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STATUTORY RULES OF NORTHERN IRELAND

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**2016 No. 218**

The Jobseeker's Allowance Regulations (Northern Ireland) 2016

PART 5

CONDITIONS OF ENTITLEMENT

**The conditions and relevant earnings**

**33.**—(1) A claimant's relevant earnings for the purposes of Article 4(2)(b) of the Order (the contribution-based conditions)(1) are the total amount of the claimant's earnings equal to the lower earnings limit for the base year.

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

**Relaxation of the first set of conditions**

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

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

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

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

**Waiting days**

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

(2) In the case of a person to whom paragraph 4 of Schedule 1 to the Order applies, the number of days is 7.

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(1) Article 4(2)(b) was amended by section 11(2) of the Welfare Reform Act (Northern Ireland) 2010 (c.13 (N.I.))

(2) S.R. 1975 No. 113; regulation 9E was added by regulation 2(3) of S.R. 2010 No. 109

**Jobseeking period**

**36.**—(1) For the purposes of the Order, but subject to paragraph (2), the “jobseeking period” means any period throughout which the claimant satisfies or is treated as satisfying the conditions specified in Article 3(2)(b) and (e) to (i) of the Order (conditions of entitlement to a jobseeker’s allowance)(3).

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

- (a) any period in respect of which no claim for a jobseeker’s allowance has been made or treated as made;
- (b) such period as falls before the day on which a claim for a jobseeker’s allowance is made or treated as made;
- (c) where a claim for a jobseeker’s allowance has been made or treated as made but no entitlement to benefit arises in respect of a period before the date of claim by virtue of section 1(2) of the Social Security Administration (Northern Ireland) Act 1992 (limits for backdating entitlement)(4), that period;
- (d) any week in which a claimant is not entitled to a jobseeker’s allowance in accordance with Article 16 of the Order (trade disputes); or
- (e) any period in respect of which a claimant is not entitled to a jobseeker’s allowance because section 1(1A) of the Social Security Administration (Northern Ireland) Act 1992 (requirement to state national insurance number)(5) applies.

(3) For the purposes of Article 7 of the Order (duration of a jobseeker’s allowance), a day must be treated as if it was a day in respect of which the claimant was entitled to a jobseeker’s allowance where that day—

- (a) falls within a jobseeking period; and
- (b) is a day
  - (i) on which the claimant satisfies the conditions specified in Article 4 of the Order (the contribution-based conditions)(6) other than the conditions specified in Article 4(1) (c) and (d) of the Order, and
  - (ii) on which a jobseeker’s allowance is not payable to the claimant by virtue of Articles 8J or 8K of the Order or by virtue of a restriction imposed pursuant to section 5B, 6, 7 or 8 of the Social Security Fraud Act (Northern Ireland) 2001 (loss of benefit provisions)(7).

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(3) Article 3(2) was amended by paragraph 6(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and Article 50(3) of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))

(4) 1992 c. 8 (N.I.); section 1(2) was amended by paragraph 15 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(5) Section 1(1A) was inserted by Article 18 of the Social Security Administration (Fraud) (Northern Ireland) Order 1997 (S.I. 1997/1182 (N.I. 11))

(6) Article 4 was amended by paragraph 102 of Schedule 6 to the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), paragraph 4 of Schedule 7 to the Welfare Reform and Pensions (Northern Ireland) Order 1999, paragraph 46 of Schedule 1 to the National Insurance Contributions Act 2002 (c. 19), section 11(1) to (5) of the Welfare Reform Act (Northern Ireland) 2010 (c. 13 (N.I.)) and paragraph 29 of Schedule 2 and Schedule 12 to Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))

(7) 2001 c. 17 (N.I.); section 5B was inserted by section 19(1) of the Welfare Reform Act (Northern Ireland) 2010. Section 6 was amended by paragraph 33 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002 (c. 14 (N.I.)), section 45(1) and paragraph 14(2) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.)) and paragraph 1 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010. Section 7 was amended by section 1(5) of and paragraph 2 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010. Section 8 was amended by paragraph 34 of Schedule 2 to the State Pension Credit Act (Northern Ireland) 2002, paragraph 14(4) and (5) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 and paragraph 3 of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2010

