

## **Availability and Actively Seeking Employment**

### **Background**

1. Two of the entitlement conditions for the receipt of Jobseeker's Allowance (JSA) are that claimants are:
  - available for employment; and
  - actively seeking employment (ASE).
2. At the New Jobseeker Interview (NJI) the adviser will establish whether the claimant satisfies the entitlement conditions and will agree a Jobseeker's Agreement (JSAg).
3. Claimants must attend the Jobcentre for regular Jobsearch Reviews, normally every fortnight.
4. An adviser does not normally carry out these reviews but may be called upon if entitlement doubts arise.
5. Claimants must also attend an Adviser interview at the end of their permitted period, if they have one.
6. At each attendance the interviewer must:
  - remind the claimant of the conditions for the receipt of JSA and their obligations;
  - assess whether the claimant has been available as agreed in their JSAg;
  - review the steps the claimant has taken to look for work;
  - offer advice and guidance on what the claimant might do next to help them get a job;
  - identify any variations in the claimants availability or job search activity and arrange for an adviser to take follow up action or vary the JSAg.

### **Definitions**

#### **Availability**

7. The Jobseekers Act provides that a person claiming JSA must be available for employment. This means employed earner's employment. A person may be available for both employment and self-employment but cannot restrict their availability to only self-employment.
8. This means that they must be willing and able to take up employment immediately or at least 40 hours a week, and have a Right to Work in the UK.
9. There are exceptions to the requirement to be immediately available for employment and these are:
  - persons engaged in providing a service, paid or unpaid, must be willing and able to take up employment on being given 24 hours' notice;
  - persons undertaking voluntary work must be willing and able to take up employment on being given one weeks notice and attend a job interview within 48 hours notice;
  - persons with caring responsibilities must be willing and able to take up employment of at least 16 hours a week on being given one weeks notice and attend a job interview within 48 hours notice;

- persons doing part-time work must be willing and able to take up employment immediately following the statutory period of notice they are required to give their employer to end the contract of employment.

### **Person with caring responsibilities for a child**

10. There are increased exceptions to the requirement to be immediately available for employment for claimants with caring responsibilities for a child. If necessary, such claimants must be willing and able to take up employment of at least 16 hours per week on being given 28 days notice; and attend a job interview within 1 week.
11. However, to be eligible for this exception, the claimant must show that it is not reasonable for them to do so within the usual time limits.

### **Example**

- Rebecca has been receiving contributory JSA for three months and has a partner Dave. They have one child, Chloe aged three. At Rebecca's initial JSA meeting, availability rules were explained and her JSAg shows she is available to attend interviews within 48 hours and to take up employment within seven days.
- The PA undertakes the thirteen week interview and reviews the JSAg. Rebecca informs the PA that she cannot start work within seven days due to childcare. She also explains that her partner Dave works 40 hours per week and is unable to care for Chloe as his working pattern is varied, flexible and unpredictable as he is a taxi driver, and therefore, she cannot start work sooner.
- Rebecca informs the PA that she has a nursery place but has enquired and would need extra hours before she could start work and would need to give 28 days notice. The PA asks for a letter to confirm this unless the local knowledge of childcare in the area can confirm this.
- They agree the JSAg and the PA sets a workflow for two weeks to check letter received from the nursery.

**Note:** Refer the case to the Labour Market Decision Maker (LMDM) if local knowledge does not indicate the required 28 days notice and the letter from the nursery has not been received.

### **Providing a service**

12. Where people are engaged in duties for the benefit of others they are providing a service, for example:

- doing community service;
- doing paid or unpaid work;
- acting as a Justice of the Peace; or
- acting as a member of an appeal tribunal arranged by The Tribunals Service.

### **Voluntary work**

13. Voluntary work can include work for anyone, except a member of the claimant's family, where:

- no payment is received by the claimant; or
- the only payment received or due is for reasonably incurred expenses.

### **Caring responsibilities**

14. Caring responsibilities mean a responsibility for caring for a person in the same household or a close relative who is:

- a child under the age of 16;
- over pensionable age; or
- a person whose physical or mental condition requires them to be cared for.

15. A close relative is:

- a spouse/civil partner;
- the other member of a couple who are not married or are not in a civil partnership;
- a parent;
- a step-parent;
- a grandparent;
- a parent-in-law;
- a son;
- a step-son;
- a son-in-law;
- a daughter;
- a step-daughter;
- a daughter-in-law;
- a brother;
- a sister;
- a half brother/sister;
- a grandchild;
- the partner of any of the above.

### **Actively Seeking Employment**

16. The Jobseeker's Act provides that a person claiming JSA must actively seek employment in each week of their claim. This means that they must take those steps each week which are reasonable in their case, and which offer the best prospects of securing employment.

#### **Steps to seek employment**

17. To satisfy the ASE condition claimants must do all that can be reasonably expected, in each week of their claim, to give themselves the best prospect of securing employment.

18. The number of steps that the claimant will undertake is detailed within their Jobseeker's Agreement. Claimants are expected to take the number of steps detailed, in each week of their claim, to ensure they fulfil the ASE condition.

19. The following are regarded as single steps to seek employment:

- making an oral or written application for employment to persons:
- who advertise the availability of employment; or
- who appear to be in a position to offer employment;
- seeking information on the availability of employment from:
- an advertisement;

- a person who has advertised a job;
- an employment agency or business;
- an employer;
- registering with an employment agency or business.

20. Activities, which improve a claimant's employability, are acceptable steps for the purposes of the ASE condition. The following are single steps which could improve a claimant's employability:

- asking another person, for example an agent, to help the claimant look for work;
- seeking specialist advice, for example from a Disability Employment Adviser, to improve prospects of securing employment;
- drawing up a curriculum vitae;
- obtaining a reference or testimonial from previous employer;
- drawing up a list of employers to contact about the possibility of a job;
- researching employers who, for instance, a claimant may have an interview with;
- seeking information about an occupation with a view to getting a job in that occupation, for example attending an open day.

21. Applying for 3 vacancies counts as 3 steps to seek employment.

22. If a claimant takes no steps at all in a week, they cannot satisfy the ASE condition for that week unless they can be treated as actively seeking employment.

23. A step that would otherwise count towards satisfying the ASE condition may be disregarded if it is done in such a way as to reduce the chances of it being successful. For example, a claimant may attend a seminar which is aimed at helping produce a CV but produces one which is illegible or contains wrong details, this step could be disregarded.

