

STATUTORY INSTRUMENTS

1996 No. 207

The Jobseeker's Allowance Regulations 1996

PART VI

MEMBERSHIP OF THE FAMILY

Persons of a prescribed description

76.—(1) Subject to paragraph (2), a person of a prescribed description for the purposes of the definition of “family” in section 35(1) of the Act is a person [^{F1}who falls within the definition of qualifying young person in section 142 of the Benefits Act (child and qualifying young person)], and in these Regulations, except in Part IV, such a person is referred to as a “young person”.

(2) Paragraph (1) shall not apply to a person who is—

- ^{F2}(a)
- (b) entitled to a jobseeker's allowance or would, but for section 3(1)(d) of the Act (provision against dual entitlement) be so entitled; or
- (c) entitled to income support or would, but for section 134(2) of the Benefits Act (exclusion from benefit) be [^{F3}so entitled; or
- (d) a person to whom section 6 of the Children (Leaving Care) Act 2000 (exclusion from benefits) applies [^{F4}or]
- (e) entitled to an income-related employment and support allowance or would, but for paragraph 6(1)(d) of Schedule 1 to the Welfare Reform Act (conditions of entitlement to income-related employment and support allowance), be so entitled.][^{F5}; or
- (f) entitled to universal credit]

[^{F6}(3) A person of a prescribed description for the purposes of the definition of “family” in section 35(1) of the Act includes a child or young person in respect of whom section 145A of the Benefits Act applies for the purposes of entitlement to child benefit but only for the period prescribed under section 145A(1) of that Act.]

Textual Amendments

- F1** Words in reg. 76(1) substituted (10.4.2006) by The Social Security (Young Persons) Amendment Regulations 2006 (S.I. 2006/718), regs. 1(2)(a), **3(6)(a)**
- F2** Reg. 76(2)(a) omitted (10.4.2006) by virtue of The Social Security (Young Persons) Amendment Regulations 2006 (S.I. 2006/718), regs. 1(2)(a), **3(6)(b)**
- F3** Reg. 76(2)(d) substituted (1.10.2001) by The Children (Leaving Care) Act 2000 (Commencement No. 2 and Consequential Provisions) Order 2001 (S.I. 2001/3070), art. 3(1), **Sch. 4 (b)**
- F4** Reg. 76(2)(e) and word added (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008 (S.I. 2008/1554), regs. 1(2)(b), **3(12)(a)**
- F5** Reg. 76(2)(f) and word inserted (29.4.2013) by The Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations 2013 (S.I. 2013/630), regs. 1(2), **30(3)**

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F6 Reg. 76(3) added (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Working Tax Credit and Child Tax Credit\) \(Amendment\) Regulations 2002 \(S.I. 2002/2402\)](#), reg. 1(3), **Sch. 2 para. 2**

Circumstances in which a person is to be treated as responsible or not responsible for another

77.—(1) Subject to the following provisions of this regulation, a person is to be treated for the purposes of the Act as responsible for a child or young person for whom he is receiving child benefit [^{F7}and this includes a child or young person to whom paragraph (3) of regulation 76 applies.]

(2) In a case where a child ("the first child") is in receipt of child benefit in respect of another child ("the second child"), the person treated as responsible for the first child in accordance with the provisions of this regulation shall also be treated as responsible for the second child.

(3) In the case of a child or young person in respect of whom no person is receiving child benefit, the person who shall be treated as responsible for that child or young person shall be—

- (a) except where sub-paragraph (b) applies, the person with whom the child or young person usually lives; or
- (b) where only one claim for child benefit has been made in respect of the child or young person, the person who made that claim.

(4) Where regulation 78(7) (circumstances in which a person is to be treated as being or not being a member of the household) applies in respect of a child or young person, that child or young person shall be treated as the responsibility of the claimant for that part of the week for which he is under that regulation treated as being a member of the claimant's household.

(5) Except where paragraph (4) applies, a child or young person shall be treated as the responsibility of only one person in any benefit week and any person other than the one treated as responsible for the child or young person under this regulation shall be treated as not so responsible.