### **Jobseeking periods: periods of interruption of employment**

**37.**—(1) For the purposes of Article 4(4)(b)(i) of the Order and for determining any waiting days—

- (a) where a linked period commenced before 7th October 1996, any days of unemployment which form part of a period of interruption of employment where the last day of unemployment in that period of interruption of employment was no more than 8 weeks before the date upon which that linked period commenced;
- (b) where a jobseeking period or a linked period commences on 7th October 1996, any period of interruption of employment ending within the 8 weeks preceding that date; or
- (c) where a jobseeking period or a linked period commences after 7th October 1996, any period of interruption of employment ending within the 12 weeks preceding the day the jobseeking period or linked period commenced,

must be treated as a jobseeking period and, for the purposes of sub-paragraph (a), a day must be treated as being, or not being, a day of unemployment in accordance with section 25A of the Benefits Act (determination of days for which unemployment benefit is payable)(**8**) and with any regulations made under that section, as in operation on 6th October 1996.

(2) In this regulation—

“period of interruption of employment” in relation to a period prior to 7th October 1996 has the same meaning as it had in the Benefits Act by virtue of section 25A of that Act (determination of days for which unemployment benefit is payable) as in operation on 6th October 1996;

“waiting day” means a day—

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

### **Linking periods**

**38.**—(1) For the purposes of the Order, 2 or more jobseeking periods must be treated as one jobseeking period where they are separated by a period comprising only—

- (a) any period of not more than 12 weeks;
- (b) a linked period
- (c) any period of not more than 12 weeks falling between—
  - (i) any 2 linked periods; or
  - (ii) a jobseeking period and a linked period; or
- (d) a period in respect of which the claimant is summoned for jury service and is required to attend court.

(2) Linked periods for the purposes of the Order are any of the following periods—

- (a) to the extent specified in paragraph (4), any period throughout which the claimant is entitled to a carer’s allowance under section 70 of the Benefits Act(**9**);
- (b) any period throughout which the claimant is incapable of work, or is treated as incapable of work, in accordance with Part XIA of the Benefits Act (incapacity for work)(**10**);

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(8) Section 25A was inserted by paragraph 5 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and repealed by Article 40(2) of Schedule 3 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

(9) Section 70 was amended by regulation 2(3) of S.R. 1994 No. 370, Articles 2(2)(a)(iii) and 3 of S.R. 2002 No. 321, regulation 2(3) of S. R. 2011 No. 356 and Article 2(2) of S.I. 2013/3233

(10) Part XIA was inserted by Article 7 and amended by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)), paragraph 57 of Schedule 6 to the Social Security (Northern Ireland) Order

- (c) any period throughout which the claimant has, or is treated as having, limited capability for work for the purposes of Part 1 of the Welfare Reform Act (Northern Ireland) 2007<sup>(11)</sup>;
- (d) any period throughout which the claimant was entitled to a maternity allowance under section 35 or 35B of the Benefits Act<sup>(12)</sup>;
- (e) any period throughout which the claimant was engaged in training for which a training allowance is payable;
- (f) a period which includes 6th October 1996 during which the claimant attends court in response to a summons for jury service and which was immediately preceded by a period of entitlement to unemployment benefit.

(3) A period is a linked period for the purposes of Article 4(4)(b)(ii) of the Order only where it ends within 12 weeks or less of the commencement of a jobseeking period or of some other linked period.

(4) A period of entitlement to carer's allowance is a linked period only where it enables the claimant to satisfy contribution conditions for entitlement to a jobseeker's allowance which the claimant would otherwise be unable to satisfy.

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

**39.**—(1) The provisions of this regulation apply only to days—

- (a) which fall after 6th October 1996 and within a tax year in which the claimant has attained the qualifying age for state pension credit but is under pensionable age; and
- (b) in respect of which a jobseeker's allowance is not payable because the decision of the determining authority is that the claimant—
  - (i) has exhausted their entitlement to a jobseeker's allowance;
  - (ii) fails to satisfy one or both of the contribution conditions specified in Article 4(1)(a) and (b) of the Order; or
  - (iii) is entitled to a jobseeker's allowance but the amount payable is reduced to nil by virtue of deductions made in accordance with regulation 51 for pension payments.

