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STATUTORY INSTRUMENTS

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**2013 No. 378**

**The Jobseeker's Allowance Regulations 2013**

**PART 5**

Conditions of entitlement

**The conditions and relevant earnings**

**34.**—(1) A claimant's relevant earnings for the purposes of section 2(2)(b) of the Act <sup>M1</sup> are the total amount of the claimant's earnings equal to the lower earnings limit for the base year.

(2) For the purposes of paragraph (1), earnings which exceed the lower earnings limit are to be disregarded.

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**Marginal Citations**

**M1** Section 2(2)(b) was amended by section 12 of the [Welfare Reform Act 2009 \(c.24\)](#).

**Relaxation of the first set of conditions**

**35.**—(1) A claimant who satisfies the condition in paragraph (2) is to be taken to satisfy the first set of conditions if the claimant has—

- (a) paid Class 1 contributions before the relevant benefit week in respect of any one tax year; and
- (b) earnings equal to the lower earnings limit in that tax year on which primary Class 1 contributions have been paid or treated as paid which in total, and disregarding any earnings which exceed the lower earnings limit for that year, are not less than that limit multiplied by 26.

(2) The condition referred to in paragraph (1) is that the claimant, in respect of any week during the last complete tax year preceding the relevant benefit year, is entitled to be credited with earnings in accordance with regulation 9E of the Social Security (Credits) Regulations 1975 (credits for certain spouses and civil partners of members of Her Majesty's forces) <sup>M2</sup>.

(3) In this regulation, “relevant benefit week” means the week in relation to which the question of entitlement to a jobseeker's allowance is being considered.

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**Marginal Citations**

**M2** [S.I. 1975/556](#). Regulation 9E was inserted by [S.I. 2010/385](#).

## Waiting Days

**36.—**(1) Paragraph 4 of Schedule 1 to the Act does not apply in a case where a person's entitlement to a jobseeker's allowance commences within 12 weeks of an entitlement of theirs to income support, incapacity benefit, employment and support allowance or carer's allowance coming to an end.

(2) In the case of a person to whom paragraph 4 of Schedule 1 to the Act applies, the number of days is three.

## Jobseeking Period

**37.—**(1) For the purposes of the Act, but subject to paragraph (2), the “jobseeking period” means any period throughout which the claimant satisfies or is treated as satisfying the conditions specified in section 1(2)(b) and (e) to (i) of the Act (conditions of entitlement to a jobseeker's allowance) <sup>M3</sup>.

(2) The following periods are not to be, or to be part of, a jobseeking period—

- (a) any period in respect of which no claim for a jobseeker's allowance has been made or treated as made;
- (b) such period as falls before the day on which a claim for a jobseeker's allowance is made or treated as made;
- (c) where a claim for a jobseeker's allowance has been made or treated as made but no entitlement to benefit arises in respect of a period before the date of claim by virtue of section 1(2) of the Administration Act (limits for backdating entitlement) <sup>M4</sup>, that period;
- (d) any week in which a claimant is not entitled to a jobseeker's allowance in accordance with section 14 of the Act (trade disputes); or
- (e) any period in respect of which a claimant is not entitled to a jobseeker's allowance because section 1(1A) of the Administration Act (requirement to state national insurance number) <sup>M5</sup> applies.

(3) For the purposes of section 5 of the Act (duration of a jobseeker's allowance) <sup>M6</sup>, a day must be treated as if it was a day in respect of which the claimant was entitled to a jobseeker's allowance where that day—

- (a) falls within a jobseeking period; and
- (b) is a day—
  - (i) on which the claimant satisfies the conditions specified in section 2 of the Act (the contribution-based conditions) <sup>M7</sup> other than the conditions specified in section 2(1) (c) and (d) of the Act; and
  - (ii) on which a jobseeker's allowance is not payable to the claimant by virtue of sections 6J or 6K of the Act or by virtue of a restriction imposed pursuant to section 6B, 7, 8 or 9 of the Social Security Fraud Act 2001 (loss of benefit provisions) <sup>M8</sup>.

### Marginal Citations

- M3** Relevant amendments to section 1(2) were made by section 44 of the Welfare Reform Act 2012 and paragraph 12 of Schedule 3 to the Welfare Reform Act 2007.
- M4** Section 1(2) was amended by paragraph 16 of Schedule 8 to the [Welfare Reform and Pensions Act 1999 \(c.30\)](#).
- M5** Section 1(1A) was inserted by section 19 of the [Social Security Administration \(Fraud\) Act 1997 \(c.47\)](#).
- M6** Section 5 was amended by Schedule 14 to the Welfare Reform Act 2012.

