ADM Chapter H5: unearned income

Subpages

Introduction H5001

H5001 This chapter provides guidance on unearned income. ADM Chapters **H3** and **H4** provide guidance on employed earnings and on self-employed earnings. ADM Chapter **H6** provides guidance on student income.

What is unearned income H5002 - H5119

Unearned income

What is unearned income

H5002 [See Memo ADM 20/20 and Memo ADM 26/20] A claimant's unearned income means[1] any of their income consisting of

1. retirement pension income

2. benefit income

3. foreign benefits

4. spousal maintenance

5. student income (see ADM Chapter **H6** for guidance on student income)

6. employment and training payments paid

6.1 as a substitute for UC **or**

6.2 for a person's living expenses

7. sports awards

8. certain insurance payments

9. income from an annuity

10. income from a trust

11. income deemed to yield from capital (sometimes also known as "tariff income")

12. capital treated as income

13. certain income which is taxable.

1 UC Regs, reg 66(1)

If a type of income is not listed above, it does **not** affect the claimant's award.

H5003 Unearned income also includes unearned income which the claimant does not actually possess but is treated as having[1]. This is referred to as "notional income".

1 UC Regs, reg 66(1) & reg 74

Retirement pension income

H5004 Retirement pension income includes RP, SP, occupational and personal pensions and certain other pension related income as explained at ADM **H5005** et seq[1]. The meaning of "retirement pension income" has the same meaning as it does in SPC legislation but this does not mean that it is treated the same way when calculating UC. It also includes increases in RP for a person's partner. All retirement pension income should be taken fully into account for UC; there are no comparable deductions for Income Tax and NI in UC.

1 UC Regs, reg 67; SPC Act 02, s 16(1) & 16(1)(za)

Retirement pension

H5005 RP has to be taken fully into account. For UC this includes either

1. contributory (Category A or B) RP[1] **or**

2. non-contributory (Category C or D) RP[2].

1 SPC Act 02, s 16(1)(a); 2 s 16(1)(d)

H5006 RP also includes the following elements

1. a SAP payable as a result of divorce[1]

2. GRB earned between 1961 and 1975 under the graduated pension scheme[2]

3. age additions[3].

1 SPC Act 02, s 16(1)(b); 2 s 16(1)(c); 3 s 16(1)(e)

H5007 Any increase in a Category A or Category B for RP in respect of a person's partner has to be taken fully into account[1].

1 UC Regs, reg 67(2); SPC Act, s 16(1)(a)

State Pension

H5008 SP replaced RP for people reaching pensionable age on or after 6.4.16.and should be taken fully into account[1]. It is either

1 contributory (Cat A or B) **or**

2. non-contributory (Cat C) in limited circumstances only.

H5009 SP does not consist of individual elements like RP (BP, AP & GRB etc.) and is generally based only on the claimant's NI record. Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse's or civil partner's AP, deferred RP or deferred GRB,

2. the claimant receives a transitional rate of SP (for women who paid reduced rate NI) and

3. the claimant is awarded a Shared Additional Pension (SAP) upon divorce.

4. Increments (of SP) for deferred retirement.

1 UC Regs, reg 67; SPC Act 02, s 16(1)(za)

Occupational pensions

H5010 Income from occupational pension schemes should be taken fully into account[1]. This includes any payment (other than a payment ordered by a court or made in settlement of a claim) made by or on behalf of a former employer on account of early retirement on grounds of ill health or disability[2].

Note: A non-taxable attributable Service Invalidity Pension (SIP) or a Service Attributable Pension (SAP) is a pension awarded to members of the armed forces who are discharged on medical grounds as a result of illness or injury attributed to service. SAPs and non-taxable attributable SIPs are not occupational pensions and are not taken into account. Armed Forces Pensions are based on years of service and are occupational pensions. They should be taken into account as explained at ADM H5011 et seq.

1 SPC Act 02, s 16(1)(f); 2 s 16(1)(l)

Meaning of occupational pension scheme

H5011 An occupational pension scheme is a pension scheme defined under specific pensions legislation[1] that provides benefits to, or in respect of, people with service in a particular employment or may provide benefits to, or in respect of, other people.

1 SPC Act 02, s 17; PS Act 93, s 1

H5012 Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Redundancy Scheme **or**

2. British Coal Industrial Death and Retirement Scheme **or**

3. British Coal Redundant Mineworker's Pension Scheme **or**

4. Police and Fire-fighters' disablement or special widow's pension schemesnare included.

H5013 Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship. This type of payment is a charitable or voluntary payment and is ignored as income for UC.

Example

Angela retired early from the nursing profession. Every three months she receives a payment of £300 from a charitable trust for nurses. The DM decides that the payment is a charitable payment and is not included as income for UC purposes.

H5014 The DM should take payments into account as an occupational pension if a pensioner who has been in employment that was contracted out of S2P is entitled to

1. GMP instead of additional pension through an occupational pension scheme **and**

2. increments to an occupational pension and GMP if retirement was deferred.

H5015 - H5018

Personal pensions

H5019 Income from personal pension schemes should be taken fully into account[1]. Personal pension schemes provide pensions on retirement for

1. S/E people **or**

2. employees who are not members of occupational pension schemes.

1 SPC Act 02, s 16(1)(f)

Meaning of personal pension scheme

H5020 A personal pension is a pension scheme that[1]

1. is not an occupational pension scheme **and**

2. is established by a person within specified finance legislation[2].

