

Chapter 15 - Earnings for non-income-related benefits

Contents

Introduction

Scope of guidance	15000
General application	15003
Definition of employed earner	15004
Definition of self-employed earner	15006
Gainful employment	15010
Rounding of fractions	15013

Notional earnings

Earnings not known.....	15014
No earnings or earnings less than for comparable employment	15015
National minimum wage.....	15017

Employed earners

Definitions

Meaning of employed earner	15020
Meaning of earnings.....	15024
Meaning of derived from	15026
Meaning of service user	15027
Meaning of gross earnings.....	15040
Meaning of pay period.....	15041

Treatment of particular kinds of payments

Introduction.....	15050
Accommodation provided by employer.....	15051
Advance of earnings or loans.....	15052
Bonus or commission.....	15053
Broadcasting and publication fees	15054
Cash in lieu of concessionary coal.....	15055

Directors of limited companies	15056
Establishing a director's income	15057
Payments as a director or other employee	15070
Share dividend	15076
Debenture interest.....	15077
Holiday pay.....	15090
Income tax refunds.....	15091
Justices of the Peace	15092
Travel allowances and subsistence	15094
Financial loss allowances	15095
Local Authority councillors	15096
England and Wales	15097
Scotland	15112
Expenses - England, Wales and Scotland.....	15113
Payments not claimed.....	15117
Reimbursement of expenses	15118
Payments in kind	15129
Payments in lieu of remuneration.....	15130
Retainers	15131
Single status payments	15132
Special occupations	15133
Auxiliary coastguards	15135
Part-time members of a fire brigade	15136
Part-time manning or launching of a lifeboat	15137
Territorial army or volunteer reservists	15138
Tips.....	15141
Vouchers and child care cheques.....	15142
Payment in return for an undertaking as to conduct.....	15144
Ancillary school workers	
Description	15145
Paid holiday.....	15147
Special payments.....	15148

Allocation of payments	15149
Employment and training schemes	
General	15176
Employees	15179
Trainees	15180
Work based learning - Skill Build and Training for Work (Wales and Scotland)	15185
Employment rehabilitation programmes	15190
Work Based Training for Young People and Modern Apprenticeships	15194
Employment retention and advancement scheme.....	15198
Employment credit schemes	15202
Local exchange trading systems	
General	15212
Participation in a local exchange trading system scheme	15214
Local exchange trading system credits.....	15215
Payments made under employment protection legislation	
Introduction	15230
Types of payments.....	15231
Treatment of payments	15232
When payments are due to be paid	15234
Payments on termination of employment	
Introduction	15238
Types of payments.....	15240
Payments for period before employment ended.....	15241
Holiday pay	15242
Statutory redundancy payments	15243
Payments in kind.....	15250
Employment never existed.....	15251
Payments not received	15252
Delay in payment	15253
Employer withholds payment.....	15254
Payments in lieu of remuneration	15256

Payments in lieu of notice	15257
Holiday pay	15258
Payments of compensation.....	15260
Amount treated as earnings.....	15262
Meaning of part-time employment	15266
Payments during sickness or other absences from work	
General	15267
Definitions	15268
Statutory paternity pay	15269
Statutory adoption pay	15270
Statutory sick pay.....	15271
Statutory maternity pay	15272
Issue of company shares	15273
Income from investments	15275
Payments for private health scheme.....	15278
Occupational or personal pension	
General	15279
Definition	15280
Amount of occupational or personal pension.....	15286
Calculation of weekly amount	15290
Where occupational pension is not included as earnings.....	15292
Where a personal pension is not included as earnings	15296
Augmentation grants under the National Assistance Act 1948	15297
Pension protection fund payments.....	15300
Adult dependency increases to MA, RP, IB and SDA	15305
Adult dependency increases to CA.....	15306
Amounts not regarded as earnings	
Compensation for loss of earnings	15310
Jury service	15311
Pensions - personal benefit.....	15312
Payments of long-term compensation on redundancy made by a local education authority.....	15316

Disregard of final earnings - CA, ADIs and CDIs

General.....	15340
ADIs.....	15342
CDIs	15343

Calculation of net earnings

Deductions from gross earnings	15380
Income tax.....	15381
Social Security contributions.....	15382
Occupational pension scheme deductions or personal pension scheme payments.....	15383
Expenses not reimbursed by employer	15387
Deduction and disregards	15390

Period over which earnings are taken into account

General.....	15400
Date on which earnings are due to be paid	15401
Earnings when employment ends	15404
Notice given and worked.....	15405
Employment terminated by employer without notice	15407
Employment terminated by employee without notice	15408

Period for which payment is made

Identifiable period.....	15425
Specific types of earnings	15426
No identifiable period	15428
Different kinds of earnings received for overlapping periods.....	15430

Calculation of weekly amount of earnings from employed earners employment

Period of a week or less.....	15432
Period of a month.....	15433
Period of three months.....	15435
Period of a year.....	15436
Period of more than a week	15437

Two payments from same source and of same kind in same benefit week	15450
First of two payments due before date of claim	15451
Averaging of amounts	15452
Identifying a recognisable cycle	15454
No recognisable cycle	15455

Self-employed earners

Who is a self-employed earner

General	15470
Deciding if a person is a self-employed earner	15475
Sickness	15480

Assessment period for self-employed earners

General	15490
Business trading for less than a year	15491
Business trading for more than a year	15492
Change likely to affect the normal pattern of trading	19495
New businesses	15501
Royalties and copyright payments	15504
Expenses deducted from royalty or copyright payment	15508
Income tax, Social Security contributions and qualifying premium payments deducted from a royalty or copyright payment	15509
Date on which royalties or copyright payments are treated as paid	15510

