

# Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF STRATEGIC COMMUNICATIONS)

## Decision Makers Guide

### Volume 14 Amendment 41 – October 2016

1. This letter provides details on Amendment 41; 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/lq/acileeds/guidance/decision%20makers%20guide/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 41 affects chapters 86. The changes
  - 86016: Deleted ref to DMG CH.20
  - 86018: New para on 'recognizable cycle' added.
  - 86019-48: Renumbered following above.
4. The last two amendment packages amending Volume 14 were  
Amendment 40 [June 2016]  
Amendment 39 [January 2016]
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**

**Statutory Instruments**

SS (LP & Misc Amdts) Regs – WP (Emp O) Des  
O 14 (2 pages)

**Chapter 86**

Conts 86000 – 86094 (1 page)  
86011 – 86049 (6 pages)

**Insert**

**Statutory Instruments**

SS (LP & Misc Amdts) Regs – WP (Emp O) Des  
O 14 (2 pages)

**Chapter 86**

Conts 86000 – 86094 (1 page)  
86011 – 86049 (6 pages)

## Statutory Instruments

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The Social Security Lone Parents and Miscellaneous Amendments Regulations 2008 SI 2008 No. 3051	SS (LP & Misc Amdts) Regs
The Social Security (Loss of Benefit) Regulations 2001 No. 4022	SS (Loss of Benefit) Regs
The Social Security (Mariners' Benefits) Regulations 1975 No. 529	SS (Mariners' Ben) Regs
The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987 No. 417	SS (MA) (Work Abroad) Regs
The Social Security (Maternity Allowance) Regulations 1987 No. 416	SS (MA) Regs
The Social Security (Maternity Allowance) (Earnings) Regulations 2000 No. 688	SS (MA) (Earnings) Regs
The Social Security (Maximum Additional Pension) Regulations 2010 No. 426	SS (MAP) Regs
The Social Security (Medical Evidence) Regulations 1976 No. 615	SS (Med Ev) Regs
The Social Security (Miscellaneous Amendments) Regulations 1997 No. 454	SS (Misc Amdts) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2001 No. 652	SS (Misc Amdt) (No. 2) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 No. 641	SS (Misc Amdt) (No. 2) Regs 2010
The Social Security (Miscellaneous Amendments) (No. 3) Regulations 2011 No. 2425	SS (Misc Amdt) (No. 3) Regs 2011
The Social Security (National Insurance Number Information: Exemption) Regulations 1997 No. 2676	SS (NINO: Exemption) Regs
The Social Security (Overlapping Benefits) Regulations 1979 No. 597	SS (OB) Regs
The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664	SS (POR) Regs
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 No. 30	SS (PFA) Misc Amdt Regs 96
The Social Security Benefit (Persons Residing Together) Regulations 1977 No. 956	SS (PRT) Regs

## Statutory Instruments

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The Social Security (Reciprocal Agreements) Order 1995 No. 767	SS (RA) Order 95
The Social Security (Reciprocal Agreements) Order 1996 No. 1928	SS RA Order
The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 No. 469	SS (RP etc) (Trans Provs) Regs
The Social Security (Severe Disablement Allowance) Regulations 1984 No. 1303	SS (SDA) Regs
The Social Security (Savings for Existing Beneficiaries) Regulations 1984 No. 1696	SS (SEB) Regs
The Social Security (State Pension and National Insurance Credits) Regulations 2009 No. 2206	SS (SP & NIC) Regs
The Social Security (Treatment of Postgraduate Master's Degree Loans and Special Support Loans) (Amendment) Regulations 2016 No. 743	SS (Treatment of Postgrad Master's Degree Loans and Special Support Loans) (Amdt) Regs 2016.
The Social Security (Unemployment, Sickness, and Invalidity Benefit) Regulations 1983 No. 1598	SS (U, S, & IVB) Regs
The Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978 No. 529	SS (W & W IVP) Regs
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 No. 642	SS (WB & RP) Regs
The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 No. 643	SS (WB, RP & OB) (Trans) Regs
The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 No. 1926	SS (Wfl for lone parents) Regs
The Social Security (Work-focused Interviews) Regulations 2000 No. 897	SS (Wfl) Regs 00
The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003 No. 455	SS (WTC & CTC) (Cons Amdt) Regs
The Statutory Sick Pay Regulations 1982 No. 894	SSP (Gen) Regs

