

2011 No. 917

SOCIAL SECURITY

The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011

<i>Made</i> - - - -	<i>28th March 2011</i>
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<i>Coming into force</i> - -	<i>20th May 2011</i>

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 123(1)(d) and (e), 136(3) and (5)(a) and (b), 137(1) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 30 and 146(1) and (2) of the Housing Grants, Construction and Regeneration Act 1996(b), section 10, 79(1) and (4) and 84 of the Social Security Act 1998(c) and sections 12(1), (4)(a) and (b), 17A(1), (2), (5)(a), (d) and (e) and (6) to (9), 20, 20A, 20B(4) to (6), 20E(3)(a), 21, 35(1) and 36(2) and (4) of, and Schedule 1 to, the Jobseekers Act 1995(d).

These Regulations are made with the consent of the Treasury in respect of provisions relating to section 30 (means testing in case of application by owner-occupier or tenant) of the Housing Grants, Construction and Regeneration Act 1996(e).

In respect of provisions in these Regulations relating to housing benefit and council tax benefit, organisations appearing to the Secretary of State to be representative of the authorities concerned have agreed that consultations need not be undertaken(f).

In accordance with section 173(1)(b) of the Social Security Administration Act 1992(g), the Secretary of State has obtained the agreement of the Social Security Advisory Committee that the proposals in respect of these Regulations should not be referred to it.

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- (a) 1992 c. 4. Section 123(1) was amended by section 103 of, and Schedule 9 to, the Local Government Finance Act 1992 (c. 14), and by section 60 of, and Schedule 6 to, the Tax Credits Act 2002 (c. 21); section 137(1) is an interpretation provision and is cited because of the meaning given to the word "prescribed"; section 175(1) and (4) were amended by section 2 of, and paragraph 29(1) and (2) of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
 - (b) 1996 c. 53 ("the 1996 Act"). Section 30 was amended by S.I. 2002/1860 and by section 81 of, and Schedule 8 to, the Civil Partnership Act 2004 (c. 33); the functions of the Secretary of State and the Treasury, so far as exercisable in relation to Wales were transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art. 2, Schedule 1; section 146 was amended by the Local Democracy, Economic Development and Construction Act 2009 (c. 20) on a day to be appointed and the functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art. 2, Schedule 1.
 - (c) 1998 c.14.
 - (d) 1995 c. 18. Section 17A was inserted by section 1 of the Welfare Reform Act 2009 (c. 24); section 20B was inserted by section 59 and Schedule 7 to the Welfare Reform and Pensions Act 1999 (c. 30); sections 35(1) and 36(4) were amended by section 2 of, and paragraphs 62 and 63 of Schedule 3 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2). Section 35(1) is an interpretation provision and is cited because of the meaning given to the words "prescribed" and "regulations".
 - (e) See section 30(9) of the 1996 Act.
 - (f) See section 176(2) of the Social Security and Administration Act 1992.
 - (g) 1992 c.5.

PART 1

General

Citation and Commencement

1. These Regulations may be cited as the Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 and shall come into force on 20th May 2011.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Jobseekers Act 1995;

“claimant” means a person who claims a jobseeker's allowance, except that in relation to a joint-claim couple claiming a joint-claim jobseeker's allowance, it means either or both of the members of the couple;

“the Council Tax Benefit Regulations” means the Council Tax Benefit Regulations 2006(a);

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006(b);

“the Housing Renewal Grants Regulations” means the Housing Renewal Grants Regulations 1996(c);

“the Jobseeker's Allowance Regulations” means the Jobseeker's Allowance Regulations 1996(d);

“the Scheme” means the Employment, Skills and Enterprise Scheme;

“working day” means any day except for a Saturday, Sunday, Christmas Day, Good Friday or bank holiday under the Banking and Financial Dealings Act 1971(e) in England and Wales or in Scotland;

“the Employment, Skills and Enterprise Scheme” means a scheme within section 17A (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc.) of the Act known by that name and provided pursuant to arrangements made by the Secretary of State that is designed to assist claimants to obtain employment or self-employment, and which may include for any individual work-related activity (including work experience or job search).

(2) For the purpose of these Regulations where a written notice is given by sending it by post it is taken to have been received on the second working day after posting.

PART 2

Selection for and participation in the Employment, Skills and Enterprise Scheme

Selection for participation in the Scheme

3. The Secretary of State may select a claimant for participation in the Scheme.

Requirement to participate and notification

4.—(1) Subject to regulation 5, a claimant (“C”) selected under regulation 3 is required to participate in the Scheme where the Secretary of State gives C a notice in writing complying with paragraph (2).

