

# ADM Chapter S3: JSA, self-employed earners and share fishermen

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# **Introduction S3001 - S3002**

## **Introduction**

S3001 This Chapter deals with the calculation and treatment of the earnings of S/E earners and share fishermen.

S3002

# Who is a self-employed earner S3003 - S3007

## Who is a self-employed earner

S3003 A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earners employment<sup>1</sup>.

**Note:** A person may also be employed as an employed earner. This does not stop the person being S/E.

1 JSA Regs 13, reg 2(2); SS CB Act 92, s 2(1)(b)

S3004 A S/E earner enters into a contract for services to a customer

1. on a sole trader basis **or**
2. in partnership with others.

S3005 S/E earners are responsible, to the full extent of their personal fortune, for the debts of the business and are entitled to **either**

1. in the case of a sole trader, all the profits **or**
2. if in a partnership (see **S3400**), the agreed share of the net profits.

S3006 A person may be S/E and also have other work as an employed earner. If so the earnings from each employment should be calculated separately.

S3007 To determine if a claimant is, or has been a S/E earner, the DM should have regard to a number of factors. A determination should be made after weighing up the answers to the following

1. is the claimant's work supervised? A lack of supervision may point towards self-employment.
2. does the claimant have the powers of appointment and dismissal and can they employ a substitute? A power to appoint a substitute may point towards self-employment.
3. in what form does remuneration take? Taxation paid at source may suggest that the employment is not S/E.

- 4.** how long in duration are the contracts of work? Short contracts may point towards self-employment.
- 5.** does the claimant provide their own equipment? Provision of own equipment may point towards self-employment.
- 6.** where does the claimant work? Working from home may point towards self-employment.
- 7.** is the person who engages the claimant for work obliged to provide work? If there is no obligation then this may point towards self-employment.
- 8.** does the claimant have discretion to the hours of work? The greater the discretion, the more likely that the work is self-employment.

# Claims from self-employed earners S3008 - S3009

## Claims from self-employed earners

S3008 Where the DM is considering whether the claimant is a S/E earner then it is important to keep that determination separate from the issue of remunerative work (see ADM Chapter **R2**).

S3009 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order<sup>1</sup>: Is the claimant

**1.** still employed as a S/E earner i.e. still trading

**1.1** if the answer is no then they will not be in employment and earnings from past employment can be disregarded<sup>2</sup> **or**

**1.2** if the answer is yes the DM considers question 2

**2.** carrying out activities connected to the self-employment or in a period of non-activity which is a normal incident of the cycle of work

**2.1** if the answer is no the DM considers question 4

**2.2** if the answer is yes the DM considers question 3

**3.** in remunerative work<sup>3</sup> i.e. is the work 16 hours or more a week

**3.1** if the answer is yes the claimant is not entitled to JSA

**3.2** if the answer is no the DM considers question 4

**4.** in receipt of earnings that are to be taken into account<sup>4</sup> and in respect of what period are the earnings to be taken into account<sup>5</sup>.

**Note 1:** See **S3020** for guidance on whether the claimant is still trading.

**Note 2:** A claimant could be in remunerative work if they are carrying out activities or it is a period of non-activity which is a normal incident in the cycle of work so they are treated as engaged in work. See ADM Chapter **R2** for guidance on remunerative work.

**Note 3:** To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at S3051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09; 2 JSA Regs 13, Sch, para 4;  
3 reg 42(1); 4 reg 60(1); 5 reg 55(1)(a) & (b)

# Directors of limited companies S3010 - S3011

## Directors of limited companies

S3010 A limited company is a legal person<sup>1</sup> and is different from a sole trader or partnership because

- 1.** the company belongs to its shareholders, who share in any distributed profits according to the size of their individual holding **and**
- 2.** the liability of each shareholder is limited to the number of shares taken, or the amount that the shareholder has stood as personal guarantor for. The shareholder is not liable for any amount above the amount unpaid on shares (if any) or the amount guaranteed **and**
- 3.** if **2.** does not apply, liability for debts is limited to the company's capital.

1 R(SB) 57/83

S3011 A limited company, of whatever size, is separate from its employees, officers and shareholders<sup>1</sup>. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company<sup>2</sup> and is an employed earner.

1 R(SB) 57/83; 2 McMillan v Guest 1942, AC 561

# Earnings of self-employed earners S3012 - S3013

## Earnings of self-employed earners

S3012 In S/E cases, earnings are the gross receipts (see S3125) of the employment<sup>1</sup>.

1 JSA Regs 13, reg 60(1)

S3013 S/E earnings do not include

**1.** charges paid to the S/E earner in return for providing BL accommodation<sup>1</sup> (see **S3014**) **or**

**2.** any payment made to the claimant with whom a person is accommodated by virtue of arrangements made under relevant legislation<sup>2</sup> **or**

**3.** any payment made to the claimant for a person who is not normally a member of the claimant's household but is temporarily in the claimant's care by

**3.1** the NHS Commissioning Board<sup>3</sup>

**3.2** an LA (but excluding payments of HB)<sup>4</sup>

**3.3** a voluntary organisation<sup>5</sup>

**3.4** the person concerned under relevant legislation<sup>6</sup>

**3.5** a clinical commissioning group<sup>7</sup>

**3.6** in Wales, a Local Health Board<sup>8</sup> **or**

**4.** any sports award<sup>9</sup>.

**Note:** in S3013 **2.** this includes Kinship Care and Continuing Care payments in Scotland.

1 JSA Regs 13, reg 60(2)(a); 2 reg 60(2)(b)&(ba); Children Act 1989, s 22C(2), (3), (5), (6)(a), 6(b); Social Services and Well-being (Wales) Act 2014, s 81(2), (3), (5) or (6a) or (b); Children (Scotland) Act 1995, s 26; Looked After Children (Scotland) Regulations 2009, reg 33 or reg 51; Children Act 1989, s 59(1)(a) Children and Young People (Scotland) Act 2014, s 73(1)(b); 3 JSA Regs 13, reg 60(2)(c)(i); 4 reg 60(2)(c)(ii); 5 reg 60(2)(c)(iii); 6 reg 60(2)(c)(iv); NHA Act 48, s 26(3A); JSA Regs 13, reg 60(2)(c)(vii); Social Services Well-being (Wales) Act 2014, s 35 or 36; 7 JSA Regs 13, reg 60(2)(c)(v); National Health Service Act 2006, s 14D; 8 JSA Regs, reg 60(2)(c)(vi);



# Board and lodging accommodation S3014 - S3019

## Board and lodging accommodation

S3014 BL accommodation is accommodation<sup>1</sup>

**1.** where the charge for the accommodation includes some cooked or prepared meals that are both

**1.1** cooked or prepared by someone who is not

**1.1.a** the person provided with accommodation **or**

**1.1.b** a member of the family of the person provided with accommodation **and**

**1.2** eaten in that accommodation or associated premises **or**

**2.** provided to a person in a

**2.1** hotel **or**

**2.2** guest house **or**

**2.3** lodging house (see S3015) **or**

**2.4** similar establishment **or**

**3.** that is

**3.1** not provided by a close relative (see **S3016 – S3017**) of

**3.1.a** the person provided with accommodation **or**

**3.1.b** a member of the family of the person provided with accommodation **or**

**3.2** provided on a commercial basis.

1 JSA  
Regs  
13,  
reg  
60(3)

S3015 A lodging house

**1.** is not a private house in which rooms are rented, even if services such as the provision of and washing of bed linen are provided **and**

**2.** is a place where accommodation is offered on a long-term basis **and**

**3.** is the kind of establishment that may have a sign outside offering accommodation.

S3016 A close relative is<sup>1</sup>

**1.** a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, half-brother, sister, half-sister **and**

**2.** the partner of any of those persons in **1.**

1 JSA Regs 13, reg 2(2); R(SB) 22/87

S3017 For the purposes of **S3016**, a child who is adopted becomes

**1.** a child of the adoptive parents **and**

**2.** the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship<sup>1</sup>.

1 R(SB) 22/87

S3018 – S3019

# Deciding if a person is still a self-employed earner S3020 - S3023

## Deciding if a person is still a self-employed earner

S3020 To determine whether a person is still trading and therefore still employed as a S/E earner, the DM should consider the following

- 1.** if there is a reasonable prospect of work in the near future **and**
- 2.** if the business is a going concern and regarded as such by
  - 2.1** the person **or**
  - 2.2** the business's bankers **or**
  - 2.3** any creditors **or**
  - 2.4** others **and**
- 3.** if the person is genuinely available for and actively seeking alternative work **and**
- 4.** if the person hopes or intends to restart work in the business when economic conditions improve **and**
- 5.** if the person is undertaking any activities in connection with the self employment **and**
- 6.** if there is work in the pipeline **and**
- 7.** if the person is regarded as S/E by HMRC **and**
- 8.** if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?<sup>1</sup>. For example,
  - 8.1** by advertising **or**
  - 8.2** by visiting potential customers **and**
- 9.** if the interruption in question is part of the normal pattern of the
  - 9.1** person's work **or**
  - 9.2** work that the person is seeking.

Not all of these questions will be relevant to whether a person is still employed as a S/E earner and the ones that are may not carry equal weight. It will depend on the facts of the particular case. These questions will also be relevant when considering the separate question of remunerative work if it is

determined that self-employment continues<sup>2</sup>.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29;

2 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09

S3021 All nine factors in **S3020** should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness
2. seasonal workers
3. sub-contractors **and**
4. share fishermen.

S3022 Some of the factors in **S3020** may point toward the fact that a person is trading as S/E. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

S3023 The DM should make a determination on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

### **Example 1**

Hugh claims JSA. He is the sole owner of a small roofing firm. Work has stopped temporarily because of the bad weather. He states that

1. he and his bank regard his business as a going concern
2. he has orders in the pipeline, for which he is arranging the order of materials
3. he is still regarded as S/E by HMRC
4. he is still advertising for work
5. stoppages during the winter months are a normal feature of his business.

The DM then considers the guidance at **S3020** – **S3023** and determines, in this case, that Hugh remains gainfully employed as a S/E earner because he is still trading.

### **Example 2**

Ira claims JSA. He runs a business that supplies and fits doors and windows. Because of the competition

in the area the business has received fewer and fewer orders, until now there are none. Ira states that

1. he has been unable to pay the rent on his shop and the landlord is threatening eviction
2. his business has debts and the bank has advised that the business should be wound up
3. he can not find a way of boosting his trade
4. there is no work in the pipeline
5. at present he is still regarded as S/E by HMRC
6. he still has an advertisement in the Yellow Pages.

The DM considers the guidance at **S3020 – S3023** and determines, in this case, that Ira is not gainfully employed and no longer trading.

### **Example 3**

Stephen claims JSA. He is a S/E electrician. He sub-contracts for other contractors. Stephen has claimed JSA because he has just finished one contract and work on the next contract is not due to start for another couple of weeks. Stephen states that

1. he still regards himself as S/E and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at **S3020 – S3023** and determines, in this case, that Stephen remains gainfully employed as a S/E earner because he is still trading.

## Sickness S3024 - S3032

### Sickness

S3024 If a S/E earner is unable to work in the business due to sickness, the DM should consider

1. the guidance at S3020 – **S3023** and
2. if the S/E earner remains gainfully employed as a S/E earner.

S3025 A S/E earner will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of the self employment.

S3026 – S3032

# Earnings from self-employment that has ceased **S3033 - S3050**

## Earnings from self-employment that has ceased

S3033 If a person has been engaged in

1. remunerative work as a S/E earner **or**
2. P/T self-employment

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see **S3073 – S3081**)<sup>1</sup>.

1 JSA Regs 13, Sch , para 4

### Example

James was S/E. He last worked on 11.06.13. His business completely ceased to trade on 11.06.13. He received earnings on that day. He claims JSA on 12.06.13.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11.06.13 are disregarded.

S3034 – S3050

# Assessment period for self-employed earners S3052 - S3099

## Assessment period for self-employed earners

[Business trading for less than a year](#) S3052

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[Change likely to affect the normal pattern of trading](#) S3060 - S3068

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[Royalties, copyright payments and Public Lending Right payments](#) S3073 - S3099

S3051 The normal weekly earnings of a S/E earner should be calculated by using the

**1.** gross receipts (see **S3125**) and

**2.** expenses paid out (see **S3190**)

during the assessment period. Different rules apply for royalties, copyright payments and Public Lending Rights payments.

## Business trading for less than a year

S3052 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings most accurately<sup>1</sup>.

1 JSA Regs 13, reg 55(1)(b)

### Example

Liam claims JSA on Monday 4 November. He is a P/T S/E window cleaner. He started doing occasional window cleaning jobs in February of the same year but it was not until May that the business really got off the ground.

The DM uses an assessment period starting from 1 May to 31 October as the figures produced for this period would most accurately reflect the current level of earnings.

## Business trading for more than a year

S3053 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year<sup>1</sup> (but see **S3167 – S3168**).

1 JSA Regs 13, reg 55(1)(a)

S3054 The year does not need to be the year immediately before the claim or the date the claim is looked at. If profit or loss accounts are available for the last trading year the DM can use these as the assessment period. The profit and loss accounts should be converted to a cash flow basis (see **S3101 – S3111**).

S3055 A year means a period of

1. 365 days **or**
2. 366 days if the assessment period includes the February of a leap year.

S3056 – S3059

## Change likely to affect the normal pattern of trading

S3060 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings most accurately<sup>1</sup>. The period does not need to be made up of complete weeks.

1 JSA Regs 13, reg 55(1)(b)

S3061 The assessment period should

1. normally start on the date the change affecting the pattern of the business occurred (but see **S3064**) **and**
2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

S3062 The earnings would then be averaged over that period and apportioned on a weekly basis until the figures for the following week or month become available. The assessment period would then be extended. The assessment period would

**1.** start on the date the change affecting the pattern of business occurred **and**

**2.** end on the date that the new figures became available.

The DM should supersede if the new figures affect entitlement to JSA. Where entitlement is not affected, a decision not to supersede should be made if the claimant asked for earnings to be looked at again. For further guidance on supersession including the effective date rule, see ADM Chapter **A4**.

S3063 This procedure should continue until the assessment period has been extended to one year and the earnings can be averaged over that year (see **S3053**). In most cases this procedure will provide the most accurate determination of a S/E earners earnings (but see **S3064**).

### **Example**

Carlo is S/E, he buys and sells Italian wine. On 9.8.13 Carlo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers. On 1.11.13 Carlo claims JSA.

The DM determines

**1.** Carlo is gainfully employed but not in remunerative work

**2.** that the receivership is a change that has affected the normal pattern of trading

**3.** that the assessment period is from 9.8.13 (the date the change affecting the pattern of business occurred) to 31.10.13 (the date that the most recent figures for gross receipts and expenses are available).

The earnings for the assessment period are averaged for that period and apportioned on a weekly basis until 30.11.13 when the figures for the following month become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 9.8.13 to 30.11.13. The earnings for this period are averaged and apportioned on a weekly basis until 31.12.13 when the figures for the following month become available.

The DM continues with this procedure until the assessment period has been extended to one year.

S3064 When considering the assessment period the DM should consider the facts of each case carefully. A period that does not start with the first day of the interruption may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

S3065 The DM should be satisfied that any change

**1.** has affected **or**

**2.** is likely to affect

the normal pattern of trading.

### **Example 1**

Barry owns and runs a small garage, he has been S/E for four years. Barry claims JSA because two months prior to his claim there was a fire in the garage workshop that badly damaged equipment. This meant that Barry was not able to offer a repairs or maintenance service to his customers.