## Statutory Instruments

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Education (Student Support) Regulations (Northern Ireland) Order SR 1999/192	Support (NI) Order
The Education (Student Support) Regulations	Support Regs
The Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 No. 938	TC Comm No. 3 Order
The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2885	TP (FtT) (SEC) Rules
The Tribunal Procedure (Upper Tribunal) Rules 2008 No. 2698	TP (UT) Rules
The Workmen's Compensation (Supplementation) Scheme 1982 No. 1489	WC(S) Scheme
Work Programme (Employment Officer) Designation Order 2014	WP (Emp O) Des O 14



# Chapter 86 - Earnings

## Contents

### General Rules

<b>Introduction</b> .....	86000
Number of hours worked .....	86001
Earnings of claimant and partner .....	86002
Polygamous marriages.....	86003
Rounding of fractions .....	86004
Effect of earnings .....	86005
The date from which earnings are taken into account .....	86008
Calculating the weekly amount of earnings.....	86011
Averaging of amounts .....	86016
Recognizable cycle.....	86018
Final payments of income .....	86019
Meaning of regular payment.....	86020
Period over which final payments are taken into account .....	86021
Date final payments are treated as paid.....	86022
Arrears of earnings.....	86024
Part-week payments.....	86026

### Earnings of employed earners

<b>Introduction</b> .....	86028
<b>Earnings of employed earners - explanation of terms</b>	
Meaning of employed earner.....	86031
Meaning of earnings .....	86034
Meaning of derived from.....	86036
Meaning of gross earnings .....	86037
<b>Calculation of net earnings</b>	
Deductions from gross earnings .....	86038
Income tax.....	86039
Social Security contributions .....	86040

Occupational pension scheme deductions or personal pension scheme payments .....	86041
Expenses not reimbursed by employer .....	86045
<b>Treatment of particular kinds of payments from employment</b>	
Introduction.....	86050
Employment ended .....	86051
Employment continuing .....	86052
Accommodation provided by employer .....	86054
Actors and entertainers .....	86055
Advance of earnings or loans.....	86058
Bonus or commission.....	86059
Royalties and copyright fees .....	86060
Directors of limited companies .....	86063
Establishing a director's income.....	86064
Payments as a director or other employee.....	86065
Holiday pay.....	86070
Justices of the Peace .....	86071
Travel allowances.....	86072
Subsistence.....	86073
Financial loss allowances.....	86074
Local Authority councillors.....	86076
Basic allowance.....	86078
Special responsibilities allowance .....	86079
Childcare and dependant carers' allowance .....	86080
Expenses.....	86081
Treatment of expenses .....	86085
Payments in kind.....	86088
Payments in lieu of remuneration.....	86090
Retainers .....	86091
Single status payments .....	86092
Special occupations.....	86093
Auxiliary coastguards .....	86094

1. the first day of the benefit week in which the earnings become payable or the amount of the earnings changes, if it is practicable to do so **or**
2. the first day of the benefit week following the payment of the new earnings or new amount of earnings if it is not practicable for them to be taken into account from the day described in 1..

*1 SS CS (D&A) Regs, Sch 3B, para 2*

## **Calculating the weekly amount of earnings**

86011 Where the period for which a payment of earnings is made is a week or less, the weekly amount will be the amount of the payment<sup>1</sup>.

*1 SPC Regs, reg 17(1)(a)*

86012 Where the payment of earnings 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 52<sup>1</sup>.

*1 SPC Regs, reg 17(1)(b)(i)*

86013 Where the payment of earnings 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 52<sup>1</sup>.

*1 SPC Regs, reg 17(1)(b)(ii)*

86014 Where the payment of earnings is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52<sup>1</sup>.

*1 SPC Regs, reg 17(1)(b)(iii)*

86015 Where the payment of earnings is for more than a week, and DMG 86011 - 86014 do 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 made<sup>1</sup>.

