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STATUTORY INSTRUMENTS

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**2001 No. 4022**

**The Social Security (Loss of Benefit) Regulations 2001**

**PART IV**

**HARDSHIP FOR JOINT-CLAIM COUPLES**

**Application of Part and meaning of “couple in hardship”**

**11.**—(1) This Part of these Regulations applies in respect of any part of the disqualification period when section 8(2) of the Act would otherwise apply.

(2) In this Part of these Regulations, a “couple in hardship” means, for the purposes of [F<sup>1</sup>regulation 12], a joint-claim couple, other than a couple to whom paragraph (4) or (5) applies, who are claiming a joint-claim jobseeker’s allowance jointly where at least one member of that couple is an offender and where—

- (a) [F<sup>2</sup>at least one member of the joint-claim couple is a woman who is pregnant] and the Secretary of State is satisfied that, unless a joint-claim jobseeker’s allowance is paid, she will suffer hardship;
- (b) one or both members of the couple are members of a polygamous marriage, one member of the marriage is pregnant and the Secretary of State is satisfied that, unless a joint-claim jobseeker’s allowance is paid, she will suffer hardship;
- (c) the award of a joint-claim jobseeker’s allowance includes, or would, if a claim for a jobseeker’s allowance from the couple were to succeed, have included in their applicable amount a disability premium and the Secretary of State is satisfied that, unless a joint-claim jobseeker’s allowance is paid, the member of the couple who would have caused the disability premium to be applicable to the couple would suffer hardship;
- (d) either member of the couple suffers from a chronic medical condition which results in functional capacity being limited or restricted by physical impairment and the Secretary of State is satisfied that—
  - (i) the suffering has already lasted or is likely to last, for not less than 26 weeks; and
  - (ii) unless a joint-claim jobseeker’s allowance is paid, the probability is that the health of the person suffering would, within two weeks of the Secretary of State making his decision, decline further than that of a normally healthy adult and the member of the couple who suffers from that condition would suffer hardship;
- (e) either member of the couple, or where a member of that couple is married to more than one person under a law which permits polygamy, one member of that marriage, devotes a considerable portion of each week to caring for another person who—
  - (i) is in receipt of an attendance allowance[F<sup>3</sup>, the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Benefits Act[F<sup>4</sup>, armed forces independence payment] or the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78 of the 2012 Act];

(ii) has claimed either attendance allowance<sup>F5</sup>, disability living allowance<sup>F6</sup>, armed forces independence payment<sup>F7</sup> or personal independence payment<sup>F7</sup> but only for so long as the claim has not been determined, or for 26 weeks from the date of claiming, whichever is the earlier; <sup>F7</sup>...

(iii) has claimed either attendance allowance or disability living allowance and has an award of either attendance allowance or the care component of disability living allowance at one of the two higher rates prescribed under section 72(4) of the Benefits Act for a period commencing after the date on which that claim was made, <sup>F8</sup> ...

<sup>F9</sup>(iv) has claimed personal independence payment and has an award of the daily living component of personal independence payment at the standard or enhanced rate in accordance with section 78 of the 2012 Act for a period commencing after the date on which that claim was made, [<sup>F10</sup> or ]

(v) has claimed armed forces independence payment and has an award for a period commencing after the date on which that claim was made,]

and the Secretary of State is satisfied, after taking account of the factors set out in paragraph (6) in so far as they are appropriate to the particular circumstances of the case, that the person providing the care will not be able to continue doing so unless a joint-claim jobseeker's allowance is paid; or

(f) section 16 of the Jobseekers Act applies to either member of the couple by virtue of a direction issued by the Secretary of State, except where the member of the joint-claim couple to whom the direction applies does not satisfy the requirements of section 1(2)(a) to (c) of that Act;

(g) section 3A(1)(e)(ii) of the Jobseekers Act <sup>M1</sup> (member of joint-claim couple under the age of 18) applies to either member of the couple and the Secretary of State is satisfied that unless a joint-claim jobseeker's allowance is paid, the couple will suffer hardship; or

(h) one or both members of the couple is a person—

(i) who, pursuant to the Children Act 1989 <sup>M2</sup>[<sup>F11</sup>or the Social Services and Well-being (Wales) Act 2014], was being looked after by a local authority;

(ii) with whom the local authority had a duty, pursuant to [<sup>F12</sup>either of those Acts], to take reasonable steps to keep in touch; or

(iii) who, pursuant to [<sup>F13</sup>either of those Acts], qualified for advice or assistance from a local authority,

but in respect of whom head (i), (ii) or (iii) above, as the case may be, had not applied for a period of 3 years or less as at the date on which the requirements of regulation 15 are complied with; and

(iv) who, as at the date on which the requirements of regulation 15 are complied with, is under the age of 21.

