Chapter R2 - JSA conditions of entitlement

Contents

General rules on entitlement

Introduction........................................................................................................ R2001
JSA - basic conditions.................................................................................... R2003
  Definition of training allowance .......................................................... R2008
Under pension age...................................................................................... R2010
JSA - contribution conditions .................................................................. R2015

Remunerative work - introduction.......................................................... R2200
Does the claimant have employment......................................................... R2203
Meaning of remunerative work .............................................................. R2210
Treated as in or not in remunerative work ............................................. R2213
Work done for payment or in expectation of payment ....................... R2230
Work for no monetary reward................................................................. R2231
Payment in kind....................................................................................... R2232
Expectation of payment.......................................................................... R2233
Self-employed earners............................................................................ R2234
Sale of goods.......................................................................................... R2236
  Business start up ................................................................................ R2237
Company directors.................................................................................. R2239

Establishing hours of work

Introduction ............................................................................................... R2250
JSA - carers and specified occupations..................................................... R2252
Counting the hours
  Flexible working schemes................................................................... R2258
  Overtime ............................................................................................. R2259
  Breaks .............................................................................................. R2260
  Night Duty ....................................................................................... R2261
  Evidence of hours ......................................................................... R2262
Company directors................................................................................ R2263
Musicians ......................................................................................... R2264
Self-employed .................................................................................. R2265
Teachers ......................................................................................... R2278
Calculating average hours ................................................................ R2293
Identifying a recognizable cycle .................................................... R2294
Permanent or indefinite contract ..................................................... R2295
Fixed term contracts and casual workers ........................................ R2296
Supply teachers ............................................................................... R2297
Extra work ....................................................................................... R2298
Probation .......................................................................................... R2299
Recognizable cycle established ....................................................... R2306
Periods when a person does not work ............................................. R2307
  Sickness, maternity leave, ordinary paternity leave, additional
  paternity leave, adoption leave and periods of unauthorised absence R2308
  Holidays or periods of no work ...................................................... R2309
Calculating the number of hours for which a person is
  engaged in work ............................................................................ R2311
Calculating the average hours .......................................................... R2315
Yearly cycle with school holidays or similar vacations ................. R2316
  Ancillary school workers ............................................................... R2318
No recognizable cycle established
  Estimating future hours ............................................................... R2320
  Averaging past hours .................................................................. R2322
  Short-time workers .................................................................... R2327
Changes to the normal hours .......................................................... R2338
  Seasonal workers ..................................................................... R2339
  Averaging the hours .................................................................. R2340
  Agency and casual workers ....................................................... R2341

People treated as in remunerative work

  Introduction ............................................................................... R2390
  Absence from work without good cause ..................................... R2397
    Good cause ............................................................................. R2399
Recognized, customary or other holiday................................. R2410
Payment on termination or interruption of employment ............... R2435

People treated as not in remunerative work

Introduction............................................................................... R2464
Charity or voluntary workers and volunteers ......................... R2467
  Meaning of voluntary organization.................................... R2468
  Meaning of volunteer.......................................................... R2469
Engaged on a training scheme ............................................... R2470
Engaged in specific occupations............................................ R2474
Councillors............................................................................. R2475
  Meaning of councillor.......................................................... R2476
Foster parents and people providing respite care
  Foster parents................................................................. R2478
  People providing respite care.............................................. R2479
Sports awards......................................................................... R2480
  Meaning of sports award.................................................... R2481
  Work experience.............................................................. R2482

People in relevant education

What constitutes relevant education

Introduction............................................................................... R2555
Definition of a qualifying young person................................. R2556
What is approved training....................................................... R2557
When is a person not a qualifying young person.................... R2558
What is relevant education..................................................... R2559
What is a student loan............................................................ R2561
Undertaking a course............................................................. R2562
What is a modular course....................................................... R2564
Person not regarded as undertaking a course......................... R2565
Being treated as a qualifying young person.......................... R2566

Waiting days............................................................................. R2701
Claimants who do not have to serve waiting days.................... R2702
Limited capability for work

Introduction ........................................................................................................ R2960

Treated as capable/not having limited capability for work -
short periods of sickness .................................................................................. R2961

   Evidence of incapacity/limited capability for work ................................ R2962

Already treated as capable/not having limited capability for work twice
or more in the jobseeking period or year ....................................................... R2975

When do these treated as provisions not apply .......................................... R2976

NHS treatment abroad .................................................................................... R2977

   Evidence of incapacity/limited capability for work ............................... R2978

Treated as capable – personal capability assessment
(incapacity for work) ........................................................................................ R2985

Treated as not having limited capability for work (employment and
support allowance) ......................................................................................... R2986

Capable of work

   Meaning of capable of work ................................................................. R2988

   Medical evidence ...................................................................................... R2997
Chapter R2: - JSA conditions of entitlement

General rules on entitlement

Introduction

R2001 This Chapter contains guidance on the basic conditions of entitlement for JSA plus detailed guidance on

1. remunerative work and
2. relevant education.

R2002

JSA - basic conditions

R2003 People are entitled to JSA if they

1. have accepted a claimant commitment and
2. are not in remunerative work and
3. are not involved in a TD and
4. are capable of work/do not have LCW and
5. are not in relevant education and
6. are in GB (except for certain temporary absences abroad) and
7. are under pension age and
8. satisfy the contribution-based conditions

1 JS Act 95, s 1(2); 2 s 1(2)(b); 3 s 1(2)(e); 4 s 14; 5 ESA (Trans Provs) Regs, reg 5;
6 JS Act 95, s 1(2)(g); 7 s 1(2)(i); 8 s 1(2)(h); 9 s 1(2)(d)

R2004 – R2007

Definition of training allowance

R2008 A training allowance is an allowance 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 Skills Development Scotland or
1.2.e the Young People’s Learning Agency for England, the Chief Executive of Skills Funding or
1.2.f Welsh Ministers and

2. to people for
   2.1 their maintenance or
   2.2 a member of their family and

3. for the period, or part of the period, that they are taking part in a course of training or instruction
   3.1 provided by, or under arrangements made with, that department or
   3.2 approved by that department in relation to the person or
   3.3 so provided or approved by or on behalf of the
      3.3.a Secretary of State for Work and Pensions or
      3.3.b Scottish Enterprise or
      3.3.c Highlands and Islands Enterprise or
      3.3.d Skills Development Scotland or
      3.3.e Welsh Ministers.

