

Chapter 37 - Transitional protection from UB and IS to JSA

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Chapter 37 - Transitional protection from UB and IS to JSA

Introduction

General

37000 For UB and IS claimants who are entitled to transitional protection to JSA the normal JSA rules apply, except in certain circumstances. These circumstances are explained in the following guidance.

37001 Claimants comply with any requirements or provisions of the consolidated regs¹ if they are treated as complying with that requirement or provision².

1 JSA (TP) (96) Regs; 2 reg 1(4)

UB claimants

37002 The guidance in DMG 37006 - 37617 should be applied to UB only claimants to decide

1. whether they can be transitionally protected **and**
2. the extent of that protection.

IS claimants

37003 The guidance in DMG 37006 - 37092 and DMG 37700 - 37855 should be applied to IS only claimants to decide

1. whether they can be transitionally protected **and**
2. the extent of that protection.

UB and IS claimants

37004 Where there is entitlement to both UB and IS the guidance in

1. DMG 37006 - 37617 should be applied to the UB element **and**
2. DMG 37006 - 37092 and 37700 - 37855 should be applied to the IS element.

37005

Definitions

Benefit week

37006 A benefit week¹

1. for **IS**, is the week in which IS is paid or a period of seven days beginning or ending any day the Secretary of State directs² **or**
2. for **UB**, is a period of seven days ending on the day of the week specified in a written notice last given to the claimant by the Secretary of State for the purposes of claiming UB **or**
3. for **JSA**, up to and including 27.10.96, is a period of seven days ending³
 - 3.1 where the Secretary of State wants the claimant to attend every two weeks, on the day of the week specified in a written notice given or sent to the claimant by the Secretary of State as in DMG Chapter 20 requiring the claimant to provide a signed declaration as in DMG Chapter 20 **or**
 - 3.2 in the case of a claimant who is not normally required to attend in person, on the day of the week specified by the Secretary of State for the purposes of providing a signed declaration as in DMG, Chapter 20 **or**
 - 3.3 where the Secretary of State wants the claimant to attend other than every two weeks, on the actual day that the Secretary of State specifies in a written notice given or sent to the claimant **or**
 - 3.4 where the Secretary of State has set a day for payment of JSA for the claimant's claim, but a notice as in 1. has not been given or sent to the claimant, on the day that has been set for payment of JSA
4. for **JSA** from 28.10.96 is⁴ a period of seven days ending
 - 4.1 where the Secretary of State wants the claimant to attend every two weeks, on the day of the week specified in a written notice given or sent to the claimant by the Secretary of State as in DMG, Chapter 20 requiring the claimant to provide a signed declaration as in Volume 4, Chapter 20
 - 4.2 in the case of a claimant who is not normally required to attend in person, on the day of the week specified by the Secretary of State for the purposes of providing a signed declaration as in DMG, Chapter 20
 - 4.3 where
 - 4.3.a the Secretary of State wants the claimant to attend other than every two weeks **or**
 - 4.3.b the claimant is a personal issue claimant

on the actual day that the Secretary of State specifies in a written notice given or sent to the claimant

5. where

5.1 there is an award of IS that includes Sunday 6.10.96 and the benefit week ends on a Saturday **or**

5.2 there is an award of UB that includes Saturday 5.10.96 (or Sunday 6.10.96 if there is a day substituted for Sunday) and the Secretary of State has given the claimant a written notice that specifies a Saturday for the purpose of claiming UB

on a Saturday, or any other day that the Secretary of State may specify in a written notice given or sent to the claimant

6. where the Secretary of State has set a day for payment of JSA for the claimant's claim, but a notice as in 1. has not been given or sent to the claimant, on the day that has been set for payment of JSA.

*1 JSA (TP) (96) Regs, reg 1(2); 2 IS (Gen) Regs, reg 2(1), SS (C & P) Regs, sch 7 para 4;
3 JSA Regs, reg 1(3); 4 JSA Regs, reg 1(3); SS & CS (JSA) (Misc Amdt) Regs, reg 2(2)(a);
JSA (TP) (96) Regs, reg 1(2)*

37007

Day of interruption of employment

37008 A day of interruption of employment means a day of unemployment or incapacity for work¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 1(2); SS CB Act 92, s 25A(1)(c)

37009

Day not a day of unemployment

37010 A day is not a day of unemployment if the claimant is disallowed or disqualified for receiving UB for that day¹.

1 s 25A(1)(c)

37011 Where the claimant is entitled to UB but it is not payable, for example due to an occupational pension or overlapping benefit, that day is a day of unemployment¹.

1 JSA (TP) (96) Regs, reg 1(2), SS (U, S & IVB) Regs, reg 7(1)(b)

37012

Jobseeking period

Which days are part of a JSP period

37013 Days are part of a JSP if they are days when the claimant satisfies, or is treated as satisfying, **all** the following conditions¹

1. availability²
2. having a current JSAg that remains in force³
3. ASE⁴
4. not being in remunerative work⁵
5. capability⁶
6. not receiving relevant education⁷
7. under pension age⁸
8. in GB⁹ (see DMG 072130 et seq).

Note: Waiting days are part of a JSP.

1 JSA (TP) (96) Regs, reg 2(1); 2 JS Act 95, s 1(2)(a); 3 s 1(2)(b); 4 s 1(2)(c); 5 s 1(2)(e); 6 s 1(2)(f); 7 s 1(2)(g); 8 s 1(2)(h); 9 s 1(2)(i)

37014 Days when a claimant

1. does not satisfy the conditions in DMG 37013 **1. to 3. and**
2. gets a hardship payment

are treated as days on which those conditions are satisfied, and will form part of a JSP¹.

1 JSA (TP) (96) Regs, reg 2(2)

37015 Days when a claimant satisfies¹ the

1. earnings rules that existed for UB² (see DMG 37175 - 37334) **and**
2. conditions in DMG 37013 **1. to 3.** and DMG 37013 **5. to 8.**

are treated as days when the claimant satisfies the conditions in DMG 37013 **4.**

1 JSA (TP) (96) Regs, reg 2(3) & 13(3); 2 SS (U, S & IVB) Regs, reg 7(1)(g)(i) & (iii); 3 reg 7(1)(o)

Period of interruption of employment to be treated as a JSP

37016 A PIE that ends within eight weeks of the start of a JSP is treated as a JSP¹. Any day of unemployment, including a single day, forms part of a PIE if a JSP begins within six days of that day². When working out eight weeks before a date, the date itself is excluded.

1 JSA (TP) (96) Regs, reg 3(4); 2 reg 3(3)

Which days are not part of a JSP period

37017 Days are not part of a JSP if they are

1. days when no claim for JSA is made or treated as made¹ **or**
 2. before the day when a claim for JSA is made or treated as made and good cause is not shown for the delay in claiming² **or**
 3. before the day when a claim for JSA was made or treated as made and where good cause is shown, which fall before the earliest date for which good cause is shown² **or**
 4. days for which the claimant is not entitled to JSA because they are more than twelve months before the date on which the claim to JSA was made or treated as made³ **or**
 5. days when a claimant⁴
 - 5.1 satisfies the conditions at DMG 37013 1. to 8. **and**
 - 5.2 is not entitled to JSA⁵ because of not
 - 5.2.a attending on the day specified in a written notice given or sent by the Secretary of State **or**
 - 5.2.b attending at the time specified in a written notice given or sent by the Secretary of State, where the claimant has been given a warning in writing **or**
 - 5.2.c providing a signed declaration when required to do so by the Secretary of State **and**
- has not shown good cause for the failure **or**
6. days in any week (Sunday to Saturday) when a claimant is not entitled to JSA because of a TD⁶.

*1 JSA (TP) (96) Regs, reg 2(4)(a); 2 reg 2(4)(b); 3 reg 2(4)(c); SS A Act 92, s 1(2)(b) & 1(4)(aa);
4 JSA (TP) (96) Regs, reg 2(4)(d); 5 JSA Regs, reg 25; 6 JSA (TP) (96) Regs, reg 2(4)(e)*

Linking periods

37018 Two or more JSPs are treated as one JSP where they are separated only by¹

1. twelve weeks or less **or**
2. one linked period (see DMG 37019 - 37020) or more than one linked period where one follows immediately after the other **or**
3. any linked periods that are separated by a period of twelve weeks or less **or**
4. linked periods immediately before a period of twelve weeks or less **or**

5. linked periods immediately after a period of twelve weeks or less **or**
6. any combination of 3. 4. or 5. **or**
7. one or more periods for which the claimant
 - 7.1 has been called for jury service **and**
 - 7.2 is required to attend court.

But such periods should follow immediately one after the other. See DMG 21021 for example.

Note: week means a period of seven days².

1 JSA (TP) (96) Regs, reg 3(1); 2 JSA Regs, reg 1(3)

Linked periods

37019 Linked periods are¹ any periods when the claimant is

1. entitled to CA² (see DMG 37020) **or**
2. incapable of work or is treated as incapable of work³ **or**
3. entitled to MA⁴ **or**
4. doing training for which a training allowance is payable⁵ (see DMG 21554) **or**
5. called for jury service and attends court for a period that includes 6.10.96.
The period of jury service must follow immediately after a period of entitlement to UB⁶.

*1 JSA (TP) (96) Regs, reg 3(2); 2 SS Amendment (Carer's Allowance) Regs 2002, reg 3(b);
3 JSA (TP) (96) Regs, reg 3(2)(b); 4 reg 3(2)(c); 5 reg 3(2)(d); 6 reg 3(2)(e)*

CA

37020 Entitlement to CA becomes a linked period only if

1. it allows the claimant to satisfy the contribution conditions for entitlement to JSA(Cont) **and**
2. the claimant would otherwise be unable to satisfy the conditions¹.

1 reg 3(5)

37021 - 37025

Period of interruption of employment

37026 A PIE is formed¹ by

1. two days of unemployment, whether consecutive or not, within a period of six consecutive days **or**
2. four or more consecutive days of incapacity for work.

1 JS Act 95, s 40(1)(b); SS CB Act 92, s 25A(1)(d)

37027 Any two PIEs not separated by a period of more than eight weeks are treated as one¹.

1 JS Act 95, s 40(1)(b); SS CB Act 92, s 25A(1)(d)

37028 A week, for PIE purposes, is any period of seven days¹.

1 JS Act 95, s 40(1)(b); SS CB Act 92, s 25A(1)(d)

37029 To calculate any period of consecutive days, Sundays or the day substituted for Sunday as in DMG 37400 - 37617, are disregarded¹. But Sunday must be included when calculating the duration of the intervening period² to determine whether two PIEs are separated by more than eight weeks.

1 CWS 3/48(KL); R(U) 33/59; 2 R(U) 12/58

37030 The effects of the PIE provisions are that

1. a single day of **unemployment** can form part of a PIE only if it is within six consecutive days of another day of **unemployment**
2. a spell of incapacity of three days or less **cannot** link with a spell of unemployment even if one follows immediately after the other
3. a spell of incapacity of three days or less does not count for benefit purposes at all.

Example 1

Roy is incapable of work from 2.12.96 to 31.12.96, 10.2.97 to 12.2.97 and 7.3.97 to 20.3.97.

The spell 10.2.97 to 12.2.97 is not a PIE as the condition of four consecutive days of incapacity is not satisfied.

As 31.12.96 is separated from 7.3.97 by more than eight weeks the PIEs do not link.

Example 2

Geoff is unemployed from 7.11.96 to 28.11.96 and is then incapable of work from 29.11.96 to 30.11.96 and unemployed from 2.12.96.

Benefit is not payable for the days 29.11.96 to 30.11.96 because they do not form a PIE (incapacity is for less than four consecutive days).

UB is payable for 2.12.96 because it is within six days of another day of unemployment.

37031 - 37033

Training

37034 [\[See Memo DMG 42/10\]](#) Training is¹ training for which an allowance is payable

1. out of public funds by
 - 1.1 a government department **or**
 - 1.2 on behalf of
 - 1.2.a the Secretary of State for Work and Pensions **or**
 - 1.2.b Scottish Enterprise **or**
 - 1.2.c Highlands and Islands Enterprise **or**
 - 1.2.d The Learning and Skills Council for England **or**
 - 1.2.e The National Assembly for Wales **and**
2. to people for
 - 2.1 their maintenance **or**
 - 2.2 a member of their family (see DMG Chapter 22) **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, that department **or**
 - 3.2 approved by or on behalf of the
 - 3.2.a Secretary of State for Work and Pensions **or**
 - 3.2.b Scottish Enterprise **or**
 - 3.2.c Highlands and Islands Enterprise **or**
 - 3.2.d National Assembly for Wales.

1 JSA (TP) (96) Regs, reg 1(2)

37035 Training does not include an allowance paid by any Government department to, or for, people that are following a course of F/T education. That is not done under arrangements made under relevant legislation¹ for people or who are training as a teacher. From and including 28.10.96 the relevant legislation² is extended.

1 E & T Act 73, s 2; 2 JSA (TP) (96) Regs, reg 1(2); E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2

Transitionally protected period

37036 The transitionally protected period starts on the first day in the benefit week that starts on or after 7.10.96. It applies to claimants¹

1. who are awarded JSA on a claim treated as made as in DMG 37100 - 37103
or
2. whose award of UB terminated as in DMG 37109 - 37123.

1 JSA (TP) (96) Regs, reg 10(1)

37037 The transitionally protected period ends, for each claimant, on the earlier of¹ the

1. last day of the benefit week that includes 6.4.97 **or**
2. end of any period of entitlement to JSA(Cont) that does not link with any later period of entitlement to JSA(Cont).

1 JS Act 95, s 40(2)(d); JSA (TP) (96) Regs, reg 10(2)

37038 In deciding whether a transitionally protected period has ended, periods of entitlement to JSA(Cont) separated by¹

1. eight weeks or less link **and**
2. more than eight weeks do not link.

Disregard any linked period as in DMG 37019 when deciding whether any particular periods link.

1 JS Act 95, s 40(2)(d); JSA (TP) (96) Regs, reg 10(3)

37039 - 37049

Attendance

Attendance at a Jobcentre

37050 Claimants who were

1. claiming UB or IS **and**
2. required to be available

had to attend a Jobcentre if directed to do so by the Secretary of State¹.

1 SS (C&P) Regs, reg 8(1)

37051 Claimants who are entitled to transitional protection still need to attend a Jobcentre if directed to do so by the Secretary of State and the direction by the Secretary of State should be treated as a notice to attend as in DMG 20911¹.

1 JSA (TP) (96) Regs, reg 20

37052 - 37053

Attendance to provide information

37054 Claimants who were claiming UB or IS and were required to be available (including those claiming an increase for a child or adult dependant) had to attend to provide certificates, documents, information or evidence under DMG 37080 - 37082, if required to do so by the Secretary of State¹.

1 SS (C&P) Regs, reg 8(2)

37055 Claimants who are entitled to transitional protection still need to attend if required to do so by the Secretary of State and the direction by the Secretary of State should be treated as a notice to attend as in DMG 20911¹.

1 JSA (TP) (96) Regs, reg 20

37056 - 37057

Attendance for an interview in connection with obtaining employment

37058 If UB claimants

1. failed to comply with a written notice requesting them to report to an
 - 1.1 officer of the DWP **or**
 - 1.2 officer of the Department for Education and Skills **or**
 - 1.3 LEA

for an interview in connection with their prospects of employment **and**

2. within 14 days of the date of the claimant's failure they were given or sent a further notice requesting them to report to such an officer for the same purpose **and**
3. they failed to comply with the further notice

subject to DMG 37061, the days in DMG 37059 were treated as not being days of unemployment¹.

1 SS (U, S & IVB) Regs, reg 7(1)(i)

37059 The written notices must have

1. been issued by or on behalf of the Secretary of State **and**
2. stated the time, place and date of each interview.

37060 Where DMG 37059 applies, the days that were treated as not being days of unemployment were

1. the day set for the further interview **and**
2. all later days until the earlier of
 - 2.1 the day before the claimant did report to the specified officer at the specified place and there attended an interview in connection with employment prospects **or**
 - 2.2 the day before the further notice is withdrawn¹.

1 reg 7(1)(i)

37061 DMG 37060 does not apply if the claimant showed good cause for failing to report for the further interview. The claimant's reasons for failing to report for any previous interviews were not relevant.

37062 A notice as in DMG 37058 - 37061

1. still applies to claimants who are entitled to JSA(Cont) under transitional protection **and**
2. is treated as a notice to attend as in DMG 20911 - 20912¹.

1 JSA (TP) (96) Regs, reg 20

37063 - 37064

Written notice

37065 The DM should be satisfied

1. that both notices were given or sent to claimants. Evidence that they were posted to the claimants' last known address is sufficient (although claimants

may be able to show good cause for non-attendance if they can show that they did not receive the further notice) **and**

2. that the further notice was sent within 14 days of the date on which the claimant failed to comply with the previous notice.

37066

In connection with the prospects of employment

37067 The interview must be in connection with the claimant's prospects of employment. A vacancy which the claimant may be able to obtain need not exist at the date set for interview. The following types of interview are included

1. attendance for initial registration for employment by claimants under the age of 18
2. interview by a claimant advisor
3. interview to discuss possible attendance at a training course.

37068 - 37069

Failure to attend

37070 The DM should be satisfied that the claimant did not attend both the initial and further interviews. If there is clear evidence from the claimant of the failure to attend, that is sufficient. Otherwise evidence should be obtained from the officers who were to conduct the interviews.

37071 - 37072

Good cause

37073 The definition of good cause and the guidance in DMG Chapter 02 should be followed. To escape disallowance the claimant need only show good cause for failing to report on the day specified for the further interview.

37074 If the claimant is able to show good cause, the reason for non-attendance may cast doubt on the claimant's capability or availability for employment on the day concerned (and possibly for other days as well). In these circumstances those doubts should be passed to the DM.

37075 - 37079

Evidence and information

Information to be given when claiming

37080 Every person who makes a claim for benefit (including an increase of benefit) must supply such information, certificates, documents and evidence in connection with the claim as the Secretary of State requires¹.

1 JSA (TP) (96) Regs, reg 21(1); SS (C & P) Regs, reg 7(1)

37081 The information required by the Secretary of State should be provided within one month from the date requested, or for a longer period if considered reasonable¹

1 reg 7(1)

37082 During the period 7.10.96 to 20.10.96 DMG 37080 - 37081 still applies to claimants who are entitled to transitional protection and is treated as a requirement to provide a signed declaration as in DMG 20926 et seq on the day specified by the Secretary of State¹.

1 JSA (TP) (96) Regs, reg 21(1)

37083 - 37084

Information to be given when obtaining payment of benefit

37085 Every claimant and every person to whom or on whose behalf benefit is payable has to¹

1. provide certificates and other documents and information or facts affecting the right to benefit or to its receipt as and when the DM requires **and**
2. notify the DM of any change of circumstances they might reasonably be expected to know could affect their right to benefit or to its receipt as soon as is reasonably practicable after it has happened. This must be done in writing (unless the DM requests it in another way) to an office of the DWP.

1 reg 21(1); SS (C & P) Regs, reg 32(1)

37086 During the period 7.10.96 to 20.10.96 DMG 37085 still applies to those claimants who are entitled to JSA under transitional protection and should be treated as a requirement to provide a signed declaration on the day specified by the DM as in DMG 29026 et seq¹.

1 JSA (TP) (96) Regs, reg 21(1)

37087 - 37089

Information given between 30.9.96 and 13.10.96

37090 Where claimants have, for the purposes of claiming UB or IS, complied with DMG 37080 - 37081 or DMG 37085 during the period 30.9.96 to 13.10.96, that provision of information is to be treated as a signed declaration as in DMG Chapter 20¹.

1 JSA (TP) (96) Regs, reg 21(2)

37091

Time at which JSA is to cease

37092 During the period 30.9.96 to 27.10.96, for the purposes of DMG Chapter 20 the reference to¹

1. claimants providing information or evidence that shows that they continue to be entitled to JSA is to include a reference to comply with DMG 37080 - 37081 or 37085 **and**
2. the day after they last attended in compliance with a notice as in DMG, Chapter 20 is to include a reference to the first day of their award of JSA.

1 reg 21(3)

37093 - 37099

Unemployment Benefit to Jobseeker's Allowance

JSA to replace UB

Claims to UB made on or after 7.10.96 but before 13.10.96

37100 Where a claimant claims UB on a day specified in a notice previously given to the claimant by the Secretary of State and that day is on or after 7.10.96 and before 13.10.96 and where an award of UB is made and is payable for the relevant day that award is an award of¹

1. UB until the end of the benefit week that includes the relevant day **and**
2. JSA from the first day of the benefit week immediately after the benefit week that includes the relevant day, until the claimant fails to satisfy or ceases to be treated as satisfying, any condition of entitlement to JSA that applies in the claimant's case.

1 JSA (TP) (96) Regs, reg 5(1) & 5(2)(a)

Example

The claimant has claimed UB every two weeks on a Wednesday since 28.8.96. On 9.10.96 he claims for the period 26.9.96 to 9.10.96 and UB is paid for the whole of that period.

The award of UB is treated as

1. an award of UB up to and including 9.10.96 **and**
2. an award of JSA from 10.10.96.

37101 But DMG 37100 does not apply and the claimant is not entitled to JSA(Cont) if

1. UB was
 - 1.1 payable for the relevant day **and**
 - 1.2 not payable for 6.4.96 or 7.4.96 **and**
2. the claimant had, on the relevant day been entitled to UB for 156 days or more (including the relevant day) in that PIE.

1 reg 7(3)

Example

Helen claims UB on 4.3.96. 4.3.96 to 6.3.96 are waiting days. UB is paid for the period 7.3.96 to 27.3.96 except Sundays.

Benefit is not payable for the period 28.3.96 to 17.4.96 because she refused employment. UB is paid again for the period 18.4.96 to 9.10.96, except Sundays.

UB was paid for 5.10.96 and not paid for 6.4.96 or 7.4.96. On 5.10.96 the claimant had received 165 days of UB.

As the maximum number of days JSA(Cont) that the claimant can be entitled to is 156 days the claimant is not entitled to JSA(Cont).