The DM determines that

**1.** there had been a change that had affected the normal pattern of business **and**

**2.** the assessment period is from the date of the fire up to the week before the JSA claim.

### **Example 2**

Omar works P/T as a S/E draughtsman providing technical drawings for builders. Most of his work comes from one particular building firm. Omar claims JSA because six months before the claim the building firm went into receivership.

The DM determines that

**1.** there had been a change that had affected the normal pattern of business **and**

**2.** the assessment period starts from the date Omar lost his major customer.

### **Example 3**

Dougal is a S/E roofer. The business has been trading for five years. Dougal claims JSA because a period of snowy weather stopped him from working. The period he was unable to work was ten days.

The DM determines that, although the bad weather might be a change, it was not one that would affect the normal pattern of business. The normal pattern of business would include times in the winter when roofing work could not be done.

**Note:** Weather conditions that are exceptional for the area could be regarded as a change affecting the normal pattern of business.

### **Example 4**

Morris is a S/E shop keeper. He has been in business for nine years. Morris claims JSA because a recent storm has blown off part of his shop roof. He is unable to trade until his roof is mended because there are too many leaks.

The DM decides that the bad weather is a change that has affected the normal pattern of business. The DM decides the assessment period starts from the date of the storm.

S3066 – S3068

## **New businesses**

S3069 A person may start up a new business

- 1.** at the same time as claiming JSA **or**
- 2.** whilst in receipt of JSA.

The DM should consider if that person has started remunerative work.

S3070 If the work is not remunerative work no income should be taken into account until the S/E earner starts to receive actual earnings. When the first payment of earnings is received the DM should use the assessment period

- 1.** starting on the first day of the benefit week in which the person started S/E **and**
- 2.** ending on the last day of the benefit week in which actual earnings are received.

S3071 The assessment period should be extended every week or month until a yearly assessment is possible (see **S3062**). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see **S3072**).

## **Example**

Gareth is in receipt of JSA. His benefit week ending day is a Monday. On 6.8.13 he starts work as a S/E pine furniture maker working twelve hours per week.

The DM determines

- 1.** Gareth is not in remunerative work **and**

**2.** that the assessment period is 5.8.13 - 11.8.13.

The earnings are taken into account for that period up to and including 18.8.13 when the figures for the following week become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 5.8.13 - 18.8.13. The earnings for this period are averaged and apportioned on a weekly basis up to and including 25.8.13 when further figures are available.

The DM continues with this procedure until the assessment period has been extended to one year.

S3072 When determining the assessment period for new businesses the DM should consider the facts of each case carefully. A period that does not start with the first day of self-employment may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

## **Royalties, copyright payments and Public Lending Right payments**

S3073 Earnings as described in **S3074** paid during an award of benefit have a different assessment period to that in **S3051 – S3072**.

S3074 This paragraph applies to<sup>1</sup>

**1.** royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trademark **or**

**2.** any payment in respect of any

**2.1** book registered under the Public Lending Right Scheme 1982 **or**

**2.2** work made under any international public lending right scheme that is similar to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work covered by **2.2** above.

1 JSA Regs 13, reg 55(3)

S3075 Each payment should be taken into account for the number of weeks (including part of a week) calculated by dividing the amount of the payment by

1. the amount of JSA that would have been paid if the earnings had not been received **and**

2. the correct disregard (see **S3470**)<sup>1</sup>.

1 JSA Regs 13, reg 55(4), Sch

S3076 The attribution period should begin on the first day of the benefit week in which the payment is received.

### Example

Libby is in receipt of JSA that is payable on a Monday in arrears. She receives royalties of £500 on 15.11.13. Libby has been paid JSA to benefit week ending 25.11.13. The payment is taken into account as follows

		£
1. current weekly rate	=	75.10
2. appropriate earnings disregard	=	5.00
3. total of weekly JSA + disregard	=	80.10
4. number of weeks is	=	<del>10.10</del>
		<u>500</u>
		80.10

5. the payment is taken into account for

**5.1** six weeks is at £80.10 per week - no JSA payable for the period 12.11.13 to 23.12.13 **and**

**5.2** one week at £19.40 but £5.00 is disregarded - JSA of £60.70 (£75.10 - £14.40 (£19.40 - £5.00)) is payable on 30.12.13.

The overpayment question is referred to the DM.

S3077 If at the end of the period calculated under **S3075**

1. a further claim for JSA is made **and**

2. another payment of royalties or copyright has been received during that period

**2.1** seven weeks at £80.10 per week (the first four weeks overlap with the last four weeks in

S3076) - no JSA is payable during the period 3.12.13 to 20.1.14 **and**

**2.2** one week at £39.30 but £5.00 is disregarded - JSA of £40.80 (£75.10 - £34.30 (£39.30 - £5.00)) is payable on 27.1.14.

the further payment should be treated separately as in **S3075**. If the period extends beyond that calculated for the first payment, the second payment should be taken into account from the end of that period.

### Example

(See the example at **S3076**).

Libby receives a further payment of royalties of £600 on 5.12.13 that is taken into account as follows

<b>1.</b> number of weeks is	=	7
	<u>600</u>	<u>19.30</u>
	80.10	80.10

**2.** the payment is taken into account  
for

S3078 – S3079

### Expenses deducted from royalty, copyright payment or Public Lending Right payment

S3080 The S/E earner may have to pay expenses on receipt of the royalty, copyright payment or Public Lending Right payment. These expenses are deductible if they are

- 1.** wholly and exclusively for the purpose of that employment **and**
- 2.** paid out in the attribution period of the payment<sup>1</sup>.

<sup>1</sup> JSA Regs 13, reg 55(4); reg 61(1)(a); reg 61(3)(a)

### Example 1

Gore writes a book between June and December 2013 and it is on sale from 1.1.14. The first copyright payment is received on 3.6.14. There are no expenses paid out in the attribution period of the payment. The DM decides that no expenses should be deducted from the payment.

### Example 2

Seeta writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Seeta's book is published in March 2014 and the first copyright is received on 1.5.14.

Seeta pays her accountant using the money from the copyright payment. The DM decides to deduct the accountant's bill as an expense because

1. the accountant's bill is an expense that is wholly and exclusively for the purpose of Seeta's employment **and**
2. it is defrayed in the attribution period of the copyright payment.

### **Income tax, NI contributions and qualifying premium payments deducted from a royalty, copyright payment or Public Lending Right payment**

S3081 The DM should consider deductions for

1. income tax (see **S3270** et seq) **and**
2. NI contributions (see **S3297** et seq) **and**
3. half of any premiums for personal pensions (see **S3326**)

from the royalty, copyright payment or Public Lending Right payment<sup>1</sup>.

**Note 1:** The DM should take care not to duplicate any deduction for a personal pension. A deduction for such a premium may already be deducted from another assessment period.

**Note 2:** From 2016 the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

<sup>1</sup> JSA Regs 13, 61(3), 61(1)(a) & 61(3)(b) & (c)

S3082 – S3099

# Calculation of normal weekly earnings S3100 - S3189

## Calculation of normal weekly earnings

[Evidence - cash flow](#) S3101 - S3116

[Method of calculation](#) S3117 - S3124

[Gross receipts](#) S3125 - S3189

S3100 **S3101** – **S3244** provide guidance on the calculation of earnings of most S/E earners. Specific guidance is given for

1. child minders (see **S3350**)
2. crofts or small holdings (see **S3361**)
3. farmers (see **S3370**)
4. hotels, guest houses, bed and breakfast establishments etc (see **S3380**)
5. local exchange trading schemes (see **S3385**)
6. partnerships (see **S3400**)
7. renting out property (see **S3425**)
8. seasonally S/E (see **S3440**)
9. share fishermen (see **S3754**)
10. sub-contractors (see **S3450**)
11. actors and entertainers (see **S3452**).

## Evidence - cash flow

S3101 To calculate the amount of earnings the DM will need evidence of

1. the gross receipts (see **S3125**) **actually received**, not money owed to the business **and**

**2.** expenses defrayed, that is, **actually paid for**, not unpaid bills

for the assessment period. This is known as cash flow and evidence should be presented on a cash flow basis.

S3102 On a new or repeat claim to JSA, the onus is on the S/E earner to provide the evidence necessary to support the claim. A claimant who is S/E should be asked to submit details of

**1.** the business **and**

**2. actual** gross receipts and expenditure

during the assessment period.

S3103 The figures provided in **S3102 2.** should be accepted as accurate unless

**1.** there is reason to doubt **or**

**2.** they are unrepresentative of the current trading position.

Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and **1.** or **2.** does not apply.

S3104

## **Accounts**

S3105 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the gross receipts and expenses paid for.

S3106 A set of accounts consists of two main statements

**1.** the **balance sheet**: that is, a statement of the financial position of a business at a given date **and**

**2.** the **profit and loss account**: that is, a summary of the results of a business's transactions for a period ending on the date of the balance sheet.

S3107 Accounts are prepared using accounting principles. Accounts may include **anticipated** receipts and expenses for the accounting period. The anticipated amounts are not

- 1.** gross receipts as they have not been received by the business **or**
- 2.** allowable expenses as they have not been paid for.

S3108 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing

- 1.** accounts that are calculated on a cash flow basis **or**
- 2.** evidence of the gross receipts and expenses paid.

S3109 The figures provided in **S3108 1.** and **2.** should be accepted as accurate unless

- 1.** there is reason to doubt them **or**
- 2.** they are unrepresentative of the current trading position.

Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and **1.** or **2.** does not apply.

S3110 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example

- 1.** bank receipts
- 2.** purchase receipts
- 3.** expenses for a different assessment period.

S3111 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example

- 1.** the value of stock at the start and end of the accounting period

2. money owed to the business by debtors
3. money owed by the business to creditors
4. depreciation of assets of the business.

As the DM is considering the S/E person's cash flow, these will not be allowable expenses.

S3112 – S3115

### **Income tax certificate**

S3116 The DM should not accept as conclusive evidence of the weekly net profit an

1. income tax certificate **or**
2. accountant's statement of the net profit figure that is acceptable for tax purposes.

### **Method of calculation**

S3117 To calculate the earnings of a S/E earner the DM

1. should establish the **gross receipts** of the business during the assessment period (see **S3125**) **and**
2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see **S3206**) **and**
3. deduct from any remaining figure amounts for
  - 3.1 notional income tax (see **S3270** et seq) **and**
  - 3.2 notional NI contributions (see **S3297** et seq) **and**
  - 3.3 half of any premium paid for a personal pension scheme (see **S3326**) **and**
4. deduct the correct **disregard(s)** (see **S3470**).

The figure that is left is the earnings that should be taken into account.

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

S3118 The whole process can be summarized as follows

gross	<b>less</b>
allowable	<b>less</b>
notional income tax	<b>less</b>
notional NI contributions	<b>Less</b>
half of any personal pension scheme	<b>divided by</b>
the number of days in the assessment period	<b>multiplied by</b>
7 to give a weekly figure	<b>equals</b>
the weekly net profit	<b>less</b>
any disregards that apply	<b>equals</b>
the weekly earnings to be taken into account	

S3119 – S3124

## Gross receipts

S3125 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt<sup>1</sup>. **S3167** provides guidance for payments received that relate to a period different to the assessment period.

1 JSA Regs 13, reg 61(4)

S3126 The gross receipts of a business include

- 1.** any payments for goods and services provided (see **S3127**)
- 2.** earnings payable abroad (see **S3128**)
- 3.** any business subsidies or payments of compensation (see **S3138**)
- 4.** personal drawings (see **S3139**)
- 5.** income from letting or sub-letting (see **S3154**)

6. sale of certain business assets (see S3155)

7. tips and gratuities (see **S3156**)

8. payments in kind (see **S3158**)

9. any VAT receipts (see **S3160**).

## **Payments received for goods and services provided**

S3127 All

1. cash **and**

2. cheque **and**

3. credit card payments

received in return for goods and services supplied, should be included as a gross receipt of the business.

## **Earnings payable abroad**

S3128 Money that is due to be paid to a business in a country outside the UK should be included as a gross receipt only when it is received by the business, for example when it is paid

1. to any branch or official representative of the business **or**

2. into any business account.

S3129 Where the payment is made in a currency other than sterling, any

1. bank charge **or**

2. commission

payable for converting the payment into sterling should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 10

S3130 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies<sup>1</sup>.

1 JSA Regs 13, Sch, para 9

## Example

Derek is S/E on a P/T basis in an import/export business. During the assessment period his business received £1000 in a country that was, and currently is, prohibiting the transfer of funds to the UK. The DM calculates the earnings as follows

Gross receipts (including the £1000 received abroad)	= £5000
Deductions for allowable expenses, notional income tax and NI contributions and half of a premium for a personal pension	= £2500
Net profit	= £2500
Divided by the number of weeks in the assessment period	= £48.07 <b>less</b>
Normal earnings disregard	= £5.00 <b>less</b>
Special disregard for earnings abroad (£1000 divided by 52)	= £19.23
Earnings to be taken into account (£48.07 - £5.00 - £19.23)	= £23.84

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM revises or supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

S3131 – S3137

## Business subsidies or payments of compensation

S3138 Some businesses may receive

1. subsidies, for example businesses involving farming or agriculture receive subsidies from the Department for the Environment, Food and Rural Affairs, or the EC **or**
2. payment of compensation from another person because of disruption to the business. For example payments of compensation awarded because of BSE.

Such payments should be included in the gross receipts of the business.

## Personal drawings

S3139 A S/E person may draw money from the business for day to day expenses. These drawings,

known as personal drawings, are in anticipation of profits or business income and should be included as part of the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.

S3140 Where drawings are made in excess of the profits of the business they should be treated as capital in the hands of the claimant. Money taken from the business in excess of profits comes from

- 1.** capitalized profits from earlier years **or**
- 2.** increased borrowing.

In **1.** or **2.** the drawings are withdrawals from the capital of the business.

S3141 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the gross receipt. If it has, the amount of the drawings should be added back to the amount of the gross receipts.

S3142 A S/E person who is a sole owner of, or a partner in, a business may pay interest to the business on money taken as personal drawings. These payments should be included in the gross receipts of the business.

### **Example 1**

Joseph is in receipt of JSA, he is a S/E earner. His assessment period is 12 months. He produces evidence of his gross receipts and expenses for the assessment period. Personal drawings are shown as an expense and are not included in the gross receipts of the business. The DM determines

- 1.** that the personal drawings should be added to the gross receipts of the business **and**
- 2.** allowable expenses should be deducted from this new gross receipts figure.

### **Example 2**

Rachel is in receipt of JSA, she is a S/E earner. Her assessment period is 12 months. She produces evidence of her gross receipts and expenses for the assessment period.

Personal drawings are shown as an expense and are not included in the gross receipts of the business. It appears from the figures that the personal drawings may exceed any profit.

The DM calculates the net profit without including the personal drawings as a gross receipt of the business. This calculation shows that the personal drawings exceed the net profit of the business.

The DM determines

1. that personal drawings equal to the amount of the net profit previously calculated should be added to the gross receipts of the business **and**
2. allowable expenses should be deducted.

S3143 – S3153

### **Income from letting or sub-letting**

S3154 Any income received from letting or sub-letting of business premises or land should be included in the gross receipts of the business. Any expense connected with the letting should be included with other business expenses.

### **Sale of certain business assets**

S3155 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business<sup>1</sup>.

1 R(FC) 1/97

### **Example**

Adam runs a business that manufactures computers. The sale of these computers is included in the gross receipts of the business. But when Adam sells a computer that he uses to keep his business records on, the amount received for this computer is not included in the gross receipts of the business.