Textual Amendments

F7 Words in [reg. 77\(1\)](#) added (for specified purposes and with effect in accordance with reg. 1(3) of the amending S.I.) by [The Income-related Benefits and Jobseeker's Allowance \(Working Tax Credit and Child Tax Credit\) \(Amendment\) Regulations 2002 \(S.I. 2002/2402\)](#), reg. 1(3), **Sch. 2 para. 3**

Circumstances in which a person is to be treated as being or not being a member of the household

78.—(1) Subject to paragraphs (2) to (5), the claimant and any partner and, where the claimant or his partner is treated as responsible under regulation 77 (circumstances in which a person is to be treated as responsible or not responsible for another) for a child or young person, that child or young person and any child of that child or young person shall be treated for the purposes of the Act as members of the same household notwithstanding that any of them is temporarily living away from the other members of his family.

[^{F8}(1A) Subject to paragraphs (2) and (3), the members of a joint-claim couple shall be treated for the purposes of the Act as members of the same household notwithstanding that they are temporarily living away from each other.]

(2) [^{F9}Paragraphs (1) and (1A)] shall not apply to a person who is living away from the other members of his family where—

- (a) that person does not intend to resume living with the other members of his family; or

- (b) his absence from the other members of his family is likely to exceed 52 weeks, unless there are exceptional circumstances (for example the person is in hospital or otherwise has no control over the length of his absence), and the absence is unlikely to be substantially more than 52 weeks.
- (3) ^{F10}Paragraphs (1) and (1A)] shall not apply in respect of any member of a couple or of a polygamous marriage where—
- (a) one, both or all of them are patients detained in a hospital provided under section 4 of the National Health Service Act 1977 ^{F11} (^{F12}high security psychiatric services]) or ^{F13}section 102 of the National Health Service (Scotland) Act 1978 (state hospitals)]; or
- ^{F14}(b) one, both or all of them are—
- (i) detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or
- (ii) on temporary release in accordance with ^{F15}the provisions of the Prison Act 1952 or] rules made under section 39(6) of the Prisons (Scotland) Act 1989;]
- (c) ^{F16}a claimant] is abroad and does not satisfy the conditions of regulation 50 (persons absent from Great Britain); or
- (d) one of them is permanently ^{F17}residing in a care home, an Abbeyfield Home or an independent hospital].
- (4) A child or young person shall not be treated as a member of the claimant's household where he is—
- (a) placed with the claimant or his partner by a local authority under ^{F18}section 22C(2)] of the Children Act 1989 ^{F19} or by a voluntary organisation under section 59(1)(a) of that Act; or
- ^{F20}(aa) placed with the claimant or his partner by a local authority under section 81(2) of the Social Services and Well-being (Wales) Act 2014; or]
- (b) placed with the claimant or his partner prior to adoption; or
- (c) in accordance with a relevant Scottish enactment, boarded out with the claimant or his partner, whether or not with a view to adoption; or
- (d) placed for adoption with the claimant or his partner pursuant to a decision under the Adoption Agencies Regulations 1983 ^{F21} or ^{F22}the Adoption Agencies (Scotland) Regulations 2009].
- (5) Subject to paragraphs (6) and (7), paragraph (1) shall not apply to a child or young person who is not living with the claimant and who—
- (a) in a case which does not fall within sub-paragraph (b), has been continuously absent from Great Britain for a period of more than four weeks commencing—
- (i) where he went abroad before the date of the claim for a jobseeker's allowance, with that date;
- (ii) in any other case, on the day which immediately follows the day on which he went abroad; or
- (b) where ^{F23}regulation 50(5)] or paragraph 11 or 13 of Schedule 5 (temporary absence abroad for the treatment of a child or young person) applies, has been continuously absent from Great Britain for a period of more than 8 weeks, that period of 8 weeks commencing—
- (i) where he went abroad before the date of the claim for a jobseeker's allowance, on the date of that claim;
- (ii) in any other case, on the day which immediately follows the day on which he went abroad; or

