
DRAFT STATUTORY INSTRUMENTS

2013 No.

The Employment and Support Allowance Regulations 2013

PART 8

Sanctions

Interpretation

50. For the purposes of this Part—

“JSA sanctionable failure” means a failure by a claimant which is sanctionable under section 6K of the Jobseekers Act 1995;

“low-level sanction” means a reduction of an employment and support allowance in accordance with section 11J of the Act for a sanctionable failure by the claimant to comply with—

- (a) a work-focused interview requirement imposed under section 11F(2) of the Act (persons subject to work preparation requirement and work-focused interview requirement);
- (b) a work preparation requirement imposed under section 11F(2) of the Act; or
- (c) a requirement under section 11G of the Act (connected requirements);

“lowest-level sanction” means a reduction of an employment and support allowance in accordance with section 11J of the Act for a sanctionable failure by the claimant to comply with a requirement imposed under section 11E(2) of the Act (persons subject to work-focused interview requirement only);

“reduction period” means the number of days for which a reduction in the amount of an award of an employment and support allowance is to have effect;

“sanctionable failure” means a failure which is sanctionable under section 11J of the Act;

“total outstanding reduction period” means the total number of days for which no reduction has yet been applied for all of the claimant’s low-level sanctions, lowest-level sanctions and reductions to which regulation 61 applies;

“UC sanctionable failure” means a failure by a claimant which is sanctionable under section 26 or 27 of the Welfare Reform Act 2012.

General principles for calculating reduction periods

51.—(1) Subject to paragraphs (3) and (4), the reduction period is to be determined in relation to each sanctionable failure in accordance with regulations 52 and 53.

(2) Reduction periods are to run consecutively.

(3) Where the reduction period calculated in relation to a sanctionable failure in accordance with regulation 52 or 53 would result in the total outstanding reduction period exceeding 1095 days, the number of days in the reduction period in relation to that failure is to be adjusted so that 1095 days is not exceeded.

- (4) In determining the reduction period in relation to a sanctionable failure, a previous sanctionable failure, UC sanctionable failure or JSA sanctionable failure is to be disregarded if it—
- (a) occurred in the 14 days immediately preceding the failure in question; and
 - (b) gave rise to a reduction under these Regulations, the Universal Credit Regulations 2013 or the Jobseeker's Allowance Regulations 2013.

Low-level sanction

52. The reduction period for a low-level sanction is the total of—

- (a) the number of days beginning with the date of the sanctionable failure and ending with—
 - (i) the day before the date on which the claimant meets a compliance condition specified by the Secretary of State;
 - (ii) the day before the date on which the claimant falls within section 11D of the Act;
 - (iii) the day before the date on which the claimant is no longer required to take a particular action specified as a work preparation requirement by the Secretary of State under section 11C(1) or 11F(2) of the Act; or
 - (iv) the day on which the award of an employment and support allowance is terminated, whichever is soonest; and
- (b) whichever of the following number of days is applicable in the claimant's case—
 - (i) seven days, if sub-paragraphs (ii) and (iii) do not apply;
 - (ii) 14 days, if in the 365 days preceding the failure in question there was another sanctionable failure giving rise to a low-level sanction for which a seven day reduction period applies;
 - (iii) 14 days, if in the 365 days preceding the failure in question there was a UC sanctionable failure giving rise to a low-level sanction under regulation 104 of the Universal Credit Regulations 2013 for which a seven day reduction period applies;
 - (iv) 14 days, if in the 365 days preceding the failure in question there was a JSA sanctionable failure giving rise to a low-level sanction under regulation 21 of the Jobseeker's Allowance Regulations 2013(1) for which a seven day reduction period applies;
 - (v) 28 days, if in the 365 days preceding the failure in question there was another sanctionable failure giving rise to a low-level sanction for which a 14 day or 28 day reduction period applies;
 - (vi) 28 days, if in the 365 days preceding the failure in question there was a UC sanctionable failure giving rise to a low-level sanction under regulation 104 of the Universal Credit Regulations 2013 for which a 14 day or 28 day reduction period applies; or
 - (vii) 28 days, if in the 365 days preceding the failure in question there was a JSA sanctionable failure giving rise to a low-level sanction under regulation 21 of the Jobseeker's Allowance Regulations 2013 for which a 14 day or 28 day reduction period applies.

