

DMG Chapter 27: Self-employed earners and share fishermen

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27000 This Chapter deals with the calculation and treatment of the earnings of S/E earners and share fishermen. The guidance for

1. S/E earners applies to

1.1 JSA(Cont), but only the claimant's own earnings affect the amount of JSA(Cont) payable¹ **and**

1.2 JSA(IB) **and**

1.3 IS **and**

2. share fishermen explains that the calculation of a share fisherman's earnings is different for

2.1 JSA(Cont) **and**

2.2 JSA(IB) and IS.

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

Meaning of claimant

27001 Claimant means¹ either

1. one person who claims JSA or IS **or**

2. in the case of a joint claim for JSA

2.1 the couple **or**

2.2 each member of the couple, as the context requires.

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

Who is a self-employed earner

27002 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(b)

27003 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.

27004 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 27400), the agreed share of the net profits.

27005 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.

27006 To determine if a claimant is, or has been a S/E earner, the DM should have regard to a number of factors. A determination should be made after weighing up the answers to

1. is the claimant's work supervised? A lack of supervision may point towards self-employment.

2. does the claimant have the powers of appointment and dismissal and can they employ a substitute? A power to appoint a substitute may point towards self-employment.

3. in what form does remuneration take? Taxation paid at source may suggest that the employment is not S/E.

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

Claims from self-employed earners

27007 Where the DM is considering whether the claimant and/or partner is a S/E earner then it is important to keep that determination separate from the issue of remunerative work (see DMG Chapter 20).

27008 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order¹: Is the claimant

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

1.1 if the answer is no then they will not be in employment and earnings from past employment can be disregarded² **or**

1.2 if the answer is yes the DM considers question 2

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

2.1 if the answer is no the DM considers question 4

2.2 if the answer is yes the DM considers question 3

3. in remunerative work³ i.e. is the work 16 hours (24 hours in respect of a partner) or more a week

3.1 if the answer is yes the claimant is not entitled to JSA or IS

3.2 if the answer is no the DM considers question 4

4. in receipt of earnings that are to be taken into account⁴ and in respect of what period are the earnings to be taken into account⁵.

Note 1: See DMG 27020 for guidance on whether the claimant is still trading.

Note 2: A claimant could be in remunerative work if they are carrying out activities or it is a period of non-activity which is a normal incident in the cycle of work so they are treated as engaged in work. See DMG Chapter 20 for guidance on remunerative work.

Note 3: To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at DMG 27051 et seq.

1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09; 2 JSA Regs, Sch 6, para 4;

IS (Gen) Regs, Sch 8, para 3; 3 JSA Regs, reg 51(1); IS (Gen) Regs, reg 5(1) & (1A);

4 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1);

5 JSA Regs, reg 95(1)(a) & (b); IS (Gen) Regs, reg 30(1)(a) & (b)

27009 If the S/E earner has ceased self-employment the DM should consider if

1. there are any capital assets from the business **and**

2. any capital assets from the business should be disregarded (see DMG 27031 - 27033 and DMG 29366 et seq).

Directors of limited companies

27010 A limited company is a legal person¹ and is different from a sole trader or partnership because

1. the company belongs to its shareholders, who share in any distributed profits according to the size of their individual holding **and**

2. the liability of each shareholder is limited to the number of shares taken, or the amount that the shareholder has stood as personal guarantor for. The shareholder is not liable for any amount above the amount unpaid on shares (if any) or the amount guaranteed **and**

3. if **2.** does not apply, liability for debts is limited to the company's capital.

1 R(SB) 57/83

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

27011 A limited company, of whatever size, is separate from its employees, officers and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company² and is an employed earner (see DMG 26048).

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

Earnings of self-employed earners

27012 [[See Memo DMG 13/20](#)] In S/E cases, earnings are the gross receipts (see DMG 27125) of the employment¹.

1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)

27013 S/E earnings do not include¹

- 1.** charges paid to the S/E earner in return for providing BL accommodation (see DMG 27014) **or**
- 2.** any of the payments in DMG 28377 and 28384 (fostering allowances and payments for people temporarily in the claimant's care, including in Scotland, Continuing Care and Kinship Care Payments)
- 3.** any sports award² (see DMG 20480).

1 IS (Gen) Regs, reg 37(2); JSA Regs, reg 100(2); 2 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); National Lottery etc. Act 1993, s 23(2)

Board and lodging accommodation

27014 BL accommodation is accommodation¹

- 1.** where the charge for the accommodation includes some cooked or prepared meals that are both
 - 1.1** cooked or prepared by someone who is not
 - 1.1.a** the person provided with accommodation **or**
 - 1.1.b** a member of the family of the person provided with accommodation **and**
 - 1.2** eaten in that accommodation or associated premises **or**
- 2.** provided to a person in a
 - 2.1** hotel **or**
 - 2.2** guest house **or**
 - 2.3** lodging house (see DMG 27015) **or**
 - 2.4** similar establishment **or**
- 3.** that is
 - 3.1** not provided by a close relative (see DMG 27016 - 27017) of

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

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

3.2 provided on a commercial basis.

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

27015 A lodging house

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

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

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

27016 A close relative is¹

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

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

1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); R(SB) 22/87

27017 For the purposes of DMG 27016, a child who is adopted becomes

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

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

The child stops being the child of, or the brother or sister of any children of the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship¹.

1 R(SB) 22/87

27018 - 27019

Deciding if a person is still a self-employed earner

27020 To determine whether a person is still trading and therefore still employed as a S/E earner, the DM should consider the following:

1. if there is a reasonable prospect of work in the near future **and**

2. if the business is a going concern and regarded as such by

2.1 the person **or**

2.2 the business's bankers **or**

2.3 any creditors **or**

2.4 others **and**

3. if the person is genuinely available for and actively seeking alternative work **and**

4. if the person hopes or intends to restart work in the business when economic conditions improve **and**

5. if the person is undertaking any activities in connection with the self employment **and**

6. if there is work in the pipeline **and**

7. if the person is regarded as S/E by HMRC **and**

8. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example,

8.1 by advertising **or**

8.2 by visiting potential customers **and**

9. if the interruption in question is part of the normal pattern of the

9.1 person's work **or**

9.2 work that the person is seeking.

Not all of these questions will be relevant to whether a person is still employed as a S/E earner and the ones that are may not carry equal weight. It will depend on the facts of the particular case. These questions will also be relevant when considering the separate question of remunerative work if it is determined that self-employment continues².

1 Vandyk v. Minister of Pensions & National Insurance [1955] 1Q29;

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

27021 All nine factors in DMG 27020 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness

2. seasonal workers

3. sub-contractors **and**

4. share fishermen.

27022 Some of the factors in DMG 27020 may point toward the fact that a person is trading as S/E. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

27023 The DM should make a determination on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

Example 1

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

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

The DM then considers the guidance at DMG 27020 - 27023 and determines, in this case, that Hugh remains gainfully employed as a S/E earner because he is still trading.

Example 2

Ira claims JSA. He runs a business that supplies and fits doors and windows. Because of the competition in the area the business has received fewer and fewer orders, until now there are none. Ira states that

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

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Ira is not gainfully employed and no longer trading.

Example 3

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

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

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Stephen remains gainfully employed as a S/E earner because he is still trading.

Sickness

27024 If a S/E earner is unable to work in the business due to sickness, the DM should consider

- 1.** the guidance at DMG 27020 - 27023 **and**
- 2.** if the S/E earner remains gainfully employed as a S/E earner.

27025 A S/E earner will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of the self employment.

Example 1

Anne-Marie is a S/E dentist. She is the only dentist in the practice. She claims IS as she has been unable to work because she is suffering from flu. She is unable to work for a total of two weeks. During that time

- 1.** the receptionist re-books the appointments Anne-Marie had during her period of sickness
- 2.** continues to send out reminders for regular check-ups and books any new appointments
- 3.** she is still regarded as S/E by HMRC
- 4.** the bank still regards the business as a going concern.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Anne-Marie

remains gainfully employed as a S/E earner because she is still trading.

Example 2

Marlon is a S/E plumber. He is a sole trader. He claims IS as he has broken his leg and has been advised by his doctor to avoid work for six months. Marlon states that

- 1.** his business activity depends entirely on his ability to work and until his leg has healed he cannot undertake any work in connection with his business
- 2.** he has had to advise customers that he is unable to carry out the work that he had arranged so that they can find alternative contractors
- 3.** he and his bank do not consider the business as a going concern
- 4.** he intends to restart work in the business when his leg has healed so he has not removed any of his advertisements in case any contracts can be arranged for when he returns to work.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that self-employment has ceased there are no earnings to be calculated and any business assets can be disregarded¹.

1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)

Example 3

Roseanne is the owner of a fish and chip shop. She claims IS because she has had a serious operation and has been advised by her doctor to avoid work for three months. Roseanne states that the fish and chip shop continues to trade with day to day management taken over by her sister-in-law.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Roseanne remains gainfully employed as a S/E earner because her business is still trading. The DM calculates the earnings to be taken into account.

27026 - 27030

Self-employment ceased

27031 If the DM determines that self-employment has ceased DMG 27032 - 27035 should be considered.

Capital

27032 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 29 provides guidance on the valuation of business assets and the disregards that can apply.

Earnings from self-employment that has ceased

27033 If a person has been engaged in

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

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see DMG 27073 - 27081)¹.

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

Example

James was S/E. He last worked on 11.11.10. His business completely ceased to trade on 11.11.10. He received earnings on that day. He claims JSA on 12.11.10.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11.11.10 are disregarded.

Income derived from business when self-employment has ceased

27034 Where a person has ceased to be a S/E earner the assets of the business may continue to produce income. For example, premises owned by a former shopkeeper may be leased to another person. Such income should be regarded as income derived from capital.

27035 The treatment of that income will depend upon how the capital assets are treated. For example

1. income derived from certain disregarded capital remains income (see DMG Chapter 28) **and**
2. in other cases, income derived from capital remains capital (see DMG Chapter 29).

27036 - 27050

Assessment period for self-employed earners 27051 - 27099

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27051 The normal weekly earnings of a S/E earner should be calculated by using the

1. gross receipts (see DMG 27125) **and**

2. expenses paid out (see DMG 27190)

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

Business trading for less than a year

27052 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹.

1 JSA Regs, reg 95(1)(b); IS (Gen) Regs, reg 30(1)(b)

Example

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

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

Business trading for more than a year

27053 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year¹ (but see DMG 27167 - 27168).

27054 The year does not need to be the year immediately before the claim or the date the claim is looked at. If profit or loss accounts are available for the last trading year the DM can use these as the assessment period. The profit and loss accounts should be converted to a cash flow basis (see DMG 27101 - 27111).

27055 A year means a period of

1. 365 days **or**

2. 366 days if the assessment period includes the February of a leap year.

27056 - 27059

Change likely to affect the normal pattern of trading

27060 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹. The period does not need to be made up of complete weeks.

1 JSA Regs, reg 95(1)(b); IS (Gen) Regs, reg 30(1)(b)

27061 The assessment period should

1. normally start on the date the change affecting the pattern of the business occurred (but see DMG 27064) **and**

2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

27062 The earnings would then be averaged over that period and apportioned on a weekly basis until the figures for the following week or month become available. The assessment period would then be extended. The assessment period would

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

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

The DM should supersede if the new figures affect entitlement to IS or JSA. Where entitlement is not affected, a decision not to supersede should be made if the claimant asked for earnings to be looked at again. For further guidance on supersession including the effective date rule, see DMG Chapter 04.

27063 This procedure should continue until the assessment period has been extended to one year and the earnings can be averaged over that year (see DMG 27053). In most cases this procedure will provide

the most accurate determination of a S/E earners earnings (but see DMG 27064).

Example

Carlo is S/E, he buys and sells Italian wine. On 9.8.10 Carlo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers. On 1.11.10 Carlo claims JSA.

The DM determines

- 1.** Carlo is gainfully employed but not in remunerative work
- 2.** that the receivership is a change that has affected the normal pattern of trading
- 3.** that the assessment period is from 9.8.10 (the date the change affecting the pattern of business occurred) to 31.10.10 (the date that the most recent figures for gross receipts and expenses are available).

The earnings for the assessment period are averaged for that period and apportioned on a weekly basis until 30.11.10 when the figures for the following month become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 9.8.10 to 30.11.10. The earnings for this period are averaged and apportioned on a weekly basis until 31.12.10 when the figures for the following month become available.

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

27064 When considering the assessment period the DM should consider the facts of each case carefully. A period that does not start with the first day of the interruption may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

27065 The DM should be satisfied that any change

- 1.** has affected **or**
- 2.** is likely to affect

the normal pattern of trading.

Example 1

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

The DM determines that

1. there had been a change that had affected the normal pattern of business **and**
2. the assessment period is from the date of the fire up to the week before the JSA claim.

Example 2

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

The DM determines that

1. there had been a change that had affected the normal pattern of business **and**
2. the assessment period starts from the date Omar lost his major customer.

Example 3

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

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

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

Example 4

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

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

27066 - 27068

New businesses

27069 A person may start up a new business

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

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

27070 If the work is not remunerative work no income should be taken into account until the S/E earner starts to receive actual earnings. When the first payment of earnings is received the DM should use the assessment period

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

27071 The assessment period should be extended every week or month until a yearly assessment is possible (see DMG 27062). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see DMG 27072).

Example

Gareth is in receipt of JSA(IB). His benefit week ending day is a Monday. On 6.2.08 he starts work as a S/E pine furniture maker working twelve hours per week.

The DM determines

1. Gareth is not in remunerative work **and**
2. that the assessment period is 5.2.08 - 11.2.08.

The earnings are taken into account for that period up to and including 18.2.08 when the figures for the following week become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 5.2.08 - 18.2.08. The earnings for this period are averaged and apportioned on a weekly basis up to and including 25.2.08 when further figures are available.

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

27072 When determining the assessment period for new businesses the DM should consider the facts of each case carefully. A period that does not start with the first day of self-employment may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

Royalties, copyright payments and Public Lending Right payments

27073 Earnings as described in DMG 27074 paid during an award of benefit have a different assessment period to that in DMG 27051 - 27072.

27074 This paragraph applies to¹

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

2. any payment in respect of any

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

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

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

1 IS (Gen) Regs, reg 30(2A); JSA Regs, reg 95(2A)

27075 Each payment should be taken into account for the number of weeks (including part of a week) calculated by dividing the amount of the payment by

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

2. the correct disregard (see DMG 27470)¹.

1 JSA Regs, reg 95(2), Sch 6 & Sch 6A; IS (Gen) Regs, reg 30(2) & Sch 8

27076 The attribution period should begin¹

1. where JSA or IS is paid in arrears, on the first day of the benefit week in which the payment is received **or**

2. where IS is paid in advance, on the first day of the benefit week

2.1 if the payment was received on that day **or**

2.2 following receipt of the payment, if the payment was not received on the day in **2.1.**

1 JSA Regs, reg 96; IS (Gen) Regs, reg 31; SS (C & P) Regs, reg 26A

Example

Libby is a lone parent in receipt of IS that is payable on a Monday in arrears. She receives royalties of £500 on 15.11.02. Libby has been paid IS to benefit week ending 25.11.02. The payment is taken into account as follows

£

1. current weekly rate = 75.10

2. appropriate earnings = 20.00
disregard

3. total of weekly IS + disregard = 95.10

4. number of weeks is $\frac{500}{95.10} = 5 \frac{24.50}{95.10}$

5. the payment is taken into account for

5.1 five weeks is at £95.10 per week - no IS payable for the period 12.11.02 to 16.12.02 **and**

5.2 one week at £24.50 but £20.00 is disregarded - IS of £70.60 (£75.10 - £4.50 (£24.50 - £20.00)) is payable on 23.12.02.