24. Claimants may not always satisfy the ASE condition if they continually take steps to improve their employability without actually looking, or applying, for a job.

### **Definition of week**

25. In most cases a week for ASE purposes is each period of seven days, including Sunday, which ends on the claimant's benefit week ending day. The first and last week of a claim may be shorter than 7 days.

See Example 1.

### **Example**

- a claimant makes a claim on a Monday and their benefit week ending day is Wednesday;
- the first week of the claim will be from Monday to Wednesday inclusive, which is a period of 3 days;
- the benefit week ending is Wednesday and the claimant starts work on Monday;
- the last week of the claim will start on Thursday and end on Sunday inclusive, which is a period of 4 days.

26. When the claimant has a change of benefit week ending day, a week is a period of 7 days ending on each of the claimant's benefit week ending days. Sundays are included in the 7 days.

See Example 2.

### **Example**

- a claimant has a benefit week ending of Thursday 14 November.
- the period of a week runs from the previous Friday 8 November, up to Thursday 14 November;
- when the claimant's benefit week ending day is changed to Tuesday 19 November, the period of a week runs from Wednesday 13 November to the Tuesday 19 November;
- any steps to seek work or improve employability taken on Wednesday 13 November and Thursday 14 November can be counted twice, once in week ending Thursday 14 November and again in week ending Tuesday 19 November.

### **Pregnant Women**

27. There is no requirement for pregnant women to terminate their claim to JSA, just because they have reached 11 weeks before their expected week of confinement.
28. If they chose to, pregnant women can remain on JSA beyond 11 weeks before their expected week of confinement, as long as they continue to fulfil the entitlement conditions. For example they must be available for and actively seek employment.

### **EEA nationals**

29. Special rules apply to EEA nationals who are pregnant or lone parents when they claim Income Support.
30. If they are making a new/repeat claim or are currently claiming JSA they must not be advised that a claim is needed as in some circumstances they may not be entitled. The claimant must be made aware that by applying for Income Support she may be subject to the Right To Reside element of the Habitual Residence Test .
31. See the EEA Nationals guidance for further information.

### **Exporting JSA Abroad**

32. Following the introduction of a new EC Regulation, 883/04, from 1 May 2010 any JSA claimant who wishes to register for work and export their benefit to another EC country will continue to receive JSA, via JSAPs, whilst they are abroad.
33. Any claimant who exports their JSA abroad will have to adhere to the attendance arrangements in the country they visit, and will have to adhere to the Labour Market Conditions. They must be available for and actively seek employment.
34. JBES will be the liaison point between Jobcentre Plus and EC member states, therefore any Labour Market Doubts will be referred by the member state to JBES for consideration.

35. Further information about the importing process can be found in the Import and Export of Benefit Guidance

### **Import of Unemployment Benefit**

36. Following the introduction of a new EC Regulation, 883/04, from 1 May 2010 any EU claimant who wishes to register for work and import their benefit to the UK will not claim Jobseeker's Allowance. They will instead continue to receive benefit from the member state they have come from.

37. Any claimant who imports their unemployment benefit will have to adhere to our attendance arrangements, i.e. attend Jobsearch Reviews, and will have to adhere to the Labour Market Conditions. They must be available for and actively seek employment.

38. JBES will be the liaison point between Jobcentre Plus and EC member states, therefore any Labour Market Doubts must be referred to JBES for consideration.

39. A referral to a LMDM must not be made for a claimant who is importing their unemployment benefit from another EC country.

40. Further information about the importing process can be found in the Import and Export of Benefit Guidance

### **Right to Work**

41. The following claimant groups need to prove they have a right to work in the UK, or that they are exempt from this requirement, before they can be considered as available for employment:

- Bulgarian and Romanian nationals;
- Non European Economic Area (EEA) nationals; and
- Migrant victims of domestic violence.

### **Right to Work – A2 Nationals**

42. Bulgaria and Romania joined the European Union (EU) on 1 January 2007, therefore nationals from these countries, also known as A2 nationals, are able to move and live freely in any Member State of the EU.

43. A2 Nationals do not need permission to reside legally in the UK under the Immigration Act, however, even though they have a right of residence, they need permission to work in the UK unless they are in one of the exempt groups:

44. If an A2 National does not have a Right to Work they cannot legally start work in the UK.

### **Exemptions from the Right to Work**

45. An A2 national can be exempt from the requirement to obtain authorisation to work in the UK for a variety of reasons, including:

- under the Immigration Act 1971 they had leave to enter or remain on 31 December 2006 and that leave did not place any restrictions on them taking employment in the UK;
- they have been working legally, and without interruption, in the UK for a 12 month period ending on or after 31 December 2006;
- highly skilled migrants;

- students; or
- Self-employed people.

### **Highly Skilled Migrants**

46. A2 nationals who are highly skilled migrants have an unrestricted access to the UK labour market.
47. Claimants who fall into this category will be those who meet the existing UK Borders Agency criteria for admission under the Highly Skilled Migrants programme, the Science and Engineering Graduates Scheme and the Scottish Graduates Scheme.
48. Highly Skilled Migrants can obtain a Blue Registration Certificate confirming their status.

### **Students**

49. Students may engage in employment for up to 20 hours a week during term time and full time work during vacation periods.
50. However, students must be studying full time at a genuine educational establishment and must obtain a registration certificate confirming their status before starting work.

### **Self-Employed People**

51. All EU citizens have the right to establish themselves in other member states as self employed.
52. Self employed A2 Nationals do not have to obtain a work permit but must register with the Inland Revenue.
53. The registration certificate issued for a self-employed A2 national will not confer a right to take up employment on any other basis than self employed. Therefore, they cannot be considered as available for employed earners employment.

