

# Chapter 72 - Unemployability Supplement

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# Chapter 72 - Unemployability Supplement

## Introduction

72001 This chapter contains guidance on US. US was abolished from 6.4.87 but people in receipt of the benefit immediately before 6.4.87 continued to receive it. However should entitlement cease, for whatever reason, entitlement stops<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 1*

72002 A person satisfies the condition of being entitled immediately before 6.4.87 if

1. a claim was made before 6.4.87 but the award was made after that date **or**
2. an award was made before 6.4.87 but did not start to receive the benefit until after that date.

72003 US was designed as a means of providing benefit to persons who were rendered permanently incapable of work as a result of an IA and who might not have satisfied the conditions for SB or IVB.

## Conditions of entitlement

72004 The weekly rate of IIDB was increased if

1. the claimant was incapable of work **and**
2. such incapacity was the result of the relevant loss of faculty **and**
3. such incapacity was likely to be permanent<sup>1</sup>.

72005 Even if a claimant is not in fact incapable of work, they may be treated as so incapable and as likely to remain so incapable if the relevant loss of faculty is likely to prevent their earnings exceeding a prescribed amount<sup>1</sup>. From 11.4.11 the prescribed amount is calculated by

1. multiplying the rate of the NMW<sup>2</sup> by 16<sup>3</sup> **and**
2. rounding the amount calculated in 1. which includes an amount of less than
  - 2.1 50p up to the nearest 50p<sup>4</sup> **or**
  - 2.2 £1 but more than 50p up to the nearest £1<sup>5</sup> **and**
3. multiplying the amount resulting from 1. or 2. by 52<sup>6</sup>.

**Note:** See Appendix 1 to this chapter for details of the prescribed amount

*1 SS CB Act 92, Sch 7, para 2(3); SS (Gen Ben) Regs, reg 16; 2 reg 16(2); National Minimum Wage Regulations 1999, reg 11; 3 SS (Gen Ben) Regs, reg 16(1)(a); 4 reg 16(1)(b)(i); 5 reg 16(1)(b)(ii); 6 reg 16(1)(c)*

72006 It is a condition of receipt of US that a person shall be in receipt of IIDB; a person whose IIDB is paid in the form of a gratuity cannot satisfy that primary condition<sup>1</sup>. There are no provisions which would enable a claimant receiving a pension in lieu of a gratuity to qualify for US.

*1 R(I) 48/59*

72007 However, a person who is

1. entitled to both a pension and a gratuity **and**
2. rendered incapable by the loss of faculty for which the gratuity has been awarded

may nevertheless satisfy the basic condition mentioned in DMG 72006 as the loss of faculty giving rise to the gratuity is treated as resulting from the accident or PD for which the pension is payable<sup>1</sup>.

*1 SS (Gen Ben) Regs, reg 39(1)*

72008 - 72114

## Not entitled to industrial injuries disablement benefit

72115 A person not in receipt of IIDB may still be entitled to US, see DMG 72120 - 72125.

72116 - 72119

### Former constables and firemen

72120 Payment of US can be made to certain former constables or firemen<sup>1</sup>. The conditions of entitlement are that the claimant must

1. be entitled as a former constable or fireman to payments of injury pension under the appropriate legislation **and**
2. be, or have been, so entitled in respect of
  - 2.1 an injury received or disease contracted before 5.7.48 **or**
  - 2.2 retirement due to such an injury or disease **and**
3. as a result of that injury or disease satisfy the incapacity conditions (see DMG 72130).

*1 SS (Gen Ben) Regs, reg 44*

72121 However, payments under DMG 72120 cannot be made for any period during which the claimant is entitled to US under the normal provisions<sup>1</sup> or under the special provisions discussed at DMG 72124.

*1 SS (Gen Ben) Regs, reg 44(3)*

72122 - 72123

### Beneficiary under the PB & MDB scheme

72124 Where a claimant under this scheme satisfies the incapacity condition for US then an amount equal to US can be paid<sup>1</sup>.