- M7** Section 2 was amended by paragraph 3 of Schedule 7 to the Welfare Reform and Pensions Act 1999, paragraph 45 of Schedule 1 to the [National Insurance Contributions Act 2002 \(c.19\)](#), [paragraph 133](#) of Schedule 7 to the Social Security Act 1998, section 12 of, and paragraph 6 of Schedule 2 and Schedule 7 to, the Welfare Reform Act 2009 and paragraph 35 of Schedule 2 and Schedule 14 to the Welfare Reform Act 2012.
- M8** [2001 c.11](#). Section 6B was inserted by section 24 of the Welfare Reform Act 2009. Sections 6B was amended by paragraph 10 of Schedule 2 and Schedule 7 to the Welfare Reform Act 2009 and sections 113, 118, 119 and 121 of, and paragraph 58 of Schedule 2, paragraph 16 of Schedule 3 and Schedule 14 to, the Welfare Reform Act 2012. Section 7 was amended by paragraph 45 of Schedule 2 to the [State Pension Credit Act 2002 \(c.16\)](#), [section 49](#) of, and paragraph 23 of Schedule 3 to, the Welfare Reform Act 2007, paragraph 11 of Schedule 2, paragraph 2 of Schedule 4 and Schedule 7 to the Welfare Reform Act 2009, sections 118 and 119 of, and paragraph 59 of Schedule 2, paragraph 17 of Schedule 3 and Schedule 14 to, the Welfare Reform Act 2012, paragraph 45 of Schedule 2 to the [Criminal Justice and Licensing \(Scotland\) Act 2010 \(asp 13\)](#) and [S.I. 2011/2298](#).

### Jobseeking periods: periods of interruption of employment

- 38.**—(1) For the purposes of section 2(4)(b)(i) of the Act and for determining any waiting days—
- (a) where a linked period commenced before 7th October 1996, any days of unemployment which form part of a period of interruption of employment where the last day of unemployment in that period of interruption of employment was no more than eight weeks before the date upon which that linked period commenced;
  - (b) where a jobseeking period or a linked period commences on 7th October 1996, any period of interruption of employment ending within the eight weeks preceding that date; or
  - (c) where a jobseeking period or a linked period commences after 7th October 1996, any period of interruption of employment ending within the 12 weeks preceding the day the jobseeking period or linked period commenced,

must be treated as a jobseeking period and, for the purposes of sub-paragraph (a), a day must be treated as being, or not being, a day of unemployment in accordance with section 25A of the Benefits Act (determination of days for which unemployment benefit is payable)<sup>M9</sup> and with any regulations made under that section, as in force on 6th October 1996.

- (2) In this regulation—

“period of interruption of employment” in relation to a period prior to 7th October 1996 has the same meaning as it had in the Benefits Act by virtue of section 25A of that Act as in force on 6th October 1996;

“waiting day” means a day—

- (a) at the beginning of a jobseeking period; and
- (b) in respect of which a person is not entitled to a jobseeker's allowance.

#### Marginal Citations

- M9** Section 25A was inserted by paragraph 5 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 and repealed by Schedule 3 to the Jobseekers Act 1995.

### Linking Periods

- 39.**—(1) For the purposes of the Act, two or more jobseeking periods must be treated as one jobseeking period where they are separated by a period comprising only—

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- (a) any period of not more than 12 weeks;
  - (b) a linked period;
  - (c) any period of not more than 12 weeks falling between—
    - (i) any two linked periods; or
    - (ii) a jobseeking period and a linked period; or
  - (d) a period in respect of which the claimant is summoned for jury service and is required to attend court.
- (2) Linked periods for the purposes of the Act are any of the following periods—
- (a) to the extent specified in paragraph (4), any period throughout which the claimant is entitled to a carer's allowance under section 70 of the Benefits Act <sup>M10</sup>;
  - (b) any period throughout which the claimant is incapable of work, or is treated as incapable of work, in accordance with Part 12A of the Benefits Act <sup>M11</sup>;
  - (c) any period throughout which the claimant has, or is treated as having, limited capability for work for the purposes of Part 1 of the Welfare Reform Act 2007;
  - (d) any period throughout which the claimant was entitled to a maternity allowance under section 35 of the Benefits Act <sup>M12</sup>;
  - (e) any period throughout which the claimant was engaged in training for which a training allowance is payable;
  - (f) a period which includes 6th October 1996 during which the claimant attends court in response to a summons for jury service and which was immediately preceded by a period of entitlement to unemployment benefit.
- (3) A period is a linked period for the purposes of section 2(4)(b)(ii) of the Act only where it ends within 12 weeks or less of the commencement of a jobseeking period or of some other linked period.
- (4) A period of entitlement to carer's allowance is a linked period only where it enables the claimant to satisfy contribution conditions for entitlement to a jobseeker's allowance which the claimant would otherwise be unable to satisfy.

