ADM Chapter H3: Earned income - employed earnings

Subpages

- Introduction H3001 - H3002
- Definitions H3003 - H3009
- General principles of earned income H3010 - H3019
- Employed earnings H3020 - H3079
- Amounts excluded from being employed earnings H3080 - H3129
- Payments disregarded from employed earnings H3130 - H3169
- Calculating the amount of earnings H3170 - H3179
- Trade disputes H3180 - H3189
- Earnings information H3190 - H3199
- Notional earnings H3200 - H3299
- Surplus Earnings H3302 - H3999
- Appendices

Introduction H3001 - H3002

Introduction

H3001 In UC employed earnings fall within the general meaning of earned income. Self-employed earnings also fall within the meaning of earned income. Guidance on self-employed earnings is in ADM Chapter **H4**. Unless otherwise stated, the guidance in this chapter applies to claimants whose earnings are reported via RTI and those claimants, whether in RTI or not, who self-report their employed earnings.

H3002 ADM Chapter **E2** provides guidance on how earned income affects an award of UC.

Definitions H3003 - H3009

Meaning of claimant H3003

Meaning of earned income H3004 - H3009

Meaning of claimant

H3003 Claimant means[1] either

1. a single claimant for UC **or**

2. each of joint claimants for UC.

1 WR Act 12, s 40

Meaning of earned income

H3004 Earned income means[1]

1. the remuneration or profits derived from

1.1 employment under a contract of service or in an office (including elective office) **or**

1.2 a trade, profession or vocation **or**

1.3 any other paid work **or**

2. any income treated as earned income for the purposes of UC.

Note: Paid work in **1.3** means[2] work done for payment or in expectation of payment. It does not include work performed for a charitable or voluntary organisation or as a volunteer where the only payment received in any of those cases is in respect of expenses.

1 UC Regs, reg 52; 2 reg 2

H3005 The words “derived from” mean having their origins in[1]. Payments for past and present

employment should be treated as earnings unless specifically excluded. For the purposes of UC, RTI will provide up to three months historical data of earnings received before the date of claim. This historical data should not be treated as earnings.

1 R(SB) 21/86.pdf

H3006 Employment under a contract of service includes employees who work for a wage or salary. In most cases the existence of such a contract – which may be written, verbal or implied - will be clear.

H3007 The phrase "in an office" includes

1. directors of limited companies

2. clergy

3. LA councillors

4. MPs

5. MSPs

6. Senedd Cymru - Welsh Parliament members **and**

7. sub-postmasters and mistresses.

Note 1: ADM Chapter H4 for guidance on the treatment of earnings in cases where, in relation to a company, a person stands in a position analogous to a company director, sole owner or partner.

Note 2: For **3.** LA councillors' allowances are sometimes called "expenses". Unless the payment meets the criteria in H3140 – H3144, it is taken into account as employed earnings. See H3038 for more information about the treatment of LA Councillors and earned income.

Example 1

Cecille is a director of a limited company called "Office Kleanerz". She is one of a number of directors who run the company. Cecille's earnings from the company in her role as one of the directors are earned income.

Example 2

Sam is the elected Mayor of the town where he lives. In this role, Sam receives an allowance for attending council meetings and performing other tasks in his role as Mayor. Sam's receipts are earned income.

H3008 ADM Chapter H4 provides guidance on earned income from self-employment and covers earnings derived from a trade, profession or vocation.

H3009

General principles of earned income H3010 - H3019

The General principles of earned income H3010

Deciding entitlement before the end of the first assessment period H3011 - H3012

Failure to report earnings H3013 - H3019

The general principles of earned income

Actual amounts

H3010 Calculating a person's earned income for UC in respect of an assessment period should be based on the **actual** amounts received in that period[1]. Any exceptions to this rule, including the treatment of Surplus Earnings[2] in Digital/Full Service areas from 11.4.18, are provided in this guidance.

Note: The 'take home pay' of a claimant may not always be the same as the amount reported by HMRC through RTI and used in the calculation of UC. See example 3 below and H3190 for more information.

1 UC Regs, reg 54(1); 2 reg 54A

Example 1

Alice is in receipt of UC. She works at a school as a classroom assistant. Her pay for the month of May was £350. She is in dispute with her employer because she thinks that she should have been paid more due to some extra work that she agreed to do. For the purposes of UC, Alice's earned income is based on the actual amount received in May: £350.

Example 2

Ryan is in receipt of UC. He works as a receptionist at a hotel. His pay for the month of May was £350. Ryan thinks that his employer has overpaid him because he worked fewer shifts in May than normal. For the purposes of UC, Ryan's earned income is based on the actual amount received in May: £350.

Example 3

Gennady is in receipt of UC. He works as a packer in a warehouse. His pay for the month of May was

£350. However, Gennady's employer deducted £350 from his pay to cover the costs of repairs to a roller shutter door he damaged, for which he was subsequently dismissed. For the purposes of UC, HMRC report that Gennady's pay for May is £350 – the amount recovered by his employer for damage to company property is a non-allowable deduction for UC purposes.

Deciding entitlement before the end of the first assessment period

H3011 Where

1. the DM is determining whether the claimant is entitled to UC on income grounds **and**

2. that determination is before the end of the first assessment period for that claim to UC

then the amount of earnings used to determine whether the financial conditions for UC are met may be based on an estimate of the amount received or to be received[1].

1 UC Regs, reg 54(2)(a)

Example

Roy has claimed UC and works for a supermarket. The DM is determining whether or not Roy will be entitled to UC but has not got the actual information regarding Roy's earnings because Roy has not yet been paid for this particular month. The DM is informed by Roy that he expects to be paid £260 per month. This figure looks reasonable with regard to the number of hours that Roy works. The DM uses this estimate of Roy's earnings to decide whether or not Roy will be entitled to UC.

H3012

Failure to report earnings

H3013 Where

1. the claimant has failed to report their earned income in relation to an assessment period **and**

2. the DM makes a determination as to the amount of earned income in that assessment period

then the amount of earnings for that assessment period may be based on an estimate of the amount received or to be received[1].

1 UC Regs, reg 54(2)(b)

Example

Georgia works as a catering assistant. She normally reports earned income for £320 for each assessment period. In October, despite working, she fails to report her earnings. The DM decides to use £320 as an estimate of the amount that Georgia will have received. This is based on what she normally receives.

H3014 – H3019

Employed earnings H3020 - H3079

Employed earnings

Employed earnings H3020

Types of earnings H3021 - H3058

Benefits treated as earnings H3059 - H3079

Employed earnings

H3020 [See Memo ADM 11/20] Income from employment

1. under a contract of service **or**

2. in an office (including elective office)

is known as employed earnings[1].

1 UC Regs, reg 55(1)

Example 1

Ross is a cricket coach. He coaches children of all ages at various locations and has an employment contract with a company specialising in coaching sports run by his friend. The money that Ross earns under the terms of that contract is employed earnings.

Example 2

Chris is a civil servant and works in an administrative post for a government department. The money that Chris earns from this job is employed earnings.

Example 3

Graham has a market stall buying and selling CDs and DVDs. He works for himself. Graham's income from the market stall is not employed earnings (ADM Chapter **H4** provides guidance on S/E earnings).

Types of earnings

H3021 Employed earnings[1] in relation to an employment includes any

1. salary

2. wages **or**

3. fee.

Note: In tax legislation these earnings are known as "general earnings"[2].

1 UC Regs, reg 55(2); 2 Income Tax (Earnings and Pensions) Act 2003, s 7(3)

H3022 An actual repayment to the claimant of

1. income tax **or**

2. NI contributions

by HMRC in respect of a tax year in which a person was in paid work is treated as employed earnings[1]. Where the paid work was from carrying on a trade, profession or vocation then the repayment is treated as S/E earnings[2] (see ADM **H4131**).

Note 1: Repayments of income tax may include tax relating to other sources such as unearned income. As long as the claimant was in paid work in the tax year the repayment relates to, then the whole repayment is treated as earnings.

Note 2: There is no requirement for the claimant to report changes that take place in relation to their tax code or variations in their tax reported via RTI.

1 UC Regs, reg 55(4A); 2 reg 57(1)

Example

Ellie receives a cheque from HMRC for £200. This relates to an overpayment of £600 income tax made in the tax year 11/12 (in which Ellie was in paid work) and an underpayment of £400 in income tax relating to the tax year 12/13. The amount that Ellie should declare as employed earnings is £200 as this is the repayment she received, not £600 which relates to the refund due in one of those years.

H3023 Employed earnings also include certain payments which HMRC treat as earnings[1]. These are payments to

1. agency workers[2] **and**

2. workers under arrangements made by intermediaries[3] **and**

3. workers by a managed service company[4].

1 Income Tax (Earnings and Pensions) Act 2003, s 7(3)(b); 2 Part 2, Chapter 7;
3 Part 2, Chapter 8; 4 Part 2, Chapter 9

H3024 Ordinarily, it will be straightforward as to when a claimant is in receipt of employed earnings. Where a claimant's income is subject to PAYE and is paid via their employer's payroll, the RTI feed from HMRC will recognise those earnings. The claimant's award of UC will then be adjusted to take them into account.

H3025 There may be cases where it is less clear as to whether the claimant is in receipt of employed earnings. The general rule is that any amount which HMRC recognises as being "general earnings" is also earnings for the purposes of UC.

H3026 Even though a claimant may regard themselves as being S/E, if the earnings fall within the meaning of employed earnings then they have to be taken into account as such. The earnings information may not be provided through RTI so the claimant will need to self report their earnings.

