

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 5 Amendment 48 – June 2016

1. This letter provides details on Amendment 48; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer.

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/dmg%20amendment%20packages/index.asp#>

or on the **Internet** at the 'Amdt Packages' tab on the following link:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints.

3. Amendment 48 affects abbreviations, chapters 25, 26, 27 & 28. The changes are
 - **Chapter 25** - Clarification of overpaid income at DMG 25047 and accompanying re-number of chapters and cross references.
 - **Chapter 26** – added HMRC definition of actors/ entertainers for Tax & NI purposes, amended hyperlink to DMG 11/16.
 - **Chapter 27** - 27270 & 27288 - added references to Scottish Rate of Income Tax, 27454 - added note re: actors/ entertainers and NI & Tax definition from HMRC, also re-arranged examples
 - **Chapter 28** - 28050, 28076 - Added references to State Pension, 28010 – Added note re: Scottish Rate of Income Tax
4. The last two amendment packages amending Volume 5 were
Amendment 46 [October 2016]

Amendment 45 [June 2015]
5. If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

Remove**Abbreviations**

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25001 – 25007 (1 page)

25031 – 25041 (2 pages)

25043 – 25071 (7 pages)

Chapter 26

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28076 – 28089 (2 pages)

| | |
|---------|---|
| LCW | Limited capability for work |
| LCWA | Limited capability for work assessment |
| LCWRA | Limited capability for work related activity |
| LEA | Local Education Authority |
| LEC | Local Enterprise Council |
| LEL | Lower Earnings Limit |
| LETS | Local Exchange Trading System |
| LPP | Lone Parent Premium |
| LPRO | Lone Parent run-on |
| LQPM | Legally Qualified Panel Member |
| LRP | Liable Relative Payment |
| LSC | Learning and Skills Council |
| LT | Linking Term |
| LTACP | Living Together as Civil Partners |
| LTAMC | Living Together as Married Couple |
| LTAHAW | Living Together as Husband And Wife |
| | |
| MA | Maternity Allowance |
| MAP | Maternity Allowance Period |
| MB | Maternity Benefit |
| MDB | Miscellaneous Diseases Benefit |
| MG | Maternity Grant |
| MID | Mortgage Interest Direct |
| MIRO | Mortgage Interest run-on |
| MP | Member of Parliament |
| MPP | Maternity Pay Period |
| MSC | Maximum Savings Credit |
| MSP | Member of the Scottish Parliament |
| | |
| NASS | National Asylum Support Service |
| NCET | National Council for Education and Training |
| NCIP | Non-Contributory Invalidity Pension |
| ND | New Deal |
| NDLP | New Deal for Lone Parents |
| NDP | New Deal for Partners |
| NDYP | New Deal for Young People |
| ND18-24 | New Deal for 18-24 year olds |
| ND25+ | New Deal for claimants aged 25 years and over |
| NHS | National Health Service |
| NI | National Insurance |
| NINO | National Insurance Number |
| NMW | National Minimum Wage |

| | |
|------------|---|
| NRP | Non-Resident Parent |
| NVQ | National Vocational Qualification |
| OOT | Own Occupation Test |
| OPB | One Parent Benefit |
| PA | Personal Adviser |
| PAYE | Pay As You Earn |
| PB and MDB | Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme |
| PCA | Personal Capability Assessment |
| PD | Prescribed Disease |
| PETA | Personal Expenses Transitional Addition |
| PFA | Person(s) From Abroad |
| PIE | Period of Interruption of Employment |
| PILON | Pay In Lieu Of Notice |
| PILOR | Pay In Lieu Of Remuneration |
| PIP | Personal Independence Payment |
| PIW | Period of Incapacity for Work |
| PLCW | Period of limited capability for work |
| PLCWA | Period of limited capability for work assessment |
| PO | Post Office |
| POAOB | Payment on Account of Benefit |
| POA | Power of Attorney |
| PP | Pensioner Premium |
| PR | Preserved Right |
| PSIC | Person Subject to Immigration Control |
| P/T | Part-Time |
| PW | Pay-Week |
| PWC | Person With Care |
| PWHL | Permitted Work Higher Limit |
| PWHLs | Permitted Work Higher Limit subsequent period |
| PWK | Permitted Work |
| PWLL | Permitted Work Lower Limit |
| PWP | Permitted Work Period |
| QB | Qualifying Benefit |
| QBP | Qualifying Benefit or Pension |
| QD | Qualifying Days |
| QEF | Qualifying earnings factor |
| QI | Qualifying Income |
| QP | Qualifying Period |

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|--------|---|
| QRW | Qualifying remunerative work |
| QW | Qualifying Week |
| QWfl | Quarterly Work-focused interview |
| RA | Retirement Allowance |
| RBD | Reduced Benefit Direction |
| RCH | Residential Care Home |
| REA | Reduced Earnings Allowance |
| Reg(s) | Regulation(s) |
| Res A | Residential Allowance |
| RISWR | Redundant Iron and Steel Employees re-adaptation scheme |
| RMPS | Redundant Mineworkers Payment scheme |
| RP | Retirement Pension |
| RQC | Relevant Qualifying Condition |
| RVU | Relationship Validation Unit |
| S | Section (of an Act) |
| S2P | State Second Pension |
| SAP | Shared Additional Pension |
| SAYE | Save As You Earn |
| SB | Sickness Benefit |
| SC | Savings Credit |
| Sch | Schedule (as in an Act) |
| SCT | Savings Credit Threshold |
| SDA | Severe Disablement Allowance |
| SDM | Sector Decision Maker |
| SDP | Severe Disability Premium |
| S/E | Self-Employed |
| Sec | Section (of an Act) |
| SED | Scottish Education Department |
| SERPS | State Earnings Related Pension Scheme |
| Sev DP | Severely Disabled Person |
| SF | Social Fund |
| SFFP | Social Fund Funeral Payment(s) |
| SFO | Social Fund Officer |
| SHA | Special Hardship Allowance |
| SI | Statutory Instrument |
| SIR | Standard Interest Rate |
| SJP | Supervised Jobsearch Pilot Scheme |
| SMG | Standard Minimum Guarantee |
| SMP | Statutory Maternity Pay |
| SP | State Pensions |

| | |
|-------------|--|
| SPC | State Pension Credit |
| SpTA | Special Transitional Addition |
| SPW | Supported Permitted Work |
| SRPS | Shipbuilding Redundancy Payment Scheme |
| SS | Social Security |
| SS benefits | Benefits payable under SS(CB) Act 92 |
| SSMG | Sure Start Maternity Grant |
| SSP | Statutory Sick Pay |
| STCP | Skills Training Conditionality Pilot |
| Supp B | Supplementary Benefit |
| SVQ | Scottish Vocational Qualification |
| TA | Transitional Addition |
| TAW | Temporary Allowance for Widow(ers) |
| TBI | Total Benefit Income |
| TD | Trade Dispute |
| TE | Transitional Element |
| TEC | Training and Enterprise Council |
| TFEU | Treaty on the Functioning of the European Union |
| TS | Tribunals Service |
| TU | Trade Union |
| UB | Unemployment Benefit |
| UC | Universal Credit |
| UCP | Urgent Case Payment |
| UEL | Upper Earnings Limit |
| UK | United Kingdom |
| US | Unemployability Supplement |
| UT | Upper Tribunal |
| VAT | Value Added Tax |
| VSO | Voluntary Sector Option of New Deal for young people |
| WA | Widow's Allowance |
| WB | Widow's Benefit |
| WBLA | Work Based Learning for Adults |
| WBLfYP | Work Based Learning for Young People |
| WBTfA | Work Based Training for Adults |
| WBTfYP | Work Based Training for Young People |
| WC | Workmen's Compensation |
| WC(S) | The Workmen's Compensation (Supplementation) Scheme |

