Chapter 20 - Jobseeker’s Allowance and Income Support - conditions of entitlement

Contents

Entitlement to Jobseeker’s Allowance and Income Support

General rules on entitlement

Introduction 20001

Jobseeker’s Allowance - basic conditions 20003

Jobseeker’s Allowance - joint claims from 28.10.02 20004

Claimant entitled to income-based  
Jobseeker’s Allowance on 27.10.02 20006

Persons in receipt of a training allowance 20007

Definition of training allowance 20008

Under pension age 20010

Contribution-based Jobseeker’s Allowance - additional conditions 20015

Income-based Jobseeker’s Allowance - additional conditions 20016

Jobseeker’s Allowance joint claims 20017

Income Support - basic conditions 20022

Jobseeker’s Allowance joint claims - exemptions 20023

Studying full time 20025

Regular carer 20027

Incapable of work 20028

Limited capability for work 20030

People in work living in a residential care home,  
nursing home, Abbeyfield home or an  
independent hospital (revoked…but see Appendix 6) 20031

Disabled worker (revoked…but see Appendix 6) 20040

Disabled students (revoked but see Appendix 7) 20041

Deaf students (revoked but see Appendix 7) 20042

Blind members (revoked but see Appendix 7) 20043

Pregnant woman 20044

Refugee learning English 20045

Member required to attend court 20046

Meaning of tribunal 20047

Young person in training 20048

Member affected by a trade dispute 20049

Previous entitlement to joint-claim 20050

Entitlement of a new joint-claim couple to a Jobseeker’s Allowance 20063

One member does not satisfy prescribed conditions 20065

Polygamous marriage 20067

People entitled to Income Support 20081

Lone parents 20082

Lone parents from 02.12.08 20083

Special rules from 02.12.08 20086

Lone parents from 26.10.09 20090

Special rules from 26.10.09 20093

Lone parents from 25.10.10 20095

Special rules from 25.10.10 20098

Definition of a child 20102

Treated as responsible for a child 20103

Lone foster parents 20104

Meaning of placed 20105

Residence orders 20106

Single person looking after children prior to adoption 20107

People temporarily looking after another person 20110

Temporary absence 20111

Childminders 20113

Regular carers 20116

Regularly and substantially 20117

Substantially caring 20118

Awaiting outcome of claim to Attendance Allowance,  
Disability Living Allowance, Armed Forces Independence  
Payment or Personal Independence Payment 20120

Recently ceased to care or no longer awaiting  
outcome of claims to Attendance Allowance,  
Disability Living Allowance, Armed Forces Independence  
Payment or Personal Independence Payment 20122

People incapable of work, treated as incapable and  
entitled to Statutory Sick Pay 20134

Incapacity tests 20135

Treated as incapable 20136

Treated as capable 20138

Disabled workers (revoked…but see Appendix 6) 20152

People in work living in a residential care home, nursing home,  
Abbeyfield home or an independent hospital  
(revoked…but see Appendix 6) 20153

People entitled to Mortgage Interest Run-on 20154

Disabled students (revoked…but see Appendix 5) 20155

Old student cases 20157

Hearing impaired students (revoked…but see Appendix 5) 20158

Visually impaired people (revoked…but see Appendix 5) 20159

Pregnant women 20160

Incapable of work by reason of pregnancy 20161

Expected week of confinement 20162

Parental leave 20163

Paternity leave 20164

Certain people in relevant education 20165

Second chance learning 20167

Refugee learning English 20174

People who claim asylum on or after 3.4.00 20175

People required to attend court 20176

People affected by a trade dispute 20177

Certain persons subject to immigration control 20178

People in custody 20179

Member of a couple looking after children whilst  
partner temporarily abroad 20181

People appealing against a decision because of capability  
for work 20182

Young person in training 20189

The remunerative work exclusion

Remunerative work-introduction 20200

Contribution-based Jobseeker’s Allowance 20201

Income-based Jobseeker’s Allowance and  
Income Support 20202

Does the claimant have employment 20203

Meaning of remunerative work

Contribution-based Jobseeker’s Allowance 20210

Income-based Jobseeker’s Allowance 20211

Income Support 20212

Treated as in or not in remunerative work 20213

Work done for payment or in expectation of payment 20230

Work for no monetary reward 20231

Payment in kind 20232

Expectation of payment 20233

Self-employed earners 20234

Sale of goods 20236

Business start up 20237

Company directors 20239

Establishing hours of work

Introduction 20250

Jobseeker’s Allowance - carers and specified occupations 20252

Income Support - carers and specified occupations 20257

Counting the hours

Flexible working schemes 20258

Overtime 20259

Breaks 20260

Night Duty 20261

Evidence of hours 20262

Company directors 20263

Musicians 20264

Self-employed 20265

Teachers 20278

Calculating average hours 20293

Identifying a recognisable cycle 20294

Permanent or indefinite control 20295

Fixed term contracts and casual workers 20296

Supply teachers 20297

Extra work 20298

Probation 20299

Recognisable cycle established 20306

Periods when a person does not work 20307

Sickness, maternity leave, paternity leave, adoption  
leave and periods of unauthorised absence 20308

Holidays or periods of no work 20309

Calculating the number of hours for which  
a person is engaged in work 20311

Calculating the average hours 20315

Jobseeker’s Allowance - yearly cycle with  
school holidays or similar vacations 20316

Income Support - yearly cycle with  
school holidays or similar vacations 20317

Ancillary school workers 20318

No recognisable cycle established

Estimating future hours 20320

Averaging past hours 20322

Short-time workers 20327

Changes to the normal hours 20338

Seasonal workers 20339

Averaging the hours 20340

Agency and casual workers 20341

People treated as in remunerative work

Introduction 20390

Contribution-based Jobseeker’s Allowance 20391

Income-based Jobseeker’s Allowance 20392

Income Support 20395

Absence from work without good cause 20397

Good cause 20399

Recognised, customary or other holiday 20410

Certain people affected by a trade dispute 20425

Payment on termination or interruption of employment 20435

People treated as not in remunerative work

Introduction 20464

Childminders 20466

Charity or voluntary workers and volunteers 20467

Meaning of voluntary organisation 20468

Meaning of volunteer 20469

Engaged on a training scheme

Jobseeker’s Allowance 20470

Income Support 20471

People receiving assistance under the self-employed route 20472

Meaning of self-employed route 20473

Engaged in specific occupations 20474

Councillors 20475

Meaning of councillor 20476

**Foster parents and people providing respite care**

Foster parents 20478

People providing respite care 20479

Sports awards 20480

Meaning of sports award 20481

Disabled workers (revoked…but see Appendix 6) 20496

People affected by a trade dispute

Income-based Jobseeker’s Allowance 20499

Income Support 20501

Caring for another person 20502

People living in a residential care home, nursing home,  
Abbeyfield home or an independent hospital  
(revoked…but see Appendix 6) 20504

Mortgage Interest Run-on 20530

People in relevant education

What constitutes relevant education

Introduction 20556

Definition of a child 20557

Definition of a qualifying young person 20558

Education and training condition 20559

16 year olds (15 year olds in Scotland) 20561

Extension period for 16 and 17 year olds 20562

Interruptions 20565

Reasonable cause 20568

School holidays 20569

Education received abroad 20576

Young person held in custody 20577

Cases of doubt 20578

Cases of doubt about recognised establishment or  
education 20579

Hours of attendance 20591

Evening courses 20592

Hours of study in education elsewhere 20598

Non-advanced

Jobseeker’s Allowance 20600

Income Support 20601

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

Introduction 20630

Jobseeker’s Allowance 20631

Qualifying conditions 20633

Income Support 20634

Person is a parent 20646

Person is disabled (revoked…but see Appendix 5) 20647

Person has limited leave to remain 20648

Person is an orphan 20664

Acting in place of parents 20668

Someone claiming Child Benefit or another benefit for the  
young person 20669

Foster parents 20670

Sponsors 20672

Health and Social Services Boards and voluntary organisations 20673

Person of necessity living away from parents 20686

Living away from 20689

Estranged 20690

Physical or moral danger 20693

Serious risk to physical or mental health 20694

Person living away from and cannot be supported by parents 20700

Where claimant has both parents 20701

Chronically sick or disabled 20702

Substantially and permanently disabled 20703

Person leaving accommodation provided by a  
Health and Social Services Board 20725

Refugee learning English 20728

School leavers

Introduction 20750

Person under 16 20752

Terminal dates 20763

External examinations 20778

Period up to the terminal date 20779

Person starts work or training 20780

Age 20 20790

Waiting days

Waiting days 20901

Claimants who do not have to serve waiting days 20902

Participation and signing

Introduction 20909

Participation

Notice to participate in an interview 20911

Signing a declaration

A declaration 20915

**How is entitlement affected**

Entitlement ends 20919

Definitions 20920

Entitlement continues but a sanction is applicable 20921

Period of sanction 20922

One member of a joint-claim couple is sanctioned 20931

Entitlement does not end 20932

Good reason 20935

When entitlement ends 20955

Fails to participate, or participates late 20956

Does not provide a signed declaration, or provides one on the  
wrong day 20957

Limited capability for work

Introduction 20960

**Treated as capable/not having limited capability for work -  
short periods of sickness** 20961

Meaning of week 20962

Entitlement to Jobseeker’s Allowance 20963

Unable to work because of some specific disease or disablement 20967

Already treated as capable / not having limited capability for work  
twice or more in the jobseeking period or year 20971

Extended period of sickness 20972

How the two types of sickness can be used 20977

When the extended period of sickness will not apply 20979

National Health Service treatment abroad 20980

Treated as capable - personal capability assessment  
(incapacity for work) 20985

**Treated as not having limited capability for work  
(Employment and Support Allowance)** 20986

Capable of work

Meaning of capable of work 20988

Medical evidence 20997

**Appendix 1** - Pension age

**Appendix 3** - Recognised customary or other holiday

**Appendix 5** - Savings provisions - prescribed categories of person

**Appendix 6** - Savings provisions - disabled workers

**Appendix 7** - Savings provisions - Jobseeker’s Allowance joint-claim couple exemptions

Statutes commonly referred to in Chapter 20

**Full Title Abbreviation**

Disabled Persons (Employment) Dis P (E) Act (NI) 45

Act (Northern Ireland) 1945

Employment and Training Act E&T Act (NI) 50

(Northern Ireland) 1950

Enduring Power of Attorney Enduring Power of Attorney (Northern Ireland) Order 1987 (NI) Order 87

Jobseeker's (Northern Ireland) Order JS (NI) Order 95

1995

Powers of Attorney Act Powers of Attorney Act (Northern Ireland) 1971 (NI) 71

Social Security Administration SS A (NI) Act 92

(Northern Ireland) Act 1992

Social Security Contributions and SS C&B (NI) Act 92

Benefits (Northern Ireland) Act 1992

Statutory Rules commonly referred to in Chapter 20

S**hort description Full title Abbreviation**

Child Benefit The Child Benefit (General) CHB (Gen) Regs  
Regulations Regulations 2006 No 223

Claims and The Social Security (Claims SS (C&P) Regs (NI)  
Payments and Payments) Regulations  
Regulations (Northern Ireland) 1987

No 465

Decisions and The Social Security and SS & CS (D&A) Regs (NI)

Appeals Child Support (Decisions and

Regulations Appeals) Regulations

(Northern Ireland) 1999 No 162

Income Related The Income Related Benefits IRB & SF (Misc  
Benefits and and Social Fund Amdts) Regs (NI) 96  
Social Fund (Miscellaneous Amendments)  
Regulations Regulations (Northern Ireland)

1996 No 405

Income Support The Income Support IS (Gen) Amdt Regs (NI)  
Amendment (General) Amendment  
 Regulations No 3 Regulations (Northern

Ireland) 1991 No 338

Income Support The Income Support IS (Gen) Regs (NI)  
Regulations (General) Regulations

(Northern Ireland) 1987

No 459

Incapacity for The Social Security SS (IW) (Gen) Regs (NI)  
Work (General) (Incapacity for Work)  
Regulations (General) Regulations

(Northern Ireland) 1995

No 41

Jobseeker’s The Jobseeker’s Allowance JSA Regs (NI)  
Allowance Regulations (Northern Ireland)

Regulations 1996 No 198

Members of the The Social Security Benefit SS (Ben) (Members of   
Forces Regulations (Members of the Forces) Forces) Regs Regulations 1975 No 493

Chapter 20 - Jobseeker’s Allowance and Income Support - conditions of entitlement

Entitlement to Jobseeker’s Allowance and Income Support

General rules on entitlement

Introduction

20001 This Chapter contains guidance on the basic conditions of entitlement for Jobseeker’s Allowance and Income Support plus detailed guidance on

**1.** the basic conditions for entitlement for Jobseeker’s Allowance, including joint claims1

**2.** people entitled to claim Income Support

**3.** remunerative work

1. relevant education
2. Mortgage Interest Run-on.

Where the rules differ between Jobseeker’s Allowance and Income Support this is stated in the guidance.

1 JS (NI) Order 95, art 3(2B)

20002 Jobseeker’s Allowance and Income Support each have their own conditions of entitlement but there are some general rules which apply to both

**1.** a person cannot be entitled to Jobseeker’s Allowance or Income Support unless a valid claim is made1

**2.** a person under the age of 16 can never be entitled to Jobseeker’s Allowance or Income Support2

**3.** an eligible child or a relevant child cannot be entitled to income-based Jobseeker’s Allowance or Income Support3 unless they fall within DMG 30546 et seq or 30565 et seq

**4.** to be entitled to Jobseeker’s Allowance or Income Support a person must be in Northern Ireland4. This means **lawfully** in Northern Ireland. A person who

1. has entered Northern Ireland unlawfully **and**
2. makes no representations to the Immigration Department is not entitled to Jobseeker’s Allowance or Income Support. A person who does make representations to the Immigration Department could be a person from abroad

**5.** a person, and where relevant their partner, satisfy the national insurance number provisions5 (see DMG Chapter 2).

1 SS A (NI) Act 92, sec 1(1), (4)(b) ; 2 JS (NI) Order 95, art 5(1)(f) & 5A(1)(e); SS C&B (NI) Act 92, sec 123(1);  
3 Children (Leaving Care) Act (NI) 2002, sec 6;  
Children (Leaving Care) (2002 Act) (Comm. No.2 & Conseq. Provs) Order (NI) 2005, Sch 1, para 1 & Sch 3, para 1;  
JSA Regs (NI), reg 57; IS (Gen) Regs (NI), reg 4ZA; 4 JS (NI) Order 95, art 3(2)(i); SS C&B (NI) Act 92, sec 123(1);  
5 IS (Gen) Regs (NI), reg 2A(b) ; JSA Regs (NI), reg 2A,

Jobseeker’s Allowance - basic conditions

20003 **[See ADM Memo 7/19][See DMG Memo Vol 1/117, 4/145, 8/93 & 13/75]** People are entitled to Jobseeker’s Allowance1 if they

**1.** are available for and actively seeking employment and have a current Jobseeker’s agreement but see DMG 20007 where a person is in receipt of a training allowance **and**

**2.** are not in remunerative work **and**

**3.** are not involved in a Trade Dispute2 **and**

**4.** are capable of work3/do not have limited capability for work **and**

**5.** are not in relevant education **and**

**6.** are in Northern Ireland (except for certain temporary absences abroad) **and**

**7.** are under pension age **and**

**8.** satisfy

**8.1** the conditions for contribution-based Jobseeker’s Allowance4 **or**

**8.2** the conditions for income-based Jobseeker’s Allowance5.

**Note :** Special rules apply to share fishermen (see DMG Chapter 27) and joint claims for Jobseeker’s Allowance. Members of reserve forces can be entitled to Jobseeker’s Allowance whilst attending continuous training, which can include training outside of Northern Ireland6.

1 JS (NI) Order 95, art 3(2); 2 art 16; 3 ESA (Trans Provs) Regs (NI), reg 5;  
4 reg 4; 5 reg 5; 6 JSA Regs (NI), reg 14(1)(u)

Jobseeker’s Allowance - joint claims from 28.10.02

20004 Where the context specifies “the claimant” in the case of joint claims it should be read as “a claimant”. From and including 28.10.02, a joint claim to Jobseeker’s Allowance must be made (other than in the circumstances described in DMG 20006) where one or both members of a couple are

**1.** born on or after 28.10.471 **and**

**2.** aged 18 or over **and**

**3.** there are no children in the household or the assessment **and**

**4.** neither are working 16 hours or more a week **and**

**5.** there is an element of income-based Jobseeker’s Allowance in their assessment.

*1 JSA Regs (NI), reg 3A(1) & JS (NI) Order 95, art 3(4)*

**Note :** The definition of a claimant is in DMG Chapter 22.

20005

Claimant entitled to income-based Jobseeker’s Allowance on 27.10.02

20006 Where a claimant is entitled to income-based Jobseeker’s Allowance on 27.10.02 they can continue to receive income-based Jobseeker’s Allowance **without** having to make a joint claim with their partner (only until the day their partner is required to attend a place specified by an Employment Officer in a notification given or sent to the partner) if1

**1.** they satisfy the conditions of entitlement for income-based Jobseeker’s Allowance2 **and**

**2.** their partner does not satisfy all the following conditions of entitlement3

**2.1** being available

**2.2** having a jobseeker’s agreement

**2.3** actively seeking employment

**2.4** not being in remunerative work

**2.5** being capable

**2.6** not being in relevant education

**2.7** being under pension age

**2.8** being in Northern Ireland.

1 JSA Regs (NI), reg 3E(2)(a); 2 reg 3E(1)(a); 3 reg 3E(1)(c)

**Example**

Josh and Meg are both 40 years old. Josh is getting income-based Jobseeker’s Allowance for himself and Meg and attends the Jobs & Benefits Office on a Wednesday every fortnight. Meg receives a letter from the Jobs & Benefits Office asking her to attend an interview on Thursday 14 November to make a joint claim for Jobseeker’s Allowance. Josh can continue to get income-based Jobseeker’s Allowance for himself and Meg until Thursday 14 November. From Friday 15 November he will only be able to get income-based Jobseeker’s Allowance as a part of a joint claim couple with Meg.

Persons in receipt of a training allowance

20007 A person who is in receipt of a training allowance, is entitled to income-based Jobseeker’s Allowance without1

**1.** being available for employment **or**

**2.** having entered into a jobseeker’s agreement **or**

**3.** actively seeking employment.

But this does not apply to a qualifying young person or a child2.

1 JSA Regs (NI), reg 168; 2 SS C&B (NI) Act 92, sec 138

**Definition of training allowance**

20008 A training allowance is1 an allowance payable

**1.** out of public funds by

**1.1** a government department **or**

**1.2** on behalf of the Department for Employment and Learning

**2.** to people for

**2.1** their maintenance **or**

**2.2** a member of their family **and**

**3.** for the period, or part of the period, that they are taking part in a course of training or instruction

**3.1** provided by, or under arrangements made with, a government department **or**

**3.2** approved by that department in relation to the person **or**

**3.3** so provided or approved by or on behalf of the Department for Employment and Learning.

**Note :** An allowance paid directly or indirectly by the European Social Fund is paid out of public funds2. Decision makers will have to consider whether **2.** and **3.** are also satisfied.

1 JSA Regs (NI), reg 1(2); IS (Gen) Regs (NI), reg 2(1); 2 R(IS) 10/98

20009 A training allowance does not include

**1.** an allowance paid by a government department to, or for, a person who is

**1.1** following a course of full-time education (unless that course is arranged under prescribed legislation1) **or**

**1.2** training to be a teacher2 **or**

**2.** an allowance paid by a Health and Social Services Board or a voluntary organisation3 **or**

**3.** an allowance paid directly or indirectly from the public funds of a foreign country4.

1 Dis P (E) Act (NI) 45, sec 2 & 3; E&T Act (NI) 50, sec 1(1);  
2 JSA Regs (NI), reg 1(2); 3 R(P) 13/56; 4 R(P) 5/56

Under pension age

20010 To be entitled to Jobseeker’s Allowance a person must be under pension age1. Pension age is2

**1.** for a man - the 65th birthday **or**

**2.** for a woman

**2.1** born before 06.04.50 - the 60th birthday **or**

**2.2** born after 05.04.55 - the 65th birthday **or**

**2.3** born 06.04.50 - 05.04.55 inclusive - see Appendix 1 to this Chapter.

1 JS (NI) Order 95, art 3(2)(h); 2 Pensions (NI) Order 95, Sch 2, part 1

20011 - 20014

Contribution-based Jobseeker’s Allowance - additional conditions

20015 In addition to the conditions at DMG 20003 **1.** - **7.**, to be entitled to contribution-based Jobseeker’s Allowance1 a person must

**1.** satisfy contribution conditions (see DMG 21051 et seq) **and**

**2.** not have earnings in excess of the prescribed amount (see DMG 21081 et seq) **and**

**3.** not be entitled to Income Support.

1 JS (NI) Order 95, art 4

Income-based Jobseeker’s Allowance - additional conditions

20016 In addition to the conditions at DMG 20003 **1.** - **7.**, to be entitled to income-based Jobseeker’s Allowance1 a person must

**1.** have no income, or an income which does not exceed the applicable amount **and**

**2.** not be entitled to Income Support, State Pension Credit or income-related Employment and Support Allowance **and**

**3.** not be a member of a family, one of whose members is entitled to Income Support or income-based Jobseeker’s Allowance **and**

**4.** not have a partner who is entitled to State Pension Credit or income-related Employment and Support Allowance **and**

**5.** not have a partner who is in remunerative work **and**

**6.** be aged 18 or over. But in certain circumstances persons aged 16 or 17 may be entitled (see DMG Chapter 30) **and**

**7.** if aged 16 or 17, be registered for employment and training.

1 JS (NI) Order 95, art 5

Jobseeker’s Allowance joint claims

20017 To claim Jobseeker’s Allowance, both members of the joint claim are required1 to

**1.** be available for employment **and**

**2.** have a jobseeker’s agreement **and**

**3.** be actively seeking employment **and**

**4.** not be engaged in remunerative work **and**

**5.** be capable of work / not have limited capability for work **and**

**6.** not be receiving relevant education **and**

**7.** be under pensionable age **and**

**8.** be in Northern Ireland.

They must both attend the new Jobseeker’s interview, sign the claim form, accept equal responsibility for the claim and sign fortnightly (see DMG 20909 et seq).

**Note :** There are certain categories of members of the couple that are not required to satisfy paragraphs **1.** - **8.** above2 (see DMG 20023).

1 JS (NI) Order 95, art 3(2B)(b); 2 JSA Regs (NI), Sch A1

20018 In addition to the conditions at DMG 20017, to be entitled to Jobseeker’s Allowance1 members of a joint claim couple must

**1.** have no income, or an income which does not exceed the applicable amount **and**

**2.** not have a member of the family of which the couple are members entitled to Income Support or, other than the couple, income-based Jobseeker’s Allowance **and**

**3.** not be entitled to State Pension Credit or income-related Employment and Support Allowance **and**

**4.** have at least one member who is over 18 and if only one member is over 18 the other member must

**4.1** have a Departmental direction (see DMG 30770 et seq) **or**

**4.2** satisfy the conditions at DMG 30597 et seq.

1 JS (NI) Order 95, art 5A

20019 Members of a joint claim couple may choose which one of them should receive Jobseeker’s Allowance1. If the members of a joint claim couple do not make the choice, the decision maker should decide who should receive Jobseeker’s Allowance2.

1 JS (NI) Order 95, art 5B(1); 2 art 5B(2)

20020 - 20021

Income Support - basic conditions

20022 **[See ADM Memo 7/19][See DMG Memo Vol 1/117, 4/145, 8/93 & 13/75]** To be entitled to Income Support1 a person must

1. be in Northern Ireland (except in certain circumstances) (Chapter 7) **and**
2. be aged 16 or over **and**
3. be under the qualifying age for State Pension Credit (see DMG 77032) **and**
4. have no income or an income which does not exceed the applicable amount **and**
5. not be in remunerative work **and**
6. not have a partner in remunerative work **and**
7. not be in relevant education (unless in special circumstances) (See DMG 20630 et seq) **and**
8. be in a prescribed category (20081 et seq) **and**
9. not be entitled to Jobseeker’s Allowance or Employment and Support Allowance **and**
10. not have a partner who is entitled to income-based Jobseeker’s Allowance or income-related Employment and Support Allowance **and**
11. not have a partner who is entitled to State Pension Credit.

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

1 SS C&B (NI) Act 92, sec 123

Jobseeker’s Allowance joint claims - exemptions

**[See DMG Memo Vol 1/85, 3/79, 4/101, 5/85, 6/69, 8/28, 9/15 & 14/45]**

20023 Certain categories of members of a joint claim couple are not required to satisfy conditions in DMG 20017. These categories1 are where one of the members **does** satisfy those conditions and the other member is

**1.** not in remunerative work **and**

**2.** under pension age **and**

**3.** a person who is

**3.1** a full-time student **or**

**3.2** a regular carer **or**

**3.3**  incapable of work (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.4** treated as capable of work or entitled to Statutory Sick Pay **or**

**3.5**  has limited capability for work **or**

**3.6**  in employment living in a residential care home, nursing home, Abbeyfield home or an independent hospital  
(revoked from and including 25.1.10 but see Appendix 6  
for savings provisions) **or**

**3.7**  a disabled worker (revoked from and including 25.1.10  
but see Appendix 6 for savings provisions) **or**

**3.8** a disabled student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.9** a deaf student (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.10** blind (revoked from and including 1.11.10 but see Appendix 7 for savings provisions) **or**

**3.11** a pregnant woman **or**

**3.12** over the qualifying age for State Pension Credit **or**

**3.13** a refugee learning English **or**

**3.14** required to attend court or tribunal **or**

**3.15** a young person in training **or**

**3.16** affected by a trade dispute.

*1 JSA Regs (NI) reg 3D(1)(c) & Sch A1*

20024 A member that falls into any category in DMG 20023 for one or more days in a benefit week is treated as satisfying that category for the whole of that week1.

*1 JSA Regs (NI) reg 3D(2)*

Studying full-time

20025 A member is exempt who at the date of claim

1. is a qualifying young person **or**
2. is a full time student **or**
3. if they do not satisfy **1.** or **2.** **but**
   1. have applied to start a full time course to an educational establishment and the application has not been rejected **or**
   2. has a place on a full time course of study due to start at the beginning of the next academic
      1. term **or**
      2. year1.

*1 JSA Regs (NI) reg 3D & Sch A1, para 2*

20026 A member who falls into DMG 20025 above and has applied to an educational establishment to commence a full time course of study within one month of

1. the last day of studying on a previous course or

**2.** receiving exam results relating to a previous course of study

is exempt, but not if the course applied for is beyond a first degree course or a comparable course1.

*1 JSA Regs (NI), Sch A1, para 2*

Regular carer

20027 A member is exempt who is1

1. both entitled to and in receipt of Carer’s Allowance2 and caring for another person **or**
2. regularly and substantially (see DMG 20117 et seq) engaged in caring for another person and that person

**2.1** is in receipt of Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate3 **or**

**2.2** has claimed Attendance Allowance or Disability Living Allowance but

**2.2.a** only until the claim has been determined **or**

**2.2.b** up to 26 weeks from the date of claim whichever is the earlier **or**

**2.3** has

**2.3.a** made an advance claim for4 **and**

**2.3.b** an award of **and**

**2.3.c** not completed the qualifying period for Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate.

**Note :** A member who is a regular carer can be treated so for a period of up to 8 weeks from when this paragraph ceases to apply.

