

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (MISCELLANEOUS AMENDMENTS) (NO. 2)
REGULATIONS 2012

2012 No. 2575

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**

The purpose of these Regulations is to:

- extend the provision introduced in July 2012 which enabled jobseeker's allowance (JSA) claimants who are members of the reserve forces to attend the mandatory annual 15 day reserve forces training without the need to terminate their claim, to income support (IS) claimants and their partners, and to partners of income-related employment and support allowance ((ESA(IR)) claimants;
- ensure that where JSA claimants who are also members of the reserve forces undertake the mandatory annual 15 day reserve forces training abroad they are treated as being in Great Britain for the purpose of their entitlement to JSA;
- ensure that JSA claimants who attend full-time training which falls outside the Employment, Skills and Enterprise (ESE) scheme are treated in the same way as those in the ESE Scheme when subject to a sanction – so that in both types of case, the claimant feels the effect of the sanction but retains underlying entitlement to JSA whiles engaging in full-time training;
- rectify a typographical error in the Jobseeker's Allowance (Members of the Reserve Forces) Regulations 2012 <http://www.legislation.gov.uk/uksi/2012/1616/contents/made> which came into force in July and amended the Jobseeker's Allowance Regulations 1996 (the JSA Regulations) <http://www.dwp.gov.uk/docs/a11-4001.pdf> to allow earnings from the mandatory annual reserve forces training to be attributed over the period of the training, or, where the training is 15 days over 14 days for the purposes of the JSA claim;
- introduce a small technical change to rectify an omission in the draft Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012 <http://www.legislation.gov.uk/ukdsi/2012/9780111526408/contents> which are due to come into force on 22 October 2012 to allow a decision awarding JSA to be revised where the Secretary of State makes a decision to reduce a claimant's award of JSA under the new Regulation 69B (to be introduced by the draft 2012

Regulations). Regulation 69B sets out the circumstances in which an award of JSA may be reduced after a previous disqualification;

- reinstate the provisions of the Jobseeker's Allowance (Amendment) Regulations 2012 <http://www.legislation.gov.uk/ukxi/2012/1135/contents/made>, which came into force on 16th May 2012 and amended the JSA Regulations in relation to travel time which qualifies as good cause for sanctions purposes which have been amended in error by the draft Jobseeker's Allowance (Sanctions)(Amendment) Regulations 2012 <http://www.legislation.gov.uk/ukdsi/2012/9780111526408/contents>.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

This instrument makes minor changes to the Regulations relating to income-related benefits (the IRB Regulations) and the Social Security and Child Support (Decisions and Appeals) Regulations 1999 <http://www.dwp.gov.uk/docs/a1-6011.pdf>. The amendments have been combined into one package to avoid making numerous statutory instruments. The changes in this package are being introduced to ensure parity of treatment across existing benefit legislation or correct minor errors and omissions.

The income-related benefits Regulations

- i The Income Support (General) Regulations 1987 (SI 1987/1967) <http://www.dwp.gov.uk/docs/a6-2501.pdf>
- ii The Jobseeker's Allowance Regulations 1996 (SI 1996/207) <http://www.dwp.gov.uk/docs/a11-4001.pdf>
- iii The Employment and Support Allowance Regulations 2008 (SI 2008/794) <http://www.dwp.gov.uk/docs/a13-5101.pdf>

Other relevant Social Security Regulations

- iv) The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (SI 1999/991) <http://www.dwp.gov.uk/docs/a1-6011.pdf>

5. Territorial Extent and Application

This instrument applies to Great Britain. Equivalent provision will be made for Northern Ireland by statutory rules.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

Reserve Forces disregard for IS Claimants/Partners and ESA(IR) Partners

7.1 The Jobseeker's Allowance (Members of the Reserve Forces) Regulations 2012 <http://www.legislation.gov.uk/ukxi/2012/1616/contents/made>, which came into force in July, introduced new provisions into the Jobseeker's Allowance Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf> to allow JSA claimants who are also members of the reserve forces to be treated as satisfying the requirements to be available for and actively seeking work during their mandatory annual reserve forces training for a period of up to 15 days in any calendar year. They also introduced a new earnings disregard in order to ensure that JSA entitlement of at least 10p is retained. This in turn means that Housing Benefit and Council Tax Benefit are not affected for recipients of income-based JSA who take part in annual reserve forces training.

