

# Chapter V1: ESA amounts of allowance and part-week payments

## Contents

<b>Introduction</b> .....	V1001
<b>Amount of ESA</b>	
Overall award .....	V1002
Amounts of personal rate	
Assessment phase .....	V1006
After assessment phase.....	V1007
Rates of personal allowance .....	V1008
Support component.....	V1010
<b>Patients</b>	
Effect of hospital admission .....	V1015
Patient means .....	V1016
Free in-patient treatment	
Deciding free in-patient treatment.....	V1017
Maintained free of charge .....	V1018
Burden of proof .....	V1020
Medical or other treatment .....	V1025
Hospital or similar institution	
Hospital .....	V1030
Similar institution .....	V1033
Examples of hospitals or similar institutions .....	V1035
In-patient .....	V1040
Prescribed legislation .....	V1043
England and Wales .....	V1044
Scotland .....	V1045
Services provided under NHS legislation.....	V1046
<b>Serving a sentence of imprisonment detained in hospital</b> .....	V1050
<b>Person in hardship</b> .....	V1060

## **Deductions from ESA**

### Pension and PPF periodic payments

Introduction ..... V1065

### Meaning of pension payments and pension protection fund payments

Pension payments..... V1069

Periodical payments and lump sums ..... V1071

Personal pension scheme..... V1073

Occupational pension scheme ..... V1080

Public service pension scheme..... V1081

Civil service compensation scheme ..... V1086

Local government premature retirement scheme ..... V1097

Insurance policy providing benefits in connection with physical or mental illness or disability..... V1100

Pension protection fund periodic payments..... V1101

Armed forces redundancy arrangements..... V1102

### **In connection with the coming to an end of the employment** ..... V1104

### **When to take pension payments into account**

Payment of a pension..... V1120

When the pension is updated ..... V1121

### **Disregarded payments**

General..... V1126

Pension payments..... V1127

Pension protection fund periodic payments ..... V1129

Shortfalls in pension schemes ..... V1130

War pensions ..... V1131

Guaranteed income payments..... V1132

Permanent health insurance ..... V1133

### **Payment in arrears** ..... V1141

### **Calculating the amount of the pension**

General..... V1149

Calculating the weekly pension rate..... V1157

More than one pension ..... V1160

## **Deductions from ESA for councillor's allowances**

Introduction.....	V1171
Definitions	
Councillor .....	V1172
Councillor's allowance.....	V1174
The amount of the deduction from ESA	
The weekly limit.....	V1181
The amount of the deduction .....	V1182
The net weekly amount of a councillor's allowance.....	V1183
Basic allowance .....	V1185
Special responsibilities allowance.....	V1186
Childcare and dependent carer's allowance.....	V1187
Expenses .....	V1191
Deductions for Income tax and NI contributions .....	V1205
When to take councillor's allowance into account	
Payment of a councillor's allowance .....	V1211
When the councillor's allowance is updated.....	V1212
Calculating the weekly rate .....	V1213

## **Statutory payments**

Statutory sick pay .....	V1220
Statutory maternity pay and ESA.....	V1222
Statutory adoption pay and ESA.....	V1223
Statutory paternity pay and ESA.....	V1234
Shared parental pay and ESA.....	V1236

## **Part-week payments**

Introduction.....	V1301
Definitions	
Meaning benefit week .....	V1305
Meaning of part-week.....	V1306
Meaning of relevant week .....	V1307
Relevant week .....	V1311
Amount of ESA payable .....	V1316
Modification in the calculation of income.....	V1324

Reduction in certain cases ..... V1327

Payment of ESA for days of certain treatment..... V1331

# Chapter V1 – ESA amounts of allowance and part-week payments

## Introduction

V1001 This Chapter explains how to calculate the amount of ESA, including where people are

1. a patient (see V1015) **or**
2. serving a sentence of imprisonment detained in hospital (see V1050) **or**
3. in hardship (see V1060).

## Amount of ESA

### Overall award

V1002 ESA is paid for the claimant only. There are no increases for any partner or dependants. The amount for each benefit week is calculated by<sup>1</sup>

1. deciding the personal rate appropriate to the claimant<sup>2</sup> (see V1006) **and**
2. adding the amount of the support component if the claimant is entitled<sup>3</sup> (see V1009) **and**
3. deducting<sup>4</sup>
  - 3.1 any pension payments<sup>5</sup> (see V1069) **and**
  - 3.2 any PPF periodic payments<sup>6</sup> (see V1071) **and**
  - 3.3 any councillors' allowances<sup>7</sup> (see V1171).

**Note 1:** Where the calculation results in a fraction of a penny, it should be rounded up to the next whole penny if this is to the claimant's advantage otherwise a fraction of a penny is to be disregarded<sup>8</sup>.

**Note 2:** From 3.4.17 the WRAC is no longer included in an award of ESA for claims made on or after that date. See the Appendix to ADM Chapter V6 (ESA: Assessment phase and components) for where transitional provisions apply.

*1 WR Act 07, s 2; 2 s 2(1)(a); ESA Regs 13, reg 62; 3 s 2(1)(b); 4 WR Act 07, s 2(1)(c); 5 s 3(1)(a); 6 s 3(1)(b); 7 s 3(1)(c); 8 ESA Regs 13, reg 4(a)*

V1003 - V1005

## Amounts of personal rate

### Assessment phase

V1006 In the assessment phase there are separate rates of personal allowance for<sup>1</sup>

1. claimants aged
  - 1.1 less than 25 or
  - 1.2 25 or over.

*1 ESA Regs 13, reg 62(1)(b)*

**Note:** See ADM Chapter V6 for the meaning of assessment phase.

### After assessment phase

V1007 In the ESA that follows after the end of the assessment phase, there are no specific age-related personal allowances<sup>1</sup> for claimants. Every claimant, regardless of age, has the aged 25 or over rate of personal allowance.

*1 ESA Regs 13, 62(1)(a)*

**Note:** The period after the end of the assessment phase is no longer referred to as the main phase.

### Rates of personal allowance

V1008

Assessment phase	Amount
where the claimant is aged not less than 25	£73.10
where the claimant is aged less than 25	£57.90
Main phase	£73.10

V1009

### Support component

V1010 Where the claimant is entitled to the support component (see ADM Chapter U2 – ESA: LCW and LCWRA) the amount awarded is £36.20.

V1011 – V1014

# Patients

## Effect of hospital admission

- V1015 The personal rate of an ESA claimant is not affected if the claimant is a patient in hospital. However, the component is withdrawn where the claimant has been receiving free hospital in-patient treatment for a continuous period of more than 52 weeks<sup>1</sup>.

*1 ESA Regs 13, reg 63(1)(b)*

## Patient means

- V1016 A patient means a claimant (other than a prisoner) who is regarded as receiving free in-patient treatment<sup>1</sup>.

*1 SS (HIP) Regs, reg 2(4), 2(5) & ESA Regs 13, reg 63(5)*

## Free in-patient treatment

### Deciding free in-patient treatment

- V1017 To be receiving free in-patient treatment a person must be

1. maintained free of charge
2. receiving medical or other treatment
3. in a hospital or similar institution
4. an in-patient
5. receiving the treatment
  - 5.1 under prescribed legislation<sup>1</sup> **or**
  - 5.2 in a hospital or similar institution maintained or administered by the Defence Council.