(a) S.I. 2006/215.
(b) S.I. 2006/213.
(c) S.I. 1996/2890.
(d) S.I. 1996/207.
(e) 1971 c. 80.

- (2) The notice must specify—
- (a) that C is required to participate in the Scheme;
 - (b) the day on which C’s participation will start;
 - (c) details of what C is required to do by way of participation in the Scheme;
 - (d) that the requirement to participate in the Scheme will continue until C is given notice by the Secretary of State that C’s participation is no longer required, or C’s award of jobseeker’s allowance terminates, whichever is earlier;
 - (e) information about the consequences of failing to participate in the Scheme.
- (3) Any changes made to the requirements mentioned in paragraph (2)(c) after the date on which C’s participation starts must be notified to C in writing.

Circumstances in which requirement to participate in the Scheme is suspended or ceases to apply

- 5.—(1) Where a claimant (“C”) is—
- (a) subject to a requirement to participate in the Scheme, and
 - (b) while C is subject to such a requirement, the Jobseeker’s Allowance Regulations apply so that C is not required to meet the jobseeking conditions^(a)

C’s requirement to participate in the Scheme is suspended for the period during which C is not required to meet the jobseeking conditions.

- (2) A requirement to participate in the Scheme ceases to apply to a claimant (“C”) if—
- (a) the Secretary of State gives C notice in writing that C is no longer required to participate in the Scheme, or
 - (b) C’s award of jobseeker’s allowance terminates,

whichever is earlier.

(3) Where paragraph (2)(a) applies, the requirement ceases to apply on the day specified in the notice.

PART 3

Sanctions

Failure to participate in the Scheme

6. A claimant who fails to comply with any requirement notified under regulation 4 is to be regarded as having failed to participate in the Scheme.

Good cause

7.—(1) A claimant (“C”) who fails to participate in the Scheme must show good cause for that failure within 5 working days of the date on which the Secretary of State notifies C of the failure.

(2) The Secretary of State must determine whether C has failed to participate in the Scheme and, if so, whether C has shown good cause for the failure.

(3) In deciding whether C has shown good cause for the failure, the Secretary of State must take account of all the circumstances of the case, including in particular C’s physical or mental health or condition.

(a) See section 17A(10) of the Act for the meaning of the “jobseeking conditions”.

Consequences of failure to participate in the Scheme

8.—(1) Where the Secretary of State determines that a claimant (“C”) has failed to participate in the Scheme, and C has not shown good cause for the failure in accordance with regulation 7, the appropriate consequence for the purpose of section 17A of the Act is as follows.

(2) In the case of a jobseeker’s allowance other than a joint-claim allowance, the appropriate consequence is that C’s allowance is not payable for the period specified in paragraphs (4) to (7) (“the specified period”).

(3) In the case of a joint-claim jobseeker’s allowance, the appropriate consequence is that C is to be treated as subject to sanctions for the purposes of section 20A (denial or reduction of a joint-claim jobseeker’s allowance) of the Act for the specified period.

(4) The period is 2 weeks in a case which does not fall within paragraph (5), (6) or (7).

(5) The period is 4 weeks where—

- (a) on a previous occasion the Secretary of State determined that C’s jobseeker’s allowance was not payable or was payable at a lower rate because C failed without good cause to participate in the Scheme (“the first determination”), and
- (b) a subsequent determination is made no more than 12 months after the date on which C’s jobseeker’s allowance was not payable or was payable at a lower rate following the first determination.

(6) Subject to paragraph (7), the period is 26 weeks where—

- (a) on two or more previous occasions the Secretary of State determined that C’s jobseeker’s allowance was not payable or was payable at a lower rate because C failed without good cause to participate in the Scheme, and
- (b) a subsequent determination is made no more than 12 months after the date on which C’s jobseeker’s allowance was not payable or was payable at a lower rate following the most recent previous determination.

(7) Where paragraph (6) applies but the Secretary of State is satisfied that C has re-complied in accordance with paragraph (8), the period is either—

- (a) 4 weeks, or
- (b) 4 weeks plus a period which ends with the last day of the benefit week in which C re-complies,

whichever is longer.

(8) C will be taken to have re-complied where, after the date on which the Secretary of State determines that C has failed to participate in the Scheme, C complies with—

- (a) the requirement as to participation in the Scheme to which the determination relates, or
- (b) such other requirement as to participation as may be made by the Secretary of State and notified to C in accordance with regulation 4.