### **Tips and gratuities**

S3156 Tips or gratuities received in response to the service provided by a S/E earner, for example as a hairdresser, taxi driver or coach driver, should be included in the gross receipts of the business.

S3157 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example, on personal grounds should not be included in the gross receipts of the business.

## Payments in kind

S3158 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the gross receipts of the business.

### Example

Terry is a P/T S/E electrician in receipt of JSA. He does some work for a local farmer. The farmer pays Terry for the work in the form of farm produce.

The DM values the produce at what it would have cost if bought from the farmer (or a local grocer), and includes that amount in the gross receipts of the business.

S3159

## VAT

S3160 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

1. VAT collected from customers - known as output tax **and**
2. VAT paid by the S/E person to supplier - known as input tax.

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

S3161 Where

1. a business is registered for VAT **and**
2. in the assessment period the amount received is greater than the amount paid to HMRC.

the difference should be included in the gross receipts of the business. This is the amount that **S3160 2.** exceeds **S3160 1.**

**Note:** VAT can also be an allowable expense of the business, see **S3211.**

S3162 – S3165

## Capital receipts

S3166 Capital receipts do **not** form part of the gross receipts of the business<sup>1</sup>. For example,

1. loans
2. injections of capital
3. grants from the Prince's Trust **and**
4. proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see S3155).

1 R(FC) 1/97

## Income for a different period

S3167 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately<sup>1</sup>.

**Note:** The DM should not consider any payment made before or after the assessment period.

1 JSA Regs 13, reg 61(10)

S3168 It is not intended that every payment is assessed individually over a period different to the assessment period. This should be the exception rather than the rule. So, any payment for a period

1. equal to or shorter than the assessment period should be assessed over the full length of the assessment period **or**
2. longer than the assessment period should be converted on a pro rata basis to represent the length of the assessment period.

## Example

Ryan is a S/E earner in receipt of JSA. He receives a payment that is a half-yearly payment under a long-term contract. As the level of trading has changed recently due to a fire on the business premises the assessment period used is 13 weeks.

The DM considers that

1. the payment should be multiplied by 13 and divided by 26 **and**
2. the resulting sum should be added to any other gross receipts of the business.

S3169 – S3189



# Business expenses S3190 - S3259

## Business Expenses

[Conditions for deducting business expenses](#) S3190 - S3205

[Allowable business expenses](#) S3206 - S3219

[Expenses not allowed](#) S3220 - S3259

## Conditions for deducting business expenses

S3190 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that

1. was paid out wholly and exclusively for the purposes of the business<sup>1</sup> **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred<sup>2</sup> (see **S3198**) **and**
4. is an allowable expense (see **S3206**).

1 JSA Regs 13, reg 61(3)(a); 2 reg 61(7)

## Wholly and exclusively

S3191 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business<sup>1</sup>. Any such payment should be deducted in full, subject to **S3190 2. - 4.**

1 JSA Regs 13, reg 61(4)

## Expenses for both business and private use

S3192 If expenditure is for both business and private use, for example

1. a business that is run from home **or**
2. there is only one vehicle for both business and private use

the DM should apportion the cost. Only the portion of the expenditure that is wholly attributable to the

business can be deducted.

S3193 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

S3194 The DM should normally accept the evidence of

1. the S/E earner **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax and contribution purposes<sup>1</sup>.

1 R(FC) 1/91; R(IS) 13/91

S3195 Examples of expenses that may be apportioned between private and business use are<sup>1</sup>

1. telephone calls and telephone rental
2. motor expenses such as fuel, road fund license (sometimes called road tax), insurance premiums, servicing, maintenance or repair charges
3. fuel costs and standing charges for gas and electricity.

1 R(FC) 1/91; R(IS) 13/91

### **Example 1**

Indra is in receipt of JSA. She runs a business from her home. She uses the telephone for private and business use. The total cost of telephone charges in the assessment period is £300.

Indra provides evidence that HMRC have agreed that the apportionment is 60% for business use and 40% for personal use.

The DM decides that £180 of the expenses have been reasonably incurred and allows this amount when calculating Indra's net profit.

### **Example 2**

Greg uses a car for both business and private use. The total cost in the assessment period is £750. Greg provides information that 55% of the cost is for business use and 45% is for personal use.

The DM decides that this is reasonable and allows £412.50 as an expense.

### **Example 3**

Serena is a dressmaker who works at home using an electric sewing machine. She uses an electric fire to heat the room when working. A quarterly electric bill is included as a business expense but no breakdown is given of business and private use.

The DM apportions the expenses so that only the part that is wholly and exclusively for the business is allowed. To do this the DM makes a determination based on all the facts, including

- 1.** the size of the working area in relation to the rest of the rooms
- 2.** how many other people live in the home
- 3.** what amount Serena thinks represents business use
- 4.** how many hours are spent working and using the appliances
- 5.** what other electrical appliances are used in the home.

S3196 – S3197

### **Reasonably incurred**

S3198 The term “reasonably incurred” is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

- 1.** appropriate to the business **and**
- 2.** necessary to the business **and**
- 3.** not excessive.

The DM should consider the nature of the business, level of trading and if there are any employees.

S3199 To determine what is reasonable the DM should have regard to the circumstances of each individual’s case<sup>1</sup>, including the level of the person’s earnings<sup>2</sup>.

1 R(P) 2/54; 2 R(G) 1/56

S3200 The DM may have to consider if it is reasonable for a person to reduce the hours worked to below the remunerative work level by employing someone to do part of the work of the business. To determine

if this expense is reasonably incurred the DM should consider all of the circumstances of the individual case including if the

**1.** person is capable of doing the work **and**

**2.** evidence suggests that the person is employing another so that the remunerative work condition is satisfied and the person can claim JSA

The DM may conclude that the expense of employing another person is not reasonably incurred, therefore cannot be deducted from the gross receipts.

S3201 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive<sup>1</sup>.

1 R(G) 7/62

S3202 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

S3203 – S3205

## **Allowable business expenses**

S3206 If the conditions in **S3190 1. - 3.** are met, all day to day expenses of a business are allowable, including<sup>1</sup>

**1.** accountancy charges

**2.** advertising costs

**3.** certain capital repayments on a loan used to<sup>2</sup>

**3.1** replace an item of equipment or machinery that has

**3.2** repair an existing asset, but only to the extent that the loan exceeds any sum paid or due to be paid under an insurance policy for that repair, for example, labour may not be covered by the policy

**3.1.a** worn out in the course of the business **or**

**3.1.b** become outdated **or**

**4.** cleaning of business premises

5. employee's wages before any deductions, including wages payable to a partner, but not a business partner (see S3210)
6. employer's contribution to an employee's pension scheme
7. employer's secondary class 1 NI contributions
8. heating and lighting
9. hire or rental costs, but not any capital or purchase elements
10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair exceeds any sum paid or due to be paid under an insurance policy for that repair<sup>3</sup>
11. interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see 3.<sup>4</sup>
12. legal fees for the running of the business, but not with the setting up or expansion of the business
13. payment in kind for work done for the business - the monetary value is allowed
14. rent, council tax, water charges and insurance premiums on the business premises
15. stationery
16. stock purchases
17. sundries, if the DM is satisfied that the expenses are allowable
18. telephone, fax or telex
19. transport, for example business use of the car including petrol costs, road fund license, insurance and servicing
20. VAT (see S3211)<sup>5</sup>.

This list is not exhaustive.

1 JSA Regs 13, reg 61(3)(a), reg 61(4), reg 61(5), reg 61(7); reg 73(3); 2 reg 61(6); reg 73(3);  
3 reg 61(8)(b)(ii); reg 73(3); 4 reg 61(8)(b)(iii); reg 73(3); 5 reg 61(8)(b)(i); reg 73(3)

S3207 For the purpose of **S3206 3.2** an asset includes buildings, plant machinery, vehicles or equipment.

### Example 1

Jayne is a mobile hairdresser. She takes out a loan to buy a replacement car as her existing car is beyond repair.

The DM determines that

1. the loan is used to replace a car with a similar item and the capital repayments are allowable **and**
2. interest payments on the loan are allowable.

### Example 2

Dermot is a builder. He takes out a loan to buy an additional van after taking on an employee.

The DM determines that

1. the capital repayments on the loan are not allowable because the loan is for an additional item **and**
2. interest payments on the loan are allowable.

### Example 3

Giles is a farmer. He takes out a loan to replace a tractor but decides to buy a combine harvester instead.

The DM determines that

1. the capital repayments on the loan are not allowable because the loan is for a different piece of machinery **and**
2. interest payments on the loan are allowable.

S3208 – S3209

## Partner's earnings from the business

S3210 The earnings of a partner (but not a business partner) who is employed in the business should be allowed as a business expense (see **S3206 5**). The wage should not be added back to the business accounts to offset any loss<sup>1</sup>.

<sup>1</sup> JSA Regs 13, reg 61(11)

## VAT

S3211 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC

showing amounts of

**1.** VAT collected from customers - known as output tax **and**

**2.** VAT paid by the S/E person to suppliers - known as input tax.

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

S3212 Where

**1.** a business is registered for VAT **and**

**2.** in the assessment period the amount paid to HMRC is greater than the amount received in the same period

the difference should be taken into account as an expense<sup>1</sup>. This is the amount that S3211 **1.** exceeds **S3211 2.**

**Note:** VAT can also be a gross receipt of the business (see **S3160**).

1 JSA Regs 13, reg 61(8)(b)(i)

S3213

S3214 Any business expenditure paid out in the assessment period **may** be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately<sup>1</sup>.

**Note:** The DM should not deduct an expense paid before or after the assessment period.

1 JSA Regs 13, reg 61(10)

S3215 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

S3216 Any expense for a period

**1.** equal or shorter than the assessment period should be assessed over the full length of the assessment period **or**

**2.** longer than the assessment period should be converted on a pro rata basis to represent the length of

the assessment period.

### **Example**

Dominic is a S/E taxi driver. He started trading six months before he claimed JSA. The assessment period is 26 weeks. In that time the annual road fund license and insurance on the taxi was paid.

The DM determines

- 1.** that the expenses should be multiplied by 26 (the length of the assessment period) and divided by 52  
**and**
- 2.** the resulting figure should be added to any other allowable expenses.

S3217 – S3219

### **Expenses not allowed**

S3220 Business expenses that should not be allowed are

- 1.** those expenses where the conditions for deducting a business expense are not met (see S3190)
- 2.** capital expenditure
- 3.** depreciation of capital assets
- 4.** expenses used, or intended to be used, in setting up or expanding a business
- 5.** any loss incurred
  - 5.1** before the start of the assessment period<sup>1</sup>**or**
  - 5.2** in any other employment<sup>2</sup>
- 6.** repayment of capital on loans except where S3206 **3.** applies
- 7.** business entertainment expenses
- 8.** losses incurred on the disposal of a capital asset
- 9.** payments into a contingency fund to safeguard against future bad debts<sup>3</sup>
- 10.** personal drawings on income and capital

**11.** money on goods used for personal consumption.

1 JSA Regs 13, reg 61(5)(d); 2 reg 61(11); 3 reg 61(7)

## Capital expenditure

S3221 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. In line with HMRC practise, fixed assets include items such as tools, equipment, machinery and vehicles used in the business. The DM should not allow capital expenditure as a business expense<sup>1</sup>.

1 JSA Regs 13, reg 61(5)(a)

### Example

Paul is a mobile hairdresser. He buys a replacement car with cash. The replacement car is a fixed asset of the business. The money used to buy it is capital expenditure. The DM does not allow a deduction. But if Paul had taken out a loan to buy the car, repayments of capital and interest would have been allowed as expenses (see **S3206**).

## Depreciation

S3222 Depreciation of a capital, or fixed, asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear, during the assessment period.

S3223 If there are fixed assets, accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense<sup>1</sup>.

1 JSA Regs 13, reg 61(5)(b)

S3224 – S3225

## Sums used in setting up or expanding a business

S3226 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business<sup>1</sup>. This applies to expenditure on, for example

- 1.** fixed assets of the business, including fixtures and fittings or the cost of larger premises **or**
- 2.** non-recurring costs such as legal services in obtaining a lease.

**Note:** If a business loan has been obtained the DM should consider interest on the loan (see **S3206 11.**) and allow as an expense other items that are ongoing regular expenses.

### **Loss incurred before the beginning of the assessment period**

S3227 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period<sup>1</sup>.

1 JSA Regs 13, reg 61(5)(d)

S3228 – S3229

### **Loss incurred in any other employment**

S3230 A person may

- 1.** have more than one employment as a S/E earner **or**
- 2.** be both a S/E earner and an employed earner, for example a director.

The earnings from each employment should be assessed separately.

S3231 Any business loss in one employment should **not** be offset against the earnings of another employment<sup>1</sup>.

1 JSA Regs 13, reg 61(11)

### **Example**

Thomas is in receipt of JSA. His wife is a market trader and a S/E music teacher. The market stall runs at a loss. The DM

- 1.** considers that the loss from the market stall is not an allowable expense against the gross receipts from teaching music **and**
- 2.** calculates the net profit from each self-employment separately.

### **Repayment of capital on business loans**

S3232 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset<sup>1</sup> (see S3206 **3.**).

S3233 – S3234

### **Business entertainment**

S3235 Any expense claimed for providing business entertainment, for example

1. business lunches **or**
2. hospitality in connection with the business

should not be allowed as a business expense<sup>1</sup>.

1 JSA Regs 13, reg 61(5)(f)

### **Loss on disposal of a capital asset**

S3236 When an asset is sold for less than the value shown in the books of the business the difference is referred to as the “loss on disposal” and is accepted as a loss for accounting purposes. But the DM should not

1. allow the loss as an expense **or**
2. include the proceeds from the sale of the asset as a gross receipt of the business (see **S3155**).

### **Payments into contingency funds**

S3237 Any payments into a contingency fund set up to safeguard against future bad debts should not be allowed as a business expense. This is an allocation of funds rather than an expense.

S3238 – S3239

### **Personal drawings**

S3240 Personal drawings may be shown as a

1. trading expense of the business **or**
2. withdrawal of capital on the balance sheet (if produced).

In either case, the drawings should not be allowed as a business expense.

## **Personal consumption**

S3241 The DM should not allow any money spent on goods for personal consumption as a business expense.

S3242 Personal consumption is not limited to food products. It could include a range of items, for example

- 1.** paint
- 2.** spare parts
- 3.** building materials
- 4.** drinks.

S3243 The DM should not assume

- 1.** personal consumption **or**
- 2.** if the S/E person is a partner, that the figure for personal consumption will be the same for each partner.

S3244 If the business is one where personal consumption is likely to arise, for example

- 1.** a farmer **or**
- 2.** a grocer

and no figure has been declared, enquiries should be made about the nature and value of any produce or goods consumed or used.

S3245 - S3259

# Calculation of income tax, National Insurance contributions and qualifying premium S3260 - S3349

## Calculation of income tax, National Insurance contributions and qualifying premium

[Introduction](#) S3260 - S3265

[Chargeable income](#) S3266 -S3269

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[Premiums for personal pension schemes](#) S3325 - S3349

### Introduction

S3260 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for<sup>1</sup>

1. income tax (see **S3270** et seq) **and**
2. Class 2 NI contributions (see **S3297** et seq) **and**
3. Class 4 NI contributions (see **S3316** et seq) **and**
4. half of any premium for a personal pension scheme (see **S3326**).

1 JSA Regs 13, reg 61(3)(b) & (c)

S3261 The DM should base deductions for **S3260 1. - 3.** on the chargeable income for the assessment period.