(2) For the purposes of regulation 36(1) (jobseeking period) but subject to paragraphs (3), (4) and (5), any days to which paragraph (1) applies and in respect of which the person does not satisfy the condition specified in Article 3(2)(b) of the Order (conditions of entitlement to a jobseeker's allowance), are to be days on which the person is treated as satisfying the condition in Article 3(2) (b) and (e) to (i) of the Order.

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

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1998 (S.I. 1998/1506 (N.I. 10)), and Article 58 of and paragraphs 22 and 23 of Schedule 8 to the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

(11) 2007 c. 2 (N.I.)

(12) Section 35 was amended by Article 4(a) of the Still-Birth (Definition) (Northern Ireland) Order 1992 (S.I. 1992/1310 (N.I. 10)), regulation 2 of S.R. 1994 No. 176, Article 63 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), Articles 50(1) and (2) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11)), paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10 (N.I.)), paragraph 5 of Schedule 1 to the Work and Families (Northern Ireland) Order 2006 (SI 2006/1947 (N.I. 16)) and regulation 2(3) of S.R. 2014 No. 102 and section 35B was inserted by regulation 2(5) of S.R. 2014 No. 102

(4) Any day which is, for the purposes of section 30C of the Benefits Act(13), a day of incapacity for work falling within a period of incapacity for work is not to be a day on which the person is treated as satisfying the conditions referred to in paragraph (2).

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

### **Persons temporarily absent from Northern Ireland**

**40.**—(1) For the purposes of the Order, a claimant must be treated as being in Northern Ireland during any period of temporary absence from Northern Ireland—

- (a) not exceeding 4 weeks in the circumstances specified in paragraph (2);
- (b) not exceeding 8 weeks in the circumstances specified in paragraph (3).

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

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

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

- (a) immediately preceding the period of absence from Northern Ireland the claimant was entitled to a jobseeker's allowance;
- (b) the period of absence is unlikely to exceed 52 weeks;
- (c) the claimant continues to satisfy or be treated as satisfying the other conditions of entitlement to a jobseeker's allowance;
- (d) the claimant is, or the claimant and any other member of their family are, accompanying a member of the claimant's family who is a child or young person solely in connection with arrangements made for the treatment of that child or young person for a disease or bodily or mental disablement; and
- (e) those arrangements relate to treatment—
  - (i) outside Northern Ireland;
  - (ii) during the period whilst the claimant is, or the claimant and any member of their family are, temporarily absent from Northern Ireland; and
  - (iii) by, or under the supervision of, a person appropriately qualified to carry out that treatment.

(4) A person must also be treated, for the purposes of the Order, as being in Northern Ireland during any period of temporary absence from Northern Ireland where—

- (a) the absence is for the purpose of attending an interview for employment;
- (b) the absence is for 7 consecutive days or less;
- (c) notice of the proposed absence is given to the Department before departure, and is given in writing if so required by the Department; and

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(13) Section 30C was inserted by Article 5(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12)) and amended by paragraph 37 of Schedule 3 to the Tax Credits Act 2002 (c. 21)

- (d) on their return to Northern Ireland the person satisfies the Department that they attended for the interview in accordance with their notice.
- (5) For the purpose of the Order a claimant must be treated as being in Northern Ireland during any period of temporary absence from Northern Ireland if—
- (a) the claimant was entitled to a jobseeker’s allowance immediately before the beginning of that period of temporary absence; and
  - (b) that period of temporary absence is for the purpose of the claimant receiving treatment at a hospital or other institution outside Northern Ireland where the treatment is being provided—
    - (i) under Articles 5, 7 and 8 of the Health and Personal Social Services (Northern Ireland) Order 1972 (services generally)(**14**);
    - (ii) pursuant to arrangements made under Article 14A of that Order (voluntary organisations and other bodies)(**15**), or
    - (iii) pursuant to arrangements made under paragraph 13 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (Health and Social Services trusts — specific powers)(**16**).
- (6) For the purposes of the Order, a person must be treated as being in Northern Ireland during any period of temporary absence from Northern Ireland not exceeding 15 days where—
- (a) the absence is for the purpose of taking part in annual continuous training as a member of any reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001(**17**); and
  - (b) the person was entitled to a jobseeker’s allowance immediately before the period of absence.
- (7) In this regulation, “appropriately qualified” means qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