Calculation of normal weekly earnings

General	15520
Cash flow	15521
Accounts	15524
Income tax certificate	15531
Method of calculation	15532
Gross receipts	15534
Payments received for goods and services provided	15536
Earnings payable abroad	15537

Schemes to help with self-employment	15540
Business subsidies or payments of compensation.....	15542
Personal drawings	15543
Income from letting or subletting.....	15547
Sale of certain business assets	15548
Tips and gratuities.....	15549
Payments in kind.....	15551
Value Added Tax.....	15560
Capital receipts	15562
Income for a different period	15563

Business expenses

Conditions for deducting business expenses	15580
Wholly and exclusively	15581
Expenses for both business and private use	15582
Reasonably incurred	15586
Allowable business expenses	15590
Value Added Tax.....	15591
Expenditure for a different period.....	15600

Expenses not allowed

General.....	15620
Capital expenditure	15621
Depreciation	15622
Sums used in setting up or expanding a business	15624
Loss incurred before the beginning of the assessment period.....	15625
Loss incurred in any other employment.....	15626
Repayment of capital on business loans	15628
Business entertainment.....	15629
Loss on disposal of a capital asset	15630
Payments into contingency funds	15631
Personal drawings.....	15632
Personal consumption.....	15633

Calculation of income tax, Social Security contributions and qualifying premium

Introduction.....	15650
Chargeable income	15652
Deduction for notional income tax.....	15654
Tax allowances	15655
Personal allowance	15656
Tax rates	15657
Calculation of deduction.....	15680
Deduction for notional Class 2 Social Security contributions	15681
Liability for a Class 2 contribution	15682
Calculation of the Class 2 contribution	15685
Small profits threshold	15686
Married woman's election	15688
Deduction for notional Class 4 Social Security contributions	15690
Liability for Class 4 contributions	15691
Calculation of Class 4 deduction.....	15692
Premiums for personal pension schemes and retirement annuity contracts	15693
Personal pensions	15694
Retirement annuity contracts	15696

Particular forms of self-employment

Share fishermen.....	15710
Meaning of fishing boat.....	15712
Meaning of usually works.....	15713
Meaning of profits or gross earnings of the fishing boat.....	15714
Method of calculation of weekly earnings	15715
Share fisherman is an owner or part owner of a boat.....	15718
Share fisherman is a regular crew member.....	15719
Shared expenses	15722
Child minders	15723
Crofts or small holdings.....	15725

Farmers	15726
Hotels, guest houses, bed and breakfast establishments	15728
Board and lodging accommodation and subletting	15729
Bars and restaurants in hotels, guest houses.....	15730
Partnerships	15731
Calculation of a business partner's normal weekly earnings.....	15733
Salaried partners.....	15740
Renting out property as a business	15743
Seasonally self-employed	15747
Sub-contractors	15748

Guidance common to both employed and self-employed earners

Date on which earnings are treated as paid

General.....	15755
Treatment of arrears of earnings	15756
Arrears paid on due date	15757
Arrears paid after the due date	15758

Payments to be disregarded

General.....	15760
Contributions to accommodation and living costs.....	15761
Income from Sub Tenants and Board and Lodging	
- period from 26.1.07 to 1.10.07	15762
Income from subletting	
Position prior to 26.1.07 and from 1.10.07 to 6.4.08.....	15764
Position between 26.1.07 and 1.10.07	15766
Position from 7.4.08	15767
Income from board and lodging	15768
Board and lodging accommodation	15771
Earnings payable abroad	15774
Earnings paid in a foreign currency	15780

Fostering allowances	15781
Payments for persons temporarily in care	15782

Deduction for child care charges

Benefits other than Carer's Allowance	15795
Meaning of "couple"	15800
Meaning of "lone parent"	15801
Meaning of "incapacitated"	15802
Meaning of "relevant child care charges"	15803
Childminding (Scotland)	15805
Day care (Scotland)	15809
Calculation of the average weekly child care charge	
Child care charges paid weekly	15810
Child care charges paid monthly	15812
Insufficient information	15813
Carer's Allowance	15814

Appendices

Notional deduction for income tax (See DMG 15380 - 15680)	Appendix 1
Notional deductions for Social Security contributions	
(See DMG 15681 et seq)	Appendix 2
Pension age (See DMG 15683)	Appendix 3
Territorial or reserve forces (See DMG 15133)	Appendix 4
Exemptions granted from statutory	
guarantee payments (See DMG 15231)	Appendix 5
Maximum weekly amount (See DMG 15262 - 15263)	Appendix 6
S/E earnings from B/L and Subletting	
position between 26.1.07 and 1.10.07	Appendix 7

Chapter 15 - Earnings for non-income-related benefits

Introduction

Scope of guidance

15000 The guidance in this chapter concerns the calculation of the weekly amount of earnings of employed earners **and** self-employed earners for the purposes of

1. benefits under certain legislation (for example IB)¹
2. the exempt work provision for IfW²
3. CA
4. ADI and CDI.

Note: This chapter does not provide guidance for UC, JSA, IS, ESA or SPC. For guidance on earnings for those benefits please refer to the relevant chapters of the DMG and ADM.

1 SS CB Act 92 Parts II - V; SS Ben (C of E) Regs, reg 3(1); 2 R(IB) 1/06

15001 The guidance applies to cases where payment of or entitlement to benefit in any benefit week beginning on or after 25.11.96 is affected by a person's earnings¹. Any questions about entitlement to benefit before 25.11.96 should be sent to DMA Leeds.

1 SS Ben (C of E) Regs, reg 18(2)

15002 For guidance relating to employed earners, see DMG 15020. See DMG 15470 for guidance on S/E earners and for guidance on issues common to both see DMG15755.

General application

15003 The amount of the earnings to be taken into account¹ is the whole of the earnings after making the deductions² and allowing the disregards³ provided for.