Claims to UB made on or after 14.10.96 but before 20.10.96

37102 Where a claimant claims UB on a day specified in a notice previously given to the claimant by the Secretary of State and that day is on or after 14.10.96 but before 20.10.96 and where an award of UB is made and is payable for the relevant day, the claim is an award of¹

1. UB for the first week in that period of claim **and**
2. JSA from the first day of the second week of that claim, until the claimant fails to satisfy or ceases to be treated as satisfying, any condition of entitlement to JSA that applies in the claimant's case.

1 JSA (TP) (96) Regs, reg 5(1), 5(2)(b)

Example

Susan has claimed UB every two weeks on a Thursday since 29.8.96. On 17.10.96 she claims for the period 4.10.96 to 17.10.96 and UB is paid for the whole of that period.

The award of UB is treated as an award of

1. UB for the period 4.10.96 to 10.10.96 **and**
2. JSA from 11.10.96.

37103 But DMG 37102 does not apply and the claimant is not entitled to JSA(Cont) if¹

1. UB was
 - 1.1 payable for the relevant day **and**
 - 1.2 not payable for 6.4.96 or 7.4.96 **and**
2. the claimant had, on the relevant day been entitled to UB for 156 days or more (including the relevant day) in that PIE.

1 reg 7(3)

Example

Maureen claims UB on 4.3.96. 4.3.96 to 6.3.96 are waiting days. UB is paid for the period 7.3.96 to 27.3.96 except Sundays. Benefit is not payable for the period 28.3.96 to 17.4.96 because she refused employment.

UB is paid again for the period 18.4.96 to 9.10.96, except Sundays. UB was paid for 5.10.96 and not paid for 6.4.96 or 7.4.96.

On 5.10.96 the claimant had received 165 days of UB. As the maximum number of days JSA(Cont) that the claimant can be entitled to is 156 days the claimant is not entitled to JSA(Cont).

37104

Award of UB for benefit week which includes 7.10.96

37105 Claimants are treated as having an award of JSA from the first day after the benefit week that includes 5.10.96, or 6.10.96 if Sunday substitution applies in that week, if¹

1. they are awarded UB or UB and IS for the benefit week that includes 7.10.96
and
2. no UB was payable for 5.10.96, or 6.10.96 if Sunday substitution applies in that week.

1 JSA (TP) (96) Regs, reg 6(1)(a)

37106 Awards under DMG 37105 continue until the claimant¹

1. fails to satisfy **or**
2. ceases to be treated as satisfying

any relevant condition of entitlement to JSA.

1 reg 6(1)

37107 From 28.10.96 but not before DMG 37105 - 37106 applies to claimants for whom UB was not payable for 5.10.96, or 6.10.96 if Sunday substitution applies in that week, due to a disqualification because¹

1. they have
 - 1.1 lost their employment as an employed earner through misconduct **or**
 - 1.2 voluntarily left employment as an employed earner without just cause
or
2. after a situation in any employment had been properly notified to them as vacant or about to become vacant they have, without good cause, refused or failed to apply for that situation or refused to accept that situation when offered to them **or**

3. they have without good cause neglected to avail themselves of a reasonable opportunity of employment **or**
4. they have without good cause refused or failed to carry out any official recommendations given to them with a view to helping them to find employment. The recommendations must be reasonable, having regard to their circumstances and to the means of getting that employment usually adopted in the district where they live **or**
5. they have
 - 5.1 lost their place on an approved training scheme through their misconduct **or**
 - 5.2 left a place on an approved training scheme without good cause voluntarily **or**
6. after a place on an approved training scheme had been properly notified to them as vacant or about to become vacant they have, without good cause, refused or failed to apply for that place or refused to accept that place when offered to them **or**
7. they have without good cause neglected to avail themselves of a reasonable opportunity of a place on an approved training scheme.

1 JSA (TP) (96) Regs, reg 6(2); SS CB Act 95, s 28(1)

37108

Advance awards of UB

- 37109 Where an advance award of UB is made for a period that continues after the end of the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week, that award terminates at the end of the benefit week that includes 5.10.96 or 6.10.96 if Sunday substitution applies in that week¹.

1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 5(3)(a)

Example

George makes a claim to UB on 26.8.96. He is entitled to UB, claims on 5.9.96 for the period 26.8.96 to 5.9.96 and UB is paid for that period.

On Thursday 19.9.96 he attends the Jobcentre as normal and claims UB for the period 6.9.96 to 19.9.96. At that time the Secretary of State certifies that due to an imminent strike by Jobcentre staff, the claim can be controlled without applying the normal rules (see DMG 37115 2.).

The DM extends the claim and awards UB for 26 weeks from 19.9.96 until 19.3.97.

This award of UB terminates on 10.10.96.

37110 Claimants who are paid UB for 5.10.96 or 6.10.96 if Sunday Substitution applied in that week and whose award of UB is terminated as in DMG 37109 should be treated as having been awarded JSA for

1. a period commencing on the first day of the benefit week that begins on or after 7.10.96 **and**
2. each benefit week after that until they
 - 2.1 fail to satisfy **or**
 - 2.2 cease to be treated as satisfying

any condition of entitlement to JSA, except the remunerative work (see DMG Chapter 20) and prescribed amount of earnings rules (see DMG Chapter 21)¹.

1 JS Act 95, s 40(2)(b); JSA (TP) (96) Regs, reg 7(1)

37111 DMG 37110 does not apply and the claimant is not entitled to JSA(Cont)¹ if

1. UB was
 - 1.1 payable for 5.10.96, or 6.10.96 if Sunday substitution applies in that week **and**
 - 1.2 not payable for 6.4.96 or 7.4.96 **and**
2. the claimant had, on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, been entitled to UB for 156 days or more (including 5.10.96, or 6.10.96 if Sunday substitution applies in that week) in that PIE.

1 reg 7(3)

Example

Harry claims UB on 4.3.96. 4.3.96 to 6.3.96 are waiting days. UB is paid for the period 7.3.96 to 27.3.96 except Sundays.

The DM disqualifies the claimant for the period 28.3.96 to 17.4.96 because he refused employment.

UB is paid again for the period 18.4.96-9.10.96, except Sundays.

UB was paid for 5.10.96 and not paid for 6.4.96 or 7.4.96.

On 5.10.96 the claimant had received 165 days of UB.

As the maximum number of days JSA(Cont) that the claimant can be entitled to is 156 days the claimant is not entitled to JSA(Cont).

37112

When advance awards of UB can be made

37113 Following the first claim for UB in any spell of unemployment, no benefit should be awarded after the date of claim¹. A spell of unemployment is²

1. any period of unemployment lasting one or more days **or**
2. two or more periods of unemployment not separated by more than three consecutive days that are not days of unemployment.

1 SS (C & P) Regs, reg 17(2); 2 reg 17(2)(b)(i)

Example

William makes a claim for UB on Monday 25.11.91, claiming for the period from 23.11.91.

His normal signing day is Thursday (the first Thursday is 28.11.91) and benefit would normally be paid two weeks in arrears up to and including the date of signing.

But following the claim made on 25.11.91, benefit can only be awarded for 23.11.91 and 25.11.91.

37114 For further claims made in the same spell of unemployment

1. the claim may be treated as a claim for **and**
2. an award may be made for

up to seven days after the date of claim¹. Also benefit may be awarded before the date of claim.

1 reg 17(2)

37115 The Secretary of State may also certify that

1. the normal operation of the rules on claiming, awarding or payment are impracticable or unduly difficult¹ **or**
2. in the Secretary of State's opinion the awarding and payment of UB in any case where the claimant's employment as an employed earner has not ended (for example because of a temporary interruption of employment) can be adequately controlled without applying the legislation².

1 SS (C & P) Regs, reg 17(2)(b)(i); 2 reg 17(2)(b)(ii)

37116 Where the Secretary of State has issued a certificate as in DMG 37115, benefit may be awarded for up to

1. 26 weeks **or**
2. the period of the certificate

whichever is shorter. Benefit can be awarded for that period, whether or not benefit has already been awarded for earlier periods on that claim.

37117 Where

1. a claim has been treated as extended following the certificate of the Secretary of State **and**
2. an award made on that claim but for less than 26 weeks

the period of claim may be further extended and further awards made on that claim. But a claim cannot be extended and an award made for more than 26 weeks from the date of the original claim¹.

1 SS (C&P) Regs, reg 17(2)(c)

Example

Mary makes a claim for UB during a temporary interruption of employment.

She makes her claim on 25.11.91 for the period from 23.11.91 (24.11.91 is a Sunday).

Her claim links with an earlier PIE, and therefore there is entitlement to benefit for the first three days of the claim.

As this is the first claim in the spell of unemployment (see DMG 37114) benefit is awarded for 23.11.91 and 25.11.91.

The claimant claims again on Thursday 28.11.91 (the signing day). At that time the Secretary of State certifies that the claim can be controlled without applying the normal rules.

The DM extends the claim and awards benefit for 13 weeks from 28.11.91 (that is until 26.2.92).

On 27.2.92 the previous certificate is still in force and the DM again extends the claim and awards benefit for 13 weeks up to 27.5.92.

A further claim will be necessary before the DM can award benefit again.

37118 In calculating any period of time in DMG 37114 - 37117 Sundays should be included¹.

1 reg 17(2)(b)(ii)

37119 - 37120

Awards of UB made on or after 7.10.96

37121 Where an award of UB is made

1. on or after 7.10.96 **and**
2. for a period that starts before 7.10.96 **and**
3. that continues after the end of the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week

that award terminates at the end of the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week¹.

1 JS Act 95, s 40(2)(b); JSA (TP) (96) Regs, reg 5(3)(b)

37122 Claimants who are paid UB for 5.10.96 or 6.10.96 if Sunday Substitution applied in that week and whose award of UB is terminated as in DMG 37121 are to be treated as having been awarded JSA for

1. a period commencing on the first day of the benefit week that begins on or after 7.10.96 **and**
2. each benefit week after that until they
 - 2.1 fail to satisfy **or**
 - 2.2 cease to be treated as satisfying

any condition of entitlement to JSA, except the remunerative work rules (see DMG Chapter 20) and the prescribed amount of earnings rules (see DMG Chapter 21), that applies to that claimant¹.

1 JS Act 95, s 40(2)(b); JSA (TP) (96) Regs, reg 7(1)

37123 But DMG 37122 does not apply and the claimant is not entitled to JSA(Cont)¹ if

1. UB was
 - 1.1 payable for 5.10.96, or 6.10.96 if Sunday substitution applies in that week **and**
 - 1.2 not payable for 6.4.96 or 7.4.96 **and**
2. the claimant had, on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, been entitled to UB for 156 days or more (including 5.10.96, or 6.10.96 if Sunday substitution applies in that week) in that PIE.

1 JSA (TP) (96) Regs, reg 7(3)

Example

Irene claims UB on 4.3.96. 4.3.96 to 6.3.96 are waiting days. UB is paid for the period 7.3.96 to 27.3.96 except Sundays.

The DM disqualifies the claimant for the period 28.3.96 to 17.4.96 because she refused employment.

UB is paid again for the period 18.4.96 to 9.10.96, except Sundays.

UB was paid for 5.10.96 and not paid for 6.4.96 or 7.4.96.

On 5.10.96 the claimant had received 165 days of UB.

As the maximum number of days JSA(Cont) that the claimant can be entitled to is 156 days the claimant is not entitled to JSA(Cont).

37124 - 37125

Claimants on jury service or on training on 5.10.96 or 6.10.96

37126 Claimants should be treated as if they had an award of UB on 5.10.96, or 6.10.96 if Sunday substitution applies in that week and DMG 37100 - 37106 or DMG 37109 - 37123 should apply to them, if on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, they¹

1. were

1.1 summoned for jury service and UB was payable to the claimant for the day immediately before the day on which they were required to serve as a juror **or**

1.2 taking part in training and UB was payable to the claimant for the day immediately before the day on which the training began **and**

2. would, but for being summoned for jury service or taking part in training, have been available for employment and ASE.

1 JS Act 95, s 40(2)(h); JSA (TP) (96) Regs, reg 8(1) & (7)

37127

Which legislation applies

37128 Where DMG 37100 - 37103 or DMG 37109 - 37123 apply, entitlement to UB in the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week, should be decided as if the¹

1. UB legislation² had continued in force until the end of that benefit week **and**

2. JSA legislation³ did not apply in that benefit week.

1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 5(4); 2 JS Act 95, s 40(1)(b); SS CB Act 92; SS A Act 92; SS (U, S & IVB) Regs; 3 JS Act 95

37129 - 37134

How the JSA(Cont) rules apply differently during the transitionally protected period

Entitlement

- 37135 A claimant who
1. is treated as making a claim for JSA as in DMG 37100 - 37103 **and**
 2. who satisfied the conditions of entitlement to UB in force on 6.10.96, should be treated as¹
 - 2.1 available for employment **and**
 - 2.2 having entered into a JSAg **and**
 - 2.3 ASE **and**
 - 2.4 satisfying the contribution conditions for JSA(Cont) **and**
 - 2.5 not engaged in remunerative work **and**
 - 2.6 capable of work **and**
 - 2.7 not receiving relevant education **and**
 - 2.8 under pension age **and**
 - 2.9 in GB.

1 JSA (TP) (96) Regs, reg 5(5)

- 37136 Claimants to whom DMG 37100 - 37103 or DMG 37109 - 37123 apply must¹
1. for each week continue to
 - 1.1 satisfy the availability conditions (see DMG Chapter 21) **and**
 - 1.2 satisfy the ASE conditions (see DMG Chapter 21) **and**
 - 1.3 have entered into a JSAg (see DMG Chapter 21) or been treated as having entered into a JSAg (see DMG 37137) **and**
 2. for each day, except Sunday or the day substituted for Sunday (see DMG 37400 - 37617)
 - 2.1 continue to satisfy the contribution conditions for receipt of JSA(Cont), except the prescribed amount of earnings rules (see DMG Chapter 21) **and**
 - 2.2 continue to be capable of work (see DMG Chapter 20) **and**
 - 2.3 not be receiving relevant education (see DMG Chapter 20) **and**
 - 2.4 be under pension age **and**
 - 2.5 continue to be in GB (see DMG 072130 et seq).

If they are not, they are not entitled to JSA(Cont)². The remunerative work rules (see DMG Chapter 20) do not apply to claimants who satisfy DMG 37100 - 37107 or DMG 37109 - 37123. But the UB earnings rules will apply (see DMG 37170 - 37339).

1 JSA (TP) (96) Regs, reg 9(1) & (2); 2 JS Act 95, s 1(2); 3 JSA (TP) (96) Regs, reg 9(2)(b)

Treated as having entered into a JSAg

37137 Claimants who satisfy DMG 37100¹ - 37123² are to be treated as having entered into a JSAg³

1. while the award of JSA is in force **or**
2. until they actually enter into a JSAg with an Emp O **or**
3. where a reference on a JSAg is made to a DM, until a direction is given as in DMG Chapter 21.

1 JSA (TP) (96) Regs, reg 5 & 6; 2 reg 7; 3 reg 6 & 8(2)

37138 If a claimant refuses to enter into a JSAg when invited to they stop being treated as having a JSAg from the date of the refusal. Where a proposed JSAg is referred to a DM the claimant stops being treated as having a JSAg from the day the DM gives a direction.

37139 From 28.10.96 for the purposes of DMG 37137 - 37138, claimants are treated as having an award of UB for the benefit week that includes 7.10.96, if they were disqualified from receiving UB because¹

1. they have
 - 1.1 lost their employment as an employed earner through misconduct **or**
 - 1.2 voluntarily left employment as an employed earner without just cause **or**
2. after a situation in any employment had been properly notified to them as vacant, or about to become vacant, they have, without good cause, refused or failed to apply for that situation or refused to accept that situation when offered to them **or**
3. they have without good cause neglected to avail themselves of a reasonable opportunity of employment **or**
4. they have without good cause refused or failed to carry out any official recommendations given to them with a view to helping them to find employment. The recommendations must be reasonable, having regard to their circumstances and to the means of getting that employment usually adopted in the district where they live **or**

5. they have
 - 5.1 lost their place on an approved training scheme through their misconduct **or**
 - 5.2 voluntarily left a place on an approved training scheme without good cause **or**
6. after a place on an approved training scheme had been properly notified to them as vacant or about to become vacant they have, without good cause, refused or failed to apply for that place or refused to accept that place when offered to them **or**
7. they have without good cause neglected to avail themselves of a reasonable opportunity of a place on an approved training scheme.

1 JSA (TP) (96) Regs, reg 6(2); SS CB Act 92, s 28(1)

Pattern of availability

37140 Claimants are treated as having recorded their pattern of availability in their JSAg under DMG 37137, if they restricted the hours that they were available to 40 hours or more in a week, for their claim to¹

1. UB or
2. IS or
3. UB and IS.

1 JSA (TP) (96) Regs, reg 6(2), 6(3) & 8(3)

Maximum entitlement to JSA(Cont)

Claimants entitled to UB for 6.4.96 or 7.4.96

37141 For claimants who are awarded JSA as in DMG 37100 - 37103 or DMG 37109 - 37123, if UB was payable for 6.4.96 or 7.4.96 if Sunday substitution applied and if the PIE that was current on that day was also current on 5.10.96 or 6.10.96 if Sunday substitution applied

1. the maximum number of days entitlement to JSA(Cont) is 312 days **and**
2. in calculating the number of days of JSA(Cont) that the claimant has had any
 - 2.1 Sunday **or**
 - 2.2 day that was, before 7.10.96, substituted for Sunday

should be disregarded for any benefit week that starts on or after 7.10.96¹.

Note: The 312 day maximum for JSA(Cont) only applies up to and including 30.11.97².

1 JS Act 95, s 40(2)(h); JSA (TP) (96) Regs, reg 8(1) & (4); 2 JSA (TP) Regs, reg 8(4)

Example

The claimant claims UB on 6.2.96. 6.2.96 to 8.2.96 are waiting days. UB is paid for all days in the period 9.2.96 to 9.10.96, except Sundays. As UB was paid for 6.4.96 he is entitled to 312 days of JSA(Cont). The days in the period 9.2.96 to 9.10.96 (209 days) are treated as days of entitlement to JSA. The claimant can have another 103 days of JSA(Cont) before reaching the maximum of 312 days.

37142 From 1.12.97 claimants who were entitled to 312 days JSA(Cont) are only entitled to 182 days JSA(Cont) from and including that date¹.

1 reg 8(4)

Example

Pauline claims and receives UB and IS and then JSA(IB) (with underlying entitlement to JSA(Cont)) from 4.3.96 until 28.10.96. Her cumulative total is 205. She goes on training for work from 29.10.96 until 18.8.97. She attends the Jobcentre on 19.8.97 when her training for work ends. She says that she has left her husband and only wants JSA(Cont). Pauline is entitled to JSA(Cont) until and including 30.11.97, as until that date she is entitled to 312 days JSA(Cont). From and including 1.12.97 she is only entitled to 182 days JSA(Cont), so she is no longer entitled to JSA(Cont).

Claimants doing training or jury service on the relevant day

37143 Claimants who have an award of JSA as in DMG 37109 - 37123 should be treated as if they had an award of UB on 6.4.96, or 7.4.96 if Sunday substitution applies in that week, if they¹

1. were

1.1 summoned for jury service and UB was payable to the claimant for the day immediately before the day on which they were required to serve as a juror **or**

1.2 taking part in training and UB was payable to the claimant for the day immediately before the day on which the training began **and**

2. would, but for being summoned for jury service or taking part in training, have been available for employment and ASE.

1 JS Act 95, s 40(2)(h); JSA (TP) (96) Regs, reg 8(1), (7)(a), (7)(b) & (9)

37144 The claimants described in DMG 37143 cannot have more than 182 days JSA(Cont) because they were not treated as having an award of JSA(Cont) under reg 5 or 7 of the JSA (TP) Regs¹.

1 JSA (TP) (96) Regs, reg 8(1)

Example

Jane receives UB from 4.3.96 until 28.9.96. She goes on jury service on 30.9.96 until 14.10.96. She attends the Jobcentre on 15.10.96. She is treated as having an award of JSA(Cont) under reg 6. She cannot have 312 days JSA(Cont) because she is not a person who was treated as having an award under reg 5 or 7.

The DM works out the number of days of entitlement to JSA(Cont) using the formula $A + B \times (7/6)$ (see DMG 37151 et seq). Jane has had 210 days JSA(Cont) and therefore is not entitled to any JSA(Cont) from and including 15.10.96.

Claimants not entitled to UB for 6.4.96 or 7.4.96

37145 For claimants who are awarded JSA as in DMG 37100 - 37103 or DMG 37109 - 37123 if UB was not payable for 6.4.96 or 7.4.96

1. the maximum number of days entitlement to JSA is 156 days **and**
2. in calculating the number of days of JSA(Cont) that the claimant has had any
 - 2.1 Sunday **or**
 - 2.2 day that was, before 7.10.96, substituted for Sunday

should be disregarded for any benefit week starting on or after 7.10.96¹.

1 JS Act 95, s 40(2)(h); JSA (TP) (96) Regs, reg 8(1) & (4)

Days that do not count towards the claimant's maximum entitlement to JSA(Cont)

37146 Any day that

1. the claimant does not satisfy the engaged in employment and weekly earnings rules (see DMG 37170 - 37173) **and**
2. JSA is not payable

does not count towards the claimant's maximum number of days of entitlement to JSA(Cont) (see DMG Chapter 21)¹.

1 reg 13(5)

Calculating when entitlement to JSA(Cont) ends

- 37147 Any day of unemployment within the PIE current on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, should be treated as a day of entitlement to JSA(Cont)¹
1. for claimants who are awarded JSA as in DMG 37100 - 37103 or DMG 37109 -37123
 2. in deciding whether they have had the maximum entitlement to JSA(Cont) of 156 days or 312 days.