1 SPC Act 02, s 17; PS Act 93, s 1; 2 Finance Act 2004, s 154(1)

H5021 - H5029

Overseas arrangements

H5030 Income from an overseas pension arrangement should be taken fully into account[1].

1 SPC Act 02, s 16(1)(g)

Meaning of overseas arrangement

H5031 An overseas arrangement is[1] a scheme or arrangement which

1. has the effect (or is capable of having the effect) of providing benefits to or in respect of employed earners on the termination of employment, death or retirement **and**

2. is administered wholly or primarily outside the GB **and**

3. is not included in the description of an appropriate scheme **and**

4. is not an occupational pension scheme.

1 SPC Act 02, s 16(3)

Retirement annuity contracts

H5032 Payments from this type of personal pension should be taken fully into account[1]. Before 1.7.88 people could take out retirement annuity contracts. These are similar to a personal pension and were usually taken out by S/E people. People with these pensions are entitled to buy an annuity between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

1 SPC Act 02, s 16(1)(h)

Meaning of retirement annuity contract

H5033 Retirement annuity contract means[1] an approved contract or scheme that allows a person to buy an annuity from the age of 60.

1 SPC Act 02, s 16(3)

Foreign annuities or insurance policies

H5034 Income from annuities or insurance policies that were bought or transferred to provide income under a personal pension scheme or other overseas pension arrangement[1] should be taken fully into account.

1 SPC Act 02, s 16(1)(i)

Retirement annuities purchased on divorce

H5035 Income received from an annuity purchased or transferred to meet an ex spouse's liability on divorce[1] should be taken fully into account.

1 SPC Act 02, s 16(1)(j)

Civil list pensions

H5036 Income from a civil list pension[1] should be taken fully into account.

1 SPC Act 02, s 16(1)(k)

H5037 A civil list pension is awarded for distinguished service to the nation in the arts, science or literature. It is

1. paid at the discretion of the Queen **and**

2. voted annually by Parliament.

Equity release schemes

H5038 Any payment made at regular intervals under an equity release scheme should be taken fully into account[1].

1 SPC Act 02, s 16(1)(m)

Meaning of equity release scheme

H5039 Equity release scheme means[1] a loan made between a person ("the lender") and the claimant

1. by means of which a sum of money is advanced by the lender to the claimant by way of payments at regular intervals **and**

2. which is secured on a dwelling in which the claimant owns an estate or interest and which he occupies as his home.

1 SPC Regs, reg 1(2)

H5040 - H5049

Financial Assistance Scheme

H5050 Income from the FAS should be taken fully into account[1]. The FAS provides financial help to some people who have lost out on their non-state pension because

1. the scheme they were a member of was under-funded when it started to wind-up **and**

2. the employer is insolvent or no longer exists.

1 SPC Act 02, s 16(1)(n)

H5051 Awards under the FAS top up the amount payable (subject to a maximum amount) under the qualifying pension scheme to a level broadly equal to 90% of the amount that would have been received had the pension scheme not started to wind-up. Tax is deducted at source. In most cases FAS payments for individuals commence at age 65. The terminally ill and survivors may qualify for payments earlier.

H5052 - H5059

Benefit income

H5060 Certain benefits are taken into account in UC. The following paragraphs describe those benefits. These benefits should be taken into account subject to any adjustment to the amount payable in accordance with the overlapping benefit rules[1]. This means that the net amount of the benefit should be taken into account **after** the adjustment for any overlapping benefit.

1 UC Regs, reg 66(1)(b)

H5061

Jobseeker's allowance

H5062 JSA received by the claimant or any partner should be taken fully into account[1]. It is payable to unemployed people who satisfy the contribution conditions.

1 UC Regs, reg 66(1)(b)(i)

Employment and support allowance

H5063 ESA should be taken fully into account[1]. ESA is paid to people who

1. have LCW **and**

2. satisfy the contribution conditions.

1 UC Regs, reg 66(1)(b)(ii)

Carer's allowance

H5064 CA should be taken fully into account[1]. It is payable to people who have caring responsibilities for a person receiving AA or DLA.

1 UC Regs, reg 66(1)(b)(iii)

Note 1: The Scottish carer's allowance supplement[1], paid by the Scottish Government to those recipients of CA living in Scotland, is **not** the same as CA and is fully disregarded.

The Scotland Act 2018, s47

Note 2: The Scottish Government has awarded an additional payment of £230.10 in respect of the period 01.04.20 to 30.09.20[1]. These payments are fully disregarded.

1 SS (Scot) Act 2018, s 81(4A)

Bereavement allowance

H5065 BA should be taken into account in full[1]. It replaced WP for a person whose spouse died on or after 9.4.01. It may also be paid to a person whose civil partner dies on or after 5.12.05. It is restricted to payment for not more than 52 weeks.

Note: Where a claimant receives a BPT it is a one off lump sum payment and is capital.

1 UC Regs, reg 66(1)(b)(iv)

Widowed mother's allowance

H5066 WMA should be taken fully into account[1]. It is paid to some widows whose husbands died before 9.4.01.

1 UC Regs, reg 66(1)(b)(v)

Widowed parent's allowance

H5067 Surviving spouses or civil partners may be entitled to WPA. It should be taken fully into account[1].

1 UC Regs, reg 66(1)(b)(vi)

Widow's pension

H5068 The DM should take WP fully into account[1]. It may still be paid where it is claimed in respect of a death prior to 9.4.01.