Payments to agency workers

H3027 In some situations a worker provides services to an "employer" through a third party in such a way that, technically, the worker is not an employee of either the "employer" or the third party. The third party will often be an employment agency but this can apply to any worker whose income derives from a contract with any third party for their services[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 4

H3028 The services provided by the worker are, for income tax purposes, treated as if they were the duties of an employment held by the worker. The remuneration received is treated as earnings and is therefore chargeable to tax as employment income[1]. For UC purposes these payments have to be treated as the claimant's earnings[2].

1 Income Tax (Earnings and Pensions) Act 2003, s 45; 2 UC Regs, reg 55(2)

H3029 ADM Chapter **H4** for guidance on the treatment of earnings in cases where, in relation to a

company, a person stands in a position analogous to a sole owner or partner.

Payments to workers under arrangements made by intermediaries

H3030 Arrangements made by intermediaries are where a worker personally performs, or is under an obligation personally to perform, services for the purposes of a business carried on by another person ("the client"). However, the services are provided not under a contract directly between the worker and the client but under arrangements involving a third party or intermediary[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 49

H3031 This may arise in cases where if the services were provided under a contract directly between the client and the worker, the worker could be regarded for income tax purposes as an employee of the client. The remuneration received either directly or indirectly by the worker from the third party is regarded as earnings[1]. For UC purposes these payments have to be treated as the claimant's earnings[2].

1 Income Tax (Earnings and Pensions) Act 2003, s 50; 2 UC Regs, reg 55(2)

H3032 – H3035

Managed service companies

H3036 A managed service company is a form of intermediary company through which workers provide their services to clients. All payments received by individuals providing their services through managed service companies are subject to tax as earnings from employment[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 61D

H3037 For UC purposes, the income received by the worker has to be treated as earnings[1].

1 UC Regs, reg 55(2)

Local Authority Councillors

H3038 Councillors are

1. in England and Wales, a member of

1.1 a London borough council **or**

1.2 a county council **or**

1.3 a district council **or**

1.4 a parish or community council **or**

1.5 the Common Council of the City of London **or**

1.6 the Council of the Isles of Scilly

2. in Scotland, a member of a council for a local government area[1].

1 Local Government etc (Scotland) Act 1994, s 2

H3039 LA councillors are elected office holders and are employed earners[1]. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme[2] for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

1. a meeting of the authority **and**

2. a sub-committee of the authority **and**

3. a meeting for any other body to which the authority makes appointments **and**

4. other meetings authorized by the authority.

1 R(IS) 06/92.pdf ; 2 Local Authorities (Members' Allowances) (England) Regulations 2003, reg 4 & Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 5

H3040 The allowances paid for official duties may include

1. basic allowance

2. special responsibilities allowance

3. childcare and dependent carers' allowance

4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see **H3044** et seq).

Basic allowance

H3041 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

1. for the time they devote to their work **and**

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

Special responsibilities allowance

H3042 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly. It should be treated as earnings.

Childcare and dependent carers' allowance

H3043 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor. It should be treated as earnings[1].

1 UC Regs, reg 55(3)(a)

Expenses

H3044 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties[1], for example travel and subsistence allowances[2]. If the LA cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 UCRegs, reg 55(3)(a); 2 R(IS) 06/92.pdf

H3045 After expenses in **H3044** have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA. The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

Example

Sharon attends three school summer fairs, in her capacity as a LA councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The DM decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.

H3046 The DM should

1. add together all of the allowances that are paid **and**

2. deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties[1].

1 UC Regs, reg 55(3)(a); R(IS)16/93.pdf

H3047 For the purposes of **H3045**, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

H3048 Examples of the treatment of certain expenses are as follows

1. Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.

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

3. Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.

4. Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. DMs may need to apply averages and estimates over a period to calculate a weekly deduction.

5. Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded. This is different to the normal treatment of travelling expenses. When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.

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

7. Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance. The DM should establish what proportion of

the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.

8. Pension contributions are not an expense. But, one half of any sum paid by the councillor towards an occupational or personal pension can be deducted from the gross earnings.

Payments not claimed

H3049 Councillors are entitled to allowances whether they are claimed or not. If a councillor has not been paid an allowance and payment could be expected, the DM should consider taking notional earnings into account.

H3050 – H3057

Certain payments treated as earnings

H3058 Payments made by an employer to a person in respect of

1. an absence due to sickness or disability (for example, employer's sick pay)

2. tax where a deduction is not possible

3. a director's earnings but the tax due has not been deducted

4. contributions to a non-approved personal pension arrangement (it is for HMRC to grant approval to a pension scheme)

5. restrictive undertakings (for example, where an employee agrees not to work for a competitor or agrees to confidentiality)

fall to be treated as earnings[1].

Note: For **3.** ADM Chapter **H4** provides guidance on the treatment of earnings in cases where, in relation to a company, a person stands in a position analogous to a company director, sole owner or partner.

1 UC Regs, reg 55(2); Income Tax (Earnings and Pensions) Act 2003, Part 3, Chapter 12

Benefits treated as earnings

H3059 Payments which have to be treated as employed earnings are

1. SSP[1]

2. SMP[2]

3. statutory paternity pay[3]

4. statutory adoption pay[4]

5. statutory shared parental pay[5]

6. PBP[6]

7. statutory neonatal care pay[7].

1 UC Regs, reg 55(4)(a); 2 reg 55(4)(b); 3 reg 55(4)(c); 4 reg 55(4)(e); 5 reg 55(4)(f); 6 reg 55(4)(g); 7 reg 55(4)(h)

H3060 – H3069

Statutory sick pay

H3070 SSP is payable by employers to employees as part of, or instead of, normal wages for up to 28 weeks in any period of sickness. The DM should take any payment of SSP[1] into account as earnings.

1 UC regs, reg 55(4)(a)

Statutory maternity pay

H3071 SMP is payable by employers to female employees as part of, or instead of, normal earnings when they have given up work to have a baby. The DM should take any payment of SMP[1] into account as earnings.

1 UC Regs, reg 55(4)(b); Moore v SSWP [2021] EWCA Civ 970

Statutory paternity pay

H3072 Ordinary statutory paternity pay has to be taken into account as earnings[1]. Ordinary paternity leave is a period of absence from work on leave following the birth or adoption of a child under relevant legislation[2]. It is available to employed parents who

1. have or expect to have parental responsibility for a new child **and**

2. are the

2.1 biological father of the child **or**

2.2 mother's husband or partner **or**

2.3 child's adopter **or**

2.4 husband or partner of the adopter **and**

3. have completed at least 26 weeks continuous service with their employer up to and including the 15th week before the baby is due **and**

4. have told their employer of their intention to take leave by the end of the 15th week before the expected week of the child's birth.

1 UC Regs, reg 55(4)(c); 2 ER Act 1996, s 80A & 80B

H3073 – H3074

Statutory adoption pay

H3075 Employees who adopt a child under the age of 18 have the right to 26 weeks adoption leave. Statutory adoption pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL. The DM should take any payment of statutory adoption pay[1] into account as earnings.

1 UC Regs, reg 55(4)(e)

Statutory shared parental pay

H3076 Employees and workers may be entitled to shared parental leave and shared parental pay in respect of babies born or adopted on or after 5.4.15. The DM should take any payment of statutory shared parental pay[1] into account as earnings.

1 UC Regs, reg 55(4)(f)

Statutory parental bereavement pay

H3077 If a child dies on or after 6.4.20, bereaved parents who are employees may take up to 2 weeks' leave (PBL) from their job in the 56 weeks following the death of the child[1]. If more than one child dies, the employee is entitled to PBL in respect of each child[2]. Bereaved parents may also be entitled to PBP.

The DM should take any payment of PBP into account as earnings[3].

1 The Parental Bereavement Leave Regulations 2020, reg 5(4); 2 reg 4(10); 3 UC Regs, reg 55(4)(g)

H3078 – H3079

Amounts excluded from being employed earnings H3080 - H3129

Amounts excluded from being employed earnings

Amounts excluded from being employed earnings H3080

Benefits in kind H3081 - H3107

Amounts exempt from taxation and are excluded from earnings for UC H3108 - H3129

Amounts excluded from being employed earnings

H3080 Generally, employed earnings include any amounts that HMRC regard as general earnings but certain amounts are excluded. These amounts are certain amounts that HMRC treat as earnings and certain amounts that are exempt from income tax[1].

1 UC Regs, reg 55(2)(a) & (b)

Benefits in kind

H3081 Employed earnings will **not** initially include certain amounts which HMRC treat as earnings and are known as benefits in kind[1]. These are

1. certain expenses payments

2. cash vouchers and credit tokens

3. living accommodation provided to an employee or a member of their family or household

4. cars, vans and related benefits

5. employment-related loans

6. notional loans in respect of the acquisition of shares

7. disposals of shares for more than the market value

8. employment-related benefits.

H3082 – **H3107** describe these amounts.

1 UC Regs, reg 55(2)(a); Income Tax (Earnings and Pensions) Act 2003, Part 3, Chapters 2 to 11

Taxable expenses

H3082 These are expenses paid by an employer to the employee in respect of expenses incurred by reason of the employment[1]. For example, a mileage allowance paid to an employee who has used their own car for business.

1 Income Tax (Earnings and Pensions) Act 2003, s 70

Cash vouchers

H3083 A cash voucher means a voucher, stamp or similar document capable of being exchanged for a sum of money which is

1. greater than

2. equal to **or**

3. not substantially less than

the expense incurred by the person at whose cost the voucher, stamp or similar document is provided[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 75

Non-cash vouchers

H3084 A non-cash voucher means a

1. voucher, stamp or similar document or token which is capable of being exchanged for money, goods or services **or**

2. transport voucher **or**

3. cheque voucher,

but does not include a cash voucher[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 84

Credit tokens

H3085 A credit-token is something that merely has to be produced in order to obtain goods and services without immediate payment[1]. These are largely credit cards made available for obtaining money, goods and services for private use.

