

JOBSEEKER'S ALLOWANCE

LEGISLATION

The Jobseekers (NI) Order 1995

The Jobseeker's Allowance Regulations (NI) 1996 as amended



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GLOSSARY

AA – Attendance Allowance

CPAG – Child Poverty Action Group

CA – Carer's Allowance

CTC – Child Tax Credit

DEL – Department for Employment and Learning

DLA – Disability Living Allowance

DfC – Department for Communities

ESA – Employment and Support Allowance

ESA(C) – Contribution-based Employment and Support Allowance

ESA(IR) – Income-related Employment and Support Allowance

HMRC – Her Majesty's Revenue and Customs

JSA(C) – Contribution-based Jobseeker's Allowance

JSA(IB) – Income-based Jobseeker's Allowance

PC – Pension Credit

SDA – Severe Disablement Allowance

UC – Universal Credit

WTC – Working Tax Credit



INTRODUCTION

Jobseeker's Allowance (JSA) has two components:

- **Contribution-based Jobseeker's Allowance (JSA(C))**

JSA(C) is not means tested but some earnings related income from part-time work and some pension income can affect the amount of benefit paid. Capital does not affect entitlement to JSA(C). It is paid to a person who satisfies the national insurance contribution conditions set out in detail in section 2. JSA(C) is paid for a maximum of 26 weeks in any benefit year. There is no habitual residence or right to reside test for JSA(C); and

- **Income-based Jobseeker's Allowance (JSA(IB))**

JSA(IB) is means tested and is not based on a person's national insurance contributions. It can be paid in addition to JSA(C) where a person has additional needs such as housing costs or entitlement to claim for a partner. There is a habitual residence and right to reside test for JSA(IB). For JSA(IB), couples must make a joint claim for benefit and both satisfy the rules of entitlement, including those around actively seeking work.

Common rules requiring a person to seek employment apply to both JSA(C) and JSA(IB). These are set out below in section 1. There are then separate rules for entitlement to JSA(C) and JSA(IB) and these are set out in section 2 and section 3.

These notes are divided into five sections:

- common rules relevant to both JSA(C) and JSA(IB);
- JSA(C);
- JSA(IB);
- who should claim;
- common provisions.

JSA(IB) is an adult only benefit. Therefore any person making a claim for JSA(IB) who has dependent children should also make a claim for Child Tax Credit (CTC) if s/he has not already done so. If a person has a claim for CTC, s/he should notify any change of circumstances, eg no longer working.

- **Welfare reform**

JSA (IB) is one of the benefits that are due to be replaced by Universal Credit (UC). UC will replace a number of existing benefits and tax credits including JSA(IB). UC is likely to begin a phased introduction in Northern Ireland with a possible pilot being launched in a small number of areas in the Autumn of 2017. Claimants will, whether in work or out of work, claim one central means-tested benefit. Existing claimants of JSA (IB) will



be able to stay on the benefit (as long as existing conditions are met) until they are moved onto (migrated to) UC.

The Law Centre will update the welfare reform section of its website when more definite information is known (www.lawcentreni.org/welfare-reform.html)

1. COMMON RULES

To qualify for JSA, a person must satisfy all of the following common rules:

- be available for work: see 1.1;
- be actively seeking work: see 1.2;
- have entered into a Jobseeker's agreement: see 1.3;
- not have limited capability for work, although there are important exceptions: see 1.5;
- not be in full-time paid work: see 1.6;
- not be engaged in relevant education: see 1.7;
- be under pensionable age: see 1.8;
- be in Northern Ireland: see 1.9.

In addition, a person claiming JSA(C) must satisfy contribution-based conditions (see 2.1). Likewise, a person claiming JSA(IB) must satisfy income-based conditions (see 3.1).

Also, couples are required to make a joint claim. This will include attendance at a compulsory work focused interview for partners of people claiming JSA(IB) (see section 4).

A lone parent with a youngest child aged seven (or five from January 2017) cannot make a new claim for Income Support unless s/he comes within a category of people who can claim; being a lone parent is not sufficient. S/he is expected to claim JSA (if capable of work) or Employment and Support Allowance (ESA) (if s/he has limited capability for work). Lone parents already claiming Income Support on those dates will be able to continue to claim for a period. The arrangements for availability for work are modified for lone parents in certain circumstances and these are set out below.

1.1 Available for work

A person must generally be willing and able to take up employment immediately.

1.1.1 Exceptions

Voluntary workers and carers are allowed one week's notice (48 hours' notice to attend an interview) and a person providing a service is allowed 24 hours' notice.



A carer is defined as a person with responsibility for caring for someone in the same household or a close relative who is a child under sixteen or for an elderly person over pensionable age or for a person who requires care because s/he is physically or mentally disabled.

Voluntary work is work for a non-profit making organisation or work other than for a member of the person's family where the only payment is in respect of expenses incurred.

A person working part time and required to give notice will only have to be available to start another job after serving the notice.

Most lone parents are treated in the same way as carers – they must be willing and able to take up employment with a week's notice and to attend an interview within 48 hours. However, if the lone parent can show that her/his caring responsibilities make it unreasonable for her/him to do so within those periods, s/he will be allowed four weeks' notice before having to take up a job and a week before attending an interview. Entitlement to a longer notice period is not automatic.

Special rules allow a lone parent to be treated as available for work during school holidays where it is unreasonable for her/him to make alternative caring arrangements. A lone parent may also be treated as available for work for up to eight weeks where there has been a death or serious illness in the family or domestic emergency. A lone parent will only be permitted to be treated as available for work under these circumstances for up to a maximum four such periods in one year.

1.1.2 Hours of availability

A person must be willing and able to work at least 40 hours per week unless otherwise exempted. S/he must also be willing to accept work of less than 40 hours per week (but usually not less than 24 hours) if it is offered.

However, a carer (this includes a person with childcare responsibilities) can restrict her/his hours of availability to less than 40 hours provided s/he is available for at least sixteen hours per week and for as many hours as her/his caring responsibilities allow. S/he must show that s/he has reasonable prospects of securing employment. S/he does not have to show this if s/he is caring for a child under sixteen and the employment officer decides that s/he would not satisfy this condition due to the type and number of vacancies within daily travelling distance of her/his home.

From 26 April 2010, a lone parent with a child under thirteen is able to restrict the hours and the times s/he is available to the child's normal school hours, so long as s/he is available for at least sixteen hours a week

A person can agree to a pattern of availability across the week provided the pattern is recorded in the Jobseeker's agreement and s/he still has reasonable prospects of finding work.



Complex rules apply where a person may be treated as available or unavailable for work in certain circumstances. For further information, see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook*.

1.1.3 Restrictions on jobs

A person may place restrictions on the nature, terms and conditions of employment or the locality of any work s/he is prepared to accept, provided that s/he can show that s/he has reasonable prospects of employment and is available for work of 40 hours per week. The level of remuneration can be restricted but only for the first six months of the claim.

A person may restrict her/his availability in any way if the restrictions are reasonable in view of her/his physical or mental condition. The rate of pay can be restricted indefinitely on the same grounds. A person who falls within this category does not need to show that s/he has reasonable prospects of employment. However, if a person has no prospects at all of securing employment, it may be in her/his interest to claim ESA.

A person may restrict her/his availability in any way if s/he has caring responsibilities for a child under sixteen and has to comply with certain parenting or anti-social behaviour orders. The restrictions must be reasonable in view of the order. A person who falls within this category does not need to show that s/he has reasonable prospects of employment.

A person may restrict the nature of employment for which s/he is available on the grounds of religious belief or conscientious objection, providing s/he can demonstrate that s/he has reasonable prospects of work and is available for 40 hours per week.

A person with childcare responsibilities may only need to be available for sixteen hours a week, and may be treated as available for work if s/he refuses a job due to lack of affordable or available childcare, but only at the discretion of the decision maker.

In deciding if a person has reasonable prospects of securing employment, the following factors will be taken into account:

- her/his skills, qualifications and experience;
- the type and number of vacancies within daily travelling distance from home;
- the length of time s/he has been unemployed;
- the job applications s/he has made and the outcomes;
- the willingness to move home if s/he wishes to restrict the type of work for which s/he is available.

The burden of proof that a person applying for JSA has reasonable prospects of securing employment if s/he restricts availability is on her/him.



1.1.4 Permitted period

A person may be treated as available for work for a permitted period of between one and thirteen weeks where s/he is allowed to restrict availability to her/his:

- usual occupation; and/or
- usual pay.

When deciding the permitted period, the following factors must be taken into account:

- the person's usual occupation and any relevant skills or qualifications;
- the length of any training relevant to that occupation;
- the length of the period employed in that occupation and the period since last employed in that occupation;
- the availability and location of employment in that occupation.

1.2 Actively seeking work

A person must be actively seeking work to receive JSA. S/he is expected to take at least three steps in each benefit week, unless taking one or two steps is all that is reasonable to do in that week. There is no exhaustive list of what counts as steps.

Steps which may be considered reasonable for a person to take in any week include:

- oral, written or phone applications for employment;
- obtaining information on the availability of employment from advertisements, employment agencies, businesses or employers;
- registering with an employment agency or employment business;
- appointing a third party to help her/him find work;
- seeking specialist advice, or referral by an employment officer, on how to improve prospects of securing employment, taking into account her/his needs and limitations;
- drawing up a curriculum vitae (CV);
- seeking references from previous employers;
- drawing up a list of employers with a view to seeking information from them;
- seeking information about an employer who may be able to offer employment;
- seeking information on an occupation with a view to securing employment in that occupation.

In determining what steps are reasonable for a particular person, consideration must be given to her/his:

- skills, qualifications and abilities;
- physical or mental limitations;



- work experience and the time that has elapsed since last employed;
- the effectiveness of the steps taken by her/him in the previous weeks to improve prospects of employment;
- availability and location of vacancies in employment;
- any time during which s/he is engaged in voluntary work that may improve prospects of employment;
- any time spent as an auxiliary coastguard, staffing or launching a lifeboat, or as a part-time fire-fighter;
- whether s/he has applied for, accepted or participated in certain training courses to improve employment prospects;
- steps taken to find accommodation if s/he has nowhere to live.

During any permitted period, a person can restrict the steps taken to her/his usual occupation and/or her/his usual pay.

Steps taken shall be disregarded where a person:

- has acted violently or abusively in taking a step;
- has spoiled an application;
- through behaviour or appearance has undermined her/his prospects of securing employment unless due to circumstances beyond her/his control.

Even if a person is not actively seeking work, s/he can be treated as if s/he is in certain circumstances eg laid off, working short-term, two-week holidays per year, temporarily detained in police custody for a period of 96 hours or less, required to attend a court or tribunal (as a justice of the peace, lay magistrate, party to any proceedings, a witness or a juror), providing certain conditions are met. For further details, see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook*.