1 UC Regs, reg 66(1)(b)(vii)

Note: Bereavement support payment (BSP) replaced bereavement benefit for those people whose spouse or civil partner died on or after 6.4.17 (BA, WMA, WPA and WP will continue where entitlement currently exists). The regular monthly BSP payment is not a prescribed source of unearned income in UC. It is therefore not taken into account in the UC assessment.

See DMG Chapter **59** for guidance on BSP, DMG Chapter **58** for guidance on WB and DMG Chapter **63** for guidance on BB. For guidance on how BSP impacts on capital in UC, please see ADM Chapter **H2**.

Maternity allowance

H5069 MA should be taken fully into account[1]. It is payable to women who can't get SMP.

1 UC Regs, reg 66(1)(b)(viii); Moore v SSWP [2021] EWCA Civ 970

Industrial injuries benefit

H5070 Industrial injuries benefit (but not increases where constant attendance is needed or for exceptionally severe disablement) should be taken fully into account[1]. The additional allowances

1. REA **or**

2. RA **or**

3. US

may also be paid with industrial injuries benefit. They should be taken fully into account.

Note: US was removed from the disablement benefit scheme on 6.4.87 but may continue in payment to people getting it before that date.

1 UC Regs, reg 66(1)(b)(ix)

Incapacity Benefit

H5071 This is a benefit paid to people who have incapacity for work although it has been replaced by ESA and no new claims to it can be made. These awards are being reassessed to determine whether they can be converted to ESA. For UC purposes, IB is taken fully into account as unearned income[1]. See Chapter **M4** for more information.

1 UC (TP) Regs 14, reg 25(1); UC Regs, reg 66, 2 UC (TP) Regs 14, reg 25(2)

Severe Disablement Allowance

H5072 This was a benefit paid to people who were unable to work due to sickness or disability and who were unable to claim IB. No new claims can be made although existing claims may be transitionally protected. These awards are being reassessed to determine whether they can be converted to ESA. For UC purposes, SDA is taken fully into account as unearned income[1]. See Chapter **M4** for more information.

1 UC (TP) Regs 14, reg 25(1); UC Regs, reg 66, 2 UC (TP) Regs 14, reg 25(2)

Foreign benefits

H5073 Foreign benefits are[1] any

1. benefit

2. allowance **or**

3. other payment

which is paid under the law of a country outside the UK and is in the nature of the benefits described in ADM **H5060** - **H5070**. These payments have to be taken fully into account.

1 UC Regs, reg 66(1)(c)

Overpaid existing benefit

H5074 Regulations[1] allow for an overpayment of an existing benefit (excluding a tax credit or joint claim to JSA) to be recovered as unearned income for any period in which that overpaid existing benefit overlaps with a current assessment period in which UC also falls to be calculated. Any existing benefit paid in the current assessment period is treated as unearned income by virtue of these regulations. See ADM **M4062** for more information.

1 UC (TP) Regs 14, reg 10

H5075 - H5079

Spousal maintenance

H5080 Maintenance payments for the claimant or partner made by a spouse, civil partner, former spouse or former civil partner[1] should be taken fully into account. This includes payments made

1. under a court order **or**

2. under an agreement for maintenance (which can be voluntary).

Note: Spousal maintenance is not the same as maintenance paid in respect of a child. Child maintenance is **not** taken into account as income.

1 UC Regs, reg 66(1)(d)

Employment and training payments

H5081 Payments made under relevant legislation[1] which are

1. a substitute for UC **or**

2. for a person's living expenses (see **H5085**)

are taken fully into account[2].

1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2; 2 UC Regs, reg 66(1)(f)

Sports awards

H5082 Sports award means an award

1. made by one of the Sports Councils named in the National Lottery legislation **and**

2. out of sums allocated to it under that legislation[1].

1 UC Regs, reg 66(1)(g); National Lottery etc Act 1993, s 23(2)

H5083 The Sport Councils named in the National Lottery legislation[1]are the

1. English Sports Council[2]

2. Scottish Sports Council

3. Sports Council for Wales

4. Sports Council for Northern Ireland

5. UK Sports Council[3].

1 National Lottery etc Act 1993 s 23(2); 2 National Lottery etc Act (Amendment of s 23) Order 1996, art 2; 3 art 2

H5084 Where the payment of the Sports Award is for a person's living expenses (see ADM **H5085**) then it has to be taken fully into account[1]. Any other element of a Sports Award (for example, sporting equipment costs) is ignored.

1 UC Regs, reg 66(1)(g)

Living expenses

H5085 In ADM **H5081** and ADM **H5084** living expenses means[1]

1. food

2. ordinary clothing or footwear

3. household fuel

4. rent or other housing costs

5. council tax

in respect of the claimant, partner or any child or qualifying young person for whom the claimant is responsible.

1 UC Regs, reg 66(2)

Certain insurance payments

H5086 Payments received under an insurance policy which is insuring against the risk of losing income due to

1 illness **or**

2 accident **or**

3 redundancy

are taken fully into account[1].

Note: Following the introduction of the loans for mortgage interest regulations[1] on 6.4.18, Mortgage Payment Protection Insurance (MPPI) policies or any equivalent payments, are no longer taken into account in UC. DMs should ensure that when considering whether any income at **H5086** should be taken into account that the policy does not contain an amount for mortgage protection (sometimes referred to as a 'mixed income protection policy').

1 UC Regs, reg 66(1)(h)

Income from an annuity

H5087 Income from an annuity - but not retirement pension income - should generally be taken fully into account[1]. However, see ADM **H5122** for guidance on income from an annuity which can be disregarded.