### **Forms of evidence**

54. A claimant can prove they have a Right to Work in the UK using the following forms of evidence, however not all of these forms of evidence will determine whether the claimant has a Right to Work for benefit purposes:
  - A passport or other travel document issued before 1 January 2007 showing that the holder has leave to enter/remain if that leave did not place any restrictions on them taking employment in the UK.
  - A Blue Registration Certificate – these indicate the holder can work in the UK without restrictions, and are issued to A2 Nationals who are highly skilled or are exempt from the requirement to obtain an Accession worker card.
  - A Yellow Registration Certificate – these are issued to A2 Nationals who are self-employed persons, self sufficient persons or students, and will state whether the holder can work legally in the UK or not.
  - A Purple Accession Worker Card - these are issued to A2 Nationals who wish to work in the UK but are subject to work authorisation. An Accession Worker Card is not issued for a specific period of time, but it will expire if a claimant leaves their job. Therefore, when a claimant with an Accession Worker Card leaves their job, they also lose their Right to Work in the UK.

- A Seasonal Agricultural Workers Scheme (SAWS) Work Card – these are issued to A2 Nationals who wish to work in the UK under the Seasonal Agricultural Workers Scheme. A2 nationals who are employed under SAWS will not gain full EEA worker status as they are only allowed to work for 6 months with 3 months break between employers; therefore they cannot accrue a continuous period of 12 months employment.
55. If an A2 national makes a claim to JSA but does not have a Right to Work in the UK, or if they are unable to prove they have a Right to Work, refer the availability doubt to the LMDM.
56. Further information regarding A2 nationals can be in Joint IS/JSA Bulletin 01/07 or on the UK Border Agency website.

### **Right to Work - Non-EEA nationals**

57. Non-EEA nationals / third country nationals (TCN) need permission to enter and remain in the UK under the Immigration Act 1971.
58. Their visa will state if they can legally work in the UK. It will also say whether this is restricted to a particular employer or if they can change employers without needing further permission.
59. In some cases if the job ends, so does the person's leave. From this date they are no longer in the country legally.
60. Further information regarding TCNs can be found on the UK Border Agency website.
61. Once a TCN has worked legally in the UK for 5 years they can apply for indefinite leave to remain and once granted they no longer need to have a Right to Work.
62. Any claimant who does not have a Right to Work cannot legally start work in the UK, therefore they cannot be regarded as available for work
63. If an TCN makes a claim to JSA but does not have a Right to Work in the UK, or if they are unable to prove they have a Right to Work, refer the availability doubt to the LMDM.

### **Migrant victims of domestic violence**

64. From 1 April 2012, individuals who entered the UK or were given leave to remain in the UK as a spouse, civil partner, unmarried or same sex partner of a British Citizen or someone present in the UK, **and** whose relationship has broken down due to domestic violence, can apply to the UK Border Agency (UKBA) for limited leave to remain under the Destitute Domestic Violence (DDV) concession. The limited leave to remain will apply for 3 months pending consideration of their application for indefinite leave to remain under the Domestic Violence Immigration Rule.
65. Those individuals who have been granted limited leave to remain by the UKBA under the DDV concession have a right to work in the UK during the period of the limited leave to remain, and are therefore able to claim JSA.
66. A migrant victim of domestic violence can claim JSA for the 3 month period of limited leave to remain granted, as long as they comply with the JSA conditions of entitlement, including being available for and actively seeking employment.



67. However, as a victim of domestic violence, the claimant may be able to take advantage of the conditionality easements available to them under the domestic emergency provision or, from 23 April 2012, the domestic violence provision.
68. It should be clearly explained to the claimant that they need to notify Jobcentre Plus urgently if their immigration status changes, i.e. they are granted indefinite leave to remain or are not granted indefinite leave to remain.
69. Individuals who choose to make a claim to JSA must confirm that they have been granted limited leave to remain under the DDV provision by providing a Home Office decision letter.
70. If UKBA reject the claimant's application for indefinite leave to remain, the claimant can continue to claim JSA until the end of the 13 week period of the limited leave to remain.
71. A claimant has the right to lodge an appeal with the Immigration Tribunal against the UKBA decision to refuse indefinite leave to remain. During the appeal period the claimant continues to have leave to remain in the UK, however they are not entitled to claim the following benefits:
- income-based jobseeker's allowance;
  - state pension credit;
  - income-related employment and support allowance;
  - attendance allowance;
  - severe disablement allowance;
  - carer's allowance;
  - disability living allowance;
  - income support;
  - a social fund payment;
  - health in pregnancy grant;
  - child benefit;
  - housing benefit, or
  - council tax benefit.

### **Availability and self employed work**

72. Claimants who are seeking to be self employed must also be willing and able to work in employed earner's employment to satisfy the availability condition.
73. A claimant may have a permitted period in which they are restricting their availability if they were self-employed in their usual occupation. However this will only allow them to restrict the **type** of work, eg hairdressing, they must still remain available for employed earner's employment during any permitted period.
74. If at any time in the 12 months before their date of claim, a claimant has been self employed, they can actively seek self employment in their usual occupation and /or their usual rate of pay during their permitted period if they wish. They must however, remain available for employed earner's employment as well.

## **Restricted availability**

75. In any week, a person may restrict their availability for employment to 40 hours, or more, in that week provided:

- the times at which they are available for work, their pattern of availability is such as to give them reasonable prospects of securing employment;
- their pattern of availability is recorded on a Jobseeker's Agreement (JSAg); and
- any changes to the agreed pattern of availability are recorded on a varied JSAg before they occur.

76. Claimants who are not prepared to work for as many as 40 hours a week are unreasonably restricting their availability for employment, regardless of whether they have reasonable prospects of getting work, unless they are a claimant who can restrict their availability.

77. Where a claimant has agreed a pattern of availability in their JSAg, they are only required to take up employment at a time when they have agreed to be available.

78. Where it has been agreed that a person will be available within 24 hours, if they are providing a service, or within one week, if they have caring responsibilities or are volunteers, the 24 hour or one week periods of notice can include times at which the individual has not agreed to be available for employment. However, the claimant is not required to start work at a time which falls outside their agreed pattern of availability.

### **Example**

- a claimant with caring responsibilities has agreed a pattern of availability on Monday, Tuesday, Thursday and Friday for a total of 30 hours;
- if notice is given on Wednesday, the earliest the claimant needs to be willing and able to start work is the following Wednesday as once weeks notice is required.
- if notice is given on Friday, the earliest the claimant needs to be willing and able to start work is the following Friday, as again one weeks notice is required.

79. Provided they can show that they have reasonable prospects of obtaining employment in spite of their restrictions, a claimant may restrict their availability by placing restrictions on the:

- nature of the work;
- pay;
- terms and conditions of employment, for example a claimant may not want to take a job which does not include paid holidays, or a pension; or
- locality or localities in which they are prepared to work.

