

Chapter V4: ESA & employed earners

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Chapter V4: ESA & employed earners

Earnings of employed earners

Introduction

V4001 This Chapter deals with the calculation of payments made to employed earners. These will usually be earnings paid by an employer, but can sometimes be other types of payment.

V4002 How payments made to employees may affect an of ESA will depend on whether

1. the work is continuing
2. the work has ended.

V4003

V4004 ESA has no condition of entitlement based on income and so earnings are not taken into account against the amount of ESA paid to the claimant. However, where a claimant who is entitled to ESA is working then the guidance in this chapter should be used to identify

1. the type of earnings **and**
2. the weekly amount of those earnings.

The level of earnings will then determine whether the work is within the PWK limits¹. ADM Chapter V3 provides guidance on the effect of work on ESA.

1 ESA Regs 13, reg 39 & 76(8)

V4005 – V4006

V4007 It is only the amount of a claimant's own earnings that may affect entitlement to ESA on the grounds of whether the level of earnings is within the PWK limits¹. The earnings of a claimant's partner cannot affect entitlement to ESA.

1 ESA Regs 13, reg 39

V4008 – V4012

Explanation of terms

Meaning of employed earner

V4013 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 ESA Regs 13, reg 2; SS CB Act 92, s 2(1)(a); 2 Income Tax (Earnings and Pensions) Act 2003, s 7(3)

- V4014 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.
- V4015 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

- V4016 Earnings means any pay or profit derived from employment¹ and includes
1. bonus or commission² (see V4059)
 2. PILOR³ (see V4113)
 3. PILON⁴
 4. holiday pay (see V4075), but not where it is payable more than four weeks after the employment ended, or was interrupted⁵
 5. retainers⁶ (see V4118)
 6. payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment⁷, including any payment made by the employer for
 - 6.1 the employee’s travelling expenses between home and work⁸ or
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is at work⁹ (see V4070)
 7. awards of compensation under employment law¹⁰
 8. payments such as guarantee payments and payments due to suspension from employment on medical or maternity grounds¹¹
 9. certain payments which are treated as earnings for social security purposes¹²
 10. amounts of compensation paid on the termination of P/T employment¹³ (see V4622 et seq)
 11. 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 deduct¹⁴ (see V4130).

This list is not exhaustive. See V4046 - V4132 for more examples of what are and what are not earnings.

1 ESA Regs 13, reg 80(1); 2 reg 80(1)(a); 3 reg 80(1)(b); 4 reg 80(1)(c); 5 reg 80(1)(d); 6 reg 80(1)(e); 7 reg 80(1)(f); 8 reg 80(1)(f)(i); 9 reg 80(1)(f)(ii); 10 reg 80(1)(g); ER Act 96, s 112(4) or 117(3)(a); 11 reg 80(1)(h); ER Act 96, s 28, 34, 64, 68 & 70; 12 reg 80(1)(i); 13 reg 80(1)(j); 14 reg 80(1)(k)

V4017 [See memo ADM 06/20] Earnings do not include

1. payments in kind¹ (see V4111)
2. periodic payments made because employment has ended through redundancy²
3. payments made for periods when an employee is on maternity leave, paternity leave, shared parental leave, adoption leave, or is away from work due to illness³
4. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment⁴ (see V4108)
5. payments of occupational pension⁵
6. redundancy payments⁶
7. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme⁷
8. any payment of expenses paid to the claimant as a result of participating in a service user group⁸ (see V4119)
9. a bounty paid at intervals of at least one year and derived from service in a special occupation⁹(see V4122)

1 ESA Regs 13, reg 80(2)(a); 2 reg 80(1)(b); 3 reg 80(2)(b); ER Act 96, 75A or 75B; 4 reg 80(2)(c); 5 reg 80(2)(d); 6 ER Act 96, s 135; 7 ESA Regs 13, reg 80(2)(e); 8 reg 80(2)(f); 9 reg 80(2)(g)

Meaning of derived from

V4018 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 V4017. Work out the period for which earnings are to be taken into account before deciding the claim (see V4771 et seq).