Lowest-level sanction

53. The reduction period for a lowest-level sanction is the number of days beginning with the date of the sanctionable failure and ending with—

(1) S.I. 2013/XXX.

- (a) the day before the date on which the claimant meets a compliance condition specified by the Secretary of State;
- (b) the day before the date on which the claimant falls within section 11D of the Act; or
- (c) the day on which the claimant's award of an employment and support allowance is terminated,

whichever is soonest.

Start of the reduction

54. A reduction period determined in relation to a sanctionable failure takes effect from—

- (a) where the claimant has not been paid an employment and support allowance for the benefit week in which the Secretary of State determines that the amount of the award of employment and support allowance is to be reduced under section 11J of the Act, the first day of that benefit week;
- (b) where the claimant has been paid an employment and support allowance for the benefit week referred to in paragraph (a), the first day of the first benefit week for which the claimant has not been paid an employment and support allowance; or
- (c) where the amount of the award of the employment and support allowance for the benefit week referred to in paragraph (a) or (b) is already subject to a reduction because of a previous sanctionable failure, the first day in respect of which the amount of the award is no longer subject to that reduction.

Reduction period to continue where award of employment and support allowance terminates

55.—(1) Where an award of an employment and support allowance terminates while there is an outstanding reduction period—

- (a) the period continues to run as if a daily reduction were being applied; and
 - (b) if the claimant becomes entitled to a new award of an employment and support allowance before the period expires, that new award is subject to a reduction for the remainder of the total outstanding reduction period.
- (2) Paragraph (3) applies where—
- (a) an award of an employment and support allowance terminates before the Secretary of State determines that the amount of the award is to be reduced under section 11J of the Act in relation to a sanctionable failure; and
 - (b) that determination is made after the claimant becomes entitled to a new award of an employment and support allowance.
- (3) Where this paragraph applies—
- (a) the reduction period in relation to the sanctionable failure referred to in paragraph (2) is to be treated as having taken effect on the day before the previous award terminated;
 - (b) that reduction period is treated as having continued to run as if a daily reduction were being applied; and
 - (c) if the new award referred to in paragraph (2)(b) begins before that reduction period expires, that new award is subject to a reduction for the remainder of the total outstanding reduction period.

Suspension of a reduction where a fraud sanction applies

56.—(1) A reduction in the amount of an award of an employment and support allowance in accordance with section 11J of the Act is to be suspended for any period during which section 6B or 7 of the Social Security Fraud Act 2001(2) applies to the award.

(2) The reduction ceases to have effect on the day on which that period begins and has effect again on the day after that period ends.

Termination of a reduction

57.—(1) A reduction in the amount of an award of an employment and support allowance under section 11J of the Act is to be terminated where, since the date of the most recent sanctionable failure which gave rise to such a reduction, the claimant has been in paid work—

- (a) for a period of at least 26 weeks; or
- (b) for more than one period where the total of those periods amounts to at least 26 weeks.

(2) The termination of the reduction has effect—

- (a) where the date on which paragraph (1) is satisfied falls within a period of entitlement to an employment and support allowance, from the beginning of the benefit week in which that date falls; or
- (b) where that date falls outside a period of entitlement to an employment and support allowance, from the beginning of the first benefit week in relation to any subsequent award of an employment and support allowance.

(3) The claimant is in paid work for the purposes of paragraph (1) where their weekly earnings are at least equal to 16 multiplied by the national minimum wage which would apply for a person of the claimant's age under the National Minimum Wage Regulations 1999(3).

Amount of reduction for each benefit week

58. Where it has been determined that an award of an employment and support allowance is to be reduced in accordance with section 11J of the Act, the amount of the reduction for each benefit week in respect of which a reduction has effect is to be calculated as follows.