1 UC Regs, reg 66(1)(i)

Income from a trust

H5088 Income from a trust should generally be taken fully into account[1]. However, see ADM H5123 for guidance on income from a trust which can be disregarded.

1 UC Regs, reg 66(1)(j)

H5089

Income deemed to yield from capital

H5090 Claimants are treated as having an income where their capital is above a certain level[1]. In the legislation, it is called "Income deemed to yield from capital". It is also often referred to as "tariff income".

1 WR Act 12, Sch 1, para 4(3)(d), UC Regs, reg 66(1)(k)

H5091 Where a claimant’s capital is over £6,000 but does not exceed the £16,000 limit for UC then it is treated as providing a monthly income[1] of

1. £4.35 for each £250 over £6,000 **and**

2. £4.35 for any excess over £6,000 which is not a complete £250.

1 UC Regs, reg 72(1)

Example 1

Mohamed has savings of £6,740. For the purposes of UC, this is treated as providing a monthly income of £13.05 which falls to be taken into account.

Example 2

Tom has a cash ISA. When he claimed UC, the ISA was worth £6,000. For the purposes of UC, this is treated as providing a monthly income of nil because the ISA is not worth over £6,000.

H5092 ADM **H5091** does not apply where[1]

1. the claimant’s capital is disregarded **or**

2. the actual income from that capital is taken into account as income from an annuity **or**

3. the actual income from that capital is taken into account as income from a trust.

1 UC Regs, reg 72(2)

H5093 Where a claimant is treated as being in receipt of income yielded from capital then any actual income derived from that capital has to be treated as capital from the date it is due to be paid to the claimant[1]. It cannot be treated as income.

1 UC Regs, reg 72(3)

H5094 The types of income which might be derived from capital include

1. interest

2. dividends **and**

3. rental income.

Example 1

Pierre-Michel has savings of £8,000 held in a bank account. This means, that for the purposes of Pierre-

Michel's award of UC, the £8,000 is deemed to yield a monthly income of £34.80. At the end of the financial year, the bank credits Pierre-Michel with £170 interest on the savings. The DM treats this £170 as a payment of capital. Pierre-Michel now has £8,170 in capital yielding a monthly income of £39.15.

Example 2

Scoot owns a second property which he does not live in as his home. Scoot rents the property and receives rental income as a result. For UC, the capital (the second property in this example) is treated as yielding an income and the actual income derived from that capital (the rental income) is treated as part of Scoot's capital from the date it is due to be paid.

H5095 - H5099

Capital treated as income

H5100 Any sums that are paid

1. regularly **and**

2. with reference to a period of time

have to be treated as income even if they would normally be regarded as capital or as having a capital element[1].

1 UC Regs, reg 46(3)

Example

Emily is the beneficiary of payments under an annuity. The payments are paid to her once a year. The payments are treated as payments of income and are taken fully into account when calculating Emily's award of UC.

H5101 Where capital is payable by instalments the DM should decide if the payments should be treated as capital or income. Capital can be payable by instalments in situations where

1. a person lends another person a lump sum of money and the borrower repays that money in regular or irregular payments

2. a person receives payments from an investment bond with a life assurance company.

The above is not exhaustive.

Example

Susan has an investment bond with a friendly society. The bond is worth £20,000 but is disregarded by the DM because it has a policy of life assurance attached to it. The terms of the bond allow Susan to withdraw money on a monthly basis which reduces the surrender value of the bond. The DM decides that the money Susan receives is capital payable by instalments.

H5102 Where

1. the amount of instalments outstanding **and**

2. the amount of any other capital held by the claimant or partner

exceeds £16,000 treat each instalment received as income. If the total is less than £16,000 each instalment is capital[1].

1 UC Regs, reg 46(4)

H5103 - H5109

Other income that is taxable

H5110 Income that is received and which is taxable under certain legislation[1] has to be treated as income to be taken fully into account[2].

1 Income Tax (Trading and Other Income) Act 2005 Part 5; 2 UC Regs, reg 66(1)(m)

H5111 The types of taxable income which a claimant may receive and which fall to be treated as income for UC under **H5110** include[1]

1. receipts from intellectual property (for example, royalty payments)

2. income from films and sounds recordings

3. certain telecommunication rights

4. income received as a settler

5. income from estates in administration.

Note: A “settler” is a person who has settled or transferred property into a trust. Where the settler has an interest in the trust, then the income received may be taken into account.

1 Income Tax (Trading and Other Income) Act 2005, Part 5

H5112 Where a claimant receives an income which is not defined as such for the purposes of UC then it cannot be taken into account as income.

Example

Teresa is in receipt of UC. She rents out a spare bedroom in her house for £60 a week. Because this weekly income from a sub-tenant or boarder is not defined as income for the purposes of UC, it is not taken into account as Teresa's unearned income.

Note 1: It is not relevant whether the rental income is above or below the 'rent a

room' tax relief limits.

Note 2: if a self-employed claimant is renting out rooms in their house as part of

conducting a trade, for example running a B&B, then that income would be taken

into account in the same way as other earnings.

H5113 - H5119

Other types of unearned income H5120 - H5149

Unearned income

Personal injury payments

H5120 [**See ADM Memo 07/20**] There are rules to cover where an amount of money has been

1. awarded to **or**

2. agreed by or on behalf of

a person as a result of a personal injury to that person[1].