1 JS Act 95, s 40(2)(h); JSA (TP) (96) Regs, reg 8(1) & (6)

Calculating the number of days entitlement to JSA(Cont)

- 37148 Claimants may be entitled to a balance of JSA(Cont)
1. at the end of the transitionally protected period **or**
 2. if their claim to JSA terminates and they make a new claim to JSA that does not link with the transitionally protected period.
- 37149 Days of UB can be carried forward and counted towards the number of days of entitlement to JSA (Cont)¹ when
1. the claimant is transitionally protected² **or**
 2. the first day of the award of JSA is part of a JSP that is separated by not more than 12 weeks from a PIE³ **or**
 3. the tax years for satisfying the contribution conditions for JSA(Cont) are the same as those used for satisfying UB on a claim made before 7.10.96⁴.

1 reg 9; 2 reg 9(1); 3 reg 9(6)(a); 4 reg 9(6)(b)

- 37150 If DMG 37149 applies, the formula in DMG 37152 is used to calculate the number of days that count towards the maximum entitlement to JSA(Cont)¹.

1 reg 9(4)

- 37151 The balance due using the formula in DMG 37152 applies where¹
1. the benefit week following the benefit week that includes 6.4.97, unless the claimant's transitionally protected period had ended before then **or**
 2. an award of JSA where the claimant satisfies the contribution-based conditions (see DMG Chapter 21) and where
 - 2.1 the first day of that award forms part of a JSP separated by

2.1.a more than eight weeks **but**

2.1.b less than twelve weeks

from the last day of the transitionally protected period or where there is no such day, 5.10.96, or 6.10.96 if Sunday substitution applies in that week, if UB was payable for that day **or**

2.2 up to 20.3.97, the first day of that award forms part of a JSP that is separated by not more than twelve weeks from a PIE **or**

2.3 from 21.3.97², the first day of that award is after the last day of the transitionally protected period and forms part of a JSP that is separated by not more than twelve weeks from a PIE **or**

2.4 up to 20.3.97³, the tax years that are used to satisfy the contribution-based condition for JSA(Cont) (see DMG Chapter 21) are the same tax years as those used for entitlement to UB on a claim made by the claimant for a day before 7.10.96.

1 JS Act 95, s 40(2)(g); JSA (TP) (96) Regs, reg 9(3); 2 SS (Misc Amdts) Regs 97, reg 4; 3 reg 4

37152 The formula for calculating the number of days of entitlement is¹

$$(A + B) \times \frac{7}{6}$$

where

A = the number of days entitlement to UB in any PIE as in DMG 37151

B = the number of days entitlement to JSA(Cont) in the transitionally protected period.

Any fraction that is produced using the formula should be disregarded².

1 JS Act 95, s 40(2)(g); JSA (TP) Regs, reg 9(4); 2 reg 9(5)

37153 The effect of restricting the days of UB that can be used in the formula is that, where the claimant is not transitionally protected, days of UB will only count towards the total number of days of entitlement to JSA(Cont) where UB was payable for the relevant day¹.

Note: The relevant day is 5.10.96 or 6.10.96 if Sunday substitution applies in that week.

1 reg 9(3)(b)

Example

Mary claims JSA on 26.2.99. She has been claiming IB and before that IVB for six years.

Immediately before claiming IVB in 1993 she claimed UB for 30 days. She had a previous UB claim for ten days in 1993 but there was a gap of ten weeks between the two periods.

Mary's entitlement to JSA(Cont) will be based on the 91/92 and 90/91 tax years. This is because linking rules allow days of unemployment that form part of a PIE that has a last effective day no more than eight weeks before the start of a linked period that began before 7.10.96 to be treated as a JSP. The start of Mary's JSP is therefore the first day of the 30 day period of UB in 1993. The same tax years apply to the UB claims. Therefore the formula for calculating the days of entitlement to JSA(Cont) is used to decide how many days of UB can be carried forward.

The formula only allows days of UB to be included where the award of JSA is after the last day in the transitionally protected period or where UB was payable for the relevant day.

Mary does not have a transitionally protected period so the first day of the award of JSA cannot be after the last day of the transitionally protected period. She was not paid UB for the relevant period either. Therefore none of the days of UB can be counted towards the maximum entitlement of JSA(Cont).

Dependency increases

37154 Claimants

1. for whom UB was payable for 5.10.96, or 6.10.96 if Sunday substitution applies in that week **and**
2. whose UB included an adult dependency increase **and**
3. who are entitled to JSA(Cont) within the transitionally protected period **and**
4. who are not entitled to JSA(IB) within the transitionally protected period

are entitled to a dependency increase as an addition to their JSA(Cont). But this only applies while the claimant satisfies the conditions of entitlement to the UB dependency increase that applied on 5.10.96, or 6.10.96 if Sunday substitution applies in that week¹.

1 JSA (TP) (96) Regs, reg 10(4)

37155 Claimants are treated as if an adult dependency increase was payable for 5.10.96, or 6.10.96 if Sunday substitution applies, if

1. they satisfy DMG 37126 **and**
2. they had been entitled to an adult dependency increase that was payable immediately before the day

2.1 that they were required to serve as a juror **or**

2.2 that the training began¹.

1 JSA (TP) (96) Regs, reg 8(8)

37156 The amount of the dependency increase should equal the amount of any dependency increase payable with the claimant's UB¹.

1 JS Act 95, s 40(2)(i); JSA (TP) (96) Regs, reg 10(4)

37157 Where

1. UB was paid for 5.10.96, or 6.10.96 if Sunday substitution applied **and**
2. included an increase for an adult dependant **and**
3. an adjustment needs to be made for a part-week

the benefit is deemed to be payable at a daily rate of one sixth of the weekly rate for each day of the week except Sundays¹.

1 reg 10(10); SS (Overlapping Benefits) Regs 79, reg 14(1)(b)

37158 Where Sunday substitution applies, the benefit is deemed to be payable at a daily rate of one sixth of the weekly rate for each day except the day substituted for Sunday¹.

1 JSA (TP) (96) Regs, reg 10(11); SS (Overlapping Benefits) Regs 79, reg 14(2)

UB rules

37159 The weekly rate of UB can be increased for any period¹ during which the

1. claimant is
 - 1.1 living with their spouse **or**
 - 1.2 contributing to the spouse's maintenance at a rate not less than the standard rate of increase **and**
2. spouse is not engaged in any gainful employment from which their weekly earnings exceed the standard rate of increase (the "all or nothing rule").

1 SS CB Act 92, s 82

37160 The earnings should be calculated in the calendar week. That is seven days beginning with midnight between Saturday and Sunday¹. Entitlement to benefit is affected in the same calendar week.

1 s 122(1)

37161 The DM should use the guidance in the following paragraphs to decide whether the claimant satisfies the conditions for entitlement to an adult dependency increase

1. DMG Chapter 16 (persons caring for a child)

2. DMG Chapter 16 (care of a child, earnings)
3. DMG Chapter 16 (“all or nothing” earnings rule, earnings for less than a week, occupational or personal pension included as earnings)
4. DMG Chapter 16 (residence of one person with another, temporary absence)
5. DMG Chapter 16 (temporary absence, maintenance)
6. DMG Chapter 16 (pre-claim period, contributing test, wholly or mainly maintaining)
7. DMG Chapter 18 (dependency benefits)
8. DMG Chapter 18 (reduction of dependency increase, effect of having a dependant, people treated as dependants)
9. DMG Chapter 18 (adjustment of benefit after six weeks in hospital)
10. DMG Chapter 18 (beneficiary in hospital, beneficiary's spouse in hospital, both in hospital).

Note: The pre-claim period for UB is a period when the claimant was in employment (including S/E).

Pension payments

37162 No deductions should be made from JSA(Cont) during the transitionally protected period if a claimant is¹

1. in receipt of pension payments (see DMG Chapter 21) **and**
2. under the age of 55 on 5.10.96, or 6.10.96 if Sunday substitution applies in that week.

If the claimant reaches the age of 55 during the transitionally protected period the normal pension payment rules for JSA(Cont) (see DMG Chapter 23) will apply.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 10(5); SS CB Act 92, s 30

Claimants over pension age

37163 Claimants who

1. on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, have reached pension age **and**
2. UB was payable to because they
 - 2.1 are not more than five years over pension age **and**
 - 2.2 would be entitled to a

2.2.a Cat A RP **or**

2.2.b Cat B RP on the contributions of their deceased spouse

if their entitlement had not been deferred or if they had not made an election under relevant legislation¹

are entitled to JSA(Cont) as if **2.** applied and as though the JSA pension age rules² did not apply³.

1 SS CB Act 92, s 25(2)(b), (c), 54(1), (2); 2 JS Act 95, s 1(2)(h); 3 s 40(1)(b); JSA (TP) (96) Regs, reg 10(6)

37164 This provision applies until

1. claimants have had their full entitlement to JSA(Cont) **or**
2. the end of the transitionally protected period **or**
3. claimants are no longer entitled to JSA(Cont) as in DMG 37136 (except the pension age rule)

whichever is earlier¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 10(6)

37165

Rate of JSA(Cont)

37166 During the transitionally protected period claimants whose JSA(Cont) is less than the

1. UB that was payable for the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week¹ **or**
2. UB that would have been payable for the benefit week including 5.10.96, or 6.10.96 if Sunday substitution applies in that week, had no adjustments been made in that week² **or**
3. amount of UB that would have been payable had the claimant not been
 - 3.1 on jury service **or**
 - 3.2 undergoing training³

are entitled to JSA(Cont) at the same rate as their UB.

1 reg 10(7); 2 reg 10(7); 3 reg 10(8)

37167 - 37169

Earnings during the transitionally protected period - JSA(Cont)

Earnings

37170 For the purpose of deciding entitlement to JSA(Cont), in the TPP, the amount of a claimant's earnings should be calculated or estimated as it would have been for UB (see DMG 37200 - 37214)¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 14(1)

37171 For transitional protection purposes, any period during which claimants are entitled to JSA(Cont) because they have satisfied the engaged in employment and weekly earnings rules (see DMG 37170 - 37334) forms part of a JSP¹.

1 reg 2(3)

Engaged in employment and weekly earnings rules

37172 Claimants who work or have earnings during the TPP do not have to satisfy the remunerative work rule for JSA(Cont)¹. But they do have to satisfy² the earnings rules³ that existed for UB (see DMG 37175 - 37334).

1 reg 8(2)(b); 2 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13(1) & (2); 3 SS (U, S & IVB) Regs, reg 7(1)(g)(i) & (iii); & reg 7(1)(o)

37173 In any week that¹

1. claimants fail to satisfy the engaged in employment and weekly earnings rules for one or more days
 - 1.1 they may still qualify for JSA(Cont) on the other days in that week except Sunday or the day substituted for Sunday² **and**
 - 1.2 the amount of JSA(Cont) payable in that week should be reduced by one sixth of the weekly amount for each day in that week that they fail to satisfy those tests³ **and**
2. UB would not have been payable for a week due to the operation of the weekly earnings rule, no JSA(Cont) is payable to the claimant⁴.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13(1); 2 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13(4)(a); 3 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13(4)(b); 4 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13(4)(c)

37174

Engaged in employment - general

- 37175 Claimants are not entitled to JSA(Cont) for any day that they are engaged in employment unless¹
1. their earnings from the employment are (see DMG 37200 - 37214)²
 - 1.1 not more than £2 **or**
 - 1.2 not more than £2 on the daily average, if they are earned over a longer period than a day **and**
 2. if the employment is employed earner's employment (see DMG 37268-37285) either³
 - 2.1 it is not the claimant's usual main occupation **or**
 - 2.2 it is done for, or organized through either
 - 2.2.a a charity **or**
 - 2.2.b an LA, HA, preserved board or health board in providing a service that is capable of being provided by a charity.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; 2 SS (U, S & IVB) Regs, reg 7(1)(g)(i); 3 reg 7(1)(g)(iii)

- 37176 If claimants are engaged in any employment, the onus is on them to prove that both conditions are satisfied¹.

1 R(U) 16/64

37177

Gainful employment

- 37178 If claimants are **not** engaged in **gainful** employment on a particular day, no question under DMG 37175¹ arises on that day. But the weekly earnings rule² (see DMG 37300 - 37334) should be considered for **all** of the days claimed in a seven day period if claimants are engaged in employment on **any** day in that seven day period (see DMG 37305).

*1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g); R(U) 34/53;
2 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o)*

- 37179 Guidance on the
1. meaning of gainful employment **and**
 2. days on which claimants in various types of occupation should be regarded as in employment

is in DMG Chapter 15.

37180 DMG 37175¹ applies if claimants are engaged in any gainful employment, despite their liability for NI contributions. So it applies to employments such as sheltered occupations for the disabled, which by their nature might be thought to be excluded².

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g); 2 R(U) 4/64

37181 If it is clear that claimants were engaged in employment only on certain days, but it is not possible to obtain evidence of the precise days of employment, the DM should estimate the number of days that claimants were employed.

37182 The estimate in DMG 37181 should be based on the evidence available¹. But if sufficient information to base a reliable estimate on cannot be obtained, it may be decided that claimants were engaged in employment for the whole of the period the work was performed in².

1 R(U) 7/72; R(S) 9/53; 2 R(S) 2/74

37183 - 37184

Lifeboat crew and firefighters

37185 The engaged in employment rule¹ does not apply to a person engaged in

1. the crewing or launching of a lifeboat **or**
2. the performance of duty as a P/T member of a fire brigade² who
 - 2.1 in Scotland and Wales is a person who is a P/T member of a fire brigade maintained under certain legislation³.
 - 2.2 in England is a person who is a P/T firefighter employed by a fire and rescue authority.

The expression P/T firefighter includes retained firefighters. The performance of duty as a P/T firefighter includes attendance at a training course.

*1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g) & 9;
2 JSA Regs, reg 4; 3 Fire Services Acts 47-59*

37186 If a person is engaged in either of the duties in DMG 37185 on any day the claim for JSA(Cont) for that day cannot be disallowed under DMG 37175¹ even if the person is also engaged in a different type of employment on that day.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g)

37187 Any retaining fees payable to people engaged in either of the duties in 37185, for being on standby, are disregarded¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(5B)

37188 - 37189

Payments to reserve force members

37190 Earnings are **disregarded** for the purpose of the engaged in employment rule¹ where they are paid to a member of a reserve force

1. by way of annual bounty **or**
2. for attendance at the first 16 authorized drill nights in the bounty year².

*1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13 & 14(1); SS (U, S & IVB) Regs, reg 7(1)(g);
2 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(3)*

37191 A reserve force means¹

1. Royal Naval Reserves
2. Royal Marines Reserves
3. Army Reserves
4. Territorial and Army Volunteer Reserves
5. RAF Reserves
6. Royal Auxiliary Air Force.

1 reg 3(4); SS (Conts) Regs, Sch 3, Part I

37192 The principal application of the disregard will be to members of the Territorial Army. The disregards do not apply to the

1. Royal Observer Corps **or**
2. Royal Naval Auxiliary Service.

37193 The annual bounty is a tax free payment paid to members who

1. complete at least the minimum number of specified training days which includes for the majority a 15 day annual camp **and**
2. pass the required tests **and**
3. are available for call out during the whole of the year from 1 April to 31 March.

37194 A payment for a drill night should be disregarded if¹

1. it is authorized by the commanding officer of the unit **and**
2. it is for any of the first 16 authorized drill nights attended by the claimant in a period of twelve months commencing on 1 April **and**
3. the payment to which the member is entitled does not exceed $\frac{1}{4}$ of a day's pay.

1 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(3) & (4)

37195 Where the member of the reserve force attends more than 16 drill nights in any year the DM should take into account as earnings the amount the claimant is entitled to receive for the 17th and later drill nights. Such payments should be allocated to the actual nights of attendance.

37196 Training expenses and travel and subsistence allowances are a reimbursement of expenses. They are not to be taken into account as earnings¹.

1 R(P) 1/87

37197 - 37199

Engaged in employment - earnings

37200 To decide whether an employment can be disregarded under the condition in DMG 37175¹ the claimant's earnings on the particular **day** in question must be calculated. Guidance on

1. the types of payment regarded as earnings **and**
2. how to calculate earnings

is in DMG Chapter 15.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g)

37201 Claimants' earnings should be attributed to **all** the days they were engaged in gainful employment. This includes those on which they perform little or no work¹.

1 R(U) 3/72

37202 If claimants earnings can be calculated for each day according to the amount of work done on that day, for example, where they are paid by the

1. day **or**
2. hour **or**
3. amount produced

their earnings must be calculated on a daily basis.

37203 Earnings can only be averaged if they cannot be related to particular days¹. If earnings are received in various ways, part may be attributed to certain days and part averaged.

1 R(U) 28/51

37204 When earnings are calculated on the daily average DMs should use the method that seems most reasonable in the circumstances. It is usually reasonable to

1. select a particular period according to how the earnings are received, for example a
 - 1.1 week
 - 1.2 month
 - 1.3 year **and**

2. calculate the number of days in that period that claimants were engaged in employment **and**
3. divide the amount of earnings by the number of days of employment in that period¹.

1 R(U) 6/57; R(U) 16/61; R(U) 1/67; R(U) 4/77

37205 The sole object is to establish whether the daily earnings are above or below the limit. It is not essential to calculate the amount of earnings precisely unless they are close to the limit. If

1. it is possible to calculate the earnings in various ways **and**
2. which ever way they are calculated they are above or below the limit

there is no need to go further¹.

1 CWU 7/49 (KL)

37206 - 37207

Sundays

37208 The daily average of earnings should be calculated by spreading them over all the days on which they were earned. If claimants

1. are not engaged in employment on Sundays that day should be excluded when averaging their earnings **or**
2. do, or may do, as much work on Sundays as on any other day of the week, for example if they are the holder of an office with continuous responsibilities, Sunday should be included in the calculations.

37209

Payments from more than one source

37210 If claimants are engaged in two or more employments the earnings from each employment should be added together to give the total earnings for each day in question¹. If earnings from different sources are paid in different ways

1. each source should be considered separately **and**
2. the total earnings for each day in question should be calculated.

1 R(U) 7/70

Example

Branch secretaries of trade unions may receive a quarterly salary for certain duties, a weekly salary for others and a special payment for each attendance at a conference.

1. The quarterly salary should be averaged over the days that they were engaged in the relevant duties in the quarter **and**
2. the weekly salary over the days that they were engaged in the relevant duties in the week **and**
3. conference payments should be assigned to the days of conference.

The total for each day in question should then be calculated.

37211

LA councillors

37212 The

1. basic allowance **and**
2. special responsibility allowance

payable to councillors are not treated as earnings for the purposes of the **daily** earnings rule¹. See DMG Chapter 15 for guidance on earnings and councillors' allowances.

1 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(4A) & (4B)

37213

Payments in cash or kind

37214 Payments in cash **and** payments in kind should be taken into account (see DMG 37216 - 37261). If the **only** payment is a payment in kind that could be disregarded under certain provisions¹, the claimant is considered to have no earnings (DMG Chapter 15).

1 reg 3

37215

Engaged in employment - employed

Small amounts of work and pay

37216 Subject to DMG 37217 claimants who

1. perform some service **and**
2. receive some pay in cash or kind

are employed.

37217 In some cases, especially those involving payment in kind, the

1. amount of work performed **or**
2. reward received

may be so small that it can be disregarded as negligible (see DMG 37263 - 37266).
If the **only** payment received is payment in kind that can be disregarded¹ (see DMG Chapter 15), the claimant has not received any earnings.

1 SS (C of E) Regs, reg 3

37218

Work without pay - preparatory or maintenance work

37219 Some employees do

1. preparatory **or**
2. maintenance

work for no direct pay. Fishermen work on their boats in harbour but are paid only for the time spent at sea. If such work is a duty of the employment they are employed even though they are not directly paid for it.

37220

Work without pay - training or testing

37221 Claimants taking

1. selection test **or**
2. course of training

as a condition of future employment for wages are not employed during the test or period of training, even if they receive travelling or subsistence expenses, or are subsequently engaged by the employer¹.

1 R(U) 3/67

37222

Work without pay - work performed but no pay received

37223 If claimants work in accordance with their contract of employment but the employer fails to pay their wages or salary (for example because the employer is dishonest or insolvent) they are employed on the days they work¹.

1 R(U) 5/75

37224

Work without pay - voluntary work schemes

37225 If

1. a claimant works in a voluntary work scheme **and**
2. there is evidence that the claimant may receive payment, whether directly or from a third party

the case should be referred to DMA Leeds for advice

37226

Pay received but no work performed

37227 Employees who

1. attend daily for work **and**
2. are paid for attending even though no work is available

are employed¹.

1 R(U) 35/51; R(U)11/64

37228 Those who are

1. not paid **or**
2. are paid only expenses as distinct from a sum especially for attendance

are not employed.

37229 Employees who attend

1. but are unable to start work (for example because of a stoppage or breakdown of machinery) **and**
2. receive no pay for that day

are not employed. If they do some work, or if they are paid although they do no work, they are employed on that day.

37230

Pay without attendance

37231 Employees who are paid for days that they are not required to work are employed¹ where

1. there is a current contract of employment (see DMG 37233) **and**
2. the payments made are pay for the non-working days (see DMG 37235 - 37261).

1 R(U) 21/53

37232

Pay without attendance - whether the contract has terminated

37233 Where payment is made for a holiday taken immediately after the last working day in employment, the claimant is

1. not employed if the contract does **not** continue throughout the holiday **and**
2. employed if the contract **does** continue.

37234

Pay without attendance - whether payments are for non-working days

37235 The terms of the contract of employment and any agreement between the employer and employee determines whether payment for non-working days are earnings. The fact that employees are free to seek other employment is not sufficient to entitle them to JSA(Cont)¹. Some of the situations in which problems most frequently arise are covered in DMG 37237 - 37261.

1 R(U) 2/58, para 7; R(U) 1/76, para 7

37236

Pay without attendance - ancillary school workers

37237 Ancillary school workers often receive payments during, or for, school holidays. If such payments are conditional upon the employee agreeing to resume work when required, they are earnings from the employment and the claimants are employed on the days for which they are made¹. But payments are **not** earnings if they are simply an inducement to the claimant to resume employment, and are not made

1. for services performed during the holidays **or**
2. in return for the claimant's agreement to be available to work for the employer if required².

To decide whether a payment falls under **1.** or **2.** the DM should arrange for a copy of the contract of employment, letter of appointment and any other documents that set out the terms and conditions of the employment to be obtained.