*1 PB & MDB Scheme, Art 7*

### Workmen's Compensation

72125 US is payable to claimants who

1. are entitled to weekly payments under relevant legislation<sup>1</sup> or any duly certified contracting out scheme thereunder **and**

2. as a result of the injury or disease for which the compensation is payable, can be treated as satisfying the incapacity conditions<sup>2</sup>.

However, there cannot be a payment of more than one US<sup>3</sup>.

*1 Workmen's Compensation Acts; 2 SS (Gen Ben) Regs, reg 42; 3 reg 42(2)*

72126 - 72129

# Incapacity

## General

72130 The question whether, as the result of the relevant loss of faculty, the claimant is incapable of work is a question of fact to be decided by the DM having regard to the nature and degree of disablement, the medical evidence regarding incapacity and any other relevant medical or lay evidence. The opinion of a medical adviser or of a HCP regarding incapacity may be obtained<sup>1</sup>. Such an opinion is simply medical evidence to help the authorities in reaching a decision and is not binding on them. Departmental procedure provides for the opinion of members of a medical board to be obtained automatically on certain occasions but, in addition, the DM can ask for a further opinion to be obtained at any time **before** his decision is given.

*1 SS Act 98, s 19(2)*

## Meaning of HCP

72131 A HCP<sup>1</sup> is a

1. registered medical practitioner **or**
2. registered nurse **or**
3. registered occupational therapist or physiotherapist<sup>2</sup> **or**
4. member of such other regulated profession<sup>3</sup> as prescribed.

**Note:** Only for the purposes of the higher rate of DLA mobility component for the severely visually impaired have regulated professions of optometrist and orthoptist been prescribed as HCPs (see DMG Chapter 61).

*1 s 39(1); SS (C&P) Regs 79, reg 2(1); 2 Health Act 1999, s 60;  
3 NHS Reform & Health Care Professions Act 2002, s 25(3); SS Act 98, s 39(1)*

72132 - 72134

## Whether incapable

72135 A person is incapable of work if, having regard to his age, education, experience, state of health and other personal factors, there is no work or type of work which he can reasonably be expected to do<sup>1</sup>. The fact that there is no such work locally, or that owing to the state of the labour market the claimant has only a remote prospect of obtaining it, or that there is none in connection with the occupation in which they have previously been employed, does not prove that he is incapable of work for US purposes; the incapacity must be the result of the relevant loss of faculty and is not concerned with inability to obtain work from other causes<sup>2</sup>.

*1 CI 99/48 (KL); 2 R(I) 43/54*

72136 - 72139

## Limited capacity

72140 It is not essential that a claimant should be totally incapable of any work. If they are capable of some work but because of the relevant loss of faculty he is not likely to be able to earn more than the prescribed amount<sup>1</sup> they may be treated as incapable of work. Earnings includes any remuneration or profit derived from an employment<sup>2</sup>. See Appendix 1 to this Chapter for details of the prescribed amount.

*1 SS (Gen) Regs, reg 16; 2 SS CB Act 92, s 3(1)(a)(b), 3(1); s 122(1) & Sch 20*

72141 This provision is not a rigid “earnings rule” but is a relaxation or modification of the usual test of incapacity. It should be applied broadly, looking at the circumstances as a whole rather than at one short period in isolation. Thus a claimant’s condition may be changeable and they may be able to undertake occasional odd jobs or seasonal employment earning several pounds a week, but be totally incapable of work the rest of the time. The question is whether, taking a long view, they are able, in spite of the relevant loss of faculty, to earn more than the prescribed amount. Furthermore, entitlement depends solely on whether they are unable because of the relevant loss of faculty to earn more than the prescribed amount.

