

Chapter 48 - General rules on income

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Chapter 48 - General rules on income

Introduction

General rules

Meaning of claimant and partner

48001 Claimant means¹ a person who has claimed ESA. Partner means² where a claimant

1. is a member of a couple, the other member of that couple
2. is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage.

1 WR Act 07 s 24(1); 2 ESA Regs, reg 2(1)

48002 Couple means¹ two people who are

1. married to, or civil partners of, each other and are members of the same household **or**
2. not married to, or civil partners of, each other but are LTAMC.

Note: Where one or both members of a couple are under the age of 16, they cannot be a couple. This is because the person under 16 is a child and therefore not a man or a woman, or not eligible to register as a civil partner.

1 ESA Regs, reg 2(1)

48003 Polygamous marriage means¹ any marriage which was entered into under a law which permits polygamy where

1. one of the parties to it is married to more than one person **and**
2. the claimant, the other party to the marriage and the additional spouse are members of the same household

1 ESA Regs, reg 2(1)

The calculation and treatment of income

- 48004 This Chapter deals with the calculation and treatment of various types of income and explains
1. how to treat the income of the claimant and any partners - see DMG 48008 et seq
 2. how to decide the period over which an income should be taken into account - see DMG 48030 et seq
 3. how to calculate the weekly amount of an income - see DMG 48079 et seq
 4. the special rules for modifying the amount taken into account - see DMG 48091 et seq.
- 48005 Other Chapters deal with other aspects of income, including
1. which incomes are fully or partly disregarded - see DMG Chapter 51
 2. when to treat capital as income - see DMG Chapter 51 (for income treated as capital see DMG Chapter 52)
 3. when to treat claimants as possessing income they do not possess (known as notional income) - see DMG Chapter 51
 4. the treatment of various types of income, including
 - 4.1 earnings of employed earners - see DMG Chapter 49
 - 4.2 earnings from self-employment - see DMG Chapter 50
 - 4.3 income other than earnings - see DMG Chapter 51
 - 4.4 liable relative payments - see DMG Chapter 51
 - 4.5 student's income - see DMG Chapter 51
 - 4.6 how to treat income when calculating part weeks - see DMG Chapter 46
 - 4.7 income in urgent cases - see DMG Chapter 54.

Income - ESA(Cont)

- 48006 Unlike ESA(IR), the amount of ESA(Cont) that a claimant receives is not affected by all income. It is affected by
1. any pension payments¹ **and**
 2. any PPF periodic payments² **and**
 3. any councillor's allowances³

which the claimant receives. Guidance on how this affects ESA(Cont) is in DMG Chapter 44.

1 WR Act 07, s 3(1)(a); 2 s 3(1)(b); 3 s 3(1)(c)

48007 Earnings which are income are also relevant to ESA(Cont) when determining whether work is permitted work¹. When the DM is determining the amount of weekly earnings for permitted work, the following guidance from this chapter should be applied: DMG 48048 - 48058, DMG 48070 - 48075, DMG 48079 - 48087 and DMG 48090 - 48095.

1 ESA Regs, regs 45 & 88

Income of the claimant's partner - ESA(IR)

48008 In a claim for ESA(IR), the DM should calculate the income of the claimant's partner in the same way as for the claimant¹. This income should then be treated as the claimant's income². But DMs should consider if the circumstances in DMG 48009 to DMG 48017 applies. Income paid to, or in respect of a child or young person who is a member of the claimant's family must not be treated as the claimant's income³. See DMG Chapter 51 for definitions of child, young person and family.

1 reg 83 (1); 2 WR Act 07, Sch 1, para 6(2); 3 ESA Regs, reg 83(2)

Treatment of income - couples

48009 Special rules apply to the treatment of income for certain couples and members of polygamous marriages where the claimant or partner is aged less than 18¹. The DM should not take any partners income fully into account if ESA(IR) is not paid for that partner. The amount that the DM should disregard depends on how the couple's personal allowance has been calculated². The DM should treat any remaining balance of the partner's income in the normal way. A further disregard may apply.