The overpayment question is referred to the DM.

27077 If at the end of the period calculated under DMG 27075

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

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

the further payment should be treated separately as in DMG 27075. If the period extends beyond that calculated for the first payment, the second payment should be taken into account from the end of that period.

Example

(See the example at DMG 27076).

Libby receives a further payment of royalties of £600 on 5.12.02 that is taken into account as follows

1. number of weeks is $\frac{600}{95.10} = 6 \frac{29.40}{95.10}$

2. the payment is taken into account
for

2.1 six weeks at £95.10 per week (the first three weeks overlap with the last four weeks in DMG 27076) - no IS is payable during the period 3.12.02 to 13.1.03 **and**

2.2 one week at £29.40 but £20.00 is disregarded - IS of £70.70 (£80.10 - £9.40 (£29.40 - £20.00)) is payable on 20.1.03.

27078 - 27079

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

27080 The S/E earner may have to pay expenses on receipt of the royalty, copyright payment or Public Lending Right payment. These expenses are deductible if they are

- 1.** wholly and exclusively for the purpose of that employment **and**
- 2.** paid out in the attribution period of the payment¹.

1 JSA Regs, reg 95(3); reg 101(1)(a); 101(4)(a); IS (Gen) Regs, reg 30(3); reg 38(1)(a); reg 38(3)(a)

Example 1

Dermot writes a book between June and December 2009 and it is on sale from 1.1.10. The first copyright payment is received on 3.6.10. There are no expenses paid out in the attribution period of the payment. The DM decides that no expenses should be deducted from the payment.

Example 2

Seeta writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Seeta's book is published in March 2011 and the first copyright is received on 1.5.11.

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

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

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

27081 The DM should consider deductions for

- 1.** income tax (see DMG 27270 et seq) **and**
- 2.** SS/NI contributions (see DMG 27297 et seq) **and**
- 3.** half of any premiums for personal pensions (see DMG 27326)

from the royalty, copyright payment or Public Lending Right payment¹.

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

1 JSA Regs, 95(3), 101(1)(a) & 101(4)(b) & (c); IS (Gen) Regs, reg 30(3), 38(1)(a) & 38(3)(b) & (c)

27082 - 27099

Calculation of normal weekly earnings 27100 - 27189

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27100 DMG 27101 - 27244 provide guidance on the calculation of earnings of most S/E earners. Specific guidance is given for

1. child minders (see DMG 27350)
2. crofts or small holdings (see DMG 27361)
3. farmers (see DMG 27370)
4. hotels, guest houses, bed and breakfast establishments etc (see DMG 27380)
5. local exchange trading schemes (see DMG 27385)
6. partnerships (see DMG 27400)
7. renting out property (see DMG 27425)
8. seasonally S/E (see DMG 27440)
9. share fishermen (see DMG 27750 et seq)
10. sub-contractors (see DMG 27450)
11. actors and entertainers (see DMG 27452).

Evidence - cash flow

27101 To calculate the amount of earnings the DM will need evidence of

1. the gross receipts (see DMG 27125) **actually received**, not money owed to the business **and**

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

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

27102 On a new or repeat claim to JSA or IS, the onus is on the S/E earner to provide the evidence necessary to support the claim. A claimant who is S/E or whose partner is S/E should be asked to submit details of

1. the business **and**

2. actual gross receipts and expenditure

during the assessment period.

27103 The figures provided in DMG 27102 **2.** should be accepted as accurate unless

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

2. they are unrepresentative of the current trading position.

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

27104

Accounts

27105 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the gross receipts and expenses paid for.

27106 A set of accounts consists of two main statements

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

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

27107 Accounts are prepared using accounting principles. Accounts may include **anticipated** receipts and expenses for the accounting period. The anticipated amounts are not

1. gross receipts as they have not been received by the business **or**

2. allowable expenses as they have not been paid for.

27108 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing

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

27109 The figures provided in DMG 27108 **1.** and **2.** should be accepted as accurate unless

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

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

27110 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example

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

27111 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example

- 1.** the value of stock at the start and end of the accounting period
- 2.** money owed to the business by debtors
- 3.** money owed by the business to creditors
- 4.** depreciation of assets of the business.

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

27112 - 27115

Income tax certificate

27116 The DM should not accept as conclusive evidence of the weekly net profit an

1. income tax certificate **or**

2. accountant's statement of the net profit figure that is acceptable for tax purposes.

Method of calculation

27117 To calculate the earnings of a S/E earner the DM

1. should establish the **gross receipts** of the business during the assessment period (see DMG 27125) **and**

2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see DMG 27206) **and**

3. deduct from any remaining figure amounts for

3.1 notional income tax (see DMG 27270 et seq) **and**

3.2 notional SS contributions (see DMG 27297 et seq) **and**

3.3 half of any premium paid for a personal pension scheme (see DMG 27326) **and**

4. deduct the correct **disregard(s)** (see DMG 27470).

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

27118 The whole process can be summarized as follows

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

the weekly earnings to be taken into account

27119 - 27124

Gross receipts

27125 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt¹. DMG 27167 provides guidance for payments received that relate to a period different to the assessment period.

1 JSA Regs, reg 101(4); IS (Gen) Regs, reg 38(3)

27126 The gross receipts of a business include

- 1.** any payments for goods and services provided (see DMG 27127)
- 2.** earnings payable abroad (see DMG 27128)
- 3.** certain allowances paid to assist in carrying on the business¹ (see DMG 27135)
- 4.** any business subsidies or payments of compensation (see DMG 27138)
- 5.** personal drawings (see DMG 27139)
- 6.** income from letting or sub-letting (see DMG 27154)
- 7.** sale of certain business assets (see DMG 27155)
- 8.** tips and gratuities (see DMG 27156)
- 9.** payments in kind (see DMG 27158)
- 10.** any VAT receipts (see DMG 27160).

1 JSA Regs, reg 100(1) & 19(1)(r); IS (Gen) Regs, reg 37(1); E & T Act 73, s 2;
Enterprise and New Towns (Scotland) Act 90, s 2

Payments received for goods and services provided

27127 All

- 1. cash and**

2. cheque **and**

3. credit card payments

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

Earnings payable abroad

27128 Money that is due to be paid to a business in a country outside the UK should be included as a gross receipt only when it is received by the business, for example when it is paid

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

2. into any business account.

27129 Where the payment is made in a currency other than sterling, any

1. bank charge **or**

2. commission

payable for converting the payment into sterling should be disregarded¹.

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

27130 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

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

Example

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

Gross receipts (including the £1000 received abroad)	= £5000
Deductions for allowable expenses, notional income tax and SS/NI contributions and half of a premium for a personal pension	= £2500
Net profit	= £2500
Divided by the number of weeks in the assessment period	= £48.07 less

Normal earnings disregard	= £5.00 less
Special disregard for earnings abroad (£1000 divided by 52)	= £19.23
Earnings to be taken into account (£48.07 - £5.00 - £19.23)	= £23.84

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

27131 - 27134

Schemes to help with self-employment

27135 An allowance may be payable under certain schemes to assist people to become S/E¹. In a business partnership one or all of the partners may be receiving payments.

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

27136 Any allowance paid into the S/E earner's business bank account during the assessment period should be included in the gross receipts of the business¹.

1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)

27137

Business subsidies or payments of compensation

27138 Some businesses may receive

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

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

Personal drawings

27139 A S/E person may draw money from the business for day to day expenses. These drawings, known as personal drawings, are in anticipation of profits or business income and should be included as part of the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.

27140 Where drawings are made in excess of the profits of the business they should be treated as

capital in the hands of the claimant. Money taken from the business in excess of profits comes from

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

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

27141 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the gross receipt. If it has, the amount of the drawings should be added back to the amount of the gross receipts.

27142 A S/E person who is a sole owner of, or a partner in, a business may pay interest to the business on money taken as personal drawings. These payments should be included in the gross receipts of the business.

Example 1

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

The DM determines

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

Example 2

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

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

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

The DM determines

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

Income from letting or sub-letting

27154 Any income received from letting or sub-letting of business premises or land should be included in the gross receipts of the business. Any expense connected with the letting should be included with other business expenses.

Sale of certain business assets

27155 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business¹.

1 R(FC) 1/97

Example

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

Tips and gratuities

27156 Tips or gratuities received in response to the service provided by a S/E earner, for example as a hairdresser, taxi driver or coach driver, should be included in the gross receipts of the business.

27157 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example, on personal grounds should not be included in the gross receipts of the business.

Payments in kind

27158 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the gross receipts of the business.

Example

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

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

27159

VAT

27160 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC

showing amounts of

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

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

27161 Where

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

the difference should be included in the gross receipts of the business. This is the amount that DMG 27160 **2.** exceeds DMG 27160 **1.**.

Note: VAT can also be an allowable expense of the business, see DMG 27211.

27162 - 27165

Capital receipts

27166 Capital receipts do **not** form part of the gross receipts of the business¹. For example,

- 1.** loans
- 2.** injections of capital
- 3.** grants from the Prince's Trust **and**
- 4.** proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see DMG 27155).

1 R(FC) 1/97

Income for a different period

27167 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

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

1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)

27168 It is not intended that every payment is assessed individually over a period different to the

assessment period. This should be the exception rather than the rule. So, any payment for a period

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

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

Example

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

The DM considers that

1. the payment should be multiplied by 13 and divided by 26 **and**

2. the resulting sum should be added to any other gross receipts of the business.

27169 - 27189

Business expenses 27190 - 27259

[Conditions for deducting business expenses](#) 27190 - 27205

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Conditions for deducting business expenses

27190 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that¹

- 1.** was paid out wholly and exclusively for the purposes of the business² **and**
- 2.** was paid out during the assessment period **and**
- 3.** was reasonably incurred³ (see DMG 27198) **and**
- 4.** is an allowable expense (see DMG 27206).

1 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a); 2 JSA Regs, reg 101(9)(a);
IS (Gen) Regs, reg 38(8)(a); 3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)

Wholly and exclusively

27191 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business¹. Any such payment should be deducted in full, subject to DMG 27190 **2. - 4.**

1 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a)

Expenses for both business and private use

27192 If expenditure is for both business and private use, for example

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

the DM should apportion the cost. Only the portion of the expenditure that is wholly attributable to the business can be deducted.

27193 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

27194 The DM should normally accept the evidence of

1. the S/E earner **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax and contribution purposes¹.

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

27195 Examples of expenses that may be apportioned between private and business use are¹

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

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

Example 1

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

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

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

Example 2

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

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

Example 3

Serena is a dressmaker who works at home using an electric sewing machine. She uses an electric fire to

heat the room when working. A quarterly electric bill is included as a business expense but no breakdown is given of business and private use.

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

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

27196 - 27197

Reasonably incurred

27198 The term “reasonably incurred” is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

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

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

27199 To determine what is reasonable the DM should have regard to the circumstances of each individual’s case¹, including the level of the person’s earnings².

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

27200 The DM may have to consider if it is reasonable for a person to reduce the hours worked to below the remunerative work level by employing someone to do part of the work of the business. To determine if this expense is reasonably incurred the DM should consider all of the circumstances of the individual case including if the

1. person is capable of doing the work **and**
2. evidence suggests that the person is employing another so that the remunerative work condition is satisfied and the person can claim JSA or IS.

The DM may conclude that the expense of employing another person is not reasonably incurred,

therefore cannot be deducted from the gross receipts.

27201 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive¹.

1 R(G) 7/62

27202 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

27203 - 27205

Allowable business expenses

27206 If the conditions in DMG 27190 **1.** - **3.** are met, all day to day expenses of a business are allowable, including¹

1. accountancy charges

2. advertising costs

3. certain capital repayments on a loan used to²

3.1 replace an item of equipment or machinery that has

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

3.1.b become outdated **or**

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

4. cleaning of business premises

5. employee's wages before any deductions, including wages payable to a partner, but not a business partner (see DMG 27210)

6. employer's contribution to an employee's pension scheme

7. employer's secondary Class 1 contributions

8. heating and lighting

9. hire or rental costs, but not any capital or purchase elements

10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair

exceeds any sum paid or due to be paid under an insurance policy for that repair³

- 11.** interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see **3**.⁴
- 12.** legal fees for the running of the business, but not with the setting up or expansion of the business
- 13.** payment in kind for work done for the business - the monetary value is allowed
- 14.** rent, council tax, water charges and insurance premiums on the business premises
- 15.** stationery
- 16.** stock purchases
- 17.** sundries, if the DM is satisfied that the expenses are allowable
- 18.** telephone, fax or telex
- 19.** transport, for example business use of the car including petrol costs, road fund license, insurance and servicing
- 20.** VAT (see DMG 27211)⁵.

This list is not exhaustive.

1 JSA Regs, reg 101(4)(a), reg 101 (5), reg 101(6), reg 101(8); reg 163(3); IS (Gen) Regs, reg 38(3)(a), reg 38(4), reg 38(5), reg 38(7); 2 JSA Regs, reg 101(7); reg 163(3); IS (Gen) Regs, reg 38(6); 3 JSA Regs, reg 101(9)(b)(ii); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(ii); 4 JSA Regs, reg 101(9)(b)(iii); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(iii); 5 JSA Regs, reg 101(9)(b)(i); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(i)

27207 For the purpose of DMG 27206 **3.2** an asset includes buildings, plant machinery, vehicles or equipment.

Example 1

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

The DM determines that

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

Example 2

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

The DM determines that

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

Example 3

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

The DM determines that

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

27208 - 27209

Partner's earnings from the business

27210 The earnings of a partner (but not a business partner) who is employed in the business should be allowed as a business expense (see DMG 27206 **5.**). The wage should not be added back to the business accounts to offset any loss¹.

1 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11)

Example

Rose runs a dress-making business from home. She is in receipt of JSA(IB). Her business is making a loss of £50 per week. The accounts show that Rose pays her husband £45 per week for book keeping.

For JSA purposes their income is

Rose NIL

husband £45

total £45 per week.

VAT

27211 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

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

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

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

27212 Where

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

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

the difference should be taken into account as an expense¹. This is the amount that DMG 27211 **1.** exceeds DMG 27211 **2.**.

Note: VAT can also be a gross receipt of the business (see DMG 27161).

1 JSA Regs, reg 101(9)(b)(i); IS (Gen) Regs, reg 38(8)(b)(i)

27213

Expenditure for a different period

27214 Any business expenditure paid out in the assessment period **may** be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

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

1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)

27215 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

27216 Any expense for a period

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

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

Example

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

The DM determines

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

27217 - 27219

Expenses not allowed

27220 Business expenses that should not be allowed are

- 1.** those expenses where the conditions for deducting a business expense are not met (see DMG 27190)
- 2.** capital expenditure
- 3.** depreciation of capital assets
- 4.** expenses used, or intended to be used, in setting up or expanding a business
- 5.** any loss incurred
 - 5.1** before the start of the assessment period¹ **or**
 - 5.2** in any other employment²
- 6.** repayment of capital on loans except where DMG 27206 **3.** applies
- 7.** business entertainment expenses
- 8.** losses incurred on the disposal of a capital asset
- 9.** payments into a contingency fund to safeguard against future bad debts³
- 10.** personal drawings on income and capital
- 11.** money on goods used for personal consumption.

1 JSA Regs, reg 101(6); IS (Gen) Regs, reg 38(5); 2 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11);

3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)

Capital expenditure

27221 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. In line with HMRC practise, fixed assets include items such as tools, equipment, machinery and vehicles used in the business. The DM should not allow capital expenditure as a business expense¹.