1 SS Ben (C of E) Regs, reg 3(2); 2 reg 10; 3 reg 13

Definition of employed earner

15004 The term employed earner means¹ a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including an elective office) where payments are taxable under Schedule E (PAYE).

1 SS Ben (C of E) Regs, reg 2(1)

15005 The term employed earner includes¹

1. anyone in employment outside GB that would be classed as employed earners employment if it were in GB **and**
2. anyone in employment where liability for contributions is disregarded².

1 SS Ben (C of E) Regs, reg 2(1); 2 SS CB Act 92 s 2(2)(a)

Definition of self-employed earner

15006 A S/E earner is a person who is gainfully employed

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

1 SS Ben (C of E) Regs, reg 2(1)

15007 The term S/E earner includes¹

1. anyone in employment outside GB that would be classed as self-employed earners employment if it were in GB **and**
2. anyone in employment where liability for contributions is disregarded².

1 SS Ben (C of E) Regs, reg 2(1); 2 SS CB Act 92, s 2(2)(a)

15008 - 15009

Gainful employment

15010 Both employed earners and self-employed earners must be in gainful employment.

15011 An employment should be regarded as gainful if a person is

1. engaged in it with a desire, hope and intention of obtaining remuneration or profit in return for services or efforts¹ **or**
2. is in fact paid for the services performed, whether or not there was any desire, hope or intention of obtaining remuneration².

1 CP 7/49; 2 R(P) 1/65

15012 It is immaterial that

1. a person may have arranged (for example, by deed or covenant) for the remuneration to be paid direct to some other person or body (for example, a charity). The remuneration so assigned must be regarded as earnings and disposal of those earnings does not mean that the employment ceases to be gainful
2. there may be no contract of service or for services¹
3. the employment in which a person is engaged is disregarded in relation to liability for contributions²

4. the remuneration is derived from an employment abroad³.

1 CWU 42/50; 2 SS Ben (C of E) Regs, reg 2(1); 3 reg 2(1); R(P) 1/70

Rounding of fractions

- 15013 Any calculation which results in a fraction of a penny should be treated as a whole penny if it would be to the claimant's advantage, otherwise it should be disregarded¹. Where a calculation involves more than one stage, the rounding process is only applied to the final calculation.

1 SS Ben (C of E) Regs, reg 5

Notional Earnings

Earnings not known

- 15014 Where it is not possible to find out what the claimant's earnings are at the time the DM is making the decision, the claimant is treated as having such earnings as is reasonable in the circumstances taking into account the number of hours worked and the earnings paid for comparable employment in the area¹.

1 SS Ben (C of E) Regs, reg 4(1)

No earnings or earnings less than for comparable employment

- 15015 On 11.11.02 a Commissioner decided¹ that the regulation² which permits a DM to take into account notional earnings where a person is working for nothing or for less than that paid for comparable employment in the area was **ultra vires**.

1 R(IB) 7/03; 2 SS Ben (C of E) Regs, reg 4(2)

- 15016 This means that, in these circumstances, a claimant cannot be treated as possessing earnings which that person does not in fact possess. As the notional earnings provisions are not available DMs should consider the NMW Provisions. See DMG 15017 - 15019.

National minimum wage

- 15017 The NMW affects most workers over the age of 18 who must be paid at or above the minimum rates from that date. Even if they want to, employees cannot agree with their employers to accept a wage lower than the NMW.
- 15018 HMRC is responsible for enforcing the NMW legislation (on behalf of the Department for Business, Innovation and Skills). There are NMW enforcement teams located at HMRC offices around the country. There is also a NMW Helpline on 0800 917 2368 that gives advice and guidance, including information on how to make a complaint.
- 15019 Where a DM has evidence that an employer is breaching NMW legislation, consideration should be given to reporting the matter to the HMRC.

Employed earners

Definitions

Meaning of employed earner

- 15020 The definition of an employed earner is in DMG 15004 - 15005.
- 15021 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.
- 15022 The phrase "in an office" includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses.
- 15023

Meaning of earnings

- 15024 Earnings means any pay or profit derived from employment and includes¹
1. bonus or commission (see DMG 15053)
 2. PILOR (see DMG 15130)
 3. PILON and certain compensation payments made by the employer because the employment has ended (see DMG 15238 et seq)
 4. holiday pay (see DMG 15090), but not where it is payable more than four weeks after the employment ended, or was interrupted
 5. retainers (see DMG 15131)
 6. payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for
 - 6.1 the employee's travelling expenses between home and work (but see DMG 15096 et seq for councillors) **or**
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is away from home (see DMG 15118)
 7. Employment Protection awards² (see DMG 15230 et seq)
 8. awards of compensation made under trade union legislation³ (see DMG 15260 et seq)
 9. payments made for periods when an employee is on maternity, paternity or adoption leave or is away from work due to illness⁴ (see DMG 15267 et seq)
 10. payments of occupational pension⁵ (see DMG 15279) and personal pension.

This list is not exhaustive. See DMG 15050 et seq for more examples of what are and what are not earnings.

1 SS Ben (C of E) Regs, reg 2(1); reg 9(1); 2 ER Act 96, s 28, 35, 64, 68, 112, 113, 114, 115, 116, 117, 128, 129, 132; 3 Trade Union and Labour Relations (Consolidation) Act 92, s 156, 157, 189 & 192; 4 SS Ben (C of E) Regs, reg 9(1)(j); 5 SS CB Act 92, s 89

15025 Earnings does not include¹

1. payments in kind
2. periodic payments made because employment has ended through redundancy²
3. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment³ (see DMG 15118)
4. payments in respect of expenses arising out of a claimant's participation as a service user⁴.