1 ESA Regs, reg 83 (4); 2 Sch 4, paras 1(3)(e), (f), (g), (h) or (i)

48010 The claimant's income should be calculated in the normal way.

Couple - both members aged less than 18

48011 Where both members of a couple are aged less than 18 the DM should disregard the amount of the partner's income that is the difference between the personal allowance for¹

1. couples where both members are less than 18 **and**
2. a single claimant aged less than 25.

1 ESA Regs, reg 83(4)(a)

Example

Mark is aged 17, he claims ESA. He has a partner, Esther, who is aged 16. The DM decides that Mark is entitled to ESA(IR) of £94.95 per week.

Esther starts working 14 hours per week, she earns £55 per week.

The DM decides that

1. £47.00 (£94.95 - £47.95) should be disregarded immediately **and**
2. the balance of £8.00 is subject to the normal £10 earnings disregard.

Couple - only one member aged less than 18

48012 Where only one member of the couple are aged less than 18 the DM should disregard the amount of the partner's income that is the difference between the personal allowance for¹

1. couples where both members are aged 18 or over **and**
2. a single claimant aged less than 25.

1 ESA Regs, reg 83(4)(b)

48013

Polygamous marriage or relationship

48014 If a claimant or partner is married polygamously to two or more members of the claimant's household, the income of each of the members should be treated as the claimant's income¹ and should be calculated in the same way as the claimant's income is calculated².

Note: In certain circumstances special rules apply³ to the income of a member of a polygamous marriage who is a partner aged less than 18 (see DMG 48016).

1 ESA Regs, reg 83(3)(a); 2 reg 83(3)(b); 3 reg 83(5)

48015 In a polygamous relationship, that is, where there is no marriage, the claimant cannot be treated as LTAMC with any other member of that relationship. The DM should treat each member of the relationship as a single claimant or, if appropriate, as a lone parent. Their income should be calculated accordingly.

48016 If a partner

1. is aged less than 18 **and**
2. is a member of a polygamous marriage **and**
3. has no amount allowed in the calculation of the personal allowance

a special disregard applies to any income that the partner receives.

48017 The amount of the partner's income that the DM should disregard is the difference between the personal allowance for¹

1. a couple where both members are aged 18 or over **and**
2. a single person aged 25 or over.

1 ESA regs, reg 83(5)

Example

Hussain claims ESA. He is a member of a polygamous marriage and has three wives. Fatima is aged 24, Parveen is aged 23 and Yasmin is aged 16. Yasmin works 15 hours per week and earns £35.

The DM decides

1. Hussain is entitled to £94.95 personal allowance for himself and Fatima. He is also entitled to £34.45 (£94.95 - £60.50) for Parveen. No personal allowance is payable for Yasmin **and**
2. no income is to be taken into account on Hussain's award. This is because £34.45 (£94.95 - £60.50) of the £35 wages can be disregarded immediately. The balance of £0.55 is subject to the normal earnings disregard of £10, therefore no income is to be taken into account.

Disregard of fractions

48018 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹. Where ESA is awarded for a period which is not a complete benefit week and the applicable amount results in an amount which includes a fraction of a penny that fraction should be treated as a penny².

Note: If deciding the amount of the claimant's income includes more than one calculation, each fraction should be rounded to the claimant's advantage.

1 reg 3(a); 2 reg 3(b)

Calculating entitlement to ESA(IR)

48019 The amount of ESA(IR) a claimant is entitled to is, if there is

1. no income, the applicable amount **or**
2. income, the difference between the income and the applicable amount¹.

Note: If a claimant satisfies the conditions for ESA(Cont) and ESA(IR) see DMG Chapter 44 to decide the amount payable.

1 WR Act 07, s 4(1)

- 48020 When calculating whether a claimant is entitled¹, the DM should
1. calculate the weekly amount of income following the guidance in this part **and**
 2. then add any tariff income from capital.

