

Department for Work and Pensions

DECISION MAKING AND APPEALS (PART OF LEGAL GROUP)

Decision Makers Guide

Volume 9 Amendment 22 – June 2016

1. This letter provides details on Amendment 22; the changes have already been incorporated in to the Intranet and Internet versions of the DMG.
2. PDF amendment packages are also available. These can be printed with the amended pages being reproduced in full. Each page will contain the amendment number in the footer

PDF amendment packages can be found on the **Intranet** at:

<http://intranet/1/lg/acileeds/guidance/decision%20makers%20guide/index.asp>

or on the Internet at:

<http://www.dwp.gov.uk/publications/specialist-guides/decision-makers-guide/>

Note: When printing PDF packages set the print properties to Duplex/Long Edge in order to produce double sided prints

3. Amendment 22 affects abbreviations chapters 48 & 49. The changes
 - **Chapter 48** minor amends only.
 - **Chapter 49** Added Ref to new SP from new SP Act, section 31.
 - **Chapter 50** Minor amends, clarified working and income to include royalties etc
 - **Chapter 51** Minor amends including - Expanded 'fully taken into account' to clarify normal rules apply to calculate that after deductions
4. The last two packages for Volume 9 were

Amendment 20 [February 2016]

Amendment 19 [October 2015]

If using a PDF amendment package remove the sheets as stated in the left hand column of the Remove and Insert table below and insert the new sheets as stated in the right hand column (note the record of amendments at the back of the Volume).

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Insert**Abbreviations**

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Chapter 51

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LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council
LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liable Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAMC	Living Together as Married Couple
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MDB	Miscellaneous Diseases Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage

NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit
PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIP	Personal Independence Payment
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POAOB	Payment on Account of Benefit
POA	Power of Attorney
PP	Pensioner Premium
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period

QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)
Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SJP	Supervised Jobsearch Pilot Scheme
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SP	State Pensions

SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification
TA	Transitional Addition
TAW	Temporary Allowance for Widow(ers)
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TFEU	Treaty on the Functioning of the European Union
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UC	Universal Credit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(S)	The Workmen's Compensation (Supplementation) Scheme

WC (Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
Wp	Work programme
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component
WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training

Chapter 48 - General rules on income

Introduction

General rules

Meaning of claimant and partner

48001 Claimant means¹ a person who has claimed ESA. Partner means² where a claimant

1. is a member of a couple, the other member of that couple
2. is a husband or wife by virtue of a polygamous marriage, the other party to the marriage or any spouse additional to either party to the marriage.

1 WR Act 07 s 24(1); 2 ESA Regs, reg 2(1)

48002 Couple means¹ two people who are

1. married to, or civil partners of, each other and are members of the same household **or**
2. not married to, or civil partners of, each other but are LTAMC.

Note: Where one or both members of a couple are under the age of 16, they cannot be a couple. This is because the person under 16 is a child and therefore not a man or a woman, or not eligible to register as a civil partner.

1 ESA Regs, reg 2(1)

48003 Polygamous marriage means¹ any marriage which was entered into under a law which permits polygamy where

1. one of the parties to it is married to more than one person **and**
2. the claimant, the other party to the marriage and the additional spouse are members of the same household

1 ESA Regs, reg 2(1)

The calculation and treatment of income

- 48004 This Chapter deals with the calculation and treatment of various types of income and explains
1. how to treat the income of the claimant and any partners - see DMG 48008 et seq
 2. how to decide the period over which an income should be taken into account - see DMG 48030 et seq
 3. how to calculate the weekly amount of an income - see DMG 48079 et seq
 4. the special rules for modifying the amount taken into account - see DMG 48091 et seq.
- 48005 Other Chapters deal with other aspects of income, including
1. which incomes are fully or partly disregarded - see DMG Chapter 51
 2. when to treat capital as income - see DMG Chapter 51 (for income treated as capital see DMG Chapter 52)
 3. when to treat claimants as possessing income they do not possess (known as notional income) - see DMG Chapter 51
 4. the treatment of various types of income, including
 - 4.1 earnings of employed earners - see DMG Chapter 49
 - 4.2 earnings from self-employment - see DMG Chapter 50
 - 4.3 income other than earnings - see DMG Chapter 51
 - 4.4 liable relative payments - see DMG Chapter 51
 - 4.5 student's income - see DMG Chapter 51
 - 4.6 how to treat income when calculating part weeks - see DMG Chapter 46
 - 4.7 income in urgent cases - see DMG Chapter 54.