72142 If the claimant is engaged in work with earnings of the prescribed amount or less, this may well denote the full extent of their capacity for work. Or there may be evidence which suggests that this is not the case. Such evidence will take many forms, for example

1. medical evidence that the relevant loss of faculty would not prevent his undertaking more remunerative work **or**
2. evidence which shows that he would undertake more remunerative work if it were available to him **or**
3. evidence which justifies the conclusion that he could in fact earn more but is deliberately restricting his earnings to the prescribed amount or less.

72143 - 72144

## Seeking employment

72145 Although a claimant may be seeking employment, other evidence may show that in fact he is incapable of work, particularly if over a long period he has failed to obtain work<sup>1</sup>. In the absence of such evidence, if it is known that the claimant is seeking employment of a particular type, he should be regarded as capable of that employment and, unless the earnings would amount only to the prescribed amount or less, as not incapable of work. The onus rests upon the claimant to show otherwise<sup>2</sup>.

*1 CI 4/48 (KL); 2 R(I) 32/61*

72146 - 72147

## **Neither employed nor seeking employment**

72148 If the evidence does not establish that the claimant is totally incapable of work, but nevertheless he is neither in employment nor seeking employment, the DM should consider

1. whether the claimant is capable of some work **and**
2. what the likely earnings from such work would be.

72149 Information about the level of earnings for specified types of employment can be obtained from the local Jobcentre Plus office who may also be able to assist in suggesting suitable employments open to a person of the claimant's industrial experience and having the claimant's disabilities and limitations. It is immaterial whether such employment is available or easily obtainable, but it may be pertinent to consider the length of time the claimant has been without work<sup>1</sup>.

*1 CI 44/49 (KL)*

72150 - 72151

## **Whether incapacity is the result of the relevant loss of faculty**

72152 The DM needs to decide whether a person is incapable of following a particular occupation<sup>1</sup>. The principles followed when considering REA also apply to US<sup>2</sup> (see DMG Chapter 71).

*1 SS CB Act 92, Sch 7; 2 R(I) 10/61*

## **Permanent incapacity for work**

72153 The likelihood of the claimant remaining permanently incapable of work as the result of the relevant loss of faculty must be decided on the balance of probabilities as shown by

1. the nature and degree of disablement **and**
2. the medical evidence **and**
3. any history of
  - 3.1 employment since the accident **or**
  - 3.2 experience in seeking employment **and**
4. any other relevant evidence.

72154 In the majority of cases the opinion of a medical adviser on this issue is obtained in the normal course of events. However the DM has power to ask for a further opinion to be obtained at any time before his decision is given.

72155 In order to decide whether incapacity for work is likely to be permanent, the DM should bear in mind that

1. permanency can be considered at and from any stage because it is future likelihood, not capability for the regular occupation in the past, which is relevant
2. the statutory requirement is in terms of "likely" to remain permanently incapable<sup>1</sup> and so it is not necessary to be certain that the claimant will remain permanently incapable; it is sufficient if the balance of probabilities is that permanent incapacity is likely
3. "permanently incapable" should be the acceptance of continuation of the current condition (and relevant factors leading to the decision) unless there is strong evidence that it is likely, not possibly, to change
4. where a final assessment has been made otherwise than for life it would be extremely difficult to justify a finding that incapacity was likely to be permanent
5. the award of a life assessment does not necessarily mean that the claimant is permanently incapable of work because the loss of faculty may have no bearing on his inability to work and each case should be considered in the light of the evidence<sup>2</sup>
6. if the loss of faculty results from a disease or condition which is very likely to be cured, or very substantially improved so far as capability is concerned, the permanent condition is difficult to satisfy<sup>3</sup> (see DMG 72156)
7. pneumoconiosis is, by its very nature, permanent and where there is no doubt that incapacity for all work results from this disease, it can usually be accepted that such incapacity is likely to be permanent<sup>4</sup>.