1 SS Ben (C of E) Regs, reg 9(1); 2 reg 9(1)(b); 3 reg 9(3); 4 reg 9(3)

Meaning of derived from

15026 The words "derived from" mean having their origins in¹. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 15025. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG 15400 et seq).

1 R(SB) 21/86

Meaning of Service user

15027 A service user¹ is

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 1.1in their capacity as a user, potential user, carer of 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 legislation² 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 under 1. or 2..

1 SS Ben (C of E) Regs, reg 9(3A); 2 E & T Act 73, s 2

15028 For the purposes of 15027

1. a service user is a person who
 - 1.1 has used or
 - 1.2 is using or
 - 1.3 may potentially use or
 - 1.4 is otherwise affected bythe services referred to in 2. below **and**
2. 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. 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.

Example 1

The General Social Care Council (GSCC) is required under legislation to promote high standards in the training of social care workers. It does this through inspection and regulation. Person A has had the help of a social worker in the past. Person A and other individuals have been invited to attend a training programme for social workers as visitors to monitor and advise on the training policies of the GSCC from the perspective of people who have used social work services. The DM determines that Person A is a service user.

Example 2

Person B is an unpaid carer and looks after her elderly father. Occasionally the LA ask Person B to take part in consultations to discuss the role of unpaid carers in the community and the services provided by the LA. The LA as a best value authority has a general duty under legislation to do this. The DM determines that Person B is a service user.

Example 3

The National Institute for Health & Care Excellence (NICE) is a statutory body. Its guidance helps support providers and commissioners deliver high quality care in health and care settings. Key to NICE's work is its ability to engage with stakeholders, such as NHS patients, social care service users, carers, etc. in order to produce relevant and meaningful guidance.

Person C has a diagnosis of chronic obstructive pulmonary disease (COPD). As part of developing a clinical guideline on COPD, NICE has asked Person C to join the guideline development group to ensure that the patient's perspective is taken into account during the development of the guideline. The DM determines that Person C is a service user.

15029 - 15039

Meaning of gross earnings

15040 Gross earnings means the amount of earnings

1. **after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ (see DMG 15380) **but**
2. **before** any authorised deductions are made by the employer. These may include
 - 2.1 income tax
 - 2.2 pensions contributions
 - 2.3 SS contributions (often called NI contributions)
 - 2.4 TU subscription
 - 2.5 payments under a court order
 - 2.6 recovery of any debt
 - 2.7 recovery of wages overpaid².

1 R(FC) 1/90; R(IS) 16/93; 2 R(TC) 2/03

Meaning of pay period

15041 A pay period is the period for which the employee is, or expects to be, normally paid¹. This can be a week, a fortnight, 4 weeks, a month, or any other period.

1 SS Ben (C of E) Regs, reg 2(1)

15042 - 15049

Treatment of particular kinds of payments

Introduction

- 15050 DMG 15024¹ gives some examples of what earnings can include. But, there are other payments that count as earnings.

1 SS Ben (C of E) Regs, reg 9(1)

Accommodation provided by employer

- 15051 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored.

Advance of earnings or loans

- 15052 Earnings should be taken into account from the date they are treated as paid¹. This is based on when they are due to be paid (see DMG 15401 et seq). If they are paid before the due date, disregard them until the due date arrives². Then take the amount properly due into account as normal from that date. Any other income made by way of a loan made by the employer should be treated in the same way.

1 SS Ben (C of E) Regs, reg 7; 2 Sch 1, para 11

Example

Cameron earns £50 a week which is due to be paid every 4th Friday. He was last paid £200 on 8 November. On 18 November, he gets an advance of £100 from his employer. The £100 is disregarded. The full £200 due to be paid on 6 December is then taken into account (6 December to 2 January = 4 weeks x £50).

Bonus or commission

- 15053 Payments of bonus or commission should be treated as earnings. DMG 15425 et seq contains guidance on the period over which they should be taken into account.

Broadcasting and publication fees

- 15054 Fees and royalties should be treated as earnings, no matter how often or infrequently they are paid. They can be for employment or self employment and include payments for

1. taking part in radio or television plays, commercials and documentaries
2. repeat showings of plays, commercials and documentaries
3. interviews with press reporters
4. published items.

Cash in lieu of concessionary coal

- 15055 Former employees of British Coal who live in property where solid fuel cannot be used, may receive a cash payment instead of an agreed amount of coal (concessionary coal). Payments made instead of it should be treated as earnings¹.

1 R(SB) 2/86

Directors of limited companies

- 15056 A limited company, of whatever size, is separate from its employees and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

- 15057 The income of a director can include
1. payments for services as a director or any other employment with the company
 2. share dividend
 3. debenture interest.

15058 - 15069

Payments as a director or other employee

- 15070 Directors have no legal right to receive payment for their services as a director, but can still be voted payment. Or they may be entitled to payments under the company's Articles of Association. Any payments voted to a director or to which they are so entitled should be taken into account as earnings.
- 15071 A director may also be employed by the company for another reason, for example as a sales manager. Such a person has a contract of employment with the company and is entitled to a salary. Any salary should be taken into account as earnings.

- 15072 If a director in a small company does no other work in it, the services provided will be limited and the amount of payment expected will be small. If the director also does other work in the company, then more payment will be expected.
- 15073 Many small companies operate with only two directors, for example the claimant and partner. Such companies normally obtain contracts and pay employees a salary for work done. Any earnings paid to the claimant will usually be for work done as an employee of the company.
- 15074 Directors may leave earnings that they are entitled to in a company bank account. If the director is free to draw on the account at any time, the money is actual income. It should be taken into account as actual earnings.

15075

Share dividend

- 15076 Share dividend is income from capital and should be disregarded.