7.2 The original change was introduced to make it possible for JSA claimants who are also members of the reserve forces to keep their claim open during their mandatory annual reserve forces training period for up to 15 days in any calendar year. This change reduces the administrative burden for both the claimant and the Department for Work and Pensions and minimises any delays in payment that currently result from requiring reservists to stop claiming benefit during this annual training period and re-claim after its completion; and therefore to remove any disincentive for benefit recipients to participate in the reserve forces.

7.3 This new change introduces a similar earnings disregard for IS claimants and partners, and for partners of ESA(IR) claimants to ensure equality of treatment for all members of the reserve forces who claim JSA or IS or who are partners of JSA, ESA(IR) or IS claimants. The disregard is not being extended to ESA *claimants* because generally an ESA claimant is not entitled to ESA in any week in which they work even if in a special occupation, such as the reserve forces.

Jobseekers who are also members of the reserve forces undertaking mandatory annual training abroad to be treated as being in Great Britain

7.4 Occasionally reservists are required to undertake their mandatory annual reserve forces training abroad. The Jobseeker's Allowance Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf> as currently drafted mean that JSA claimants who are reservists would be required to sign off if their training is abroad, and reclaim benefit on their return.

7.5 This is contrary to the original policy intent which is to reduce the administrative burden and minimise any delays in payment that currently result from requiring reservists to re-claim benefit after the completion of mandatory annual 15 day reserve forces

training; and therefore to remove any disincentive for benefit recipients to participate in the reserve forces.

7.6 These Regulations therefore amend the Jobseeker's Allowance Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf> to ensure that all reservists claiming JSA can keep their claim open during the period of their mandatory annual 15 day reserve forces training whether that training takes place in Great Britain or elsewhere if they were entitled to JSA prior to the absence commencing.

7.7 It is not necessary to make a corresponding change to the IS and ESA Regulations as rules allowing temporary absence abroad are more flexible in these benefits. IS Regulations allow up to four weeks temporary absence in almost all circumstances. The only exceptions apply to people not likely to be eligible for the reserved forces, namely, young people in non-advanced education and people incapable of work due to sickness or disability. There are no restrictions on temporary absence abroad for partners of ESA claimants.

JSA Non-Employment, Skills and Enterprise Scheme (ESE) claimants and sanctions

7.8 The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011 (ESE Scheme Regulations) <http://www.dwp.gov.uk/docs/a11-3001.pdf>, which came into force in May 2011, made provision for claimants who are taking part in the ESE scheme and attending full-time training to be excused from meeting the JSA labour market conditions of entitlement. If such claimants are sanctioned, they are not paid JSA for the period of the sanction, but do not lose underlying entitlement to JSA by virtue of being in full time training. Therefore, they feel the effect of the sanction.

7.9 In contrast, certain claimants who are full-time students and who are not in the ESE Scheme, are excused from meeting the JSA labour market conditions of entitlement if they are paid a training allowance by virtue of Regulation 170 of the Jobseeker's Allowance Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf>. This ensures that they do not lose entitlement to JSA as a result of being a full time student. When they are sanctioned, they can continue with their training and retain entitlement to JSA, because the training allowance remains in payment in full and therefore they do not feel the effect of the sanction. This means they are treated differently from full-time students who are subject to a sanction when taking part in the ESE Scheme. The change is required to ensure equality and consistency of treatment between claimants referred to full-time training under the ESE Scheme Regulations and JSA Regulations.

7.10 This change therefore revokes the relevant Regulation to ensure that non-ESE Scheme claimants who are full time students feel the effect of a sanction in the same way as claimants taking part in the ESE Scheme do. In practice, non ESE Scheme claimants will be paid a nominal amount of training allowance when subject to a sanction to ensure they can still be excused from the labour market conditions. This means they will feel the effect of the sanction but can still attend their course and retain an underlying entitlement to JSA.