80. If a claimant imposes restrictions on their availability, establish whether the restrictions placed are what they insist upon, or whether they are merely preferences.

81. A preference does not amount to a restriction unless it is all they are prepared to accept. Claimants should be warned that placing restrictions on their availability may affect their entitlement to JSA

82. After claiming JSA for 6 months, a person may not place restrictions on the level of pay they are willing to accept. This means that a claimant should not specify any minimum pay requirement at their 6 monthly review as this would amount to a restriction.

83. This applies even if the wage requirement is reasonable. This does not apply if the restriction on the level of pay is due to their physical or mental condition.

84. If the claimant states they are willing to work for the National Minimum Wage (NMW) appropriate to them, take a statement to that effect and annotate it 'Treat as straightforward - NMW only required'.

85. No referral to the Benefit Delivery Expert Labour Market Decision Maker (LMDM) will be necessary in these cases.

86. All other cases where the claimant insists on restricting the rate of pay they require after 6 months of unemployment, must be referred to the LMDM for a decision.

### **Establishing reasonable prospects**

87. To establish whether a claimant has reasonable prospects of securing employment, all the following circumstances must be taken into account:

- their skills, qualifications and experience;
- the type and number of vacancies within daily travelling distance of their home;
- if they want a type of job which is not available locally, consider whether they are willing to:
  - move home to do this type of work; or
  - work away from home during the week; or
  - work at home if the known employers commonly employ home working arrangements;
- how long it is since they last worked;
- the job applications they have made and the outcomes;
- any availability restrictions.

88. The claimant must show they have reasonable prospects of securing employment if they wish to restrict their availability in any way.

### **Claimants who can restrict their availability**

89. Certain groups of claimants may restrict their availability, such as:

- Claimants with a sincerely held religious belief or conscientious objection;
- Claimants with a physical or mental condition;
- Claimants with caring responsibilities;
- Claimants with caring responsibilities for a child; and
- Lone Parents whose youngest child is aged 12 or under.

### **Restrictions because of religious or other belief**

90. A claimant may restrict the type of work they are prepared to do, provided they can show they have reasonable prospects of employment, because of a sincerely held religious belief or conscientious objection.

91. They must explain why their religious or other belief affects the type of work they can do. For example:

- a vegetarian may object to working in an abattoir; or
- a person who follows a particular religion may object to taking employment which requires them to work on a day which is considered sacred.

### **Restrictions because of physical or mental condition**

92. A claimant may restrict their availability in any way provided the restrictions are reasonable in the light of their physical or mental condition. For example, a person with emphysema could restrict the:

- type of work to avoid working in smoke or fumes;
- number of hours work in a week;
- number of hours in a shift.

93. Where the claimant imposes acceptable restrictions because of their physical or mental condition they do not have to show they have reasonable prospects of getting a job. However, they must show all the restrictions are reasonable and are connected with their health.

94. If a claimant places restrictions on their availability which are not connected to, or consistent with their physical or mental condition, they must show they have reasonable prospects of obtaining work within all these restrictions. For example, if a deaf claimant will only accept work within a factory they must show that they have reasonable prospects of getting a job with this restriction. This is because the restriction is not connected with their health condition.

95. If a claimant with a physical or mental condition requires additional help or advice in looking for work, consult the Disability Employment Adviser (DEA).

### **Restrictions because of caring responsibilities**

96. A claimant with caring responsibilities may restrict their availability to less than 40 hours in a week provided that in that week:

- they are available for employment for as many hours as their caring responsibilities allow **and**:
- the hours they are available do not overlap with the hours of caring; **and**
- they have reasonable prospects of obtaining employment in spite of these restrictions; **and**
- they are available for employment of at least 16 hours.

97. In order to identify the number of hours for which a person with caring responsibilities is available, take the following circumstances into account:

- the particular days and hours spent caring;
- the age and physical and mental condition of the person being cared for; and
- whether the caring responsibility is shared with another person or persons.

98. To satisfy the availability conditions the claimant must be available for work for the total number of hours they are not caring. For example, if a claimant's caring responsibilities allow them to be available for 30 hours a week they could not satisfy the conditions if they said they were only available for 22 hours because they wanted some time to themselves.

### **Age, physical and mental condition of the person to be cared for**

99. Claimants who are caring for a young child or a person with physical or mental limitations may need to spend more time caring than one who has a caring responsibility for teenage children.

100. A claimant with a young child may wish to restrict their availability to the minimum of 16 hours per week. This would be acceptable provided they continue to have reasonable prospects of securing employment.

101. They should not restrict hours to 16 if they can do more.

102. If there is a doubt that a claimant is making themselves available for as many hours as their caring responsibilities will allow, refer the doubt to the LMDM.

### **Caring responsibility shared with another claimant**

103. Where the claimant shares the caring responsibility with another claimant, it is up to them how to split their responsibilities.

104. Their individual availability for work must, however, be for at least 16 hours a week.

105. When one claimant is available for work, the other should be undertaking the caring responsibility and vice versa. Therefore, the claimants involved in caring should have different patterns of availability.

106. They must both show they have reasonable prospects of securing employment.

107. If the claimant is sharing the caring responsibility;

- both claimants/carers may make their claim at the same time; or
- one claimant/carer may already be claiming, or claim, at the same or different Jobcentre.
- they may be part of a joint claim.

108. Consider each claimant's availability individually but make sure the hours of caring by them do not overlap with each other. A claimant cannot be available at the same times in the week as they are caring.

109. Record on LMS 'Client Conversation' screen and the JSAg:

- that the claimant is a carer;
- the name of the claimant who shares the caring responsibility, if appropriate;
- any acceptable restrictions resulting from their caring responsibility.

110. Refer any doubts about availability to the LMDM.

### **Restrictions for Claimants with caring responsibilities for a child**

111. A claimant with caring responsibilities for a child can restrict their availability for employment to less than 40 hours per week, providing that:

- they are available for work for as many hours as their caring responsibilities allow; **and**
- they have reasonable prospects of securing employment; **and**
- they are available for at least 16 hours per week.

112. In a small number of areas, there may be few or no jobs available which would fit within the restricted patterns of employment sought.