**Note:** A person who does not meet any one of these conditions is not receiving free in-patient treatment. The DM does not need to consider the other conditions.

*1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90*

### Maintained free of charge

- V1018 A person is treated as being maintained free of charge<sup>1</sup> in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient<sup>2</sup> **or**
2. the person is meeting the full cost of their maintenance as a private patient in a private hospital<sup>3</sup>.

*1 SS (HIP) Regs, reg 2(4); 2 NHS Act 77, s 65; NHS (Scot) Act 78, s 58 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14; 3 SS (HIP) Regs, reg 2(4)*

V1019 In any other circumstances the person is treated as maintained free of charge. For example when

1. a payment is made by the patient for an amenity bed but the treatment is provided under the NHS<sup>1</sup>
2. a patient is in paid work outside the hospital during the day and pays an amount to the HA, based on earnings, towards maintenance and incidental costs<sup>2</sup>
3. a person is a patient in a care home being funded under arrangements made by the HA<sup>3</sup>.

*1 NHS Act 77, s 64; NHS (Scot) Act 78, s 55; 2 NHS Act 77, s 64; NHS (Scot) Act 78, s 56; 3 NHS Act 77; NHS (Scot) Act 78*

### **Burden of proof**

V1020 The burden of proving that a person is not being maintained free of charge rests with that person<sup>1</sup>.

*1 CS 591/49*

V1021 – V1024

### **Medical or other treatment**

V1025 To be treated as receiving free in-patient treatment a person must be receiving

1. medical treatment, for example
  - 1.1 surgical treatments
  - 1.2 administration of drugs and injections **or**
2. other treatment which includes nursing services by professionally trained staff in the form of
  - 2.1 observations
  - 2.2 therapies
  - 2.3 support appropriate to the person's needs
  - 2.4 advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

V1026 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment<sup>1</sup>.

*1 R(S) 26/54*

V1027 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day<sup>1</sup>.

*1 R(S) 4/84*

V1028 – V1029

## **Hospital or similar institution**

### **Hospital**

V1030 A hospital<sup>1</sup> is

1. an institution for
  - 1.1 the reception and treatment of people suffering from illness
  - 1.2 the reception and treatment of people during convalescence
  - 1.3 people needing medical rehabilitation
2. a maternity home that provides obstetric services
3. in Scotland, any institution for dental treatment maintained in connection with a dental school
4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

*1 SS (HIP) Regs, reg 2(4); NHS Act 77, s 128; NHS (Scot) Act 78, s 108*

V1031 Illness includes<sup>1</sup>

1. mental disorder **or**
2. any injury or disability needing
  - 2.1 medical treatment **or**
  - 2.2 dental treatment **or**
  - 2.3 nursing.

*1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108*

V1032 Mental disorder means

1. in England and Wales<sup>1</sup>
  - 1.1 mental illness **or**
  - 1.2 arrested or incomplete development of the mind **or**
  - 1.3 psychopathic disorder **or**
  - 1.4 any other disorder or disability of the mind
2. in Scotland<sup>2</sup>, any form of
  - 2.1 mental illness **or**

## 2.2 mental handicap.

*1 MH Act 83, s 1(2); 2 Mental Health (Scotland) Act 1984*

### Similar institution

V1033 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the DM should decide as a question of fact whether it is similar to a hospital taking into account

1. the purpose of the institution **and**
2. the type of treatment provided **and**
3. the level of care offered.

V1034 A hospital or similar institution also includes those

1. maintained by or on behalf of the<sup>1</sup>
  - 1.1 DH
  - 1.2 Welsh Assembly
  - 1.3 Scottish Executive Health Directorates **or**
2. maintained or administered by the Defence Council, for example an army, navy or air force hospital.

**Note:** These include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland.

*1 NHS Act 77, s 4; NHS (Scot) Act 78, s 102*

### Examples of hospitals or similar institutions

V1035 A hostel or care home providing accommodation and social care to former alcoholics or drug addicts is not similar to a hospital.

V1036 An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation may be a similar institution to a hospital.

V1037 A care home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the care home. But if the provision of nursing care is minimal, for example rarely expected, the care home may not be a hospital.

V1038 – V1039

### In-patient

V1040 In-patient is not defined and should be given its ordinary meaning of a patient who occupies a bed in a

1. hospital **or**

2. similar institution

rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to<sup>1</sup>.

**Note:** The question of whether a person is an in-patient should be judged on the facts of each case.

*1 R(I) 27/59; R(S) 8/51*

V1041 Examples of when a person would be included as an in-patient are where the person is

1. a patient and spends part of each day away from the hospital
2. provided with meals by close relatives.

V1042 Examples of when a person would not be included as an in-patient are where the person is receiving treatment at home during the period a rehabilitation centre is closed for a holiday<sup>1</sup>.

*1 R(I) 14/56*

## Prescribed legislation

V1043 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation<sup>1</sup>. Whether a person is to be treated as an in-patient, depends on the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

1. the DH **or**
2. the Scottish Executive Health Directorates **or**
3. a Health Board in Scotland **or**
4. a local Health Board in Wales **or**
5. a NHS Trust.

Hospitals have a variety of functions under NHS legislation and not all of them mean that a person is receiving free in-patient treatment.

*1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90*

## England and Wales

V1044 HAs acting on behalf of the Secretary of State in England or Welsh Ministers can

1. arrange for long term health care in a care home for a person whom they assess as needing that care<sup>1</sup> (in this case the service must be provided free of charge and the HA is responsible for the full cost) **or**
2. contribute to the cost of care through payments to a LA, voluntary organization or housing association<sup>2</sup> for
  - 2.1 social care **or**

**2.2** accommodation **or**

**2.3** housing costs

for a person who does not need in-patient care from the NHS **or**

- 3.** make grants to voluntary organizations<sup>3</sup> towards the cost of care for a person who does not need in-patient care from the NHS.

**Note:** If **1.** applies the person is receiving free in-patient treatment under prescribed legislation.

*1 NHS Act 77, s 23; 2 s 28A; 3 HS & PH Act 68, s 64*

## **Scotland**

V1045 Health Boards acting on behalf of Scottish Ministers can

- 1.** provide accommodation and services needed to meet all reasonable requirements<sup>1</sup>
- 2.** make the necessary arrangements to meet all reasonable requirements<sup>2</sup>.

If services are provided under **2.** the Health Board is responsible for the full cost.

*1 NHS (Scot) Act 78, s 36; 2 s 37*

## **Services provided under NHS legislation**

V1046 Examples of services under NHS legislation are<sup>1</sup>

- 1.** hospital accommodation
- 2.** other accommodation for the purpose of any service the Secretary of State has the power to provide
- 3.** medical services
- 4.** nursing services
- 5.** facilities which the Secretary of State considers appropriate as part of the health service for the
  - 5.1** prevention of illness **or**
  - 5.2** care of people suffering from illness **or**
  - 5.3** after care of people who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

*1 NHS Act 77, s 3(1); NHS (Scot) Act 78, s 36 & 37*

V1047 – V1049

## **Serving a sentence of imprisonment detained in hospital**

V1050 A person serving a sentence of imprisonment detained in hospital<sup>1</sup>

1. under prescribed legislation<sup>2</sup> **and**
  - 1.1 before the date on which the secretary of state certifies to be that person's release date<sup>3</sup> (tariff date) **or**
2. under prescribed Scottish legislation<sup>4</sup>

is entitled to the personal rate of ESA. However, no component is payable<sup>5</sup>.