Attribution of earnings in relation to Jobseeker's Allowance by members of the reserve forces undertaking mandatory annual 15 day reserve forces training

7.11 This minor change is to correct a typographical error in the Jobseeker's Allowance (Members of the Reserved Forces) Regulations 2012 <http://www.legislation.gov.uk/uksi/2012/1616/contents/made> which amended the Jobseeker's Allowance Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf>. The Regulations as currently drafted say that where the mandatory annual reserve forces training takes place over more than 14 days; earnings from it should be attributed over 14 days **or** over a period which is equal to the duration of the training period. The earnings cannot be attributed in both ways and the words 'over a period which is equal to the duration of the training period' were included in error. We are therefore removing the additional words.

Interim Jobseeker's Allowance sanctions regime

7.12 The draft Jobseeker's Allowance (Sanctions) (Amendment) Regulations 2012 <http://www.legislation.gov.uk/ukdsi/2012/9780111526408/contents> (the Sanctions Regulations) which (subject to parliamentary approval) are due to come into force in October provide for the introduction of a revised sanctions regime into JSA which will substantially align it to the sanctions regime that will be introduced in Universal Credit. This will help staff and claimants to prepare for the introduction of the new benefit.

7.13 DWP intends the revised sanction regime to make the consequences of non-compliance clearer and impose stronger sanctions on claimants who repeatedly fail to meet their responsibilities. The Sanctions Regulations make no changes to the current requirements imposed on jobseekers or the flexibilities already built into the system which allow requirements to be tailored to suit their circumstances, for example, to allow for caring responsibilities

7.14 One of the features of the revised regime is the introduction of sanctions that will apply when a claimant is awarded JSA following disqualification for not being available for or actively seeking work (the jobseeking conditions). Currently claimants who are disqualified for these reasons can reclaim JSA straightaway and if they meet entitlement conditions then benefit resumes. Under the revised regime, subject to some exceptions, claimants who re-apply for JSA following disqualification for failing to meet the jobseeking conditions will be subject to a loss of benefit period of 4 weeks for a first failure and 13 weeks where there has been another disqualification within the previous 12 months. The sanction is intended to more effectively deter claimants from failing to comply with requirements to be available for and actively seek work.

7.15 We have now identified that a further minor technical change is required to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 <http://www.dwp.gov.uk/docs/a1-6011.pdf> to support this new type of sanction by allowing a new award of JSA to be revised where the Secretary of State makes a decision to apply the new sanction because of a previous failure to meet the jobseeking conditions.

Travel to work times for Jobseekers Allowance claimants

7.16 The Jobseeker's Allowance (Amendment) Regulations 2012 <http://www.legislation.gov.uk/uksi/2012/1135/contents/made>, which came into force on 16th May 2012, amended Regulation 72 of the JSA Regulations 1996 <http://www.dwp.gov.uk/docs/a11-4001.pdf> concerning travel time in relation to what is not good cause for certain failures relating to employment. The change removed reference to one hour each way during the first 13 weeks of entitlement to Jobseeker's Allowance (JSA) so that the minimum expected travel time is 90 minutes each way in all cases.

7.17 The draft Jobseeker's Allowance (Sanctions)(Amendment) Regulations 2012 <http://www.legislation.gov.uk/ukdsi/2012/9780111526408/contents> (the Sanctions Regulations) which are due to come into force in October 2012 make further amendments to Regulation 72 with the effect that the reference to one hour each way during the first 13 weeks of entitlement to JSA was reinstated in error.

7.18 The change made by these Regulations will correct this error and ensure the Regulations reflect current policy that a JSA claimant will not be regarded as having good cause for:

- failing to comply with a jobseeker's direction,
- refusing or failing to apply for or accept a job vacancy notified to them by an employment officer, or
- failing to avail themselves of a reasonable opportunity of employment where the time it took, or would normally take, the claimant to travel from his home to the place of employment or place specified in a jobseeker's direction and back (by a route and means appropriate to the claimant's circumstances and to the employment or the carrying out of the jobseeker's direction) is less than 90 minutes either way, except in cases where that time would be unreasonable in view of the claimant's health or caring responsibilities.