113. To accommodate such a situation, where the Adviser agrees that no suitable jobs are likely to be found, claimants with caring responsibilities for a child can restrict their hours to as many as their caring responsibilities allow, subject to a minimum of 16 hours per week, regardless of whether they can show reasonable prospects or not.

114. The claimant's circumstances will be reviewed regularly.

115. Claimants who have additional caring responsibilities for a child because they have an outstanding parenting order in England, Wales & Scotland or a parenting contract in England or Wales agreed or issued after exclusion, truancy or misbehaviour at school, can restrict their availability for work providing the restrictions are reasonable in light of the order/contract.
116. These circumstances will be considered good cause for not attending the office during this period. In these circumstances, where the claimant is required to care for a child, Advisers will consider treating the claimant as available for work to safeguard the parent from being disallowed JSA and attendance can be excused for this period.

### **Restrictions for Lone Parents**

117. From 26 April 2010, in addition to being able to restrict their availability as a claimant with caring responsibilities for a child, a Lone Parent who has a child aged 12 or under, has the **right** to restrict their availability for work to school hours if they wish.
118. This right is restricted to normal school hours, for example 9am to 3.15pm subject to a minimum of 16 hours per week.
119. Where a Lone Parent restricts their availability to school hours, they do not have to show they have reasonable prospects of getting a job.
120. If a Lone Parent has more than one child aged 12 or under, they can restrict their availability in line with the school hours of all of their children.

### **Example**

121. A Lone Parent has two children, Oliver aged 8 and Lauren aged 11.
122. Oliver attends school 8.45am to 3pm, while Lauren attends school 9am to 3.15pm.
123. The Lone Parent can restrict their availability in line with a combination of their children's school hours: 9am to 3pm.
124. Advisers should make all eligible Lone Parents aware of this right.
125. The provision whereby a Lone Parent can choose to restrict their availability to school hours only applies to term time. If a Lone Parent wants to restrict their availability during the school holidays they will have to meet the criteria of a claimant who has caring responsibilities for a child.

### **Permitted period and usual occupation**

126. From the beginning of a claim, claimants can restrict their availability for a period of time, called the permitted period, to:
- employment in their usual occupation; or
  - the same level of pay they were receiving; or
  - both employment in their usual occupation and at the same level of pay they were used to receiving.
127. Whether a claimant should be treated as available for a permitted period and the length of the permitted period should be determined with regard to the following;
- the usual occupation and any relevant skills or qualifications they have; and
  - the length of any periods of training undertaken in relation to the occupation; and

- the length of time the claimant has been employed in the occupation and the period since he last worked in that occupation; and
- the availability and location of employment in that occupation.

128. If more than one occupation has been followed regularly, both can be usual occupations. However, if a claimant has trained for a particular occupation but has never worked in that occupation, it cannot be their usual occupation.

129. During a permitted period, claimants are not exempt from the ASE condition. They must take those steps each week that are reasonable in their case and offer them best prospects of securing employment, albeit in their usual occupation/ usual level of remuneration.

130. Claimants may also choose to look for work other than their usual occupation, even though they are within the permitted period.

131. A permitted period may be anything from a minimum of 1 week to a maximum of 13 weeks and starts on the first day of a claim for JSA.

132. In this context a week is any period of 7 consecutive days. The length of the permitted period is suggested by an adviser at the NJI and recorded on the Jobseeker's Agreement (JSAg).

133. Further guidance on permitted periods can be found in the Decision Maker's Guide, Volume 4, Chapter 21, paragraphs 21379 onwards.

134. Where a claimant has no usual occupation, or where their former occupation is no longer attainable, they may not be entitled to a permitted period and must be advised of this when making a claim. However, they may have a usual level of remuneration on which to base a restriction.

### **Restrictions on pay**

135. If a claimant does not have a usual occupation they may still be able to place a restriction on the level of pay they are willing to accept. However the claimant must still be able to prove that they have reasonable prospects of employment with such a restriction in place.

136. In deciding whether the claimant has reasonable prospects of employment you should have regard to:

- their skills, qualifications and experience; and
- the type and number of vacancies within daily travelling distance of their home; and
- how long they has been unemployed; and
- whether they are willing to move home to take up employment.

137. Any restriction on the acceptable level of pay may only be allowed for a maximum six month period beginning with the date of claim.

138. The only exception to this is when the restriction on pay has been agreed as reasonable because of the claimant's mental or physical condition. In such cases the restriction can continue as long as it remains reasonable because of the claimant's mental or physical condition.

### **Availability and part time work**

139. A claimant who already works part-time in a week must show they are available for work for at least 40 hours in that week. The 40 hour pattern can

include the hours already worked providing they have reasonable prospects of obtaining employment within the pattern.

140. They must, if necessary, be prepared to give up the part-time job to take employment of 40 hours a week.

141. Claimants who are engaged in part-time work do not have to be available to start an alternative job immediately. Their availability for work can be accepted provided they are able and willing to start an alternative job immediately after serving the statutory period of notice for the part-time work.

142. A period of notice should not be assumed. Most employers will be prepared to waive this period of notice, especially for people undertaking small amounts of work. If an employer insists on a period of notice only the statutory period is relevant, not any further contractual period.

143. Claimants who are engaged in providing a service or are doing voluntary work on the last day of their statutory notice period are not entitled to a further 24/48 hours or a week's notice.

### **Claimants who can be treated as available for and/or actively seeking employment**

144. In some circumstances claimants may be unable to satisfy the availability and ASE conditions because they are doing other activities.

145. There are circumstances when it may be possible to treat the claimant as available for and actively seeking employment.

146. A claimant must not be treated as available or ASE in any week in which they satisfy the conditions.

### **Claimants who cannot be regarded as available**

147. A claimant is not regarded as available if they are:

- an A2 national who does not have the Right to Work in the UK;
- a non-EEA national who does not have the Right to Work in the UK;
- a full time student;
- a prisoner on temporary release;
- in receipt of maternity allowance or maternity pay; or
- on paternity leave.

148. These categories take precedence over the circumstances in which a person can be treated as available and/or actively seeking employment.

### **Full-time student**

149. A full-time student is a person, other than one in receipt of training allowance, who is:

- aged less than 19 and attending a full-time course of advanced education; or
- aged 19 or over but under pensionable age.