**Note 1:** For the purposes of 4. in making the decision, the DM should consider the assessment and the reason for the limitation. However, if weighty contemporary evidence supporting permanence is submitted, it may provide grounds for an application for a reconsideration of the assessment.

**Note 2:** For the purposes of 7. similar principles apply in the case of most respiratory diseases.

*1 SS CB Act 92, Sch 7, para 2(1); 2 R(I) 86/52 (in the context of REA); 3 R(I) 7/53;  
4 CI 4/48 (KL); R(I) 58/52*

72156 Where DMG 72155 **6.** applies and the cure or improvement necessitates an operation, a reasonable refusal by the claimant to undergo that operation would not prevent the permanent condition being satisfied<sup>1</sup>. Before a claimant could be held to be acting unreasonably there must be cogent evidence that the operation is not attended by danger to life or health, or by exceptional suffering, and that it will probably (as opposed to merely possibly) remove the cause of incapacity. Such evidence will usually be difficult to find.

*1 R(I) 23/59 (in the context of REA)*

72157 - 72161



# Age related increase of unemployment supplement

72162 People entitled to US who on 22.9.71 were under pensionable age were entitled to an enhancement of the personal rate of US if on the qualifying date they were under the age of 60 (55 in the case of a woman)<sup>1</sup>.

*1 SS CB Act 92, Sch 7, para 3(1)(a) & (b)*

## Qualifying date

72163 The qualifying date is the earliest of the

1. date from which US is awarded<sup>1</sup> **or**
2. first day in a PIE which was a day of IfW where IfW in respect of which US is payable, forms part of a PIE<sup>2</sup> **or**
3. date from which US was awarded in an earlier period where **2.** does not apply but there has been an earlier period or periods for which the claimant was entitled to US and the break between each period is 8 weeks or less<sup>3</sup> (see DMG 72164).

*1 SS CB Act 92, Sch 7, para 3(5); 2 Sch 7, para 3(6); 3 Sch 7, para 3(7)*

72164 Where DMG 72163 **3.** applies, where there is a break of more than 8 weeks the linking provisions do not apply and the periods before and after such a break must be regarded as different periods. The qualifying date is the date from which US was awarded in the most recent of such separate periods.

72165 - 72166

## Rate of increase

72167 The rate of the increase depends<sup>1</sup> on the claimant's age on the qualifying date<sup>2</sup>. These are set out below

<b>Age at qualifying date</b>	<b>Rate of increase</b>
1. Qualifying date before 5.7.48	Higher rate
2. Under age 40	Higher rate
3. Age 40 but under 50	Middle rate
4. Age 50 and under 60 for a man or 55 for a woman	Lower rate

*1 SS CB Act 92, Sch 4, Part V, para 6; 2 Sch 4, Part V, para 6*

72168 The increase is similarly payable to persons in the special classes discussed in DMG 72121 - 72125.

72169 However, the rate is reduced where the claimant is entitled to Cat A RP or Cat B RP which includes AP<sup>1</sup>. The amount of the reduction is the amount of AP less any GMP<sup>2</sup>.

**Note:** The amount of AP is the amount before any increase for Incs<sup>3</sup>.

*1 SS CB Act 92, Sch 7, para 3(2); 2 Sch 7, para 3(3); 3 Sch 7, para 3(4)*

72170 - 72174

# Award of unemployability supplement

## Period of award

72175 The period for which US is to be awarded is determined at the time it is awarded<sup>1</sup>, and a decision, making an award, must specify a terminal date. An award can, however, be renewed from time to time on the receipt of fresh claims. The period of the award, if based on IIDB, cannot exceed the period for which that pension is payable; that is, the terminal date must not be later than the end of a current provisional assessment. The awards should begin on Wednesdays and end on Tuesdays<sup>2</sup>. It must be established on each fresh claim that the conditions for entitlement continue to be satisfied.