#### **Marginal Citations**

**M10** Section 70 was amended by S.I.s 1994/2556, 2002/1457 and 2011/2426.

**M11** Part 12A was inserted by section 5 of the Social Security (Incapacity for Work) Act 1994.

**M12** Section 35 was amended by section 67 of the Social Security Act 1998, section 4(2) of the Still-Birth (Definition) Act 1992 (c.29), section 53 of the Welfare Reform and Pensions Act 1999, paragraph 4 of Schedule 7 to the Employment Act 2002 (c.22), paragraph 6 of Schedule 1 to the Work and Families Act 2006, section 63 of the Welfare Reform Act 2012 and S.I. 1994/1230.

#### **Persons approaching retirement and the jobseeking period**

- 40.**—(1) The provisions of this regulation apply only to days—
- (a) which fall after 6th October 1996 and within a tax year in which the claimant has attained the qualifying age for state pension credit (which is, in the case of a woman, pensionable age and in the case of a man, the age which is pensionable age in the case of a woman born on the same day as the man) but is under pensionable age; and
  - (b) in respect of which a jobseeker's allowance is not payable because the decision of the determining authority is that the claimant—
    - (i) has exhausted their entitlement to a jobseeker's allowance;

(ii) fails to satisfy one or both of the contribution conditions specified in section 2(1) (a) and (b) of the Act; or

(iii) is entitled to a jobseeker's allowance but the amount payable is reduced to nil by virtue of deductions made in accordance with regulation 51 for pension payments.

(2) For the purposes of regulation 37(1) (jobseeking period) but subject to paragraphs (3), (4) and (5), any days to which paragraph (1) applies and in respect of which the person does not satisfy the condition specified in section 1(2)(b) of the Act (conditions of entitlement to a jobseeker's allowance), are to be days on which the person is treated as satisfying the condition in section 1(2) (b) and (e) to (i) of the Act.

(3) Where a person is employed as an employed earner or a self-employed earner for a period of more than 12 weeks, then no day which falls within or follows that period is to be a day on which the person is treated as satisfying those conditions, but this paragraph is not to prevent paragraph (2) from again applying to a person who makes a claim for a jobseeker's allowance after that period.

(4) Any day which is, for the purposes of section 30C of the Benefits Act <sup>M13</sup>, a day of incapacity for work falling within a period of incapacity for work is not to be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).

(5) Any day which, for the purposes of Part 1 of the Welfare Reform Act 2007, is a day where the person has limited capability for work falling within a period of limited capability for work is not to be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).

#### Marginal Citations

**M13** Section 30C was inserted by section 3 of the Social Security (Incapacity for Work) Act 1994 and amended by paragraph 25 of Schedule 3 to the [Tax Credits Act 2002 \(c.21\)](#).

### Persons temporarily absent from Great Britain

**41.**—(1) For the purposes of the Act, a claimant must be treated as being in Great Britain during any period of temporary absence from Great Britain—

- (a) not exceeding four weeks in the circumstances specified in paragraph (2);
- (b) not exceeding eight weeks in the circumstances specified in paragraph (3).

(2) The circumstances specified in this paragraph are that—

- (a) the claimant is in Northern Ireland and satisfies the conditions of entitlement to a jobseeker's allowance;
- (b) immediately preceding the period of absence from Great Britain, the claimant was entitled to a jobseeker's allowance; and
- (c) the period of absence is unlikely to exceed 52 weeks.