(9) The specified period begins—

- (a) where, in accordance with regulation 26A(1) of the Social Security (Claims and Payments) Regulations 1987(a), C’s jobseeker’s allowance is paid otherwise than fortnightly in arrears, on the day following the end of the last benefit week in respect of which that allowance was paid, and
- (b) in any other case, on the first day of the benefit week following the date on which C’s jobseeker’s allowance is determined not to be payable or to be payable at a lower rate.

(10) Paragraphs (4) to (7) are subject to paragraph (11).

(11) Where the Secretary of State notifies C during the specified period that C is no longer required to participate in the Scheme, the specified period terminates at the end of—

- (a) one week beginning with the date of the notice, or

(a) S.I. 1987/1968. Regulation 26A was inserted by S.I. 1996/1460.

(b) the benefit week in which the requirement to participate ceases to apply, whichever is later.

(12) In this regulation “benefit week” has the same meaning as in regulation 1(3) of the Jobseeker’s Allowance Regulations(a).

PART 4

Hardship

Hardship

9. Regulation 140 (meaning of “person in hardship”) of the Jobseeker’s Allowance Regulations(b) is amended as follows—

(a) in paragraph (2) substitute “, (4A), (4B) or (4C)” for “or (4A) or (4B)”;

(b) after paragraph (4B) insert—

“(4C) In paragraph (2), a “person in hardship” does not include a claimant who is required at that time to participate in the Employment, Skills and Enterprise Scheme.”.

Hardship for joint-claim couples

10. Regulation 146A (meaning of “couple in hardship”) of the Jobseeker’s Allowance Regulations(c) is amended as follows—

(a) in paragraph (2) substitute “, (5A) or (5B)” for “or (5A)”;

(b) after paragraph (5A) insert—

“(5B) In paragraph (2), a “couple in hardship” does not include a joint-claim couple either or both of whom are at that time required to participate in the Employment, Skills and Enterprise Scheme.”.

PART 5

Consequential Amendments

Definitions

11.—(1) Paragraph (2) applies to the following provisions (which relate to interpretation)—

(a) regulation 2(1) of the Council Tax Benefit Regulations;

(b) regulation 2(1) of the Housing Benefit Regulations;

(c) regulation 2(1) of the Housing Renewal Grants Regulations;

(d) regulation 1(3) of the Jobseeker’s Allowance Regulations(d).

(2) In each of the provisions to which this paragraph applies insert the following definition in the appropriate place—

““the Employment, Skills and Enterprise Scheme” means a scheme under section 17A (schemes for assisting persons to obtain employment: “work for your benefit” schemes etc.) of the Jobseekers Act 1995 known by that name and provided pursuant to

(a) A relevant amending instrument is S.I. 2009/604.

(b) Regulation 140 was amended by S.I. 1996/1516, 1996/1517, 1997/2863, 1999/2860, 2000/239, 2000/1978, 2001/1029, 2003/445, 2005/2687, 2005/2877, 2008/1554, 2008/3051, 2009/480 and 2010/509.

(c) Regulation 146A was inserted by S.I. 2000/1978 and was amended by S.I. 2001/1029, 2005/2877, 2005/2687, 2008/1554, 2009/480 and 2010/509.

(d) Relevant amending instruments are S.I. 2001/739 and 2002/530 which relate to the definition of “self-employment route” in the Jobseeker’s Allowance Regulations.

arrangements made by the Secretary of State that is designed to assist claimants to obtain employment, including self-employment, and which may include for any individual work-related activity (including work experience or job search);”.

(3) The definition of “self-employment route” in each of the provisions mentioned in paragraph (1)(a), (b) and (d) is amended as follows—

(a) at the end of paragraph (a) omit “or”; and

(b) at the end of paragraph (b) insert “or” and the following paragraph—

“(c) the Employment, Skills and Enterprise Scheme;”.

(4) The definition of “self-employment route” in the provision mentioned in paragraph (1)(c) is amended as follows—

(a) in paragraph (b)(iv) omit “or”; and

(b) at the end of paragraph (v) insert—

“or

(vi) the Employment, Skills and Enterprise Scheme;”.

Notional income

12.—(1) This regulation applies to the following provisions (which relate to notional income)—

(a) regulation 32(7) of the Council Tax Benefit Regulations(**a**);

(b) regulation 42(7) of the Housing Benefit Regulations(**b**);

(c) regulation 31(9A) of the Housing Renewal Grants Regulations(**c**);

(d) regulation 105(10A) of the Jobseeker’s Allowance Regulations(**d**).

(2) In each of the provisions to which this regulation applies insert the following sub-paragraph after sub-paragraph (cb)—

“(cc) in respect of a claimant’s participation in the Employment, Skills and Enterprise Scheme;”.