Income - ESA(Cont)

- 48006 Unlike ESA(IR), the amount of ESA(Cont) that a claimant receives is not affected by all income. It is affected by
1. any pension payments¹ **and**
 2. any PPF periodic payments² **and**
 3. any councillor's allowances³

Period over which income is taken into account

Calculating the period

- 48030 To determine the period over which any income other than income from self-employment is taken into account the DM needs to establish
1. the date of claim
 2. the first day of the claimant's benefit week (see DMG 48059)
 3. the date on which the income is due to be paid (see DMG 48031 et seq)
 4. the date on which the income is treated as paid (see DMG 48048 et seq) **and**
 5. **either**¹
 - 5.1 the period for which the payment is made **or**
 - 5.2 the amount of
 - 5.2.a ESA that would be payable without the income **and**
 - 5.2.b any disregard the DM would normally allow on the weekly amount of the income.

See DMG Chapter 49 on earnings disregards and DMG Chapter 51 on other income with partial disregards.

Note 1: If the income is a payment of earnings when employment ends see DMG 48076 where different kinds of earnings are received for overlapping periods, and DMG Chapter 49 for the period over which the payment is taken into account.

Note 2: The guidance in DMG 48031 - 48095 does not apply to income from self-employment.

1 ESA Regs, reg 91(2)

Date on which income is treated as paid

48048 The date on which a payment of income is treated as paid may not be the same as the date on which it is due to be paid under DMG 48031 et seq.

Note: There are no longer any special rules that apply to the date on which WTC is treated as paid.

Income due before the first benefit week of the claim

48049 A payment of income (including WTC) 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. But see DMG 48090 if the payment is UC, ESA, JSA, IS, MA, IB or SDA.

Note: A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 48059 2.1).

1 ESA Regs, reg 93(1)(a)

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

48050 If a payment (including WTC) 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).

But see DMG 48090 if the payment is UC, ESA, JSA, IS, MA, IB, or SDA, or DMG Chapter 46 if the period involved is a part week.

Note: A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 48059 2.1).

1 ESA Regs, reg 93(1)(b)

Example 1

The claimant is sick and receives ESA(IR) fortnightly in arrears. His benefit week ending day is Wednesday.

On Friday 16 August he advises DWP that he has received his first payment of income from an insurance policy (payable when a person is unable to work) on that day. The payment is made on the day it is due. The DM treats the payment as paid on Thursday 15 August which is the first day of the benefit week in which it was due to be paid. The DM takes the income into account in the payment due to be issued on Wednesday 21 August.

Example 2

The claimant is sick and receives ESA(IR). Her benefit week ending day is Thursday. She receives one week's benefit for the period 15 November to 21 November on 23 November.

On 22 November, she advises the office that her partner received his first payment of P/T earnings on the evening of 21 November. The payment is made on the day it is due.

The DM determines that it is not practicable to take the partner's earnings into account for the benefit week 15 November to 21 November, because benefit has already been issued for that week.

The DM treats the earnings as paid on 22 November, which is the first day of the first benefit week in which it is practicable to take the payment into account.

48051 The practicability rule cannot apply where notification is received in time for the income to be taken into account in the correct benefit week but it is not actioned until after the payment of ESA has been made.

48052 - 48053

Treatment of income paid incorrectly to the claimant

48054 A claimant may have income (including benefit income) that is being taken into account in an income-related benefit award, which is then retrospectively revised. This can often lead to an overpayment of that income but this does not mean that arrears of the income-related benefit in payment also arise. In such cases, the overpaid income is taken into account until the recipient comes under an immediate obligation to repay it, and only then from the date on which an obligation to repay arises¹. For more information on overpayments, please see DMG Chapter 9.

1 R(IS) 5/99 (Leaves v. CAO)

Example

Ella has been receiving RP since 1.3.10 and SPC since 4.10.10. HMRC provide an updated NI record on 1.6.16 which shows that Ella's RP award has been incorrectly calculated from the outset. On 7.6.16, a DM revises Ella's RP award to a lower amount with effect from 1.3.10. On 27.6.16 a DM decides that the overpaid RP is a non-recoverable overpayment. For SPC purposes, the revised RP award is taken into account from the next payday – 30.6.16, the effect is not retrospective and there are no arrears of SPC to be offset against the overpaid RP.