### **Remunerative work**

- 41.**—(1) For the purposes of the Order, “remunerative work” means work—
- (a) for which payment is made or which is done in expectation of payment; and
  - (b) in which a claimant is—
    - (i) engaged for 16 or more hours per week; or
    - (ii) where their hours of work fluctuate, engaged on average for 16 or more hours per week.
- (2) For the purpose of paragraph (1), the number of hours in which a claimant is engaged in work is to be determined—
- (a) where no recognisable cycle has been established in respect of a person’s work, by reference to the number of hours or, where those hours are likely to fluctuate, the average of the hours, which they are expected to work in a week;

(14) [S.I. 1972/1265 \(N.I. 14\)](#); Article 5 was amended by Schedule 6 to the Health and Social Security (Northern Ireland) Order 1984 ([S.I. 1984/1158 \(N.I. 8\)](#)), Schedule 5 to the Mental Health (Northern Ireland) Order 1986 ([S.I. 1986/595 N.I. 4](#)) and paragraph 3 of Schedule 1 to the Primary Medical Services (Northern Ireland) Order 2004 ([S.I. 2004/311 \(N.I. 2\)](#))

(15) Article 14A was inserted by paragraph 2 of Schedule 1 to the Registered Homes (Northern Ireland) Order 1992 ([S.I. 1992/3204 \(N.I. 20\)](#))

(16) [S.I. 1991/194 \(N.I. 1\)](#); paragraph 13 of Schedule 3 was amended by Schedule 1 to the Health and Personal Social Services (Northern Ireland) Order 1994 ([S.I. 1994/429 \(N.I. 2\)](#)) and sections 32 and 34(3) of and paragraph 1(1)(d) and 1(3) of Schedule 6 to the Health and Social Care (Reform) Act (Northern Ireland) 2009 ([c. 1 \(N.I.\)](#))

(17) [S.I. 2001/1004](#)

- (b) where the number of hours for which they are engaged fluctuate, by reference to the average of hours worked over—
  - (i) if there is a recognisable cycle of work, the period of one complete cycle (including, where the cycle involves periods in which the person does not work, those periods but disregarding any other absences);
  - (ii) in any other case, the period of 5 weeks immediately before the date of claim or the date of supersession, or such other length of time as may, in the particular case, enable the person's average hours of work to be determined more accurately.
- (3) In determining in accordance with this regulation the number of hours for which a person is engaged in remunerative work—
  - (a) that number must include any time allowed to that person by their employer for a meal or for refreshments, but only where the person is, or expects to be, paid earnings in respect of that time;
  - (b) no account must be taken of any hours in which the person is engaged in an employment or scheme to which any one of sub-paragraphs (a) to (e) of regulation 43(1) (persons treated as not engaged in remunerative work) applies;
  - (c) no account must be taken of any hours in which the person is engaged otherwise than in an employment as an earner in caring for—
    - (i) a person who is in receipt of attendance allowance, the care component, the daily living component or armed forces independence payment;
    - (ii) a person who has claimed an attendance allowance, armed forces independence payment, a disability living allowance or personal independence payment, but only for the period beginning with the date of claim and ending on the date on which the claim is determined or, if earlier, on the expiration of the period of 26 weeks from the date of claim;
    - (iii) another person and is in receipt of a carer's allowance under section 70 of the Benefits Act; or
    - (iv) a person who has claimed either an attendance allowance, armed forces independence payment, a disability living allowance or a personal independence payment and has an award of attendance allowance, armed forces independence payment, the care component or the daily living component for a period commencing after the date on which that claim was made.
- (4) In this regulation—
  - “armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011<sup>(18)</sup>;
  - “disability living allowance” means a disability living allowance under section 71 of the Benefits Act<sup>(19)</sup>;
  - “care component” means the care component of disability living allowance at the highest or middle rate prescribed under section 72(3) of the Benefits Act;
  - “daily living component” means the daily living component of personal independence payment at the standard or enhanced rate referred to in Article 83 of the Welfare Reform (Northern Ireland) Order 2015;
  - “personal independence payment” means an allowance under Part 5 of the Welfare Reform (Northern Ireland) Order 2015.