*1 SPC Regs, reg 17(1)(b)(iv)*

## **Averaging of amounts**

86016 If the claimant's earnings fluctuate and have changed more than once, or the regular pattern of work means that the claimant does not work the same hours every week, the weekly amount of a claimant's earnings should be averaged<sup>1</sup>. The DM should work out the average weekly earnings over

1. where the claimant does not work the same hours every week and there is a recognized cycle of work, over the period of the complete cycle, (including any periods where the claimant does no work, but not including any other absences) **or**
2. where 1. does not apply
  - 2.1 the last two payments if those payments are one month or more apart **or**
  - 2.2 the last four payments if the last two payments are less than one month apart **or**
  - 2.3 such other payments as may enable a more accurate average weekly amount to be calculated.

*1 SPC Regs, reg 17(2)*

86017 The last payments for the purposes of DMG 86016 **2.1** and **2.2** are the last payments made to the claimant<sup>1</sup>

1. before the date the claim was made or treated as made **or**
2. before a supersession.

*1 SPC Regs, reg 17(3)*

86018 A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle. Where there is a recognizable cycle calculate average hours over one complete cycle. Include, where the cycle involves periods where the person does no work, those periods, but disregard any other absences<sup>1</sup>. See [DMG Chapter 20](#) for full guidance on identifying a recognisable cycle but note that SPC does not have the same attribution rules, specifically the “treat as paid” rule, that exist in working age legislation.

A recognizable cycle could include one of the following scenarios (not exhaustive):

**Scenario 1**

- week 1 X hours
- week 2 Y hours
- week 3 X hours
- week 4 X hours
- week 5 Y hours
- week 6 X hours

There is a recognizable cycle of three weeks (weeks 1 to 3 repeated in weeks 4 to 6).

**Scenario 2**

- month 1 A hours

month 2 B hours

month 3 A hours

month 4 B hours

There is a recognizable cycle of 2 months.

### **Scenario 3**

week 1 X hours

week 2 X hours

week 3 Y hours

week 4 W hours

week 5 V hours

There is no recognizable cycle.

**Note:** A cycle may include weeks in which no work is done.

*1 SPC Regs, reg 17(2)(a)(i)*

### **Example 1**

Bernard is in receipt of SPC and works two weeks on and one week off.

In the two weeks he actually works he receives earnings of £80 a week.

In the third week, he 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 Bernard's entitlement.

### **Example 2**

Gillian is in receipt of SPC. She works and has a zero hours contract. This means that for Gillian, her pay fluctuates from week to week but she has been receiving something each week. As a result of this, Gillian's income has been averaged and taken into account when working out her SPC. It was decided to use a period of six weeks to calculate an average because this looked to provide a representative picture of her pay.

Gillian has been told by her employer that although she is still contracted, there will be no work for her for the next 3 weeks. Gillian will not be paid anything by her employer for the next 3 weeks because she is not required to work.

The average figure taken into account for Gillian's SPC is no longer accurate because she actually has no earnings. The amount of earnings to take into account

for Gillian's SPC award whilst she is not working is **nil**. Once/if Gillian's work resumes, then a new average can be determined based on the actual earnings paid to her. This will mean taking actual amounts earned into account each week until a new average can be calculated.

### **Example 3**

Stephen is in receipt of SPC and normally works the following:

Week 1 – 12 hours	Week 5 – 12 hours
Week 2 – 6 hours	Week 6 – 6 hours
Week 3 – 6 hours	Week 7 – 6 hours
Week 4 – 12 hours	Week 8 – 12 hours

He is paid weekly based on the hours that he works each week. Therefore for week 1, his pay is 12 hours x the hourly rate for the job, in week 2 his pay is 6 hours x the hourly rate for the job and so on.

There is a recognised cycle of work because there is a pattern of work which repeats itself. The cycle is over 4 weeks.