*1 ESA Regs 13, reg 63(3) & (4); 2 MH Act 83 s 47, s 45A; 3 MH Act 83, s 50(3);  
4 MH (C & T) (Scot) Act 03 s 136 Criminal Procedure (Scotland) Act 1995, s 59A;  
5 ESA Regs 13, reg 62*

### Example

Adrian is transferred from Wormwood Scrubs prison to Broadmoor under the Mental Health Act. He makes a claim to ESA on the basis that Broadmoor is a hospital and he should be treated as a patient not a prisoner. The DM establishes that the transfer was made under section 47 of the 83 MH Act and as such determines that Adrian is disqualified for receiving ESA because he is a prisoner serving a sentence of imprisonment detained in hospital.

### Example

Adrian is transferred from Wormwood Scrubs prison to Broadmoor under the Mental Health Act. He makes a claim to ESA on the basis that Broadmoor is a hospital and he should be treated as a patient not a prisoner. The DM establishes that the transfer was made under section 49 of the 83 MH Act and as such determines that Adrian is entitled to ESA at the personal rate, no components are payable.

**Note:** See ADM Chapter U6 for guidance on how imprisonment affects ESA.

V1051 – V1059

## Person in hardship

V1060 ADM Chapter U6 describes what a person in hardship is<sup>1</sup>. The amount of ESA payable in hardship cases is<sup>2</sup>

1. the claimant's personal rate, reduced by 20% **and**
2. any appropriate components.

**Note:** the amount under V1060 is only payable for a maximum of the first six weeks of hardship<sup>3</sup>.

*1 ESA Regs 13, reg. 94; 2 reg 63(2); 3 reg 63(6)*

V1061 – V1064

## Deductions from ESA

### Pension and PPF periodic payments

## Introduction

V1065 Pension payments and PPF periodic payments that are

1. made to a claimant for any week **and**
2. more than £85 each week

are deducted from the claimant's personal rate, when calculating the amount of ESA payable to the claimant for each benefit week or part-week. The amount deducted is half the excess over £85<sup>1</sup>.

*1 WR Act 07, s 2(1)(c) & s 3; ESA Regs 13, reg 67(1)*

### Example

Kim receives pension payments totalling £90 each week. The pension payments exceed the £85 maximum by £5. This means that £2.50 is deducted in each benefit week from the amount of ESA that she is entitled to because this is half of the £5 excess.

V1066 The law provides for

1. when pension payments and PPF periodic payments are to be taken into account<sup>1</sup> (see V1120 et seq) **and**
2. certain payments to be disregarded<sup>2</sup> (see V1126) **and**
3. the calculation of a weekly amount where pensions are paid for periods other than a week<sup>3</sup> (see V1149 et seq).

*1 ESA Regs 13, reg 70; 2 reg 68; 3 reg 72*

V1067 – V1068

## Meaning of pension payments and pension protection fund payments

### Pension Payments

V1069 Pension payments are<sup>1</sup> periodical payments (see V1071 et seq) paid to or for a person

1. under a personal pension scheme (see V1073 et seq) **or**
2. in connection with the ending of the person's employment as an earner (see V1104) under
  - 2.1 an occupational pension scheme (see V1080) **or**
  - 2.2 a public service pension scheme (see DMG V1081 et seq)
3. under an insurance policy<sup>2</sup> providing benefits in connection with physical or mental illness or disability (see V1100).

*1 WR Act 07, s 3(3); 2 ESA Regs 13, reg 2 & reg 64*

V1070 Payments as in V1069 **2.** may be, but are not confined to, pensions that the employer has contributed to. These include

1. payments made under a scheme arranged by the employer where the money is provided exclusively by the claimant
2. payments made by the UK or other governments where provision is made for them in law, for example pensions to former Crown employees
3. pensions from employment overseas (see V1152)
4. the compensation element of a retired local government officer's pension<sup>1</sup>
5. payments under the Civil Service Compensation Scheme (see V1085 et seq)
6. payments under the Civil Service Pension Scheme.

*1 Local Government (Early Termination of Employment) (Discretionary Compensation) (England and Wales) Regulations 2006*

### **Periodical payments and lump sums**

V1071 Periodical payments are those that are paid at regular intervals.

V1072 A lump sum payment is not a periodical payment. This applies even where the claimant has chosen to receive a lump sum instead of a periodical payment<sup>1</sup>. But where

1. a person is entitled to a lump sum payment **and**
2. the rules of the scheme allow the lump sum to be paid in instalments **and**
3. the person chooses to receive it in this way

the instalments are periodical payments.

*1 R(U) 5/85*

### **Personal pension scheme**

V1073 Personal pension schemes are those

1. for earners<sup>1</sup>, either employed or self-employed (see V1074) **or**
2. under a contract or trust scheme<sup>2</sup> (see V1075).

*1 PS Act 93, s 1; 2 Finance Act 2004, Sch 36, para 1(1)(f)*

V1074 A personal pension scheme for employed or self-employed earners is<sup>1</sup> any scheme or arrangement

1. where the earner has arranged with the scheme's trustees or managers to become a member of the scheme **and**
2. that
  - 2.1 provides **or**
  - 2.2 is capable of providingbenefits in the form of pensions or otherwise **and**

3. where benefits are payable on
  - 3.1 death **or**
  - 3.2 retirement to or for earners.

*1 WR Act 07, s 3(4); PS Act 93, s 1*

V1075 Personal pension schemes under V1073 **2.** are contracts or trust schemes established before 4.1.88 that provide for a life annuity later in life<sup>1</sup>.

*1 Finance Act 2004, Sch 36, para 1(1)(f) & WR Act 07, s 3(4)*

V1076 If the member of the scheme used the personal pension to contract-out of the state earnings related pension scheme (SERPS), the part of the pension that

1. comes from DWP rebates **and**
  2. is used to replace the state earnings related pension scheme
- can only be drawn from age 60.

V1077 – V1078

V1079 The DM should refer the case to DMA Leeds, if

1. they are unable to decide whether a pension is paid under a personal pension scheme **and**
2. the pension payment does not satisfy any other part of V1069.

### **Occupational pension scheme**

V1080 An occupational pension scheme is<sup>1</sup> any scheme or arrangement that

1. is comprised in one or more instruments (for example trust deeds) or agreements (for example informal arrangements) **and**
2. has, or is capable of having, effect on one or more types of employment **and**
3. provides benefits, for example pensions, payable on
  - 3.1 termination of service **or**
  - 3.2 death **or**
  - 3.3 retirement

for earners with qualifying service.

*1 WR Act 07, s 3(4); PS Act 93, s 1; R(JSA) 1/01; R(JSA) 6/02*

### **Public service pension scheme**

V1081 A public service pension scheme is<sup>1</sup> an occupational pension scheme that is

1. established under legislation, by royal prerogative or under a royal charter **and**
  - 1.1 all its particulars are set out in the legislation, royal warrant or charter **or**
  - 1.2 it cannot come into force or be amended without the government's approval **or**
2. established with the government's approval **or**
3. prescribed by legislation<sup>2</sup>.