(3) The circumstances specified in this paragraph are that—

- (a) immediately preceding the period of absence from Great Britain, the claimant was entitled to a jobseeker's allowance;
- (b) the period of absence is unlikely to exceed 52 weeks;
- (c) the claimant continues to satisfy or be treated as satisfying the other conditions of entitlement to a jobseeker's allowance;
- (d) the claimant is, or the claimant and any other member of their family are, accompanying a member of the claimant's family who is a child or young person solely in connection

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- with arrangements made for the treatment of that child or young person for a disease or bodily or mental disablement; and
- (e) those arrangements relate to treatment—
- (i) outside Great Britain;
  - (ii) during the period whilst the claimant is, or the claimant and any member of their family are, temporarily absent from Great Britain; and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.
- (4) A person must also be treated, for the purposes of the Act, as being in Great Britain during any period of temporary absence from Great Britain where—
- (a) the absence is for the purpose of attending an interview for employment;
  - (b) the absence is for seven consecutive days or less;
  - (c) notice of the proposed absence is given to the Secretary of State before departure, and is given in writing if so required by the Secretary of State; and
  - (d) on their return to Great Britain the person satisfies the Secretary of State that they attended for the interview in accordance with their notice.
- (5) For the purposes of the Act a claimant must be treated as being in Great Britain during any period of temporary absence from Great Britain if—
- (a) the claimant 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 the treatment is being provided—
    - (i) under section 6(2) of the Health Service Act (performance of functions outside England) <sup>M14</sup> or section 6(2) of the Health Service (Wales) Act (performance of functions outside Wales);
    - (ii) pursuant to arrangements made under section 12(1) of the Health Service Act (Secretary of State's arrangements with other bodies) <sup>M15</sup>, section 10(1) of the Health Service (Wales) Act (Welsh Minister's arrangements with other bodies), paragraph 18 of Schedule 4 to the Health Service Act (joint exercise of functions) <sup>M16</sup> or paragraph 18 of Schedule 3 to the Health Service (Wales) Act (joint exercise of functions) <sup>M17</sup>; or
    - (iii) under any equivalent provision in Scotland or pursuant to arrangements made under such provision.
- (6) For the purposes of the Act, a person must be treated as being in Great Britain during any period of temporary absence from Great Britain not exceeding 15 days where—
- (a) the absence is for the purpose of taking part in annual continuous training as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 <sup>M18</sup>; and
  - (b) the person was entitled to a jobseeker's allowance immediately before the period of absence.
- (7) In this regulation, “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

### Marginal Citations

- M14** Section 6(2) was amended by paragraph 2 of Schedule 4 to the [Health and Social Care Act 2012 \(c.7\)](#).
- M15** Section 12(1) was amended by paragraph 8 of Schedule 4 to the Health and Social Care Act 2012.
- M16** Paragraph 18 of Schedule 4 was amended by paragraph 22 of Schedule 4 to the Health and Social Care Act 2012.
- M17** Paragraph 18 of Schedule 3 was amended by paragraph 40 of Schedule 21 to the Health and Social Care Act 2012.
- M18** [S.I. 2001/1004](#).

### Remunerative work

- 42.**—(1) For the purposes of the Act, “remunerative work” means work—
- (a) for which payment is made or which is done in expectation of payment; and
  - (b) in which a claimant is—
    - (i) engaged for 16 or more hours per week; or
    - (ii) where their hours of work fluctuate, engaged on average for 16 or more hours per week.
- (2) For the purposes of paragraph (1), the number of hours in which a claimant is engaged in work is to be determined—
- (a) where no recognisable cycle has been established in respect of a person's work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which they are expected to work in a week;
  - (b) where the number of hours for which they are engaged fluctuate, by reference to the average of hours worked over—
    - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
    - (ii) in any other case, the period of five weeks immediately before the date of claim or the date of supersession, or such other length of time as may, in the particular case, enable the person's average hours of work to be determined more accurately.
- (3) In determining in accordance with this regulation the number of hours for which a person is engaged in remunerative work—
- (a) that number must include any time allowed to that person by their employer for a meal or for refreshments, but only where the person is, or expects to be, paid earnings in respect of that time;
  - (b) no account must be taken of any hours in which the person is engaged in an employment or scheme to which any one of sub-paragraphs (a) to (e) of regulation 44(1) (person treated as not engaged in remunerative work) applies;
  - (c) no account must be taken of any hours in which the person is engaged otherwise than in an employment as an earner in caring for—
    - (i) a person who is in receipt of attendance allowance, the care component <sup>F1</sup>. . . the daily living component [<sup>F2</sup>or armed forces independence payment,] ;
    - (ii) a person who has claimed an attendance allowance [<sup>F3</sup>armed forces independence payment,] , a disability living allowance or personal independence payment, but only for the period beginning with the date of claim and ending on the date on which the