1 CU 62/48 (KL); R(U) 6/70; 2 R(U) 6/68

37238

Pay without attendance - other payments conditional on resuming employment

37239 If claimants

1. bind themselves to resume employment at a certain time (for example when a particular ship they are employed on sails) **and**
2. on resuming, receive wages for the intervening period they are employed during that period¹.

1 R(U) 8/54

37240

Pay without attendance - payments conditional on remaining at the employer's disposal

37241 Claimants who

1. receive a payment for a particular day **and**
2. agree to keep themselves available to work for the employer if required are employed on that day¹.

1 R(U) 5/58; R(U) 11/73(T)

37242 Employees who are suspended from work during their statutory minimum notice period must be ready and willing to work for their employer to qualify for pay during that period¹. So they are normally employed during such a period. If their employment is

1. **terminated** during this period **and**
2. a payment is made to them

see the guidance in DMG Chapter 26 on payments on termination of employment.

1 ER Act 96, s 87 & 88-91

37243 - 37244

Pay without attendance - holidays

37245 Where a payment is made, under the terms of a contract of employment, for a holiday that claimants are not required to work, they are employed on that day even where

1. the payment is made for only part of the day concerned¹ **or**
2. the employment has been suspended indefinitely²

1 R(U) 4/71; 2 R(U) 9/63, para 18

37246

Pay without attendance - payment of wages during suspension for misconduct

37247 If claimants

1. are suspended from their employment pending the outcome of investigations into alleged misconduct **and**
 2. continue to receive wages because their contract provides for this
- they are employed during the period of suspension.

37248 DMG 37247 applies even if

1. the investigations lead to their dismissal **and**
2. they are obliged to refund the payments on dismissal¹.

Compare DMG 37252 on gratuitous payments and DMG 37260 on unpaid suspension.

1 R(U) 9/83

37249

Pay without attendance - shift and rota systems

37250 Workers employed under a shift or rota system, especially those employed off-shore in the oil or gas industry, are normally paid only for the days or weeks that they work. But occasionally wages are enhanced to take account of spells when they are

1. on-shore **or**
2. otherwise not working.

Such claimants are employed during periods ashore only if there is clear evidence that their wages are enhanced to include a sum that represents payment for non-working periods.

37251

Pay without attendance - gratuitous payments

37252 Sometimes payments made by the employer while the contract of employment subsists are not earnings. The question is whether the payment

1. is made as a result of any obligation by the employer **or**
2. gives rise to any obligation by the employee¹.

1 R(U) 4/63

Example

An employer pays the employees during a period of lay-off purely as an act of grace. There is no obligation on the employees to remain at the employer's disposal.

The payment is not earnings and the employees are not employed during the lay-off¹.

- 37253 Claimants are not employed on a day **after** the termination of their employment, even if they receive payments from the employer for that day as an act of grace to help them while out of work ¹.

1 R(U) 13/58

- 37254 Some employers make payments to prevent undue hardship to employees who are suspended from duty without pay while some alleged misconduct is being investigated. These hardship payments are

1. gratuitous **and**
2. are not earnings from the employment.

But see DMG 37247 if it is a term of the employment that the claimant should be paid during suspension.

- 37255 If the contract of employment does not expressly provide for payments to be made for days on which the claimant is not required to work, it may be difficult to decide whether any payments are made by the employer

1. under an implied term of the employment **or**
2. as an act of charity.

- 37256 If a payment is made as in DMG 37255 and is alleged to be gratuitous and is not made in accordance with an expressed term of the contract of employment the employer should be asked to explain in writing

1. the agreement or arrangement under which the payment was made **and**
2. the conditions, if any, attached **and**
3. whether similar payments have been made to the claimant in the past and if so, how frequently.

The more regular the payments and the longer the period over which they have been made, the more likely it is that they have become an implied term of the employment. Cases of doubt should be referred to DMA Leeds for advice.

37257 - 37259

Pay without attendance - payments to suspended employees on reinstatement

37260 Employees suspended from duty without pay, while an alleged misconduct is being investigated may on reinstatement receive payments up to the amount of pay lost while suspended. If hardship payments as in DMG 37254 have already been made, the employee may receive further payments up to the amount of pay lost while suspended.

37261 In some cases these payments may be reduced by the amount of JSA(Cont) the employee has received. In either case the employee cannot retrospectively be treated as employed and the payments are not grounds for revising or superseding awards of JSA(Cont) for days during the suspension. But where a DM has not determined the employed question a disallowance can be given.

37262

Engaged in employment - trivial amounts of work disregarded

37263 When considering JSA(Cont), trivial amounts of work can be disregarded. The effect of disregarding work in this way is that if no other work is taken into account the claimant

1. is regarded as not doing any work on the day in question **and**
2. could not therefore have any earnings.

37264 If there

1. is evidence that a claimant has been doing some work **or**
2. are reports that the claimant intends to do some work

consider whether the work done can be disregarded as trivial in amount and so negligible.

37265 Whether a part of the day is negligible depends on its proportion to the normal working hours of the claimant on the relevant day¹.

1 CI 265/49; R(I) 4/53; CS 499/50; R(S) 18/53

37266 The duration of the employment is not the sole consideration. It will usually be relevant (particularly in S/E cases) to consider

1. the nature of the work **and**
2. the effort required by the claimant in performing the duties **and**
3. where the claimant performs part of the normal duties, its proportion to the full normal duties¹.

Further reference to these considerations is made in DMG Chapter 15. Care should be exercised by DMs in regarding work as being negligible. The principles expressed in case law should be strictly applied.

1 R(S) 2/61

37267

Engaged in employment - employed earner's employment and not usual main occupation

37268 If claimants are engaged in employed earner's employment, in order to satisfy the second condition in DMG 37175¹ they have to show

1. that it is not their usual main occupation **or**
2. that it is done for, or organized through
 - 2.1 a charity **or**
 - 2.2 an LA, HA, preserved board or health board in providing a service that can be provided by a charity.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g)(iii)

37269

Employed earner's employment

37270 An employed earner is a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including elective office) with general earnings.

A S/E earner is a person who is gainfully employed in GB otherwise than in employed earner's employment (whether or not they are also employed in such employment)¹. Company directors are employed earner's because they are employed in an office with earnings which are taxable under Schedule E. See also DMG 37276 - 37278.

1 SS CB Act 92, s 2(1)(b)

37271 The DM may determine whether employment was employed earner's employment. If an issue arises as to whether employment was employed earner's employment, Inland Revenue is responsible for deciding that issue¹.

1 SSC (ToF) Act 99, s 8(1)(a); SS (D&A) Regs, reg 11A, as inserted by SS (D&A) Amendment (No 3) Regs

37272

Usual main occupation

- 37273 The claimant's usual main occupation is the occupation in which the claimant
1. is usually engaged **and**
 2. hopes to continue to be engaged
- as the main source of livelihood. It should be decided from the claimant's record of employment and the type of employment for which the claimant is available. It is not limited to the claimant's last employment.
- 37274 If the employment in which claimants are engaged is the same as their usual main occupation, for example if they are simply working in their usual main occupation to a reduced extent or for a different employer, the test should be decided against them. If there is some difference in the kind of work done, the test should be decided in their favour. The difference need not be substantial.

37275

Company directors

- 37276 Company directors may be employed in one or more of the following capacities
1. **Non-executive directors** These are agents of the company, not employees, and take little or no active part in the day-to-day running of the company's business.
 2. **Executive directors** These are both agents and employees of the company, and may be employed in any agreed manner on the day-to-day running of the company's business. There may be a written contract of employment setting out the director's duties, pay.
 3. **Employees** Claimants who are directors may, apart from their duties as directors, also perform work as employees of the company under an express or implied contract of service.
- 37277 The usual main occupation of such a person is not simply that of a company director. The guidance in DMG 37273 - 37274 should be followed to decide which of the functions described in DMG 37276 is the claimant's usual main occupation. Days on which the claimant is not engaged in employment in that capacity are not days on which the claimant follows his usual main occupation, even if the claimant performs work on behalf of the company on those days in another capacity.
- 37278 Some claimants are directors of two or more companies involved in different lines of business. If such a person resigns one or more directorships but continues in another, the DM must determine whether the one in which the claimant continues is one where the actual duties are the claimant's usual main occupation.

If they are not, the claimant satisfies the test. Similar principles apply if the claimant resigns a directorship and then becomes a director of a new company in a different line of business.

37279

No usual main occupation

37280 If the claimant has no usual main occupation the test should be decided in the claimant's favour.

37281

Work done for a specified authority or charity

37282 If the claimant's employment is employed earner's employment in the claimant's usual main occupation, the claimant may still satisfy the second condition if the requirements in DMG 37268 are satisfied.

37283 Cases that involve recognized charities should cause little difficulty. DMs are not expected to make extensive enquiries into the legal status of an organization. Unless there is some doubt, it should be accepted that an organization is a charity if

1. it states that it has been accepted as a charity by the Inland Revenue **or**
2. it is currently listed on the register of charities maintained by the Charities Commissioners.

37284 An institution may still be a charity even if it is not on the register. In Scotland, where the register of charities does not apply, a body that is the same as a recognized charity in England and Wales should be accepted as a charity.

37285 Whether a claimant is providing a service capable of being provided by a charity should be decided on broad common sense lines. The work must be paid voluntary work rather than commercial work. The test cannot be satisfied if the service is provided in the course of trade or profit.

37286 - 37299

Weekly earnings rule - general

37300 Claimants are not entitled to JSA(Cont) for a day if it falls

1. in a period of seven days (including Sundays) **and**
2. the claimant's earnings are equal to or exceed the weekly LEL for Class 1 contributions.

37301 The period of seven days ends¹ on the day of the week last notified in writing by the DM to the claimant for the purposes of claiming JSA(Cont).

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o); JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(5)

37302 In certain circumstances, earnings can be **disregarded** for the purposes of the weekly earnings rule (see DMG 37329 - 37334)¹

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o); JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(5)

37303 - 37304

End of the seven day period

37305 The weekday last notified in writing by the Secretary of State to claimants for the purposes of claiming JSA(Cont)¹ (see DMG 37300) is for

1. claimants who attend the Jobcentre every fortnight and receive benefit by post, the weekday shown on their latest form ES 40 **or**
2. postal claimants and personal issue claimants, the weekday they were told of in the notice ES40 given to them by the Secretary of State before attending.

1 JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o)(i)

37306

Meaning of earnings

37307 Earnings includes any remuneration or profit derived from an employment¹. Employment includes any trade, business, office or vocation². Claimants cannot have earnings in any seven day period unless they are in employment on at least one day in that period.

1 SS CB Act 92, s 3(1); 2 s 122

37308 Although the weekly earnings rule¹ refers to earnings in a **seven day period**, the DM should consider

1. whether the claimant was engaged in employment (DMG 37172 - 37285) **and**
2. if so, what the earnings were

on **each** day in the period in question and then add them together to decide the claimant's total earnings in any seven day period.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o)

37309 DMG 37172 - 37285 should be followed when considering

1. whether the claimant was in employment on any day **and**
2. if so, what the earnings were from that employment.

37310

Daily earnings of £2 or less

37311 If the claimant had earnings of £2 or less on one or more days in the seven day period, those earnings must be taken into account when calculating whether the total earnings in the seven days are at least the LEL. This applies even if they can be disregarded for the engaged in employment rule¹ (see DMG 37172 - 37285).

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(g)

37312

Lower earnings limit

37313 A LEL for Class 1 contributions is set for each year¹. Details of the amount are shown at Appendix 2.

1 SS CB Act 92, s 5(1)(a); SS (Conts) Regs, reg 7

37314 If claimants have paid Class 1 contributions in a particular period, that does not necessarily resolve the question of whether their earnings for the purposes of the weekly earnings rule¹ were at least the LEL in that period. This is because

For the purpose of calculating liability for Class 1 contributions	Whereas for the purposes of the weekly earnings rule
1. earnings in the week ending Saturday are considered	the seven day period (see DMG 37305) will often end on a weekday other than Saturday
2. only earnings from employed earner's employment count	earnings from other employment, including self-employment, must be taken into account
3. gross earnings are used	when calculating earnings various amounts can be deducted ² (DMG Chapter 15)

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o);

2 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3 & 4

37315

Lifeboat crew and firefighters

37316 The weekly earnings rule¹ does **not** apply to a person engaged in²

1. the crewing or launching of a lifeboat **or**
2. the performance of duty as a P/T firefighter in a fire brigade maintained under the relevant legislation³.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o);

2 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 9;

3 Fire Services Act 47-59

37317 If claimants are engaged in either of these activities **at any time** in a seven day period, the weekly earnings rule¹ cannot apply to them in that period. This applies even if they also have earnings from a different employment during the seven days

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U,S & IVB) Regs, reg 7(1)(o)

37318 Any retaining fees payable for being on standby to people engaged in either of the duties in DMG 37316 are disregarded¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(5B)

37319

Earnings not to be taken into account - Payments to reserve force members

37320 Earnings are **disregarded** for the purpose of the weekly earnings rule¹ where they are paid to a member of a reserve force

1. by way of annual bounty **or**
2. for attendance at the first 16 authorized drill nights in the bounty year².

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o);

2 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(3)

37321 A reserve force means¹

1. Royal Naval Reserves **and**
2. Royal Marines Reserves **and**
3. Army reserves **and**
4. Territorial and Army Volunteer reserves **and**
5. RAF Reserves **and**
6. Royal Auxiliary Air Force.

1 reg 3(4); SS (Conts) Regs, Sch 3, Part 1

37322 The principal application of the disregard will be to members of the Territorial Army. The disregards do not apply to the

1. Royal Observer Corps **or**
2. the Royal Naval Auxiliary Service.

37323 The annual bounty is a tax free payment paid to members who

1. complete at least the minimum number of specified training days which includes for the vast majority a 15 day annual camp **and**
2. pass the required tests **and**
3. are available for call out during the whole of the year from 1 April to 31 March.

37324 A payment for a drill night should be disregarded if¹

1. it is authorized by the commanding officer of the unit **and**
2. it is for any of the first 16 authorized drill nights attended by the claimant in a period of twelve months commencing on 1 April **and**
3. the payment to which the member is entitled does not exceed $\frac{1}{4}$ of a day's pay.

1 JSA (TP) (96) Regs, reg 11(1)(a); SS (C of E) Regs, reg 3(3) & (4)

37325 Where the member of the reserve force attends more than 16 drill nights in any year the DM should take into account as earnings the amount the claimant is entitled to receive for the 17th and later drill nights. Such payments should be allocated to the actual nights of attendance.

37326 Training expense, travel and subsistence allowances are a reimbursement of expenses. They are not to be taken into account as earnings¹.

1 R(P) 1/87

37327 - 37328

Earnings not to be taken into account - earnings for periods before or after the day being considered

37329 Earnings should not be taken into account for the purposes of the weekly earnings rule¹ where they are paid for a day that falls

1. **before** the day that is being considered, and none of the six days (excluding Sunday or its substitute) before the first day of the seven day period is a day on which the claimant
 - 1.1 satisfies the conditions of entitlement to JSA except the
 - 1.1.a contribution based conditions (other than those in **1.4**, **1.5** and **1.6**) **and**

- 1.1.b income-based conditions **and**
 - 1.1.c remunerative work rules **and**
 - 1.2 satisfies the engaged in employment rules **and**
 - 1.3 satisfies the weekly earnings rules **and**
 - 1.4 satisfies the first contribution condition **and**
 - 1.5 satisfies the second contribution condition **and**
 - 1.6 is not entitled to IS **or**
2. **after** the day that is being considered, and all of the six days (excluding Sunday or its substitute) before the day that is being considered are days on which the claimant³
- 2.1 satisfies the conditions of entitlement to JSA except the
 - 2.1.a contribution based conditions (other than those in **2.4, 2.5 and 2.6) and**
 - 2.1.b income-based conditions **and**
 - 2.1.c remunerative work rules **and**
 - 2.2 satisfies the engaged in employment rules **and**
 - 2.3 satisfies the weekly earnings rules **and**
 - 2.4 satisfies the first contribution condition **and**
 - 2.5 satisfies the second contribution condition **and**
 - 2.6 is not entitled to IS.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o); R(U) 2/96;

2 JSA (TP) (96) Regs, reg 13(3) & 9A(a); SS (C of E) Regs, reg 3(5)(a) & (6);

3 JSA (TP) (96) Regs, reg 13(3) & 11(1)(a); SS (C of E) Regs, reg 3(5)(b) & (6)

- 37330 Where there are earnings, each day in the seven day period has to be tested individually against DMG 37329.
- 37331 The day being considered means each day covered by the seven day period in question (see DMG 37300 - 37305).
- 37332 When considering whether none or all of the six days mentioned in DMG 37535 were days on which the claimant
- 1.1 satisfies the conditions of entitlement to JSA except the
 - 1.1.a contribution based conditions (other than those in **1.4, 1.5 and 1.6) and**
 - 1.1.b income-based conditions **and**
 - 1.1.c remunerative work rules **and**
 - 1.2 satisfies the engaged in employment rules **and**

- 1.3 satisfies the weekly earnings rules **and**
- 1.4 satisfies the first contribution condition **and**
- 1.5 satisfies the second contribution condition **and**
- 1.6 is not entitled to IS.

the DM should consider any questions arising in those six days **before** deciding the period referred under the weekly earnings rule¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 13; SS (U, S & IVB) Regs, reg 7(1)(o)

37333 Earnings can only be disregarded under DMG 37329 if they are for a day **before** or **after** the day being considered. They can never be disregarded for the day being considered, if the earnings were earned on that day. But those earnings for that day may be disregarded when considering the disregard for another day in the seven day period.

37334 An example of the principles in DMG 37329 - 37333 is at Appendix 3.

37335

Earnings and transition from the transitionally protected period to JSA

37336 Where a claimants earnings¹

- 1. are calculated as in DMG 37170 **and**
- 2. are then calculated for JSA (see DMG Chapter 20)

any earnings decided under **1.** are to be disregarded when considering **2.**

1 JSA (TP) (96) Regs, reg 14(2)

37337 DMG 37336 will only apply where claimants

- 1. have been entitled to transitional protection and that protection ends **and**
- 2. are entitled to JSA(Cont) in the week after **1.**

37338 DMG 37336 is necessary because under

- 1. the old UB rules earnings are taken into account when earned **and**
- 2. under JSA they are taken into account from the first day of the benefit week in which they are paid.

37339 If this provision did not exist a claimant's earnings may be taken into account in the last week of transitional protection and the same earnings taken into account again in the following week.

37340 - 37349

Part-time students - JSA(Cont)

37350 Claimants who are awarded JSA as in DMG 37100 - 37107 or DMG 37109 - 37123 are treated as if they are a P/T student if¹

1. they were, on 31.7.96
 - 1.1 entitled to UB **and**
 - 1.2 attending a course of study as in DMG 37375 - 37376 **and**
 - 1.3 not a student as in DMG 37353 - 37371 **and**
2. they continue to follow the course of study, education, training or instruction that they were following on 31.7.96 **and**
3. their award of JSA
 - 3.1 arose as in DMG 37100 - 37107 or on a claim treated as made as in DMG 37109 - 37123 **and**
 - 3.2 has not terminated.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 15(1), (3)(a) & (4)

37351 In order to determine whether the award has terminated as in DMG 37350 **3.** any period that is a linked period as in DMG 37019 should be disregarded and two awards separated by a linking period should be treated as a single award¹.

1 reg 15(4)(b)

37352

Meaning of student

37353 A student is a person who is attending a F/T course of study at an educational establishment¹.

1 SS (U, S & IVB) Regs, reg 7(3)

37354 Once people have started a course, they are treated as attending it in both term-time and vacations, until the earliest of the dates on which¹

1. the course ends **or**
2. the course is abandoned **or**
3. they are dismissed from the course.

1 reg 7(3)(a)

37355 A student who has started a F/T course is subject to the guidance in DMG 37357 - 37380 and is not entitled to UB **for any period** until the course ends, including, for example

1. all vacations, including the summer vacation

2. periods of absence from the course
3. academic years which have to be repeated because of examination failure.

37356

Full-time course of study

37357 F/T course is not defined in legislation. The DM should consider the following points when determining whether a course is F/T

1. it is the course and not the student that has to be F/T¹
2. the question whether a person is a student attending a F/T course is one of fact to be determined by the DM, taking into account the circumstances of the individual case². The claimant's
 - 2.1 views about the nature of the course **and**
 - 2.2 reasons are for attending it **and**
 - 2.3 willingness to take up employmentare all irrelevant³
3. in deciding whether a course is F/T, evidence from the educational establishment should be accepted unless there is strong evidence to the contrary⁴. Any description of the course should be set against the level of commitment required of the claimant in terms of hours of attendance and private study⁵. The level of commitment needed for a F/T course of study should not be equated with what is regarded as a full working week
4. a F/T advanced course may involve less hours of attendance in supervised instruction or study than a F/T non-advanced course
5. in advanced courses, hours of attendance in supervised instruction or study should not be considered in isolation. In many F/T courses the number of hours of attendance in supervised instruction or study may be small. The student is expected to put in considerable hours of private study. In non-advanced courses, hours of attendance in supervised instruction or study usually form a larger part of the course
6. the 21 hour rule for IS has no counterpart in UB. It is not relevant to the decision whether a person is attending a F/T course under the student provisions. A course is not necessarily P/T simply because the hours of attendance do not exceed 21 per week.

*1 R(SB) 40/83; R(SB) 41/83; 2 R(SB) 41/83; 3 R(SB) 40/83; R(SB) 41/83; R(SB) 2/51;
4 R(SB) 40/83; R(SB) 41/83; 5 R(SB) 40/83; R(SB) 41/83*

37358 Many Colleges of Further Education no longer classify courses as full or P/T. They enter into a learning agreement with individual students to provide the number of guided learning hours a week necessary to achieve the qualification aimed for by the student.

37359 Guided learning hours are hours spent under tuition or supervised study and do not include time spent in private study.

37360 Where a college is unable to say whether a course is full or P/T the DM should consider other evidence, including

1. the type of qualification aimed for **and**
2. the number of
 - 2.1 hours of attendance **and**
 - 2.2 recommended hours of private study **and**
3. the length of time normally required for successful completion of the course **and**
4. how long the claimant will take to complete the course.