1.3 Jobseeker's agreement

A person claiming JSA must usually agree and sign a written Jobseeker's agreement with an employment officer.

The Department for Communities (DfC) will not normally determine entitlement to benefit until this has taken place. If this leads to a delay in payment of benefit it may be possible to claim a hardship payment (see 5.2).

In very exceptional circumstances, eg a strike by Social Security Agency staff, a person who has not signed an agreement may be treated as having done so.

The Jobseeker's agreement must include:

- the person's name;
- the hours s/he is available for employment and any pattern of availability;
- how quickly s/he must be available for work;



- any restrictions on her/his availability for employment, ie location and type of employment;
- the type of employment s/he is seeking;
- the steps s/he will take to seek employment and improve prospects of employment;
- the starting and finishing dates of any permitted period;
- a statement of her/his right to:
 - have the Jobseeker's agreement referred to a decision maker; and
 - seek revision or supersession of any determination or direction given by the decision maker; and/or
 - appeal to an appeal tribunal against any determination given by a decision maker;
- the date of the agreement.

The Jobseeker's agreement must be signed by both the person and the employment officer. The person must be given a copy of it.

The employment officer cannot enter into an agreement if s/he does not accept that the proposed agreement meets the availability for and actively seeking work conditions. In these circumstances, the employment officer can refer the proposed Jobseeker's agreement to a decision maker for determination.

Where a person thinks it is unreasonable to be asked to comply with the terms of the agreement, s/he can ask for the proposed Jobseeker's agreement to be referred to a decision maker for determination.

The decision maker must make a decision within fourteen days of the agreement being referred unless to do so would be impracticable. Either the person or the employment officer can ask for this decision to be revised or superseded by a different decision maker.

If the person is dissatisfied with the determination made by the decision maker, s/he may appeal to an appeal tribunal within one month of the date of notification of the decision. The Department for Communities (DfC - previously called the Department for Social Development) interprets this as the date the letter was posted.

If still dissatisfied, then the person can appeal on a point of law to a Social Security Commissioner.

1.3.1 Varying a Jobseeker's agreement

A person may vary the Jobseeker's agreement in agreement with the employment officer. Any variation must be in writing, agreed and signed by both parties.

If either the person or the employment officer does not agree, then the change can be referred to a decision maker in the same way as if either party had been unable to agree the original agreement.



If the decision maker believes that both the person's proposals and the employment officer's proposals are reasonable and would qualify the person as being available for and actively seeking work, s/he must give preference to the person's proposals.

The decision maker can give directions as to the terms on which the person and the employment officer must agree to vary the Jobseeker's agreement. If a person does not sign the new agreement within 21 days, the decision maker can bring the Jobseeker's agreement to an end with the result that the person will no longer receive JSA.

Again, both the person and/or the employment officer can ask for the decision to be revised by a different decision maker and a further appeal against that decision can be made to an appeal tribunal. However, if the first decision maker decided to end the Jobseeker's agreement, the person will not get JSA while a revision or supersession is taking place nor while an appeal is waiting to be heard (unless hardship payment is applicable).

The tribunal has similar powers where parties cannot reach agreement on the variation of a Jobseeker's agreement. If a person fails to comply with the tribunal direction within a prescribed period (21 days), the decision maker may bring the agreement to an end, thereby ending entitlement to JSA.

1.4 Directions

An employment officer has the power to give a Jobseeker's direction (a written notice) at any time requiring a person to undertake a specific activity with a view to achieving one of the following:

- helping her/him to find employment;
- improving her/his prospect of being employed.

The jobseeker's direction must be reasonable.

A person may be directed to improve her/his employability by, for example, attending a course to improve jobseeking skills. A direction may be used to enforce what is already contained in the Jobseeker's agreement, but may also require an additional act or step to be undertaken by a person. Failure to carry out a reasonable direction, without good cause, will result in the loss of benefit (see 5.1).

There is no direct appeal against a Jobseeker's direction but if a person is sanctioned for failing to comply with it s/he can challenge a decision by applying for a Mandatory Reconsideration and then appeal to an appeal tribunal on the basis that it was not reasonable, or that s/he has good cause for failing to comply (see Law Centre (NI) Legal Information Briefing: *Mandatory Reconsideration and Direct Lodgement of Appeals*: www.lawcentreni.org/Publications/Law-Centre-Information-Briefings/Mandatory-reconsideration-Law-Centre-NI-information-briefing-May-2016.pdf)



1.5 Capability for work

In order to claim JSA, a person must not have 'limited capability for work.' This is decided through the tests for ESA which assess whether a person has a limited capability for work due to a mental or physical illness or disability. The person's opinion as to her/his capability for work is immaterial.

A person can impose reasonable restrictions on her/his availability for work if necessary because of physical or mental health problems. Jobseekers will no longer be automatically disallowed Jobseeker's Allowance if they have a short period of sickness within twelve weeks of the end of a previous award of ESA.

1.5.1 Periods of sickness when a person can claim JSA – two weeks

A person is allowed up to two two-week periods of sickness in a jobseeking period or in a twelve-month period where the jobseeking period has lasted more than twelve months. From 30 March 2015, it is possible to claim JSA during an 'extended period of sickness' of up to thirteen weeks where the two weeks rule does not apply. More details about this are set out below.

A person will not be permitted a two-week period of sickness if s/he was getting Statutory Sick Pay (SSP) in the eight weeks prior to being sick or if the period of sickness follows an extended period of sickness (see below).

1.5.2 Periods of sickness when a person can claim JSA – thirteen weeks

From 30 March 2015, a person is entitled to an 'extended period of sickness' while claiming JSA if:

- s/he has been or expects to be sick for more than two weeks, but does not expect to be sick for more than thirteen weeks; or
- has already been sick for two two-week periods under the rules that are set out above.

It is only possible to have one extended period of sickness in the twelve months that start on the first day of sickness. If the person is sick for more than thirteen weeks or more often than once in twelve months, s/he must claim Employment and Support Allowance (ESA) or Pension Credit instead of JSA for the period that s/he is unable to work.

A person will not be permitted an extended period of sickness if s/he was getting SSP in the eight weeks prior to being sick. The person should claim benefit on the basis of limited capability for work and will not have to serve a waiting day.

Note: A person is treated as actively seeking work in any week in which s/he is allowed an extended period of sickness unless it would be reasonable for the person to take steps to seek employment and s/he has not.



1.6 Remunerative work

A person cannot receive JSA if s/he works on average sixteen hours per week or her/his partner works 24 hours or more a week. Remunerative work is work that is done for payment or in expectation of payment.

A person will not be treated as engaged in remunerative work in certain situations including where s/he is:

- engaged by a charity or voluntary organisation and receiving only expenses incurred;
- attending a government training scheme for which a training allowance is paid;
- an auxiliary coastguard, staffing or launching a lifeboat, a part-time fire-fighter or a member of the Territorial Army, part-time member of the RIR or PSNI Reserve;
- performing duties as a councillor;
- in full-time education and doing work in connection with the course.

1.7 Relevant education

1.7.1 Full-time students

Full-time students will not normally be entitled to JSA except in narrow circumstances.

A full time student is:

- a person under nineteen and on a full time advanced course of education, eg a degree, diploma of higher education, HND or other courses above A Level or advanced GNVQ level; or
- a person aged nineteen or over but under pension age on a full time course of study.

The circumstances where a full time student retains entitlement are:

- a lone parent who is a full time student or a couple (including same sex couples) and both partners are full-time students and have a dependent child under sixteen, or aged under nineteen (under 20 in some cases) and still in full-time non-advanced education. JSA can be claimed during summer vacation only and the person claiming must be available for work and meet the other basic rules;
- where a person is on an employment related course and participation was approved before the course started by an employment officer (Jobs and Benefits Client Adviser). Payment is only made for a maximum of two weeks and only for one such course in any period of twelve months;
- where a person is waiting to go back to a course, having taken time out of the course approved by the relevant establishment, because of an illness or caring



responsibility, that has now come to an end and the person is not eligible for a grant or loan for the period specified;

- where a person is participating in a Venture Trust programme. Payment is made for a maximum of four weeks and only for one programme in any period of twelve months. (Venture Trust is a programme for ex-offenders aged sixteen to 25, the courses are based in Scotland and young people from Northern Ireland are eligible to apply).

Note: If a student has a partner who is not studying and is available for work then the partner may be able to claim JSA on behalf of the couple.

In addition, a person is counted as available for work:

- where s/he is attending a compulsory residential course as part of an Open University programme (for up to one week for each course).

1.7.2 Postgraduate students

Postgraduate students writing up their thesis or dissertation should be entitled to JSA providing they meet the criteria for the benefit and are available for and actively seeking work. As a result, the writing up of the thesis should not interfere with actively looking for work.

1.7.3 Relevant education - Aged under nineteen at the start of the course

To receive JSA, a person must not be in relevant education ie must be studying for twelve hours or less a week in non-advanced education and also be available for work. Time spent on instruction, tuition, supervised study, exams, practical work or projects provided in the curriculum is taken into account when calculating hours of study. Time spent on meal breaks or unsupervised study is ignored.

A person who starts a course when aged under nineteen and is entitled to JSA can continue to receive benefit up to the age of 20. Those who have been in continuous education or training and have been offered a place on a further year of non-advanced study that does not begin until after they are nineteen are also eligible.

A person studying more than twelve hours is considered to be in relevant education and is excluded from JSA, unless s/he is eligible to claim Income Support. However, a person participating in the full time education and training option of an employment scheme is not treated as receiving relevant education.

If a person who is not entitled to benefit because s/he is in relevant education leaves during the term, JSA will not be paid until the first Monday following the end of the holiday after the term in which s/he leaves the course. If the person is aged sixteen or seventeen, benefit will only be paid in specific circumstances.

If under nineteen at the start of the course and in advanced level education (eg degree level course, Higher National Diploma or other course above A level standard) then the rules for people aged nineteen or over at the start of the course are applied.



Whether or not an education course is full-time is a complicated matter. Part-time students will normally be able to claim JSA.

1.8 Pensionable age

To claim JSA, people must be under pensionable age. At the time of writing for men pension age is 65 years old, for women it is 63 and six months. For women it was 60 until 6 April 2010. From that date until 2018, the pensionable age for women will rise gradually to 65, depending on the woman's date of birth. A man aged between the pensionable age for a woman with the same date of birth as him and 65 will be able to choose whether to claim JSA(IB) or Pension Credit (PC). Then from 2018 to 2020 the pension age for both men and women will increase to 66. A person who transfers from JSA(IB) to PC may have transitional protection (see section 8). In practice, there is usually no point in remaining on JSA(IB) if the person claiming is a man of at least the qualifying age for Pension Credit as he qualifies for PC without having to satisfy any jobseeking requirements. He may also receive automatic national insurance credits and, importantly, a person should be no worse off on PC than on JSA (IB). For Pension Credit Qualifying Age, see Law Centre (NI) Encyclopedia of Rights 2016, A.8 Pension Credit.