1 JSA Regs, reg 101(6)(a); IS (Gen) Regs, reg 38(5)(a)

Example

Paul is a mobile hairdresser. He buys a replacement car with cash. The replacement car is a fixed asset of the business. The money used to buy it is capital expenditure. The DM does not allow a deduction. But if Paul had taken out a loan to buy the car, repayments of capital and interest would have been allowed as expenses (see DMG 27206).

Depreciation

27222 Depreciation of a capital, or fixed, asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear, during the assessment period.

27223 If there are fixed assets, accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense¹.

1 JSA Regs, reg 101(6)(b); IS (Gen) Regs, reg 38(5)(b)

27224 - 27225

Sums used in setting up or expanding a business

27226 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business¹. This applies to expenditure on, for example

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

Note: If a business loan has been obtained the DM should consider interest on the loan (see DMG 27206 11.) and allow as an expense other items that are ongoing regular expenses.

1 JSA Regs, reg 101(6)(c); IS (Gen) Regs, reg 38(5)(c)

Loss incurred before the beginning of the assessment period

27227 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period¹.

1 JSA Regs, reg 101(6)(d); IS (Gen) Regs, reg 38(5)(d)

27228 - 27229

Loss incurred in any other employment

27230 A person may

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

The earnings from each employment should be assessed separately.

27231 Any business loss in one employment should **not** be offset against the earnings of another employment¹. Also, any loss made by one member of the family should not be offset against the earnings of another member.

1 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11)

Example

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

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

Repayment of capital on business loans

27232 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset¹ (see DMG 27206 **3.**).

1 JSA Regs, reg 101(6)(e); IS (Gen) Regs, reg 38(5)(e)

27233 - 27234

Business entertainment

27235 Any expense claimed for providing business entertainment, for example

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

should not be allowed as a business expense¹.

Loss on disposal of a capital asset

27236 When an asset is sold for less than the value shown in the books of the business the difference is referred to as the “loss on disposal” and is accepted as a loss for accounting purposes. But the DM should not

- 1.** allow the loss as an expense **or**
- 2.** include the proceeds from the sale of the asset as a gross receipt of the business (see DMG 27155).

Payments into contingency funds

27237 Any payments into a contingency fund set up to safeguard against future bad debts should not be allowed as a business expense. This is an allocation of funds rather than an expense.

27238 - 27239

Personal drawings

27240 Personal drawings may be shown as a

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

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

Personal consumption

27241 The DM should not allow any money spent on goods for personal consumption as a business expense.

27242 Personal consumption is not limited to food products. It could include a range of items, for example

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

27243 The DM should not assume

- 1.** personal consumption **or**

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

27244 If the business is one where personal consumption is likely to arise, for example

1. a farmer **or**

2. a grocer

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

27245 - 27259

Calculation of income tax, contributions and qualifying premium

27260 - 27349

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Introduction

27260 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 27270 et seq) **and**
- 2.** Class 2 contributions (see DMG 27297 et seq) **and**
- 3.** Class 4 contributions (see DMG 27316 et seq) **and**
- 4.** half of any premium for a personal pension scheme (see DMG 27326).

1 JSA Regs, reg 101(4)(b) & (c); IS (Gen) Regs, reg 38(3)(b) & (c)

27261 The DM should base deductions for DMG 27260 **1.** - **3.** on the chargeable income for the assessment period.

27262 - 27265

Chargeable income

27266 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 JSA Regs, reg 102(5); IS (Gen) Regs, reg 39(3); 2 JSA Regs, reg 102(5)(b); IS (Gen) Regs, reg 39(3)(b);

3 JSA Regs, reg 101(5); IS (Gen) Regs, reg 38(4); 4 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a)

27267 The calculation at DMG 27266 **1.** - **3.** should not include any deductions for

1. notional income tax **or**

2. SS/NI contributions **or**

3. premiums for a personal pension scheme.

27268 - 27269

Deduction for notional income tax

27270 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.

Note: from April 2016 the Scottish Government can set its own rate of income tax¹. DMs should ensure that the correct tax rate is used. See appendix 1 for more details.

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

Example

Andrew makes a claim for IS in June 2013. The DM accepts as evidence of his earnings his cash flow accounts up to the tax year ending the previous April. The tax rates and allowances used to calculate the notional tax deduction are those for the previous tax year.

Tax allowances

27271 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.

27272 - 27273

Personal allowance

27274 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (see Appendix 1 to this Chapter), but for JSA and IS purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

27275 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.

27276 - 27287

Calculation of deduction

27288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should¹

1. establish the chargeable income

2. establish the personal allowance appropriate to the S/E earner. If it

2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct
or

2.2 is less than the chargeable income, go to **3.**

3. deduct the personal allowance (see Appendix 1 to this Chapter)

3.1 in full if the assessment period is a year **or**

3.2 on a pro rata basis if the assessment period is less than a year

4. multiply the first £34,800 (08/09 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (see Appendix 1 to this Chapter)

5. round up where necessary.

Note 1: Prior to 2008/2009 tax year there were 2 rates of tax, a starting rate and a basic rate. (See Example 2 below and Appendix 1 to this Chapter).

Note 2: From April 2016 the Scottish Government can set its own rate of income tax² – DMs should ensure that the correct tax rate is used. See appendix 1 for more details.

1 JSA Regs, reg 102(1)(a) & (b) & (4); IS (Gen) Regs, reg 39(1);

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

Example 1

Sam is a married man aged 45. He works P/T as a S/E gardener and claims JSA. The DM determines that the assessment period is for a year and calculates the chargeable income for the assessment period as £15,500.

The DM calculates the notional income tax as follows:

	£	
Chargeable income	- 15,500.00	less
Claimant's personal allowance (08/09 rates)	- <u>6,035.00</u>	
	9,465.00	
£9,465.00 at 20%	= 1,893.00	
Total notional income tax	= 1,893.00	

Example 2

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

	£	
Chargeable income	- 15,500.00	less
Claimant's personal allowance	- 1,183.00	
(£4,745 (04/05 rates) x 91/365)	- <u> </u>	
	= 14,317.00	
The first £503.62 (£2,020 x 91/365) at 10%	= 50.37	
The remainder (£13,813.38) at 22%	+ 3,038.95	

Total notional income tax = **3,089.32**

27289 - 27296

Deduction for notional Class 2 contributions

27297 A Class 2 contribution is a flat rate contribution. The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. The Class 2 rates are in Appendix 2 to this Chapter.

Liability for a Class 2 contribution

27298 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small profits threshold (formerly the small earnings exception level). See DMG Appendix 2 for the applicable rates.

27299 The DM should only consider the chargeable income when deciding if a deduction for Class 2 should be made. If appropriate, a deduction should still be made even if the claimant holds a small earnings exception certificate.

27300 - 27303

Calculation of the Class 2 contribution

27304 The deduction for the notional Class 2 contribution should be based on the rate of Class 2 contributions and small profits threshold current at the time of the claim only¹. Take no account of any increases in the contribution rates or small profits threshold. To calculate the amount of the deduction the DM should

- 1.** establish the chargeable income² **and**
- 2.** determine if a deduction should not be made on the grounds of small earnings **and**
- 3.** multiply the weekly rate (see Appendix 2 to this Chapter) by the number of weeks in the assessment period.

1 JSA Regs, reg 102(3)(a); IS (Gen) Regs, reg 39(2)(a);

2 JSA Regs, reg 102(5); IS (Gen) Regs, reg 39(3)

27305 - 27315

Deduction for notional Class 4 contributions

27316 A Class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels (see Appendix 2 to this Chapter). These payments are in addition to Class 2 contributions.

27317

Calculation of Class 4 deduction

27318 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the date of claim only¹. Take no account of any increases in the percentage rate and lower and upper levels. The DM should

1. establish the chargeable income **and**
2. decide the number of weeks in the assessment period (if there are less than 52 weeks in the assessment period the DM should calculate **3.** on a pro rata basis) **and**
3. deduct the LEL from chargeable income up to the UEL **and**
4. multiply the remaining figure by the percentage rate to give the notional contribution figure. No account should be taken of evidence of actual payments made or due.

The Class 4 rates are in Appendix 2 to this Chapter.

1 JSA Regs, reg 102(3)(b); IS (Gen) Regs, reg 39(2)(b)

Example 1

Assessment period is 52 weeks

Chargeable income is £7,590.85

Class 4 - Lower level is £4,745 (04/05 rates)
 - Upper level is £31,720

Chargeable income 7,590.85 **less**

lower level 4,745

Profit 2,845.85 x 8% = 227.67

Notional Class 4 contributions for 52 weeks is

£227.67.

Example 2

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

Chargeable income for this period is £7,100.00

Class 4 - lower level is $\frac{4,745 \times 273}{365} = 3,549.00$

Chargeable income 7,100.00 **less**

lower level 3,549.00

Profit 3,551.00 x 8% = 284.08

Notional Class 4 contributions for 39 weeks is £284.08.

27319 - 27324

Premiums for personal pension schemes

27325 When calculating S/E earnings the DM should deduct from the chargeable income half of any premium for a personal pension scheme for the relevant assessment period¹.

1 JSA Regs, reg 95; IS (Gen) Regs, reg 30

Example

Sanjay is in receipt of IS, his wife Gita runs a small business from home. Her earnings are calculated over a period of a year. Gita makes contributions under a personal pension scheme on a monthly basis. The relevant assessment period is a year.

The DM should calculate the contributions on a yearly basis and deduct half of this sum from the net profit.

Personal pensions

27326 Personal pension schemes¹ are

1. a scheme under certain pension and taxation legislation² **or**

2. an annuity contract or trust scheme under certain taxation legislation³.

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

1 JS Act, s 35; IS (Gen) Regs, reg 2(1); 2 Pensions Schemes Act 93, s 1;
Income and Corporation Taxes Act 1988, Chapter 4 of Part 14 & Finance Act 2004, Sch 36, para 1(1)(g);

3 Income and Corporation Taxes Act 1988, s 620 or 621;
Finance Act 2004, Sch 36, para 1(1)(f) & Income and Corporation Taxes Act 1988, s 62(3)

27327 Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income to be paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

27328 - 27349

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Child minders

27350 A child minder is a person who engages in a contract for services to care for another person's child in return for payment. Most child minders

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

27351 To calculate a child minder's normal weekly earnings the DM should

1. determine the assessment period in the normal way **and**
2. calculate the gross receipts for that period **and**
3. calculate the chargeable income as **one third** of the gross receipts during the assessment period¹ but make no deductions for business expenses **and**

4. calculate a deduction for

4.1 income tax **and**

4.2 SS/NI contributions **and**

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

5. deduct any disregard.

Note: See DMG 20466 for the remunerative work rules for childminders.

1 JSA Regs, reg 102(5)(b); IS (Gen) Regs, reg 39(3)(b)

Example

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

The DM determines

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

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

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

27352 - 27360

Crofts or small holdings

27361 Earnings from a croft or small holding should be decided on the same basis as a small business.

The person should produce an annual statement giving details of

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

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

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

27362 - 27369

Farmers

27370 A farmer in need of financial assistance may first seek advice from a surveyor, land agent, valuer

or some other similar professional to ensure he is taking advantage of any schemes or subsidies, such as those administered by the Department for Environment, Food and Rural Affairs Rural Payments Agency, that may be available.

27371 Department for Environment Food and Rural Affairs are unable to supply opinions about the amount of work involved in particular farms or their likely annual returns. However, DMs may consult the Department for Environment, Food and Rural Affairs website (www.defra.gov.uk - Economics and Statistics page) for information about total farm income for the type of enterprise in question.

27372 - 27379

Hotels, guest houses, bed and breakfast establishments

27380 The DM should apply the normal remunerative work rules when considering a claim for JSA or IS involving a person running a hotel, guest house, lodging house or bed and breakfast establishment.

27381 The DM should note that payments received for providing BL accommodation (see DMG 27014) are not earnings¹. These payments are income other than earnings and should be treated as follows

- 1.** if the BL accommodation is provided in the dwelling occupied as the home (see DMG 28181 et seq) **or**
- 2.** if the BL accommodation is not being provided in the dwelling occupied as the home, the payments should be taken into account as income other than earnings subject to a disregard for any income tax paid on that income².

1 JSA Regs, reg 100(2)(a); IS (Gen) Regs, reg 37(2)(a); 2 JSA Regs, Sch 7, para 1;
IS (Gen) Regs, Sch 9, para 1

Bars and restaurants in hotels, guest houses

27382 Income from bars and restaurants where services are provided that are not included in the BL charge should be treated as earnings from self-employment. The DM should determine the assessment period and calculate the gross receipts and allowable expenses in the normal way.

27383 - 27384

Local exchange trading systems

27385 LETS are associations that allow participants to exchange goods and services with others in the community.

27386 LETS members list their offers of, and requests for, goods and services in a directory and then trade them using a system of credits. These can be given many different names such as

• bobbins

- brads

- newberries

- beacons

- acorns.

Participating in a local exchange trading system scheme

27387 Participating in a LETS scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

27388 For both JSA and IS, DMs should consider whether a LETS participant is engaged in remunerative work (see DMG Chapter 20).

27389 In a claim for JSA, the DM should also consider whether the labour market tests continue to be satisfied (see DMG Chapter 21).

Local exchange trading credits

27390 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. Credits are considered taxable income by HMRC.

27391 Credits can be treated as

- 1.** capital **or**

- 2.** earnings

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

27392 If a person

- 1.** undertakes occasional, personal transactions for credits, for example selling an item of furniture, the credits received should be treated as capital **and**

- 2.** is gainfully employed as a S/E earner and receives credits as payment for services provided, those credits should be included in the gross receipts of the business and are subject to the appropriate disregard.

27393 The value of credits is equivalent to the number of credits awarded for the particular goods or services at the relevant exchange rate.

27394 The DM should firstly find out whether the organisers of the scheme have equated the credits to a sterling equivalent. This may have been done for HMRC or VAT purposes. If so, that equivalent can be used as the exchange rate.

27395 If a sterling equivalent is not available the DM should consider the question based on the circumstances of each case, including

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

27396 - 27399

Partnerships

27400 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

27401 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners¹.

1 Partnership Act 1890, s 24

27402 The conditions under which a partnership is formed, operates or ends, are governed by the terms of a partnership deed or agreement together with the provisions of the Partnership Act 1890. For most purposes, the terms of the deed or agreement prevail over the provisions of the Act. Where a deed or agreement exists, it becomes a legal document and its interpretation is a matter of law.

27403 The legal status of a partnership should not be confused with that of a company, in that a partnership has no legal personality in law. At any one time the assets and liabilities of the partnership are (subject to the partnership deed or agreement and the Partnership Act 1890), the joint and several assets and liabilities of the partners.

Note: Scots Law on the legal status of a partnership differs. In Scotland a partnership is a separate legal entity¹, distinct from the partners who carry out its business. DMs should refer any cases to DMA Leeds if further guidance is needed.

1 Partnership Act 1890, s 4(2)

27404 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or Partnership Act 1890 may continue to impose rights and obligations on the parties

following dissolution, providing further time for the winding up of its affairs. Further delays may result from legal challenges concerning the partnership's affairs.

27405 Where a partnership ends and the claimant has finished employment in the business, a reasonable period of time is allowed for the claimant to dispose of any assets before they are regarded as capital for benefit purposes. In considering that period of time, regard should be had to any legal obligations and restrictions imposed by the partnership deed or the Partnership Act 1890.

27406 The sale of assets may sometimes provide an income receipt as opposed to a capital receipt (e.g. the sale of "work in hand" or "stock in trade" might well be considered as resulting in an income receipt and not represent capital). Any such decisions should be based on the principles of commercial accountancy. The decision would need to reflect the approach taken by an accountant or HMRC to such questions.