WTC paid incorrectly by HMRC

48055 If a person who has ceased employment confirms when they claim ESA that they have notified HMRC of the change in their circumstances, DMs should not treat any payments of WTC paid incorrectly by HMRC as the claimant's income. However, any payments of WTC paid to the claimant prior to any notification by the claimant to HMRC of a change in circumstance should be taken into account as income¹.

1 R(IS) 5/99 (Leeves v. CAO)

Example 1

Janet finished work on Thursday 5.11.09 and made a claim for ESA on Friday 6.11.09. Her benefit week ending is a Tuesday. Janet told the DM that she had been receiving WTC but had notified HMRC that her job had now ended.

HMRC did not end the award and continued to pay WTC to Janet.

Janet was entitled to a 4 week WTC run on for the period 6.11.09 to 3.12.09. WTC was treated as paid on Wednesday 4.11.09 and taken into account by the DM until BWE 1.12.09.

Although Janet continued to receive WTC for several weeks after the run on period, the DM decided that the WTC paid incorrectly by HMRC should not be taken into account as it was not Janet's income.

Example 2

Joel finished work on 1.6.09 and made a claim for ESA on 19.6.09. He is in receipt of WTC which the DM takes into account as an income when calculating Joel's entitlement to ESA(IR).

On 19.10.09 Joel informs HMRC that he finished work in June. HMRC ends Joel's award of WTC and calculate an overpayment based on the fact that he had finished work in June but had continued to receive WTC.

The DM supersedes the award of ESA(IR) and no longer takes the WTC into account. The date of the relevant change for the purposes of the supersession is 19.10.09 which was the date that Joel informed HMRC of his change of circumstance. However the DM does not adjust the award of ESA(IR) to take account of that fact that Joel was overpaid WTC for the period prior to the notification to HMRC. This is because at that time, WTC was an income in payment to Joel and there is no disregard for it.

Treatment of arrears of income

48056 If the amount of a regular income 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 DMG 48031). But see DMG 48090 if the income is UC, ESA, JSA, IS, MA, IB or SDA.

Arrears paid on due date

48057 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. taken into account
 - 2.1 for a period calculated in the normal way (see DMG 48070 et seq)² **and**
 - 2.2 from the date on which they are treated as paid.

1 ESA Regs, reg 93(1)(b); 2 reg 91(2)(a) & (b)

Example

The claimant's partner has P/T earnings of £30 weekly due each Thursday. ESA(IR) is paid in arrears and the claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £40 weekly from 5 July, but the agreement says that the increase is not payable until 1 August, when payment is made at the new rate with three weeks arrears, a total of £70.

The DM treats the payment as made on 31 July.

The new rate of £40 is taken into account in the benefit week beginning 31 July, and the £30 arrears are taken into account for the period 31 July to 20 August.

The total amount of earnings taken into account in the benefit weeks beginning 31 July, 7 August and 14 August is £50 (£40 plus £10 arrears).

From benefit week beginning 21 August, the new weekly rate of £40 is taken into account.

Arrears paid after the due date

48058 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.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery².

1 ESA Regs, reg 93(1); 2 SSA Act 92, s 74

Example

The claimant normally receives an occupational pension monthly in arrears on the last day of each month. The pension increases from 1 April each year, first payment at the higher rate being due on 30 April.

Due to administrative problems, the increase is not paid until 30 June, when the claimant receives the new amount for the month of June and arrears for April and May.

The DM determines that the arrears for April and May were due to be paid on 30 April and 31 May, and treats them as paid on the first day of the benefit week in which each was due to be paid.

Meaning of benefit week

48059 In ESA a benefit week¹

1. is a period of seven days ending with a day which the DM directs **and**
2. when calculating the amount of income to take into account, is also a period of seven days ending on
 - 2.1 the day before the first day of the first benefit week following the date of claim **or**
 - 2.2 the last day on which ESA is paid if it is in payment for less than a week.

1 ESA Regs, reg 2(1)

48060 - 48069

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 area².

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

Note: For the treatment of allowances and expenses for councillors and ESA(Cont) see DMG Chapter 44.

49082 Councillors are elected office holders and are employed earners¹. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme² for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

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

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

49083 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 49091 et seq).