150. A full-time student cannot be regarded as available unless:

- they claim during the summer vacation; and
  - they are available for, and actively seeking employment; and
  - they have a partner who is also a full-time student; or they are single; and



- they, or their partner in the case of a student couple, are responsible or treated as responsible for a child or young person; or
- they can be treated as available for work while undertaking;
  - an Open University residential course;
  - an employment related course;

151. If a full-time student wants to claim JSA but they do not satisfy the conditions set out above, do not refuse to take a claim. Refer the availability doubt to the LMDM.

### **Prisoner on temporary release**

152. The most common form of temporary release is home leave but temporary release may be authorised for other reasons.

153. Prisoners who are granted temporary release are issued with a licence describing the conditions of their release. A prisoner may be temporarily released to a specific place where they are required to stay.

154. If a prisoner on temporary release makes a claim to JSA, do not refuse to take the claim. Refer the availability doubt to the LMDM.

### **Maternity allowance or maternity pay**

155. Maternity allowance and statutory maternity pay are paid during maternity leave for a period of 39 weeks in total. The earliest date it can start is the 11th week before the baby is due but it may start from a later date.

156. If a woman in receipt of maternity allowance or maternity pay wants to claim JSA, do not refuse to take a claim. Refer the availability doubt to the LMDM.

### **Paternity Leave**

157. If the claimant states they are on Paternity leave under the Employment Rights Act 1996 they cannot be regarded as available for employment.

158. If a man on Paternity leave insists on making a claim to JSA, do not refuse to take a claim. Refer the availability doubt to the LMDM.

### **Adoption Leave**

159. Ordinary or additional adoption leave can apply to a man or a woman. However, they cannot be regarded as being available

160. If a person on Adoption leave insists on making a claim to JSA, do not refuse to take a claim. Refer the availability doubt to the LMDM.

## **Availability**

### **Declaration of availability**

161. All claimants must show that they are available for work, and must make a declaration of availability every time they sign a Labour Market declaration.

162. A claimant's availability may be questioned/discussed at any time they attend the Jobcentre.

163. If a doubt arises because the claimant is restricting their availability use knowledge of the local labour market to decide whether, despite the restrictions, they still have reasonable prospects of obtaining work.

164. Claimants who have placed restrictions on their availability for work because of a physical or mental health problem do not have to show reasonable

prospects of securing employment, provided all these restrictions are reasonable when taking their health condition into account.

165. In determining whether a claimant has reasonable prospects of obtaining work do not rely solely on the number and type of vacancies in the Jobcentre. Other local vacancies may exist in your area and it may be useful to check other sources in the area.

166. If, within their restrictions, the claimant does not have reasonable prospects of obtaining work, refer the case to the LMDM.

## **Actively Seeking Employment**

### **Review of actively seeking employment**

167. Before reviewing the steps a claimant has taken to find work check whether they have imposed any restrictions on their availability which have been accepted. These restrictions will be recorded on their Jobseeker's Agreement.

168. Claimants are expected to continue to ASE even if they are excused attendance.

169. It is not reasonable to expect them to seek a job which:

- is vacant because of a trade dispute;
- is not in their usual occupation or at a lower rate of pay than they usually receive, unless their permitted period has ended or they do not have a permitted period;
- they would have good cause for refusing.

### **Claimant asks someone to help with their jobsearch**

170. Some claimants may ask someone else to seek work on their behalf or assist them in their efforts to find work. These include those;

- wishing to work in occupations where the most likely route is through a third party, for example, members of Equity and merchant seafarers;
- who because of a mental or physical handicap cannot be expected to take reasonable steps without help;
- who because of limited skills in English ask a friend or relative to search advertised vacancies and write to prospective employers for them.

171. In these circumstances the claimant is responsible for supplying evidence of jobsearch undertaken for them. Assess this in the same way as if they had undertaken the jobsearch themselves.

172. Appointing someone to act on their behalf does not mean that a claimant need not take other steps to find work. Consider what else they can do, in addition to what is being done for them.

### **Reviewing jobsearch**

173. The JSA Regulations do not specify that claimants must keep written records of their job search. However, encouraging a claimant to keep a written record of the steps they have taken can help them to remember what they have done, and will help to build up a picture of the progress the claimant is making in their efforts to find work.

174. A claimant may have set up their own records, but if their record keeping is inadequate, or non-existent encourage them to use the Jobsearch Activity Log (ES4).

175. The evidence of jobsearch produced when they attend to have their regular reviews may be in various forms:

- evidence in writing from employers, employment agencies, or other organisations which they have contacted;
- copies of letters they have sent to employers;
- the claimant's un-corroborated written evidence, for example an ES4;
- the claimant's verbal evidence
- evidence from previous Jobsearch Reviews recorded on LMS.

176. The steps that are reasonable will vary from claimant to claimant and from week to week. In trying to identify doubts about whether the steps taken are reasonable, all the following circumstances should be taken into account:

- their skills, qualifications and abilities;
- their physical or mental limitations, including any time spent training in the use of aids to improve their prospects of obtaining or retaining employment;
- the time which has passed since they last worked and their experience;
- the steps they have taken in previous weeks;
- the effectiveness of those steps in improving their prospects of securing employment;
- whether or not the steps taken improve their prospects of obtaining employment;
- whether or not the steps taken reduce their prospects of obtaining employment;
- the availability and location of any vacancies;
- where they cannot be treated as actively seeking employment, the time spent:
  - engaged in emergency duties;
  - attending an Outward Bound Course;
  - by a blind person undertaking training in the use of a guide dog;
  - participating in an employment or training programme for which a training allowance is not payable;
- whether they have applied for, accepted a place on, or participated in a course or programme which is wholly or partly funded out of central funds or the European Union and which is intended to help claimants to select, train for, obtain or retain employed earner's employment or self employment;
- whether they have no living accommodation and the steps they have taken to seek such accommodation;
- any time during which they were treated as available;
- the time spent participating in an employment related course;
- the time spent engaged in duties as a member of any reserve force;
- the time spent undertaking voluntary work and the extent to which this work improves their prospects of securing employment.

**Skills, qualifications, abilities and physical or mental condition**

177. The type and number of steps a claimant takes to find work may be affected by their ability or a health problem.

178. For example, a disabled person may find it physically impossible to take the same steps as an able bodied person. However, they must still take whatever steps are reasonable allowing for their circumstances.