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

S3262 – S3265

## Chargeable income

S3266 The chargeable income<sup>1</sup>, 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 employment<sup>2</sup> **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 expenses<sup>3</sup> **or**

**3.** in any other case, the person's

**3.1** gross receipts of the employment less

**3.2** any allowable expenses<sup>4</sup>.

1 JSA Regs 13, reg 62(5); 2 reg 62(5)(b); 3 reg 61(4); 4 reg 61(3)(a)

S3267 The calculation at **S3266 1. - 3.** should not include any deductions for

**1.** notional income tax **or**

**2.** NI contributions **or**

**3.** premiums for a personal pension scheme.

S3268 – S3269

## Deduction for notional income tax

S3270 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.

### Example

Andrew makes a claim for JSA 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

S3271 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.

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax.

S3272 – S3273

## Personal allowance

S3274 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 purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

## Tax rates

S3275 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.

S3276 – S3287

## Calculation of deduction

S3288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should<sup>1</sup>

**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<sup>2</sup>

**4.** multiply £34,370 (12/13 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.

1 JSA Regs 13, reg 62(1); 2 reg 62(2)

### Example 1

Sam 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:

	<b>£</b>
Chargeable income	- 15,500.00 <b>less</b>
Claimant's personal allowance (12/13 rates)	- 8,105.00
	7,395.00
£7,395.00 at 20%	= 1,479.00
Total notional income tax	= <b>1,479.00</b>

### Example 2

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

	<b>£</b>
Chargeable income	- 15,500.00 <b>less</b>
Claimant's personal allowance	- 2,020.70
(£8,105 (12/13 rates) x 91/365)	
	= 13,479.30
£13,479.30 at 20%	= 2,695.80
Total notional income tax	= <b>2,695.80</b>

## Deduction for notional Class 2 NI contributions

S3297 A Class 2 contribution is a flat rate contribution 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

S3298 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 **Appendix 2** for the applicable rates.

S3299 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.

S3300 – S3303

## Calculation of the Class 2 contribution

S3304 The deduction for the notional Class 2 contribution should be based on the rate of Class 2 contributions and small profits threshold level current at the time of the claim only<sup>1</sup>. 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 income<sup>2</sup> **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 13, reg 62(3)(a); 2 reg 62(5)

S3305 – S3315

## Deduction for notional Class 4 NI contributions

S3316 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.

S3317

### Calculation of Class 4 deduction

S3318 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 only<sup>1</sup>. 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 13, reg 62(3)(b)

### Example 1

Assessment period is 52 weeks

Chargeable income is £9,590.85

Class 4            -    Lower level is £7,605 (12/13 rates)  
                         -    Upper level is £42,475

Chargeable income 9,590.85 **less**

lower level            7,605

Profit                    1,985.85 x 9% = 178.73

Notional Class 4 contributions for 52 weeks is £178.73.

## Example 2

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

Chargeable income for this period is £8,100.00

Class 4 - lower level is  $= 5,688.00$   
$$\frac{7,605 \times 273}{365}$$

Chargeable income 8,100.00 **less**

lower level 5,688.00

Profit  $2,412.00 \times 9\% = 217.08$

Notional Class 4 contributions for 39 weeks is £217.08.

S3319 – S3324

## Premiums for personal pension schemes

S3325 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 period<sup>1</sup>.

1 JSA Regs 13, reg 61(1)(b)(ii)

### Example

Sanjay is in receipt of JSA and runs a small business from home. His earnings are calculated over a period of a year. Sanjay 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

S3326 Personal pension schemes<sup>1</sup> are

**1.** a scheme under certain pension and taxation legislation<sup>2</sup> **or**

**2.** an annuity contract or trust scheme under certain taxation legislation<sup>3</sup>.

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; 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)

S3327 Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income to be paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

S3328 – S3349

# Particular forms of self-employment S3350 - S3469

## Particular forms of self-employment

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## Child minders

S3350 A child minder is a person who engages in a contract for services to care for another person's child in return for payment. Most child minders

1. work from their own homes **and**
2. are registered with the LA **and**
3. are restricted to the number of children they care for at any one time.

S3351 To calculate a child minder's normal weekly earnings the DM should

1. determine the assessment period in the normal way **and**
2. calculate the gross receipts for that period **and**
3. calculate the chargeable income as **one third** of the gross receipts during the assessment period<sup>1</sup> but

make no deductions for business expenses **and**

**4.** calculate a deduction for

**4.1** income tax **and**

**4.2** NI contributions **and**

**4.3** half of any premium for a personal pension scheme **and**

**5.** deduct any disregard.

1 JSA Regs 13, reg 62(5)(b)

### **Example**

Fleur is a S/E child minder who is in receipt of JSA. Her assessment period is 13 weeks. The gross receipts for that period are £1,280.

The DM determines

**1.** that no expenses should be deducted from the gross receipts **and**

**2.** that the chargeable income is £426.67 (1/3 of £1,280) **and**

**3.** the income tax, NI contributions and premiums that are to be deducted from the chargeable income.

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See Appendix 1 for full details.

S3352 – S3360

### **Crofts or small holdings**

S3361 Earnings from a croft or small holding should be decided on the same basis as a small business. The person should produce an annual statement giving details of

**1.** income from sales, subsidies, etc **and**

**2.** expenditure, including for example, seed, fertiliser, feed and labour.

This statement should be used to calculate the person's net profit.

S3362 – S3369

## Farmers

S3370 A farmer in need of financial assistance may first seek advice from a surveyor, land agent, valuer or some other similar professional to ensure he is taking advantage of any schemes or subsidies, such as those administered by the Department for Environment, Food and Rural Affairs Rural Payments Agency, that may be available.

S3371 Department for Environment Food and Rural Affairs are unable to supply opinions about the amount of work involved in particular farms or their likely annual returns. However, DMs may consult the Department for Environment, Food and Rural Affairs website (<https://www.gov.uk/government/organisations/department-for-environment-f...>) for information about total farm income for the type of enterprise in question.

S3372 – S3379

## Hotels, guest houses, bed and breakfast establishments

S3380 The DM should apply the normal remunerative work rules when considering a claim involving a person running a hotel, guest house, lodging house or bed and breakfast establishment.

S3381 The DM should note that payments received for providing BL accommodation (see **S3014**) are not earnings<sup>1</sup>.

1 JSA Regs 13, reg 60(2)(a)

## Bars and restaurants in hotels, guest houses

S3382 Income from bars and restaurants where services are provided that are not included in the BL charge should be treated as earnings from self-employment. The DM should determine the assessment period and calculate the gross receipts and allowable expenses in the normal way.

S3383 – S3384

## Local exchange trading systems

S3385 LETS are associations that allow participants to exchange goods and services with others in the community.

S3386 LETS members list their offers of, and requests for, goods and services in a directory and then trade them using a system of credits. These can be given many different names such as

- bobbins
- brads
- newberries
- beacons
- acorns.

## Participating in a local exchange trading system scheme

S3387 Participating in a LETS scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

S3388 DMs should consider whether a LETS participant is engaged in remunerative work (see ADM Chapter **R2**). The DM should also consider whether the work-related requirements continue to be satisfied (see ADM Chapter **R4**).

S3389

## Local exchange trading credits

S3390 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. Credits are considered taxable income by HMRC.

S3391 Credits can be treated as

1. capital or

## 2. earnings

depending on the circumstances of each case. Credits are **not** payments in kind.

S3392 If a person

1. undertakes occasional, personal transactions for credits, for example selling an item of furniture, the credits received should be treated as capital **and**
2. is gainfully employed as a S/E earner and receives credits as payment for services provided, those credits should be included in the gross receipts of the business and are subject to the appropriate disregard.

S3393 The value of credits is equivalent to the number of credits awarded for the particular goods or services at the relevant exchange rate.

S3394 The DM should firstly find out whether the organisers of the scheme have equated the credits to a sterling equivalent. This may have been done for HMRC or VAT purposes. If so, that equivalent can be used as the exchange rate.

S3395 If a sterling equivalent is not available the DM should consider the question based on the circumstances of each case, including

1. how the transaction price is arrived at
2. whether the amount of credits earned varies with the type of work performed
3. what the exchange value of a credit is (what does it buy?)
4. whether the claimant works in the cash economy as well as in the LETS economy
5. what the average local rate of pay is for the particular work performed.

S3396 – S3399

## Partnerships

S3400 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

S3401 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners<sup>1</sup>.

1 Partnership Act 1890, s 24

S3402 The conditions under which a partnership is formed, operates or ends, are governed by the terms of a partnership deed or agreement together with the provisions of the Partnership Act 1890. For most purposes, the terms of the deed or agreement prevail over the provisions of the Act. Where a deed or agreement exists, it becomes a legal document and its interpretation is a matter of law.

S3403 The legal status of a partnership should not be confused with that of a company, in that a partnership has no legal personality in law. At any one time the assets and liabilities of the partnership are (subject to the partnership deed or agreement and the Partnership Act 1890), the joint and several assets and liabilities of the partners.

**Note:** Scots Law on the legal status of a partnership differs. In Scotland a partnership is a separate legal entity<sup>1</sup>, distinct from the partners who carry out its business. DMs should refer any cases to DMA Leeds if further guidance is needed.

1 Partnership Act 1890, s 4(2)

S3404 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or Partnership Act 1890 may continue to impose rights and obligations on the parties following dissolution, providing further time for the winding up of its affairs. Further delays may result from legal challenges concerning the partnership's affairs.

S3405 Where a partnership ends and the claimant has finished employment in the business, a reasonable period of time is allowed for the claimant to dispose of any assets before they are regarded as capital for benefit purposes. In considering that period of time, regard should be had to any legal obligations and restrictions imposed by the partnership deed or the Partnership Act 1890.

S3406 The sale of assets may sometimes provide an income receipt as opposed to a capital receipt (e.g. the sale of “work in hand” or “stock in trade” might well be considered as resulting in an income receipt and not represent capital). Any such decisions should be based on the principles of commercial accountancy. The decision would need to reflect the approach taken by an accountant or HMRC to such questions.

### **Calculation of a business partner’s normal weekly earnings**

S3407 Before calculating a partner’s share of the net profit of the business, the DM should ensure that the gross receipts include the following for **all** partners

- 1.** personal drawings
- 2.** expenses covering business and private use.

S3408 To calculate the normal weekly earnings of a business partner<sup>1</sup>, the DM should determine the assessment period **and**

- 1.** total the gross receipts of the whole business **and**
- 2.** deduct any allowable expenses incurred by the whole business **and**
- 3.** calculate the partner’s share of the resulting “net profit”<sup>2</sup>. The partner’s share will be
  - 3.1** the share set out in the deed of partnership, if there is one **or**
  - 3.2** the shares agreed in an express or implied agreement between the partners **or**
  - 3.3** an equal share<sup>3</sup> if neither **3.1** nor **3.2** apply, for example, if there are four partners, each partner’s share is 25% **and**
- 4.** deduct from **3.** an amount for
  - 4.1** income tax **and**
  - 4.2** NI contributionscalculated on the amount at **3.** **and**
- 5.** deduct half of any premium for a personal pension scheme **and**

6. deduct any disregard.

1 JSA Regs 13, reg 61; 2 reg 61(4);  
3 Partnership Act 1890, s 24

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See Appendix 1 for full details.

### Example 1

Daniel is one of two partners in a building firm. He is in receipt of JSA. There is a deed of partnership that states that Daniel will receive 40% of the profits and the other partner 60%. The gross receipts for the business during the assessment period are £10,600. The allowable expenses are £5,400. The DM decides that Daniel's share of the profits is £2,080, calculated as follows

	£
Gross receipts	10,600
Less allowable expenses	5,400
	= 5,200

Divided by Daniel's share - 40% = 2,080

The DM then deducts from £2,080 amounts for notional income tax and NI contributions, half of a premium for a personal pension scheme and the appropriate disregard.

### Example 2

Agnes and her brother are partners in a small pottery business. Agnes is in receipt of JSA. There is no deed of partnership or other agreement that profits should be shared unevenly. The gross receipts of the business during the assessment period are £8,750. Allowable expenses are £4,562. The DM determines that Agnes share of the net profit is £2,094, calculated as follows

	£
Gross receipts	8,750
Less allowable expenses	4,562
	= 4,188

Divided by Agnes's share - 50% = 2,094

The DM then deducts from £2,094 amounts for notional income tax, NI contributions and the appropriate disregard. Agnes was not paying premiums for a personal pension scheme.

## **Salaried partners**

S3410 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

- 1.** receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner<sup>1</sup>**or**
- 2.** may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

S3411 The DM should

- 1.** consider the facts of each case **and**
- 2.** examine the relationship between the person and the other parties

to decide if the salaried partner is a S/E earner.

S3412 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

- 1.** calculate the chargeable income **and**
- 2.** deduct tax, NI contributions and any premiums for a personal pension scheme

from the partner's share of the chargeable income.

S3413 – S3424

## **Renting out property as a business**

S3425 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business<sup>1</sup>.

S3426 A person who

1. has a single property that is not the home **and**
2. lets the property to tenants **and**
3. collects rents and does any repairs

is not conducting a business. The property is primarily an investment.

### **Example**

Neil inherits a house from his parents. Neil lives elsewhere with his family.

After trying for six months to sell the inherited property without success, he decides to let the house on a nine month contract to four students. Neil collects the rent once a month and carries out occasional minor repairs.

After the property has been let for six months Neil claims JSA. The DM determines that Neil is not operating a business. The DM then goes on to consider how to treat the value of the house and the rental income.

S3427 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

1. number of properties involved **and**
2. long term intentions of the person

are factors that need to be considered.

S3428 If the DM determines that a person is conducting a business from renting out properties, the income, that is the rent, should not be treated as capital. The income has not been obtained from capital, but from the person's business. The property was used as an asset. The rent is a gross receipt of the business.

### **Example**

Michael has a partnership with another person in a business. The business has been set up to buy land and property for sale and let to tenants. Michael and his partner own a garage with two flats above it and two terraced houses on the same street.

The flats and houses are all let to tenants and Michael collects the rent and does the repairs and maintenance. All business activity takes 15 hours per week. Michael claims JSA.

The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

S3429 – S3439

## Seasonally self-employed

S3440 If a S/E earner is seasonally S/E the DM should consider if the S/E earner is in remunerative work (see ADM Chapter **R2**). If not, the DM should

1. consider the guidance at **S3020 – S3023** and
2. determine if the S/E earner remains gainfully employed as a S/E earner.

### Example

Shaun is S/E as an amusement arcade owner. He made a claim for JSA in October because the summer season had ended. Shaun stated that

1. he and his creditors regarded the business as a going concern. This is because he anticipated that his business would start up again in the following April when the holiday trade would re-commence
2. he was available for and actively seeking alternative employment
3. in April, when the holiday trade would re-commence he intends to start work again in the amusement arcade
4. he still undertakes some activities in the business. He is currently redecorating the arcade. He plans to renovate and maintain the electrics and make minor repairs before April. He also plans to update the alarm system. He is also looking to update some of the machines in the arcade
5. his accountant only submits figures from April to September each year. It is normal for him to only work between April and September each year.

The DM considers the guidance at **S3020 – S3023** and decides, in this case, that Shaun remains gainfully employed as a S/E earner. As there had been no changes that had affected the normal pattern of trading the DM determines that the assessment period for the earnings should be one year.

S3441 – S3449

## Sub-contractors

S3450 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

### Example

A firm of builders contract to build a house extension for Tony. They sub-contract the electrical work to Lee. Lee is a S/E sub-contractor and not an employee of either the building firm or Tony.

