question of whether a person is “engaged in remunerative work or part-time employment” and not to whether a person is “employed”. The question to be determined when a person who has been self-employed claims JSA is are they still “employed” and if yes are they carrying out activities connected with the self-employment in relevant week and by virtue of reg. 52 are they treated as engaged in work during periods of no activity that are normal incident of self-employment. The next question is whether the work is “remunerative” or merely “part-time” employment” looking at the number of hours calculated by taking the average over a prescribed period. If the hours are part-time then earnings may need to be considered by applying reg. 95(1) to determine the period over which earnings should be averaged. *See also* 23.3.1 *vii above*. R(JSA) 1/09

ii *M v SSWP* [2009] EWCA Civ 1289; [2010] AACR 9. The claimant was in receipt of IS when it came to light that he was the registered owner of a property in France but which the claimant said was beneficial owned by a Ms V, with whom he was living in England. Ms V had provided the purchase price and renovation costs. The property that had been put in the claimant's name and he had bequeathed the usufruct to her under French law, to secure the succession to the property under French law of their son rather than Ms V's adult children. The DM decided that the property was the claimant's capital so he was not entitled to IS. His appeal to an appeal tribunal was dismissed and he appealed to the Commissioner. The claimant argued that English law should be applied meaning that the property was held on an implied trust for Ms [2010] AACR 9

23.10.2

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V and so was not his capital. The Commissioner held that French law was the applicable law and on the basis of expert evidence, that French law gave Ms V no proprietary interest in the property. The claimant applied to the CA for permission to appeal. Permission was granted. The Commissioner found on a proper understanding of common law principles, that French law was the applicable law, as France was the country with which the parties' arrangements had the closest connection (*Webb v Webb* [1991] 1 WLR 1410 and *Lightning v Lightning Electrical Contractors Ltd* CA 23 April 1998 distinguished). The same result would follow from the application of Art. 7 of the Hague Convention and the Recognition of Trusts Act 1987 to ascertain the system of law with which the arrangement had the closest connection. In those circumstances there was no need to consider what would be the position about the terms of an implied trust of the property, if English law were applicable. In the light of the expert evidence the Commissioner had made a properly informed decision on French law which could not possibly be said to be perverse or plainly wrong and no important point of principle or practice arose which would justify the grant of permission for a second appeal.

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Part 11: Participants in the self employment route

*(at the time of going to print there was no recorded decision on this matter)*



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## Part 12: Other income

### 1 Student loan to part-time student

i The claimant was a student in receipt of JSA(IB). From the start of the academic session 1999-2000 he increased the amount of his academic work to the equivalent of a full-time student load and applied for and was awarded a student loan. Two decisions that he was a full-time student and not entitled to JSA(IB) were overturned by a tribunal, so he was to be treated as a part-time student. This was conceded and not an issue before the Commissioner. However the Secretary of State decided that the student loan was income and this meant that his income exceeded his applicable amount. The claimant appealed against this and the tribunal allowed his appeal stating that the student loan was only income where defined as such in reg. 136 of the JSA Regs, which only applied to full-time students. The Secretary of State appealed and the Commissioner allowed the appeal and said that the correct approach was to consider the purpose of the loan and as that was to enable the claimant to meet his living needs the loan fell to be treated as income other than earnings. The disregards applicable to student income were also not appropriate in this case. The loan was payable in respect of the academic session so should be averaged over this period and the fact that the loan may not be properly payable did not affect the position. R(JSA) 4/04

## Part 13: Capital

### 1 Capital limit

*(at the time of going to print there was no recorded decision on this matter)*

### 2 Calculation of capital

*(at the time of going to print there was no recorded decision on this matter)*

### 3 Disregard of capital of child or young person

*(at the time of going to print there was no recorded decision on this matter)*

### 4 Income treated as capital

*(at the time of going to print there was no recorded decision on this matter)*

### 5 Calculation of capital in the United Kingdom

R(JSA) 1/02 i The claimant declared an interest in his former matrimonial home, which was occupied by his estranged wife and their daughter aged under 18. The AO decided that the claimant should be treated as jointly owning the property under reg. 114 of the JSA Regs. 1996. On the basis of the valuer's opinion the AO decided that the claimant was not entitled to JSA(IB) as his capital exceeded £8,000 and the decision was upheld by the SSAT. The claimant appealed to the Commissioner. The Commissioner decided that it was not enough for a tribunal to accept the opinion of a valuer, as to the value of a property, without some reasons being given for adopting the value put forward. The Commissioner followed CIS/191/1994 and held that there is no rule of law that, where a wife and child are still living in the matrimonial home, the value of the claimant's share in that property must be regarded as nil. The value of the claimant's share must be considered on the evidence in each case. But, where a property is of modest value and none of the value can be realised by the claimant, or anyone acquiring his interest, for a lengthy and undetermined period, it may have little or no value. It was decided what proper valuation evidence should include, and that the valuer's report should say what is missing and the assumptions upon which the report is based if there is a lack of relevant information and the valuer has to proceed on the basis of assumptions. The Commissioner decided there was no evidence that the claimant's capital exceeded £8,000.