1 UC Regs, reg 75(1)

Regular payments

H5121 Where the person receives regular payments as a result of a personal injury

1. by order of the court **or**

2. by an agreement

then those payments are disregarded when calculating that person's unearned income[1].

Note: The agreement referred to in **2.** must be reached **after** the date that the injury occured[2].

1 UC Regs, reg 75(2); 2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ 162

Payments under an annuity

H5122 Where an annuity has been bought with the personal injury award, payments under the annuity are disregarded when calculating that person's unearned income[1].

1 UC Regs, reg 75(3)

Award held in trust

H5123 [**See Memo ADM 21-21**] Where the personal injury award is held in trust any

1. capital of the trust **and**

2. income from the trust

is fully disregarded. The capital in **1.** does not count as part of that person's capital and the income in **2.** does not count as part of that person's unearned income[1].

1 UC Regs, reg 75(4)

Award administered by the court

H5124 Where a personal injury award

1. is administered by the court **or**

2. can only be disposed by direction of the court

then it is fully disregarded when calculating that person's capital. Any regular payments of income from that award are fully disregarded when calculating that person's unearned income[1].

1 UC Regs, reg 75(5)

Other cases

H5125 Where a personal injury award

1. is not held on trust **or**

2. has not been used to buy an annuity **or**

3. has not been disposed of

then it is fully disregarded when calculating that person's capital. The period of the disregard is 12 months from the date that the award is paid[1]. ADM Chapter **H1** provides guidance on capital.

1 UC Regs, reg 75(6)

H5126 - H5139

Special compensation schemes

H5140 [See Memo ADM 13/20] **[See Memo ADM 21-21]** **[See Memo ADM 04-25]** **[See Memo ADM 08-25]** Any payment of capital or income[1] from a scheme approved by the Secretary of State for the purposes of this regulation or from a trust established with funds provided by the Secretary of State for the purpose of

1. providing compensation or support in respect of

1.1 a diagnosis of variant Creutzfeldt-Jacob disease **or**

1.2 infection from contaminated blood products **or**

1.3 the 7th July 2005 London bombings **or**

1.4 the London Emergencies Trust (LET) **or**

1.5 the We Love Manchester Emergency Fund (WLMEF) **or**

1.6 persons who during World War 2

1.6.a were interned **or**

1.6.b suffered forced labour **or**

1.6.c suffered injury **or**

1.6.d suffered property loss **or**

1.6.e suffered the loss of a child

1.7 any Post Office compensation payment[3]

1.8 Grenfell Tower payment[4] **or**

1.9 vaccine damage payment

1.9.a a person who is severely disabled as a result of vaccination receives a payment under relevant legislation[5] **or**

1.9.b. the partner of a person referred to in **1.9.a** receives a payment which is derived from that payment from that person or their estate **or**

1.9.c. the payment is made to the personal representative of a person who was severely disabled as a result of vaccination or to their partner from their estate

2. supporting persons with a disability to live independently in their accommodation is fully disregarded[2].

1 *UC Regs, reg 76(1); 2 reg 76(2); 3 reg 76(1A)(e); 4 reg 76(1B); 5 reg 76(1C)*

H5141 The schemes and trusts covered by ADM **H5140** include

1. The Macfarlane Trusts

2. the Eileen Trust ("The Fund")

3. MFET Limited

4. The Scottish infected blood support scheme (SIBSS)

5. Infected Blood Schemes (for England, Wales and Northern Ireland)

6. The Thalidomide Trust.

Note: The Infected Blood Schemes at **H5141 4.** and **5.** replaced the existing UK schemes at **H5141 1, 2.** and **3.** from 1.4.17 and 2.10.17 respectively.

H5142 - H5144

Relatives of Creutzfeldt-Jacob disease sufferers or persons infected from contaminated blood products

H5145 Payments made to the

1. partner

2. parent

3. son or daughter

of the diagnosed or infected person or from their estate (including payments received from the trust or scheme), will be disregarded if they would be disregarded in the assessment of SPC[1] (see DMG Chapter

84).

Note: See ADM Chapter **H2** for guidance on the capital disregard which may apply to these payments.

1 UC Regs, reg 76(3)

H5146 - H5149

Notional income H5150 - H5199

Notional income

Notional income

H5150 In certain situations a person can be treated as being in possession of income which they do not actually have[1]. This is known as notional income. Notional income should be calculated in the same way as actual income.

1 WR Act 12, Sch 1, para 4(3)(a); UC Regs, reg 74

Income upon application

H5151 DMs should treat an income that

1. would be paid to a person if applied for **and**

2. has not been applied for[1]

as notional income. This means that the person is treated as possessing that income.

1 UC Regs, reg 74(1)

H5152 ADM **H5151** does not apply to the GB benefits which would otherwise be taken into account as income[1].

1 UC Regs, reg 74(2)

Example

Ronnie is in receipt of UC and he also cares for his elderly mother. Although Ronnie cares for his mother and may qualify for CA if a claim was made for it, the DM cannot treat the CA as notional income.

H5153 Only take an income into account if it can be shown beyond doubt that an application or claim for it would succeed. The DM should

1. gather evidence **and**

2. consider all the qualifying conditions for the income.

It should not be assumed that one or more qualifying conditions are satisfied.

Example

In the past Beth has received payments from a trust. The trustees have the discretion as to whom they can make payments to. They are not obliged to make payments to Beth and Beth has no power to demand payments from the trust. The DM cannot treat Beth as being in receipt of notional income in respect of possible payments from the trust.