1.9 Resident in Northern Ireland

To claim JSA, a person must be in Northern Ireland. However, JSA can be paid during temporary absences from Northern Ireland in the following circumstances:

- indefinitely where a person was entitled to JSA immediately before going abroad and the absence is for NHS treatment at a hospital or other institution outside Northern Ireland;
- for up to four weeks if the person satisfies the conditions of being treated as available for work and her/his partner satisfies the conditions for one of the pensioner premiums, a disability premium or a severe disability premium or the person and/or partner are in Great Britain;
- or up to eight weeks if s/he is taking a child or young person abroad for treatment and the child or young person is a member of her/his family;
- for up to seven days if s/he is attending a job interview;
- for up to three months if s/he is unemployed and looking for work in another EEA member state. See below for when this may apply.

It is possible to export JSA(C) for a maximum of three months where a person is unemployed and looking for work in another EEA country. A person claiming JSA(C) who intends to look for work in another EEA state must register as unemployed for at least four weeks before leaving Northern Ireland and must then register in the second



EEA state within seven days of arrival. At present, the UK government only accepts that JSA(C) can be exported.

Anyone wishing to export JSA(IB) should contact Law Centre (NI) for further advice as it may be possible to challenge the government's interpretation of this rule.

2. CONTRIBUTION-BASED JSA

A person may claim JSA(C) if s/he satisfies all the common rules and:

- satisfies the contribution conditions;
- earns less than the prescribed amount;
- if s/he has certain pension income, this is low enough;
- is not involved in a trade dispute.

If a person does not qualify for JSA(C), or does but needs additional benefit (for partner and/or housing costs) s/he may qualify for JSA(IB).

2.1 Contributions and credits

In order to be entitled to JSA(C) a person must have paid a certain amount of national insurance contributions and/or credits. These contributions must be of the sort paid by employees (Class 1 contributions).

Class 1 contributions are paid as a percentage of wages, and the total wages on which a person pays contributions in a year is called the earnings factor. For example, if Mr X earned £100 per week for 52 weeks, his earnings factor for the year would be £5,200. Contributions are not paid on earnings below a certain figure. This is known as the Lower Earnings Limit (LEL).

Between the LEL and the primary threshold, a person does not have to actually pay national insurance contributions but will be treated as having done so. Earnings on or above the primary threshold require that contributions must be paid. Contributions treated as paid are deemed the same as contributions actually paid.

Year	LEL	Primary threshold
2004 – 05	£79	£91
2005 – 06	£82	£94
2006 – 07	£84	£97
2007 – 08	£87	£100
2008 – 09	£90	£105
2009 – 10	£95	£110



2010 – 11	£97	£110
2011 – 12	£102	£139
2012 – 13	£107	£146
2013 – 14	£109	£149
2014 – 15	£111	£153
2015 – 16	£112	£155
2016 – 17	£112	£155

If looking for work and signing on, a person will be awarded national insurance credits. One credit is awarded for each week of unemployment. Each credit has an earnings factor equal to the LEL which applies in the year the credit is awarded (in 2015/2016 it is worth £112 per week). Credits can help satisfy the second contribution condition of entitlement to JSA(C).

2.1.1 Contribution years

The National Insurance system has different start dates for contribution years and benefit years.

Benefit year

The benefit year starts on the first Sunday in January each year, and ends on the day before the first Sunday of the next year.

Contribution year

The contribution year starts on 6 April of one calendar year, and ends on 5 April of the following calendar year.

Both contribution conditions for JSA(C) require that contributions be paid or credited in the last two contribution years. These are the contribution years which are completed before the start of the benefit year in which the claim is made.

If a person claims JSA(C) in October 2016, the last two complete contribution years before the benefit year 2016 will be 6 April 2013 to 5 April 2014, and 6 April 2014 to 5 April 2015. Contributions in these years, and these years only, determine entitlement to JSA(C).

2.1.2 Contribution conditions

- **First condition**

The first condition for qualification for JSA(C) is that a person must actually have paid contributions with an earnings factor of 26 times the LEL in one of the last two contribution years before the benefit year in which the claim is made (see above).



The LEL in 2013/2014 was £109 so 26 times the LEL is £2,834. The LEL in 2014/2015 was £111, so 26 times the LEL is £2,886. Therefore, to pass this condition, a person claiming in 2016 would have to have earned and paid contributions on at least £2,834 in 2013/2014 or £2,886 in 2014/2015.

A person must also have worked a minimum of 26 weeks during one of the last two complete tax years. However a person can still fulfill her/his contribution criteria by working longer than 26 weeks but not by working any less than this period. In effect, unlike the previous first condition rule (prior to legislation changes in 2010) a person cannot reach the earnings limit by working for less than 26 weeks in one of the tax years to satisfy this condition. These contribution rules are the same for ESA(C).

The first condition is relaxed so that sufficient contributions paid in any one year are enough if the person was:

- entitled to Carer's Allowance in the last complete tax year before the relevant benefit year;
- working for more than two years before the first day of the period of limited capability for work and was entitled to a disability or severe disability element of WTC during that period;
- entitled to credited contributions because s/he had been in prison or detention and a conviction was subsequently quashed.

Credited contributions do not count for this condition.

• **Second condition**

The second condition is that a person must have paid or been credited with contributions with an earnings factor of 50 times the LEL in both of the last two contribution years.

For a claim in 2015, the two contribution years would be 2012/2013 and 2013/2014. Fifty times £107 is £5,350 so if a person earned and paid contributions on £5,350 in 2012/2013, the second condition for the year 2012/2013 would be satisfied. For 2013/2014, a person must have earned and paid contributions with an earnings factor worth at least £5,450 (£109 x 50). Again, credits can be combined with paid contributions to satisfy the test.

Alternatively, in either year, a person might have earned and paid contributions on at least £2,834/£2,886 (and so satisfied the first condition) and then received 25 credits, making the contribution record up to the sum needed.

As a further possibility, a person could have had limited capability for work for one contribution year and received 50 credits for the next year, thereby satisfying the condition for that year.

2.1.3 Delaying a claim

If a person fails to satisfy the contribution conditions in a particular benefit year, but would satisfy them in the next benefit year, it is possible to delay claiming benefit until



the next benefit year starts and thus be awarded benefit. The important day for contribution conditions is the first day of the jobseeking period (JSP) which only starts when a claim for benefit is made.

Suppose a person became unemployed in November 2016. Assume the second contribution condition for 2013/2014 was not satisfied, but was for 2014/2015 and 2015/2016. S/he also satisfies the first condition for 2014/2015. If a claim for JSA(C) is made in November it will be disallowed because the claim in 2016 fails the contribution conditions. However, if the person waited until after the first Sunday in 2017 before claiming, then the first day of the JSP will be in the benefit year 2017 and JSA(C) will be awarded.

Where a person actually claims in November and is refused benefit because s/he fails the contribution conditions, s/he must stop claiming for more than twelve weeks and then make a fresh claim. The twelve week gap would end the current JSP.

2.2 Prescribed amount of earnings

A person may claim JSA(C) if s/he is working less than sixteen hours per week and earning less than the prescribed amount.

The prescribed amount of earnings is calculated by adding the person's relevant age related amount of JSA(C) to the relevant earnings disregard and subtracting one penny.

For example, for someone aged 25 or over with a £5 disregard, the prescribed amount would be $£73.10 + £5 - £0.01 = £78.09$.

If in any one week a person earns more than her/his prescribed amount, s/he will not be entitled to JSA(C) and that week will not count towards her/his maximum 182 benefit days.

2.3 Trade disputes

A person is not entitled to JSA where there is a stoppage at work which is due to a trade dispute unless s/he proves s/he is not directly interested in the dispute.

2.4 Rates of benefit

JSA(C) is paid at a basic rate of personal allowance dependent on age, less any earnings or occupational pension minus the relevant disregards. All other income is ignored.

Personal allowance

Under 25 £57.90

25 and over £73.10

A person can only claim JSA(C) for her/himself. The benefit does not provide for extra amounts where s/he has a partner or children. Instead the person should claim Child Tax Credit for her/his children and JSA(IB) for additional amounts for eligible partners,



premiums and housing costs. See section 3.

2.4.1 Pensions

The amount of JSA(C) payable is reduced by any amount of certain occupational pensions or personal pensions over £50 per week, irrespective of a person's age.

2.4.2 Earnings disregard

For JSA(C), £5 per week of earnings is disregarded.

The exception to this, with £20 disregarded, is where a person is an auxiliary coastguard or part-time fire-fighter or part-time lifeboat crew or a member of the Territorial Army Reserve.

JSA(C) will be reduced pound for pound by the amount of earnings received over the disregarded amount.

Earnings of a partner are ignored for JSA(C).

2.5 Waiting days

JSA(C) is not paid for the first seven days (known as waiting days) unless:

- the person has a claim linked to a previous claim for JSA. For joint claim couples this includes a previous claim made by either partner;
- the person claiming (or for joint claim couples either partner) was entitled to Income Support, ESA, Incapacity Benefit, or Carer's Allowance (CA) within the twelve weeks before becoming entitled to Jobseeker's Allowance;
- the person is a member of a joint claim couple and is receiving a training allowance;
- the person is sixteen or seventeen and getting JSA under the severe hardship rules.

2.6 How long is JSA(C) paid for?

JSA(C) is paid for a total of 182 days (26 weeks). It is paid for seven days a week. Any breaks of less than twelve weeks are linked together.

A person cannot re-qualify for JSA(C) based on contributions paid in the same two contribution years. S/he must wait until the beginning of a new benefit year before s/he can claim again.

3. INCOME-BASED JSA

JSA(IB) is paid to a person who is required to sign on as available for work and can be paid as a top-up to JSA(C) and/or when JSA(C) is ended.



3.1 Who can claim?

To qualify for JSA(IB), a person must satisfy all of the common rules above and the conditions outlined below.

3.1.1 Must be aged sixteen or over and under pension age

A young person aged sixteen or seventeen will not normally be entitled to JSA(IB). However, there are some circumstances in which s/he can claim (some of these only apply for a limited period). Alternatively, a payment can be made to a sixteen or seventeen year old where this will prevent severe hardship.

A young person aged under sixteen can never claim JSA(IB) for her/himself.

A sixteen or seventeen year old who qualifies for Income Support because s/he is not required to sign on as available for work (eg lone parent) can choose to register as available for work and claim JSA(IB) instead.