Calculation of a business partner's normal weekly earnings

27407 Before calculating a partner's share of the net profit of the business, the DM should ensure that the gross receipts include the following for **all** partners

- 1.** allowances from schemes to help with self-employment
- 2.** personal drawings
- 3.** expenses covering business and private use.

27408 To calculate the normal weekly earnings of a business partner¹, the DM should determine the assessment period **and**

- 1.** total the gross receipts of the whole business **and**
- 2.** deduct any allowable expenses incurred by the whole business **and**
- 3.** calculate the partner's share of the resulting "net profit"². The partner's share will be
 - 3.1** the share set out in the deed of partnership, if there is one **or**
 - 3.2** the shares agreed in an express or implied agreement between the partners **or**
 - 3.3** an equal share³ if neither **3.1** nor **3.2** apply, for example, if there are four partners, each partner's share is 25% **and**
- 4.** deduct from **3.** an amount for
 - 4.1** income tax **and**
 - 4.2** SS/Nl contributions

calculated on the amount at **3. and**

5. deduct half of any premium for a personal pension scheme **and**

6. deduct any disregard.

1 JSA Regs, reg 101; IS (Gen) Regs, reg 38; 2 JSA Regs, reg 101(5); IS (Gen) Regs, reg 38(4);
3 Partnership Act 1890, s 24

Example 1

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

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

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

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

Example 2

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

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

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

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

27409

Salaried partners

27410 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ **or**

2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

27411 The DM should

1. consider the facts of each case **and**

2. examine the relationship between the person and the other parties

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

27412 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

1. calculate the chargeable income **and**

2. deduct tax, contributions and any premiums for a personal pension scheme

from the partner's share of the chargeable income.

27413 - 27424

Renting out property as a business

27425 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

27426 A person who

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

is not conducting a business. The property is primarily an investment. See DMG Chapter 28 for the treatment of rental income.

Example

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

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

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

27427 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

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

are factors that need to be considered.

27428 If the DM determines that a person is conducting a business from renting out properties, the income, that is the rent, should not be treated as capital. The income has not been obtained from capital, but from the person's business. The property was used as an asset. The rent is a gross receipt of the business.

Example

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

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

The DM determines that Michael is a S/E earner and that all of the properties are business assets that can be disregarded¹. The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

1 JSA Regs, Sch 8, para 11; IS (Gen) Regs, Sch 10, para 6

27429 - 27439

Seasonally self-employed

27440 If a S/E earner is seasonally S/E the DM should consider if the S/E earner is in remunerative work (see DMG 20339). If not, the DM should

- 1.** consider the guidance at DMG 27020 - 27023 **and**
- 2.** determine if the S/E earner remains gainfully employed as a S/E earner.

Example

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

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

The DM considers the guidance at DMG 27020 - 27023 and decides, in this case, that Shaun remains gainfully employed as a S/E earner. As there had been no changes that had affected the normal pattern of trading the DM determines that the assessment period for the earnings should be one year.

27441 - 27449

Sub-contractors

27450 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

Example

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

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

27451 If a S/E sub-contractor claims JSA or IS the DM should consider

- 1.** the guidance at DMG 27020 - 27023 **and**
- 2.** if the S/E sub-contractor remains gainfully employed as a S/E earner.

Example

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

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

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Stephen remains gainfully employed as a S/E earner.

Actors and entertainers

27452 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

27453 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed

earner at the same time as his overall self-employment.

27454 The fact that an actor or entertainer has periods of employment during which class 1 SS contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to IS or JSA to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

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

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

Example 1

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

- 1.** decides that the claimant is gainfully employed as a S/E earner (see DMG 27020 - 27023)
- 2.** considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fell to be taken into account with her other earnings from self-employment
- 3.** decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

Example 2

Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as

an employed earner, employed under a contract of service, and paid class 1 SS contributions.

The DM decides that Craig's employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

27455 - 27469

Disregard of earnings from self-employment 27470 - 27476

[Earnings from self-employment that has ceased](#) 27471

[Earnings payable abroad](#) 27472 - 27474

[Earnings paid in a foreign currency](#) 27475

[Earnings disregard](#) 27476

27470 The following disregards should be applied to the net profit of a S/E earner.

Earnings from self-employment that has ceased

27471 If a person has been engaged in

1. remunerative work as a S/E earner **or**

2. P/T self-employment

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see DMG 27073 - 27081)¹.

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

Example

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

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

Earnings payable abroad

27472 Money that is paid to the business in a country outside the UK should be treated as a gross receipt if it is received by the business. For example, when it is paid

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

2. into any business bank account.

27473 Any gross receipts that are received by the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

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

Example

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

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

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

27474

Earnings paid in a foreign currency

27475 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments.

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

Earnings disregard

27476 The relevant earnings disregard (see DMG Chapter 26) should be applied.

Self-employment route 27477 - 27497

[Definition - IS 27477](#)

[Definition - JSA 27478](#)

[Receipts - trading whilst on the self-employment route 27479](#)

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[Income - money in the special account 27485 - 27491](#)

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Definition - IS

27477 Self-employment route means¹ assistance in pursuing S/E earner's employment whilst participating in

1. an EZ programme **or**
2. a programme provided or arrangements made under specified legislation².

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

2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

Definition - JSA

27478 Self-employment route means¹ assistance in pursuing S/E earner's employment whilst participating in

1. an EZ programme **or**
2. a programme provided or arrangements made under specified legislation² **or**
3. a scheme under prescribed legislation³.

1 JSA Regs, reg 1(3); 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2;

3 JSA (SAPOE) Regs, reg 3

Receipts - trading whilst on the self-employment route

27479 Gross receipts from trading whilst on any of the schemes or activities falling within the definition of the self-employment route (see DMG 27477 - 27478) are

- 1.** not earnings, earnings from self-employment or income other than earnings¹ **and**
- 2.** paid into a special account² (see DMG 27481 - 27483) **and**
- 3.** taken into account in a certain way when working out IS and JSA³ (see DMG 27477 - 27497).

1 JSA Regs, reg 88A; IS (Gen) Regs, reg 23A; 2 JSA Regs, reg 102A; IS (Gen) Regs, reg 39A;
3 JSA Regs, reg 102B&C; IS (Gen) Regs, reg 39 B&C

Trading after the self-employment route ends

27480 Gross receipts received after the self-employment route ends are earnings from employment as a S/E earner¹. This is because a person is no longer treated as not employed after the self-employment route ends. Do not take into account the

- 1.** period of training **or**
- 2.** gross receipts received

whilst on the self-employment route when working out those earnings.

1 IS (Gen) Regs, reg 37; JSA Regs, reg 100

Example

Sinead starts trading from 1 December as a freelance journalist whilst on the self-employment route. She continues to trade after the self-employment route ends on 30 May. She is entitled to JSA from 31 May because she is working on average for less than 16 hours a week. The DM decides

- 1.** Sinead is in employment as a S/E earner from 31 May **and**
- 2.** the assessment period for working out earnings from that employment starts on 31 May **and**
- 3.** the earnings should be worked out in accordance with DMG 27100 et seq **and**
- 4.** gross receipts from trading whilst on the self-employment route should be worked out in accordance with DMG 27477 - 27497.

Special account

27481 Gross receipts from trading whilst on the self-employment route are paid into a special account¹. The special account is in the names of the person providing the self-employment route and the person who is on it. Both of them have to authorize withdrawals from the account.

1 IS (Gen) Regs, reg 39A; JSA Regs, reg 102A

27482 Withdrawals from the account are only allowed to meet the expenses of trading. Withdrawals are not allowed to meet the personal expenses of the person who is on the self-employment route.

27483 The amount in the account at the end of the last day of the self-employment route is paid to the claimant. The date the amount is due depends on whether the person is entitled to IS or JSA within a 13 week period after the self employment route ends.

Date payment from special account is due to be paid

27484 The amount in the special account at the end of the last day a person is on the self-employment route is due to be paid immediately after

1. the self-employment route ends if the person is not entitled to IS or JSA immediately after the self-employment route ends **or**
2. entitlement to IS or JSA ends if entitlement ends within a period of 13 weeks after the self-employment route ends starting with the day after the self employment route ends **or**
3. a period of 13 weeks starting with the day after the self-employment route ends if the person is entitled to IS or JSA throughout that period.

Example 1

Charles starts trading as a window cleaner whilst on the self-employment route. He continues to trade after the self-employment route ends. The self-employment route ends on 25 July. He is not entitled to IS or JSA after the self-employment route ends because he is in remunerative work. Money in the special account at the end of the last day on the self-employment route is due to be paid on 26 July.

Example 2

Anwara starts trading as a designer of jewellery whilst on the self-employment route. She continues to trade after the self-employment route ends on 19 September working ten hours a week on average. Her husband is claiming IS for himself, Anwara and their children. Money in the special account at the end of the last day on the self-employment route is due to be paid on 20 September because Anwara is not entitled to IS or JSA as her husband is getting IS for her.

Example 3

Gemma starts trading as a computer consultant whilst on the self-employment route. She is entitled to JSA after the self-employment route ends on 28 February because she works less than 16 hours a week as a computer consultant. Her business picks up and she starts working 18 hours a week on average. The DM decides that Gemma is not entitled to JSA from 1 April because she is in remunerative work. Money in the special account at the end of the last day on the self-employment route is due to be paid on 1 April because

1. 1 April is the day after entitlement to JSA ends **and**

2. entitlement to JSA ends within the period from 1 March, the day after the self-employment route ends to 30 May which is 13 weeks after the self-employment route ends.

Example 4

Sean starts trading as a windscreen fitter whilst on the self-employment route. He is entitled to JSA after the self-employment route ends on 30 May because he works less than 16 hours a week. Money in the special account at the end of the last day on the self-employment route is due to be paid on 30 August because that is the day immediately after a period of 13 weeks, starting with the day after the self-employment route ends.

Income - money in the special account

27485 Income paid to people who are on the self-employment route will be subject to special rules as to its calculation and the date that it is taken into account and treated as paid.

Date payment treated as paid

27486 The date on which payment of money in the special account at the end of the last day on the self-employment route is treated as paid depends on whether or not it is due to be paid during a benefit week. It is treated as paid on the first day of the benefit week if it is due to be paid in that week¹.

1 IS (Gen) Regs, reg 39C(3)(b); JSA Regs, reg 102C(3)(b)

Example

Martin has been continuously in receipt of JSA since the self-employment route ended on 5 February. His BWE is Wednesday. Money in the special account is due to be paid on 8 May which is during a benefit week. The payment is treated as paid on Thursday, 7 May, because that is the first day of the benefit week.

27487 For IS, if it is not due to be paid during a benefit week, it is treated as paid on the day of the week which corresponds to the first day of the benefit week for the first claim for IS made after the self-employment route ends by the

1. person **or**

2. partner of the person

who was on the self-employment route¹. See example at DMG 27486.

1 IS (Gen) Regs, reg 39C(3)(a)

27488 For JSA, if it is not due to be paid during a benefit week, it is treated as paid on the day of the week which corresponds to the first day of the benefit week for the first claim for JSA made after the self-employment route ends by the

1. person or

2. partner of the person

who was on the self-employment route¹.

1 JSA Regs, reg 102C(3)(a)

Example

Ron's wife Pamela was on the self-employment route. The self-employment route ended on 3 June. Payment of money in the special account was due to be paid on 4 June. Neither Ron or Pamela were in receipt of IS or JSA when the payment was due. So, payment was not due during a benefit week.

Benefit is subsequently claimed for the couple as follows

Pamela claims IS on 28 June; her BWE is Wednesday,

Ron claims JSA on 19 July; his BWE is Thursday,

Ron claims IS on 23 August; his BWE is Monday,

Pamela claims JSA on 13 September; her BWE is Tuesday.

The payment of money in the special account is treated as paid on

- 4 June for the claim made for IS by Pamela on 28 June because 4 June is a Thursday and that day corresponds with the first day of the benefit week for that claim
- 5 June for the claim made for JSA by Ron on 19 July because 5 June is a Friday and that day corresponds with the first day of the benefit week for that claim
- 4 June for the claim made for IS by Ron on 23 August because 4 June is a Thursday and that day corresponds with the first day of the benefit week for the first claim made for IS after the self-employment route ended

• 5 June for the claim made for JSA by Pamela on 13 September because 5 June is a Friday and that day corresponds with the first day of the benefit week for the first claim made for JSA after the self-employment route ended.

Period payment taken into account

27489 The period over which the payment of money in the special account is taken into account is equal in length to the period the person was on the self-employment route. The period starts with the date the payment is treated as paid¹.

1 IS (Gen) Regs, reg 39C(2); JSA Regs, reg 102C(2)

Example

Grace was on the self-employment route from 3 August to and including 29 January, 180 days. The money in the special account is due to be paid on 1 May. Her BWE is Thursday. The payment is treated as paid on 30 April. The payment is taken into account from 30 April to and including 26 October because 26 October is 180 days from 30 April which is the date the period starts.

Amount taken into account

27490 The amount taken into account is the amount in the account at the end of the last day on the self-employment route less

1. a deduction for income tax **and**
2. certain disregards¹.

The amount is apportioned equally over the whole of the period the payment is taken into account² (see DMG 27489).

1 IS (Gen) Regs, reg 39C(1); JSA Regs, reg 102C(1); 2 IS (Gen) Regs, reg 39C(2); JSA Regs, reg 102C(2)

Fractions

27491 Fractions of a penny are rounded up or down depending on whether it is to a person's advantage¹. It is an advantage to have less income taken into account.

1 IS (Gen) Regs, reg 27; JSA Regs, reg 92

Deduction for income tax

27492 A deduction for income tax is worked out on the amount of chargeable income and as if that income is the only income to be taxed¹. Chargeable income is the amount in the special account at the end of the last day on the self-employment route².

1 IS (Gen) Regs, reg 39D(1)(a); JSA Regs, reg 102D(1)(a); 2 IS (Gen) Regs, reg 39D(3); JSA Regs, reg 102D(3)

27493 A deduction is made from the amount of chargeable income for certain personal allowances under income tax law¹ which are applicable to the person who was on the self-employment route². The rate of tax charged on the chargeable income after deduction for personal allowances is the basic rate³.

Note: The law does not say what date should be used to decide which personal allowances are applicable. Nor does it say the date to use to decide which rates of tax to apply. It is for the DM to decide which date to use for these purposes.

1 Income and Corporation Taxes Act 1988, s 257(1); 2 IS (Gen) Regs, reg 39D(1)(b); JSA Regs, reg 102D(1)(b); 3 IS (Gen) Regs, reg 39D(1)(c); JSA Regs, reg 102D(1)(c)

27494 Guidance on the personal allowances which can be deducted and on the rate of income tax is at DMG 27260 et seq.

27495 The amount

1. for personal allowances **and**

2. tax

is worked out on a pro-rata basis if the period over which the payment in the special account is taken into account (see DMG 27489) is less than a year¹.

1 IS (Gen) Regs, reg 39C(2) & 39D(2); JSA Regs, reg 102C(2) & 102D(2)

Disregards

27496 An amount is disregarded from the payment of money in the special account for each benefit week it is taken into account¹. The amount which is disregarded is the equivalent of certain disregards which apply to earnings².

1 IS (Gen) Regs, reg 39C(4); JSA Regs, reg 102C(4); 2 IS (Gen) Regs, Sch 8, para 4 to 6B & 9; JSA Regs, Sch 6, para 5 to 8 & 11 to 12

27497 Guidance on the disregards of earnings is in DMG Chapter 26. DMs should decide which disregard the person who was on the self-employment route is entitled to and deduct that amount.