Notional retirement pension income upon application

H5154 A person who has reached the qualifying age for SPC has to be treated as possessing any retirement pension income[1] which they

1. have not applied for **and**

2. would be expected to be entitled to.

1 UC Regs, reg 74(3)

H5155 The circumstances in which a person can be treated as possessing notional retirement pension income are the same as in the SPC scheme and the same rules apply[1].

1 UC Regs, reg 74(4)

Retirement pension and state pension - notional income

H5156 A person who has reached qualifying age for SPC, but who does not claim RP/ SP, has to be treated as possessing the amount of RP/ SP which they could be expected to receive[1], but only from the date it could be expected to be acquired if a claim was made. This will apply in joint claimant cases where one member has reached the qualifying age for SPC and the other member has not.

1 SPC Regs, reg 18(1)

Example

On 1 November Alice claimed UC. Her partner John has reached qualifying age for SPC and is not in receipt of any RP.

On 6 November the Pension Service advised that John would be entitled to £80 a week RP if he made a claim for it.

The DM estimates the time it would take for a typical claim for RP to be dealt with and put into payment and decides that John should be treated as having a notional income of £80 a week from 13 November.

H5157 For UC purposes RP includes[1]

1. contributory (Category A or B) RP including an increase in respect of a partner

2. non-contributory (Category C or D) RP

3. a SAP payable as a result of divorce

4. graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme

5. any age additions.

Note: for UC purpose SP has the meaning in **H5008-09**

1 UC Regs, reg 67, SPC Act 02, s 16(1)(a)-(e)

Deferring retirement pension and state pension

H5158 (see DMG memo 04-24) The rules on deferring RP allow people who have deferred claiming their pension for at least twelve months from April 2005 to have the choice between taking extra RP or a lump sum payment for the additional RP accrued. SP has its own rules on deferment – see DMG chapter **74** for more details.

H5159 Where ADM **H5156** applies and a claimant has migrated to UC from TC and was deferring their RP/SP at the time they were sent a migration notice, any unclaimed RP/SP that would be regarded as notional income should be disregarded for 12 APs.[1] If the claimant's UC award ends due to a temporary increase in their earnings

1. before the 12 APs of the period of disregard has expired **and**

2. they qualify for UC within three months of the earlier award ending

any remaining APs of the period of disregard will apply from the start of the claimant's repeat UC claim.[2]

1 UC (TP) Regs, reg 60B(1); 2 UC (TP) Regs, reg 60B(2), UC (TP) Regs, reg 57

Example

On 16.4.24 Trevor reached the qualifying age for SPC. Trevor is a TC claimant who has been deferring his SP.

On 18.4.25 Trevor received a migration notice advising him to claim UC. Trevor claims and is awarded UC from 18.5.25.

The DM decides that the amount of deferred SP which would be treated as notional income should be disregarded for a period of 12 APs starting from 18.5.25.

Trevor's UC award ends on 18.9.25 due to a temporary increase in earnings. On 18.10.25 Trevor's earnings decrease and he re-claims UC on the same date. He becomes entitled to a new award from

18.10.25.

A DM decides that the amount of deferred SP which would be treated as notional income will be disregarded for a further 7 APs from 18.10.25.

H5160 Where a claimant to whom ADM **H5156** applies

1. has deferred their RP for at least twelve months **and**

2. would have been entitled to make an election under specific RP legislation[1]

they have to be treated as having the amount of RP income[2] which they might expect to be entitled to if they had elected to receive a lump sum.

1 SS CB Act 92, Sch 5 or 5A; Graduated Retirement Benefit Regs, Sch. 1; 2 SPC Regs, reg 18(1B)

Example

Roger claimed UC on 12.10.12. His partner, Sally is of pension age and has confirmed that she is currently deferring her entitlement to RP.

Sally has deferred her RP for 18 months.

The DM received evidence that Sally would be entitled to £100 RP a week if she opted to take a lump sum payment for the deferral period, instead of additional RP that she would be entitled to.

The DM decides to treat Sally as having a notional income of £100 a week.

Deferring retirement pension whilst an overlapping benefit is in payment

H5161 Where a claimant to whom ADM **H5156** applies is in receipt of an overlapping benefit or allowance, the amount of RP income they are treated as having[1] is the RP that they are entitled to minus the amount of the benefit or allowance in payment.

1 SPC Regs, reg 18(1CA)

H5162 Where a claimant to whom ADM **H5156** applies is in receipt of an overlapping benefit or allowance - which would result in an adjustment to be made to the amount of RP payable - they are treated as having[1] the RP income minus the adjustment which would be made to it.

1 SPC Regs, reg 18(1CB)

Example

Jack has been deferring his RP for two years. His partner has claimed UC.

Jack receives £46.95 a week CA that is taken fully into account.

The DM receives evidence that Jack would be entitled to £80 a week RP if he claimed it and opted to take a lump sum payment for the period he has deferred.

The DM decides to treat Jack as having notional RP income of £33.05 a week (£80 RP less £46.95 CA).

H5163 - H5169

Occupational pension schemes - notional income

H5170 A claimant who has reached qualifying age for SPC and has entitlement to an occupational pension but who has elected to defer payment should be treated as possessing the amount of occupational pension he could expect to receive if he applied for it[1], but only from the date it could be expected to be acquired if a claim was made.

Note: See ADM **H5178** et seq for where a claimant fails to secure money purchase benefits under an occupational pension scheme.