*1 WR Act 07, s 3(4); PS Act 93, s 1; 2 Occupational Pension Schemes (Public Service Pension Schemes) Regs 1978*

V1082 Pension schemes that are also public service pension schemes include pension schemes for

1. civil servants **or**
2. local government employees **or**
3. teachers **or**
4. the Armed Forces **or**
5. police officers.

V1083 If DMs have difficulty in determining whether a pension scheme is a public service pension scheme they should arrange to get

1. the claimant's consent to contact the manager of the scheme **and**
2. a statement from the manager of the scheme as to whether the pension scheme is a public service pension scheme within the meaning of the relevant law<sup>1</sup>.

*1 PS Act 93, s 1*

V1084 If a pension scheme is not a public service pension scheme it may still fall within the definition of an occupational pension scheme (see V1080).

V1085 Most public service schemes include provision for injury or contracting a disease (for example Police and Fire Service schemes). Such pensions may be paid on a minimum income guarantee basis. This means that the pension tops up existing income to a certain level. The pension rate may therefore be affected by the amount of ESA entitlement. In such cases the DM should take into account the gross amount of pension i.e. before any adjustment has been made for ESA. This ensures that the gross amount of the pension is offset against any ESA, and the pension provider takes the subsequent balance of any ESA payable into account. There is no disadvantage to the claimant, and means that in cases where the amount of pension paid to the claimant is equal to the level of guarantee, the claimant's total income remains unchanged. The pension provider needs to be informed of the correct amount of ESA payable.

## **Civil Service Compensation Scheme**

V1086 Civil servants may be entitled to annual payments as compensation<sup>1</sup> if their employment ends because of

1. compulsory redundancy **or**
2. voluntary early retirement or severance

in a redundancy situation.

*1 R(JSA) 1/01; R(JSA) 2/01*

V1087 – V1092

V1093 Until 1995, payments made to civil servants taking early retirement or redundancy were made as part of the Principal Civil Service Pension Scheme. The Principal Civil Service Pension Scheme also provided benefits to those who retired at the normal retirement age. But on 1.1.95, a separate scheme, called the Civil Service Compensation Scheme was introduced.

V1094 The Civil Service Compensation Scheme provides benefits to civil servants whose employment ends before the normal retirement age. The Principal Civil Service Pension Scheme continues to provide benefits to those who retire at the normal retirement age.

V1095 Under the Civil Service Compensation Scheme, annual compensation payments may be made to civil servants. The Civil Service Compensation Scheme also allows civil servants to change the mix of their

1. lump sum **and**
2. annual compensation payments **and**
3. preserved pension.

V1096 The Civil Service Compensation Scheme is a public service pension scheme<sup>1</sup> and annual compensation payments from it are payments from a public service pension scheme. This means that half of the excess of the £85 weekly limit (see V1065) are taken into account in ESA.

*1 R(JSA) 2/01*

## **Local government premature retirement scheme**

V1097 Some pensionable local government employees who

1. are made redundant **or**
2. volunteer for redundancy **or**
3. cease work in the interests of the efficient exercise of the employers' functions

receive payments under the local government premature retirement scheme<sup>1</sup>.

V1098 The scheme entitles employees<sup>1</sup> to annual payments as compensation for their employment ending as in V1097. These are calculated on the same basis as their annual retirement pension under the superannuation legislation<sup>2</sup>. The compensation payment is a payment from a public service pension scheme.

*1 Local Government (Early Termination of Employment) (Discretionary Compensation)  
(England and Wales) Regs 2006; 2 Local Government Pension Scheme Regulations 1995*

V1099

### **Insurance policy providing benefits in connection with physical or mental illness or disability**

V1100 A payment under a permanent health insurance policy is a pension payment for the purposes of ESA<sup>1</sup>. It means<sup>2</sup> any periodical payment

1. made to a former employee **and**
2. which was arranged by an employer under an insurance policy **and**
3. which provides benefits to the former employee in connection with physical or mental illness or disability **and**
4. is payable on the termination of employment.

*1 ESA Regs 13, reg 64; 2 reg 2*

### **Pension protection fund periodic payments**

V1101 PPF periodic payments are defined as<sup>1</sup>

1. any periodic compensation payments made in relation to a person, payable under the pension compensation provisions set out in specified legislation<sup>2</sup>
2. any periodic payments made in relation to a person, payable under specific legislation<sup>3</sup>

other than payments made to the claimant as a beneficiary on the death of a person entitled to such payments<sup>4</sup>.

*1 WR Act 07, s 3(3); 2 Pensions Act 04, s 162(2); Pensions (Northern Ireland Order) 05, art 146(2);  
3 Pensions Act 04, s 166; Pensions (Northern Ireland) Order 05, art 150; 4 ESA Regs 13, reg 75(b)*

### **Armed Forces redundancy arrangements**

V1102 Pensions payable to service personnel who retire from the Armed Forces are paid under a public service pension scheme.

V1103 Pensions paid to service personnel who have been made redundant

1. are calculated on the length of qualifying service completed, plus an additional number of years **and**
2. fall within the definition of public service pension schemes.

## In connection with the coming to an end of the employment

V1104 A pension must be paid in connection with the end of employment of the person who it is paid for, to fall within V1069 2.. Occupational or public service pensions that are paid where the employment has not ended do not fall within V1069 2.. For example, war pensions paid

1. because of disablement **and**
2. regardless of whether the employment is continuing.

V1105 In this context “employment” includes any trade, business, profession, office or vocation<sup>1</sup>. Employment in the Armed Services falls within this definition.

*1 ESA Regs 13, reg 2*

V1106 Retired officers who are entitled to a war pension receive it as a disablement addition to their service pension. This disablement addition is

1. awarded by the Service Personnel and Veterans Agency **and**
2. paid by the Paymaster General in the same cheque as the person's service pension.

V1107 If the claimant is a retired officer with a service pension, the DM should

1. find out the amount of any disablement addition **and**
2. deduct it from the total payment received.

V1108 – V1109

V1110 Gallantry awards are sometimes paid to former members of the Forces in addition to their service pensions. Payment is

1. made from the date of the award **and**
2. a reward for conduct rather than a period of service.

These awards are not paid in connection with the coming to an end of an employment and are **not** pension payments.

V1111 Pension payments may be payable to the claimant from the former employer of a deceased partner or other relative. Such payments should be disregarded (see V1127).

V1112 The amount of a service pension may be increased if the claimant has been invalided out of the Forces. The full amount should be taken into account.

V1113 Police officers who retire because of permanent disability may be entitled to an ill health award<sup>1</sup> in addition to a pension under a public service pension scheme. If they are permanently disabled through an injury received while carrying out their duties, they are also entitled to an injury pension. It is a condition for the receipt of

both payments that the officer ceases to be a member of a police force. The payments are therefore made in connection with the coming to an end of a police officer's employment and are payments as in V1069 **2.2**.

*1 Police Pension Regs 1987*

V1114 – V1119

## **When to take pension payments into account**

### **Payment of a pension**

V1120 Where

1. a claimant is entitled to a pension payment **and**
2. the payment is **paid** to the claimant

the pension payment should be taken into account from the first day of the benefit week in which the payment is made<sup>1</sup>.

