

*Draft Regulations laid before Parliament under section 37(2) of the Jobseekers Act 1995, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2004 No.**

**SOCIAL SECURITY**

**The Social Security (Income Support and Jobseeker's Allowance) Amendment Regulations 2004**

*Made* - - - - 2004  
*Coming into force* - - 4th October 2004

Whereas a draft of this instrument was laid before Parliament in accordance with section 37(2) of the Jobseekers Act 1995(1) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 123(1)(a), 137(1) and (2)(b), 171D(1), 171G(2) and 175(1), (3) and (4) of the Social Security Contributions and Benefits Act 1992(2) and sections 6(4), 7(4), 35(1) and 36(2) and (4) of, and paragraph 11(2) of Schedule 1 to, the Jobseekers Act 1995(3) and of all other powers enabling him in that behalf, after agreement by the Social Security Advisory Committee that proposals in respect of these Regulations should not be referred to it(4), hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Social Security (Income Support and Jobseeker's Allowance) Amendment Regulations 2004 and shall come into force on 4th October 2004.

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(1) 1995 c. 18.  
(2) 1992 c. 4. Section 137(1) is an interpretation provision and is cited because of the meaning there given to the word "prescribed". Sections 171D and 171G were inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) and have effect for the purposes of the Jobseekers Act 1995 by virtue of paragraph 2 of Schedule 1 to that Act. Section 171G(2) is an interpretation provision and is cited because of the meaning there given to the word "prescribed". Section 175(4) was amended by section 2 of, and paragraph 29 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).  
(3) Section 35(1) is an interpretation provision and is cited because of the meaning there given to the words "prescribed" and "regulations". Sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 respectively of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999.  
(4) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5); paragraph 67 of Schedule 2 to the Jobseekers Act 1995 added that Act to the list of "relevant enactments" in respect of which regulations must normally be referred to the Committee.

### **Amendment of the Income Support (General) Regulations 1987**

**2.—**(1) The Income Support (General) Regulations 1987<sup>(5)</sup> shall be amended in accordance with this regulation.

(2) After paragraph (3) of regulation 4<sup>(6)</sup> (temporary absence from Great Britain) insert the following paragraph—

“(3A) A claimant’s entitlement to income support shall continue during a period of temporary absence from Great Britain if—

- (a) he satisfied the conditions of entitlement to income support immediately before the beginning of that period of temporary absence; and
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Great Britain where that treatment is being provided—
  - (i) under section 3 of the National Health Service Act 1977<sup>(7)</sup> (services generally);
  - (ii) pursuant to arrangements made under section 23 of that Act<sup>(8)</sup> (voluntary organisations and other bodies); or
  - (iii) pursuant to arrangements made under paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990<sup>(9)</sup> (National Health Service Trusts – specific powers).”.

### **Amendment of the Jobseeker’s Allowance Regulations 1996**

**3.—**(1) The Jobseeker’s Allowance Regulations 1996<sup>(10)</sup> shall be amended in accordance with this regulation.

(2) In regulation 14(1)<sup>(11)</sup> (circumstances in which a person is to be treated as available)—

(a) after sub-paragraph (l) insert the following sub-paragraph—

“(ll) if he is treated as capable of work in accordance with regulation 55A, for the period determined in accordance with that regulation;”;

(b) after sub-paragraph (p) add the following sub-paragraph—

“(q) if he is temporarily absent from Great Britain in the circumstances prescribed in regulation 50(6AA) or, as the case may be, (6C).”.

(3) In regulation 19(1)<sup>(12)</sup> (circumstances in which a person is to be treated as actively seeking employment)—

(a) after sub-paragraph (l) insert the following sub-paragraph—

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<sup>(5)</sup> S.I. 1987/1967.

<sup>(6)</sup> Regulation 4 was amended by S.I. 1988/663, 1990/547, 1995/482, 1996/206 and 1944.

<sup>(7)</sup> 1977 c. 49. Section 3 was amended by sections 184 and 196 of, paragraphs 7 and 8 of Schedule 11 and Part 4 of Schedule 14 to, the Health and Social Care (Community Health and Standards) Act 2003 (c. 43) and by S.I. 2002/2759.

<sup>(8)</sup> Section 23 was amended by section 25(4) of, and Schedule 7 to, the Health Services Act 1980 (c. 53), section 4 of, and paragraph 18(1) of Schedule 3 to, the Road Traffic (Consequential Provisions) Act 1988 (c. 54), section 63 of, and paragraph 10 of Schedule 3 to, the Vehicle Excise and Registration Act 1994 (c. 22), section 2(1) of, and paragraph 13 of Schedule 1 to, the Health Authorities Act 1995 (c. 17), sections 1(3) and 6(2) of, paragraphs 1 and 11 of Schedule 1 and paragraphs 4 and 9 of Schedule 5 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17) and by S.I. 2000/90.

<sup>(9)</sup> 1990 c. 19. Paragraph 13 was amended by section 2(1) of, and paragraph 85(e) of Schedule 1 to, the Health Authorities Act 1995 (c. 17), section 65(1) of, and paragraphs 74 and 83(1) and (5) of Schedule 4 to, the Health Act 1999 (c. 8) and sections 1(3) and 6(2) of, paragraphs 39 and 46(a) of Schedule 1 to, and paragraphs 30 and 36(1) and (3) of Schedule 5 to, the National Health Service Reform and Health Care Professions Act 2002 (c. 17).

<sup>(10)</sup> S.I. 1996/207.