## 1 JSA Regs (NI) Sch A1, para 3, 4 & 5; 2 SS C&B (NI) Act sec 70;

## 3 sec 72(3); 4 sec 65(6)(a); SS C&P (Regs) (NI) reg 13A

Incapable of work

20028 A member can be exempt if they are

**1.** incapable of work1 (revoked from 1.11.10 except where they are subject to the savings provisions in Appendix 7) **or**

**2.** treated as incapable of work2 (revoked from 1.11.10 except where they are subject to the saving provisions in Appendix 7) **or**

**3.** treated as capable of work3 because they

**3.1** became incapable of work because of misconduct **or**

**3.2** fail without good cause to submit to treatment **or**

**3.3** fail without good cause to observe any prescribed rules of behaviour **or**

**4.** entitled to Statutory Sick Pay.

1 JSA Regs (NI), Sch A1, para 6(a); SS C&B (NI) Act 92, Part X11A;  
2 JSA Regs (NI), Sch A1, para 6(b); SS C&B (NI) Act 92, sec 167D;  
3 JSA Regs (NI), Sch A1, para (6)(c); SS C&B (NI) Act 92, sec 167E(1);  
SS (IW) (Gen) Regs (NI,) reg 16(1)

20029 See DMG 20135 - 20138 for guidance on incapacity tests, treated as incapable and treated as capable.

Limited capability for work

20030 A member can be exempt if they have limited capability for work, but they do not have to make a claim for Employment and Support Allowance in order to satisfy limited capability for work exemption1. So where that member provides

**1.** a medical certificate2 **or**

**2.** a self-certificate

**2.1** lasting less than 8 days **or**

**2.2** for any of the first 7 days of limited capability for work **or**

**3.** such other evidence that the Department thinks is sufficient to show that the member has limited capability for work3 where it is unreasonable to require them to provide a medical certificate as in sub-paragraph **1.** Above

they will not have to satisfy the joint-claim conditions for the period that the medical evidence covers.

**Note :** Self-certificate as in sub-paragraph **2.** above means a written declaration on a form approved by the Department which includes a declaration that the person has been unfit for work on a date or for a period and can also include a statement that they expect to continue to be unfit on subsequent days.

*1 JSA Regs (NI), Sch A1, para 6B; 2 SS (Med Ev) Regs (NI), Sch 1, Pt 1; 3 WR Act (NI) 07, sec 1(4)*

People in work living in a residential care home, nursing home, Abbeyfield home or an independent hospital (revoked from 25.1.10 but see Appendix 6 for savings provisions)

20031 People in employment who satisfy DMG 20504 - 20505 are treated as **not** engaged in remunerative work and are exempt1.

*1 JSA Regs (NI), Sch A1, para 7*

20032 - 20039

Disabled worker (revoked from 21.1.10 but see Appendix 6 for savings provisions)

20040 A disabled worker who satisfies DMG 20496 is treated as **not** in remunerative work and is exempt1.

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

Disabled students (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)

20041 A member is exempt1 if they are a student and

**1.** if they were the only claimant, would be entitled to a disability premium or severe disability premium **or**

**2.** have been incapable of work for not less than 196 days.

Two or more separate periods of incapacity separated by a break of not more than 56 days are treated as one continuous period.

*1 JSA Regs (NI), Sch A1, para 9*

Deaf students (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)

20042 A member who is a hearing impaired student can be exempt if, because of their impaired hearing they receive1

1. in Northern Ireland, England and Wales a supplementary requirement to their student grant under relevant legislation2 **or**
2. in Scotland, an allowance or bursary which includes an amount for expenses incurred under relevant legislation3

*1 JSA Regs (NI), Sch A1, para 10; 2 The Education (Mandatory Awards) Regs 99, Sch 2 para 9;  
The Education Act 62 sec 2; The Education (Student Support) Regs (NI) 2000, reg 13;  
The Students Award Regs (NI) 99, Sch 6 para 9; Education and Libraries (NI) Order 1986, art 50(3);  
3 Students’ Allowances (Scotland) Regs 99, reg 4; Education Authority (Bursaries) (Scotland) Regs 95, reg 4*

Blind members (revoked from and including 1.11.10 but see Appendix 7 for savings provisions)

20043 A member who is visually impaired can be exempt if they are1 registered as blind with a Health and Social Services Board under relevant legislation2.

People continue to be treated as so registered for a period of 28 weeks from the date registration ends.

**Note :** the person must be registered as blind not as partially-sighted. Decision makers should make enquiries from the Health and Social Services Board if there is any doubt.

*1 JSA Regs (NI), Sch A1, para 11; 2 National Assistance Act 48, sec 29*

Pregnant woman

20044 A woman who is a member of a joint-claim couple can be exemptif she is incapable of work by reason of pregnancy1 (see DMG 20161).

**Note : Pregnancy itself is not an illness. If there is any doubt about the woman’s condition seek medical evidence. This may be from the Incapacity Benefit decision maker who determines the incapacity issue.**

*1 JSA Regs (NI), Sch A1, para 12*

Refugee learning English

20045 A member can be exempt1 if

**1.** they are a refugee as in DMG Chapter 7 **and**

**2.** they are attending a course for more than 15 hours a week in order to

**2.1** learn English **and**

**2.2** subsequently find work **and**

**3.** they had been in Northern Ireland for not more than twelve months on the day the course started.

1 JSA Regs (NI), Sch A1, para 14

Member required to attend court

20046 A member is exempt whilst they are required to attend court or tribunal as a1

1. justice of the peace **or**
2. party to any proceedings **or**
3. witness **or**
4. juror.

*1 JSA Regs (NI), Sch A1, para 15*

Meaning of tribunal

20047 Tribunal means any tribunal listed in specific legislation1.

*1 Tribunal and Inquiries Act 1992, Sch 1*

Young person in training

20048 A member who is not a qualifying young person or child1 is exempt where they are attending a course of training provided by or through2 a training organisation pursuant to its arrangement with the Department for Employment and Learning.

*1 SS C&B (NI) Act 92, sec 138; 2 JSA Regs (NI), Sch A1, para 16*

Member affected by a trade dispute

20049 A member who

1. is affected by a trade dispute **and**
2. would not be entitled to a single Jobseekers Allowance because of the trade dispute is exempt1. See DMG Chapter 32 for further guidance on trade disputes.

1 JSA Regs (NI), Sch A1, para 17

Previous entitlement to a joint-claim

20050 If joint-claim entitlement ends because of responsibility for one or more children, the couple must1

1. supply evidence of the change **and**
2. nominate which member is to become the claimant

The addition of children is a change of circumstances and the Jobseeker’s Allowance claim is no longer subject to joint-claim conditions and a replacement award of Jobseeker’s Allowance should be made.

1 JSA Regs (NI), reg 3B; JS (NI) Order 95, art 3(4) & Sch 1, para 9A

20051 - 20062

Entitlement of a new joint-claim couple to a Jobseeker’s Allowance

20063 Where a claim for Jobseeker’s Allowance becomes subject to joint claim conditions because the child or all of the children they were responsible for have

1. died **or**
2. ceased to be a child or children for whom they are responsible **or**
3. reached 16 and is not a qualifying young person

the Jobseeker’s Allowance claim is treated as a claim made by both members of the couple.

20064 The income-based Jobseeker’s Allowance award shall end and be replaced by a new award of joint-claim Jobseeker’s Allowance if the decision maker1

**1.** has sufficient information to decide whether a new award should be made **and**

**2.** is informed of which member of the couple is to be the nominated member.

1 JSA Regs (NI), reg 3C; JS (NI) Order, art 5B

One member does not satisfy prescribed conditions

20065 A member of a joint claim couple is entitled to Jobseeker’s Allowance without making a joint claim if1

**1.** that member satisfies all the relevant conditions but

**2.** the other member does not satisfy the relevant conditions and falls into DMG 20066 **1.-11.**.

1 JSA Regs (NI), reg 3E

20066 The other member1

**1.** fails to attend for a new claim as required by an employment officer for the purposes of specified legislation2 **or**

**2.** for a period determined by the Department

**2.1** is not available for employment

**2.2** is not actively seeking employment

**2.3** does not have a current jobseeker’s agreement **or**

**3.** is temporarily absent from Northern Ireland **or**

**4.** is a person from abroad **or**

**5.** is subject to immigration control

**6.** is over pensionable age **or**

**7.** is in work or has agreed to work for 16 hours or more but less than 24 hours per week **or**

**8.** has claimed Maternity Allowance or Statutory Maternity Pay **or**

**9.** is

**9.1** not within DMG 20066 **8. and**

**9.2** within

**9.2.a** eleven weeks of expected date of confinement **or**

**9.2.b** up to twenty eight weeks after pregnancy ends **or**

**10.** is paid benefit under a reciprocal agreement by another country **or**

**11.** is in receipt of Statutory Sick Pay and who, immediately before he became incapable of work, was in remunerative work for 16 hours or more per week.

See DMG Chapter 24 for further guidance on applicable amounts in these cases.

1 JSA Regs (NI), reg 3E; 2 SS (C&P) Regs (NI), reg 6

Polygamous marriage

20067 Members of a joint claim couple can only be members of one joint claim couple1. In this situation the member or members can nominate which joint claim couple to be a member of. If none is nominated, the decision rests with the Department.

*1 JSA Regs (NI), reg 3A(2); JS (NI) Order 95, art 3(4) & Sch 1(9A)*

20068 - 20080

People entitled to Income Support

20081 People can receive Income Support for the whole of the benefit week provided they satisfy the conditions of entitlement and are in one of the following categories1 for one or more days in that benefit week

1. lone parents
2. lone foster parents
3. single claimant or lone parent looking after a child prior to adoption
4. people temporarily looking after another person
5. regular carers
6. people incapable of work (revoked from and including 30.12.09 but see Appendix 5 for savings provisions)
7. disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
8. people in employment living in a residential care home, nursing home, Abbeyfield home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)
9. people entitled to Mortgage Interest Run-on
10. disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
11. deaf students (revoked from 30.12.09 but see Appendix 5 for savings provisions)
12. blind people (revoked from 30.12.09 but see Appendix 5 for savings provisions)
13. pregnant women
14. parental leave
15. paternity leave
16. certain people in relevant education
17. young people in second chance learning
18. refugees learning English
19. people who claim asylum on or after 3.4.00 and who is granted refugee status on or before 14.6.07
20. people required to attend court or a tribunal
21. people affected by a trade dispute
22. certain persons from abroad
23. people in custody
24. members of a couple looking after children whilst their partner is temporarily abroad
25. people appealing against a decision which embodies a determination of capability for work
26. people engaged in training.

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

**Note :** Just because the claimant no longer falls into any particular prescribed category, this in itself is not grounds for superseding the decision awarding Income Support. The decision maker must be satisfied that the claimant does not fall into any other category. This may mean that further enquiries will have to be made before the decision maker can be satisfied that no other prescribed category applies1.

1 R(IS) 10/05

Lone parents

20082 Lone parent means1 a person who

**1.** has no partner **and**

**2.** is responsible for and a member of the same household as

**2.1** a child **or**

**2.2** a young person.

**Note :** The claimant’s status as a lone parent is not affected by the presence of another adult, for example when the claimant lives with parents.

The decision maker should accept that a claimant is a lone parent unless there is an indication that the person may have a partner. When members of a couple claim to be estranged while still living at the same address, the decision maker should consider whether they are members of the same household.

1 JSA Regs (NI), reg 1(2); IS (Gen) Regs (NI), reg 2(1)

20083 To be entitled to Income Support, where they do not satisfy any other prescribed category, the lone parent will have to be

**1.** responsible for and a member of the same household as

**1.1** a single child aged under 5 **or**

**1.2** more than one child where the youngest child is aged under 5 **or**

**2.** under the age of 181.

**Note :** See Appendix 8 for savings and transitional provisions for certain lone parents following a full-time course and special commencement provisions for existing Income Support claimants.

20084 - 20101

Definition of a child

20102 A child means a person under the age of 161. A person will no longer be entitled to Income Support as a lone parent once their child, or youngest child, reaches the age set out in DMG 20083.

1 SS C&B (NI) Act 92, sec 133(1)

Treated as responsible for a child

20103 To be a lone parent a person must be treated as responsible for a child (see DMG Chapter 22).

Lone foster parents

20104 Single people or lone parents can get Income Support if they have a child placed with them under arrangements made with a

**1.** Health and Social Services Board or a Health and Social Services trust **or**

**2.** voluntary organisation1.

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

1 IS (Gen) Regs (NI), Sch 1B, para 2; Children and Young Persons Act (NI) 68

Meaning of placed

20105 For the purpose of DMG 20104, placed means the claimant must actually have a child living with them or accommodated by them for a continuous period of more than 24 hours. The decision maker should ensure that they make sufficient enquiries to satisfy themselves that a child is placed within the meaning of the legislation1.

1 Children (NI) Order 95, art 21, 22,26 & 27

**Example 1**

Person L is single and is a foster carer on call with a Health and Social Services trust to accept placement of new-born babies at short notice. These new-borns are also likely to be removed from the Person L at short notice due to their popularity for adoption. On 9 March, Person L has a two-week old baby placed with her. That child stays with her until 11 March and is then removed. She has no other children placed with her. For that week as she had a child placed with her for more than 24 hours she satisfies the condition of having a child placed with her and therefore as she is in this category for at least one day in her benefit week, she will be entitled to Income Support for that week.

Person L then has no further placements for 3 weeks so cannot satisfy the condition of having a child placed with her as she does not satisfy any of the other prescribed categories, her Income Support award is terminated.

**Example 2**

Person M is a lone parent and Health and Social Services Board foster carer. Her own child is now 12 years old. She takes in a 6 year old child for respite day care for 10 hours per day for 2 days per week. She makes a claim for Income Support, however as the placement is not for a continuous period of more than 24 hours, she does not satisfy the condition of having a child placed with her. Her claim to Income Support is disallowed.

Residence orders

20106 A residence order places parental responsibility on the person to whom it is made and puts them on a similar footing to a parent. A residence allowance may be paid at the Health and Social Services Board or Health and Social Services trust’s discretion to avoid hardship or to assist if the child has special needs, however payment of such an allowance does not mean that the child is looked after by the Health and Social Services Board or Health and Social Services trust. So in this situation, the person is no longer fostering the child and so could not satisfy the criteria in DMG 20104 above.

**Example**

Jennifer was fostering her 2 grandchildren aged 9 and 11 and was receiving a fostering allowance. She claimed Income Support and was able to satisfy the criteria of being a lone foster parent and so was entitled to Income Support. 6 months later, Jennifer is given a residence order for the 2 children and also awarded a residence allowance as the elder child has learning difficulties and requires extra attention. She is no longer fostering the children so she cannot satisfy the conditions for Income Support as a lone foster parent. As the children are over the relevant age for her to qualify for Income Support as a lone parent and none of the other prescribed categories are applicable, Jennifer is advised that she must claim either Jobseeker’s Allowance or if she is sick, Employment and Support Allowance.

Single person looking after children prior to adoption

20107 Where the claimant is a single claimant or a lone parent they can get Income Support where they have a child placed with them prior to adoption by an adoption agency1.

1 IS (Gen) Regs (NI), Sch 1B, para 2A; Adoption Agencies Regulations (NI) 1989

20108 - 20109

People temporarily looking after another person

20110 People can get Income Support if they are looking after

**1.** a child because the parent or usual carer is

**1.1** temporarily ill **or**

**1.2** temporarily absent from the home **or**

**2.** a member of the family who is temporarily ill1.

Seek medical evidence of the illness if there is any doubt.

1 IS (Gen) Regs (NI), Sch 1B, para 3

Temporary absence

20111 Treat an absence as temporary if the person intends or expects to return home. Examples of temporary absence include where the parent or usual carer

**1.** enters hospital

**2.** goes on holiday

**3.** works away on a short term contract.

20112 If an absence which started off as temporary becomes permanent consider whether the person left with the child has become a lone parent.

Childminders

20113 Temporary absence as in DMG 20111 does not include where a child’s parent or usual carer is working and absent from home for a set period each day. DMG 20110 does not apply to childminders employed to look after children during such absences.

20114 - 20115

Regular carers

20116 People can get Income Support where they are1

**1.** both entitled to and in receipt of Carer’s Allowance2 or would be in receipt of Carer’s Allowance but for the application of the loss of benefit provisions3 and caring for another person **or**

**2.** regularly and substantially engaged in caring for another person and that person

**2.1** is in receipt of Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate4 **or**

**2.2** has claimed Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment5 **or**

**2.3** has

**2.3.a** made an advance claim for6 **and**

**2.3.b** an award which was made in respect of that claim **and**

**2.3.c** not completed the qualifying period for

Attendance Allowance, the care component of Disability Living Allowance at the highest or middle rate or the daily living component of Personal Independence Payment at the standard or enhanced rate.

1 IS (Gen) Regs (NI), Sch 1B, para 4; 2 SS C&B (NI) Act 92, sec 70; 3 SS Fraud Act (NI), sec 6;  
4 SS C&B (NI) Act 92, sec 72(3); 5 IS (Gen) Regs (NI), Sch 1B, para 4(a)(ii) & (iii);  
6 Sch 1B, para 4(a)(iia), (iiia)& (iv); UC, PIP, JSA & ESA (C&P) Regs (NI), reg 33

Regularly and substantially

20117 The words “regularly and substantially” should be given their everyday meaning. Whether someone is regularly and substantially caring is a question of fact for the decision maker1.

**Note :** More than one person may be able to satisfy the carer provision at any given time.

1 R(IS) 8/02

Substantially caring

20118 The decision maker should decide whether, taking into account the needs of the person cared for and the impact on the claimant’s own life, the claimant can be regarded as substantially engaged in caring. The decision maker should take into account

**1.** the pattern of caring

**2.** how long the caring lasts

**3.** how disruptive the caring is to the claimant’s life

**4.** the predictability of the needs of the person being cared for

**5.** the kind of help provided

**6.** the care accepted for Disability Living Allowance or Attendance Allowance purposes

**7.** the proportion of the claimant’s life and the life of the person being cared for that is taken up by the care1.

1 R(IS) 8/02

20119 Assistance must be directly provided to the disabled person. When deciding what amounts to caring, the decision maker should consider whether the carer performs duties or oversees activities that the disabled person needs help with, due to their disability. Where care is provided to a child, this should be above the normal levels of care provided to children. Care involves assistance or supervision directly arising from the disabled person’s needs. It includes, but not be confined to, support for bodily functions. It can also include washing, shopping for food, cooking and other domestic tasks. Activities carried out for the disabled person in the margins of personal assistance , such as shopping for them, can also be taken into account. Travel to and from the disabled person’s home does not count as it does not involve providing direct assistance1. Likewise being on standby at the end of a phone is too remote an activity.

1 R(IS) 8/02

Awaiting outcome of claim to Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment

20120 Where DMG 20116 **2.2** applies the person can get Income Support until the earlier of1

**1.** the date the claim for Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment is decided **or**

**2.** 26 weeks from the date of claim for Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment.

**Note :** Where the person is already in receipt of Disability Living Allowance and applies for another component, this is not a new claim so they could not qualify again under this provision.

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

20121 The purpose of DMG 20120 is to help carers where there is a delay in deciding a claim for Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment.

Recently ceased to care or no longer awaiting outcome of claim to Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment

20122 People who have recently ceased to care or whole claim to Attendance Allowance, Disability Living Allowance, Armed Forces Independence payment or Personal Independence Payment has been decided, can also get Income Support where

**1.** DMG 20116 applied **or**

**2.** they would have applied if a claim to Income Support had been made

but only for a period of eight weeks from the date DMG 20116 ceased to apply1.

1 IS (Gen) Regs (NI), Sch 1B, para 5 & 6

20123 Circumstances in which DMG 20122 could apply are when for example a different carer takes over or the person being cared for moves elsewhere or dies.

20124 Where a person had satisfied **any** of the criteria in DMG 20116 or DMG 20120, they can continue to be entitled to Income Support for a period of 8 weeks from the date those criteria ceased to apply to that person1.

1 IS (Gen) Regs (NI), Sch 1B, para 5

20125 - 20133

People incapable of work, treated as incapable or entitled to Statutory Sick Pay

20134 People can get Income Support if they are

**1.** incapable of work1 (revoked from 30.12.09 but see Appendix 5 for savings provisions) **or**

**2.** treated as incapable of work2 (revoked from 30.12.09 but see Appendix 5 for savings provisions) **or**

**3.** treated as capable of work3 because they

**3.1** became incapable of work because of misconduct **or**

**3.2** fail without good cause to submit to treatment **or**

**3.3** fail without good cause to observe any prescribed rules of behaviour **or**

**4.** entitled to Statutory Sick Pay4.

1 IS (Gen) Regs (NI), Sch 1B, para 7(a); SS C&B (NI) Act 92, Part XIIA;  
2 IS (Gen) Regs (NI), Sch 1B, para 7(b); SS C&B (NI) Act 92, sec 167D;  
3 IS (Gen) Regs (NI), Sch 1B, para 7(c); SS C&B (NI) Act 92, sec 167E; SS (IW) (Gen) Regs (NI), reg 16(1);  
4 IS (Gen) Regs (NI), Sch 1B, para 7(d)

**Note :** From 27.10.08, all new claims to Income Support on grounds of being incapable for work will be treated as a claim for Employment and Support Allowance unless the linking rules apply. See DMG 45211 - 45213.

Incapacity tests

20135 There are two incapacity tests: the Own Occupation Test and the Personal Capability Assessment. A person who satisfies the relevant incapacity test is incapable of work. See DMG Chapter 13 for detailed guidance.

Treated as incapable

20136 People may be treated as incapable of work where1

**1.** they are in hospital

**2.** they have a particular medical condition

**3.** they are terminally ill

**4.** they are blind

**5.** they are in receipt of the higher rate care component of Disability Living Allowance

**6.** they are severely mentally ill

**7.** they are paraplegic.

1 SS (IW) (Gen) Regs (NI), reg 10

20137 People may also be treated as incapable where the personal capability assessment applies but it is not yet assessed where they

**1.** continue to send in medical evidence (see DMG Chapter 13) **and**

**2.** have not been found capable of work or treated as capable of work within the preceding 6 months because they failed to provide information or evidence or failed without good cause to attend a medical examination unless

**2.1** it is a different disease or disablement **or**

**2.2** it is the same disease or disablement but it has significantly worsened **or**

**2.3** in a case where they were found capable of work because they did not provide the information requested, they have now provided it1.

1 SS (IW) (Gen) Regs (NI), reg 28

Treated as capable

20138 Except where DMG 20134 **3.** applies people treated as capable of work are not entitled to Income Support unless they can qualify on other grounds. People will be treated as capable if they

**1.** fail to attend or agree to a medical examination without good cause1 **or**

**2.** fail without good cause to return the questionnaire within the permitted time2 **or**

**3.** do work that is not permitted in the regulations3.

**Note :** In relation to work that is not permitted, if the person states that they are a volunteer the ordinary meaning of the phrase “engaged in voluntary work” should be applied. In one sense all work is voluntary because a person could walk away from a job at any time on giving notice. The fact that an employer cannot afford to pay a proper wage or declares the work to be voluntary does not mean that it is. However a person could be a volunteer even though the arrangement was a formal one and the voluntary work they were involved in was long-standing and taxing.

1 SS (IW) (Gen) Regs (NI), reg 8(2); 2 reg 7; 3 reg 16

Certain people in receipt of the daily living component of Personal Independence Payment

20139 A person will satisfy entitlement conditions for Income Support where

**1.** they are in receipt of the daily living component of Personal Independence Payment at the enhanced rate **and**

**2.** immediately before receiving that benefit the person was entitled to and in receipt of Income Support because they were treated as incapable of work by virtue of being in receipt of the highest rate care component of Disability Living Allowance.

1 IS (Gen) Regs (NI), Sch 1B, para 7A; SS (IW) (Gen) Regs (NI), reg 10(2)(a)(i)

20140 - 20151

Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20152 A disabled worker who satisfies DMG 20496 is treated as **not** engaged in remunerative work and can get Income Support1.

1 IS (Gen) Regs (NI), Sch 1B, para 8

People in work living in a residential care home, nursing home, Abbeyfield home or independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20153 People in employment who satisfy DMG 20504 - 20505 are treated as **not** engaged in remunerative work and can get Income Support1.

1 IS (Gen) Regs (NI), Sch 1B, para 9

People entitled to Mortgage Interest Run-on

20154 People in employment who satisfy DMG 20530 - 20532 are treated as **not** engaged in remunerative work and get Income Support1.

1 IS (Gen) Regs (NI), Sch 1B, para 9A

Disabled students (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20155 Full-time students can get Income Support if they1

**1.** qualify for the disability premium or severe disability premium under DMG Chapter 23 **or**

**2.** have been incapable of work as in DMG 20134 for a continuous period of not less than 196 days.

1 IS (Gen) Regs (NI), Sch 1B, para 10(a) & (b)

20156 Two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period1.

1 IS (Gen) Regs (NI), Sch 1B, para 10(b)

Old student cases

20157 Students can also get Income Support if1

**1.** immediately before 01.09.90 they were in receipt of Income Support under the former definition of disabled student **or**

**2.** on or after that date they make a claim for Income Support **and** at any time during the previous 18 months were in receipt of Income Support because they

**2.1** satisfied the former definition of disabled student **or**

**2.2** were severely handicapped and in relevant education.

But this does not apply where Income Support has ceased for a continuous period of 18 months or more.

1 IS (Gen) Regs (NI), Sch 1B, para 11

Hearing impaired students (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20158 Full-time students can get Income Support if they receive1

**1.** a supplementary requirement to their student support under relevant legislation2 **or**

**2.** an allowance or bursary which includes an amount for expenses incurred under relevant legislation3 **or**

**3.** a payment under relevant legislation4 **or**

**4.** a grant under relevant legislation5

because of their impaired hearing.

1 IS (Gen) Regs (NI), Sch 1B, para 12; 2 The Education (Mandatory Awards) Regs 99, Sch 2, para 9;  
Student Awards Regs (NI) 1999, Sch 6, para 9; 3 Student’s Allowance (Scotland) Regs 99, reg 4(1)(d);  
Education Authority Bursaries (Scotland) Regs 95, reg 4(1)(d); 4 Education Act 62, s 2;  
Education & Libraries (NI) Order 1980, art 50(3); Education (Student Support) Regs 2000, reg 13;  
Education (Student Support) Regs (NI) 2000, reg 13

Visually impaired people (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20159 People who are visually impaired can get Income Support if they are1 registered as blind (not as partially sighted) in a register compiled by a Health and Social Services Board under relevant legislation2. People continue to be treated as so registered for a period of 28 weeks from the date registration ends.

1 IS (Gen) Regs (NI), Sch 1B, para 13; 2 National Assistance Act 48, sec 29

Pregnant women

20160 A woman can get Income Support if1

**1.** she is incapable of work by reason of pregnancy **or**

**2.** she is or has been pregnant, but only for the period

**2.1** beginning 11 weeks before the expected week of confinement **and**

**2.2** ending 15 weeks after the date pregnancy ended.

1 IS (Gen) Regs (NI), Sch 1B, para 14

**Incapable of work by reason of pregnancy**

20161 A pregnant woman is incapable of work if her pregnancy has given rise to a medical condition which, on the evidence, has made her incapable of work. Pregnancy itself is not an illness. If a woman claims Income Support and says she is incapable of work because of her pregnancy the Income Support decision maker should ask for medical evidence, usually a medical certificate. This can be obtained from the Incapacity Benefit decision maker if the claimant has claimed Incapacity Benefit.