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<sup>(18)</sup> S.I. 2011/517

<sup>(19)</sup> Section 71 was amended by Article 64(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (S.I. 1999/3147 (N.I. 11))

**Persons treated as engaged in remunerative work**

**42.**—(1) Except in the case of a person on maternity leave, paternity leave, shared parental leave, adoption leave or absent from work through illness, a person is to be treated as engaged in remunerative work during any period for which they are absent from work referred to in regulation 41(1) (remunerative work) where the absence is either without good cause or by reason of a recognised, customary or other holiday.

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

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

**Persons treated as not engaged in remunerative work**

**43.**—(1) A person is to be treated as not engaged in remunerative work in so far as they are—

- (a) engaged by a charity<sup>(20)</sup> or a voluntary organisation or are a volunteer where the only payment received by them or due to be paid to them is a payment in respect of any expenses incurred, or to be incurred, if they otherwise derive no remuneration or profit from the employment;
- (b) engaged on a scheme for which a training allowance is being paid;
- (c) engaged in employment as—
  - (i) a part-time fire and rescue officer employed by the Northern Ireland Fire and Rescue Service Board under the Fire and Rescue Services (Northern Ireland) Order 2006<sup>(21)</sup>;
  - (ii) an auxiliary coastguard in respect of coastal rescue activities;
  - (iii) a person engaged part-time in the manning or launching of a lifeboat;
  - (iv) a member of any reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001;
  - (v) a member of the Police Service for Northern Ireland Reserve provided for under section 1 of the Police (Northern Ireland) Act 2000<sup>(22)</sup>;
- (d) performing their duties as a councillor, and for this purpose “councillor” has the same meaning as in section 167F(2) of the Benefits Act<sup>(23)</sup>;
- (e) engaged in caring for a person who is accommodated with them by virtue of arrangements made under any of the provisions referred to in regulation 60(2)(b) or (c), and are in receipt of any payment specified in regulation 60(2)(b) or (c);
- (f) engaged in an activity in respect of which—
  - (i) a sports award had been made, or is to be made, to them; and
  - (ii) no other payment is made or is expected to be made to them;
- (g) engaged in the programme known as Work Experience.

(2) In this regulation, “volunteer” means a person who is engaged in voluntary work, otherwise than for a close relative, grand-parent, grand-child, uncle, aunt, nephew or niece, where the only

<sup>(20)</sup> See section 1 of the Charities Act (Northern Ireland) 2008 (c. 12 (N.I.))

<sup>(21)</sup> S.I. 2006/1254 (N.I. 9)

<sup>(22)</sup> 2000 c. 32 (N.I.)

<sup>(23)</sup> Section 167F was inserted by Article 8(1) of the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))



payment received, or due to be paid to the person by virtue of being so engaged, is in respect of any expenses reasonably incurred by the person in connection with that work.