*1 ESA Regs 13, reg 70*

#### **Example**

Donald claims and is entitled to ESA from Thursday 7 November. His benefit week ends on a Thursday. He receives a pension payment of £100 a week, starting on Monday 11 November. Only half of the excess of the amount above £85 can be deducted from ESA. In the benefit week 8 November to 14 November £7.50 is deducted from his ESA.

### **When the pension is updated**

V1121 A claimant's rate of pension may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the new rate is paid<sup>1</sup>.

*1 ESA Regs 13, reg 71*

#### **Example**

Amrit claims ESA, her benefit week ends on a Thursday and she is entitled to ESA. She receives a pension payment of £90 a week. Her ESA is reduced by £2.50 each benefit week. She receives an increase of £5 a week in her pension starting on Monday 11 November. The increase in the pension payment is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £2.50 is deducted from her ESA
2. 8 November to 14 November, £5 is deducted from her ESA.

## Disregarded payments

### General

- V1126 **[See memo ADM 08/20]** Certain payments may be received by the claimant but do not fall to be deducted from ESA<sup>1</sup>.

*1 WR Act 07, s 3(2)(a), ESA Regs 13, reg 68*

### Pension payments

- V1127 Payments may be payable to the claimant under

1. a personal pension scheme **or**
2. an occupational pension scheme **or**
3. a public service pension scheme **and**

because a person who was a member of the scheme has died.

- V1128 Any payments in V1127 are known as survivors' benefits and should be disregarded in full<sup>1</sup>.

*1 ESA Regs 13, reg 68(a)*

### Example

Guy's wife Jane is a member of an occupational pension scheme. Following Jane's death a reduced pension payment is paid by the scheme to Guy. This pension is not taken into account when working out the amount of ESA payable to Guy.

### Pension protection fund periodic payments

- V1129 Any PPF periodic payment made to the claimant as a beneficiary on the death of a person who was entitled to this type of payment is disregarded<sup>1</sup>.

*1 ESA Regs 13, reg 68(b)*

### Shortfalls in pension schemes

- V1130 Where a full pension cannot be paid to a claimant because of a deficit or because of insufficient resources in the pension scheme then the shortfall is not taken into account<sup>1</sup>.

*1 ESA Regs 13, reg 68(c)*

### War pensions

- V1131 Any pension payment under a pensions scheme in respect of death due to military or war service is not to be deducted from ESA<sup>1</sup>.

## Guaranteed income payments

V1132 Any guaranteed income payment under the Armed Forces Compensation Scheme is not to be deducted from ESA<sup>1</sup>.

*1 ESA Regs 13, reg 68(e)*

## Permanent health insurance

V1133 Where the claimant

1. receives a payment under a permanent health insurance scheme **and**
2. had contributed over 50% of the premium

then the payment is not deducted from ESA<sup>1</sup>.

*1 ESA Regs 13, reg 68(f)*

V1134 – V1140

## Payment in arrears

V1141 Pension payments are often made in arrears, and can be

1. weekly **or**
2. monthly **or**
3. quarterly **or**
4. any other period.

Subject to V1120 – V1128 any pension payments deducted from ESA should start from the **first** day of the benefit week in which the payment is made to the claimant<sup>1</sup>.

*1 ESA Regs 13, reg 70 & 71*

V1142 A pension payment **must actually be made** before the DM deducts an amount from ESA.

### Example

William claims and is entitled to ESA from Thursday 8 November. His benefit week ends on a Thursday. He is entitled to a pension payment of £95 a week from Monday 5 November of which he receives his first payment (£380) on Monday 26 November. Only half of the excess of the weekly pension amount above £85 can be deducted from ESA. ESA is awarded at the full rate from 8 November but from the benefit week 23 November to 28 November and thereafter £5  $[(£95 - £85) \div 2]$  is deducted from his ESA.

V1143 – V1148

## Calculating the amount of the pension

## General

V1149 Except for V1151, the amount of the pension payment is the gross amount payable. Where income tax is deducted at source, the amount to be taken into account is the amount before tax is deducted<sup>1</sup>.

*1 R(U) 8/83*

V1150 Some claimants

1. have to make **or**
2. choose to make

certain payments from their pensions. The payments may be to the employer or a third party. With the exception of compulsory payments to buy or repay an element of their current pension, any payments deducted before the pension is paid should be ignored. The amount of pension to be taken into account is the amount before deductions are made. The claimant's liability to make the payments is separate from the liability to pay the pension. The deductions at source are simply a convenient method of ensuring that the claimant's obligations or wishes are met. Examples of these payments include

- repaying a debt to a former employer
- payments to someone because of a court order
- subscriptions to a trade union or other association
- payments into a further pension scheme.

V1151 Where the rules of the claimant's pension scheme provide for compulsory deductions, for example to buy or repay an element of their current pension, the amount deducted should be disregarded in calculating the amount of pension. This is because "payments" refers to the amount the claimant is actually entitled to receive. So a payment made under a binding obligation, for example to acquire additional pension rights, should be disregarded in calculating the amount of the pension.

### Example

Jim is employed by an electricity company for 29 years and two months. He retires voluntarily. For superannuation purposes he is treated as having completed 30 years service. Under the rules of the superannuation scheme, a monthly deduction of £35.00 is made from his gross occupational pension of £450.50 for the purchase of the ten additional months. He is also paying £20.00 a month to a debt collecting agency under a court order.

Jim cannot avoid the reduction to his pension payments. While he must buy additional pension rights under the rules of the scheme, he would normally repay his other debts from any net income he receives. The payments made under the court

order are not to be disregarded. The DM takes into account a pension payment of £415.50 a month<sup>1</sup>.

*1 R(U) 4/83*

V1152 Sometimes pension payments are received by the claimant in a currency other than sterling. To work out the sterling equivalent, DMs should use the selling rate that applies

1. on the date on which payment is due **and**
2. not the date on which it is actually converted.

No allowance should be made for commission or other expenses incurred in converting currency<sup>1</sup>.

*1 R(SB) 28/85*

V1153 Because exchange rates fluctuate, the DM will need to give a fresh decision each time a pension payment is made, for the period it covers (subject to V1120 – V1128). For the purposes of working out a sterling equivalent only, it does not matter that the pension is not available in sterling until some time after the pension is due.

V1154 – V1156

## Calculating the weekly pension rate

V1157 Where payments are paid to the claimant weekly then it is the weekly rate that should be deducted from ESA as per V1065<sup>1</sup>.

*1 ESA Regs 13, reg 67(1)*

V1158 If payments are not paid weekly, they should be converted into a weekly amount<sup>1</sup>. To do this

1. monthly payments should be multiplied by twelve and the result divided by 52<sup>2</sup> (a month means a calendar month<sup>3</sup>)
2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52<sup>4</sup>
3. annual payments should be divided by 52<sup>5</sup>
4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment<sup>6</sup>.

*1 ESA Regs 13, reg 72(1); 2 reg 79(1)(b)(i); 3 CG 66/49 (KL);  
4 ESA Regs 13, reg 79(1)(b)(ii); 5 reg 79(1)(b)(iii); 6 reg 79(1)(b)(iv)*

V1159 The weekly amount of a payment may be averaged<sup>1</sup> if the payment varies. The DM should average over

1. a complete cycle if there is a recognizable cycle of work (this is unlikely to apply to ESA recipients in receipt of a pension) **or**

2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

*1 ESA Regs 13, reg 72(1) & reg 79(5)*

## **More than one pension**

V1160 Where a claimant is receiving more than one pension the DM should

1. calculate the weekly rate of each pension separately **and**
2. add the weekly rates together

before working out the excess over the maximum sum<sup>1</sup>.