179. Claimants undertaking training for the use of aids to improve their prospects of obtaining or retaining employment will not have as much time to seek work as other claimants. Take into account the time spent on this training when considering whether the steps taken are sufficient and reasonable.

**Claimants with literacy problems**

180. Do not expect claimants that have literacy problems to write to employers or read advertisements. They can however; make arrangements with a third party to draw vacancies to their attention and should take other steps which are reasonable allowing for their circumstances.

181. Attending a course designed to help with their literacy may enhance a claimant's employability, but they must remain available for employment.

**Claimant does not speak English**

182. You may need to use an interpreter when interviewing a claimant who does not speak or understand English. Make sure the interpreter clearly understands the conditions for receipt of JSA.

183. Attending a course to learn English would enhance their employability and would count as a step towards seeking employment.

**Steps taken in previous weeks**

184. Steps taken in previous weeks will often have an impact on what steps it is reasonable for them to take in the week in question.

185. For example:

- if a claimant is awaiting a reply from an employer or has already been told there is no work with that employer, it is clearly not reasonable for them to write to the same employer again immediately;
- it is not reasonable for a claimant to continually take steps to improve their employability without ever actually looking for work;
- claimants are expected to contact agencies they are registered with even though the agency is searching for work on their behalf. It is however, reasonable for them to wait a week or two before contacting the agency;
- If there is a high turnover of vacancies it is reasonable to expect the claimant to visit the Direct Gov website every week;
- it is reasonable for a claimant to apply for a newly advertised vacancy with an employer while awaiting a response to a previous application to the same employer.

**Whether the steps taken improve prospects of obtaining employment**

186. During a review of jobsearch find out about:

- what the claimant has done to look for work;
- whether they actually applied for any jobs and if so what type, with which employers, and with what results;

- the reasons why they have not applied for any jobs;
- any possible ideas for future jobsearch;
- any applications for, or acceptance of, a place on a course or programme, or a short course of training or education which will enhance their employability.

187. The claimant must be advised to build on previous steps to advance the progress of their job search, for example, if they have sent a written application for a job in the previous 2 weeks, it may be appropriate for them to telephone the employer to check whether they have been selected for interview.

188. If the claimant's circumstances have changed, for example they have reached the end of their permitted period; you may need to consider a variation to their Jobseeker's Agreement.

### **Whether steps taken reduce prospects of obtaining employment**

189. Unless the circumstances were due to reasons outside the claimant's control, for example a history of mental illness, disregard steps taken by them where they have:

- shown violent or abusive behaviour towards the employer during a job interview;
- completed a written application for a job in such a way as to reduce their chances of getting the job;
- completed an inadequate CV in a way designed to put employers off or against the advice of an adviser;
- failed to maintain the appropriate behaviour or appearance at a job interview.

### **Availability and location of any vacancies**

190. Regularly update local labour market knowledge and awareness of the type and location of vacancies so that up to date advice can be given to claimants and doubtful cases identified for referral to the LMDM.

191. Take into account the claimant's acceptable restrictions set out in their JSAg and the distance and time it would take them to travel to particular locations when discussing available vacancies.

192. Travel time of one and a half hours each way by public transport is reasonable for a claimant that has no physical or mental health problems.

193. The steps they have taken may be different from those specified on the JSAg because of new employers in the area or existing employers closing. They are nevertheless valid if they are reasonable for the claimant to take in the week.

### **Course or programme which helps employment prospects**

194. A claimant may have applied for or been accepted on a course or programme which is aimed at helping people to select, train for, obtain or retain employment.

195. In these circumstances the claimant can limit their jobsearch to temporary or casual work until the course begins.

196. They may also be undertaking an employment related course or a training programme for not less than 3 days in the week and not receiving a training allowance.

197. Take into account the amount of time they spend on this type of course when assessing their jobsearch activity. If they appear to have taken insufficient

steps to actively seeking employment in a week in which they participated in a course or programme on a part time basis, referral to the LMDM will be necessary.

### **Claimants with no living accommodation**

198. If a claimant has no living accommodation it may be difficult for them to be contacted by anyone offering employment or help in obtaining employment. They may also need to spend much of their time searching for accommodation.

199. Take both these factors into account when considering what steps it is reasonable for a claimant without accommodation to take in a week. The JSAG should indicate that they are taking steps to find accommodation. The JSAG will need to be varied once accommodation is found.

### **Best prospects of securing employment**

200. Prospects of employment vary from claimant to claimant. Some will have good prospects of employment and there may be many steps they can take which may lead to employment.

201. Provided they take the steps most likely to give them the best prospects of securing employment they are not expected to take every step open to them. The steps which are most appropriate will depend on what steps they have taken previously.

202. A claimant with good prospects may write to many employers when first becoming unemployed. There would be no point in writing to the same employers again until a period of time had passed. They could however, follow up their written applications with a phone call.

203. Claimants whose prospects of employment are poor may only have a few steps that they can take. It may be reasonable to expect them to take all the steps. For example, if their best chance of gaining employment is to visit building sites because they are an unskilled labourer, there is no reason why they should not visit all the sites within the location in each week.

204. Take into account the length of time a claimant has been unemployed when considering the ASE condition. A claimant who is within their permitted period is only required to look for employment in their usual occupation and at a level of pay not less than that which they are used to getting for the type of work.

205. However, a claimant who has been claiming JSA for more than 6 months is expected to look for any job which they are physically and intellectually capable of doing and any restrictions they place must give them reasonable prospects of securing employment.

206. If a claimant applies for jobs requiring skills or qualifications they do not have, they may not satisfy the ASE condition. They do not need to show that they would accept offers of employment to satisfy the condition however, if after taking the required steps there is a doubt as to whether they would take the employment offered, their availability may be in doubt.

207. If in the process of looking for work a claimant makes it clear to an employer that they would not actually accept an offer of work, this behaviour would negate the step to actively seeking employment. Refusal of employment action may be considered.

208. Be aware of the type of work the claimant is looking for when considering whether the steps they have taken are appropriate. It is reasonable that a highly qualified claimant will look in specialist magazines, newspapers and the internet for the work they are seeking rather than visit a Jobcentre, whereas for an unskilled claimant the opposite may apply.

209. Doubts about ASE may arise where the claimant has taken insufficient steps and/or taken steps that are inappropriate and/or the steps are taken in such a way as to negate their efforts to get a job.