Debenture interest

- 15077 Directors may have debentures in a company. Debentures are a type of loan capital. Debenture holders are entitled to a fixed rate of interest. The interest is payable whether the company makes a profit or not. If a director has made a loan to a company, the interest payments should be disregarded. If any of the loan itself is repaid, the amount repaid should similarly be disregarded.

15078 - 15089

Holiday pay

- 15090 Any holiday pay that is payable within 4 weeks of the date employment ended, or was interrupted, should be treated as earnings¹. If it is payable more than 4 weeks after the employment has ended, or been interrupted, it should be disregarded. Guidance on the effects of holiday pay paid on termination of employment is given in DMG 15258.

1 SS Ben (C of E) Regs, reg 9(1)(d)

Income tax refunds

- 15091 Earnings of employed earners are taxed under the PAYE scheme by direct deduction from wages or salary. Any refunds of income tax should be disregarded¹.

1 SS Ben (C of E) Regs, Sch 1, para 10

Justices of the Peace

15092 Most Justices of the Peace are members of the public who volunteer to be magistrates. In England and Wales a Justice of the Peace who is not a District Judge is a Lay Justice¹. Those people who were employed as magistrates and referred to as stipendiary magistrates are now known as District Judges (Magistrates Courts)². In connection with their duties Lay Justices may receive

1. travel allowances³
2. subsistence⁴
3. financial loss allowances⁵.

1 Courts Act 2003, s 9; 2 Access to Justice Act 1999; 3 Courts Act 2003, s 15(1)(a); 4 s 15(1)(b); 5 s 15(1)(c)

15093 In Scotland, Justices of the Peace sit in District Courts, where they have not been replaced by Justice of the Peace Courts, and in Justice of the Peace Courts. Justices of the Peace in Scotland may receive¹

1. travel allowances
2. subsistence allowances
3. financial loss allowances.

1 District Courts (Scotland) Act 1975, s 17(1); Criminal Proceedings etc (Reform) (Scotland) Act 2007, s 68(4) & (5)

Travel allowances and subsistence

15094 Travel allowances and payments of subsistence incurred wholly, exclusively and necessarily in the performance of the Lay Justice's or Justice of the Peace's duties should be disregarded in full¹.

1 SS Ben (C of E) Regs, reg 9(1)(f) & 9(3)

Financial loss allowances

15095 Financial loss allowances are paid to compensate Lay Justices and Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for

1. loss of earnings - these should be treated as PILOR¹ (see DMG 15130)
2. loss of SS benefits - these should be disregarded
3. other expenses that are incurred wholly, exclusively and necessarily in the performance of the duties of the Lay Justice or Justice of the Peace - these should be disregarded in full.

1 SS Ben (C of E) Regs, reg 9(1)(b)

Local Authority councillors

- 15096 LA councillors are elected office holders and are employed earners¹. The system for payment of allowances and reimbursement of expenses in Scotland is different from that in England and Wales.

1 R(IS) 6/92

England and Wales

- 15097 An LA must draw up a scheme¹ for payment of councillors' allowances. This will give information on the official duties of its councillors and the allowances paid for those duties. The allowances paid for official duties may include a

1. basic allowance
2. special responsibilities allowance
3. dependants' carers' allowance
4. travelling and subsistence allowance
5. co-optees' allowance.

*1 Local Authorities (Member's Allowances) (England) Regulations 2003, reg 4(1);
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 5*

- 15098 Basic allowance is payable to all councillors in England and Wales. The amount of the basic allowance in respect of each year will be the same for each councillor in the LA but it may differ from LA to LA¹.

*1 Local Authorities (Member's Allowances) (England) Regulations 2003, reg 4;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 7*

15099 - 15107

- 15108 Each LA in England and Wales may pay a special responsibility allowance for each year to those councillors who have responsibilities which fall within certain categories¹. The authority has to identify the special responsibilities for which the allowance is to be paid and the amounts of allowance to be paid for them. Special responsibility allowance should be treated as earnings.

1 The Local Authorities (Members' Allowances)(England) Regulations, reg 5; Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 8

- 15109 LAs may pay a dependants' carers' allowance to those councillors who necessarily incur expenditure for the care of their children or dependants whilst undertaking various duties as a councillor¹. See DMG 15800 et seq. on care charges.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 7;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 9*

- 15110 LAs may pay an allowance in respect of travelling and subsistence undertaken in connection with or relating to their duties as councillors which are specified and which fall into certain categories¹.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 8;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 15*

- 15111 LAs may pay an allowance for each year in respect of attendance at conferences and meetings¹.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 9;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 19*

Scotland

- 15112 In Scotland there are four grades of LA councillors¹. The level of remuneration paid to a councillor depends on their grade and the banding of the LA. In addition councillors are entitled to mileage allowance for travel². There is no entitlement to any other allowance but councillors are entitled to reimbursement of certain expenses subject to a maximum rate³. The Civic Head of the Council may be entitled to reimbursement of additional receipted expenditure⁴. Certain elements of the councillors' remuneration and expenses are taxable and subject to NI contributions as an employed earner.

*1 Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007, reg 4;
2 Local Government (Allowances and Expenses) (Scotland) Regulations 2007, reg 5; 3 reg 4; 4 reg 3*

Expenses - England, Wales and Scotland

- 15113 Repayment for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties, should be fully disregarded. For example, travel and subsistence allowances.
- 15114 If the LA cannot say how much of any payment is for expenses, ask the councillor for details. If the councillor has an income tax assessment, take this into account. Evidence from the councillor should normally be accepted.
- 15115 Councillors have to do a lot of their work at home. This means that they may have additional expenses which are wholly, exclusively and necessarily incurred in the performance of their duties. Any such expenses which are not repaid to them by the LA should be deducted when calculating net earnings (see DMG 15387).
- 15116 When councillors travel from home to the council office, or any other work place, it is not just travelling to work. It is a part of the work itself. Disregard any travelling expenses incurred in that work. This is different to the normal treatment of travelling expenses (see DMG 15388).