| | |
|-----------|---|
| WC (Supp) | Workmen's Compensation (supplementation) scheme |
| WCA | Work capability assessment |
| WDisP | War Disablement Pension |
| WFHRA | Work focused health related assessment |
| Wfi | Work-focused Interview |
| WFP | Winter Fuel Payment |
| WFTC | Working Families Tax Credit |
| WMA | Widowed Mother's Allowance |
| WMA(C) | WMA payable where late husband entitled to Cat C retirement pension |
| WP | Widow's Pension |
| Wp | Work programme |
| WPA | Widowed Parent's Allowance |
| WP(C) | Widow's Pension payable where late husband entitled to Cat C retirement Pension |
| WPT | Widow's Payment |
| WRAC | Work-related activity component |
| WRAG | Work-related activity group |
| WTB | Work and training beneficiary(ies) |
| WTC | Working Tax Credit |
| WtWB | Welfare to Work Beneficiary |
| WWP | War Widow's Pension/War Widower's Pension |
| YT | Youth Training |

Chapter 25 - Income (General)

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Chapter 25 - Income (General)

Introduction

General rules

Meaning of claimant

25001 Claimant means¹ either

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA
 - 2.1 the couple **or**
 - 2.2 each member of the couple, as the context requires.

1 JS Act 95, s 35(1); IS (Gen) Regs, reg 2(1)

The calculation and treatment of income

25002 This Chapter deals with the calculation and treatment of various types of income and explains

1. how to treat the income of other members of the claimant's family - see DMG 25007 et seq
2. how to decide the period over which an income should be taken into account - see DMG 25031 et seq
3. how to calculate the weekly amount of an income - see DMG 25063 et seq
4. the special rules for modifying the amount taken into account - see DMG 25081 et seq.

25003 Other Chapters deal with other aspects of income, including

1. which incomes are fully or partly disregarded - see DMG Chapter 28
2. when to treat capital as income - see DMG Chapter 28 (for income treated as capital see DMG Chapter 29)
3. when to treat claimants as possessing income they do not possess (known as notional income) - see DMG Chapter 28

4. the treatment of various types of income, including
 - 4.1 earnings of employed earners - see DMG Chapter 26
 - 4.2 earnings from self-employment - see DMG Chapter 27
 - 4.3 income other than earnings - see DMG Chapter 28
 - 4.4 liable relative payments - see DMG Chapter 28
 - 4.5 earnings of share fishermen - see DMG Chapter 27
 - 4.6 income of young claimants and young partners - see DMG, Chapter 30
 - 4.7 how to treat income if the claimant or any member of the claimant's family is involved in a TD - see DMG Chapter 32
 - 4.8 student's income - see DMG Chapter 30
 - 4.9 how to treat income when calculating part weeks - see DMG Chapter 33
 - 4.10 income in urgent cases - see DMG Chapter 31.

Income - JSA(Cont)

25004 The DM should follow the guidance in this Chapter when determining the amount of a claimant's own earnings in a claim for JSA(Cont). The guidance on other income, and the treatment of income of the members of the claimant's family does not apply to a claim for JSA(Cont).

Note: For guidance on the treatment of occupational and personal pensions in JSA(Cont) see DMG Chapter 23.

25005 - 25006

Income of the claimant's family - JSA(IB) or IS

25007 **[See DMG Memo JSA/IS 64]** In a claim for JSA(IB) or IS, the DM should calculate the income of

1. the claimant's partner **and**
2. a child or young person who is a member of the claimant's family

in the same way as for the claimant¹. This income should then be treated as the claimant's income². However DMs should consider if the circumstances in DMG 25008 or DMG 25009 applies.

Note: The DM should also consider the special rules on the income of a child or young person (see DMG Chapter 28).

1 JSA Regs, reg 88(1); reg 88ZA; IS (Gen) Regs, reg 23(1); 2 JS Act, s 13(2); SS CB Act 92, s 136(1)

Period over which income is taken into account

Calculating the period

- 25031 To determine the period over which any income other than income from self-employment is taken into account the DM needs to establish
1. the date of claim
 2. the first day of the claimant's benefit week (see DMG 25052 - 25054)
 3. the date on which the income is due to be paid (see DMG 25034 et seq)
 4. the date on which the income is treated as paid (see DMG 25043 et seq) **and**
 5. **either**¹
 - 5.1 the period for which the payment is made **or**
 - 5.2 the amount of
 - 5.2.a JSA or IS that would be payable without the income **and**
 - 5.2.b any disregard the DM would normally make on the weekly amount of the income.

See DMG Chapter 26 on earnings disregards and DMG Chapter 28 on other income with partial disregards.

Note 1: If the income is a payment of earnings when employment ends see DMG 25062 where different kinds of earnings are received for overlapping periods, and DMG Chapter 26 for the period over which the payment is taken into account.

Note 2: The guidance in DMG 25034 - 25087 does not apply to income from self-employment.

1 JSA Regs, reg 94(2); IS (Gen) Regs, reg 29(2)

25032 - 25033

Date on which income is due to be paid

25034 To determine the period over which income should be taken into account, the DM needs information on the date a payment is due to be paid. This may be different from the date a payment is actually made or received. But income is often paid on the date it is due.

25035 When deciding the date a payment is due the DM should consider that

1. due means legally due, for example under a contract or statutory provision
2. if there is no legal obligation to make the payment on a particular day, the person or body making the payment should be asked when they consider the payment is due
3. the date when the payment is received may be assumed to be the due date where
 - 3.1 the available evidence
 - 3.1.a does not give a due date¹ **or**
 - 3.1.b is not considered credible **and**
 - 3.2 no further evidence can be obtained.

1 R(SB) 33/83

Income other than earnings

25036 The date when a payment of income is due could be a question of fact or a question of law. For example

1. a claimant or a claimant's former employer may be able to say when a payment of occupational pension was due
2. a mortgage protection policy would state when payments are due to be made under the policy.

Earnings

25037 The date on which a payment of earnings is due will be the normal pay day agreed in the contract of employment. The terms of a contract

1. may be
 - 1.1 express (in writing or verbal) **or**
 - 1.2 implied (by the actions of or understanding between the two parties) **and**

2. may be varied
 - 2.1 if both parties agree to it (the variation may be express or implied) **or**
 - 2.2 because of certain action taken by either party (such as dismissal or resignation).