**Example 1**

Lynn who is carrying twins, miscarries one of them five months into the pregnancy. Her doctor issues a sick note advising her to refrain from work due to pregnancy, until her baby is born. The Income Support decision maker accepts that, on the evidence, the woman is incapable of work by reason of pregnancy and awards Income Support.

**Example 2**

Julia claims Income Support saying that she cannot go to work as she is pregnant and suffering from morning sickness. The Income Support decision maker asks for a medical certificate. Julia says the doctor has not issued her with a sick note but has advised her to drink flat coke and eat dry toast. The Income Support decision maker decides that Julia is not incapable of work by reason of pregnancy.

Expected week of confinement

20162 The expected week of confinement1 is a period of 7 days beginning with midnight between Saturday and Sunday.

**Example**

The expected week of confinement is week beginning 20.5.07. 11 weeks before that is week beginning 4.3.07. The baby is born on 24.5.07. The woman can claim Income Support between 4.3.07 and 6.9.07.

1 SS C&B (NI) Act 92, sec 171(1)

**Parental leave**

20163A person can get Income Support1 when they are taking parental leave2 if they are

1. taking care of a child who is a member of their household **and**
2. entitled to take time off for this purpose **and**
3. not entitled to payment of any kind from their employer **and**
4. entitled to

**4.1** Working Tax Credit **or**

**4.2** Child Tax Credit payable at a rate higher than the family element3 which is subject to calculations in prescribed legislation4 **or**

**4.3** Housing Benefit

on the day before that leave begins.

1 Maternity & Parental Leave etc. Regs, (NI) part (III);  
2 IS (Gen) Regs (NI), Sch 1B, para 14A;  
3 para 14A(1)(c); 4 Tax Credits (Income Thresholds and Determination of Rates) Regs 2002

Paternity leave

20164 A person can get Income Support if they are entitled to and taking paternity leave1 and are2

**1.** not entitled to Statutory Paternity Pay3 or a payment of any kind from their employer in respect of that leave for the period to which the Income Support claim relates **and/or**

**2.** entitled to

**2.1** Working Tax Credit **or**

**2.2** Child Tax Credit payable at a rate higher than the family element4 which is subject to calculations in prescribed legislation5 **or**

**2.3** Housing Benefit

on the day before that leave begins.

1 Employment Rights (NI) Order 1996, art 112A & B  
2 IS (Gen) Regs (NI), Sch 1B, para 14B; 3 SS CB (NI) Act 92, part 12ZA  
4 IS (Gen) Regs (NI), Sch 1B, para 14B(2)(b);  
5 Tax Credits (Income Thresholds and Determination of Rates) Regs 2002

**Example 1**

Joe is entitled to and takes paternity leave from 9 April. His employer pays him half his weekly wage in respect of the paternity leave period. Joe was in receipt of Working Tax Credit up to and including 8 April. Joe is entitled to Income Support for the period of his paternity leave.

**Example 2**

Tony is entitled to and takes paternity leave from 9 April and claims Income Support from that date. As a favour to his employer, he delivers some flipchart paper to one of his customers on 14 April. His employer pays him his travelling costs and travel time. Tony can still get Income Support. The payment from his employer is not in respect of the paternity leave.

Certain people in relevant education

20165 A qualifying young person in relevant education (see DMG 20558 et seq) can get Income Support if1 they are

**1.** a parent **or**

**2.** a disabled person (revoked from 30.12.09 but see Appendix 5 for savings provisions) **or**

**3.** a person with limited leave to enter or remain **or**

**4.** an orphan and there is no-one acting in place of the parents **or**

**5.** of necessity living away from the parents and anyone acting in their place because

**5.1** they are estranged from them **or**

**5.2** they are in physical or moral danger **or**

**5.3** there is a serious risk to their physical or mental health **or**

**6.** no longer living in accommodation provided by a Health and Social Services Board and are of necessity living away from the parents and any person acting in their place **or**

**7.** living away from their parents and anyone acting in their place **and**

**7.1** the parents (and anyone acting in their place) are unable to support them financially because they are

**7.1.a** chronically sick or mentally or physically disabled **or**

**7.1.b** detained in custody or imprisoned **or**

**7.1.c** prohibited from entering or re-entering Northern Ireland

**8.** a refugee learning English2.

**Note :** A person is in relevant education shall be treated as satisfying the criteria for being a qualifying young person where they are in one of the categories above3. Income Support can therefore be paid to the end of the Child Benefit extension period.

See DMG 20630 et seq for further guidance.

1 IS (Gen) Regs (NI), Sch 1B, para 15; reg 13(2)(a)-(e); 2 reg 13(2)(h); 3 reg 13(1) - (2A)

20166 DMG 20556 gives guidance on what relevant education is and when people who have finished relevant education can be treated as still receiving it.

Second chance learning

20167 This is for young people who remain in education beyond the age of 20/211. To satisfy this category

**1.** the person must have enrolled on or been accepted for or is undertaking a course of full-time non-advanced education2 **and**

**2.** the person3

**2.1** must be under age 21 **or**

**2.2** is 21 and became that age while they were undertaking a course of full-time non-advanced education2 **and**

**3.** the person4

**3.1** has no parent or any person acting in the place of a parent **or**

**3.2** has to live away from their parent and any person acting in place of a parent because

**3.2.a** they are estranged from their parents and any person acting in place of a parent3 **or**

**3.2.b** they are in physical or moral danger **or**

**3.2.c** there is a serious risk to their physical or mental health **or**

**3.3** is living away from their parents and any person acting in place of their parents where their parents or any person acting in place of their parents are unable financially to support them and are

**3.3.a** chronically sick or mentally or physically disabled **or**

**3.3.b** detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court **or**

**3.3.c** prohibited from entering or re-entering Northern Ireland.

1 IS (Gen) Regs (NI), Sch 1B, para 15A; 2 Sch 1B, para 15A(2);  
3 Sch 1B, para 15A(3); 4 Sch 1B, para 15(A)(4)

20168 For the purposes of second chance learning, the meaning of “course of full-time non-advanced education”1 means a course of full-time education which is not advanced2 and which is not provided as a result of the person’s employment or any office held and which is provided

**1.** at a school or college **or**

**2.** elsewhere but is approved by the Department as being such a course.

1 IS (Gen) Regs (NI), Sch 1B, para 15A(6); 2 reg 61(1)

20169 - 20173

Refugee learning English

20174 People can receive Income Support for up to 9 months if1

**1.** they are a refugee(see DMG 070800) **and**

**2.** they are attending a course for more than 15 hours a week in order to

**2.1** learn English **and**

**2.2** subsequently find work **and**

**3.** they had been in Northern Ireland for not more than 12 months on the day the course started.

1 IS (Gen) Regs (NI), Sch 1B, para 18

People who claim asylum on or after 3.4.00

20175 People who

**1.** claimed asylum on or after 3.4.00 **and**

**2.** were granted leave to remain as refugees before 14.6.07

could receive Income Support for a period when they were waiting for their asylum

claim to be determined1. From 14.6.07 only those people whose refugee status has been determined can receive Income Support2.

1 IS (Gen) Regs (NI), reg 21A & Sch 1B, para 18A;  
2 HB v SSWP [2015] EWCA Civ 141; [2015] AACR 17

People required to attend court

20176 People can get Income Support whilst they are required to attend court or tribunal as a1

**1.** justice of the peace **or**

**2.** a party to any proceedings **or**

**3.** a witness **or**

**4.** a juror.

1 IS (Gen) Regs (NI), Sch 1B, para 19

People affected by a trade dispute

20177 People can get Income Support if they are1

**1.** affected by a trade dispute **or**

**2.** returning to work for the first 15 days following a trade dispute.

See DMG Chapter 32 for further guidance on trade disputes.

1 IS (Gen) Regs (NI), Sch 1B, para 20

Certain persons subject to immigration control

20178 Certain persons subject to immigration control can get Income Support1 (see DMG 24509).

1 IS (Gen) Regs (NI), Sch 1B, para 21

People in custody

20179 People in custody can get Income Support, but only to help with housing costs, where they are in custody pending trial or sentencing1. This does not apply to prisoners serving a custodial sentence.

*1 IS (Gen) Regs (NI), Sch 1B, para 22*

20180 People on a

**1.** home detention curfew **or**

**2.** court-ordered curfew **or**

**3.** restriction of liberty order **or**

**4.** mandatory probation service programme

are not detained in custody.

Member of a couple looking after children whilst partner temporarily abroad

20181 People can get Income Support where they are1

**1.** a member of a couple and the other member is temporarily absent from the United Kingdom **and**

**2.** treated as responsible for a child who is a member of the household.

1 IS (Gen) Regs (NI), Sch 1B, para 23

People appealing against a decision because of capability for work

20182 People can get Income Support if

**1.** they are found to be not incapable of work

**1.1** under the own occupation test and their general practitioner continues to provide evidence of incapacity for work1 **or**

**1.2** under the personal capability assessment2 **and**

**2.** they have made and are pursuing an appeal against the decision that they are not incapable of work.

Income Support can be paid until the appeal is determined which includes appeals to a Commissioner where the claimant has been unsuccessful at the tribunal. It does not matter if the claim to Income Support was made after the incapacity determination. See DMG Chapter 24 for guidance on the amount payable.

1 IS (Gen) Regs (NI), Sch 1B, para 24; 2 Sch 1B, para 25

20183

20184 When dealing with such cases decision makers should consider the following

**1.** a person who falls within a prescribed category for any day in a benefit week shall fall within that category for the whole of that week1

**2.** backdating of the Income Support claim can be considered where the claimant claims Income Support as soon as is practical after being notified of the decision that their entitlement to Incapacity Benefit has ceased2

**3.** where an existing Income Support award can be revised3 the date of the revision shall be the date that the Incapacity Benefit decision maker terminated the award of Incapacity Benefit.

1 IS (Gen) Regs (NI), reg 4ZA(4); 2 SS (C&P) Regs (NI), reg 19(6) and 7(d)  
3 SS CS (D&A) Regs (NI), reg 3(7B) & 3(7C)

20185

20186 Income Support cannot be paid under DMG 20182 where people are treated as capable of work, for example where they have failed to return the incapacity questionnaire. Where a claimant in these circumstances appeals against an Appeal Tribunal decision, Income Support cannot be paid until the appeal is determined by the Commissioner.

20187 For the purpose of DMG 20182 the continued medical evidence of incapacity should be dated later than the date of the decision based upon the incapacity determination which the claimant has appealed against.

20188 See DMG Chapter 3 for guidance on the revision of Income Support decisions when incapacity decisions are appealed.

Young person in training

20189 A person, who is not a qualifying young person or a child1 can get Income Support where they are attending a course of youth training provided by, or through2 a

training organisation pursuant to its arrangement with the Department for Employment and Learning.

*1 SS C&B (NI) Act 92, sec 138; 2 IS (Gen) Regs (NI), Sch1B, para 28; SS C&B (NI) Act 92, sec 138*

20190 - 20199

The remunerative work exclusion

Remunerative work - introduction

20200 Being in remunerative work affects entitlement to Jobseeker’s Allowance and Income Support1. In all cases, before the decision maker applies the law to establish how many hours a person is working, they must decide whether or not the work is continuing.

1 JS (NI) Order 95, art 3(2)(e); SS C&B (NI) Act 92, sec 123(1)(c)

Contribution-based Jobseeker’s Allowance

20201 Contribution-based Jobseeker’s Allowance is a personal benefit and is not payable for a partner1. The remunerative work exclusion therefore applies only to the claimant.

1 JS (NI) Order 95, art 4(1)

Income-based Jobseeker’s Allowance and Income Support

20202 The remunerative work exclusion applies where the person engaged in remunerative work is the

**1.** claimant **or**

**2.** claimant’s partner, if the claimant is a member of a couple.

Does the claimant have employment

20203 Decision makers should decide that a person is not in remunerative work if they do not have any employment and are between jobs. Decision makers will need to decide whether employment has ended if someone has been engaged in remunerative work (see DMG 26523 et seq).

20204 Decision makers should decide that a person is still in employment and not between jobs if

**1.** the contract of employment (which can be written or verbal) is still current **or**

**2.** the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because

**2.1** there is an express agreement (written or verbal) **or**

**2.2** it is reasonable to assume that a long standing practice of re-employment will continue1.

1 R(JSA) 5/03

20205 Off-shore workers are an example of those workers who may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

**Example**

Dennis works for an oil company as a welder on oil rigs. He does not have a recognisable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. Dennis claims Jobseeker’s Allowance for a period when he is not working. On looking at the facts of Dennis’ past work for the company, the decision maker is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The decision maker decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods he is onshore and not physically working or being paid.

20206 It is a question of fact for the decision maker whether the work is continuing or not. Decision makers will need to consider such things as

**1.** the type and nature of the work

**2.** the frequency and length of the contracts/periods of work

**3.** the process of securing the work

**4.** the employment situation/opportunities in the area

**5.** whether there is a continuing relationship between the claimant and the employer

**6.** whether there is evidence of the relationship between the claimant and the employer having ended, e.g. the production of a P45.

This list is not prescriptive or exhaustive and other considerations may be equally valid in the circumstances of each case.

20207 Decision makers should also look at whether there is a mutual expectation between the person and the employer that they will resume after a period of no work. This mutual expectation should be more than just a hope of re-employment.

**Example**

Carole has worked as a housekeeper at a holiday village in an east coast seaside resort for the past three summer seasons (April to October). The village closes down between November and March so no work is available. There are very limited employment opportunities in the area in the winter months. Carole makes a claim for Jobseeker’s Allowance in November. The decision maker establishes that Carole has to put in her application for the housekeeper post every February along with other candidates. While she is hopeful of securing further work for the following season she has no guarantee from the employer that she will be successful. The decision maker decides that as there is no mutual expectation of the work resuming then Carole does not have employment in the “off” season and therefore she is not in remunerative work.

20208 - 20209

Meaning of remunerative work

Contribution-based Jobseeker’s Allowance

20210 Remunerative work1 is work for which payment is made, or which is done in expectation of payment and in which the claimant is engaged for not less than

**1.** 16 hours a week **or**

**2.** 16 hours a week on average where the hours of work fluctuate.

1 JSA Regs (NI), reg 51(1)

Income-based Jobseeker’s Allowance

20211 Remunerative work1 is work for which payment is made, or which is done in expectation of payment and

**1.** in which the claimant is engaged for not less than

**1.1** 16 hours a week **or**

**1.2** 16 hours a week on average where the hours of work fluctuate **or**

**2.** in which any partner of the claimant is engaged for not less than

**2.1** 24 hours a week **or**

**2.2** 24 hours a week on average where the hours of work fluctuate **or**

**3.** in which any non-dependant, or child or young person who is treated as receiving relevant education, is engaged for not less than

**3.1** 16 hours a week **or**

1. 16 hours a week on average where the hours of work fluctuate.

**4.** In the case of a joint claim, if a member starts remunerative work for 16-24 hours, they will be treated as a normal claimant and partner Jobseeker’s Allowance claim, with the working member being the partner.

1 JSA Regs (NI), reg 51(1)

Income Support

20212 Remunerative work1 is work for which payment is made, or which is done in expectation of payment

**1.** in which a person is engaged for not less than

**1.1** 16 hours a week **or**

**1.2** 16 hours a week on average where the hours of work fluctuate **or**

**2.** in which any partner of the claimant is engaged for not less than

**2.1** 24 hours a week **or**

**2.2** 24 hours a week on average where the hours of work fluctuate

1 IS (Gen) Regs (NI), reg 5(1) & 5(1A)

Treated as in or not in remunerative work

20213 A person engaged in remunerative work is not necessarily excluded from Jobseeker’s Allowance or Income Support. In certain circumstances a person who is **actually** in remunerative work may be **treated** as **not** being in remunerative work (see DMG 20464)1.

1 JSA Regs (NI), reg 53; IS (Gen) Regs (NI), reg 6

20214 Also, there are circumstances in which a person who is **not actually** in remunerative work may be **treated** as engaged in remunerative work1 (see DMG 20390 et seq).

1 JSA Regs (NI), reg 52; IS (Gen) Regs (NI), reg 5(3)-(5)

20215 The flow charts on the following pages show the link between a person being

**1.** engaged in remunerative work **and**

**2.** treated or not treated as being engaged in remunerative work **and**

**3.** excluded or not excluded from contribution-based Jobseeker’s Allowance , income-based Jobseeker’s Allowance or Income Support.

20216 - 20229

Remunerative work exclusion - claimant

Is work done for payment or in expectation of payment?

Are the hours of work 16 or more on average? (see DMG 20250)

Yes

No

No

Yes

Can claimant be treated as in remunerative work? (DMG 20390)

Can claimant be treated as not in remunerative work? (DMG 20464)

No

Yes

No

Yes

Claimant is in remunerative work and is excluded from contribution-based Jobseeker’s Allowance; income-based Jobseeker’s Allowance and Income Support

Claimant is not in remunerative work

Remunerative work exclusion - partner

Yes

No

No

Yes

Can the partner be treated as in remunerative work?

(DMG 20390)

Can the partner be treated as not in remunerative work? (DMG 20464)

No

Yes

No

Yes

Partner is in remunerative work. Claimant is excluded from income-based Jobseeker’s Allowance and Income Support

Partner is not in remunerative work

Is work done for payment or in expectation of payment? (DMG 20230)

Are the hours of work on average 24 or more?

Work done for payment or in expectation of payment

20230 Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The decision maker should look at all the relevant facts in each case. Regard work as remunerative if

**1.** payment is made for it **or**

**2.** it is done in expectation of payment1.

Remunerative does not mean profitable. (See DMG 20234).

1 JSA Regs (NI), reg 51(1); IS (Gen) Regs (NI), reg 5(1); R(IS)1/93

Work for no monetary reward

20231 A person cannot be in remunerative work if the work done is neither paid nor done in expectation of payment. If the only “payment” is notional earnings1 the work cannot be treated as remunerative.

1 JSA Regs (NI), reg 105(13); IS (Gen) Regs (NI), reg 42(6)

Payment in kind

20232 “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

**Example 1**

Thomas is given free meals and accommodation in a guest house run by a friend. Whilst there he does several chores so that average hours are in excess of 16 a week. The meals and accommodation are not given in return for work done. Thomas is not in remunerative work but the decision maker should consider whether

**1.** he is available for employment **and**

**2.** the free meals and accommodation are notional earnings.

**Example 2**

Gordon is given free meals and accommodation in a guest house run by a friend in return for doing various chores amounting to more than 16 hours of work a week. Gordon is in remunerative work.

Expectation of payment

20233 Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date1. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

20234 Where a person who has been a self-employed earner claims Jobseeker’s Allowance, there are four questions to consider1 to decide if the claimant is engaged as a self-employed earner.

**1.** is the person still trading

**2.** if the answer to **1.** is yes, is the person

**2.1**  carrying out activities connected to the self-employment in the weeks to which the claim is related **or**

**2.2** to be treated as engaged in work2 in a period of non-activity which is a normal incident of self-employment, whether as a part of the cycle of work or otherwise

**3.** if the person is engaged in work, is it remunerative work, i.e. is the work for 16 hours or more per week

**4.** if the person is not in remunerative work, are they in receipt of earnings to be taken into account and for what period they are to be taken into account.

1 R(JSA) 1/09; 2 IS (Gen) Regs (NI), reg 5; JSA Regs (NI), reg 52

20235 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The decision maker need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why1.

1 CA, CAO v Ellis (R(IS) 22/95)

Sale of goods

20236 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

**Note :** Also that payment may be derived from takings.

Business start up

20237 An allowance payable under certain schemes to assist people to become self employed is not payment for work1.

**Note :** that the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See DMG Chapter 21 for further guidance.

1 CA,, CAO v Smith; R(IS) 21/95

20238 Drawings from any business to meet living expenses, in cash or kind, will be payment for work except where the drawings are from business capital.

**Example**

Annie and her civil partner Rosie run a grocery shop at a loss. The business is for sale. They are living on the stock and money taken from the till. If that money was banked it would merely reduce the business overdraft. The couple are living off the capital of the business and are therefore not working for payment or in expectation of payment.

Company directors

20239 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director1. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract of service with the company and thus be a self-employed earner. In such cases, DMG 20234 applies.

1 R(IS) 5/95

20240 - 20249

Establishing hours of work

Introduction

20250 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count, although the question of notional earnings1 would arise. See DMG 20278 for guidance on teachers.

1 JSA Regs (NI), reg 105(13); IS (Gen) Regs (NI), reg 42(6)

20251 Hours worked as a carer or in certain specified occupations do not count for remunerative work purposes. (See DMG 20464 et seq.)

Jobseeker’s Allowance - carers and specified occupations

20252 For Jobseeker’s Allowance purposes, decision makers should take no account of the hours worked

**1.** by anyone falling within

**1.1** DMG 20464 **2.** to **7.** **or**

**1.2** DMG 20465 **1.** to **2.** and **4.**1 **or**

**2.** in caring for someone2 who

**2.1** is in receipt of Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate **or**

**2.2** has claimed Attendance Allowance or Disability Living Allowance **or**

**2.3** has claimed and has an award of

**2.3.a** Attendance Allowance **or**

**2.3.b** the care component of Disability Living Allowance at the highest or middle rate3 for the period between the date of claim and date of award **or**

**3.** in caring for someone if the carer is in receipt of Carer’s Allowance4.

1 JSA Regs (NI), reg 51(3)(b); 2 reg 51(3)(c); 3 SS C&B (NI) Act 92, sec 64; 4 sec 70

20253 DMG 20252 **2.2** applies only until the earlier of1

**1.** the date the claim for Attendance Allowance or Disability Living Allowance is decided **or**

**2.** 26 weeks from the date of claim for Attendance Allowance or Disability Living Allowance

1 JSA Regs (NI), reg 51(3)(c)(ii)

20254 The purpose of DMG 20253 is to help carers where there is a delay in deciding a claim to Attendance Allowance or Disability Living Allowance. The provision does not apply if a

**1.** claim for Attendance Allowance or Disability Living Allowance is unsuccessful **and**

**2.** further claim is made solely so that the carer can continue to receive Jobseeker’s Allowance.

20255 The guidance at DMG 20252 **2.** and DMG 20252 **3.** does not apply to carers who are employed earners1, for example nurses and care workers in residential care homes. The hours of such employees will count towards the remunerative work rule in the normal way.

1 JSA Regs (NI), reg 51(3)(c)

20256 Hours worked in any other occupation by a person who satisfies DMG 20464should be taken into account in the normal way.

Income Support - carers and specified occupations

20257 For Income Support take no account of the hours worked by anyone falling within DMG 20464 **1.** to **8.**1. Hours worked in any other occupation by a person who satisfies DMG 20464 **1.** to **8.** should be taken into account in the normal way.

1 IS (Gen) Regs (NI), reg 5(6)

**Example 1**

Margery claims Income Support. She minds children in her home from Monday to Friday, 8am to 1pm. She also works in the evenings in a supermarket from 7pm to 10pm, 5 nights a week. The hours she spends childminding do not count for remunerative work purposes. Her total hours of work are 15 a week in the supermarket. She is not in remunerative work.

**Example 2**

Trevor is required at home to care for his disabled partner who gets Attendance Allowance. He also works 20 hours a week as a barman. Because he is a carer he is treated as not engaged in remunerative work and none of the hours count, not even those spent in bar work.

Counting the hours

Flexible working schemes

20258 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.

Overtime

20259 Overtime for which payment is made or expected counts towards the weekly total.

Breaks

20260 Any time allowed by the employer for meals or refreshments counts towards the total hours worked provided earnings are paid or are expected to be paid for this time1.

1 JSA Regs (NI), reg 51(3)(a); IS (Gen) Regs (NI), reg 5(7)

Night duty

20261 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

**1.** payment made or expected is less than for normal daytime duties **or**

**2.** the time on night duty is spent sleeping.

**Example**

Edward makes a claim for income-based Jobseeker’s Allowance. His wife, Michelle works in a care home. Her daytime working is 16 hours a week. Michelle is also contracted for night duty of 20 hours a week. For her night duty, Michelle receives a retainer which is paid at a lower hourly rate than her daytime work. If she is called upon to deal with an emergency she is paid at the daytime rate. She is not required to perform any duties unless there is an emergency so she sleeps in the bedroom provided for her. The decision maker decides that Michelle is in remunerative work.

Evidence of hours

20262 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

20263 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a self-employed earner follow the guidance at DMG 20265 to establish any additional hours worked.

Musicians

20264 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

**Example 1**

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.

**Example 2**

A musician is engaged to perform music. The performances last for 12 hours a week. She practices the performances for 10 hours a week. She is engaged in remunerative work.

Self-employed

20265 Include all the hours necessary to run the business, for example, time spent in

**1.** trips to wholesalers and retailers

**2.** visits to potential customers

**3.** advertising or canvassing

**4.** cleaning the business premises

**5.** cleaning and maintaining items used in the business, for example a taxi or driving school car

**6.** providing estimates

**7.** book-keeping

**8.** research work, for example where the person is a writer.

20266 Where a self-employed person is running a business which is

**1.** building up **or**

**2.** winding down

it may be appropriate to revise the remunerative work question week by week until hours of work reach a consistent level.

20267 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

**Example**

Trevor, a window cleaner in good health and with all the necessary window cleaning equipment claims to have worked 15 hours a week during a period of fine weather. His accounts book revealed that he operated a long-standing window cleaning round with an average of 10 customers per day, five days a week. He agreed that it took him about 30 minutes to clean each house plus an hours travelling in total between houses. Based on this evidence the decision maker concluded that he worked 6 hours a day, five days a week, a total of 30 hours a week.

20268 If a self-employed person has been doing undisclosed work or working more hours than is claimed, the decision maker must decide on the probable number of hours worked. Consider all the available evidence, including any Benefit Investigation Officer’s reports of what times of day and for how many days the person was observed working.

20269 - 20277

Teachers

20278 The conditions of employment of schoolteachers, in grant aided schools in Northern Ireland, are laid down in an Order1 and Regulations2. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non teaching activities such as

**1.** preparing and planning lessons and timetables

**2.** assessing and reporting on pupils

**3.** helping to administer and organise the school

**4.** advising pupils and ensuring their discipline, health and safety

**5.** discussing pupils’ progress with parents.

Time spent in these activities should be counted. This list is not exhaustive. If the decision maker is unsure whether a teacher is obliged to do a particular activity, consult the Order or Regulations or job description.

1 Education & Libraries (NI) 86, art 69;  
2 Teachers (Terms and Conditions of Employment) Regulations (NI) (No 267) and (No 299)

20279 Before either the Order or Regulations came into force, teachers were generally required by their contracts to carry out the duties now laid down1. Members of the teaching profession not covered by the Order or Regulations (for example higher education lecturers and teachers in private schools) have similar obligations unless their contract provides

**1.** that they are not required to do such work **or**

**2.** that any such work is included in the hours of work laid down in the contract.

1 Teachers (Terms and Conditions of Employment) Regulations (NI), Schedule 3

20280 In most cases the contract of employment will not state the amount of time to be spent in duties other than actual teaching. Accept the person’s own evidence if it seems reasonable. If a person states that the time spent on non teaching duties is anything up to one third of the time spent teaching, accept this without question.

20281 It may be reasonable to accept a larger proportion than a third depending on the

**1.** teacher’s experience

**2.** subjects being taught

**3.** method of teaching

**4.** amount of homework to be marked

**5.** number of pupils.

In these cases ask the person to provide a detailed list of non teaching duties. If there is still doubt the employer may be able to provide evidence.