3.1.2 Must not have capital over £16,000

JSA(IB) is not payable to a person if s/he and/or partner have capital over £16,000.

The legislation sets out what counts as capital and what can be ignored.

Personal possessions (other than those which would be considered an investment, eg an art collection) and the person's home will not normally be included as savings/capital. Included on the list of items not normally counted as savings/capital is any payment made to a person as the holder of a Victoria or George Cross medal. The surrender value of any insurance policies and certain other savings can be ignored in specific circumstances.

A person can still be treated as possessing capital where s/he has deprived her/himself of this capital in order to secure or increase entitlement to JSA(IB).

There are complex rules regarding the assessment of capital. For further information see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook*.

3.1.3 Must not be in remunerative work

JSA(IB) will not be paid if a person works sixteen or more hours per week or her/his partner works 24 hours or more per week. However, a person who takes up full time employment may be able to get mortgage interest run on for up to four weeks (see 3.2.1.4). **Note:** see 1.6 for occupations not regarded as remunerative work.

3.1.4 Must not be claiming and entitled to Income-related ESA or Pension Credit

A person will not be able to claim if s/he is claiming and entitled to Income-related ESA (ESA (IR)) or PC. Further, if the person is a member of a couple who must make a joint claim, then her/his partner must not be claiming or entitled to Income Support, ESA (IR) or PC.



Where the person is a member of a couple who do not have to make a joint claim, s/he will only be entitled where her/his partner is not entitled to Income Support, JSA(IB), ESA(IR) or PC.

3.1.5 Habitual residence and right to reside

A person must be present in the United Kingdom (UK), habitually resident in the UK, Republic of Ireland, Channel Islands or Isle of Man (the Common Travel Area (CTA)) and have a right to reside.

From 1 January 2014, in order for a person to be habitually resident in the CTA, s/he must have lived in the CTA for three months before s/he will be entitled to JSA(IB). The test applies to all people claiming (but not partners or dependants) including British/Irish citizens returning from abroad to Northern Ireland.

Also, from 1 January 2014 certain EEA nationals, particularly those who have never worked in the UK before, may only be entitled to JSA(IB) for a maximum of three months.

Some groups are automatically treated as habitually resident, including:

- people who are treated as workers or self-employed persons within specific pieces of European legislation and who are also citizens of the European Economic Area (ie Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Iceland, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and UK) and their dependants;
- refugees; and
- people who have been granted new forms of leave outside of the immigration rules, known as humanitarian protection and discretionary leave.

3.1.5.1 A8 nationals and their dependants

In May 2004, ten countries joined the European Union (EU). They are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Workers from these states (except Malta and Cyprus) were referred to as A8 nationals.

Citizens of Malta and Cyprus enjoyed the same rights as EEA nationals as soon as these two countries joined the EU.

Until 31 April 2011, A8 nationals had to register with the Home Office's Workers Registration Scheme and have twelve months uninterrupted employment before they could enjoy full European law rights.

This rule has now been abolished. 'A8' nationals are now EEA nationals with full European law rights.



3.1.5.2 A2 nationals

Since January 2007, the EU also includes workers from Bulgaria and Romania, referred to as A2 nationals.

Until 31 December 2013 most A2 nationals had to comply with strict rules under the Home Office Worker's Authorisation Scheme and must have worked for twelve months in authorised work before obtaining full EU rights.

This rule has now been abolished and from 1 January 2014, A2 nationals are now EEA nationals with full European law rights.

3.1.5.3 Croatian nationals

On 1 July 2013, Croatia joined the EU as an accession state.

Nationals of Croatia currently have to comply with a Workers Authorisation Scheme which is very similar to that which applied to Bulgarian and Romanian nationals. Most Croatian nationals will need permission to work in the UK and will only have full EU rights after twelve months of authorized work.

These restrictions will continue to apply to Croatian nationals until at least 30 June 2018.

3.1.5.4 Habitual residence and Jobseeker's Allowance

The habitual residence test states that no person will be treated as habitually resident unless s/he has a right to reside in the UK, Republic of Ireland, Channel Isles or Isle of Man. Also from 1 January 2014, for claims to JSA(IB) only, no person can be habitually resident unless s/he has lived in the CTA for three months. If a person is not habitually resident, s/he will have an applicable amount of nil.

There are exceptions to these rules, for example if a person is a worker or self-employed or retains worker status. If a person is turned down for Jobseeker's Allowance because of the habitual residence test, contact Law Centre (NI).

The right to reside is complex and subject to constant change. See *Your Rights in Northern Ireland, a guide for migrant workers* at www.lawcentreni.org or phone the Law Centre's advice line.

3.1.6 Must not be subject to immigration control

A person is 'subject to immigration control' if s/he is not an EEA national and:

- requires leave to enter or remain but does not have it;
- has leave to enter or remain but on the condition that s/he does not have recourse to public funds which include Housing Benefit;
- has leave to enter or remain and is subject to a formal undertaking;
- is appealing a decision about her/his immigration status.



3.2 How much?

The amount of JSA(IB) payable is calculated by subtracting a person's resources (ie income) from her/his needs (ie the weekly amount a person and her/his partner are considered to need, weekly, to live on).

JSA(IB) is an adult only benefit, therefore a person can only claim for her/himself and her/his partner where s/he is a member of a couple. A claim for Child Tax Credit should be made in respect of any dependent children.

3.2.1 Needs

In calculating a person's needs, three elements are taken into account:

- personal allowances;
- premiums (if any);
- housing costs (for owner-occupiers). **Note:** If the claim was made after 4 January 2009 and the £200,000 upper limit on loans applies, housing costs can only be included for 104 weeks.

3.2.1.1 Personal allowances

These are fixed amounts which cover basic weekly living expenses including food, fuel, clothing, laundry, etc. The qualifying amount depends on age, whether the person is single, a lone parent or in a couple. Personal allowances for children and qualifying young people are not included in JSA(IB) for new claims from April 2004. See section 8 for transitional arrangements.

Status	Age	Amount (£)
Couple*	both 18 or over	114.85
	one aged 18 or over, the other under 18 and entitled to Income Support/JSA(IB)/ESA(IR) or in some other situations	114.85
	both under 18 and both entitled to Income Support/JSA(IB)/ESA(IR)	87.50
	both under 18 and one is responsible for a child	87.50
	one is 25 or over and the other under 18 and not entitled to Income Support/JSA(IB)/ESA(IR)	73.10



	one is 18-24 and the other under 18 and not entitled to Income Support/JSA(IB)/ESA(IR)	57.90
	both under 18, one is entitled to JSA at the higher rate for single under 18	57.90
Lone parent	aged 18 or over	73.10
	aged under 18	57.90
Single person	aged 25 or over	73.10
	aged under 25	57.90
Child/qualifying young person**	aged under 20	66.90

* The rate of personal allowance for a couple depends on the age of each partner and whether one or both of them would be entitled to Income Support or JSA(IB) if they were single.

** pre 6 April 2004 claims with no CTC. Personal allowances will not be included for any child, qualifying young person or other dependant with more than £3,000 savings and/or capital.

Special rules apply to a person aged sixteen or seventeen who wishes to claim JSA. In addition to satisfying the normal rules of entitlement, s/he will have to come under a specified category. Some examples of these are a person who is:

- entitled to claim Income Support - s/he will be able to choose whether to claim Income Support or JSA; or
- a member of a couple responsible for a child under sixteen; or
- within the 20-week Child Benefit extension period and is:
 - estranged from her/his parents or whoever is acting as her/his parent; or
 - married or in a civil partnership in specified circumstances.

Those are not exhaustive lists and if a person encounters problems s/he should contact Law Centre (NI) for advice.

In most cases a person cannot claim JSA if in 'relevant education', see section 1.7.

If a person aged sixteen or seventeen does not qualify for JSA(IB) or Income Support s/he can still apply for JSA(IB) on a discretionary basis. These are called 'hardship payments'. Further information on these payments is set out in section 5.2.

A child is anyone under sixteen. This also includes anyone aged sixteen or over but under 20 who counts as a 'qualifying young person' for Child Benefit purposes. This will include a person who:



- has left relevant education or training up to and including 31 August after her/his sixteenth birthday;
- has left education or training and is registered for work, education or training and is within her/his extension period;
- is aged sixteen or over and under 20 and is either on a full-time course of non-advanced education or approved training or has finished such a course and been enrolled or accepted on another such course. The person must have started or been enrolled on the course before turning nineteen years of age;
- is aged sixteen or over but under 20, has left education and approved training and has not yet reached her/his terminal date for Child Benefit purposes.

3.2.1.2 Premiums

Premiums are added to personal allowances in recognition of extra expenses due to age and disability, and in some circumstances, parental responsibilities.

Disability premium

(a) A person or partner aged under the qualifying age for PC can qualify if s/he is:

- receiving Disability Living Allowance (DLA) or Working Tax Credit (WTC) with a disability or severe disability element;
- receiving payments from the invalid vehicle or war pensioners' vehicle schemes;
- purchasing or hiring a car under the Motability scheme; or
- certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified).

(b) A person can also qualify if s/he has a partner aged under the qualifying age for PC who is in receipt of Incapacity Benefit long term rate, short term Incapacity Benefit for the terminally ill or Constant Attendance Allowance.

Amount

Single Person	£32.25
Couple	£45.95

Enhanced disability premium

A person can qualify for this premium where s/he or her/his partner who is under the qualifying age for PC is in receipt of the high rate care component of DLA.

Amount

Single adult	£15.75
Couple	£22.60



□ Pensioner premium

A person who is at least the qualifying age for PC or partner who is between that age and 80 years old can qualify for this premium. The couple rate applies where either or both are between that age and 80.

Amount

Single person	£82.50
Couple	£122.70

□ Higher pensioner premium

This premium is awarded in one of three circumstances:

- the person has a partner who is aged 80 or more;
- the person or her/his partner (if s/he has one);
 - is at least the qualifying age for PC; and
 - is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) or receiving one of the benefits or vehicle scheme payments which count for the disability premium at (a), or is in receipt of Attendance Allowance;

Amount

Couple	£122.70
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□ Severe disability premium

The circumstances in which a person qualifies for the severe disability premium are as follows:

- the person:
 - is single, in receipt of a qualifying benefit: DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; and
 - has no-one receiving CA for her/him; and
 - has no non-dependants aged eighteen or over normally residing with her/him;
- the person and her/his partner:
 - are both in receipt of a qualifying benefit: DLA (highest or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or
 - the person applying is getting one of the above benefits and the partner is receiving Attendance Allowance; and



- someone is receiving CA for one of them but not for the other; and
- they have no non-dependants aged eighteen or over normally residing with them (couple lower rate);
- the person and her/his partner:
 - are both receiving DLA (higher or middle rate of the care component), Constant Attendance Allowance or Exceptionally Severe Disablement Allowance; or
 - the person is getting one of these benefits and the partner is receiving Attendance Allowance;
 - no-one is in receipt of CA for either the person or her/his partner; and
 - they have no non-dependants aged eighteen or over normally residing with them (couple higher rate).