1 R(SB) 21/86

Meaning of gross earnings

V4019 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 V4036) **but**
2. before any authorized deductions are made by the employer. These may include
 - 2.1 income tax
 - 2.2 pensions contributions
 - 2.3 NI contributions (previously called SS 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, 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

V4020 A pay period is the period for which the employee is, or expects to be, normally paid¹. This might be a week, a fortnight, four weeks, a month, or any other period.

1 ESA Regs 13, reg 2

V4021 - V4025

Calculation of net earnings

Deductions from gross earnings

V4026 The earnings of an employed earner which need to be calculated for ESA purposes are the claimant's net earnings¹.

1 ESA Regs 13, reg 81(1)

V4027 Net earnings are gross earnings less¹

1. income tax **and**
2. Class 1 NI contributions **and**
3. half of any sum paid by the employee, towards an occupational or personal pension scheme.

1 ESA Regs 13, reg 81(2)

Income tax

V4028 Deduct from gross earnings any income tax deducted by the employer.

NI contributions

V4029 NI contributions are often called SS 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

V4030 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 ($£26 \times 12 \div 52 = £6$ pw) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£50 - £3 = £47$).

V4031 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 ESA Regs 13, reg 2; PS Act 93, s 1

V4032 - V4033

V4034 Personal pension schemes¹ are

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

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

1 ESA Regs 13, reg 2; 2 PS Act 93, s 1; Income and Corporation Taxes Act 1988, Chapter 4 of Part 14 & Finance Act 2004, Sch 36, para 1(1)(g); 3 Income and Corporations Taxes Act 1988, s 620 or s 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income & Corporation Taxes Act 1988, s 622(3)

V4035 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

V4036 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

V4037 Examples of expenses for which deductions may be made under V4036 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.

V4038 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 ADM Chapter V5). 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) 2 K8 651; Borley v. Ockended (1925) 2 K8 325; 2 R(IS) 16/93

V4039 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 V4036. 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

V4040 - V4045

Treatment of particular kinds of payments from employment

Introduction

V4046 The law¹ gives some examples of what earnings can include (see V4016). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in V4050 - V4131.

1 ESA Regs 13, reg 80(1)

V4047 – V4048

Employment ended

V4049 Payments made as a result of employment ending do not affect ESA.

Accommodation provided by employer

- V4050 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored.

Actors and entertainers

- V4051 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 an employed earner or employment as a S/E earner (see ADM Chapter V5 for the meaning S/E earner).
- V4052 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.
- V4053 The fact that an actor or entertainer has periods of employment during which class 1 NI contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to ESA 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 as an employed earner or otherwise.

Advance of earnings or loans

- V4054 Earnings should be calculated from the date they are treated as paid¹. This is based on when they are due to be paid.

1 ESA Regs 13, reg 78

V4055 - V4058

Bonus or commission

- V4059 Payments of bonus or commission should be treated as earnings. V4791 et seq provides guidance on the period over which they should be attributed.

Broadcasting and publication fees

- V4060 Fees and royalties are earnings, no matter how often or infrequently they are paid. They can be from employment or self-employment (see ADM Chapter V5) 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.

Councillors

V4061 For the treatment of councillors and ESA see ADM Chapter V1.

Directors of limited companies

V4062 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

V4063 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.

Payments as a director or other employee

V4064 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 regarded as earnings.

V4065 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 regarded as earnings.

V4066 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.

V4067 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.

V4068 – V4069

Expenses

V4070 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 ESA Regs 13, reg 80(1)(f)

V4071 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.

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 ESA Regs 13, reg 80(2)(c); R(FIS) 4/85

V4072 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.

V4073 - V4074

Holiday pay

V4075 Any holiday pay that is payable within four weeks of the date employment ended, or was interrupted, should be treated as earnings for ESA¹.