Basic allowance and special responsibilities allowance

49084 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

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

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

49085 - 49088

Scotland

49089 In Scotland there are four grades of LA councillors¹. The level of remuneration paid to a councillor depends on their grade and the banding of the LA. In addition councillors are entitled to mileage allowance for travel². There is no entitlement to any other allowance but councillors are entitled to reimbursement of certain expenses subject to a maximum rate³. The Civic Head of the Council may be entitled to reimbursement of additional receipted expenditure⁴. Certain elements of the councillors' remuneration and expenses are taxable and subject to NI contributions as an employed earner.

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

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

Childcare and dependent carers' allowance

49090 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor. It should be treated as earnings¹.

1 ESA Regs, reg 95(1)(f)

Expenses

49091 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties¹, for example travel and subsistence allowances². If the LA cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 ESA Regs, reg 95(2)(c); 2 R(IS) 6/92

49092 After expenses in DMG 49091 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA (see DMG 49036). 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.

Notional earnings

Notional earnings - general

49193 Notional earnings are earnings that a person does not actually have, but is treated as having. For

1. claimants in receipt of ESA(IR), notional earnings of

1.1 the claimant **or**

1.2 any partner

are taken into account as if they were actual earnings¹ (but see DMG 49145 et seq where that notional income is PWK)

2. claimants in receipt of ESA(Cont), notional earnings are

2.1 not deducted from the amount of ESA(Cont) payable **but**

do count when determining whether the claimant has breached either of the PWK limits².

1 ESA Regs, reg 109(2); 2 reg 88

49194 The DM should treat the claimant or partner as having notional earnings where¹

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

2. that person

2.1 makes no payment of earnings **or**

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

The rate for comparable employment in the area is a question of fact and must be based on evidence. It should not be assumed to be the NMW. If the notional income rules are satisfied the DM must take into account at least the NMW rate relevant to the claimant, unless one of the situations in DMG 49197 applies.

Note: If it is the claimant who is working then the DM will need to consider the guidance in DMG Chapter 42 with regard to LCW.

1 ESA Regs, reg 108(3)

49195 The NMW provides that in most cases workers will be paid at least a standard hourly rate, dependent on their age and whether they are receiving accredited training.

49196 Not all the money paid to a worker counts for the purposes of the NMW. Also the hours for which NMW should be paid depends on the type of work the worker is doing.

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

- 49197 The DM should not take notional earnings into account where the claimant or the claimant's partner
1. satisfies the DM that the means of the person for whom the service is performed, are not enough to pay, or to pay more for the service¹ **or**
 2. is engaged by a charitable or voluntary organization or is a volunteer and the DM is satisfied that it is reasonable for the services to be provided free of charge² **or**
 3. provides a service under an employment or training programme if
 - 3.1 no training allowance is payable to the claimant or the claimant's partner for the programme **or**
 - 3.2 where such an allowance is payable it is for the sole purpose of reimbursement of travelling or meal expenses to the person participating in the programme³
 4. is engaged in work experience in
 - 4.1 the NDLPs **or**
 - 4.2 a scheme approved by the Secretary of State as supporting the objectives of the NDLPs⁴.

1 ESA Regs, reg 108(3); 2 reg 108(4)(a); 3 reg 108(4)(b); 4 reg 108(4)(c)

- 49198 The DM should not take notional earnings into account where the claimant is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement commences¹ and for which the claimant receives no payment.

1 ESA Regs, reg 108(4)(d) & (e)

- 49199 In DMG 49198 "work placement" means¹ work which
1. is practical work experience **and**
 2. is not performed in expectation of payment.

1 ESA Regs, reg 108(4)(e)

Remunerative work

- 49200 Where a service is being performed, consider whether the remunerative work exclusion applies for ESA(IR).

Meaning of voluntary organization

49201 Voluntary organization means¹ a body that is not a

1. public authority **or**
2. LA.

whose activities are not carried out for profit.

1 ESA Regs, reg 2(1)

Meaning of “person”

49202 The meaning of “person” as used in DMG 49194 **1.** and **2.** includes¹

1. a limited company
2. a corporate body
3. an individual.

1 R(SB) 13/86

49203 - 49205

Performance of a service

49206 A service performed for another person benefits that person. That benefit may be in not having to employ someone else to do the work. It might also be in getting extra work done at little, or no, cost.