### **Relevant education**

**44.**—(1) For the purposes of the Order—

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

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

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

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

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

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

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

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

- (6) A person is not to be regarded as undertaking a course by virtue of this regulation for any part of the period mentioned in paragraph (4) during which the following conditions are met—
- (a) the person has, with the consent of the relevant educational establishment, ceased to attend or undertake the course because they are ill or caring for another person;
  - (b) the person has recovered from that illness or ceased caring for that person within the past year, but not yet resumed the course; and
  - (c) the person is not eligible for a grant or student loan.
- (7) In this regulation, except where paragraph (8) applies, “qualifying young person” means a person who has reached the age of 16 but not the age of 20—
- (a) up to, but not including, the 1st September following their 16th birthday; and
  - (b) up to, but not including, the 1st September following their 19th birthday, if they are enrolled in, or accepted for, approved training or a course of education—
    - (i) which is not a course of advance education;
    - (ii) which is provided at a school or college or provided elsewhere but approved by the Department; and
    - (iii) where the average time spent during term time (excluding meal breaks) in receiving tuition, engaging in practical work, or supervised study, or taking examinations exceeds 12 hours per week.
- (8) A person is not a “qualifying young person” within the meaning in paragraph (7) where they—
- (a) are aged 19 and have not started the education or training or been enrolled or accepted for it before reaching the age of 19;
  - (b) fall within paragraph (7)(b) and their education or training is provided by means of a contract of employment; or
  - (c) are receiving universal credit, an employment or support allowance or a jobseeker’s allowance.
- (9) In this regulation—
- “approved training” means training in pursuance of arrangements made under section 3 of the Employment and Training Act (Northern Ireland) 1950<sup>(24)</sup> which is approved by the Department for the purposes of this regulation;
- “modular course” means a course which consists of two or more modules, the successful completion of a specified number of which is required before a person is considered by the educational establishment to have completed the course;
- “student loan” means a loan towards a student’s maintenance pursuant to any regulations made under Article 3 of the Education (Student Support) (Northern Ireland) Order 1998<sup>(25)</sup>, section 22 of the Teaching and Higher Education Act 1998<sup>(26)</sup>, section 73 of the Education (Scotland) Act 1980<sup>(27)</sup>, including in Scotland a young student’s bursary paid under regulation 4(1)(c) of the Students’ Allowances (Scotland) Regulations 2007<sup>(28)</sup>.

(24) 1950 c. 29 (N.I.)

(25) S.I. 1998/1760 (N.I. 14); Article 3 was amended by section 147(3) of the Learning and Skills Act 2000 (c. 21), the Income Tax (Earnings and Pensions) Act 2003 (c. 1), the Finance Act 2003 (c. 14) and Articles 12(2) and (3) and 15 of and the Schedule to the Higher Education (Northern Ireland) Order 2005 (S.I. 2005/1116 (N.I. 5))

(26) 1998 c. 30; section 22 was amended by section 146(2) of the Learning and Skills Act 2000

(27) 1980 c. 44. Section 73 was amended by section 73 of the Self-Governing Schools etc (Scotland) Act 1989 (c. 39), section 29 of the Teaching and Higher Education Act 1998 (c. 30) and section 3 of the Education (Graduate Endowment and Student Support) (Scotland) Act 2001 (asp 6)

(28) S.S.I. 2007/153

### Short periods of sickness

- 45.—(1) Subject to the following provisions of this regulation, a person who—
- (a) has been awarded a jobseeker's allowance, or is a person to whom any of the circumstances mentioned in Article 8J(2) or (3) or 8K(2) of the Order apply;
  - (b) proves to the satisfaction of the Department that they are unable to work on account of some specific disease or disablement; and
  - (c) during the period of their disease or disablement, satisfies the requirements for entitlement to a jobseeker's allowance other than those specified in Article 3(2)(f) of the Order (capable of work or not having limited capability for work)(29),

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

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

(3) Paragraph (1) does not apply to a claimant on more than two occasions in any one jobseeking period or, where a jobseeking period exceeds 12 months, in each successive 12 months within that period; and for the purposes of calculating any period of 12 months, the first 12 months in the jobseeking period commences on the first day of the jobseeking period.

(4) Paragraph (1) does not apply to any person where the first day in respect of which they are unable to work falls within 8 weeks after the day the person ceased to be entitled to statutory sick pay.

(5) Paragraph (1) does not apply to a claimant who is temporarily absent from Northern Ireland in the circumstances prescribed by regulation 40(5).