Examples of schemes which pay training allowances are Training for Work in Scotland, Work Based Learning - Skills Based in Wales and Employment Rehabilitation.

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

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 R(IS) 10/98

R2009 A training allowance does not include

1. an allowance paid by a government department to, or for a person who is
   1.1 following a course of FTE (unless that course is arranged under prescribed legislation) or
   1.2 training to be a teacher or

2. an allowance paid by a LA or a voluntary organization or

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

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2; 2 JSA Regs, reg 1(3); 3 R(P) 13/56; 4 R(P) 5/56
Under pension age

R2010 To be entitled to JSA a person must be under pension age1. Pension age is2

1. for a man - the 65th birthday or
2. for a woman
   2.1 born before 6.4.50 - the 60th birthday or
   2.2 born after 5.4.55 - the 65th birthday or
   2.3 born 6.4.50 to 5.4.55 inclusive - see Appendix 1 to this Chapter.

1 JS Act 95, s 1(2)(h); 2 Pensions Act 95, Sch 4, Part 1

JSA - contribution conditions

R2015 In addition to the conditions at DMG R2003 1. - 7., to be entitled to JSA1 a person must

1. satisfy contribution conditions and
2. not have earnings in excess of the prescribed amount

See ADM Chapter R1: Jobseeking periods and Jobseekers allowance contribution conditions for detailed guidance

1 JS Act 95, s 2

Remunerative work - introduction

R2200 Being in remunerative work affects entitlement to JSA1. In all cases, before the DM applies the law to establish how many hours a person is working, they must decide whether or not the work is continuing.

1 JS Act 95, s 1(2)(e)

R2201 JSA is a personal benefit and is not payable for a partner1. The remunerative work exclusion therefore applies only to the claimant.

1 JS Act 95, s 4(1)

Does the claimant have employment

R2202 DMs should decide that a person is not in remunerative work if they do not have any employment and are between jobs. DMs will need to decide whether employment
has ended if someone has been engaged in remunerative work (see ADM Chapter S2: Employed earnings).

R2204 DMs should decide that a person is still in employment and not between jobs if

1. the contract of employment (which can be written or verbal) is still current or
2. the contract of employment ends at the beginning of what would be a period of absence even if the contract continued (e.g. a school holiday) and it is expected that the person will return to employment after that period because
   2.1 there is an express agreement (written or verbal) or
   2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

R2205 Off-shore workers are an example of those workers who may be employed on an ad-hoc basis. They may be contracted by companies to perform work for a specific period with no obligations on either party to provide work or to accept offers of work.

Example

Dennis works for an oil company as a welder on oil rigs. He does not have a recognizable pattern of work as the company request his services on an irregular basis and he is not guaranteed a specific amount of work in any period. Dennis claims JSA for a period when he is not working. On looking at the facts of Dennis' past work for the company, the DM is satisfied that there has been a continuing provision of employment that has been accepted by Dennis, and that it averages 16 hours or more a week. The DM decides that there is a continuing relationship and that Dennis continues to be in remunerative work during periods when he is on-shore and not physically working nor being paid.

R2206 It is a question of fact for the DM whether the work is continuing or not. DMs will need to consider such things as

- the type and nature of the work
- the frequency and length of the contracts/periods of work
- the process of securing the work
- the employment situation/opportunities in the area
- whether there is a continuing relationship between the claimant and the employer
- whether there is evidence of the relationship between the claimant and the employer having ended, e.g. the production of a P45.

This list is not prescriptive or exhaustive and other considerations may be equally valid in the circumstances of each case.
DMs should also look at whether there is a mutual expectation between the person and the employer that they will resume after a period of no work. This mutual expectation should be more than just a hope of re-employment.

**Example**

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

**Meaning of remunerative work**

Remunerative work\(^1\) is work for which payment is made, or which is done in expectation of payment and in which the claimant is engaged for not less than

1. 16 hours a week **or**
2. 16 hours a week on average where the hours of work fluctuate.

\(^1\) JSA Regs 13, reg 42(1)

**Treated as in or not in remunerative work**

A person engaged in remunerative work is not necessarily excluded from JSA. In certain circumstances a person who is actually in remunerative work may be treated as not being in remunerative work (see DMG R2464)\(^1\).

\(^1\) JSA Regs 13, reg 44

Also, there are circumstances in which a person who is not actually in remunerative work may be treated as engaged in remunerative work\(^1\) (see DMG R2390).

\(^1\) JSA Regs 13, reg 43
Work done for payment or in expectation of payment

R2230  Whether or not a person is in remunerative work is a question of fact rather than legal interpretation. The DM should look at all the relevant facts in each case. Regard work as remunerative if

1. payment is made for it or
2. it is done in expectation of payment1.

Remunerative does not mean profitable (see DMG R2234).

1 JSA Regs 13, reg 42(1)(a)

Work for no monetary reward

R2231  A person cannot be in remunerative work if the work done is neither paid nor done in expectation of payment. If the only “payment” is notional earnings1 the work cannot be treated as remunerative.

1 JSA Regs 13, reg 63(4)

Payment in kind

R2232  “Payment” includes payment in kind provided it is made in return for work done. It does not matter that the definition of earnings excludes any payment in kind.

Example 1

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

1. he can still satisfy his claimant commitment and
2. the free meals and accommodation are notional earnings.

Example 2

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

Expectation of payment

R2233  Work “done in expectation of payment” means more than a mere hope that payment will be made at a future date1. There should be a realistic expectation of payment. An established author writing a book in his field has a realistic expectation of
payment. A person who is not an established author and has no agreement for publication does not have a realistic expectation of payment.