*1 ESA Regs 13, reg 72(2)*

V1161 – V1170

# **Deductions from ESA for councillor's allowances**

## **Introduction**

V1171 Work as a councillor is disregarded when deciding LCW<sup>1</sup>. Any allowances received for performing the duties of a councillor may however affect the amount of ESA payable<sup>2</sup>.

*1 ESA Regs 13, reg 37(2)(a); 2 WR Act 07, s 3(1)(c)*

## **Definitions**

### **Councillor**

V1172 Councillors are<sup>1</sup>

1. in England and Wales, members 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 area<sup>2</sup>.

*1 ESA Regs 13, reg 2; 2 Local Government etc (Scotland) Act 1994, s 2*

V1173 The official duties<sup>1</sup> and responsibilities of a councillor will vary from council to council. Each LA must draw up a scheme<sup>2</sup> 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) Regs 91, Part II, reg 6*

## **Councillor's allowance**

V1174 A councillor's allowance<sup>1</sup> is a payment

1. in England and Wales of an allowance made under certain legislation<sup>2</sup>
2. in Scotland of an allowance or remuneration under certain legislation<sup>3</sup>.

*1 ESA Regs 13, reg 2; 2 Local Government Act 1972, s 173 or 177 but not s 173(4);  
3 Local Government and Housing Act 1989, s 18 or Local Governance (Scotland) Act 2004, s 11 & 16*

V1175 – V1180

## **The amount of the deduction from ESA**

### **The weekly limit**

V1181 The net weekly limit of a councillor's allowance before it can affect ESA is calculated by<sup>1</sup>

1. multiplying the rate of the NMW<sup>2</sup> by 16<sup>3</sup> **and**
2. rounding the amount calculated in 1. which includes an amount of less than
  - 2.1 50p up to the nearest 50p<sup>4</sup> **or**
  - 2.2 £1 but more than 50p up to the nearest £1<sup>5</sup>.

A net weekly payment of a councillor's allowance below this limit will not reduce the amount of ESA payable. It is only when the net amount of the councillor's allowance exceeds this limit that a reduction is made from ESA.

*1 ESA Regs 13, reg 69(1); 2 reg 2; National Minimum Wage Regulations 1999, reg 11;  
3 ESA Regs 13, reg 69(1); 4 reg 69(3)(a); 5 reg 69(3)(b)*

### **The amount of the deduction**

V1182 The amount to be deducted from the claimant's award of ESA is the excess over the net weekly limit<sup>1</sup>.

*1 ESA Regs 13, reg 69(1)*

### Example

Ruth is entitled to ESA. She is also a councillor and receives a net weekly councillor's allowance of £104.50. The amount of the reduction in her ESA is

£7.00 (£104.50 - £97.50 (2011 rate))
--------------------------------------

The DM makes a weekly deduction of £7.00 from Ruth's ESA.

### The net weekly amount of a councillor's allowance

V1183 It is the net weekly amount of a councillor's allowance that may affect the amount of ESA payable. The net amount means the amount after reductions for any payment by way of expenses

1. wholly **and**
2. exclusively **and**
3. necessarily

incurred in the performance of duties as a councillor (see DMG V1191 et seq). When calculating the net weekly amount, DMs should add all the allowances paid to the councillor in the week<sup>1</sup>.

*1 ESA Regs 13, reg 69(2)*

V1184 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 V1191 et seq).

### Basic allowance

V1185 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.

### Special responsibilities allowance

V1186 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly.

### **Childcare and dependent carers' allowance**

V1187 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.

V1188 – V1190

### **Expenses**

V1191 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 duties<sup>1</sup>, for example travel and subsistence allowances<sup>2</sup>. 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 ESA Regs 13, reg 69(2); 2 R(IS) 6/92*

V1192 After expenses in V1191 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. 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**

Sophie 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.

V1193 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** duties<sup>1</sup>.

V1194 For the purposes of V1193, 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.

V1195 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.

V1196 Secretarial expenses should only be deducted from the basic allowance.

V1197 Dependants' 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.

V1198 – V1200

V1201 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.

V1202 Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see V1191). This is different to the normal treatment of travelling expenses. 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.

V1203 Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.

V1204 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 V1191). 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.

### **Deductions for Income Tax and NI Contributions**

V1205 Income Tax and NI Contributions do not count as expenses incurred in the performance of duties as a councillor. DMs should not make a reduction from the

gross amount paid in councillor's allowances in respect of any deductions for Income Tax and NI Contributions<sup>1</sup>.

*1 R(IB) 3/01*

### **Example**

Derek receives an allowance in respect of his work as a councillor. The amount he is paid is £104.50 a week after £20 is deducted in respect of Income Tax and NI Contributions. The DM decides that the net amount of allowance for the purposes of deciding the amount of ESA is £124.50. This means that the amount of reduction in Derek's ESA is

£27.00 (£124.50 - £97.50)
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The DM makes a weekly deduction of £27.00 from Derek's ESA.

V1206 – V1210

## **When to take councillor's allowances into account**

### **Payment of a councillor's allowance**

V1211 Where

1. a claimant is entitled to a councillor's allowance **and**
2. the payment is **paid** to the claimant

the allowance should be taken into account from the first day of the benefit week in which the payment is made<sup>1</sup>.

*1 ESA Regs 13, reg 70*

### **Example**

Bill claims and is entitled to ESA from Thursday 3 November. His benefit week ends on a Thursday. He receives a net councillor's allowance of £102.50 a week, starting on Monday 7 November. Only excess of the amount above £97.50 can be deducted from ESA. In the benefit week 4 November to 10 November £5.00 is deducted from Bill's ESA.

## **When the councillor's allowance is updated**

V1212 A claimant's rate of councillor's allowance may change. Any increase or decrease should be taken into account from the first day of the benefit week in which the increase or decrease is paid<sup>1</sup>.

*1 ESA Regs 13, reg 71*

## Example

Hillary claims ESA, her benefit week ends on a Thursday and she is entitled to ESA. She receives a councillor's allowance of £96.50 a week. Her ESA is reduced by £1.50 each benefit week. She receives an increase of £5 a week in her allowance starting on Monday 11 November. The increase in the allowance is taken into account for the benefit week 8 November to 14 November.

So in the benefit week

1. 1 November to 7 November, £1.50 is deducted from her ESA
2. 8 November to 14 November, £6.50 is deducted from her ESA.

## Calculating the weekly rate

V1213 Where a councillor's allowance is paid to the claimant weekly then it is the weekly rate that should be deducted from ESA as per V1182<sup>1</sup>.

*1 ESA Regs 13, reg 69(1)*

V1214 If the councillor's allowance is not paid weekly, then it should be converted into a weekly amount as follows<sup>1</sup>

1. monthly payments should be multiplied by twelve and the result divided by 52<sup>2</sup>. A month means a calendar month<sup>3</sup>
2. quarterly payments (three monthly) should be multiplied by 4 and then divided by 52<sup>4</sup>
3. annual payments should be divided by 52<sup>5</sup>
4. payments for any other period should be multiplied by 7 and then divided by the number of days in the period covered by the payment<sup>6</sup>.