Notional capital

13.—(1) This regulation applies to the following provisions (which relate to notional capital)—

(a) regulation 39(4) of the Council Tax Benefit Regulations(**e**);

(b) regulation 49(4) of the Housing Benefit Regulations(**f**);

(c) regulation 38(3A) of the Housing Renewal Grants Regulations(**g**);

(d) regulation 113(3A) of the Jobseeker’s Allowance Regulations(**h**).

(2) In each of the provisions to which this regulation applies insert the following sub-paragraph after sub-paragraph (bb)—

(a) Regulation 32(7) was amended by S.I. 2006/588, 2008/698, 2008/2767, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

(b) Regulation 42(7) was amended by S.I. 2006/588, 2008/698, 2008/2767, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

(c) Paragraph (9A) was inserted by S.I. 1998/808, was substituted by S.I. 1999/1523, was amended by S.I. 2000/973, 2000/531, 2000/2798, 2002/530 and 2011/688 and was modified by S.I. 2010/1222.

(d) Paragraph (10A) was inserted by S.I. 1998/2117, was amended by S.I. 1999/2640, 2003/455, 2006/588, 2008/698, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

(e) Regulation 39(4) was amended by S.I. 2006/588, 2008/698, 2008/2767, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

(f) Regulation 49(4) was amended by S.I. 2006/588, 2008/698, 2008/2767, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

(g) Paragraph (3A) was inserted by S.I. 1999/1523, was amended by S.I. 2000/531, 2000/973, 2002/530, 2002/2798 and 2011/688 and was modified by S.I. 2010/1222.

(h) Paragraph (3A) was inserted by S.I. 1998/2117, was amended by S.I. 1999/2640, 2001/1029, 2004/2308, 2005/3391, 2006/588, 2008/698, 2009/480 and 2011/688 and was modified by S.I. 2010/1222.

“(bc) in respect of a claimant’s participation in the Employment, Skills and Enterprise Scheme;”.

Income to be disregarded

14.—(1) This regulation applies to the following Schedules (which relate to sums to be disregarded in the calculation of income other than earnings)—

- (a) Schedule 4 to the Council Tax Benefit Regulations;
- (b) Schedule 5 to the Housing Benefit Regulations;
- (c) Schedule 3 to the Housing Renewal Grants Regulations;
- (d) Schedule 7 to the Jobseeker’s Allowance Regulations.

(2) In each Schedule to which this regulation applies insert the following paragraph after paragraph A2(a)—

“**A3.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme.”.

Capital to be disregarded

15.—(1) This regulation applies to the following Schedules (which relate to capital to be disregarded)—

- (a) Schedule 5 to the Council Tax Benefit Regulations;
- (b) Schedule 6 to the Housing Benefit Regulations;
- (c) Schedule 4 to the Housing Renewal Grants Regulations;
- (d) Schedule 8 to the Jobseeker’s Allowance Regulations.

(2) In each Schedule to which this regulation applies insert the following paragraph after paragraph A2(b)—

“**A3.** Any payment made to the claimant in respect of any travel or other expenses incurred, or to be incurred, by him in respect of his participation in the Employment, Skills and Enterprise Scheme but only for 52 weeks beginning with the date of receipt of the payment.”.

Further amendments to the Jobseeker’s Allowance Regulations

16. The Jobseeker’s Allowance Regulations are amended as follows—

- (a) in the definition of “relevant notification” in regulation 25(1A) (entitlement ceasing on a failure to comply)(c), insert “, under the Employment, Skills and Enterprise Scheme” after “scheme”;
- (b) at the end of regulation 53 (persons treated as not engaged in remunerative work)(d) insert—

“(m)he is participating in the Employment, Skills and Enterprise Scheme.”.

(a) Each of the Schedules listed in regulation 14(1) was modified by S.I. 2010/1222 so as to insert paragraph A1 and amended by S.I. 2011/688 so as to insert paragraph A2.

(b) Each of the Schedules listed in regulation 15(1) was modified by S.I. 2010/1222 so as to insert paragraph A1 and amended by S.I. 2011/688 so as to insert paragraph A2.

(c) Relevant amending instruments are S.I. 1999/530, 2000/1978, 2000/2194, 2010/509 and 2011/688; regulation 25(1A) was also modified by S.I. 2010/1222.

(d) Relevant amending instruments are S.I. 1999/2165, 1999/3156, 2000/1978, 2000/2910, 2004/963, 2004/3168, 2005/2060, 2005/2929, 2006/2378, 2009/3228, 2010/641 and 2011/688; regulation 53 was also modified by S.I. 2010/1222.