Step 1

Take the number of days—

- (a) in the benefit week; or
- (b) if lower, in the total outstanding reduction period,

and deduct any days in that benefit week or total outstanding reduction period for which the reduction is suspended in accordance with regulation 56.

Step 2

Multiply the number of days produced by step 1 by the daily reduction rate.

Step 3

(2) [2001 c.11](#). Section 6B was inserted by section 24 of the Welfare Reform Act 2009. Sections 6B was amended by paragraph 10 of Schedule 2 and Schedule 7 to the Welfare Reform Act 2009 and sections 113, 118, 119 and 121 of, and paragraph 58 of Schedule 2, paragraph 16 of Schedule 3 and Schedule 14 to, the Welfare Reform Act 2012. Section 7 was amended by paragraph 45 of Schedule 2 to the State Pension Credit Act 2002 ([c.16](#)), section 49 of, and paragraph 23 of Schedule 3 to, the Welfare Reform Act 2007, paragraph 11 of Schedule 2, paragraph 2 of Schedule 4 and Schedule 7 to the Welfare Reform Act 2009, sections 118 and 119 of, and paragraph 59 of Schedule 2, paragraph 17 of Schedule 3 and Schedule 14 to, the Welfare Reform Act 2012, paragraph 45 of Schedule 2 to the Criminal Justice and Licensing (Scotland) Act 2010 ([asp 13](#)) and [S.I. 2011/2298](#).

(3) [S.I. 1999/584](#).

Deduct the amount produced by step 2 from the amount of the award of employment and support allowance for the benefit week.

Daily reduction rate

59.—(1) The daily reduction rate for the purposes of regulation 58 is, unless regulation 60 applies, the amount prescribed for the claimant under regulation 62(1) or, where applicable, regulation 63(2), multiplied by 52 and divided by 365.

(2) The amount of the daily reduction rate is to be rounded down to the nearest 10 pence.

Lower daily reduction rate

60.—(1) The daily reduction rate is 40% of the rate applicable under regulation 59(1) if, at the end of the benefit week, the claimant falls within—

- (a) section 11E of the Act;
- (b) section 11D(2)(c) of the Act; or
- (c) regulation 47(1)(b), (c), (f) or (g).

(2) The daily reduction rate is nil if, at the end of the benefit week, the claimant falls within section 11D(2)(a) of the Act.

Sanctions where universal credit ends and the person is entitled to an employment and support allowance

61.—(1) This regulation applies where—

- (a) a person ceases to be entitled to universal credit;
- (b) there is a reduction relating to the person's award of universal credit under section 26 or 27 of the Welfare Reform Act 2012; and
- (c) the person is entitled to an employment and support allowance.

(2) Any reduction relating to the award of the universal credit is to be applied to the award of the employment and support allowance.

(3) The period for which the reduction relating to the award of employment and support allowance is to have effect is the number of days which apply to the person under regulation 102, 103, 104 or 105 of the Universal Credit Regulations 2013 minus any such days which—

- (a) have already resulted in a reduction in the amount of universal credit; or
- (b) fall after the date on which the person ceases to be entitled to universal credit and before the date on which the person becomes entitled to an employment and support allowance.

(4) The daily reduction rate for the reduction relating to the award of employment and support allowance is—

- (a) the amount referred to in regulation 60(1) where, on the date the claimant becomes entitled to an employment and support allowance, the claimant falls within—
 - (i) section 11E of the Act;
 - (ii) section 11D(2)(c) of the Act; or
 - (iii) regulation 47(1)(b), (c), (f) or (g);
- (b) zero where the claimant falls within section 11D(2)(a) of the Act; or
- (c) the amount referred to in regulation 59(1) in all other cases.

(5) The amount of the reduction of the claimant's award of an employment and support allowance is the number of days arrived at under paragraph (3) multiplied by the daily reduction rate referred to in paragraph (4).