Earnings when employment ends

25038 When employment ends, the date on which a payment of final earnings is due to be made

1. is a mixed question of fact and law **and**
2. depends on the circumstances in which the employment ended and the terms of the contract.

Note: When the due date has been established see DMG 25062 where different kinds of earnings are received for overlapping periods, and DMG Chapter 26 for the treatment and effect of the earnings on JSA or IS.

Notice given and worked

25039 Final earnings are payable on the dates agreed in the contract of employment where employment

1. has run its full course, for example a fixed period engagement has reached its end **or**
2. is terminated by the employer after due notice has been given and worked.

25040 This means that the claimant should receive the following payments on the final pay-day (often the last day of employment)

1. the normal week or month's earnings, including any part week or month's earnings
2. wages held in hand
3. holiday pay.

Employment terminated by employer without notice

25041 Where the employer terminates employment without due notice they are legally obliged to pay on the last day of employment¹

1. wages earned between the end of the employee's previous pay period and the last day of employment

Date on which income is treated as paid

25043 The date on which a payment of income is treated as paid may not be the same as the date on which it is due to be paid under DMG 25034 et seq.

Note: There are no longer any special rules for the date on which WTC or CTC is treated as paid.

Income due before the first benefit week of the claim

25044 A payment of income (including WTC) should be treated as paid on the date it was due, if it was due to be paid before the first benefit week of the claim¹. But see DMG 25076 if the payment is UC, ESA, JSA, IS, MA, IB or SDA.

Note: A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 25051 and 25053 **2.1**).

1 JSA Regs, reg 96(1)(a); IS (Gen) Regs, reg 31(1)(a)

Income due in or after the first benefit week of the claim

25045 If a payment (including WTC) was due to be paid in or after the first benefit week of the claim, it should be treated as paid on¹ the first day of the benefit week in which it is

1. due to be paid **or**
2. practicable to take the payment into account (if this rule is used the DM should record the reasons for using it).

But see DMG 25076 if the payment is UC, ESA, JSA, IS, MA, IB, or SDA, or DMG Chapter 33 if the period involved is a part week.

Note: A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 25053 and 25054 **2.1**).

1 JSA Regs, reg 96(1)(b); IS (Gen) Regs, reg 31(1)(b)

Example 1

Doug receives IS in arrears. His benefit week ending day is Wednesday.

On Friday 16 August he advises the Department that he has received his first payment of income from an insurance policy on that day. The payment is made on the day it is due.

The DM treats the income as paid on Thursday 15 August which is the first day of the benefit week in which it was due to be paid. The DM takes the income into

account in the payment of IS due for the benefit week ending on Wednesday 21 August.

Example 2

Alice is unemployed and receives JSA(IB) fortnightly in arrears. Her benefit week ending day is Thursday. She attends the Jobcentre on Thursday 21 November, and receives two weeks benefit for the period 8 November to 21 November on 23 November.

On 22 November, Alice advises the Department that her partner received his first payment of P/T earnings on the evening of 21 November. The payment is made on the day it is due.

The DM determines that it is not practicable to take the partner's earnings into account for the benefit week 15 November to 21 November, because benefit has already been paid for that week.

The DM treats the earnings as paid on 22 November, which is the first day of the first week in which it is practicable to take the payment into account. (See DMG 25082 for guidance on the special rule which applies when two payments are taken into account for the same week because of the impracticability rule.)

- 25046 The practicability rule cannot apply where notification is received in time for the income to be taken into account in the correct benefit week but it is not actioned until after the payment of IS or JSA has been made.

Treatment of income paid incorrectly to the claimant

- 25047 A claimant may have income (including benefit income) that is being taken into account in an income-related benefit award, which is then retrospectively revised. This can often lead to an overpayment of that income but this does not mean that arrears of the income-related benefit in payment also arise. In such cases, the overpaid income is taken into account until the recipient comes under an immediate obligation to repay it, and only then from the date on which an obligation to repay arises¹. For more information on overpayments, please see DMG Chapter 9.

1 R(IS) 5/99 (Leaves v. CAO)

Example

Ella has been receiving RP since 1.3.10 and SPC since 4.10.10. HMRC provide an updated NI record on 1.6.16 which shows that Ella's RP award has been incorrectly calculated from the outset. On 7.6.16, a DM revises Ella's RP award to a lower amount with effect from 1.3.10. On 27.6.16 a DM decides that the overpaid RP is a non-recoverable overpayment. For SPC purposes, the revised RP award is taken into account from the next payday – 30.6.16, the effect is not retrospective and there are no arrears of SPC to be offset against the overpaid RP.

WTC paid incorrectly by HMRC

25048 If a person who has ceased employment confirms when they claim IS or JSA that they have notified HMRC of the change in their circumstances, DMs should not treat any payments of WTC paid incorrectly by HMRC as the claimant's income. However, any payments of WTC paid to the claimant prior to any notification by the claimant to HMRC of a change in circumstance should be taken into account as income¹.

1 R(IS) 5/99 (Leeves v. CAO)

Example 1

Janet finished work on Thursday 6.8.09 and made a claim for IS on Friday 7.8.09. Her benefit week ending was a Tuesday. She told the DM that she had been receiving WTC but had notified HMRC that her job had now ended.

HMRC did not end the award and continued to pay WTC to Janet. Janet was entitled to a four week WTC run on for the period 7.8.09 to 3.9.09. WTC was taken into account by the DM until BWE 1.9.09.

Although Janet continued to receive WTC for several weeks after the run on period the DM decided that the WTC paid incorrectly by HMRC should not be taken into account as it was not Janet's income.

Example 2

Joel finished work on 1.6.09 and made a claim for JSA on 19.6.09. He is in receipt of WTC which the DM takes into account as an income when calculating Joel's entitlement to JSA(IB).

On 19.10.09 Joel informs HMRC that he finished work in June. HMRC ends Joel's award of WTC and calculate an overpayment based on the fact that he had finished work in June but had continued to receive WTC.

The DM supersedes the award of JSA(IB) and no longer takes the WTC into account. The date of the relevant change for the purposes of the supersession is 19.10.09 which was the date that Joel informed HMRC of his change of circumstance. However the DM does not adjust the award of JSA(IB) to take account of that fact that Joel was overpaid WTC for the period prior to the notification to HMRC. This is because at that time, WTC was an income in payment to Joel and there is no disregard for it.

Treatment of arrears of income

25049 If the amount of a regular income increases, or the claimant starts to receive a new income, the first payment may include arrears. The treatment of the arrears will depend on whether they were paid on the date on which they were due to be paid

(see DMG 25034). But see DMG 25076 if the income is UC, ESA, JSA, IS, MA, IB or SDA.

Arrears paid on due date

25050 Arrears which are paid on the due date should be

1. treated as paid on the first day of the benefit week in which
 - 1.1 they are paid **or**
 - 1.2 it is practicable to take them into account¹ **and**
2. taken into account
 - 2.1 for a period calculated in the normal way (see DMG 25055 et seq)² **and**
 - 2.2 from the date on which they are treated as paid.