- ***Consolidation***

7.19 Informal consolidation of this instrument will be provided in due course in the 'Law Relating to Social Security' (referred to as "The Blue Books") which are regularly updated and are available to the public at no cost via the internet at: <http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/>

8. Consultation outcome

8.1 A formal consultation has not been carried out by the Department for Work and Pensions on these Regulations. Consultation was not considered necessary for these minor changes as they are largely beneficial and are designed to align existing legislation and where they are not they are required to correct errors and / or omissions.

8.2 In addition, the Department for Work and Pensions has presented the proposals to the Social Security Advisory Committee which decided that the Regulations did not need to be formally referred to it.

9. Guidance

9.1 Guidance is being developed for staff in the Jobcentre Plus offices who advise customers, and for staff in benefit centres who determine income-related benefit claims and administer awards, including decision makers. Instructional memos will also be issued to ensure all staff involved in relevant processes are aware of the guidance changes.

9.2 Claimants will be informed about the changes, where relevant, at their interviews with their advisers. Leaflets and Directgov pages will be updated as necessary.

9.3 The Department for Work and Pensions also has Armed Forces Champions in every district. Their role is to be the key link between Jobcentre Plus and the Armed Forces community in their district, helping to raise the profile of Jobcentre Plus support where necessary. Through these channels they will alert the reserve forces to the changes concerning annual reserve forces training. The MoD will also inform members of the reserve forces by producing a Defence Instruction Notice that has world wide military distribution.

9.4 In addition project, policy, communication and operational staff are in the process of developing a comprehensive suite of products to support both claimants and staff in understanding the revised sanction regime. This will include revised guidance for all staff impacted by the changes, including the Decision Makers Guide, and a suite of blended learning products preceded by information updates which will be made available through Departmental communication channels.

9.5 In relation to the travel time correction, guidance will be issued to decision makers to apply the relevant travel time rules as follows:

- Any failures occurring between 16 May and 21 October: 90 minutes travel time from start of entitlement;
- Any failures occurring from 22nd October until 5 November: one hour travel time in first 13 weeks;
- Any failures occurring from 5 November: 90 minutes travel time from start of entitlement.

9.6 Existing information leaflets will be updated to explain the revised sanctions approach. These will be issued to new claimants when they first make a claim to JSA and to existing claimants at their fortnightly jobsearch review.

9.7 Information on those changes that affect Housing Benefit and Council Tax Benefit will be sent to local authorities as they administer those benefits.

10. Impact

10.1 There is no impact on business and civil society organisations.

10.2 The impact on the public sector is negligible.

10.3 A full impact assessment has not been published for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will monitor the effect of the changes that apply to the Reserve Forces through its network of Armed Forces Champions to ensure they support claimants during their annual training commitment.

12.2 There are no plans to monitor the impact of the JSA Non-Employment, Skills and Enterprise Scheme (ESE) claimants and sanctions change as it's intended to restore the policy intention and ensure all claimants who are sanctioned and attend full-time training are treated consistently.

12.3 The interim jobseeker's allowance sanctions regime will be monitored and evaluated through:

- i) analysis of internal management information (MI); and
- ii) the evaluation of the Jobcentre Plus Offer which will include qualitative assessments from staff and claimants of the new sanctions regime, a survey of claimants about their experience of receiving JSA and associated support from Jobcentre Plus. Findings from the evaluation will be available in two phases, an initial report will be published in Autumn 2012 which will include a baseline of the sanctions changes proposed for JSA and a second report will be published in Autumn 2013 which will include early analysis of the revised sanctions regime.

12.4 In addition the operation of the Regulations will continue to be reviewed through the normal avenues of guidance enquiries received from Department for Work and Pensions offices and correspondence from members of the public.

13. Contact

Fiona Dunn at the Department for Work and Pensions (Tel: 0207 449 5308 or e-mail: Fiona.Dunn@dwp.gsi.gov.uk) can answer any queries regarding this instrument.