Amount

Single person (lower rate)	£61.85
Couple (lower rate)	£61.85
Couple (higher rate)	£123.70

Note: A person claiming who is in receipt of one of the qualifying benefits and has a partner who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) is treated as having no partner and therefore as a single person.

The following people do not count as non-dependants:

- anyone getting Attendance Allowance, the highest or middle rate of the care component of DLA for her/himself, Constant Attendance Allowance or Exceptionally Severe Disablement Allowance;
- anyone under eighteen (or under 20 if still in full-time education) and not treated as part of the household of the person applying for benefit purposes;
- any member of the person's family for benefit purposes (ie her/his partner and dependent children and young people);
- anyone engaged by a voluntary organisation or charity to care for the person applying, where a charge is made for that care. This does not apply to people engaging their own carers under direct payments legislation;
- anyone who normally lives elsewhere;
- a person who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified);



- anyone (other than a close relative) who is liable to make payments on a commercial basis to the person applying or her/his partner in order to live in the home;
- anyone (other than a close relative) to whom the person applying is liable to make such payments in order to remain in the home;
- a person (other than a close relative) who jointly occupies the home and is a joint owner or is jointly liable with the applicant to make payments in respect of occupation of the home;

For any of the three categories above, a close relative can also be disregarded as a non-dependant where:

- the joint ownership or liability began before 11 April 1988; or
- the joint ownership or liability began on or before the date the person applying first lived in the house.

□ Carer premium

This premium applies where the person and/or her/his partner is entitled to Carer's Allowance (CA). This applies even if the person (or partner) is not actually in receipt of CA because another benefit (eg Bereavement Allowance) is in payment which overlaps with CA.

An extra statutory payment to compensate a person or partner for not getting CA also counts.

Amount

Single person	£34.60
Couple, one of whom gets or would get CA	£34.60
Couple, both of whom get or would get CA	£69.20

Note: The three premiums below only apply for pre- April 2004 claims with no CTC.

□ Family premium

The family premium is awarded in respect of a family with a child or qualifying young person. One family premium applies regardless of the number of children or qualifying young people.

It applies even if the person claiming or partner is not the parent of the child or qualifying young person and even if s/he does not receive a personal allowance for the child or qualifying young person because the child or qualifying young person has capital in excess of £3,000.

It can be added to any of the premiums listed below.



From 6 April 1998, the lone parent rate of family premium was abolished.

Amount £17.45

❑ Disabled child premium

This applies to a child or qualifying young person of the family who receives DLA at any rate or who is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified). However, the premium is not applicable if the child or qualifying young person has capital over £3,000.

A separate premium is awarded for each child or qualifying young person who qualifies and it can be added to any other premium.

Amount £60.06

The disabled child premium can be extended for a further eight weeks after a child dies, as is the rule with Child Benefit.

❑ Enhanced disability premium (child element)

This applies where a child or qualifying young person is in receipt of the highest rate of the care component of DLA.

The premium is not awarded in respect of any child or qualifying young person who has capital over £3,000.

A separate premium is awarded for each child or qualifying young person who qualifies and it can be added to any other premium.

Amount (per child or qualifying young person) £24.43

The enhanced disabled child premium can be extended for a further eight weeks after a child dies.

Remember:

Normally, only one premium (the highest) is paid, but there are five exceptions:

1. carer premium can be paid with any other premium/s;
2. severe disability premium can be paid with any other premium;
3. enhanced disability premium can be paid with any other premium except the pensioner and higher pensioner premiums (note: for a child it is only payable in claims with transitional protection);

Pre-April 2004 claims with no CTC

4. family premium can be paid with any other premium/s (only pre-April 2004 claims with no CTC);



5. disabled child premium can be paid with any other premium/s (only pre-April 2004 with no CTC).

3.2.1.3 Housing costs

Some housing costs for owner-occupiers are taken into account in assessing the needs for JSA(IB). The amount is a weekly one representing mortgage interest, interest on loans for repairs or improvements, co-ownership payments, and some other housing costs such as ground rent and service charges. The level of support for mortgage interest and repairs and improvements is restricted to total loans below £200,000 for most claims made after 4 January 2009 (£100,000 in most other cases). Any loan to adapt the home for a person with a disability is ignored when working out if total housing costs exceed this limit.

Most payments of mortgage interest are calculated using a standard rate of interest. From October 2010, the standard interest rate used to calculate support for mortgage interest payments is set at a level equal to the Bank Of England's published monthly Average Mortgage Rate, currently this means a reduction from a standard interest rate of 6.08 per cent to 3.12 per cent.

From 5 January 2009, the standard interest rate was set as 6.08 per cent. From 6 July 2015 the standard rate of interest fell to 3.12 per cent.

If the rate of interest a person pays is higher than the standard rate, then s/he has to meet the shortfall. If a person is paid more than the interest s/he has to pay, then the lender must first apply the excess to any arrears, then to repaying the mortgage itself. No other help with accumulated arrears of interest is provided.

For the vast majority, mortgage interest payments are paid directly to the building society or other lender rather than to the person.

There are complex rules covering which housing costs are eligible for help. Contact Law Centre (NI) for further advice.

In most cases, housing costs are not included until a person has been claiming JSA for a period – known as the qualifying period. What the period is depends on when the person claimed and when the loan was taken out. In some cases, there is no qualifying period, eg if the claimant's partner is at least the qualifying age for PC.

Mortgage interest payments for new claimants on (IB) JSA after 4 January 2009 only last for two years and this is payment then withdrawn. The withdrawal of this payment has started to affect claimants from January 2011. It is unclear at the moment what help is available for dealing with this financial shortfall.

3.2.1.3.1 New rules from 1 April 2016

The rules of entitlement to housing costs changed on 1 April 2016. Most people making a claim to JSA(IB) on or after this date do not receive any housing costs for a qualifying period of 39 (previously thirteen) weeks. After the 39 weeks, full housing



costs are included in a person's claim. In some cases, it is possible to use linking rules to reduce the qualifying period (for more details see 3.2.1.3.7).

There is a two year (104 week) time limit for payment of housing costs to people in receipt of JSA(IB) who have an upper limit of £200,000 on their loans. This starts at the end of the 39 week qualifying period.

Prior to 1 April 2016, there were different rules for help with housing costs for loans taken out before or after 5 January 2009 (see below). These had a shorter waiting period (thirteen weeks). Those waiting to receive housing costs under these rules should have been automatically transferred over to the new longer qualifying period, with payment starting immediately for those who had already served 13 or more weeks.

3.2.1.3.2 People in a qualifying period but not in receipt of IS, JSA or ESA

Between 5 January 2009 and 5 January 2010, the rules operated in an unfair way. Where a person made a claim for JSA(IB) and was not entitled to any JSA (either Contribution-based or Income-based) as her/his income was too high until housing costs could be included, the relevant old rules qualifying periods (see below) applied. This has been corrected from 5 January 2010.

3.2.1.3.3 Old rules - Loans taken out from 2 October 1995

If the thirteen-week qualifying period does not apply, a person with a loan taken out on or after 2 October 1995 does not get housing costs for the first 39 weeks of a claim. Full housing costs are awarded after 39 weeks.

There are exceptions where the rules in relation to a loan taken out before 2 October 1995 (see below) apply (eg where the person is a carer).

3.2.1.3.4 Old rules - Loans taken out before 2 October 1995

If the thirteen-week qualifying period does not apply, a person with a loan taken out before 2 October 1995 does not get housing costs for the first eight weeks of a claim, and only 50 per cent for the next eighteen weeks. Full housing costs are awarded after 26 weeks.

3.2.1.3.5 Loans for repairs and improvements

A person can get help with loans for repairs or improvements to maintain the current home, or any part of the building in which it is contained, in a habitable condition. Loans towards the cost of necessary survey work should also be included.

Help towards the interest payments on a loan will be payable for any of the following:

- provision of a bath, shower, toilet, wash basin and the necessary plumbing and hot water;
- repairs to heating system;



- damp-proof measures (this may include repairs to a roof);
- provision of ventilation and natural lighting;
- provision of drainage facilities;
- provision of facilities for preparing and cooking food (but not for storing it);
- provision of home insulation;
- provision of electric lighting and sockets;
- provision of storage facilities for fuel or refuse;
- repairs of unsafe structural defects;
- adaptations for a person with a disability;
- providing separate sleeping accommodation for children of different sexes aged ten or over who are part of the family. It can be argued that this should apply if:
 - both children will be ten or over in the near future; or
 - the children were not aged ten when the loan was taken out but are by the time a claim for Income Support is made.

If the loan is also for other repairs and improvements, housing costs will only be paid for the proportion which relates to any of the items listed above. The amount payable is calculated as for mortgages (ie waiting periods and similar interest rates apply).

3.2.1.3.6 Reduction in payment

The amount payable for housing costs may be reduced if:

- a person moves into more expensive accommodation whilst on JSA(IB), ESA(IR), Income Support or PC during a short break between periods on any of those benefits;
- housing costs are excessive eg dwelling too large; or the area is more expensive than other areas where there is suitable accommodation, or the outgoings are higher than on other properties in the area suitable to a person's needs.
- the person has non-dependants normally living in the house (ie people for whom the person is not claiming benefit). A deduction is made for each non-dependant living in the home. If a non-dependent couple is residing with the person, only one non-dependant deduction is made based on their joint income.



Circumstances	Weekly rate of non-dependant deductions
Aged eighteen or more, in full-time paid work (but not receiving PC) and gross income of:	
£420.00 or more	£94.50
£338.00 - £419.99	£86.10
£253.00 - £337.99	£75.60
£195.00- £252.99	£46.20
£133.00 - £194.99	£33.65
Less than £133.00	£14.65

Full-time paid work is paid employment of sixteen hours or more per week. Gross income is gross wages (before tax and national insurance deductions) and most other income.

Income which is disregarded includes DLA, Attendance Allowance and payments from the Macfarlane Trusts, MFET Limited, the Eileen Trust, the Independent Living Fund and the Fund.

Where a non-dependant is not in full-time paid work, a weekly deduction of £14.65 will usually apply. Exceptions to this rule provide that in certain cases no deductions will apply (see below).