When Lee completes the work he moves to a different contract that may be for further work with the building firm or for a different contractor.

S3451 If a S/E sub-contractor claims JSA the DM should consider

1. the guidance at **S3020 – S3023** and
2. if the S/E sub-contractor remains gainfully employed as a S/E earner.

### Example

Stephen claims JSA. He is a S/E electrician. He sub-contracts for other contractors. Stephen has claimed JSA because he has just finished one contract and work on the next contract is not due to start for another couple of weeks. Stephen states that

1. he still regards himself as S/E and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at **S3020 – S3023** and determines, in this case, that Stephen remains gainfully employed as a S/E earner.

## Actors and entertainers

S3452 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.

S3453 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.

S3454 The fact that an actor or entertainer has periods of employment during which class 1 NI 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 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.

### **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 NI 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 **S3020 – S3023**)
- 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 NI 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.

S3455 – S3469

# Disregard of earnings from self-employment S3470 - S3500

## Disregard of earnings from self-employment

[Introduction](#) S3470

[Earnings from self-employment that has ceased](#) S3471

[Earnings payable abroad](#) S3472 - S3474

[Earnings paid in a foreign currency](#) S3475

[Earnings disregard](#) S3476 - S3500

## Introduction

S3470 The following disregards should be applied to the net profit of a S/E earner.

## Earnings from self-employment that has ceased

S3471 If a person has been engaged in

1. remunerative work as a S/E earner **or**
2. P/T self-employment

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see **S3073 – S3081**)<sup>1</sup>.

1 JSA Regs 13, Sch, para 4

## Example

James was S/E. He last worked on 11 November. His business has completely ceased to trade. He received earnings on that day. He claims JSA on 12 November.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11 November are disregarded.

## Earnings payable abroad

S3472 Money that is paid to the business in a country outside the UK should be treated as a gross receipt if it is received by the business. For example, when it is paid

1. to any branch or official representative of the business **or**
2. into any business bank account.

S3473 Any gross receipts that are received by the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies<sup>1</sup>.

1 JSA Regs 13, Sch, para 9

### Example

Derek is S/E on a P/T basis in an import/export business. During the assessment period his business received £1,000 in a country that was, and currently is, prohibiting the transfer of funds to the UK. The DM calculates the earnings as follows

Gross receipts (including the £1,000 received abroad)	= £5,000
Deductions for allowable expenses, notional income tax and NI contributions and half of a premium for a personal pension	= £2,500
Net profit	= £2,500
Divided by the number of weeks in the assessment period (52)	= £48.07
Normal earnings disregard	= £5.00 <b>less</b>
Special disregard for earnings abroad (£1,000 divided by 52)	= £19.23
Earnings taken into account (£48.07 - £5.00 - £19.23).	= £23.84

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

S3474

## **Earnings paid in a foreign currency**

S3475 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments.

1 JSA Regs 13, Sch, para 10

## **Earnings disregard**

S3476 The relevant earnings disregard (see ADM Chapter **S2**) should be applied.

S3477 – S3500

# Share fishermen - introduction and additional conditions for payment

## S3501 - S3508

### Share fishermen

[Who is a share fisherman](#) S3501 - S3502

[Meaning of fishing boat](#) S3503

[Meaning of usually works](#) S3504

[Meaning of profits or gross earnings of the fishing boat](#) S3505 - S3508

### Introduction

#### Who is a share fisherman

S3501 A share fisherman is<sup>1</sup>

**1.** a person who

**1.1** usually works in the fishing industry **and**

**1.2** is S/E **and**

**1.3** is the master or a crew member of a fishing boat crewed by more than one person **and**

**1.4** is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat **or**

**2.** a person who

**2.1** was a person who worked as in **1.**, but has permanently stopped such work because of age or ill health **and**

**2.2** usually works

**2.3** is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat **and**

**2.4** has not ceased to usually work as described in **2.2.**

**2.2.a** ashore in GB (see ADM Chapter **C3**) **and**

**2.2.b** as S/E **and**

**2.2.c** making or mending any gear belonging to a fishing boat or performing other services that help, or are connected with, a fishing boat **and**

1 JSA Regs 13, reg 67

S3502 The master and all the members of the crew of a fishing boat are within the definition at **S3501 1.**, This includes those who do a specialist job, such as an engineman, cook or firefighter, as long as they are paid at least partly by a share in the earnings of the fishing boat<sup>1</sup>.

1 R(U) 10/51

## **Meaning of fishing boat**

S3503 “Fishing boat” means<sup>1</sup> a boat that is used

- 1.** for or in connection with fishing for sea fish **and**
- 2.** in order to make a profit.

Sea fish includes shellfish, salmon and migratory trout.

1 JSA Regs 13, reg 67; Merchant Shipping Act 1995, s 313(1)

## **Meaning of usually works**

S3504 A DM can consider that a person “usually works....” if the person has

- 1.** done that job for some time **or**
- 2.** only recently started it but intends to follow it in the future.

## **Meaning of profits or gross earnings of the fishing boat**

S3505 The profits or gross earnings of the fishing boat are the money received for the catch. People are paid by a share of the profits or gross earnings of the fishing boat if

- 1.** the fishermen
  - 1.1** sell the catch themselves (either retail or wholesale) **and**
  - 1.2** share at least some of the profits between them **or**

2. the fishermen catch the fish for someone who then pays them a piece-rate wage<sup>1</sup>.

1 CU 495/49(KL)

S3506 - S3508

## **Additional condition for payment of Jobseeker's Allowance to share fishermen S3509 - S3535**

### **Additional condition for payment of Jobseeker's Allowance to share fishermen**

[Meaning of benefit week](#) S3510 - S3512

[Meaning of worked as a share fishermen](#) S3513 - S3512

[Neglected a reasonable opportunity of employment as a share fisherman](#) S3513 - S3517

S3509 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period in a benefit week when they have not worked as share fishermen. If they cannot prove this, even if it is just for part of one day in a week, no JSA is payable for the whole of that benefit week<sup>1</sup>

1 JSA Regs 13, reg 71(1)

### **Meaning of benefit week**

S3510 "Benefit week" means<sup>1</sup> a period of seven days beginning with the

- 1.** date of claim **or**
- 2.** day after the last day of the previous benefit week.

1 JSA Regs 13, reg 71(4)

### **Example**

Joe, a share fisherman, makes a claim for JSA on Thursday. He does not want to back-date it. His first benefit week will be from the Thursday he has made his claim to the following Wednesday. His second benefit week will run from the next Thursday to the following Wednesday.

S3511 - S3512

### **Meaning of worked as a share fishermen**

S3513 This guidance applies when a DM is identifying the period for which a share fisherman has to prove that he has not neglected to avail himself of employment as a share fisherman. Share fishermen

do not always have to catch fish to work as share fishermen. They will have worked as share fishermen if they have done any of the following work<sup>1</sup> and they satisfy the conditions in **S3514**

**1.** any repairs or maintenance done to the fishing boat or its nets or gear (including running repairs) **or**

**2.** any work in connection with

**2.1** laying up the boat, nets and gear at the end of a fishing season **or**

**2.2** preparing the boat, nets and gear for a season's fishing.

But share fishermen will not have worked as share fishermen if they have done work which is not to the fishing boat or its nets or gear<sup>2</sup>.

1 JSA Regs 13, reg 71(2)(b); 2 R(U) 33/52

S3514 The work in **S3513 1.** and **2.** is only work as a share fisherman if<sup>1</sup>

**1.** at the time it is done the work is, or is likely in the near future to become, necessary for the safety or reasonable efficiency of the fishing boat **and**

**2.** it is the duty of the share fisherman (by agreement, custom, practice or otherwise) to perform it without pay, other than a share in the profits or gross earnings of the fishing boat.

If the work cannot be postponed for as long as two months, then it is likely in the near future to become necessary for the safety or reasonable efficiency of the fishing boat.

1 JSA Regs 13, reg 71(2)(a)

S3515 In most cases a share fisherman on board a boat that leaves harbour equipped to fish will have performed work as a share fisherman for that period, even if fishing is stopped or prevented by bad weather or other causes. But if the share fisherman has only done what was reasonably necessary to find out that weather conditions were not suitable for fishing, the fisherman has not performed work as a share fisherman, even if the boat left harbour equipped to fish<sup>1</sup>.

1 R(U) 1/81

S3516 Examples of work as a share fisherman are

**1.** scraping and painting a boat, where that work is likely to become necessary for its reasonable efficiency in the near future<sup>1</sup>

**2.** fishing for bait (even if none is caught) where this has to be done and is normally done before fishing for a catch to sell<sup>2</sup>

3. setting off for the fishing grounds, but returning to dock before reaching them because of an accident to the fishing boat or because the harbour entrance was blocked<sup>3</sup>

4. returning to home port earlier than intended because they are unable to continue fishing alone when their neighbouring boat with whom they were fishing breaks down<sup>4</sup>.

1 CSU 88/49 (KL); 2 R(U) 22/51; 3 R(U) 9/52; 4 R(U) 9/53

S3517 Examples of work which is not work as a share fisherman are

1. voluntarily helping a harbour master, according to custom, to place a boom across a harbour to protect vessels in the harbour<sup>1</sup>

2. sailing to the entrance to a loch just to check if the weather was suitable for fishing, where that was the only practicable way of checking this<sup>2</sup>.

1 R(U) 33/52; 2 R(U)1/81

## **Neglected a reasonable opportunity of employment as a share fisherman**

S3518 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period they have not worked as share fishermen either catching fish or as defined in **S3513 – S3514**<sup>1</sup>. Any employment as a share fisherman is covered, including

1. the claimant's usual work as a share fisherman on the claimant's usual boat (including work as defined in **S3513 – S3514**)

2. employment as a share fisherman on a boat other than the claimant's usual boat (including work as defined in **S3513 – S3514**).

1 JSA Regs 13, reg 71(1) & (2)

S3519 It is **for claimants** to prove that they did not neglect an opportunity of such employment<sup>1</sup>. But DMs should accept that claimants satisfy this condition if there is no evidence to suggest otherwise. Information about work which claimants might have had may come, for example, from an employer or owner of a boat, or from the local fishery officer. If some boats go fishing from a port while others do not, it is difficult for those who stay behind to prove that they have not neglected a reasonable opportunity to fish<sup>2</sup>.

1 R(U) 28/53; 2 R(U) 1/51

### **Example 1**

Bill, a share fisherman, is part owner of a crabbing boat manned by himself and a partner. Bill does no work on two days because, in his opinion, fishing is not profitable. Some boats do go fishing. Bill has neglected an opportunity to fish, and no JSA is payable for the benefit week in which those two days fall. If the days fall in two separate benefit weeks, then JSA would not be payable for those two weeks.

## **Example 2**

A fishing boat fishes with another boat - neither boat can fish alone. One of the boats is under repair for two days, and the crew of the other boat do not go fishing either. But other local boats are available and could have been hired on those days. As the crew of the other boat make no enquiries about these boats, and do not make any attempt to find other work as share fishermen, they have not proved that they did not neglect an opportunity to fish.

S3520 The guidance at ADM Chapter **S5** on the meaning of neglect to avail and reasonable opportunity should be applied when deciding whether a share fisherman has neglected a reasonable opportunity of employment as a share fisherman<sup>1</sup>.

1 R(U) 9/72

## **Example**

Fred, a share fisherman who is a trawler skipper, misses an eight week (benefit weeks) long fishing trip because he arranges with the owners of the boat to take his sick wife on a two week holiday. He would normally have taken his holiday at the end of the eight week trip. Fred has neglected to avail himself of a reasonable opportunity of employment as a share fisherman<sup>1</sup>. JSA is not payable for the eight benefit weeks of the fishing trip.

1 R(U) 9/72

S3521 An opportunity should not be regarded as reasonable if taking it would reduce the share fisherman's chances of going back to fishing with their usual boat.

S3522 – S3535

## Further condition for payment if fishing boat is crew owned **S3538 - S3599**

### Further condition for payment if fishing boat is crew owned

[Meaning of benefit week](#) S3538

[Meaning of worked as a share fishermen](#) S3539

[Meaning of crew owned](#) S3540

[Share fishermen who are no longer masters or members of the crew](#) S3541

[Weather](#) S3542 - S3550

[Repairs](#) S3551 - S3559

[Absence of fish](#) S3560 - S3569

[Other good cause](#) S3570 - S3599

S3536 If share fishermen are masters or members of the crew of fishing boats that are crew owned, they must prove that, for any period in a benefit week when they have not worked as share fishermen, the fishing boat did not put to sea to go fishing because

- 1.** the state of the weather meant the boat could not reasonably have put to sea to go fishing (see **S3542 – S3546**) or
- 2.** it was being repaired or having maintenance work done to it, other than the repairs or maintenance referred to in **S3513 – S3514** (see **S3551 – S3552**) or
- 3.** there was an absence of fish in any waters in which the fishing boat could reasonably be expected to operate (see **S3560 – S3563**) or
- 4.** of any other good cause which forced them not to fish (see **S3570 – S3584**)<sup>1</sup>.

1 JSA Regs 13, reg 71(3)

S3537 If the claimant cannot show that one of the reasons at 536 is met for any period in a benefit week, even if it is just for part of one day in a week, JSA is not payable for the whole of that benefit week. This applies to the share fishermen described in **S3501 2.** as well as those who actually go fishing.

## Meaning of benefit week

S3538 Guidance on the meaning of benefit week is at **S3510 – S3511**.

## Meaning of worked as a share fishermen

S3539 Guidance on the meaning of worked as share fishermen is at **S3513 – S3517**.

## Meaning of crew owned

S3540 If the master or any member of the crew is the owner or part owner of the boat, the boat is crew owned.

## Share fishermen who are no longer masters or members of the crew

S3541 Share fishermen do not have to satisfy the further condition at **S3536** if, although linked to some extent to a particular boat, they can be treated as no longer being a master or member of the crew. They cannot be so treated just because the boat is idle<sup>1</sup>.

1 R(U) 29/58; R(U) 6/63; R(U) 19/64

### Example 1

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Tim, a share fisherman who works on the boat, but has no share in the ownership of the boat, is not needed and does not work for the two weeks. Tim ceases to be a member of the crew whilst he is not needed and does not have to satisfy the additional condition in **S3536**.

### Example 2

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Jimmy, a share fisherman who works on the boat, and has a share in the ownership of the boat, is not needed and does not work for the two weeks. Jimmy does not cease to be a member of the crew whilst he is not needed and does have to satisfy the additional condition in **S3536**.

### Example 3

The owners of a fishing boat are unable to get a full complement to crew their boat. They decide to go out of business and lay up the vessel for sale. Pat, the master of the boat, who is also a part owner, claims

JSA. Pat continues to be a part-owner of the vessel until it is sold, but meanwhile takes employment elsewhere. Pat and the members of the crew ceased to be master and members of the crew at the end of the last fishing trip - all intention of further fishing with the boat had definitely ceased. Pat does not have to satisfy the additional condition in **S3536**.

#### **Example 4**

Skippers at a particular port decide not to go fishing because there is no economic market for the catch. Colin, a share fisherman on one of the boats affected, who is not an owner of the boat he works on, is paid off. After six weeks the boats start fishing again and Colin goes back to work on the same boat. He has not ceased to be a member of the crew while the boat was temporarily idle. Colin does have to satisfy the additional condition at **S3536**.

## **Weather**

S3542 The question whether, because of the state of the weather, the boat could not reasonably have put to sea to go fishing is one of fact which has to be considered by the DM. Each case should be determined on its own particular facts, including the opinion of the local fishery officer where the DM considers it necessary to obtain it.

