

2015 No. 339

SOCIAL SECURITY

**The Jobseeker's Allowance (Extended Period of Sickness)
Amendment Regulations 2015**

<i>Made</i>	- - - -	<i>23rd February 2015</i>
<i>Laid before Parliament</i>		<i>25th February 2015</i>
<i>Coming into force</i>	- -	<i>30th March 2015</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 171D and 175(3) to (5) of the Social Security Contributions and Benefits Act 1992(a), sections 6(4), 7(4), 6F(1), 35(1) and 36(2) and (4) of the Jobseekers Act 1995(b), sections 9(1), 10(6), 79(1) and 84 of the Social Security Act 1998(c), section 24(1) and (2) of, and paragraph 1 of Schedule 2 to, the Welfare Reform Act 2007(d) and paragraph 1(1) of Schedule 6 to the Welfare Reform Act 2012(e).

The Social Security Advisory Committee has agreed that the proposals in respect of these Regulations should not be referred to it (f).

Citation and commencement

1. These Regulations may be cited as the Jobseeker's Allowance (Extended Period of Sickness) Amendment Regulations 2015 and come into force on 30th March 2015.

Amendment of the Jobseeker's Allowance Regulations 1996

2.—(1) The Jobseeker's Allowance Regulations 1996(g) are amended as follows.

(2) In regulation 14(1) (circumstances in which a person is to be treated as available)—

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- (a) 1992 c.4. Section 171D was inserted by section 6(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) ("the 1994 Act"). Section 175(4) was amended by paragraph 29 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2). Section 175(5) was amended by paragraph 36 of Schedule 1 to the 1994 Act.
- (b) 1995 c.18. Section 6F was inserted by section 49(3) of the Welfare Reform Act 2012 (c.5) ("the 2012 Act"). Section 35(1) is an interpretation provision and is cited because of the meaning given to the words "prescribed" and "regulations". Those definitions were amended by paragraph 62 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).
- (c) 1998 c.14. Section 84 is an interpretation provision and is cited because of the meaning given to the word "prescribe".
- (d) 2007 c.5 ("the 2007 Act"). Section 24(1) is an interpretation provision and is cited because of the meaning given to the word "prescribed". Paragraph 2 of Schedule 1 to the Jobseekers Act 1995 provides that questions about whether a person has limited capability for work are to be determined for the purpose of that Act in accordance with Part 1 of the 2007 Act or Part 1 of the 2012 Act as appropriate.
- (e) 2012 c.5.
- (f) See sections 172(1) and 173(1)(b) of the Social Security Administration Act 1992 (c. 5).
- (g) S.I.1996/207.

- (a) in sub-paragraph (I)(a), after “regulation 55,” insert “55ZA or 55A,”;
 - (b) omit sub-paragraph (II)(b).
- (3) In regulation 19 (circumstances in which a person is to be treated as actively seeking employment), after paragraph (1)(I)(c), insert—
- “(IzI) in any week during which he is treated as capable of work or as not having limited capability for work under regulation 55ZA unless it would be reasonable for him to take steps in that week to seek employment and he has not taken such steps;”.
- (4) In regulation 55 (short periods of sickness)—
- (a) in paragraph (1)(d)—
 - (i) in sub-paragraph (c), for “but for his disease or disablement, would satisfy” substitute “during the period of his disease or disablement, satisfies”;
 - (ii) after “employment and support allowance,” insert “universal credit,”;
 - (b) in paragraph (3), for “The preceding provisions of this regulation shall” substitute “Paragraph (1) does”;
 - (c) in paragraph (4)(e), for “The preceding provisions of this regulation do” substitute “Paragraph (1) does”;
 - (d) in paragraph (5)(f), for “The preceding provisions of this regulation shall” substitute “Paragraph (1) does”;
 - (e) after paragraph (5), insert—
 - “(6) Paragraph (1) does not apply to any person—
 - (a) during any period where the person is treated as capable of work or as not having limited capability for work under regulation 55ZA (extended period of sickness); or
 - (b) where the first day in respect of which that person would, apart from this sub-paragraph, have been treated as capable of work or as not having limited capability for work under this regulation falls immediately after the last day on which the person is so treated under regulation 55ZA.”.
- (5) After regulation 55 insert—

“Extended period of sickness

55ZA.—(1) This regulation applies to a person who—

- (a) has been awarded a jobseeker’s allowance;
- (b) proves to the satisfaction of the Secretary of State that he is unable to work on account of some specific disease or disablement;
- (c) either—
 - (i) declares that he has been unable to work, or expect to be unable to work, on account of that disease or disablement for more than 2 weeks but he does not expect to be unable to work on account of that disease or disablement for more than 13 weeks; or

(a) Regulation 14(1)(I) was amended by S.I.2008/1554.
 (b) Regulation 14(1)(II) was inserted by S.I.2004/1869 and amended by S.I. 2008/1554.
 (c) There are amendments to regulation 19(1) which are not relevant to these Regulations.
 (d) Regulation 55(1) was amended by S.I.1996/1517, 1999/2860, 2008/1554 and 2012/2568.
 (e) Regulation 55(4) is substituted by S.I.2013/2536.
 (f) Regulation 55(5) was added by S.I.2004/1869.