No non-dependant deductions will be made in respect of a person:

- aged sixteen or seventeen; or
- aged under 25 and on Income Support or JSA(IB); or
- receiving PC; or
- aged under 25 and on the assessment phase ESA(IR); or
- aged under 25 and on Contribution-based ESA (ESA(C)); or
- who is a close relative and a co-owner or joint tenant with the person or partner; or
- a full-time student during period of study. This only applies during the summer vacation if the student is not in full-time paid work; or
- who gets an allowance for youth training under specific provisions; or
- normally living elsewhere; or
- in hospital for more than 52 weeks or in prison.

No deduction will be made for the housing costs of non-dependants regardless of the circumstances of the non-dependants themselves where:



- the person applying or her/his partner is certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified) for purposes of higher pensioner or disability premium; or
- the person applying or her/his partner is getting DLA care component; or
- the partner is getting Attendance Allowance.

3.2.1.3.7 Linking rules

In some circumstances it is possible to link a jobseeking period to an earlier such period (see below). This is an important consideration because if jobseeking periods can be linked then:

- the question of whether contribution conditions are satisfied for JSA(C) will be determined by looking at the situation at the beginning of the first jobseeking period;
- there is no further five day waiting period;
- if the linked jobseeking periods amount to more than 182 days then the person will not be entitled to JSA(C);
- if the jobseeking periods together amount to more than two years then it may be possible for the person to get JSA while attending a qualifying course.

It is possible to link a jobseeking period with an earlier one:

- where the jobseeking periods are separated by no more than twelve weeks;
- over any period during which the person is on jury service;
- where the jobseeking periods are separated by a 'linked period'. This is any period during which the person:
 - is entitled to Carer's Allowance where this allows her/him to satisfy the contribution conditions for JSA(C); or
 - is incapable of or treated as incapable of work; or
 - has, or is treated as, having limited capability for work; or
 - is getting maternity allowance; or
 - is undergoing certain types of training and is receiving a training allowance.

3.2.1.4 Mortgage interest run on

A person will continue to receive help with housing costs for a period of four weeks where:

- s/he or partner has been receiving JSA(IB), ESA(IR) or Income Support for a continuous period of 26 weeks; and



- s/he or partner takes up a full time job or increases the hours of work to full time. A person counts as in full time work if s/he works sixteen hours or more per week. A partner counts as in full time work if s/he works 24 hours or more per week; and
 - that work is expected to last for at least five weeks; and
 - current JSA(IB) entitlement includes housing costs; and
 - s/he or partner will remain liable for the housing costs.

The amount is paid as Income Support and will be the lowest of either:

- the amount of housing costs payable in the week before commencement of full time work; or
- the amount of JSA(IB) entitlement in the week before commencement of full time work.

A person should notify the local office that s/he or her/his partner has started full time work. Payment should then be made automatically to the person and not the lending agency. All income and capital are ignored in calculating the amount of housing costs.

3.2.2 Resources

Resources are the income of a person from all sources and include part-time earnings, most other benefits and maintenance payments. However, Attendance Allowance, DLA (any component), and Housing Benefit are some of the benefits which do not count as resources (see 3.2.2.3). Child Benefit (unless the person is not getting CTC) and CTC do not count as resources. Where a person is a member of a couple, her/his partner's income is added to her/his income.

3.2.2.1 Part-time earnings

Net earnings (ie earnings after deductions of tax, national insurance and half of any contribution paid towards a personal or occupational pension) will be taken into account in full, less any amount which is to be disregarded (see 3.2.2.2).

No deductions can be made for travel, childcare or other expenses. Also, any payments made by the employer for travel costs to work or childcare expenses will be treated as earnings. Any other work-related expenses paid by the employer will be treated as wages unless exclusively and necessarily incurred in the performance of the duties of employment.

Payments of reasonable expenses to volunteers will be ignored provided no other additional payments are being made.

3.2.2.2 Earnings disregard

Disregard first £20 where a:

- person is a lone parent;
- person or partner



- is receiving disability premium; or
- would receive disability premium but is in hospital, residential care home, nursing home, board and lodging accommodation, home for persons in need or other residential accommodation;
- person or partner:
 - is entitled to a higher pensioner premium, or would receive it and is in hospital; and
 - is at least the qualifying age for PC; and
 - immediately before reaching the qualifying age for PC was working and entitled to a £20 disregard; and
 - is continuing to work part-time (breaks of eight weeks or less when work is given up or benefit ceases will be ignored);
- couple, and entitlement to JSA(IB) would include disability premium but for the fact that:
 - one person qualifies for higher pensioner premium (save for being in hospital); and
 - the other person is under the qualifying age for PC ; and
 - either person is in employment;
- couple, where:
 - one member qualifies for the higher pensioner premium; and
 - immediately before reaching the qualifying age for PC, one member of the couple was in part-time employment and entitled to a £20 disregard because of entitlement to the disability premium;

Note: To get this disregard, there must have been no break in employment since the person reached the qualifying age for PC.
- person or partner is a part-time fire-fighter, auxiliary coastguard, staffing or launching a lifeboat, PSNI Reserve, Territorial Army, Army, RAF or Navy Reserve force;
- person or partner qualifies for a carer premium. The disregard usually applies to the carer's earnings.

Basic £5/£10 disregard. Where a person does not qualify for a £20 disregard, £5 of her/his earnings will be disregarded if s/he is single. Where a couple claim, £10 of their total earnings are disregarded whether or not they are both working.

3.2.2.3 Other income

The main categories of income are set out below.

- **Treatment for JSA(IB) purposes - count in full:**



- Bereavement Allowance (though a bereavement payment is treated as capital), Widow's Pension, Retirement Pension and maintenance;
- CA;
- ESA(C);
- Incapacity Benefit;
- Industrial Injuries Benefits (except constant Attendance Allowance and exceptional severe disablement allowance which are disregarded in full);
- JSA(C);
- Maternity Allowance;
- net SSP (ie less tax, national insurance and half of any pension contributions);
- net Statutory Adoption Pay;
- net Statutory Maternity Pay (SMP);
- net Statutory Paternity Pay;
- Severe Disablement Allowance;
- WTC.
- **Treatment for JSA(IB) purposes - ignore first £10:**
 - War Disablement Pension;
 - War Widow(er)'s or Surviving Civil Partner's Pension;
 - a pension from Germany or Austria paid to victims of Nazi persecution;
 - extra statutory payments made in lieu of those payments already listed or similar payments made by another country.

Only £10 in total can be ignored. However, the £10 ignored is additional to the total disregard of any mobility supplement or attendance allowance paid as part of a War Disablement Pension.
- **Treatment for JSA(IB) purposes - ignore in full:**
 - any payment made as a holder of the Victoria Cross or George Cross;
 - any extra statutory payment paid in compensation for non-payment of Income Support, JSA(IB), DLA, Attendance Allowance, Constant Attendance Allowance or a mobility supplement;
 - Attendance Allowance;
 - Child Benefit;
 - Constant Attendance Allowance;
 - CTC;
 - DLA;
 - Education Maintenance Allowance;
 - foster fees;



- Guardian's Allowance;
- Housing Benefit;
- income in kind;
- income frozen from abroad;
- Job Start Allowance;
- Mobility Supplement under the War Pensions Scheme;
- payments under the Personal Social Services (Direct Payments) NI Order 1996;
- payments under Sections 18, 35 and 36 of the Children (NI) Order 1995;
- payments from Independent Living Fund and Skipton Fund;
- Social Fund payments.

Charitable or other voluntary payments made regularly are ignored except where a person is involved in a trade dispute or within the first fifteen days following her/his return to work after a trade dispute.

Regular personal injury payments derived from lump sums held in trust or in an annuity or from an agreement or court order are disregarded in full, regardless of what the payment is intended for.

Other incomes may be disregarded in part or in full; for a complete list see Child Poverty Action Group's *Welfare Benefits and Tax Credits Handbook*.

- **Maintenance**

Most child maintenance is ignored completely. Most other maintenance counts in full.

- **Income from capital**

JSA(IB) is not payable to a person if s/he and/or partner have capital over £16,000. The first £6,000 is ignored and an income of £1 per week will be assumed for every £250 or part of £250 in excess of £6,000.

A person who is permanently in residential care, a nursing home or other type of residential accommodation and who has capital in excess of £10,000 will be treated as having a weekly income of £1 for every complete £250 or part of £250 in excess of £10,000 but not exceeding the upper capital limit of £16,000.

- **Notional income**

A person will still be treated as possessing income which s/he has deprived her/himself of for the purpose of securing entitlement or increasing entitlement to JSA(IB).

This may include an assumption of income where work is undertaken for which a person does not receive any payment or any proper payment. In making such a decision, the decision maker will consider what would be a reasonable payment and also the circumstances of the person for whom the work is undertaken.

This does not apply to work undertaken free of charge as a volunteer for a charitable or voluntary organisation if the Social Security Agency is satisfied that it is



reasonable to provide such services free of charge and a number of other specific circumstances.

4. WHO SHOULD CLAIM?

A person can only claim JSA(C) for her/himself.

A person making a claim for JSA(IB) can only claim for her/himself and partner.

Some couples must make a joint claim for JSA. Both members of a joint claim couple must usually:

- claim JSA; and
- satisfy all the rules for getting JSA(IB) ie common rules and Income-based conditions.

Unless a couple is required to make a joint claim, one member of the couple claims for both.

Where a joint claim is required, both members of the couple are usually required to satisfy all the conditions for getting JSA, including signing on and attending compulsory interviews.

From 28 April 2009, a partner who does not have to make a joint claim for JSA with the person claiming must take part in work focused interviews every six months where the person/partner is responsible for a child or qualifying young person.

See section 4.2 for further details.

4.1 Joint claim for Jobseeker's Allowance

A couple where at least one of them is eighteen or over and was born after 28 October 1947 have to make a joint claim. The exception to this is where the person or partner is treated as responsible for a child or young person.

A joint claim must be made unless one partner is:

- entitled to Child Benefit for a child or qualifying young person;
- waiting for a decision on Child Benefit and no one else is receiving Child Benefit in respect of the child or qualifying young person;
- looking after a child or qualifying young person whom someone else is responsible for so that s/he can attend school;
- responsible for a child or qualifying young person who normally lives with her/him and for whom no one is receiving Child Benefit;
- looking after a child or qualifying young person for a local health and social services trust;
- looking after a child or qualifying young person with a view to adoption.



A person who is a member of a couple and required to make a joint claim, and whose partner has not made a joint claim, can qualify for JSA even if the partner has not claimed JSA with her/him. This applies if her/his partner:

- is over pensionable age;
- works sixteen or more but less than 24 hours per week;
- has claimed Maternity Allowance or SMP;
- is pregnant and within eleven weeks of the expected date of confinement or it is less than 28 weeks since the pregnancy ended;
- is receiving reciprocal unemployment benefit from another country;
- is receiving SSP and was previously working sixteen hours or more per week.