1 JSA Regs, reg 96(1)(b); IS (Gen) Regs, reg 31(1)(b);

2 JSA Regs, reg 94(2)(a); IS (Gen) Regs, reg 29(2)(a)

Example

The claimant's partner has P/T earnings of £20 weekly due each Thursday. IS is paid in arrears and the claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £25 weekly from 5.7.09, but the agreement says that the increase is not payable until 1.8.09, when payment is made at the new rate with three weeks arrears, a total of £40.

The DM treats the payment as made on 29.7.09.

The new rate of £25 is taken into account in the benefit week beginning 29.7.09, and the £15 arrears are taken into account for the period 29.7.09 to 18.8.09.

The total amount of earnings taken into account in the benefit weeks beginning 29.7.09, 5.8.09 and 12.8.09 is £30 (£25 plus £5 arrears).

From benefit week beginning 19.8.09, the new weekly rate of £25 is taken into account.

Arrears paid after the due date

25051 Arrears paid after the due date should be treated as paid

1. on the first day of the benefit week in which they were due **or**
2. on the due date if they were due before the first benefit week of the claim¹.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery².

1 JSA Regs, reg 96(1); IS (Gen) Regs, reg 31(1); 2 SSA Act 92, s 74

Example

The claimant normally receives an occupational pension monthly in arrears on the last day of each month.

The pension increases from 1 April each year, first payment at the higher rate being due on 30 April.

Due to administrative problems, the increase is not paid until 30 June, when the claimant receives the new amount for the month of June and arrears for April and May.

The DM determines that the arrears for April and May were due to be paid on 30 April and 31 May, and treats them as paid on the first day of the benefit week in which each was due to be paid.

Meaning of benefit week

JSA

25052 In JSA a benefit week¹ is a period of seven days ending with the day determined by the last two digits of the claimant's NINO as shown in the following table unless the Secretary of State arranges otherwise.

| NI No. | Day |
|---------|-----------|
| 00 - 19 | Monday |
| 20 - 39 | Tuesday |
| 40 - 59 | Wednesday |
| 60 - 79 | Thursday |
| 80 - 99 | Friday |

1 JSA Regs, reg 1(3)

IS

25053 In IS a benefit week¹

1. is either

- 1.1 the week for which the claimant's relevant SS benefit is or would be paid if the claimant satisfied the contribution conditions or had not exhausted entitlement **or**
 - 1.2 in any other case, a period of seven days beginning or ending with a day which the DM directs² **and**
2. when calculating the amount of income to take into account, is also a period of seven days ending on
 - 2.1 the day before the first day of the benefit week following the date of claim **or**
 - 2.2 the last day on which IS is paid if it is in payment for less than a week³.

1 SS (C&P) Regs, Sch 7, para 4; 2 Sch 7, para 4; 3 IS (Gen) Regs, reg 2(1)

25054 Relevant SS benefit means¹

1. IB
2. BB
3. SDA
4. RP
5. WB.

1 SS (C&P) Regs, Sch 7, para 4

Period for which payment is made

Identifiable period

25055 If the period for which a payment is made can be identified, then the length of time for which it is taken into account will depend on whether the payment is monthly or not. Where the period for which the payment is made is

1. a month¹, it should be taken into account for a period ending with the date immediately before the next monthly payment would have been treated as paid (whether or not the next monthly payment is actually paid) **or**
2. other than a month², it should be taken into account for an equivalent period (for example a payment for a week should be taken into account for a week).

The period begins from the date determined by following the guidance at DMG 25043 et seq.

Note: A capital payment that is treated as income will often not be payable for an identifiable period.

1 JSA Regs, reg 94(2)(a); IS (Gen) Regs, reg 29(2)(a); 2 JSA Regs, reg 94(2)(aa); IS (Gen) Regs, reg 29(2)(aa)

Employer's pay arrangements

25056 Where an employer has specific pay arrangements, which mean employees are paid at specific intervals, such as monthly, a payment should be taken into account for a period equal to the pay interval¹. But see DMG Chapter 26 if the payment is made because the employment has ended.

Note: Earnings from holiday pay and compensation payments (see DMG Chapter 26), which are made for part of a day should be taken into account for a day².

1 R(IS) 10/95; 2 JSA Regs, reg 94(5); IS (Gen) Regs, reg 29(4A)

Example

John claimed IS because he was absent from work due to an illness. His BWE day is Monday.

John's employer pays him on the last day of each month. On 31.3.08 John received three weeks SSP of £217.65 [£72.55 x 3 weeks].

The DM decided that the payment should be taken into account for one month at the weekly rate of £50.22 [£217.65 x 12 ÷ 52].

The weekly amount is taken into account for the following period -

BWE 31.3.08 - £50.22

BWE 7.4.08 - £50.22

BWE 14.4.08 - £50.22

BWE 21.4.08 - £50.22

BWE 28.4.08 - £50.22

John's next monthly payment from his employer would be due to be paid on 30.4.08 (treated as paid on 29.4.08) and the weekly amount would be taken into account for the period BWE 5.5.08 to BWE 26.5.08

Supply teachers

25057 An LA may create a pool or panel of supply teachers. The LA calls on these teachers as and when needed, but the teachers may refuse work if they wish. In these circumstances the DM should note that

1. the supply teachers have a separate contract of employment for each period they work¹ **but**
2. if the LA pays them at regular intervals for the work they have done, each payment should be taken as paid for a period equal to the pay interval².

1 R(U) 2/87; 2 R(IS) 10/95

Example

A supply teacher is paid on the 16th of every month for all the work she has done in the previous month. On 16 October she is paid for the four days she worked during September. The DM takes the payment into account for one month.

Reservists

25058 Earnings which a claimant has derived from being a member of a reserve force

1. in respect of a period of annual continuous training for a maximum of 15 days in any calendar year **or**
2. in respect of their first year of training for a maximum of 43 days in a year which begins with their first day of training¹

are treated in accordance with DMG 25059.

1 JSA Regs, reg 94(2C)(a); IS (Gen) Regs, reg 29(2C)(a)

25059 The earnings, whether paid to the claimant alone or together with other earnings derived from the same source, have to be taken into account

1. in accordance with the table¹ below where this is applicable **or**
2. in any other case, over a period equal to the number of days of the training period².

1 JSA Regs, reg 94(2C)(c); IS (Gen) Regs, reg 29(2C)(c); 2 JSA Regs, reg 94(2C)(b); IS (Gen) Regs, reg 29(2C)(b)

| Period of training in days | Period of time over which earnings are to be taken into account in days |
|----------------------------|---|
| 8 to 10 | 7 |
| 15 to 17 | 14 |
| 22 to 24 | 21 |
| 29 to 31 | 28 |
| 36 to 38 | 35 |
| 43 | 42 |

Example 1

Dylan is in receipt of JSA and has also recently joined the Army Reserve. He takes part in a training exercise as part of his first year in the Reserve. Dylan receives payment in respect of his participation. The payment is for 16 days training. The DM takes the payment of earnings into account for a period of 14 days from the date that it is treated as paid (see DMG 25043 et seq) as a weekly amount (see DMG 25063 et seq). The payment is subject to a disregard.