1 SPC Regs, reg 18(1D)

Example

Asif belongs to an occupational pension scheme. The retirement age for the scheme is 60. However, it is possible to defer drawing the pension for four years after this age in return for receiving a larger income. It is also possible to apply for the occupational pension from the age of 55 but payments would be made at a reduced rate.

Asif decides to take his payments at the age of 60. The DM decides that Asif has not deferred payment of his occupational pension because he has taken the pension at the retirement age for the scheme.

Personal pensions

General

H5171 A personal pension is a fund that provides an income on retirement for employees[1] or the S/E[2]. Since April 2015, people have had greater flexibility in how they access their pension savings. The flexibilities allow an individual to be able to choose what they want to do with their defined contribution fund or money purchase benefits (referred to in this guidance as "pension pot") from the age of 55.

1 PS Act 93, s 1; 2 Income and Corporation Taxes Act 1988, Part XIV, chapter IV

H5172 Any income generated from a pension pot in UC is retirement pension income[1]. Where one partner in a joint UC claim has reached the qualifying age for SPC[2] and has a pension pot but does not apply to make use of that income, then notional retirement pension income may apply[3]

1 UC Regs, regs 61(1)(a) & 67, 2 SPC Act 02, s 1(6), 3 UC Regs, reg 74(3)

H5173 A person could

1. draw out all of the funds in the pension pot

2. purchase an annuity

3. opt for a drawdown arrangement (where lump sums or regular amounts can be drawn down from the pension pot) without any restriction either in the form of a cap or a minimum income amount

4. do nothing and leave the fund untouched.

Income and capital drawdown

H5174 Whilst a claimant's pension pot is held by the pension provider then the value of the right to that sum falls to be disregarded as capital for the purposes of UC[1]. Pension flexibilities allow people to withdraw money from their pension pot. This is known as a drawdown. If the claimant has withdrawn money from their pension pot then a determination has to be made as to how this is to be treated for the purposes of UC.

1 UC Regs, Sch 10, para 10

H5175 Where a claimant chooses to

1. take ad-hoc withdrawals **or**

2. take the whole sum

then the amount withdrawn falls to be treated as capital. (see ADM Chapter **H1**).

H5176 Where a claimant chooses to withdraw amounts on a regular basis then those amounts fall to be treated as income and taken into account as such[1].

1 UC Regs, reg 46(3)

H5177 For the purposes of notional income for UC claimants who have reached the qualifying age for SPC, the claimant's pension pot is required to be re-valued

1. after every drawdown of capital

2. after every drawdown of income which exceeds the applicable notional income amount (see ADM **H5188** et seq) **or**

3. upon the claimant's request.

Example

John is in receipt of UC. His partner, Lisa, who is of SPC qualifying age, has a pension pot of £40,000 which she doesn't wish to access at the moment but might do at a later stage. The decision maker calculates that as an annuity income, this would produce £2,000 per annum or £166.67 per month. This is based on 100% of the rate of annuity that the pension pot would generate (see ADM **H5188**). The figure of £166.67 is taken into account as notional income. Lisa then decides to draw down £8,000 as capital, leaving £32,000 in her pension pot. The decision maker reassesses the notional income figure based on 100% of the rate of annuity that the remaining amount in the pension pot would generate.

Personal pensions/occupational pensions where income withdrawal is allowed - notional income

H5178 Treat a person who has reached qualifying age for SPC who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that allows income withdrawal **and**

2. has not bought an annuity **and**

> **2.1** has deferred taking all or part of the income from the fund **or**
>
> **2.2** has failed to do everything necessary to get all or part of the income from the fund that would be payable if he applied for it

as having a notional income[1].

1 SPC Regs, reg 18(2)(a)(i) & (ii)

Amount of notional income

H5179 The amount of the notional income is 100% of the rate of the annuity which the fund would generate[1] (see ADM **H5188** et seq).

1 SPC Regs, reg 18(3)

From what date should the DM take notional income into account

H5180 Take notional income into account from the date that the person could expect to get the income if an application was made[1]. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

2. add the estimated time it would take the pension fund holder to process an application for that income.

1 SPC Regs, reg 18(2)

Example

Holly is in receipt of UC. Her husband, Bernard, is of qualifying age for SPC.

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case 100% of the rate of the annuity which the fund would generate, based on the Government's tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from the first day of the assessment period in which the personal pension would have been paid.

Personal pensions/occupational pensions where income withdrawal is not allowed - notional income

H5181 Treat a person who has reached qualifying age for SPC who

1. is entitled to money purchase benefits under a personal pension or occupational pension scheme that does not allow income withdrawal **or**

2. has a retirement annuity contract

and has not bought an annuity, as having a notional income[1].

1 SPC Regs, reg 18(2)(a)(iii) & (b)

Amount of notional income

H5182 The amount of notional income is the amount that a person could have received without buying an annuity, if the pension funds or retirement annuity contract were held in a scheme that did allow income withdrawal[1] (see DMG ADM **H5188** et seq).

1 SPC Regs, reg 18(4)

From what date should the DM take notional income into account

H5183 Take notional income into account from the date that a person could expect to get the income if an application was possible[1]. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**

2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for that income.

1 SPC Regs, reg 18(2)

Example

Dan is in receipt of UC His wife, Fiona, is of qualifying age for SPC. On 1 November the DM receives evidence that Fiona has a retirement annuity contract.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from the first day of the assessment period in which the income would have been paid.

Meaning of money purchase benefits

H5184 The term money purchase benefits means[1] where pension benefits are determined by the amount of the payment or payments made by or on behalf of the member of the pension scheme rather than average salary benefits.