49207 A service may be performed even where there is a close family relationship¹, for example mother and son. In such cases there may be no formal arrangement. The person for whom the service is performed is referred to as the employer in DMG 49252.

1 R(SB) 3/92

Details of the service performed

49208 There may be a low rate of payment, or no payment at all being made for the service. If so, compare it with other employment by finding out

1. who is benefiting from the service
2. why it is being provided
3. when it is being provided (for example, during the day, night, or both)
4. where it is provided
5. who suggested that it be provided
6. what duties are involved
7. how many hours each day, or week, are spent on those duties.

When earnings are not to be treated as paid

- 49209 Do not treat the claimant as having earnings where
1. the claimant
 - 1.1 works for a charitable or voluntary organization, for example Attend (formerly the League of Hospital Friends) **or**
 - 1.2 is a volunteer **and**
 2. it is reasonable for the service to be provided free of charge.

Meaning of volunteer

- 49210 Volunteers¹ in this context are people who often have no connection to any charitable or voluntary organization. They perform, of their own free will, a service for another person. They do so without any legal obligation and expect no payment.

1 R(IS) 12/92

- 49211 A person may hope or expect to be paid for their services at a later date. If payment is to be made for work currently being done, the person is not a volunteer. If payment is to be for work done at a future date, the person may still be a volunteer.

Example

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

Time exchange schemes

- 49212 Participation in a time-exchange scheme is not voluntary work, but as the nature of the scheme is not to make any payment in cash, it is treated in the same way as voluntary work as far as the effect on ESA(IR) is concerned. The hours worked by the claimant/partner are "banked" with the scheme and can be exchanged for the same amount of time from another member who will provide their skills to the claimant. Exceptionally where expenses are reimbursed they should be treated as other income (see DMG Chapter 51).

49636 Fixed term employees on a determinate fixed term contract have the end date of their contract notified to them at the start of their contract, and those on project work have the same right to legislative notice as other employees.

Contractual entitlement

49637 The period of notice due under a contract is usually stated in the contract. But that period may be extended by agreement between the employer and employee, for example by a redundancy agreement. The period of notice agreed then becomes the period due under the contract.

49638 If there is evidence that this may have happened, for example, if the employer pays more PILON than was due under the written contract, ask to see a copy of the agreement. If there is no written agreement, ask to see any other evidence of the change.

49639 Contractual entitlement is affected if the agreement gives the employee a legal right to a longer period. In such a case, the employee is contractually entitled to the longer period. If the agreement simply provides for more compensation than would otherwise be due, contractual entitlement is not affected.

49640 The period of notice due may not be stated in writing. If so, ask the employer and employee whether it was agreed verbally. If it was and they agree on the period due, that period will be the period due by contract.

49641 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment¹. The DM should consider what is reasonable taking account of all the circumstances and the custom in the type of employment.

1 R(U) 37/53; R(U) 4/56; R(U) 10/58; R(U) 10/64; R(U) 5/74

49642 - 49645

49646 The DM should note that

1. employees may be paid PILON at the same rate as their earnings. The period might then be considered to be the period implied under their contracts
2. the higher an employee's rate of pay and status, the longer the period of notice should be
3. an employee's length of service and status can be compared with other employees whose contractual entitlement is known.

Example

Ross has been continuously employed for 15½ years by Arnolds Ltd up to him being made redundant. Under his contract of employment he is entitled to two weeks notice. He did not work any period of notice on being made redundant or receive PILON.

The DM determines that the specified period is twelve weeks because

1. by statute Ross was entitled to twelve weeks notice as he had been continuously employed by Arnolds Ltd for 15½ years and this is longer than the period of notice he was due to under his contract of employment
2. Ross has not worked any period of notice or received PILON.

Note: The DM now has to consider the period using the set formula to determine if the specified period is shorter than the period using the set formula.

Payments for period before employment ended

- 49647 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. How it affects a claim for ESA(IR) depends on whether the work that has ended was remunerative or P/T.

Remunerative work

[\[See Memo DMG 11/16\]](#)

- 49648 If the work was remunerative, earnings due for the period of that employment should normally be disregarded¹. This includes any payments held in hand by the employer when the employment ends. It does not include any
1. retainers² including
 - 1.1 statutory guarantee payments **and**
 - 1.2 payments made where the claimant has been suspended on medical or maternity grounds **or**
 2. awards made under employment protection or trade union law (including “out of court” settlements).