1 Income Tax (Earnings and Pensions) Act 2003, s 92

H3086

Living accommodation

H3087 Living accommodation means[1] accommodation provided for

1. an employee **or**

2. a member of an employee's family or household

by reason of the employment.

1 Income Tax (Earnings and Pensions) Act 2003, s 97(1)

H3088 However, it does not include accommodation where the

1. employer is an individual **and**

2. provision of the accommodation is made in the normal course of the employer's domestic, family or personal relationships[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 97(2)

Vehicles

H3089 It can be a benefit in kind where a car or a van is

1. made available (without any transfer of the property in it) to an employee or a member of the employee's family or household **and**

2. so made available by reason of the employment **and**

3. available for the employee's or member's private use[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 114

H3090 – H3099

Loans

H3100 These are loans or other forms of credit known as employment-related loans and which are made to an employee or a relative of an employee[1]. The types of arrangement covered are

1. a loan made by the employee's employer

2. a loan made by a company or partnership over which the employee's employer had control

3. a loan made by a company or partnership by which the employer (being a company or partnership) was controlled.

4. a loan made by a company or partnership which was controlled by a person by whom the employer (being a company or partnership) was controlled.

5. a loan made by a person having a material interest in

> **5.1** a close company which was the employer, had control over the employer or was controlled by the employer **or**
>
> **5.2** a company or partnership controlling that close company.

1 Income Tax (Earnings and Pensions) Act 2003, s 174

Notional loans

H3101 Notional loans in respect of the acquisition of shares are where

1. shares in a company (either the employer or another company) are, or an interest in shares in a company is, acquired by an employee or a person connected with an employee, **and**

2. the right or opportunity to acquire the shares or interest in shares was available by reason of the employment[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 192

H3102 Tax legislation provides that the employee is treated as having received an employment-related loan at the time of the acquisition if the shares were acquired at below the market value[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 193

Disposal of shares for more than the market value

H3103 An employee by reason of his employment may be able to acquire shares in the company for which he works or another company.

H3104 Where the employee disposes of the shares for a price which is in excess of the market value of the shares then the difference between the market value and the price sold is treated as earnings by HMRC[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 199

Employment-related benefits

H3105 Any benefit or facility of any kind provided to the claimant and which is related to the claimant's employment is recognised in the relevant tax legislation as an employment-related benefit. This also includes the claimant's family and household.

H3106 The definition of what is a benefit is very wide and includes everything that confers a special bounty of any description on the recipient. However, something (other than a loan where special provisions apply) which is a "fair bargain" between the employer and the employee is not a "benefit".

H3107 HMRC determine the cash equivalent by determining the cost of the benefit minus any part of that cost made good by the employee to the person(s) providing the benefit[1].

1 Income Tax (Earnings and Pensions) Act 2003, s 203(2)

Amounts exempt from taxation and are excluded from being earnings for UC

H3108 Particular payments which are exempt from taxation do not fall to be treated as earnings for UC[1]. These are

1. mileage allowances and passenger payments **(see note to H3110 for treatment of mileage allowance relief payments)**

2. transport, travel and subsistence

3. education and work-related training

4. recreational benefits

5. non-cash vouchers and credit-tokens

6. removal benefits and expenses

7. payments to certain kinds of employees

8. pension provision

9. termination of employment payments

10. other miscellaneous payments.

H3109 - H3120 describe these amounts.

1 UC Regs, reg 55(2)(b); Income Tax (Earnings and Pensions) Act 2003, Part 4

H3109

Mileage allowances and passenger payments

H3110 Approved mileage allowance payments paid to an employee in respect of business travel are exempt from taxation. Approved passenger payments are amounts paid to an employee because, while using a car or van for business travel, the employee carries in it one or more passengers who are also employees for whom the travel is business travel. Such payments are exempt from taxation[1].

Note: this does not include mileage allowance relief under section 232 of the Income Tax (Earnings and Pensions) Act 2003. Mileage allowance relief paid through the tax system is employed earnings.

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 2

Transport, travel and subsistence

H3111 No liability to taxation arises on transport, travel and subsistence[1]. This includes

1. workplace parking

2. modest private use of heavy goods vehicles

3. payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles

4. incidental overnight expenses and benefits

5. works transport services

6. support for public bus services

7. cycling equipment

8. travel and subsistence during public transport strikes

9. transport between work and home for disabled employees

10. provision of cars for disabled employees

11. transport home for late night working.

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 3

Education and work-related training

H3112 Training which enables an employee to carry out their job is exempt from taxation[1].

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 4

Recreational benefits

H3113 Benefits in the form of sporting facilities made available to employees but not to the general public are exempt from taxation[1].

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 5

H3114

Non-cash vouchers and credit tokens

H3115 Where a non-cash voucher or credit token is used by an employee to purchase an item which is exempt from taxation as employment income (for instance, workplace parking), then that voucher or token is also exempt[1].

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 6

Removal benefits and expenses

H3116 Where an employee moves residence in order to perform their employment and the employer provides help with removal benefits and expenses then these are exempt from taxation[1].

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 7

Payments to certain kinds of employees

H3117 The following[1] are exempt from taxation

1. accommodation benefits to ministers of religion

2. termination payments to MPs and others ceasing to hold office

3. overnight expenses of MPs and other elected representatives

4. EU travel expenses of MPs and other representatives

5. transport and subsistence for Government Ministers

6. armed forces leave travel facilities

7. armed forces food, drink and mess allowances

8. reservists and auxiliary forces training allowances

9. crown employees foreign service allowances

10. the income of consuls, official agents and employees working in UK

11. visiting forces and staff of designated allied headquarters

12. experts seconded to the European Commission

13. costs of transfer to the mainland for off-shore workers

14. allowances in lieu of coal.

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 8

Pension provision

H3118 No tax liability arises on payments made by an employer in respect of an employee's death or retirement[1].

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 9

Termination of employment payments

H3119 There is a limited tax liability for payments made by an employer in respect of redundancy[1]. A redundancy payment is excluded from the meaning of earnings for the purposes of UC and falls to be treated as capital in the assessment period in which it is received. ADM Chapter H1 provides guidance on capital.

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 10

Other miscellaneous payments

H3120 Other miscellaneous payments[1] which are exempt from taxation include

1. certain payments in respect of living accommodation

2. payments in respect of work accommodation and supplies

3. subsidised meals

4. childcare costs

5. telephone and computer equipment

6. awards and gifts from staff suggestion schemes and long service awards

7. overseas medical treatment

8. incidental expenses of employment-related transfer of business assets.

1 Income Tax (Earnings and Pensions) Act 2003, Part 4, Chapter 11

H3121 – H3129

Payments disregarded from employed earnings H3130 - H3169

Payments disregarded from employed earnings

Payments disregarded from employed earnings H3130 - H3139

Expenses allowed as a deduction by HMRC H3140 - H3159

Service users H3160 - H3169

Payments disregarded from employed earnings

H3130 When calculating employed earnings

1. certain expenses allowed as a taxable deduction by HMRC from earnings[1] **and**

2. expenses received from involvement in service user activity[2]

fall to be disregarded.

1 UC Regs, reg 55(3)(a); Income Tax (Earnings and Pensions) Act 2003, Part 5, Chapter 2;
2 UC Regs, reg 55(3)(b)

H3131 – H3139

Expenses allowed as a deduction by HMRC

H3140 Employed earnings do not include certain expenses allowed as a taxable deduction by HMRC[1]. These are expenses which the employee has met in connection with their employment.

1 UC Regs, reg 55(3)(a)

H3141 The general rule[1] that HMRC follow is that an expense can be allowed where the

1. employee is obliged to incur and pay it as holder of the employment **and**

2. amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

1 Income Tax (Earnings and Pensions) Act 2003, s 336

H3142 The expense must be incurred in direct connection with the employer's trade or business[1]. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed[2].

1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325;
2 R(IS)16/93.

H3143 Examples of expenses for which deductions may be made are

1. equipment, tools and stationery for work purposes

2. overalls and specialist work clothing

3. telephone calls made entirely for work purposes

4. travelling costs between different work places and any accommodation costs involved.

H3144 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work, would not satisfy the test. Child minding expenses[1], and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

1 R (FC) 1/90.

H3145 HMRC specifically allow deductions from employment income for employee's expenses paid by the employee[1]. These include

1. travel expenses for necessary attendance and in the performance of duties

2. fees and subscriptions for professional bodies

3. employee liability and indemnity insurance

4. expenses of ministers of religion

5. limited agency fees paid by entertainers

6. certain earnings with a foreign element.

Business entertainment and gifts expenses do not generally qualify for a deduction from earnings[2].

1 Income Tax (Earnings and Pensions) Act 2003, Part 5, Chapter 2; 2 s 356

Service users

H3160 Employed earnings do not include a payment of expenses made to a person who is involved in service user activity[1].