When taking Stephen's earnings into account, his total earnings paid across the 4 week cycle are added up and then divided by 4. This then provides a weekly figure which falls to be taken into account in his SPC award for as long as he is engaged in this cycle of work.

### **Example 4**

Peter works as a playground supervisor at a school. There is a recognised cycle of work based on the school year. This repeats itself every 12 months. Peter's employment contract provides for the payment of earnings of £200 a week during term-time but he receives nothing during the school holidays. Over the course of the cycle he earns £7,600 (£200 x 38 weeks). This is taken into account as £146.15 per week (£7,600 / 52 weeks cycle of work). The amount is taken into account in his SPC award for so long as Peter is employed on this contract.

## **Final payments of income**

86019 From 5.4.04 a new rule was introduced<sup>1</sup> to deal with the treatment of final payments of income. This applies where

1. a claimant has been receiving a regular payment of income **and**
2. that payment is coming to an end or has ended **and**
3. the claimant receives a final payment of that income.

*1 SPC Regs, reg 17ZA(1)*

## Meaning of regular payment

86020 “Regular payment” means<sup>1</sup> a payment of income made in respect of a period as described in DMG 86011 - 86016.

*1 SPC Regs, reg 17ZA(5)*

## Period over which final payments are taken into account

86021 If the circumstances in DMG 86018 apply<sup>1</sup>

1. where a final payment is

1.1 less than **or**

1.2 equal to

the amount of the previous regular payment, the whole of the final payment shall be treated as being paid in respect of a period equal in length to that of the regular period **or**

2. where a final payment is greater than the amount of the previous regular payment, to the extent that it comprises one or more multiples of that amount, **each multiple** shall be treated as being paid in respect of a period that is equal in length to that of the regular period. Any excess shall be treated as being paid in respect of a further period that is equal in length to that of the regular period.

*1 SPC Regs, reg 17ZA(2)*

## Date final payments are treated as paid

86022 A final payment falling within DMG 86020 1. shall be treated as paid<sup>1</sup> on the date the next regular payment would have been paid had payments continued, if not actually paid on that date.

*1 SPC Regs, reg 17ZA(3)*

### Example

Paul’s claim to SPC starts on 15.1.04 and his benefit week commences on a Monday. He has been receiving monthly earnings of £120 paid on the last day of the month since he began claiming SPC. The regular weekly amount taken into account is £27.69 less the appropriate earnings disregard. Paul finishes work on 20.8.04 and on that day receives a final payment of £90. The DM treats this as paid on the last day of the month, i.e. 31.08.04, and takes £20.76 less the disregard into account from BWC 30.8.04 until BWC 20.9.04. From BWC 27.9.04 there is no income to take into account because no payment will be made or treated as made, on 30.9.04.

86023 Each multiple of the final payment falling within DMG 86020 **2.** shall be treated as paid<sup>1</sup> on the dates on which the corresponding number of regular payments would have been made had payments continued.

*1 SPC Regs, reg 17ZA(4)*

### **Example**

Alan's claim to SPC starts on 10.2.04 and his benefit week commences on a Monday. He has been receiving monthly earnings of £80 paid on the last day of the month since the beginning of his claim. He finishes work on 30.9.04 and on that day receives £150 which is his final earnings together with £70 holiday pay. The DM treats the £80 regular payment as paid on 30.9.04 and the balance of £70 as paid on 31.10.04, the date the next regular payment would have been due. The final payment is taken into account at a weekly rate of £16.15 less the appropriate earnings disregard from BWC 25.10.04 until BWC 22.11.04. On 30.11.04, no payment is either made or treated as made, so no earnings will be taken into account from BWC 29.11.04.

### **Arrears of earnings**

86024 Where the claimant receives payments of arrears of earnings, then the DM should decide

1. how much SPC has been paid to the claimant which would have not been paid if the arrears had been paid on time<sup>1</sup> **and**
2. if the current rate of earnings has changed.