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- (c) has been an in-patient or in accommodation ^{F24}... for a continuous period of more than 12 weeks commencing—
- (i) where he became an in-patient or, as the case may be, entered that accommodation before the date of the claim for a jobseeker's allowance, with that date; or
 - (ii) in any other case, with the date on which he became an in-patient or entered that accommodation, and, in either case, has not been in regular contact with either the claimant or any member of the claimant's household; or
- (d) is being looked after by a local authority under a relevant enactment; or
- (e) has been placed with a person other than the claimant prior to adoption; or
- (f) is in the care of a local authority under a relevant Scottish enactment; or
- (g) has been boarded out under a relevant Scottish enactment with a person other than the claimant prior to adoption; or
- (h) has been placed for adoption pursuant to a decision under the Adoption Agencies Regulations 1983 or [^{F25}the Adoption Agencies (Scotland) Regulations 2009]; or
- (i) is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court.

(6) In the case of a person who was entitled to income support [^{F26}or an income-related employment and support allowance] immediately before his entitlement to a jobseeker's allowance commenced, sub-paragraphs (a), (b) and (c) of paragraph (5) [^{F27}shall] each have effect as if head (i) was omitted.

(7) A child or young person to whom any of the circumstances mentioned in [^{F28}sub-paragraphs (d), (f) or (i)] of paragraph (5) applies shall be treated as being a member of the claimant's household only for that part of any benefit week where that child or young person lives with the claimant.

(8) Where a child or young person for the purposes of attending the educational establishment at which he is receiving relevant education is living with the claimant or his partner and neither one is treated as responsible for that child or young person that child or young person shall be treated as being a member of the household of the person treated as responsible for him and shall not be treated as a member of the claimant's household.

(9) In this regulation—

^{F29}(za) “accommodation” means accommodation provided by a local authority in a home owned or managed by that local authority—

(i) under sections 21 to 24 of the National Assistance Act 1948 (provision of accommodation); or

[under section 18 or 19 of the Care Act 2014 (duty and power to meet needs for care ^{F30}(ia) and support); or]

(ii) in Scotland, under section 13B or 59 of the Social Work (Scotland) Act 1968 (provision of residential or other establishment); or

(iii) under section 25 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (care and support services etc.); [^{F31} or

(iv) in Wales, under section 35 or 36 of the Social Services and Well-being (Wales) Act 2014 (duty and power to meet care and support needs of an adult);]

where the accommodation is provided for a person whose stay in that accommodation has become other than temporary;]

(a) “relevant enactment” means the Army Act 1955 ^{F32}, the Social Work (Scotland) Act 1968 ^{F33}, the Matrimonial Causes Act 1973 ^{F34}, [^{F35}the Adoption and Children (Scotland) Act

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2007], the Family Law Act 1986^{F36}[^{F37}, the Children Act 1989 and the Social Services and Well-being (Wales) Act 2014];

- (b) "relevant Scottish enactment" means the Army Act 1955, the Air Force Act 1955^{F38}, the Naval Discipline Act 1957^{F39}, the Adoption Act 1958^{F40}, the Matrimonial Proceedings Children Act 1958^{F41}, the Children Act 1958^{F42}, the Social Work (Scotland) Act 1968, the Family Law Reform Act 1969^{F43}, the Children and Young Persons Act 1969^{F44}, the Matrimonial Causes Act 1973, the Guardianship Act 1973^{F45}, the Children Act 1975^{F46}, the Domestic Proceedings and Magistrates' Courts Act 1978^{F47}, [^{F35}the Adoption and Children (Scotland) Act 2007], the Child Care Act 1980^{F48}, and the Foster Children Act 1980^{F49};
- (c) "voluntary organisation" has the meaning assigned to it in the Children Act 1989 or, in Scotland, the Social Work (Scotland) Act 1968.