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claim is determined or, if earlier, on the expiration of the period of 26 weeks from the date of claim;

- (iii) another person and is in receipt of a carer's allowance under section 70 of the Benefits Act; or
- (iv) a person who has claimed either an attendance allowance [<sup>F4</sup>armed forces independence payment,] , a disability living allowance or personal independence payment and has an award of attendance allowance [<sup>F5</sup>armed forces independence payment,] , the care component or the daily living component for a period commencing after the date on which that claim was made.

(4) In this regulation—

[<sup>F6</sup>“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;]

“disability living allowance” means a disability living allowance under section 71 of the Benefits Act <sup>M19</sup>;

“care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Benefits Act;

“daily living component” means the daily living component of personal independence payment at the standard or enhanced rate referred to in section 78 of the Welfare Reform Act 2012;

“personal independence payment” means an allowance under Part 4 of the Welfare Reform Act 2012.

#### Textual Amendments

- F1** Word in reg. 42(3)(c)(i) omitted (8.4.2013) by virtue of [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(a)(i)**
- F2** Words in reg. 42(3)(c)(i) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(a)(ii)**
- F3** Words in reg. 42(3)(c)(ii) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(b)**
- F4** Words in reg. 42(3)(c)(iv) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(c)**
- F5** Words in reg. 42(3)(c)(iv) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(d)**
- F6** Words in reg. 42(4) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), arts. 2(2), 7, **Sch. para. 52(2)(e)**

#### Marginal Citations

- M19** Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999.

#### Persons treated as engaged in remunerative work

**43.—**(1) Except in the case of a person on maternity leave, paternity leave, adoption leave or absent from work through illness, a person is to be treated as engaged in remunerative work during



any period for which they are absent from work referred to in regulation 42(1) (remunerative work) where the absence is either without good cause or by reason of a recognised, customary or other holiday.

(2) Subject to paragraph (3), a person who was, or was treated as being, engaged in remunerative work and in respect of that work earnings to which regulation 58(1)(c) (earnings of employed earners) applies are paid, is to be treated as engaged in remunerative work for the period for which those earnings are taken into account in accordance with Part 7.

(3) Paragraph (2) does not apply to earnings disregarded under paragraph 1 of the Schedule to these Regulations.

### Persons treated as not engaged in remunerative work

- 44.—(1) A person is to be treated as not engaged in remunerative work in so far as they are—
- (a) engaged by a charity <sup>M20</sup> or a voluntary organisation or are a volunteer where the only payment received by them or due to be paid to them is a payment in respect of any expenses incurred, or to be incurred, if they otherwise derive no remuneration or profit from the employment;
  - (b) engaged on a scheme for which a training allowance is being paid;
  - (c) engaged in employment as—
    - (i) in England and Wales, a part-time fire-fighter employed by a fire and rescue authority;
    - (ii) in Scotland, a part-time fire-fighter employed by a fire and rescue authority as defined in section 1 of the Fire (Scotland) Act 2005 <sup>M21</sup> or a joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of that Act;
    - (iii) an auxiliary coastguard in respect of coastal rescue activities;
    - (iv) a person engaged part-time in the manning or launching of a lifeboat;
    - (v) a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001;
  - (d) performing their duties as a councillor, and for this purpose “councillor” has the same meaning as in section 171F(2) of the Benefits Act <sup>M22</sup>;
  - (e) engaged in caring for a person who is accommodated with them by virtue of arrangements made under any of the provisions referred to in regulation 60(2)(b) or (c), and are in receipt of any payment specified in regulation 60(2)(b) or (c);
  - (f) engaged in an activity in respect of which—
    - (i) a sports award had been made, or is to be made, to them; and
    - (ii) no other payment is made or is expected to be made to them;
  - (g) engaged in the programme known as Work Experience.

(2) In this regulation, “volunteer” means a person who is engaged in voluntary work, otherwise than for a close relative, grand-parent, grand-child, uncle, aunt, nephew or niece, where the only payment received, or due to be paid to the person by virtue of being so engaged, is in respect of any expenses reasonably incurred by the person in connection with that work.