These payments should not be disregarded.

1 ESA Regs, Sch 7, para 1(1)(a); 2 Sch 7, para 1 & 2

Partner’s earnings on retirement

- 49649 Any earnings paid or due to be paid to the claimant’s partner should be disregarded where¹
1. the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in GB) **and**

2. the partner is entitled to RP or SP on retirement **and**
3. the earnings were paid or due to be paid because of the partners retirement **and**
4. the only reason the partner is not entitled to
 - 4.1 RP is that the contribution conditions are not satisfied (RP) **or**
 - 4.2. SP is that they do not have the minimum number of qualifying years.

1 ESA Regs, Sch 7, para 3, 3A

Part-time work

- 49650 The work that ends may have been P/T. If it ended **on or after** the date of entitlement take any earnings into account in the normal way.
- 49651 If it ended **before** the date of entitlement disregard all earnings with the exception of retainers¹. Retainers should be taken into account in the normal way (see DMG 49648).

1 ESA Regs, Sch 7, para 2(1)

- 49652 The employment will not have ended where
1. the contract of employment is still current **or**
 2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because
 - 2.1 there is some express arrangement that employment will resume **or**
 - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

Note: For further guidance on whether employment has terminated, see DMG 49527 - 49598.

Statutory redundancy payments

- 49653 Employees may receive statutory redundancy payments on termination of their employment. Such payments should be taken into account as capital.
- 49654 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments, for example severance payments may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is treated as capital.

49655 - 49999

Appendix 2

[See Memo DMG 10/16]

Maximum weekly amount

Payable under section 227 of the Employment Rights Act 1996.

	£
From 1.2.07	310
From 1.2.08	330
From 1.2.09	350
From 1.10.09	380
From 1.2.11	400
From 1.2.12	430
From 1.2.13	450
From 6.4.14	464
From 6.4.15	475

Appendix 3

[See Memo DMG 10/16]

Statutory guarantee payments

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

	£
From 1.2.07	19.60 per day
From 1.2.08	20.40 per day
From 1.2.09	21.50 per day
From 1.2.10	21.20 per day
From 1.2.11	22.20 per day
From 1.2.12	23.50 per day
From 1.2.13	24.20 per day
From 6.4.14	25.00 per day
From 6.4.15	26.00 per day

Calculating average hours

- 58 If the person is engaged in work where the hours fluctuate, calculate the average weekly hours¹.

1 IS (Gen) Regs, reg 5(2)

Identifying a recognizable cycle

- 59 See if there is any pattern of work over a period of time. This is known as a recognizable cycle. A recognizable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle¹.

1 NS v SSWP (IS) [2015] UKUT 0423 (AAC)

Example 1

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

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

Example 2

month 1	A hours
month 2	B hours
month 3	A hours
month 4	B hours

There is a recognizable cycle of two months.

Example 3

week 1	X hours
week 2	X hours
week 3	Y hours
week 4	W hours
week 5	V hours

There is no recognizable cycle.

Note: A cycle may include weeks in which no work is done¹.

1 IS (Gen) Regs, reg 5(2)(b)(i)

Permanent or indefinite contract

- 60 A recognizable cycle of work can exist at the outset of employment. This would happen where a person has a permanent or indefinite contract that expressly provides for a cycle. The contract may expressly provide for periods of work and periods of no work, for example, school holidays for school ancillary workers are usually periods of no work.

Example

Julia works as a school clerk under an indefinite contract that provides for work during school terms and no work during school holidays. The DM decides that Julia's contract establishes a cycle from its outset.

Fixed term contracts and casual workers

- 61 A cycle may be established after one or two years where a person is employed under a succession of fixed term contracts or on a casual basis (perhaps with no contract)¹. DMs should decide each case on its facts. The DM will need to consider whether two complete cycles would be necessary if one year had not been sufficient to establish a cycle, e.g. in the case of relief cover or occasional work. DMs should also consider whether there is a mutual expectation between the person and the employer that work will resume after a period of no work.