1 R(IS) 1/93

Self-employed earners

R2234 Where a person who has been a self-employed earner claims JSA, there are four questions to consider¹ to decide if the claimant is engaged as a self-employed earner.

1. is the person still trading
2. if the answer to 1. is yes, is the person
   2.1 carrying out activities connected to the self-employment in the weeks to which the claim is related or
   2.2 to be treated as engaged in work² in a period of non-activity which is a normal incident of self-employment, whether as a part of a cycle of work or otherwise
3. if the person is engaged in work, is it remunerative work, i.e. is the work for 16 hours or more per week
4. if the person is not in remunerative work, are they in receipt of earnings to be taken into account and for what period they are to be taken into account.

1 R(JSA) 1/09; 2 JSA Regs 13, reg 43

R2235 A person providing a service for payment is engaged in remunerative work regardless of profit or loss. There can be an expectation of payment derived from profit but it must be a realistic expectation of payment for work being done at the time. The DM need not make detailed forecasts of profitability. Where a person is involved in a commercial activity it is likely that this is remunerative work. It is for that person to show that they are working for nothing and explain why¹.

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

Sale of goods

R2236 Payment received from the sale of goods is not necessarily payment for work. Payment is made for the goods not for the work of the salesman. But where a person is paid commission on sales, the commission itself is payment for work.

Note: Also that payment may be derived from takings.

Business start up

R2237 An allowance payable under certain schemes to assist people to become S/E is not payment for work¹.
Note: That the former name of business start up scheme no longer applies generally and schemes are likely to have local names. See ADM Chapter S3: JSA & self-employed earners & share fishermen for further guidance.

R2238 Drawings from any business to meet living expenses, in cash or in kind, will be payment for work except where the drawings are from business capital.

Example

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

Company directors

R2239 A director of a limited company is an office holder and will usually be an employee of the company. The current or future receipts of the business are not payment to the director. A director can own or be a shareholder in the company and receive payment or have a realistic expectation of payment in that capacity. It is possible for an office-holding director to also have a contract for service with the company and thus be a S/E earner. In such cases DMG R2234 applies.

R2240 - R2249

Establishing hours of work

Introduction

R2250 Establish the weekly total of hours worked. Normally, only hours for which payment is made or expected count for remunerative work purposes. These are not necessarily the same as hours of attendance. For example, if a person works additional hours without pay and without expectation of payment the extra hours would not count, although the question of notional earnings would arise. See DMG R2278 for guidance on teachers.

R2251 Hours worked as a carer or in certain specified occupations do not count for remunerative work purposes (see DMG R2464 et seq).

JSA - carers and specified occupations

R2252 For JSA purposes, DMs should take no account of the hours worked
1. by anyone falling within DMG R2464 \(^1\) or

2. in caring for someone \(^2\) who

   2.1 is in receipt of “AA”, the care component of DLA or the daily living component of PIP or

   2.2 has claimed “AA”, DLA or PIP but only for the period starting with the date of claim and ending

      2.2.a when a decision is made on the claim or

      2.2.b 26 weeks from the date of claim if this is earlier than the date in

      2.2.a above or

   2.3 has claimed and has an award of

      2.3.a “AA” or

      2.3.b the care component of DLA \(^3\) or

      2.3.c the daily living component of PIP

      for the period between the date of claim and date of award or

3. in caring for someone if the carer is in receipt of CA \(^4\).

1 JSA Regs 13, reg 42(3)(b); 2 reg 42(3)(c); 3 SS CB Act 92, s 72(4); 4 s 70

R2253

R2254 The purpose of DMG R2252 2.2.b is to help carers where there is a delay in deciding a claim to “AA” or DLA. The provision does not apply if a

1. claim for “AA” or DLA is unsuccessful and

2. further claim is made solely so that the carer can continue to receive JSA.

R2255 The guidance at DMG R2252 2. and DMG R2252 3. does not apply to carers who are employed earners \(^1\), for example nurses and care workers in care homes. The hours of such employees will count towards the remunerative work rule in the normal way.

1 JSA Regs 13, reg 42(3)(c)

R2256 Hours worked in any other occupation by a person who satisfies DMG R2464 should be taken into account in the normal way.

R2257

**Counting the hours**

**Flexible working schemes**

R2258 Most people in paid employment are required to work, and are paid for, the same number of hours each week. Flexible working hours does not affect this.
Overtime

R2259 Overtime for which payment is made or expected counts towards the weekly total.

Breaks

R2260 Any time allowed by the employer for meals or refreshments counts towards the total hours worked provided earnings are paid or are expected to be paid for this time. \[^1\] JSA Regs 13, reg 42(3)(a)

Night Duty

R2261 Any time spent on night duty in addition to normal daytime duties counts towards the total hours worked if payment is made or expected for that night duty. This applies even if

1. payment made or expected is less than for normal daytime duties or
2. the time on night duty is spent sleeping.

Evidence of hours

R2262 Accept a statement from the person or the employer about the number of hours worked unless it is unclear or there is reason to doubt it. Make further enquiries where necessary. If it becomes necessary to examine the contract of employment note that it will not usually specify overtime hours. Where appropriate, add these to the number of contracted hours.

Company directors

R2263 A director of a limited company is an office holder and in that role may have only limited duties to carry out. However, where a director also has a contract for service with the company and is a S/E earner follow the guidance at DMG R2265 to establish any additional hours worked.

Musicians

R2264 Practising is not remunerative work unless the practice is necessary to do the work the person is engaged in.

Example 1

A musician teaches at a school for six hours a week. He also practices his instrument for 14 hours a week in order to maintain his skill as a musician. He is not engaged in remunerative work.
Example 2

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

Self-employed

R2265 Include all the hours necessary to run the business, for example, time spent in
1. trips to wholesalers and retailers
2. visits to potential customers
3. advertising or canvassing
4. cleaning the business premises
5. cleaning and maintaining items used in the business, for example a taxi or driving school car
6. providing estimates
7. book-keeping
8. research work, for example where the person is a writer.

R2266 Where a S/E person is running a business which is
1. building up or
2. winding down

it may be appropriate to re-determine the remunerative work issue week by week until hours of work reach a consistent level.