1 UC Regs, reg 55(3)(b)

Meaning of service user

H3161 A service user is[1]

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

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

1.1.a health **or**

1.1.b social care **or**

1.1.c social housing **or**

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

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

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

2.1 the Secretary of State in relation to social security or child support functions under relevant legislation[2] **or**

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

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

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

1 UC Regs, reg 53(2); 2 E & T Act 73, s 2

H3162 For the purposes of **H3161**, a service user is a person

1. who

1.1 has used **or**

1.2. is using **or**

1.3 may potentially use **or**

1.4. is otherwise affected by

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

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

2.1 health **or**

2.2 social care **or**

2.3 social housing **or**

2.4 social security **or**

2.5 child support **and**

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

3.1 research **or**

3.2 monitoring **or**

3.3 planning

in order to improve services through user involvement.

H3163 With regards to **H3161**, service users may also be described as

1. experts-by-opinion **or**

2. patients **or**

3. potential patients **or**

4. clients **or**

5. carers **or**

6. focus groups.

H3164 With regards to **H3161**, a body that seeks to improve services through user consultation may describe the process as

1. service user and carer user involvement **or**

2. public involvement **or**

3. participation **or**

4. co-production **or**

5. Local Involvement Networks (LINks)

Example 1

Anton is an out-patient at his local hospital and attends there on a regular basis for treatment. He is in receipt of UC. Anton has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. In order to attend the meetings, Anton needs to get a taxi. The Health Trust pay Anton £40 for attending the meetings and also reimburse his travel expenses. The expenses for the taxi fare are reimbursed to him by the local Health Trust. The DM decides that the travel expenses do not count as employed earnings when calculating Anton's entitlement to UC but the £40 fee for attending the meeting is earned income.

Example 2

Donna is asked to help with improving discharge and aftercare services at her local NHS trust psychiatric hospital. Donna has experience of being admitted as an in-patient and of aftercare services. The trust invites Donna to participate in a planning seminar. The trust offers her a payment of £120 as a fee and reimburses her £10 travel expenses. The DM decides that the travel expenses do not count as employed earnings when calculating Donna's entitlement to UC, but the £120 fee is earned income.

Example 3

Brian is a full time carer for his wife who is severely disabled. He is invited to participate on a national steering group that is developing good practice guidelines for respite care. Brian is paid a fee of £20 for his participation. He is reimbursed his travel expenses of £90 and also £60 for the cost of a replacement carer for the time that he will be away. The DM decides that the travel expenses and the £60 for the replacement carer do not count as employed earnings when calculating Brian's entitlement to UC, but the £20 fee for his participation is earned income.

Example 4

Sally is invited by a local charity to provide feedback of her experience as a patient receiving treatment from a mental health service. The charity has been commissioned by an NHS trust to involve service users in monitoring the mental health service. Sally is paid a fee of £40 for her time and also accepts a reimbursement of £5 for a lunchtime meal. The DM decides that the expense for the meal does not count as employed earnings when calculating Sally's entitlement to UC, but the £40 fee is earned income.

Example 5

Tony has rheumatoid arthritis. He is invited by a research team to join the steering group for a study investigating a new treatment for this condition. The research is funded by the NHS through the National Institute for Health Research and is being undertaken by a team at the university. The university pays Tony £75 for each meeting and reimburses his £20 travel expenses. The DM decides that the travel expenses do not count as employed earnings when calculating Tony's entitlement to UC, but the £75 fee received is earned income.

H3165 – H3169

Calculating the amount of earnings H3170 - H3179

Calculating the amount of earnings

H3170 When taking into account employed earnings (and the benefits treated as earnings) in respect of an assessment period, the DM should allow a deduction for

1. the total relievable pension contributions made in that period[1] **and**

2. any amounts of

2.1 income tax **and**

2.2 class 1 contributions

that have been deducted or paid in that assessment period[2] **and**

3. any amounts withheld as donations to charity in a scheme approved by HMRC in that assessment period[3].

Note 1: The earnings figure provided by RTI or as a self-reported amount will be the claimant's gross taxable earnings. Gross taxable earnings already allow for pension contributions paid under "net pay arrangements" and charitable donations. DMs should be aware of this and ensure the deduction is not made twice.

1 UC Regs, reg 55(5)(a); 2 reg 55(5)(b); 3 reg 55(5)(c)

Note 2: From April 2016 the Scottish Government can set its own rate of income tax[1]. DMs should ensure that the correct tax rate is used – see A**ppendix 1** to this chapter.

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

H3171 A relievable pension contribution means[1] a contribution paid to a registered pension scheme by or on behalf of a member of that scheme. This means that the contribution can be paid by the individual member, who must be a relevant UK individual, or by a third party on behalf of the individual member.

1 UC Regs, reg 53; Finance Act 2004, s 188

H3172 A relevant UK individual means[1]

1. a person with earnings chargeable to UK income tax **or**

2. a person resident in the UK for some time of the year **or**

3. a person was resident in the UK both at some time during the five tax years immediately before that year and when that person became a member of the pension scheme **or**

4. a person, or their spouse, who has for the tax year general earnings from overseas Crown employment subject to UK tax.

1 Finance Act 2004, s 189

H3173 A contribution will not be a relievable pension contribution if it falls into

1. contributions after age 75[1]

2. life assurance premium contributions[2]

3. contributions paid by employers[3]

4. age related or minimum payments[4].

1 Finance Act 2004, s 188(3)(a); 2 s 188(3)(aa); 3 s 188(3)(b); 4 s 188(3)(c)

H3174 – H3179

Trade disputes H3180 - H3189

Trade disputes

H3180 Where a person who has had employed earnings

1. has withdrawn their labour in a trade dispute **and**

2. is still subject to their employment contract

the DM must treat that person as possessing earnings of the same level they would have had if they were not taking action in a trade dispute[1].

1 UC Regs, reg 56

H3181 A trade dispute means[1] a dispute between workers and their employer which relates wholly or mainly to one or more of

1. terms and conditions of employment, or the physical conditions in which any workers are required to work

2. engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers

3. allocation of work or the duties of employment between workers or groups of workers

4. matters of discipline

5. a worker's membership or non-membership of a trade union

6. facilities for officials of trade unions

7. machinery for negotiation or consultation, and other procedures, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures.

1 UC Regs, reg 2; Trade Union and Labour Relations (Consolidation) Act 1992, s 244

Example

Richard works for an insurance company and his normal monthly earnings are £490. The trade union to which he belongs has voted to go on strike. Richard will be joining the strike. Whilst on strike, Richard's employer will not be paying him any wage. The DM treats Richard as having monthly earnings of £490 for

the purposes of UC.

H3182 – H3189

Earnings information H3190 - H3199

Earnings information

H3190 For claimants who are engaged in employment in respect of which their employer is not an RTI employer then they must provide such information for the purposes of calculating their earned income as the DM may require[1].

1 UC Regs, reg 61(1)

H3191 [See ADM Memo 27/20] Where a claimant is, or has been, engaged in an employment in respect of which their employer is an RTI employer then

1. the amount of their employed earnings for each assessment period is to be based on the PAYE information reported to HMRC and received by the Secretary of State from HMRC in that assessment period **and**

2. for an assessment period in which no information is received from HMRC, the amount of earnings is taken to be nil[1].

1 UC Regs, reg 61(2)

Example 1

Pontus is in receipt of UC and also works in the club shop of his local football club. His employer's normal payday is the 15th of each month and his UC assessment period runs from the 16th to 15th of each month. Pontus was due to be paid on 15th October but due to an internal delay by his employer's payroll department, his wages for the period ending 15th October were not paid until 16th October. On the same day, HMRC reported these earnings to DWP via the RTI interface.

For UC purposes, these earnings are not late – there has been no failure in the RTI interface. The earnings are to be taken into account in the assessment period in which the RTI information is received – this will be the assessment period which runs from 16th October to 15th November.

Example 2

Isla is on a zero hours contract for an RTI employer. Her employer's normal payday is the last day of each month and her UC assessment period begins on the 1st of each month.

HMRC reported Isla's earnings for the period ending 31st January to DWP via the RTI interface on 1st February. On 28th February, HMRC reported Isla's earnings for the period ending 28th February to DWP via the RTI interface.

For the purposes of calculating Isla's UC entitlement, this means that no earnings will be taken into account in the assessment period running from 1st to 31st January.

In the assessment period that runs from 1st February to 28th February Isla's earnings will include those notified to DWP on 1st February **and** 28th February.

H3192 However, the DM can decide that ADM **H3191** does not apply when the DM considers that

1. the information from the employer is not likely to be sufficiently accurate or timely **or**

2. in respect of a particular assessment period where

> **2.1** no information is received from HMRC and that this is likely to be due to a failure to report information (including computer failure in relation to systems operated by HMRC, the employer or any other person) **or**
>
> **2.2** the information received from HMRC is incorrect or that the payment does not fall within the meaning of employed earnings (see **H3020** et seq)[1].

1 UC Regs, reg 61(3)

H3193 If the DM decides that ADM **H3191** does not apply then a decision must be made as to the amount of a person's employed earnings using such information or evidence as the DM sees fit[1]. A person must also provide such information for the calculation of earned income as the DM may require[2].

1 UC Regs, reg 61(4); 2 reg 61(1)

Example 1

Joanne works in a small garage and has made a claim for UC. Her employer has had problems reporting Joanne's earnings to HMRC due to IT problems. In order to calculate Joanne's award of UC, Joanne is asked to self-report the earnings she receives from this employer through the self-reported earnings tool. Joanne may be asked to produce verification of those earnings, for example a wage slip.

Example 2

Felix works in a small sheet metal factory and receives UC. His AP runs from the 17th to 16th. Felix is paid on 13th April but his employer delays reporting the payment to HMRC until 17th April - the AP after it was actually received. Felix reports the discrepancy to the department and provides his wage slip and a bank statement as evidence. The DM accepts Felix's evidence and decides no information was received from HMRC because the employer failed to report the information on time. The DM makes a decision that the wage notified by RTI on 17th April should be taken into account when it was received – in the AP running 17th to 16th April.