15117

Reimbursement of expenses

15118 Payments made by an employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings¹. These can include

1. payments for travelling expenses between home and work
2. school fees for a claimant's child.

1 SS Ben (C of E) Regs, reg 9(1)(f)

15119 Payments made by an employer for expenses which **are** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings¹ and are fully disregarded. These can include

1. payments made for
 - 1.1 travelling expenses
 - 1.2 overnight accommodationso that the employee can attend a meeting
2. a mileage allowance to run a car for business purposes.

Note: See also DMG 15387 to 15389 for cases where an employee incurs allowable expenses but no reimbursement is made by the employer.

1 SS Ben (C of E) Regs, reg 9(3)

15120 An employer may pay for an expense from which the employee gets some private benefit. If so, divide the payment into private and business use. The part of the payment for private use is earnings¹. The rest, which is for business use, is wholly, exclusively and necessarily incurred, and is not earnings.

1 R(IS) 16/93

Example

Winston uses his own private telephone for work purposes. His employer pays the standing and rental charges for the telephone and 50% of the calls. This is because Winston also uses the phone for personal calls, and 50% of the calls made are personal. The DM decides that 50% of the amount paid by the employer for the standing and rental charges is an expense wholly, exclusively and necessarily incurred. The remaining 50% is for Winston's personal use and so is earnings. The amount paid by the employer for calls is wholly, exclusively and necessarily incurred and is not earnings.

15121 - 15128

Payments in kind

- 15129 A payment in kind, for example free accommodation, should not be treated as earnings.

Payments in lieu of remuneration

- 15130 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to lay Justices, Justices of the Peace and LA councillors for loss of earnings are examples of such payments. ET compensation awards for a past employment and awards made under sex and race discrimination law can also be PILOR. Such payments are earnings¹.

1 SS Ben (C of E) Regs, reg 9(1)(b)

Retainers

- 15131 Retainers¹ are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings.

1 SS Ben (C of E) Regs, reg 9(1)(e)

Single status payments

- 15132 A payment which is made to a person to redress past pay inequalities is a payment of earnings¹ and may have to be taken into account if that person is still working for that employer. These payments are sometimes called "single status payments" but may be called something else.

1 SS Ben (C of E) Regs, reg 9(1)

Special occupations

- 15133 Some occupations are known as special occupations. These are

1. auxiliary coastguards for coastal rescue activities
2. in England and Wales, a P/T fire-fighter employed by a fire and rescue authority under relevant legislation¹
3. in Scotland, a P/T fire-fighter employed by the Scottish Fire and Rescue Service²
4. P/T work manning or launching a lifeboat
5. members of the territorial or reserve forces³ (see Annex 4 to this Chapter).

1 Fire and Rescue Services Act 2004; 2 Fire (Scotland) Act 2005, s 1A;

3 SS (Contributions) Regs, Sch 3, Part 1

- 15134 People in special occupations may receive a bounty payment for their services. If a bounty is paid at intervals of at least one year, it should be disregarded. If it is paid more often than once a year, for example quarterly, it should be treated as earnings. The period for which the bounty is payable is of no relevance.

Auxiliary coastguards

- 15135 Payments received for watch keeping duties should be treated as earnings. Payments for expenses of coastal rescue activities should also be treated as earnings, unless they were wholly, exclusively and necessarily incurred in the performance of the coastguard's duties (see DMG 15387).

Part-time members of a fire brigade

- 15136 Payments for drills, services or retaining fees, should be treated as earnings. Payments for expenses should also be treated as earnings, if they were not wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Part-time manning or launching of a lifeboat

- 15137 Treat payments for drills, services or retaining fees, as earnings. Payments for expenses should also be treated as earnings, unless they are wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Territorial army or volunteer reservists

- 15138 Members of the Territorial Army or Royal Navy/Royal Air Force volunteer forces may receive a training expenses allowance, paid at a flat rate. The allowance is for meals and other incidental expenses while on duty. It is not for expenses wholly, exclusively and necessarily incurred in the performance of the duties and should be treated as earnings.
- 15139 Payments for travelling expenses between the volunteer's home and place of duty, for example the drill hall, are also not wholly, exclusively and necessarily incurred. Such payments should be treated as earnings¹.

1 SS Ben (C of E) Regs, reg 9(1)(f)

- 15140 Treat other payments, for example drill night pay, as earnings, unless they are for an item wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Tips

- 15141 Tips are expected in some jobs, for example hairdressers, waiters and bar staff. They may be made because of the services rendered by the employee in the course of the employment. The average weekly amount of any such tips received should be included in the calculation of earnings. Do not include tips made as gifts on grounds that are personal to the recipient and unconnected with the employment.

Vouchers and child care cheques

- 15142 An employee may receive vouchers instead of, or as well as, earnings. These can include
1. luncheon vouchers
 2. child care vouchers
 3. child care cheques.
- 15143 Any vouchers received are payments in kind and should be disregarded in full.

Payment in return for an undertaking as to conduct

- 15144 Some employees may receive a payment from an employer or former employer in return for an undertaking to behave or not to behave in a certain way. These payments are earnings¹, even though the undertaking may not be legally enforceable.

1 SS CB Act 92, s 4(4)(b)

Example

A former employee of a pharmaceutical company undertakes not to reveal information about products under development to any new employer. In return for the undertaking he is paid a lump sum on leaving his former employment.

Ancillary school workers

Description

- 15145 The description “ancillary school workers” refers to members of the non-teaching staff of educational establishments and mainly comprises
1. school meals workers
 2. general domestic and
 3. clerical staff (for example secretaries, clerks, librarians).

