

DMG Chapter 26: Employed earners

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Introduction

26001 This Chapter deals with the calculation and treatment of payments made to employed earners. These will usually be earnings paid by an employer, but may be other types of payment.

26002 How payments made to employees affect a claim for JSA or IS will depend on

- 1.** which benefit has been claimed
- 2.** whether the work is continuing
- 3.** whether the work has ended.

26003 Differences in the treatment of any payment between IS and JSA, will be pointed out throughout this guidance. Guidance on the calculation and treatment of payments made on termination of employment is given in DMG 26500 - 26768. Guidance on payments made under employment protection legislation is in DMG 26300 - 26453.

Meaning of claimant

26004 Claimant means¹ either

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

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

Calculation of earnings - JSA

26005 Earnings are calculated in the same way for both JSA(Cont)¹ and JSA(IB)² and include any notional earnings³.

1 JSA Regs, reg 80(1); 2 reg 94-102; 3 reg 105

JSA(Cont)

26006 It is only the amount of a claimant's own earnings that affect the amount of JSA(Cont) payable¹. The earnings of a claimant's dependants cannot affect it.

1 JS Act 95, s 4(1); JSA Regs, reg 80(2)

JSA(IB) and IS

26007 Earnings of the claimant or any member of the claimant's family may be taken into account in the calculation of JSA(IB) or IS¹.

1 JS Act 95, s 4(3) & 13(2); SS CB Act 92, s 124(1) & 136(1)

26008

IS only

26009 For IS only when a person satisfies the conditions and is in receipt of MIRO (see DMG 20530 et seq), any earnings for the period of MIRO are to be disregarded in full¹.

1 IS (Gen) Regs, Sch 8, para 15C

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Meaning of employed earner

26010 The term employed earner means¹ a person who is gainfully employed in GB

1. under a contract of service **or**

2. in an office (including an elective office) with general earnings².

1 JSA Regs, reg 3; IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(a);
2 Income Tax (Earnings and Pensions) Act 2003, s 7(3)

26011 [See [DMG memo 12/23](#)] Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

26012 The phrase in an office includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses. General earnings include any wage, salary, fee, gratuity, profit or incidental benefit¹.

1 Income Tax (Earnings and Pensions) Act 2003, s 7(3) & s 62

Meaning of earnings

26013 [See [Memo DMG 13/20](#)] Earnings means any pay or profit derived from employment and includes¹

1. bonus or commission (see DMG 26045)

2. PILOR (see DMG 26082)

3. PILON and certain compensation payments made by the employer because the employment has

ended (see DMG 26500 et seq)

4. holiday pay (see DMG 26059), but not where it is payable more than four weeks after the employment ended, or was interrupted (see DMG 32692 for an exception to this rule in trade dispute cases)

5. retainers (see DMG 26083)

6. payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for

6.1 the employee's travelling expenses between home and work (but see DMG 26065 et seq for councillors) **or**

6.2 any expenses that the employee may have for the care of a family member while the employee is at work (see DMG 26077)

7. Employment Protection awards² (see DMG 26300 et seq)

8. awards of compensation made under TU legislation³ (see DMG 26314 and 26335).

9. Any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of social security contributions to deduct⁴ (see DMG 26094).

This list is not exhaustive. See DMG 26040 - 26095 for more examples of what are and what are not earnings.

1 JSA Regs, reg 98(1); IS (Gen) Regs 35(1); 2 ER Act 96, s 55(4), 68 & 69, 70(1)-(3), 77 & 79, 92(6), 112(3) & (4),
113, 121(a), 128, 132; 3 TULR (C) Act 92, s 156, 157, 189 & 192; 4 IS (Gen) Regs, reg 35(1)(j);
JSA Regs, reg 98(1)(h)

26014 [See DMG Memo 08/20] Earnings do not include¹

1. payments in kind (see DMG 26080)

2. periodic payments made because employment has ended through redundancy²

3. payments made for periods when an employee is on maternity leave, paternity leave, adoption leave, shared parental leave or is away from work due to illness (see DMG 26130)

4. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26077)

5. payments of occupational pension³

6. redundancy payments⁴ (see DMG 26506)

7. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme⁵

8. any payment of expenses paid to the claimant as a result of participating in a service user group⁶ (see DMG 26084).

1 JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(2); 2 JSA Regs, reg 98(2)(b); IS (Gen) Regs, reg 35(1)(b);

3 JSA Regs, reg 98(2)(e); IS (Gen) Regs, reg 35(2)(d); 4 ER Act 96, s 135;

5 JSA Regs, reg 98(2)(g); IS (Gen) Regs, reg 35(2)(e); 6 JSA Regs, reg 98(2)(h); IS (Gen) Regs, reg 35(2)(f)

Meaning of derived from

26015 The words “derived from” mean having their origins in¹. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 26014. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG Chapter 25).

1 R(SB) 21/86

Meaning of gross earnings

26016 Gross earnings means the amount of earnings

1. after the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ (see DMG 26027) **but**

2. before any authorized deductions are made by the employer. These may include

2.1 income tax

2.2 pensions contributions

2.3 SS contributions (sometimes called NI contributions)

2.4 TU subscriptions

2.5 payments under a court order

2.6 recovery of any debt.

Note: Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings².

1 R(FC) 1/90 & R(IS) 16/93; 2 R(TC) 2/03

Meaning of pay period

26017 A pay period is the period for which the employee is, or expects to be, normally paid¹. This can be a week, a fortnight, four weeks, a month, or any other period.

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

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Deductions from gross earnings

26020 Net earnings are gross earnings less¹

1. income tax **and**

2. Class 1 SS contributions **and**

3. half of any sum paid by the employee, towards an occupational or personal pension scheme.

1 JSA Regs, reg 99(4); IS (Gen) Regs, reg 36(3)

Income tax

26021 Deduct from gross earnings any income tax deducted by the employer.

SS contributions

26022 SS contributions are often called National Insurance Contributions or NI Conts. Reduce gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

26023 Deduct from the employee's gross earnings for a normal pay period one half of any amount which

1. a person pays into an occupational pension scheme for that period **or**

2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension

scheme for that period **or**

- 3.** a person contributes towards a personal pension scheme for that period.

Example

Patricia earns £50 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her normal pay period is a week. Her pension contribution is changed into a weekly figure ($\text{£26} \times 12 \div 52 = \text{£6 pw}$) and half of this weekly figure ($\text{£6} \div 2 = \text{£3}$) is deducted from her gross weekly earnings ($\text{£50} - \text{£3} = \text{£47}$).

26024 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

- 1.** normally in the form of a pension, all or part of which may be taken as a lump sum
- 2.** payable on death or retirement.

1 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1)

26025 Personal pension schemes¹ are arrangements between employees, or S/E earners, and pension providers such as insurance companies. They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1); IS (Gen) Regs, reg 2(1)

26026 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

26027 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

26028 Examples of expenses for which deductions may be made under DMG 26027 are

- 1.** equipment, tools and stationery

2. overalls and specialist clothing

3. telephone calls made entirely for work purposes

4. travelling costs between different work places and any accommodation costs involved.

26029 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed (see DMG 27192 - 27195). Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

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

16/93

26030 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work, would not satisfy the test in DMG 26027. Child minding expenses¹, and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

1 R(FC) 1/90

26031 See DMG 26062 and DMG 26066 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 26077 for more guidance on the general question of expenses.

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Introduction

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

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

Employment ended

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

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

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

Accommodation provided by employer

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

Actors and entertainers

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

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

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

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

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

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

Example 1

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

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

Example 2

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

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

and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

Advance of earnings or loans

26044 Earnings should be taken into account from the date they are treated as paid¹. This is based on when they are due to be paid (see DMG Chapter 25). If they are paid before the due date, treat any amount paid as capital until the due date arrives. Then take the amount properly due into account as normal from that date. Any other loan made by the employer should also be treated as capital².

1 JSA Regs, reg 94 & 96(1); IS (Gen) Regs, reg 29 & 31(1); 2 JSA Regs, reg 110(5) & Sch 7, para 34; IS (Gen) Regs, reg 48(5) & Sch 9, para 32

Example

Cameron earns £50 a week which is due to be paid every 4th Friday. He was last paid £200 on 8 November. On 18 November, he gets an advance of £100 from his employer. The £100 is treated as capital. The full £200 due to be paid on 6 December is then taken into account (6 December to 2 January = 4 weeks x £50).

Bonus or commission

26045 Payments of bonus or commission should be treated as earnings. DMG Chapter 25 contains guidance on the period over which they should be taken into account.

Broadcasting and publication fees

26046 Fees and royalties should be treated as earnings, no matter how often or infrequently they are paid. They can be for employment or self employment (see DMG Chapter 27) and include payments for

- 1.** taking part in radio or television plays, commercials and documentaries
- 2.** repeat showings of plays, commercials and documentaries
- 3.** interviews with press reporters
- 4.** published items.

Cash in lieu of concessionary coal

26047 Employees of British Coal who live in property where solid fuel cannot be used, may receive a cash payment instead of an agreed amount of coal (concessionary coal). Payments made instead of it should be treated as earnings¹.

Directors of limited companies

26048 A limited company, of whatever size, is separate from its employees and shareholders¹. 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, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

26049 The income of a director can include

- 1.** payments for services as a director or any other employment with the company
- 2.** share dividend
- 3.** debenture interest.

Note: see DMG Chapter 29 when considering the effect of a director's capital

Payments as a director or other employee

26050 Directors have no legal right to receive payment for their services as a director, but can still be voted payment. Or they may be entitled to payments under the company's Articles of Association. Any payments voted to a director or to which they are so entitled should be taken into account as earnings.

26051 A director may also be employed by the company for another reason, for example as a sales manager. Such a person has a contract of employment with the company and is entitled to a salary. Any salary should be taken into account as earnings.

26052 If a director in a small company does no other work in it, the services provided will be limited and the amount of payment expected will be small. If the director also does other work in the company, then more payment will be expected.

26053 Many small companies operate with only two directors, for example the claimant and partner. Such companies normally obtain contracts and pay employees a salary for work done. Any earnings paid to the claimant will usually be for work done as an employee of the company.

26054 Directors may leave earnings that they are entitled to in a company bank account. If the director is free to draw on the account at any time, the money is actual income. It should be taken into account as actual earnings. If it is not paid to the director, or the director cannot draw it out of the account, it is a debt due. This should be taken into account as income due but not paid¹.

26055 If a director of a small company is not voted any payment, the DM should consider whether the director should be treated as having earnings (see DMG 26180 et seq). In doing so, the DM should consider whether the company can afford to pay the director.

Share dividend

26056 Share dividend is income from capital and should be treated as capital¹.

1 JSA Regs, reg 110(4); IS (Gen) Regs, reg 48(4)

Debenture interest

26057 Directors may have debentures in a company. Debentures are a type of loan capital. Debenture holders are entitled to a fixed rate of interest. The interest is payable whether the company makes a profit or not. If a director has made a loan to a company, the interest payments should be treated as capital¹. If any of the loan itself is repaid, the amount repaid is a repayment of capital.

1 JSA Regs, reg 110(4); IS (Gen) Regs, reg 48(4)

Single status payments

26058 A payment which is made to a person to redress past pay inequalities is a payment of earnings¹ and may have to be taken into account if that person is still working for that employer. These payments are sometimes called “single status payments” but may be called something else.

1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1); Minter v. Kingston Upon Hull City Council [2011] Civ 1155

Example

Anna is in receipt of JSA(IB) of £40 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Anna’s employer offers her a payment of £7,200. This is paid to Anna with her salary and the DM treats it as a payment of earnings.

Holiday pay

26059 Any holiday pay that is payable within four weeks of the date employment ended, or was interrupted, should be treated as earnings¹. If it is payable more than four weeks after the employment has ended, or been interrupted, it should be treated as capital². Guidance on the effects of holiday pay paid on termination of employment is given in DMG 26594 and 26652.

1 JSA Regs, reg 98(1)(c); IS (Gen) Regs, reg 35(1)(d); 2 JSA Regs, reg 110(3); IS (Gen) Regs, reg 48(3)

Income tax refunds

26060 Earnings of employed earners are taxed under the PAYE scheme by direct deduction from wages or salary. Any refunds of income tax should be treated as capital¹ (see DMG 32782 for the exception to this rule in trade dispute cases).

1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2)

Justices of the Peace

26061 Most Justices of the Peace are members of the public who volunteer to be magistrates. In England and Wales a Justice of the Peace who is not a District Judge is a Lay Justice¹. Those people who were employed as magistrates and referred to as stipendiary magistrates are now known as District Judges (Magistrates Courts)². In connection with their duties Lay Justices may receive

- 1.** travel allowances³
- 2.** subsistence⁴
- 3.** financial loss allowances⁵.

1 Courts Act 2003, s 9; 2 Access to Justice Act 1999; 3 Courts Act 2003, s 15(1)(a); 4 s 15(1)(b); 5 s 15(1)(c)

26062 In Scotland, Justices of the Peace sit in District Courts, where they have not been replaced by Justice of the Peace Courts, and in Justice of the Peace Courts. Justices of the Peace in Scotland may receive¹

- 1.** travel allowances
- 2.** subsistence allowances
- 3.** financial loss allowances.

1 District Courts (Scotland) Act 1975, s 17(1); Criminal Proceedings etc (Reform) (Scotland) Act 2007, s 68(4) & (5)

Travel allowances and subsistence

26063 Travel allowances and payments of subsistence incurred wholly, exclusively and necessarily in the performance of the Lay Justice's or Justice of the Peace's duties should be disregarded in full¹.

1 JSA Regs, reg 98(2)(d) & Sch 7, para 3; IS (Gen) Regs, reg 35(2)(c) & Sch 9, para 3

Financial loss allowances

26064 Financial loss allowances are paid to compensate Lay Justices and Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for

- 1.** loss of earnings - these should be treated as pay in lieu of remuneration¹ (see DMG 26082)
- 2.** loss of SS benefits - these should be treated as income other than earnings
- 3.** other expenses that are incurred wholly, exclusively and necessarily in the performance of the duties of the Lay Justice or Justice of the Peace - these should be disregarded in full.

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

Local Authority councillors

26065 Councillors are

- 1.** in England and Wales, a member of
 - 1.1** a London borough council **or**
 - 1.2** a county council **or**
 - 1.3** a district council **or**
 - 1.4** a parish or community council **or**
 - 1.5** the Common Council of the City of London **or**
 - 1.6** the Council of the Isles of Scilly
- 2.** in Scotland, a member of a council for a local government area¹.

1 Local Government etc (Scotland) Act 1994, s 2

26066 LA councillors are elected office holders and are employed earners¹. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme² for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

- 1.** a meeting of the authority **and**
- 2.** a sub-committee of the authority **and**
- 3.** a meeting for any other body to which the authority makes appointments **and**

4. other meetings authorized by the authority.

1 R(IS) 6/92; 2 Local Authorities (Members' Allowances) (England) Regulations 2003, reg 4 & Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 5

26067 The allowances paid for official duties may include

1. basic allowance

2. special responsibilities allowance

3. childcare and dependent carers' allowance

4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 26071 et seq).

Basic allowance and special responsibilities allowance

26068 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

1. for the time they devote to their work **and**

2. to cover costs for which no other payment is made, for example, the use of a councillor's home and telephone. The amount actually used for expenses will vary in each case.

Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional special responsibilities allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly. It should be treated as earnings.

Scotland

26069 In Scotland there are four grades of LA councillors¹. The level of remuneration paid to a councillor depends on their grade and the banding of the LA. In addition councillors are entitled to mileage allowance for travel². There is no entitlement to any other allowance but councillors are entitled to reimbursement of certain expenses subject to a maximum rate³. The Civic Head of the Council may be entitled to reimbursement of additional receipted expenditure⁴. Certain elements of the councillors' remuneration and expenses are taxable and subject to NI contributions as an employed earner.

¹ Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007, reg 4;

² Local Government (Allowances and Expenses) (Scotland) Regulations 2007, reg 5; 3 reg 4; 4 reg 3

Childcare and dependent carers' allowance

26070 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor. It should be treated as earnings¹.

1 IS (Gen) Regs, reg 35(1)(f), JSA Regs, reg 98(1)(e)

Expenses

26071 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties¹, for example travel and subsistence allowances². If the LA cannot say how much of any payment is for expenses, ask the councillor for details.

Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 JSA Regs, reg 98(2)(d); IS (Gen) Regs, reg 35(2)(c); 2 R(IS) 6/92

26072 After expenses in DMG 26071 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA (see DMG 26027). The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

Example

Sharon attends three school summer fairs, in her capacity as a LA councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The DM decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.

26073 The DM should

- 1.** add together all of the allowances that are paid **and**
- 2.** deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties¹.

1 JSA Regs, reg 99(4); IS (Gen) Regs, reg 36(3); R(IS) 16/93

26074 For the purposes of DMG 26072, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic

allowance. This is because this allowance is paid to every councillor and not for any specific duties.

26075 Examples of the treatment of certain expenses are as follows

- 1.** Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.
- 2.** Secretarial expenses should only be deducted from the basic allowance.
- 3.** Defendants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.
- 4.** Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. DMs may need to apply averages and estimates over a period to calculate a weekly deduction.
- 5.** Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 26071). This is different to the normal treatment of travelling expenses (see DMG 26030). When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.
- 6.** Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.
- 7.** Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see DMG 26029). The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.
- 8.** Pension contributions are not an expense. But, one half of any sum paid by the councillor towards an occupational or personal pension can be deducted from the gross earnings (see DMG 26020 and DMG 26023).

Payments not claimed

26076 Councillors are entitled to allowances whether they are claimed or not¹. If a councillor has not

been paid an allowance and payment could be expected, the DM should consider taking notional income into account² (see DMG Chapter 28).

1 R(S) 6/86; 2 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2)

Treatment of expenses

26077 Payments made by an employer for expenses which **are not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings¹. These can include

- 1.** payments for travelling expenses between home and work
- 2.** expenses for the care of a member of the claimant's family
- 3.** school fees for a claimant's child
- 4.** child care costs.

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

26078 Payments made by an employer for expenses which are wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings¹. They are treated as income other than earnings but are fully disregarded². These can include

- 1.** payments made for travelling expenses and overnight accommodation so that the employee can attend a meeting
- 2.** a mileage allowance to run a car for business purposes.

1 JSA Regs, reg 98(2)(d); IS (Gen) Regs, reg 35(2)(c); R(FIS) 4/85; 2 JSA Regs, Sch 7, para 3;
IS (Gen) Regs, Sch 9, para 3

26079 An employer may pay for an expense from which the employee gets some private benefit. If so, divide the payment into private and business use. The part of the payment for private use is earnings¹. The rest, which is for business use, is wholly, exclusively and necessarily incurred, and is not earnings.

1 R(IS) 16/93

Example

Winston uses his own private telephone for work purposes. His employer pays the standing and rental charges for the telephone and 50% of the calls. This is because Winston also uses the phone for personal calls, and 50% of the calls made are personal. The DM decides that 50% of the amount paid by the employer for the standing and rental charges is an expense wholly, exclusively and necessarily incurred. The remaining 50% is for Winston's personal use and so is earnings. The amount paid by the

employer for calls is wholly, exclusively and necessarily incurred and is not earnings.

Payments in kind

26080 A payment in kind, for example free accommodation, should not be treated as earnings¹. Where wages are paid at a reduced rate because of the payment in kind, consider notional earnings (see DMG 26180 et seq).