20282 The amount of non teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

20283 - 20292

Calculating average hours

20293 If the claimant or partner is engaged in work where the hours fluctuate, calculate the average weekly hours1.

1 JSA Regs (NI), reg 51(2); IS (Gen) Regs (NI), reg 5(2)

Identifying a recognisable cycle

20294 See if there is any pattern of work over a period of time. This is known as a recognisable cycle1. A recognisable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

**Example 1**

week 1 X hours

week 2 Y hours

week 3 X hours

week 4 X hours

week 5 Y hours

week 6 X hours

There is a recognisable cycle of 3 weeks (weeks 1 to 3 repeated in weeks 4 to 6).

**Example 2**

month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognisable cycle of 2 months.

**Example 3**

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognisable cycle.

**Note :** A cycle may include weeks in which no work is done2.

1 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen) Regs (NI), reg 5(2)(b)(i);  
2 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen) Regs (NI), reg 5(2)(b)(i)

Permanent or indefinite contract

20295 A recognisable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

**Example**

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. She makes a claim to Jobseeker’s Allowance during the Easter holidays. The decision maker decides that Julia’s contract establishes a cycle from its outset.

Fixed term contracts and casual workers

20296 A cycle may be established after one or two years where a claimant is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)1. Decision makers should decide each case on its facts. The decision maker will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle e.g. in the case of relief cover or occasional work. Decision makers should consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

**Example**

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He makes a claim to Jobseeker’s Allowance for the Christmas holiday stating that he has been asked to return to work after the holidays. Bill tells the decision maker that he expects to return to work as he did the previous January. The decision maker decides that Bill has established a recognisable cycle of work and that it has not been broken. Bill is not entitled to Jobseeker’s Allowance because on average he works 16 hours or more a week.

Supply teachers

20297 Supply teachers are likely to be employed on intermittent contracts, each of varying lengths and separated by periods of non-employment. Every case should be considered on its own facts with a view to ascertaining whether or not a cycle exists. Therefore although it is possible that a supply teacher has a recognisable cycle of work, in practice, work as a supply teacher is unlikely to give rise to a cycle1.

1 R(JSA) 5/03

Extra work

20298 A person may have a contract for work that specifies when they will and won’t be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle1.

1 R(JSA) 5/02

**Example**

Celeste is employed as a shop assistant by a students union. The terms of her contract are “Monday to Friday, 8.15 am to 1.15 pm term time only”. Celeste agrees to do extra work stocktaking during the first week of the summer holidays. She makes a claim to Jobseeker’s Allowance the day after she finishes the extra work. The decision maker decides that Celeste’s contract establishes a cycle from the outset of the work, and that the cycle has not been broken by the extra hours of work done during the holiday period.

Probation

20299 A recognisable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

**Example**

Harry is employed at a secondary school for 37 hours a week for 38 weeks a year as a workshop technician. His contract of employment, subject to a 6 month probationary period, specifies that he is expected to work during term times and not during school holidays. The decision maker decides that he is in a recognisable cycle from the outset of his contract and, on average, works 16 hours or more a week. He is not entitled to Jobseeker’s Allowance because he is in remunerative work.

20300 - 20305

Recognisable cycle established

20306 Where there is a recognisable cycle, calculate average hours over one complete cycle1. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences.

1 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen) Regs (NI), reg 5(2)(b)(i); R(IS) 8/95

Periods when a person does not work

20307 Periods when a person does not work can fall into the following categories:

**1.** periods of absence because of sickness, maternity leave, paternity leave or adoption leave

**2.** periods of unauthorised absence “without good cause”

**3.** periods of no work (other than holidays) during which someone is not working because work is not provided by the employer

**4.** periods during which someone can be properly regarded as on holiday.

**Note :** For periods during which someone is not working because they are between jobs they are not in remunerative work, see DMG 20203 - 20206.

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

**[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]**

20308 When someone is absent from work due to sickness, paternity leave1, adoption leave2 or maternity leave3, the decision maker should decide that they are not in remunerative work during such absences4. When someone has a period of absence without good cause, the decision maker should treat such an absence in the same way as proper holidays5 (see DMG 20315).

1 Employment Rights (NI) Order 1996, art 112A & 112B; 2 art 107A & 107B  
3 art 103 - 105; 4 JSA Regs (NI), reg 52(1); IS (Gen) Regs (NI), reg 5(3A)  
5 JSA Regs (NI), reg 52(1); IS (Gen) Regs (NI), reg 5(3)

Holidays or periods of no work

20309 The decision maker should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid1. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

**1.** spread over a year in equal instalments **and**

**2.** enhanced to take account of a lack of holiday entitlement

should not be taken into account when deciding whether someone has paid holidays.

1 R(JSA) 5/03

20310 From 1.10.98, legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.991.

1 Working Time Regs (NI) 1998 No 386, reg 13

Calculating the number of hours for which a person is engaged in work

20311 If the decision maker has decided that the claimant or partner is still in employment (see DMG 20203 - 20206) (and they are not absent from work due to sickness or maternity, adoption or paternity leave) they will need to calculate the number of hours for which the claimant or partner is engaged in work.

**Note :** If the claimant or partner is in a recognisable cycle but found not to be in remunerative work, the normal income rules apply. Decision makers should note that there cannot be a disregard for final earnings because the work is continuing.

20312 If the claimant or partner works the same number of hours each week when not on holiday, that is the number of hours worked each week.

20313 If the claimant’s or partner’s hours of work fluctuate, the decision maker should take an average

**1.** as per DMG 20322 et seq if there is no cycle of work **or**

**2.** as per DMG 20315 et seq if there is a cycle of work.

20314

Calculating the average

20315 Legislation1 requires that in cycle cases where the hours of work fluctuate, the average should be calculated by taking into account periods in which the person does not work while disregarding other absences. Decision makers should only deduct periods of holiday, absences without good cause, sickness, maternity, adoption or paternity leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle2. Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity, adoption and paternity leave which are “other absences to be disregarded”.

**Note :** Decision makers should no longer follow R(IS) 7/96

1 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen)Regs (NI), reg 5(2)(b)(i); 2 R(JSA) 5/03

Jobseeker’s Allowance - yearly cycle with school holidays or similar vacations

20316 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, there is a recognisable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, the decision maker should divide the total number of hours worked during the year by 52 weeks less any weeks of “other absence”1 (see DMG 20315).

1 R(JSA) 5/03

**Example 1**

Jeff, a qualified teacher, has worked as a school tutor for children with special needs since October 2005. He works on a sessional basis, completing a monthly return of the number of hours he has taught for which he is paid accordingly. He does not get paid for holidays, so claims Jobseeker’s Allowance in October 2009. For the academic year 2008/2009 Jeff worked 520 hours.

**Note :** an academic year includes the summer holidays. By the time he claims Jobseeker’s Allowance in October 2009 he has completed at least two cycles of academic work, so the decision maker decides that his employment has not ended. He has no paid holidays, so the total hours worked (520) are divided by the weeks in the cycle (52). This gives 10 hours a week, meaning that Jeff is not in remunerative work.

**Example 2**

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2008 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday”. The academic terms cover 38 weeks but Megan receives her pay over the calendar year in 12 equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2007/2008 academic year she has four other such contracts.

**1.** 7.5 hours a week for 12 weeks in the Autumn term

**2.** 8.5 hours a week for 10 weeks in the Spring term

**3.** 7.5 hours a week for 4 weeks in the Summer term

**4.** 5 hours a week for 6 weeks in the Summer term.

In June 2009, Megan claims Jobseeker’s Allowance for the summer vacation.

The hours of work from all the contracts have to be added together, but should they be viewed as fluctuations in the cycle of work established by the main contract and averaged over the whole year, or only added in during the periods covered by the additional contracts?

The additional contracts are with the same employer as the main contract, involve the same type of work as the main contract and the work under then is done during the periods of work in the cycle established under the main contract. So the hours from them would should be added to the hours from the main contract and taken into account over the whole cycle.

She is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The “holidays” should therefore be taken into account as periods of no work and included in the averaging.

Total number of hours is 824. Divided by 52 equals 15.8 (i.e. below 16)

Megan is not in remunerative work.

**Example 3**

Emily is employed in a student’s union shop for 25 hours per week term-time only. The academic year covers 31 weeks. She has an annual cycle of work from September to September. Contractually she was entitled to 30 days paid holiday. This consisted of 18 days holiday plus 12 public holidays. Four of the public holidays fell in term-time and Emily did not have to work for those days.

The total number of hours worked during the cycle was 755 (31 weeks x 25 hours - 20 hours of public holidays that fell in term-time).

The total number of paid holidays, 30 days or 6 weeks, should be subtracted from the number of weeks in the cycle, which gives 46 weeks. The number of hours worked, 755, is divided by 46 giving an average of hours worked of 16.41. Emily is in remunerative work1.

1 R(JSA) 3/04

Income Support - yearly cycle with school holidays or similar vacations

20317 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, whether or not payment is made for any part of the holidays, there is a recognisable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, exclude from the calculation of average hours any periods

1. of school holidays or similar vacations when that person does no work **and**
2. not part of school holidays or similar vacations, when the person is not required to work1.

1 IS (Gen) Regs (NI), reg 5(3B); R(IS) 15/01

**Example**

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2000 for 15.5 hours a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday.” The academic term cover 38 weeks, but Megan receives her pay over the calendar year in 12 equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 1999/2000 academic year she has four such other contracts:

1. 7.5 hours a week for 12 weeks in the Autumn term
2. 8.5 hours a week for 10 weeks in the Spring term
3. 7.5 hours a week for 4 weeks in the Summer term
4. 5 hours a week 6 weeks in the Summer term.

In June 2001 Megan claims Income Support for the summer vacation.

She is not entitled to holiday pay. The fact that she receives her pay spread over the year in equal instalments does not affect this, nor does the fact that she receives an enhanced rate of pay.

The periods of school holiday are excluded from the calculation of average hours.

Total number of hours is 824. Divided by 38 equals 21.7 (i.e. over 16). Megan is in remunerative work.

Ancillary school workers

20318 Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at DMG 20316 or DMG 20317 as appropriate.

Examples of ancillary school workers include

1. school meals services employees
2. domestic staff
3. clerical staff (such as secretaries and clerks)
4. laboratory workers
5. nursing assistants
6. school bus drivers.

20319

No recognisable cycle established

Estimating future hours

20320 Where

**1.** a person has just started work or is about to start work **or**

**2.** the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work

**3.** because of absences from work a recognisable cycle has not been established

estimate the hours or the average hours the person is **expected** to work in a week1.

1 JSA Regs (NI), reg 51(2)(a); IS (Gen) Regs (NI), reg 5(2)(a)

20321 Average the estimated hours over a period long enough to cover the expected pattern of work1. Consider the decision when there is sufficient evidence to average the actual hours worked.

1 R(IS) 8/95

Averaging past hours

20322 Where the person has been in work before the date of claim, decision or application for supersession and a recognisable cycle has not been established calculate average weekly hours over

**1.** the 5 weeks immediately before the date of claim, or the date on which a superseding decision is made1 **or**

**2.** a longer or shorter period immediately before the date of claim, the date of decision or the date of application for supersession if the 5 week period in **1.** does not give a fair average.

**Note :** “Immediately before” in this context means the end of the last complete week before the date of claim, date of decision or date of application for supersession.

1 JSA Regs (NI), reg 51(2)(b)(ii); IS (Gen) Regs (NI), reg 5(2)(b)(ii)

20323 Include in the calculation at DMG 20322 any periods of non-working within the normal pattern of employment (rest periods)1. Do not include periods of non-working after the employment has ended.

*1 R(IS) 12/95*

**Example**

Elizabeth works for 6 months from January to June 2006 for an average of more than 16 hours a week. The employment ended in June 2006 and she did no more work. This comes to light in 2007 and the decision maker supersedes on 01.03.07. When calculating the average hours the decision maker must use a period immediately before 01.03.07. The decision maker averages over the period January 2006 to 28.02.07 to get the most accurate result. The period of non-working after employment ended is not included in the calculation. Elizabeth was engaged in remunerative work for the period January to June 2006 because average hours of work were more than 16 a week.

20324 Examples of circumstances in which it may not be appropriate to use the 5-week period in DMG 20322 **1.** are where the

**1.** 5 weeks contain a period of absence which distorts the average **or**

**2.** 5 weeks do not show the person’s normal pattern of working hours, for example they include a short period of overtime which is not typical, or reduced hours because of unusual slackness in the business **or**

**3.** person is paid at intervals of longer than a week.

In either of the circumstances in **1.** or **2.** a period of less than 5 weeks as in DMG 20322 **2.** might give a fairer result. Extending the period beyond the last 5 weeks would still include the distortions so in these circumstances estimate future hours as in DMG 20320.

20325 If the decision maker bases a weekly average of hours over a period of more or less than 5 weeks, as in DMG 20322 **2.**, the alternative period must still be a period immediately before the date of claim or the date the superseding decision is made. It should be either

**1.** more than the 5-week period in DMG 20322 **1.**, in which case it will include those 5 weeks **or**

**2.** less than the 5-week period in DMG 20322 **1.**, in which case it will be a part of those 5 weeks immediately before the date of claim or the date on which a superseding decision is made.

**Example**

Michael works for 6 months from January to June 2006 for an average of more than 16 hours a week. This comes to light in 2007 and the decision maker supersedes on 1.3.07. From June 2006 Michael’s working pattern changed. He then worked on average for 6 hours a week up to 1.3.07. When recalculating average hours the decision maker uses a period immediately before 1.3.07. The decision maker averages over the period January 2006 to 28.2.07 to get the most accurate result. Michael is not engaged in remunerative work at any time during that period because average hours of work are less than 16 a week.

20326 The approaches outlined in DMG 20320 and DMG 20322 are alternatives. There is no provision for the decision maker to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

Short-time workers

20327 Employers experiencing a fall in business may put their employees on short-time working. This can be

**1.** a reduction in hours worked each day **or**

**2.** no work on certain days of the week **or**

**3.** work restricted to certain weeks, for example week on, week off.

Follow the guidance in DMG 20320-20321 and estimate future hours1 at the start of short-time working until average hours over a past period can be calculated2.

Periods of no work should be included in the average.

1 JSA Regs (NI), reg 51(2)(a); IS (Gen) Regs (NI), reg 5(2)(a); R(IS) 8/95;  
2 JSA Regs (NI), reg 51(2)(b)(i) & (ii); IS (Gen) Regs (NI), reg 5(2)(b)(i) & (ii)

20328 - 20337

Changes to the normal hours

20338 Once the normal hours of work have been established, a person may work different hours for a period falling outside the normal pattern of working. Where this happens determine whether the change

**1.** represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary **or**

**2.** represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period **or**

**Note :** In this way a claimant normally entitled to Jobseeker’s Allowance or Income Support could be excluded under the remunerative work rules. Likewise, a person normally excluded could become entitled if temporary circumstances such as illness, adverse weather conditions or breakdown of equipment caused a reduction in working hours

**3.** means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller’s hours of work increase during a spell of hot weather and the decision maker decides that the previous calculation of average hours was based on an unrepresentative period. In such a case re-calculate average hours over

**3.1** the cycle of work if there is now a recognisable cycle1 **or**

**3.2** the 5-week period or other more suitable period immediately before the date of application for supersession2.

1 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen) Regs (NI), reg 5(2)(b)(i);  
2 JSA Regs (NI), reg 51(2)(b)(ii); IS (Gen) Regs (NI), reg 5(2)(b)(ii)

Seasonal workers

20339 The normal remunerative work rules apply to self-employed seasonal workers.

Averaging the hours

20340 Calculate average hours over

**1.** if there is a recognisable cycle over one complete cycle of work (this will usually be one year1). Include periods in which the person does no work, but exclude other absences such as holidays or sickness2 **or**

**2.** if there is no recognisable cycle - over the 5-week period, or other more suitable period, immediately before the date of claim, or the date a supersession decision is made3.

Include in the calculation time spent on all activities connected with the business.

1 R(JSA) 1/03; 2 JSA Regs (NI), reg 51(2)(b)(i); IS (Gen) Regs (NI), reg 5(2)(b)(i);  
3 JSA Regs (NI), reg 51(2)(b)(ii); IS (Gen) Regs (NI), reg 5(2)(b)(ii)

**Example**

For the last 5 years Ethan has been a self-employed seasonal worker as a travelling showman operating children’s rides. His on-season runs for 7 months June to December and for this period he worked 60 hours per week. He did no work in the off-season from January to May. He stated that he retained all of the equipment necessary for his work to recommence and that he would resume work the following June. The decision maker decides that the claimant had a cycle of one year and that the hours should be averaged over the whole cycle. The average hours worked were over 30 and the decision maker decided that the claimant was in remunerative work.

Agency and casual workers

20341 The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.

20342 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

20343 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

See DMG Chapter 26 for guidance on when employment ends. If a claim is made after employment is terminated, the person will not be in remunerative work.

20344 - 20389

People treated as in remunerative work

Introduction

**[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]**

20390 In Jobseeker’s Allowance and Income Support people can be treated as in remunerative work even though they are absent from remunerative work. This rule does not apply where people are absent because they

**1.** are ill **or**

**2.** are pregnant and have a right to return to work **or**

**3.** have given birth to a child and have a right to return to work

**4.** are on paternity leave **or**

**5.** are on adoption leave1.

1 JSA Regs (NI), reg 52(1); IS (Gen) Regs (NI), reg 5(3) & 3(A)

Contribution-based Jobseeker’s Allowance

20391 Treat claimants as in remunerative work for any period during which they are

**1.** absent without good cause1 **or**

**2.** absent by reason of a recognised, customary or other holiday2 **or**

**3.** covered by earnings received from remunerative work3.

1 JSA Regs (NI), reg 52(1); 2 reg 52(1); 3 reg 52(3)

Income-based Jobseeker’s Allowance

20392 Treat the claimant or partner as in remunerative work for any period during which they are

**1.** absent without good cause1 **or**

**2.** absent by reason of a recognised, customary or other holiday2 **or**

**3.** covered by holiday pay3.

1 JSA Regs (NI), reg 52(1); 2 reg 52(1); 3 reg 52(3)

20393 Treat a member of a joint claim couple1 as engaged in remunerative work if they are involved in a trade dispute.

1 JSA Regs (NI), reg 52(2A)

20394 In addition treat a partner as in remunerative work for the first 7 days of stoppage of work or withdrawal of labour where they are

**1.** involved in a trade dispute **and**

**2.** would not be entitled to Jobseeker’s Allowance in their own right because of that dispute **and**

**3.** the claimant was not entitled to income-based Jobseeker’s Allowance when the partner became involved in the trade dispute1.

1 JSA Regs (NI), reg 52(2)

Income Support

20395 Treat the claimant or partner as in remunerative work for any period during which they are

**1.** absent without good cause1 **or**

**2.** absent by reason of a recognised, customary or other holiday2 **or**

**3.** covered by earnings received from remunerative work3 unless those earnings are disregarded4 (see DMG 26583 et seq).

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

20396 In addition treat the claimant or partner as in remunerative work for the first 7 days of stoppage where they are involved in a trade dispute1.

1 IS (Gen) Regs (NI), reg 5(4)

Absence from work without good cause

20397 If a person is absent from remunerative work **without** good cause the remunerative work exclusion will still apply. It cannot apply where the work is not remunerative as defined in DMG 20210 et seq.

20398 If a person is absent from remunerative work **with** good cause the remunerative work exclusion will not apply.

Good cause

20399 “Good cause” is for the decision maker to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorised the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause.

20400 Examples of good cause include where the absence is due to

**1.** bereavement or sudden serious illness in the family **or**

**2.** a disaster at home **or**

**3.** suspension from work, whether or not on full pay **or**

**4.** a requirement to attend court.

20401 - 20409

Recognised, customary or other holiday

20410 A person should be treated as in remunerative work for any period of absence because of a recognised, customary or other holiday1. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see DMG 20309) **or**
2. work is not remunerative as in DMG 20210 et seq **or**
3. claimant goes on holiday after employment ends. But see DMG 20435 et seq where payments of holiday pay lead to the person being treated as in remunerative work.

See Appendix 3 to this Chapter for guidance on what is a recognised, customary or other holiday.

1 JSA Regs (NI), reg 52(1); IS (Gen) Regs (NI), reg 5(3)

20411 - 20424

Certain people affected by a trade dispute

20425 A person who is, or was, affected by a trade dispute1 will be treated as engaged in remunerative work for the 7 day period following the date on which

**1.** the stoppage of work due to a trade dispute at the person’s place of work began **or**

**2.** the person first withdrew labour in furtherance of a trade dispute.

20426 The 7 day exclusion applies

**1.** in income-based Jobseeker’s Allowance, where the partner is affected by a trade dispute

**2.** in Income Support, where the claimant or partner is affected by a trade dispute

**3.** in new or repeat claim only

**4.** even if the work in which the person was engaged immediately before the stoppage or withdrawal of labour was not remunerative.

20427 The 7 day exclusion does not apply where a claimant’s partner becomes involved in a trade dispute during the currency of a claim.

**Example 1**

Jack claims Income Support because his partner, who works as a cleaner for 10 hours a week, is affected by a trade dispute. The 7 day exclusion applies even though the partner’s work was not remunerative.

**Example 2**

Joe is already in receipt of Income Support when his partner, who also works as cleaner for 10 hours a week, becomes involved in a trade dispute. The 7 day exclusion does not apply because Income Support was already in payment when the partner was affected by the trade dispute.

20428 - 20434

Payment on termination or interruption of employment

20435 A person who was, or was treated as being engaged in remunerative work is excluded from Jobseeker’s Allowance and Income Support for the period over which certain payments, paid on termination of that employment, fall to be taken into account1. Some payments are disregarded2 (see DMG 26583 et seq). The relevant payments depend on which benefit is claimed.

1 JSA Regs (NI), reg 52(3); IS (Gen) Regs (NI), reg 5(5);  
2 JSA Regs (NI), reg 52(3A); Sch 5, para 1; IS (Gen) Regs (NI), reg 5(5A); Sch 8, para 1

20436 - 20463

People treated as not in remunerative work

Introduction

20464 In certain circumstances a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

**1.** engaged in childminding in the childminder’s home1 (Income Support only) **or**

**2.** engaged by a charity or voluntary organisation or is a volunteer2 **or**

**3.** engaged on a training scheme3 **or**

**4.** receiving assistance under the self-employed route4 **or**

**5.** engaged in specific occupations5 **or**

**6.** performing duties as a councillor6 **or**

**7.** engaged as a foster parent or in providing respite care7 **or**

**8.** engaged in an activity which attracts a sports award8

**9.** engaged on the Work Experience employment programme (Jobseeker’s Allowance only)9

**10.** participating in a scheme for assisting persons to obtain employment10.

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 IS (Gen) Regs (NI), reg 6(1)(b); 2 JSA Regs (NI), reg 53(a); IS (Gen) Regs (NI), reg 6(1)(c);  
3 JSA Regs (NI), reg 53(b); IS (Gen) Regs (NI), reg 6(1)(d); 4 JSA Regs (NI), reg 53(bb);  
IS (Gen) Regs (NI), reg 6(1)(dd); 5 JSA Regs (NI), reg 53(d); IS (Gen) Regs (NI), reg 6(1)(h);  
6 JSA Regs (NI), reg 53(e); IS (Gen) Regs (NI), reg 6(1)(i); 7 JSA Regs (NI), reg 53(f)  
IS (Gen) Regs (NI), reg 6(1)(j); 8 JSA Regs (NI), reg 53(j); IS (Gen) Regs (NI), reg 6(1)(l);  
9 JSA Regs (NI), reg 53(k); 10 reg 53(l)

20465 In addition, there are other circumstances where a person should be treated as not being in remunerative work, **regardless** of the type of work undertaken. These are where the person is

**1.** disabled1 (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**

**2.** affected by a trade dispute2 **or**

**3.** caring for another person3 (Income Support only) **or**

**4.** living in a residential care home, nursing home, an Abbeyfield home or an independent hospital4 (revoked from and including 25.1.10 but see Appendix 6 for savings provisions) **or**

**5.** in receipt of Income Support by way of Mortgage Interest Run-On5.

1 JSA Regs (NI), reg 53(h); IS (Gen) Regs (NI), reg 6(4)(a); 2 JSA Regs (NI), reg 53(g) & 53(gg);  
IS (Gen) Regs (NI), reg 6(4)(b); 3 IS (Gen) Regs (NI), reg 6(4)(c), Sch 1B, para 4  
4 JSA Regs (NI), reg 53(c); IS (Gen) Regs (NI), reg 6(4)(d); 5 IS (Gen) Regs (NI), reg 6(5) & 6(6)

**Example**

Trevor is required at home to care for his disabled partner who gets Attendance Allowance. He also works 20 hours as a barman. Because he is a carer he is treated as not engaged in remunerative work and none of the hours count, not even those spent in bar work.

Childminders

20466 For Income Support purposes, people who are childminders are treated as not being in remunerative work as long as the childminding is done in their home1. If the childminding is done in the employer’s home, the hours worked will count towards the remunerative work exclusion.

**Note :** For Jobseeker’s Allowance purposes, all work as a childminder will count towards the remunerative work exclusion.

1 IS (Gen) Regs (NI), reg 6(1)(b)

Charity or voluntary workers and volunteers

20467 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organisation or are volunteers and

**1.** the only payment

**1.1** received **or**

**1.2** due to be paid

is for expenses incurred **and**

**2.** they receive no remuneration or profit **and**

**3.** they are not treated as having notional earnings1 (see DMG 28389 - 28391).

1 JSA Regs (NI), reg 53(a) & Sch 6, para 2; IS (Gen) Regs (NI), reg 6(1)(c) & Sch 9, para 2

Meaning of voluntary organisation

20468 A voluntary organisation is any association, other than a public body whose activities are not carried out for profit1.

1 JSA Regs (NI), reg 1(3); IS (Gen) Regs (NI), reg 2(1)

Meaning of volunteer

20469 A volunteer is a person

**1.** who is engaged in voluntary work for someone who is not a relative **and**

**2.** where the only payment that person receives or is due to be paid to that person is in respect of expenses they have reasonably incurred in connection with that work1.

1 IS (Gen) Regs (NI), reg 6(1)(c); JSA Regs (NI), reg 53(a)

Engaged on a training scheme

Jobseeker’s Allowance

20470 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 20008 - 20009) is being paid1. People in the self-employed employment option of the New Deal for Young People are treated as not employed and as participating in arrangements for training under employment and training law2 if they receive or are entitled to receive a training allowance (**NB :** this only applies for their participation in the New Deal for Young People3).

1 JSA Regs (NI), reg 53(b); 2 E&T Act (NI) 1950, sec 1 & 3; 3 New Deal (Misc Provs) Order (NI) 98

Income Support

20471 Treat people as not being in remunerative work where they are on a training scheme for which a training allowance (see DMG 20008 - 20009) is being paid1. People in the self-employment route of the New Deal for lone parents are eligible to receive a top-up payment or a payment to assist with expenses incurred as a result of participating on the scheme. Such payments are treated as a training allowance2 for the purpose of Income Support and “training premium” for all other purposes. Whilst receiving such payments claimants are treated as not engaged in remunerative work3.

1 IS (Gen) Regs (NI), reg 6(1)(d); 2 New Deal (Lone Parents) (Misc Provs) Order (NI) 2001  
(SR. 2001 No.110), reg 2(2)(a); 3 IS (Gen) Regs (NI), reg 6(1)(d) & (dd)

People receiving assistance under the self-employed route

20472 People are treated as not being in remunerative work where they are receiving assistance under the self-employed route1 (see DMG 14001).