If the earnings have changed the DM must supersede the award of SPC. The superseding decision must take effect on the first day of the benefit week in which the claimant receives the new amount of earnings (or if that is not practicable on the first day of the next following benefit week)<sup>2</sup>.

**Note:** the figure at **1.** will be the amount of SPC overpaid and may be recovered from the claimant.

*1 SSA Act 92, s 74(1); 2 SS CS (D&A) Regs, Sch 3B, para 2*

86025 The weekly amount of the arrears for the purposes of determining the overpayment should be calculated by reference to the period that the arrears covers<sup>1</sup>. This means that if the arrears period is one month then the weekly amount of the payment should be determined in accordance with DMG 85033, if it is three months then in accordance with DMG 85034 and so on.

*1 SPC Regs, reg 17(1)*

### **Example**

Mary receives earnings of £25 per week. At the beginning of June Mary tells the DM her earnings have increased to £30 per week and she has received five weeks arrears amounting to £25 for the period 4.5.09 to 5.6.09. The DM supersedes the

award of SPC to take her new regular weekly wage of £30 into account. The £25 arrears relating to the period 4.5.09 to 5.6.09 is a late payment of earnings and the DM calculates the overpayment and the amount to recover by looking at the amount of SPC which would not have been paid if the arrears had been paid on time.

## **Part-week payments**

86026 Part-week payments of SPC may only be made in certain circumstances (see DMG Chapter 79). DMG 79105 provides guidance on the treatment of income for a part-week.

86027 Where a payment of SPC is appropriate in the circumstances described at DMG 79106, the normal income rules will apply<sup>1</sup> (see DMG 86011).

*1 SPC Regs, reg 17(1)*



# Earnings of employed earners

## Introduction

- 86028 This part deals with the calculation and treatment of payments made to SPC claimants who are employed earners. These will usually be earnings paid by an employer, but may be other types of payment.
- 86029 How payments made to employees affect a claim to SPC will depend on
1. whether the work is continuing **or**
  2. whether the work has ended.
- 86030 Earnings from employment as an employed earner which is ongoing whilst the claimant is in receipt of SPC are taken into account, less any appropriate earnings disregard, in the same way as other income.



# Earnings of employed earners - explanation of terms

## Meaning of employed earner

- 86031 The term employed earner means<sup>1</sup> a person who is gainfully employed in GB
1. under a contract of service **or**
  2. in an office (including any elective office) where payments are taxable under Schedule E (PAYE).

*1 SPC Regs, reg 17A(5)*

86032 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

86033 The phrase in an office includes directors of limited companies, clergy, LA councillors, Members of Parliament and sub-postmasters and mistresses.

## Meaning of earnings

- 86034 Earnings means any pay or profit derived from employment and includes<sup>1</sup>
1. bonus or commission<sup>2</sup> (see DMG 86059)
  2. PILOR<sup>3</sup> (see DMG 86090 and 86153)
  3. PILON<sup>4</sup> (see DMG 86156)
  4. holiday pay<sup>5</sup> (see DMG 86160)
  5. retainers<sup>6</sup> (see DMG 86091)
  6. payment made by the employer for expenses which are not wholly exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for
    - 6.1 the employee's travelling expenses between home and work<sup>7</sup> (but see DMG 86081 for councillors) **or**
    - 6.2 any expenses that the employee may have for the care of a family member while the employee is at work<sup>8</sup> (see DMG 86085)
  7. any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of social security contributions to deduct<sup>9</sup> (see DMG 86101)
  8. SSP and SMP<sup>10</sup>
  9. statutory paternity pay<sup>11</sup>
  10. statutory shared parental pay<sup>12</sup>
  11. statutory adoption pay<sup>13</sup>
  12. employers sick or maternity pay<sup>14</sup>.

This list is not exhaustive. See DMG 86050 - 86102 for more examples of what are and what are not earnings.