Example 2

Helen is in receipt of JSA and has also recently joined the Army Reserve. She takes part in a training exercise as part of her first year in the Reserve. Helen receives payment in respect of her participation. The payment is for 13 days training. The DM takes the payment of earnings into account for a period of 13 days from the date that it is treated as paid (see DMG 25043 et seq) as a weekly amount (see DMG 25063 et seq). The payment is subject to a disregard.

No identifiable period - IS

25060 If the period cannot be identified, the DM should calculate the amount to be taken into account¹. Where the payment is

1. earnings, by dividing the claimant's net earnings (see DMG Chapter 26)² by the total of the
 - 1.1 weekly amount of IS to which the claimant would have been entitled had the payment not been made **and**
 - 1.2 amount of any disregard³ that would have been made on the earnings **or**
2. income other than earnings, by deducting any tax paid on the income⁴, and dividing the result by the total of the

- 2.1 weekly amount of IS the claimant would have been entitled to had the payment not been made **and**
- 2.2 amount of any disregard⁵ (other than on tax) that would have been made on the income.

If the calculation does not result in a whole number of weeks, the balance of the payment should be taken into account for a corresponding fraction of a week⁶.

Note: See DMG Chapter 26 if the payment is made because employment has ended.

1 IS (Gen) Regs, reg 29(2)(b); 2 reg 36(3); 3 Sch 8; 4 Sch 9, para 1; 5 Sch 9; 6 reg 29(2)(b)

Example 1

Sheila is in receipt of IS of £40 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Sheila's employer offers her a payment of £7,200. She can agree to accept this sum as a final and full settlement of any unequal treatment claim that she could have brought against her employer. Alternatively, Sheila can have the option of taking a net payment of £720 but this amount would be deducted from any future settlement won through action at an Employment Tribunal or as part of any negotiated settlement between herself and her employer.

Sheila decides to accept the sum of £720 and this is duly paid to her with her salary by the employer. The DM decides that the payment is a payment of earnings but cannot identify a period in respect of which the payment is made. The DM therefore performs the calculation in DMG 25060 1. where:

£720 is divided by £45 (IS of £40 plus £5 disregard) = 16

The DM takes the payment into account for 16 weeks at the weekly rate of £45.

Example 2

Freddie is paid a one-off bonus of £150. The period for which the payment was made is not identifiable. £5 of a weekly payment of the income would be disregarded. Freddie would be entitled to £65 IS a week without the payment. The £150 payment is divided by £70 (£65 IS plus £5 disregard). The DM determines Freddie's income is £70 a week for a period of 2 1/7 weeks (two weeks and one day).

No identifiable period – JSA

- 25061 If the period for which a payment is made cannot be identified (i.e. it's not in respect of a week, month etc) then the DM should determine the number of weeks over which a payment has to be taken into account by applying the formula¹

$$\frac{E}{J + D}$$

where-

E is the amount of net earnings (see DMG Chapter 26) or income other than earnings less any disregarded tax and

J is the amount of JSA which would be payable had the payment not been made and

D is an amount equal to the total of the sums disregarded from the payment other than the tax.

After applying the formula, any fraction is to be treated as a corresponding fraction of a week².

1 JSA Regs, reg 94(2)(b); 2 reg 94(11)

Different kinds of earnings received for overlapping periods

25062 If different kinds of earnings are received from the same source, and the periods over which the earnings would be taken into account overlap, the earnings should be taken into account

1. for the total of the periods which apply to each of the different kinds of earnings **and**
2. from the earliest date on which any of those earnings would be treated as paid under DMG 25043 et seq¹ **and**
3. in the following order²
 - 3.1 in the case of JSA(Cont) or JSA(IB)
 - 3.1.a normal earnings
 - 3.1.b compensation payments
 - 3.1.c holiday pay **or**
 - 3.2 in the case of IS
 - 3.2.a normal earnings including wages held in hand
 - 3.2.b pay-in-lieu of notice or remuneration
 - 3.2.c compensation payment
 - 3.2.d holiday pay received within four weeks of the date employment ended.

Note 1: Pay in lieu of remuneration is paid in place of a person's normal wages or salary.

Note 2: For JSA, pay in lieu of notice or remuneration is included in the definition of a compensation payment (see DMG Chapter 26).

1 JSA Regs, reg 94(3); IS (Gen) Regs, reg 29(3); 2 JSA Regs, reg 94(4); IS (Gen) Regs, reg 29(4)

Example

The claimant is paid IS in arrears and her benefit week ends on a Wednesday.

Her husband's P/T employment is terminated without notice on 23 August, which is after the date of claim. He receives his normal week's earnings, one week in hand, four days holiday pay and two weeks in lieu of notice on 23 August.

The DM determines that the periods over which the earnings would be taken into account overlap.

The earnings are treated as paid on Thursday 22.8.96, and taken into account as follows for a total of four weeks and four days

1. the normal week's earnings and the week in hand payment for the period 22.8.96 - 4.9.96
2. two weeks in lieu of notice for the period 5.9.96 - 18.9.96
3. four days holiday pay for the period 19.9.96 - 22.9.96.

Calculation of weekly amount

Period of a week or less

25063 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment¹. But see 25071 et seq and 25086.

1 JSA Regs, reg 97(1)(a); IS (Gen) Regs, reg 32(1)(a)

Period of a month

25064 Where the payment is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52¹.

1 JSA Regs, reg 97(1)(b)(i); IS (Gen) Regs, reg 32(1)(b)(i)

Example

A payment of £100 is made for a period of a month. The DM calculates that the weekly amount is £23.07 (£100 x 12/52).

Period of three months

25065 Where the payment is for a period of three months the weekly amount should be worked out by

1. multiplying the amount of the payment by four **and**
2. dividing the result by 52¹.

1 JSA Regs, reg 97(1)(b)(ii); IS (Gen) Regs, reg 32(1)(b)(ii)

Example

A payment of £100 is made for a period of three months. The DM calculates that the weekly amount is £7.69 (£100 x 4/52).

Period of a year

Income which is not working tax credit

25066 Where the payment of income is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 JSA Regs, reg 97(1)(b)(iia); IS (Gen) Regs, reg 32(1)(b)(iia)

Working tax credit

- 25067 Where a payment of WTC is made in respect of a year then the DM should divide the award of WTC by the number of days in the year and multiply the result by 7¹. This means that the divisor will be either 365 days or, in a leap year, 366 days.

1 JSA Regs, reg 97(1)(b)(iii); IS (Gen) Regs, reg 32(1)(b)(iii)

Period of more than a week

- 25068 Where the payment is for more than a week, and DMG 25063 - 25067 does not apply, the weekly amount should be worked out by
1. multiplying the amount of the payment by seven **and**
 2. dividing the result by the number of days in the period for which the payment is made¹.

1 JSA Regs, reg 97(1)(b)(iv); IS (Gen) Regs, reg 32(1)(b)(iv)

Example

A payment of £100 is made for a period of four weeks. The DM calculates that the weekly amount is £25 (£100 x 7/28).