1 JSA Regs (NI), reg 53(bb); IS (Gen) Regs (NI), reg 6(1)(dd)

Meaning of self-employed route

20473 For the meaning of self-employed route see DMG 14000.

Engaged in specific occupations

20474 People are treated as not being in remunerative work where they are

**1.** part-time firefighters1 **or**

**2.** auxiliary coastguards for coastal rescue activities2 **or**

**3.** working part-time in the manning or launching of a lifeboat3 **or**

**4.** members of a territorial or reserve force4

**5.** persons in the army whose service is restricted to part-time services in Northern Ireland5

**6.** part-time members of the Police Service of Northern Ireland (Reserves)6.

1 JSA Regs (NI), reg 53(d)(i); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(a);  
2 JSA Regs (NI), reg 53(d)(ii); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(b);  
3 JSA Regs (NI), reg 53(d)(iii); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(c);  
4 JSA Regs (NI), reg 53(d)(iv); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(d);  
5 JSA Regs (NI), reg 53(d)(v); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(e);  
6 JSA Regs (NI), reg 53(d)(vi); IS (Gen) Regs (NI), reg 6(1)(h) & Sch 8, para 7(1)(f)

Councillors

20475 People who perform duties as a councillor are treated as not being in remunerative work1.

1 JSA Regs (NI), reg 53(e); IS (Gen) Regs (NI), reg 6(1)(i)

Meaning of councillor

20476 A councillor1 means a member of a district council.

1 SS C&B (NI) Act 92, sec 167F(2)

20477

Foster parents and people providing respite care

Foster parents

20478 People receiving payments from a Health and Social Services Board, a Health and Social Services trust, training school or voluntary organisation for fostering a child or young person are treated as not in remunerative work1.

**Note:** See DMG 28380 for guidance on the income disregard of these payments.

1 JSA Regs (NI), reg 53(f) & Sch 6, para 27; IS (Gen) Regs (NI), reg 6(1)(j) & Sch 9, para 26

People providing respite care

20479 People providing respite care are treated as not in remunerative work1 if

**1.** the person requiring care is being cared for in the claimant’s home **and**

**2.** the person requiring care is not normally a member of the claimant’s household **and**

**3.** the only payments received are specified payments2 from a

**3.1** Health and Social Services Board or Health and Social Services trust **or**

**3.2** juvenile justice centre **or**

**3.3** voluntary organisation.

**Note :** See DMG 28384 - 28385 for guidance on the income disregard of these payments.

1 JSA Regs (NI), reg 53(f); IS (Gen) Regs (NI), reg 6(1)(j);  
2 JSA Regs (NI), Sch 6, paras 27 & 28; IS (Gen) Regs (NI), Sch 9, paras 26 & 27

Sports awards

20480 People are treated as not being in remunerative work1 if

**1.** they are engaged in an activity for which a sports award has been or is to be made2 **and**

**2.** no other payment is made or expected to be made to them in respect of the activity3.

1 JSA Regs (NI), reg 53(j); IS (Gen) Regs (NI), reg 6(1)(l); 2 JSA Regs (NI), reg 53(j)(i);  
IS (Gen) Regs (NI), reg 6(1)(l)(i); 3 JSA Regs (NI), reg 53(j)(ii); IS (Gen) Regs (NI), reg 6(1)(l)(ii)

Meaning of sports awards

20481 A sports award1 is made by one of the Sports Councils named in the National Lottery legislation and out of sums allocated under that legislation.

*1 IS (Gen) Regs (NI), reg2(1); JSA Regs (NI), reg 1(3); National Lottery etc. Act 1993, sec 23(2)*

20482 - 20495

Disabled workers (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20496 Treat people as not in remunerative work where they are mentally or physically disabled1 and as a result of that disability

**1.** earn 75% or less of what a person without that disability working the same number of hours would reasonably be expected to earn2 **or**

**2.** work 75% or less of the hours that a person without that disability could reasonably be expected to do in the same work or in a similar job in the area3.

1 JSA Regs (NI), reg 53(h); IS (Gen) Regs (NI), reg 6(4)(a);  
2 JSA Regs (NI), reg 53(h)(i); IS (Gen) Regs (NI), reg 6(4)(a)(i);  
3 JSA Regs (NI), reg 53(h)(ii); IS (Gen) Regs (NI), reg 6(4)(a)(ii)

20497 The person’s own evidence of reduced earnings or hours should normally be accepted. However, if necessary decision makers should obtain further evidence for comparison purposes. This may include information from private employment agencies, Health and Social Services Boards or charities for the disabled.

20498 See Appendix 2 to this Chapter for guidance on protection for people adversely affected by the change in this provision from 07.10.91.

People affected by a trade dispute

Income-based Jobseeker’s Allowance

20499 Where

**1.** the partner of a claimant is involved in a trade dispute **and**

**2.** the seven day exclusion period (see DMG 20394)

**2.1** does not apply **or**

**2.2** no longer applies

the claimant’s partner is treated as not being in remunerative work1.

*1 JSA Regs (NI), reg 53(g)*

20500 Claimants should be treated as not in remunerative work1 where

**1.** they are

**1.1** a member of a joint claim couple **and**

**1.2** involved in a trade dispute **and**

**2.** the seven day exclusion period (see DMG 20393)

**2.1** does not apply **or**

**2.2** no longer applies.

1 JSA Regs (NI), reg 53(gg)

Income Support

20501 Where the claimant or partner is involved in a trade dispute and they are treated as not being in remunerative work because

**1.** the seven day exclusion period (see DMG 20396)

**1.1** does not apply **or**

**1.2** no longer applies **and**

**2.** certain payments1 are not or no longer taken into account

they are treated as not being in remunerative work2.

1 IS (Gen) Regs (NI), reg 35(1)(b), (c), (d) & (i); 2 reg 6(4)(b)

Caring for another person

20502 For Income Support purposes, people are treated as not being in remunerative work where they are1

**1.** regularly and substantially engaged in caring for another person and that person

**1.1** is in receipt of Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate2 **or**

**1.2** has claimed Attendance Allowance or Disability Living Allowance **or**

**1.3** has

**1.3.a** made an advance claim for **and**

**1.3.b** an award of **and**

**1.3.c** not completed the qualifying period for

Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate3 **or**

**1.4** has

**1.4.a** made an advance claim for **and**

**1.4.b** an award of **and**

**1.4.c** completed the qualifying period for

Attendance Allowance or the care component of Disability Living Allowance at the highest or middle rate and the award is in payment **or**

**2.** both entitled to and in receipt of Carer’s Allowance4 and caring for another person.

**Note 1 :** See DMG 20117 - 20119 for guidance on deciding whether or not a person is regularly and substantially caring.

**Note 2 :** For Jobseeker’s Allowance purposes, where people are caring for another person the hours spent in caring do not count toward the remunerative work exclusion5. However, hours spent by a carer in any other occupation do count (see DMG 20252 et seq).

1 IS (Gen) Regs (NI), reg 6(4)(c) & Sch 1B, para 4; 2 SS C&B (NI) Act 92, sec 72(3);  
3 SS C&B (NI) Act 92, sec 65(6)(a); SS (C&P) Regs (NI), reg 13A;  
4 SS C&B (NI) Act 92, sec 70; 5 JSA Regs (NI), reg 51(3)(c)

20503 Where DMG 20502 **1.2** applies people are treated as not in remunerative work until the earlier of1

**1.** the date the claim for Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment is decided **or**

**2.** 26 weeks from the date of claim for Attendance Allowance, Disability Living Allowance, Armed Forces Independence Payment or Personal Independence Payment.

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

People living in a residential care home, nursing home, Abbeyfield home or an independent hospital (revoked from and including 25.1.10 but see Appendix 6 for savings provisions)

20504 People who

**1.** are in employment **and**

**2.** live in certain types of accommodation

are treated as not being in remunerative work1.

1 JSA Regs (NI), reg 53(c); IS (Gen) Regs (NI), reg 6(4)(d)

20505 DMG 20504 applies only to a person who

**1.** lives in (whether permanently or temporarily) or is temporarily absent from

**1.1** a residential care home **or**

**1.2** a nursing home **or**

**1.3** an Abbeyfield home **or**

**1.4** an independent hospital **and**

**2.** requires personal care because of

**2.1** old age **or**

**2.2** disablement **or**

**2.3** past or present dependence on alcohol or drugs **or**

**2.4** past or present mental disorder **or**

**2.5** a terminal illness.

See DMG Chapter 24 for guidance on the treatment of people in residential care homes, nursing homes, Abbeyfield homes or an independent hospital.

20506 - 20529

Mortgage interest run-on

20530 People may be entitled to Income Support in respect of mortgage or loan interest mortgage interest run-on after they start remunerative work if the

**1.** remunerative work is expected to last for not less than five weeks **and**

**2.** people were, for a continuous period of 26 weeks immediately before the day on which they started this work, entitled to and in receipt of income-based Jobseeker’s Allowance, Income Support or an income-related Employment and Support Allowance **and**

**3.** people had, on the day before starting this work, included in the applicable amount, an amount in respect of mortgage or loan interest or other housing costs such as groundrent or service charge **and**

**4.** people remain liable to make payments on the loan1.

For Income Support only people who satisfy these conditions are treated as not being in remunerative work for the first four weeks of that work2.

1 IS (Gen) Regs (NI), reg 6(5); 2 reg 6(6)(a)

20531 When determining the length of time benefit has been in payment, any periods of mortgage interest run-on will not be treated as part of the 26 week qualifying period1.

1 IS (Gen) Regs (NI), reg 6(7)

20532 See DMG 26009 for guidance on earnings disregard, DMG 28351 for income disregard, DMG 29605 for capital disregards, DMG 24391 for applicable amount, DMG 33349 for payment of mortgage interest run-on and DMG 02009 for claims.

20533 - 20555

People in relevant education

What constitutes relevant education

Introduction

20556 With certain exceptions, a child or young person in Northern Ireland shall be treated as receiving relevant or full-time education1 where that person is a child or qualifying young person within the meaning of specified legislation2. The exceptions are in DMG 20631 et seq.

1 JSA Regs (NI), reg 54(1) & (2); IS (Gen) Regs (NI), reg 12; 2 SS C&B (NI) Act 92, sec 138

Definition of a child

20557 A child is a person under the age of 161.

1 JS (NI) Order 95, sec 2(1); SS C&B (NI) Act 92, sec 138

Definition of a qualifying young person

20558 Where any of the conditions at DMG 20559 to 20566 below applies, the person is a qualifying young person and treated as in relevant education and unless certain conditions apply (see DMG 20630 et seq) they will not be entitled to Jobseeker’s Allowance or Income Support. Where more than one of the conditions in DMG 20559 to 20566 below apply, the person remains a qualifying young person until the last of them ceases to be satisfied1. Where the person leaves relevant education or approved training they continue to be a qualifying young person until the terminal dates (see DMG 20763 et seq).

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

Education and training condition

20559 This condition applies to a person who has not reached age 201 **and**

**1.** is undertaking a course of full-time education which is not advanced education or provided by virtue of his employment or any office held but which is provided

**1.1** at a school or college **or**

**1.2** elsewhere but is approved by Her Majesty’s Revenue and Customs Commissioners and the full-time education was being received there when that person was still a child **or**

**2.** is undertaking approved training that is not provided through a contract of employment **or**

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

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

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

**1.** the education or training began **or**

**2.** the person was accepted or enrolled on the education or training

before they were 191.

**Note :** Bear in mind that National Vocational Qualification courses have different levels and each level is a course in its own right, even where the subject is the same. Only levels 1 to 3 equate to non-advanced full-time education. So, for example, a person starts a National Vocational Qualification level 1 English course before they were 19 and so they satisfy the education and training condition. By the time they finish the level 1 course, the person is over 19. They then decide to go on the level 2 English course. This is a different course even though it is the same subject. As the person was over 19 when they began or were enrolled on the level 2 course they would no longer satisfy the criteria above.

1 CHB (Gen) Regs, reg 3(4)

16 year olds (15 year olds in Scotland)

20561 A 16 year old (in Scotland also a 15 year old) who has left relevant education or training will still be a qualifying young person until the 31st August following their 16th birthday. Where the person is 16 on the 31st August, they remain a qualifying young person until the 1st September following their 16th birthday1.

1 CHB (Gen) Regs, reg 4

Extension period for 16 and 17 year olds

20562 The extension period1

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

**2.** ends 20 weeks later.

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

1 CHB (Gen) Regs, reg 5

20563 This period applies to those aged 16 and 17 years

**1.** who have ceased to be in education or training **and**

**2.** who are registered for work, education or training with a qualifying body1 **and**

**3.** who are not engaged in remunerative work **and**

**4.** whose extension period has not expired **and**

**5.** where the person who is responsible for the 16/17 year old

**5.1** was entitled to Child Benefit for them immediately before the extension period began **and**

**5.2** has made a request to Her Majesty’s Revenue and Customs Commissioners in writing, or by such other means that the Commissioner accepts, within three months of the education or training ceasing for the payment of Child Benefit during the extension period

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

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

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

20564 Where the 16/17 year old in a Child Benefit extension period is orphaned or estranged1 they still have to satisfy the conditions in DMG 20563 but it is unlikely that they will be able to satisfy the condition at DMG 20563 **5.**. Estranged or orphaned young people are therefore treated as satisfying this condition2 (DMG 20563 **5.**) and will therefore still be entitled, subject to other conditions of entitlement, to Income Support. There is no requirement that these young people should transfer to income-based Jobseeker’s Allowance prior to being placed back in education.

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

Interruptions

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

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

**1.** one of up to six months duration, even if it began before the person was 16, but only to the extent that it is considered to be reasonable in the opinion of Her Majesty’s Revenue and Customs Commissioners **and**

**2.** due to illness or disability and for a period that is considered reasonable in the opinion of Her Majesty’s Revenue and Customs Commissioners1.

1 CHB (Gen) Regs, reg 6(3)

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

**1.** has provision made to undertake non-approved training **or**

**2.** is receiving advanced education **or**

**3.** is receiving education by virtue of his employment or any office held

then they will not satisfy the condition in DMG 20566 above1.

1 CHB (Gen) Regs, reg 6(4)

Reasonable cause

20568 Examples of reasonable cause for interruption include

**1.** individual holidays, other than official holidays, during term-time

**2.** temporary closure of the educational establishment during term-time

**3.** authorised absence following contact with an infectious disease

**4.** illness or disability (mental or physical)

**5.** absence due to illness or death in the family

**6.** disruption of normal transport with no reasonable alternative available

**7.** change of educational establishment

**8.** authorised absences to follow a course of study elsewhere, for example

**8.1** to study at home for an examination **or**

**8.2** a field course **or**

**8.3** an educational cruise.

School holidays

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

20570 - 20575

Education received abroad

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

Young person held in custody

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

**1.** remand centre **or**

**2.** detention centre **or**

**3.** youth custody centre

will normally be in full-time education.

Cases of doubt

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

**1.** ask the Child Benefit decision maker for an opinion **and**

**2.** deal with the claim on the assumption that the opinion of the Child Benefit decision maker will be adverse to the claimant1 **and**

**3.** when the Child Benefit decision maker’s opinion is received, revise the decision at **2.** if the person is not to be treated as receiving relevant education.

1 SS & CS (D&A) Regs (NI), reg 13(2); reg 15

Cases of doubt about recognised establishment or education

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

**1.** a particular establishment **or**

**2.** the education received by the claimant

should be referred to Child Benefit Office who will make a determination on behalf of the Department. The decision maker is bound by the opinion of Child Benefit Office regarding recognition of an establishment or of the education.

20580 - 20590

Hours of attendance

20591 Full-time education is education which on average exceeds 12 hours per week during term time. In calculating the hours of attendance, only count time spent on1

**1.** receiving instruction or tuition **and**

**2.** undertaking supervised study **and**

**3.** examinations or practical work **and**

**4.** taking part in any exercise, experiment or project which is an integral part of the course. This may be on or off the premises as long as it is always led or supervised by a teacher appointed for the purpose.

Do not include meal breaks, or any time spent on unsupervised study or homework, whether on or off the premises.

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

Evening courses

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

**Example**

Lynn is 17 years old. She is studying for 3 A levels. She studies for 2 of them at school during the day and for the third one at an evening class in the local college. The decision maker calculates the total hours of attendance at both school and college.

20593 - 20597

Hours of study in education elsewhere

20598 Where there are special reasons and study is done elsewhere, the method of study might be quite different from that at an educational establishment. For this reason, the 12 hour requirement in DMG 20591 **1.** is not binding but may be used as a guide in deciding if the education is full-time. Count all time spent on

**1.** all activities mentioned in DMG 20591 **and**

**2.** unsupervised study.

If the hours in **1.** and **2.** do not exceed 12 a week, the person should not be treated as receiving relevant education. The decision maker must decide all other cases on their merit.

20599

Non-advanced

Jobseeker’s Allowance

20600 A course of non-advanced education is of a level **below** a course of advanced education. Advanced education is defined as1

**1.** a course leading to a

**1.1** postgraduate degree or comparable qualification **or**

**1.2** first degree or comparable qualification **or**

**1.3** diploma of higher education **or**

**1.4** higher national diploma **or**

**2.** any other course which is of a standard above

**2.1** advanced General National Vocational Qualification or equivalent **or**

**2.2** General Certificate of Education (Advanced level) **or**

**2.3** Scottish National qualification (higher or advanced higher).

1 JSA Regs (NI), reg 1(2)

Income Support

20601 A course of non-advanced education has the same meaning as in DMG 20600. But in addition advanced education is further defined as1

**1.** a course leading to a

**1.1** postgraduate degree or comparable qualification **or**

**1.2** first degree or comparable qualification **or**

**1.3** diploma of higher education **or**

**1.4** higher national diploma **or**

**1.5** higher national certificate **or**

**1.6** teaching qualification **or**

**2.** any other course which is a standard above

**2.1** advanced General National Vocational Qualification or equivalent **or**

**2.2** General Certificate of Education (Advanced level) **or**

**2.3** Scottish National qualification (higher or advanced higher)

1 IS (Gen) Regs (NI), reg 12(2)

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

20603 - 20629

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

Introduction

20630 Despite being in full-time education certain people are eligible to receive Jobseeker’s Allowance or Income Support subject to the other conditions of entitlement. See DMG Chapter 30 for guidance on claims from young people in Jobseeker’s Allowance, where special conditions of entitlement apply. See DMG 20003 for Jobseeker’s Allowance basic conditions and DMG 20022 for Income Support.

Jobseeker’s Allowance

20631 In Jobseeker’s Allowance young people are treated as not receiving relevant education where they are1

**1.** taking part in the Full Time Education and Training Option of New Deal 18-242 **or**

**2.** a part-time student (see DMG Chapter 30) **and**

**2.1** satisfy the qualifying conditions in DMG 206333 **and**

**2.2** attend a course of non-advanced education.

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

20632 Young people who

**1.** satisfied the conditions of DMG 20631 **and**

**2.** have completed or terminated the course of part-time study

are also not treated as in relevant education1.

1 JSA Regs (NI), reg 54(4)

Qualifying conditions

20633 The qualifying conditions1 in DMG 20631 **2.** are that

**1.** during the whole of the 3 months immediately before first attending the course the young person

**1.1** was in receipt of Jobseeker’s Allowance or Incapacity Benefit **or**

**1.2** was in receipt of Income Support on grounds of incapacity for work (see DMG 20134) **or**

**1.3** was on a Jobskills course **or**

**2.** during the 6 months immediately before first attending the course the young person

**2.1** satisfied **1.1**, **1.2** or **1.3** for a total of 3 months (not necessarily continuously) **and**

**2.2** was in remunerative work (or other work where earnings led to disentitlement from the appropriate benefit) for the remainder of the 6 months **and**

**3.** those periods fell wholly after the terminal date.

1 JSA Regs (NI), reg 11(2)

Income Support

20634 There are certain circumstances (see DMG 20646-20728) in which young people are entitled to Income Support even though they are treated as being in relevant education. These people are known as eligible persons1 (see DMG 20165).

1 IS (Gen) Regs (NI), reg 13(1)

20635 - 20645

Person is a parent

20646 Young people can get Income Support if they are the parent of a child

**1.** who they are treated as responsible for (guidance on "responsible" is in DMG Chapter 22) **and**

**2.** who is treated as a member of the same household1.

**Note :** Pregnancy does not count for this purpose.

1 IS (Gen) Regs (NI), reg 13(2)(a)

Person is disabled (revoked from 30.12.09 but see Appendix 5 for savings provisions)

20647 A qualifying young person in relevant education is entitled to Income Support if, as well as satisfying the other conditions of entitlement, they

**1.** qualify for the disability premium or severe disability premium1 **or**

**2.** have been incapable of work for a continuous period of not less than 196 days (two or more separate periods of incapacity, separated by a break of not more than 56 days, are treated as one continuous period2).

1 IS (Gen) Regs (NI), reg 13(2)(b); 2 reg 13(2)(bb)

Person has limited leave to remain

**[See DMG Memo Vol 1/101, 2/40, 3/89, 4/117, 5/94, 6/81, 8/51, 9/24, 13/54 & 14/52]**

20648 Income Support may be payable to a person with limited leave to remain and who is in relevant education. A person will be eligible for Income Support where the person has1

**1.** discretionary leave to remain where a person has claimed asylum. This means that the person is **not** subject to immigration control and so they **do** have recourse to public funds and will not therefore fall into the category in DMG 20165 **3.**. They should be treated as any UK national would in the same circumstances **or**

**2.** limited leave to remain as a student where the leave allows the person to attend an educational establishment. This person would **not** have recourse to public funds (this will be noted on their UK visa) and so will fall into the category in DMG 20165 **3.**. However entitlement to Income Support is only for 42 days and only if the person’s funds from abroad have temporarily stopped and are likely to resume shortly.

1 IS (Gen) Regs (NI), reg 13(2)(bc)

20649 - 20663

Person is an orphan

20664 Young people can get Income Support if they have

**1.** no living parent **and**

**2.** no-one acting in place of the parents1.

1 IS (Gen) Regs (NI), reg 13(2)(c)

20665 The condition in DMG 20664 is not satisfied if the young person does not know

**1.** if the parents or person acting in their place are alive or dead **or**

**2.** where the parents or person acting in their place are living.

If the young person has had no contact with the parents or person acting in their place consider whether they are of necessity living away from them.

20666 Young people who satisfy DMG 20664 are eligible for Income Support in their own right for

**1.** themselves **and**

**2.** any dependants (who will often be younger brothers and sisters).

20667 If an orphaned young person,

**1.** goes to live with a relative or other person **and**

**2.** that person takes over the role of parent

the young person will be regarded as dependant on that person and not entitled to Income Support. This is the case even where the young person has younger brothers and sisters.

Acting in place of parents

20668 To determine if another person is acting in the place of a young person’s parents, consider factors such as whether the person

**1.** provides supervision and financial, moral, social or other care and guidance **and**

**2.** provides shelter, food and clothing **and**

**3.** is responsible for any necessary disciplinary action

as would be appropriate for someone the same age as the young person.

Someone claiming Child Benefit or another benefit for the young person

20669 If someone other than the parent is claiming Child Benefit or another benefit for the young person, that is a strong indication that the person is acting in place of the young person's parents1.

1 R(IS) 9/94

Foster Parents

20670 A Health and Social Services Board may place a young person who is the subject of a care order with foster parents. These foster parents will be acting in place of parents1. The conditions in DMG 20165 **4.** to **7.** will not be satisfied where a young person

**1.** in relevant education claims Income Support **and**

**2.** is living with foster parents.

1 IS (Gen) Regs (NI), reg 13(3)(a)(i)

20671 When the care order expires, usually on the young person's 18th birthday, a young person may continue to live with their former foster parents. In these cases the former foster parents are not acting in place of parents. The decision maker should consider if any of the conditions in DMG 20165 are met.

**Example**

Robin is 18 years old. Robin was the subject of a care order and the Health and Social Services Board placed him with foster parents. The care order expired on his 18th birthday. Robin is estranged from his natural parents, he has not seen them for 7 years. He continues to live with his former foster parents and is expected to make a contribution towards his upkeep. Robin is studying at the local college for his A levels. He claims Income Support.

The decision maker decides that Robin is in relevant education. The decision maker then considers whether any of the conditions in DMG 20165 are satisfied. The decision maker decides that Robin is entitled to Income Support during the period that he is in relevant education because

**1.** Robin's former foster parents are not acting in place of parents **and**

**2.** Robin is estranged from his natural parents and is of necessity living away from them.

Sponsors

20672 A sponsor’s duties are limited and not the same as those of a parent. Consider DMG 20668 if the sponsor may be acting in the place of a parent.

Health and Social Services Boards and voluntary organisations

20673 A person acting in the place of a young person’s parents includes

**1.** a Health and Social Services Board or voluntary organisation1 where, under certain provisions2 the young person is being looked after by them **or**

**2.** the person with whom the young person is placed3 by the Health and Social Services Board or voluntary organisation, whether or not payment is made **or**

**3.** for the purposes of DMG 20700 only, the person with whom the young person is placed irrespective of who made the arrangements3.

1 IS (Gen) Regs (NI), reg 13(3)(a)(i); 2 reg 16(8); 3 reg 13(3)(a)(ii)

20674 - 20685

Person of necessity living away from parents

20686 Young people can get Income Support if they have of necessity to live away from the parents or any person acting in their place (see DMG 20668) because1

**1.** they are estranged **or**

**2.** they are in physical or moral danger **or**

**3.** there is a serious risk to their physical or mental health.

Normally accept the young person’s own evidence but seek additional evidence if there is a doubt. (See also DMG 20700 - 20701).

1 IS (Gen) Regs (NI), reg 13(2)(d); JSA Regs (NI), reg 57(2)(f)

20687 Where a young person is the subject of a care order, the Health and Social Services Board is acting in place of parents1. But some young people who are the subject of a care order may have to live in accommodation away from the Health and Social Services Board. For example, there may be reasons why a young person cannot live in a home or a foster home and lives in a flat instead.

1 IS (Gen) Regs (NI), reg 13(3)(a)(i); JSA Regs (NI), reg 57(3)

20688 In these cases the Health and Social Services Board is acting in place of parents because the care order still exists1. But the decision maker should consider the guidance at DMG 20689 - 20694 to decide if the young person is living away from the Health and Social Services Board for any of the reasons in DMG 20686.

1 IS (Gen) Regs (NI), reg 13(3)(a)(i); JSA Regs (NI), reg 57(3)

Living away from

20689 “Living away from” includes young people

**1.** who have left the family home to live at another address **or**

**2.** whose parents have left the young person

**3.** who, although a care order still exists, live alone rather than with foster parents or in a care home.

Estranged

20690 “Estranged” is not defined in legislation and should be given it’s ordinary, everyday meaning1 of “alienated in feeling or affection”. Examples of when young people are estranged from their parents include where they

**1.** have no intention or wish to live with them **or**

**2.** have no wish for any prolonged physical or emotional contact with them **or**

**3.** the parents feel the same way towards the young person.

A young person may be estranged even though the parent is providing some financial support. However, DMG 20686 **1.** will not be satisfied just because a young person says that estrangement exists. It must also be shown that the young person, of necessity, has to live away from the parents because of the estrangement.

1 Cozens v Brutus [1972] 3WLR 521

20691 **Estranged** includes estrangement from the care home or foster parents where the young person had been placed by the Health and Social Services Board. The existence of the care order does not mean that the young person cannot be estranged from the Health and Social Services Board. The decision maker should have regard to the young person's circumstances to decide if estrangement exists.

20692 For the conditions in DMG 20686 to be satisfied the young person has **of necessity** to live away from the Health and Social Services Board. The decision maker should find out the reasons why the young person cannot live in accommodation provided by the Health and Social Services Board.