1 JSA Regs, reg 98(2)(a); IS (Gen) Regs, reg 35(2)(a)

26081 Payments in kind do not include any payment by non-cash voucher if it has been taken into account as earnings of an employed earner (see DMG 26094).

Payments in lieu of remuneration

26082 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to Justices of the Peace and LA councillors for loss of earnings are examples of such payments. Employment Tribunal compensation awards for a past employment and awards made under sex and race discrimination law can also be PILORs. Payments made in lieu of remuneration are earnings¹.

1 JSA Regs, reg 98(1)(b) & (3); IS (Gen) Regs, reg 35(1)(b); R(SB) 21/86

Retainers

26083 Retainers¹ are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings and should not be disregarded. Retainer payments include²

1. statutory guarantee payments **and**

2. payments made where a claimant has been suspended on medical or maternity grounds.

1 JSA Regs, reg 98(1)(d); IS (Gen) Regs, reg 35(1)(e); 2 JSA Regs, Sch 6, para 1; IS (Gen) Regs, Sch 8, paras 1 & 2

Service User Groups

26084 Payments other than expenses received for taking part in a service user group (see DMG 28393) should be treated as earnings for

1. IS¹, **and**

2. JSA(IB)²

and be attributed in the usual way with the appropriate weekly disregards. DMs will also need to consider whether the remunerative work rule applies (see DMG Chapters 20 and 41).

1 IS (Gen) Regs, reg 35(1); 2 JSA Regs, reg 98(1)

Example

Jenny is in receipt of JSA(IB). She is involved in a tenants association which discusses LA housing issues. In return for attending the meetings, Jenny receives £20 from the LA. The DM decides that the payment is a payment of earnings and falls to be taken into account when calculating Jenny's entitlement to JSA(IB). The payment is subject to the normal weekly earnings disregards.

Special occupations

26085 Some occupations are known as special occupations. These are

- 1. auxiliary coastguards for coastal rescue activities**
- 2. in Scotland a P/T firefighter employed by the Scottish Fire and Rescue Service¹**
- 3. in England and Wales, a P/T firefighter employed by a fire and rescue authority under relevant legislation²**
- 4. P/T work crewing or launching a lifeboat**
- 5. members of the reserve forces³ (see Appendix 1 to this Chapter).**

1 Fire (Scotland) Act 2005, s 1A; 2 Fire and Rescue Services Act 2004; 3 SS (Contributions) Regs 2001, Sch 6, Part 1

26086 People in special occupations may receive a bounty payment for their services. If a bounty is paid at intervals of at least one year, it should be treated as capital¹. If it is paid more often than once a year, for example quarterly, it should be treated as earnings. The period for which the bounty is payable is of no relevance.

1 JSA Regs, reg 110(1); IS (Gen) Regs, reg 48(1)

Auxiliary coastguards

26087 Payments received for watch keeping duties should be treated as earnings. Payments for expenses of coastal rescue activities should also be treated as earnings, unless they were wholly, exclusively and necessarily incurred in the performance of the coastguard's duties (see DMG 26014).

Part-time members of a fire brigade

26088 Payments for drills, services or retaining fees, should be treated as earnings. Payments for

expenses should also be treated as earnings if they were not wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Part-time crewing or launching of a lifeboat

26089 Treat payments for drills, services or retaining fees, as earnings. Payments for expenses should also be treated as earnings, unless they are wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Reservists

26090 Members of the Army Reserve or Royal Navy/Royal Air Force volunteer forces may receive a training expenses allowance, paid at a flat rate. The allowance is for meals and other incidental expenses while on duty. It is not for expenses wholly, exclusively and necessarily incurred in the performance of the duties and should be treated as earnings.

26091 Payments for travelling expenses between the volunteer's home and place of duty, for example the drill hall, are also not wholly, exclusively and necessarily incurred. Such payments should be treated as earnings¹.

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

26092 Treat other payments, for example drill night pay, as earnings, unless they are for an item wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Tips

26093 Tips are expected in some jobs, for example hairdressers, waiters and bar staff. They may be made because of the services rendered by the employee in the course of the employment. The average weekly amount of any such tips received should be included in the calculation of earnings. Do not include tips made as gifts on grounds that are personal to the recipient and unconnected with the employment.

Vouchers and child care cheques

26094 An employee may receive vouchers instead of, or as well as, earnings. These can include

1. luncheon vouchers

2. child care vouchers

3. child care cheques.

26095 Earnings of an employed earner include the amount for any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of SS contributions to deduct¹.

Note: The amount taken into account as earnings for SS purposes may be equal, or be more or less than, the face value of the voucher.

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

26096 Payments in kind are not normally taken into account as earnings of an employed earner. Payments in kind do not include any non-cash voucher if it has been taken into account as earnings of an employed earner¹. (see DMG 26094 above).

1 IS (Gen) Regs, reg 35(2A); JSA Regs, reg 98(2A)

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Application to claimant and family

26097 Net earnings should be taken into account less any disregard. The amount of disregard will depend on

- 1.** which benefit has been claimed
- 2.** whether the earnings are from work in a special occupation
- 3.** whether the claimant is single

4. who the earnings belong to.

JSA(Cont)

26098 For JSA(Cont) disregard all the earnings of a claimant's dependants¹. Disregard £5 from the claimant's own earnings unless the claimant is in a special occupation (see DMG 26084) or is a share fisherman (see DMG Chapter 27)². In such cases disregard the claimant's earnings up to a maximum of £20³. No other disregards can apply⁴.

1 JS Act 95, s 4(1); JSA Regs, reg 80(2); 2 Sch 6, para 12; 3 Sch 6, paras 9 & 10; 4 JSA Regs, reg 99(3)

JSA(IB) and IS

26099 The income of each member of the family is worked out separately in JSA(IB) and IS. It is then treated as belonging to the claimant. This means that earnings of the claimant's partner can affect the claim. Earnings of any children or young people in the family may also sometimes affect the claim (see DMG 26134).

26100 Disregards apply equally to the claimant and partner, with an overall maximum limit set for the family. Where more than one disregard applies, the family is normally entitled to only one disregard. This will usually be the highest one, which can be up to £20.

26101 The exception to this rule is where amounts can be disregarded as in DMG 26130 - 26133. In such a case, those amounts may be disregarded in addition to the normal maximum set for the family.

Disabled people

26102 A disregard of up to £20 a week¹ applies if the claimant

1. is entitled to a DP² **or**

2. would be entitled to a DP but for living in hospital as an in patient **or**

3. is a member of a couple³ and their applicable amount would

3.1 include a DP but for an HPP being payable **or**

3.2 have included an HPP but for the claimant living in a place as in **2.** and if so, they would also have satisfied the conditions in **3.1 or**

4. is entitled to an HPP, or would be entitled to an HPP but for living in a place set out in **2.**⁴ **and**

4.1 the claimant or partner has reached the qualifying age for SPC **and**

4.2 immediately before reaching that age he or the partner was working P/T and was entitled to

the £20 disregard under **1. to 3. and**

4.3 the claimant or partner has continued in P/T work.

1 JSA Regs, Sch 6, para 5(1), Sch 6A, para 1(1); IS (Gen) Regs, Sch 8, para 4(1);
2 JSA Regs, Sch 6, para 5(2), Sch 6A, para 1(2); IS (Gen) Regs, Sch 8, para 4(2);
3 JSA Regs, Sch 6, para 5(3), Sch 6A, para 1(3); IS (Gen) Regs, Sch 8, para 4(3);
4 JSA Regs, Sch 6, para 5(4), Sch 6A, para 1(4); IS (Gen) Regs, Sch 8, para 4(4)

Repeat claims

26103 When considering whether the higher disregard again applies, do not take account of breaks in entitlement for any period

1. of eight consecutive weeks or less¹ that is

1.1 on or after the date on which the claimant or partner reaches the qualifying age for SPC during which

1.1.a the claimant or partner are not in P/T work **or**

1.1.b the claimant is not entitled to JSA, ESA or IS **or**

1.2 immediately after the date on which the claimant or partner

1.2.a stopped specified training² **or**

1.2.b gave up an employment rehabilitation programme **or**

2. not exceeding the permitted period³ (see DMG 26104)

2.1 which is on or after the date the claimant or partner reaches the qualifying age for SPC **and**

2.2 during which the claimant or partner is in remunerative work **or**

3. which is⁴

3.1 on or after the date the claimant or partner reached the qualifying age for SPC **and**

3.2 during which the claimant is not entitled to JSA, ESA or IS because the claimant or partner has been in specified training or on a course at an ERC.

1 JSA Regs, Sch 6, para 5(7)(a), Sch 6A, para 1(5)(a)(i); IS (Gen) Regs, Sch 8, para 4(7)(a); 2 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 90, s 2; 3 JSA Regs, reg 87(7) & Sch 6, para 5(7)(b), Sch 6A, paras 1(5)(b) & 21; IS (Gen) Regs, Sch 8, para 4(7)(b); 4 JSA Regs, Sch 6, para 5(7)(c), Sch 6A, para 1(5)(c); IS (Gen) Regs, Sch 8, para 4(7)(c)

Permitted period

26104 A claimant can stop getting benefit for a permitted period without losing entitlement to the higher earnings disregard¹.

1 JSA Regs, reg 87(7) & Sch 6, para 21; IS (Gen) Regs, reg 3A

26105 Where the claimant or partner starts remunerative work, the permitted period is normally twelve weeks. In other cases the period is eight weeks. But there is an exception to this rule for JSA.

26106 Where the claimant or partner leaves remunerative work, the permitted period is eight weeks if they

- 1.** are sanctioned for leaving voluntarily or for misconduct¹ **or**
- 2.** leave the work within four weeks of starting it **or**
- 3.** at any time in the 26 weeks before they started the work they were
 - 3.1** engaged in remunerative work **or**
 - 3.2** in relevant education **or**
 - 3.3** a student.

1 JS Act 95, s 19

26107 The permitted period is twelve weeks where the person gives up work but satisfies the trial period rules¹ (see DMG Chapter 34).

1 JSA Regs, reg 74(4)

Lone parents

26108 £20 of earnings is disregarded¹ if

- 1.** DMG 26101 - 26102 does not apply **and**
- 2.** the claimant is a lone parent (see DMG Chapter 22).

1 JSA Regs, Sch 6, para 6; IS (Gen) Regs, Sch 8, para 5

26109 - 26110

Carers

26111 If the disregards in DMG 26101 - 26107 do not apply, a disregard of £20 can be applied¹ to a carer's earnings where

1. the claimant's applicable amount includes a CP **and**

2. the carer

2.1 is in receipt of CA **or**

2.2 at any time in the preceding eight weeks was in receipt of CA, or was treated as being in receipt of CA **or**

2.3 is treated as being in receipt of CA.

1 JSA Regs, Sch 6, para 7; Sch 6A, para 2; IS (Gen) Regs, Sch 8, para 6A

26112 A CP may be awarded for both the claimant and partner where they both have earnings. Only £20 can be disregarded from the total amount of their combined earnings¹.

1 JSA Regs, Sch 6, para 7(2); Sch 6A, para 2(2); IS (Gen) Regs, Sch 8, para 6A(2)

26113 If a carer's partner has earnings from a special occupation (see DMG 26115) the disregard from those earnings should be limited. The limit will be the amount which, when added to the carer's earnings, will not exceed £20¹.

1 JSA Regs, Sch 6, para 8; Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 6B

Example

Pamela is a carer with P/T earnings of £8 a week. Her partner David is a P/T crew member on a lifeboat, earning £20 a week. Pamela's earnings are fully disregarded. £12 is disregarded from David's earnings.

26114 If a carer's partner has earnings that are not from a special occupation, the disregard from those earnings should be limited. The limit will be the amount, up to £5, which would not, when added to the carer's earnings, be more than £20¹.

1 JSA Regs, Sch 6, para 8; Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 6B

Example 1

Sanjay is a carer who has P/T earnings of £17 a week. His partner Gita, has P/T earnings as a school meals assistant of £10 a week. Sanjay's earnings are fully disregarded. Gita's earnings will have a £3 disregard (£20 - £17).

Example 2

Craig is a carer with P/T earnings of £8 a week. His partner John has P/T earnings as a barman, of £16. Craig's earnings are fully disregarded. John's earnings have a £5 disregard.

Special occupations

26115 If the disregards in DMG 26101 - 26114 do not apply, a disregard of £20 can normally be allowed on earnings from special occupations¹ (see DMG 26085). This is one of the disregards that can apply when considering the amount of JSA(Cont) payable. See DMG 26117 - 26119 for the exception to this rule.

1 JSA Regs, Sch 6, para 9(1); Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 7(1)

26116 Both members of a couple may have earnings from special occupations. Unless the exception in DMG 26117 applies, only £20 can be disregarded in total.

Example

George is a P/T crew member on a lifeboat, earning £14 a week. His partner Molly is a member of the Army Reserve and also earns £14 a week. George's earnings are fully disregarded. Molly's earnings have a £6 disregard (£20 - £14).

Reservists

26117 Members of the reserve forces (see Appendix 1 to this Chapter) may attend an annual training camp (known as "annual continuous training") which can last for up to 15 days. Payment in respect of the time at camp is taken into account as earnings but subject to a specific disregard. DMG Chapter 25 provides guidance on the period that the payment is taken into account for.

26118 For JSA(Cont) claimants, any earnings in respect of attendance at annual continuous training, in aggregate with any other earnings that the claimant may have, are disregarded to the extent of

1. the claimant's personal rate of JSA(Cont) less

2. ten pence¹.

1 JSA Regs, Sch 6, para 19(1) & (3)

26119 For JSA(IB) and IS claimants, any earnings in respect of attendance at annual continuous training, in aggregate with any other income that the claimant may have, are disregarded which exceed

1. the claimant's applicable amount less

2. ten pence¹.

Example

On 30.9.12 Jane receives a payment of £532 from the Army Reserve in respect of the time spent away training at camp. She was at camp for 15 days from 3.9.12 to 17.9.12. Her applicable amount for JSA(IB) is £67.50.

The DM decides that the payment in respect of time spent at camp:

- 1.** is taken into account, subject to the appropriate disregards
- 2.** is to be treated as paid on 27.9.12 because that is the first day of the benefit week in which it is received
- 3.** is attributed for a period of 14 days because it is payment specifically in respect of duties performed at a camp lasting in excess of 14 days. It is therefore taken into account from 27.9.12 to 10.10.12
- 4.** the weekly amount of the payment is determined to be £248.26
- 5.** for the weeks ending 3.10.12 and 10.10.12 only £67.40 of the earnings are taken into account. This is because this is the amount of Jane's applicable amount less 10 pence.

Jane's JSA resumes at its normal rate of £67.50 from 11.10.12.

26120 - 26122

Earnings from one or more occupations

26123 A single claimant may have earnings from a special occupation of less than £20, and also have another job. Up to £5 can be disregarded from the other job. The total amount disregarded can be no more than £20¹.

1 JSA Regs, Sch 6, para 10; Sch 6A, para 4; IS (Gen) Regs, Sch 8, para 8

Example

Peter earns £5 a week as an auxiliary coastguard and £20 a week as a waiter. His earnings as a coastguard are fully disregarded and £5 is disregarded from his earnings as a waiter.

26124 A claimant may have earnings from a special occupation of less than £20, and have a partner who has a P/T job. Up to £5 can be disregarded from the partner's earnings unless DMG 26125 applies. The total amount disregarded for the couple can be no more than £20¹.

1 JSA Regs, Sch 6, para 9(2); Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 7(2)

Example 1

Ian earns £20 a week as a P/T member of a lifeboat crew. His partner Kath, earns £30 a week as a cleaner. All of Ian's earnings are disregarded. Kath's earnings have no disregard.

Example 2

Simon earns £10 a week as a P/T member of a fire brigade. His partner Graham earns £25 a week as a check out operator. All of Simon's earnings are disregarded. £5 is disregarded from Graham's earnings.

JSA(IB) and IS - couples

26125 In JSA(IB) and IS there is a £10 disregard that applies to all couples¹. How it applies depends on whether

- 1.** any other disregard also applies **and**
- 2.** one or both of the couple have earnings.

Note: This disregard does not apply in JSA(Cont).

1 JSA Regs, Sch 6, para 11; Sch 6A, para 6; IS (Gen) Regs, Sch 8, para 6

Couple - £20 disregard does not apply

26126 If the disregards in DMG 26101 - 26124 do not apply, a £10 disregard can be applied to the couple¹. If only one of them has earnings, the full £10 can be disregarded from that person's earnings. It does not matter whether the earnings are the claimant's or the partner's.

1 JSA Regs, Sch 6, para 11(a); Sch 6A, para 6(1); IS (Gen) Regs, Sch 8, para 6(a)

26127 If they both have earnings, apply the disregard to the claimant's earnings first. Any amount of disregard left can then be disregarded from the partner's earnings. The total amount disregarded for the couple can not be more than £10.

Example 1

Pat is a barperson earning £20 a week. Her partner Stan does not work. Pat's earnings have a £10 disregard.

Example 2

Gordon earns £20 a week as a club pianist. His partner Hazel earns £7 a week as a cleaner. Gordon's earnings have a £10 disregard. Hazel's earnings have no disregard.

Example 3

Michelle earns £7 a week as a typist. Her partner Annette earns £20 a week as a salesperson. Michelle's earnings are disregarded in full and £3 (£10 - £7) is disregarded from Annette's earnings.

Couple - £20 disregard also applies

26128 One or more of the £20 disregards in DMG 26101 - 26124 may apply. If the total amount disregarded is

- 1.** £10 or more, apply the appropriate disregard, the couple disregard does not apply, **or**
- 2.** less than £10, disregard the amount of the earnings that makes the total disregarded £10¹.

1 JSA Regs, Sch 6, para 11(b); Sch 6A, para 6(2); IS (Gen) Regs, Sch 8, para 6(b)

Example 1

Paul is a carer and earns £30 a week. His partner Steve, earns £26 a week as a barman. Paul's earnings have a £20 disregard. Steve's earnings have no disregard.

Example 2

Haydn earns £3 as an auxiliary coastguard. His partner Pauline, earns £20 a week as an assistant in a care home. All of Haydn's earnings are disregarded. £7 is disregarded from Pauline's earnings.

Other cases

26129 If none of the conditions in DMG 26101 - 26128 is satisfied a personal disregard of £5 a week should be allowed¹.

1 JSA Regs, Sch 6, para 12; IS (Gen) Regs, Sch 8, para 9

Earnings paid for employment which has been interrupted

26130 Disregard earnings from employment that has been interrupted¹, for example by a period of sickness. SSP, SMP, Paternity Pay and Statutory Adoption Pay are examples of other payments that might be made. SSP, SMP, Paternity Pay, Shared Parental Pay and Statutory Adoption Pay should be taken into account as income (see DMG Chapter 28).

1 JSA Regs, Sch 6, para 1(1)(b); IS (Gen) Regs, Sch 8, para 1(1)(b)

26131 This disregard does not include

- 1.** retainers (including guarantee payments)
- 2.** earnings where the claimant has been suspended from employment.

Earnings payable outside United Kingdom

26132 Earnings may be payable in a country outside the UK. If they cannot be transferred to the UK, disregard them for as long as their transfer is prevented¹.

1 JSA Regs, Sch 6, para 14; IS (Gen) Regs, Sch 8, para 11

Earnings paid in a foreign currency

26133 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments¹.

1 JSA Regs, Sch 6, para 15; IS (Gen) Regs, Sch 8, para 12

Earnings of a child or young person

[See DMG Memo JSA/IS 64]

26134 Earnings of a child or young person should be disregarded in full unless¹

1. FTE has ended **and**

2. the child or young person is in remunerative work in the period when they are treated as still being in FTE.