A person who is a member of a couple required to make a joint claim, and whose partner has not made a joint claim, will have her/his entitlement to benefit calculated as a single person where her/his partner:

- did not attend a notified interview with an employment officer;
- failed to meet the labour market conditions;
- is no longer treated as present in Northern Ireland due to temporary absence;
- is subject to immigration control or is a person from abroad.

When a joint claim has been made and one person satisfies all the conditions of entitlement, the other person will be exempt from meeting the conditions if s/he is below pension age and not in full time work and was for at least one day in the past week:

- studying full time;
- caring for someone in receipt of Attendance Allowance or DLA (middle or highest rate of the care component) or who has applied for these benefits within the past 26 weeks and has not received a decision;
- caring for someone in receipt of Attendance Allowance or DLA (middle or highest rate of the care component) but this stopped less than eight weeks ago;
- incapable of work or had or was treated as having limited capability for work;
- a student who is deaf or has a disability;
- certified as severely sight impaired or blind by a consultant ophthalmologist (or treated as such for a 28 week period where a person ceases to be so certified);
- incapable of work or had limited capability for work because of pregnancy;
- a refugee learning English for more than fifteen hours per week on a course that began within a year of arrival in Northern Ireland;
- required to attend court;
- aged sixteen to 24 and on a training course;



- at least the qualifying age for PC;
- engaged in a trade dispute.

4.2 Work-focused interviews for partners

The partner of the person claiming is now required to attend a compulsory work-focused interview as a condition of the person claiming receiving the full amount of JSA(IB) where:

- both the person and partner are aged over eighteen and under qualifying age for PC; and
- there is continuous entitlement to JSA(IB) for at least 26 weeks; and
- this benefit is paid at a higher rate because of the partner.

A partner who her/himself is claiming one of the following benefits is exempt:

- Income Support;
- JSA(IB) but not joint claim JSA;
- Incapacity Benefit;
- Severe Disablement Allowance;
- ESA(IR);
- CA.

If a partner fails to attend without good cause, the benefit of the person claiming will be reduced by £14.62 weekly. For details of what constitutes good cause see CPAG handbook.

5. COMMON PROVISIONS

5.1 Benefit sanctions

A person may lose benefit in certain circumstances for a minimum of one week and up to 26 weeks. This is known as a benefit sanction and is either mandatory or discretionary.

5.1.1 Fixed sanction period

A person will lose benefit for a mandatory period of two weeks if s/he:

- without good cause (see 5.1.3.1), does not apply for a place, has refused a place, failed to attend or complete a compulsory training scheme or employment programme;



- without good cause (see 5.1.3.2), has refused or failed to carry out a Jobseeker's direction that was reasonable or the sanction relates to a Back to Work Session;
- has lost a place on a compulsory training scheme or employment programme training through misconduct;

A sanction of up to two weeks (JSA will not be payable for a period of at least one week but not more than two) can be applied in certain circumstances when a person fails to attend an appointment.

A person will lose benefit for a mandatory period of four weeks where s/he has been given a fixed period sanction within the last twelve months. However, an initial sanction under an employment scheme (those listed above under the first and third bullet points) will be for two weeks where a person has been given a fixed period sanction within the last twelve months. Subsequent employment scheme sanctions are for four and 26 weeks.

5.1.2 Variable sanction period

Additionally, a decision maker has the discretion to impose a benefit sanction on a person for a period of one to 26 weeks if s/he has:

- lost a job through misconduct;
- voluntarily left employment without just cause eg harmful to health, caring for a sick relative, except during the trial period of five to twelve weeks;
- without good cause, neglected to take up a reasonable opportunity of employment (see 5.1.3.2);
- without good cause, refused or failed to apply for or accept a job vacancy notified to her/him by an employment officer (see 5.1.3.2).

In determining the period of the sanction, the decision maker must take into account all the circumstances of the case and, in particular, the following:

- where the job would have lasted more than 26 weeks, the length of time it was likely to last;
- where the job was lost through misconduct and the employer intends to re-engage the person, the date the person will return to work;
- where a person leaves employment voluntarily or fails to avail of a reasonable opportunity for employment, any mitigating physical or mental stress connected with employment;
- where a person leaves employment voluntarily and the hours were sixteen hours per week or less, the rate of pay and hours worked in that employment.

A person who has accepted voluntary redundancy is not treated as having left her/his employment voluntarily.



5.1.3 Good cause

If a person is sanctioned s/he may be able to challenge this on the basis that s/he has good cause.

A person can argue good cause in relation to:

- refusing to take up, apply for, or attend training schemes;
- refusing to carry out a Jobseeker's direction or apply for or take up a reasonable opportunity of employment.

5.1.3.1 Training schemes and employment programmes

In determining whether a person has good cause for refusing to take up, apply for, or attend a training scheme or employment programme, the decision maker must consider the following factors, namely, whether:

- the person was suffering from some disease or bodily or mental disablement which prevented her/him from attending, or attending would put at risk her/his health or the health of another person;
- the person gave up a place on a training scheme and if s/he had continued to participate in it s/he would have, or would have been likely to have, put her/his health and safety at risk;
- failure to attend has resulted from a religious or conscientious objection;
- the travel time involved more than 60 minutes in each direction (it can be longer where no appropriate training scheme is available within 60 minutes);
- inability to attend resulted from caring responsibilities;
- the person was attending court on jury service or as a witness or a party to the proceedings;
- the person was arranging or attending the funeral of a close relative or close friend;
- the person was manning or launching a lifeboat or performing the duty of a part-time member of the Fire Brigade;
- the person was dealing with a domestic emergency;
- the person was engaged in emergency duties for the benefit of others as a member of a group organised to deal with such emergencies.

5.1.3.2 Jobseeker's directions and employment opportunities

In determining whether a person has good cause for refusing to carry out a Jobseeker's direction or apply for or take up a reasonable opportunity of employment, the decision maker must consider certain factors, including whether:

- there were restrictions on availability or hours of work previously agreed, and the disparity between these and the requirements of the vacancy;



- a particular employment or Jobseeker's direction would cause significant harm to the person's health or subject her/him to physical or mental stress;
- failure to undertake particular employment or carry out a Jobseeker's direction has resulted from a religious or conscientious objection;
- caring responsibilities would make it unreasonable for the person to undertake particular employment or carry out a Jobseeker's direction;
- the travel time and route to and from the place of employment is inappropriate;
- expenses incurred in following Jobseeker's directions or taking up employment in relation to earnings or income are unreasonable.

A person will have good cause for failing to apply for or refusing to accept or avail of a job opportunity if the vacancy:

- involves less than 24 work hours per week; or
- involves less than sixteen work hours per week (where s/he is allowed to restrict availability to 24 hours per week); or
- pays commission only.

5.1.3.3 Other issues

A person who is subject to a benefit sanction may be able to claim a JSA(IB) hardship payment if s/he satisfies the conditions.

A person can apply for a revision or supersession of a sanction decision, and/or sanction period or appeal against these.

5.2 Hardship payments

A person who is subject to a benefit sanction or who is waiting for a decision or who has had her/his benefit suspended may be able to claim a hardship payment. In determining whether a person will suffer hardship, the decision maker must take into account the following factors:

- the presence in the person's family of a person who satisfies the requirements for a disability or disabled child premium or the disability or severe disability element of CTC;
- the income and capital available to the person and her/his family;
- whether there is a substantial risk that essential items, including food, clothing, heating and accommodation will cease to be available, or will be available at considerably reduced levels and how long this will persist.

5.2.1 Vulnerable groups

Hardship payments can be made where the decision maker is satisfied that unless JSA is paid, hardship will result and the person or partner is:



- pregnant;
- a lone parent or a member of a couple and responsible for a child or young person who will suffer hardship. Lone parents responsible for a child under seven (under five at some point during 2013) cannot claim hardship payments but can claim Income Support instead;
- eligible for a disability premium;
- suffering from a chronic medical condition which has lasted or is likely to last for no less than 26 weeks and whose health is likely to decline (further than that of a normally healthy adult) within two weeks;
- spending a considerable amount of time caring for someone who is in receipt of Attendance Allowance or DLA care component (middle or higher rate), or who has been awarded one of these but it is not yet in payment;
- spending a considerable amount of time caring for someone who has claimed Attendance Allowance or DLA and the claim has not been determined. Hardship payments will only be paid for up to 26 weeks from the date of the claim or until the claim is decided, whichever comes first;
- under 21 and left care within the last three years;
- is a sixteen or seventeen year old who can claim JSA(IB) – including severe hardship payments.

A person who falls within one of the above vulnerable groups can receive a hardship payment straightaway (unless the five day waiting period has to be served).

A person who does not fit into any of the above categories may still be entitled to a hardship payment if s/he can demonstrate that s/he or her/his partner will suffer hardship if a payment is not made. However, in these circumstances, JSA(IB) will not be payable for the first fourteen days. The person's weekly personal allowance will be reduced by 40 per cent unless s/he or her/his partner is seriously ill or pregnant when the reduction will be 20 per cent. Premiums and housing costs will continue to be paid without any reduction.

A person who has received an employment scheme sanction, excluding those relating to the gateway period, cannot get a hardship payment unless s/he is in a vulnerable group. In addition, where a decision is made that a person is not available for work, is not actively seeking work or does not hold a valid Jobseeker's agreement, she will normally only be entitled to a hardship payment if in a vulnerable group.

Hardship payments will not be made unless the person completes the appropriate form and returns it to the correct office.



6. BENEFIT FRAUD

Fraud can occur when a person deliberately misleads DfC or fails to, or allows another person to fail to notify promptly a change of circumstances that could affect entitlement to benefit. There are two offences, namely making false representations for benefit and making dishonest representations for benefit.

There are three main options available to DfC in relation to fraud, namely:

- formal caution;
- penalty;
- prosecution.

6.1 Formal caution

Caution is generally used for less serious offences. A person will be asked to attend a formal caution interview where s/he will be asked to sign a record admitting the offence and accepting the caution. Accepting a caution means that a person will not normally be prosecuted. The caution may be cited in court where a person is successfully prosecuted for a further offence.

6.2 Penalty

A person can be offered the option of paying a penalty if:

- an overpayment is found to be recoverable and a decision to this effect has been issued;
- the overpayment resulted from an act or omission by the person and occurred after 18 December 1997;
- there are grounds for prosecuting the person for an offence relating to the overpayment.

The penalty is an additional 50 per cent of the recoverable overpayment caused by the offence and is added to the amount of overpayment and recovered in the same way.

A person will be sent a notice setting out the broad terms of the penalty and will be invited to an interview to discuss acceptance of the penalty. A person does not have to make the decision to accept the penalty at the interview but will be allowed five days to make up her/his mind. Once a person has entered into an agreement to pay the penalty, s/he will have 28 days in which to change her/his mind.