**Example**

Andrea is 16 and studying for GCSEs at her local college. Her natural father is dead and she is estranged from her mother. She is the subject of a care order but she lives alone in a flat. She claims Income Support.

The decision maker establishes that Andrea lives alone in the flat because she was violent and aggressive to her foster families and to members of staff and residents at a care home.

The decision maker determines that Andrea is in relevant education. The decision maker then considers if any of the conditions in DMG 20165 are satisfied. On the facts of this case the decision maker awards Income Support during the period that Andrea is in relevant education because she is

**1.** of necessity living away from her mother and the Health and Social Services Board **and**

**2.** estranged from her mother and the Health and Social Services Board.

Physical or moral danger

20693 DMG 20686 **2.** will apply if the young person would be in physical or moral danger living at home and because of this has to live away. This is a question of fact and the decision maker will need to determine the degree of risk in each case, taking into account that the danger

**1.** need not be from the parents

**2.** includes any form of physical or moral danger which causes the young person to live away from the parents1

The decision maker should accept evidence from the young person or representative unless there is stronger evidence to the contrary.

1 R(IS) 9/94

Serious risk to physical or mental health

20694 DMG 20686 **3.** will apply if there is a serious risk to the physical or mental health of the young person1 and because of that serious risk the young person has to live away from home. The risk must be serious and the decision maker will need to determine the degree of risk in each case. Examples of serious risk might include where the young person

**1.** suffers from chronic bronchitis which is made worse by the damp conditions at the parent’s home **or**

**2.** has a history of mental illness which is made worse by the parent’s attitude **and**

there is a serious risk that the young person’s health will be adversely affected by staying in the parent’s home.

1 R(SB) 8/82

20695 - 20699

Person living away from and cannot be supported by parents

20700 Young people can get Income Support if

**1.** they are living away from the parents and any person acting in their place (see DMG 20668) **and**

**2.** the parents, or person acting in their place, are unable to support them financially **and**

**3.** the parents, or person acting in their place, are

**3.1** chronically sick or mentally or physically disabled **or**

**3.2** detained in custody pending trial or awaiting sentence, or in prison **or**

**3.3** not allowed to enter or re-enter Northern Ireland1 (no specific prohibition order is necessary2).

1 IS (Gen) Regs (NI), reg 13(2)(e); 2 R(IS) 9/94

Where claimant has both parents

20701 When either the conditions at DMG 20686 or 20700 apply, take account of the fact that

**1.** both parents have to satisfy the conditions, unless the young person has only one parent **and**

**2.** the parents do not have to satisfy the same condition; for example, the father might be in prison (see DMG 20700 **3.2**) and the claimant is estranged from their mother (see DMG 20686 **1.**) **and**

**3.** **1.** and **2.** apply where more than one person is acting in place of the parents, for example both grandparents.

Chronically sick or disabled

20702 Accept a person as chronically sick or disabled if they

**1.** would satisfy the conditions for the award of higher pensioner premium or disability premium1 **or**

**2.** are substantially and permanently disabled2

**3.** are entitled to Employment and Support Allowance which includes a work-related activity component or support component3.

1 IS (Gen) Regs (NI), reg 13(3)(b)(i); 2 reg 13(3)(b)(iii); 3 reg 13(3)(iv)

Substantially and permanently disabled

20703 The decision maker should accept people who are registered with a Health and Social Services Board1 as being disabled. If they have been refused registration and their condition has not worsened the decision maker should not accept them as disabled.

1 Dis P (E) Act (NI) 45

20704 In any other case a decision should be made on the evidence available. Examples of disablement are

**1.** loss of limb

**2.** paraplegia

**3.** paralysis

**4.** mental disorders

**5.** polio victims

**6.** rheumatoid arthritis where there is substantial difficulty with day to day tasks.

This list is not exhaustive.

20705 - 20724

Person leaving accommodation provided by a Health and Social Services Board

20725 Young people can get Income Support if they

**1.** have left accommodation provided for them by a Health and Social Services Board1 under specified legislation **and**

**2.** of necessity are living away from their parents and any person acting in place of their parents2.

1 Children (NI) Order 1995; 2 IS (Gen) Regs (NI), reg 13(2)(dd)

20726 The young person does not need to have been in care. A Health and Social Services Board can provide accommodation in a number of ways, for example by arranging independent living. A person who has moved from one type of accommodation to another may still have their accommodation provided by a Health and Social Services Board.

20727 The Health and Social Services Board should be contacted to confirm if the accommodation was provided by the Health and Social Services Board under specified legislation. The Health and Social Services Board should

**1.** have provided the accommodation **and**

**2.** not simply have helped the young person to find accommodation1.

1 Children and Young Persons Act (NI) 68

Refugee learning English

20728 Young people can get Income Support for up to 9 months if

**1.** they are a refugee **and**

**2.** they are attending a course for more than 15 hours a week so that they can learn English to get work **and**

**3.** they had been in Northern Ireland for not more than 12 months on the date the course started1.

1 IS (Gen) Regs (NI), reg 13(2)(h)

20729 - 20749

School leavers

Introduction

20750 A person who has completed full-time non-advanced education may be treated as still in relevant education for both Jobseeker’s Allowance and Income Support until the next terminal date. The terminal date is defined in DMG 20763.

20751

Person under 16

20752 A person who is under the age of 16 at

**1.** the date full-time non-advanced education ends **and**

**2.** the terminal date next following the date in **1.**

will not be entitled to Jobseeker’s Allowance or Income Support until the 16th birthday1 and then only if the conditions in DMG Chapter 30 or DMG 20001 et seq are satisfied.

1 CHB (Gen) Regs, reg 7(2), Case 1

20753 - 20762

Terminal dates

20763 A person continues to be treated as a qualifying young person and entitled to Child Benefit where they have left relevant education or approved training up to and including

**1.** the week including the terminal date **or**

**2.** if they attain the age of 20 on or before that date, the week including the last Monday before they were 201.

**Note :** In this context week is a Child Benefit week; i.e. Monday to Sunday.

1 CHB (Gen) Regs, reg 7(2), Case 1(1.1)

20764 For the purpose of DMG 20763 above the terminal dates are

**1.** the last day in February

**2.** the last day in May

**3.** the last day in August

**4.** the last day in November

whichever occurs first after they have ceased relevant education or approved training1.

1 CHB (Gen) Regs, reg 7(2) Case 1(1.2)

**Example**

Julie is 18 and is estranged from her parents and has been receiving Income Support while she was in relevant education. She leaves school on 6.7.11 so the terminal date in her case is 31.8.11. The terminal date falls in the Child Benefit week 29.8.11 to 4.9.11 so Julie is a qualifying young person until 4.9.11. Her entitlement to Income Support will end when the Income Support week in which she ceased to be a qualifying young person and therefore ceased to be in that specific prescribed category of person (subject to her not satisfying any of the other prescribed categories) ends. Her benefit week ending day is Wednesday so the benefit week in which Julie ceased to be a qualifying young person is 1.9.11 to 7.9.11. Her Income Support entitlement would therefore end on 7.9.11.

20765 - 20766

20767 Leaving school is not necessarily the same as ceasing relevant education. Relevant education can cease when the hours of attendance reduce to 12 hours a week or less (see DMG 20591). In this case the date of leaving school is irrelevant.

20768 See DMG 20564 if a school leaver intends to resume relevant education at the same or another educational establishment.

20769 - 20777

External examinations

20778 Where a person has ceased to receive relevant education and

**1.** was entered for external examinations before relevant education ceased **and**

**2.** was still entered for those examinations when relevant education ceased **and**

**3.** the examinations are in connection with the education received

treat them as a qualifying young person up to the first terminal date as described in DMG 20764 and 20765 above, after the last examination1.

1 CHB (Gen) Regs, reg 7(2), Case 2

Period up to the terminal date

20779 In the period up to the terminal date young people are not entitled to Jobseeker’s Allowance or Income Support because they are treated as

**1.** a child or qualifying young person for Child Benefit purposes1 **and**

**2.** receiving relevant education2

unless they come within the exceptions in DMG 20630 et seq.

1 CHB (Gen) Regs, reg 7(1); 2 JSA Regs (NI), reg 54(2); IS (Gen) Regs (NI), reg 12

Person starts work or training

20780 Child Benefit ceases when a young person starts work or training but the terminal date still applies. If work ends before the terminal date is reached Child Benefit can be reinstated on application.

20781 - 20789

Age 20

20790 A person who reaches 20

**1.** whilst still receiving full-time non-advanced education **or**

**2.** before reaching the terminal date

is no longer treated as receiving relevant education but may be a student. (see DMG Chapter 30).

20791 - 20900

Waiting days

Waiting days

**[See DMG Memo Vol 4/126, 6/87 & 8/62]**

20901 A claimant is not entitled to Jobseeker’s Allowance for the first 3 days of a jobseeking period1. These 3 days are called waiting days. This applies only to Jobseeker’s Allowance, and not to Income Support.

1 JS (NI) Order 95, Sch 1, para 4; JSA Regs (NI), reg 46(2)

Claimants who do not have to serve waiting days

20902 Claimants (for joint-claim couples see DMG 20903) do not have to serve waiting days if1

**1.** their entitlement to Jobseeker’s Allowance begins within 12 weeks of the end of their entitlement to

**1.1** Income Support **or**

**1.2** Incapacity Benefit **or**

**1.3** Employment and Support Allowance **or**

**1.4** Carer’s Allowance **or**

**2.** they are young people who are only entitled to Jobseeker’s Allowance because of a Departmental severe hardship direction (see DMG Chapter 30 )2 **or**

**3.** they claim Jobseeker’s Allowance **and**

**3.1** an award cannot be made because the claimant or their partner has an existing award of Income Support or Jobseeker’s Allowance3 **and**

**3.2** the decision maker ends that award by supersession on the day immediately before the date the award on the new claim takes effect4.

1 JSA Regs (NI), reg 46(1); SS CS (D&A) Regs (NI), reg 14A(4); 2 JS (NI) Order 95, art 5(1)(f)(ii)  
3 SS & CS (D&A) Regs, reg 14A (1) & (4); 4 reg 14A (2) & (3)

**Example**

Dolores claims Income Support from Monday 6.11.06. On Monday 7.5.07 she starts full time work. The last day for which she is paid Income Support is Sunday 6.5.07. She is made redundant on Saturday 28.7.07, and claims and satisfies the main conditions1 to be entitled to Jobseeker’s Allowance from and including Monday 30.7.07. Dolores has to serve 3 waiting days and is not entitled to Jobseeker’s Allowance for Monday 30.7.07, Tuesday 31.7.07 and Wednesday 1.8.07. To be within 12 weeks of her entitlement to Income Support coming to an end, Dolores would have had to have claimed Jobseeker’s Allowance and satisfied the main entitlement1 conditions on Sunday 29.7.07.

1 JS (NI) Order 95, art 3(2)

20903 Joint claim couples claiming Jobseeker’s Allowance do not have to serve waiting days if1

**1.** they claimed Jobseeker’s Allowance jointly within twelve weeks of either member of the couple being entitled to Jobseeker’s Allowance, Income Support, Incapacity Benefit, Employment and Support Allowance or Carer’s Allowance **or**

**2.** one of them is a young person who is only entitled to Jobseeker’s Allowance because of a Departmental severe hardship direction (see DMG Chapter 30)2 **or**

**3.** one member has already served waiting days in a jobseeking period which is linked to the jobseeking period of the joint claim couple **or**

**4.** the member of a joint claim couple nominated to receive payment is in receipt of a training allowance.

1 JSA Regs (NI), reg 46(1); 2 JS (NI) Order, art 5(1)(f)(ii) & 18(1)

20904 Decision makers should note that entitlement to Jobseeker’s Allowance can exist even though nothing is payable. For example a claimant is entitled to

1. Jobseeker’s Allowance, but no Jobseeker’s Allowance is payable because of a sanction
2. contribution-based Jobseeker’s Allowance only, but has a pension that exceeds the allowable limit, so no Jobseeker’s Allowance is payable
3. Jobseeker’s Allowance, but no Jobseeker’s Allowance is payable because the claimant is a share fisherman who does not satisfy the additional conditions which have to be met.

**Example**

Tony claims Income Support from Monday 6.11.06. On Monday 7.5.07 he starts full-time work. The last day for which Income Support is paid is Sunday 6.5.07. Tony is dismissed for misconduct on Tuesday 17.7.07. He claims Jobseeker’s Allowance from Wednesday 18.7.07 and is entitled but no Jobseeker’s Allowance is payable because the decision maker imposes a sanction for 20 weeks from and including 18.7.07 because he has lost his employment through misconduct. Tony does not have to serve waiting days.

20905 - 20908

Participation and signing

Introduction

20909 The guidance on participation and signing applies only to Jobseeker’s Allowance and not to Income Support.

20910 Where a claimant fails to participate one of 4 outcomes is possible. Jobseeker’s Allowance entitlement

**1.** ends1 (DMG 20915) **or**

**2.** is retained but is not payable for a period2 **or**

**3.** does not end and Jobseeker’s Allowance continues to be payable at a reduced rate (joint-claim couples only)3 **or**

**4.** does not end and continues to be paid at full rate.

**Note :** Where one member of a joint-claim couple is awarded an exception the Employment Officer will not require that person to participate.

1 JSA Regs (NI), reg 25; 2 reg 27A; 3 reg 74B; 4 reg 27

**Note 1:** From 27.9.17 all references to claimants having to show “just” or “good cause” for a failure, act or omission became considerations for good reason instead.

Participation

Notice to participate in an interview

20911 If the employment officers gives or sends a notification to a claimant, including each member of a joint claim couple, to tell them to participate in an interview at a particular place at a particular day and time the claimant has to do so1. This notification can be in writing, by telephone or by electronic means. An employment officer2 is any officer who acts on behalf of the Department. The legislation allows other people to be authorised as employment officers3.

1 JS (NI) Order 95, art 10(1)(a); JSA Regs (NI), reg 23 & 23A  
2 JS (NI) Order 95, art 10(3); JSA Regs (NI), reg 4; 3 JS (NI) Order 95, art 10(3)

20912 The following are the most common types of notification

**1.** **JS40** - tells a claimant to

**1.1** attend at a particular office to sign a declaration (for example JS24, JS20SF) on a

**1.1.a** regular basis (normally fortnightly) **and**

**1.1.b** particular signing day at a particular time **or**

**1.2** post in a declaration if they are a postal claimant on a

**1.2.a** regular basis (normally fortnightly) **and**

**1.2.b** particular day.

**2.** **Claims pack** tells a claimant to participate at a particular office or other place (for example an employer’s premises) to make a claim on a particular day at a particular time.

**3. A computer generated letter** which tells a claimant to participate at a particular office or other place to go to an interview with an employment officer to discuss, for example, job search or possible training schemes or employment programmes, on a particular day at a particular time.

**4. A telephone call** telling the claimant to participate at a particular office or other place, to go to an interview on a particular day at a particular time to discuss, for example job search or possible training schemes or employment programmes.

**Example 1**

Meg Gledhill, who has been in receipt of income-based Jobseeker’s Allowance for six months, starts a New Deal for 18-24 year olds programme, and remains on 10p Jobseeker’s Allowance per week.

She has a disagreement with the programme provider and leaves the New Deal for 18-24 year olds early. She goes to the Jobs and Benefits Office three weeks later. The decision maker is asked, amongst other things, to terminate the Jobseeker’s Allowance award for the failure to participate at the Jobs and Benefits Office. The Jobs and Benefits Office also suspend Jobseeker’s Allowance whilst they make enquiries about whether the claimant is available and actively seeking employment.

The decision maker decides that disentitlement is not appropriate. The original notice to participate in an interview at the Jobs and Benefits Office was revoked when she started New Deal for 18-24 year olds. No further notice to participate has been issued. The decision maker goes on to decide the claimant can be sanctioned as she did not have good reason for leaving early.

**Example 2**

Rob Cowie claimed Jobseeker’s Allowance, but received a letter saying he was not entitled to Jobseeker’s Allowance because he had restricted his availability and had no reasonable prospects of finding work. He appealed the decision and won at the tribunal. He goes to the Jobs and Benefits Office again to ask about his arrears of benefit.

The decision maker is asked to terminate the Jobseeker’s Allowance award for failure to participate as Rob stopped participating after getting the letter saying he was no longer entitled to Jobseeker’s Allowance.

The decision maker decides that disentitlement is not appropriate as the notice to participate lapsed once Rob got the letter telling him he was not entitled to Jobseeker’s Allowance.

20913 If the claimant is able to prove that the notification has not been received1 the notification cannot be treated as correctly served under the legislation2.

1 R(JSA) 1/04; 2 JSA Regs (NI), reg 23 & 23A

20914

Signing a declaration

A declaration

20915 If the Department asks them1, claimants have to provide signed declarations (usually on form JS24) to the *effect* that since making a claim for Jobseeker’s Allowance or since they last provided such a signed declaration

**1.** they have been

**1.1** available **or**

**1.2** satisfying the conditions necessary to be treated as available except for any period they have already told the Department about **and**

**2.** they have been

**2.1** actively seeking employment to the extent needed to give them their best chance of getting employment **or**

**2.2** satisfying the conditions necessary to be treated as actively seeking employment except for any period they have already told the Department about **and**

**3.** there has been no change to their circumstances which might affect entitlement to Jobseeker’s Allowance or the amount of Jobseeker’s Allowance payable, except for anything they have already told the Department about.

1 JS (NI) Order 95, art 10(1)(b) & 10(1A)(a to d); 2 JSA Regs (NI), reg 24(6)

20916 The declarations have to be provided on the day on which claimants are told in a notification to participate (see DMG 20911), or on any other day as the Department may say1. Usually claimants will only need to sign declarations on the days they are required to regularly participate as instructed by form JS40, or, if they are postal claimants, on the days they are told on form JS40 to sign their declarations.

1 JSA Regs (NI), reg 24(10)

20917 References to the Department can also include a reference to people designated as Employment Officers1.

1 JSA Regs (NI), reg 24(11)

20918

How is entitlement affected

Entitlement ends

20919 Entitlement to Jobseeker’s Allowance will end when

**1.** the claimant

**1.1** fails to participate in an interview on the day and place specified in a relevant notification **and**

**1.2** fails to make contact with the Employment Officer in the manner set out in a relevant notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate in an interview1 **or**

**2.** the claimant

**2.1** participates in an interview on the right day but at the wrong time **and**

**2.2** has been informed by the Employment Officer in writing that if they do not participate in an interview at the right time the next time they are required to then this may result in entitlement to Jobseeker’s Allowance ceasing or not being payable for a period **and**

**2.3** fails to participate at the right time on the next occasion **and**

**2.4** fails to make contact with the Employment Officer in the manner set out in the relevant notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate in an interview at the right time2 **or**

**3.** the claimant was required to provide a signed declaration and fails to do so on the day they were supposed to3 and fails to make contact with the Employment Officer before the end of 5 working days after the day they fail to provide a signed declaration, or makes contact but fails to show good reason, those 5 days beginning with the first working day after the day they failed to provide a signed declaration4.

1 JSA Regs (NI), reg 25(1)(a); 2 reg 25(1)(b); 3 reg 25(1)(c); 4 reg 27

Definitions

**[See DMG Memo Vol 1/104, 4/123, 5/98, 6/85 & 9/27]**

20920 For the purposes of the guidance on failure to participate in an interview

**1.** “working day” means any day that the appropriate office is not closed1

**2.** “relevant notification” means a notification to the claimant of when and where they are to participate in an interview2 but which is not a notification to attend an employment programme, training scheme or steps to success scheme3.

1 JSA Regs (NI), reg 25(1A); 2 reg 23 & 23A; 3 reg 25(1A)

**Example 1**

Nicky Robson makes a claim to Jobseeker’s Allowance on Thursday at Portadown Jobs and Benefits Office. He is given a notification (JS40) telling him to come to Portadown Jobs and Benefits Office on the following Tuesday at 10am and every second Tuesday after that at 10am.

Nicky does not turn up at Portadown Jobs and Benefits Office the following Tuesday and makes no further contact with the office. His entitlement ends.

**Example 2**

Alan Connor has been regularly going to Lisburn Jobs and Benefits Office every second Wednesday at 10.30am to sign declarations as he was told to by a notification (JS40).

At his next regular signing day, Alan turns up at 2.30pm. He is subsequently sent a letter telling him that if he does not turn up at the correct time on the next occasion then his Jobseeker’s Allowance could cease or it could not be payable for a period.

On his next regular Wednesday signing he does not turn up at all and has made no contact with the Employment Officer by the end of the following Wednesday.

Alan’s entitlement to Jobseeker’s Allowance ends.

**Example 3**

Tracy has been regularly going to Newry Jobs and Benefits Office on Tuesdays to sign declarations as she was told by a notification (JS40). She tells the Jobs and Benefits Office that she will be on holiday the next time she is due to participate. Form JS674 is completed and is noted with the date that she is to participate following her return home.

On her return from holiday Tracy does not turn up and makes no contact with the Jobs and Benefits Office. Tracy’s entitlement to Jobseeker’s Allowance ends.

Entitlement continues but a sanction is applicable

20921 Entitlement to Jobseeker’s Allowance will continue but a sanction may be imposed for a period where either

**1.** the claimant (or in the case of a joint-claim couple, either member of the couple)

**1.1** fails to participate on the day and place specified in a relevant notification **and**

**1.2** makes contact with the Employment Officer in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day they failed to participate **and**

**1.3** fails to show good reason for that failure **or**

**2.** the claimant (or in the case of a joint-claim couple, either member of the couple)

**2.1** participates on the day and at the place specified in a relevant notification but fails to participate at the correct time **and**

**2.2** has been informed by the Employment Officer in writing that if they do not participate at the right time the next time they are required to participate then this may result in entitlement to Jobseeker’s Allowance ceasing or a reduction being made to the award **and**

**2.3** fails to participate at the right time on the next occasion **and**

**2.4** makes contact with the Employment Officer in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day on which they fail to participate at the correct time **and**

**2.5** fails to show good reason for that failure1.

1 JSA Regs (NI), reg 70A(3) & (4)

Period of sanction

20922 Where a sanction is applicable as in DMG 20921 above, it will be a lower level sanction1. See DMG 34171 et seq for details of the sanction length and when sanction period begins2.

1 JS (NI) Order 95, art 21A(2)(a); 2 JSA Regs (NI), reg 69A

20923 - 20930

One member of a joint-claim couple is sanctioned

20931 Where one member of a joint-claim couple are sanctioned, Jobseeker’s Allowance is payable to the other member of the couple1.

1 JS (NI) Order 95, art 21A(10)

Entitlement does not end

20932 Where the claimant has failed to sign a declaration in the manner set out in the notification1, entitlement to Jobseeker’s Allowance will not end and will continue to be payable at the full rate if the claimant

**1.** makes contact with an Employment Officer in the manner set out in the notification before the end of 5 working days, those 5 days beginning with the first working day after the day the claimant failed to provide a signed declaration **and**

**2.** shows good reason for that failure2.

**Note :** For guidance on good reason as it applies to this issue see DMG 20935 et seq.

1 JSA Regs (NI), reg 24(6) & (10); reg 25(1)(c); 2 reg 27

20933 - 20934

Good reason

20935 Entitlement does not end if claimants show good reason for failing to

**1.** comply with a notice **or**

**2.** provide a signed declaration on the day they were told to do so

before the end of the 5th working day after the day on which they failed to comply or did not provide the declaration1. A working day means any day on which the appropriate office is open to the public2. Appropriate office means the office of the Department or any other place which the claimant has been told to attend in a notice3.

1 JSA Regs (NI), reg 27; 2 reg 25(1A); 3 reg 4

20936 Claimants have to show good reason **only**

**1.** during their signing time1 if they attend at a later time that day **or**

**2.** for the whole day on which they failed to provide a signed declaration2 not any days between the day they failed to provide a signed declaration and the day they actually do provide one.

1 JSA Regs (NI), reg 27; 2 reg 24(6) & 27

**Example**

Portadown Jobs and Benefits Office opens Monday to Friday every week. Lee Hancock goes to Portadown Jobs and Benefits Office every fortnight on Thursday at 11.30 am to sign a declaration. He did not go last Thursday, when he was due to go, but comes into the Jobs and Benefits Office this Thursday to sign his declaration. He explains that he did not come in last Thursday at 11.30am because his brother had phoned him on the Wednesday night to say that if he could get to Londonderry by 10.30 am on the Thursday, he may have the chance of a job. He had to leave early to get to Londonderry on time, and did not have time to call at or phone the Jobs and Benefits Office before he left. He did not get back to Portadown until 6pm, by which time the office was closed. Lee has a letter from Littlewoods to say that they did interview him for a job on the Thursday, but he did not get it because he did not have the necessary experience. Lee does not give any explanation as to why he did not come to the Jobs and Benefits Office or phone them on the Friday, Monday, Tuesday or Wednesday. The decision maker accepts that Lee’s reason for not attending last Thursday at 11.30am is good reason. Lee is not required to show good reason for his failure to come into or contact the Jobs and Benefits Office on the Friday, Monday, Tuesday or Wednesday. As he has shown good reason before the end of Thursday, which is the 5th working day after he failed to participate, Lee’s entitlement will not end.

20937 Additional evidence purporting to show good reason, which is received after the end of the fifth working day, cannot be taken into account when considering good reason. However, information which is received late, but merely serves to verify or clarify evidence which was received within the time limit, can be taken into account.

**Example 1**

The decision maker is not prepared to take at face value the claimant’s statement that a public transport failure had prevented his attendance at the Jobs and Benefits Office because no details have been supplied. In response to a written enquiry, detailed evidence is received after the five days. This evidence confirms that the claimant’s original statement was genuine, and can be taken into account because it merely verifies that the claimant did show good reason within the five days.

**Example 2**

The claimant provides a statement that she did not attend at the Jobs and Benefits Office because she forgot. In response to a written enquiry, the claimant provides evidence that she had to look after the child of a friend who was ill. This evidence is received after the five days. The claimant is treated as available by the decision maker, however this cannot be taken into account in relation to the attendance question as she did not show good reason within the five days.

**Example 3**

The claimant provides a statement that he could not go to the Jobs and Benefits Office because he had to go to a job interview thirty miles away from his home. The decision maker writes to the claimant asking for details of the interview time etc. The claimant provides details which clearly show that he could not have gone to the Jobs and Benefits Office at the time and day specified in the written notice. The details are provided after the five days, but they merely verify the claimant’s original statement. The claimant has shown good reason within the five days.

**Example 4**

Ian Sargent does voluntary work for the RSPCA on Tuesdays and Wednesdays. On Thursday he gets a letter asking him to go to the Jobs and Benefits Office on Friday for an interview with an employment officer about job opportunities. He does not attend. Ian does not do voluntary work in the 48 hours starting from the date he got the letter, so he does not automatically have good reason.

20938 – 29939

20940 See DMG Chapter 34 for guidance on good reason mentioned in DMG 20935.

20941 – 20954

When entitlement ends

20955 When a decision maker has decided that claimants’ entitlement to Jobseeker’s Allowance will end as in DMG 20919 the decision maker then has to decide when entitlement ends.

Fails to participate, or participates late

20956 Where claimants have failed to participate, or participated late having been given a warning and failed to make contact with an employment officer within 5 working days (see DMG 20919 **1.** and **2.**) entitlement ends on the **earlier** of

**1.** the day after the last day for which claimants have provided information or evidence that shows that they continue to be entitled to Jobseeker’s Allowance1 **and**

**2.** the day claimants were required to participate2.

But entitlement will not end earlier than the day after the day on which claimants last participated on time and on the correct day in accordance with a notice3, as long as that day falls before the date of the failure to participate or late participation.