1 ESA Regs, reg 90(1)

48021 If the claimant's income in the benefit week is more than the weekly applicable amount, the claimant is not entitled to ESA(IR).

Note: If the date of claim is not the first day of the benefit week, the DM does **not** have to consider the special rules for calculating ESA(IR) for a part week. Because the claimant is not entitled, nothing is payable.

48022 - 48029

Period over which income is taken into account

Calculating the period

- 48030 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 48059)
 3. the date on which the income is due to be paid (see DMG 48031 et seq)
 4. the date on which the income is treated as paid (see DMG 48048 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 ESA that would be payable without the income **and**
 - 5.2.b any disregard the DM would normally allow on the weekly amount of the income.

See DMG Chapter 49 on earnings disregards and DMG Chapter 51 on other income with partial disregards.

Note 1: If the income is a payment of earnings when employment ends see DMG 48076 where different kinds of earnings are received for overlapping periods, and DMG Chapter 49 for the period over which the payment is taken into account.

Note 2: The guidance in DMG 48031 - 48095 does not apply to income from self-employment.

1 ESA Regs, reg 91(2)

Date on which income is due to be paid

48031 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.

48032 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

48033 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

48034 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

48035 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 48076 where different kinds of earnings are received for overlapping periods, and DMG Chapter 49 for the treatment and effect of the earnings on ESA.

Notice given and worked

48036 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.

48037 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

48038 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
2. wages held in hand

3. holiday pay
4. a payment in lieu of notice.

See DMG Chapter 49 if the claimant is due a payment when employment has ended but this has not been paid. The last day of employment is not necessarily the same as the last day the claimant attended work.

1 R(SB) 23/84

Employment terminated by employee without notice

48039 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay

1. wages earned between the end of the employee's previous pay period and the last day of employment
2. wages held in hand
3. holiday pay

on the day that each payment is due to be paid.

48040 - 48047

Date on which income is treated as paid

48048 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 48031 et seq.

Note: There are no longer any special rules that apply to the date on which WTC is treated as paid.

Income due before the first benefit week of the claim

48049 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 48090 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 48059 2.1).

1 ESA Regs, reg 93(1)(a)

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

48050 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 48090 if the payment is UC, ESA, JSA, IS, MA, IB, or SDA, or DMG Chapter 46 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 48059 2.1).

1 ESA Regs, reg 93(1)(b)

Example 1

The claimant is sick and receives ESA(IR) fortnightly in arrears. His benefit week ending day is Wednesday.

On Friday 16 August he advises DWP that he has received his first payment of income from an insurance policy (payable when a person is unable to work) on that day. The payment is made on the day it is due. The DM treats the payment 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 due to be issued on Wednesday 21 August.

Example 2

The claimant is sick and receives ESA(IR). Her benefit week ending day is Thursday. She receives one week's benefit for the period 15 November to 21 November on 23 November.

On 22 November, she advises the office 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 issued for that week.

The DM treats the earnings as paid on 22 November, which is the first day of the first benefit week in which it is practicable to take the payment into account.

48051 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 ESA has been made.

48052 - 48053

Treatment of income paid incorrectly to the claimant

48054 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

48055 If a person who has ceased employment confirms when they claim ESA 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 5.11.09 and made a claim for ESA on Friday 6.11.09. Her benefit week ending is a Tuesday. Janet 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 4 week WTC run on for the period 6.11.09 to 3.12.09. WTC was treated as paid on Wednesday 4.11.09 and taken into account by the DM until BWE 1.12.09.

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 ESA 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 ESA(IR).

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 ESA(IR) 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 ESA(IR) 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

48056 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 48031). But see DMG 48090 if the income is UC, ESA, JSA, IS, MA, IB or SDA.

Arrears paid on due date

48057 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 48070 et seq)² **and**
 - 2.2 from the date on which they are treated as paid.