#### Marginal Citations

**M20** See section 1 of the [Charities Act 2011 \(c.25\)](#).

**M21** [2005 asp 5](#).

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**M22** Section 171F was inserted by section 6 of the Social Security (Incapacity for Work) Act 1994.

### Relevant education

**45.**—(1) For the purposes of the Act—

- (a) a person is to be treated as receiving relevant education if they are a qualifying young person; and
- (b) the following are to be treated as relevant education—
  - (i) undertaking a full-time course of advanced education; and
  - (ii) undertaking any other full-time course of study or training at an educational establishment for which a student loan, grant or bursary is provided for the person's maintenance or would be available if the person applied for it.

(2) In paragraph (1)(b)(i), “course of advanced education” means—

- (a) a course of study leading to—
  - (i) a postgraduate degree or comparable qualification;
  - (ii) a first degree or comparable qualification;
  - (iii) a diploma of higher education;
  - (iv) a higher national diploma; or
- (b) any other course of study which is of a standard above advanced GNVQ or equivalent, including a course which is of a standard above a general certificate of education (advanced level), or above a Scottish national qualification (higher or advanced higher).

(3) A claimant who is not a qualifying young person and is not undertaking a course described in paragraph (1)(b) is nevertheless to be treated as receiving relevant education if the claimant is undertaking a course of study or training that is not compatible with any work-related requirement imposed on the claimant by the Secretary of State.

(4) For the purposes of paragraph (1)(b), a person is to be regarded as undertaking a course—

- (a) throughout the period beginning on the date on which the person starts undertaking the course and ending on the last day of the course or on such earlier date (if any) as the person finally abandons it or is dismissed from it; or
- (b) where a person is undertaking a part of a modular course, for the period beginning on the day on which that part of the course starts and ending—
  - (i) on the last day on which the person is registered with the provider of the course, or part of the course, as undertaking that part; or
  - (ii) on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

(5) The period referred to in paragraph (4)(b) includes—

- (a) where a person has failed examinations or has failed to complete successfully a module relating to a period when the person was undertaking a part of the course, any period in respect of which the person undertakes the course for the purpose of retaking those examinations or that module; and
- (b) any period of vacation within the period specified in paragraph (4)(b) or immediately following that period except where the person has registered with the provider of the course, or part of the course, to attend or undertake the final module in the course and the vacation immediately follows the last day on which the person is to attend or undertake the course.

(6) A person is not to be regarded as undertaking a course by virtue of this regulation for any part of the period mentioned in paragraph (4) during which the following conditions are met—

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

(7) In this regulation, except where paragraph (8) applies, “qualifying young person” means a person who has reached the age of 16 but not the age of 20—

- (a) up to, but not including, the 1st September following their 16th birthday; and
- (b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled in, or accepted for, approved training or a course of education—
  - (i) which is not a course of advanced education;
  - (ii) which is provided at a school or college or provided elsewhere but approved by the Secretary of State; and
  - (iii) where the average time spent during term time (excluding meal breaks) in receiving tuition, engaging in practical work, or supervised study, or taking examinations exceeds 12 hours per week.

(8) A person is not a “qualifying young person” within the meaning in paragraph (7) where they—

- (a) are aged 19 and have not started the education or training or been enrolled or accepted for it before reaching the age of 19;
- (b) fall within paragraph (7)(b) and their education or training is provided by means of a contract of employment; or
- (c) are receiving universal credit, an employment or support allowance or a jobseeker's allowance.

(9) In this regulation—

“approved training” means training in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973 or section 2(3) of the Enterprise and New Towns (Scotland) Act 1990 which is approved by the Secretary of State for the purposes of this regulation;

“modular course” means a course which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course;

“student loan” means a loan towards a student's maintenance pursuant to any regulations made under section 22 of the Teaching and Higher Education Act 1998 <sup>M23</sup>, section 73 of the Education (Scotland) Act 1980 <sup>M24</sup> or Article 3 of the Education (Student Support) (Northern Ireland) Order 1998 <sup>M25</sup>, including in Scotland a young student's bursary paid under regulation 4(1)(c) of the Student's Allowances (Scotland) Regulations 2007 <sup>M26</sup>.

#### Marginal Citations

**M23** 1998 c.30. Section 22 was amended by section 146 of the [Learning and Skills Act 2000 \(c.21\)](#), [sections 42 and 43 of the Higher Education Act 2004 \(c.8\)](#), [section 257 of the Apprenticeships, Skills, Children and Learning Act 2009 \(c.22\)](#), [section 76 of the Education Act 2011 \(c.21\)](#), [paragraph 236 of Schedule 6 to the Income Tax \(Earnings and Pensions\) Act 2003 \(c.1\)](#) and section 147 of the [Finance Act 2003 \(c.14\)](#).