R2267 Accept a statement from the person about the number of hours worked unless there is reason for doubt. Where there is doubt, make a decision on the basis of all the available evidence.

Example

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

R2268 If a S/E person has been doing undisclosed work or working more hours than is claimed, the DM must determine on the probable number of hours worked. Consider all the available evidence, including any reports of what times of day and for how many days the person was observed working.
Teachers

The conditions of employment of most LA schoolteachers, except headteachers, are laid down in an Order or Agreement. They have a contractual duty to spend whatever time is necessary to carry out their professional duties effectively in non-teaching activities such as

1. preparing and planning lessons and timetables
2. assessing and reporting on pupils
3. helping to administer and organize the school
4. advising pupils and ensuring their discipline, health and safety
5. discussing pupils' progress with parents.

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

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

1. they are not required to do such work
2. any such work is included in the hours of work laid down in the contract.

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

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

1. teacher’s experience
2. subjects being taught
3. method of teaching
4. amount of homework to be marked
5. number of pupils.
In these cases ask the person to provide a detailed list of non-teaching duties. If there is still doubt the employer may be able to provide evidence.

R2282 The amount of non-teaching work may vary from week to week. For example, a teacher may need to spend more time marking examination papers or writing reports at certain times of the year.

R2283 - R2292

Calculating average hours

R2293 If the claimant or partner is engaged in work where the hours fluctuate, calculate the average weekly hours\(^1\).

Identifying a recognizable cycle

R2294 See if there is any pattern of work over a period of time. This is known as a recognizable cycle\(^1\). A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1
week 1  X hours
week 2  Y hours
week 3  X hours
week 4  X hours
week 5  Y hours
week 6  X hours

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

Example 2
month 1  A hours
month 2  B hours
month 3  A hours
month 4  B hours

There is a recognizable cycle of 2 months.

Example 3
week 1  X hours
week 2  X hours
week 3  Y hours
week 4  W hours
week 5  V hours

There is no recognizable cycle.
Note: A cycle may include weeks in which no work is done.

1 JSA Regs 13, reg 42(2)(b)(i); 2 reg 42(2)(b)(i)

Permanent or indefinite contract

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

Example

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

Fixed term contracts and casual workers

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

Example

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

Supply teachers

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

1 R(JSA) 5/02
Extra work

R2298 A person may have a contract for work that specifies when they will and won’t be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle.

Example

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

Probation

R2299 A recognizable cycle of work can exist from the outset of the contract even if there is an initial period of probation.

Example

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

Recognizable cycle established

R2300 - R2305 Where there is a recognizable cycle calculate average hours over one complete cycle. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences.

Periods when a person does not work

R2307 Periods when a person does not work can fall into the following categories:
1. periods of absence because of sickness, maternity leave, paternity leave or adoption leave
2. periods of unauthorized absence “without good cause”
3. periods of no work (other than holidays) during which someone is not working because work is not provided by the employer
4. periods during which someone can be properly regarded as on holiday.

**Note:** For periods during which someone is not working because they are between jobs they are not in remunerative work, see DMG R2203 - R2206.

### Sickness, maternity leave, ordinary paternity leave, additional paternity leave, adoption leave and periods of unauthorised absence

R2308 When someone is absent from work due to sickness, ordinary paternity leave, additional paternity leave, adoption leave or maternity leave the DM should decide that they are not in remunerative work during such absences. When someone has a period of absence without good cause the DM should treat such an absence in the same way as proper holidays (see DMG R2315).

1 Employment Rights Act 1996, s 80A, 80B, 80AA & 80BB; 2 s 75A & 75B; 3 s 71-73; 4 JSA Regs 13, reg 43(1); 5 JSA Regs, reg 43(1)

### Holidays or periods of no work

R2309 The DM should decide that all people (including teaching staff) should only be regarded as being on holiday for the weeks of holiday for which they are paid. These can be ascertained from the contract of employment (which will usually be in writing but can be verbal). The fact that pay is

1. spread over a year in equal instalments and
2. enhanced to take account of a lack of holiday entitlement

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

1 R(JSA) 5/03

R2310 From 1.10.98 legislation was introduced to give most workers a right to paid holidays. A worker is usually entitled to four weeks paid holiday in any leave year beginning after 23.11.99.

1 Working Time Regulations 1998 No. 1833, reg 13

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

R2311 If the DM has decided that the claimant or partner is still in employment (see DMG R2203 - R2206) (and they are not absent from work due to sickness, maternity,
adoption or paternity leave) they will need to calculate the number of hours for which the claimant or partner is engaged in work.

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

R2312 If the claimant or partner works the same number of hours each week when not on holiday, that is the number of hours worked in each week.

R2313 If the claimant’s or partner’s hours of work fluctuate, the DM should take an average
1. as per DMG R2322 et seq if there is no cycle of work or
2. as per DMG R2315 et seq if there is a cycle of work.

R2314

**Calculating the average hours**

R2315 Legislation\(^1\) requires that in cycle cases where the hours of work fluctuate, the average should be calculated by taking into account periods in which the person does not work while disregarding other absences. DMs should only deduct periods of holiday, absences without good cause, sickness, maternity, adoption or paternity leave from the number of weeks in the cycle before dividing the result into the total number of hours worked in the cycle\(^2\). Periods of no work should not be deducted. Put another way, it is only periods of holiday, absences without good cause, sickness, maternity, adoption and paternity leave which are “other absences to be disregarded”.

**Note:** DMs should no longer follow R(IS) 7/96.

\(^1\) JSA Regs, reg 42(2)(b)(i); \(^2\) R(JSA) 5/03

**Yearly cycle with school holidays or similar vacations**

R2316 Where a person has a contract of employment (written, verbal or implied) which continues throughout the year, there is a recognizable cycle of one year. Where a person with such a contract works at a school, educational establishment or any other place of employment where there are school holidays or similar vacations, the DM should divide the total number of hours worked during the year by 52 weeks less any weeks of “other absence”\(^1\) (see DMG R2315).