Disregards - capital 27498 - 27499

[Assets of current or future businesses 27498](#)

[Capital acquired for current or future business purposes 27499](#)

Assets of current or future businesses

27498 The DM should disregard any assets acquired

1. by a participant in the self-employment route **and**
2. for the purpose of establishing or carrying on the commercial activity under the self-employment route¹.

1 IS (Gen) Regs, Sch 10, para 6; JSA Regs, Sch 8, para 11

Capital acquired for current or future business purposes

27499 The DM should disregard any capital acquired

1. by a current or former participant in the self-employment route **and**
2. for the purpose of establishing or carrying on the commercial activity assisted under the self-employment route¹.

Note 1: The disregard applies for a period of 52 weeks from the date on which the sum was acquired.

Note 2: This disregard may apply to cash or money held in bank or building society accounts.

1 IS (Gen) Regs, Sch 10, para 52; JSA Regs, Sch 8, para 47

Share fishermen - introduction and additional conditions for payment 27500 - 27599

Subpages

- Who is a share fisherman - Jobseeker's Allowance and Income Support 27500 - 27508
- Additional condition for payment of Jobseeker's Allowance to share fishermen 27509 - 27535
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Who is a share fisherman - Jobseeker's Allowance and Income Support 27500 - 27508

[Meaning of "fishing boat" 27503](#)

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[Meaning of "profits or gross earnings of the fishing boat" 27505 - 27508](#)

27500 The guidance on who is a share fisherman applies to JSA and IS.

27501 A share fisherman is¹

1. a person who

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

1.2 is S/E **and**

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

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

2. a person who

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

2.2 usually works

2.2.a ashore in GB (see DMG 070702) **and**

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

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

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

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

Note: For IS, the fishing boat must be British².

1 JSA Regs, reg 156; 2 SS (Mariners' Benefits) Regs, reg 1(2)

27502 The master and all the members of the crew of a fishing boat are within the definition at DMG 27501 **1.**, This includes those who do a specialist job, such as an engineman, cook or firefighter, as long as they are paid at least partly by a share in the earnings of the fishing boat¹.

1 R(U) 10/51

Meaning of “fishing boat”

27503 “Fishing boat” means¹ a boat that is used

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

Sea fish includes shellfish, salmon and migratory trout.

1 JSA Regs, reg 156; Merchant Shipping Act 1995, s 313(1)

Meaning of “usually works”

27504 A DM can consider that a person “usually works....” if the person has

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

Meaning of “profits or gross earnings of the fishing boat”

27505 The profits or gross earnings of the fishing boat are the money received for the catch. People are paid by a share of the profits or gross earnings of the fishing boat if

- 1.** the fishermen

1.1 sell the catch themselves (either retail or wholesale) **and**

1.2 share at least some of the profits between them **or**

- 2.** the fishermen catch the fish for someone who then pays them a piece-rate wage¹.

27506 - 27508

Additional condition for payment of Jobseeker's Allowance to share fishermen 27509 - 27535

[Meaning of "benefit week" for JSA\(Cont\) 27510](#)

[Meaning of "benefit week" for JSA\(IB\) 27511 - 27512](#)

[Meaning of "worked as share fishermen" 27513 - 27517](#)

[Neglected a reasonable opportunity of employment as a share fisherman 27518](#)

27509 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period in a benefit week when they have not worked as share fishermen. If they cannot prove this, even if it is just for part of one day in a week, no JSA is payable for the whole of that benefit week¹. This additional condition does not apply to IS. It does apply to JSA(Cont) and JSA(IB).

1 JSA Regs, reg 161(1)

Meaning of "benefit week" for JSA(Cont)

27510 "Benefit week" for JSA(Cont) means¹ a period of seven days beginning with the

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

1 JSA Regs, reg 161(4) & 164(3)

Example

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

Meaning of "benefit week" for JSA(IB)

27511 "Benefit week" for JSA(IB) means¹ a period of seven days ending with the day determined by the

last two digits of the claimant's NINO as is shown in the following table unless the Secretary of State arranges otherwise.

NI No Day

00 - 19 Monday

20 - 39 Tuesday

40 - 59 Wednesday

60 - 79 Thursday

80 - 99 Friday

1 JSA Regs, reg 1(3)

27512

Meaning of “worked as share fishermen”

27513 This guidance applies when a DM is identifying the period for which a share fisherman has to prove that he has not neglected to avail himself of employment as a share fisherman. Share fishermen do not always have to catch fish to work as share fishermen. They will have worked as share fishermen if they have done any of the following work¹ and they satisfy the conditions in DMG 27514

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

2. any work in connection with

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

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

But share fishermen will not have worked as share fishermen if they have done work which is not to the fishing boat or its nets or gear².

1 JSA Regs, reg 161(2)(b); 2 R(U) 33/52

27514 The work in 27513 **1.** and **2.** is only work as a share fisherman if¹

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

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

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

1 JSA Regs, reg 161(2)(a)

27515 In most cases a share fisherman on board a boat that leaves harbour equipped to fish will have performed work as a share fisherman for that period, even if fishing is stopped or prevented by bad weather or other causes. But if the share fisherman has only done what was reasonably necessary to find out that weather conditions were not suitable for fishing, the fisherman has not performed work as a share fisherman, even if the boat left harbour equipped to fish¹.

1 R(U) 1/81

27516 Examples of work as a share fisherman are

1. scraping and painting a boat, where that work is likely to become necessary for its reasonable efficiency in the near future¹
2. fishing for bait (even if none is caught) where this has to be done and is normally done before fishing for a catch to sell²
3. setting off for the fishing grounds, but returning to dock before reaching them because of an accident to the fishing boat or because the harbour entrance was blocked³
4. returning to home port earlier than intended because they are unable to continue fishing alone when their neighbouring boat with whom they were fishing breaks down⁴.

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

27517 Examples of work which is not work as a share fisherman are

1. voluntarily helping a harbour master, according to custom, to place a boom across a harbour to protect vessels in the harbour¹
2. sailing to the entrance to a loch just to check if the weather was suitable for fishing, where that was the only practicable way of checking this².

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

Neglected a reasonable opportunity of employment as a share fisherman

27518 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period they have not worked as share fishermen either catching fish or as defined in 27513 - 27514¹. Any employment as a share fisherman is covered,

including

1. the claimant's usual work as a share fisherman on the claimant's usual boat (including work as defined in 27513 - 27514)
2. employment as a share fisherman on a boat other than the claimant's usual boat (including work as defined in 27513 - 27514).

1 JSA Regs, reg 161(1) & (2)

27519 It is **for claimants** to prove that they did not neglect an opportunity of such employment¹. But DMs should accept that claimants satisfy this condition if there is no evidence to suggest otherwise. Information about work which claimants might have had may come, for example, from an employer or owner of a boat, or from the local fishery officer. If some boats go fishing from a port while others do not, it is difficult for those who stay behind to prove that they have not neglected a reasonable opportunity to fish².

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

Example 1

Bill Sears, a share fisherman, is part owner of a crabbing boat manned by himself and a partner. Bill does no work on two days because, in his opinion, fishing is not profitable. Some boats do go fishing. Bill has neglected an opportunity to fish, and

no JSA is payable for the benefit week in which those two days fall. If the days fall in two separate benefit weeks, then JSA would not be payable for those two weeks.

Example 2

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

27520 The guidance at DMG Chapter 34 on the meaning of neglect to avail and reasonable opportunity should be applied when deciding whether a share fisherman has neglected a reasonable opportunity of employment as a share fisherman¹.

1 R(U) 9/72

Example

Fred Finlay, a share fisherman who is a trawler skipper, misses an eight week (benefit weeks) long fishing

trip because he arranges with the owners of the boat to take his sick wife on a two week holiday. He would normally have taken his holiday at the end of the eight week trip. Fred has neglected to avail himself of a reasonable opportunity of employment as a share fisherman¹. JSA is not payable for the eight benefit weeks of the fishing trip.

1 R(U) 9/72

27521 An opportunity should not be regarded as reasonable if taking it would reduce the share fisherman's chances of going back to fishing with their usual boat.

27522 - 27535

Further condition for payment of JSA(Cont) if fishing boat is crew owned 27536 - 27599

[Meaning of “benefit week” 27538](#)

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27536 If share fishermen are masters or members of the crew of fishing boats that are crew owned, they must prove that, for any period in a benefit week when they have not worked as share fishermen, the fishing boat did not put to sea to go fishing because

- 1.** the state of the weather meant the boat could not reasonably have put to sea to go fishing (see DMG 27542 - 27546) **or**
- 2.** it was being repaired or having maintenance work done to it, other than the repairs or maintenance referred to in DMG 27513 - 27514 (see DMG 27551 - 27552) **or**
- 3.** there was an absence of fish in any waters in which the fishing boat could reasonably be expected to operate (see DMG 27560 - 27563) **or**
- 4.** of any other good cause which forced them not to fish (see DMG 27570 - 27584)¹.

This further condition does not apply to JSA(IB) or IS.

1 JSA Regs, reg 161(3)

27537 If the claimant cannot show that one of the reasons at DMG 27536 is met for any period in a benefit week, even if it is just for part of one day in a week, JSA(Cont) is not payable for the whole of that benefit week. This applies to the share fishermen described in DMG 27501 **2.** as well as those who

actually go fishing.

Meaning of “benefit week”

27538 Guidance on the meaning of benefit week is at DMG 27510 - 27511.

Meaning of “worked as share fishermen”

27539 Guidance on the meaning of worked as share fishermen is at DMG 27513 - 27517.

Meaning of “crew owned”

27540 If the master or any member of the crew is the owner or part owner of the boat, the boat is crew owned.

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

27541 Share fishermen do not have to satisfy the further condition at DMG 27536 if, although linked to some extent to a particular boat, they can be treated as no longer being a master or member of the crew. They cannot be so treated just because the boat is idle¹.

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

Example 1

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Tim Jeffries, a share fisherman who works on the boat, but has no share in the ownership of the boat, is not needed and does not work for the two weeks. Tim ceases to be a member of the crew whilst he is not needed and does not have to satisfy the additional condition in DMG 27536.

Example 2

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Jimmy Brown, a share fisherman who works on the boat, and has a share in the ownership of the boat, is not needed and does not work for the two weeks. Jimmy does not cease to be a member of the crew whilst he is not needed and does have to satisfy the additional condition in DMG 27536.

Example 3

The owners of a fishing boat are unable to get a full complement to crew their boat. They decide to go out of business and lay up the vessel for sale. Pat Layton, the master of the boat, who is also a part owner, claims JSA. Pat continues to be a part-owner of the vessel until it is sold, but meanwhile takes employment elsewhere. Pat and the members of the crew ceased to be master and members of the crew at the end of the last fishing trip - all intention of further fishing with the boat had definitely ceased.

Pat does not have to satisfy the additional condition in DMG 27536.

Example 4

Skippers at a particular port decide not to go fishing because there is no economic market for the catch. Colin Forbes, a share fisherman on one of the boats affected, who is not an owner of the boat he works on, is paid off. After six weeks the boats start fishing again and Colin goes back to work on the same boat. He has not ceased to be a member of the crew while the boat was temporarily idle. Colin does have to satisfy the additional condition at DMG 27536.

Weather

27542 The question whether, because of the state of the weather, the boat could not reasonably have put to sea to go fishing is one of fact which has to be considered by the DM. Each case should be determined on its own particular facts, including the opinion of the local fishery officer where the DM considers it necessary to obtain it.

27543 Usually it is not possible to accept that the weather prevented a particular fishing boat from putting to sea if on the same day other boats from the same port were able to fish. But it may be possible to accept this if, for example, the evidence shows that the weather was not too bad to stop larger boats from fishing, but was too rough for the claimant's boat¹.

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

27544 The use of the word "reasonably" indicates that the test should be applied in a reasonable, and therefore practical, manner. So the claimant does not have to show that the weather was such that the boat could not put to sea throughout the whole day. The claimant only has to show that the boat could not put to sea at all normal and reasonable times for putting to sea on the day and at the port or harbour in question¹.

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

Example 1

Scott Lewis is a share fisherman. His boat cannot put to sea at the normal early morning time because of bad weather. By 11am the weather has improved sufficiently to allow the boat to go out. But the boat does not go to sea, because it would have had to return on the tide at about 2.30 pm. No other fishing boats leave harbour that day. Scott satisfies the condition at DMG 27536 **1.**

Example 2

Pat is a crew member of a fishing boat. The crew are ready to go to sea at 3am, but they are prevented by bad weather. At 8am the master decides that fishing will not be possible that day, and he dismisses the crew. The weather improves, and other boats the same size (which on that day could only safely leave or

enter the harbour before 7am, or between 11am and 7pm or after 11pm) put to sea and fish successfully.
Pat does not satisfy the condition at DMG 27536 **1.**

27545 A fishing boat is not prevented from putting to sea by the weather if it could have gone

1. to the fishing grounds by a different and more sheltered route, even if it is longer¹ **or**

2. to different fishing grounds.

1 R(U) 15/57

27546 A fishing boat cannot go to different fishing grounds if it is not equipped to catch the fish which live there. The boat is not expected to spend money to change gear to be able to catch a different type of fish because there is bad weather on the fishing grounds which it is equipped to fish in.

27547 - 27550

Repairs

27551 A share fisherman who says that the boat did not go fishing because it was being repaired or having maintenance work done to it must show that the repairs or maintenance were not those described in DMG 27513 - 27514. If the claimant cannot do this, this condition is not satisfied, and JSA(Cont) is not payable.

27552 Repair and maintenance work other than as described in DMG 27513 - 27514 includes the period during which the boat is sailing or being transported to and from the repair yard. This condition is satisfied for those days.

27553 - 27559

Absence of fish

27560 Absence of fish does not mean that

1. there are no fish at all **or**

2. there is a shortage of fish

in the waters concerned. There will be an absence of fish, and the condition will be satisfied if there is a negligible quantity, that is only very few fish in the waters concerned¹.

1 R(U) 20/58

27561 The claimant will not satisfy the condition just because

1. the catches are so small that it is not financially worthwhile to continue daily fishing¹ **or**

2. that a particular type of fish are absent if

2.1 other fish are plentiful **and**

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

1 R(U) 20/58

27562 Sometimes, from the same port, some share fishermen go fishing and some do not. In such cases, it is difficult for those who do not go to prove that there was an absence of fish from the waters¹.

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

Example 1

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

Example 2

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

Evidence

27563 Whether there is an absence of fish is a question of fact which the DM must determine on the evidence available. This will usually include a statement by the claimant. Where

1. the Jobcentre Plus Office lacks information or technical knowledge on the issues involved **or**

2. it is desirable to obtain some confirmation of the claimant's statement

the DM will usually need the written opinion of the local fishery officer. Sometimes expert opinion from another source will be available¹.

1 R(U) 22/59

Example

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

27564 - 27569

Other good cause

27570 Good cause will normally only be shown where share fishermen have been forced not to fish by something¹

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

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

Example 1

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

Example 2

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

Example 3

Dominic Heard, a share fisherman, does not go fishing because

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

Neither of these reasons is good cause.

27571 The claimant cannot show good cause because as an individual the claimant could not fish

because

1. the fishing boat did not put to sea¹ **or**
2. the claimant had to follow the master's decision².

The question of good cause relates to the boat and crew as a whole. To satisfy the condition the claimant must show that **the boat** did not go fishing due to good cause that is, some compelling circumstances over which the crew as a whole had no control³.

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

27572 It may be that there are circumstances which make it entirely reasonable for the crew as a whole to decide not to go fishing. But this will not automatically mean that this is good cause.