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

**Example 1**

Sally Crosby was required to go to Portadown Jobs and Benefits Office every other Thursday at 10.30am to sign a declaration.

She participates on Thursday 6th March at the correct time and signs a declaration confirming that she has been actively seeking employment and available and that her circumstances have not changed since the last time she signed such a declaration.

Sally does not go to the Jobs and Benefits Office on Thursday 20th March, and does not contact them again.

On Friday 28th March the decision maker considers ending entitlement (by this date Sally cannot show good reason within the necessary time).

The decision maker supersedes the award of Jobseeker’s Allowance because there has been a relevant change of circumstances (i.e. she has failed to participate without good reason).

**Entitlement ends on Friday 7th March (and no Jobseeker’s Allowance is paid for this day). This is because**

**1.** the date Sally was required to participate was Thursday 20th March

**2.** the day after the last day for which she provided information showing she has continued to be entitled to Jobseeker’s Allowance (by signing the declaration form JS24) was Friday 7th March

**3.** the earlier of these two dates is Friday 7th March

**4.** she did not participate on time and on the correct date in accordance with a notice on any date on or between Friday 7th March and Wednesday 19th March.

**Example 2**

John Still attends Portadown Jobs and Benefits Office every other Thursday at 10.30am to sign a declaration.

He participates on Thursday 6th March at the correct time and signs a declaration confirming that he has been actively seeking employment and available and that his circumstances have not changed since the last time he signed such a declaration.

John does not go to the Jobs and Benefits Office on Thursday 20th March, but sends in booklet JS40 that he no longer wishes to claim from Monday 17th March, but giving no reason or explanation for this. The JS40 also confirms that he has been available and actively seeking employment and his circumstances have not changed for the period Friday 7th March to Sunday 16th March inclusive.

On Friday 28th March the decision maker considers ending entitlement (by this date John cannot show good reason within the necessary time).

The decision maker supersedes the award of Jobseeker’s Allowance because there has been a relevant change of circumstances (i.e. he has failed to participate without good reason).

**Entitlement ends on Monday 17th March (and no Jobseeker’s Allowance is paid for this day). This is because**

**1.** the date John was required to participate was Thursday 20th March

**2.** the day after the last day for which he provided information showing he continued to be entitled to Jobseeker’s Allowance (by signing the declaration on the JS40) was Monday 17th March

**3.** the earlier of these two dates is Monday 17th March

**4.** he did not participate on time and on the correct date in accordance with a notice on any date on or before Friday 7th March and Wednesday 19th March.

**Example 3**

Gerard Rushe is required to go to Portadown Jobs and Benefits Office every other Thursday at 10.30am to sign a declaration.

He goes on Thursday 6th March at the correct time and signs a declaration confirming that he has been actively seeking employment and available and that his circumstances have not changed since the last time he signed such a declaration.

Gerard also goes to the Jobs and Benefits Office on Wednesday 12th March at 9am in response to a letter asking him to attend for a restart interview at that time.

He does not go to the Jobs and Benefits Office on Thursday 20th March and does not contact them again. On Friday 28th March the decision maker considers ending entitlement (by this date Gerard cannot show good reason within the necessary time).

The decision maker supersedes the award of Jobseeker’s Allowance because there has been a relevant change of circumstances (i.e. he has failed to participate without good reason).

**Entitlement ends on Thursday 13th March (and no Jobseeker’s Allowance is paid for this day). This is because**

**1.** the date Gerard was required to participate was Thursday 20th March

**2.** the day after the last day for which he provided information showing that he continued to be entitled to Jobseeker’s Allowance (by signing the declaration form JS24) was Friday 7th March

**3.** the earlier of these two dates is Friday 7th March

**4.** Gerard **did** participate on time and on the correct date in accordance with a notice on Wednesday 12th March, which is before his failure to participate. So entitlement cannot end earlier than the day after this day.

**Example 4**

Joan Sharpe is required to go to Portadown Jobs and Benefits Office every other Tuesday at 10am to sign a declaration.

She goes on Tuesday 6th May at the correct time and signs a declaration confirming that she has been actively seeking employment and available and that her circumstances have not changed since the last time she signed such a declaration.

Joan does not go to the Jobs and Benefits Office on Tuesday 20th May. She does go to the office on Friday 23rd May and explains why she failed to participate. The officer takes a declaration (JS24) covering the period Wednesday 7th May to Tuesday 20th May.

The decision maker determines that good reason was shown. There is no break in entitlement.

**Example 5**

Paul Shipley is required to go to Portadown Jobs and Benefits Office every other Tuesday at 10am to sign a declaration.

He goes on Tuesday 6th May at the correct time and signs a declaration confirming that he has been actively seeking employment and available and that his circumstances have not changed since the last time he signed such a declaration.

Paul does not go to the Jobs and Benefits Office on Tuesday 20th May. He goes to the office on Friday 23rd May and explains why he failed to participate. The officer takes a declaration (JS24) covering the period Wednesday 7th May to Tuesday 20th May.

The decision maker determines that good reason was not shown for the failure to attend. There are no other doubts about entitlement for the period 7th May to 20th May.

The decision maker supersedes the award of Jobseeker’s Allowance because there has been a change in circumstances (i.e. that he has failed to participate without good reason).

**Entitlement ends on Tuesday 20th May (and no Jobseeker’s Allowance is paid for this day). This is because**

**1.** the date Paul was required to participate was Tuesday 20th May

**2.** the day after the last day for which he provided information showing he has continued to be entitled to Jobseeker’s Allowance (by signing the declaration on JS 24) was Wednesday 21st May

**3.** the earlier of these two dates is Tuesday 20th May

**4.** he did not participate on time and on the correct date in accordance with a notice on any date on or between Wednesday 7th May and Monday 19th May.

**Example 6**

Gail Rogers is required to go to Portadown Jobs and Benefits Office every other Tuesday at 10am to sign a declaration.

She goes on Tuesday 6th May at the correct time and signs a declaration confirming that she has been actively seeking employment and available and that her circumstances have not changed since the last time she signed such a declaration.

Gail does not go to the Jobs and Benefits Office on Tuesday 20th May. On Wednesday 28th May the decision maker terminates the award of Jobseeker’s Allowance from and including 7th May due to a relevant change of circumstances (i.e. that she failed to participate without good reason).

Gail goes to the office on Thursday 5th June and explains why she failed to participate. She asks to claim for the period before she failed to participate and completes a backdated claim form for the period 7th May to 4th June. That request for backdating must also be treated as an application for revision of the decision to terminate Jobseeker’s Allowance from 7th May. The backdated claim form provides information showing that she continues to be entitled to Jobseeker’s Allowance from 7th May to and including 20th May. There are no other doubts on entitlement for the period 7th May to 20th May.

Because the application to revise is within one month of the decision to terminate, the decision maker revises the decision to terminate Jobseeker’s Allowance from 7th May. Jobseeker’s Allowance is terminated from and including 20th May. This is because the day after the last day she has provided evidence showing that she has continued to be entitled to Jobseeker’s Allowance is 21st May and she failed to participate on 20th May. The earliest of these two days is 20th May.

The period of the backdated claim for the period 20th May to 4th June should be considered in the normal way.

**Example 7**

David Brown is required to go to Portadown Jobs and Benefits Office every other Tuesday at 10am to sign a declaration.

He goes on Tuesday 6th May at the correct time and signs a declaration confirming that he has been actively seeking employment and available and that his circumstances have not changed since the last time he signed such a declaration.

David does not go to the Jobs and Benefits Office on Tuesday 20th May. On Wednesday 28th May the decision maker terminates the award of Jobseeker’s Allowance from and including 7th May due to a relevant change of circumstances (i.e. that he failed to participate without good reason).

David goes to the office on Tuesday 8th July and explains why he failed to participate. He asks to claim for the period before he failed to participate and completes a backdated claim form for the period 7th May to 4th June. The backdated claim form provides information showing that he continues to be entitled to Jobseeker’s Allowance from 7th May to and including 20th May. There are no other doubts on entitlement for the period 7th May to 20th May.

That request for backdating must be treated as an application for supersession of the decision to terminate Jobseeker’s Allowance from 7th May because it is outside of the one month time limit for revising and cannot be admitted. For the purposes of this example, the time limit for revising cannot be extended.

No arrears are payable because of the effective date rule (see DMG Chapter 4). The backdated claim should now be considered in the normal way.

Does not provide a signed declaration, or provides one on the wrong day

20957 Where a claimant has failed to provide a signed declaration, or provided it on the wrong day (see DMG 20919 **3.**), entitlement ends on the **earlier** of

**1.** the day after the last day for which the claimant has provided information or evidence which establishes entitlement to Jobseeker’s Allowance1 **and**

**2.** the day on which the claimant should have provided the signed declaration2.

But entitlement will not end earlier than the day after the day on which the claimant last participated on time and on the correct day in accordance with a notice3, as long as that day falls before the date of the failure to participate or late participation.

**Note :** See DMG 20932 where the claimant has contacted the Employment Officer within 5 working days and provides good cause.

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

**Example 1**

Lynn Wheatley sends in a declaration to Portadown Jobs and Benefits Office every other Thursday.

She posts in her declaration on Thursday 6th March confirming that she has been actively seeking employment and available and that her circumstances have not changed since the last time she signed such a declaration.

Lynn does not send in a declaration to the Jobs and Benefits Office on Thursday 20th March, and does not contact them again.

On Friday 28th March the decision maker considers ending entitlement (by this date Lynn cannot show good reason within the necessary time).

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

**1.** the date on which Lynn was required to provide the signed declaration was Thursday 20th March

**2.** the day after the last day for which she provided information establishing her entitlement to Jobseeker’s Allowance (by signing the declaration form JS24) was Friday 7th March

**3.** the earlier of these two dates is Friday 7th March

**4.** she did not participate on this and on the correct date in accordance with a notice on any date on or between Friday 7 March and Wednesday 19 March.

**Example 2**

Tony Evans sends in a declaration to Portadown Jobs and Benefits Office every other Thursday. He posts in his declaration on Thursday 6th March confirming that he has been actively seeking employment and available and that his circumstances have not changed since the last time he signed such a declaration.

Tony does not send in a declaration to the Jobs and Benefits Office on Thursday 20th March, but sends in booklet JS40 saying that he no longer wishes to claim from Monday 17th March, but gives no reason or explanation for this. The JS40 also confirms that he has been available and actively seeking employment and his circumstances have not changed for the period Friday 7th March to Sunday 16 March inclusive.

On Friday 28th March the decision maker considers ending entitlement (by this date Tony cannot show good reason within the necessary time).

**Entitlement ends on Monday 17th March**. This is because

**1.** the date Tony was required to provide the signed declaration was Thursday 20th March

**2.** the day after the last day for which he provided information establishing his entitlement to Jobseeker’s Allowance (by signing the declaration on form JS40) was Monday 17th March

**3.** the earlier of these two dates is Monday 17th March

**4.** he did not participate on time and on the correct date in accordance with a notice on any date on or between Friday 7th March and Wednesday 19th March.

20958 Providing a declaration means

**1.** posting it on the day the claimant is told to do so by the notice (booklet JS40) **or**

**2.** otherwise delivering it (for example by hand) to the relevant Jobs and Benefits Office so that it arrives no later than it would have done had it been sent by post on the correct day.

20959

Limited capability for work

Introduction

20960 Claimants are entitled to Jobseeker’s Allowance if they do not have limited capability for work or are not treated as not having limited capability for work1. The guidance on limited capability for work applies only to Jobseeker’s Allowance and not Income Support.

1 JS (NI) Order 95, art 3(2)(f) & Sch 1, para 2(1); SS C&B (NI) Act 92, Part XIIA

Treated as capable/not having limited capability for work - short periods of sickness

20961 Claimants can be treated as capable of work/not having limited capability for work for up to two weeks if

**1.** they have been awarded Jobseeker’s Allowance **and**

**2.** they prove to the decision maker that they are unable to work because of some specific disease or disablement (see DMG 20967-20968)2 **and**

**3.** they would satisfy the requirements for entitlement to Jobseeker’s Allowance (other than availability, actively seeking employment, capability and not having limited capability for work) if it was not for their disease or disablement (see DMG 20963)3 **and**

**4.** they **have not** stated in writing that they

**4.1** intend to claim **or**

**4.2** have claimed

Incapacity Benefit, Employment and Support Allowance, Severe Disablement Allowance or Income Support4 **and**

**5.** the first day they are unable to work **does not** fall within 8 weeks of the person’s entitlement to Statutory Sick Pay5 **and**

**6.** they have not already been treated as capable/not having limited capability for work twice in the jobseeking period or year (see DMG 20975)6.

**7.** they are not temporarily absent from Northern Ireland due to receiving hospital treatment outside Northern Ireland7 **and**

**8.** they are not already in an extended period of sickness8 (see DMG 20972 below) **and**

**9.** the first day of the short period of sickness does not begin immediately after the last day of the extended period of sickness9 (see DMG 20977 below).

1 JSA Regs (NI), reg 55(1)(a); 2 reg 55(1)(b); 3 reg 55(1)(c);  
4 reg 55(1); 5 reg 55(4); 6 reg 55(3); 7 reg 55(5); 8 reg 55(6)(a); 9 reg 55(6)(b)

**Example**

Freda is entitled to Statutory Sick Pay from Monday 04.09.06 until Sunday 10.12.06.

She starts work on Monday 11.12.06, but is made redundant on Friday 05.01.07.

Freda claims and is entitled to Jobseeker’s Allowance from and including Saturday 06.01.07.

On Tuesday 06.02.07, the day she is due to attend the Jobs and Benefits Office, she phones to say that she has flu and cannot come in.

She attends the Jobs and Benefits Office on Friday 09.02.07, and fills in a written declaration that she was unable to work because of flu from Saturday 03.02.07 until and including Thursday 08.02.07.

Freda cannot be treated as capable of work. Although she satisfies the conditions at DMG 20961 **1.** to **4.** and **6.** the first day she was unable to work (03.02.07) falls within 8 weeks of entitlement to Statutory Sick Pay (10.12.06), so DMG 20961 **5.** is not satisfied. If Freda had first been unable to work on Sunday 04.02.07 she would have satisfied all the conditions, and could have been treated as capable.

Meaning of week

20962 Week means a period of 7 days1 starting on any day.

1 JSA Regs (NI), reg 1(2)

Entitlement to Jobseeker’s Allowance

20963 The following claimants will satisfy the requirement in DMG 20961 **3.** and DMG 20976 **4.**

**1.** claimants to whom Jobseeker’s Allowance would not be payable because of a sanction1 under relevant legislation2

**2.** claimants to whom Jobseeker’s Allowance would not be payable because their pension becomes more than the prescribed amount3

**3.** claimants to whom Jobseeker’s Allowance would not be payable because they are share fishermen and have not satisfied the additional conditions to receive Jobseeker’s Allowance4.

1 JSA Regs (NI), reg 55(1)(c) & 55A(1)(d); 2 JS (NI) Order 95, art 21(5)&(6) & 22A(2);  
3 art 6(1); JSA Regs (NI), reg 81; 4 reg 161

**Example**

Grace is awarded contribution-based Jobseeker’s Allowance at a reduced rate because she gets an occupational pension. She gets flu and is unable to work. In the same week her pension increases above the level at which she gets paid contribution-based Jobseeker’s Allowance. Although Jobseeker’s Allowance is no longer payable to her because her pension is more than the prescribed amount, Grace would be entitled to Jobseeker’s Allowance were it not for her sickness so she can be treated as capable for 2 weeks.

20964 - 20966

Unable to work because of some specific disease or disablement

20967 See DMG Chapter 13 for guidance on "some specific disease or disablement".

20968 Claimants can prove that they are unable to work because of some specific disease or disablement, by providing written declarations that they have been unfit for work from a certain date or for a period1. These written statements have to be made on a form approved by the Department, and can only be made for a past period.

1 JSA Regs (NI), reg 55(2) & reg 55A(2)

20969

Already treated as capable/not having limited capability for work twice or more in the jobseeking period or year

20970 A claimant can only be treated as capable/not having limited capability for work on two occasions in any one jobseeking period. The two occasions must be separated by at least one day to be separate periods. But if the jobseeking period lasts for more than a year, then the claimant can be treated as capable/not having limited capable for work twice in every year. Years are calculated from the first day of the jobseeking period1.

1 JSA Regs (NI), reg 55(3)

**Example**

The jobseeking period begins on Monday 04.01.10 and ends on Friday 03.02.12. The claimant can be treated as capable twice in the year from Monday 04.01.10 to Monday 03.01.11, twice in the year from Tuesday 04.01.11 to Tuesday 03.01.12 and twice in the year from Wednesday 04.01.12.

20971 When calculating the two occasions when the short period of sickness can apply, any occasion where the claimant initially satisfies the condition for the short period of sickness, but the sickness continues beyond 2 weeks so that they satisfy conditions for the extended period of sickness, (see DMG 20972 et seq) shall be disregarded as a short period of sickness1.

1 JSA Regs (NI), reg 55(7)

Extended period of sickness

20972 In addition to the two short periods of sickness (see DMG 20961), a claimant can also be treated as capable of work/not having limited capability for work for an extended period of sickness of up to 13 weeks.

20973 This extended period of sickness applies to a person who1

**1.** has been awarded Jobseeker’s Allowance

**2.** proves to the decision maker that they are unable to work because of some specific disease or disablement **and**

**3.** either

**3.1** declares that they have been unable to work or expects to be unable to work for more than 2 weeks but does not expect to be unable to work because of that disease or disablement for more than 13 weeks **or**

**3.2** is a person who has already had 2 short periods of sickness within the current jobseeking period or 12 months where the jobseeking period exceeds 12 months

**4.** during this period, satisfies the requirements for entitlement to Jobseeker’s Allowance other than those to be available for and actively seeking employment and capable of work or not having limited capability for work **and**

**5.** has not stated in writing that they propose to claim or have claimed Employment and Support Allowance for that period.

1 JSA Regs (NI), reg 55ZA(1)

20974 The evidence required where

**1.** DMG 20973 **3.1** applies1 is a doctors statement or other evidence for incapacity for work or limited capability for work purposes2 and any other additional information as the Department requires **or**

**2.** where paragraph DMG 20973 **3.2** applies3, is a written declaration in a form approved by the Department (JSA28) that they have been unfit for work from a certain date for a specified period.

1 JSA Regs (NI), reg 55ZA(2); 2 SS (Med Ev) Regs (NI); 3 JSA Regs (NI), reg 55ZA(3)

20975 Where a claimant satisfies the criteria in paragraph DMG 20973-74 above, they shall be treated as capable of work/not having limited capability for work for a continuous period beginning on the first day on which the claimant is unable to work and ending on

**1.** the last day he is unable to work **or**

**2.** if that period of sickness exceeds 13 weeks, the day which is 13 weeks after the first day on which the claimant is unable to work1.

1 JSA Regs (NI), reg 55ZA(4)

20976 A claimant can only have one extended period of sickness in any period of 12 months starting on the first day on which the claimant is unable to work as described in paragraph DMG 209751.

1 JSA Regs (NI), reg 55ZA(5)

How the two types of sickness can be used

20977 The claimant will be able to make use of both the short period of sickness and the extended period of sickness so that they can have two periods of up to two weeks and one period of up to 13 weeks in any jobseeking period/12 month period. Where a claimant’s sickness begins as a short period of sickness not exceeding 2 weeks but the sickness continues beyond 2 weeks, then the claimant can make use of the extended period of sickness up to the maximum period of 13 weeks. A claimant cannot start a short period of sickness immediately after the last day on which an extended period of sickness applied1.

1 JSA Regs (NI), reg 55(6)(b)

**Example 1**

Person L is in receipt of Jobseeker’s Allowance and on 16 April she provides a medical certificate to say she is unable to work due to influenza for a period of 2 weeks. She is treated as capable of work for the period 16 - 29 April and as satisfying the conditions for the short period of sickness.

During this 2 week period, person L contracts pneumonia and she provides a medical certificate for a further 8 weeks. She is then able to satisfy the conditions for the extended period of sickness for the whole period of sickness from 16 April to 24 June (10 weeks).

Person L has now used her extended period of sickness and could now only use the two short periods of sickness if she has any further sickness in her current jobseeking period/12 month period.

**Example 2**

Person P is in receipt of Jobseeker’s Allowance and on 12 June he provides a medical certificate to say he is unable to work due to a fractured leg for a period of 13 weeks. He is treated as capable of work for the period 12 June to 10 September and as satisfying the conditions for the extended period of sickness.

He is due to return to normal jobseeking activity on 11 September. However he gets an ear infection which leaves him feeling dizzy and unable to sit or stand for anything other than short periods. His doctor prescribes antibiotics and recommends bed rest for 2 weeks. Although he still has 2 short periods of sickness available to use, as this short period would begin directly after the extended period of sickness ends and he has used the full 13 weeks allowable period of sickness on the extended period of sickness then he cannot remain on Jobseeker’s Allowance and is advised to make a claim for Employment and Support Allowance from 11 September.

20978 Where the extended period of sickness applies to a claimant, the short period of sickness cannot apply during that same period1.

1 JSA Regs (NI), reg 55(6)(a)

Sickness type

20979 Where during an extended period of sickness, the type of disease or disablement that the claimant is suffering from changes, the claimant can still continue to satisfy the conditions for the extended period of sickness up to the maximum period of 13 weeks1.

1 JSA Regs (NI), reg 55ZA(1)

Medical evidence

20980 Where the period for which a person is sick extends beyond two weeks and the person satisfies the other conditions for the extended period of sickness, the claimant will have to provide a doctor’s statement or other evidence for limited capability for work or limited capability for work purposes and any other additional information as the Department requires1.

1 JSA Regs (NI), reg 55ZA(3A)

When the extended period of sickness will not apply

20981 The extended period of sickness will not apply to a claimant where1

**1.** the first day they are unable to work falls within 8 weeks beginning with the day the claimant ceased to be entitled to Statutory Sick Pay **or**

**2.** the claimant is temporarily absent from Northern Ireland for the purpose of receiving National Health Service treatment abroad.

1 JSA Regs (NI), reg 55ZA(6)

National Health Service treatment abroad

20982 In Northern Ireland claimants can be treated as capable of work/not having limited capability for work if

**1.** they have been awarded Jobseeker’s Allowance or a joint-claim Jobseeker’s Allowance1 **and**

**2.** they are temporarily absent from Northern Ireland for the purpose of receiving National Health Service treatment abroad2 (see DMG Chapter 7) **and**

**3.** they prove to the decision maker that they are unable to work because of some specific disease or disablement3 (see DMG 20967 - 20968) **and**

**4.** they would satisfy the requirements for entitlement to Jobseeker’s Allowance (other than availability, actively seeking employment and capability) if it was not for their disease or disablement4 **and**

**5.** they **have not** stated in writing, before a period of temporary absence abroad begins, that they have claimed Employment and Support Allowance before the beginning of the period of absence5.

**Note :** This legislation only applies in Northern Ireland. Equivalent legislation exists in England and Wales but there is no equivalent for Scotland.

1 JSA Regs (NI), reg 55A(1)(a); 2 reg 55A(1)(b); 3 reg 55A(1)(c);  
4 reg 55A(1)(d); 5 reg 55A(1)

20983 - 20984

Treated as capable - personal capability assessment (incapacity for work)

20985 The decision maker should treat claimants as capable of work if1

**1.** they

**1.1** are incapable of work under the personal capability assessment (see DMG Chapter 13) **or**

**1.2** are treated as incapable of work because they have a severe condition2 or there are exceptional circumstances3 **and**

**2.** they have

**2.1** worked or been in education or done training, or other activities, in preparation for work while suffering from the same illness or disability which led to the finding of incapacity **and**

**2.2** since then the illness or disability has not got worse and they are not suffering from a different illness or disability which might affect their capability for work **or**

**3.** they can show that they have reasonable prospects of getting employment (see DMG Chapter 21).

1 SS (IW) (Gen) Regs (NI), reg 17A; 2 reg 10; 3 reg 27

**Example**

Joe Crosby, who is blind, works as a switchboard operator for a small building supplies company. He breaks his leg and is unfit to work, due to complications for 16 months. He is claiming Incapacity Benefit and is treated as incapable of work under the personal capability assessment as he is blind. His employer sacks Joe after 10 months and finds someone else to replace him. After 16 months his doctor tells him that his leg is fully healed and he can go back to work. Joe attends the Jobs and Benefits Office and claims Jobseeker’s Allowance. He is treated as incapable of work under the personal capability assessment, but he worked whilst blind and his blindness has not worsened. Also, his broken leg has now healed and no longer affects his capability for work. The decision maker treats him as capable.

Treated as not having limited capability for work (Employment and Support Allowance)

20986 A claimant who

**1.** claims Jobseeker’s Allowance **and**

**2.** can show they have a reasonable prospect of obtaining employment

is to be treated as not having limited capability for work (see DMG Chapter 42) throughout the period of that claim1. This applies even where it has been determined that the claimant has limited capability for work2.

1 ESA Regs (NI), reg 31(1); 2 reg 31(2)

20987

Capable of work

Meaning of capable of work

20988 The decision maker has to apply the tests of incapacity as applied in Incapacity Benefit claims1 to decide whether or not someone is capable of work2 (see DMG Chapter 13). The rules about treating people as incapable also applies for example, where the claimant is pregnant and within 6 weeks of her expected week of confinement, or where the claimant is a hospital in-patient. There are some differences for Jobseeker’s Allowance, which are discussed at DMG 20961-20985 and 20997.

1 SS C&B (NI) Act 92, part XIIA; 2 JS (NI) Order 95, Sch 1, para 2

20989 - 20996

Medical evidence

20997 For Jobseeker’s Allowance claimants do not have to provide medical evidence to show that they are capable of work, unless there is a doubt about this1.