Example 3

Marcelo works in his local hospital as a porter and receives UC. His AP runs from the 28th to 27th and his payday is the 28th of each month. In the AP 28th January to 27th February, RTI reports no earnings. In the AP 28th February to 27th March, RTI reports earnings of £1,430 with a 3rd party deduction of £680. This leaves a nil UC award in this AP. In the AP 28th March to 27th April, RTI reports earnings of £300. In the AP 28th April to 27th May, RTI reports earnings of £1,455 with a 3rd party deduction of £300. This again leaves Marcelo with a nil UC award in this AP.

Marcelo contacts his work coach and provides wage slips as evidence of the earnings he was due to be paid, and bank statements confirming the amounts and dates of the earnings that he received in this period. This evidence shows that Marcelo received £680 in the AP 28th January to 27th February, £750 in the AP 28th February to 27th March, £475 in the AP 28th March to 27th April and £980 in the AP 28th April to 27th May.

The DM accepts Marcelo's evidence and decides no evidence was received from HMRC in the AP 28th January to 27th February because the employer failed to report the information on time. In the following three APs, the DM decides that the information received from the employer via HMRC was not sufficiently accurate. The DM decides that Marcelo's earnings in each of the APs affected is to be the amount that he received in those APs, as evidenced by his wage slips and bank statements.

H3194 [See ADM Memo 27/20] In cases where ADM **H3191** does not apply and the DM is making a decision on the amount of the claimant's earnings in accordance with ADM **H3193**, the DM can

1. treat a payment of employed earnings as received in a later assessment period to the one in which the payment was actually received (for example where the DM received or would have expected to receive the information or evidence in the later period) **or**

2. where a payment of employed earnings has been taken into account in that decision, disregard information received from HMRC about the same payment[1].

This also applies where a decision is made in the situation described in A4311[2].

1 UC Regs, reg 61(5); 2 reg 61(6)

H3195 – H3199

Notional earnings H3200 - H3299

Notional earnings

Notional earnings H3200

Deprivation of earned income H3201 - H3219

Notional earnings and the performance of a service H3220 - H3249

Calcualtion of gross earnings H3250 - H3269

Amount to be taken into account H3270 H 3276

Onus of proof H3272 - H3299

Notional earnings

H3200 Notional earnings are earnings which the claimant does not actually have but which they are treated as possessing. For UC there are two situations where notional earnings apply. These are

1. deprivation of earned income[1] **and**

2. where work is performed for no payment or payment at a rate less than that would be normally paid for the work[2].

All such amounts are to be treated as earned income.

1 UC Regs, reg 60(1); 2 reg 60(3)

Deprivation of earned income

H3201 In a case

1. where

1.1 a person has deprived themselves **or**

1.2 an employer has arranged for a person to be deprived

of earned income **and**

2. the purpose of the deprivation was to

2.1 secure entitlement to UC **or**

2.2 increase the amount of UC

then that person must be treated as being in possession of that earned income[1].

1 UC Regs, reg 60(1)

H3202 The purpose of

1. securing entitlement to UC **or**

2. increasing the amount of UC

has to be treated as existing where entitlement or higher entitlement to UC did in fact result following the deprivation and the DM is of the view that this was an intended and foreseeable consequence[1].

1 UC Regs, reg 60(2)

Meaning of deprive

H3203 The word “deprive” is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning[1].

1 R(SB) 38/85.

H3204 Claimants will have deprived themselves of earned income, if, because of their own actions, they no longer have that income. Claimants will still have deprived themselves of income whether or not another income has replaced the original income[1].

1 R(SB) 40/85.

H3205 Claimants cannot deprive themselves of income that they have already received. If a payment of earned income is received it is actual income and should be taken into account in the normal way.

H3206 A deprivation of income may occur where a claimant's income is reduced to repay an overpaid income. The DM should decide if a significant reason for the reduction is to get or increase the amount of UC. DMs should bear in mind that the repayment of a

1. legally enforceable **and**

2. immediately repayable

debt cannot be for the purpose of increasing or getting UC[1].

1 R(SB) 12/91.

Questions for consideration

H3207 The DM should consider the questions in **H3210** – **H3216** where claimants appear to have deprived themselves of earned income.

H3208 – H3209

Has a deprivation of earned income happened?

H3210 Deprivation will have happened if a person

1. gives up **or**

2. transfers to another person

an income due to be received.

H3211 The claimant has to prove that an income is no longer received. Once the DM has shown that a claimant was receiving an income it is up to the claimant to prove it is no longer paid. If the claimant cannot do this the DM should decide that the income is still being received. The income should be taken into account as actual income[1].

1 R(SB) 38/85.

Was the purpose of the deprivation to get or increase the amount of UC?

H3212 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing UC[1].

1 R(SB) 38/85.

H3213 Getting or increasing UC need not be the most important reason for disposing of an income but it must be a significant reason[1].

1 R(SB) 40/85.

H3214 It is unlikely that there will be direct evidence that a deprivation was for the purpose of getting benefit. Decide on a person's reasons for disposing of an income after considering all the facts of the case. These may include

1. the person's explanations

2. the timing of the disposal

3. the claimant's knowledge of the benefit system

4. the likelihood of a benefit claim at the time of the deprivation.

H3215 When considering claimants' intentions in depriving themselves of income the DM should consider what account of the claimant's intentions best explains the facts of the case. If the best explanation of the deprivation is that a significant reason for the disposal was getting or increasing UC the DM should calculate a notional income.

Timing of the disposal of income?

H3216 DMs should carefully consider the timing of a disposal of income as

1. a claim for UC made shortly after the disposal of an income may indicate that getting or increasing UC was a significant reason for the disposal

2. a claim for UC made a long time after the disposal of an income is less likely to indicate that getting or increasing UC was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming UC at a later date, the deprivation may still have been for getting or increasing benefit.

H3217 – H3219

Notional earnings and the performance of a service

H3220 The DM should treat the claimant as having notional earnings where[1]

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

2. that other person

2.1 makes no payment of earnings **or**

2.2 pays less than the rate paid for comparable services in that location **and**

3. the means of that other person are sufficient to pay for, or pay more, for those services.

1 UC Regs, reg 60(3)

H3221 The amount of notional earnings which a claimant is treated as having is the amount of pay that would be reasonable for the provision of those services[1].

1 UC Regs, reg 60(3)

H3222 – H3224

H3225 The DM should **not** take notional earnings into account[1] where the claimant

1. satisfies the DM that the means of the person for whom the service is performed, are not enough to pay, or to pay more for the service **or**

2. is engaged by a charitable or voluntary organisation and the DM is satisfied that it is reasonable for the services to be provided free of charge **or**

3. does not accept a payment for their involvement as a service user (see H3161 for meaning of service user) **or**

4. provides a service under an employment or training programme approved by the Secretary of State.

1 UC Regs, reg 60(3)(b) & (4)

Meaning of voluntary organisation

H3226 Although there is no definition of voluntary organisation for notional earnings purposes, DMs should regard it as meaning a body that is not a

1. public authority **or**

2. LA

whose activities are not carried out for profit. Organisations such as the St John Ambulance and Attend (formerly the league of Hospital Friends) are examples of voluntary organisations.

Meaning of person

H3227 The meaning of "person" as used in DMG **H3220 1.** includes[1]

1. a limited company

2. a corporate body

3. an individual.

1 R(SB) 13/86.

Performance of a service

H3228 A service performed for another person benefits that person. That benefit may be in not having to employ someone else to do the work. It might also be in getting extra work done at little, or no, cost.

Details of the service performed

H3229 There may be a low rate of payment, or no payment at all being made for the service. If so, compare it with other employment by finding out

1. who is benefiting from the service

2. why it is being provided

3. when it is being provided (for example, during the day, night, or both)

4. where it is provided

5. who suggested that it be provided

6. what duties are involved

7. how many hours each day, or week, are spent on those duties.

When earnings are not to be treated as paid

H3230 Do not treat the claimant as having earnings where[1]

1. the claimant works for a charitable or voluntary organisation, for example Attend (formerly the League of Hospital Friends) **and**

2. it is reasonable for the service to be provided free of charge or at a rate less than the rate that would be paid for comparable services in the same area.

1 UC Regs, reg 60(4)(a)

H3231 – H3239

Is it reasonable to provide services free of charge?

H3240 The question of reasonableness should be considered based on the circumstances of each case[1]. No exhaustive list can be given of relevant factors but they may include matters such as

1. whether the person providing the services is getting anything in return (for example, training which may assist the person in obtaining employment could be seen as reasonable)

2. the length of time for which the services have been offered (the shorter the period, the more reasonable it may be)

3. claimants are expected to do their best to avoid dependency on benefits. They should seek paid work wherever possible.

Note: Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the claimant to provide the services free of charge.

1 R(IS) 12/92.

Service users and notional earnings

H3241 Do not treat the claimant as having notional earnings where the claimant provides services

1. free of charge **or**

2. at a rate less than would be paid for comparable services in the same location

whilst participating as a service user[1]. H3161 provides guidance on what a service user is.

1 UC Regs, reg 60(4)(b)

Employment and training programme

H3242 Do not treat the claimant as having notional earnings where the claimant provides services under or in connection with participation in

1. an employment **or**

2. a training

programme approved by the Secretary of State[1].