**Example 1**

Jeff, a qualified teacher, has worked as a school tutor for children with special needs since October 2009. He works on a sessional basis, completing a monthly return of the number of hours he has taught for which he is paid accordingly. He does not get
paid for holidays, so claims JSA in October 2013. For the academic year 2012/2013 Jeff worked 520 hours.

Note: an academic year includes the summer holidays. By the time he claims JSA in October 2013 he has completed at least two cycles of academic work, so the DM decides that his employment has not ended. He has no paid holidays, so the total hours worked (520) are divided by the weeks in the cycle (52). This gives 10 hours a week, meaning that Jeff is not in remunerative work.

Example 2

Megan, a lecturer at a college of further education, has a contract of employment, which started in January 2013 for 15.5 hours of work a week during academic terms. There is no entitlement to paid holiday, but the contract states “your rate of pay allows for the fact that you have no formal entitlement to holiday with the result that the pay you receive for each hour worked is comparable to that paid to employees who are entitled to holiday”. The academic terms cover 38 weeks but Megan receives her pay over the calendar year in twelve equal monthly instalments.

In addition to the above work, Megan is employed under additional contracts, which depend on the demand for other courses which she teaches. In the 2012/2013 academic year she has four other such contracts

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

In June 2014 Megan claims JSA for the summer vacation.

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

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

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

The “holidays” should therefore be taken into account as periods of no work and included in the averaging.
Total number of hours is 824. Divided by 52 equals 15.8 (i.e. below 16)

Megan is not in remunerative work.

Example 3

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

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

The total number of paid holidays, 30 days or 6 weeks, should be subtracted from the number of weeks in the cycle, which gives 46 weeks. The number of hours worked, 755, is divided by 46 giving an average of hours worked of 16.41. Emily is in remunerative work\(^1\).

Ancillary school workers

Ancillary school workers are members of the non-teaching staff of schools and other educational establishments. Where such workers have a yearly cycle of work during term-time only follow the guidance at DMG R2316. Examples of ancillary school workers include

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

No recognizable cycle established

Estimating future hours

Where

1. a person has just started work or is about to start work or
2. the hours of work have just changed or are about to change and the change does not form part of the normal pattern of work or

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

estimate the hours or the average hours the person is expected to work in a week\(^1\).

\(^1\) JSA Regs, reg 43(2)(a)

R2321 Average the estimated hours over a period long enough to cover the expected pattern of work\(^1\). Consider the case where there is sufficient evidence to average the actual hours worked.

Averaging past hours

R2322 Where the person has been in work before the date of claim, decision or application for supersession and a recognizable cycle has not been established calculate average weekly hours over

1. the five weeks immediately before the date of claim or the date on which a superseding decision is made\(^1\) or

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

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

\(^1\) JSA Regs, reg 43(2)(b)(ii)

R2323 Include in the calculation at DMG R2322 any periods of non-working within the normal pattern of employment (rest periods)\(^1\). Do not include periods of non-working after the employment has ended.

\(^1\) R(IS) 12/95

R2324 Examples of circumstances in which it may not be appropriate to use the five week period in DMG R2322 1. are where the

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

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

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

In either of the circumstances in 1. or 2. a period of less than five weeks as in DMG R2322 2. might give a fairer result. Extending the period beyond the last five weeks would still include the distortions so in these circumstances estimate future hours as in DMG R2320.
If the DM bases a weekly average of hours over a period of more or less than five weeks, as in DMG R2322, the alternative period must still be a period immediately before the date of claim or the date the superseding decision is made. It should be either

1. more than the five week period in DMG R2322, in which case it will include those five weeks or
2. less than the five week period in DMG R2322, in which case it will be a part of those five weeks immediately before the date of claim or the date on which a superseding decision is made.

The approaches outlined in DMG R2320 and DMG R2322 are alternatives. There is no provision for the DM to calculate an average of weekly hours over a past period of actual work and a future period of expected work.

**Short-time workers**

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

1. a reduction in hours worked each day or
2. no work on certain days of the week or
3. work restricted to certain weeks, for example week on, week off.

Follow the guidance in DMG R2320 - R2321 and estimate future hours at the start of short-time working until average hours over a past period can be calculated. Periods of no work should be included in the average.

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

**Changes to the normal hours**

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

1. represents a new pattern of working hours. If so, re-calculate the hours of work and supersede the decision as necessary or
2. represents a short-term change in the normal pattern. If so, identify the period in which abnormal hours are worked and supersede the decision based on the remunerative work for that period or
3. means that the period over which average hours were calculated needs to be extended to include the period of change. For example, where an ice-cream seller’s hours of work increase during a spell of hot weather and the DM decides that the previous calculation of average hours was based on an unrepresentative period. In such a case recalculate average hours over

3.1 the cycle of work if there is now a recognizable cycle\(^1\) or

3.2 the five week period or other more suitable period immediately before the date of application for supersession\(^2\).

---

**Seasonal workers**

**R2339** The normal remunerative work rules apply to S/E seasonal workers.

**Averaging the hours**

**R2340** Calculate average hours

1. if there is a recognizable cycle - over one complete cycle of work (this will usually be one year\(^1\)). Include periods in which the person does no work, but exclude other absences such as holidays or sickness\(^2\) or

2. if there is no recognizable cycle - over the five week period, or other more suitable period, immediately before the date of claim, or the date a supersession decision is made\(^3\).

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

---

**Example**

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

**Agency and casual workers**

**R2341** The normal remunerative work rules apply to claimants who find employment through agencies or are employed on a casual basis. Whether the employment is ongoing is relevant.
R2342 Where the employment ends after each period of work, periods of unemployment should not be included in the calculation of average hours.

R2343 Where employment is ongoing, periods when the person does no work should be included in the calculation of average hours.

**Note:** See ADM Chapter S2: JSA and employed earners for guidance on when employment ends. If a claim is made after employment is terminated, the person will not be in remunerative work.

R2344 – R2389

**People treated as in remunerative work**

**Introduction**

R2390 In JSA and IS people can be treated as in remunerative work even though they are absent from remunerative work. This rule does not apply where people are absent because they

1. are ill or
2. are pregnant and have a right to return to work or
3. have given birth to a child and have a right to return to work or
4. are on paternity leave or
5. are on adoption leave\(^1\).