27573 It may be reasonable for a boat not to go fishing when it is likely that the trip will be unprofitable. But this, of itself, is not good cause¹.

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

Example 1

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

Example 2

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

Example 3

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

The claimants in Example 2 in DMG 27562 and the Example in DMG 27563 do not satisfy this condition either.

27574 - 27575

No market for fish

27576 Good cause will be shown if there is no possible market for the potential catch¹.

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

Example

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

27577 - 27578

Conservation - fishing quotas

27579 Orders made under certain legislation¹ forbid the catching of certain species of fish (mostly herring and mackerel) by certain methods and at certain times. EC law forbids fishing once a set quota has been reached, and forbids fishing in certain areas. Sea fishermen who fish for a species covered by such an order or EC law have good cause for not fishing for that species if the reason is that they are forbidden to do so by the orders or EC law or because the quota has been reached.

1 Sea Fish (Conservation) Act 1967

27580 But the DM also needs to consider whether or not the share fishermen have good cause for not fishing for other types of fish, before good cause can be shown and the condition met. In particular the DM should consider if the boats need to be and can be converted to catch other fish that are available. The DM should also take into account the difficulties involved in converting the boats, when compared to the length of time before the share fisherman can go back to catching their usual species of fish.

27581 - 27582

Crew members absent

27583 It will be good cause if a boat does not go to sea because¹

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

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

Example 1

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

Example 2

Peter Caplan, a share fisherman, reports at 2am that, because of his wife's sudden illness, he is unable to

go fishing. No replacement can be found at such short notice and the boat is unable to sail that day. This is good cause.

Example 3

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

Example 4

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

at least a week. This is good cause.

27584 There may be other circumstances in which it is not possible to get sufficient crew for the boat to put to sea. For example, number of men available in the area reduce. This would be good cause¹.

1 R(U) 6/63

27585 - 27599

Share fishermen - remunerative work 27600 - 27749

[Calculating hours of work 27601 - 27749](#)

27600 In both JSA and IS, the normal rules on remunerative work (see DMG Chapter 20) apply to share fishermen, with one exception. In JSA(Cont), hours worked as a share fisherman do not count towards the remunerative work exclusion¹.

1 JSA Regs, reg 162

Calculating hours of work

27601 When calculating the hours of work

1. for JSA(IB) and IS - include all the time spent in work as a share fisherman
2. for JSA(Cont) - ignore all the time spent in work as a share fisherman.

Hours worked in any other occupation, or in work which does not come within the meaning of work as a share fisherman, count towards the remunerative work exclusion in the normal way.

Work as a share fisherman

27602 Work as a share fisherman is not defined. It will normally fall into two types

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

DMs may find the guidance at DMG 27513 - 27517 helpful in determining whether work done is work as a share fisherman.

27603 - 27749

Earnings of share fishermen 27750 - 27999

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27750 Some of the rules for calculating the earnings of a share fisherman are different for

1. JSA(Cont) and

2. JSA(IB) and IS.

The guidance will highlight the differences.

27751 - 27753

A share fisherman is a self-employed earner - JSA and IS

27754 A share fisherman is a S/E earner. One difference between a

1. share fisherman and

2. business partner

is that the share fisherman pays a higher rate of Class 2 contributions (see DMG 27297 and Appendix 2 to this Chapter) to qualify for JSA(Cont). Class 4 liability is the same (see DMG 27316 and Appendix 2 to this Chapter).

27755 Earnings should only be taken into account when a person is a S/E earner. A S/E earner is a person who is gainfully employed

1. in GB and

2. in employment that is not employed earner's employment¹.

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

Claims from share fishermen - JSA and IS

27756 When considering a claim that includes a share fisherman the DM should decide if that person is in remunerative work. If the share fisherman is in remunerative work JSA or IS is not payable.

Note: The JSA(Cont) rules for remunerative work and share fishermen are different to the rules for JSA(IB) and IS (see DMG 27600 et seq).

27757 If the share fisherman is not in remunerative work the DM should consider if

- 1.** any other conditions of entitlement are satisfied, for example, in JSA is the claimant available for, and ASE **and**
- 2.** the person is currently gainfully employed as a share fisherman (see DMG 27020 - 27025) **and**
- 3.** any earnings are to be taken into account.

27758 If the share fisherman has ceased self-employment the DM should consider if

- 1.** there are any capital assets from the business **and**
- 2.** any capital assets from the business should be disregarded (see DMG 27031 - 27033 and Chapter 29).

Earnings of a share fisherman - JSA and IS

27759 The earnings of a share fisherman are the gross receipts (see DMG 27125) of the employment¹.

1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)

27760 S/E earnings do not include¹

- 1.** charges paid to the share fisherman in return for providing BL accommodation (see DMG 27762) **or**
- 2.** any of the payments in DMG 28380 et seq (fostering allowances).

1 JSA Regs reg 100(2), IS (Gen) Regs, reg 37(2)

27761 A share fisherman may be S/E and also have other work as an employed earner. The earnings from each employment should be calculated separately.

Board and Lodging accommodation

27762 BL accommodation is accommodation¹

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

1.1 cooked or prepared by someone who is not

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

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

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

2. provided to a person in a

2.1 hotel **or**

2.2 guest house **or**

2.3 lodging house (see DMG 27763) **or**

2.4 similar establishment **or**

3. that is

3.1 not provided by a close relative (see DMG 27764 - 27765) of

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

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

3.2 provided on a commercial basis.

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

27763 A lodging house

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

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

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

27764 A close relative is¹

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

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

27765 For the purposes of DMG 27764, a child who is adopted becomes

1. a child of the adoptive parents **and**
2. the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship¹.

1 R(SB) 22/87

27766 - 27773

Gainfully employed - Jobseeker's Allowance and Income Support 27774 - 27809

[Sickness 27786 - 27792](#)

[Share fisherman no longer self-employed 27793 - 27794](#)

[Earnings from self-employment that has ceased 27795 - 27809](#)

27774 A S/E earner is someone who is gainfully employed. If a share fisherman is not working, this does not mean that the share fisherman has ceased to be gainfully employed.

27775 A share fisherman may be a

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

27776 Earnings should only be taken into account if the share fisherman is gainfully employed. The DM should

1. consider the guidance at DMG 27020 - 27023 **and**
2. determine if the share fisherman remains gainfully employed as a S/E earner.

Example 1

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

1. the boat has been tied up before because of bad weather. Stoppages during the winter months are a normal feature of his business. When the weather improves the boat will go back out to sea
2. he and his bank still regard his business as a going concern
3. he is still regarded as S/E by HMRC.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Kevin remains gainfully employed as a S/E earner.

Example 2

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

1. the boat owner and the bank do not regard the boat as a going concern
2. he will resume work on the boat when it is repaired, however he is unable to work whilst the boat is being repaired
3. he is not regarded as S/E by HMRC.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Barry is not gainfully employed and no earnings should be taken into account.

27777 If the share fisherman is gainfully employed the DM should consider what earnings should be taken into account. The JSA(Cont) rules for treatment of earnings (see DMG 27810 - 27961) are different to the rules for JSA(IB) and IS.

27778

27779 For the purposes of DMG 27020 **9.**, periods when the boat is confined to harbour, for example, because of

1. bad weather **or**
2. routine repairs and maintenance **or**
3. exhaustion of fishing quotas

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

27780 Each case should be considered individually. But where long tie ups occur on a regular basis the DM may consider that they form part of a regular pattern of business.

27781 - 27785

Sickness

27786 If a share fisherman is unable to work due to sickness, the DM should

1. consider the guidance at DMG 27020 - 27023 **and**
2. determine if the share fisherman remains gainfully employed as a S/E earner.

27787 A share fisherman will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of self-employment.

Example 1

Campbell is a share fisherman, he is a regular crew member. He claims IS as he has been unable to work because he is suffering from flu. He is unable to work for a total of two weeks. During that time Campbell states that

- 1.** he is still regarded as S/E by HMRC
- 2.** the bank still regards his business as a going concern.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Campbell remains gainfully employed as a S/E earner.

Example 2

Mitchell is a share fisherman, he is a regular crew member. He claims IS as he has broken his leg and has been advised by his doctor to avoid work for six months. Mitchell states that

- 1.** his business activity depends entirely on his ability to work and until his leg has healed he cannot undertake any work in connection with his business
- 2.** he and his bank do not consider his business as a going concern
- 3.** he intends to restart work in his business when his leg has healed.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that self-employment has ceased and no earnings fall to be calculated and any business assets can be disregarded¹.

1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)

Example 3

Nicholas is a share fisherman, he is a part owner of a boat. He claims IS because he has had a serious operation and has been advised by his doctor to avoid work for three months. Nicholas states that

- 1.** the boat continues to go to sea with his day to day management taken over by another part owner of the boat **and**
- 2.** he intends to return to work at the end of the three month period.

The DM considers the guidance of DMG 27020 - 27023 and decides, in this case, that Nicholas remains gainfully employed as a S/E share fisherman. The DM calculates the earnings to be taken into account.

Share fisherman no longer self-employed

27793 If the DM determines that a share fisherman is no longer S/E DMG 27794 - 27797 should be considered.

Capital

27794 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 29 provides guidance on the valuation of business assets and the disregards that can apply.

Example

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

The DM determines

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

Earnings from self-employment that has ceased

27795 If a person has been engaged in

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

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded¹.

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

Example

James is a share fisherman, he is a regular crew member. Due to health problems he can no longer work as a share fisherman. He last worked on 11.11.10 and received his share of the catch on that day. He claims IS on 12.11.10.

The DM determines that James has ceased to be a S/E share fisherman. The earnings received on 11.11.10 are disregarded.

Income derived from business when self-employment has ceased

27796 Where a person has ceased to be a share fisherman the assets of the business may continue to produce income. Such income should be regarded as income derived from capital.

27797 The treatment of that income will depend upon how the capital assets are treated. For example

- 1.** income derived from certain disregarded capital remains income (see DMG Chapter 28) **and**
- 2.** in other cases, income derived from capital remains capital (see DMG Chapter 29).

Example

Christopher is a share fisherman who is a boat owner. He decides that he will no longer work on the boat and puts the boat up for sale. As the owner of the boat he still receives a share of the catch. He claims IS.

The DM considers

- 1.** that Christopher is no longer a S/E share fisherman **and**
- 2.** how to treat the income received from the boat.

27798 - 27809

Assessment period - Jobseeker's Allowance and Income Support

27810 - 27819

[JSA\(Cont\)](#) 27811 - 27814

[JSA\(IB\) and IS](#) 27815 - 27819

27810 The normal weekly earnings of a share fisherman should be calculated by using the gross receipts received and expenses incurred or paid out (see DMG 27871 - 27975) during the assessment period. The assessment period is different for

1. JSA(Cont) and

2. JSA(IB) and IS.

JSA(Cont)

27811 For JSA(Cont) the assessment period is the share fisherman's benefit week¹.

1 JSA Regs, reg 163(3), (101(2))

27812 A share fisherman is paid JSA(Cont) for complete benefit weeks even if the share fisherman is without work for only part of the benefit week. A share fisherman is not entitled to part-week payments (see DMG Chapter 33).

27813 Any work as a share fisherman does not count towards the remunerative work rule (see DMG 27600 et seq).

Benefit week

27814 For the JSA(Cont) assessment period, a benefit week is a period of seven days beginning with the

1. date of claim or

2. day after the last day of the previous benefit week¹.

1 reg 163(3) (101(12)); reg 164(3)

Example

Dougal is a share fisherman, he claims JSA on Thursday 24 October. He is entitled to JSA(Cont). His

benefit week is Thursday 24 October to Wednesday 30 October. His next benefit week is Thursday 31 October to Wednesday 6 November.

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

JSA(IB) and IS

27815 The DM should refer to the guidance on S/E earners at DMG 27051 et seq to consider the assessment period for JSA(IB) and IS.

27816 - 27819

Calculation of weekly earnings - Jobseeker's Allowance and Income Support 27820 - 27839

[Method of calculation](#) 27820 - 27823

[Evidence](#) 27824 - 27839

Method of calculation

27820 To calculate the earnings of a share fisherman the DM

- 1.** should establish the **gross receipts** of the boat during the assessment period (including any payment in DMG 27826 **2.**) **and**
- 2.** deduct from the gross receipts the **allowable expenses** of the boat, and the share fisherman, taking care to avoid duplication **and**
- 3.** calculate the person's share of the sum remaining at **2.** according to the agreement for distributing the proceeds of the catch¹ **and**
- 4.** deduct from the figure in **3.** amounts for
 - 4.1** notional income tax (see DMG 27270 and 27934) **and**
 - 4.2** notional SS/NI contributions (see DMG 27297 and 27936 et seq) **and**
 - 4.3** half of any premium (see DMG 27325) paid for a personal pension scheme **and**
- 5.** deduct the correct **disregard(s)** (see DMG 27953).

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

1 JSA Regs, reg 101(1)(b); reg 163(3), (101(3)); IS (Gen) Regs, reg 38(1)(b)

27821 - 27823

Evidence

27824 The evidence that a share fisherman should provide depends on whether the share fisherman is

- 1.** an owner or part owner of a boat **or**

2. a regular crew member.

Share fisherman is an owner or part owner of a boat

27825 A share fisherman who is the owner or part owner of a boat should be asked for details of the

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

Share fisherman is a regular crew member

27826 A share fisherman who is a regular crew member of a boat should be asked

1. to approach the boat owner for details of the

1.1 gross receipts and expenses of the boat during the assessment period **and**

1.2 arrangement for sharing the proceeds of the catch **and**

2. if the boat owner pays the

2.1 employee's portion of any SS/NI contribution **or**

2.2 cost of provisions (such as food) **or**

2.3 cost of replacement gear or clothing **and**

3. if the sum declared for gross receipts is the income received by the boat before or after any of the payments under **2.** have been made.

27827 If the conditions for deducting an expense is met (see DMG 27871 or 27872) the DM should allow as an expense payments in DMG 27826 **2.** that have not been deducted from the gross receipts figure. This will be in addition to any other allowable expenses incurred by all members of the sharing scheme.

27828 If the gross receipts figure is net of any deductions in DMG 27826 **2.** those amounts should be added back to establish the correct gross receipts figure. The DM should then consider the deductions in the normal way.

27829 - 27839

Gross receipts 27840 - 27869

[JSA\(Cont\) 27841 - 27853](#)

[JSA\(IB\) and IS 27854](#)

[Income for a different period - JSA\(IB\) and IS 27855 - 27869](#)

27840 Full guidance on gross receipts is at DMG 27125 et seq. The treatment of gross receipts is different for

1. JSA(Cont) and

2. JSA(IB) and IS.

JSA(Cont)

27841 For JSA(Cont) purposes, a share fisherman's earnings, that is the gross receipts, are treated as paid in the benefit week in which they are **earned**¹. This means that a share fisherman who is

1. gainfully employed and

2. in receipt of JSA(Cont)

will not have any earnings averaged, unless DMG 27842 - 27845 applies.

1 JSA Regs, reg 163(3)(101(2))

Example

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

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

Earnings unusually high or low

27842 The DM may calculate earnings over a period that is not the assessment period, which for JSA(Cont) is the benefit week.

27843 The DM should consider calculating earnings over a period greater than the benefit week if¹

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

1 reg 163(3)(101(11))

Determination for earnings unusually high or low

27844 To determine if the earnings are unusually high or low the DM could take one or more of the following steps

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

Example

Gareth is a share fisherman. He has been in receipt of JSA(Cont) since 10.12.02. On 20.2.03 he receives a lump sum payment of compensation. The compensation is paid because Gareth was unable to work as a share fisherman for five weeks in 2001 because of an oil spillage that affected fishing in the area.