Special considerations apply to such workers where the question of earnings falls to be considered during the school holiday periods. These considerations apply only to those workers whose employment has not been terminated at the end of a school term.

- 15146 When the educational establishment at which they work is closed between terms, certain ancillary school workers may be entitled to **paid holidays** and/or **special payments**.

Paid holiday

- 15147 A person may be entitled to paid holidays. In this case the person is still under contract of employment during the paid holiday and has earnings.

Special payments

- 15148 A person may be entitled to special payment(s) sometimes described as “retaining fees”, for periods other than paid holiday. These payments may fall into two categories
1. those which are mainly an inducement to return to the employment (Example 1)¹ and
 2. those where the payment is conditional upon an undertaking to resume work when required (Example 2)². When a claim for increase of benefit is made for an adult dependant for a period for which such a special payment is made, decision makers are advised to ask for copies of the terms of service (which may be included in the letter of appointment or may be separately notified to employees) in order to decide whether a particular ancillary school worker is to be regarded as gainfully employed and in receipt of earnings under a contract of employment.

1 R(U) 6/68; 2 R(U) 6/70

Example 1

A cleaner at a university residential hostel, received 2 weeks holiday pay at the beginning of the 6 weeks university vacation. On resuming work at the end of the vacation she received a payment of £40, described by the employer as a retaining fee, at the rate of £10 a week for the 4 weeks in which her services were not required following the 2 weeks of paid holiday. It was held that the claimant was not gainfully occupied in an employment since the £40 was not paid by way of wages or reward for services rendered during the 4 weeks, nor was it paid in consideration of the claimant agreeing to be available to serve if required, but as an inducement to resume the employment.

Example 2

A person employed in a school meals service was paid a retaining fee in respect of the school holiday of six weeks. The payment was made in two equal instalments; the first at the beginning and the second the day after the end of the school holidays. To be entitled to a retaining fee employees must undertake to return to work at the end of the period during which the schools are closed.

The retaining fee is earnings because it derived from a gainful occupation and is payable under the terms of the contract of employment. Further, the fee although paid in two instalments, was a payment in respect of the whole period of the six weeks holiday, and for the purpose of fixing the rate of earnings must be spread evenly over the period.

Allocation of payments

- 15149 If it is decided that the dependant has earnings in a holiday period comprised partly of holiday pay and partly of a special payment and the employment authority has not related the payments to specific weeks in the period, the holiday pay should ordinarily be allocated to the first week(s) of the holiday and the special payment to the remaining weeks. However, where it would be to a claimant's advantage to attribute the payments in some different way, this should be done.

Example

For the 6 week period of the summer holiday, a school meals assistant is to be paid holiday pay of £60 a week for 2 weeks plus a special payment of £80, all of which is regarded as earnings. Her husband falls sick at the beginning of the second week of the holiday period and claims Incapacity Benefit, including an increase for his wife. He remains sick for 4 weeks.

His wife should be treated as receiving £60 holiday pay for the first week of the holiday and £20 special pay for each of the 4 succeeding weeks. By attributing the payments in this way, the claimant would be entitled to an increase for his wife throughout the period of his incapacity.

If his incapacity lasted for at least 5 weeks, no increase would be payable for the fifth week because the remaining holiday pay (£60) would necessarily be attributed to it.

Allocation of payments should not be made to weeks where no benefit considerations arise, for example to weeks occurring after a claimant has again become fit for work.

15150 - 15175

Employment and training schemes

General

- 15176 The main schemes organised by the DWP were the various ND schemes (see DMG Chapter 14) and, since 2011, the “Get Britain Working” measures and the Work Programme.
- 15177 In addition there are a number of employment and training programmes provided by the Young People’s Learning Agency for England, the Chief Executive of Education and Skills Funding, Skills Development Scotland or provided by or on behalf of the Secretary of State for Business, Innovation and Skills, Scottish Enterprise, the Highlands and Islands Enterprise or the National Assembly for Wales.
- 15178 Where a person is on such a scheme, DMs will need to establish whether they are
1. employees (or self-employed) or
 2. trainees.

Employees

- 15179 Employees get a wage from their employer. Treat the wage as earnings.

Trainees

- 15180 Trainees get a training allowance with no income tax or SS contributions deducted. These allowances should not be treated as earnings, but see Chapter 17 for guidance on overlapping benefits.

15181 - 15184

Work based learning - Skill Build and Training for Work (Wales and Scotland)

- 15185 Work Based Learning, (TfW in Scotland and WBL - SB in Wales) are voluntary schemes for the long term unemployed. They are provided by Scottish Enterprise, the Highlands and Islands Enterprise and Skills Development Scotland or the Welsh Ministers¹. Schemes may be known locally by a name other than Work Based Learning. Local Jobcentre Plus offices can confirm whether a particular scheme is Work Based Learning.

1 TfW (Miscellaneous Provisions) Order 1995

- 15186 There are two groups who are treated differently depending on whether a training allowance is payable
1. those receiving or eligible to receive a training allowance, who are treated as trainees

2. those receiving or entitled to receive remuneration from the employer providing the training facilities who are treated as employees.

15187 - 15189

Employment rehabilitation programmes

- 15190 Employment rehabilitation programmes are for adults who, because of illness, injury or disability, may need help to improve their employment prospects. Courses can last up to six months and are also known as Work Choice.
- 15191 People taking part in employment rehabilitation programmes are trainees. Treat any payments in the same way as a training allowance. Payments can include
1. an allowance for attending the course
 2. travelling expenses
 3. an allowance for midday meals.