S3543 Usually it is not possible to accept that the weather prevented a particular fishing boat from putting to sea if on the same day other boats from the same port were able to fish. But it may be possible to accept this if, for example, the evidence shows that the weather was not too bad to stop larger boats from fishing, but was too rough for the claimant's boat<sup>1</sup>.

1 R(U) 15/57; R(U) 2/62

S3544 The use of the word "reasonably" indicates that the test should be applied in a reasonable, and therefore practical, manner. So the claimant does not have to show that the weather was such that the boat could not put to sea throughout the whole day. The claimant only has to show that the boat could not put to sea at all normal and reasonable times for putting to sea on the day and at the port or harbour in question<sup>1</sup>.

1 R(U) 30/58; R(U) 2/62

#### **Example 1**

Scott is a share fisherman. His boat cannot put to sea at the normal early morning time because of bad weather. By 11am the weather has improved sufficiently to allow the boat to go out. But the boat does not go to sea, because it would have had to return on the tide at about 2.30 pm. No other fishing boats

leave harbour that day. Scott satisfies the condition at **S3536 1.**

## Example 2

Pat is a crew member of a fishing boat. The crew are ready to go to sea at 3am, but they are prevented by bad weather. At 8am the master decides that fishing will not be possible that day, and he dismisses the crew. The weather improves, and other boats the same size (which on that day could only safely leave or enter the harbour before 7am, or between 11am and 7pm or after 11pm) put to sea and fish successfully. Pat does not satisfy the condition at **S3536 1.**

S3545 A fishing boat is not prevented from putting to sea by the weather if it could have gone

1. to the fishing grounds by a different and more sheltered route, even if it is longer<sup>1</sup>or
2. to different fishing grounds.

1 R(U) 15/57

S3546 A fishing boat cannot go to different fishing grounds if it is not equipped to catch the fish which live there. The boat is not expected to spend money to change gear to be able to catch a different type of fish because there is bad weather on the fishing grounds which it is equipped to fish in.

S3547 – S3550

## Repairs

S3551 A share fisherman who says that the boat did not go fishing because it was being repaired or having maintenance work done to it must show that the repairs or maintenance were not those described in **S3513 – S3514**. If the claimant cannot do this, this condition is not satisfied, and JSA is not payable.

S3552 Repair and maintenance work other than as described in **S3513 – S3514** includes the period during which the boat is sailing or being transported to and from the repair yard. This condition is satisfied for those days.

S3553 – S3559

## Absence of fish

S3560 Absence of fish does not mean that

1. there are no fish at all **or**
2. there is a shortage of fish

in the waters concerned. There will be an absence of fish, and the condition will be satisfied if there is a negligible quantity, that is only very few fish in the waters concerned<sup>1</sup>.

1 R(U) 20/58

S3561 The claimant will not satisfy the condition just because

1. the catches are so small that it is not financially worthwhile to continue daily fishing<sup>1</sup> **or**
2. that a particular type of fish are absent if

**2.1** other fish are plentiful **and**

**2.2** the boat can be easily adapted for the different type of fishing required.

1 R(U) 20/58

S3562 Sometimes, from the same port, some share fishermen go fishing and some do not. In such cases, it is difficult for those who do not go to prove that there was an absence of fish from the waters<sup>1</sup>.

1 R(U) 1/51; R(U) 11/58

### Example 1

Robin, the part-owner of a two man crabbing boat, does no work as a share fisherman for two days because he thinks that fishing is unprofitable due to a lack of fish. But there is nothing different about these two days from the days before and after them, when he does go fishing. Also, some other boats go fishing on the two days. Robin has not proved that there is an absence of fish from the waters. He has not satisfied the further condition, and JSA is not payable for the benefit week(s) in which the two days fall.

### Example 2

Thomas, a share fisherman who normally fishes by line, does not fish when it becomes unprofitable. The fish are not taking bait, and his boat is not equipped for net fishing. But the day before he stops fishing, he caught 184 kilos (29 stones) of fish. And other boats successfully fish on the days he does not, using different gear. There is no absence of fish from the waters. Thomas has not satisfied the further condition. JSA is not payable for the benefit weeks in which the days he did not fish fall.

## Evidence

S3563 Whether there is an absence of fish is a question of fact which the DM must determine on the evidence available. This will usually include a statement by the claimant. Where

1. the Jobcentre Plus Office lacks information or technical knowledge on the issues involved **or**
2. it is desirable to obtain some confirmation of the claimant's statement

the DM will usually need the written opinion of the local fishery officer. Sometimes expert opinion from another source will be available<sup>1</sup>.

1 R(U) 22/59

## Example

Nick, a ripper fisherman, does not fish when there is cloudy water because he does not catch many fish. He says that when the water is cloudy the fish mainly caught by that method of fishing move into deeper waters. Expert opinion from a marine laboratory does not agree with this theory. Nick has not proved that there is an absence of fish from the waters concerned.

S3564 – S3569

## Other good cause

S3570 Good cause will normally only be shown where share fishermen have been forced not to fish by something<sup>1</sup>

1. imposed on them **and**
2. outside their control **and**
3. about which they had no choice.

1 CSU 94/50(KL); R(U) 5/56; R(U) 16/57

## Example 1

The crew of a fishing boat are unable to fish for three days because their licence is suspended by the Sea Fish Industry Authority because they deliberately broke its conditions. The suspension of the licence is not good cause.

## Example 2

Len, who claims JSA, is master and part-owner of a fishing boat. The boat is put up for sale, and does not go to sea for one week before the sale, so that potential buyers can examine it. This is not good cause.

## Example 3

Dominic, a share fisherman, does not go fishing because

1. he runs out of bait **and**
2. a different method of fishing without bait does not offer any reasonable chance of success because the water is cloudy.

Neither of these reasons is good cause.

S3571 The claimant cannot show good cause because as an individual the claimant could not fish because

1. the fishing boat did not put to sea<sup>1</sup>**or**
2. the claimant had to follow the master's decision<sup>2</sup>.

The question of good cause relates to the boat and crew as a whole. To satisfy the condition the claimant must show that **the boat** did not go fishing due to good cause that is, some compelling circumstances over which the crew as a whole had no control<sup>3</sup>.

1 R(U) 7/55; 2 R(U) 15/57; 3 R(U) 7/55; R(U) 15/57

S3572 It may be that there are circumstances which make it entirely reasonable for the crew as a whole to decide not to go fishing. But this will not automatically mean that this is good cause.

S3573 It may be reasonable for a boat not to go fishing when it is likely that the trip will be unprofitable. But this, of itself, is not good cause<sup>1</sup>.

1 R(U) 10/51; R(U) 17/55; R(U) 19/64

## Example 1

Jerry's boat, with others, stays in harbour because the current price for fish is not high enough. This is not good cause.

## Example 2

A fishermen's association make an agreement that, until the market for fish improves, only part of the fishing fleet will go fishing at any one time, in accordance with a fixed rota. Kevin's boat stays in harbour in accordance with the rota. This is not good cause.

## Example 3

The skippers of drift net fishing boats at a particular port decide not to go fishing because there is no economic market for the fish caught. This is not good cause.

The claimants in Example 2 in **S3562** and the Example in **S3563** do not satisfy this condition either.

S3574 - S3575

## No market for fish

S3576 Good cause will be shown if there is no possible market for the potential catch<sup>1</sup>.

1 R(U) 6/56; R(U) 16/53

## Example

Keith, a share fisherman, is under contract to sell to a particular buyer. This buyer cannot take any fish on 26 December. Any fish caught on this day cannot be preserved, and there is no evidence that any one else will buy it. This is good cause for not going fishing.

S3577 - S3578

## Conservation - fishing quotas

S3579 Orders made under certain legislation<sup>1</sup> forbid the catching of certain species of fish (mostly herring and mackerel) by certain methods and at certain times. EC law forbids fishing once a set quota has been reached, and forbids fishing in certain areas. Sea fishermen who fish for a species covered by such an order or EC law have good cause for not fishing for that species if the reason is that they are forbidden to do so by the orders or EC law or because the quota has been reached.

1 Sea Fish (Conservation) Act 1967

S3580 But the DM also needs to consider whether or not the share fishermen have good cause for not fishing for other types of fish, before good cause can be shown and the condition met. In particular the DM should consider if the boats need to be and can be converted to catch other fish that are available.

The DM should also take into account the difficulties involved in converting the boats, when compared to the length of time before the share fisherman can go back to catching their usual species of fish.

S3581 – S3582

### **Crew members absent**

S3583 It will be good cause if a boat does not go to sea because<sup>1</sup>

- 1.** one or more members of the crew are absent through necessity, not through choice **and**
- 2.** no other arrangements to crew the boat, or for it to go out short handed, can reasonably be made.

1 R(U) 7/55; R(U) 3/57; R(U) 6/58; R(U) 3/64

#### **Example 1**

A boat does not go to sea for three days because the master and mate are attending to the funeral arrangements of another member of the crew. This is not good cause. The fact that the boat does not go out to sea is within the control of the crew as a whole. Whilst the action taken is reasonable and proper it is not something that has been forced upon them.

#### **Example 2**

Peter, a share fisherman, reports at 2am that, because of his wife's sudden illness, he is unable to go fishing. No replacement can be found at such short notice and the boat is unable to sail that day. This is good cause.

#### **Example 3**

Ray, a member of the crew of a boat, is absent because of his father's illness. Although a replacement could have been found, the boat does not sail. This is not good cause.

#### **Example 4**

A boat is unable to begin a fishing trip on the day arranged because of the sudden illness of Dave the skipper. Dave is not expected to be ill for long, and no-one knows of a local substitute. No effort is made to try to find a substitute skipper for at least a week. This is good cause.

S3584 There may be other circumstances in which it is not possible to get sufficient crew for the boat to put to sea. For example, number of men available in the area reduce. This would be good cause<sup>1</sup>.

S3585 - S3599

# Share fishermen - remunerative work S3600 - S3753

## Share fishermen - remunerative work

[Introduction](#) S3600

[Calculating hours of work](#) S3601 - S3753

### Introduction

S3600 The normal rules on remunerative work (see ADM Chapter R2) apply to share fishermen, with one exception. The hours worked as a share fisherman do not count towards the remunerative work exclusion<sup>1</sup>.

1 JSA Regs 13, reg 72

### Calculating hours of work

S3601 When calculating the hours of work ignore all the time spent in work as a share fisherman. Hours worked in any other occupation, or in work which does not come within the meaning of work as a share fisherman, count towards the remunerative work exclusion in the normal way.

### Work as a share fisherman

S3602 Work as a share fisherman is not defined. It will normally fall into two types

1. time spent at sea
2. time spent maintaining the boat and equipment.

DMs may find the guidance at **S3513 – S3517** helpful in determining whether work done is work as a share fisherman.

S3603 – S3753

# Earnings of share fishermen S3754 - S3773

## Earnings of share fishermen

[A share fisherman is a self-employed earner](#) S3754 - S3755

[Claims from share fishermen](#) S3756 - S3757

[Earnings of a share fisherman](#) S3759 - S3773

## A share fisherman is a self-employed earner

S3754 A share fisherman is a S/E earner. One difference between a

1. share fisherman **and**
2. business partner

is that the share fisherman pays a higher rate of Class 2 contributions (see **S3297** and **Appendix 2** to this Chapter) to qualify for JSA. Class 4 liability is the same (see **S3316** and **Appendix 2** to this Chapter).

S3755 Earnings should only be taken into account when a person is a S/E earner. A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earner's employment<sup>1</sup>.

**Note:** A share fisherman may also be employed in another occupation as an employed earner. This does not stop the share fisherman being S/E.

1 JSA Regs 13, reg 2(2); SS CB Act 92, s 2(1)(b)

## Claims from share fishermen

S3756 When considering a claim that includes a share fisherman the DM should decide if that person is in remunerative work. If the share fisherman is in remunerative work JSA is not payable.

S3757 If the share fisherman is not in remunerative work the DM should consider if

1. any other conditions of entitlement are satisfied **and**
2. the person is currently gainfully employed as a share fisherman (see **S3020 – S3025**) **and**
3. any earnings are to be taken into account.

S3758

## Earnings of a share fisherman

S3759 The earnings of a share fisherman are the gross receipts (see **S3125**) of the employment<sup>1</sup>.

1 JSA Regs 13, reg 60(1)

S3760 S/E earnings do not include<sup>1</sup>

1. charges paid to the share fisherman in return for providing BL accommodation (see S3762) **or**
2. any of the payments in **S3013** et seq.

1 JSA Regs 13 reg 60(2)

S3761 A share fisherman may be S/E and also have other work as an employed earner. The earnings from each employment should be calculated separately.

## Board and Lodging accommodation

S3762 BL accommodation is accommodation<sup>1</sup>

1. where the charge for the accommodation includes some cooked or prepared meals that are both

**1.1** cooked or prepared by someone who is not

**1.2** eaten in that accommodation or associated premises **or**

**1.1.a** the person provided with accommodation **or**

**1.1.b** a member of the family of the person provided with accommodation **and**

2. provided to a person in a

**2.1** hotel **or**

**2.2** guest house **or**

**2.3** lodging house (see S3763) **or**

**2.4** or similar establishment **or**

**3.** that is

**3.1** not provided by a close relative (see S3764 – S3765) of

**3.2** provided on a commercial basis.

**3.1.a** the person provided with accommodation **or**

**3.1.b** a member of the family of the person provided with accommodation **or**

1 JSA Regs 13, reg 60(3)

S3763 A lodging house

**1.** is not a private house in which rooms are rented, even if services such as the provision and washing of bed linen are provided **and**

**2.** is a place where accommodation is offered on a long-term basis **and**

**3.** is the kind of establishment that may have a sign outside offering accommodation.

S3764 A close relative is<sup>1</sup>

**1.** a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, half-brother, sister, half-sister **and**

**2.** the partner of any of those persons in **1.**

1 JSA Regs 13, reg 2(2);

S3765 For the purposes of **S3764**, a child who is adopted becomes

**1.** a child of the adoptive parents **and**

**2.** the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship<sup>1</sup>.

S3766 - S377

# Gainfully employed S3774 - S3809

## Gainfully employed

[Introduction](#) S3774 - S3785

[Sickness](#) S3786 - S3792

[Share fisherman no longer self-employed](#) S3793 - S3794

[Earnings from self-employment that has ceased](#) S3795 - S3809

## Introduction

S3774 A S/E earner is someone who is gainfully employed. If a share fisherman is not working, this does not mean that the share fisherman has ceased to be gainfully employed.

S3775 A share fisherman may be a

1. boat owner **or**
2. regular crew member **or**
3. a casual crew member.

S3776 Earnings should only be taken into account if the share fisherman is gainfully employed. The DM should

1. consider the guidance at **S3020 – S3023 and**
2. determine if the share fisherman remains gainfully employed as a S/E earner.

### Example 1

Kevin is a share fisherman, he is part owner of a boat. The boat is tied up because of bad weather. He claims JSA. Kevin states that

1. the boat has been tied up before because of bad weather. Stoppages during the winter months are a normal feature of his business. When the weather improves the boat will go back out to sea

**2.** he and his bank still regard his business as a going concern

**3.** he is still regarded as S/E by HMRC.

The DM considers the guidance at **S3020 – S3023** and determines, in this case, that Kevin remains gainfully employed as a S/E earner.