1 R(JSA) 5/02

Example

Bill is a catering assistant at a secondary school. He has been working on a casual basis for just over a year. He does not work for the Christmas holiday but says that he has been asked to return to work after the holidays. Bill tells the DM that he expects to return to work as he did the previous January. The DM decides that Bill has established a recognizable cycle of work and that it has not been broken. Bill is in remunerative work because on average he works 16 hours or more a week.

Extra work

- 62 A person may have a contract for work that specifies when they will and won't be expected to work. If they work any additional hours during a holiday period, either for their usual employer or another employer, it does not mean that the contract does not establish a cycle¹.

1 R(JSA) 5/02

Chapter 50 - Self-employed earners

Self-employed earners - Employment and Support Allowance

General

50001 This Chapter deals with the calculation and treatment of the earnings of S/E earners in ESA. General guidance on the effect of work is in DMG Chapter 41.

50002 The earnings of a S/E earner are income. The calculation of this income can affect entitlement to ESA(IR) because it is a condition of entitlement to ESA(IR) that income does not exceed the claimant's applicable amount¹. The level of earnings from work performed by the claimant will also determine whether the work is within the PWK limits².

1 WR Act 07, Sch 1, para 6(1)(a); 2 ESA Regs, reg 45(2), (3) & (4)

50003 ESA(Cont) has no condition of entitlement based on income and so earnings are not taken into account in the same way as they are with ESA(IR). However, where a claimant who is entitled to ESA(Cont) is working, or has received income from any type of work done previously then the guidance in this chapter should be used along with the guidance in Chapters 41, 48 and 49 to decide the level of earnings¹. The level of earnings will then determine whether the work is within the PWK limits².

1 ESA Regs, reg 88; 2 reg 45(2), (3) & (4)

ESA(Cont)

50004 It is only the amount of a claimant's own earnings that may affect entitlement to ESA(Cont) 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(Cont).

1 WR Act 07, Sch 2, para 10

ESA(IR)

50005 Earnings of the claimant or any partner may be taken into account for the calculation of income for ESA(IR). The earnings of the claimant's partner are treated as being the income of the claimant¹. If the claimant is not working due to illness or a medical condition but their partner is working or has recently finished work, the guidance on earnings from self-employment for ESA(IR) will apply to the partner.

1 WR Act 07, Sch 1, para 6(2)

Meaning of claimant

50006 Claimant means¹ a person who has claimed ESA.

1 WR Act 07, s 24(1)

Who is a self-employed earner

50007 A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earners employment¹.

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

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

50008 A S/E earner enters into a contract for services to a customer

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

50009 S/E earners are responsible, to the full extent of their personal fortune, for the debts of the business and are entitled to **either**

1. in the case of a sole trader, all the profits **or**
2. if in a partnership (see DMG 50400), the agreed share of the net profits.

50010 A person may be S/E and also have other work as an employed earner. If so the earnings from each employment should be calculated separately.

50011 To determine if a person is, or has been a S/E earner, the DM should have regard to a number of factors. A determination should be made after weighing up the answers to the following

1. is the person's work supervised? A lack of supervision may point towards self-employment.
2. does the person have the powers of appointment and dismissal and can they employ a substitute? A power to appoint a substitute may point towards self-employment.
3. in what form does remuneration take? Taxation paid at source may suggest that the employment is not S/E.
4. how long in duration are the contracts of work? Short contracts may point towards self-employment.
5. does the person provide their own equipment? Provision of own equipment may point towards self-employment.

Calculation of income tax, National Insurance contributions and qualifying premium

Introduction

50260 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 50270 et seq) **and**
2. Class 2 NI contributions (see DMG 50297 et seq) **and**
3. Class 4 NI contributions (see DMG 50316 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 50326).

1 ESA Regs, reg 98(3)(b) & (c)

50261 The DM should base deductions for DMG 50260 **1. - 3.** on the chargeable income for the assessment period.

50262 - 50265

Chargeable income

50266 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

1. in the case of a S/E child minder, one third of the gross receipts of that employment² **or**
2. in the case of a partnership, the person's share of
 - 2.1 the gross receipts of the employment less
 - 2.2 any allowable business expenses³ **or**
3. in any other case, the person's
 - 3.1 gross receipts of the employment less
 - 3.2 any allowable expenses⁴.

1 ESA Regs, reg 99(4); 2 reg 99(4)(b); 3 reg 98(4); 4 reg 98(3)(a)

50267 The calculation at DMG 50266 **1. - 3.** should not include any deductions for

1. notional income tax **or**
2. NI contributions **or**
3. premiums for a personal pension scheme.