1 JSA Regs, Sch 6, para 17 & 18; IS (Gen) Regs, Sch 8, para 14 & 15

26135 Where the child or young person is still treated as in FTE (see DMG 26134), disregard £20 if

1. DCP

1.1 is included in the child's applicable amount **or**

1.2 would be included but for the child living in a care home **and**

2. the child's earning capacity is not less than 75% of that normally expected.

In all other cases where the child or young person is still treated as in FTE, disregard £5.

26136 After applying the appropriate disregard, ignore the excess of income over the child's personal allowance and any DCP¹.

1 JSA Regs, reg 106(4); IS (Gen) Regs, reg 44(4)

Example

Andy gets JSA for himself and his children. His son Wayne, aged 16, left school on 28.6.96 and is treated as still being in FTE. On 1.7.96, Wayne starts work as an apprentice printer, working 40 hours a week, for £65.

On 5.7.96 Wayne gets his first wage of £65. DCP is not payable, so £5 is disregarded from Wayne's earnings. This leaves £60, which is more than the personal allowance in payment for Wayne (£28.85). The excess (£31.15) is ignored, leaving £28.85 to be taken into account.

26137 - 26149

Employment and training schemes 26150 - 26179

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Work based learning - Skill Build and Training for Work (Wales and Scotland) 26155 - 26156

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General

26150 Employment and training schemes are funded out of public funds by the Young People's Learning Agency for England, the Chief Executive of Education and Skills Funding or by or on behalf of the Secretary of State for Business, Innovation and Skills, Scottish Enterprise, the Highlands and Islands Enterprise, Skills Development Scotland or Welsh Ministers. Where a person is on such a scheme, establish whether they are

1. employees

1.1 in remunerative work **or**

1.2 in P/T work **or**

2. trainees.

Employees

26151 Employees get a wage from their employer. Treat the wage as earnings. If the work is remunerative there will be no entitlement to benefit. If the work is P/T, take the net earnings into account, less any disregard (see DMG 26097 et seq).

Trainees

26152 Trainees get a training allowance with no income tax or SS contributions deducted¹. Treat these allowances as other income and take them into account in full² except for

1. travelling expenses repaid to the trainee unless the same expenses have already been disregarded as student income (see DMG Chapter 30)³

2. living away from home allowance (see DMG 28195)

3. training premium

4. childminding costs paid direct to the childminder⁴

5. training bonus⁵ (see DMG Chapter 29)

6. discretionary payments made under Employment and Training Law intended to meet or help meet the special needs of a person undertaking a qualifying course⁶.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 JSA Regs, reg 101(1); IS (Gen) Regs, reg 40(1);

3 JSA Regs, Sch 7, para 63(2); IS (Gen) Regs, Sch 9, para 65(2); 4 JSA Regs, reg 105(10);

IS (Gen) Regs, reg 42(4); 5 JSA Regs, Sch 9, para 32; IS (Gen) Regs, Sch 10, para 30;

6 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13; E & T Act 1973, s 2

26153 - 26154

Work based learning - Skill Build and Training for Work (Wales and Scotland)

26155 Work Based Learning (TfW in Scotland and WBL - SB in Wales) is a voluntary scheme for the long term unemployed in Scotland and Wales. It is provided by Scottish Enterprise, the Highlands and Islands Enterprise and Skills Development Scotland or the Welsh Ministers¹. Schemes may be known locally by a name other than Work Based Learning. Local Jobcentre Plus offices can confirm whether a particular scheme is Work Based Learning.

1 TfW (Miscellaneous Provisions) Order 1995

26156 There are two groups who are treated differently depending on whether a training allowance is payable

1. those receiving or eligible to receive a training allowance, who are treated as trainees

2. those receiving or entitled to receive remuneration from the employer providing the training facilities who are treated as employees.

Employment rehabilitation programmes

26157 Employment rehabilitation programmes are for adults who, because of illness, injury or disability, may need help to improve their employment prospects. Courses can last up to six months and are also known as Work Choice.

26158 People taking part in employment rehabilitation programmes are trainees. Treat any payments in the same way as a training allowance. Payments can include

1. an allowance for attending the course

2. travelling expenses

3. an allowance for midday meals.

Work based Training for Young People and Modern Apprenticeships

26159 WBTfYP (Skillseeker's in Scotland) and Modern Apprenticeships provide training for young people who

1. have reached the minimum school leaving age

2. are not attending school or college F/T as a pupil or student

3. are not in higher education

4. are not in custody as prisoners or on remand

5. are not overseas nationals subject to

5.1 employment restrictions **or**

5.2 a time limit on their stay in GB (other than a refugee or asylum seeker) **and**

6. are not benefiting from any other Government scheme (for example WBLA).

26160 Young people on WBTfYP (Skillseeker's in Scotland) and Modern Apprenticeships can be employees or trainees with wages or training allowances. Employee status is more common on Modern Apprenticeships. Courses may vary in length and typically may be around two years on WBTfYP or three on Modern Apprenticeships. See DMG Chapter 34 for further details.

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Notional earnings - general

26180 Notional earnings are earnings that a person does not actually have, but is treated as having. The DM should treat the claimant or any other member of the family as having notional earnings where¹

1. they perform a service for another person **and**

2. that person

2.1 makes no payment of earnings **or**

2.2 pays less than the rate paid for a comparable employment in the area.

The rate for comparable employment in the area is a question of fact and must be based on evidence. It should not be assumed to be the NMW. If the notional income rules are satisfied the DM must take into account at least the NMW rate relevant to the claimant, unless one of the situations in DMG 26183 applies.

¹ JSA Regs, reg 105(13); IS (Gen) Regs, reg 42(6)

26181 The NMW provides that in most cases workers will be paid at least a standard hourly rate, dependant on their age and whether they are receiving accredited training.

26182 Not all the money paid to a worker counts for the purposes of the NMW. Also the hours for which

NMW should be paid depends on the type of work the worker is doing.

Note: If DMs are unable to decide whether the NMW applies or to calculate the NMW for a particular claimant further guidance should be sought from DMA (Leeds).

26183 The DM should not take notional earnings into account¹ where the claimant, the claimant's partner or any member of the family

1. satisfies the DM that the means of the person for whom the service is performed, are not enough to pay, or to pay more for the service **or**

2. is engaged by a charitable or voluntary organization or is a volunteer and the DM is satisfied that it is reasonable for the services to be provided free of charge **or**

3. provides a service under an employment or training programme (see DMG Chapter 21) if

3.1 no training allowance is payable to the claimant or the claimant's partner for the programme **or**

3.2 where such an allowance is payable it is for the sole purpose of reimbursement of travelling or meal expenses to the person participating in the programme.

1 JSA Regs, reg 105(13), (13A); IS (Gen) Regs, reg 42(6), reg 42(6A)

26184 The DM should not take notional earnings into account where the claimant is participating in a work placement which is approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement commences¹ and for which the claimant receives no payment.

1 JSA Regs, reg 105(13A)(c); IS (Gen) Regs, reg 42(6A)(d)

26185 In DMG 26184 "work placement" means¹ work which

1. is practical work experience **and**

2. is not performed in expectation of payment.

1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 42(6AA)

Remunerative work

26186 Where a service is being performed for some payment or in the expectation of payment, consider whether the remunerative work exclusion applies (see DMG Chapter 20). If JSA is in payment, consider also whether the availability conditions are satisfied.

Meaning of voluntary organization

26187 Voluntary organization means¹ a body that is not a

1. public authority or

2. LA

whose activities are not carried out for profit.

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

Meaning of “person”

26188 The meaning of “person” as used in DMG 26180 **1.** and **2.** includes¹

1. a limited company

2. a corporate body

3. an individual.

1 R(SB) 13/86

Performance of a service

26189 A service performed for another person benefits that person. That benefit may be in not having to employ someone else to do the work. It might also be in getting extra work done at little, or no, cost.

26190 A service may be performed even where there is a close family relationship¹, for example mother and son. In such cases there may be no formal arrangement. The person for whom the service is performed is referred to as the employer in DMG 26233.

1 R(SB) 3/92

Details of the service performed

26191 There may be a low rate of payment, or no payment at all being made for the service. If so, compare it with other employment by finding out

1. who is benefiting from the service

2. why it is being provided

3. when it is being provided (for example, during the day, night, or both)

4. where it is provided

5. who suggested that it be provided

6. what duties are involved

7. how many hours each day, or week, are spent on those duties.

26192 - 26194

When earnings are not to be treated as paid

26195 Do not treat the claimant as having earnings where

1. the claimant

1.1 works for a charitable or voluntary organization, for example Attend (formerly the League of Hospital Friends) **or**

1.2 is a volunteer **and**

2. it is reasonable for the service to be provided free of charge.

Meaning of volunteer

26196 Volunteers¹ in this context are people who often have no connection to any charitable or voluntary organization. They perform, of their own free will, a service for another person. They do so without any legal obligation and expect no payment.

1 R(IS) 12/92

26197 A person may hope or expect to be paid for their services at a later date. If payment is to be made for work currently being done, the person is not a volunteer. If payment is to be for work done at a future date, the person may still be a volunteer.

Example

Sinead starts unpaid work for the Church of England Childrens Society in January. On 1st March she becomes a paid employee for the society as a permanent F/T fundraiser. The voluntary work she did in January and February was not done in expectation of payment. During that time she was a volunteer.

Time exchange schemes

26198 Participation in a time-exchange scheme is not voluntary work, but as the nature of the scheme is not to make any payment in cash, it is treated in the same way as voluntary work as far as the effect on JSA(IB) is concerned. The hours worked by the claimant/partner are “banked” with the scheme and can be exchanged for the same amount of time from another member who will provide their skills to the claimant. Exceptionally where expenses are reimbursed they should be treated as other income (see DMG 28393).

Is it reasonable

26199 There is no definition of reasonable. The question should be considered based on the circumstances of each case¹. No exhaustive list can be given of relevant factors but they may include matters such as

- 1.** whether the person providing the services is getting anything in return (for example, training which may assist the person in obtaining employment could be seen as reasonable)
- 2.** the length of time for which the services have been offered (the shorter the period, the more reasonable it may be)
- 3.** claimants are expected to do their best to avoid dependency on benefits. They should seek paid work wherever possible.

Note: Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the claimant to provide the services free of charge.

1 R(IS) 12/92

Carers

26200 The claimant or partner may be caring for a sick or disabled relative. In such a situation it is often reasonable for the services to be provided free of charge. In considering this the DM should take account of all the relevant circumstances. In particular the DM should take into account matters such as

- 1.** the general background of the way in which the claimant came to be caring for the relative
- 2.** what options would be available if they stopped providing the care
- 3.** the nature and frequency of the care provided
- 4.** the expectations of the family members concerned
- 5.** their housing arrangements
- 6.** whether the person gave up work to look after the relative.

26201 The DM may consider that it is **not** reasonable for the services to be provided free of charge. The question of notional earnings may then need to be considered. The DM should take into account matters such as

- 1.** the means of the person cared for
- 2.** whether they have talked about their financial relationship, and if so, what the results were
- 3.** what would happen if the claimant made a charge for the care.

Note: Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the service to be provided free of charge.

Example 1

Timothy is a single man aged 45. He lives with and looks after his elderly disabled father. His father's only income is RP and AA. Timothy is an only child and he gave up work to look after his father. Timothy is a volunteer in looking after his father. It is reasonable for him to provide his services free of charge.

Example 2

Julie is 22 and unemployed. She lives with and looks after her disabled cousin. Her cousin gets a large weekly income from a trust fund. Julie did not give up a job to look after her cousin. The family did not expect that she should be responsible for looking after her cousin. It is not reasonable for Julie to provide her services free of charge.

Fine Payment Work - England and Wales

26202 Fine payment work has been introduced for people who are genuinely unable to pay their fine. Claimants are allowed to do unpaid work in the voluntary sector as an alternative. When the work is done the fine is regarded as paid. A fines officer works out the number of hours the offender is required to work to discharge the fine. The offender is allowed to reduce the number of hours he is required to work by paying part of the fine.

26203 Offenders who are genuinely unable to pay their fine will be able to work off their fine at a fixed rate¹. In these circumstances notional income should not be applied as offenders are not depriving themselves of income. They do not have the opportunity to be paid for the work they are doing, it is done to comply with a court order. Offenders cannot be said to be performing a service when they are complying with a court order.

1 The Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004 (S.I. 2004 No. 2196), reg 2

Supervised Attendance Orders - Scotland

26204 These orders¹ are similar to fine payment work in England and Wales. They provide a community-based alternative to imprisonment for failure to pay a fine, substituting the unpaid portion of a fine for a period of constructive activity which is organised by the social work department.

1 Criminal Procedure (Scotland) Act 1995, s 235 - 237 & Sch 7

26205 The period of these orders can vary between 10 and 100 hours. The activity undertaken often includes elements of social education, financial management and unpaid work. The granting of these orders discharges the fine¹.

26206 - 26209

Calculation of gross notional earnings

26210 The maximum amount of notional earnings that can be taken into account is the lower of

- 1.** the market rate for comparable employment in the area **and**
- 2.** the means of the person to pay for the service.

But, the DM should take into account at least the NMW rate relevant to the claimant.

Meaning of in the area

26211 In the area means the normal travel to work area. When considering this point, take account of where the claimant or partner lives and works.

Comparable employment

26212 It is not identical or equivalent employment that has to be identified, but comparable employment. Work of a different type can be comparable if the skills and experience needed are similar to those being used.

26213 Work of the same type will usually be comparable. But it may not always be paid at the same rate. Rates of pay can be affected by the employee's

- 1.** skills
- 2.** age
- 3.** seniority
- 4.** experience.

26214 Do not assume that the highest rate paid is the normal rate for the job. If the amounts paid vary, compare the available evidence with the pay and requirements of the claimant's job.

Payments in kind

26215 Payments in kind are not earnings¹. Payments in kind should not be taken into account when looking at whether a person is paid, or paid less, than the rate for comparable employment².

¹ JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(2); 2 R(IS) 2/98

Example

Blossom works as a shop assistant for ten hours per week. She receives payment of £7 in cash and goods to the value of £35 each week. The goods to the value of £35 are payment in kind and are disregarded. The DM considers what the market rate for the job is and calculates notional earnings at £42 per week. He decides it is reasonable to deduct the £7 cash payment from the notional earnings and takes £35 per week into account.

Are earnings to be treated as paid

26216 Consider whether it is reasonable to treat earnings as paid by taking into account

1. whether the employer

1.1 pays less than the going rate for similar employment in the area **or**

1.2 makes no payment **and**

2. a reasonable rate of pay for the job they are doing.

Reasonable rates of pay

26217 The rate paid for comparable employment in the area is a question of fact. It should not be assumed to be the NMW. If earnings are not immediately ascertainable, the DM treats the claimant as possessing earnings that are reasonable in the circumstances¹. The DM must treat the claimant as possessing at least the NMW rate that is relevant to them.

1 IS (Gen) Regs, reg 42(5); JSA Regs, reg 105(12)

26218 The parts of the job which would normally attract earnings, or more earnings, should be identified. Ignore hours spent under training or supervision, unless the cost is outweighed by the work performed.

Can the person afford to pay

26219 The claimant may say that the employer is unable to pay. If this is the case, the claimant must submit evidence, so that the DM can consider the question. This could be

1. in the case of a S/E trader, the accounts, bank statements and details of trading turnover **or**

2. in the case of an individual, details of that person's resources and outgoings.

26220 Where the service is for a person, take account of that person's actual means. This is not the amount by which their income would exceed a notional benefit level¹. It is the amount of money that they actually have available to them.

1 R(SB) 3/92

26221 The DM should consider what is reasonable in each case. Where the employer is getting JSA(IB) or

IS they will not normally have the means to pay. But this general rule may not always apply. For example, where the “employer” gets benefits, or other payments, to pay for their personal care.

26222 - 26224

Amount to be taken into account

26225 After determining the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

26226 From the resulting figure, make notional deductions for

- 1. income tax **and****
- 2. Class 1 SS contributions.**

Deduction for notional income tax

26227 Deduct the appropriate income tax allowance if the chargeable income figure calculated is higher. If it is equal to or less than that chargeable income figure, no notional income tax will be deducted. Income tax allowances are made up of

- 1. a personal allowance - given to everyone**
- 2. a married couple’s allowance - which can be claimed by a member of a married couple**
- 3. an additional personal allowance - given in special cases for a child or young person.**

26228 Calculate the notional income tax to be deducted¹ as in DMG Chapter 27.

1 JSA Regs, reg 105(15); IS (Gen) Regs, reg 42(8)

Deduction for notional SS contribution

26229 The deduction depends on the claimant’s circumstances. Employed earners between 16 and pension age have to pay SS contributions. This is subject to the amount of their earnings. Contributions are payable at a standard rate between a lower and upper earnings limit¹ (see DMG Chapter 27 Appendix 2).

1 JSA regs, reg 105(15)(b); IS (Gen) Regs, reg 42(8)(b)

26230 Some married women can pay SS contributions at a reduced rate. These are women who

- 1. had chosen to pay the reduced rate before 12.5.77 **and****
- 2. were married before 6.4.77 **and****

3. have continued to renew their certificate of election.

26231 The right to pay reduced rate contributions ends if the woman

1. gets divorced or her marriage is annulled **or**

2. becomes a widow, and has not become entitled to WB **or**

3. loses her right to WB for a reason other than remarrying **or**

4. has had no earnings on which Class 1 contributions are payable and has not been S/E in any two consecutive tax years since 5.4.78.

26232 Standard rate deductions should be made unless there is a current certificate of election.

Onus of proof

26233 In general, the burden of proof rests on the DM¹. But that is not always the case. The onus of proving that the employer does not have the means to pay falls on the claimant. The DM then considers what reasonable amount of notional earnings should be taken into account.

1 R(SB) 13/86

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26300 When working out periods of continuous employment (in order to work out legislative rights that are dependant on the total length of employment with a particular employer) no distinction is made between part-time and full time service¹. Periods in either type of work count when working out periods of continuous employment.

1 ER Act 96, s 211, 212(1) & 212(3)

26301 The effect of payments or awards made under employment protection legislation on claims for JSA or IS depends on

- 1.** what type of payment is involved
- 2.** when the payment was due to be made
- 3.** whether the payment has actually been made
- 4.** which benefit has been claimed.

Types of payments

26302 There are many different types of payments and awards including

- 1.** statutory guarantee payments (see DMG 26314)
- 2.** guarantee payments under a collective agreement or wages order (see DMG 26335)
- 3.** remuneration while suspended from work on medical or maternity grounds (see DMG 26395)
- 4.** awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal (see DMG 26405)
- 5.** interim relief pending determination of a claim for unfair dismissal (see DMG 26409)
- 6.** remuneration under a protective award (see DMG 26422)

7. statutory redundancy payments (see DMG 26506)

8. payments for certain time off work (see DMG 26440).

Treatment of payments - general

26303 Most payments under employment protection legislation should be treated as earnings¹ (see DMG 26013 et seq). Take them into account in the normal way.

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

26304 Statutory redundancy payments¹ are the exception to this general rule. They should be ignored for JSA(Cont) but taken into account as capital for JSA(IB) or IS. Included at Appendix 4 to this Chapter is a table showing how the amount of statutory redundancy payable is calculated.