1 ESA Regs 13, reg 80(1)(d)

V4076 – V4110

Payments in kind

V4111 A payment in kind, for example free accommodation, should not be treated as earnings¹.

1 ESA Regs 13, reg 80(2)(a)

V4112 Payments in kind do not include any payment by non-cash voucher if it has been treated as earnings of an employed earner (see V4130).

Payments in lieu of remuneration

V4113 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. PILOR are earnings¹.

1 ESA Regs 13, reg 80(1)(b); R(SB) 21/86

V4114 - V4117

Retainers

V4118 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 are earnings. Retainer payments include

1. statutory guarantee payments (see Appendix 2) **and**
2. payments made where the claimant has been suspended on medical or maternity grounds.

1 ESA Regs 13, reg 80(1)(e)

Service user groups

V4119 Payments other than expenses received for taking part in a service user group should be treated as earnings for ESA.

Example

Jenny is in receipt of ESA. 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.

Meaning of service user

V4120 A service user is¹

1. a person who is being consulted by or on behalf of

1.1 a body which has a statutory duty to provide services in the field of

1.1.a health **or**

1.1.b social care **or**

1.1.c social housing **or**

1.2 a body which conducts research or undertakes monitoring for the purpose of planning or improving the services in **1.1**

in their capacity as a user, potential user, carer of a user or a person affected by those services **or**

2. a person who is being consulted by or on behalf of

2.1 the Secretary of State in relation to social security or child support functions under relevant legislation² **or**

2.2 a body which conducts research or monitoring in order to plan or improve the functions in **2.1**

In their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person

3. the carer of a person consulted under **1.** or **2.**

1 ESA Regs 13, reg 80(5); 2 E & T Act 73, s 2

V4121 For the purposes of V4120

1. a service user is a person who

1.1 has used **or**

1.2 is using **or**

1.3 may potentially use **or**

1.4 is otherwise affected by

the services referred to in **2.** below **and**

2. the services concerned are delivered by a body which has a statutory duty to provide services in the field of

2.1 health **or**

2.2 social care **or**

2.3 social housing **or**

2.4 social security **or**

2.5 child support **and**

3. a service user is a person who is consulted by the bodies in **2.** or by an alternative body (for example, educational establishments or voluntary and charitable organisations) who conduct

- 3.1 research or
- 3.2 monitoring or
- 3.3 planning

in order to improve services through user involvement.

Special occupations

- V4122 Some occupations are known as special occupations. These are service as
1. a P/T fire-fighter in a fire brigade maintained under relevant legislation¹
 2. a P/T fire-fighter employed by a fire and rescue authority
 3. a P/T fire-fighter employed by the Scottish Fire and Rescue Service
 4. an auxiliary coastguard in respect of coast rescue services
 5. a person engaged P/T work manning or launching a lifeboat
 6. a member of the reserve forces² (see Appendix 1 to this Chapter).

See V4017 on the treatment of a bounty paid in respect of special occupations.

1 Fire and Rescue Services Act 2004; 2 SS (Contributions) Regs 2001, Sch 6, Part 1

Auxiliary coastguards

- V4123 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 V4017).

Part-time members of a fire brigade

- V4124 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 V4017).

Part-time crewing or launching of a lifeboat

- V4125 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 V4017).

Reservists

- V4126 Members of the Army Reserves 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.

- V4127 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 ESA Regs 13, reg 80(1)(f)(i)

- V4128 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 V4017).

Tips

- V4129 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

- V4130 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.

- V4131 Earnings of an employed earner include the amount for any payment made by a non-cash voucher that has been treated as earnings for the purposes of working out the amount of NI contributions to deduct¹.

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

1 ESA Regs 13, reg 80(1)(k)

- V4132 Payments in kind are not normally regarded as earnings of an employed earner. Payments in kind do not include any non-cash voucher if it has been treated as earnings of an employed earner¹ (see V4130).