- (ii) is not a person to whom regulation 55(1) (short periods of sickness) applies by virtue of paragraph (3) of that regulation;
 - (d) during the period of his disease or disablement, satisfies the requirements for entitlement to a jobseeker's allowance other than those specified in section 1(2)(a), (c) and (f) (availability for and actively seeking employment and capable of work or not having limited capability for work); and
 - (e) has not stated in writing that for the period of his disease or disablement he proposes to claim or has claimed an employment and support allowance or universal credit.
- (2) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(i) applies is—
- (a) evidence of incapacity for work or limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976^(a) (which prescribe the form of a doctor's statement or other evidence required in each case); and
 - (b) any such additional information as the Secretary of State may request.
- (3) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(ii) applies is a declaration made by the person in writing, in a form approved for the purposes by the Secretary of State, that the person has been unfit for work from a date or for a period specified in the declaration.
- (4) Subject to the following paragraphs, a person to whom this regulation applies is to be treated as capable of work or as not having limited capability for work for the continuous period beginning on the first day on which he is unable to work on account of the disease or disablement ("the first day") and ending on—
- (a) the last such day; or
 - (b) if that period would otherwise exceed 13 weeks, the day which is 13 weeks after the first day.
- (5) This regulation does not apply to a person on more than one occasion in any one period of 12 months starting on the first day applying for the purpose of paragraph (4).
- (6) Paragraphs (4) and (5) of regulation 55 apply for the purposes of this regulation as they apply for the purposes of paragraph (1) of regulation 55."

Amendment of the Jobseeker's Allowance Regulations 2013

- 3.—(1) The Jobseeker's Allowance Regulations 2013^(b) are amended as follows.
- (2) After regulation 16 (circumstances in which requirements must not be imposed) insert—

"Further circumstances in which requirements must not be imposed

- 16A.**—(1) This regulation applies in the case of a claimant who is treated as capable of work or as not having limited capability for work under regulation 46A (extended period of sickness).
- (2) Where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work search requirement—
- (a) the Secretary of State must not impose a work search requirement on the claimant; and

(a) S.I.1976/615.
(b) S.I.2013/378.

- (b) a work search requirement previously applying to the claimant ceases to have effect from the date on which the claimant is first treated as capable of work or as not having limited capability for work under regulation 46A.

(3) Paragraph (4) applies where the Secretary of State is satisfied that it would be unreasonable to require the claimant to comply with a work availability requirement to be able and willing to—

- (a) take up work; and
- (b) attend an interview.

(4) Where this paragraph applies, “able and willing to take up work” under a work availability requirement means able and willing to take up paid work and to attend an interview, immediately once the claimant ceases to be treated as capable of work or as not having limited capability for work under regulation 46A.

(5) Paragraph (6) applies where the Secretary of State is satisfied that it would be—

- (a) unreasonable to require the claimant to comply with a work availability requirement to be able and willing to take up work; and
- (b) reasonable to require the claimant to comply with a work availability requirement to be able and willing to attend an interview.

(6) Where this paragraph applies, “able and willing to take up work” under a work availability requirement means—

- (a) able and willing to take up paid work immediately once the claimant ceases to be treated as capable of work or as not having limited capability for work under regulation 46A; and
- (b) able and willing to attend an interview before the claimant ceases to be so treated.”

(3) In regulation 46 (short periods of sickness)—

(a) in paragraph (1)—

- (i) in sub-paragraph (a) omit “satisfies the requirements for entitlement to a jobseeker’s allowance or”;
- (ii) in sub-paragraph (c) for “but for their disease or disablement, would satisfy” substitute “during the period of their disease or disablement, satisfies”;
- (iii) at the end insert “or universal credit”;

(b) in paragraphs (3), (4) and (5) for “The preceding provisions of this regulation do” substitute “Paragraph (1) does”;

(c) after paragraph (5) insert—

“(6) Paragraph (1) does not apply to any person—

- (a) during any period where the person is treated as capable of work or as not having limited capability for work under regulation 46A (extended period of sickness); or
- (b) where the first day in respect of which that person would, apart from this sub-paragraph, have been treated as capable of work or as not having limited capability for work under this regulation falls immediately after the last day on which the person is so treated under regulation 46A.”.