<sup>(11)</sup> Regulation 14 was amended by S.I. 1996/1517, 1997/563, 1999/3087 and 2000/3336.

<sup>(12)</sup> Regulation 19 was amended by S.I. 1996/1517, 1997/563, 1998/1274, 1999/3087 and 2000/3336.

- “(11) in any week during which he is for not less than 3 days treated as capable of work in accordance with regulation 55A;”;
- (b) after sub-paragraph (t) add the following sub-paragraph—
- “(u) if he is temporarily absent from Great Britain in the circumstances prescribed in regulation 50(6AA) or, as the case may be (6C).”.
- (4) In regulation 50(13) (persons temporarily absent from Great Britain)—
- (a) after paragraph (6) insert the following paragraph—
- “(6AA) For the purposes of the Act a claimant shall be treated as being in Great Britain during any period of temporary absence from Great Britain if—
- (a) he was entitled to a jobseeker’s allowance immediately before the beginning of that period of temporary absence; and
- (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Great Britain where that treatment is being provided—
- (i) under section 3 of the National Health Service Act 1977 (services generally);
- (ii) pursuant to arrangements made under section 23 of that Act (voluntary organisations and other bodies); or
- (iii) pursuant to arrangements made under paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990 (National Health Service Trusts – specific powers).”;
- (b) after paragraph (6B)(14) insert the following paragraph—
- “(6C) For the purposes of the Act a member of a joint-claim couple (“the first member”) shall be treated as being in Great Britain during any period of temporary absence if—
- (a) he and the other member of that couple were entitled to a joint-claim jobseeker’s allowance immediately before the beginning of that period of temporary absence; and
- (b) that period of temporary absence is for the purpose of the first member receiving treatment at a hospital or other institution outside Great Britain where that treatment is being provided—
- (i) under section 3 of the National Health Service Act 1977;
- (ii) pursuant to arrangements made under section 23 of that Act; or
- (iii) pursuant to arrangements made under paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990.”.
- (5) In regulation 55(15) (short periods of sickness) after paragraph (4) add the following paragraph—
- “(5) The preceding provisions of this regulation shall not apply to a claimant who is temporarily absent from Great Britain in the circumstances prescribed by regulation 50(6AA) or, as the case may be, (6C).”.
- (6) After regulation 55 insert the following regulation—

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(13) Regulation 50 was amended by S.I. [2000/1978](#).

(14) Paragraph (6B) was inserted by S.I. [2000/1978](#).

(15) Regulation 55 was amended by S.I. [1996/1517](#), [1999/2860](#) and [2000/1978](#).

**“Periods of sickness and persons receiving treatment outside Great Britain**

**55A.—**(1) A person—

- (a) who has been awarded a jobseeker's allowance, a joint-claim jobseeker's allowance or is a person to whom any of the circumstances mentioned in section 19(5) or (6) or 20A(2) apply; and
- (b) who is temporarily absent from Great Britain in the circumstances prescribed by regulation 50(6AA) or, as the case may be, (6C); and
- (c) who proves to the satisfaction of the Secretary of State that he is unable to work on account of some specific disease or disablement; and
- (d) but for his disease or disablement, would satisfy the requirements for entitlement to a jobseeker's allowance other than those specified in section 1(2)(a), (c) and (f) (available for and actively seeking employment and capable of work),

shall be treated during that period of temporary absence abroad as capable of work, except where that person has stated in writing before that period of temporary absence abroad begins that immediately before the beginning of the period of that temporary absence abroad he has claimed incapacity benefit, severe disablement allowance or income support.

(2) The evidence which is required for the purposes of paragraph (1)(c) is a declaration made by that person in writing, in a form approved for the purposes by the Secretary of State, that he will be unfit for work from a date or for a period specified in the declaration.”.

Signed by authority of the Secretary of State for Work and Pensions.

2004

Parliamentary Under-Secretary of State,  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Income Support (General) Regulations 1987 (S.I.1987/1967) and the Jobseeker's Allowance Regulations 1996 (S.I. 1996/207) ("the Jobseeker's Allowance Regulations") to provide that a person who is entitled to income support or a jobseeker's allowance retains his entitlement to benefit during a period of temporary absence from Great Britain in order to receive National Health Service (NHS) hospital treatment pursuant to the National Health Service Act 1977 (c. 49) or the National Health Service and Community Care Act 1990 (c. 19) (these Acts extend to England and Wales only).

Regulation 2 amends regulation 4 of the Income Support (General) Regulations 1987 to provide that a person's entitlement to income support shall continue during such a period of temporary absence if immediately before the beginning of that period the person was entitled to income support.

Regulation 3(4) amends regulation 50 of the Jobseeker's Allowance Regulations to provide that a claimant or a member of a joint-claim couple shall be treated as being in Great Britain during a period of temporary absence from Great Britain if immediately before the beginning of that period he was entitled to a jobseeker's allowance and that absence is for the purpose of receiving NHS hospital treatment.

A new regulation 55A of the Jobseeker's Allowance Regulations provides that such a claimant or such a member of a joint-claim couple shall also be treated as capable of work during a period of temporary absence from Great Britain for the purpose of receiving NHS hospital treatment unless he makes a written statement before that period of temporary absence that he has claimed incapacity benefit, severe disablement allowance or income support (regulation 3(5) and (6)).

Corresponding amendments are made to regulations 14 and 19 of the Jobseeker's Allowance Regulations to provide that such a claimant or, as the case may be, such a member of a joint-claim couple shall be treated as available for employment and actively seeking employment (regulation 3(2) and (3)).

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.