1 ESA Regs 13, reg 80(3)

V4133 – V4175

Employment and training schemes

General

V4176 Employment and training schemes are funded out of public funds by the Young People's Learning Agency for England, the Chief Executive of Skills Funding or by or on behalf of the Secretary of State for Education and Skills, Scottish Enterprise, the Highlands and Islands Enterprise, Skills Development Scotland or the Welsh Ministers. Where a person is on such a scheme, establish whether they are employees

Employees

V4177 Employees get a wage from their employer. Treat the wage as earnings.

V4178 - V4182

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

V4183 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, 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

V4184 Participants receiving or entitled to receive remuneration from the employer providing the training facilities who are treated as employees.

V4185 – V4186

Work Based Training for Young People and Modern Apprenticeships

V4187 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 work based learning).

V4188 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.

V4189 – V4621

Payments of compensation

Meaning of compensation

V4622 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 **or**
 - 2.2** only received part of the PILON they are due **or**
 - 2.3** not received any or all of the PILON they are due 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.

1 ESA Regs 13, reg 80(4)

V4623 Payments of compensation do not include¹

- 1.** any bonus or commission (see V4059)
- 2.** PILOR, except any periodic sums paid because employment has ended through redundancy
- 3.** PILON
- 4.** holiday pay
- 5.** retainers (see V4118)
- 6.** payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see V4108)
- 7.** awards made under employment and trade union law, including any award of compensation

8. payments in kind (see V4111)
9. payments for a period when the claimant is on maternity or sick leave
10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see V4070)
11. any occupational pension
12. any redundancy payment²
13. refunds of contributions to which the claimant is entitled under an occupational pension scheme
14. compensation payable under certain education law³
15. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme
16. payments in respect of expenses as a result of participating in a service user group.

1 ESA Regs 13, reg 80(4); 2 ER Act 96, s 135(1); 3 Education Reform Act 1988, s 173

V4624 – V4625

- V4626 The period for which the payment of compensation is calculated is one week¹. This period begins on the date on which the compensation is treated as paid² (see V4782 et seq).

1 ESA Regs 13, reg 76(6); 2 reg 78

V4627 – V4768

The calculation of earnings

- V4769 This guidance deals with
1. how to decide the period over which earnings should be calculated - see V4771 et seq
 2. how to calculate the weekly amount of earnings - see V4799 et seq
 3. the special rules for modifying the weekly amount of earnings - see V4806 et seq.

Disregard of fractions

- V4770 Where the calculation of earnings results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹.

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

1 ESA Regs 13, reg 4

Period over which earnings are calculated

Calculating the period

V4771 To determine how earnings should be calculated in relation to an award of ESA the DM needs to establish

1. the date of claim
2. the first day of the claimant's benefit week (see V4790)
3. the date on which the earnings are due to be paid (see V4774 et seq)
4. the date on which the earnings are treated as paid (see V4782 et seq) **and**
5. **either**¹
 - 5.1 the period for which the payment is made **or**
 - 5.2 the amount of ESA that would be payable without the earnings.

Note: If the income is a payment of earnings when employment ends see V4798 where different kinds of earnings are received for overlapping periods.

1 ESA Regs 13, reg 76(2)

V4772 – V4773

Date on which earnings are due to be paid

V4774 To determine the period over which earnings should be calculated, the DM needs information on the date a payment is due to be paid. This may be different from the date a payment is actually made or received. But earnings are often paid on the date they are due.

V4775 When deciding the date a payment is due the DM should consider that

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

V4776 The date on which a payment of earnings is due will be the normal pay day agreed in the contract of employment. The terms of a contract

1. may be
 - 1.1 express (in writing or verbal) **or**
 - 1.2 implied (by the actions of or understanding between the two parties) **and**
2. may be varied
 - 2.1 if both parties agree to it (the variation may be express or implied) **or**
 - 2.2 because of certain action taken by either party (such as dismissal or resignation).