1 ESA Regs, reg 93(1)(b); 2 reg 91(2)(a) & (b)

Example

The claimant's partner has P/T earnings of £30 weekly due each Thursday. ESA(IR) is paid in arrears and the claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £40 weekly from 5 July, but the agreement says that the increase is not payable until 1 August, when payment is made at the new rate with three weeks arrears, a total of £70.

The DM treats the payment as made on 31 July.

The new rate of £40 is taken into account in the benefit week beginning 31 July, and the £30 arrears are taken into account for the period 31 July to 20 August.

The total amount of earnings taken into account in the benefit weeks beginning 31 July, 7 August and 14 August is £50 (£40 plus £10 arrears).

From benefit week beginning 21 August, the new weekly rate of £40 is taken into account.

Arrears paid after the due date

48058 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 ESA Regs, reg 93(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

48059 In ESA a benefit week¹

1. is a period of seven days ending with a day which the DM directs **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 first benefit week following the date of claim **or**
 - 2.2 the last day on which ESA is paid if it is in payment for less than a week.

1 ESA Regs, reg 2(1)

48060 - 48069

Period for which payment is made

Identifiable period

48070 If the period for which a payment is made can be identified, it should be taken into account

1. for an equivalent period¹ (for example a payment for a week should be taken into account for a week) **and**
2. from the date decided in DMG 48048 et seq.

Note: A capital payment that is treated as income will often not be payable for an identifiable period. See DMG 48074 for guidance on payments not payable for an identifiable period.

1 ESA Regs, reg 91(2)(b)

Monthly paid income

48071 Where a payment is in respect of a month, it should be taken into account for a period¹

1. beginning with the date the payment is treated as paid **and**
2. ending with the date immediately before the date the next monthly payment would have been treated as paid (whether or not the next monthly payment is actually paid).

But see DMG Chapter 49 if the payment is made because the employment has ended.

1 ESA Regs, reg 91(2)(a)

Example

John is entitled to ESA(IR) and his BWE day is Monday.

John's partner is paid SSP on the last day of each month. On 31 March she received three weeks SSP of £217.65 [$£72.55 \times 3$ weeks].

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

The weekly amount is taken into account for the following period

BWE 31 March - £50.22

BWE 7 April - £50.22

BWE 14 April - £50.22

BWE 21 April - £50.22

BWE 28 April - £50.22

The next payment of SSP would be due to be paid on 30 April (treated as paid on 29 April), and the weekly amount would be taken into account for the period from BWE 5 May to BWE 26 May.

Employer's pay arrangements

48072 Where an employer has specific pay arrangements, which means 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 49 if the payment is made because the employment has ended.

Note: Earnings from holiday pay and compensation payments (see DMG Chapter 49), which are made for part of a day should be taken into account for a day².

1 R(IS) 10/95; 2 ESA Regs, reg 91(7)

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

48073

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 48074. Appendix 1 to DMG Chapter 49 lists the reserve forces.

1 ESA Regs, reg 91(4A)(a)

48074 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 ESA Regs, reg 91(4A)(c); reg 91(4A)(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 ESA(IR) and his partner recently joined the Army Reserve. She takes part in a training exercise as part of her first year in the Reserve. Dylan's partner receives payment in respect of her 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 48048 et seq) as a weekly amount (see DMG 48079 et seq). The payment is subject to a disregard.

Example 2

Helen is in receipt of ESA(IR) and her partner recently joined the Army Reserve. He takes part in a training exercise as part of his first year in the Reserve. Helen's partner receives payment in respect of his 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 48048 et seq) as a weekly amount (see DMG 48079 et seq). The payment is subject to a disregard.

No identifiable period

48075 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 49)² by the total of the
 - 1.1 weekly amount of ESA 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 ESA 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.

Note: See DMG Chapter 49 if the payment is made because employment has ended.

1 ESA Regs, reg 91(2)(c); 2 reg 96(3); 3 Sch 7; 4 Sch 8; 5 Sch 8

Example

Sam is in receipt of ESA(IR) of £45 per week and his partner 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. Sam's partner's employer offers her a payment of £6,500. 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, there is the option of taking a net payment of £650 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.