25069 - 25070

Calculation of amount where only part of payment overlaps benefit week

- 25071 Where a payment for one week or less is treated as paid before the first benefit week of the claim, it may fall to be taken into account for only some days in the first benefit week. The DM should determine the amount to be taken into account by
1. multiplying the amount of the payment by the number of days in the period of the overlap **and**
 2. dividing the result by the number of days in the period for which payment is made¹.

Note: If the period the payment overlaps is a part week see DMG Chapter 33.

1 JSA Regs, reg 97(2); IS (Gen) Regs, reg 32(2)

Treatment of particular kinds of payments from employment

Introduction

26037 The law¹ gives some examples of what earnings can include (see DMG 26013). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in DMG 26040 - 26096.

1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1)

Employment ended

26038 Some payments are made to employees because their employment has ended. How these payments affect a claim for JSA or IS will depend on

- which benefit has been claimed
- whether the work was P/T
- whether the work was remunerative.

26039 Guidance on the treatment of payments made because employment has ended is given in DMG 26500 et seq.

Accommodation provided by employer

26040 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored. Where no other payment is made to the employee, or any payment being made seems too low, the DM should consider whether to treat the claimant as having earnings or greater earnings (see DMG 26180 et seq).

Actors and entertainers

26041 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

26042 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

26043 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to IS or JSA to decide whether earnings are from employment as an employed

earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Note: from 6 April 2014, HMRC treat actors and entertainers as self-employed for NI (and generally tax) purposes¹ and they now pay Class 2 or 4 contributions.

1 Social Security (Categorisation of Earners) (Amendment) Regulations 2014

Example 1

Laura is an actress. She makes a claim for JSA because she has left her partner who was in F/T employment. Her acting engagements are sporadic, and she is not currently working. She continues to look for work and remains on her agent's books. She has been booked for some future engagements, but nothing substantial, and has not worked for several weeks. She says that she could find more substantial acting work at any time, that being the nature of work. In the year prior to the current claim, the claimant has had a number of engagements in advertising and the theatre as well as three separate, short term, engagements with the BBC to appear in three separate dramatic productions. Her most substantial earnings were derived from these engagements with the BBC. She states that she was actually employed by the BBC under a contract of service and says that the fact that she paid class 1 contributions supports this contention. As such she argues that her earnings from the BBC should not be included when working out her earnings from self-employment. The DM

- decides that the claimant is gainfully employed as a S/E earner (see DMG 27019 - 27023)
- considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fell to be taken into account with her other earnings from self-employment
- decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

Example 2

Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 contributions.

The DM decides that Craig's employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company,

Remuneration for period before employment ended

- 26640 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. Such pay is due because of the employment itself not because of its termination. It is not a compensation payment.
- 26641 Severance payments may be made when employment ends. Such payments may be worked out on past years of service in the employment. But they are not made for a period before the employment ended. They will not be exempt from the definition of a compensation payment¹.

1 R(U) 5/92

Remunerative work

- 26642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer, when the employment ends. It does not include any
1. awards made under employment protection or trade union law (including “out of court” settlements)
 2. retainers including
 - 2.1. statutory guarantee payments
 - 2.2. payments made where a person has been suspended on medical or maternity grounds.

1 JSA Regs, Sch 6, para 1

- 26643 If the remunerative work of the claimant’s partner has ended because of retirement, disregard any earnings due to be paid for that employment if on retirement the partner
1. is entitled to RP **or**
 2. would be entitled if the contribution conditions were satisfied¹ **or from 6.4.16**
 3. is entitled to a state pension **or**
 4. would be entitled if the minimum number of qualifying years were met².

1 JSA Regs, Sch 6, para 1A;

2 The Pensions Act 2014 (Consequential, Supplementary and Incidental Amendments) 2015, a16

Part-time work

- 26644 The employment that ends may have been P/T, that is **not** remunerative (see DMG Volume 4, Chapter 20). How this affects the claim will depend on when the employment ended.
- 26645 If employment ends **before** the first day of entitlement disregard any earnings except¹ any
1. payment by way of a retainer including
 - 1.1. statutory guarantee payments

- 1.2. payments made where a person has been suspended on medical or maternity grounds.
2. awards made under employment protection or trade union law (including “out of court” settlements)

1 JSA Regs, Sch 6, para 2

26646 If employment ends **on or after** the first day of entitlement, take any earnings from it into account in the normal way.

26647 The employment will not have ended where

1. the contract of employment is still current **or**
2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because
 - 2.1 there is some express arrangement that employment will resume **or**
 - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

26648 - 26650

Emoluments

26651 Emoluments are forms of profit or gain from employment, including perks or advantages of the employment. They may be in money or in kind. They accrue while the claimant is employed but may not be paid until the employment ends. Examples are

1. payments made for items that the employer had previously agreed to pay, for example subscriptions to a private health scheme, or payment of a child's school fees
2. payments of employees' expenses incurred during the employment, for example a car mileage allowance, travelling expenses, or the cost of overnight accommodation
3. rights under a share option agreement¹
4. pension lump sums, where entitlement accrued during working life and not simply because of the employment ending. Employees are automatically entitled to such lump sum payments from their pension schemes.
5. lump sum payments of commuted pension where entitlement to the pension accrued before the employment ended. These may be paid under schemes that allow employees to cash in part of their weekly pension entitlement. The amount cashed in is then taken as a lump sum.

Calculation of income tax, contributions and qualifying premium

Introduction

27260 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 27270 et seq) **and**
2. Class 2 contributions (see DMG 27297 et seq) **and**
3. Class 4 contributions (see DMG 27316 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 27326).

1 JSA Regs, reg 101(4)(b) & (c); IS (Gen) Regs, reg 38(3)(b) & (c)

27261 The DM should base deductions for DMG 27260 **1. - 3.** on the chargeable income for the assessment period.

27262 - 27265

Chargeable income

27266 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

1. in the case of a S/E child minder, one third of the gross receipts of that employment² **or**
2. in the case of a partnership, the person's share of
 - 2.1 the gross receipts of the employment less
 - 2.2 any allowable business expenses³ **or**
3. in any other case, the person's
 - 3.1 gross receipts of the employment less
 - 3.2 any allowable expenses⁴.

1 JSA Regs, reg 102(5); IS (Gen) Regs, reg 39(3); 2 JSA Regs, reg 102(5)(b); IS (Gen) Regs, reg 39(3)(b); 3 JSA Regs, reg 101(5); IS (Gen) Regs, reg 38(4); 4 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a)

27267 The calculation at DMG 27266 1. - 3. should not include any deductions for

1. notional income tax **or**
2. SS/NI contributions **or**
3. premiums for a personal pension scheme.

27268 - 27269

Deduction for notional income tax

27270 The DM should use the tax rates and allowances for the year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Note: from April 2016 the Scottish Government can set its own rate of income tax¹. DMs should ensure that the correct tax rate is used.

1 the Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016

Example

Andrew makes a claim for IS in June 2013. The DM accepts as evidence of his earnings his cash flow accounts up to the tax year ending the previous April. The tax rates and allowances used to calculate the notional tax deduction are those for the previous tax year.