\(^1\) JSA Regs 13, reg 43(1)

R2391 Treat claimants as in remunerative work for any period during which they are

1. absent without good cause\(^1\) or
2. absent by reason of a recognized, customary or other holiday\(^2\) or
3. covered by earnings received from remunerative work\(^3\).

\(^1\) JSA Regs 13, reg 43(1); \(^2\) reg 43(1); \(^3\) reg 43(3)

R2392 - R2396

**Absence from work without good cause**

R2397 If a person is absent from remunerative work **without** good cause the remunerative work exclusion will still apply. It cannot apply where the work is not remunerative as in DMG R2210 et seq.

R2398 If a person is absent from remunerative work **with** good cause the remunerative work exclusion will not apply.
Good cause

R2399  "Good cause" is for the DM to determine. The onus is on the claimant to show that good cause exists. Whether or not the employer has authorized the absence may be an indication of good cause but is not conclusive. Taking days off work for no apparent reason is not good cause.

R2400  Examples of good cause include where the absence is due to

1. bereavement or sudden serious illness in the family or
2. a disaster at home or
3. suspension from work, whether or not on full pay or
4. a requirement to attend court.

R2401 - R2409

Recognized, customary or other holiday

R2410  A person should be treated as in remunerative work for any period of absence because of a recognized, customary or other holiday1. This is the case even if there is no permanent contract of employment. But this will not apply where the

1. absence is not a holiday (see DMG R2309) or
2. work is not remunerative as in DMG R2210 et seq or
3. claimant goes on holiday after employment ends. But see DMG R2435 et seq where payments of holiday pay lead to the person being treated as in remunerative work.

See Appendix 3 to this Chapter for guidance on what is a recognized, customary or other holiday.

1 JSA Regs 13, reg 43(1)

R2411 - R2434

Payment on termination or interruption of employment

R2435  A person who was, or was treated as being engaged in remunerative work is excluded from JSA and IS for the period over which certain payments, paid on termination of that employment, fall to be taken into account1. Some payments are disregarded2 (see DMG 26583 et seq). The relevant payments depend on which benefit is claimed.

1 JSA Regs 13, reg 43(2); 2 reg 43(3), Sch 1, para 2

R2436 – R2463
People treated as not in remunerative work

Introduction

R2464 In certain circumstances a person who is in remunerative work should be treated as not being in remunerative work. These are where the person is

1. engaged by a charity or voluntary organization or is a volunteer\(^1\) or
2. engaged on a training scheme\(^2\) or
3. engaged in specific occupations\(^3\) or
4. performing duties as a councillor\(^4\) or
5. engaged as a foster parent or in providing respite care\(^5\) or
6. engaged in an activity which attracts a sports award\(^6\) or
7. engaged on Work Experience employment programme\(^7\).

Where a person has an additional occupation the remunerative work rules apply in the normal way to the additional occupation.

1 JSA Regs 13, reg 44(1)(a); 2 reg 44(1)(b); 3 reg 44(1)(c); 4 reg 44(1)(d); 5 reg 44(1)(e); 6 reg 44(1)(f); 7 reg 44(g)

R2465 – R2466

Charity or voluntary workers and volunteers

R2467 People are treated as not being in remunerative work where they are engaged by a charity or voluntary organization or are volunteers and

1. the only payment
   1.1 received or
   1.2 due to be paid
   is for expenses incurred and
2. they receive no remuneration or profit and
3. they are not treated as having notional earnings\(^1\) (see DMG 28389 - 28391).

1 JSA Regs 13, reg 44(1)(a)

Meaning of voluntary organization

R2468 A voluntary organization is a body, other than a public authority or LA, whose activities are not carried out for profit\(^1\).

1 JSA Regs 13, reg 2(1)

Meaning of volunteer

R2469 A volunteer is a person
1. who is engaged in voluntary work for someone who is not a relative and
2. where the only payment that person receives or is due to be paid to that
   person is in respect of expenses they have reasonably incurred in connection
   with that work.

1 JSA Regs 13, reg 44(2)

Engaged on a training scheme

R2470 Treat people as not being in remunerative work where they are on a training
scheme for which a training allowance (see DMG R2008 - R2009) is being paid.  

1 JSA Regs 13, reg 44(b)

R2471 - R2473

Engaged in specific occupations

R2474 People are treated as not being in remunerative work where they are
1. working as a part-time firefighter
   1.1 in England but live in Scotland or
   1.2 in Scotland but live in England or
2. auxiliary coastguards for coastal rescue activities or
3. working P/T in the crewing or launching of a lifeboat or
4. members of a territorial or reserve force.

1 JSA Regs 13, reg 44(1)(c)(i); Fire (Scotland) Act 2005, s 1A; 2 JSA Regs 13, reg 44(1)(c)(iii); 3 reg 44(1)(c)(vi); 4 reg 44(1)(c)(v)

Councillors

R2475 People who perform duties as a councillor are treated as not being in remunerative
work.

1 JSA Regs 13, reg 44(1)(d)

Meaning of councillor

R2476 In England and Wales a councillor is a member of
1. a London Borough council or
2. a county or county borough council or
3. a district council or
4. a parish or community council or
5. the Common Council of the City of London or
6. the Council of the Isles of Scilly.

1 SS CB Act 92, s 171F(2)(a)
In Scotland a councillor is a member of
1. a regional council or
2. an islands council or
3. a district council¹.

¹ SS CB Act 92, s 171F(2)(b)

**Foster parents and people providing respite care**

**Foster parents**

People who receive payments from
1. a LA or
2. a voluntary organization or
3. in Scotland, a care authority

for fostering a child or young person are treated as not being in remunerative work¹.