- (6) Paragraph (1) does not apply to any person—
- (a) during any period where the person is treated as capable of work or as not having limited capability for work under regulation 46 (extended period of sickness); or
  - (b) where the first day in respect of which that person would, apart from this subparagraph, have been treated as capable of work or as not having limited capability for work under this regulation falls immediately after the last day on which the person is so treated under regulation 46.

### Extended periods of sickness

- 46.—(1) This regulation applies to a person who—
- (a) has been awarded a jobseeker's allowance or is a person to whom any of the circumstances mentioned in Article 8J(2) or (3) or 8K(2) of the Order apply;
  - (b) proves to the satisfaction of the Department that they are unable to work on account of some specific disease or disablement;
  - (c) either—
    - (i) declares that they have been unable to work, or expect to be unable to work, on account of that disease or disablement for more than 2 weeks but they do not expect to be unable to work on account of that disease or disablement for more than 13 weeks; or

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(29) Article 3(2)(f) was substituted by sections 28(1) and paragraph 6(3) of Schedule 3 to the Welfare Reform Act (Northern Ireland) 2007 (c. 2 (N.I.))

- (ii) is not a person to whom regulation 45(1) (short periods of sickness) applies by virtue of paragraph (3) of that regulation;
  - (d) during the period of their disease or disablement, satisfies the requirements for entitlement to a jobseeker's allowance except those specified in Article 3(2)(f) (capable of work or not having limited capability for work) of the Order; and
  - (e) has not stated in writing that for the period of the disease or disablement they propose to claim or have claimed an employment and support allowance or universal credit.
- (2) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(i) applies is—
- (a) evidence of incapacity for work or limited capability for work in accordance with the Social Security (Medical Evidence) Regulations (Northern Ireland) 1976 (which prescribe the form of a doctor's statement or other evidence required in each case)**(30)**; and
  - (b) any such additional information as the Department may request.
- (3) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(ii) applies is a declaration made by the person in writing in a form approved for the purposes by the Department, that the person has been unfit for work from a date or for a period specified in the declaration.
- (4) Subject to the following paragraphs, a person to whom this regulation applies is to be treated as capable of work or as not having limited capability for work for the continuous period beginning on the first day on which the person is unable to work on account of the disease or disablement ("the first day") and ending on—
- (a) the last such day; or
  - (b) if that period would otherwise exceed 13 weeks, the day which is 13 weeks after the first day.
- (5) This regulation does not apply to a person on more than one occasion in any one period of twelve months starting on the first day applying for the purpose of paragraph (4).
- (6) Paragraphs (4) and (5) of regulation 45 apply for the purposes of this regulation as they apply for the purposes of paragraph (1) of regulation 45.

### **Periods of sickness and persons receiving treatment outside Northern Ireland**

**47.—(1)** A person—

- (a) who has been awarded a jobseeker's allowance, or is a person to whom any of the circumstances mentioned in Article 8J(2) or (3) or 8K(2) of the Order apply;
- (b) who is temporarily absent from Northern Ireland in the circumstances prescribed by regulation 40(5);
- (c) who proves to the satisfaction of the Department that they are unable to work on account of some specific disease or disablement; and
- (d) but for their disease or disablement, would satisfy the requirements for entitlement to a jobseeker's allowance other than those specified in Article 3(2)(f) of the Order (capable of work or not having limited capability for work),

is to be treated during that period of temporary absence abroad as capable of work or as not having limited capability for work, except where that person has stated in writing before that period of temporary absence abroad begins that immediately before the beginning of the period of that temporary absence abroad they have claimed employment and support allowance.

(2) The evidence which is required for the purposes of paragraph (1)(c) is a declaration made by that person in writing, in a form approved for the purposes by the Department that they are unfit for work from a date or for a period specified in the declaration.

### **Prescribed amount of earnings**

**48.** The prescribed amount of earnings for the purposes of Article 4(1)(c) of the Order (the contribution-based conditions) is to be calculated by applying the formula—

$$(A + D) - £0.01$$

where—

A is the age-related amount applicable to the claimant for the purposes of Article 6(1)(a) of the Order<sup>(31)</sup>; and

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

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<sup>(31)</sup> Article 6(1) was amended by Part 1 of Schedule 12 to the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1))