Textual Amendments

- F8** Reg. 78(1A) inserted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 33(a)**
- F9** Words in reg. 78(2) substituted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 33(b)**
- F10** Words in reg. 78(3) substituted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 33(c)(i)**
- F11** 1977 c.49; section 4 was amended by section 148, Schedule 4, paragraph 47 of the Mental Health Act 1983 (c.20).
- F12** Words in reg. 78(3)(a) substituted (2.10.2006) by The Social Security (Miscellaneous Amendments) (No. 4) Regulations 2006 (S.I. 2006/2378), regs. 1(3), **13(4)**
- F13** Words in reg. 78(3)(a) substituted (1.4.2006) by The Social Security (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/588), regs. 1(4), **3(2)**
- F14** Reg. 78(3)(b) substituted (7.10.1996) by The Jobseeker's Allowance and Income Support (General) (Amendment) Regulations 1996 (S.I. 1996/1517), regs. 1, **18**
- F15** Words in reg. 78(3)(b)(ii) omitted (temp.) (8.4.2020) by virtue of The Social Security (Coronavirus) (Prisoners) Regulations 2020 (S.I. 2020/409), regs. 1, **3(2)** (with reg. 6(2))
- F16** Words in reg. 78(3)(c) substituted (19.3.2001) by The Jobseeker's Allowance (Joint Claims) Regulations 2000 (S.I. 2000/1978), reg. 1(1), **Sch. 2 para. 33(c)(ii)**
- F17** Words in reg. 78(3)(d) substituted (24.10.2005) by The Social Security (Care Homes and Independent Hospitals) Regulations 2005 (S.I. 2005/2687), reg. 1, **Sch. 2 para. 3(a)**
- F18** Words in reg. 78(4)(a) substituted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **22(2)**
- F19** 1989 c.41.
- F20** Reg. 78(4)(aa) inserted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **6(3)(a)**
- F21** S.I. 1983/1964.
- F22** Words in reg. 78(4)(d) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 19(2)(a)**
- F23** Words in reg. 78(5)(b) substituted (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), reg. 1(1), **Sch. Pt. 2**
- F24** Words in reg. 78(5)(c) omitted (24.10.2005) by virtue of The Social Security (Care Homes and Independent Hospitals) Regulations 2005 (S.I. 2005/2687), reg. 1, **Sch. 2 para. 3(b)**
- F25** Words in reg. 78(5)(h) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 19(2)(a)**

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- F26** Words in reg. 78(6) inserted (27.10.2008) by The Employment and Support Allowance (Consequential Provisions) (No. 2) Regulations 2008 (S.I. 2008/1554), regs. 1(2)(b), **3(13)**
- F27** Word in reg. 78(6) substituted (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), reg. 1(1), **Sch. Pt. 2**
- F28** Words in reg. 78(7) substituted (7.10.1996) by The Jobseeker's Allowance (Amendment) Regulations 1996 (S.I. 1996/1516), reg. 1(1), **Sch. Pt. 2**
- F29** Reg. 78(9)(za) inserted (24.10.2005) by The Social Security (Care Homes and Independent Hospitals) Regulations 2005 (S.I. 2005/2687), reg. 1, **Sch. 2 para. 3(c)**
- F30** Reg. 78(9)(za)(ia) inserted (1.4.2015) by The Care Act 2014 (Consequential Amendments) (Secondary Legislation) Order 2015 (S.I. 2015/643), art. 1(2), **Sch. para. 9(2)** (with art. 4)
- F31** Reg. 78(9)(za)(iv) and word inserted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **6(3)(b)(i)**
- F32** 1955 c.18. The provisions relating to reception orders were repealed as from 1st January 1992 by the Armed Forces Act 1991 (c.61) but with savings (articles 2 and 3(1) of S.I. 1991/2719).
- F33** 1968 c.49.
- F34** 1973 c.18.
- F35** Words in reg. 78(9)(a)(b) substituted (15.7.2011) by The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 (S.I. 2011/1740), art. 1(2), **Sch. 1 para. 19(2)(b)**
- F36** 1986 c.55.
- F37** Words in reg. 78(9)(a) substituted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **6(3)(b)(ii)**
- F38** 1955 c.19.
- F39** 1957 c.53.
- F40** 1958 c.5.
- F41** 1958 c.40.
- F42** 1958 c.65.
- F43** 1969 c.46.
- F44** 1969 c.54.
- F45** 1973 c.29.
- F46** 1975 c.72.
- F47** 1978 c.22.
- F48** 1980 c.5.
- F49** 1980 c.6.

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