**Note:** See DMG 28380 for guidance on the income disregard of these payments.

¹ JSA Regs 13, reg 44(1)(e)

**People providing respite care**

People who provide respite care are treated as not being in remunerative work¹ if
1. the person requiring care is being cared for in the claimant’s home and
2. the person requiring care is not normally a member of the claimant’s household and
3. the only payments received are specified payments² from a
   3.1 HA or
   3.2 LA or
   3.3 voluntary organization or
   3.4 a primary care trust or
   3.5 the person concerned under specified legislation³.

**Note:** See DMG 28384 - 28385 for guidance on the income disregard of these payments.

¹ JSA Regs 13, reg 44(1)(f); 2reg 60(2)(b) & (c); 3 NA Act, s 26(3A)
Sports awards

R2480 People are treated as not being in remunerative work\(^1\) if

1. they are engaged in an activity for which a sports award has been or is to be made\(^2\) and

2. no other payment is made or expected to be made to them in respect of the activity\(^3\).

\[^1\text{JSA Regs 13, reg 44(1)(f); 2 reg 44(1)(f)(i); 3 reg 44(1)(f)(ii)}\]

Meaning of sports award

R2481 A sports award\(^1\) is an award made by one of the Sports Councils named in National Lottery law\(^2\) and out of sums allocated under that law.

\[^1\text{JSA Regs 13, reg 2(1); 2 National Lottery etc. Act 1993, s 23(2)}\]

Work experience

R2482 Work experience is an opportunity for JSA claimants aged 18 and over to gain experience in the workplace for between two and eight weeks\(^1\).

\[^1\text{E &T Act 73, s 2}\]

People in relevant education

What constitutes relevant education

Introduction

R2555 [See ADM memo 7/15] A person shall be treated as receiving relevant education if they are a qualifying young person\(^1\), although there are certain exceptions (see ADM xxxxx).

\[^1\text{JSA Regs 13, reg 45(1)(a)}\]

Definition of a qualifying young person

R2556 A qualifying young person\(^1\) is a person who has reached age 16 but not the age of 20

1. up to but not including the 1 September following their 16\(^{th}\) birthday and
2. up to but not including the 1 September following their 19th birthday, if they are enrolled in or accepted for approved training or a course of education and that training or course

2.1 is not a course of advanced education and

2.2 is provided at a school or college, or elsewhere if it is approved by the Secretary of State and

2.3 means that the qualifying young person is spending on average, 12 hours per week during term time (excluding meal breaks) in receiving tuition, undertaking practical work, supervised study or taking exams.

What is approved training

R2557 Approved training means training as provided for in legislation\(^1\) and which is approved by the Secretary of State\(^2\).

\(^1\) E&T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 90; \(^2\) JSA Regs 13, reg 45(9)

When is a person not a qualifying young person

R2558 A person is not a qualifying young person\(^1\) where they

1. are aged 19 and have not started education or training or been enrolled or accepted for it before reaching age 19 or

2. satisfy the conditions in R2557 2. above and their education or training is provided through a contract of employment or

3. are receiving UC, ESA or JSA.

\(^1\) JSA Regs 13, reg 45(8)

What is relevant education

R2559 [See ADM memo 7/15] Relevant education\(^1\) means undertaking

1. a full-time course of advanced education and

2. any other full-time course of study or training at an educational establishment for which a student loan, grant or bursary is provided for the persons maintenance (or would be available if applied for).

\(^1\) JSA Regs 13, reg 45(1)(b)

R2560 A course of advanced education\(^1\) means

1. a course of study leading to

   1.1 a postgraduate degree or comparable qualification

   1.2 a first degree or comparable qualification
1.3 a diploma of higher education
1.4 a higher national diploma or
2. any other course of study which is of a standard above advanced GNVQ or equivalent including a course which is of a standard above the advanced level of a general certificate of education or above the higher or advanced higher level of a Scottish national qualification.

What is a student loan

A student loan is a loan towards a student's maintenance which arises from specific legislation and includes a young student's bursary in Scotland.

Undertaking a course

A person is to be regarded as undertaking a course throughout the period

1. beginning on the date that the person starts undertaking the course and
2. ending on the last day of the course or on such earlier date (if any) as the person abandons or is dismissed from that course or

2. where a person is undertaking a part of a modular course, for the period

1. beginning on the day which that part of the course starts and
2. ending

1. on the last day on which the person is registered with the provider of the course, or part of the course, as undertaking that part or
2. on such earlier date (if any) as the person finally abandons the course or is dismissed from it.

The period in R2562 2. above includes any period

1. where a person is undertaking the course again for the purpose of retaking exams or a module that they have previously failed and
2. of vacation within the period on R2562 2. above or immediately following that period, except where a person has registered with the provider of the course, or part of the course, to attend or undertake the final module in the course.
and the vacation immediately follows the last day on which the person is to attend or undertake the course.

1 JSA Regs 13, reg 45(5)

What is a modular course

R2564 A modular course is one made up of two or more modules and for a person to be considered by the educational establishment to have completed the course, they must have completed a specified number of modules.

1 JSA Regs 13, reg 45(9)

Person not regarded as undertaking a course

R2565 A person is not to be regarded as undertaking a course for any part of the period described in paragraph R2564 above where the person

1. has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person or

2. has recovered from that illness or ceased caring for that person within the past year but has not yet resumed the course and

3. is not eligible for a grant or student loan.

1 JSA Regs 13, reg 45(6)

Being treated as a qualifying young person

R2566 Where a person does not satisfy the criteria of a qualifying young person as in R2556 and is not undertaking a course of relevant education as described in a R2559, they can be treated as receiving relevant education if the claimant is undertaking a course of study or training that is not compatible with any work related requirement that has been imposed by the Secretary of State.

1 JSA Regs 13, reg 45(3)

R2567 – R2700

Waiting days

R2701 [See Memo ADM 22/14] A claimant is not entitled to JSA for the first 3 days of a JSP. These 3 days are called waiting days.

1 JS Act 95, Sch 1, para 4; 2 JSA Regs 13, reg 36(2)
Claimants who do not have to serve waiting days

R2702 Claimants do not have to serve waiting days if their entitlement to JSA began within 12 weeks of the end of their entitlement to

1. IS or
2. IB or
3. ESA or
4. CA.

1 JSA Regs 13, reg 36(1)

R2703 – R2959

Limited capability for work

Introduction

R2960 Claimants are entitled to JSA if they do not have LCW or are not treated as not having LCW.