1 SPC Regs, reg 18(5), PS Act 93, s 181(1)

What is a pension fund holder

H5185 A pension fund holder, with respect to an occupational pension scheme, personal pension scheme or retirement annuity contract means[1]

1. trustees **or**

2. managers **or**

3. administrators

of the scheme or contract concerned.

1 SPC Regs, reg 1(2)

Who is a person who derives entitlement

H5186 The term person who derives entitlement is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

H5187 People such as widows or widowers of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

Information and evidence

H5188 Pension fund holders must provide the DM with information in relation to

1. 100% of the rate of the annuity that the fund would generate **and**

2. the amount of income that would be available if the funds were held in a scheme that produces an income.

H5189 This information is based on tables prepared by the Government's Actuaries Department (GAD)[1]. DMs should consider evidence from pension fund holders when deciding the amount of notional income. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

1 UC, PIP & WaB (C&P) Regs, reg 41

H5190 DMs should consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available. See ADM Chapter A1 on the Principles of Decision Making and Evidence.

Lump sums on retirement

H5191 At the point that

1. an annuity is bought **or**

2. an income is taken

from the personal pension fund, a lump sum of up to 25% of the fund may be taken. Treat this payment as capital.

Actual income

H5192 Take into account in full in the normal way, any income that is

1. paid under an annuity bought with funds from a

> **1.1** personal or occupational pension scheme **or**
>
> **1.2** retirement annuity contract **or**

2. withdrawn from a personal or occupational pension scheme.

Provision under a retirement annuity contract

H5193 Before 1.7.88 people could buy retirement annuity contracts. People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

Note: ADM **H5033** explains what a retirement annuity contract is.

Retirement annuity contract - notional income

H5194 If a claimant who has reached qualifying age for SPC fails to purchase an annuity with the funds available under his retirement annuity contract notional income should be taken into account[1]. ADM H5182 explains how much income should be taken into account.

1 SPC Regs, reg 18(2)(b)

H5195 - H5199

Calculation of unearned income H5200 - H5999

Calculation of unearned income

General H5200 - H5209

Fluctuating income H5210 - H5999

General

H5200 The general rule is that unearned income has to be calculated as a monthly amount[1]. The guidance here does not apply to student income[2].

Note: Month means calendar month[3].

1 UC Regs, reg 73(1); 2 reg 73(4); 3 Interpretation Act 1978, Sch 1

H5201 Where a payment of income is made not on a monthly basis then the amount has to be calculated as a monthly figure[1].

Note: DMs should apply the appropriate supersession rule where an income commences or ends during an assessment period. ADM Chapter **A4** provides guidance on supersession.

1 UC Regs, reg 73(2)

H5202 This means that

1. weekly payments are multiplied by 52 and divided by 12[1]

2. four weekly payments are multiplied by 13 and divided by 12[2]

3. three monthly payments are multiplied by 4 and divided by 12[3]

4. annual payments are divided by12[4].

1 UC Regs, reg 73(2)(a); 2 reg 73(2)(b); 3 reg 73(2)(c); 4 reg 73(2)(d)

Example

Lizzie is paid maintenance from her ex-partner. He pays Lizzie £40 every week. For the purposes of UC, this is calculated as a monthly income of £173.33 (£40 X 52/12).

Digital Service Areas

H5203 For claimants in digital service areas only (see ADM Chapter **M5**), where unearned income relates to a period which either begins or ends during an assessment period, then the amount of unearned income has to be calculated using the formula[1]

$$N \times \frac{M \times 12}{365}$$

where:

N is the number of days in respect of which unearned income is paid that fall in the assessment period; and

M is the monthly amount of the income as calculated in accordance with ADM **H5200** or ADM **H5202**

1 UC Regs, reg 73(2A)

Example

Josh is in receipt of UC. During the assessment period running from 3rd December to 2nd January, he begins to receive a payment of new style JSA. The payment of JSA is paid in respect of 17th December onwards and the weekly rate is £57.35 or £248.52 as a monthly figure. For the purposes of Josh's UC assessment period, this payment of JSA is calculated as follows:

$$17 \times \frac{248.52 \times 12}{365}$$

This means that the amount of JSA to take into account for the assessment period is £138.90 (£248.52 x 12 ÷ 365) x 17 days in respect of which JSA is paid in the assessment period).

H5204 - H5209

Fluctuating income

H5210 Where the claimant's income fluctuates, the monthly amount has to calculated

1. if there is an identifiable cycle, over the duration of one such cycle[1] **or**

2. if there is no identifiable cycle[2] then over

> **2.1** three months **or**
>
> **2.2** some other period which enables the income to be determined more accurately.

1 UC Regs, reg 73(3)(a); 2 reg 73(3)(b)

Meaning of identifiable cycle

H5211 An identifiable cycle is a recurring round of events where the end of a cycle marks the beginning of the next cycle.

Example 1

month 1 £50 income received

month 2 £60 income received

month 3 £50 income received

month 4 £50 income received

month 5 £60 income received

month 6 £50 income received

There is an identifiable cycle of three months (months 1 to 3 repeated in months 4 to 6).

Example 2

month 1 £100 income received

month 2 £180 income received

month 3 £100 income received

month 4 £180 income received

There is an identifiable cycle of 2 months.

Example 3

month 1 £100 income received

month 2 £85 income received

month 3 £90 income received

month 4 £20 income received

month 5 £125 income received

There is no identifiable cycle.

H5212 - H5999

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