*1 SS CB Act 92, Sch 7, Part 1, para 2(4); 2 SS (C&P) Regs, reg 22 & Sch 6*

72176 The length of the period of an award should be fixed according to the particular circumstances, but should not usually exceed two years. If, exceptionally, there is no doubt that the claimant will remain permanently incapable of work as the result of the relevant loss of faculty, the award might be for several years or, perhaps, for life subject to the length of the assessment. Generally, however, the position is that, although not likely, it is possible that the claimant may become capable of work, or capable of earning more than the prescribed amount, and so the award should be for a shorter period, from six months to two years, subject to the length of the assessment.

72177 A person who satisfies the conditions for US may also become entitled to other benefits such as RP, IB and REA, payment of all of which is extinguished by US<sup>1</sup>. Therefore, before an award is made of US a claimant may wish to choose which benefit to claim. Such a person already in receipt of another benefit may wish to change to US and later may wish to change back again. An award of US cannot, however, be terminated in order to make way for another benefit. If, therefore, a person is to be awarded US but it seems possible that at some later date he may wish to forego that benefit, the award should be for a shorter period as appropriate. In this connection see also DMG Chapter 71 where there is concurrent title to REA.

*1 SS (OB) Regs, reg 6 & Sch 1; SS (II & D) Misc Prov Regs, reg 11*

72178 - 72179

## Reconsideration/Supersession

72180 An award of US may be reconsidered, but it should rarely be necessary or appropriate to do so unfavourably during the currency of an award, as any possibility of improvement in the claimant's condition will have been taken into account. Reconsideration should be made only if it is clearly justified.

**Note:** See DMG Chapter 03 for guidance on revision and DMG Chapter 04 for guidance on supersession.

- 72181 Changes should not be made merely on the ground that it is no longer likely that the claimant will remain permanently incapable of work.
- 72182 If the claimant demonstrates capacity for work by taking up employment, and is likely to earn more than the prescribed amount, the award may be reconsidered. A reasonable period of employment (rarely less than eight weeks) should be allowed to elapse to demonstrate capacity for work, and the date of the change of circumstances should be fixed as the end of that period.
- 72183 If evidence received suggests that the claimant has become capable of undertaking work at more than the prescribed amount, although not established in such employment, it will be necessary to consider the incapacity question with some care. In this respect the opinion of a medical adviser, and the DM as to the claimant's industrial potentialities, will normally be necessary.
- 72184 If a revised decision is not given, the changed circumstances should be taken into account when the award expires and a further claim is being considered.

### **Successive accidents**

- 72185 Guidance on the provisions affecting US in the event of successive accidents is given in DMG Chapter 69. However, the DM should note that claimants may establish entitlement to US in circumstances in which they would not otherwise be able to do so<sup>1</sup> (see DMG 72007).

*1 SS (Gen Ben) Regs, reg 39(1)*

72186

## **Increases of unemployability supplement for dependants**

72187 A person entitled to US may also be able to receive an increase in respect of certain adult and child dependants (see DMG Chapter 16).

72188 - 72999



# Appendix 1

## The prescribed amount

<b>From</b>	<b>£</b>
6.4.87	1352.00
11.4.88	1404.00
10.4.89	1482.00
9.4.90	1820.00
8.4.91	2028.00
6.4.92	2106.00
12.4.93	2184.00
11.4.94	2236.00
10.4.95	2288.00
8.4.96	2366.00
7.4.97	2418.00
6.4.98	2496.00
12.4.99	3016.00
10.4.00	3042.00
2.10.00	3094.00
9.4.01	3146.00
1.10.01	3432.00
1.10.02	3510.00
1.10.03	3744.00
1.10.04	4056.00
1.10.05	4212.00
1.10.06	4472.00
1.10.07	4602.00
1.10.08	4784.00
1.10.09	4836.00
1.10.10	4940.00

1.10.11	5070.00
1.10.12	5174.00
1.10.13	5252.00
1.10.14	5408.00

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