Sam's partner decides to accept the sum of £650 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 48074 1. where:

£650 is divided by £65 (ESA(IR) of £45 plus £20 disregard) = 10

The DM takes the payment into account for 10 weeks at the weekly rate of £65.

- 48076 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 week¹.

1 ESA Regs, reg 91(2)(c)

Example

Terry becomes ill and becomes entitled to ESA(IR) - his employment hasn't ended. Prior to his illness Terry worked in a bakery but did not qualify for SSP. Three weeks after he claims ESA the bakery pays Terry a one-off bonus of £150. The period for which the payment was made is not identifiable. Terry would be entitled to ESA(IR) of £70 a week without the payment. The £150 payment is divided by £70. The DM determines the claimant's income is £70 a week for a period of 2 1/7 weeks (two weeks and one day).

Different kinds of earnings received for overlapping periods

48077 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 48048 et seq¹ **and**
3. in the following order²
 - 3.1 normal earnings including wages held in hand
 - 3.2 pay-in-lieu of notice or remuneration
 - 3.3 payment of compensation in respect of part-time employment
 - 3.4 holiday pay received within four weeks of the date employment ended.

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

1 ESA Regs, reg 91(5); 2 reg 91(6)

Example

The claimant is paid ESA(IR) 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 August, 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 August - 4 September
2. two weeks in lieu of notice for the period 5 September - 18 September
3. four days holiday pay for the period 19 September - 22 September.

48078

Calculation of weekly amount

Period of a week or less

48079 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 DMG 48085 et seq and DMG 48094.

1 ESA Regs, reg 94(1)(a)

Period of a month

48080 Where the payment is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by 12 **and**
2. dividing the result by 52¹.

1 reg 94(1)(b)(i)

Example

A payment of £200 is made for a period of a month. The DM calculates that the weekly amount is £46.15 ($£200 \times 12/52$).

Period of three months

48081 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 4 **and**
2. dividing the result by 52¹.

1 reg 94(1)(b)(ii)

Example

A payment of £200 is made for a period of three months. The DM calculates that the weekly amount is £15.38 ($£200 \times 4/52$).

Period of a year

Income which is not working tax credit

48082 Where the payment is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 reg 94(1)(b)(iiia)

Working tax credit

48083 Where an award 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 either be 365 days or, in a leap year, 366 days.

1 ESA Regs, reg 94(1)(b)(iii)

Example

Cath makes a claim for ESA. Her partner is in receipt of WTC. The award of WTC is in respect of a year. The amount of the WTC award is £1,800. There are 365 days in the year. The DM calculates the weekly amount of WTC by dividing £1,800 by 365 and then multiplying the result by 7. This gives a result of £34.52 (see DMG 48018 on the disregard of fractions).

Period of more than a week

48084 Where the payment is for more than a week, and DMG 48080 - 48083 does not apply, the weekly amount should be worked out by

1. multiplying the amount of the payment by 7 **and**
2. dividing the result by the number of days in the period for which the payment is made¹.

1 reg 94(1)(b)(iv)

Example

A payment of £200 is made for a period of four weeks. The DM calculates that the weekly amount is £50 (£200 x 7/28).

Calculation of amount where only part of payment overlaps benefit week

48085 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 46.

1 reg 94(2)

48086 Where a payment is for one week or more, and is to be taken into account for some days only in a 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 the payment is made¹.

Note: If the period the payment overlaps is a part week see DMG Chapter 46.

1 ESA Regs, reg 94(3)

Example 1

The claimant receives £400 from a sickness insurance policy for a period of four weeks on 8 May.

She becomes entitled to ESA(IR) on 28 May because the payments from the policy have stopped. She will be paid fortnightly in arrears on a Thursday.

The payment is treated as paid on 8 May for the period 8 May to 4 June.