1 UC Regs, reg 60(4)(c)

H3243 – H3245

Fine payment work - England and Wales

H3246 Fine payment work has been introduced for people who are genuinely unable to pay their fine. Claimants are allowed to do unpaid work in the voluntary sector as an alternative. When the work is done

the fine is regarded as paid. A fines officer works out the number of hours the offender is required to work to discharge the fine. The offender is allowed to reduce the number of hours he is required to work by paying part of the fine.

H3247 Offenders who are genuinely unable to pay their fine will be able to work off their fine at a fixed rate[1]. In these circumstances notional income should not be applied. They do not have the opportunity to be paid for the work they are doing, it is done to comply with a court order. Offenders cannot be said to be performing a service when they are complying with a court order.

1 The Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004, reg 2

Community payback orders - Scotland

H3248 These orders[1] are similar to fine payment work in England and Wales. They provide a community-based alternative to imprisonment for failure to pay a fine, substituting the unpaid portion of a fine for a period of constructive activity which is organised by the social work department.

1 Criminal Procedure (Scotland) Act 1995, s 227A

H3249 The period of these orders can vary between 10 and 100 hours. The activity undertaken often includes elements of social education, financial management and unpaid work. Offenders cannot be said to be performing a service when they are complying with a community payback order.

Calculation of gross notional earnings

H3250 The maximum amount of notional earnings that can be taken into account is the lower of the

1. market rate for comparable employment in the area **and**

2. means of the person to pay for the service.

The DM should take into account at least the NMW rate relevant to the claimant.

H3251

Comparable services

H3252 It is not identical or equivalent services that has to be identified, but comparable services. Work of a different type can be comparable if the skills and experience needed are similar to those being used.

H3253 Work of the same type will usually be comparable. But it may not always be paid at the same rate. Rates of pay can be affected by the employee's

1. skills

2. age

3. seniority

4. experience.

H3254 Do not assume that the highest rate paid is the normal rate for the job. If the amounts paid vary, compare the available evidence with the pay and requirements of the claimant's job.

Payments in kind

H3255 Payments in kind are not earnings[1]. Payments in kind should not be taken into account when looking at whether a person is paid, or paid less, than the rate for comparable employment[2].

1 UC Regs, reg 52; 2 R(IS) 2/98.

Example

Bella works as a shop assistant for ten hours per week. She receives payment of £7 in cash and goods to the value of £35 each week. The goods to the value of £35 are payment in kind and are ignored. The DM considers what the market rate for the job is and calculates notional earnings at £70 per week. He decides it is reasonable to deduct the £7 cash payment from the notional earnings and takes £63 per week into account. The total amount in the form of earnings taken into account is therefore £70 (£7 actual earnings + £63 notional earnings).

Are earnings to be treated as paid

H3256 Consider whether it is reasonable to treat earnings as paid by taking into account

1. whether the employer

1.1 pays less than the going rate for similar employment in the area **or**

1.2 makes no payment **and**

2. a reasonable rate of pay for the job they are doing.

Reasonable rates of pay

H3257 The rate paid for comparable employment in the area is a question of fact. It should not be assumed to be the national minimum wage. The DM must treat the claimant as possessing at least the national minimum wage rate that is relevant to them. The amount of notional earnings may be more than the national minimum wage but it should not be less.

H3258 The parts of the job which would normally attract earnings, or more earnings, should be identified. Ignore hours spent under training or supervision, unless the cost is outweighed by the work performed.

Can the person afford to pay?

H3259 The claimant may say that the employer is unable to pay. If this is the case, the claimant must submit evidence, so that the DM can consider the question. This could be

1. in the case of a S/E trader, the accounts, bank statements and details of trading turnover **or**

2. in the case of an individual, details of that person's resources and outgoings.

H3260 Where the service is for a person, take account of that person's actual means. This is not the amount by which their income would exceed a notional benefit level[1]. It is the amount of money that they actually have available to them.

1 R(SB) 03/92.

H3261 The DM should consider what is reasonable in each case. Where the employer is getting UC they will not normally have the means to pay. But this general rule may not always apply. For example, where the "employer" gets benefits, or other payments, to pay for their personal care.

H3262 – H3269

Amount to be taken into account

H3270 After determining the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

H3271 From the resulting figure, make notional deductions for

1. income tax **and**

2. Class 1 contributions.

Appendix 1 to this chapter provides details of tax and contribution rates and thresholds.

Deduction for notional income tax

H3272 Deduct the appropriate income tax allowance if the chargeable income figure calculated is higher. If it is equal to or less than that chargeable income figure, no notional income tax will be deducted. Income tax allowances are made up of

1. a personal allowance - given to everyone

2. a married couple's allowance - which can be claimed by a member of a married couple

3. an additional personal allowance - given in special cases for a child or young person.

Calculate the notional income tax to be deducted as in **DMG Chapter 27**.

Note: From April 2016 the Scottish Government can set its own rate of income tax[1]. DMs should ensure that the correct tax rate is used. See appendix 1**.**

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

Deduction for notional NI contribution

H3273 The deduction depends on the claimant's circumstances. Employed earners between 16 and pension age have to pay NI contributions. This is subject to the amount of their earnings.

H3274 Some married women can pay NI contributions at a reduced rate. These are women who

1. had chosen to pay the reduced rate before 12.5.77 **and**

2. were married before 6.4.77 **and**

3. have continued to renew their certificate of election.

H3275 The right to pay reduced rate contributions ends if the woman

1. gets divorced or her marriage is annulled **or**

2. becomes a widow, and has not become entitled to WB **or**

3. loses her right to WB for a reason other than remarrying **or**

4. has had no earnings on which Class 1 contributions are payable and has not been S/E in any two consecutive tax years since 5.4.78.

H3276 Standard rate deductions should be made unless there is a current certificate of election.

Onus of proof

H3277 In general, the burden of proof rests on the DM[1]. But that is not always the case. The onus of proving that the employer does not have the means to pay falls on the claimant. The DM then considers what reasonable amount of notional earnings should be taken into account. ADM **Chapter A1** provides guidance on the burden of proof.

1 R(SB) 13/86.

H3278 - H3299

Surplus Earnings H3302 - H3999

Surplus Earnings

General H3302 - H3304

Exception H3305

Definitions H3306 - H3310

Calculation H3311 - H3313

Minimum income floor H3314

Surplus Earnings

H3300 From 11.4.18 the general principle for calculating earned income (**H3010**) in digital/ full service areas is modified in certain circumstances.

H3301 Where a UC award has ceased due to excess income, past earnings (employed earnings, self-employed earnings or a combination of both) can be taken into account on a further claim to UC within 6 months of the previous award ending. This ensures that those claimants with fluctuating earnings patterns, which may bring them in and out of entitlement to UC, are not unduly penalised or unfairly rewarded over those claimants who receive the same amounts but are paid monthly and retain UC entitlement throughout.

General

H3302 Surplus earnings will be applied to a new claim to UC where the claimant, or either of joint claimants:

1. had an award of UC (the "old award") that terminated within the 6 months ending on the first day in respect of which the new claim is made[1] **and**

2. has not been entitled to UC since the old award ended[2] **and**

3. had total earned income in the final AP of the old award that exceeded the relevant threshold[3].

For the definitions of “total earned Income” see **H3307** and “the relevant threshold” **H3309**.

Note: for the purposes of these regulations the “old award” does not include an award where the last day on which that award terminated fell before 11.4.18.

1 UC Regs, reg 54A(1)(a); 2 reg 54A(1)(b); reg 54A(1)(c)

H3303 Where surplus earnings are to be applied to a new claim to UC, they will be treated as earned income for the purposes of determining entitlement to UC, or calculating the amount of that award where there is entitlement1.

1 UC Regs, reg 54A(2).

H3304 If a claim is made after the six month period in **H3302 1.** above, surplus earnings will not be applied and the UC award will be calculated in the normal way.

Example 1

Larry claims UC on 16.4.19, having previously been entitled to UC in an award which ended on 30.11.18 due to excess earnings in the final AP (i.e. within 6 months of the old award). Larry has not been in receipt of UC in the period 1.12.18 to 15.4.19, and so surplus earnings are calculated for the purposes of determining whether Larry qualifies for UC in this new claim.

Example 2

Jeff and Susie make a new claim to UC on 18.4.19. Jeff was previously a single claimant in receipt of UC as a self-employed earner. His award ended on 15.1.19 due to excess income. Susie is in full-time employment. As neither Jeff or Susie have been in receipt of UC in the period 16.1.19 to 17.4.19, the surplus earnings from Jeff’s old award of UC are used to determine whether they qualify for UC as a couple for this new claim.

Exception

H3305 Surplus earnings will not apply[1] where the claimant has, or had at the time the old award terminated, recently been a victim of domestic violence[2] (See ADM **J3183**).

1 UC Regs, reg 54A(5); 2 reg 98

Definitions

H3306 The original surplus[1] is the amount that exceeds the relevant threshold[2] (see **H3309**) in the final AP of the old award.

1 UC Regs, reg 54A(3); 2 reg 54A(6)

H3307 Total earned income[1] means the earned income of

1. the claimant **or**

2. if the claimant is a member of a couple, the couples combined earned income **but**

excluding any amount a claimant is treated as having by way of the minimum income floor[2]

1 UC Regs, reg 54A(6); 2 reg 62

H3308 The nil UC threshold[1] is the amount of total earned income that would mean there is no entitlement to UC, calculated by using the following formula:

$$\frac{(M - U)}{55} \times 100 + WA$$

Where:

M is the maximum amount of an award of UC[2]

U is unearned income[3]

WA is the work allowance[4]

1 UC Regs, reg 54A(6); 2 WR Act 12, s 8(2); 3 UC Regs, regs 66 –74; 4 reg 22

H3309 The relevant threshold is the nil UC threshold (as in **H3308**) plus

1. £300 for claims made after the temporary de minimis period ends **or**

2. £2,500 for claims made in the temporary de minimis period.