Note: Acceptance of a formal caution or penalty will bring immunity from prosecution for the specified offences. However, a person may still be prosecuted for related offences such as a Housing Benefit overpayment.

Acceptance of a formal caution or penalty is an admittance of guilt. The caution or penalty should not be accepted just to avoid prosecution, if the person did not commit



the offence. A person will not automatically be prosecuted if s/he does not accept the formal caution or penalty. Prosecution will depend on the evidence that DfC has obtained.

6.3 Prosecution

Fraud is a criminal offence and can result in prosecution. The maximum penalty for these offences, if convicted in summary proceedings in the magistrates court, is a £5,000 fine or six months in prison, or both. This is in addition to repayment of any overpayment that may have occurred. Where a case is tried on indictment in the Crown Court the maximum penalty is an unlimited fine or seven years imprisonment or both.

6.3.1 Benefit sanctions

In addition to a fine, imprisonment and recovery of any overpayment, DfC can apply benefit sanctions to certain benefits including JSA.

The government has introduced a 'one strike' sanction which applies where a first offence of benefit fraud results in a prosecution, caution or an administrative penalty. The additional sanction is the reduction of benefit for four weeks as below. This will be additional to any recovery of overpayment or administrative penalty. A claimant who accepts a caution or administrative penalty has a four week period in which to change her/his mind. If a second or subsequent benefit fraud offence results in another administrative penalty or caution then a further sanction of thirteen weeks reduction of benefit will apply. This only applies to offences committed after the introduction of fraud legislation on 1 April 2002.

A person's JSA(IB) will be reduced as follows:

- 20 per cent of the appropriate personal allowance for a single person if the person claiming or any member of her/his family is pregnant or seriously ill, or where the person who committed the offence is appealing an incapacity for work decision and already has a reduction in benefit;
- in all other cases, 40 per cent of the appropriate personal allowance for a single person;
- from 1 September 2011 new legislation has been introduced to allow for a 100 per cent reduction of benefit in certain cases.

While JSA(IB) is sanctioned, an underlying entitlement will remain to protect eligibility to passport benefits and other linked entitlements.

6.3.2 Hardship payments

A person who is sanctioned because of fraud can apply for a hardship payment (see 5.2). If hardship is established, a reduced rate of JSA(IB) is payable straightaway if the



person falls into a vulnerable group. If a person establishes hardship and does not fall into a vulnerable group, a reduced rate of JSA(IB) is payable from the fifteenth day of the sanction period. A hardship payment is made if the claimant or partner falls into a vulnerable group (see 5.2.1) or the DfC is satisfied that the claimant or partner would face hardship if a payment was not made.

However, a reduced rate of JSA(IB) is not payable where both members of a joint claim couple have been sanctioned for fraud or a combination of fraud and breach of the joint claim requirements. If only one member of a joint claim couple is sanctioned, the other member is paid:

- JSA(C) if eligible or;
- the appropriate hardship payment for a couple, if eligible; or
- JSA(IB) for a single person, although income and capital of a partner are taken into account.

6.3.3 Other issues

Where a doubt arises during a fraud investigation about a person's entitlement to benefit, the benefit may be suspended until further information is gathered. This decision cannot be appealed other than by way of judicial review.

A person in this situation should supply the information required as quickly as possible and try to persuade the decision maker not to suspend benefit. If this does not work, a fresh claim for benefit should be lodged. This decision can then be appealed.

A decision maker may also seek to recover an overpayment once the investigations have been completed. This can be done where the cause of the overpayment is attributable to a failure to disclose information or accidental or deliberate misrepresentation of circumstances and either of these caused the overpayment.

Under welfare reform changes, a new sanctions regime is likely to be introduced in Northern Ireland sometime during 2016/17. However, at the time of writing there is no clear date for this. The welfare reform section of the Law Centre's website will be updated as soon as more information becomes available (see www.lawcentreni.org/welfare-reform.html).

7. OTHER ASSISTANCE

7.1 Child Tax Credit

CTC is a means-tested benefit which provides help for dependent children.



A person making a claim for JSA(IB) should also claim CTC for any dependent children. If a person is already in receipt of CTC, s/he should notify the change of circumstances. If entitled to JSA(IB), s/he will also be entitled to maximum CTC.

See *Law Centre (NI) Encyclopedia of Social Welfare Rights A.7 Tax Credit*.

7.2 Social Fund payments

A person receiving JSA(IB) will also be entitled to claim payments from the Social Fund, although some payments will be loans rather than grants. Social fund payments cover maternity, funeral expenses, cold weather and winter payments as well as community care grants, budgeting loans and crisis loans. Major changes to the Social Fund are expected to come into place in November 2016 under welfare reform legislation. This will mean that existing arrangements may no longer apply. However, at the time of writing the arrangements above are correct.

See *Law Centre (NI) Encyclopedia of Social Welfare Rights A.5 Social Fund*.

7.3 Housing Benefit

A person receiving JSA(IB) living in private rented or Housing Executive property may be entitled to maximum Housing Benefit. However, it is important to note that the maximum Housing Benefit available to a private renter is capped at a rate known as the Local Housing Allowance (LHA). The most up-to-date rates can be found on www.nidirect.gov.uk. A person whose entitlement to JSA(IB), Incapacity Benefit, ESA, Severe Disablement Allowance or Income Support has ended because s/he started work, increased her/his hours of work or increased her/his earnings will be able to claim an extended payment of Housing Benefit. A person's Housing Benefit may also be reduced by the introduction of the benefit cap. Please refer to Section 9 below for more details.

For full details, see *Law Centre (NI) Encyclopedia of Social Welfare Rights A.6 Housing Benefit*.

7.4 Passported benefits

A person on JSA(IB) is automatically entitled to:

- free prescriptions, eye tests and glasses, dental check-ups and treatment, school meals, school uniforms (from Education and Library Board), Health Start Food and Vitamins if expectant mother or has children under four; and
- help with travel expenses if going to hospital for treatment.



8. TRANSITIONAL ARRANGEMENTS

CTC was introduced on 6 April 2003. PC was introduced on 6 October 2003.

8.1 Child Tax Credit

CTC was introduced on 6 April 2003.

From 6 April 2004, a person making a new claim for JSA(IB) is not able to claim for dependent children on JSA(IB). Instead s/he must claim CTC. CTC replaces the following JSA(IB) amounts:

- personal allowances for children;
- premiums for children;
- the family premium.

A new claim for JSA(IB) only includes amounts for adults and housing costs.

Before 6 April 2004, a person could claim for her/himself, a partner and any dependent children who lived in the same household. The children must have been aged under sixteen or aged under nineteen (20 in some cases) and still in relevant education (see *Students and Benefits*, published by Adult Learner Finance Project NI and Law Centre (NI), for meaning of relevant education) and the responsibility of the person claiming.

From 6 April 2003 to 5 April 2004, both new and existing claims for JSA(IB) continued to include personal allowances and premiums for children. In April 2004, the then Inland Revenue (now amalgamated with Her Majesty's Customs & Excise into Her Majesty's Revenue & Customs [HMRC]) began the transfer to CTC. A person claiming JSA(IB) during 2003-2004 could choose to claim CTC. In these claims, the child dependant amounts in JSA(IB) continued to be paid and CTC counted as income. A person who had an award of CTC and claimed JSA(IB) during 2003-2004 was similarly treated.

The transfer of people with long-standing claims of JSA(IB) is due to take place sometime in the future.

8.2 Transitional protection

Those affected by these changes have transitional protection.

8.2.1 Child dependant amounts

Transitional protection allows claims for JSA(IB) which already included child dependant additions on 5 April 2003 to retain them until transferred to CTC. This transitional protection is lost if entitlement to the additions ceases or stops due to exceeding the earnings limit and this occurs for more than eight weeks.



A person who on 6 April 2004 had an existing claim for JSA(IB) which included dependent children and had a CTC award from before that date ceased to have these included in the claim from 6 April 2004. The calculation of income for the purposes of JSA(IB) is now the same as for new claims (see 3.2.2).

A person who on 6 April 2004 had an existing claim for JSA(IB) which included dependent children and had no CTC award continues to have these included in the claim until HMRC transfers them to CTC or until CTC is claimed (whichever comes first). The transfer of people with long-standing claims of JSA(IB) is due to take place sometime in the future. Until this happens, both Child Benefit (excluding £10.50 for a child under one year old) and CTC count as income in the calculation of JSA(IB). When CTC is awarded and amounts for dependent children in JSA(IB) cease, Child Benefit and CTC are ignored in full as income.

9. THE BENEFIT CAP

Regulations have now been passed which mean that the benefit cap will apply in Northern Ireland from 31 May 2016.

9.1 What is the benefit cap?

The benefit cap limits the amount, in total, that claimants can receive from a list of specified benefits, including JSA. The cap for single claimants is currently £350 a week and £500 for couples, with or without dependent children, and for lone parent families. Most benefit income is taken into account:

- Bereavement Allowance;
- Child Benefit;
- Child Tax Credit;
- Employment and Support Allowance;
- Guardian's Allowance;
- Housing Benefit;
- Incapacity Benefit;
- Income Support;
- Jobseeker's Allowance;
- Maternity Allowance;
- Severe Disablement Allowance;
- Widowed Parent's Allowance;
- Widowed Mothers Allowance;



- Widows Pension.

Where a person's benefit entitlement exceeds the cap, the reduction will be from the person's Housing Benefit award.

9.2 Exemptions to the benefit cap

The cap will not apply where the person claiming or her/his partner is receiving one of the following benefits:

- Disability Living Allowance (including if received for a dependent child);
- Working Tax Credit;
- Attendance Allowance;
- Industrial Injuries Disablement Benefits;
- Employment and Support Allowance, if paid with the support component;
- War Widow's or War Widower's Pension;
- Carer's Allowance.

The cap will also not apply where the person claiming or her/his partner had in at least 50 out of the last 52 weeks been in employment and not entitled to Income Support, JSA or ESA. In these circumstances, the cap will not apply for 39 weeks from the day after the last day of employment.

9.3 Mitigations Scheme NI

Two additional exemptions apply in Northern Ireland as part of the welfare reform mitigations. The first ensured that those in receipt of Carer's Allowance were exempt from the cap but this has now been inserted into the legislation. The second one ensures that any families with children not exempt under the above provisions will receive a supplementary payment to compensate for any deduction made as a result of the cap being applied. This applies for up to four years.

10. LEGISLATION

- The Jobseekers (NI) Order 1995
- The Jobseeker's Allowance Regulations (NI) 1996 as amended



11. FURTHER INFORMATION

Welfare Benefits and Tax Credits Handbook, 18th edition, CPAG, 2016/2017, £61.00, available from CPAG, 94 White Lion Street, London N1 9PF.

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