*1 ESA Regs 13, reg 72(1); 2 reg 79(1)(b)(i); 3 CG 66/49 (KL);  
4 ESA Regs 13, reg 79(1)(b)(ii); 5 reg 79(1)(b)(iii); 6 reg 79(1)(b)(iv)*

V1215 The weekly amount of a councillor's allowance may be averaged<sup>1</sup> if the income 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 **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

*1 ESA Regs 13, reg 72(1) & reg 79(5)*

V1216 – V1219

## Statutory Payments

### Statutory Sick Pay

V1220 A claimant is not entitled<sup>1</sup> to ESA in respect of a day if, for the purposes of SSP, that day

1. is a day of incapacity for work in relation to employed earners' employment<sup>2</sup>,  
**and**
2. falls within a period of entitlement to SSP<sup>3</sup>.

*1 WR Act 07, s 20(1); 2 s 20(1)(a); 3 s 20(1)(b)*

V1221 A partner's entitlement to SSP does not prevent entitlement for the claimant.

## **Statutory Maternity Pay and ESA**

V1222 A woman is not entitled<sup>1</sup> to ESA for any day within the MPP where she is entitled to SMP unless

1. on the day immediately before the first day in the MPP<sup>2</sup> she is in a PLCW<sup>3</sup>,  
**and**
2. she satisfies the contribution conditions for ESA(Cont)<sup>4</sup>, **and**
3. on any day during the MPP she is in a PLCW<sup>5</sup>, **and**
4. that day is not a day where she is treated as not having LCW<sup>6</sup>.

*1 WR Act 07, s 20(2); 2 ESA Regs 13 reg 73(1)(a); 3 reg 73(1)(a)(i); 4 reg 73(1)(a)(ii);  
5 reg 73(1)(b)(ii); 6 reg 73(1)(b)(ii)*

V1223 Where V1222 applies the woman is entitled to ESA for any day in the MPP where ESA is payable<sup>1</sup>. The amount of ESA which is payable is reduced by the amount of SMP to which she is entitled. The balance, if any, of ESA is payable for the week or part-week<sup>2</sup>.

*1 ESA Regs 13, reg 73(2); 2 reg 73(3)*

## **Statutory Adoption Pay and ESA**

V1224 A claimant is not entitled<sup>1</sup> to ESA for any day within the APP unless on the day immediately before the first day of the APP<sup>2</sup>

1. that claimant is in a PLCW<sup>3</sup> **and**
2. satisfies the contribution conditions for ESA<sup>4</sup>.

*1 WR Act 07, s 20(4); 2 ESA Regs 13, reg 74(1); 3 reg 74(1)(a); 4 reg 74(1)(b)*

V1225 Where V1224 applies the claimant is entitled to ESA for any day in the adoption pay period where ESA is payable<sup>1</sup>. The amount of ESA which is payable is reduced by the amount of SAP to which the claimant is entitled. The balance, if any, of ESA is payable for the week or part-week<sup>2</sup>.

*1 ESA Regs 13, reg 74(2); 2 reg 74(3)*

V1226 – V1233

## **Statutory Paternity Pay and ESA**

V1234 A claimant is not entitled<sup>1</sup> to ESA for any day within the additional paternity pay period unless

1. on the day immediately before the first day of the additional paternity pay period<sup>2</sup> that claimant is treated as being in a period of LCW<sup>3</sup> **and**
2. satisfies the contribution conditions for ESA<sup>4</sup> **and**
3. on any day during the additional statutory paternity pay period the claimant is in a PLCW<sup>5</sup>, **and**
4. that day is not a day where that claimant is treated as not having LCW<sup>6</sup>.

*1 WR Act 07, s 20(6); 2 ESA Regs 13, reg 75(1)(a); 3 reg 75(1)(a)(i);  
4 reg 75(1)(a)(ii); 5 reg 75(1)(b)(i); 6 reg 75(1)(b)(ii)*

V1235 Where V1234 applies the claimant is entitled to ESA for any day in the additional paternity pay period where ESA is payable<sup>1</sup>. The amount of ESA which is payable is reduced by the amount of Additional Statutory Paternity Pay to which the claimant is entitled. The balance, if any, of ESA is payable for the week or part-week<sup>2</sup>.

*1 ESA Regs 13, reg 75(2); 2 reg 75(3)*

## Shared Parental pay and ESA

V1236 A claimant is not entitled<sup>1</sup> to ESA for any day within the shared parental pay period unless

1. on the day immediately before the first day of the shared parental pay period<sup>2</sup> that claimant is treated as being in a period of LCW<sup>3</sup> **and**
2. satisfies the contribution conditions for ESA<sup>4</sup> **and**
3. on any day during the shared parental pay period the claimant is in a PLCW<sup>5</sup>, **and**
4. that day is not a day where that claimant is treated as not having LCW<sup>6</sup>.

*1 WR Act 07, s 20(6); 2 ESA Regs 13, reg 75A(1)(a); 3 reg 75A(1)(a)(i);  
4 reg 75A(1)(a)(ii); 5 reg 75A(1)(b)(i); 6 reg 75A(1)(b)(ii)*

V1237 Where V1236 applies the claimant is entitled to ESA for any day in the shared parental pay period where ESA is payable<sup>1</sup>. The amount of ESA which is payable is reduced by the amount of Shared Parental Pay to which the claimant is entitled. The balance, if any, of ESA is payable for the week or part-week<sup>2</sup>.

*1 ESA Regs 13, reg 75A(2); 2 reg 75A(3)*

V1238 – V1300

## Part-week payments

### Introduction

V1301 This part gives guidance on the calculation of part-week payments relating to new style ESA (hereafter referred to as ESA).

**Note 1:** ADM chapter M1 (UC: Pathfinder) provides guidance on the meaning of new style ESA.

V1302 – V1304

## Definitions

### Meaning of benefit week

V1305 Benefit week<sup>1</sup> means a period of seven days ending on such day as the DM 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 DM directs **or**
  - 1.2 follows the date of claim for ESA **or**
2. the last day on which ESA is paid if it is in payment for less than a week.

*1 ESA Regs 13, reg 2*

### Meaning of part-week

V1306 Part-week<sup>1</sup> means an entitlement to ESA in respect of any period of less than a week.

*1 ESA Regs 13, reg 98(3)*

### Meaning of relevant week

V1307 Relevant week<sup>1</sup> means the period of seven days determined in accordance with V1311 to V1312.

*1 ESA Regs 13, reg 98(3)*

V1308 – V1310

### Relevant week

V1311 Where a part-week<sup>1</sup>

1. is the whole period for which ESA
  - 1.1 is payable **or**
  - 1.2 occurs at the beginning of an awardthe relevant week is the period of seven days ending on the last day of that part-week **or**
2. occurs at the end of an award, the relevant week is the period of seven days beginning on the first day of the part-week.

### Example 1

Conrad claims and is entitled to ESA from Friday 13.9.13. After serving his 3 waiting days, ESA is payable from Monday 16.9.13. His benefit week runs from Wednesday to Tuesday. A part-week payment is required for the period Monday 16.9.13 to Tuesday 17.9.13. The relevant week is Wednesday 11.9.13 to Tuesday 17.9.13.