The DM determines that for benefit week ending 6 June 5/28ths of the payment should be taken into account and deducts £71.42 ($£400 \times 5 = 2000/28 = 71.42$).

Example 2

The claimant is ill. His benefit week ending day is Wednesday and he is paid ESA(IR) fortnightly in arrears on a Friday.

His partner is sick and had been receiving employer's sick pay.

On Monday 9 December the claimant notifies the office that his partner's final payment of sick pay has been made on Friday 6 December. This payment is £45 and is for a period of one week and three days.

The DM treats the payment as made on Thursday 5 December (the first day of the claimant's benefit week) for the period 5 December to 14 December.

The amount of sick pay taken into account for the period 12 December to 14 December is £13.50 ($£45 \times 3/10$).

48087 Different rules apply if the payment is one of the following benefits

1. ESA
2. IS
3. JSA
4. MA

5. IB
6. SDA
7. UC.

48088 - 48089

Calculating the amount of UC, ESA, JSA, IS, MA, IB or SDA to be taken into account as income in any benefit week

48090 Special rules apply to payments of UC, ESA, JSA, IS, MA, IB or SDA. The DM should

1. treat each day's benefit as a separate payment **and**
2. treat each day's benefit as paid on any day in respect of which it is payable¹ **and**
3. take each day's benefit into account for the day it is paid for² **and**
4. where only part of a payment is to be taken into account for some days only (relevant days) in a specific benefit week and the benefit involved is
 - 4.1 MA, IB or SDA - take into account for the relevant days the amount of benefit payable for those days³ **or**
 - 4.2 ESA, IS or JSA - take into account for the relevant days an amount calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven⁴.

Note: Because payments of UC, ESA, JSA, IS, MA, IB or SDA are made for specific days in each benefit week and payment is attributed to those days, the rules on modifying the amount taken into account at DMG 48091 will not apply to these benefits⁵.

1 ESA Regs, reg 93 (2); 2 reg 91(2)(a); 3 reg 94(4)(a); 4 reg 94(4)(b); 5 reg 94(5)

Example 1

The ESA(IR) claimant's partner receives IBLT of £70 for Tuesday 3 December to Monday 9 December. Her benefit week ends on a Monday. The DM takes a payment of £10 into account for each of the seven days in the benefit week. £70 is taken into account altogether in the benefit week.

Example 2

The ESA(IR) claimant's partner receives IBLT of £20 for Tuesday 3 December to Wednesday 4 December. The claimant's benefit week ends on a Monday. The DM takes £10 into account for 3 December and £10 for 4 December. £20 is taken into account altogether in the benefit week ending Monday 9 December.

Modifying the amount taken into account

Two payments from same source and of same kind in same benefit week

48091 The weekly amount of income taken into account in a benefit week should be restricted where an income

1. is or has been paid regularly **and**
2. two payments
 - 2.1 from the same source **and**
 - 2.2 of the same kind¹

would be taken into account in the same benefit week following the rules in DMG 48048 et seq. The amount of income should be restricted to the weekly amount which is treated as paid first.

1 ESA Regs, reg 94(5)

Example 1

A claimant is sick and receiving ESA(IR) fortnightly in arrears on a Thursday.

He is receiving a bonus payment from a former employer fortnightly on a Friday.

He receives two weeks payment on 15 November and the DM treats the payment as made on 15 November for the period 15 November to 28 November

As the claimant is due to return to work on 2 December, the claimant's former employer pays his final two weeks payment on 26 November

The DM determines that the payment is due to be paid on the date it is actually paid, and treats it as paid on 22 November for the period 22 November to 5 December.

As there would be two payments of income of the same kind from the same source to be taken into account for the benefit week 22 November to 28 November, the DM restricts the amount of income taken into account to the weekly amount of the first payment.

Example 2

On 12 August, Sonya is awarded ESA(IR). She is a Monday BWE and is in receipt of CA which is paid every four weeks by Direct Payment. She receives a payment on 4 August, her next payment is due on 1 September. The DM calculates the weekly amount of CA to take into account when determining the ESA(IR) award.