(4) After regulation 46 insert—

“Extended period of sickness

46A.—(1) This regulation applies to a person who—

- (a) has been awarded a jobseeker’s allowance or is a person to whom any of the circumstances mentioned in section 6J(2) or (3) or 6K(2) of the Act apply;
- (b) proves to the satisfaction of the Secretary of State that they are unable to work on account of some specific disease or disablement;

- (c) either—
 - (i) declares that they have been unable to work, or expect to be unable to work, on account of that disease or disablement for more than 2 weeks but they do not expect to be unable to work on account of that disease or disablement for more than 13 weeks; or
 - (ii) is not a person to whom regulation 46(1) (short periods of sickness) applies by virtue of paragraph (3) of that regulation;
- (d) during the period of their disease or disablement, satisfies the requirements for entitlement to a jobseeker’s allowance except those specified in section 1(2)(f) (capable of work or not having limited capability for work); and
- (e) has not stated in writing that for the period of the disease or disablement they propose to claim or have claimed an employment and support allowance or universal credit.

(2) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(i) applies is—

- (a) evidence of incapacity for work or limited capability for work in accordance with the Social Security (Medical Evidence) Regulations 1976(a) (which prescribe the form of a doctor’s statement or other evidence required in each case); and
- (b) any such additional information as the Secretary of State may request.

(3) The evidence which is required for the purposes of paragraph (1)(b) in a case where paragraph (1)(c)(ii) applies is a declaration made by the person in writing, in a form approved for the purposes by the Secretary of State, that the person has been unfit for work from a date or for a period specified in the declaration.

(4) Subject to the following paragraphs, a person to whom this regulation applies is to be treated as capable of work or as not having limited capability for work for the continuous period beginning on the first day on which the person is unable to work on account of the disease or disablement (“the first day”) and ending on—

- (a) the last such day; or
- (b) if that period would otherwise exceed thirteen weeks, the day which is thirteen weeks after the first day.

(5) This regulation does not apply to a person on more than one occasion in any one period of twelve months starting on the first day applying for the purpose of paragraph (4).

(6) Paragraphs (4) and (5) of regulation 46 apply for the purposes of this regulation as they apply for the purposes of paragraph (1) of regulation 46.”.

Amendment of the Employment and Support Allowance Regulations 2008

4.—(1) The Employment and Support Allowance Regulations 2008(b) are amended as follows.

(2) In regulation 4 (the end of the assessment phase)(c)—

- (a) in paragraph (1) for the words from “a period of 13 weeks” to the end substitute “the relevant period”;
- (b) in paragraph (3) for “the 13 week period referred to in paragraph (1)” substitute “the relevant period”;
- (c) after paragraph (3) insert—

(a) S.I.1976/615.
 (b) S.I.2008/794.
 (c) Regulation 4 was amended by S.I.2010/840 and 2013/2536.

“(4) In this regulation, “the relevant period” means the period of 13 weeks beginning with—

- (a) the first day of the assessment phase as determined under section 24(2)(a) of the Act; or
- (b) where that day immediately follows an extended period of sickness, the first day of the extended period of sickness.

(5) In paragraph (4), “extended period of sickness” means a period in which the claimant was—

- (a) entitled to a jobseeker’s allowance; and
- (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations 1996 or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period of sickness).”.

(3) In regulation 5 (the assessment phase-previous claimants), after paragraph (1) insert—

“(1A) For the purposes of paragraph (1), any period when the claimant was—

- (a) entitled to a jobseeker’s allowance; and
- (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations 1996 or regulation 46A of the Jobseeker’s Allowance Regulations 2013,

is to be treated as a period when the claimant was previously entitled to an employment and support allowance.”

Amendment of the Employment and Support Allowance Regulations 2013

5.—(1) The Employment and Support Allowance Regulations 2013(a) are amended as follows.

(2) In regulation 5 (the end of the assessment phase)—

- (a) in paragraph (1) for the words from “a period of 13 weeks” to the end substitute “the relevant period”;
- (b) in paragraph (3) for “the 13 week period referred to in paragraph (1)” substitute “the relevant period”;
- (c) after paragraph (3) insert—

“(4) In this regulation, “the relevant period” means the period of 13 weeks beginning with—

- (a) the first day of the assessment phase as determined under section 24(2)(a) of the Act; or
- (b) where that day immediately follows an extended period of sickness, the first day of the extended period of sickness.