50268 - 50269

Deduction for notional income tax

- 50270 The DM should use the tax rates and allowances for the year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Example

Andrew makes a claim for ESA in June 2009. The DM accepts as evidence of his earnings his cash flow accounts up to the tax year ending the previous April. The tax rates and allowances used to calculate the notional tax deduction are those for the previous tax year.

Tax allowances

- 50271 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only. The rates of income tax allowances are in Appendix 1 to this Chapter.

50272 - 50273

Personal allowance

- 50274 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (see Appendix 1 to this Chapter), but for ESA purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

- 50275 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1 to this Chapter.

Note: from April 2016 the Scottish Government can set its own rate of income tax¹. DMs should ensure that the correct income tax rate is used.

1 the Social Security (Scottish Rate of Income Tax etc.) (Amendment) Regulations 2016

50276 - 50287

Calculation of deduction

- 50288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should¹

Pension payments taken fully into account

Occupational pensions

Treatment of occupational pensions in ESA(IR)

51050 Payments of income from occupational pensions should be taken fully into account subject to the normal rules for calculating the amount of income to be assessed. Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Employment Redundancy Scheme **or**
2. British Coal Industrial Death and Retirement Scheme **or**
3. British Coal RMPS

are included. Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship¹. This type of payment is a charitable or voluntary payment.

1 ESA Regs, reg 2(1)

Treatment of occupational pensions in ESA(Cont)

51051 See DMG Chapter 44 for guidance on the treatment of occupational pensions in ESA(Cont).

Personal pensions

Treatment of personal pensions in ESA(IR)

51052 Income from personal pension schemes should be taken fully into account. Personal pension schemes provide pensions on retirement for

1. S/E people **or**
2. employees who are not members of occupational pension schemes.

Personal pension schemes may also make payments to dependants following the death of the scheme member.

Treatment of personal pensions in ESA(Cont)

51053 See DMG Chapter 44 for the guidance on the treatment of personal pensions in ESA(Cont).

51054 - 51059

Maternity, paternity, adoption, parental and sick pay

Statutory maternity pay

- 51131 SMP is payable by employers to female employees as part of, or instead of, normal earnings when they have given up work to have a baby. Women who are not employees are not entitled to SMP but may claim MA instead.

Paternity pay and additional paternity pay

- 51132 Ordinary and additional statutory paternity pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the LEL.

Statutory adoption pay

- 51133 Statutory adoption pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL. It is paid at the same rate as standard SMP.

Statutory sick pay

- 51134 SSP is payable by employers as part of or instead of, normal wages for up to 28 weeks in any period of sickness. People who are not employed are not entitled to SSP but may claim ESA instead.

Statutory shared parental pay

- 51135 Employees and workers may be entitled to shared parental leave and shared parental pay in respect of babies born or adopted on or after 5.4.15.

Treatment of SMP, paternity pay, statutory adoption pay, statutory shared parental pay and SSP

- 51136 The amount the DM should take into account is the gross amount less

1. any income tax paid¹ **and**
2. any employees' NI contributions or Northern Ireland Class 1 contributions²
and
3. one half of any contribution paid by the claimant to an occupational or personal pension scheme³.

Note 1: A claimant cannot be entitled to ESA for a day which is a day of incapacity for work for SSP purposes⁴. However, SSP might be received by the claimant, for example, where it is paid in arrears, whilst the claimant is in receipt of ESA(IR).

Note 2: A claimant's partner could be entitled to SSP whilst the claimant is entitled to ESA(IR).

1 ESA Regs, Sch 8, para 1; 2 Sch 8, para 4(a) & 5(a); 3 Sch 8, para 4(b) & 5(b); 4 WR Act 07, s 20(1)

Employer's private maternity, paternity, adoption or sick pay

51137 Maternity, paternity, adoption or sick pay from an employer's private scheme should be treated in the same way as SMP, Statutory paternity pay, Statutory adoption pay or SSP with disregards made for the items described in DMG 51136.

Lump sum payments of SMP

51138 Some employers may pay SMP as a lump sum at the start of the MPP. The DM should apply the normal rules when deciding the period SMP should be taken into account¹.

1 ESA Regs, reg 91(2)(a)

51139