The DM determines that

1. the earnings for benefit week ending 24.2.03 are unusually high **and**
2. the payment of compensation should be divided by five (the number of weeks covered by the payment) and included in the earnings for benefit weeks 18.2.03 - 24.3.03.

27845 If the earnings are unusually low because the share fisherman has incurred an unusually high expense, the DM should consider calculating the expense over a period other than the benefit week (see DMG 27890 - 27897).

27846 - 27853

JSA(IB) and IS

27854 For JSA(IB) and IS purposes, any payment of income received by the share fisherman during the

assessment period, **regardless of when it is earned**, should be included as a gross receipt¹. DMG 27855 provides guidance if a payment is received for a period that is longer than the assessment period.

1 JSA Regs, reg 101(4); IS (Gen) Regs, reg 38(3)

Example

Abraham is a regular crew member, he is in receipt of JSA and has a Thursday to Wednesday benefit week. His assessment period ends on 13 November. He works as a share fisherman on Monday 11 November to Tuesday 12 November but he does not receive his share of the profit until Thursday 14 November.

The DM determines that as his earnings from work as a share fisherman on 11 November to 12 November are not received in the assessment period they cannot be included in the gross receipts. They will be included in the gross receipts in the next assessment period.

Income for a different period - JSA(IB) and IS

27855 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

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

1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)

27856 It is not intended that every payment is assessed individually over a period different to the assessment period. This should be the exception rather than the rule. So, any payment for a period

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

Example

Mark is a share fisherman in receipt of JSA(IB). He receives a payment that is a half yearly payment under a long term contract. The assessment period is 13 weeks.

The DM

- 1.** multiplies the payment by 13 and divides that figure by 26 **and**
- 2.** adds the resulting sum to the other gross receipts.

Expenses 27870 - 27925

[Conditions for deducting business expenses](#) 27870 - 27872

[Wholly and exclusively](#) 27873 - 27875

[Reasonably incurred](#) 27876 - 27882

[Shared expenses of share fishermen](#) 27883 - 27885

[Allowable business expenses - JSA and IS](#) 27886 - 27889

[Expenses unusually high or low - JSA\(Cont\)](#) 27890 - 27899

[Expenditure for a period different to the assessment period - JSA\(IB\) and IS](#) 27900 - 27909

[Expenses not allowed](#) 27910 - 27925

Conditions for deducting business expenses

27870 The conditions for deducting business expenses are different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

JSA(Cont)

27871 When calculating the net profit of a share fisherman for JSA(Cont) purposes, the DM should deduct from the gross receipts any business expense that is

1. **incurred** wholly, exclusively and necessarily for the purpose of the business¹ **and**
2. **incurred** during the assessment period, that is the benefit week² **and**
3. reasonably incurred³ (see DMG 27876) **and**
4. an allowable expense (see DMG 27886).

1 JSA Regs, reg 163(3)(101(6) & (10)(a)); 2 reg 163(3)(101(6)); 3 reg 163(3)(101(9))

JSA(IB) and IS

27872 When calculating the net profit of a share fisherman for JSA(IB) and IS purposes, the DM should deduct from the gross receipts any business expenses that

- 1.** was **paid out** wholly and exclusively¹ for the purpose of the business² **and**
- 2.** was **paid out** during the assessment period **and**
- 3.** was reasonably incurred³ see DMG (27876) **and**
- 4.** is an allowable expense (see DMG 27886).

1 reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a); 2 JSA Regs, reg 101(9)(a);
IS (Gen) Regs, reg 38(8)(a); 3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)

Wholly and exclusively

27873 An expense is wholly and exclusively

- 1.** incurred - JSA(Cont) **or**
- 2.** **paid out** - JSA(IB) and IS

when the expense is only for the purpose of the business¹. Any such payment should be deducted in full if all of the conditions in DMG 27871 or 27872 are satisfied.

Note: DMG 27192 - 27195 provide guidance where the expense is for both business and private use.

1 JSA Regs, reg 101(4)(a) & reg 163(3)(101(6)); IS (Gen) Regs, reg 38(3)(a)

27874 - 27875

Reasonably incurred

27876 The term reasonably incurred is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

- 1.** appropriate for the share fisherman **and**
- 2.** necessary for the share fisherman **and**
- 3.** not excessive.

The DM should consider the level of trading.

27877 To determine what is reasonable the DM should have regard to the circumstances of each

individual's case¹, including the level of the person's earnings².

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

27878 If expenditure on a particular item is necessary to enable the share fisherman to run the business the whole of that expenditure may be regarded as a deductible expense, unless there is evidence that it is excessive¹.

1 R(G) 7/62

27879 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

27880 - 27882

Shared expenses of share fishermen

27883 Expenses of the boat may not always be attributable to all the sharers in the scheme. The owner may bear all, or part, of the cost of certain items. The DM should establish the expenses that are

- 1.** common to all the sharers **and**
- 2.** peculiar to the owner or owners.

Example 1

Arthur is a boat owner, he has three other share fishermen aboard. The boat, the owner and each of the three sharers take 20% of the profit after deduction of expenses.

If a claim for JSA or IS was made involving Arthur, his share would be 40% of the net profit.

If a claim for JSA or IS was made involving one of the other share fishermen aboard, their share would be 20% of the net profit.

In each case the DM should consider deductions for tax, SS contributions and half of any premium for a personal pension scheme.

Example 2

Andrew is a part owner of a boat, there is one other owner and one other share fisherman. The boat takes 60% of the gross profits and the two owners and the third sharer divide the remainder equally. The owners meet all expenses.

If a claim to JSA or IS was made involving the third sharer, the share would be 13.33% of the gross receipts.

If a claim to JSA or IS was made involving Andrew or his partner, the share would be 43.33% of the gross receipts less 50% of the allowable expenses.

In each case the DM should then consider deductions for tax, SS contributions and half of any premium for a personal pension scheme.

27884 - 27885

Allowable business expenses - JSA and IS

27886 Guidance on allowable business expenses is at DMG 27206 - 27212. DMs should note that for

- 1.** JSA(Cont), the expenses have to be **incurred** in the assessment period, that is the benefit week **and**
- 2.** JSA(IB) and IS, the expenses have to have been **paid out** in the assessment period.

27887 - 27889

Expenses unusually high or low - JSA(Cont)

27890 The DM may calculate expenditure over a period longer than the benefit week.

27891 The DM should consider calculating expenditure over a period longer than the benefit week if¹

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

1 JSA Regs, reg 163(3)(101(11))

Evidence of expenses

27892 As the assessment period for JSA(Cont) is the benefit week

- 1.** the share fisherman should be asked to provide details of expenses that are not incurred weekly **and**
- 2.** the DM can then convert the expenses into a weekly figure.

This will give a true picture of the share fisherman's expenses.

27893 Evidence of incurred expenses could be

- 1.** receipts **or**
- 2.** invoices **or**
- 3.** accounts for the boat, taking care not to allow personal expenses put through the accounts.

Determination for expenses unusually high or low

27894 If the procedure at DMG 27892 is followed the DM may not have to determine if an expense is unusually high or low. But there may be expenses that the share fisherman may not have been aware of at the start of the claim and declares in a particular benefit week.

27895 To determine if an expense is unusually high or low the DM could take one or more of the following steps

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

Example

Ewan is a share fisherman who is a regular crew member. He claims JSA and is entitled to JSA(Cont), he has a Wednesday benefit week ending.

Ewan declares that in the benefit week Thursday 4 March - Wednesday 10 March an expense is incurred because of essential painting to the boat. This expense makes the expenses of the boat unusually high for the benefit week. Ewan's share of the catch is net of any expenses.

The cost incurred is £300 and the boat has this essential painting done once a quarter. The annual costs of essential painting is £1,200. The DM checks a recent claim from Ewan and finds that the essential painting costs were £300 per quarter.

The DM decides that the expense is wholly, exclusively and necessarily incurred for share fishing and is reasonable in the circumstances. The DM calculates the weekly amount of the expense to be £23.08 (£1,200 divided by 52). An allowable expense of £23.08 is allowed from the gross receipts for each benefit week until the annual cost of essential painting alters.

27896 It is not intended that every expense is assessed individually over a period different to the benefit week. This should be the exception rather than the rule.

27897 Any expense for a period

- 1.** equal or shorter than the benefit week should be assessed over the benefit week **or**

2. longer than the benefit week should be converted into a weekly figure only if the DM determines that¹

2.1 the expenditure is unusually high or low **and**

2.2 it is reasonable to do so, having regard to all of the facts of the case.

1 JSA Regs, reg 163(3)(101(11))

27898 - 27899

Expenditure for a period different to the assessment period - JSA(IB) and IS

27900 Any business expenditure paid out in the assessment period **may** be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

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

1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)

27901 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

27902 Any expense for a period

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

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

Example

Patrick is a share fisherman. He started working as a share fisherman six months before he claimed JSA. He is entitled to JSA(IB). In that time the annual insurance was paid.

The amount of the insurance should be multiplied by 26 (the length of the assessment period) and divided by 52. The resulting amount should be added to any other deductible expenses.

27903 - 27909

Expenses not allowed

27910 The rules for non-allowable business expenses are different for

1. JSA(Cont) **and**

2. JSA(IB) and IS.

JSA(Cont)

27911 Business expenses that should not be allowed are¹

1. those expenses where the conditions for deducting a business expense are not met (27871)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. repayment of capital on loans except where 27206 3. applies
6. business entertainment expenses
7. losses incurred on the disposal of a capital asset
8. payments into a contingency fund to safeguard against future bad debts²
9. personal drawings on income and capital
10. money on goods used for personal consumption.

Full guidance on the above expenses is at DMG 27221 - 27226 and DMG 27232 - 27244.

1 JSA Regs, reg 163(3)(101(7)); 2 reg 163(101(9))

JSA(IB) and IS

27912 Business expenses that should not be allowed are¹

1. those expenses where the conditions for deducting a business expense are not met (see DMG 27872)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. any loss incurred
 - 5.1 before the start of the assessment period **or**
 - 5.2 in any other employment²

6. repayment of capital on loans, except where DMG 27206 **3.** applies

7. business entertainment expenses

8. losses incurred on the disposal of a capital asset

9. payments into a contingency fund to safeguard against future bad debts³

10. personal drawings on income and capital

11. money on goods used for personal consumption.

Full guidance on the above expenses is at DMG 27220 - 27244.

1 reg 101(6); IS (Gen) Regs, reg 38(5); 2 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11);

3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)

27913 - 27925

Calculation of income tax, contributions and qualifying premium

27926 - 27952

[General - JSA and IS 27926 - 27932](#)

[Income tax, Class 2 and Class 4 contributions - JSA\(IB\) and IS 27933](#)

[Notional Income tax - JSA\(Cont\) 27934 - 27935](#)

[Notional Class 2 contributions - JSA\(Cont\) 27936 - 27942](#)

[Notional Class 4 contributions - JSA\(Cont\) 27943 - 27944](#)

[Premiums for personal pension schemes - JSA and IS 27945 - 27952](#)

General - JSA and IS

27926 Having calculated the share fisherman's gross receipts and expenses on a cash flow basis, the DM should consider deductions for¹

- 1.** income tax (see DMG 27270 and 27934) **and**
- 2.** Class 2 contributions (see DMG 27297 and 27936) **and**
- 3.** Class 4 contributions (see DMG 27316 and 27943) **and**
- 4.** half of any premium for a personal pension. (See DMG 27325).

1 JSA Regs, reg 101(4)(b) & (c) & 163(3)(101(3)); IS (Gen) Regs, reg 38(3)(b) & (c)

27927 A share fisherman is entitled to the same tax allowances and tax rates as any other S/E earner (see DMG 27271 - 27276). A share fisherman

- 1.** pays a special rate of Class 2 contributions **and**
- 2.** may also have to pay Class 4 contributions.

27928 The rules for deducting income tax and SS/Nl contributions are different for

- 1.** JSA(Cont) **and**

2. JSA(IB) and IS.

This is because the assessment periods are different.

Chargeable income

27929 The DM should base deductions for DMG 27926 **1.** to **3.** on the chargeable income for the assessment period.

27930 A share fisherman's chargeable income is the person's share of¹

1. the gross receipts of the employment **less**

2. any allowable business expenses.

1 JSA Regs, reg 101(5) & 163(3)(101)(6)); IS (Gen) Regs, reg 38(4)

27931 - 27932

Income tax, Class 2 and Class 4 contributions - JSA(IB) and IS

27933 Guidance on notional deductions for

1. income tax **and**

2. Class 2 contributions **and**

3. Class 4 contributions

for JSA(IB) and IS is at DMG 27270 - 27318. The guidance at DMG 27934 - 27944 applies to JSA(Cont) only.

Notional Income tax - JSA(Cont)

27934 As the assessment period is the benefit week the

1. personal allowance **and**

2. tax rate

should be apportioned on a weekly basis¹. Guidance on personal allowances and tax rates is at DMG 27271 - 27276.

1 JSA Regs, reg 163(4)

Calculation of deduction

27935 To determine the deduction for notional income tax from a share fisherman's chargeable income the DM should¹

1. establish the chargeable income (see DMG 27929)
2. deduct the personal allowance (see Appendix 1 to this Chapter) apportioned on a weekly basis
3. multiply the first £34,800 (08/09 rates) of the remainder by the basic rate of tax (see Appendix 1 to this Chapter)
4. round up where necessary.

1 JSA Regs, reg 163(4) & 102

Example

Gary is a married share fisherman who is receiving JSA(Cont)

	£
Chargeable income	160.00 less
Claimant's personal allowance (£6,035 (08/09 rates) divided by 52)	<u>116.06</u>
	= 43.94
The remainder (£43.94) at 20%	<u>8.79</u> <hr/>
Total notional tax	= 8.79

Notional Class 2 contributions - JSA(Cont)

27936 As the assessment period is for a benefit week the small earnings exception should be apportioned on a weekly basis according to the benefit week¹.

1 JSA Regs, reg 163(4)

27937 If the chargeable income is above the proportion of the small earnings exception the DM should consider if a Class 2 contribution should be deducted. Full guidance on Class 2 contributions is at DMG 27297 et seq.

Example

Gary is a married share fisherman who is receiving JSA(Cont)

£

Chargeable income - 160.00

Small earnings exception

(£4,215 divided by 52) - 81.06

Gary's chargeable income is more than the small earnings exception. The DM decides that Gary is liable for a Class 2 deduction and deducts a notional Class 2 contribution.

27938 - 27942

Notional Class 4 contributions - JSA(Cont)

27943 As the assessment period is for a benefit week the specified levels should be apportioned on a weekly basis according to the benefit week¹.

1 JSA Regs, reg 163(4)

27944 If the chargeable income is above the proportion of the specified level the DM should consider if a Class 4 contribution should be deducted. Full guidance on Class 4 contributions is at DMG 27316 - 27318.

Example

Gary is a married share fisherman who is receiving JSA(Cont)

£

Chargeable income - 160.00

Lower level

(£4,745 divided by 52) - 91.25

Gary's chargeable income is more than the proportion of the specified level. The DM decides that Gary is liable for a Class 4 deduction.