### **Example 2**

Barry is a share fisherman, he is a regular crew member. The boat is tied up because of extensive damage caused when the boat recently ran aground in bad weather. The boat will be tied up for a long period of time. He claims JSA. Barry states that

**1.** the boat owner and the bank do not regard the boat as a going concern

**2.** he will resume work on the boat when it is repaired, however he is unable to work whilst the boat is being repaired

**3.** he is not regarded as S/E by HMRC.

The DM considers the guidance at **S3020 – S3023** and determines, in this case, that Barry is not gainfully employed and no earnings should be taken into account.

S3777 If the share fisherman is gainfully employed the DM should consider what earnings should be taken into account.

S3778

S3779 For the purposes of **S3020 9.**, periods when the boat is confined to harbour, for example, because of

**1.** bad weather **or**

**2.** routine repairs and maintenance **or**

**3.** exhaustion of fishing quotas

would usually be part of the normal pattern of business for a share fisherman.

S3780 Each case should be considered individually. But where long tie ups occur on a regular basis the

DM may consider that they form part of a regular pattern of business.

S3781 – S3785

## **Sickness**

S3786 If a share fisherman is unable to work due to sickness, the DM should

- 1.** consider the guidance at **S3020 – INtrand**
- 2.** determine if the share fisherman remains gainfully employed as a S/E earner.

S3787 A share fisherman will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of self-employment.

S3788 – S3792

## **Share fisherman no longer self-employed**

S3793 If the DM determines that a share fisherman is no longer S/E S3795 should be considered.

### **Example**

Ivor is a share fisherman who is a boat owner. He decides to sell the boat and ties it up until it is sold. He claims JSA.

The DM determines

- 1.** that Ivor is no longer a S/E share fisherman **and**
- 2.** the value of Ivor's boat and whether it can be disregarded.

S3794

## **Earnings from self-employment that has ceased**

S3795 If a person has been engaged in

**1. remunerative work as a S/E share fisherman or**

**2. P/T self-employment as a share fisherman**

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 4

**Example**

James is a share fisherman, he is a regular crew member. Due to health problems he can no longer work as a share fisherman. He last worked on 11.11.13 and received his share of the catch on that day. He claims JSA on 12.11.13.

The DM determines that James has ceased to be a S/E share fisherman. The earnings received on 11.11.13 are disregarded.

S3796 – S3809

## Assessment period S3810 - S3819

### Assessment period

S3810 The normal weekly earnings of a share fisherman should be calculated by using the gross receipts received and expenses incurred or paid out (see **S3871 – S3897**) during the assessment period.

S3811 The assessment period is the share fisherman's benefit week<sup>1</sup>.

1 JSA Regs 13, reg 73(3), (61(2))

S3812 A share fisherman is paid JSA for complete benefit weeks even if the share fisherman is without work for only part of the benefit week. A share fisherman is not entitled to part-week payments (see **ADM Chapter S1**).

S3813 Any work as a share fisherman does not count towards the remunerative work rule (see **S3600** et seq).

### Benefit week

S3814 For the assessment period, a benefit week is a period of seven days beginning with the

**1.** date of claim **or**

**2.** day after the last day of the previous benefit week<sup>1</sup>.

1 reg 73(3)(61(12)) & reg 74(3)

### Example

Dougal is a share fisherman, he claims JSA on Thursday 24 October. He is entitled to JSA. His benefit week is Thursday 24 October to Wednesday 30 October. His next benefit week is Thursday 31 October to Wednesday 6 November.

Dougal does some work as a share fisherman on 31 October and 1 November. The DM determines that this work does not count towards the remunerative work rule and considers entitlement to JSA for the seven days in benefit week 31 October to 6 November.



# Calculation of weekly earnings S3820 - S3840

## Calculation of weekly earnings

[Method of calculation](#) S3820 - S3823

[Evidence](#) S3824 - S3840

### Method of calculation

S3820 To calculate the earnings of a share fisherman the DM

- 1.** should establish the **gross receipts** of the boat during the assessment period (including any payment in **S3826 2.**) **and**
- 2.** deduct from the gross receipts the **allowable expenses** of the boat, and the share fisherman, taking care to avoid duplication **and**
- 3.** calculate the person's share of the sum remaining at **2.** according to the agreement for distributing the proceeds of the catch<sup>1</sup> **and**
- 4.** deduct from the figure in **3.** amounts for
  - 4.1** notional income tax (see **S3270** and **S3934**) **and**
  - 4.2** notional NI contributions (see **S3297** and **S3936** et seq) **and**
  - 4.3** half of any premium (see **S3325**) paid for a personal pension scheme **and**
- 5.** deduct the correct **disregard(s)** (see **S3953**).

The figure that is left is the earnings that should be taken into account.

1 JSA Regs 13, reg 61(1)(b); reg 73(3)(61(3))

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

S3821 – S3823

## Evidence

S3824 The evidence that a share fisherman should provide depends on whether the share fisherman is

1. an owner or part owner of a boat **or**
2. a regular crew member.

### Share fisherman is an owner or part owner of a boat

S3825 A share fisherman who is the owner or part owner of a boat should be asked for details of the

1. gross receipts and expenses of the boat for the assessment period **and**
2. agreement for sharing the proceeds of the catch.

### Share fisherman is a regular crew member

S3826 A share fisherman who is a regular crew member of a boat should be asked

1. to approach the boat owner for details of the
  - 1.1 gross receipts and expenses of the boat during the assessment period **and**
  - 1.2 arrangement for sharing the proceeds of the catch **and**
2. if the boat owner pays the
  - 2.1 employee's portion of any SS contribution **or**
  - 2.2 cost of provisions (such as food) **or**
  - 2.3 cost of replacement gear or clothing **and**
3. if the sum declared for gross receipts is the income received by the boat before or after any of the payments under **2.** have been made.

S3827 If the conditions for deducting an expense is met (see **S3871** or **S3873**) the DM should allow as an expense payments in **S3826 2.** that have not been deducted from the gross receipts figure. This will be in addition to any other allowable expenses incurred by all members of the sharing scheme.

S3828 If the gross receipts figure is net of any deductions in **S3826 2**, those amounts should be added back to establish the correct gross receipts figure. The DM should then consider the deductions in the normal way.

S3829 – S3840

## Gross receipts S3842 - S3870

### Gross receipts

[Earnings unusually high or low](#) S3842 - S3870

S3841 For JSA purposes, a share fisherman's earnings, that is the gross receipts, are treated as paid in the benefit week in which they are **earned**<sup>1</sup>. This means that a share fisherman who is

1. gainfully employed **and**
2. in receipt of JSA

will not have any earnings averaged, unless **S3842 – S3845** applies.

1 JSA Regs 13, reg 73(3)(61(2))

### Example

Abraham is a regular crew member, he is in receipt of JSA and he has a Thursday to Wednesday benefit week. He works as a share fisherman on Monday 12 March to Tuesday 12 March but he does not receive his share of the profit until Thursday 14 March.

The DM considers that his earnings from his work as a share fisherman on 11 March to 12 March are treated as paid in benefit week ending 13 March as this is the benefit week in which they are earned.

### Earnings unusually high or low

S3842 The DM may calculate earnings over a period that is not the assessment period, which is the benefit week.

S3843 The DM should consider calculating earnings over a period greater than the benefit week if<sup>1</sup>

1. the earnings in the benefit week are unusually high or low **and**
2. it is reasonable to do so, having regard to all of the facts of the case.

### **Determination for earnings unusually high or low**

S3844 To determine if the earnings are unusually high or low the DM could take one or more of the following steps

- 1.** look at previous weeks in the share fisherman's current claim
- 2.** look at previous claims from the share fisherman
- 3.** look at claims from other share fishermen on a similar boat and in the same circumstances
- 4.** look at the earnings of a similar boat with the same working pattern in the same area
- 5.** make enquiries of the District Fisheries Officer
- 6.** make enquiries of the Harbour Master.

### **Example**

Gareth is a share fisherman. He has been in receipt of JSA since 10.2.13. On 18.6.13 he receives a lump sum payment of compensation. The compensation is paid because Gareth was unable to work as a share fisherman for five weeks in 2012 because of an oil spillage that affected fishing in the area.

The DM determines that

- 1.** the earnings for benefit week ending 20.6.13 are unusually high **and**
- 2.** the payment of compensation should be divided by five (the number of weeks covered by the payment) and included in the earnings for benefit weeks 14.6.13 - 18.7.13.

S3845 If the earnings are unusually low because the share fisherman has incurred an unusually high expense, the DM should consider calculating the expense over a period other than the benefit week (see **S3890 – S3897**).

S3846 – S3870

## Expenses S3871 - S3925

### Expenses

[Conditions for deducting business expenses](#) S3871 - S3872

[Wholly and exclusively](#) S3873 - S3875

[Reasonably incurred](#) S3876 - S3882

[Shared expenses of share fishermen](#) S3883 - S3885

[Expenses unusually high or low](#) S3911 - S3925

[Expenses not allowed](#) S3911 - S3925

### Conditions for deducting business expenses

S3871 When calculating the net profit of a share fisherman for JSA purposes, the DM should deduct from the gross receipts any business expense that is

**1. incurred** wholly, exclusively and necessarily for the purpose of the business<sup>1</sup>**and**

**2. incurred** during the assessment period, that is the benefit week<sup>2</sup>**and**

**3. reasonably incurred**<sup>3</sup> (see **S3876**) **and**

**4. an allowable expense** (see **S3886**).

1 JSA Regs 13, reg 73(3)(61(6)&(10)(a)); 2 reg 73(3)(61(6)); 3 reg 73(3)(61(9))

S3872

### Wholly and exclusively

S3873 An expense is wholly and exclusively when the expense is only for the purpose of the business<sup>1</sup>. Any such payment should be deducted in full if all of the conditions in **S3871** are satisfied.

**Note: S3192 – S3195** provide guidance where the expense is for both business and private use.

S3874 – S3875

## Reasonably incurred

S3876 The term reasonably incurred is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

1. appropriate for the share fisherman **and**
2. necessary for the share fisherman **and**
3. not excessive.

The DM should consider the level of trading.

S3877 To determine what is reasonable the DM should have regard to the circumstances of each individual's case<sup>1</sup>, including the level of the person's earnings<sup>2</sup>.

1 R(P) 2/54; 2 R(G) 1/56

S3878 If expenditure on a particular item is necessary to enable the share fisherman to run the business the whole of that expenditure may be regarded as a deductible expense, unless there is evidence that it is excessive<sup>1</sup>.

1 R(G) 7/62

S3879 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

S3880 – S3882

## Shared expenses of share fishermen

S3883 Expenses of the boat may not always be attributable to all the sharers in the scheme. The owner may bear all, or part, of the cost of certain items. The DM should establish the expenses that are

1. common to all the sharers **and**

2. peculiar to the owner or owners.

### **Example 1**

Arthur is a boat owner, he has three other share fishermen aboard. The boat, the owner and each of the three sharers take 20% of the profit after deduction of expenses.

If a claim for JSA was made involving Arthur, his share would be 40% of the net profit.

If a claim for JSA was made involving one of the other share fishermen aboard, their share would be 20% of the net profit.

In each case the DM should consider deductions for tax, NI contributions and half of any premium for a personal pension scheme.

### **Example 2**

Andrew is a part owner of a boat, there is one other owner and one other share fisherman. The boat takes 60% of the gross profits and the two owners and the third sharer divide the remainder equally. The owners meet all expenses.

If a claim to JSA was made involving the third sharer, the share would be 13.33% of the gross receipts.

If a claim to JSA was made involving Andrew or his partner, the share would be 43.33% of the gross receipts less 50% of the allowable expenses.

In each case the DM should then consider deductions for tax, NI contributions and half of any premium for a personal pension scheme.

S3884 – S3885

### **Allowable business expenses**

S3886 Guidance on allowable business expenses is at **S3206** – S3212. DMs should note that for the expenses have to be **incurred** in the assessment period, that is the benefit week

S3887 – S3889

### **Expenses unusually high or low**

S3890 The DM may calculate expenditure over a period longer than the benefit week.

S3891 The DM should consider calculating expenditure over a period longer than the benefit week if<sup>1</sup>

1. the expenditure in the benefit week is unusually high or low **and**
2. it is reasonable to do so, having regard to all of the facts of the case.

1 JSA Regs 13, reg 73(3)(61(11))

### **Evidence of expenses**

S3892 As the assessment period is the benefit week

1. the share fisherman should be asked to provide details of expenses that are not incurred weekly **and**
2. the DM can then convert the expenses into a weekly figure.

This will give a true picture of the share fisherman's expenses.

S3893 Evidence of incurred expenses could be

1. receipts **or**
2. invoices **or**
3. accounts for the boat, taking care not to allow personal expenses put through the accounts.

### **Determination for expenses unusually high or low**

S3894 If the procedure at **S3892** is followed the DM may not have to determine if an expense is unusually high or low. But there may be expenses that the share fisherman may not have been aware of at the start of the claim and declares in a particular benefit week.

S3895 To determine if an expense is unusually high or low the DM could take one or more of the following steps

1. look at previous weeks in the share fisherman's current claim
2. look at previous claims from the share fisherman
3. look at claims from other share fishermen on a similar boat and in the same circumstances

4. look at the expenses of a similar boat with the same working pattern in the same area

5. make enquiries of the District Fisheries Officer

6. make enquiries of the Harbour Master.

### **Example**

Ewan is a share fisherman who is a regular crew member. He claims JSA and has a Wednesday benefit week ending.

Ewan declares that in the benefit week Thursday 4 March - Wednesday 10 March an expense is incurred because of essential painting to the boat. This expense makes the expenses of the boat unusually high for the benefit week. Ewan's share of the catch is net of any expenses.

The cost incurred is £300 and the boat has this essential painting done once a quarter. The annual costs of essential painting is £1,200. The DM checks a recent claim from Ewan and finds that the essential painting costs were £300 per quarter.

The DM decides that the expense is wholly, exclusively and necessarily incurred for share fishing and is reasonable in the circumstances. The DM calculates the weekly amount of the expense to be £23.08 (£1,200 divided by 52). An allowable expense of £23.08 is allowed from the gross receipts for each benefit week until the annual cost of essential painting alters.

S3896 It is not intended that every expense is assessed individually over a period different to the benefit week. This should be the exception rather than the rule.

S3897 Any expense for a period

1. equal or shorter than the benefit week should be assessed over the benefit week **or**

2. longer than the benefit week should be converted into a weekly figure only if the DM determines that<sup>1</sup>

**2.1** the expenditure is unusually high or low **and**

**2.2** it is reasonable to do so, having regard to all of the facts of the case.

1 JSA Regs 13, reg 73(3)(61(11))

S3898 – S3910

## Expenses not allowed

S3911 Business expenses that should not be allowed are<sup>1</sup>

1. those expenses where the conditions for deducting a business expense are not met (**S3871**)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. repayment of capital on loans except where **S3206 3.** applies
6. business entertainment expenses
7. losses incurred on the disposal of a capital asset
8. payments into a contingency fund to safeguard against future bad debts<sup>2</sup>
9. personal drawings on income and capital
10. money on goods used for personal consumption.

Full guidance on the above expenses is at **S3221 – S3226** and **S3232 – S3244**.

1 JSA Regs 13, reg 73(3)(61(7)); 2 reg 73(61(9))

S3912 – S392

# Calculation of income tax, National Insurance contributions and qualifying premium S3926 - S3949

## Calculation of income tax, National Insurance contributions and qualifying premium

[General](#) S3926 - S3933

[Notional income tax](#) S3934

[Notional Class 2 contributions](#) S3936 - S3942

[Notional Class 4 contributions](#) S3943 - S3944

[Premiums for personal pension schemes](#) S3945 - S3949

### General

S3926 Having calculated the share fisherman's gross receipts and expenses on a cash flow basis, the DM should consider deductions for<sup>1</sup>

1. income tax (see **S3270** and **S3934**) and
2. Class 2 contributions (see **S3297** and **S3936**) and
3. Class 4 contributions (see **S3316** and **S3943**) and
4. half of any premium for a personal pension. (See **S3325**).