(3) Except in a case to which paragraph (4) or (5) applies, a joint-claim couple shall, for the purposes of [<sup>F14</sup>regulation 13], be deemed to be a couple in hardship where the Secretary of State is satisfied, after taking account of the factors set out in paragraph (6) in so far as they are appropriate to the particular circumstances of the case, that the couple will suffer hardship unless a joint-claim jobseeker's allowance is paid.

(4) In paragraphs (2) and (3), a joint-claim couple shall not be deemed to be a "couple in hardship"—

- (a) where one member of the couple is entitled to income support or falls within a category of persons prescribed for the purposes of section 124(1)(e) of the Benefits Act; or
  - (b) during a period in respect of which it has been determined that both members of the couple are subject [<sup>F15</sup>or are to be treated as subject] to sanctions for the purposes of section [<sup>F16</sup>8 or] 20A of the Jobseekers Act (<sup>F16</sup>attendance, information and evidence;] denial or reduction of joint-claim jobseeker's allowance).
- (5) Paragraph (2)(e) shall not apply in a case where the person being cared for resides in a [<sup>F17</sup>care home, an Abbeyfield Home or an independent hospital].
- (6) Factors which, for the purposes of paragraphs (2) and (3), the Secretary of State is to take into account in determining whether a joint-claim couple will suffer hardship are—
- (a) the presence in the joint-claim couple of a person who satisfies the requirements for a disability premium specified in paragraphs 20H and 20I of Schedule 1 to the Jobseeker's Allowance Regulations;
  - (b) the resources which, without a joint-claim jobseeker's allowance, are likely to be available to the joint-claim couple, the amount by which these resources fall short of the amount applicable in their case in accordance with regulation 16 (applicable amount of joint-claim couple in hardship cases), the amount of any resources which may be available to the joint-claim couple from any person in the couple's household who is not a member of the family and the length of time for which those factors are likely to persist;
  - (c) whether there is a substantial risk that essential items, including food, clothing, heating and accommodation, will cease to be available to the joint-claim couple, or will be available at considerably reduced levels, the hardship that will result and the length of time those factors are likely to persist.
- (7) In determining the resources available to the offender's family under paragraph (6)(b), any training premium or top-up payment paid pursuant to the Employment and Training Act 1973 shall be disregarded.

#### Textual Amendments

- F1** Words in reg. 11(2) substituted (E.W.S.) (1.4.2010) by [The Social Security \(Loss of Benefit\) Amendment Regulations 2010 \(S.I. 2010/1160\)](#), regs. 1, **2(8)(a)**
- F2** Words in reg. 11(2)(a) substituted (5.12.2005) by [The Civil Partnership \(Pensions, Social Security and Child Support\) \(Consequential, etc. Provisions\) Order 2005 \(S.I. 2005/2877\)](#), art. 1, **Sch. 3 para. 34(3)** (with art. 3)
- F3** Words in reg. 11(2)(e)(i) substituted (E.W.S.) (8.4.2013) by [The Social Security \(Loss of Benefit\) \(Amendment\) Regulations 2013 \(S.I. 2013/385\)](#), regs. 1(2)(b), **12(a)**
- F4** Words in reg. 11(2)(e)(i) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), art. 2(2), **Sch. para. 22(4)(a)**
- F5** Words in reg. 11(2)(e)(ii) substituted (E.W.S.) (8.4.2013) by [The Social Security \(Loss of Benefit\) \(Amendment\) Regulations 2013 \(S.I. 2013/385\)](#), regs. 1(2)(b), **12(b)**
- F6** Words in reg. 11(2)(e)(ii) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), art. 2(2), **Sch. para. 22(4)(b)**
- F7** Word in reg. 11(2)(e)(ii) omitted (E.W.S.) (8.4.2013) by virtue of [The Social Security \(Loss of Benefit\) \(Amendment\) Regulations 2013 \(S.I. 2013/385\)](#), regs. 1(2)(b), **12(c)**
- F8** Word in reg. 11(2)(e) omitted (8.4.2013) by virtue of [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), art. 2(2), **Sch. para. 22(4)(c)**

- F9** Reg. 11(2)(e)(iv) and word inserted (E.W.S.) (8.4.2013) by The Social Security (Loss of Benefit) (Amendment) Regulations 2013 (S.I. 2013/385), regs. 1(2)(b), **12(d)**
- F10** Words in reg. 11(2)(e)(v) inserted (8.4.2013) by The Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions Subordinate Legislation) Order 2013 (S.I. 2013/591), art. 2(2), **Sch. para. 22(4)(d)**
- F11** Words in reg. 11(2)(h)(i) inserted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **8(3)(a)**
- F12** Words in reg. 11(2)(h)(ii) substituted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **8(3)(b)**
- F13** Words in reg. 11(2)(h)(iii) substituted (3.11.2017) by The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Order 2017 (S.I. 2017/901), arts. 1, **8(3)(b)**
- F14** Words in reg. 11(3) substituted (E.W.S.) (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **2(8)(b)**
- F15** Words in reg. 11(4)(b) inserted (E.W.S.) (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **2(8)(c)(i)**
- F16** Words in reg. 11(4)(b) inserted (E.W.S.) (1.4.2010) by The Social Security (Loss of Benefit) Amendment Regulations 2010 (S.I. 2010/1160), regs. 1, **2(8)(c)(ii)**
- F17** Words in reg. 11(5) substituted (E.W.S.) (24.10.2005) by Social Security (Care Homes and Independent Hospitals) Regulations 2005 (S.I. 2005/2687), regs. 1, **15(3)**