H3310 The temporary de minimis period is the period beginning on 11.4.18 and ending on 31.03.27.

Note: the temporary de minimis period may be extended where the Secretary of State considers it appropriate to do so in order to safeguard the efficient administration of UC. Where the Secretary of State decides to extend the period, the determination will be published and will apply to all cases.

Calculation

Single claimant

H3311 Surplus earnings are calculated with reference to when the new claim is made[1]. If the new claim in question is:

1. the first since the termination of the old award, surplus earnings are the original surplus (**H3306**) **or**

2. the second since the termination of the old award, surplus earnings are the amount (if any) of:

2.1 the original surplus plus

2.2 the total earned income (**H3307**) in what would have been the first AP of the first claim which exceeds the relevant threshold (**H3309**). This is "the adjusted surplus".

3. the third since the termination of the old award, surplus earnings are the amount, if any, of:

3.1 the adjusted surplus from the second claim plus

3.2 the total earned income in what would have been the first AP of the second claim which exceeds the relevant threshold.

4. the fourth or fifth since the termination of the old award, surplus earnings are the amount, if any, of:

4.1 the adjusted surplus from the third or fourth claim (see 3 above) plus

4.2 the total earned income in what would have been the first AP of the third or fourth claim which exceeds the relevant threshold.

1 UC Regs, reg 54A(3)

Example 1

For the purposes of this example John is a single claimant aged 26. He has regular monthly earnings of £500 and no unearned income. The work allowance does not apply. His maximum UC amount is £393.45 and his AP runs from the 11th to 10th each month. The de minimis is £2,500.

In the AP 11.4.24 to 10.5.24 John receives a one-off performance bonus of £3,000, making his total earned income for this AP £3,500. This ends his UC entitlement but surplus earnings will apply to any subsequent claims that he makes within 6 months.

The original surplus is calculated by taking the following steps:

1. the nil UC threshold is £393.45 - £0.00 ÷ 55 x 100 = £715.36 + £0.00 = £715.36

2. the relevant threshold is £715.36 + £2,500 = £3,215.36

3. the original surplus is £3,500 - £3,215.36 = £284.64

1st claim

John makes a new claim to UC on 11.5.24, his first claim since the old award ended.

His UC entitlement is determined as follows:

1. £284.64 (surplus earnings) + £500 (actual earned income) = £784.64

2. £784.64 (total earned income) x 0.55 (taper) = £431.55

3. £393.45 (maximum UC amount) - £431.55 (total earned income) = £38.10 (excess income).

John has no UC entitlement for this claim as a result of his excess income but surplus earnings will not apply to any subsequent claims made within 5 months. This is because the surplus has been eroded; his total earned income no longer exceeds the relevant threshold:

1. £784.64 (total earned income) < £3,215.36 (relevant threshold)

Example 2 (note, this shows the original de minimus and taper rates of £300 and 63%)

For the purposes of this example Emma is a single claimant aged 27. She has regular monthly earnings of £300 and no unearned income. The work allowance does not apply. Her maximum UC amount is £317.82 and her AP runs from the 11th to 10th each month. The de minimis is £300.

In the AP 11.4.19 to 10.5.19 Emma receives a one-off performance bonus of £2,100, making her total earned income for this AP £2,400. This ends her UC entitlement but surplus earnings will apply to any subsequent claims within 6 months.

The original surplus is calculated by taking the following steps:

1. the nil UC threshold is £317.82 - £0.00 ÷ 63 x 100 = £504.48 + £0.00 = £504.48.

2. the relevant threshold is £504.48 + £300 = £804.48.

3. the original surplus is £2,400 - £804.48 = £1,595.52

1st claim

Emma makes a new claim to UC on 11.5.19, her first claim since the old award ended.

Her UC entitlement is determined as follows:

1. £1,595.52 (original surplus earnings) + £300 (actual earned income) = £1,895.52.

2. £1,895.52 (total earned income) x 0.63 (taper) = £1,194.18.

3. £317.82 (maximum UC amount) - £1,194.18 (total earned income) = £876.36 (excess income).

Emma has no UC entitlement for this claim as a result of her excess income but surplus earnings will apply to any subsequent claims made within 5 months (because Emma's total earned income is in excess of the relevant threshold):

The surplus for this claim is calculated as follows:

1. £1,895.52 (total earned income) - £804.48 (relevant threshold) = £1,091.04

2nd claim

Emma makes another claim on 11.6.19, her second since the old award ended.

Her UC entitlement is determined as follows:

1. £1,091.04 (surplus earnings from 1st claim) + £300 (actual earned income) = £1,391.04.

2. £1,391.04 (total earned income) x 0.63 (taper) = £876.36.

3. £317.82 (maximum UC amount) - £876.36 (total earned income) = £558.54 (excess income).

Emma has no UC entitlement for this claim but surplus earnings will apply to any subsequent claims made within four months (because Emma's total earned income is still in excess of the relevant threshold):

The adjusted surplus for this claim is calculated as follows:

1. £1,091.04 (1st claim surplus) + £300 (total earned income from 1st claim) = £1,391.04.

2. £1,391.04 - £804.48 (relevant threshold) = £586.56

3rd claim

Emma makes another claim on 11.7.19, her third since the old award ended.

Her UC entitlement is determined as follows:

1. £586.56 (adjusted surplus) + £300 (actual earned income) = £886.56.

2. £886.56 (total earned income) x 0.63 (taper) = £558.53.

3. £317.82 (maximum UC amount) - £558.53 (total earned income) = £240.71 (excess income).

Emma has no UC entitlement for this claim but surplus earnings will apply to any subsequent claims made within 3 months. The adjusted surplus for this claim is calculated as follows:

1. £586.56 (2nd claim adjusted surplus) + £300 (total earned income from 2nd claim) = £886.56.

2. £886.56 - £804.48 (relevant threshold) = £82.08 (adjusted surplus)

4th claim

Emma makes a further claim on 11.8.19, her fourth since the old award ended.

Her UC entitlement is determined as follows:

1. £82.08 (adjusted surplus) + £300 (actual earned income) = £382.08.

2. £382.08 (total earned income) x 0.63 (taper) = £240.71.

3. £317.82 (maximum UC amount) - £240.71 (total earned income) = £77.11.

Emma is entitled to a UC award of £77.11. Surplus earnings have been eroded and no longer apply.

Note: see **Appendix 2** for more examples.

Joint claimants

H3312 If the claim is the 1st joint claim by members of a couple and each member had an old award of UC either

1. individually as a single claimant **or**

2. as a member of a different couple

the amounts of any surplus earnings, had they claimed as a single person

1. from the old award **or**

2. from a previous claim that would have been treated as earned income

are to be combined.

Example

Stan's UC award as a single claimant ends when he receives a large performance related bonus of

£3,500 in addition to his regular monthly wage of £500.

The original surplus is calculated as follows:

1. the nil UC threshold is £393.45 - £0.00 ÷ 55 x 100 = £715.36 + £0.00 = £715.36

2. the relevant threshold is £715.36 + £2,500 = £3,215.36.

3. the original surplus is £4,000 - £3,215.36 = £784.64.

Francine's UC award as a single claimant ends when she receives a large performance related bonus of £4,000 in addition to her regular monthly wage of £600.

The original surplus is calculated as follows:

1. the nil UC threshold is £393.45 - £0.00 ÷ 55 x 100 = £715.36 + £0.00 = £715.36.

2. the relevant threshold is £715.36 + £2,500 = £3,215.36.

3. the original surplus is £4,600 - £3,215.36 = £1,384.64.

Stan and Francine form a couple and submit a joint claim to UC in the next AP after their individual UC awards end. The surplus earnings that are applied to this new joint claim are:

£784.64 (Stan's surplus) + £1,384.64 (Francine's surplus) = £2,169.28.

H3313 Where the claim is

1. a single claim where the claimant either

- **1.1** had an old award **or**
- **1.2** made a subsequent claim as a joint claimant **or**

2. a joint claim where either claimant had

- **2.1** an old award **or**
- **2.2** made a subsequent claim as a member of a different couple

surplus earnings will be a proportion of

1. the original surplus **or**

2. any adjusted surplus

as determined by the SoS.

That proportion is to be 50% unless there are any exceptional circumstances, for example, where the surplus is entirely attributable to a bonus received by the former partner in the month that the couple separated.

Example 1

Francine (as in the example above) claims UC as a single claimant. She had previously been part of a joint claim with Stan. They had a joint surplus of £2,991.04. For the purposes of Francine's UC claim as single person, the DM apportions 50% of the joint surplus to her claim. Francine's surplus earnings will be: £1,495.52.

Example 2

Haley and Jeff make a joint UC claim as a couple. Haley had previously received UC as part of a joint UC claim with Avery. In the final AP of that claim, they had an adjusted surplus earnings figure of £1,500. Jeff was in receipt of UC as a single claimant with an adjusted surplus earnings figure of £1,800.

For the purposes of the new joint UC claim, the DM decides that surplus earnings will be applied as follows:

50% of the joint surplus from Haley's previous joint UC claim - £750 plus

Jeff's surplus earnings from his single UC claim - £1,800 = £2,550.

Minimum Income Floor

H3314 The application of the minimum income floor1 is not affected by the calculation of surplus earnings. It is the level of earnings that is calculated after the application of the surplus earnings that should be used to determine whether the minimum income floor applies.