### Example 2

Megan's award of ESA ends on Saturday 16.11.13. Her benefit week runs from Friday to Thursday. A part-week payment is required for the period Friday 15.11.13 to Saturday 16.11.13. The relevant week is Friday 15.11.13 to Thursday 21.11.13.

V1312 Where a claimant has an award of ESA and that claimant's benefit week changes, for the purpose of calculating the amount of ESA payable for the part-week

1. beginning on the day after their last complete benefit week before the change **and**
2. ending immediately before the change<sup>1</sup>

the relevant week is the period of seven days beginning on the day after the last complete benefit week.

### Example

Sangeeta's benefit week for ESA runs from Thursday to Wednesday. The DM directs that Sangeeta's benefit week should run from Saturday to Friday with effect from Saturday 17.8.13. A part-week payment is due for the period Thursday 15.8.13 to Friday 16.8.13. The relevant week is Thursday 15.8.13 to Wednesday 21.8.13.

V1313 – V1315

## Amount of ESA payable

V1316 Where the claimant is entitled to ESA and a part-week payment is required, the amount of ESA payable in respect of that part-week is to be calculated<sup>1</sup> by applying the formula

$$\frac{N \times X}{7}$$

where

X is the amount calculated in accordance with specified legislation<sup>2</sup> **and**

N is the number of days in the part-week.

### Example

Wallace is entitled to ESA at an amount of £56.80. He requires a part-week payment for 5 days.

$$\frac{5 \times £56.80}{7} = £40.58 \quad (\text{rounded up to the claimant's advantage})$$

V1317 Where ESA is awarded for a period which is not a complete benefit week and the applicable amount in respect of the period results in an amount which includes a fraction of a penny, that fraction is to be treated as a penny<sup>1</sup>.

*1 ESA Regs 13, reg 4(b)*

V1318 – V1323

## Modification in the calculation of income

V1324 For the purposes of calculating the amount of part-week payable<sup>1</sup> (see V1316), a claimant's income is to be calculated in accordance with specified legislation<sup>2</sup>, subject to

1. any income which is due to be paid in the relevant week is to be treated as paid on the first day of that week
2. any
  - 2.1 WB **or**
  - 2.2 training allowance **or**
  - 2.3 WPA **or**
  - 2.4 BSP<sup>3</sup> **or**
  - 2.5 CA **or**
  - 2.6 increase in disablement pension payable in accordance with specified legislation<sup>4</sup>

which is payable in the relevant week but not in respect of any day in the part-week is to be disregarded

3. where the part-week occurs at the end of the claim
  - 3.1 any income **or**
  - 3.2 any change in the amount of income of the same kind

which is first payable within the relevant week but not on any day in the part-week is to be disregarded

4. where only part of the weekly balance of income is taken into account in the relevant week, the balance is to be disregarded.

*1 ESA Regs 13, reg 100; 2 reg 76 – reg 84; 3 ESA Regs 13, reg 100(b); 4 SS CB Act 92, Sch 7, part 1*

### Example 1

Mabel claims and is entitled to ESA from 6.1.14. After serving her 3 waiting days, ESA is payable from 9.1.14. Her first complete benefit week runs from Tuesday 14.1.14 to Monday 20.1.14. A part-week payment is required from Thursday 9.1.14 to Monday 13.1.14 i.e. 5 days. The relevant week is Tuesday 7.1.14 to Monday 13.1.14.

Mabel's final payment of WB (one week's benefit) is payable on Tuesday 7.1.14 at a weekly rate of £32.49. Mabel's part-week payment is

$$\frac{5 \times \pounds 71.70}{7} = \pounds 51.214 \quad \text{minus} \quad \frac{5 \times \pounds 32.49}{7} = \pounds 23.207$$

$$\pounds 51.214 - \pounds 23.207 = \pounds 28.01 \text{ (rounded up)}$$

### Example 2

Amrik's last day of entitlement to ESA is Friday 21.3.14. His benefit week runs from Thursday to Wednesday. A part-week payment is due for Thursday 20.3.14 to Friday 21.3.14 i.e. 2 days. The relevant week is Thursday 20.3.14 to Wednesday 26.3.14.

Amrik will receive his first payment of RP on Monday 24.3.14. As his RP is payable within the relevant week, but not within the part-week, the payment of RP is disregarded.

### Example 3

Harriet claims and is entitled to ESA from Friday 22.11.13 at the weekly rate of £71.70. Her benefit week is Tuesday to Monday. Harriet requires a part-week payment from Friday 22.11.13 to Monday 25.11.13 i.e. 4 days. Her relevant week runs from Tuesday 19.11.13 to Monday 25.11.13.

Harriet's final payment of MA is payable for only 1 of the day's of the part-week i.e. Friday 22.11.13. The weekly rate of MA is £136.78. As only part of Harriet's MA is taken into account in the relevant week, the balance is disregarded. Harriet's part-week payment is

$$\frac{4 \times \pounds 71.70}{7} = \pounds 40.971 \quad \text{minus} \quad \frac{1 \times \pounds 136.78}{7} = \pounds 19.54$$

$$\pounds 40.971 - \pounds 19.54 = \pounds 21.44 \text{ (rounded up)}$$

V1325 – V1326

## Reduction in certain cases

V1327 The amount of ESA payable in respect of a part-week<sup>1</sup>, where a disqualification is made under specified legislation<sup>2</sup> in respect of that part-week, is

1. one seventh of the ESA which would have been paid for the part-week if

1.1 there was no disqualification **and**

1.2 it was not a part-week

**multiplied by**

2. the number of days in the part-week in respect of which no disqualification is to be made.

*1 ESA Regs 13, reg 101; 2 reg 93*

### **Example**

Heidi is disqualified from ESA for 1 week 4 days because she failed to attend a medical recommended by her doctor, and had no good cause for not attending. Heidi's benefit week is Friday to Thursday. Heidi's weekly entitlement to ESA is £71.70. The DM determines that her disqualification runs from Friday 11.7.14 to Monday 21.7.14. A part-week payment is required for Tuesday 22.7.14 to Thursday 24.7.14 i.e. 3 days. The relevant week is Friday 18.7.14 to Thursday 24.7.14. Heidi's part-week payment is

$$\frac{3 \times £71.70}{7} = £30.73 \quad (\text{rounded up})$$

V1328 – V1330

## **Payment of ESA for days of certain treatment**

V1331 Where a claimant is entitled to ESA as a result of being treated as having LCW because they are receiving or recovering from regular treatment (see ADM Chapter U2 – ESA LCW & LCWRA), the amount payable is to be

1. one seventh of the claimant's entitlement to ESA

**multiplied by**

2. the number of days in that week on which the claimant was receiving or recovering from treatment, but does not include any day during which the claimant does not work<sup>1</sup>.

*1 ESA Regs 13, reg 102*

### **Example**

Siobhan suffers from chronic renal failure. She has regular weekly treatment by way of haemodialysis. Siobhan is treated as having LCW during any week that she receives or is recovering from that treatment. Where she has one day of treatment

and one day of recovery, Siobhan would receive two days ESA. Where she has two days of treatment and two days of recovery, Siobhan would receive four days ESA.

V1332 – V1999

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