### **Availability or Actively Seeking Employment Doubt identified**

210. When an Availability or ASE doubt is identified the case must be referred to a LMDM, the following action must be taken:

<b>Step</b>	<b>Action</b>
1	Explain to the claimant that JSA cannot be paid to them under the normal rules until the LMDM has made a decision.
2	Click the [Dec] or [NoDec] button in the Client Details window. <b>Note:</b> If no previous DMA action has been taken, you will automatically get a New Referral/Decision Details window. If one or more is already held, click [New]
3	Click the [Question] hotspot and select the appropriate option from the drop down menu.
4	Record the Source as appropriate
5	Record the Suspension start date and if appropriate the Suspension end date
6	Record the Ref to as 'DMA Sector Office'
7	Click [Save]
8	Print Referral Notification Letter ES48 from LMS, and issue it together with the ESL48JP to the claimant
9	input a suspension for the period in doubt to JSAPS
10	Take a statement from the claimant, using the relevant stencil from DART. Ensure the claimant's reasons are fully covered.
11	To ensure that details of the referral are maintained for reconsideration or appeal purposes, copy the information from DART into the LMS notes box for the relevant decision
12	Send the submission to the LMDM using DART for an Availability/ASE decision.

**Note:** The Official Use box on the DART stencils can be used to record any additional information relevant to the doubt.

### **Suspending a Jobseeker's Allowance claim**

If a claim to Jobseeker's Allowance (JSA) needs to be suspended:

<b>Step</b>	<b>Action</b>
1	access dialogue JA210: Maintain Suspension and Decision details
2	in the MAINTAIN SUSPENSION AND DECISIONS screen JA210213, input [S] in the '(S)usp/(D)ecision field' and press [ENTER] to access dialogue

	JA210211.
3	<p>in the MAINTAIN DECISION DETAILS screen JA210211 input details of the suspension by completing the following fields:</p> <ul style="list-style-type: none"> <li>• AR Code – Input the AR Code</li> <li>• AR Period in doubt – Input the start and end dates of the period in doubt</li> <li>• Submit – Input '2'</li> </ul>

211. JSA is a weekly benefit and therefore suspensions are input for whole benefit weeks. If an availability or restricted availability doubt arises in a week, input a suspension for the complete benefit week which includes the doubtful day(s).

212. If the doubt is because the claimant:

- has been placed on the nature of or terms and conditions of employment the claimant is prepared to accept, the suspension begins on the date the restriction is imposed from.
- is unavailable for a specific period, input a suspension from the start of the benefit week in which the doubt arises to the end of the benefit week in which the doubt ends.
- is unavailable for an indefinite period, input a suspension from the start of the benefit week in which the doubt arises but do not input an end date.
- is not ASE, input a suspension for the benefit weeks in which the claimant failed to take sufficient steps to find work.
- is placing a restriction on the type of work or locality, the suspension would take effect from the day the restriction is imposed.

### **Hardship**

213. Some claimants may be able to claim JSA Hardship when a Suspension has been imposed on their JSA. See JSA Hardship Awards for further information.

### **Submission action**

214. Access LMS and check the 'View Referral / Decision Details' screen.

215. To ensure that details of the referral are maintained for reconsideration or appeal purposes, check that all of the information from the DART referral has been copied from DART into the LMS notes box for the relevant decision.

216. When making DART referrals for availability/ASE doubts that cover multiple benefit weeks, a single referral to DMA should be made covering the entire period of the doubt rather than making multiple referrals for the same claimant.

217. Send the submission to the LMDM using DART to enable them to make an availability/ASE decision. See the DMA Referrals Guide chapter for further information on what must be included in the submission.

### **AR codes**

218. Doubts about whether the claimant satisfies the Labour Market conditions for the receipt of JSA are referred to a LMDM for a decision, using the following AR codes:



AR Code	Use to refer	Example of use
JSA550	claimant is not available for employment and cannot be treated as available for employment	claimant has no work permit and is unable to work in this country without one
JSA550A	claimant is not available within time limits	claimant is not able to start work immediately
JSA550B	claimant has placed restrictions on the number of hours they are prepared to work	claimant is not available because of short period in custody
JSA550C	claimant is placing restrictions on the nature of, location or terms and conditions of employment they are prepared to accept	claimant requires work which is not obtainable in the location they are seeking to be employed
JSA550S	claimant is a part-time student	claimant is studying for 16 hours or less but not willing to give course up for employment
JSA552	claimant was not actively seeking employment	claimant not taking sufficient steps as set out in JSAg to satisfy the conditions
JSA553	claimant is a prisoner on temporary release or a woman in receipt of maternity allowance or maternity pay	claimant is a prisoner on temporary release or a woman in receipt of maternity allowance or maternity pay.
JSA553S	claimant is a full time student	claimant is a full time student

219. Where the claimant is not entitled to JSA but has claimed National Insurance Contribution credits, refer the doubts to the LMDM for a decision using the appropriate AR code with the addition of a letter 'O' at the end to denote it's a credit only decision.

### **Decision made by the Labour Market Decision Maker**

220. The details of the decision will be automatically entered into the LMS 'Referral/Decision Details' screen once the LMDM has input their decision into DMAS.

221. The LMDM will email their decision notification to JSA Maintenance team from DMAS for action; therefore no further action is required in the Jobcentre.

**Note:** If copies of the decision notification and/or case papers are received at the Jobcentre these should be retained for monitoring purposes.

222. Where a LMDM decides the claimant was not available/ASE their claim to JSA will be disallowed.

223. If the decision is to disallow, explain to the claimant that their award of JSA has ended and if they wish to continue their claim, form JSA1 or JSA4(RR) must be completed. Claimants do not need a NJI but should have their forms checked at an advisory interview

- 224. A claim form is not required where a suspension is input for a definite period and JSA payments resume after the suspension dates.
- 225. The claimant will need to reconsider the circumstances that gave rise to the doubt and subsequent disallowance. If their circumstances do not change the doubt will remain.
- 226. See the Sanctions, Suspensions and Disallowances chapter of the JSA Procedural Guidance for further information.

### **Hardship**

- 227. Some claimants may be able to claim JSA Hardship when a Disallowance has been imposed on their JSA. See JSA Hardship Awards for further information.