1 JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(1)

When payments are due to be paid

26305 A payment is due to be paid when it is due and owing. But, notional income rules allow for earnings which are due on termination of employment because of redundancy, but which have not been paid¹, to be ignored for IS and JSA purposes. A payment is no longer due if the right to enforce payment of it is lost.

1 JSA Regs, reg 105(7)(d); IS (Gen) Regs, reg 42(3C)

26306 Employers sometimes appeal against Employment Tribunal decisions awarding payments. Until the appeal is decided, entitlement to any award will be in doubt. Any payment will not be due to be paid until the employer's appeal is dismissed.

26307 Employers and employees sometimes agree a settlement after an Employment Tribunal has made an award. Any settlement varies the award made. The award itself is due and owing until the agreement has been carried out. It is then replaced by the agreement and is no longer due to be paid.

26308 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

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General

26314 Some employees working short time or who are laid off can get statutory guarantee payments. These are payable when an employer is unable to provide work¹. Bad weather or a drop in business are examples of when this might happen. Statutory guarantee payments cannot be paid for any day after employment has terminated.

1 ER Act 96, s 28

26315 Payments are made for days on which the employee would normally be required to work. Those days are fixed in the contract of employment. A fresh contract can be drawn up by agreement between the employer and employee.

26316 A contract may provide for work only on certain days of the week. The employee normally has to work on those days but not on other days. Statutory guarantee payments are only payable for the days the employee is contracted to work.

Employees who do not qualify

26317 Statutory guarantee payments are not payable to employees who

1. usually work outside GB under their contracts of employment¹

2. have not been continuously employed by their employer for at least one month²

3. have no normal working hours fixed by a contract of employment³, for example some insurance agents and sales representatives

4. are engaged in share fishing and paid only by a share of the profits or earnings of a fishing boat⁴

5. are members of the police service and armed forces⁵.

Note: Most employees on off-shore oil and gas rigs in British sectors of the Continental Shelf are entitled to payments.

1 s 141(2); 2 s 29(1); 3 s 28(1); 4 s 199(2); 5 s 200(1) & 192(2)

26318 Statutory guarantee payments are also not payable if the Secretary of State has made an exemption order¹ (see DMG 26359 and Appendix 5 to this Chapter).

Note: The exemption order is made by the Secretary of State responsible for employment legislation.

1 s 35

Calculation

26319 Statutory guarantee payments¹ can be paid for the number of days that an individual is normally contracted to work in a week (up to a maximum of five days per week²) in any period of three months³. Thus if an employee is contracted to work three days per week he can only claim for three days in any three month period, or if he works for six days per week he can only claim for five days in any three month period. Limits on their amount and extent may be varied by order of the Secretary of State⁴. Whether those limits are revised or superseded each year depends on whether the retail prices index for September is higher (or lower) than the index for the previous September⁵. See Appendix 3 to this Chapter for details of the amounts payable.

1 ER Act 96; s 30; 2 s 31(3)-(5); 3 s 31(2); 4 s 31(7) & Employment Relations Act 1999 s 34; 5 s 34

Employees not entitled

26320 An employee is not entitled to a guarantee payment if

1. there is no work because employees of the same or an associated employer¹ are involved in

1.1 a strike **or**

1.2 a lock out **or**

1.3 other industrial action **or**

2. an employer's offer of suitable alternative work has been unreasonably refused by the employee² or

3. reasonable requirements imposed by the employer to ensure that the employee's services are available have not been met³.

1 ER Act 96, s 29(3); 2 s 29(4); 3 s 29(5)

Payments not made by employer

26321 Guarantee payments may not have been paid for the first five workless days in a three month period. The employee and employer should be asked to state the reason. If they say that it is because a condition is not satisfied, the DM should normally accept that statement.

26322 The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see DMG 26317). Or there may be no good reason given. The DM should make a determination based on the available evidence.

Complaints to a tribunal

26323 Employees may complain to an Employment Tribunal that they have not received all the payments that they should have¹. If this is confirmed the employer will be ordered to pay any amount owing². Settlements can also be reached by conciliation or arbitration.

1 ER Act 96, s 34(1); 2 s 34(2)

26324 Where such a complaint is outstanding the DM cannot determine whether an employee is due to be paid statutory guarantee payments. That question can only be decided by

- Employment Tribunals
- an Employment Appeal Tribunal
- the Court of Appeal
- the Court of Session (in Scotland).

26325 It may be a long time before a decision is made on an employee's complaint. Do not wait until the tribunal's decision is known before deciding the claim. The DM can allow the claim then revise the award once a decision is made.

Effect of statutory guarantee payments

26326 The period over which a payment is taken into account depends on the date it is due to be paid¹. That date is not always clear. It may not be the date they are actually paid.

26327 A decision can only be made when all the evidence is available. The DM should find out

1. when any payments are due to be paid **and**

2. how many days are to be paid **and**

3. when the payments will actually be paid.

26328 In cases of doubt the DM should contact the employer. The employer may be making a guarantee payment, or may say that one is due. That evidence should normally be accepted. The claimant's own evidence can also be accepted. Any decision by a tribunal must always be accepted.

26329 Statutory guarantee payments are payable only for the first five days of lay off in a three month period. They cannot be paid for any other days. Payments for other days will usually be because of a collective agreement or wages order (see DMG 26335 et seq).

JSA

26330 Statutory guarantee payments should be taken into account as earnings¹ for both elements of JSA.

1 JSA Regs, reg 98(1)(ff)

IS

26331 Statutory guarantee payments should be taken into account as earnings¹ for IS purposes.

1 IS (Gen) Regs, reg 35(1)(gg)

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Introduction

26335 Some employers have agreements with their employees for when there is a shortage of work. These collective agreements guarantee employees

1. a minimum payment of wages **or**

2. a minimum amount of work **or**

3. both.

26336 There may be enough work available so that employees can work, or earn, as much as is guaranteed. The agreement may not then be applied. But employees will still have the benefit of it. Their position will be the same as if it had been applied¹.

workers in that industry. Some employers may not be associated with the agreement. Others may have their own local agreements which are different.

1 TULR (C) Act 92, s 178(1)

Terms of an agreement

26338 Employees may have to place their services at the employer's disposal. They may have to be available and willing to work for the employer. This can be for some or all of the working days in the week.

26339 What an employee must do will often be set out in the agreement. The employer's guarantee will also be in the agreement. Consider both when looking at an agreement.

26340 An agreement may not always say what the employee must do. If wages are guaranteed, the employee's services are assumed to be at the employer's disposal on every working day¹. If work is guaranteed, the employee's services are assumed to be at the employer's disposal for the guaranteed period.

1 R(U) 21/56 (T)

26341 An agreement may be subject to a separate arrangement between the parties involved. Take this into account when deciding the effects of the agreement¹.

1 R(U) 21/56 (T)

26342 Agreements are not affected by changes in the hours or days to be worked. This is so even if part of the time worked is outside the normal hours or days¹.

1 R(U) 1/75

Changes to agreements

26343 Changes to agreements cannot be made until they are known to the employer and employees. They will then usually be jointly agreed and adopted. Make sure that up to date evidence of any agreement is obtained.

26344 Employers may follow an agreement that they are not a party to. In such cases there may be a delay in learning of any changes made. There may also be a delay in carrying out those changes¹.

1 R(U) 40/56

26345 Changes to an agreement cannot affect the JSA labour market tests for a past period. They can also have no effect on the remunerative work exclusion for a past period. This is so even if it is agreed that the change should take effect for a past period.

26346 Employers may make backdated payments, because of a change to an agreement. The DM will need to find out when those payments were due to be paid. Employers will usually be able to give this information.

Whether agreement effective

26347 An agreement may be legally enforceable. If it is not followed, court action can be taken. This is the case where

- 1.** the agreement includes a written statement that the parties intend it to be a legally enforceable contract¹ **or**
- 2.** the terms of the agreement are part of an individual's terms of employment. They then gain legal effect by being part of the contract between employer and employee incorporated either expressly or by inference.

1 TULR (C) Act 92, sec 179

26348 Agreements remain effective even if employers do not exercise their rights under them. For example, employers may waive their rights to an employee's services. The DM should take this into account when considering the employee's availability.

26349 An employer may not fulfil the terms of a guarantee. Even so, the employee remains under the obligation imposed by the agreement. Such a situation does not usually last long. It may be ended by

- 1.** the employer being persuaded to fulfil the guarantee **or**
- 2.** the agreement being properly suspended **or**
- 3.** the employment being terminated.

26350 Once employment ends a guarantee agreement can no longer apply. If an employee is later re-employed an agreement may start to apply again. The agreement may take account of an employee's previous period of employment.

Suspension of agreement

26351 If an agreement is properly suspended it stops being effective. Some agreements provide for automatic suspension, for example where production is affected by an industrial dispute. The suspension period will usually be the same as the stoppage of work.

26352 Production may be affected by other forms of protest. For example, a political protest. Whether this leads to an automatic suspension will depend on the wording of the agreement. If it refers simply to an industrial dispute there will be no automatic suspension.

26353 Agreements may be suspended by employers and trade unions acting together. Written statements will then be made confirming the suspension and giving the date from which the suspension applies. This must be a current or future date. Agreements cannot be suspended for a past period.

26354 A suspension can be applied part-way through a working week. It will remove employees obligations for days on or after the date it applies. It will not remove them for any day before.

26355 The suspension of any agreement may apply to

- 1. an individual employee or**
- 2. a group of employees or**
- 3. the employees of one employer in a federation of employers.**

26356 Employees may say that an agreement no longer applies to them. The DM should ask for details of the suspension. Employers will usually be able to supply these.

26357 An employer may act alone and suspend a guarantee without the agreement of employees. Employees may then accept the change in their terms of employment by continuing to work under the new terms. See DMG 26343 if the employees do not accept the change.

26358 Some agreements set out the circumstances in which they can be revived after being suspended. The date from which this will be effective will depend on the terms of the agreement.

Exemption orders

26359 Where there is a collective agreement in force, the DM can make an exemption order¹. This order stops employees from being entitled to statutory guarantee payments (DMG 26314 et seq). Appendix 5 lists employers who are subject to such orders.

1 ER Act 96, s 35

26360 An exemption order may be made where the agreement allows employees to

- 1. have access to independent arbitration and adjudication or**
- 2. appeal to an industrial tribunal.**

Application of exemption orders

26361 An order only applies where an employer is a party to the agreement. This can be as a single employer or as a member of an organization. The exemption order gives details of all parties to the agreement.

26362 An order cannot apply where employers follow the agreement but are not party to it. In such a

case employees will not be affected by an exemption order. They will be able to get statutory guarantee payments.

26363 Employees are not entitled to payments where a collective agreement is suspended. If an exemption order has been made they will also not be entitled to statutory guarantee payments. This is because the exemption order continues to apply until it is revoked.

Payment of wages guaranteed

26364 Employees may be entitled to guaranteed payments of wages. These are not statutory guarantee payments and are not usually paid at the same time.

26365 A guaranteed payment of wages is only payable if the employee is covered by an agreement. An employee is covered if

- 1.** the agreement is in force **and**
- 2.** the employer is a party to it **and**
- 3.** the employee is within its terms **and**
- 4.** the employment has not been terminated.

Note: Employees are within the terms of an agreement where they are the type of employee defined and have served any qualifying period required.

26366 In national agreements the guarantee week is usually the pay week quoted in the agreement. Employers who use a different pay week have a locally agreed variation to those agreements. The week used will be the employee's normal pay week.

26367 If a payment is guaranteed for a working week the payment covers the whole of that week. This is so regardless of how the amount is decided. The phrase "during working hours" used in this context means every working day.

Calculation

26368 The amount to be paid under an agreement is usually

- 1.** a part of a normal week's wage **or**
- 2.** equivalent to payment for a set number of hours at the basic rate.

Effect of guaranteed wages payments

26369 Before determining the effect of guaranteed wages payments the DM should find out

- 1.** whether a current collective agreement applies to the employee
- 2.** whether a payment of wages is payable under the terms of any such agreement
- 3.** when any payment is due to be paid
- 4.** the amount that is due to be paid
- 5.** whether an exemption order has been made.

26370 Any guaranteed payment of wages due to be paid should be treated as earnings¹ for both JSA and IS. Take it into account in the normal way.

1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1) & 42(2)

Work guaranteed

26371 Some employees are guaranteed employment for a limited number of days or hours each week. For JSA, take any such employment into account when considering the question of the claimant's availability.

26372 If employers cannot provide guaranteed work, payments may have to be made instead. Details of guarantees should be in the agreement.

26373 An agreement which guarantees employment for a full working week should be clear. An agreement for an unlimited period should also be clear. Other agreements may not be so easily understood. For example, the agreement may use vague terms which are not defined.

26374 Employees usually have to be available and willing to work **for their employer** for a guaranteed period. They have to place their services at the disposal of the employer for that period. The phrase "during working hours" in this context means that guaranteed period.

26375 The guaranteed period may be shown in terms of days, shifts or hours. Employment may be guaranteed for

- 1.** a limited number of days **or**
- 2.** a limited number of hours **or**
- 3.** a limited number of weeks.

26376

26377 If employment is guaranteed

- 1.** for set days or shifts, the employee should work those days or shifts

2. for a number of hours, the employer can say when the employee should work. This may be on some or all of the working days in the week.

26378 Employers usually let employees know when they are not needed for work. This does not remove the obligation imposed by the agreement. It also does not alter the terms of any agreement¹.

1 R(U) 2/58

26379 Employees may work for the full number of days in some weeks but not in others. Any unworked days may be identified by comparing the weeks worked.

Example

Louis is guaranteed two days work a week. He must be available and willing to work for his employer on those days. In alternate weeks he works two days, Monday and Tuesday. In the other weeks he only works one day, Tuesday. In the one day weeks, Monday is the other day on which he has an obligation to his employer¹.

1 R(U) 22/56 (T)

26380 It may not be possible to identify a day on which the employee should have worked. Take the day as being the last "unworked working day" in the guarantee week. That is a day on which the employee would work in a standard working week.

Short time working instead of redundancy

26381 Approved short time is sometimes worked as an alternative to redundancy. Some agreements allow the guarantee to be reduced when this happens. The reduction depends on the terms of the agreement but is usually

- 1.** a percentage reduction, based on the reduction of the normal working week by the short time **or**
- 2.** the amount of time lost.

Ask to see a copy of the agreement if there is any doubt.

26382 A decision to work short time instead of redundancy cannot affect a past period. It will usually be made before the beginning of the pay week. Those affected will be told before the beginning of that week.

26383 A decision can also be made part way through a pay week. Even so it can only have effect from a current or future date. If work is lost because of an emergency it cannot be decided later that it was short time. During such an emergency the normal guarantee will apply.

Approved short time

26384 Short time working usually means the loss of one or more complete days of work. In a standard five day week, each day lost is one fifth of that week. A five day guarantee would then be reduced by one fifth for each day lost.

Example 1

Katy has a standard five day working week, Monday to Friday. The guarantee is for five days. Because of approved short time working, she only works Wednesday to Friday. Her standard working week has reduced by two fifths (40%). The guarantee is also reduced by 40%, to three days.

Example 2

Wally has a five day working week. The guarantee only covers four of those days. Short time working of four days is introduced. His guarantee reduces by the amount of time lost. It is reduced by one day to three days.

Night workers

26385 Night workers usually work for a standard number of shifts. Where that number is reduced because of short time working, any guarantee will reduce by an equal amount.

Effect of holidays

26386 Holidays during short time working are treated in the same way as holidays during normal working. They remain holidays even when they fall on days when the employee may not be working.

26387 Guarantee agreements may have details of what should happen in weeks when there are holidays. The guarantee period may simply be reduced by the number of days of holiday. Or it may be reduced by the same percentage as the normal working week is reduced.

Example

Mario has a five day working week, Monday to Friday, but is now on short time. The guarantee is for four days a week. If he is on holiday in a pay week, the guarantee will reduce by the same percentage as his working week.

He works Monday to Wednesday, does not work Thursday, and is on holiday on Friday. His normal working week is reduced by the holiday from five days to four. The period of the guarantee is also reduced by one fifth (20%) from four days to $3\frac{1}{4}$ days.

26388 A holiday may fall on a day in the reduced guarantee period. If so, it has the effect of further reducing that period by a day. If it falls on a day that would not be covered by the guarantee it has no further effect.

Effect of guaranteed work

26389 Whenever work is guaranteed, consider whether the remunerative work exclusion applies. If JSA has been claimed consider also whether the availability conditions are satisfied.

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Suspension from work on medical or maternity grounds 26395 - 26404

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General

26395 Employees may be suspended from work under certain health and safety law. This can be on medical or maternity grounds¹. Employees may be entitled to be paid while they are suspended². Any payments due are earnings for JSA(Cont), JSA(IB) and IS³. Take them into account in the normal way.

1 ER Act 96, s 64 & s 66; 2 s 64 & s 68; 3 JSA Regs, reg 98(1)(ff); IS (Gen) Regs, reg 35(1)(gg)

26396

Employees not entitled to be paid

26397 Employees lose the right to be paid if they unreasonably refuse the employer's offer of suitable alternative work. This applies whatever the reason for the suspension¹.

1 ER Act 96, s 65(4)(a), s 68(2), s 66

26398 Employees who are suspended on medical grounds also lose the right to be paid if¹

1. they are incapable of work due to sickness **or**

2. they do not meet their employer's reasonable requirements ensuring that their services are available.

1 s 65(3) & (4)(b)

Calculation of pay

26399 Employees suspended on

1. maternity grounds can be paid for as long as they are suspended¹

2. medical grounds have a limit to the payment period. This is a maximum of 26 weeks².

The amount payable in either case is a normal week's pay for each week of the suspension³.

1 s 68(1), s 66; 2 s 64(1); 3 s 69(1), s 66

Complaints to a tribunal

26400 Employees may complain to a tribunal that they have not received their full entitlement¹. If this is confirmed the employer will be ordered to pay any amount owing. That amount is not due to be paid until the question has been decided by the tribunal.

1 ER Act 96, s 64, 68 & 70

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Compensation for unfair dismissal 26405 - 26421

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Introduction

26405 Employees have the right to complain¹ to an Employment Tribunal if they think that their dismissal was unfair. If this is confirmed the tribunal can

1. make an order for reinstatement or re-engagement² **or**

2. award compensation

2.1 when no such order is made³ **or**

2.2 if such an order is made but its terms are not fully met by the employer⁴.

¹ ER Act 96, s 111; 2 s 113, s 114, 115 & 116(1-4); 3 s 112(4);

⁴ s 117, 118 & 111

26406 Under an order for reinstatement, employees should be treated as if they had not been dismissed. All rights and privileges must be returned to them. This includes payment of any arrears they would have had but for the dismissal.

26407 Under an order for re-engagement employees should be re-employed in a similar job to that which they lost. The terms will be set out in the order. These can include the payment of any arrears that they would otherwise have had.

26408 It may be a long time before the tribunal make their decision. Do not wait until then before deciding the claim. The DM can revise the award once the decision is made.