Tax allowances

27271 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only. The rates of income tax allowances are in Appendix 1 to this Chapter.

27272 - 27273

Personal allowance

27274 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (see Appendix 1 to this Chapter), but for JSA and IS purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

27275 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1 to this Chapter.

27276 - 27287

Calculation of deduction

27288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to 3.
3. deduct the personal allowance (see Appendix 1 to this Chapter)
 - 3.1 in full if the assessment period is a year **or**
 - 3.2 on a pro rata basis if the assessment period is less than a year
4. multiply the first £34,800 (08/09 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (see Appendix 1 to this Chapter)
5. round up where necessary.

Note 1: Prior to 2008/2009 tax year there were 2 rates of tax, a starting rate and a basic rate. (See Example 2 below and Appendix 1 to this Chapter).

Note 2: From April 2016 the Scottish Government can set its own rate of income tax² – DMs should ensure that the correct tax rate is used.

1 JSA Regs, reg 102(1)(a) & (b) & (4); IS (Gen) Regs, reg 39(1); 2 the Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016

Example 1

Sam is a married man aged 45. He works P/T as a S/E gardener and claims JSA. The DM determines that the assessment period is for a year and calculates the chargeable income for the assessment period as £15,500.

The DM calculates the notional income tax as follows:

| | £ | |
|--|-----------------|-------------|
| Chargeable income | 15,500.00 | less |
| Claimant's personal allowance (08/09 rates) | 6,035.00 | |
| | 9,465.00 | |
| £9,465.00 at 20% | 1,893.00 | |
| Total notional income tax | 1,893.00 | |

Example 2

Angela is S/E. She is in receipt of IS. The assessment period is 13 weeks.

| | £ | |
|--|-------------------|-------------|
| Chargeable income | - 15,500.00 | less |
| Claimant's personal allowance | - 1,183.00 | |
| (£4,745 (04/05 rates) x 91/365) | | |
| | = 14,317.00 | |
| The first £503.62 (£2,020 x 91/365) at 10% | = 50.37 | |
| The remainder (£13,813.38) at 22% | + 3,038.95 | |
| Total notional income tax | = 3,089.32 | |

27289 - 27296

Deduction for notional Class 2 contributions

27297 A Class 2 contribution is a flat rate contribution. The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. The Class 2 rates are in Appendix 2 to this Chapter.

Liability for a Class 2 contribution

27298 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small profits threshold (formerly the small earnings exception level). See DMG Appendix 2 for the applicable rates.

27299 The DM should only consider the chargeable income when deciding if a deduction for Class 2 should be made. If appropriate, a deduction should still be made even if the claimant holds a small earnings exception certificate.

27300 - 27303

Calculation of the Class 2 contribution

27304 The deduction for the notional Class 2 contribution should be based on the rate of Class 2 contributions and small profits threshold current at the time of the claim only¹. Take no account of any increases in the contribution rates or small profits threshold. To calculate the amount of the deduction the DM should

1. establish the chargeable income² **and**

2. determine if a deduction should not be made on the grounds of small earnings **and**
3. multiply the weekly rate (see Appendix 2 to this Chapter) by the number of weeks in the assessment period.

*1 JSA Regs, reg 102(3)(a); IS (Gen) Regs, reg 39(2)(a);
2 JSA Regs, reg 102(5); IS (Gen) Regs, reg 39(3)*

27305 - 27315

Deduction for notional Class 4 contributions

27316 A Class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels (see Appendix 2 to this Chapter). These payments are in addition to Class 2 contributions.

27317

Calculation of Class 4 deduction

27318 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the date of claim only¹. Take no account of any increases in the percentage rate and lower and upper levels. The DM should

1. establish the chargeable income **and**
2. decide the number of weeks in the assessment period (if there are less than 52 weeks in the assessment period the DM should calculate **3.** on a pro rata basis) **and**
3. deduct the LEL from chargeable income up to the UEL **and**
4. multiply the remaining figure by the percentage rate to give the notional contribution figure. No account should be taken of evidence of actual payments made or due.

The Class 4 rates are in Appendix 2 to this Chapter.

1 JSA Regs, reg 102(3)(b); IS (Gen) Regs, reg 39(2)(b)

Example 1

Assessment period is 52 weeks

Chargeable income is £7,590.85

Class 4 - Lower level is £4,745 (04/05 rates)

- Upper level is £31,720

Chargeable income 7,590.85 **less**

lower level 4,745

Profit 2,845.85 x 8% = 227.67

Notional Class 4 contributions for 52 weeks is £227.67.

Example 2

Assessment period is 39 weeks or $\frac{273}{365}$ days

Chargeable income for this period is £7,100.00

Class 4 - lower level is $\frac{4,745 \times 273}{365} = 3,549.00$

Chargeable income 7,100.00 **less**

lower level 3,549.00

Profit 3,551.00 x 8% = 284.08

Notional Class 4 contributions for 39 weeks is £284.08.

27319 - 27324

Premiums for personal pension schemes

27325 When calculating S/E earnings the DM should deduct from the chargeable income half of any premium for a personal pension scheme for the relevant assessment period¹.

1 JSA Regs, reg 95; IS (Gen) Regs, reg 30

Example

Sanjay is in receipt of IS, his wife Gita runs a small business from home. Her earnings are calculated over a period of a year. Gita makes contributions under a personal pension scheme on a monthly basis. The relevant assessment period is a year.

The DM should calculate the contributions on a yearly basis and deduct half of this sum from the net profit.

Personal pensions

27326 Personal pension schemes¹ are

1. a scheme under certain pension and taxation legislation² **or**
2. an annuity contract or trust scheme under certain taxation legislation³.

They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 JS Act, s 35; IS (Gen) Regs, reg 2(1); 2 Pensions Schemes Act 93, s 1; Income and Corporation Taxes Act 1988, Chapter 4 of Part 14 & Finance Act 2004, Sch 36, para 1(1)(g); 3 Income and Corporation Taxes Act 1988, s 620 or 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income and Corporation Taxes Act 1988, s 622(3)

decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

27453 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

27454 The fact that an actor or entertainer has periods of employment during which class 1 SS contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to IS or JSA to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Note: from 6 April 2014, HMRC treat actors and entertainers as self-employed for NI (and generally tax) purposes¹ and they now pay Class 2 or 4 contributions.

1 Social Security (Categorisation of Earners) (Amendment) Regulations 2014

Example 1

Laura is an actress. She makes a claim for JSA because she has left her partner who was in F/T employment. Her acting engagements are sporadic, and she is not currently working. She continues to look for work and remains on her agent's books. She has been booked for some future engagements, but nothing substantial, and has not worked for several weeks. She says that she could find more substantial acting work at any time, that being the nature of work. In the year prior to the current claim, the claimant has had a number of engagements in advertising and the theatre as well as three separate, short term, engagement with the BBC to appear in three separate dramatic productions. Her most substantial earnings were derived from these engagements with the BBC. She states that she was actually employed by the BBC under a contract of service and says that the fact that she paid class 1 SS contributions supports this contention. As such she argues that her earnings from the BBC should not be included when working out her earnings from self-employment. The DM:

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 27020 - 27023)
2. considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and

as such the earnings fell to be taken into account with her other earnings from self-employment

3. decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

Example 2

Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 SS contributions.