1 JSA Regs 13, reg 61(3)(b) & (c) & 73(3)(61(3))

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

S3927 A share fisherman is entitled to the same tax allowances and tax rates as any other S/E earner (see **S3271** – **S3275**). A share fisherman

1. pays a special rate of Class 2 contributions and
2. may also have to pay Class 4 contributions.

## Chargeable income

S3929 The DM should base deductions for **S3926 1. to 3.** on the chargeable income for the assessment period.

S3930 A share fisherman's chargeable income is the person's share of<sup>1</sup>

- 1.** the gross receipts of the employment **less**
- 2.** any allowable business expenses.

1 JSA Regs 13, reg 61(4) & 73(3)(61)(6))

S3931 – S3933

## Notional income tax

S3934 As the assessment period is the benefit week the

- 1.** personal allowance **and**
- 2.** tax rate

should be apportioned on a weekly basis<sup>1</sup>. Guidance on personal allowances and tax rates is at **S3271 – S3275.**

1 JSA Regs 13, reg 73(3)(61)(3))

## Calculation of deduction

S3935 To determine the deduction for notional income tax from a share fisherman's chargeable income the DM should<sup>1</sup>

- 1.** establish the chargeable income (see **S3930**)
- 2.** deduct the personal allowance (see **Appendix 1** to this Chapter) apportioned on a weekly basis
- 3.** multiply the first £34,370 (12/13 rates) of the remainder by the basic rate of tax (see Appendix 1 to this Chapter)

4. round up where necessary.

1 JSA Regs 13, reg 73(3)(163(3)) & 62

**Note:** from 2016, the Scottish Government has had the ability to set its own rate of income tax. See **Appendix 1** for full details.

### Example

Gary is a married share fisherman who is receiving JSA

	£
Chargeable income	200.00 <b>less</b>
Claimant's personal allowance (£8,105 (12/13 rates) divided by 52)	<u>155.86</u>
	= 44.14
The remainder (£44.14) at 20%	<u>8.83</u> —
Total notional tax	= 8.83

### Notional Class 2 contributions

S3936 As the assessment period is for a benefit week the small earnings exception should be apportioned on a weekly basis according to the benefit week<sup>1</sup>.

1 JSA Regs 13, reg 73(61(3))

S3937 If the chargeable income is above the proportion of the small earnings exception the DM should consider if a Class 2 contribution should be deducted. Full guidance on Class 2 contributions is at **S3297** et seq.

### Example

Gary is a married share fisherman who is receiving JSA

	£
Chargeable income	- 160.00
Small earnings exception (£5,595 divided by 52)	- 107.60

Gary's chargeable income is more than the small earnings exception. The DM decides that Gary is liable for a Class 2 deduction and deducts a notional Class 2 contribution.

S3938 – S3942

## Notional Class 4 contributions

S3943 As the assessment period is for a benefit week the specified levels should be apportioned on a weekly basis according to the benefit week<sup>1</sup>.

1 JSA Regs 13, reg 73(3)(61)(3))

S3944 If the chargeable income is above the proportion of the specified level the DM should consider if a Class 4 contribution should be deducted. Full guidance on Class 4 contributions is at **S3316 – S3318**.

### Example

Gary is a married share fisherman who is receiving JSA

£

Chargeable income - 160.00

Lower level

(£7,605 divided by 52) - 146.25

Gary's chargeable income is more than the proportion of the specified level. The DM decides that Gary is liable for a Class 4 deduction.

The Class 4 deduction is calculated as follows

$£160.00 - £146.25 = £13.75 \times 9\% = £1.24$

## Premiums for personal pension schemes

S3945 Full guidance on premiums for personal pension schemes is at **S3325 – S3327**.

S3946 - S3949

## Amount payable for share fishermen S3950 - S3954

### Amount payable for share fishermen

S3950 The amount of JSA payable to share fishermen is calculated in the same way as with any other JSA claimant and has to take account of earnings and any pension payments<sup>1</sup>. ADM Chapter **S1** provides guidance on amounts payable.

1 JSA Regs 13, reg 74(1) & (2)

S3951 – S3954

# Earnings disregard for share fishermen S3955 - S3999

## Earnings disregard for share fishermen

[Introduction](#) S3955

[Earnings from self-employment that has ceased](#) S3956

[Earnings disregard](#) S3957

[Earnings from work that is not work as a share fisherman](#) S3958 - S3960

[Earnings paid in a foreign currency](#) S3961 - S3999

## Introduction

S3955 The following disregards should be applied to the weekly earnings of a share fisherman who is entitled to JSA

## Earnings from self-employment that has ceased

S3956 If a person has been engaged in

1. remunerative work as a share fisherman **or**
2. P/T self-employment as a share fisherman

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded<sup>1</sup>.

<sup>1</sup> JSA Regs 13, reg 73(3)(61(4)(b)); Sch, para 4

## Example

James is a share fisherman, he is a regular crew member. He ceased work as a share fisherman and last worked on 11 March. He received his share of the catch on that day. He claims JSA on 12 March, he is entitled to JSA.

The DM determines that James has ceased to be a S/E share fisherman. The earnings received on 11 March are disregarded.

## Earnings disregard

S3957 Unless **S3958 – S3960** applies, a share fisherman entitled to JSA should have £20.00 per week disregarded from any earnings from share fishing<sup>1</sup>.

1 JSA Regs 13, reg 73(3)(61(4)(a))

## Earnings from work that is not work as a share fisherman

S3958 If the share fisherman also has earnings from work<sup>1</sup>

**1.** as

**1.1** an auxiliary coastguard for costal rescue services (see ADM Chapter **S2**) **or**

**1.2** a P/T member of a fire brigade maintained under certain legislation (see ADM Chapter **S2**) **or**

**1.3** a P/T worker manning or launching a lifeboat (see ADM Chapter **S2**) **or**

**1.4** member of the territorial army or reserve forces (see ADM Chapter **S2**) **or**

**2.** as in **1.** and from another job (see ADM Chapter **S2**) **and**

**3.** the disregard for that work is £5 (see ADM Chapter **S2**)

the disregards in **S3959 – S3960** should be applied.

1 JSA Regs 13, reg 73(3)(61(5))

S3959 If the earnings disregard from work in **S3958** is £20, the disregard for earnings as a share fisherman in **S3957** should not be applied<sup>1</sup>.

1 JSA Regs 13, reg 73(3)(61(5)(a))

## Example

Vince is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from manning a lifeboat.

The DM determines that Vince is entitled to a £20 disregard for the earnings from manning the lifeboat and that he is not entitled to any disregard for the earnings from work as a share fisherman.

S3960 If the earnings disregarded from work in **S3958** is less than £20, the disregard for earnings as a share fisherman will be the difference between

**1.** the amount disregarded from the earnings in **S3958** and

**2.** £20<sup>1</sup>.

1 JSA Regs 13, reg 73(3)(61(5)(b))

### **Example 1**

Neil is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from helping a friend out in a shop.

The DM determines that Neil is entitled to a £5 disregard for the earnings that he earned from working in a shop and a £15 disregard on the earnings from work as a share fisherman.

### **Example 2**

John is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings of £8 from work as an auxiliary coastguard.

The DM determines that John is entitled to a £8 disregard for the work as an auxiliary coastguard and that he is entitled to a £12 disregard for the work as a share fisherman.

## **Earnings paid in a foreign currency**

S3961 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission<sup>1</sup>.

1 JSA Regs 13, reg 73(3)(61(4)(b)); Sch, para 10

S3962 – S399

# Appendix 1: Notional deductions for income tax

## Main income tax allowances

1. The main income tax allowances are as follows.

		12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
		£	£	£	£	£	£	£	£	£	£
Personal	under 65	8,105	9,440	10,000	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal	65-74	10,500	10,500	10,500	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal	75 & over	10,660	10,660	10,660	10,660	11,000	11,000	11,850	12,500	12,500	12,500
Married couple	under 65	-	-	-	-	-	-	-	-	-	-
Married couple	65-74	-	-	-	-	-	-	-	-	-	-
Married couple	75 & over	7,705	7,915	8,165	8,355	8,355	8,445	8,695			

## Basic rates of tax

2. Income tax is payable on taxable income

**Note** there are different rates for Scotland from **18/19** – see **3** below.

£

12/13 1 - 34,370 at basic rate of 20%

13/14 1 - 32,010 at basic rate of 20%

14/15 1 - 31,865 at basic rate of 20%

15/16	1 – 31,785	at basic rate of 20%
16/17	1 – 32,000	at basic rate of 20%
17/18	1 – 33,500	at basic rate of 20%
18/19	1 – 34,500	at basic rate of 20%
19/20	1 - 37,500	at basic rate of 20%
20/21	1 - 37,500	at basic rate of 20%
21/22	1 - 37,500	at basic rate of 20%

### 3. Scottish Income Tax Rates

18/19	11,850 – 13,850	at starter tax rate of 19%
	13,851 – 24,000	at basic rate of 20%
	24,001 – 43,430	at intermediate rate of 21%
19/20	21,501 - 14,549	at starter rate of 19%
	14,550 - 24,944	at basic rate of 20%
	24,945 - 43,430	at intermediate rate of 21%
20/21	12,501 - 14,585	at starter rate of 19%
	14,586 - 25,158	at basic rate of 20%
	25,159 - 43,430	at intermediate rate of 21%
21/22	12,571 - 14,667	at starter rate of 19%
	14,668 - 25,296	at basic rate of 20%
	25,297 - 43,662	at intermediate rate of 21%

## Appendix 2 : Notional deductions for National Insurance contributions

### Class 1 contributions

1. The Class 1 contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

#### 2. Earnings Bands 12/13

#### Earnings Limits 12/13

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £107
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £464
		UEL
		Weekly £817
		Monthly £3540

### Primary threshold

No contributions are payable on weekly earnings of £146 or less or monthly earnings of £634 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £146.01 and £817 per week and at 2% for earnings above £817 per week.

#### 3. Earnings Bands 13/14

#### Earnings Limits 13/14

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £109
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £472
		UEL
		Weekly £797

**Primary threshold**

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £645 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £149.01 and £797 per week and at 2% for earnings above £797 per week.

**4. Earnings Bands 14/15****Earnings Limits 14/15**

<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
<b>1.</b> up to LEL	NIL	Weekly £111
<b>2.</b> LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £481
		<b>UEL</b>
		Weekly £805
		Monthly £3488

**Primary threshold**

No contributions are payable on weekly earnings of £153 or less or monthly earnings of £663 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £153.01 and £805 per week and at 2% for earnings above £805 per week.

**5. Earnings Bands 15/16****Earnings Limits 15/16**

<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
<b>1.</b> up to LEL	NIL	Weekly £112
<b>2.</b> LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
		<b>UEL</b>
		Weekly £815
		Monthly £3532

## Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £815 per week and at 2% for earnings above £815 per week.

### 6. Earnings Bands 16/17

Earnings	Percentage rates
----------	------------------

1. up to LEL	NIL
--------------	-----

2. LEL to UEL	12% of earnings that exceed LEL up to UEL
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### Earnings Limits 16/17

#### LEL

Weekly £112

Monthly £486

#### UEL

Weekly £827

Monthly £3584

## Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £827 per week and at 2% for earnings above £827 per week.

### 7. Earnings Bands 17/18

Earnings	Percentage rates
----------	------------------

1. up to LEL	NIL
--------------	-----

2. LEL to UEL	12% of earnings that exceed LEL up to UEL
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### Earnings Limits 17/18

#### LEL

Weekly £113

Monthly £490

#### UEL

Weekly £866

Monthly £3753

## Primary threshold

No contributions are payable on weekly earnings of £157 or less or monthly earnings of £681 or less.

Otherwise contributions are still payable at a rate of 12% for earnings between £157.01 and £866 per week and at 2% for earnings above £866 per week.

## 8. Earnings Bands 18/19

## Earnings Limits 18/19

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £116
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £503
		<b>UEL</b>
		Weekly £892
		Monthly £3863

### Primary threshold

No contributions are payable on weekly earnings of £162 or less or monthly earnings of £702 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £162.01 and £892 per week and at 2% for earnings above £892 per week.

9.	Earnings Bands 19/20	Percentage rates	Earnings Limits 19/20
	<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
	1. up to LEL	NIL	Weekly £118
	2. LEL to UEL	12% of earnings that exceed LEL to UEL	Monthly £512
			<b>UEL</b>
			Weekly £962
			Monthly £4167

### Primary threshold

No contributions are payable on weekly earnings of £166 or less or monthly earnings of £719 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £166.01 and £962 per week and at 2% for earnings above £962 per week.

10.	Earnings Bands 20/21	Earnings Limits 20/21
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	<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
	<b>1.</b> up to LEL	NIL	Weekly £120
	<b>2.</b> LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £520
			<b>UEL</b>
			Weekly £962
			Monthly £4167

### **Primary threshold**

**No contributions are payable on weekly earnings of £183 or less or monthly earnings of £792 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £183.01 and £962 per week and at 2% for earnings above £962 per week.**

<b>11.</b>	<b>Earnings Bands 21/22</b>		<b>Earnings Limits 21/22</b>
	<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
	<b>1.</b> Up to LEL	NIL	Weekly £120
	<b>2.</b> LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £520
			<b>UEL</b>
			Weekly £967
			Monthly £4,189

### **Primary threshold**

No contributions are payable on weekly earnings of £183 or less or monthly earnings of £792 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £184.01 and £967 per week and at 2% for earnings above £967 per week.

### **Class 2 contributions**

**12.**

	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>	<b>21/22</b>
	<b>£</b>									
Ordinary Class 2 rate	2.65	2.70	2.75	2.80	2.80	2.85	2.95	3.00	3.05	3.05
Share fisherman rate	3.30	3.35	3.40	3.40	3.45	3.50	3.60	3.65	3.70	3.70

**Small earnings exception/small profits threshold****13.**

	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>	<b>21/22</b>
	<b>£</b>									
Earnings limit	5,595	5,725	5,885	5,965	5,965	6,025	6,205	6,365	6,475	6,475

**Class 4 contributions****14.**

	<b>12/13</b>	<b>13/14</b>	<b>14/15</b>	<b>15/16</b>	<b>16/17</b>	<b>17/18</b>	<b>18/19</b>	<b>19/20</b>	<b>20/21</b>	<b>21/22</b>
	<b>£</b>									
Lower level	7,605	7,755	7,956	8,060	8,060	8,164	8,424	8,632	9,500	9,568
Higher level	42,475	41,450	41,865	42,385	43,000	45,000	46,350	50,000	50,000	50,270

	9% of £7,605 to	9% of £7,755 to	9% of £7,956 to	9% of £8,060 to	9% of £8,060 to	9% of £8,164 to £45,000 per year 2% above £45,000	9% of £8,424 to £46,350 per year 2% above £46,350	9% of £8,632 to £50,000 per year. 2% above £50,000	9% of £9,500 to £50,000 per year. 2% above £50,000	9% of £9,568 to £50,27 per year 2% above £50,27
Percentage rate	£42,475 per year, 2% above £42,475	£41,450 per year, 2% above £41,450	£41,865 per year, 2% above £41,865	£42,385 per year, 2% above £42,385	£43,000 per year, 2% above £43,000					

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