Interim relief

26409 Some employees can apply to the tribunal for interim relief while waiting for a decision. This can only happen where the reason for the dismissal is connected with

- 1. TU membership or activities¹ or**
- 2. the status or activities of employee representatives (redundancy and business transfers)² or**
- 3. health and safety at work matters³.**

1 TULR (C) Act 92, s 161-166; 2 ER Act 96 s 128-132; 3 s 128-132

Amount of awards

26410 An award of compensation can be made up of

- 1. a basic award, based on age and length of service¹ (equal to the statutory redundancy payment to which the employee would have been entitled had they been dismissed for redundancy) and**
- 2. an amount to compensate for any loss (for example, loss of future earnings) suffered because of the dismissal²**

1 ER Act 96, s 118(1)(a) & 119; TULR (C) Act 92, s 156; 2 ER Act 96, s 118(1)(b) & 123

26411 The amount awarded may be reduced to take account of

- 1. wages that might have been earned if the employee had properly looked for other work after being dismissed¹ or**
- 2. the employees conduct or**
- 3. work which the employee may be expected to get at a lower wage than was earned in the former job or**
- 4. any redundancy payment that the employee was paid or**
- 5. any payment awarded under Sex Discrimination or Race Relations law².**

Note: This list is not exhaustive.

1 R(U) 6/85; 2 ER Act 96, s 126

26412 Under certain recoupment law¹, the award can also be adjusted to take account of the amount of benefit received over the relevant period. This amount is then recovered from the former employer by

the DM (see DMG 09420 et seq). But this only applies to formal awards and where the employee has claimed or had been granted JSA or IS.

1 The Employment Protection (Recoupment of JSA and IS) Regs 1996

26413 Recoupment law does not always apply, for example where the award is made under Sex Discrimination or Race Relations law. Even so, the tribunal will normally reduce the award by the amount of benefit paid for the period of the award. In such cases it is unlikely that action will be taken to recover the amount of any benefit overpaid.

Period of awards

26414 The period of the award may be cut, for example where expected weekly wages are more than was paid in the former job. An Employment Tribunal will usually give details in its decision when this happens. The period covered by the award should also be given.

26415 If the period is not clearly stated, or there is any doubt, make a decision based on the available evidence. It may be possible to work out what was intended from the text of the decision. Only do this where there is clear evidence of the tribunal's intention.

Example

Ishaq earns £200 a week as a machinist. On 7.10.96, he is sacked by his employer and complains to a tribunal. On 3.2.97, the tribunal decide that he was unfairly dismissed and award him £2000 compensation. The award is from 7.10.96 and has not been cut for any reason. There are no details given of what period the award covers. The DM decides that it was clearly intended to be for 10 weeks ($10 \times £200 = £2000$) from 7.10.96.

26416 Always make sure that the amount and period of an award are known. The most reliable source of such information is the Employment Tribunal. Employees should also be able to give these details.

Effect of awards - JSA

26417 Awards of compensation should be treated as earnings¹. Take them into account over the period for which they were awarded. There are two exceptions to this rule. These are where

1. the payment is due to be paid more than 52 weeks after the date the employment ended **or**

2. the award is compensation for loss suffered by the employee because of the dismissal² **and**

2.1 it remains unpaid **and**

2.2 the former employer is insolvent at the time the DM is making a decision (see DMG 26419).

¹ JSA Regs, reg 98(1)(f); ² ER Act 96, s 118(1)

26418 Awards as in DMG 26417 **1.** and **2.** should be disregarded¹.

1 JSA Regs, Sch 6, para 3

Employer insolvent

26419 In England and Wales, employers are insolvent¹ if they

- 1.** have been officially declared bankrupt **or**
- 2.** have made a composition (a legal compromise agreement) or arrangement with their creditors **or**
- 3.** have died and their estate is to be administered under a bankruptcy order **or**
- 4.** are companies **and**
 - 4.1** a winding up order is made **or**
 - 4.2** an administration order is made **or**
 - 4.3** a resolution for voluntary winding up is passed **or**
 - 4.4** debenture holders with a floating charge on the company have
 - 4.4.a** appointed a receiver or manager **or**
 - 4.4.b** taken possession of charged company property **or**
 - 4.5** a voluntary arrangement is approved.

1 ER Act 96, s 183(2)(a)

26420 In Scotland employers are insolvent¹ if

- 1.** a sequestration award is made on their estate **or**
- 2.** a trust deed is executed for their creditors **or**
- 3.** there is a composition contract **or**
- 4.** they have died and a judicial factor is to divide their insolvent estate among their creditors **or**
- 5.** they are companies **and**
 - 5.1** a winding up order is made **or**
 - 5.2** an administration order is made **or**

5.3 a resolution for voluntary winding up is passed **or**

5.4 a voluntary arrangement is approved **or**

5.5 a receiver is appointed.

1 s 183(2)(b)

Effect of awards - IS

26421 Awards of compensation should normally be treated as earnings¹. They should be taken into account from the date they are treated as paid². This does not include payments to compensate for the loss of the job itself (rather than for loss of earnings) or for injury to feelings. Such payments should be treated as capital.

1 IS (Gen) Reg, reg 35(1)(g) & (h); 2 reg 31(1)

Protective awards 26422 - 26439

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Introduction

26422 Employers must consult their employees' representatives in good time about certain redundancy proposals¹. Those representatives may be

- 1.** elected by the employees **or**
- 2.** representatives of a recognized TU.

1 TULR (C) Act 92, s 188

26423 Employers who mean to dismiss at least 20 employees within 90 days or less must start to consult at least

- 1.** 90 days before the first dismissal, if they mean to dismiss 100 or more employees **or**
- 2.** 30 days before the first dismissal, if they mean to dismiss 20 - 99 employees.

26424 Employee representatives can complain to a tribunal if an employer does not correctly follow the rules. The Employment Tribunal can then make a protective award if the complaint is confirmed.

Terms of an award

26425 Under a protective award employers must make payments to any employees who have been made redundant. They must also pay any who have not been dismissed but whose representatives should have been consulted. The payments must be made for a protected period, which begins with the earlier of

1. the date on which the first of the dismissals takes effect **or**

2. the date of the award.

26426 The period will last for as long as the tribunal decide is reasonable in the circumstances. It cannot last for more than

1. 90 days, if 100 or more employees are to be made redundant within 90 days **or**

2. 30 days, if 20 - 99 employees are to be made redundant within 90 days.

Payments not made by employer

26427 Employers may not pay all that they should do under a protective award. Employees can then complain to an Employment Tribunal¹. If the complaint is confirmed the employer will be ordered to pay any amount owing.

1 TULR (C) Act 92, s 192

Protective award not applied for

26428 There may be cases where

1. the employer has not followed the rules **and**

2. the employee representative has not complained to an Employment Tribunal **and**

3. the employer has paid the redundant employees in lieu of consultation.

A payment in lieu of consultation is a payment in lieu of remuneration and falls within the definition of earnings¹.

1 IS (Gen) Regs, reg 35(1)(b)

Effect of payments

26429 Payments made under a protective award are earnings¹ for both JSA and IS. They should be taken into account in the normal way.

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

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Time off work provisions 26440 - 26499

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General

26440 Under employment protection law, employees may be allowed time off during normal working hours

- 1.** for duties as a TU or elected employee representative¹
- 2.** for TU activities²
- 3.** for public duties³
- 4.** to look for work or make arrangements for training⁴
- 5.** for antenatal care⁵
- 6.** for occupational pension scheme trustees⁶
- 7.** to make arrangements for dependants⁷
- 8.** to undertake study or training if they are a young person⁸.

¹ ER Act 96, s 61; 2 TULR(C) Act 92, s 170; 3 ER Act 96, s 50; 4 s 52; 5 s 55; 6 s 58; 7 s 57A; 8 s 63A

26441 Employees may be entitled to be paid while they are taking this time off. Any payments due are earnings¹. Take them into account in the normal way.

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

26442 - 26450

Complaints to a tribunal

26451 Employees may complain to a tribunal that they have not been allowed to take time off¹. If this is confirmed the tribunal may make an award of compensation. The amount will be what the tribunal

considers fair in the circumstances, taking into account any loss suffered.

1 TULR (C) Act 92, s 168(4) & 170(4); ER Act 96, s 51(1), 54(1), 57, 57B(1), 60(1)(a), 63(1)(a), 63C(1)(a)

26452 Employees may also complain that they have not received their full entitlement to payment¹. If this is confirmed the employer will be ordered to pay the amount that the tribunal finds is due.

1 TULR (C) Act 92, s 169(5) & 172; ER Act 96, s 54(1)(b), 57(1)(b), 60(1)(b), 63(1)(b), 63C(1)(b)

26453 A DM cannot decide whether an employee is due to be paid. That question can only be decided by the tribunal. Any amount awarded by the tribunal is not due to be paid until the question has been decided. It should not be taken into account until then.

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Payments on termination of employment 26500 - 26699

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Introduction

26500 Employees may be entitled to certain payments on termination of employment, that is, when their employment ends. Payments for the termination of the employment are made because the employment has ended¹. They are not paid for any other reason. They would not be paid but for the employment ending. From 1.10.07 legislation² was amended to change the way certain payments made on the termination of employment are treated for IS and JSA purposes.

1 R(U) 4/92; 2 JSA Regs, Sch 6; IS (Gen) Regs, Sch 8

26501 The effects of these payments on JSA and IS depends on

- 1.** what type of payment is involved
- 2.** when the payment is due to be made
- 3.** which benefit has been claimed
- 4.** whether there is an unworked or waived period of notice
- 5.** whether the work that has ended was remunerative or P/T
- 6.** when the work ended.

26502 Guidance on how payments affect

- 1.** IS is in DMG 26580 - 26622
- 2.** JSA is in DMG 26630 - 26768.

Types of payments

26503 There are many different types of payments that might be made. These include

1. payments due for any period before the employment ended (see DMG 26504)

2. holiday pay (see DMG 26505)

3. PILON

4. refunds of occupational pension contributions

5. pension lump sums

6. payments, remuneration or awards made under employment protection and trade union law (see DMG 26300 et seq)

7. payments in kind (see DMG 26509)

8. income tax refunds (see DMG 26060)

9. compensation payments (see DMG 26600 and 26630)

10. statutory redundancy payments (see DMG 26506).

Payments for period before employment ended

26504 When employment ends payments may be due for the employed period, for services already rendered. They are owed under the contract of employment and are due because of the employment itself, not because of the termination. Such payments include

1. final earnings

2. wages held in hand

3. commission.

Holiday pay

26505 Most employees are entitled to be paid while they are on holiday. When their employment ends they may not have taken all the paid holiday they could have had. They will then receive a payment of holiday pay instead.

Statutory redundancy payments

26506 Employees who have been continuously employed for two years may be entitled to statutory redundancy payments if they are

1. dismissed by reason of redundancy¹ **or**

2. laid off or kept on short time for more than a set number of weeks².

26507 Not all employees are entitled to statutory redundancy payments, for example members of the armed forces and civil servants. Redundancy type payments may be paid to these employees, for example ex gratia payments and “golden handshakes”. Such payments are not **statutory** payments.

26508 Statutory redundancy pay is based on¹

- 1.** the length of continuous employment
- 2.** the age of the employee
- 3.** the amount of a week's pay (see Appendix 2 to this Chapter for the maximum amount that can be used).

Note: Appendix 4 to this Chapter shows how many weeks pay employees are entitled to.

1 ER Act 96, s 162

Payments in kind

26509 A payment in kind is payment by something other than money. This can be in many forms including

- 1.** goods, for example food or clothes
- 2.** vouchers, for example childcare or gift vouchers, but not if the amount of any voucher has been taken into account as earnings of an employed earner (see DMG 26093)
- 3.** free accommodation.

Employment never existed

26510 For employment to have ended, it must first have existed. A payment on termination of employment can be made only where a job has ended. Any payments made for other reasons are not payments on termination of employment.

Example 1

Kirsty is offered a job in a shop. The offer is then cancelled before she can start work. The shop owner pays Kirsty £30 to make up for cancelling the offer. The £30 is paid because of the cancellation. It is not paid because the job ended. It is a payment of capital.

Example 2

Wladislaw is due to start work in a shop on 21 October. On 14 October the shop owner gives him a £30

advance of wages. On 17 October Wladislaw decides that he no longer wants the job and does not start work. The £30 advance is not paid because the job ended. It is a type of loan. It was meant to last for one week and is a payment of income.

26511 - 26514

Payments not received

26515 Notional income rules allow for earnings which are due on termination of employment as a result of redundancy¹, but which have not been paid, to be ignored for IS and JSA purposes².

1 JSA Regs, reg 71(2); 2 reg 105(7)(d); IS (Gen) Regs, reg 42(3C)

26516 Any benefit which would not have been paid if the claimant had received the earnings due to him at the right time will be recovered when those earnings are paid.

26517 In the case of insolvent employers, benefits paid will be deducted from the amount awarded by the Insolvency Service. In these circumstances, cumulative totals do not accumulate on JSA(Cont) for the period covered by an Insolvency Service payment. In cases where JSA(Cont) has been paid prior to the Insolvency Service award, cumulative totals will need to be adjusted to reduce them as appropriate.

Note: In all other cases benefit paid will be recovered under existing procedures.

Delay in payment

26518 A payment is due when it is legally due and owing. Any delay in its actual payment does not affect that due date.

Employer withholds payment

26519 Employers may not pay the full amount that is due. They may for example make a reduction to pay for cash shortages that the employee is responsible for. Take the full amount due into account if

- 1.** it is a term of the contract that this action can be taken and there is no dispute about the shortage **or**
- 2.** the employee agrees to the employer's action **or**
- 3.** the money was originally paid to the employee, before being paid to the employer.

26520 If there is any doubt or dispute about the reduction, ask for full details. The DM should then take all available evidence into account when deciding the amount due.

Example 1

Jack is due to be paid £500 compensation when his employment ends. He is responsible under his contract of employment for any cash shortages. He agrees with his employer that there is a shortage of

£100. The employer deducts this amount from the payment due to him and Jack is paid £400. The full amount of £500 is taken into account.

Example 2

Vera is due to be paid £600 compensation when her employment ends. Her employer deducts £100 for a cash shortage that he says is her responsibility. Vera is not responsible for shortages under her contract. She did not agree that the deduction could be made and is disputing the alleged liability. Only the £500 actually paid is taken into account.

Uncashed cheques

26521 A cheque does not form part of a person's actual resources until it has been cleared through the banking system. The question of notional resources may need to be considered where a claimant receives a cheque which

- 1.** the claimant is refusing to cash **or**
- 2.** has been returned by the claimant to the employer.

British Telecom Newstart Scheme

26522 This is a programme where employees agree to terminate their employment in return for a payment. It is not a redundancy programme. As it is a voluntary scheme those who opt for it do not receive PILON but they do receive a payment based on the length of service and salary. This payment falls into the definition of "compensation payment"¹ (see DMG 26600 and DMG 26630).

¹ JSA Regs, reg 98

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General

26523 Employees may be temporarily away from work because

- 1.** of a recognized, customary, or other holiday **or**
- 2.** time off has been allowed under employment protection law (see DMG 26440).

26524 Employees who are away from work temporarily may continue to be employed. Their employment is not terminated.

Recognised, customary or other holidays

26525 Employment will not have terminated if a claimant is absent because of a holiday, or an absence authorised by the employer.

26526 When considering if an absence from work is because of a holiday, DMs should¹

- 1.** have regard to the reality of the situation **and**
- 2.** consider the claimant's contractual entitlement to holidays **and**
- 3.** only treat as a holiday the weeks of the holiday for which the claimant is actually paid.

¹ R(JSA) 5/03

26527 An employee will generally be entitled to four weeks annual leave under the relevant legislation¹. DMs should assume that the claimant is entitled to four weeks paid annual leave unless there is evidence

of entitlement to more than four weeks.

1 The Working Time Regulations 1998

Meaning of terminated

26528 Terminated is not defined in the legislation. It should be given its ordinary meaning¹. Termination of employment should also be given its ordinary meaning.

1 R(U) 7/68(T); R(U) 8/68(T)

26529 When a contract of employment is terminated, the employment under it is also terminated. This happens as soon as rights and obligations under the contract end¹. Whether there is any intention of resuming the employment is not relevant.

1 R(U) 7/68(T)

26530 A decision may be made to terminate a contract from a future date. It is the date of termination and not the date of the decision that is relevant.

26531 There is a distinction between the contract itself and any employment under it¹. A contract may continue during a period when the person employed under it does no

work. It may also continue when the person employed is not expected to work, for example

- 1. when there is a temporary lay-off or**
- 2. during a period of holiday (even if wages are not paid for the holiday).**

1 R(U) 8/68(T)

26532 Whether a contract has terminated is a question of fact to be decided on the available evidence. Employers may say that an employment has been terminated. That does not necessarily mean that it has terminated. Employment cannot be terminated without employees being given notice of that fact¹. Notice cannot be given retrospectively.

1 Brown v. Southall & Knight (1980) ICR 617

Example

Russell is on 2 weeks paid holiday from work. On Friday his employer sends him a letter stating that his employment will end on Saturday. Russell is entitled to one week's notice. He is abroad and does not get the letter until Monday. The employment does not end until Monday, when Russell gets the letter and has a reasonable opportunity to read it.

26533 It should usually be accepted that a contract has terminated

- 1.** when due notice of termination has been given, received and has expired **or**
- 2.** if a payment in lieu of notice has been made (except for in the example at DMG 26532) **or**
- 3.** at the end of an engagement which was for a fixed period.

Contract terminated immediately before period of absence from work

26534 DMs should decide that an employee is still in employment where the contract of employment

- 1.** is still current **or**
- 2.** ends at the beginning of what would be a period of absence even if the contract continued and it is expected that the employee will return to that employment after the absence because
 - 2.1** there is an express agreement (written or verbal) **or**
 - 2.2** it is reasonable to assume that a long standing practice of re-employment will continue.

Employment suspended

26535 Employees may be temporarily laid off when there is no work. In such cases the contract of employment may not be terminated. Employment may be simply suspended.

26536 During a period of suspension the situation may change. It may become clear that the contract has terminated. The employment should then be regarded as terminated from the date the contract ends.

Employment resumed

26537 People may still be employed, under a continuing or running contract, where

- 1.** they were expected to resume their employment on a later fixed date **and**
- 2.** they return to that employment as arranged **and**
- 3.** there is no evidence of any fresh arrangement for their re-appointment.

26538 The number of times this may have happened should be taken into account¹. For example, a person may have resumed their employment many times without the need for re-appointment. This would suggest that they are employed under a running contract.

¹ R(U) 8/68(T); R(U) 7/68

Example 1

Nigel is a violinist working P/T as a music teacher. He was originally employed for a fixed period of one

term in 1982. He continued teaching at the school for many years without having to be re-appointed.

At the end of the summer term in 1994, he received no formal notification of discharge or re-employment. Early in the summer holidays the understanding between him and his employer was that he would resume next term. There was no evidence of any fresh arrangement for re-appointment.

It was decided that he was employed under a running contract. During the 1994 summer holiday his employment was merely suspended, not terminated¹.

1 R(U) 8/68 (T)

Example 2

Angus is a printer's warehouseman employed on a basis known in the trade as "casual". His union allocates him to one of a number of employers for night shift work, one night at a time.

After a night's work he receives his pay for that night and his P45 is handed back to him. He does not know whether he will work for the same employer, or at all, on

the next night. It is decided that at the end of each night's work the employment is terminated¹.

1 R(U) 7/68(T)

26539 People may be employed under a series of fixed term contracts. Under employment protection law¹ these people may be regarded as being in continuous employment. For example, when redundancy and unfair dismissal is being considered. Such a decision is only for the purposes of the employment protection legislation. It is not relevant for JSA and IS purposes. It should not influence the DM in determining whether employment has terminated.

1 ER Act 96

Teachers

26540 Teachers and lecturers may not be permanent members of school or college staff. In all such cases ask to see the contract of employment and examine

- 1. the provisions about the period of appointment **and****
- 2. any requirement for notice to terminate the employment.**

26541 The period of the appointment may not have been given. If notice is needed to terminate the employment, find out whether notice was given. If it was, find out how and when it was given. If there is no satisfactory evidence that proper notice was given, the contract may not have been terminated.