1 JS Act 95, s 1(2)(f) & Sch 1, para 2(1); SS CB Act 92, Part XIIA

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

R2961 [See memo ADM 10/15] [See memo ADM 13/16] A person who

1. has
   1.1 been awarded JSA or
   1.2 satisfy the requirements for entitlement to JSA or
   1.3 had certain types of sanction imposed on them and
2. they prove to the DM that they are unable to work because of some specific disease or disablement (see DMG R2967 - R2968) and
3. they would satisfy the requirements for entitlement to JSA (other than capability and not having LCW) if it was not for their disease or disablement (see DMG R2963) is to be treated as capable of work/not having LCW for a period not exceeding two weeks beginning on the day on which the conditions in 1. to 3. above are satisfied. However, where the claimant has stated in writing that they intend to claim or have made a claim for ESA for that period of sickness, then the provisions of this paragraph will not apply and entitlement to JSA will cease.

1 JSA Regs 13, reg 46(1)(a); 2 reg 46(1)(b); 3 reg 46(1)(c)
Evidence of incapacity/limited capability for work

R2962 The claimant must make a declaration in writing, in a form approved by the Secretary of State, that they have been unfit for work from a date, or for a period they have specified in that declaration.\(^1\)

\(^1\) JSA Regs 13, reg 46(2)

R2963 - R2974

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

R2975 A claimant can only be treated as capable/not having LCW on two occasions in any one JSP. The two occasions must be separated by at least one day to be separate periods. But if the JSP lasts for more than a year, then the claimant can be treated as capable/not having LCW twice in every year. Years are calculated from the first day of the JSP.\(^1\)

\(^1\) JSA Regs 13, reg 46(3)

Example

The JSP begins on 4.1.14 and ends on 3.2.16. The claimant can be treated as capable twice in the year from 4.1.14 to 3.1.15, twice in the year from Wednesday 4.1.15 to 3.1.16 and twice in the year from 4.1.16.

When do these treated as provisions not apply

R2976 The treated as provisions as described in R2961 above will not apply where

1. the first day that they are unable to work falls within 8 weeks after the day the person ceased to be entitled to SSP\(^1\) or

2. the claimant is temporarily absent from GB\(^2\).

\(^1\) JSA Reg 13, reg 46(4); 2 reg 41(5); reg 46(5)

NHS treatment abroad

R2977 A claimant can be treated as capable of work/not having LCW if

1. they have\(^1\)

   1.1 been awarded JSA or

   1.2 had a certain type of sanction imposed on them and

2. they are temporarily absent from GB for the purpose of receiving NHS treatment abroad\(^2\) (see ADM Chapter C3) and

\(^1\) JSA Regs 13, reg 46(3)
3. they prove to the DM that they are unable to work because of some specific disease or disablement\(^3\) (see DMG R2967 - R2968) and

4. they would satisfy the requirements for entitlement to JSA (other than capability/not having LCW) if it was not for their disease or disablement\(^4\) and

5. they have not stated in writing, before a period of temporary absence abroad begins, that they have claimed ESA immediately before the beginning of the period of absence\(^5\).

\(^1\) JSA Regs 13, reg 47(1)(a); \(^2\) reg 47(1)(b); \(^3\) reg 47(1)(c); \(^4\) reg 47(1)(d); \(^5\) reg 47(1)

**Evidence of incapacity/limited capability for work**

R2978 The claimant must make a declaration in writing, in a form approved by the Secretary of State, that they have been unfit for work from a date, or for a period they have specified in that declaration\(^1\).

\(^1\) JSA Regs 13, reg 47(2)

R2979 - R2984

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

R2985 The DM should treat claimants as capable of work if\(^1\)

1. they are

   1.1 incapable of work under the PCA (see DMG Chapter 13) or

   1.2 treated as incapable of work because they have a severe condition\(^2\) or there are exceptional circumstances\(^3\) and

2. they have

   2.1 worked or been in education or done training, or other activities, in preparation for work while suffering from the same illness or disability which led to the finding of incapacity and

   2.2 since then the illness or disability has not got worse and they are not suffering from a different illness or disability which might affect their capability for work or

3. they can show that they have reasonable prospects of getting employment.

\(^1\) SS (IW) (Gen) Regs, reg 17A; \(^2\) reg 10; \(^3\) reg 27

**Example**

Joe, who is blind, works as a switchboard operator for a small building supplies company. He breaks his leg and is unfit to work, due to complications for 16 months. He is claiming IB and is treated as incapable of work under the PCA as he is blind.
His employer sacks Joe after ten months and finds someone else to replace him. After 16 months his doctor tells him that his leg is fully healed and he can go back to work. Joe attends the Jobcentre Plus office and claims JSA.

He is treated as incapable of work under PCA, but he worked whilst blind and his blindness has not worsened. Also, his broken leg has now healed and no longer affects his capability for work. The DM treats him as capable.

**Treated as not having limited capability for work (employment and support allowance)**

R2986 A claimant who

1. claims JSA and
2. can show they have a reasonable prospect of obtaining employment

is to be treated as not having LCW (see DMG Chapter 42) throughout the period of that claim. This applies even where it has been determined that the claimant has LCW or is to be treated as having LCW.

1 ESA Regs, reg 31(1); 2 reg 31(2)

R2987

**Capable of work**

**Meaning of capable of work**

R2988 The DM has to apply the tests of incapacity as applied in IB claims to determine whether or not someone is capable of work (see DMG Chapter 13).

1 SS CB Act 92, part XIIA; 2 JS Act 95, Sch 1, para 2

R2989 - R2996

**Medical evidence**

R2997 For JSA, claimants do not have to provide medical evidence to show that they are capable of work, unless there is a doubt about this.

1 SS (IW) (Gen) Regs, reg 6(3)(a)

R2998 - R2999

The content of the examples in this document (including use of imagery) is for illustrative purposes only