*Status: Point in time view as at 29/04/2013.*

*Changes to legislation: There are currently no known outstanding effects for the The Jobseeker's Allowance Regulations 2013, PART 5. (See end of Document for details)*

- M24** 1980 c.44. Section 73 was amended by section 73 of the [Self-Governing Schools etc \(Scotland\) Act 1989 \(c.39\)](#), [section 29](#) of the Teaching and Higher Education Act 1998 and section 3 of the [Education \(Graduate Endowment and Student Support\) \(Scotland\) Act 2001 \(asp 6\)](#).
- M25** S.I. 1998/1760 (N.I. 14).
- M26** S.S.I 2007/153.

### Short periods of sickness

**46.**—(1) Subject to the following provisions of this regulation, a person who—

- (a) satisfies the requirements for entitlement to a jobseeker's allowance or has been awarded a jobseeker's allowance, or is a person to whom any of the circumstances mentioned in section 6J(2) or (3) or 6K(2) of the Act apply;
- (b) proves to the satisfaction of the Secretary of State that they are unable to work on account of some specific disease or disablement; and
- (c) but for their disease or disablement, would satisfy the requirements for entitlement to a jobseeker's allowance other than those specified in section 1(2)(f) of the Act (capable of work or not having limited capability for work),

is to be treated for a period of not more than two weeks, beginning on the day on which subparagraphs (a) to (c) are met, as capable of work or as not having limited capability for work, except where the claimant states in writing that for the period of their disease or disablement they propose to claim or have claimed employment and support allowance.

(2) The evidence which is required for the purposes of paragraph (1)(b) is a declaration made by the claimant in writing, in a form approved for the purposes by the Secretary of State, that they have been unfit for work from a date or for a period specified in the declaration.

(3) The preceding provisions of this regulation do not apply to a claimant on more than two occasions in any one jobseeking period or, where a jobseeking period exceeds 12 months, in each successive 12 months within that period; and for the purposes of calculating any period of 12 months, the first 12 months in the jobseeking period commences on the first day of the jobseeking period.

(4) The preceding provisions of this regulation do not apply to any person where the first day in respect of which they are unable to work falls within eight weeks after the day the person ceased to be entitled to statutory sick pay.

(5) The preceding provisions of this regulation do not apply to a claimant who is temporarily absent from Great Britain in the circumstances prescribed by regulation 41(5).

### Periods of sickness and persons receiving treatment outside Great Britain

**47.**—(1) A person—

- (a) who has been awarded a jobseeker's allowance, or is a person to whom any of the circumstances mentioned in section 6J(2) or (3) or 6K(2) of the Act apply;
- (b) who is temporarily absent from Great Britain in the circumstances prescribed by regulation 41(5);
- (c) who proves to the satisfaction of the Secretary of State that they are unable to work on account of some specific disease or disablement; and
- (d) but for their disease or disablement, would satisfy the requirements for entitlement to a jobseeker's allowance other than those specified in section 1(2)(f) of the Act (capable of work or not having limited capability for work),

is to be treated during that period of temporary absence abroad as capable of work or as not having limited capability for 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 they have claimed employment and support allowance.

(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 they are unfit for work from a date or for a period specified in the declaration.

### **Prescribed amount of earnings**

**48.** The prescribed amount of earnings for the purposes of section 2(1)(c) of the Act (the contribution-based conditions) is to be calculated by applying the formula—

$$\left( A + D \right) - \pounds 0.01$$

where—

A is the age-related amount applicable to the claimant for the purposes of section 4(1)(a) of the Act<sup>M27</sup>; and

D is any amount disregarded from the claimant's earnings in accordance with the Schedule to these Regulations and either regulation 59(2) (calculation of net earnings of employed earners) or regulation 61(2) (calculation of net profit of self-employed earners).

#### **Marginal Citations**

**M27** Section 4(1)(a) was amended by Schedule 14 to the Welfare Reform Act 2012.

**Status:**

Point in time view as at 29/04/2013.

**Changes to legislation:**

There are currently no known outstanding effects for the The Jobseeker's Allowance Regulations 2013, PART 5.