26542 The terms of the employment may not be in the contract itself. They may be set out in some

other document. For example, an LEA's "Conditions of Employment and Tenure of Teacher". Ask for a copy of the relevant document.

26543 The claimant or employer may say that no written contract of employment was issued. Ask for a copy of the letter of appointment and any other letters about the terms of the appointment.

26544 Most teachers who are not permanent members of staff fall into one of two groups. This is usually the case for those working in LEA schools. The groups are

- 1.** sessional or temporary teachers, employed for a fixed period, normally of an academic term or year
- 2.** supply, casual, or occasional teachers, employed to cover for the absences of others.

Sessional or temporary teachers

26545 Contracts and letters of appointment are usually clear when the employment is for a fixed period. The fixed period will be quoted and will usually be for academic terms or years.

26546 A fresh contract or letter of appointment may be issued at the start of any later period. In such a case there is a series of agreements¹. Employment is terminated at the end of each period.

1 R(U) 8/68

26547 Teachers may continue employment after the end of the first fixed period. Their periods of employment may be separated only by school holidays. If there is no evidence of re-appointment it may be that their employment is continuous. Their separate periods of employment could be a continuation of the first appointment period.

26548 Consider the terms of the original appointment carefully. Find out exactly how and when it was agreed that the employment would resume. Make sure that all the facts are obtained before making a decision.

Supply teachers

26549 Supply teachers have their names on an LEA list of teachers who

- 1.** are willing to take employment at short notice **and**
- 2.** may be offered employment as and when vacancies arise due to absences (usually through sickness).

26550 Employment may be offered on a day to day basis, for example when it is not known how long an absentee will be off work. It may also be offered for an indefinite or set period, for example, to cover maternity leave.

26551 When supply teachers are added to the list, they may be sent a letter advising them of that fact. They may also be advised of what might happen, for example, that employment may be offered as and

when vacancies arise. Any such written notification is not a contract of employment.

26552 The letter places no obligation on the LEA to offer employment. The teacher is not obliged to accept any vacancies offered¹. When there is a vacancy the teacher is contacted, by telephone or in writing, and offered employment.

1 R(U) 2/87

26553 A written contract may not always be issued. For example, where the period of employment offered is short. Such employment terminates as soon as the duties for the period covered by the offer are finished¹.

1 R(U) 2/87

26554 The period of employment offered may include a school holiday. For example, it may be for an open or a closed period that stretches over a holiday. To decide whether employment continues during the holiday, the DM should find out

- 1.** what provision was made for terminating the appointment **and**
- 2.** whether there was a definite agreement about what would happen after the holiday. For example, was it agreed that employment would continue at the start of the next term (or half term) or because it is reasonable to assume that a longstanding practice of re-employment will continue¹.

1 R(JSA) 5/03

Whether a supply teacher's employment has terminated during a school closure

26555 It is likely that a supply teacher's employment will have terminated where¹

- 1.** the period of employment ends immediately before a school holiday **and**
- 2.** there is no definite agreement about whether the claimant will be returning to the employment at the start of the following term **and**
- 3.** the claimant has no established cycle of work which includes school holidays.

1 R(JSA) 5/03

26556 - 26559

Maternity leave and absence

26560 Under employment law¹, all pregnant employees have the right to at least 26 weeks **ordinary maternity leave**, regardless of their length of service. Additional maternity leave may also be taken².

26561 In both type of cases, employees should generally return to

1. their original employer (or successor)
2. the same job
3. on terms and conditions no less favourable than those which applied before the absence.

26562 Employees entitled to 26 weeks ordinary maternity leave must return to work at the end of that period. Additional maternity leave will start immediately after ordinary maternity leave and continue for up to a further 26 weeks.

26563 Employees continue to be employed during the 26 week ordinary maternity leave period. It counts towards the employee's period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

26564 The employment contract will continue in a very restricted form during a period of additional maternity leave, but may also be ended during this period by agreement, resignation or dismissal. Statutory continuity of service will count any periods of additional maternity leave; but contractual length of service does not have to.

26565

Suspension on maternity grounds

26566 Some employees may be suspended from work on maternity grounds. This can happen if there is a health and safety risk to new or expectant mothers that cannot be removed. Such employees are normally entitled to be paid while they are suspended.

26567 Employees continue to be employed during the maternity suspension period. It counts towards the period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

Claim within 29 weeks of child-birth

26568 A woman may make a claim within 29 weeks of having given birth. That claim may include a period which would have been a holiday but for the maternity leave. Find out whether she has any contractual right to return to work in addition to her statutory right.

26569 The contract may not have continued during the 29 week period. For example, the woman may have to be re-appointed or re-employed rather than simply resume her duties.

26570 Employment should then normally be regarded as terminated on the last day for which wages or salary was paid. This is so even though the employer has a statutory duty to re-employ the woman if she exercises her right to return.

Adoption leave

26571 Adoption leave¹ means a period of absence from work on ordinary or additional adoption leave under relevant legislation².

1 PA Regs, reg 2(1) & 3; IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3);

2 Employment Rights Act 1996, s 75A & 75B

26572 Employees who adopt a child under the age of 18 have the right to 26 weeks ordinary adoption leave¹. A further 26 weeks of additional adoption leave will also be available².

1 PA Regs, reg 18(1); 2 reg 20(2)

26573 Employees continue to be entitled to their normal terms and conditions of employment during the 26 weeks of ordinary adoption leave and during the 26 weeks additional adoption leave¹.

1 PA Regs, reg 19

26574 Following a period of adoption leave, employees have the right to return to the same job¹.

1 PA Regs, reg 26

Paternity leave

Ordinary paternity leave

26575 Ordinary paternity leave¹ means a period of absence from work on leave following the birth or adoption of a child under relevant legislation². It is available to employed parents who

1. have or expect to have parental responsibility for a new child **and**

2. are the biological father of the child or are the mother's husband or partner **and**

3. have completed at least 26 weeks continuous service with their employer up to and including the 15th week before the baby is due **and**

4. have told their employer of their intention to take leave by the end of the 15th week before the expected week of the child's birth.

1 JSA Regs, reg 1(3); IS (Gen) regs, reg 2(1); 2 ER Act 1996, s 80A & 80B

Additional paternity leave

26576 Additional paternity leave means¹ a period of absence from work on leave following the birth or adoption of a child under relevant legislation². The period of absence cannot exceed 26 weeks.

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 ER Act 1996, s 80AA & 80BB

Agreement not to work notice

26577 Many employees are entitled to notice before their employment is ended. Their employment does not terminate until that notice period ends where they

1. are given the full period of notice that they are entitled to **and**

2. do not have to work that notice **and**

3. get their normal salary for the notice period.

This is sometimes called gardening leave.

26578 - 26579

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General

26580 Employees may be entitled to certain payments when their employment ends. These include

- 1.** payments in lieu of remuneration (see DMG 26582)
- 2.** payments in lieu of notice (see DMG 26589)
- 3.** holiday pay (see DMG 26594)
- 4.** payments of compensation (see DMG 26600)
- 5.** payments due for any period before the employment ended (see DMG 26615)
- 6.** statutory redundancy payments (see DMG 26621)
- 7.** income tax refunds (see DMG 26060).

26581 How such payments affect a claim for IS depends on

- 1.** what type of payment is involved
- 2.** when the payment is due to be made
- 3.** whether there is an unworked or waived period of notice
- 4.** whether the work that has ended was remunerative or P/T
- 5.** when the work ended.

Payments in lieu of remuneration

26582 Payments in lieu of remuneration are paid in place of a person's normal wages or salary. How they affect a claim for IS depends on whether the work that has ended was remunerative or P/T.

Remunerative work

26583 Where the employment was remunerative the PILOR should be disregarded¹.

1 IS (Gen) Regs, Sch 8, para 1(1)

26584

Part-time work

26585 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the first day of entitlement the PILOR should be treated as

earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the PILOR should be disregarded¹.

1 IS (Gen) Regs, Sch 8, para 2

26586 - 26588

Payments in lieu of notice

26589 Employees are normally entitled to notice before their employment is ended. But employers may not always give them full notice. Employees are then entitled to PILON instead. For IS, such payments are earnings¹.

1 IS (Gen) Regs, reg 35(1)(c)

26590 How PILON affects a claim for IS depends on whether the work that ended was remunerative or PT.

Remunerative work

26591 Where the employment was remunerative the PILON should be disregarded¹.

1 IS (Gen) Regs, Sch 8, para 1(1)

26592

Part-time work

26593 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after**

the first day of entitlement the PILON should be treated as earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the PILON should be disregarded¹.

1 IS (Gen) Regs, Sch 8, para 2

Holiday pay

Employment terminated

26594 If holiday pay is payable more than four weeks after the employment terminated, it should be treated as capital¹. See DMG 32692 for the exception to this rule in trade dispute cases.

1 IS (Gen) Regs, reg 35(1)(d) & 48(3)

Remunerative work

26595 Where the employment was remunerative the holiday pay should be disregarded¹. However if employment was suspended earnings should be taken into account in the normal way.

1 IS (Gen) Regs, Sch 8, para 1(1)

Part-time work

26596 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the first day of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that IS may be reduced for the appropriate period. If it ended **before** the first day of entitlement the holiday pay should be disregarded¹.

1 IS (Gen) Regs, Sch 8, para 2

Employment interrupted

26597 Holiday pay payable more than four weeks after the employment was interrupted should be treated as capital¹. How it affects a claim for IS depends on whether the work that has been interrupted was remunerative or P/T.

1 IS (Gen) Regs, reg 35(1)(d)

Remunerative work

26598 Where employment is interrupted before the first day of entitlement all holiday pay is disregarded¹ unless the employment has been suspended.

1 IS (Gen) Regs, Sch 8, para 1(1)(b)

Part-time work

26599 If part-time employment is interrupted **on or after** the first day of entitlement then holiday pay is taken into account in the normal way but any holiday pay payable more than four weeks after the interruption should be treated as capital. If part-time employment is suspended all earnings should be taken into account in the normal way¹.

1 IS (Gen) Regs, Sch 8, para 2(2)

Payments of compensation

Meaning of compensation

26600 A payment is compensation only if

1. it is made for or on the termination of employment **and**

2. claimants have

2.1 not received any PILON which they are due to **or**

2.2 only received part of the PILON they are due to **or**

2.3 not received any or all of the PILON they are due to because they have waived their right to it¹.

A payment made for or on the termination of employment is not compensation if claimants have worked all their notice and been paid for it or if they have received all the PILON they are due to.

Note: The rules on payments of compensation for IS are different to the rules for JSA (see DMG 26630).

1 IS (Gen) Regs, reg 35(3)(a)

26601 Payments of compensation do not include

1. any bonus or commission (see DMG 26045)

2. PILOR, except any periodic sums paid because employment has ended through redundancy

3. PILON

4. holiday pay

5. retainers (see DMG 26083)

6. payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 26077)

7. awards made under employment and trade union law, including any award of compensation (see DMG 26300 et seq)

8. payments in kind (see DMG 26080 and 26509)

9. payments for a period when the claimant is on maternity or sick leave (see DMG 26130)

10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)

11. any occupational pension

12. statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26621 - 26622)

13. refunds of contributions to which the claimant is entitled under an occupational pension scheme

14. compensation payable under certain education law¹

15. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme².

1 Education Reform Act 1988, s 173 & 178(3) & (4); 2 IS (Gen) Regs, reg 35(3)(a)

Example

Julia, who is a lone parent, claims IS because she has been made redundant. She is entitled to four weeks notice. She did not work any notice because her job ended

on the day her employer gave her notice. Her employer says her final wages included

1. three weeks holiday pay

2. a payment for statutory redundancy

3. an ex-gratia payment.

The employer did not pay her any PILON because Julia waived her right to it.

The DM decides the ex gratia payment is compensation because Julia waived her right to the four weeks notice she was entitled to. Holiday pay and the payment for statutory redundancy are not compensation.

Effect of payments of compensation

26602 The effect of payments of compensation on IS depends on whether the

1. work which has ended was P/T or remunerative (see DMG 26603 - 26604) **and**

2. payment of compensation is earnings (see DMG 26603) **and**

3. payment of compensation which is earnings overlaps with other kinds of earnings (see DMG Chapter 25)¹.

1 IS (Gen) Regs, reg 29(3)

Part-time work

26603 Claimants are in P/T work if they work and are not treated as being in remunerative work¹ (see DMG Chapter 20 for guidance on the remunerative work rules) All the payment of compensation is earnings if the work ended **on or after** the first day of entitlement².

1 IS (Gen) reg 35(3)(c) & 29(4D)(a); 2 Sch 8, para 2

Example:

Whilst off work sick, Jane's employer terminates her part-time employment and pays her a goodwill payment. The payment is not in lieu of notice but was a compensation payment. Jane is not treated as being in remunerative work for the purposes of attributing that payment because whilst she is off sick she is not in remunerative work.

Remunerative work

26604 If a person was in remunerative work then the payment of compensation is disregarded¹.

1 IS (Gen) reg 5(5) & Sch 8, para 1

26605 - 26614

Payments for period before employment ended

26615 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. How it affects a claim for IS depends on whether the work that has ended was remunerative or P/T.

Remunerative work

26616 If the work was remunerative, earnings due for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer when the employment ends. It does not include any

1. retainers including

1.1. statutory guarantee payments

1.2. payments made where a person has been suspended on medical or maternity grounds

2. awards made under employment protection or trade union law (including “out of court” settlements).

1 IS (Gen) Regs, Sch 8, paras 1 & 2

Partner’s earnings on retirement

26617 Any earnings paid or due to be paid to the claimant’s partner should be disregarded where¹

1. the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in the UK) **and**

2. the partner has reached the qualifying age for SPC on retirement **and**

3. the earnings were paid or due to be paid because of the partners retirement.

1 IS (Gen) Sch 8, para 1A

Part-time work

26618 The work that ends may have been P/T. If it ended **on or after** the first day of entitlement take any earnings into account in the normal way.

26619 If it ended **before** the first day of entitlement disregard all earnings with the exception of retainers¹ (this includes statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds). Retainers should be taken into account in the normal way (see DMG 26083).

1 IS (Gen) Sch 8, para 2

26620 The employment will not have ended where

1. the contract of employment is still current **or**

2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because

2.1 there is some express arrangement that employment will resume **or**

2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Note: For further guidance on whether employment has terminated, see DMG 26523 - 26577.

Statutory redundancy payments

26621 Employees may receive statutory redundancy payments on termination of their employment.

Such payments should be taken into account as capital.

26622 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments, for example severance payments may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is treated as capital.

26623 - 26629

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Meaning of compensation payment

26630 For JSA compensation payment means¹ any payment made for the termination of employment other than

- 1.** payments for any period before the employment ended (see DMG 26640 et seq)
- 2.** “emoluments” (whether in money or in kind) accrued before the employment ended (see DMG 26651)
- 3.** holiday pay (see DMG 26652 et seq)
- 4.** certain payments, remuneration or awards under employment law and trade union law, including awards of compensation (see DMG 26300 - 26453)
- 5.** statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26664 - 26666)
- 6.** payments in kind (see DMG 26667)
- 7.** refunds of contributions to which the claimant is entitled under an occupational pension scheme
- 8.** payments of occupational pensions (see DMG Chapter 28)

9. periodic sums paid because of redundancy (see DMG 26014)

10. payments for a period when the claimant is on maternity or sick leave (see DMG 26130)

11. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)

12. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme.

Note: The rules on compensation payments for JSA are different to the rules for IS (see DMG 26600).

1 JSA Regs, reg 98(2) & (3)

26631 The DM must show that a payment of compensation has been received. How the payment is described is not binding. A payment of PILON is a compensation payment for the purposes of JSA.

Effect of compensation payments

26632 The DM should determine

1. if a compensation payment has been received (see DMG 26630) **and**

2. the period covered by the compensation payment (see DMG 26675 et seq) **and**

3. if the claim is affected by the compensation payment (see DMG 26633 et seq).

26633 How compensation payments affect a claim depends on whether the work that has ended was remunerative or P/T.

Remunerative work

26634 A payment of compensation may be received on termination of remunerative work (see DMG Chapter 20). These payments should be disregarded¹.

1 JSA Regs, Sch 6, para 1

26635

Part-time work

26636 The work that ended may be P/T, which is **not** remunerative. If it ended **on** or **after** the first day of entitlement treat any compensation payment¹ as earnings from the date on which it is due to be paid. Take it into account for the period covered by the payment² (see DMG 26675 et seq). If it ended **before** the first day of entitlement any compensation payment should be disregarded³.

1 JSA Regs, reg 98(1)(b); 2 reg 94(6); 3 Sch 6, para 2

Payment by someone other than employer

26639 Compensation is normally paid by the employer, but may be paid by someone else. It is compensation regardless of who pays, for example

- 1.** LAs may make payments where people have to give up employment handling food and drink under public health laws
- 2.** one company taking over another may discharge that other company's obligations to pay compensation
- 3.** The government may make payments in lieu of notice to employees of an insolvent employer under employment protection law¹.

1 ER Act 96, s 182, 184(1), (2) & (4), 185, 186 & 187; TULR (C) Act 92, Sch 2

Remuneration for period before employment ended

26640 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. Such pay is due because of the employment itself not because of its termination. It is not a compensation payment.

26641 Severance payments may be made when employment ends. Such payments may be worked out on past years of service in the employment. But they are not made for a period before the employment ended. They will not be exempt from the definition of a compensation payment¹.

1 R(U) 5/92

Remunerative work

26642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer, when the employment ends. It does not include any

- 1.** awards made under employment protection or trade union law (including "out of court" settlements)
- 2.** retainers including
 - 2.1.** statutory guarantee payments
 - 2.2.** payments made where a person has been suspended on medical or maternity grounds.

26643 If the remunerative work of the claimant's partner has ended because of retirement, disregard any earnings due to be paid for that employment if on retirement the partner

- 1.** is entitled to RP **or**
- 2.** would be entitled if the contribution conditions were satisfied¹**or from 6.4.16**
- 3.** is entitled to a state pension **or**
- 4.** would be entitled if the minimum number of qualifying years were met².

1 JSA Regs, Sch 6, para 1A;

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

Part-time work

26644 The employment that ends may have been P/T, that is **not** remunerative (see DMG Volume 4, Chapter 20). How this affects the claim will depend on when the employment ended.

- 26645 If employment ends **before** the first day of entitlement disregard any earnings except¹ any
- 1.** payment by way of a retainer including
 - 1.1.** statutory guarantee payments
 - 1.2.** payments made where a person has been suspended on medical or maternity grounds.
 - 2.** awards made under employment protection or trade union law (including "out of court" settlements)

1 JSA Regs, Sch 6, para 2

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

26647 The employment will not have ended where

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

26648 - 26650

Emoluments

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

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

Note 1: For **4.** this does not include any part of the lump sum paid because of enhancement due to the employment ending, for example in an early retirement or redundancy package. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

Note 2: For **5.** this does not include any part of the sum paid because of enhancement due to the employment ending. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

1 R(U) 5/92

Holiday pay

Employment terminated

26652 A person may receive a payment of holiday pay on the termination of employment. If the holiday pay is payable before the first day of entitlement it should be disregarded¹.