(5) In paragraph (4), “extended period of sickness” means a period in which the claimant was—

- (a) entitled to a jobseeker’s allowance; and
- (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations 1996 or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period of sickness).”.

(3) In regulation 6 (the assessment phase-previous claimants), after paragraph (1) insert—

“(1A) For the purposes of paragraph (1), any period when the claimant was—

(a) S.I.2013/379.

- (a) entitled to a jobseeker’s allowance; and
- (b) treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations 1996 or regulation 46A of the Jobseeker’s Allowance Regulations 2013,

is to be treated as a period when the claimant was previously entitled to an employment and support allowance.”.

Amendment of the Universal Credit (Transitional Provisions) Regulations 2014

6. After regulation 20 of the Universal Credit (Transitional Provisions) Regulations 2014(a) insert—

“Transition from jobseeker’s allowance following an extended period of sickness

20A.—(1) This regulation applies where—

- (a) the claimant’s first day of entitlement to universal credit (“the relevant date”), immediately follows the claimant’s last day of entitlement to a jobseeker’s allowance; and
- (b) immediately before the relevant date, the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations 1996 or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period of sickness).

(2) Where this regulation applies—

- (a) regulation 28(2) of the Universal Credit Regulations (period for which LCW or LCWRA element is not to be included) does not apply; and
- (b) for the purposes of regulation 28 of those Regulations, the relevant period is the period starting with the first day of the period for which the claimant was treated as capable of work or as not having limited capability for work as specified in paragraph (1)(b).”.

Amendment of the Social Security and Child Support (Decisions and Appeals) Regulations 1999

7.—(1) The Social Security and Child Support (Decisions and Appeals) Regulations 1999(b) are amended as follows.

(2) In regulation 3 (revision of decisions), after paragraph (5I)(c) insert—

“(5J) A decision by the Secretary of State under section 8 awarding an employment and support allowance may be revised at any time where—

- (a) it is made immediately following the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period of sickness) and that period lasted 13 weeks; and
- (b) it is not a decision which embodies a determination that the claimant is treated as having limited capability for work under regulation 30 of the Employment and Support Allowance Regulations (conditions for treating a claimant as having

(a) S.I.2014/1230.
 (b) S.I.1999/991.
 (c) Regulation 3(5I) was inserted by S.I.2012/913.

limited capability for work until a determination about limited capability for work has been made).”.

(3) In regulation 7 (date from which a decision superseded under section 10 takes effect) in paragraph (38)(a), for “the beginning of the 14th week of entitlement” substitute “the day after the last day of the relevant period as defined in regulation 4(4) of the Employment and Support Allowance Regulations”.

Amendment of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013

8.—(1) The Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013(b) are amended as follows.

(2) In regulation 15 (other decisions relating to an employment and support allowance), after paragraph (4) insert—

“(4A) The fourth circumstance is where the decision—

- (a) immediately follows the last day of a period for which the claimant was treated as capable of work or as not having limited capability for work under regulation 55ZA of the Jobseeker’s Allowance Regulations or regulation 46A of the Jobseeker’s Allowance Regulations 2013 (extended period of sickness) and that period lasted 13 weeks; and
- (b) is not a decision which embodies a determination that the person is treated as having limited capability for work under regulation 26 of the Employment and Support Allowance Regulations 2013 (conditions for treating a claimant as having limited capability for work until a determination about limited capability for work has been made).”.

(3) In regulation 35 (effective dates: Secretary of State decisions), in paragraph (7), for “the beginning of the 14th week of entitlement” substitute “the day after the last day of the relevant period as defined in regulation 5(4) of the Employment and Support Allowance Regulations 2013”.

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

Mark Harper

Minister of State

Department for Work and Pensions

23rd February 2015

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulations 2 and 3 of these Regulations amend respectively the Jobseeker’s Allowance Regulations 1996 (S.I.1996/207) (“the 1996 Regulations”) and the Jobseeker’s Allowance Regulations 2013 (S.I.2013/378) (“the 2013 Regulations”) to enable claimants who have been awarded a jobseeker’s allowance (“JSA”) to continue to be entitled to that benefit during an extended period of sickness.

The 1996 Regulations, which apply to “legacy” JSA, both contributory and income-related, are made under the Jobseekers Act 1995 (c.18) (“the 1995 Act”). The 2013 Regulations, which apply to “new-style” contributory-only JSA, are made under the Jobseekers Act 1995 as amended by

(a) Regulation 7(38) was inserted by S.I.2010/840.

(b) S.I.2013/381.

Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c.5) (removing references to an income-based allowance). In new-style JSA the claimant no longer has to be actively seeking, and available for, employment in order to be entitled to claim a jobseeker's allowance. However, the Secretary of State must impose, except in prescribed circumstances, work search and work availability requirements on new-style JSA claimants-see section 6F(1) the 1995 Act).

To be entitled to either type of a jobseeker's allowance, claimants must normally be capable of work or not have limited capability for work (see section 1 of the 1995 Act).

Regulation 2(5) inserts new regulation 55ZA into the 1996 Regulations. It enables a claimant who is unable to work on account of some specific disease or disablement which is expected to last for more than 2 weeks but less than 13 weeks or who may no longer be treated as capable of work under regulation 55 (short periods of sickness), to be treated for a continuous period of no more than 13 weeks in a rolling 12 month period as capable of work or not having limited capability for work if they have notified the Secretary of State in writing that they do not intend to claim employment and support allowance (ESA) or universal credit (UC). This is to be known as an extended period of sickness.

Regulation 2(2) amends regulation 14 (circumstances in which a person is to be treated as available) of the 1996 Regulations to enable a claimant who is treated as capable of work or not having limited capability for work under regulation 55ZA to be treated as available for work.

Regulation 2(3) amends regulation 19 (circumstances in which a person is to be treated as actively seeking employment) of the 1996 Regulations to enable such a claimant to be treated as actively seeking employment unless there are steps to seek employment in that week which it would be reasonable for them to take and they have not taken such steps.

Regulation 2(4) amends regulation 55 (short periods of sickness) of the 1996 Regulations. Sub-paragraph (a)(ii) amends that regulation so that the short period of sickness will also apply where the claimant notifies the Secretary of State in writing that they do not intend to claim UC (currently the notice applies only to ESA). Sub-paragraph (e) inserts a new paragraph (6) which has the effect of preventing both regulations 55 and 55ZA applying to a claimant at any one time. It also ensures that a claimant cannot be treated as capable of work or as not having limited capability for work for a continuous period under regulation 55 and then regulation 55A. Lastly, sub-paragraphs (a)(i) and (b) to (d)) correct minor drafting errors.

Regulation 3(4) inserts new regulation 46A into the 2013 Regulations which enables a claimant who has been awarded a jobseeker's allowance under the 2013 Regulations to be treated as capable of work or not having limited capability for work in a very similar way to those claimants to whom the 1996 Regulations apply.

Regulation 3(2) inserts a new regulation 16A into the 2013 Regulations to provide that, for a claimant who is treated as capable of work or not having limited capability for work under regulation 46A, the Secretary of State must not impose a work search requirement or may not impose a work availability requirement on a claimant if he satisfied that it would be unreasonable to do so.

Regulation 3(3)(a) and (b) amends regulation 46 (short periods of sickness) of the 2013 Regulations both to correct the same minor drafting errors as were contained in regulation 55 of the 1996 Regulations and also in relation to the notification of intention to claim UC. Similarly, regulation 3(3)(c) makes the same change as is made by regulation 2(4)(e) to the 1996 Regulations to prevent the two sickness provisions applying at the same time.

Following on from the amendments made to the 1996 Regulations and to the 2013 Regulations, regulations 4 and 5 amend respectively the Employment and Support Allowance Regulations 2008 (S.I.2008/794) and the Employment and Support Allowance Regulations 2013 (S.I.2013/379). This is to ensure that the 13 week assessment phase when a person is first entitled to ESA is reduced by the number of days previously spent on JSA in an extended period of sickness immediately prior to being entitled to ESA. The amendments also, for the purpose of determining

the end of the assessment phase for previous ESA claimants, treat periods on the extended period of sickness as a periods of entitlement to ESA.

Regulation 6 amends the Universal Credit (Transitional Provisions) Regulations 2014 (S.I.2014/1230). This is so that where an award of UC immediately follows an award of JSA and the last day of the award of JSA was in an extended period of sickness, the UC award may include an element for limited capability for work or for work-related activity only after a period of 13 weeks starting on the first day of that extended period of sickness.

Regulations 7 and 8 amend respectively the Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I.1999/991) and the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Decisions and Appeals) Regulations 2013 (S.I.2013/381). This is to ensure that decisions awarding components of ESA from week 14 of the ESA claim to be revised at any time where the claimant previously had an extended period of sickness lasting 13 weeks. It is also to ensure that the effective date of supersession of ESA decisions made on the basis that a claimant has limited capability for work or work-related activity, is the day after the last day of the relevant period as defined by the amendments made by regulations 4 and 5.

An impact assessment has not been produced for this instrument as no impact on business or the private or voluntary sector is foreseen.

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