The Class 4 deduction is calculated as follows

$£160.00 - £91.25 = £68.75 \times 8\% = £5.50$

Premiums for personal pension schemes - JSA and IS

27945 Full guidance on premiums for personal pension schemes is at DMG 27325 - 27327.

27946 - 27952

Earnings disregard for share fishermen 27953 - 27971

[General](#) 27953 - 27954

[Earnings disregard for share fishermen - JSA\(Cont\)](#) 27955 - 27971

General

27953 There are different earnings disregard for a share fisherman's earnings for

1. JSA(Cont) and

2. JSA(IB) and IS.

27954 The guidance for

1. JSA(Cont) is at DMG 27955 - 27961 and

2. JSA(IB) and IS is at DMG 27470 et seq.

Earnings disregard for share fishermen - JSA(Cont)

27955 The following disregards should be applied to the weekly earnings of a share fisherman who is entitled to JSA(Cont).

Earnings from self-employment that has ceased

27956 If a person has been engaged in

1. remunerative work as a share fisherman or

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

and that employment has ceased (that is, ceased outright), any earnings derived from that employment are fully disregarded¹.

¹ JSA Regs, reg 163(3)(101(4)(b)); Sch 6, para 4

Example

James is a share fisherman, he is a regular crew member. He ceased work as a share fisherman and last worked on 11 March. He received his share of the catch on that day. He claims JSA on 12 March, he is

entitled to JSA(Cont).

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

Earnings disregard

27957 Unless DMG 27958 - 27960 applies, a share fisherman entitled to JSA(Cont) should have £20.00 per week disregarded from any earnings from share fishing¹.

1 JSA Regs, reg 163(3)(101(4)(a)); SS Amendment Regs 2000, reg 3 and Schedule.

Earnings from work that is not work as a share fisherman

27958 If the share fisherman also has earnings from work¹

1. as

1.1 an auxiliary coastguard for costal rescue services (see DMG Chapter 26) **or**

1.2 a P/T member of a fire brigade maintained under certain legislation (see DMG Chapter 26) **or**

1.3 a P/T worker manning or launching a lifeboat (see DMG Chapter 26) **or**

1.4 member of the territorial army or reserve forces (see DMG Chapter 26) **or**

2. as in **1.** and from another job (see DMG Chapter 26) **and**

3. the disregard for that work is £5 (see DMG Chapter 26)

the disregards in DMG 27959 - 27960 should be applied.

1 JSA Regs, reg 163(3)(101(5))

27959 If the earnings disregard from work in DMG 27958 is £20, the disregard for earnings as a share fisherman in 27957 should not be applied¹.

1 JSA Regs, reg 163(3)(101(5)(a))

Example

Vince is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from manning a lifeboat.

The DM determines that Vince is entitled to a £20 disregard for the earnings from manning the lifeboat and that he is not entitled to any disregard for the earnings from work as a share fisherman.

27960 If the earnings disregarded from work in DMG 27958 is less than £20, the disregard for earnings as a share fisherman will be the difference between

1. the amount disregarded from the earnings in DMG 27958 **and**

2. £20¹.

1 JSA Regs, reg 163(3)(101(5)(b))

Example 1

Neil is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from helping a friend out in a shop.

The DM determines that Neil is entitled to a £5 disregard for the earnings that he earned from working in a shop and a £15 disregard on the earnings from work as a share fisherman.

Example 2

John is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings of £8 from work as an auxiliary coastguard.

The DM determines that John is entitled to a £8 disregard for the work as an auxiliary coastguard and that he is entitled to a £12 disregard for the work as a share fisherman.

Earnings paid in a foreign currency

27961 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission¹.

1 JSA Regs, reg 163(3)(101(4)(b)); Sch 6, para 15

27962 - 27971

JSA(Cont) and JSA(IB) compared for a share fisherman 27972 - 27999

[Amount of JSA payable 27922 - 27999](#)

Amount of JSA payable

27972 Where a share fisherman satisfies both the JSA(Cont) and JSA(IB) conditions and has income, the amount payable is

1. the difference between the

1.1 applicable amount (see DMG Chapter 23) **and**

1.2 income

if that difference is greater than the personal rate (see DMG Chapter 23) **or**

2. if **1.** does not apply, the personal rate¹.

1 JS Act 95, s 4(8)

27973 If using the comparison in DMG 27972, the amount payable is the difference between the income and the applicable amount, JSA(IB) is made up of two elements¹

1. an amount equal to the personal rate² **and**

2. an amount that is the difference between the

2.1 applicable amount less income **and**

2.2 the personal rate³.

1 JS Act 95, s 4(9); 2 s 4(10); 3 s 4(11)

27974 The calculation at DMG 27973 should be made

1. for each week that a share fisherman satisfies both the JSA(Cont) and JSA(IB) conditions **and**

2. when an award of JSA(IB) is made.

27975 If a share fisherman claims JSA and satisfies both the JSA(Cont) and JSA(IB) conditions the DM

should calculate JSA entitlement on a weekly basis until entitlement to JSA(Cont) has exhausted.

Example

Hamish is a S/E share fisherman. He is a regular crew member. He claims JSA on 13 March. His benefit week is Wednesday 13 March to Tuesday 19 March. Hamish satisfies the qualifying conditions for both JSA(Cont) and JSA(IB).

Entitlement for BWE 19.3.2002

To calculate entitlement to JSA(Cont) the DM

- 1.** disregards any hours Hamish spends working as a share fisherman in the benefit week, when considering the remunerative work rule. The DM establishes that Hamish is not in remunerative work
- 2.** determines the age-related amount for Hamish
- 3.** establishes the gross receipts for the assessment period, that is the benefit week. The gross receipts are the earnings **earned** in the benefit week
- 4.** deducts from Hamish's earnings any allowable expenses **incurred** in the assessment period, also a weekly figure for any allowable expenses that are not incurred weekly. The figure that is left is the chargeable income
- 5.** deducts from the chargeable income a weekly amount for notional tax and SS contributions. The DM also deducts half of the premium for Hamish's personal pension
- 6.** disregards £20 from the remaining figure.

The DM deducts Hamish's earnings from the age-related amount and decides that Hamish is entitled to JSA(Cont) of £32.15.

To calculate entitlement to JSA(IB) the DM

- 1.** considers that Hamish is gainfully employed as a share fisherman
- 2.** determines that Hamish's assessment period is one year
- 3.** establishes the gross receipts for the assessment period, the gross receipts are the earnings **received** in the assessment period
- 4.** determines that Hamish is not in remunerative work
- 5.** determines Hamish's applicable amount
- 6.** averages Hamish's earnings received in the assessment period to obtain a weekly figure

7. deducts from Hamish's earnings any allowable expenses **paid out** in the assessment period. The figure that is left is the chargeable income

8. deducts from the chargeable income notional tax and SS contributions. The DM also averages the amount paid into Hamish's personal pension scheme in the assessment period into a weekly figure and deducts half of that amount

9. disregards £5 from the remaining figure.

The DM deducts Hamish's earnings from his applicable amount and determines that Hamish is entitled to £27.95.

The DM decides that Hamish is entitled to JSA(Cont) of £32.15.

Entitlement for BWE 26.3.2002

In this benefit week Hamish works 15 hours working as a share fisherman.

To calculate entitlement to JSA(Cont) the DM follows the same procedure as in BWE 19 March. The DM determines that Hamish is entitled to JSA(Cont) of £14.23.

To calculate entitlement to JSA(IB) the DM uses the figure calculated for BWE 19 March. The DM determines that Hamish is entitled to JSA(IB) of £27.95 (as per calculation above).

The DM supersedes the award of JSA because there has been a change of circumstances and awards JSA(IB) of £27.95.

Hamish's award of JSA(IB) is made up of two elements

1. £14.23 which is the amount that is equal to the personal rate **and**

2. £13.72 which is the amount that is the difference between his personal rate and his applicable amount less income.

Entitlement for BWE 2.4.02

In this benefit week Hamish does no work as a share fisherman.

To calculate entitlement to JSA(Cont) the DM follows the same procedure as in BWE 19 March. The DM determines that as Hamish has not earned any money as a share fisherman he is entitled to JSA(Cont) of £53.05.

To calculate entitlement to JSA(IB) the DM uses the figure calculated for BWE 19 March. The DM determines that Hamish is entitled to JSA(IB) of £27.95 (as per calculation above).

The DM supersedes the award of JSA because there has been a change of circumstances and awards

JSA(Cont) of £53.05.

Future benefit weeks

The DM continues with this procedure until Hamish has exhausted his entitlement to JSA(Cont). The DM then considers entitlement to JSA(IB) in the normal way.

27976 - 27999

Appendix 1 - Notional deductions for income tax

[\[See DMG Memo 03/19\]](#) [\[See DMG Memo 05/20\]](#) [\[See DMG Memo 04/21\]](#) [\[See Memo DMG 7/22\]](#) [\[See Memo DMG 04/23\]](#) [\[See DMG Memo 02/24\]](#)

Main income tax allowances

1. The main income tax allowances are as follows.

		11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
		£	£	£	£	£	£	£	£	£	£	£
Personal	under 65	7,475	8,105	9,440	10,000	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal	65-74	9,940	10,500	10,500	10,500	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal	75 & over	10,090	10,660	10,660	10,660	10,660	11,000	11,500	11,850	12,500	12,500	12,500
Married couple	under 65	-	-	-	-	-	-	-				
Married couple	65-74	-	-	-	-	-	-	-				
Married couple	75 & over	7,295	7,705	7,915	8,165	8,355	8,355	8,445	8,695			

Basic rates of tax

2. Income tax is payable on taxable income

Note there are different rates for Scotland from **18/19** – see **3** below.

£

10/11 1 - 37,400 at basic rate of 20%

11/12 1 - 35,000 at basic rate of 20%

12/13 1 - 34,370 at basic rate of 20%

13/14 1 - 32,010 at basic rate of 20%

14/15 1 - 31,865 at basic rate of 20%

15/16 1 - 31,785 at basic rate of 20%

16/17 1 - 32,000 at basic rate of 20%

17/18 1 - 33,500 at basic rate of 20%

18/19 1 - 34,500 at basic rate of 20%

19/20 1 - 37,500 at basic rate of 20%

20/21 1 - 37,500 at basic rate of 20%

21/22 1 - 37,500 at basic rate of 20%

3. Scottish Income Tax Rates

11,850 - 13,850 at starter tax rate of 19%

18/19 13,851 - 24,000 at basic rate of 20%

24,001 - 43,430 at intermediate rate of 21%

12,501 - 14,549 at starter rate of 19%

19/20 14,550 - 24,944 at basic rate of 20%

24,945 - 43,430 at intermediate rate of 21%

	12,501 - 14,549	at starter rate of 19%
20/21	14,550 - 24,944	at basic rate of 20%
	24,945 - 43,430	at intermediate rate of 21%
21/22	12,571 - 14,667	at starter rate of 19%
	14,668 - 25,296	at basic rate of 20%
	25,297 - 43,662	at intermediate rate of 21%

Appendix 2 - Notional deductions for contributions

[\[See DMG Memo 03/19\]](#) [\[See DMG Memo 05/20\]](#) [\[See DMG Memo 04/21\]](#) [\[See Memo DMG 7/22\]](#)[\[See Memo DMG 04/23\]](#) [\[See DMG Memo 02/24\]](#)

Class 1 contributions

1. The Class 1 contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

2. Earnings Bands 11/12

Earnings Limits 11/12

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £102
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442
		UEL
		Weekly £817
		Monthly £3540

Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

3. Earnings Bands 12/13

Earnings Limits 12/13

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £107
2. LEL to UEL	12% of earnings that	Monthly £464

exceed LEL up to UEL

UEL

Weekly £817

Monthly £3540

Primary threshold

No contributions are payable on weekly earnings of £146 or less or monthly earnings of £634 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £146.01 and £817 per week and at 2% for earnings above £817 per week

4. Earnings Bands 13/14

Earnings Limits 13/14

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £109
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £472

UEL

Weekly £797

Monthly £3453

Primary threshold

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £645 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £149.01 and £797 per week and at 2% for earnings above £797 per week.

5. Earnings Bands 14/15

Earnings Limits 14/15

Earnings	Percentage rates	LEL
-----------------	-------------------------	------------

1. up to LEL	NIL	Weekly £111
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £481
UEL		
		Weekly £805
		Monthly £3488

Primary threshold

No contributions are payable on weekly earnings of £153 or less or monthly earnings of £663 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £153.01 and £805 per week and at 2% for earnings above £805 per week.

6. Earnings Bands 15/16

Earnings Limits 15/16

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £112
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
UEL		
		Weekly £815
		Monthly £3532

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £815 per week and at 2% for earnings above £815 per week.

7. Earnings Bands 16/17

Earnings Limits 16/17

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £112
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £486
		UEL
		Weekly £827
		Monthly £3584

Primary threshold

No contributions are payable on weekly earnings of £155 or less or monthly earnings of £672 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £155.01 and £827 per week and at 2% for earnings above £827 per week.

8. Earnings Bands 17/18

Earnings Limits 17/18

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £113
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £490
		UEL
		Weekly £866
		Monthly £3753

Primary threshold

No contributions are payable on weekly earnings of £157 or less or monthly earnings of £681 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £157.01 and £866 per week and at 2% for earnings above £866 per week.

9. Earnings Bands 18/19

Earnings Limits 18/19

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £116
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £503
		UEL
		Weekly £892
		Monthly £3863

Primary threshold

No contributions are payable on weekly earnings of £162 or less or monthly earnings of £719 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £162.01 and £892 per week and at 2% for earnings above £892 per week.

10. Earnings Bands 19/20

Earnings Limits 19/20

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £118
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £512
		UEL
		Weekly £962
		Monthly £4167

Primary threshold

No contributions are payable on weekly earnings of £166 or less or monthly earnings of £719 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £166.01 and £962 per week and at 2% for earnings above £962 per week.

11. Earnings Bands 20/21**Earnings Limits 20/21**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £120
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £520
		UEL
		Weekly £962
		Monthly £4167

Primary threshold

No contributions are payable on weekly earnings of £183 or less or monthly earnings of £792 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £183.01 and £962 per week and at 2% for earnings above £962 per week.

12.	Earnings Bands 21/22	Percentage rates	Earnings Limits 21/22
	Earnings	Percentage rates	LEL
	1. Up to LEL	NIL	Weekly £120
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £520
			UEL
			Weekly £967
			Monthly £4,189

Primary threshold

No contributions are payable on weekly earnings of £183 or less or monthly earnings of £796 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £184.01 and £967 per week and at 2% for earnings above £967 per week.

Class 2 contributions

13.

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
	£	£	£	£	£	£	£	£	£
Ordinary Class 2 rate	2.70	2.75	2.80	2.80	2.85	2.95	3.00	3.05	3.05
Share fisherman rate	3.35	3.40	3.40	3.45	3.50	3.60	3.65	3.70	3.70

Small earnings exception/Small profits threshold

14.

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
	£	£	£	£	£	£	£	£	£
Earnings limit	5,725	5,885	5,965	5,965	6,025	6,205	6,365	6,475	6,475

Class 4 contributions

15.

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
	£	£	£	£	£	£	£	£	£
Lower level	7,755	7,956	8,060	8,060	8,164	8,424	8,632	9,500	£9,568

Higher level	41,450	41,865	42,385	43,000	45,000	46,350	50,000	50,000	50,270
	9% of	9% of	9% of	9% of	9% of	9% of	9% of	9% of	9% of
	£7,755	£7,956	£8,060	£8,060	£8,164 to	£8,424	£8,632	£9,500	£9,568
	to	to	to	to	£45,000	to	to	to	to
Percentage	£41,450	£41,865	£42,385	£43,000	per year	£46,350	£50,000	£50,000	£50,270
rate	per year.	per year	per year	per year	2%	per year	per year	per year	per year
	2%	2%	2%	2%	above	2%	2%	2%	2%
	above	above	above	above	£45,000	above	above	above	above
	£41,450	£41,865	£42,385	£43,000		£46,350	£50,000	£50,000	£50,270

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