1 JSA Regs, Sch 6, para 1

26653

Remunerative work

26654 Where the employment was remunerative the holiday pay should be disregarded¹.

26655

Part-time work

26656 The employment that ended may have been P/T and therefore **not** remunerative. If it ended **on** or **after** the first day of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that the amount of JSA payable may be reduced for the appropriate period. Any holiday pay payable more than four weeks after the P/T work ended should be treated as capital. If it ended **before** the first day of entitlement the holiday pay should be disregarded¹.

1 JSA Regs, Sch 6, para 2

Mariners

26657 Special rules apply to mariners¹ employed on vessels not used wholly or mainly for the disposal of sludge.

1 SS (Mariners Benefits) Regs 1975, reg 2; JSA Regs, reg 166(2)

26658 Such mariners are not regarded as available for employment (see DMG Chapter 21) on any day in the period of leave where

- 1.** they are entitled to leave with pay when a voyage ends, **and**
- 2.** their employment is terminated before the end of that period of leave.

26659 Where the employment has terminated holiday pay should be disregarded¹.

1 JSA Regs, Sch 6, para 1

Employment interrupted

26660 If employment is interrupted **on** or **after** the first day of entitlement all holiday pay is taken into account in the normal way with any payable more than four weeks after the interruption¹ treated as capital.

1 JSA Regs, reg 98(1)(c)

Remunerative work

26661 Where employment was remunerative and is suspended any holiday pay is taken into account in the normal way.

Part-time work

26662 Where part-time employment is suspended any holiday pay received **on** or **after** the first day of entitlement is taken into account in the normal way but any payable more than four weeks after¹ is treated as capital.

1 JSA Regs, reg 98(1)(c)

26663

Statutory redundancy payments

26664 Employees may receive statutory redundancy payments on termination of employment. Such payments are capital. They should be ignored for JSA(Cont) but taken into account as capital for JSA(IB).

26665 An employer may pay employees more redundancy pay than they are entitled to under the law. Any excess is not exempt from the definition of a compensation payment (see DMG 26630). This means that where P/T employment ceases **on** or after the first day of entitlement the DM should calculate the period over which the compensation payment should be taken into account.

26666 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments for example severance, ex-gratia or golden handshakes may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is capital. Where P/T employment ceases **on** or **after** the first

day of entitlement the DM should calculate the period over which the compensation payment¹ is to be taken into account (see DMG 26675 et seq).

1 JSA Regs, reg 98(3)

Payments in kind

26667 Payments in kind (see DMG 26509) are not compensation payments¹. They are not earnings and should be disregarded for both elements of JSA².

1 JSA Regs, reg 98(3); 2 reg 103(6) & Sch 7, para 22

26668 - 26671

Bonus payments

26672 A person may receive a bonus payment on the termination of employment. The DM should consider the facts of each case to determine if the bonus payment is a compensation payment. Facts to be considered include

1. why has the bonus payment been made **and**

2. does the employer normally run a bonus scheme to reward employees for length of service, quality of work etc. If so, how much is normally paid?

Example 1

Perry was in remunerative work for the period from January to June. His employer promised him a loyalty bonus if he worked for the company for over four months. The loyalty bonus of £150 was paid when Perry left in June. Perry claims JSA.

The DM decides that the loyalty bonus is

1. not a compensation payment because the bonus payment was a reward for working for the employer for over four months **and**

2. earnings which are disregarded because remunerative work has ended (see DMG 26634).

26673

Calculation of period compensation payment taken into account - Jobseeker's Allowance 26674 - 26684

[General 26674 - 26677](#)

[When period ends - summary 26678 - 26682](#)

[Maximum period 26683 - 26684](#)

General

26674 From 1.10.07 DMG 26675 - 26768 will only be considered in cases where claimant's P/T work terminates **on** or **after** the first day of entitlement. **All** retainers will continue to be taken into account in the normal way, as will **all** earnings where employment has been suspended.

26675 The period over which a compensation payment is taken into account is a continuous period. It is not affected by the days on which a person would normally have worked (see flowchart at DMG 26768).

26676 The period starts on the date on which the payment is treated as paid¹ (see DMG Chapter 25). When it ends will depend on what the employer says about the payment². The payment may be wholly or partly

1. in lieu of notice **or**

2. because of the early termination of a contract of employment for a term certain (a "fixed term contract") **or**

3. for a combination of the reasons listed in **1.** and **2. or**

4. for another reason.

1 JSA Regs, reg 94(6) & 96; 2 TULR (C) Act 92, s 188-192

26677 The period will end¹ on the

1. expiry date, which is based on

1.1 the period of notice **or**

1.2 the date when any fixed term contract was due to run out (see DMG 26714) **or**

2. date on which any consultation period would have ended (see DMG 26744) **or**

3. standard date, which is worked out using a set formula (see DMG 26750).

1 JSA Regs, reg 94(6)

When period ends - summary

26678 Where an employer says that the compensation payment is

1. in lieu of notice or because of the early termination of a fixed term contract **and**

2. not also in lieu of consultation

the period ends on the expiry date¹.

1 JSA Regs, reg 94(6)(a)

26679 Where an employer says that the compensation payment is in lieu of notice or because of early termination of a fixed term contract, the period ends on the later of¹

1. the expiry date **or**

2. the standard date.

1 JSA Regs, reg 94(6)(a) & (b)

26680

26681 In any other case, for example, where an employer says that the compensation payment is not of any nature¹, the period ends on the standard date².

1 R(U) 1/94; 2 JSA Regs, reg 94(6)(c)

26682 The guidance at DMG 26678 - 26681 is summarized in a flowchart at DMG 26768.

Maximum period

26683 The period over which a compensation payment can be taken into account is limited to 52 weeks from the date on which the payment is treated as paid¹. This is so even where payments are made for longer periods.

1 JSA Regs, reg 94(7)

Example

Employment ends on 20th October. Compensation of 62 weeks is due to be paid on that day. The payment would normally be taken into account up to 26 December of the following year. It is a compensation payment so it can only be taken into account for the period 20th October to 17th October of the following year, 52 weeks after.

26684

The expiry date 26685 - 26739

[Meaning of the expiry date](#) 26685

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Meaning of the expiry date

26685 The expiry date means¹

1. the date on which any period of notice

1.1 was due to run out under statute, contract or custom (see DMG 26687 and 26704) **or**

1.2 would have run out had it not been waived **or**

2. where the period of notice is longer, than the period given in **1.1.**, the date on which that longer period runs out (see DMG 26725) **or**

3. the date on which any fixed term contract was due to end (see DMG 26714).

¹ JSA Regs, reg 94(8)(b)

Meaning of period of notice

26686 Period of notice means¹ the period of notice of termination of employment

- 1.** that a person is entitled to by

1.1 statute **or**

1.2 contract (whichever is the longer) **or**

- 2.** if they are not entitled to such notice, the period of notice which is customary in the employment.

1 JSA Regs, reg 94(8)(b)(i)

Entitlement to notice

Contractual and statutory entitlement differs

26687 The period of notice to which the claimant is entitled is the longer of

- 1.** the period to which the claimant is entitled by contract (see DMG 26693) **and**
- 2.** any statutory minimum (see DMG 26688).

Statutory right to minimum period

26688 Employment protection law gives most employees the right to a minimum period of notice¹. The exceptions are

- 1.** crew members on ships registered in the UK, employed under crew agreements approved by the Secretary of State²
- 2.** crown servants and members of the armed forces³
- 3.** employees who have broken their contract of employment (see DMG 26701).

Note: Most employees on offshore oil and gas platforms in British sectors of the Continental Shelf are entitled to notice.

1 ER Act 96, s 86; 2 s 199; 3 s 191 & 192

26689 Employees must have been continuously¹ employed for one month or more before being entitled to minimum notice² under statute. The amount of notice they should get depends on how long they have been employed. They should be given at least

- 1.** one week's notice, if they have been continuously employed for less than two years

2. one week's notice for each year of employment, if they have been continuously employed for between two and twelve years

3. twelve weeks notice if they have been continuously employed for twelve years or more.

1 ER Act 96, part XIV; 2 s 86

26690 Employees who have been continuously employed for four weeks or more should give their employers at least one week's notice¹. This does not increase with longer service.

1 ER Act 96, s 86

26691 Fixed term employees on a determinate fixed term contract have the end date of their contract notified to them at the start of their contract, and those on project work have the same right to legislative notice as other employees.

26692

Contractual entitlement

26693 The period of notice due under a contract is usually stated in the contract. But that period may be extended by agreement between the employer and employee, for example by a redundancy agreement. The period of notice agreed then becomes the period due under the contract.

26694 If there is evidence that this may have happened for example, if the employer pays more PILON than was due under the written contract ask to see a copy of the agreement. If there is no written agreement, ask to see any other evidence of the change.

26695 Contractual entitlement is affected if the agreement gives the employee a legal right to a longer period. In such a case, the employee is contractually entitled to the longer period. If the agreement simply provides for more compensation than would otherwise be due, contractual entitlement is not affected.

26696 The period of notice due may not be stated in writing. If so, ask the employer and employee whether it was agreed verbally. If it was and they agree on the period due, that period will be the period due by contract.

26697 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment¹. The DM should consider what is reasonable taking account of all the circumstances and the custom in the type of employment.

1 R(U)37/53; R(U)4/56(T); R(U)10/58; R(U)10/64; R(U)5/74

26698 The DM should note that

- 1.** employees may be paid PILON at the same rate as their earnings. The period might then be considered to be the period implied under their contracts
- 2.** the higher an employee's rate of pay and status, the longer the period of notice should be
- 3.** an employee's length of service and status can be compared with other employees, whose contractual entitlement is known.

Employment terminated by employee

26699 An employee is not entitled to notice from the employer if it was the employee's initiative to end the employment.

Employment terminated by mutual agreement

26700 Employees are entitled to notice if they agree to an employer's suggestion or give in to their pressure (see DMG 26732 where rights to notice are waived). Employers may still make payments in such circumstances. The DM should ask for evidence of the circumstances that led up to the termination. A determination can then be made as to whether the initiative came from the employer or the employee.

Employee dismissed for misconduct

26701 Employers may pay compensation even if they have dismissed employees without notice, for example for breach of contract, or misconduct. This is known as summary dismissal. Contracts of employment often state the offences that will attract summary dismissal.

26702 Employees who have broken their contracts are not usually entitled to notice. But an employer may not be sure that summary dismissal was justified, and may pay compensation. If the employer

- 1.** says that PILON has been paid as per statute or contract, accept the employer's statement and treat the claimant as being entitled to notice
- 2.** does not say that the payments were in lieu of notice, accept the claimant has no right to notice but not where there is clear evidence to the contrary.

26703 Where it is accepted that no notice is due, there can be no expiry date. The standard date should then be used (see DMG 26750).

Notice customary in the employment

26704 Not all employees are entitled to statutory notice. Some employees have contractual entitlement. Some have neither statutory nor contractual rights to notice, for example civil servants.

26705 In such cases, the expiry date is based on the period of notice normally given in the employment.

This is known as the notice customary in the employment. The expiry date is the date on which the customary notice is or would be due to run out¹.

1 JSA Regs, reg 94(8)(b)

Civil servants

26706 Civil servants have no statutory or contractual rights to notice. The DM will need to find out what is customary. Evidence can be found in publications detailing the terms and conditions of service for civil servants, such as the

- 1.** Civil Service Management Code
- 2.** Pay and Conditions of Service Code
- 3.** relevant Departmental codes.

26707 Departments frequently run voluntary early retirement or severance schemes. Publications that advertise such schemes may also provide evidence of customary notice.

26708 Customary notice may vary according to how the employment ends. Where there is compulsory redundancy, it is customary for departments to give

- 1.** 6 months notice to all except casual staff (subject to **2.** and **3.**)
- 2.** 9 months to those aged over 60 with between 10 and 25 years service
- 3.** 12 months to those aged over 60 with less than 10 years service.

Note: The periods in **2.** and **3.** cannot be extended past the 65th birthday.

26709 Where redundancy is voluntary, it is customary for most Departments to negotiate notice with the employee. Such notice is either explicitly or implicitly agreed.

Example 1

Employee and employer agree that the employee will work for another three months before the employment ends. Both parties have agreed that the notice period is three months. The customary notice is also three months.

Example 2

Employee and employer agree that the employee will leave on a particular date. That date is one month from the date on which the agreement is made. There is an implicit agreement to one month's notice and the customary notice is therefore one month.

Payment made for a period longer than notice period

26710 The expiry date is the date the longer period would have been due to run out if the employer says a compensation payment has been paid for a period longer than the period of notice (see DMG 26686). This does not apply if the

1. claimant had a fixed term contract (see DMG 26714) **or**

2. DM considers it unreasonable (see DMG 26711)¹.

1 JSA Regs, reg 94(8)(b)(ii) & (9)

Example

Max claims JSA after being made redundant. He is entitled to twelve weeks notice. Max works six weeks of his period of notice after being given notice by his employer. His employer says that the payment which was made to Max when he finished work included twelve weeks PILON.

The DM does not have to consider a longer period because the employer says she has paid Max twelve weeks PILON which is no more than the period of notice he was entitled to.

Note: The DM would have to consider whether it is unreasonable to extend the expiry date to the date the longer period would have run out if the employer had said she paid more than twelve weeks PILON.

26711 To determine if it is unreasonable to extend the expiry date to the date when the longer period would have run out, the DM should take into account

1. the amount of the compensation payment **and**

2. the level of pay normally received by the claimant in the employment¹ **and**

3. any other relevant fact².

1 JSA Regs, reg 94(9); 2 R(SB) 6/88

26712 The expiry date is the date when the

1. longer period is due to run out if the DM does not consider it unreasonable¹ **or**

2. period of notice (see DMG 26686) runs out (see DMG 26725) if the DM does consider it unreasonable².

1 JSA Regs, reg 94(8)(b)(ii); 2 reg 94(9)

Example 1

Brian earns £150 a week. He is entitled to four weeks notice. He gets £900 PILON when his employment ends which the employer says is for six weeks.

The DM decides the expiry date is the date when the six weeks PILON runs out because it is not unreasonable as the payment made by the employer is equal to the pay Brian would normally earn over six weeks.

Example 2

Amrit earns £200 a week. She is entitled to four weeks notice. She gets £800 PILON when her employment ends which the employer says is for 26 weeks.

The DM decides the expiry date is the date when the period of notice runs out because it is unreasonable to extend the expiry date as the payment made by the employer is equal to the pay Amrit would normally earn over four weeks.

Payment made for a period shorter than notice period

26713 The DM should calculate the period over which a compensation payment should be taken into account as normal (see DMG 26675 et seq) where

- 1.** an employer pays **or**
- 2.** an employee accepts, for whatever reason

a compensation payment for a period shorter than the notice period¹.

1 R(U) 1/94

Example

Joan was in remunerative work until 28.2.97. She claims JSA. On termination of her employment, her employer pays two weeks PILON because this is all the employer could afford to pay. Joan's contract states that she is entitled to four weeks notice.

The DM calculates the period over which the compensation payment (PILON) should be taken into account and determines that the expiry date applies. The compensation payment is taken into account for the period that the notice was due to run out under Joan's contract, that is four weeks.

Fixed term contracts

26714 Some employees have contracts of service that state the period of the employment, for example a number of years. These are called contracts for a term certain or fixed term contracts.

26715 Not all such contracts provide simply for employment for a stated period. Some provide that

employment can

- 1.** end during the stated period, providing notice is received **or**
- 2.** continue after the end of the stated period until notice is received.

26716 Where an employee was employed under a fixed term contract, ask to see a copy of it. Where the employee was entitled to notice, the guidance in DMG 26687 et seq should be applied.

26717 A fixed term contract may end before completion of the employment period provided. Payment may then be made as compensation for the early termination of the contract. The amount paid is not relevant. The expiry date is the date on which the contract was due to expire¹.

¹ JSA Regs, reg 94(6)(a) & (8)(b)(iii)

Date on which notice given

26718 When considering the period of notice, the DM must first establish the date notice was given.

Receipt of notice

26719 Notice is given only when it is

- 1.** received by
 - 1.1** the employee¹ **or**
 - 1.2** the employer **or**
 - 1.3** someone acting on their behalf **or**
- 2.** mutually agreed between the parties involved.

¹ Brown v. Southall & Knight (1980) ICR 617 at 626-9

26720 To be effective notice must be received by the employee or someone acting officially on their behalf. A notification of proposed redundancies sent to the DM¹ is not notice to terminate the employment.

¹ TULR (C) Act 92, s 193

26721 Notice is given when both the employee and employer know that the employee will leave on a specific date.

Example 1

Cleo is on holiday abroad. On Friday 15th November her employer posts her notice that her employment will end on Friday 22nd November. She returns home and reads the letter on Friday 29th November. Notice is given on 29th November.

Example 2

On Friday 3rd May, Eric's employer posts him notice that his employment will end on Friday 10th May. Eric is on holiday, but rings home on Tuesday 7th May. His mother reads the notice to him over the phone. He returns home and reads the notice himself on Friday 17 May. Notice has been given on Tuesday 7th May.

Notice

26722 Notice can be given orally or in writing. It must be definite and clear. Notice cannot be valid if it states that one party can withdraw without the agreement of the other. It is valid if it shows that notice could be withdrawn by mutual consent.

Example

An employer sends a letter giving the date on which an employee must leave under a voluntary redundancy scheme. It advises that the employee can withdraw if the financial estimates given are wrong. It says that the notice can be withdrawn by mutual agreement. The letter does not count as valid notice unless and until the employee indicates their acceptance.

26723 A provisional date of termination in a general statement is not effective notice. Whether any notification or announcement is notice to terminate employment is a question of fact. It may simply be a general warning of closure or an intention to reduce staffing¹.

1 R(U) 6/73; R(U) 4/80

Example 1

On Tuesday 14th May Diana is warned by letter that there will be redundancies. She is told that her name is on the list of employees to be made redundant. The employer proposes to give formal notice on Friday 17th May.

On Monday 20th May she receives notice that her employment will end on Friday 24th May. Notice is received on Monday 20th May. The letter of 14th May is only a warning letter and is not effective notice.

Example 2

In January, employees receive notice that their factory will be closing on a gradual basis. This is probably going to start in March and end in November. This general notice of the intended closure is not effective notice.

Calculation of date notice runs out

26725 The date on which a period of notice runs out must be decided. Do not count the day on which the notice is received. For example, an employee entitled to one week's notice, receives notice on Monday. That notice runs out on the following Monday. This applies even if

1. notice is received before the employee has done any work on that day **or**
2. it is stated that the week's notice runs out before the date calculated.

Note: This does not apply where notice is to operate from a future date.

26726 Where a month's notice is due, the date that notice runs out will vary. It will depend on whether notice was received on the last day of the month or not¹.

1 R(U) 5/73; R(U) 9/73

Example 1

Enya is dismissed without notice on 14th June. She is entitled to one month's notice. Her notice period runs out on 14th July.

Example 2

Frank is dismissed without notice on 29th February. He is entitled to one month's notice. His notice period runs out on 31st March.

Notice to operate from a future date

26727 Notice can operate from a future date¹. It may be given before the employment terminates but not have effect until after then.

1 Adams v GKN Sankey Ltd [1980] IRLR 416

26728 The employer must state that the notice is to run from a future date. This may be implicitly or explicitly. It does not apply where the employer simply attributes the PILON to a future period. When working out when such a period of notice runs out, include the date it is said to operate from.

Example 1

A letter of notice is prepared on Friday 17th May, but is dated Monday 20th May. It is handed to the employee personally on 17th May. The letter says that employment will end on Friday 17th May. The employee is entitled to one week's notice.