Earnings when employment ends

V4777 When employment ends, the date on which a payment of final earnings is due to be made

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

Notice given and worked

V4778 Final earnings are payable on the dates agreed in the contract of employment where employment

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

V4779 This means that the claimant should receive the following payments on the final pay-day (often the last day of employment)

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

Employment terminated by employer without notice

V4780 Where the employer terminates employment without due notice they are legally obliged to pay on the last day of employment¹

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

2. wages held in hand
3. holiday pay
4. a payment in lieu of notice.

Note: The last day of employment is not necessarily the same as the last day the claimant attended work.

1 R(SB) 23/84

Employment terminated by employee without notice

V4781 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay

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

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

Date on which earnings are treated as paid

V4782 The date on which earnings are treated as paid may not be the same as the date on which they are due to be paid under V4774 et seq.

Earnings due before the first benefit week of the claim

V4783 A payment of earnings should be treated as paid on the date it was due, if it was due to be paid before the first benefit week of the claim¹.

Note: A payment of may be due before the date of claim and still be within the first benefit week (see V4790).

1 ESA Regs 13, reg 78(a)

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

V4784 If a payment was due to be paid in or after the first benefit week of the claim, it should be treated as paid on¹ the first day of the benefit week in which it is

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

1 ESA Regs 13, reg 78(b)

V4785 - V4786

Treatment of arrears of earnings

V4787 If the amount of a regular payment increases, or the claimant starts to receive a new income, the first payment may include arrears. The treatment of the arrears will depend on whether they were paid on the date on which they were due to be paid (see V4774).

Arrears paid on due date

V4788 Arrears which are paid on the due date should be

1. treated as paid on the first day of the benefit week in which
 - 1.1 they are paid **or**
 - 1.2 it is practicable to take them into account¹ **and**
2. calculated
 - 2.1 for a period calculated in the normal way (see V4791 et seq)² **and**
 - 2.2 from the date on which they are treated as paid.

1 ESA Regs 13, reg 78; 2 reg 76(2)(a)

Arrears paid after the due date

V4789 Arrears paid after the due date should be treated as paid

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

1 ESA Regs 13, reg 78(1)(a)

Meaning of benefit week

V4790 Benefit week¹ means a period of seven days ending on such day as the Secretary of State may direct, but for the purposes of calculating any payment of income "benefit week" means the period of seven days ending on

1. the day before the first day of the first period of seven days which
 - 1.1 ends on such day as the Secretary of State may direct **and**
 - 1.2 follows the date of claim for an employment and support allowance **or**
2. the last day on which an employment and support allowance is paid if it is in payment for less than a week

1 ESA Regs 13, reg 2

Period for which payment is made

Identifiable period

V4791 If the period for which a payment is made can be identified, then the length of time for which it is calculated will depend on whether the payment is monthly or not. Where the period for which the payment is made is

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

The period begins from the date determined by following the guidance at V4782 et seq.

1 ESA Regs 13, reg 76(2)(a); 2 reg 76(2)(b)

Employer's pay arrangements

V4792 Where an employer has specific pay arrangements, which mean employees are paid at specific intervals, such as monthly, a payment should be calculated for a period equal to the pay interval¹.

1 R(IS) 10/95

Supply teachers

V4793 An LA may create a pool or panel of supply teachers. The LA calls on these teachers as and when needed, but the teachers may refuse work if they wish. In these circumstances the DM should note that

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

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

Example

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

V4794 – V4795

No identifiable period

V4796 If the period cannot be identified, the DM should calculate the amount by dividing the claimant's net earnings¹ by the weekly amount of ESA to which the claimant would have been entitled had the payment not been made.

1 ESA Regs 13, reg 76(2)(c)

Example

Sheila is in receipt of ESA of £45 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Sheila's employer offers her a payment of £7,200. She can agree to accept this sum as a final and full settlement of any unequal treatment claim that she could have brought against her employer. Alternatively, Sheila can have the option of taking a net payment of £720 but this amount would be deducted from any future settlement won through action at an Employment Tribunal or as part of any negotiated settlement between herself and her employer.