1 UC Regs, reg 62

H3315 – H3999

Appendices

Apendices/

Appendix 1

Appendix 2

Appendix 1/

Notional deductions for tax and national insurance and NMW rates

Main income tax allowances

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22
	£	£	£	£	£	£	£	£	£
Personal for those born after 5.4.48	9,440	10,000	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal for those born between 6.4.38 and 5.4.48	10,500	10,500	10,600	11,000	11,500	11,850	12,500	12,500	12,500
Personal for those born before 6.4.38	10,660	10,660	10,660	11,000	11,500	11,850	12,500	12,500	
Married couple aged 75 & over	7,915	8,165	8,355	8,355	8,445	8,695	8,915		

Basic rates of tax

Note: there are different rates for Scotland from tax year 18/19, see below.

Year	£	Rate
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%

Scotland

The Scottish rate of income tax is:

18/19 11,850 – 13,850 at starter tax rate of 19%

18/19 13,851 – 24,000 at basic rate of 20%

18/19 24,001 – 43,430 at intermediate rate of 21%

19/20 12,501 - 14,549 at starter rate of 19%

19/20 14,550 - 24,944 at basic rate of 20%

19/20 24,945 - 43,430 at intermediate rate of 21%

20/21 12,501 - 14,549 at starter rate of 19%

20/21 14,550 - 24,944 at basic rate of 20%

20/21 24,945 - 43,430 at intermediate rate of 21%

21/22 12,571 - 14,667 at starter rate of 19%

21/22 14,668 - 25,296 at basic rate of 20%

21/22 25,297 - 43,662 at intermediate rate of 21%

National insurance contributions

Class 1 contributions

The Class 1 NI contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

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 £3454

Primary threshold

No contributions are payable on weekly earnings of £149 or less or monthly earnings of £646 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.

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.

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.

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.

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.

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 £503 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.

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 £512 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.

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 £169 or less or monthly earnings of £520 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £169.01 and £962 per week and at 2% for earnings above £962 per week.

Earnings Bands 21/22		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 £792 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.

National Minimum Wage Hourly Rates

Year	25 and over	21 and over	18 to 20	Under 18	Apprentice
2012	-	£6.19	£4.98	£3.68	£2.65
2013	-	£6.31	£5.03	£3.72	£2.68
2014	-	£6.50	£5.13	£3.79	£2.73
2015	-	£6.70	£5.30	£3.87	£3.30
2016	£7.20*	£6.70	£5.30	£3.87	£3.30
2016	£7.20*	£6.95	£5.55	£4.00	£3.40
2017	£7.50*	£7.05	£5.60	£4.05	£3.50
2018	£7.83*	£7.38	£5.90	£4.20	£3.70
2019	£8.21*	£7.70	£6.15	£4.35	£3.90
2020	£8.72*	£8.20	£6.45	£4.55	£4.15
	23 and over	**21 - 22**	**18 - 20**	**Under 18**	**Apprentice**
2021	£8.91	£8.36	£6.56	£4.62	£4.30

* The National Minimum Wage for those aged 25 and over (also known as the National Living Wage) was introduced from 1.4.16. From 1.4.21 the National Living Wage was extended to those aged 23 and over.

Note. The National Minimum Wage does not apply prior to compulsory school leaving age. The Apprentice rate applies to apprentices aged under 19, but to apprentices aged 19 or over in their first year of apprenticeship only.

Appendix 2

Example 1 – Employed with work allowance

Alana is 32 and has 1 child. She has regular monthly earnings of £500 and no unearned income. Her UC

amount is £317.82, her child element is £277.08 and her work allowance is £397.00. The de-minimis is £300.

Her normal UC award is calculated as follows:

1. Maximum UC amount - £317.82 + 277.08 = £594.90.

2. £500 (earned income) - £397 work allowance = £103.00.

3. £103.00 x 0.63 (taper) = £64.89.

4. £594.90 - £64.89 = **£530.01** UC award

AP 1

Alana receives a net performance bonus of £1238.65, making her total earned income for this AP £1,738.65. This ends her UC entitlement but surplus earnings will apply to any subsequent claims made within 6 months.

Her UC award is calculated as follows:

1. Maximum UC amount - £317.82 + 277.08 = £594.90.

2. £1,738.65 (earned income) - £397 (work allowance) = £1,341.65.

3. £1,341.65 x 0.63 (taper) = £845.24.

4. £594.90 - £845.24 = -**£250.34** (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is £594.90 - £0.00 ÷ 63 x 100 = £944.29 + £397 = £1,341.29

2. the relevant threshold is £1,341.29 + £300 = £1,641.29

3. the original surplus is £1,738.65 - £1,641.29 = **£97.36.**

AP 2 Reclaim received

Her UC award is calculated as follows:

1. Maximum UC amount - £317.82 + 277.08 = £594.90.

2. £97.36 (surplus earnings) + £500 (actual earned income) = £597.36.

3. £597.36 (total earned income) - £397 (work allowance) = £200.36.

4. £200.36 x 0.63 (taper) = £126.23.

5. £594.90 - £126.23 = **£468.67** UC award (the surplus is eroded).

Example 2 – Couple Claim

Peter, 54 and Jackie, 41 are a couple with no children. Peter has regular monthly earnings of £500 and Jackie's regular monthly earnings are £600. They pay rent of £300 per month. Their UC amount is £498.89, their housing element is £300 and the de-minimis is £300.

Their normal UC award is calculated as follows:

1. Maximum UC amount - £498.89 + £300 = £798.89.

2. £1,100 (earned income) x 0.63 (taper) = £693.00.

3. £798.89 - £693.00 = **£105.89** UC award

AP 1

Jackie receives a one off retainer payment of £775.43 making their total household earned income for this AP £1875.43. This ends their UC entitlement but surplus earnings will apply to any subsequent claims made within 6 months.

Their UC award is calculated as follows:

1. Maximum UC amount - £798.89.

2. £1,875.43 (total earned income) x 0.63 (taper) = £1,181.52.

3. £798.89 - £1,182.52 = **-£383.63** (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is £798.89 - £0.00 ÷ 63 x 100 = £1,268.08.

2. the relevant threshold is £1,268.08 + £300 = £1,568.08.

3. the original surplus is £1,875.43 - £1,568.08 = **£307.35.**

AP2 – Reclaim received (1st)

Their UC award is calculated as follows:

1. Maximum UC amount - £498.89 + £300 = £798.89.

2. £307.35 (surplus earnings) + £1,100 (actual earned income) = £1,407.35.

3. £1,407.35 (total earned income) x 0.63 (taper) = £886.63.

4. £798.89 - £886.63 = **-£87.74** (excess income)

There is no entitlement to UC on this claim but surplus earnings would no longer apply to any subsequent claims as their total earned income no longer exceeds the relevant threshold (the surplus has been eroded):

1. the nil UC threshold is £798.89 - £0.00 ÷ 63 x 100 = £1,268.08

2. the relevant threshold is £1,268.08 + £300 = £1,568.08

3. £1,407.35 (total earned income) is **less** than £1,568.08 (the relevant threshold).

Example 3 – weekly paid claimant

Elsa is 27 with 1 child and regular weekly earnings of £330 She normally receives four weekly wages in each AP. Her UC amount is £317.82, her child element is £277.08 and her work allowance is £397. The de-minims is £300.

A typical UC award is calculated as follows:

1. Maximum UC amount - £317.82 + £277.08 = £594.90.

2. £1,320 (earned income) - £397 (work allowance) = £923.00.

3. £923 x 0.63 (taper) = £581.49.

4. £594.90 - £581.49 = **£13.41** UC award

AP1

Elsa receives 5 weekly wages in this AP making her total earned income £1,650. This ends UC entitlement but surplus earnings will apply to any subsequent claims made within 6 months.

Her UC award is calculated as follows:

1. Maximum UC amount - £317.82 + £277.08 = £594.90.

2. £1,650 (earned income) - £397 (work allowance) = £1,253.00.

3. £1,253 x 0.63 (taper) = £789.39.

4. £594.90 - £789.39 = **-£194.49** (excess income)

The original surplus is calculated as follows:

1. the nil UC threshold is £594.90 - £0.00 ÷ 63 x 100 = £944.29 + £397 = £1,341.29.

2. the relevant threshold is £1,341.29 + £300 = £1,641.29.

3. the original surplus is £1,650 - £1,641.29 = **£8.71.**

AP2 – reclaim received (1st)

Elsa reclaims UC the following month. She receives 4 weekly wages in this AP, otherwise her circumstances are unchanged.

Her UC award is calculated as follows:

1. Maximum UC amount - £317.82 + £277.08 = £594.90.

2. £8.71 (surplus earnings) + £1,320 (actual earned income) = £1,328.71.

3. £1,328.71 (total earned income) - £397 (work allowance) = £931.71.

4. £931.71 x 0.63 (taper) = £586.98.

5. £594.90 - £586.98 = **£7.92** UC award

Elsa is therefore entitled to UC, surplus earnings would no longer apply to any subsequent claims as the total earned income no longer exceeds the relevant threshold (the surplus has been eroded):

1. the nil UC threshold is £594.90 - £0.00 ÷ 63 x 100 + £397 = £1,341.29.

2. the relevant threshold is £1,341.29 + £300 = £1,641.29.

3. £1,328.71 (total earned income) is **less** than £1,641.29 (the relevant threshold).

In cases where a claimant is paid weekly, it is likely this pattern of surplus earnings will repeat itself during the course of a year. Where that occurs the claimant will have to submit a new claim each time until the surplus is eroded.

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