1 SS (IfW) (Gen) Regs (NI), reg 6(1) & (3)

20998 - 20999

Appendix 1

Pension age

**Period within which woman’s Day pension age   
birthday falls reached**

06.04.50 - 05.05.50 06.05.2010

06.05.50 - 05.06.50 06.07.2010

06.06.50 - 05.07.50 06.09.2010

06.07.50 - 05.08.50 06.11.2010

06.08.50 - 05.09.50 06.01.2011

06.09.50 - 05.10.50 06.03.2011

06.10.50 - 05.11.50 06.05.2011

06.11.50 - 05.12.50 06.07.2011

06.12.50 - 05.01.51 06.09.2011

06.01.51 - 05.02.51 06.11.2011

06.02.51 - 05.03.51 06.01.2012

06.03.51 - 05.04.51 06.03.2012

06.04.51 - 05.05.51 06.05.2012

06.05.51 - 05.06.51 06.07.2012

06.06.51 - 05.07.51 06.09.2012

06.07.51 - 05.08.51 06.11.2012

06.08.51 - 05.09.51 06.01.2013

06.09.51 - 05.10.51 06.03.2013

06.10.51 - 05.11.51 06.05.2013

06.11.51 - 05.12.51 06.07.2013

06.12.51 - 05.01.52 06.09.2013

06.01.52 - 05.02.52 06.11.2013

06.02.52 -05.03.52 06.01.2014

06.03.52 - 05.04.52 06.03.2014

06.04.52 - 05.05.52 06.05.2014

06.05.52 - 05.06.52 06.07.2014

06.06.52 - 05.07.52 06.09.2014

06.07.52 - 05.08.52 06.11.2014

06.08.52 - 05.09.52 06.01.2015

06.09.52 - 05.10.52 06.03.2015

06.10.52 - 05.11.52 06.05.2015

06.11.52 - 05.12.52 06.07.2015

06.12.52 - 05.01.53 06.09.2015

06.01.53 - 05.02.53 06.11.2015

06.02.53 - 05.03.53 06.01.2016

06.03.53 - 05.04.53 06.03.2016

06.04.53 - 05.05.53 06.05.2016

06.05.53 - 05.06.53 06.07.2016

06.06.53 -05.07.53 06.09.2016

06.07.53 - 05.08.53 06.11.2016

06.08.53 - 05.09.53 06.01.2017

06.09.53 - 05.10.53 06.03.2017

06.10.53 - 05.11.53 06.05.2017

06.11.53 - 05.12.53 06.07.2017

06.12.53 - 05.1.54 06.09.2017

06.01.54 - 05.02.54 06.11.2017

06.02.54 - 05.03.54 06.01.2018

06.03.54 - 05.04.54 06.03.2018

06.04.54 - 05.05.54 06.05.2018

06.05.54 - 05.06.54 06.07.2018

06.06.54 -05.07.54 06.09.2018

06.07.54 - 05.08.54 06.11.2018

06.08.54 - 05.09.54 06.01.2019

06.09.54 - 05.10.54 06.03.2019

06.10.54 - 05.11.54 06.05.2019

06.11.54 - 05.12.54 06.07.2019

06.12.54 - 05.01.55 06.09.2019

06.01.55 - 05.02.55 06.11.2019

06.02.55 - 05.03.55 06.01.2020

06.03.55 - 05.04.55 06.03.2020

**Appendix 2**

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

**Introduction**

**1.** From **7.4.92** the definition of remunerative work changed and the number of hours that counted as remunerative work reduced from 24 to 16 a week1. This brought Income Support (Family Credit and now Working Families Tax Credit) into line with Disability Working Allowance and now Disabled Person’s Tax Credit. Claimants are protected from this change and retain the old 24 hour rule2 if they satisfy the relevant qualifying condition. This protection is carried forward into income-based Jobseeker’s Allowance for those claimants who would previously have qualified for Income Support.

*1 IS (Gen) Regs (NI), reg 5; 2 JSA Regs (NI), reg 51(4) & (5); IS (Gen) (Amdt No 3) Regs (NI) 1991, reg 20-22*

**2.** From **7.10.91** some disabled claimants were adversely affected by changes in the definition of those disabled persons who are not treated as in remunerative work (see DMG 20465)1. Such claimants are protected from the change and retain the old rule2 if they satisfy the relevant qualifying condition. This protection is also carried forward into income-based Jobseeker’s Allowance for those claimants who would previously have qualified for Income Support.

*1 IS (Gen) Regs (NI), reg 6(4)(a); 2 JSA Regs (NI), reg 51(4) & (5); IS (Gen) (Amdt No 3) Regs (NI) 91, reg 20-22*

**Definitions**

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

**Old remunerative work rule**

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

**New remunerative work rule**

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

**Old disabled worker rule**

**6.** The remunerative work exclusion did not apply to people who

**1.** were mentally or physically disabled **and**

**2.** as a result of that disability their earning capacity was reduced to 75 per cent or less of what they would be reasonably expected to earn if they were not disabled.

**New disabled worker rule**

**7.** The remunerative work exclusion does not apply to people who

**1.** are mentally or physically disabled **and**

**2.** as a result of that disability

**2.1** earn 75 per cent or less of what a person without that disability working the same number of hours would reasonably be expected to earn **or**

**2.2** work 75 per cent or less of the hours that a person without that disability could reasonably be expected to do

in the same work or in a similar job in the area.

**Date of change**

**8.** The date of change is, for the

**1.** remunerative work rule – 7.4.92 **or**

**2.** disabled workers rule – 7.10.91.

**Permitted period**

**9.** The permitted period is, where income-based Jobseeker’s Allowance or Income Support ceases

**1.** because the claimant or partner starts remunerative work – twelve weeks **or**

**2.** for any other reason - eight weeks.

**Relevant qualifying condition**

**10.** To qualify for protection the relevant qualifying condition is

**1.** for a person whose hours of work amount to 16 or more per week1, that the person is

**1.1** engaged in work for at least 16 hours a week but less than 24 **or**

**1.2** where hours of work fluctuate, engaged on average for at least 16 hours a week but less than 24 **or**

**2.** for a disabled worker2, that the person

**2.1** is engaged in work **or**

**2.2** is mentally or physically disabled **and**

**2.3** by reason of that disability has an earning capacity of no more than 75 per cent of what that person could reasonably be expected to earn if that disability did not exist.

*1 IS (Gen) (Amdt No 3) Regs (NI) 91, reg 20(6)(a); 2 reg 20(6)(b)*

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

**Relevant qualifying condition**

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

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

**13.** If a person was in receipt of Income Support and satisfied the relevant qualifying condition in the week immediately before

**1.** 7.4.92 in the case of work between 16 and 24 hours per week **or**

**2.** 7.10.91 in the case of a disabled worker

the claim should continue to be assessed under the old rules1.

*1 IS (Gen) (Amdt No 3) Regs (NI), reg 20*

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

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

**1.** 7.4.92 in the case of work between 16 and 24 hours per week **or**

**2.** 7.10.91 in the case of a disabled worker.

**Note:** This provision applies only where the person or partner was entitled to Income Support in the week in which the relevant qualifying condition was satisfied **and** within a period of eight weeks the person or partner again satisfies the relevant qualifying condition and becomes entitled to Income Support1.

*1 IS (Gen) (Amdt No 3) Regs (NI), reg 20(3)*

**Starts work just before the change**

**15.** The claim should still be assessed under the old rules if Income Support ceased for a period of twelve weeks or less1 because a person or their partner started remunerative work and that period began before and ended after

**1.** 7.4.92 in the case of work between 16 and 24 hours per week **or**

**2.** 7.10.91 in the case of a disabled worker.

**Note:** This provision only applies where the person or partner was in receipt of Income Support and satisfied the relevant qualifying condition in the week immediately before starting remunerative work and immediately after finishing remunerative work2.

*1 IS (Gen) (Amdt No 3) Regs (NI), reg 20(4); reg 20(4)*

**Starts training course just before the change**

**16.** The claim should still be assessed under the old rules where a person or their partner was entitled to Income Support immediately before starting a training1 or rehabilitation course2 which had started but not ended before

**1.** 7.4.92 in the case of work between 16 and 24 hours per week **or**

**2.** 7.10.91 in the case of a disabled worker.

**Note:** This provision applies only where the person or partner was in receipt of Income Support and satisfied the relevant qualifying condition in the week immediately before the start of the training or course and eight weeks or less after the end of the training or course3.

*1 E&T Act (NI)50, s 1(1); Disabled Persons Employment Act (NI) 1945, s 2 & 3  
3 IS (Gen) (Amdt No 3) Regs (NI), reg 20*

**When protection ends**

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

**1.** no longer satisfies the relevant qualifying condition **or**

**2.** or their partner is no longer entitled to income-based Jobseeker’s Allowance or Income Support

for a period of more than eight weeks1. Protection is not affected when a partner with protection becomes the claimant or when a claimant with protection becomes the partner of another claimant.

*1 IS (Gen) (Amdt No 3) Regs (NI), reg 21(1)*

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

**1.** any period within the permitted period where income-based Jobseeker’s Allowance or Income Support ceases because the person or partner is in remunerative work

**2.** any period during which the person or partner is on a training or rehabilitation course

**3.** a period of up to eight consecutive weeks following the end of a training or rehabilitation course1.

*1 IS (Gen) (Amdt No 3) Regs (NI), reg 21(2)*

**Supersession where protection ceases**

**19.** A decision based upon a protection determination should be superseded when

**1.** the person with protection gives up work or reduces their hours to less than 16 **and**

**2.** income-based Jobseeker’s Allowance or Income Support continues in payment.

**20.** Where protection is lost as in paragraph 12 and the person subsequently starts remunerative work

**1.** supersede the award of income-based Jobseeker’s Allowance or Income Support on the grounds that there has been a relevant change of circumstances **and**

**2.** make a specific determination on the question of protection **and**

**3.** record the determination accordingly.

**Appendix 3**

**Recognised customary or other holiday**

**Recognised or customary holiday**

**1.** Recognised or customary holidays1 are days which employers and employees have agreed shall be non working days. They become a normal and recurring event in the employment and are an implied term of a contract of service. They can only be changed by further agreement2. This does not mean that every agreed non working day is a recognised or customary holiday3. There may be other reasons for employees not having to work.

*1 R(SB) 7/84; 2 R(U) 11/53; 3 R(U) 8/64; R(SB) 7/84*

**2.** Agreements about recognised or customary holidays may be express or implied. They can be changed or replaced by further agreement. This may be either permanently or for once only1. There may be more than one agreement involved. For example, an express agreement may provide for certain holidays. An implied agreement may then provide for extra holidays.

*1 R(U) 3/53*

**Express agreement**

**3.** An express agreement can be written or oral. It may cover all details or may leave some to be settled for each holiday, for example, the precise dates of the holiday.

**Implied agreement**

**4.** If there is no express agreement for the days being considered, consider whether there is an implied agreement. An implied agreement is where the employer and employees have come to recognize and accept the days as being days of holiday.

**Period of observance**

**5.** A day may have been observed as a non working holiday for many years. The effect is that there is an implied agreement that is a day of recognised or customary holiday. That inference stands unless there is evidence to disprove it. The period of observance may also be short. For example, a holiday may be of very recent origin. Even so, the recognition of it as a holiday may be proved. A long period of observance makes it easier to establish that a day has been recognised. But it does not in itself create a recognised or customary holiday1.

*1 R(SB) 7/84 (App)*

**Example 1**

A factory closes for two weeks in August. The first week is a holiday with pay covered by express agreement. The second week is not. The factory have been doing this for the past five years.

The 2nd week is recognised as a holiday by the employer and employees. There is no evidence to the contrary. The employees are on recognised or customary holiday for the full two weeks. They are still in employment for that period.

**Example 2**

A mill closes for Easter Monday and Tuesday. These are paid holidays by express agreement. It also closes on Good Friday, but this is not covered by the agreement and is not paid. This has happened for the past five years.

Employees who have to work on holidays get paid time and a half. Those working on Good Friday only get ordinary time. There is no pressure for pay at the rate for working on a holiday. Good Friday is not a holiday in the district generally. It is not a day of recognised or customary holiday.

**Example 3**

A pottery is closed on Easter Monday, which is a paid holiday by express agreement. It is also closed on Good Friday and Saturday. These are not covered by the agreement and are not paid. The pottery has closed on these days for the past 30 years.

It is the practise for the employees to ask for these days off each year. This request has always been granted by the employer.

Good Friday and Saturday are days of recognised or customary holiday.

**Example 4**

Rhona works for four hours each evening, Monday to Friday. For several years her employer has closed down at 5pm on the Friday before the September holiday. Rhona is on a recognised or customary holiday on that day.

**Example 5**

Ivor’s standard working week is Monday to Friday, with some liability to work on Saturday. He has not worked on a Saturday for 18 months but other employees have.

It has been the custom and practise for many years to close the factory on the Saturday of the week before the annual summer holidays. That Saturday is a recognised day of holiday.

**Practise within the establishment concerned**

**6.** There may be an agreement or practise observed at the claimant’s place of employment. The decision maker should always take this into account when determining whether there is a holiday.

**7.** As well as considering a claimant’s own position, consider the arrangements for the

**1.** establishment as a whole **and**

**2.** various departments and grades of workers involved.

**8.** A day may be said to be a general holiday. But a lot of employees may carry on their ordinary work at ordinary pay. Such a day cannot be a general holiday. It could be that employees take their holidays at different times. This may be as individuals or in groups. It may be under a rota system or by individual arrangement. A holiday taken in these circumstances is a recognised or customary holiday for the employees concerned.

**9.** Employees who are not working may not be on holiday. For example, they may have been laid off due to shortage of work. Other employees may have to work, even during a general holiday, for example, maintenance and repair workers. This does not stop it being a day of recognised or customary holiday for those who are not working. Those employees who have to work may get extra pay, or time off in lieu, for working. The effect is that the day is a holiday for those not working. But there may be another reason for the extra pay. For example, it may be payment for doing different work or for doing extra work.

**10.** There may be no extra pay. That does not necessarily mean that the day is not a recognised or customary holiday. But it is important if the employees are normally entitled to extra pay for work during holidays. Without evidence to the contrary, the inference would be that the day is not a holiday1.

*1 R(U) 11/53; R(SB) 7/84 (App)*

**Comparison with practise at other establishments**

**11.** There may be no agreement or practise observed at the claimant’s place of employment. Or there could be some doubt about the position. It may then be helpful to consider the practise in other firms in the district. It might also be helpful to consider the practise within the same industry. The practise might be more definite at other firms. That practise can then be regarded as a sign of what might be expected at the claimant’s place of employment. If there is little or no evidence about where the claimant works the question may have to be decided by looking at what happens elsewhere.

**Example 1**

A factory closes for 2 weeks in August. The first week is a holiday with pay covered by an agreement. The second week is not. The second week is recognised as a holiday by the employer and employees.

The practise is the same elsewhere in the industry but the position is no more definite. The practise elsewhere is of no help in this case.

**Example 2**

A mill closes for Easter Monday and Tuesday. These are paid holidays by express agreement. It also closes on Good Friday, but this is not covered by the agreement and is not paid.

Good Friday is not a holiday in the district generally. That is a sign that Good Friday is not a day of recognised or customary holiday.

**Dissension among employees**

**12.** All employees may take the same period of holiday, determined by agreement between the employer and the majority of the employees. Any revision of such an agreement must also be between the employer and the majority of the employees. A minority of the employees cannot make such an agreement or alter it. They are bound by the terms of any agreement made by the majority1. This applies even if days of holiday agreed by the majority are not wanted by an employee.

*1 R(U) 3/53*

**13.** An agreement, or reviewed agreement, may be made between the employer and the employees representatives. For example, between the employer and a trade union. The representatives are assumed to have the backing of the majority of the employees. A recognised or customary holiday may be waived by an agreement between the employer and employees. They may agree that some days are to be worked and not taken as holiday.

**14.** If the majority of the employees still take the holiday the agreement to work is ineffective. The days stay days of recognised or customary holiday for

**1.** those who want the holiday **and**

**2.** those who want to work but do not because the other employees are away.

**Holiday during closure**

**15.** A day of recognised or customary holiday may fall when no work would be available because of short time working1. Such days are still days of holiday.

*1 R(U) 12/54; R(U) 16/54; R(U) 2/64*

**16.** Employees are on holiday where a period of shortage of work is part of a holiday1

**1.** arranged **or**

**2.** extended **or**

**3.** altered

by agreement between the employer and employees.

*1 R(U) 3/53*

**17.** Employers may lay employees off or extend an existing holiday for economic reasons. They may refer to the period of lay off or extension as being a holiday. There is no express or implied agreement by which the days are days of recognised or customary holiday1. But they may be other holidays.

*1 R(U) 11/53; R(SB) 7/84*

**18.** The practise may be continued for a number of years. The days might then become days of recognised or customary holiday. This could be as a result of an express agreement to that effect. If could also be by implied agreement based on the actions of those involved1.

*1 R(U) 11/53; R(SB) 7/84*

**Dates of holiday**

**19.** The exact dates of a holiday may be in doubt. If so consider the terms of the express or implied agreement covering it.

**20.** An agreement may refer to a public or religious holiday whose date changes from year to year, for example Easter or the August bank holiday. Such a reference usually recognises that these holidays will fall on different dates in different years.

**21.** The Boxing Day bank holiday is the first week day after Christmas Day. It may fall on 26 December or when Christmas Day is a Saturday, on 27 December. An agreement may say that the holiday is 25 and 26 December, rather than Christmas Day and the bank holiday. When Boxing Day falls on 27 December it is not a holiday under such an agreement.

**22.** A public or religious holiday may fall at a weekend or other non working day. Another day may then be substituted as the day of holiday. In such a case the substituted day is the day of the holiday. The original day is not a day of holiday1 (except where it becomes a holiday by implied agreement).

*1 R(U) 16/55*

**23.** A substitution can only be made by agreement between employer and employees. It may be covered by a standing agreement or agreed as and when necessary. The employer cannot substitute one day for another without agreement.

**24.** An agreement about annual holidays may

**1.** state the dates of the holiday **or**

**2.** authorise the employer alone to decide the dates each year **or**

**3.** allow for the dates to be decided each year by negotiation and agreement.

**25.** No matter how the dates are fixed, they can be changed later by further agreement1.

*1 R(U) 3/53*

**Shift workers**

**26.** Shift workers may be off work for different lengths of time when their employer closes for holidays. Even so, they are on holiday for the whole of the holiday period1.

*1 R(U) 20/52*

**Example**

A holiday in a steel works lasts from Monday evening until Thursday morning. Day shift workers are on holiday for two shifts, Tuesday and Wednesday. Night shift workers are on holiday for three shifts, Monday, Tuesday and Wednesday nights.

The night shift is from 10pm to 6am. A night shift worker starts work again at 10pm on Thursday. He is on holiday on Tuesday, Wednesday and Thursday.

**Claimant with two employments**

**27.** A day of recognised or customary holiday must be in connection with the claimant’s employment as a whole. A claimant may sometimes have two jobs. Benefit may then be claimed for a day which is a holiday in only one job. The decision maker should

**1.** take account of both employments **and**

**2.** consider whether either job represents a substantial part of the claimant’s whole employment.

**28.** If the job without the holiday represents a substantial part, the claimant is not on holiday. This is so even though the day is a holiday in the other employment. If one employment is not a substantial part of the whole, there may be a day of recognised or customary holiday in the other1.

*1 R(U) 7/63*

**Seeking other employment during holiday**

**29.** A person may be free to look for other work during holidays. This does not prevent the days in question being days of recognised or customary holiday1.

*1 R(U) 2/51*

**Other holidays**

**30.** The term other holiday is not defined. So it has to be given its ordinary everyday meaning. The word holiday is also not defined. But for many years it has been used and considered in the term recognised or customary holiday. It has gained a specific meaning by doing so.

**31.** The specific meaning is a day which is a non working day by agreement between employers and workers. Such a day is a holiday no matter what use workers make of it. How they actually spend the time they have at their disposal is not normally relevant. An exception is where the employee is absent from work with good cause. See DMG 20397 et seq for guidance on absence with good cause.

**32.** A holiday can include a person’s individual holidays as well as time off as annual leave. It may be with pay or without pay. Other holidays are often without pay.

**Example 1**

Heidi works at a factory that closes for Easter Monday and Tuesday. These are paid holidays by express agreement and are recognised or customary holidays. Good Friday is not a holiday in the district generally. The factory does not close on Good Friday. Employees working on Good Friday are paid at ordinary time.

Heidi has problems arranging a childminder for Good Friday. She asks her employer if she can take it as a day off. The employer agrees but says that it will be without pay. Good Friday is an “other” holiday for Heidi.

**Example 2**

Arnold works at a pottery that closes for two weeks in July every year. Both weeks are holidays with pay covered by an express agreement. They are both recognised or customary holidays.

At the end of the first week, the management and workforce agree that for economic reasons, the holiday should be extended to three weeks. The third week is without pay and is an “other” holiday for Arnold.

**Example 3**

Stephen works at a firm of accountants. He has taken all his holiday entitlement and will not be due to any more until the New Year. In early December, Stephen wins an all expenses paid two week holiday, which must be taken before the end of the year. His employer agrees to let him have time off, without pay, to take the holiday. The time he is allowed off is an “other” holiday for Stephen.

**Appendix 5**

**Savings provisions - prescribed categories of person**

**Introduction**

1 From 30.12.09, amending legislation1 revoked a number of the prescribed categories which allow entitlement to Income Support. A person claiming Income Support on or after 30.12.09 can no longer become entitled to Income Support based solely on one of the 4 categories listed in paragraph 2 below. However, these revoked categories remain in force for the purposes of the savings provisions contained in the regulations. This appendix contains guidance on when the savings provisions will apply.

*1 IS (Prescribed Categories of Person) Regs (NI) (SR 2009/418)*

**Relevant provisions**

2 The relevant provisions are those where a person was entitled to Income Support by virtue of being

**1.** in relevant education and have a disability1

**2.** incapable of work or treated as incapable of work2

**3.** disabled or deaf students3

**4.** blind4.

These relevant provisions remain in force but only for certain situations.

*1 IS (Gen) Regs (NI), reg 13(2)(b) & (bb); 2 Sch 1B, para 7(a) & (b); 3 Sch 1B, para 10 & 12; 4 Sch 1B, para 13*

**Savings provisions**

3 A relevant provision will continue to apply (and so the claimant remains entitled to Income Support on that particular ground) where that person

**1.** was entitled to Income Support on the basis of one of the relevant provisions in paragraph 2 above immediately before 30.12.091 (see paragraph 4 below) **or**

**2.** made a claim for Income Support2

**2.1** as a Welfare to Work Beneficiary **or**

**2.2** on the of disability where the claimant

**2.2.a** was previously entitled to Income Support on the grounds of disability for a period of 4 or more consecutive days **and**

**2.2.b** ceased to be entitled to Income Support on the grounds of disability not more than 8 weeks before the start of the claim **or**

**2.3** on the grounds of disability and is entitled to Incapacity Benefit or Severe Disablement Allowance **or**

**3.** had an award of Income Support3

**3.1** which was terminated on or after 27.10.08 as a result of official error **and**

**3.2** the person satisfied one of the relevant provisions as in paragraph 2 above immediately before the award was terminated **and**

**3.3** the award was subsequently revised because of the official error.

*1 IS (Prescribed Categories of Person) Regs (NI), reg 2(2)(a); 2 reg 2(2)(b); 3 reg 2(2)(c) & (4)*

**Example**

Amanda was awarded Income Support because she was a lone parent. She was then registered blind on 1.10.09. On her son’s birthday on 5.12.09 she ceased to be entitled on the grounds of being a lone parent and her award was terminated without any consideration being given to whether Amanda may be entitled to Income Support on any other grounds. On 6.1.10 the decision to terminate her award is revised for official error as a relevant provision (being registered blind) applied to her immediately before the award was terminated.

4 Paragraph 3 **1.** above can only apply where, before 30.12.09 the Department

**1.** has determined that one of the relevant provisions in paragraph 2 above applies to the claimant1 **or**

**2.** in incapacity for work cases2

**2.1** was provided with or was satisfied as to evidence or information as required3 **or**

**2.2** was provided with medical evidence as required and has not, within the previous 6 months, made a determination that the person was capable or treated as capable of work4 **or**

**3.** where the conditions described in paragraph 4 **2.** above do not apply5

**3.1** receives notification from the claimant that a relevant provision applies to them **and**

**3.2** determines on or after 30.12.09 that the specific provision does apply to the claimant.

*1 IS (Prescribed Categories of Person) Regs (NI), reg 2(3)(a); 2 reg 2(3)(b); 3 SS (IW) (Gen) Regs (NI), reg 6;  
4 reg 28; 5 IS (Prescribed Categories of Person) Regs (NI), reg 2(3)(c)*

**Example 1**

Sam is a lone parent and has one child aged 10 who will be 11 on 6.2.10. She has been in receipt of Income Support for 5 years. Under lone parent provisions, Sam is called into the Jobs and Benefits Office on 5.10.10 and is advised that due to the age of her only child, she will no longer be entitled to Income Support from 6.2.10. However, Sam tells the decision maker that 4 months ago she was diagnosed with kidney disease and she has been on dialysis since and is therefore incapable of work. She sent evidence of her condition to the local office on 16.10.09 but this was not passed to the decision maker at the time. The decision maker decides that she satisfies the prescribed condition for incapacity for work and can therefore remain on Income Support.

**Example 2**

On 4.11.08, Lisa’s award of Income Support was terminated on the basis that her only child was 15 and she was no longer entitled a lone parent. However, Lisa also suffered from severe depression and was incapable of work but as the claimant was categorised as a lone parent this information had been overlooked. On 23.10.09, the Department looked again at the case and decided that the decision to terminate Lisa’s Income Support was not correct as they accept the evidence of incapacity and that termination was therefore made as a result of official error. The Department therefore revised the decision to award Income Support.

**Appendix 6**

**Savings provisions - disabled workers**

**Introduction**

1 From and including 25.1.10, amending legislation1 removed the provisions allowing certain disabled workers and certain employed persons living in residential accommodation who are in full-time remunerative work to be exempted from satisfying certain conditions that would otherwise mean that they would not be entitled to Income Support/Jobseeker’s Allowance. The regulations revoking these provisions also contained savings provisions and this Appendix gives guidance on when those savings provisions should be applied.

*1 SS (Misc Amdts) Regs (NI) 2010 (SR 2010/06)*

**Background**

2 From and including 25.1.10, disabled workers in full-time remunerative work and people in work living in a residential care home, nursing home, Abbeyfield home or an independent hospital are removed from the list of

**1.** prescribed persons entitled to Income Support

**2.** those who are treated as not engaged in remunerative work for Income Support/Jobseeker’s Allowance

**3.** categories of members of joint-claim couples where one member is not required to satisfy the joint-claim conditions for Jobseeker’s Allowance1.

*1 SS (Misc Amdts) Regs (NI) 2010, reg 4(1)*

**Savings provisions**

3 Where the provisions in paragraph 2 above apply to an Income Support or Jobseeker’s Allowance claimant for a period including 24.1.10, they shall continue to be entitled under those provisions until they first cease to

**1.** fall within that provision **or**

**2.** be entitled to Income Support/Jobseeker’s Allowance

whichever date is the earlier1.

*1 SS (Misc Amdts) Regs (NI) 2010, reg 4(3) - (5) & (7)*

**Appendix 7**

**Savings provisions - Jobseeker’s Allowance joint-claim couple exemptions**

**Introduction**

1 From and including 1.11.10, amending legislation1 removed some of the provisions allowing one of a joint-claim couple to not be required to satisfy the conditions set out in DMG 20017. The regulations revoking these provisions also contained savings provisions and this Appendix gives guidance on when those savings provisions should be applied.

*1 SS (Miscellaneous Amendments No.6) Regulations (NI) 2010 (2010/345)*

**Background**

2 The revoked provisions are those where a member of a joint-claim couple was exempted from satisfying the usual conditions of virtue of being

**1.** incapable of work or treated as incapable of work1

**2.** a disabled or deaf student2

**3.** blind3.

*1 JSA Regs (NI), Sch A1, para 6(a) & (b); 2 para 9 & 10; 3 para 11*

3 From 1.11.10, a member of a joint-claim couple entitled to Jobseeker’s Allowance who is not already entitled on the basis of one of the revoked provisions in paragraph 2 above will no longer be able to use one of these provisions to gain entitlement to Jobseeker’s Allowance (but see paragraph 4 below).

**Savings provisions**

4 Where one of the revoked provisions in paragraph 2 above applied to a joint-claim couple immediately before 1.11.10, it will continue to apply as if that provision had not been revoked or amended, where immediately before 1.11.10

**1.** the couple were entitled to Jobseeker’s Allowance **and**

**2.** that provision in paragraph 2 above applied to a member of that couple1.

*1 SS (Miscellaneous Amendments No.6) Regulations (NI) 2010, reg 4(3)*

5 The savings provisions in paragraph 4 above will cease to apply to a joint-claim couple when any award of Jobseeker’s Allowance to which they were entitled immediately before 1.11.10 is subsequently terminated1.

*1 SS (Miscellaneous Amendments No.6) Regulations (NI) 2010, reg 4(4)*