The employer is implicitly saying that notice will run from a future date, Monday 20th May. Notice was received by the employee on 17th May. A period of one week from and including Monday 20th May ends on Sunday 26th May, that is when the notice runs out.

Example 2

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May and that her notice is to run from Monday 27th May. She is entitled to one week's notice.

The employer is explicitly saying that notice will run from a future date, Monday 27th May. The employee received notice on 17th May. A period of one week from and including Monday 27th May ends on Sunday 2nd June, when the notice runs out.

Example 3

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May. She is entitled to one week's notice.

The letter also says that the employer is to pay her £150 PILON for the period Monday 27th May to Saturday 1st June. This is because she has got holiday pay for week beginning 20th May.

In this case the employer is not saying that notice will run from a future date. The employee received notice on Friday 17th May. It runs out on Friday 24th May.

Note: See DMG 26652 for the treatment of holiday pay.

Notice shortened or extended

26729 Employment may not always end on the date given in the notice. Before that date arrives, further notice may be received that it will end on a different date. The employer and employee might also agree that the notice period should be shortened or lengthened.

26730 When this happens notice does not have to be given again. Do not recalculate the notice from any later date¹. Full notice does have to be given again if

1. notice is cancelled rather than shortened **or**

2. employer and employee enter into a new contract of employment, rather than lengthening the notice period.

¹ Mowlem Northern Ltd v Watson [1990] IRLR 500

26731 Where there is a new contract the notice due is the period to which the employee is entitled under

it. It may also be the period which is customary in the employment.

Waiver of notice

26732 Rights to notice may be given up (waived)¹. There may be evidence that this has happened. For example, employees may sign agreements waiving their rights to notice. Employees waive their rights when they

- 1. leave their employment voluntarily or**
- 2. agree with their employers to leave without serving out notice or getting PILON.**

1 ER Act 96, s 86(3)

Calculation of date notice would have run out

26733 Where notice has been waived, the expiry date is the date that the notice would have run out. Employees leaving voluntarily, or mutually agreeing to leave, would be entitled to the amount of notice that the employer must give. The amount that has to be given by the employee is not relevant. There may be clear evidence of the date that the notice would have run out.

Example

On Monday 6th May, Angus is given notice that he is to be made redundant. The letter says that his employment will end on Friday 30th August. He is entitled to twelve weeks notice. He is also told that if he wants to leave on Friday 31st May he can do so by agreeing to it in writing. He agrees to leave on Friday 31st May.

In this case the notice would have run out on Friday 30th August. That is the date on which his employment would have ended if he had not waived his right to notice.

26734 In most cases there will be no evidence of the date when notice would have run out. Work it out from the date the employer and employee both knew exactly when the employee would leave. Do not include that date in the calculation.

Example 1

On Friday 6th September Freda tells her employer that she will be leaving on Friday 13th September. She has to give her employer one week's notice. The employer would have had to give her six week's notice. Freda is paid compensation.

Freda waives her right to notice by leaving voluntarily. The DM calculates the date that notice would have run out.

There is no evidence of the date notice would have run out so it is worked out from the 6th September. That is the date when both Freda and her employer knew when the employment would end. Six weeks

from the 6th September, excluding that day, ends on Friday 18th October. That is when the notice period would have run out.

Example 2

An employer advertises a voluntary redundancy scheme. Employees are told that if they are accepted under the scheme they must leave their employment on Friday 28th June.

Kevin, who is entitled to twelve weeks notice, applies on a form dated Monday 6th May. He hands the form to his employer on that date. On Monday 20th May, his employer gives him a letter dated that day, telling him that he has been accepted on the scheme.

It details the payments that Kevin will be entitled to. It also confirms that the date of leaving will be Friday 28th June, subject to Kevin's written agreement to the terms offered. On Tuesday 21st May Kevin signs his agreement and posts it the same day. His employer gets it on Thursday 23rd May.

Kevin has waived his rights to notice by leaving with mutual agreement. The date notice would have run out is worked out from Thursday 23rd May. That is the date when both Kevin and his employer know that the employment will definitely end on Friday 28th June. 12 weeks from Thursday 23rd May, excluding 23rd May, ends on Thursday 15th August, when the notice period would have run out.

26735 - 26739

Payment for consultation period in employment protection law 26740 - 26749

Calculation of period 26743 -

Date consultation period would have ended 26744 - 26749

26740 There are rules that must be followed before employees can be made redundant¹. One of these is that employers have to consult employees' representatives as soon as possible. Those representatives may be

- 1.** elected by the employees **or**
- 2.** representatives of a recognized trade union.

DMG 26423 gives further details.

1 TULR (C) Act 92, s 188-192; TURER Act 93, s 34

26741 Employees representatives can complain to an Employment Tribunal if an employer does not follow the rules. The Employment Tribunal can then make a protective award (see DMG 26422). If the employer fails to pay, the employee can complain to an Employment Tribunal.

26742 An employer may dismiss employees as redundant without consulting the employees representatives. The employer may then pay compensation. This is often in return for the representatives not complaining to an Employment Tribunal.

Calculation of period

26743 Some or all of a payment of compensation may be said to be in lieu of consultation. The period over which it is taken into account will end on the later of¹

- 1.** the date on which the consultation period would have ended (see DMG 26744)
- 2.** the expiry date, where the payment is also PILON or because of early termination of a fixed term contract (see DMG 26685 et seq)
- 3.** the standard date (see DMG 26750).

Note: See DMG 26679 and flowchart at DMG 26768.

Date consultation period would have ended

26744 The date the consultation period would have ended depends on

1. the number of employees that the employer dismissed, or intended to dismiss, as redundant **and**
2. the period within which they were to be made redundant.

26745 The consultation period ends on

1. the 90th day after consultations began, if 100 or more employees are to be dismissed within 90 days
or
2. the 30th day after consultations began, if 20 or more employees are to be dismissed within 90 days.

26746 The 30 and 90 days start on the day that consultations began. If consultations did not begin before employment ended, the period starts on the day after the employment ended. When working out the consultation period, all seven days of the week should be used.

Example 1

An employer intends to dismiss 250 employees as redundant within 90 days. Consultations with the unions start on 6th May. Ida's employment ends on 31st May. She gets compensation in lieu of consultation. The period of consultation starts on 6th May and ends on 3rd August.

Example 2

An employer intends to dismiss 120 employees as redundant within 90 days. Consultations with the unions have not begun when Noel's employment ends on 31st May. He gets compensation in lieu of consultation. The period starts on 1st June and ends on 29th August.

26747 - 26749

The standard date - other cases 26750 - 26999

[Meaning of the standard date](#) 26751

[Employee works out notice due from employer](#) 26572 - 26754

[No notice due](#) 26755 - 26759

[Calculation of period - the set formula](#) 26760 - 26999

26750 Compensation is taken into account over a period starting on the date it is treated as paid¹ (see DMG Chapter 25). When that period ends depends on what the employer says about it. Unless the employer says that some or all of the compensation was paid

1. in lieu of notice (see DMG 26686) **or**

2. on account of the early termination of a fixed term contract (see DMG 26714)

the standard date should be applied (see DMG 26679 - 26681).

1 JSA Regs, reg 96 & 94

Meaning of the standard date

26751 The standard date means¹ the earlier of

1. the expiry date (see DMG 26685 et seq) **and**

2. the last day of the period worked out by using a set formula (see DMG 26760).

1 JSA Regs, reg 94(8)(c)

Employee works out notice due from employer

26752 The expiry date is the last day of the notice period due to an employee. But employees who get compensation may stay in their employment for the whole of that period. The expiry date will then be the last day of that employment. That will also be the standard date.

26753 Employees may not be allowed to stay in their employment for the full notice period due. The expiry date will then be after the last day of employment. The standard date will also be after the last day of that employment.

26754 Some employees may be allowed to work for longer than the notice period due to them. Their expiry date will then be before the last day of their employment. The standard date will also be before the employment ends.

No notice due

26755 In some cases there may be no period of notice due to an employee. For example, they may

1. have been dismissed summarily due to misconduct (see DMG 26701) **or**
2. be in employment where no notice is due under contract, statute, or by custom, for example, MPs or clergy.

26756 In such cases, an expiry date cannot be worked out. The standard date will then be the last day of the period worked out by using the set formula.

26757 - 26759

Calculation of period - the set formula

26760 The DM should

- determine the amount of compensation the claimant is due
- divide that amount by the maximum weekly amount
- round any fraction down to a whole number
- treat that number as a period of weeks
- work out when a period of that length would end.

Amount of compensation

26761 Employers must give employees a written statement showing how the redundancy payment has been worked out¹. If there is any doubt, ask to see a copy of the statement.

1 ER Act 96, sec 165

26762 The exception to this rule is where an Employment Tribunal makes an award, stating the amount to be paid. The employer does not then have to provide a written statement. The Employment Tribunal report will give details of the amount due.

Maximum weekly amount

26763 The maximum weekly amount is set by employment protection law¹ (see Appendix 2) and can change². It is used to work out

- 1. awards of compensation for unfair dismissal **and****
- 2. redundancy payments **and****
- 3. payments made by the government to employees of insolvent businesses.**

1 ER Act 96, s 227(1); 2 Employment Rights (Increase of Limits) Order

26764 Divide the amount of compensation due by the maximum weekly amount. Always use the figure that is set on the date that the compensation is due¹. This is so regardless of the claimant's earnings from the employment.

1 JSA Regs, reg 94(8)(c)(ii)

Number of weeks

26765 The result of the calculation in DMG 26764 must be rounded down to the nearest whole number. That number is treated as a number of weeks. For this purpose week means a period of seven consecutive days¹.

1 JS Act 95, s 35(1)

Last day of the period

26766 The DM should work out the period starting on the date the compensation is treated as paid¹. The period will then last for the relevant number of weeks. It will end on the last day of that period.

1 JSA Regs, reg 96 & 94

Standard date

26767 Compare the last day of the period worked out as in DMG 26766 with the expiry date (see DMG 26685). The standard date is the earlier of the two dates.

Example 1

Liam is entitled to six weeks notice and is given notice on 27 June. His employment ends on 11 July. Notice would have run out on 8 August. He is due to be paid £4,000 by his employer on 11 July (£2,408 is statutory redundancy pay, £200 is holiday pay and the rest is ex gratia). The maximum weekly amount is

£280.

Compensation is £4,000 - £2,608 = £1,392 divided by £280 = 4 (rounded down).

A period of four weeks starting on 11 July ends on 7 August.

The standard date is the earlier of 8 August (the expiry date) and 7 August (the date worked out using the set formula).

The standard date in this case is 7 August.

Example 2

Lynn is entitled to three calendar months notice. On 31 May she is dismissed without notice. Notice would have run out on 31 August. She gets an ex gratia payment of £2,570 on 1 June. The maximum weekly amount is £280.

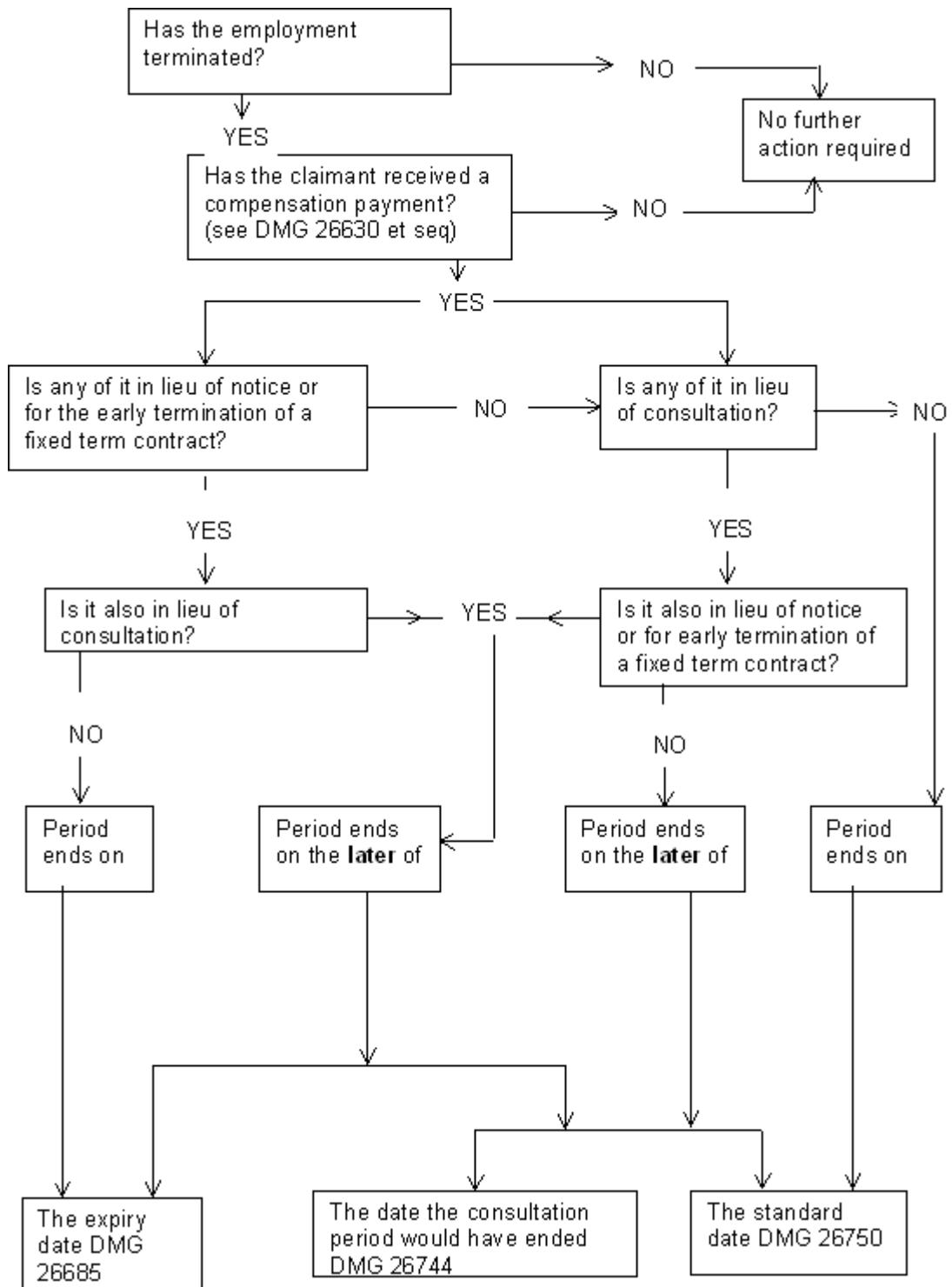
£2,570 divided by £280 = 9 (rounded down). A period of nine weeks starting on 1 June ends on 2 August.

The standard date is the earlier of 31 August (the expiry date) and 2 August (the date worked out using the formula). The standard date in this case is 2 August.

26768 The guidance in DMG 26675 - 26767 is summarized in the following flowchart which should only be considered in cases where the claimant's P/T work terminates **on** or **after** the first day of entitlement.

26769 - 26999

Calculation of period for JSA - flowchart



Appendix 1 - Territorial or reserve forces

Territorial or reserve forces prescribed in SS (Contributions) Regs 2001, Sch 6, Part I.

Royal Naval Reserve

Royal Marines Reserve

Army Reserve

Royal Fleet Reserve

Territorial Army

Royal Air Force Reserve

Royal Auxiliary Air Force

Royal Irish Regiment (to the extent that its members are not members of the regular naval, military or air forces of the Crown)

Appendix 2 - Maximum weekly amount

[See DMG Memo 5/25] Payable under section 227 of the Employment Rights Act 1996.

£

From 1.2.00 230

From 1.2.01 240

From 1.2.02 250

From 1.2.03 260

From 1.2.04 270

From 1.2.05 280

From 1.2.06 290

From 1.2.07 310

From 1.2.08 330

From 1.2.09 350

From 1.10.09 380

From 1.2.11 400

From 1.2.12 430

From 1.2.13 450

From 6.4.14 464

From 6.4.15 475

From 6.4.16 479

From 6.4.17 489

From 6.4.18 508

From 6.4.19 525

From 6.4.20 538

From 6.4.21 544

From 11.4.22 571

From 10.4.23 643

From 8.4.24 700

Appendix 3 - Statutory guarantee payments

[See DMG Memo 5/25] Amount payable to employees under section 31 of the Employment Rights Act 1996.

£

From 1.2.00 16.10 per day

From 1.2.01 16.70 per day

From 1.2.02 17.00 per day

From 1.2.03 17.30 per day

From 1.2.04 17.80 per day

From 1.2.05 18.40 per day

From 1.2.06 18.90 per day

From 1.2.07 19.60 per day

From 1.2.08 20.40 per day

From 1.2.09 21.50 per day

From 1.2.10 21.20 per day

From 1.2.11 22.20 per day

From 1.2.12 23.50 per day

From 1.2.13 24.20 per day

From 6.4.14 25.00 per day

From 6.4.15 26.00 per day

From 6.4.16 26.00 per day

From 6.4.17 27.00 per day

From 6.4.18 28.00 per day

From 6.4.19 29.00 per day

From 6.4.20 30.00 per day

From 6.4.21 30.00 per day

From 11.4.22 31.00 per day

From 10.4.23 35.00 per day

From 8.4.24 38.00 per day

Appendix 4 - Statutory redundancy payments

Calculation of amount

Reduction in amount

Calculation of amount

Redundancy pay under section 135 of the Employment Rights Act 1996.

1. the length of time an employee was continuously employed **and**
 2. the age of the employee **and**
 3. the amount of a week's pay.

The table on the next page shows how many weeks' pay employees are entitled to.

To use the table, read off the employee's age and number of complete years service.

Note: The maximum number of years that can be used is 20.

The table will then show how many weeks pay the employee is entitled to.

The table starts at age 20, because no one below this age can get a redundancy payment.

Periods of employment before age 18 do not count.

Reduction in amount

The amount awarded is reduced where the employee is aged between 64 and 65. The reduction is 1/12 for each complete month by which their age exceeds 64.

42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
62	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
63	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

64	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
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Appendix 5 - Exemptions granted from statutory guarantee payments

Employers covered by National Agreements for the following industries

Civil engineering construction

Demolition and dismantling (from 2.2.77)

British footwear manufacturing industry (from 4.7.77)

National Council for the steeplejack and lightning conductor engineering industries (from 1.8.77)

Paper making and board making industry (from 15.8.77)

Smiths Food Group factories at Paulsgrove, Stockport, Great Yarmouth and Fleetwood (from 5.9.77)

Cut Sole associates (from 8.9.77)

Fibreboard Packing Case (from 18.10.77)

Refractory Construction Industry (from 1.11.77)

Multiwall Sack manufacturing industry (from 4.11.77)

Tudor Food Products (from 11.1.78)

British Carton Association (from 14.3.78)

Henry Wiggin and Co Ltd (from 19.4.78)

National Joint Council for Workshops for the Blind (from 27.6.78)

Card Clothing industry (from 13.7.78)

Motor vehicle retail and repair industry (from 14.12.78)

The Contractors Plant Association (from 23.2.81)

Wire and wire ropes industries (from 12.9.87)

Rowntree Mackintosh Confectionery Ltd (from 6.9.89)

Airflow Streamlines plc (from 18.12.89)

G and G Kynock plc (from 21.5.90)

Bridon Ropes (from 27.12.90)

National Joint Council for Building Industries (from 1.7.94)

Building and Allied Trade Joint Industries Council (from 29.9.89)

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