[2010] ii *KS v SSWP (JSA)* [2009] UKUT 122 (AAC); [2010] AACR 3. The claimant was  
AACR 3 found to have capital in excess of £16,000 and therefore to be ineligible for JSA. The tribunal agreed and relied entirely on its findings as to capital which it found the claimant had acquired in the years up to 2005. They ignored the fact that he had been adjudged bankrupt in October 2006 and that a trustee in bankruptcy had been appointed in January 2007, although evidence of those facts had been submitted to it. The claimant appealed. The UT Judge held that once a bankruptcy order is in force, a claimant's assets should either be treated as not his capital at all or be valued at nil for benefit purposes as he is prohibited from dealing with them without the consent of the court and CIS/634/1992 was wrong in holding otherwise (CJSA/1556/2007 applied). A claimant could not deprive himself of capital while a bankruptcy order is in force. However, a claimant might deprive himself of capital if he submits to a bankruptcy order or delays its annulment for the purpose of securing entitlement. The tribunal had erred in making no satisfactory findings as to his assets or proper investigation as to whether he might have deprived himself of assets or concealed them prior to the bankruptcy. The Judge remitted the case to a new tribunal to investigate the bankruptcy with a suggestion that it might wish to use its powers to obtain oral or written evidence from the trustee in bankruptcy or to require the claimant to give evidence under oath.

### 6 Disregarded capital

R(JSA) 9/03 i This case was the subject of a CA decision in *Secretary of State v. Miah*. The claimant was a married man with eleven children, eight of whom were dependant. He owned two three-bedroomed houses in the same street, separated from each other by two other houses. A claim for income-based JSA was refused on the grounds that the

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value of only one house could be disregarded as the dwelling occupied as the home. On appeal, the tribunal upheld that decision. However, the Commissioner held that the “dwelling occupied as the home” might comprise more than one building but remitted the case to a fresh tribunal to make findings of fact as to the extent of the use of the second house by the claimant and his dependant children. The Secretary of State appealed to the CA. By the time that appeal was heard, a second tribunal had accepted evidence that the second house was occupied by the claimant and his family and it had been conceded by the Secretary of State that there would be statutory overcrowding if the claimant and his family were to occupy only one of the houses. The CA dismissed the Secretary of State’s appeal.

The CA held that the expansion of the word “dwelling” into the phrase “dwelling occupied as the home” gave the impression that the legislature had intended to convey its function as a home for the claimant rather than its bricks and mortar and that home was not necessarily confined to a single building. A test for determining whether two buildings were one home was to ask whether one house was, in effect, used as an annex of the other or whether it was a single home on a split site. Applying that test, a claimant was using as his home the place where he lived, where he ate, slept, bathed, relaxed and which he enjoyed with his family.



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## Part 14: Liable relatives

*(at the time of going to print there was no recorded decision on this matter)*

## Part 15: Child support

*(at the time of going to print there was no recorded decision on this matter)*

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## Part 16: Students

### 1. Meaning of students

- i The claimant had been attending a full-time course provided by a University relating to exams of the Chartered Institute of Certified Accountants. He failed some of exams but intended re-sitting them the following year. R(JSA) 2/02

The Commissioner found that the facts of this case were dissimilar to those of *CAO v. Webber* [1997] 4 ALL ER 274 (R/IS 15/98), *O'Connor v. CAO* [1999] ELR 209 (R/IS 7/99) and *McComb v. Department of Social Development* because those decisions dealt with the attendance of a student at a course run by the University for a qualification issued by that University.

In this case the Commissioner found that the various aspects of the 'course of study' had become separated. The University was acting as a service provider of a course of training so that the claimant could sit a course of exams set and marked by a different and unconnected body. The Commissioner found that "Course of study" was the course of training not the course of exams or any mixture of both. See also 29.12.2 *iv* and 29.12.2 *vii below*.

### 2. Student loan to part-time student

- i The claimant was a student in receipt of JSA(IB). From the start of the academic session 1999-2000 he increased the amount of his academic work to the equivalent of a full-time student load and applied for and was awarded a student loan. Two decisions that he was a full-time student and not entitled to JSA(IB) were overturned by a tribunal, so he was to be treated as a part-time student. This was conceded and not an issue before the Commissioner. However the Secretary of State decided that the student loan was income and this meant that his income exceeded his applicable amount. The claimant appealed against this and the tribunal allowed his appeal stating that the student loan was only income where defined as such in reg. 136 of the JSA Regs, which only applied to full-time students. The Secretary of State appealed and the Commissioner allowed the appeal and said that the correct approach was to consider the purpose of the loan and as that was to enable the claimant to meet his living needs the loan fell to be treated as income other than earnings. The disregards applicable to student income were also not appropriate in this case. The loan was payable in respect of the academic session so should be averaged over this period and the fact that the loan may not be properly payable did not affect the position. R(JSA) 4/04

## Part 17: Hardship

*(at the time of going to print there was no recorded decision on this matter)*