Sheila decides to accept the sum of £720 and this is duly paid to her with her salary by the employer. The DM decides that the payment is a payment of earnings but cannot identify a period in respect of which the payment is made. The DM therefore performs the calculation in V4796 where:

£720 is divided by £45 = 16

The DM decides that the claimant has earnings at a weekly rate of £45 for a period of 16 weeks.

V4797 If the calculation does not result in a whole number of weeks, the balance of the payment should be taken account of for a corresponding fraction of a week¹.

1 ESA Regs 13, reg 76(9)

Different kinds of earnings received for overlapping periods

V4798 If different kinds of earnings are received from the same source, and the periods over which the earnings would be calculated overlap, the earnings should be taken account of

1. for the total of the periods which apply to each of the different kinds of earnings **and**
2. from the earliest date on which any of those earnings would be treated as paid under V4782 et seq¹ **and**
3. in the following order²

- 3.1 normal earnings
- 3.2 PILOR and PILON
- 3.3 compensation payments
- 3.4 holiday pay.

1 ESA Regs 13, reg 76(3); 2 reg 76(4)

Calculation of weekly amount

Period of a week or less

V4799 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment¹. But see V4804 et seq and V4811.

1 ESA Regs 13, reg 79(1)(a)

Period of a month

V4800 Where the payment is for a month the weekly amount should be worked out by

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

1 ESA Regs 13, reg 79(1)(b)(i)

Example

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

Period of three months

V4801 Where the payment is for a period of three months the weekly amount should be worked out by

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

1 ESA Regs 13, reg 79(1)(b)(ii)

Example

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

Period of a year

V4802 Where the payment of income is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 ESA Regs 13, reg 79(1)(b)(iii)

Period of more than a week

V4803 Where the payment is for more than a week, and V4800 – V4802 does not apply, the weekly amount should be worked out by

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

1 ESA Regs 13, reg 79(1)(b)(iv)

Example

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

Calculation of amount where only part of payment overlaps benefit week

V4804 Where a payment for one week or less is treated as paid before the first benefit week of the claim, it may fall to be taken account of for only some days in the first benefit week. The DM should determine the amount to be calculated by

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

Note: If the period the payment overlaps is a part week see ADM Chapter S1.

1 ESA Regs 13, reg 79(2)

V4805 Where a payment is for one week or more, and is to be taken account of for some days only in a benefit week, the DM should determine the amount to be taken into calculated by

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

Note: If the period the payment overlaps is a part week see ADM Chapter S1.

1 ESA Regs 13, reg 79(3);

Modifying the weekly amount of earnings

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

V4806 The weekly amount of earnings in a benefit week should be restricted where an income

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

would be taken account of in the same benefit week following the rules in V4782 et seq¹. The amount of income should be restricted to the weekly amount which is treated as paid first.

1 ESA Regs 13, reg 79(4)

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

V4807 The special rules in V4806 do not apply if

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

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

1 ESA Regs 13, reg 79(4)

V4808 – V4810

Averaging of amounts

V4811 The weekly amount of a claimant's earnings may be averaged¹ if the amount varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (see ADM Chapter R2 on establishing a recognizable cycle) **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 ESA Regs 13, reg 79(5)

V4812 The averaging of the weekly amount of earnings does not change the other rules on its treatment such as the date that it is treated as paid. This means that earnings can only be averaged where the claimant is actually in receipt of a payment.

Example

Dot works at a school term-time only as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Dot's earnings during term-time when she is actually in receipt of an income. During the school holidays Dot receives no earnings so there are no earnings to have regard to.

V4813 – V4999

Appendix 1

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

[See ADM Memo 06/19] [See ADM Memo 03/20]

Statutory guarantee payments

Amount payable to employees under section 31 of the Employment Rights Act 1996.

	£
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