37361 If a claimant is following a course

1. that was formerly described by the college as F/T **and**
2. the nature of which has not changed in any way

that would be evidence that the claimant's course is also F/T.

37362 In the case of a

1. new course **or**
2. course where the nature of the course has changed

it may be helpful to compare the claimant's length of study and eventual qualification with a similar or identical course that is generally regarded as F/T. If the claimant is taking longer than normal to complete a course that may be an indication (but not conclusive proof) that the course is P/T¹.

1 R(SB) 41/83

37363 A list of the more common courses and their relevant qualifications is included at Appendix 1. It

1. is provided for information only **and**
2. should not be relied upon as evidence of the nature of any particular course.

37364 - 37365

Sandwich courses

37366 A person on a sandwich course is treated as attending a F/T course of study¹.

1 SS (U, S & IVB) Regs, reg 7(3)(b)

37367 A sandwich course is made up of alternate periods of

1. F/T study **and**
2. work experience.

The course as a whole should be organized so that the student attends the periods of F/T study for an average of at least 19 weeks a year.

37368 Periods of experience are

1. periods of industrial, professional or commercial experience associated with the F/T study **but**
2. undertaken somewhere other than the place of F/T study.

37369 A period should not be counted as a period of experience if

1. it is undertaken within the educational establishment by a student unable to find an outside placement, when it should be treated as in DMG 37354 **or**
2. it involves
 - 2.1 unpaid service in a hospital or public health laboratory
 - 2.2 unpaid service with an LA or a voluntary organization involving the health, welfare or care of young persons and children
 - 2.3 unpaid service in the probation and after-care service
 - 2.4 teaching practice
 - 2.5 unpaid research **or**
3. it involves unpaid service or employment
 - 3.1 in the same areas as in **2. and**
 - 3.2 which falls wholly within the terms at the establishment in any year **and**
 - 3.3 which does not total more than
 - 3.3.a six weeks in that year **or**
 - 3.3.b twelve weeks in that year and one other year.

37370 During any period as in DMG 37369 **2. or 3.** a student should continue to be treated as attending a F/T course of study unless

1. the course ends **or**
2. the course is abandoned **or**
3. they are dismissed from the course.

37371 For the purposes of DMG 37369 **3.2** and **3.3** a year means¹ a twelve month period beginning on

1. 1 January for courses starting in Spring **or**
2. 1 April for courses starting in Summer **or**
3. 1 September for courses starting in the Autumn.

1 SS (U, S & IVB) Regs, reg 7(3)(d); Education (Mandatory Awards) Regs 89, Sch 5, para 1(1)

37372 - 37374

Course of study

37375 Course of study

1. means any course whether or not a grant is made for attending it¹ **and**
2. includes modular courses.

1 SS (U, S & IVB) Regs, reg 7(3)(b) & (c)

37376 Any period

1. that is outside the period of the course **and**
2. during which the claimant attends the educational establishment in connection with the course

is treated as part of the course of study¹.

1 reg 7(3)(c)

37377 - 37379

Educational establishment

37380 Educational establishment is not defined in legislation. The DM should consider whether the claimant is receiving training, instruction or schooling

1. within an organization **or**
2. at an establishment set up for any of those purposes.

If so, the DM should determine that the claimant is attending an educational establishment.

37381 - 37384

Claimants subject to disqualification - JSA(Cont)

37385 From 28.10.96 if claimants are awarded JSA as in DMG 37105 - 37106 and were disqualified for receiving UB on 5.10.96, or 6.10.96 if Sunday substitution applies in that week, because²

1. they have
 - 1.1 lost their employment as an employed earner through misconduct **or**
 - 1.2 voluntarily left employment as an employed earner without just cause **or**
2. after a situation in any employment had been properly notified to them as vacant or about to become vacant they have, without good cause, refused or failed to apply for that situation or refused to accept that situation when offered to them **or**
3. they have without good cause neglected to avail themselves of a reasonable opportunity of employment **or**
4. they have without good cause refused or failed to carry out any official recommendations given to them with a view to assisting them to find employment. The recommendations must be those that were reasonable having regard to their circumstances and to the means of obtaining that employment usually adopted in the district in which they reside **or**
5. they have
 - 5.1 lost their place on an approved training scheme through their misconduct **or**
 - 5.2 left a place on an approved training scheme without good cause voluntarily **or**
6. after a place on an approved training scheme had been properly notified to them as vacant or about to become vacant they have, without good cause, refused or failed to apply for that place or refused to accept that place when offered to them **or**
7. they have without good cause neglected to avail themselves of a reasonable opportunity of a place on an approved training scheme

JSA(Cont) is not payable for the balance of any period of disqualification.

1 JSA (TP) (96) Regs, reg 6; 2 reg 16(1); SS CB Act 95, s 28(1)

37386 From 28.10.96, any period of disqualification for receiving UB as in DMG 37385¹

1. is to be treated as a sanction² **and**
2. is to be treated as a period of entitlement to JSA(Cont)³.

So any days of disqualification on or after 28.10.96 count towards the claimant's maximum entitlement of JSA(Cont).

1 JSA (TP) (96) Regs, reg 16(2); 2 JS Act 95, s 19; 3 s 5(1)

37387

Questions that cannot be decided immediately - JSA(Cont)

37388 If the

1. claimant's entitlement to JSA(Cont) or the rate or amount of JSA(Cont) depends on whether a sanction should be imposed for any period **and**
2. DM is satisfied that the questions cannot be determined immediately

the DM should decide the claim or question on the assumption that the question will be adverse to the claimant¹.

1 JSA (TP) (96) Regs, reg 18(1)(c) & (2)

37389 If in deciding whether the claimant satisfies the conditions for entitlement to

1. JSA(Cont) **or**
2. JSA(IB)

the DM is satisfied that one of these questions cannot be determined immediately, the DM should decide the claim based on the question that can be decided¹.

1 reg 18(1)(b)

37390 When a question as in DMG 37388 - 37389 is actually decided, the first decision should be revised to give effect to the second decision¹.

1 reg 18(3)

37391 DMG 37388 - 37390 apply only during the TPP¹.

1 reg 18

Claims for JSA

37392 Where a claimant makes a claim for JSA on or after 7.10.96, the Secretary of State may treat that claim as a claim for

1. UB as well as a claim for JSA **or**
2. UB only.

Any claim that is also treated as a claim for UB should be treated as made on the day the claim for JSA was made¹.

1 JSA (TP) (96) Regs, reg 19

Example

On 7.11.96 John attends the Jobcentre to claim JSA. He wants to claim for the period from 1.9.96.

He claims JSA. His benefit week ends on a Wednesday.

The Secretary of State treats the claim as a claim for

1. UB for the period 1.9.96 - 9.10.96 **and**
2. JSA from 10.10.96.

37393 - 37399

Day substituted for Sunday - JSA(Cont)

Introduction

37400 During the transitionally protected period, for the purposes of calculating the number of days entitlement to JSA(Cont) for a particular claimant, another day of the week can be substituted for Sunday¹.

1 JSA (TP) Regs, reg 9A(b)

37401 DMs should remember that

1. the day substituted for Sunday cannot be treated as a day of JSA(Cont) **and**
2. JSA(Cont) is not paid for the day substituted for Sunday **and**
3. the day substituted for Sunday is disregarded in calculating any period of consecutive days.

37402 There are two situations where a day can be substituted for Sunday. These are where the claimant

1. would normally work on Sunday and be idle on a later day in the week (see DMG 37410 - 37437)¹ **and**
2. has a religious objection to working on a day of the week other than Sunday (see DMG 37441 - 37448)².

1 SS (U, S & IVB) Regs, reg 4(1); 2 reg 4(3)

37403 In deciding whether Sunday is a normal

1. working day **or**
2. idle day

the night workers rules (see Appendix 4 to this Chapter) may first need to be applied¹.

1 reg 5

37404 Whether a day can be substituted for Sunday¹ must be considered separately for each week.

1 reg 4(1)

37405 A week is a period of seven days beginning with Sunday¹.

1 SS CB Act 92, s 122(1)

37406 - 37409

Sunday is a normal working day

37410 Where a claimant

1. would normally work as an employed earner on six days or less in a week, including Sunday **and**
2. is unemployed on the Sunday

the day of the week that would not normally be worked is substituted for the Sunday¹.

1 SS (U, S & IVB) Regs, reg 4(1)

37411 If the week being considered contains more than one day when the claimant would not normally work, the day substituted for Sunday is the latest of those days¹.

1 reg 4(1)

37412 Periods of short time working due to adverse industrial conditions should not be taken into account when considering whether a claimant normally works for six days (including Sunday) or less in a week¹.

1 reg 4(2)

37413 If there is no evidence of exceptional industrial circumstances (see DMG 37486), but

1. there is a reduction in hours worked due to a trade recession **and**
2. claimants show that in a particular week they were working fewer hours than the standard working week by at least one hour

that week can be accepted as a period of short time working due to adverse industrial conditions¹.

1 R(U) 17/60

37414 - 37417

Short time working

37418 Short time working due to adverse industrial conditions does not include periods of complete lay off¹. The claimant must be doing some work during the period in question.

1 R(U) 2/89

37419 When deciding whether the claimant is working short time

1. short time should be compared with F/T
2. a person's actual extent of working should be compared with the standard working week in the place of employment or the industry

3. it does not relate to the claimant's personal experience, but to short time working in the place of employment or the industry in which the claimant

works. Applying the test to the place of employment or particular industry concerned should show whether the claimant's loss of work is due to conditions which apply not only to the claimant but are of a general character¹.

1 R(U) 17/60(T)

37420 The term short time working implies

1. a reduction of working hours below the level of a recognized or standard number of hours **and**
2. not merely a reduction of working hours from what has previously occurred¹.

If a claimant's standard working week is 40 hours, a week in which the claimant works no more than 39 hours is a period of short time working. Whether such a period should be disregarded, when considering whether a claimant normally works for six days or less in a week, depends on whether it was due to adverse industrial conditions.

1 R(U) 13/60

37421 Where a standard working week has been agreed between an employer and a trade union but overtime has been worked, the dropping of overtime is not normally short time working¹.

1 R(U) 2/73

Example

A claimant is employed on a rota system consisting of

1. a week on five day shifts **then**
2. a week on five night shifts **then**
3. a week on five mid-shifts.

He also works a weekend shift on overtime.

Overtime ends and he claims UB for the Saturday and Monday following a week on the day shift and a week on the night shift.

When overtime ended the claimant returned to the standard working week, not to short time working.

37422 Often, the standard working week for an industry is agreed between employers' associations and the trade unions. But the agreement allows for modifications by local agreement between individual employers and their employees. Where there has been a modification, the modified standard week is the one used to decide whether any period was a period of short time working¹. Agreements relating to overtime are **not** a modification of a standard working week. But see DMG 37424.

1 R(U) 17/60(T)

Example

The standard working week in the claimant's industry is 45 hours, but at her place of employment this is achieved by working 47.5 hours on the day shift and 42.5 hours on the night shift in alternating weeks.

She is working short time when her actual extent of work is less (by an hour or more) than

1. 47.5 hours when she is working the day shift **and**
2. 42.5 hours when she is working the night shift.

37423 If a claimant's working week is not covered by an agreement applying either to

1. the industry generally **or**
2. to the claimant's place of work

the standard working week is the one that is recognized, expressly or by implication under the claimant's contract of service.

37424 An exceptional kind of modification of a standard working week is one where certain employees work a day more than others¹.

1 R(U) 2/61

Example

The standard working week at an iron foundry is five days, Monday to Friday.

When that week is worked the claimant, a labourer, is always required to work on the Saturday in cleaning and preparatory work.

When the rest of the foundry works for three or four days, he always works on one extra day.

The nature of his employment and the long-standing practice shows that the recognized or standard working week of the claimant is six days.

A working week of less than six days is short time for him.

37425 A week in which a claimant works their recognized hours is not a period of short time working for that claimant. This applies even if some of the claimant's colleagues are on short time¹.

1 R(U) 1/64, para 5

37426 - 37427

Adverse industrial conditions

37428 The term adverse industrial conditions is not defined. It includes a temporary reduction in demand or trade, or a shortage of materials¹.

1 R(U) 17/60(T); R(U) 2/61; R(U) 5/62; R(U) 9/62; R(U) 18/62

37429 When the term short time working is linked with the term adverse industrial conditions the implication is that the situation is not likely to be permanent¹. If short time working continues in the relevant factory or industry for long enough it must eventually become normal working.

1 R(U) 13/60

37430 There is no limit on the length of time for which short time working can continue to be due to adverse industrial conditions. Whether short time working has become the normal pattern of working should be decided in the light of the circumstances of the particular case.

37431 The following factors suggest that short time working is, or continues to be, due to adverse industrial conditions

1. the short time working is due to a temporary trade recession or some other factor particular to the industry or employer concerned which is not likely to be permanent
2. fresh contracts of employment have not been issued since the short time started
3. guarantee payments are being made
4. no recruitment is taking place, and any increase in the amount of work available will be absorbed by the current workforce (unless this would be impracticable)
5. the employer has grounds for anticipating a return to F/T working in the foreseeable future.

37432 The following factors suggest that the short time working is not, or is no longer due to adverse industrial conditions and has become normal working

1. the industry is a dying industry and there are no grounds for supposing that there will ever be a return to F/T working
2. fresh contracts of employment have been issued providing for a shorter working week
3. employees are being recruited to work under the short time arrangements.

37433 - 37434

Applying the Sunday substitution rule

- 37435 To apply the Sunday substitution rule the DM should
1. be satisfied that in the normal course the claimant would
 - 1.1 work as an employed earner on the Sunday of the week in question **and**
 - 1.2 not work on another day or days later in the week **and**
 2. identify the latest day in the week on which the claimant would not work in the normal course.
- 37436 If the claimant has **no** normal idle day in a week, Sunday substitution cannot be applied. This applies even if no work is done on one of the normal working days.
- 37437 If a normal idle day or days has been identified, but the claimant works on that day, or the last of them, that day can still be substituted for Sunday. But this only applies if the claimant is unemployed on the Sunday.

37438 - 37440

Objection on religious grounds to working on a day other than Sunday

- 37441 Sunday substitution¹ applies where the claimant
1. does not normally work on Sundays **and**
 2. has a religious objection to working on some other day in each week.

1 SS (U, S & IVB) Regs, reg 4(3)

37442 - 37443

Applying the Sunday substitution rule

- 37444 The DM should first consider whether the Sunday is a day that the claimant would not normally work. If the Sunday is a normal idle day for which a disallowance can be imposed¹ JSA(Cont) cannot be paid for it anyway.
- 1 SS CB Act 92, s 25A(1)(b)*
- 37445 The Sunday substitution rule only assists the claimant where
1. the employment has been terminated or treated as terminated (see DMG 37508 - 37559) before the Sunday **or**
 2. all normal working days in the week in question are days of interruption of employment.

37446 The claimant must object on religious grounds to working on a particular day in **each** week. Sunday substitution¹ cannot assist those who object to working on a particular weekday only in one week or in occasional weeks.

1 SS (U, S & IVB) Regs, reg 4(3)

37447 Sunday substitution should be applied if the DM is satisfied that

1. the claimant has a genuine objection to working on a day other than Sunday **and**
2. the objection is based on the claimant's religious beliefs.

37448 In cases of doubt

1. full details of the beliefs about working on that day, that are held by
 - 1.1 the claimant **and**
 - 1.2 other members of the sect or religion that the claimant belongs toshould be obtained **and**
2. the case should be referred to DMA Leeds for advice.

37449 - 37450

Whether a claimant normally works on a particular day

37451 Deciding what is normal means that some comparison must be made with other weeks (past or future). The question is

1. what is normal for the claimant **and**
2. not what is normal for the particular employment that the claimant has.

37452 Where a regular pattern emerges from the claimant's employment record, for example under a contract, shift or rota system, normality may be relatively easy to establish (see DMG 37464 - 37479).

37453 Where no obvious pattern can be identified the practice of referring to a claimant's employment record over the previous twelve months¹ should be adopted. This is known as the 50% test (see DMG 37481 - 37494).

1 CU 518/49(KL)

37454 Whether the claimant would work on a particular day in the normal course should be decided on the basis of the claimant's current employment and employment record¹. It is not necessarily what has been laid down as the normal working week in the contract of employment. The claimant's **actual** record of employment prevails over any pattern of employment provided for under contract or by industrial agreement².

1 CU 518/49(KL); 2 R(U) 19/58

Example

Ashley's employment is covered by an agreement that says that the working week is five days, but that he can be required to work on Saturdays if needed.

He worked on 39 out of the 52 Saturdays before the day in question.

Saturday is a day on which he normally works.

37455 A limited extent of employment may be normal for a claimant even if the claimant is available and willing to work to a greater extent. The statutory authorities are concerned with what actually happens and not with a claimant's intentions or desires¹. But see DMG 37459 - 37460.

1 CU 518/49 (KL); R(U) 2/86

37456

Types of cases

37457 When deciding the normal course for cases where the claimant's employment is only P/T, the guidance in DMG 37459 - 37460 should be followed. If the question cannot be decided in the claimant's favour, by following the guidance in those paragraphs, DMG 37464 - 37505 should be applied.

37458

Part-time work

37459 The following general principles should be applied¹

1. the DM must look into the future to determine how permanent or short lived the present pattern of work is likely to be. If there is fairly clear evidence of what is likely in the future, this may well be conclusive
2. whether or not there is clear evidence of what is likely in the future, attention must be paid to the claimant's past history of both work and unemployment. If F/T work is followed by a long period of unemployment, the spell of F/T work over several years ending only a short time before the P/T employment started, may be strong evidence that the P/T employment has not yet become normal
3. when the DM has considered the claimant's employment record over the year (or other more suitable period) immediately before the week in question, the DM must go on to assess the claimant's working prospects for the immediately foreseeable future. Depending on the circumstances of the case, normality may be established from a pattern of work over a period much shorter than a year

4. where F/T work is followed by unemployment and then by P/T work the DM must consider, together with all the other facts, the whole period that has passed since F/T employment ended. Both the periods of unemployment and of P/T employment must be taken into account²
5. if the P/T employment is for a temporary period only (for example where there is a fixed term contract), that is a factor to be taken into account, but it is not decisive³.

*1 Riley v AO (Appx to R(U) 2/86); CAO v Brunt (R(U) 9/88); 2 CAO v Brunt (R(U) 9/88);
3 CAO v Brunt (R(U) 9/88)*

37460 The principles explained in DMG 37459 are only factors that are relevant and which should be taken into account and balanced one against the other. They only provide guidance on the approach to be adopted and not answers in particular cases. The following more specific guidance should also be applied.

1. As a general rule if it is six months or more since the claimant last worked F/T little weight should be given to any previous F/T employment.
2. If F/T employment finished only a short time before the P/T employment started that may be strong evidence that P/T employment is not yet normal for the claimant. A short time should be generally be taken to be anything up to six months.

37461

Abnormal spell of full-time work

37462 DMG 37459 - 37460 applies where a claimant who has previously worked F/T is working P/T. If a claimant with a history of **P/T** working then has an abnormal spell of F/T work, the period of F/T work may be disregarded in the same way as an abnormal period of P/T work¹.

1 R(U) 8/56

Example

Simon regularly works for three days a week as a bank guard.

He obtains P/T work as a gardener on the other three days for 18 weeks.

When the employment as a gardener ends he claims UB.

His normal extent of work is still three days a week.

37463

Pattern cases

37464 In many cases it is easy to decide what employment is normal for the claimant in the week in question by reference to

1. a person's contract of employment **or**
2. a person's rota system **or**
3. the constant repetition of a pattern of employment.

Where a clear pattern emerges from examining the claimant's previous employment history, this is usually sufficient.

37465 If there is no clear evidence of what is normal, the best available evidence as to the claimant's normal prospects of work on the day in question must be examined¹. This generally requires an investigation into what has happened on corresponding days in the past².

1 R(U) 6/62 para 9; 2 CU 518/49(KL) para 13

37466 A particular day may be a normal idle day even though a claimant works on that day of the week in most weeks¹.

1 R(U) 10/62

Example

James is a P/T worker and normally works on the evenings of Monday to Friday each week.

It is the practice for the company to be closed on the Friday evening at the start of an agreed holiday. This Friday is a normal idle day.

37467 Where a regular pattern can be identified from the contract, shift or rota system or seasonal variation, the pattern itself is direct evidence of what will probably happen¹. Various types of pattern cases are considered in DMG 37470 - 37479. In the less common non-pattern cases, where there is no direct evidence of an obvious pattern of work, it may be necessary to resort to the 50% test to decide the normal extent (see DMG 37481 - 37494).

1 R(U) 18/62

37468 - 37469

Pattern cases - contract

37470 Even where claimants follow their present pattern of work for only a very short time, their contract of employment may provide evidence of what is the normal pattern for them. Providing they actually work in accordance with their contract, it may be possible to decide that that is normal for them as soon as they start work.

37471

Pattern cases - regular five day worker

37472 Where a regular five day worker has no opportunity to work on the sixth day or in fact never works on that day, the sixth day is a normal idle day. If such a person with a standard working week of five days (Monday to Friday) works overtime irregularly on Saturdays, it may be necessary to apply the 50% test (see DMG 37481 - 37494) to decide whether in the normal course that person would work on a Saturday.

37473 - 37474

Pattern cases - shift and rota systems

37475 A person's working days may vary from week to week under a system of shift working. In these circumstances the rota itself shows what is normal and the normal idle day can be decided week by week by reference to it.

37476 The following are examples of shift or rota system that may occur.

1. A short and simple cycle which repeats itself every two or three weeks¹.
2. Day and night shifts worked in alternative week².
3. A 28 day cycle of approximately two working weeks followed by approximately two non-working weeks³.
4. More elaborate rotas in which several months may elapse before the pattern of working and idle days in a week precisely repeats itself⁴.