The DM decides that Craig's employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

27455 - 27469

Chapter 28 - Income other than earnings

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- 2.1 work-related requirement **or**
- 2.2 an interview relating to
 - 2.2.a the imposition of work-related requirements **or**
 - 2.2.b verifying a person's compliance with a work-related requirement **or**
 - 2.2.c assisting a person to comply with a work-related requirement

the amount of new style ESA to take into account is the amount before a reduction is made¹.

Note: New style ESA means ESA as amended from 29.4.13 to remove references to ESA(IR)².

*1 JSA Regs, reg 103(5B); IS (Gen) Regs, reg 40(6)(c); WR Act 07, s 11J;
2 Part 1; WR Act 12, Sch 3 & Sch 14, Part 1: ESA Regs 08, reg 2(1)*

Overpayment recovery from other income

28008 Except where DMG 28004 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount actually received by the claimant, unless the circumstances in DMG 28009 apply. Where a retrospective change creates an overpayment, please see the guidance at DMG 25047.

Example

Paul is in receipt of JSA(IB). His partner, Lorna, works and is in receipt of WTC. HMRC has awarded WTC at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Lorna actually receives is £28 per week. When determining the amount of WTC to take into account on Paul's award of JSA(IB), the DM takes into account Lorna's WTC of £28 per week.

28009 If the claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 28576 et seq).

Deduction of income tax

28010 Any tax actually paid, or due to be paid¹, should be deducted when calculating any income that is to be

- 1. taken fully into account **or**
- 2. disregarded in part².

Note 1: Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

1 R(IS) 4/05; 2 JSA Regs, Sch 7, para 1; IS (Gen) Regs, Sch 9, para 1

Note 2: From April 2016 the Scottish Government can set its own rate of income tax 1 – DMs should ensure that the correct tax rate is used.

1 the Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016

Example

Jack makes a claim for IS on 5 June. His partner has been receiving RP of £106.50 a week since April. Jack provides a forecast tax liability which estimates that his partner will be liable for £79.00 tax under the HMRC Tax Self Assessment process on this year's RP paid to her.

The DM calculates the amount of RP to be taken into account as:

£106.50 a week RP being paid less £1.52 a week tax [$£79 \div 52$] = £104.98. The DM takes £104.98 RP a week into account.

Questions on the treatment of income

28011 The DM should direct further enquiries if there is any doubt whether income fits into any of the definitions in this Chapter. Enquiries will usually be to the paying authority and should be made before any decision is given.

28012 After deciding whether any disregards apply, the DM should calculate

1. the period over which the income should be taken into account **and**
2. the weekly rate at which the income should be taken into account.

28013 - 28049

Income taken fully into account

Types of income taken fully into account

[See DMG Memo IS/JSA 64]

28050 When calculating income other than earnings for IS and JSA(IB)¹ DMs should take

1. Annuity income
2. BA
3. CA
4. CHB
5. cash in lieu of concessionary coal
6. CTC
7. ESA(Cont)
8. Ministry of Justice ex gratia incapacity allowances (previously paid by the Home Office)
9. IB
10. IIDB
11. JSA(Cont)
12. MA
13. personal pensions
14. PB and MDB scheme
15. refund of income tax
16. RP
17. SDA
18. SP
19. War orphan's pension
20. WTC
21. WP
22. WC

fully into account. These are most common types of income that DMs deal with although there are other types too. Detailed guidance is given in DMG 28052 et seq.

1 JSA Regs, reg 103(1); IS (Gen) Regs, reg 40(1)

28051 Payments of

1. income from certain disregarded capital
2. income from insurance policies
3. income from certain sub-lets
4. occupational pensions
5. income for people attending court

are normally taken into account in full.

Retirement pension

28076 RP should be taken fully into account. It is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C or D).

Note: SP replaces RP for people reaching pensionable age on or after 6.4.16.

28077 RP may be made up of the following elements

1. a BP
2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 28367 if the dependant is not a member of the family for IS or JSA(IB) purposes)
3. an additional pension for people who were in non-contracted out employment
4. Graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme
5. Increments (of RP) for deferred retirement
6. invalidity and age additions.

28078 A pensioner who has been in employment that was contracted out of SERPS may be entitled to

1. GMP instead of additional pension through an occupational pension scheme **and**
2. increments to an occupational pension and guaranteed minimum pension if retirement was deferred.

The DM should take these payments fully into account as an occupational pension.

Note: The Pension Act 2014 abolishes contracting out for salary related occupational pension schemes from 6.4.16.

Severe disablement allowance

28079 SDA should be taken fully into account. It is a non contributory benefit payable after six months of illness. SDA was abolished in April 2001 but some claimants may continue to receive it in certain circumstances (see DMG Chapter 57).

State Pension

28080 SP replaces RP for people reaching pensionable age on or after 6.4.16. and should be taken fully into account. It is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C) in limited circumstances only.

28081 SP does not consist of individual elements like RP (BP, AP & GRB etc.) and will generally be based only on the claimant's NI record. Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse or civil partner's AP, deferred RP or deferred GRB,
2. the claimant receives a transitional rate of SP (for women who paid reduced rate NI) **and**
3. the claimant is awarded a Shared Additional Pension (SAP) upon divorce.
4. Increments (of SP) for deferred retirement.

28082 SP entitlement may be at:

1. the full rate **or**
2. the reduced rate **or**
3. the transitional rate.

28083 A pensioner who has been in employment that was contracted out of SERPS may be entitled to GMP instead of additional pension through an occupational pension scheme

The DM should take these payments fully into account as an occupational pension

Please see DMG chapter 74 for full details.

Note: SP is payable from the date of entitlement to the date entitlement ends, so there could be part week payments at the beginning and end of awards. This does **not** apply where a change of circumstance (inheritance for example) leads to a change of entitlement during an award.

War orphan's pension

28084 War orphan's pension should be taken into account in full.

Widow's benefit (widow's payment, widow's pension)

- 28085 WPT, which is paid as a lump sum should be treated as capital. In addition WP claimed prior to 9 April 2001 may be paid. The DM should take WP fully into account.

Working tax credit

- 28086 WTC should be taken fully into account. It is paid to employees or to the S/E earner direct to their bank account. Where appropriate WTC includes an element for childcare paid to the main carer.

Note: DMG Chapter 25 gives guidance about the date on which WTC is treated as paid and also on circumstances where WTC is incorrectly paid.

Workmen's compensation (supplementation) scheme

- 28087 WC (Supp) which replaced WC for old cases should be taken fully into account. It is paid for industrial injuries and diseases which were caused by employment before the start of the Dis B scheme.
- 28088 Any attendance allowance paid with WC (Supp) should be disregarded. See DMG 28352 et seq for guidance on attendance allowances.

28089