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#### Marginal Citations

- M1** Section 3A was inserted by section 59 of, and paragraph 4(2) of Schedule 7 to, the Welfare Reform and Pensions Act 1999 (c. 30).
- M2** 1989 c. 41.

### Circumstances in which a joint-claim jobseeker's allowance is payable where a joint-claim couple is a couple in hardship

**12.**—(1) This regulation applies where a joint-claim couple is a couple in hardship within the meaning of regulation 11(2) and is subject to the provisions of regulations 14 and 15.

(2) A joint-claim jobseeker's allowance shall be payable to a couple in hardship even though section 8(2) of the Act prevents payment of a joint-claim jobseeker's allowance to the couple or section 8(3) of the Act reduces the amount of a joint-claim jobseeker's allowance payable to the couple but the allowance shall be payable under this paragraph only if and for so long as—

- (a) the joint-claim couple satisfy the other conditions of entitlement to a joint-claim jobseeker's allowance; or
- (b) one member satisfies those conditions and the other member comes within any paragraph in Schedule A1 to the Jobseeker's Allowance Regulations (categories of members not required to satisfy conditions in section 1(2B)(b) of the Jobseekers Act).

### Further circumstances in which a joint-claim jobseeker's allowance is payable to a couple in hardship

**13.**—(1) This regulation applies to a couple in hardship falling within regulation 11(3) and is subject to the provisions of regulations 14 and 15.

(2) A joint-claim jobseeker's allowance shall be payable to a couple in hardship even though section 8(2) of the Act prevents payment of a joint-claim jobseeker's allowance to the couple or

section 8(3) of the Act reduces the amount of a joint-claim jobseeker's allowance payable to the couple but the allowance—

- (a) shall not be payable under this paragraph in respect of the first 14 days of the prescribed period; and
- (b) shall be payable thereafter only where the conditions of entitlement to a joint-claim jobseeker's allowance are satisfied or where one member satisfies those conditions and the other member comes within any paragraph in Schedule A1 to the Jobseeker's Allowance Regulations (categories of members not required to satisfy conditions in section 1(2B)(b) of the Jobseekers Act).

#### **Conditions for payment of a joint-claim jobseeker's allowance**

**14.**—(1) A joint-claim jobseeker's allowance shall not be payable in accordance with regulation 12 or 13 except where either member of the couple has—

- (a) furnished on a form approved for the purpose by the Secretary of State or in such other form as he may in any particular case approve, a statement of the circumstances he relies upon to establish entitlement under regulation 11(2) or, as the case may be, 11(3); and
- (b) signed the statement.

(2) The completed and signed form shall be delivered by a member of the couple to such office as the Secretary of State may specify.

#### **Provision of information**

**15.** For the purposes of section 8(4)(b) of the Act, a member of the couple shall provide to the Secretary of State information as to the circumstances of the alleged hardship of the couple.

#### **Applicable amount of joint-claim couple in hardship cases**

**16.**—(1) The weekly applicable amount of a couple to whom a joint-claim jobseeker's allowance is payable in accordance with this Part shall be reduced by a sum equivalent to 40 per cent. or, in a case where a member of the joint-claim couple is either pregnant or seriously ill or where a member of the joint-claim couple is a member of a polygamous marriage and one of those members is either pregnant or seriously ill, 20 per cent. of the following amount—

- (a) where one member of the joint-claim couple or of the polygamous marriage is aged not less than 18 but less than 25 and the other member or, in the case of a polygamous marriage, each other member, is a person under 18 to whom section 3A(1)(e)(ii) of the Jobseekers Act applies or is not subject to a direction under section 16 of that Act, the amount specified in paragraph 1(1)(d) of Schedule 1 to the Jobseeker's Allowance Regulations;
- (b) where one member of the joint-claim couple or at least one member of the polygamous marriage (other than a member of a couple or polygamous marriage to whom subparagraph (a) applies) is aged not less than 18, the amount specified in paragraph 1(1)(e) of Schedule 1 to the Jobseeker's Allowance Regulations.

(2) A reduction under paragraph (1) shall, if it is not a multiple of 5p, be rounded to the nearest such multiple or, if it is a multiple of 2.5p but not of 5p, to the next lower multiple of 5p.

**Changes to legislation:**

There are currently no known outstanding effects for the The Social Security (Loss of Benefit) Regulations 2001, PART IV.