*1 CU 151/49(KL); CU 518/49(KL); R(U) 33/53(T); 2 R(U) 17/60(T); R(U) 1/61(T); R(U) 9/62;
3 R(U) 10/80; R(U) 14/80; R(U) 4/81; R(U) 6/81; 4 R(U) 15/60; R(U) 5/62; R(U) 18/62*

Example 1

Arthur is employed on five day shifts from Monday to Friday and on five night shifts (10pm to 6am) from Monday to Friday in alternate weeks.

His normal idle day is

1. Saturday, in the weeks when he works the day shift **and**
2. applying the night workers rules, Monday in the weeks when he works the night shift.

Example 2

Phil works a rota of approximately 14 days on an off shore oil rig followed by 14 non-working days on shore.

He remains on call during the on shore periods but is not paid for those periods.

The days ashore are normal idle days for him, the rota being the best evidence of what is for him the ordinary course.

37477 In contrast to the person who regularly works to a system of day and/or nights shifts in alternate weeks, a claimant may work on morning, afternoon or evening shifts in no particular sequence. If, in such a case, the idle days vary according to the shift, they should be decided according to the shift on which the claimant is employed in the week concerned, even if it is unusual for the claimant to work on that shift.

Example

Emily usually works on Monday to Friday day shift. In the year before the Saturday in question she worked on a minority of Saturdays.

Exceptionally she was working on night shift (9.45pm to 7.00am) in the week in question, and would normally have worked on the Saturday of that week.

The Saturday in question is not a normal idle day.

37478

Seasonal variations

37479 A person's normal idle days may vary according to the time of year. A seasonal pattern can be established after a second yearly cycle has begun. If the seasonal pattern is provided for by contract a shorter period will often be sufficient (see DMG 37470). Account must be taken of any employment obtained in the slack season outside the normal employment¹.

1 CU 272/50(KL)

Example

A park watchman is employed throughout the week in summer and on Saturday and Sunday during the rest of the year.

1. He is employed to his full normal extent when he works for two days in a week during the winter months **and**
2. Monday to Friday are his normal idle days during the winter.

37480

Non-pattern cases - 50% test

37481 If there is no clear pattern of work so that the guidance in DMG 37470 - 37479 cannot be applied, what is normal for the claimant should be established by examining the claimant's employment record for a suitable period before the day in question. This method of deciding normality is known as the 50% test.

If it is established that in the year which ends with the day in question (or other more suitable period (see DMG 37489 - 37491) the claimant has worked on less than 50% of the days of the week in question, excluding the days listed in DMG 37483, that day is one on which in the normal course the claimant would not work. If the claimant has worked on as much as 50% of such days that day is a day on which in the normal course the claimant **would** have worked on the day in question¹.

1 R(U) 14/59

37482 The 50% test establishes whether, during the period of twelve months up to the day in question, but ignoring days affected by abnormal events, the claimant worked on the day in question at least half of the time.

37483 The test should be **used** only in cases where there is no more direct evidence of a regular pattern of work, such as a rota or some other system indicating clearly whether a day is a normal idle day¹. When considering the claimant's work record on the day in question over the relevant period, days affected by any of the following events should be **disregarded**

1. short time working due to adverse industrial conditions² (see DMG 37428 - 37432)
2. incapacity for work³
3. holidays⁴
4. unemployment immediately following termination of employment⁵
5. periods of exceptional industrial circumstances (see DMG 37486)⁶.

If the claimant worked on fewer than half the relevant days in the remaining weeks under consideration, the day in question is a normal idle day.

*1 R(U) 14/60(T); 2 SS (U, S & IVB) Regs, reg 4(2); 3 R(U) 14/59 para 16; 4 R(U) 14/59 para 16;
5 R(U) 14/59 para 16; 6 R(U) 14/59 para 11*

37484 - 37485

Exceptional industrial circumstances

37486 Exceptional industrial circumstances must be purely temporary, occur only occasionally and brought about by conditions unlikely to continue¹. They do not include exceptional circumstances of a personal nature. They are not the same as adverse industrial conditions (see DMG 37428 - 37432). The

1. existence of a prolonged recession to which no specific cause can be attributed and no clear end foreseen **or**
2. ordinary ups and downs of trade in the business cycle

do not justify the conclusion that there are exceptional industrial circumstances.

1 R(U) 13/55; R(U) 33/57; R(U) 28/58

Example 1

A textile company in which much weekend overtime is worked, is informed at the end of summer, by the water authority that due to the drought during the summer, that the company's water supply is to be turned off on Mondays, Tuesdays, Wednesdays, Saturdays and Sundays for a two month period. Overtime ceases.

The period of reduced working is due to exceptional industrial circumstances because it is brought about by an event that happens only occasionally and is unlikely to continue.

A period before the period of reduced working occurred is taken as the basis for deciding the claimant's normal course of working.

Example 2

Helen is a marker-out employed by a heavy engineering company and loses her opportunities of Saturday overtime after some large contracts are completed.

This is a typical fluctuation in the industry and does not represent exceptional industrial circumstances.

37487 - 37488

Suitable period for examination

37489 The period of twelve months immediately before the day in question may not always be the most suitable period to examine when applying the 50% test. A shorter or longer period may sometimes be justified¹. For example, exceptional industrial circumstances may mean that part of the year should be disregarded and the period extended accordingly².

1 R(U) 14/60(T); 2 R(U) 21/60(T)

37490 A shorter period than twelve months may be suitable where

1. there is a change in the conditions of employment resulting in the modification of the standard working hours **or**
2. a new rota is introduced.

In **2.** the claimant may acquire new normal idle days as soon as the change starts¹. But if the claimant works irregularly on a particular day the 50% test would need to be applied to a suitable period after the change. Similar considerations apply if the claimant had a change of employment in the previous year.

1 R(U) 18/62; R(U) 1/72

- 37491 If there is clear evidence of a regular pattern of employment from the terms of a contract or a shift or rota system it may be possible to establish the normal idle days from the outset¹, or at least before the 50% test would be satisfied.

1 CU 518/49(KL), para 16; R(U) 7/62; R(U) 3/74

37492

Applying the 50% test

- 37493 One of the commonest situations in which the 50% test has to be applied is where the claimant has a standard working week of five days, Monday to Friday and works irregularly on Saturdays. A UB claim for Saturday may be made when the claimant is put on short time working.

Example

Margaret is employed by the same employer from Monday to Friday for two years, during which she sometimes worked on Saturdays.

In the week commencing 8.9.96 a period of short time working starts and she claims UB for the days on which she does not work.

In deciding whether the Saturday is a normal idle day the 50% test is applied as follows.

Assuming the twelve months immediately before the day in question is the suitable period for examination

Day in question	14.9.96
Period for examination	14.9.95 - 13.9.96

Number of Saturdays in that period 52

Less

holidays falling on Saturday	3
days of incapacity falling on Saturday	6
weeks affected by short time working due to adverse industrial conditions	1
Number of Saturdays to be disregarded	10

Number of Saturdays to be taken into account:

52 less 10 =	42
Number of those Saturdays worked	20
Number of those Saturdays not worked	22

The claimant is employed on less than 50% of the 42 reckonable Saturdays. Saturday is a normal idle day even though the working arrangements have been altered because of short time.

- 37494 The day being considered should always be excluded from the calculation¹. In borderline cases the calculation should be made precisely. For example, if a claimant works on 23 out of 47 reckonable Saturdays, Saturday is a normal idle day². If the claimant works on 23 out of 46 reckonable Saturdays, Saturday is not a normal idle day.

1 R(U) 12/64; 2 R(U) 12/64

37495 - 37496

Normal course during period of short time working

- 37497 When JSA(Cont) is claimed for a non-working day that falls in a week affected by short time working due to adverse industrial conditions, the DM should identify any normal idle days by determining what the working arrangements in that week would have been had there not been short time working. This usually requires the DM to examine the working arrangements before short time began. Once that is established any days on which in the normal course the claimant would not work can be identified.
- 37498 Where a claimant whose normal working pattern varies under a shift or rota system is affected by short time working due to adverse industrial conditions, the DM should decide what shift the claimant would have worked in the week in question had the claimant not been on short time¹.

1 R(U) 5/62

Example

Ken is employed on a rota which involves a working cycle of 18 weeks.

The rota is suspended in February 1995 due to the introduction of short time working due to adverse industrial conditions.

It is expected that the same rota will be followed when short time working ends.

A Wednesday in June 1995 was a normal idle day because it was a day on which he would not have been due to work under the suspended rota.

- 37499 If the claimant's normal idle days vary according to the time of year (see DMG 37479) and short time working due to adverse industrial conditions is in operation on the week in question, the normal idle days should be decided by referring to the claimant's employment record in the corresponding season in previous years.

Example

Norman is normally employed on three days a week, Tuesday to Thursday, every week from 1 November to 31 January each year.

On 18 December he starts short time working due to adverse industrial conditions on two days a week only (Tuesday and Wednesday). Monday, Friday and Saturday are normal idle days but Thursday is not.

37500 If the 50% test needs to be applied periods of short time work must be excluded from it (see DMG 37483 1.), so if they are lengthy the test may need to be applied to a period starting more than twelve months before the day in question. If after

1. excluding periods of short time working **and**
2. applying the 50% test to weeks of normal working

it is found that the claimant did not work on the day in question more than 50% of the time, it is a normal idle day.

37501 - 37504

Normal course when short time working ends

37505 When a period of short time working due to adverse industrial conditions ends the normal idle days can often be established from the working arrangements that are introduced or resumed. The claimant's working record during the period before short time working began may also have to be taken into account.

Example

Roger has a standard working week of Monday to Thursday also works overtime on Fridays in most weeks in the twelve months ending on 30.12.94.

On 1.1.95 short time working of three days a week is introduced due to adverse industrial conditions.

In June 1995 short time working ends.

He resumes his standard working week of Monday to Thursday but does not work overtime.

Because of his employment experience before short time working began he can still be regarded as a five day week worker with Saturday as the only normal idle day, until either

1. his pattern over a suitable period shows that it is no longer normal for him to work on Fridays **or**

2. the terms of his employment change and prevent the possibility of work on Fridays.

37506 - 37507

Employment terminated

37508 The phrase termination of employment should be given its natural and ordinary meaning. The employment is terminated as soon as the contract of employment between the employer and the claimant is terminated and the rights and obligations under the contract end¹.

1 R(U) 7/68

37509 In considering whether the contract of service has terminated, it is important to keep in mind the distinction between the contract itself and employment under that contract¹. A contract may continue even if the person employed under the contract does not, or is not required to, render services, for example

1. when there is a temporary lay off **or**
2. during a period of holiday, even if wages are not paid for holiday.

1 R(U) 8/68(T)

37510 Whether a contract has terminated is a question of fact to be decided on the available evidence. If an employer says that an employment has been terminated, that does not necessarily mean that it has terminated as in DMG 37508 - 37509. An employer cannot terminate an employment without the employee being made aware that the employment has terminated¹.

1 Brown v Southall & Knight (1980) ICR 617

37511 It should generally be accepted that a contract has terminated

1. when due notice of termination has been given and received and has expired **or**
2. if a compensation payment has been made (other than in the situation described in the example above) **or**
3. at the end of an engagement that was for a fixed period.

But where people were expected to and do resume their employment on some later fixed date, and there is no evidence of any fresh arrangement for their reappointment, they are still employed under a continuing or running contract which has not terminated¹. The more frequently they have resumed their employment without the need for reappointment the stronger is the inference that they are employed under running contracts.

1 R(U) 8/68(T)

Example

Jacob works P/T as a music teacher in a school.

His original teaching engagement in 1982 is for a fixed period of one term, but after that he continues teaching at the school for several years without subsequent reappointment.

At the end of the summer term 1995 he receives no formal notification of either discharge or re-employment. But early in the summer holidays both he and his employers made it clear that they understand that he will resume next term (as in fact he does) and there is no evidence of any fresh arrangement for reappointment.

He is employed under a running contract and during the 1995 summer holiday the employment was merely suspended and not terminated.

37512 - 37519

Employment treated as terminated

37520 If, applying DMG 37508 - 37511, the claimant's employment has not been terminated, the DM should decide whether the employment can be treated as terminated. Employment can be treated as terminated in the following circumstances.

1. There is not a recognized or customary working week in connection with the employment, or the claimant does not regularly work for the same number of days in a week for the same employer or group of employers (see DMG 37523 - 37531)¹.
2. The employment has been indefinitely suspended for six consecutive days (the six days rule) (see DMG 37535 - 37542)².
3. The employment is casual for the claimant (see DMG 37545 - 37547)³.
4. The employment is not with the claimant's usual employer (see DMG 37550 - 37552)⁴.
5. The employment is disregarded under the engaged in employment rules (see DMG 37554)⁵.
6. An idle day could be recognized as normal only by taking account of a period of short time working due to adverse industrial conditions (see DMG 37556)⁶.
7. The claimant's earnings in the week in question are £12 or less (see DMG 37558 - 37559)⁷.

1 SS (U, S & IVB) Regs, reg 19(6); 2 reg 19(2); 3 reg 19(3)(a); 4 reg 19(3)(b); 5 reg 19(3)(c); 6 reg 19(3)(d); 7 reg 19(3)(e)

37521 - 37522

Recognized or customary working week

- 37523 The claimant's employment is treated as terminated as soon as it starts if
1. there is **not** a recognized or customary working week in connection with the claimant's employment **and**
 2. the claimant does **not** regularly work for the same number of days in a week for the same employer or group of employers.
- 37524 A **recognized** working week is one that has been expressly agreed between the claimant and the employer in the
1. contract of employment **or**
 2. some national agreement.
- 37525 A **customary** working week is one that has not been expressly agreed, but where there is an implied agreement about the working pattern.
- 37526 A particular week may be a recognized or customary working week, even if it differs from some other weeks. But this only applies if it occupies a regular place in the fortnightly, monthly or seasonal rota or shift arranging the work.
- 37527 Some claimants work on a rota system in which the working pattern is repeated over a period of more than a week. Such claimants have a recognized or customary working week providing there is a clearly defined working cycle, even if this is not a weekly one. For example, employees working off-shore in the oil and gas industries often work on every day for a period of about two weeks, and then do no work for a similar period.
- 37528 The word regularly, in regularly works for the same number of days in a week, means there must be uniform reoccurrence or repetition and not that it is casual, intermittent or irregular. It does **not** mean the same as normally and the question of whether someone regularly works **cannot** be decided by applying the 50% test for normality (see DMG 37481 - 37483). But it does not mean that any other occurrence must be exceptional¹.

1 R(U) 2/88

- 37529 The test cannot be satisfied by reference to the **minimum** number of days worked in a week. The phrase regularly works for the same number of days in a week does not mean regularly works for at least the same number of days¹.

1 R(U) 2/88

37530 The phrase group of employers means that there must be some connection between the employers, other than that they are all in the same line of business and all employ the claimant. There is a connection if, for example, they are all subsidiaries of the same company.

37531 If a contract of employment states that the employee is required regularly to work the same number of days in a week and these days are worked in accordance with the terms of the contract, regularity can be established very shortly after the employment starts¹. The contract can establish the necessary degree of regularity².

1 Riley v. AO (App to R(U) 2/86); R(U) 3/86(T); 2 R(U) 1/86

Example 1

Andy works F/T until 2.10.95. On 29.2.96 he starts work under a contract providing for employment on Thursdays and Fridays only, and he works only on those days. By 8.3.96 Andy is regularly working for the same number of days in a week for the same employer.

Example 2

After being out of work for 22 years Ralf starts work on 22.4.96 under a contract providing for work on Mondays, Tuesdays and Wednesdays. He works only on those days in accordance with his contract. From the start of the employment, Ralf regularly works for the same number of days in a week for the same employer.

37532 - 37534

Six days rule

37535 Where the claimant's employment has not been terminated but has been indefinitely suspended, after there have been six consecutive days of suspension the employment is treated as terminated on the day on which it was suspended¹.

1 SS (U, S & IVB) Regs, reg 19(2)

37536 In calculating the six consecutive days of suspension

1. Sunday, or the day substituted for Sunday (see DMG 37400 - 37617) **and**
2. days of recognized or customary holiday (see DMG 37570 - 37604) other than days of excess holiday (see DMG 37610 - 37617)

are disregarded.

37537 If claimants return to their employment after a period of suspension and are then suspended a second time, there are two separate periods of suspension, not one long period containing an interval of work. This applies even if the claimant returns to work on one day only, even if that day is a

1. Sunday¹ **or**
2. day substituted for Sunday **or**
3. day of recognized or customary holiday.

1 R(U) 29/57

37538 The six days of suspension do not have to be days when the claimant is unemployed. For example, the following days can all count as days of suspension for the purposes of the six day rule

1. days on which the claimant does not work but for which guaranteed payments are made
2. days for which the claimant is paid wages
3. normal idle days (see DMG 37451 - 37505)
4. days of IfW.

If during a period of suspension a claimant obtains stop gap employment with another employer, that does not end the original suspension.

37539 In deciding the seventh or later day in a continuous period of suspension the following days are disregarded¹

1. the last day on which work in the employment concerned was available to the claimant **and**
2. any days before that day.

1 SS (U, S & IVB) Regs, reg 6(3)

37540 An employment is definitely suspended if the employee is laid off on the understanding that that person will resume work on or about a certain date. This is the position, for example

1. between each spell of work under a shift or rota system, or short time working
2. during a period of lay off when the employer is able to forecast the date on which there will be work to offer
3. during holidays.

37541 If a person's employment is suspended for some temporary but undefined period, it is indefinitely suspended. A suspension that is stated at the outset to be for a definite period may become an indefinite suspension if the employer

1. later finds that the employee cannot resume work on the date previously notified **and**
2. is unable to forecast a new date for the employee to resume.

37542 If during a period of suspension (whether definite or indefinite) it becomes clear by some action of one party or the other that the contract is terminated, then from the date this comes about, but **not earlier**, the employment is regarded as terminated.

37543 - 37544

Casual employment

37545 Where a claimant's employment is casual the employment is treated as terminated immediately after it starts¹. If it seems that an employment may be casual, it will often be possible to treat that employment as terminated² because neither

1. the recognized or customary working week **or**
2. the regularly works

condition will be satisfied. If the employment **can** be treated as terminated the DM need not go on to determine whether it is casual employment for the claimant.

1 SS (U, S & IVB) Regs, reg 19(3)(a); 2 reg 19(6)

37546 The onus is on the claimant to show that the employment is casual. The word casual is not defined. When deciding whether an employment is casual for the claimant the DM should take into account

1. whether the employment lasts for only relatively short periods **and**
2. whether, at the end of each spell of employment, the claimant might reasonably expect to be re-employed almost immediately.

37547 A degree of continuity or regularity of occurrence in the claimant's recent employment history is incompatible with the word casual.

37548 - 37549

Employment not with usual employer

37550 Where the claimant's usual employment has terminated or is treated as terminated and the claimant works for an employer for whom the claimant would not work in the normal course, the latter employment is treated as terminated immediately after it starts.

37551 The words in the normal course in this context mean usually in a broad sense and are not directed to a particular day or week. It can be decided that claimants would not usually work for the employer if

1. they would not be working for that employer if they had not lost their normal employment **and**
2. if they intend to work for that employer only temporarily.

In most cases it is easy to identify the employer or employers for whom claimants would normally work and if the current employment is with a different employer it should be treated as terminated.

37552 The question may be difficult to decide when a claimant normally works for a succession of different employers, usually in the same occupation or in comparable occupations, for example a building worker who normally moves from one employment to another as jobs occur. If, following the termination of one employment, such a claimant takes similar employment with another employer, it generally cannot be decided that the claimant would not usually work for that employer. But it may be decided that the claimant would not usually work for that employer where the claimant normally

1. does a particular type of work only, and in the employment in question the claimant is doing a different type of work **or**
2. only works for a certain group of employers, or for employers in a certain area, and the present employer is not one of them.

37553

Disregarded employment

37554 The only circumstance in which an employed earner's employment can be treated as terminated is where it can be disregarded under the engaged in employment rules¹. So if the claimant has an employment in which both of the conditions in DMG 37175 are satisfied, that employment is **treated** as terminated.

1 SS (U, S & IVB) Regs, reg 7(1)(g)(i) & (iii)

37555

Short time working due to adverse industrial conditions

37556 Where in any week a period of short-time working due to adverse industrial conditions (see DMG 37418 - 37432) is taken into account in deciding the claimant's normal course of working, in that week the employment is treated as terminated immediately after it starts¹.

1 reg 19(3)(d)

37557

Earnings in the week do not exceed £12

37558 A person's employment is treated as terminated in any week in which the claimant's earnings are £12 or less¹.

1 SS (U, S & IVB) Regs, reg 19(3)(e)

37559 But those weeks may still be taken into account when deciding the normal course of his employment (see DMG 37451 - 37505).

37560 - 37569

Recognized or customary holiday

37570 Recognized or customary holidays are those days which the employer and employee have agreed shall be non-working days. These holidays must be

1. a normal and recurrent incident of employment in the establishment concerned **and**
2. under an implied term of the contract of service.

They can be varied or extended only by further agreement between the parties¹. But this does not mean that every day that the employer and employee have agreed shall be a non-working day must be a day of recognized or customary holiday².

1 R(U) 11/53; 2 R(U) 6/64

37571 The fact that an employee

1. is not given holiday pay¹ **or**
2. is free to seek work elsewhere during the holiday²

does not mean that the days concerned are not days of recognized or customary holiday.

1 R(U) 2/51; R(U) 7/56; 2 R(U) 2/51; R(U) 12/54; R(U) 16/54; R(U) 7/56

37572 An agreement governing holidays may be expressed or implied and there may be more than one agreement involved. For example, there may be an express agreement providing certain holidays and also an implied agreement providing further holidays (perhaps in extension of the original holidays). An agreement, whether expressed or implied, may be revised or replaced by further agreement, either permanently or for one occasion only¹.

1 R(U) 3/53

37573

Holiday by express agreement

37574 An express agreement may be written or oral. It may cover all details or it may leave some details (for example the precise dates of the holiday) to be settled on each holiday occasion.

37575

Holiday by implied agreement

37576 If there is no express agreement covering the particular days in question, it is necessary to consider whether there is an implied agreement, that is whether the employer and employees concerned have come to recognize and accept the days as being days of holiday. The considerations involved in deciding this question are set out in DMG 37578 - 37586.