On claiming ESA the CA Unit changes the way that Sonya's CA is paid. On 1 September Sonya receives four weeks CA and on 8 September she receives one week's CA. Further weekly payments of CA are due each Monday after that date.

The DM determines that as there would be two payments of income of the same kind and from the same source to be taken into account for BWE's 8 September - 22 September, the total amount of income to be taken into account for each week is restricted to the weekly amount of CA paid on 1 September.

Two payments taken into account for same week because of impracticability rule

48092 The special rules in DMG 48091 do not apply if

1. it is not practicable to take an income into account in the benefit week in which it was due **and**
2. in the next benefit week in which it is practicable to take it into account the claimant receives another payment
 - 2.1 of the same kind **and**
 - 2.2 from the same sourcewhich is to be taken into account in the same week¹.

In these circumstances both payments should be taken into account in that week, with a separate disregard on each of the payments, if a disregard is appropriate².

1 ESA Regs, reg 94(5); 2 Sch 7 para 8 & Sch 8 para 40

Example

The claimant is sick and receives ESA(IR) fortnightly in arrears on Mondays.

His payment for 26 August is posted early because that day is a bank holiday.

On 27 August the claimant advises the office that his partner has started P/T work and has received her first weeks P/T earnings on 22 August. She is also due to receive another weeks wages on 29 August.

The DM determines that it is not practicable to treat the first payment of earnings as paid on the first day of the benefit week in which they were due to be paid, because benefit has already been paid for that week.

They are treated as paid on 27 August, the first day of the next benefit week in which it is practicable to take them into account.

The DM then considers the earnings due to be paid on 29 August, and treats them as paid on 27 August because it is practicable to do so.

Both payments are taken into account in the same benefit week, with a separate disregard on each payment.

First of two payments due before date of claim

48093 Where the first of the two payments referred to in DMG 48091 or DMG 48092 was due to be paid before the date of claim the payment should be disregarded¹.

1 ESA Regs, Sch 7 para 11; Sch 8, para 38

Example

The claimant became entitled to ESA(IR) on 5 April and is a Tuesday BWE.

He received four weeks occupational pension from his former employer on 9 March, and the next payment is due to be paid on 6 April.

The DM determines that the payment due on 9 March should be treated as paid on 9 March and should be taken into account for the period 9 March - 5 April.

The DM determines that the payment due on 6 April should be treated as paid on 31 March which is the first day of the benefit week in which it is due.

The payment due on 9 March is disregarded because it is a payment of the same kind and from the same source as another payment which is to be taken into account in the same benefit week, and the payment of 9 March was due to be paid before the first benefit week of the claim.

Averaging of amounts

48094 The weekly amount of a claimant's income may be averaged¹ if the income fluctuates and has changed more than once or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (see DMG Chapter 41 on establishing a recognizable cycle) **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs, reg 94(6)

48095 The averaging of the weekly amount of income does not change the other rules on the treatment of income such as the date that it is treated as paid. This means that income can only be averaged where the claimant is actually in receipt of it.

Example 1

The claimant's partner works two weeks on and one week off.

In the two weeks she actually works she works 12 hours a week and receives earnings of £80 a week.

In the third week, she receives a retainer of £20.

The DM determines that the earnings should be averaged over a period of three weeks because that is the period of the recognizable cycle of work.

The DM calculates that the average weekly amount of earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

and takes that amount into account against the claimant's entitlement. This average amount is taken into account from the fourth week. For the first three weeks, the DM used the actual amounts of earnings paid before an average figure could be calculated.

Example 2

John is in receipt of ESA(IR). His partner Maggie works at a school as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Maggie's earnings during term-time when she is actually in receipt of an income. During the school holidays Maggie receives no earnings so there is no income to take into account.

48096 – 48999

The content of the examples in this document (including use of imagery) is for illustrative purposes only