Consequential amendments relating to decisions and appeals

17. The Social Security and Child Support (Decisions and Appeals) Regulations 1999(a) are amended as follows—

- (a) after regulation 7(8ZA) (date from which a decision superseded under section 10 takes effect)(b) insert the following paragraph—

“(8ZB) A decision to which regulation 6(2)(fa) applies shall take effect on the day specified in regulation in regulation 8(9)(a) or (b) of the Jobseeker’s Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011.”.

PART 6

Contracting out

Contracting out certain functions in relation to the Scheme

18.—(1) Any function of the Secretary of State specified in paragraph (2) may be exercised by, or by employees of, such person (if any) as may be authorised by the Secretary of State.

(2) The functions are any function under—

- (a) regulation 4 (requirement to participate and notification);
(b) regulation 5(3)(a) (notice that requirement to participate ceases); and
(c) regulation 8(8)(b) and 8(11) (requirements and notices after failures).

Signed by authority of the Secretary of State for Work and Pensions

28th March 2011

C Grayling
Minister of State,
Department for Work and Pensions

We consent

28th March 2011

James Duddridge
Michael Fabricant
Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations establish the Employment, Skills and Enterprise Scheme, under section 17A of the Jobseekers Act 1995 (“the Jobseekers Act”), which is designed to assist claimants to obtain employment, including self-employment, and which may include for any individual work work-related activity (such as work experience or job search).

Part 1 contains general provisions, including provisions concerning interpretation.

Part 2 concerns the circumstances in which jobseeker’s allowance claimants are required to participate in the Scheme. Regulation 3 provides that any claimant can be selected.

Regulation 4 requires a person so selected to participate in the Scheme upon being notified by the Secretary of State from the date specified in the notice. It also prescribes the contents of the notice.

(a) S.I. 1999/991.

(b) Regulation 7 was revoked, in so far as it related to child benefit or guardian’s allowance, by S.I. 2003/916. Regulation 7(8) was substituted by S.I. 1999/2677 and was amended by S.I. 2000/1982 and 2008/2677.

Regulation 5 sets out the circumstances in which a requirement to participate in the Scheme is suspended and circumstances in which a claimant is not required (or no longer required) to participate in the Scheme. These are where a participant's award of jobseeker's allowance terminates or where the Secretary of State gives the participant notice in writing that his or her participation is no longer required.

Part 3 deals with failures to participate in the Scheme and good cause for failure to participate.

Regulation 6 provides that a claimant who fails to comply with any of the requirements notified under regulation 4 is to be regarded as having failed to participate in the Scheme.

Regulation 7 provides that a claimant who fails to participate in the Scheme must show good cause for that failure within 5 working days. It is then for the Secretary of State to determine whether that claimant has shown good cause, taking into account the claimant's circumstances.

Regulation 8 provides that if a claimant fails without good cause to participate in the Scheme, the claimant's jobseeker's allowance will not be payable or will be reduced for 2, 4 or 26 weeks subject in the last case to a reduction back to 4 weeks where the claimant re-complies. It also makes provision for bringing the sanction period to an end in the case of claimants who are no longer required to participate in the Scheme.

Part 4 allows for an income-based jobseeker's allowance to be payable even though a sanction applies to the claimant because of a failure without good cause to participate in the Scheme, if the person is a vulnerable person. It does so by amending the hardship provisions in Parts 9 and 9A of the Jobseeker's Allowance Regulations 1996.

Part 5 makes various consequential amendments to other Regulations in relation to a person's participation in the Scheme.

Regulation 11 inserts a definition of the Scheme in the Jobseeker's Allowance Regulations 1996, the Housing Renewal Grants Regulations 1996, the Council Tax Benefit Regulations 2006 and the Housing Benefit Regulations 2006. Regulations 12 and 13 ensure that persons will not be treated as having notional income or notional capital by virtue of their participation in the Scheme, and regulations 14 and 15 provide that travel and other expenses paid to participants are disregarded as income and capital for the purposes of certain income-related benefits.

Regulations 16 and 17 make consequential amendments to other Regulations to ensure that, where a sanction is imposed on a claimant for failure without good cause to participate in the Scheme and in relation to decisions and appeals, the claimant is treated consistently with a claimant who incurs a sanction under section 19 or 20A of the Jobseekers Act. Regulation 16 also makes provision for claimants on the Scheme to be treated as if they are not engaged in remunerative work.

Regulation 18 makes provision for contracting out functions of the Secretary of State under the Regulations (with the exception of functions relating to the consideration of good cause and the imposition of sanctions).

A full impact assessment has not been produced for this instrument as it has no impact on the private sectors and civil society organisations.

STATUTORY INSTRUMENTS

2011 No. 917

SOCIAL SECURITY

The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011

£5.75