37577

Period of observance

37578 If a day has been observed as a non-working day for a substantial number of years it is a day of recognized or customary holiday. This applies unless there is other evidence sufficient to disprove it. Long usage

1. is not an essential factor as a holiday may be of very recent origin **nor**
2. in itself (that is, in the absence of an agreement) creates a recognized or customary holiday¹.

1 R(U) 11/53

37579

Practice within the establishment concerned

37580 If the day is supposed to be a general holiday but in fact most of the employees continue at their ordinary work at ordinary pay, it cannot be a general holiday. The true position may be that the employees, individually or in groups, take their holidays at different times, either

1. under some rota system **or**
2. by individual agreement.

A holiday taken in these circumstances is a recognized or customary holiday for the employees concerned. But it may be that the employees not working are not on holiday but simply laid off, perhaps due to a shortage of work. Certain employees, for example maintenance and repair workers, may be required to work, even during a

general holiday. This does not prevent its being a recognized or customary holiday for those who are not working.

37581 If those employees who are required for work on the day in question receive

1. extra pay for such work **or**
2. time off in lieu **or**
3. some other form of compensation

there is a strong inference that the day is a recognized or customary holiday for those not working. But there may be some other explanation for the extra pay, for example it may represent payment for doing different work or more work.

37582 The absence of extra pay or time off in lieu or some other form of compensation

1. does not necessarily mean that the day is not a recognized or customary holiday **and**
2. is significant only if the employees in question are normally entitled to extra pay or time off in lieu or some other form of compensation for work during holidays.

37583 - 37584

Comparison with practice at other establishments

37585 The existence and duration of a recognized or customary holiday should be decided

1. on the evidence from the claimant's place of work **and**
2. not by reference to the position in other establishments.

But if there is a doubt about the position in the claimant's place of work, it may be helpful to consider the practice in other establishments in the district or within the same industry.

37586 Where the practice is found to be more definite in other establishments, that practice can be regarded as an indication of what might be expected in the claimant's place of work.

37587

Dissension among employees

37588 To be effective

1. an express or implied agreement for a recognized or customary holiday **or**
2. a revision of an agreement

has to be made between the employer and the majority of the employees.

37589 A minority of the employees

1. cannot make such an agreement or alter it **and**
2. are bound by the terms of the agreement or revised agreement made by the majority¹.

So days of agreed holiday in an employment that are not wanted by an individual claimant (for example because the employee does not qualify for holiday pay) are days of recognized or customary holiday for that claimant².

1 R(U) 3/53; 2 R(U) 2/51; R(U) 4/52

37590 A holiday may be waived by an agreement between the employer and employees that the days in question are to be worked and not taken as days of holiday. But if, in spite of such an agreement the majority of the employees do take the holiday, the

1. agreement to work is ineffective **and**
2. days remain days of holiday both for those who want the holiday and for those who want to work but do not do so because of the absence of the others.

37591 - 37592

Holiday during closure

37593 A holiday that occurs when no work would be available because of short time working is still a holiday¹.

1 R(U) 12/54; R(U) 16/54; R(U) 2/64

37594 If a holiday is arranged, extended or altered by agreement between the employer and employees to absorb a period of shortage of work, the employees concerned are on holiday¹. But an employer

1. may
 - 1.1 lay employees off **or**
 - 1.2 extend an existing holiday for economic reasons **and**
2. may refer to the period of lay off or extension as being a holiday when in fact there is no express or implied agreement by which the days are days of recognized or customary holiday².

But if the practice has continued for a substantial number of years the days may eventually become days of recognized or customary holiday³.

1 R(U) 3/53; 2 R(U) 11/53; 3 CSU 29/49(KL); R(U) 24/59

37595

Dates of holiday

37596 If the precise dates of a holiday are in doubt, the terms of the express or implied agreement covering the holiday should be considered. Unless there is anything to suggest the contrary, it can be accepted that any reference in the agreement to a public or religious holiday the date of which varies year by year (for example Easter or the August bank holiday) recognizes that these holidays will fall on different dates in different years.

37597 Boxing Day is the first weekday after Christmas Day, so it may fall on 26 December or when Christmas Day is a Saturday, on 27 December. But if

1. the agreement states that the holiday is 25 and 26 December (rather than Christmas Day and Boxing Day) **and**
2. there is no other agreed arrangement to the contrary

Boxing Day is not a holiday under the agreement when it falls on 27 December.

37598 Often when a public or religious holiday falls at a weekend or other non-working day, another day is substituted as the day of holiday, between the employer and employees. Where this is the case the substituted day is the day of holiday and the original day is **not** a day of holiday¹.

1 R(U) 16/55

37599 A substitution can only be made by agreement between the employer and employees. It may be covered by a standing agreement or may be agreed as the occasion arises. The employer cannot substitute one for another without agreement.

37600 An agreement governing annual holidays in an establishment may

1. state the dates of the holiday **or**
2. authorize the employer alone to decide the dates each year **or**
3. provide for the dates to be decided each year by negotiation and agreement.

No matter how the dates are fixed they can be changed later by further agreement¹.

1 R(U) 3/53

37601 When an establishment operating shift work closes for a holiday, employees in one shift may be off work for longer than employees in another shift. They are still on holiday throughout the holiday period¹.

1 R(U) 20/52

Example

A holiday in a steel works lasts from Monday evening until Thursday morning. The day shift workers are on holiday for two shifts, Tuesday and Wednesday, and

the night shift workers, of which the claimant is one, are on holiday for three shifts, Monday night, Tuesday night and Wednesday night.

The night shift is 10pm to 6am and the claimant resumes work at 10pm on Thursday.

Taking account of the night workers rules, he is on holiday on Tuesday, Wednesday and Thursday.

37602

In connection with the claimant's employment

37603 Days of recognized or customary holiday must be in connection with the particular employment that the claimant is engaged in. In general a person who takes employment at a particular establishment is subject to the holiday conditions prevailing there¹.

1 R(U) 4/52, para 8; R(U) 18/54, para 5

37604 But there may be evidence that a particular day that is a holiday for most workers is not a holiday applying to the claimant. This can only be decided by examining all of the evidence to see whether there is any feature or condition of the individual claimant's employment in respect of holidays that distinguishes it from other workers who are subject to the same general holiday agreement. Such a situation arises most commonly in cases involving workers in educational establishments.

37605 - 37609

Excess holidays

37610 Sometimes a person has more holidays than usual. For example, the claimant may have a holiday early in the summer and a little later may change jobs or place of employment and have a second, unpaid holiday in the new employment. Some or all of the days in the later holiday may be deemed **not** to be days of recognized or customary holiday if

1. the claimant is engaged in GB under a contract of service **and**
2. the days in question occur while that contract is current **and**
3. in the period between 1 March and the day in question the claimant has had days of holiday, in connection with an employment in GB under a contract of service, at least equal in number to the number of days of holiday in connection with the claimant's current employment (see DMG 37611 - 37617)¹.

The provision requires a comparison between the number of days holiday already taken and the years entitlement.

1 SS (U, S & IVB) Regs, reg 7(1)(h)(i)

37611 The days of recognized or customary holiday to be taken into account when applying DMG 37610 **3**. do **not** include

1. days for which UB has been paid **or**
2. any day of, or day granted in lieu of, a bank holiday or public holiday¹.

1 SS (U, S & IVB) Regs, reg 7(1)(h)(ii)

37612 The years entitlement is the number of days or recognized or customary holiday in the claimant's **current** employment, in the year beginning on the later of

1. 1 March **or**
2. on the first day of the current employment.

If the number of days already taken is equal to or more than the year's entitlement, the day in question is deemed not to be a day of holiday.

37613 Only those days that are days of recognized or customary holiday as in DMG 37570 - 37603 should be counted. For example

1. days of absence from work that were not recognized or customary holidays **or**
2. holidays taken during a spell of unemployment¹

are not taken into account, although the claimant might describe them as holidays. But days **should** be taken into account where in the particular case the claimant and the employer have agreed that they are days of holiday additional to those appropriate in the claimant's employment (for example where the claimant is allowed to take holiday that the claimant had already arranged before beginning the current employment²).

1 R(U) 27/57; 2 R(U) 9/63

37614 The days referred to in DMG 37611 are **not** taken into account in calculating either the days already taken or the year's entitlement. If the day for which benefit is claimed is itself such a day, the excess holiday rule does not apply to it.

37615 The provision only helps the claimant if the day in question is a day of **unpaid** holiday. But in calculating the days of holiday already taken and the year's entitlement, both paid and unpaid holidays can be taken into account.

37616 The excess holiday rule does not apply to a claimant who

1. has a holiday shortly after beginning an employment **and**
2. was unemployed from the previous 1 March until starting the employment.

The total number of days holiday already taken is nil.

37617 The total number of days of holiday already taken is calculated up to and including the day before the day in question. So the total

1. increases day by day during a period of holiday **and**
2. may overtake the year's entitlement during that period.

37618 - 37699

Income Support to Jobseeker's Allowance

JSA to replace IS

Award of IS current in the benefit week that includes 6.10.96

37700 Any award of IS that is current in the benefit week that includes 6.10.96 is to terminate at the end of that benefit week where¹

1. the
 - 1.1 claimant was required to be²
 - 1.1.a available for employment **and**
 - 1.1.b ASE and
 - 1.2 claimant's award of IS would have continued beyond that benefit week
or
2. claimants
 - 2.1 are not required to be available for employment³ **and**
 - 2.2 are not people who have to attend at an office as directed by the Secretary of State⁴ **and**
 - 2.3 do make themselves and declare that they are
 - 2.3.a available for employment **and**
 - 2.3.b ASE.

*1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 4(1); 2 SS CB Act 92, sec 124(1)(d)(i);
3 IS (Gen) Regs, reg 8, Sch 1; 4 SS (C & P) Regs, reg 8*

Example

Helen claimed and was paid IS from 4.7.96.

She is a lone parent with a 14 year old child.

On 7.10.96 she decides to seek employment and declares that she is available for employment and ASE.

The claimant's benefit week ends on Wednesday.

IS was payable for the benefit week ending 9.10.96 and would have continued after that date.

The claimant's award of IS terminates on 9.10.96.

37701 Claimants who are paid IS for 6.10.96 and whose award of IS is terminated as in DMG 37700 are to be treated as having been awarded JSA(IB) for

1. a period commencing on the first day of the benefit week that begins on or after 7.10.96 **and**
2. each benefit week after that until they
 - 2.1 fail to satisfy **or**
 - 2.2 cease to be treated as satisfying

any condition of entitlement to JSA that applies to that claimant¹.

1 JS Act 95, s 40(2)(b); JSA (TP) (96) Regs, reg 7(1)

37702 - 37704

Award of IS starts after the benefit week that includes 6.10.96

37705 Any award of IS that is to start on a date after the benefit week that includes 6.10.96 shall also be cancelled if that award was made because the claimant had to be¹

1. available for employment **and**
2. ASE.

1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 4(2); SS CB Act 92, s 124(1)(d)(i)

37706 Claimants who are paid IS for 6.10.96 on an award that is cancelled as in 37705 are to be treated as having been awarded JSA(IB)

1. from the date that the award of IS would have taken effect **and**
2. that is to continue until such a date as the claimant
 - 2.1 fails to satisfy **or**
 - 2.2 ceases to be treated as satisfying

any condition of entitlement to JSA¹.

1 JS Act 95, s 40(2)(b); JSA (TP) (96) Regs, reg 7(2)

37707 - 37709

Claimants on jury service on 6.10.96

37710 Claimants who

1. were summoned for jury service and were required to serve as a juror on 6.10.96 **and**
2. IS was payable to for the day immediately before the day that the claimant was required to serve as a juror **and**
3. would have been available for employment and ASE on 6.10.96 if they had not been summoned for jury service

their award of IS is to end at the end of the benefit week that includes the last day that they were summoned for jury service and DMG 37701 is to apply as if they referred to that benefit week and not the benefit week that commenced on or after 7.10.96¹.

1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 8(1) & 8(10)

37711 - 37714

Jurors entitled to IS on 6.10.96

37715 DMG 37716 - 37718 applies to claimants who¹

1. were jurors in the benefit week that included 6.10.96 **and**
2. were entitled to IS without satisfying the requirement to be available for employment because they were required to attend court as a juror² **and**
3. were, immediately before commencing the duties as a juror, entitled to IS where the applicable amount was reduced due to³
 - 3.1 actual or notional UB disqualification **or**
 - 3.2 withdrawal on hardship grounds of the requirement to be available for employment or ASE **or**
 - 3.3 failure to attend a Restart course **or**
 - 3.4 receipt of a reduced benefit direction **and**
4. ceased to be a juror before the benefit week that included 6.4.97.

1 JS Act 95, s 40(2)(a); JSA (TP) (96) Regs, reg 12(1); 2 IS (Gen) Regs, reg 8 & Sch 1, para 17; 3 reg 21A & 22

37716 If claimants who fall under DMG 37715 cease to be a juror¹

1. their award of IS is to terminate at the end of the benefit week in which they ceased to be a juror **and**

2. they are to be treated as having been awarded JSA(IB) for a period commencing on the first day of the benefit week after the benefit week in which their award of IS was terminated.

1 JSA (TP) (96) Regs, reg 12(2)

37717 If the amount of JSA(IB) payable to the claimant¹ under DMG 37716 **2.** is less than the claimant's reduced applicable amount under the claimant's award of IS², in the last benefit week to which the claimant's applicable amount was subject to a reduction, then the amount of JSA(IB) that is payable to the claimant should be the higher amount that was applicable in the award of IS³.

1 JS Act 95, s 4(5); 2 IS (Gen) Regs, reg 21A & 22, Sch 2 & 7; 3 JSA (TP) (96) Regs, reg 12(3)

Example

Robin has been in receipt of IS since 10.7.96. He is available for employment and ASE. But his applicable amount is reduced because he is disqualified from receiving UB until 18.12.96, due to him leaving his last employment without just cause.

The claimant's benefit week ends on Wednesday.

He is summoned for jury service, to begin on 30.9.96.

The jury service ends on 17.10.96.

1. His award of IS terminates on 23.10.96 **and**
2. He is treated as having been awarded JSA(IB) from 24.10.96, but at a reduced amount due to the disqualification.

The claimant's applicable amount under the award of JSA is lower than his applicable amount under IS. The amount of JSA awarded to him is the same amount that was awarded under IS.

37718 Any award under DMG 37716 - 37717 is to continue

1. until such a date as the claimant fails to satisfy or ceases to be treated as satisfying any condition of entitlement that applies in their case **or**
2. until the end of the benefit week that includes 6.4.97

whichever is earlier¹.

1 JS Act 95, s 40(2)(d); JSA (TP) (96) Regs, reg 12(4)

37719 - 37724

How the JSA(IB) rules apply differently for claimants entitled to transitional protection

Treated as having entered into a JSAG

37725 Claimants who are awarded JSA(IB) as in DMG 37701 or 37706 are to be treated as having entered into a JSAG

1. while the award of JSA is in force **or**
2. until they actually enter into a JSAG with an Emp O **or**
3. where a reference is made to an DM, until a direction is given as in DMG, Chapter 21¹.

1 JSA (TP) (96) Regs, reg 8(2)

37726 Claimants are treated as having recorded their pattern of availability in their JSAG under 37725 if they restricted the hours that they were available to 40 hours or more in a week, for their claim to

1. UB or
2. IS or
3. UB and IS.

1 reg 6(3) & 8(3)

Dependency increases

37727 Where claimants are entitled to JSA(IB) an amount equal to any dependency increase payable to them with an award of UB for 5.10.96, or 6.10.96 if Sunday substitution applied

1. for an adult dependant who does not reside with them¹ **or**
2. for a child who does not reside with them²

should be included in the applicable amount of the claimant and disregarded in calculating the amount of the claimant's income³.

1 SS CB Act 92, s 82; 2 s 80(2)(a); 3 JSA (TP) (96) Regs, reg 10(9)

37728 But this only applies

1. as long as the claimant continues to satisfy the conditions of entitlement to the dependency increase that applied on that day **or**
2. until the end of the benefit week that includes 7.4.97 whichever is earlier¹.

1 reg 10(9)

37729 - 37779

Part-time students

37780 Claimants who are treated as having been awarded JSA(IB) (see DMG 37701 or 37706) who were on 31.7.96 entitled to IS and were treated as available for employment because they¹

1. were attending a course of education or training of up to 21 hours a week (see DMG 37785 - 37792) **and**
2. satisfied certain conditions for the three month or six month periods immediately preceding the start of the course (See DMG 37795 - 37800) **and**
3. are prepared to terminate the course at once if a suitable vacancy becomes available to them (see DMG 37803 - 37808)

are treated as available for employment for JSA².

1 IS (Gen) Regs, reg 9(1)(c); 2 JSA (TP) (96) Regs, reg 15(1) & 15(2)

37781 Claimants are treated as available for employment for JSA for as long as

1. they continue to satisfy DMG 37780¹ **and**
2. they continue to follow the course of²
 - 2.1 study **or**
 - 2.2 education **or**
 - 2.3 training **or**
 - 2.4 instruction

that they were following on 31.7.96 **and**

3. the award of JSA that arose as in DMG 37701 or 37706 has not terminated³.

1 JSA (TP) (96) Regs, reg 15(2); 2 reg 15(4); 3 reg 15(4)

Example

Joan starts a course of education at a college on 15.7.96.

The total number of hours of supervised study is 19 a week.

For the period 8.4.96 to 14.7.96 she was receiving IS and was required to be available for employment while receiving IS.

She is willing to terminate the course at once if a suitable vacancy arises.

She is continuing the course of education.

She can be treated as available for employment for JSA.

37782 In order to determine whether the award has terminated as in DMG 37780 **3**, any period that is a linked period as in DMG 37019 should be disregarded and two awards separated by a linking period should be treated as a single award¹.

1 JS Act 95, s 40(1)(b); JSA (TP) (96) Regs, reg 15(4)(b)

37783 - 37784

Attending a course

37785 To satisfy DMG 37780 **1**, the claimant must be attending

1. a course of education at an establishment recognized by the Secretary of State as being, or as comparable to, a school or college **or**
2. a course of training or instruction similar to a course for which a training allowance would be payable¹.

1 IS (Gen) Regs, reg 9(1)(c)

37786 If there is doubt about the recognition of a particular establishment, the question should be referred to CBC Schools Section, who will give a decision. This is binding on DMs.

37787 - 37789

Calculating the number of hours

37790 The hours of supervised study at the course of education or training being attended must not exceed 21 a week. For this purpose only the following should be counted, time spent

1. on receiving instruction or tuition, or undertaking supervised study **and**
2. on examinations or practical work **and**
3. taking part in any exercise, experiment or project which is an integral part of the course. This may be on or off the premises provided that it is conducted or supervised by a teacher from the establishment¹.

Time spent on unsupervised study and homework, whether on or off the premises, and meal breaks should **not** be counted².

1 reg 9(3); 2 reg 9(4)

37791 The claimant's statement about hours of attendance should be accepted unless there is room for serious doubt. Where there is doubt the DM may need evidence from the school or college as to the hours of attendance.

37792 If a claimant is attending more than one course of education, the total number of hours of supervised study should be used in deciding entitlement, provided that each course takes place at a recognized educational establishment.

Example

A claimant attending

1. a daytime course of education involving 20 hours a week of supervised study in pursuit of two "A" levels **and**
2. an evening course of education involving three hours a week of supervised study in pursuit of a third "A" level

would exceed the maximum of 21 hours a week.

Note: A person attending an evening class at an educational establishment is not necessarily attending a course of education.

37793 - 37794

Qualifying conditions before starting the course

37795 The conditions to be satisfied in the period **immediately** before the claimant first attended the particular course are that

1. during the **whole** of the previous three months the claimant must have been
 - 1.1 receiving
 - 1.1.a UB **or**
 - 1.1.b IB **or**
 - 1.1.c IS - but only if the claimant was required to be available for employment, or exempt from the availability condition on the grounds of incapacity for work¹ **or**
 - 1.2 on a YT course² **or**
2. during the previous six months the claimant must have been
 - 2.1 for a total of three months, but not necessarily continuously
 - 2.1.a receiving UB **or**
 - 2.1.b receiving IB **or**
 - 2.1.c receiving IS - but only if the claimant was required to be available for employment, or exempt from the availability condition on the grounds of incapacity for work¹ **or**
 - 2.1.d on a YT course as in 1. **and**

2.2 engaged in appropriate work (see DMG 37797) throughout the remainder of the six months

2.2.a after the three months period in **2.1** and before the start of the course **and**

2.2.b between any breaks in receiving UB, IB or IS or being on a YT course as in **1.**³

1 IS (Gen) Regs, reg 9(3); 2 reg 9(2)(a); 3 9(2)(b)

37796 Young persons may attend a YT course as **either**

1. employees, when they should normally be regarded as being in remunerative work and therefore excluded from IS **or**
2. trainees, when they should not be required to be available for employment as a condition of entitlement to IS¹.

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

37797 For the purposes of DMG 37795 **2.2** the term appropriate work means

1. remunerative work as in DMG Chapter 20 **or**
2. other work, the payments from which disentitled the claimant from a qualifying benefit¹.

1 reg 9(3)

37798 The period of

1. three months as in DMG 37795 **1.** **or**
2. six months as in DMG 37795 **2.**

must fall **wholly** after the claimant's terminal date¹.

1 reg 9(2)

37799 Terminal date means¹ the first of the following dates to occur after the person ceases F/T education

1. the first Monday in January **or**
2. the Monday following Easter Monday **or**
3. the first Monday in September.

1 Child Benefit (General) Regs, reg 7

37800 In considering the three months or six months period in DMG 37795 it is important to identify the start of the claimant's course. In cases where there has been no break in the claimant's education, a course should be treated as

1. a **new** course if it is obviously different because it involves
 - 1.1 the study of different or additional subjects, or the same subjects at a different level **or**
 - 1.2 attendance at a different establishment **or**
 - 1.3 new studies added where part of the original curriculum has been dropped **or**
2. a **continuation** of the existing course if exactly the same subjects are being studied at the same level but for more hours, for example 20 hours instead of 14.