*1 SPC Regs, reg 17A(2); 2 reg 17A(2)(a); 3 reg 17A(2)(b); 4 reg 17A(2)(c); 5 reg 17A(2)(d); 6 reg 17A(2)(e); 7 reg 17A(2)(f)(i); 8 reg 17A(2)(f)(ii); 9 reg 17A(2)(g); 10 reg 17A(2)(h); 11 reg 17A(2)(i) & (ia); 12 reg 17A(2)(ib) 13 reg 17A(2)(j); 14 reg 17A(2)(k)(i) and (ii)*

86035 Earnings do not include<sup>1</sup>

1. payments in kind (see DMG 86088 - 86089)
2. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment<sup>2</sup>
3. payments of occupational pension<sup>3</sup>
4. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme<sup>4</sup>
5. any payment of compensation made by an Employment Tribunal because of unfair dismissal or unlawful discrimination<sup>5</sup>.

*1 SPC Regs, reg 17A(3); 2 reg 17A(3)(b); 3 reg 17A(3)(c); 4 reg 17A(3)(d); 5 reg 17A(3)(e)*

## Meaning of derived from

86036 The words “derived from” mean having their origins in<sup>1</sup>. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 86034.

*1 R(SB) 21/86*

## Meaning of gross earnings

86037 Gross earnings means the amount of earnings

1. after the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment<sup>1</sup> but
2. before any authorized deductions are made by the employer. These may include
  - 2.1 income tax
  - 2.2 pension contributions
  - 2.3 SS contributions (sometimes called NI contributions)
  - 2.4 TU subscriptions
  - 2.5 payments under a court order
  - 2.6 recovery of any debt.

**Note:** Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings<sup>2</sup>.

*1 R(IS) 16/93, 2 R(TC) 02/03*

# Calculation of net earnings

## Deductions from gross earnings

- 86038 Net earnings are gross earnings less<sup>1</sup>
1. income tax **and**
  2. Class 1 SS contributions **and**
  3. half of any sum paid by the employee towards an occupational or personal pension scheme<sup>2</sup>.

*1 SPC Regs, reg 17(10); 2 reg 17A(4A)*

## Income tax

- 86039 Deduct from gross earnings any income tax deducted by the employer.

## Social Security contributions

- 86040 SS contributions are often called National Insurance Contributions. Reduce gross earnings by any Class 1 contribution deducted by the employer.

## Occupational pension scheme deductions or personal pension scheme payments

- 86041 Deduct from the employee's gross earnings for a normal pay period one half of any amount which
1. a person pays into an occupational pension scheme for that period **or**
  2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension scheme for that period **or**
  3. a person contributes towards a personal pension scheme for that period.

### Example

Sheila earns £60 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her pay period is a week. Her pension contribution is changed into a weekly figure ( $£26 \times 12 \div 52 = £6$  pw) and half of this weekly figure ( $£6 \div 2 = £3$ ) is deducted from her gross weekly earnings ( $£60 - £3 = £57$ ).

- 86042 Occupational pension schemes<sup>1</sup> are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are
1. normally in the form of a pension, all or part of which may be taken as a lump sum

2. payable on death or retirement.

*1 PS Act 93, s 1; SS Act 86, s 86(1)*

86043 Personal pension schemes<sup>1</sup> are arrangements between employees, or S/E earners and pension providers such as insurance companies. 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 PS Act 93, s 1; SS Act 86, s 86(1)*

86044 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period<sup>1</sup>.

*1 R(FC) 1/90*

## **Expenses not reimbursed by employer**

86045 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred<sup>1</sup>.

*1 R(IS) 16/93*

86046 Examples of expenses for which deductions may be made under DMG 86044 are

1. equipment, tools and stationery
2. overalls and specialist clothing
3. telephone calls made entirely for work purposes
4. travelling costs between different work places and any accommodation costs involved.

86047 The expense must be incurred in direct connection with the employer's trade or business<sup>1</sup>. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed<sup>2</sup>.

*1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325; 2 R(IS) 16/93*

86048 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work, would not satisfy the test in DMG 86044. Child minding expenses<sup>1</sup>, and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

*1 R(FC) 1/90*

86049 See DMG 86071 or 86076 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 86085 for more guidance on the general question of expenses.