If in doubt whether a course is a new course, the DM should check with the school or college.

37801 - 37802

Readiness to terminate the course

37803 It is a condition of the 21 hour rule that claimants must be prepared to terminate courses **immediately** a suitable vacancy becomes available to them¹.

1 reg 9(1)(c)

37804 The DM should consider the claimant's statement of intentions when deciding whether the condition in DMG 37803 is satisfied. A written undertaking should be accepted.

37805 The fact that a claimant is studying for specific qualifications or certificates is not, of itself, sufficient reason for failing to accept a written undertaking. But a claimant who is, for example

1. studying for "A" levels with the intention of going on to university **or**
2. who has paid a substantial fee to attend the course

may present grounds for reasonable doubt. Claimants refusing to give a written undertaking, should be treated as failing to satisfy this condition.

37806

YT place refused or abandoned

37807 A young person may refuse to take up, or may abandon

1. a YT place **and**
2. wish to
 - 2.1 continue a course of study for 21 hours a week or less **or**
 - 2.2 start a course of study for 21 hours a week or less.

In these circumstances further enquiry may be necessary before it is decided that the claimant is not prepared to terminate the course to take a suitable job. This may apply even where there has been a reduction in the applicable amount in cases of actual or notional UB disqualification.

37808 Evidence in writing should be required as to

1. why the YT place was refused or abandoned **and**
2. whether the person is prepared to terminate the course immediately a suitable vacancy becomes available.

Where the claimant's reasons clearly indicate commitment to completing the course, or there is a refusal to give a written undertaking, the DM should determine that the condition in DMG 37803 has not been satisfied.

37809 - 37814

Full-time students

37815 Claimants who were on 31.7.96 attending a course of study (DMG Chapter 30) as a F/T student (DMG Chapter 30) who under IS¹

1. were exempt from the requirement to be available for employment² because they were
 - 1.1 a lone parent responsible for a child (a person under the age of 16) who is a member of the household³ **or**
 - 1.2 a lone foster parent responsible for a child⁴ **or**
 - 1.3 a disabled student, including a deaf student⁵ **or**
 - 1.4 a person in receipt of a training allowance⁶ (a training allowance is an allowance payable as in DMG 37034) **or**
 - 1.5 a person who has been granted refugee status who is learning English⁷
or

1.6 a person from abroad whose funds from abroad have been temporarily disrupted⁸ **or**

2. were a student who has a partner who is also a student and who, or whose partner, is treated as responsible for a child or young person⁹

is treated as a PT student¹⁰. DMs should note that **2.** can only apply during the students summer vacation.

*1 IS (Gen) Regs, reg 10(1)(h); 2 reg 10(1)(h)(i); 3 Sch 1, para 1; 4 Sch 1, para 2;
5 Sch 1, para 7-7B; 6 Sch 1, para 11; 7 Sch 1, para 16; 8 Sch 1, para 20; 9 reg 10(1)(h)(ii);
10 JSA (TP) (96) Regs, reg 15(3)(b)*

37816 Claimants are treated as PT students for as long as

1. they continue to satisfy DMG 37815¹ and

2. they continue to follow the course of²

2.1 study or

2.2 education **or**

2.3 training **or**

2.4 instruction

that they were following on 31.7.96 **and**

3. the award of JSA that arose as in DMG 37701 or 37706 has not terminated³.

1 JSA (TP) (96) Regs, reg 15(3)(b); 2 reg 15(4); 3 reg 15(4)

37817 In order to determine whether the award has terminated as in DMG 37816 **3.** any period that is a linked period as in DMG 37019 should be disregarded and two awards separated by a linked period should be treated as a single award¹.

1 reg 15(4)(b)

37818 - 37824

Treatment of JSA(Cont) as income other than earnings

37825 In the TPP, any payment of JSA(Cont) that is to be taken into account in deciding the income of a person (DMG Chapter 28) should be treated as if it was payable on a daily basis for six days a week¹.

1 reg 17(1)

37826 This applies only in a case where JSA(Cont) is payable to a person who was entitled to UB in the benefit week that included 5.10.96, or 6.10.96 if Sunday substitution applied in that week¹.

1 reg 17(2)

37827 The days of the week for which the payment is treated as made is to be the same days as those for which UB was paid in the benefit week that included 5.10.96, or 6.10.96 if Sunday substitution applied in that week¹.

1 reg 17(3)

37828 The amount payable for each of the six days should be calculated¹

1. by dividing the total benefit payable for the week by six **or**
2. if payment was made for a part-week, by dividing the total benefit payable by the number of days in the part-week and assigning no amount to the remaining days.

1 JSA (TP) (96) Regs, reg 17(4)

37829 - 37834

Claimants subject to a reduction in benefit - JSA(IB)

37835 For claimants who, on 6.10.96, were entitled to IS at a reduced rate due to¹

1. actual (see DMG 37385) or notional UB disqualification **or**
2. withdrawal on hardship grounds of the requirement to be available for employment or ASE **or**
3. failure to attend a Restart course **or**
4. receipt of a reduced benefit reduction

their award of JSA(IB) under DMG 37701 or DMG 37706 is payable at the rate appropriate as in DMG, Chapter 23 or Chapter 24, reduced by a sum equal to the amount that their IS had been reduced and only the balance, if any, is to be payable².

1 IS (Gen) Regs, reg 21A & 22; 2 JS Act 95, s 40(2)(f); JSA (TP) (96) Regs, reg 16(3)

37836 Claimants who had an award of IS on 6.10.96 whose weekly amount was reduced after 6.10.96 due to¹ a failure to attend a Restart course²

1. shall have their JSA(IB) reduced by a sum equal to the amount that their IS would have been reduced **and**
2. any denial of JSA due to a sanction that for the period that the claimant's IS would have been reduced should be disregarded.

1 reg 16(4); 2 IS (Gen) Regs, reg 21A

37837 The reduction in DMG 37835 shall end¹

1. in a case where the claimant was disqualified for receiving UB and DMG 37385 applies, on the day after the day the balance of the period mentioned in that paragraph ends **or**
2. where a claim for UB by the claimant, or a question that arose in connection with his award of UB, had not been decided on 6.10.96 and DMG 37835 **1.** applies, on the day that claim or question is determined in the claimant's favour **or**
3. except in a case that has already ended as in **1.** or **2.**, on the earlier of
 - 3.1 the date the award of JSA(IB) terminates **or**
 - 3.2 the benefit week that includes 6.4.97.

1 JS Act 95, s 40(2)(f); JSA (TP) (96) Regs, reg 16(5)

37838 Where, due to a sanction¹ or DMG 37385², a claimant's JSA(IB) is not payable, for a period ending before or during the benefit week that includes 6.4.97 and that period ends³

1. during a benefit week, the award of JSA(IB) payable under DMG Chapter 35⁴ or DMG 37835⁵ ends on the last day of the previous benefit week **or**
2. on the last day of a benefit week, the award of JSA(IB) payable under DMG, Chapter 35⁶ or DMG 37835⁷ ends on the last day of that benefit week.

| *1 JS Act 95, s 19; 2 SS CB Act 92, s 28; 3 JSA (TP) (96) Regs, reg 16(6); 4 JS Act 95, s 20(4);
5 JSA (TP) (96) Regs, reg 16(3); 6 JS Act 95, s 20(4); 7 JSA (TP) (96) Regs, reg 16(3)*

37839 In deciding whether an award has terminated as in DMG 37837 **3.1**, periods of entitlement to JSA(IB)

1. separated by eight weeks or less shall link **and**
2. separated by more than eight weeks shall not link.

In deciding whether any particular periods link, any period that is a linked period as in DMG 37019 should be disregarded¹.

1 reg 16(7)

37840 - 37844

Questions that cannot be decided immediately - JSA(IB)

- 37845 If
1. when considering a claim or question relating to JSA(IB), it appears to the DM that the claimant's entitlement to JSA (IB) or the rate or amount of JSA(IB) depends on the amount of housing costs to be included in the claimant's applicable amount **and**
 2. DM is satisfied that not all the housing costs can be decided immediately the DM should decide the claim or question on the assumption that the housing costs to be included in the claimant's applicable amount are those that can be decided immediately¹.

1 JSA (TP) (96) Regs, reg 18(1)(a)

- 37846 When the claimant's full housing costs have been ascertained the decision as in DMG 37845 should be revised or superseded to take into account the correct housing costs¹.

1 reg 18(3)

- 37847 If
1. when considering a claim or question relating to JSA(IB), it appears to the DM that the claimant's entitlement to, the rate or amount of that benefit depends on whether a sanction should be imposed for any period or whether the claimant's applicable amount includes SDP¹ **and**
 2. the DM is satisfied that the questions cannot be decided immediately
- the DM should decide the claim or question on the assumption that the question will be adverse to the claimant².

1 IS (Gen) Regs, reg 17(1)(d), 18(1)(e) & Sch 2, para 3; 2 JSA (TP) (96) Regs, reg 18(1)(c) & (2)

- 37848 In deciding whether the claimant satisfies the conditions for entitlement to

1. JSA(IB) **or**
2. JSA(Cont)

and the DM is satisfied that one of those questions cannot be decided immediately, the DM should decide the claim based on the question that can be decided¹.

1 reg 18(1)(b)

- 37849 When a question as in DMG 37847 - 37848 is actually decided, the first decision should be revised or superseded to give effect to the second decision¹.

1 reg 18(3)

- 37850 DMG 37845 - 37849 apply only during the TPP¹

1 reg 18

37851 - 37854

Claims for Jobseeker's Allowance

37855 Where a claimant makes a claim for JSA on or after 7.10.96, the DM may treat that claim as a claim for

1. IS as well as for JSA **or**
2. IS only.

Any claim that is treated as a claim for IS should be treated as made on the day the claim for JSA was made¹.

1 JSA (TP) (96) Regs, reg 19

Example

On 7.11.96 Irene attends the Jobcentre to claim JSA. She also wants to claim for the period from 1.9.96.

She claims JSA. Her benefit week ends on a Wednesday.

The DM treats the claim as a claim for

1. IS for the period 1.9.96 to 9.10.96 **and**
2. JSA from 10.10.96.

37856 - 37999

Appendix 1

Common courses of study

BTEC First Certificates and Diplomas

This is normally a one year programme and is considered equivalent to several GCSEs - the Certificate is usually studied P/T and the Diploma F/T.

BTEC National Certificates and Diplomas

This is normally a two year course and is considered equivalent to two or three A levels - the Certificate is usually studied P/T and the Diploma F/T.

BTEC Higher National Certificates and Diplomas

This is normally a two year course and is considered equivalent to a degree - the Certificate is usually studied P/T and the Diploma F/T.

GNVQs and NVQs

These are work-related qualifications introduced in 1993. They are gradually replacing existing BTEC qualifications in selected subjects. BTEC Firsts will be replaced by BTEC Intermediate GNVQs and BTEC Nationals by BTEC Advanced GNVQs. NVQs relate to existing qualifications as shown below

NVQ level 2 = Intermediate GNVQs, BTEC Firsts and GCSEs

NVQ level 3 = Advanced GNVQ, BTEC Nationals and A levels

NVQ level 4 = BTEC Higher Nationals and Degrees.

Appendix 2

Lower earnings limit

From	To	Amount
6.4.89	5.4.90	£43
6.4.90	5.4.91	£46
6.4.91	5.4.92	£52
6.4.92	5.4.93	£54
6.4.93	5.4.94	£56
6.4.94	5.4.95	£57
6.4.95	5.4.95	£58
6.4.96		£61

Appendix 3

Weekly earnings rule

Example

In this example

1. the claimant's claim to JSA(Cont) covers the period in this example **and**
2. the claimant has been claiming (UB and then JSA(Cont)) for two months **and**
3. JSA(Cont) was paid for 31.10.96 to 6.11.96 **and**
4. the day specified for the purposes of claiming is Wednesday and proper notice was given **and**
5. the claimant is paid £30 for each day worked **and**
6. there are no allowable expenses **and**
7. all other conditions for receipt of JSA(Cont) are satisfied.

Thursday 7.11.96	Friday 8.11.96	Saturday 9.11.96	Sunday 10.11.96	Monday 11.11.96	Tuesday 12.11.96	Wednesday 13.11.96
No Work	No Work	No Work	No Work	Worked	Worked	Worked
Thursday 14.11.96	Friday 15.11.96	Saturday 16.11.96	Sunday 17.11.96	Monday 18.11.96	Tuesday 19.11.96	Wednesday 20.11.96
No Work	Worked	No Work	No Work	Worked	No Work	Worked

1st week (ending 13.11.96)

7.11.96 The days that earnings are paid for (11.11.96 - 13.11.96) are after the day being considered (7.11.96).

The DM considers DMG 37329 **2**. All of the six days before 7.11.96 (31.10.96 - 6.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**

4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 11.11.96 - 13.11.96 can be disregarded and 7.11.96 is not for disallowance.

8.11.96 The days that earnings are paid for (11.11.96 - 13.11.96) are after the day being considered (8.11.96).

1. The DM considers 37329 **2.** All of the six days before 8.11.96 (1.11.96 - 7.11.96) are days on which the claimant
2. satisfies the conditions of entitlement to JSA **and**
3. satisfies the engaged in employment rules **and**
4. satisfies the weekly earnings rules **and**
5. satisfies the first contribution condition **and**
6. satisfies the second contribution condition **and**
7. is not entitled to IS.

The earnings for 11.11.96 - 13.11.96 can be disregarded and 8.11.96 is not for disallowance.

9.11.96 The days that earnings are paid for (11.11.96 - 13.11.96) are after the day being considered (9.11.96).

The DM considers 37329 **2.** All of the six days before 9.11.96 (2.11.96 - 8.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 11.11.96 - 13.11.96 can be disregarded and 9.11.96 is not for disallowance.

10.11.96 JSA(Cont) is not payable as this day is a Sunday.

11.11.96 Earnings are paid for 11.11.96. This day is not before or after the day being considered (11.11.96). So they cannot be disregarded.

The other days that earnings are paid for (12.11.96 - 13.11.96) are **after** the day being considered (11.11.96).

The DM considers DMG 37329 **2.** All of the six days before 11.11.96 (4.11.96 - 9.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 12.11.96 - 13.11.96 are disregarded and 11.11.95 is not for disallowance under the weekly earnings rule.

But as the earnings for 11.11.96 cannot be disregarded and are £30 11.11.96 is for disallowance due to the daily earnings rule.

12.11.96 Earnings are paid for 12.11.96. This day is not before or after the day being considered (12.11.96). So they cannot be disregarded.

The other days that earnings are paid for are before (11.11.96) and after (13.11.96) the day being considered (12.11.96).

The DM considers DMG 37329 **1.** As all of the six days before the first day of the seven day period (31.10.96 - 6.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 11.11.96 cannot be disregarded.

The DM considers DMG 37329 **2.** As 11.11.96 has been disallowed not all of the six days before 12.11.96 (5.11.96 - 11.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**

4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 13.11.96 cannot be disregarded.

The earnings to be taken into account when considering 12.11.96 are £90. 12.11.96 is for disallowance.

13.11.96 Earnings are paid for 13.11.96. This day is not before or after the day being considered (13.11.96). So they cannot be disregarded.

The other days that earnings are paid for are before (11.11.96 - 12.11.96) the day being considered (13.11.96).

The DM considers DMG 37329 1.. As all of the six days before the first day of the seven day period (31.10.96 - 6.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 11.11.96 - 12.11.96 cannot be disregarded.

The earnings to be taken into account when considering 13.11.96 are £90. 13.11.96 is for disallowance.

2nd week (ending 20.11.96)

14.11.96 The days that earnings are paid for (15.11.96, 18.11.96 and 20.11.96) are after the day being considered (14.11.96).

The DM considers DMG 37329 2.. As 11.11.96 - 13.11.96 are disallowed not all of the six days before 14.11.96 (7.11.96 - 13.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 15.11.96, 18.11.96 and 20.11.96 cannot be disregarded. The earnings to be taken into account when considering 14.11.96 are £90. 14.11.96 is for disallowance.

15.11.96 Earnings are paid for 15.11.96. This day is not before or after the day being considered (15.11.96). So they cannot be disregarded.

The other days that earnings are paid for (18.11.96 and 20.11.96) are after 15.11.96.

The DM considers DMG 37329 2.. As 11.11.96 - 14.11.96 are disallowed not all of the six days before 15.11.96 (8.11.96 - 14.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 18.11.96 and 20.11.96 cannot be disregarded. The earnings to be taken into account when considering 15.11.96 are £90. 15.11.96 is for disallowance.

16.11.96 The days that earnings are paid for are before (15.11.96) and after (18.11.96 and 20.11.96) the day being considered (16.11.96).

The DM considers DMG 37329 1.. As some of the days (7.11.96 - 9.11.96) in the six days before the first day in the seven day period (7.11.96 - 13.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 15.11.96 cannot be disregarded.

The DM considers DMG 37329 2.. As 11.11.96 - 15.11.96 are disallowed not all of the six days (9.11.96 - 15.11.96) before the day being considered are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**

3. satisfies the weekly earnings rules **and**

4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

So the earnings for 18.11.96 and 20.11.96 cannot be disregarded.

The earnings to be taken into account when considering 16.11.96 are £90. 16.11.96 is for disallowance.

17.11.96 JSA(Cont) is not payable as this is a Sunday.

18.11.96 Earnings are paid for 18.11.96. This day is not **before** or **after** the day being considered (18.11.96). So they cannot be disregarded.

The other days that earnings are paid for are **before** (15.11.96) and **after** (20.11.96) 18.11.96.

The DM considers DMG 37329 **1.** As some of the days (7.11.96-9.11.96) in the six days before the first day of the seven day period (7.11.96-13.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 15.11.96 cannot be disregarded.

The DM considers DMG 37329 **2.** As 11.11.96-16.11.96 are disallowed not all of the six days (11.11.96 - 16.11.96) before 18.11.96 are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

The earnings for 20.11.96 cannot be disregarded.

The earnings to be taken into account when considering 18.11.96 are £90. 18.11.96 is for disallowance.

19.11.96 The days that earnings are paid for are **before** (15.11.96 and 18.11.96) and **after** (20.11.96) the day being considered (19.11.96).

The DM considers DMG 37329 **1.** As some of the days (7.11.96 - 9.11.96) of the six days before the first day of the seven day period (7.11.96 - 13.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 15.11.96 and 18.11.96 cannot be disregarded.

The DM considers DMG 37329 **2.** As 12.11.96 - 18.11.96 are disallowed not all of the six days (12.11.96 - 18.11.96) before 19.11.96 are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**
4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 20.11.96 cannot be disregarded.

The earnings to be taken into account when considering 19.11.96 are £90. 19.11.96 is for disallowance.

20.11.96 Earnings are paid for 20.11.96. This day is not before or after the day being considered (20.11.96). So they cannot be disregarded.

The other days that earnings are paid for (15.11.96 and 18.11.96) are before the day being considered (20.11.96).

The DM considers DMG 37329 **1.** As some of the days (7.11.96 - 9.11.96) of the six days before the first day of the seven day period (7.11.96 - 13.11.96) are days on which the claimant

1. satisfies the conditions of entitlement to JSA **and**
2. satisfies the engaged in employment rules **and**
3. satisfies the weekly earnings rules **and**

4. satisfies the first contribution condition **and**
5. satisfies the second contribution condition **and**
6. is not entitled to IS.

the earnings for 15.11.96 and 18.11.96 cannot be disregarded.

The earnings to be taken into account when considering 20.11.96 are £90. 20.11.96 is for disallowance.

The claimant is entitled to JSA(Cont) for 7.11.96 - 9.11.96 in the first week (ending 13.11.96) but

1. the rest of the days in the first week (11.11.96 - 13.11.96); **and**
2. all of the days in the second week (ending 20.11.96)

are disallowed.

Appendix 4

Night workers

- 1 The expression "night worker" is not defined in legislation. The legislation¹ applies to a person whose period of employment begins on one day and extends over midnight into the next day². It does not apply to persons whose employment lasts for more than 24 hours on either side of midnight³. For example it would not apply to continuous employment from 6pm on Monday to 2am on Wednesday or to continuous employment throughout a longer period.

1 SS (U, S & IVB) Regs, reg 5; 2 R(I) 31/55; 3 R(U) 18/56

- 2 The effect of the night worker rules is that where a period of employment begins on one day and extends over midnight into the following day¹, the claimant is treated
1. as having been employed only on the first day if the period of employment before midnight is longer than the period after midnight
 2. as having been employed only on the second day if the period of employment after midnight is longer than the period before midnight
 3. as having been employed only on the second day if the period of employment both before and after midnight is of equal duration.

1 SS (U, S & IVB) Regs, reg 5(1)

Examples

1. A person who worked from 6pm Monday to 5am Tuesday worked on Monday.
2. A person works from 6pm Monday until 7am on Tuesday or from 7pm Monday until 5am on Tuesday, worked on Tuesday.

The night worker rules do not apply to a person who although intending to work after midnight, ceases work before midnight.

- 3 Since the night worker rules refer to a period of employment, the spell of night work must constitute one continuous period¹. Where there is evidence of a definite break, other than a normal break, in the continuity of the employment, it may be necessary to regard the employment before and after the break as two distinct periods of employment and to apply the regulation to one period only. Separate periods of work must be treated separately. To determine which of two days are the day worked it is necessary to calculate the hours worked both before and after midnight. Any work done on earlier or later shifts on either of the two days should be disregarded purposes.

1 reg 5(1)

4 Meal breaks should be treated as follows

1. If a night worker is paid for a meal interval, for example is paid by the shift, the meal break should be included in the calculation of the total time worked.
2. If a night worker is not paid for a meal interval (this is commonly the case when payment is by the hour) the meal break should be deducted from the shift hours to arrive at the actual hours of employment (even though, this being a normal break, the shift is regarded as constituting one continuous period of employment)

Example

If a night shift begins at 6pm and ends at 5am, but there is a meal break from 9pm to 10pm for which wages are not paid, the employment before midnight should be regarded as of equal duration to that after midnight.

The content of the examples in this document (including use of imagery) is for illustrative purposes only