15192 - 15193

Work Based Training for Young People and Modern Apprenticeships

- 15194 WBTfYP (Skillseekers in Scotland) and Modern Apprenticeships provide training for young people who
1. have reached the minimum school leaving age
 2. are not attending school or college F/T as a pupil or student
 3. are not in higher education
 4. are not in custody as prisoners or on remand
 5. are not overseas nationals subject to
 - 5.1 employment restrictions or
 - 5.2 a time limit on their stay in GB (other than a refugee or asylum seeker)
 - and
 6. are not benefiting from any other Government scheme (for example WBLA).
- 15195 Young people on WBTfYP (Skillseekers in Scotland) and Modern Apprenticeships can be employees or trainees with wages or training allowances. Employee status is more common on Modern Apprenticeships. Courses may vary in length and typically may be around two years on WBTfYP or three on Modern Apprenticeships. See DMG Chapter 34 for further details.

15196 - 15197

Employment retention and advancement scheme

- 15198 The employment retention and advancement (ERA) scheme¹ involved a study of different methods to help people stay in work and improve their career prospects including financial incentives known as ERA payments. People eligible for ND25+, NDLP and people receiving WTC could volunteer to participate in the scheme.

1 Employment & Training Act 73, s 2

- 15199 ERA payments should be treated in the same way as a training allowance.

15200 - 15201

Employment credit schemes

- 15202 Employment credit schemes can be given many different names such as

1. Claim and Save
2. Work Credit
3. Enterprise Projects
4. Enterprise Rehearsal Schemes
5. Employment Credits.

- 15203 They are run by various bodies, including LAs. Their aim is to provide training and work experience for the long-term unemployed.

- 15204 People taking part in an employment credit scheme must

1. have a contract of service consistent with a liability to pay the Class 1 SS contribution **and**
2. remain available for employment **and**
3. be employed on average for less than 16 hours a week **and**
4. be part of an arrangement under which credits are earned and converted into earnings at the end of the contract.

- 15205 People on these schemes will usually receive part of their earnings each week. The balance of earnings is credited throughout the rest of the contract. Any amount owing is then paid as a lump sum at the end of the contract.

- 15206 If an ADI is in payment at the end of the contract, find out

1. the date the lump sum is due to be paid **and**
2. the period for which the payment is made. This should be the period over which the credits have been earned.

- 15207 Take the lump sum into account as earnings from the date it is due to be paid. Attribute it at a weekly rate over a period equal to the period worked.

15208 - 15211

Local exchange trading systems

General

- 15212 Local exchange trading systems are associations that allow participants to exchange goods and services with others in the community.
- 15213 Members of local exchange trading systems list their offers of, and requests for, goods and services in a directory and then trade them using a system of credits. These can be given many different names such as
1. bobbins
 2. brads
 3. newberries
 4. beacons
 5. acorns.

Participation in a local exchange trading system scheme

- 15214 Participating in a local exchange trading systems scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

Local exchange trading system credits

- 15215 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. They are considered taxable income for Income Tax purposes.
- 15216 Credits should be taken into account as earnings. Their value will be equivalent to the number of credits awarded for the particular goods or services involved at the relevant exchange rate.
- 15217 The DM should firstly find out whether the organisers of the scheme have equated the credits to a sterling equivalent. This may have been done for HMRC or VAT purposes. If so, that equivalent can be used as the exchange rate.

15218 If a sterling equivalent is not available the DM should decide the question based on the circumstances of each case. In doing so the DM may consider factors such as

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

15219 - 15229

Payments made under employment protection legislation

Introduction

15230 The effect of payments or awards made under employment protection legislation depends on

1. what type of payment is involved
2. when the payment was due to be made
3. whether the payment has actually been made.

Types of payments

15231 There are many different types of payments and awards including

1. statutory guarantee payments
2. guarantee payments under a collective agreement or wages order
3. remuneration while suspended from work on medical or maternity grounds
4. awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal
5. interim relief pending determination of a claim for unfair dismissal
6. remuneration under a protective award
7. statutory redundancy payments
8. payments for certain time off work.

Treatment of payments

- 15232 Most payments under employment protection legislation should be treated as earnings¹ (see DMG 15024 et seq). Take them into account in the normal way.

1 SS Ben (C of E) Regs, reg 9(1)

- 15233 Statutory redundancy payments¹ are the exception to this general rule. They should be ignored.

1 reg 9(1)(b)

When payments are due to be paid

- 15234 A payment is due to be paid when it is due and owing. It does not matter that it is unlikely to be paid, for example where the former employer is in liquidation, or is insolvent. It is no longer due if the right to enforce payment of it is lost.
- 15235 Employers sometimes appeal against Employment Tribunal decisions awarding payments. Until the appeal is decided, entitlement to any award will be in doubt. Any payment will not be due to be paid until the employer's appeal is dismissed.
- 15236 Employers and employees sometimes agree a settlement after an Employment Tribunal has made an award. Any settlement varies the award made. The award itself is due and owing until the agreement has been carried out. It is then replaced by the agreement and is no longer due to be paid.
- 15237 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

Payments on termination of employment

Introduction

- 15238 The following guidance should be read together with DMG 15340 et seq which describes a disregard that applies in CA, ADIs and CDIs to payments of final earnings. Employees may be entitled to certain payments on termination of employment, that is, when their employment ends. Payments for the termination of the employment are made because the employment has ended¹. They are not paid for any other reason. They would not be paid but for the employment ending.

1 R(U) 4/92

- 15239 The effects of these payments depends on
1. what type of payment is involved
 2. when the payment is due to be made
 3. whether there is an unworked or waived period of notice
 4. when the work ended.

Types of payments

- 15240 There are many different types of payments that might be made. These include
1. payments due for any period before the employment ended (see DMG 15241)
 2. holiday pay (see DMG 15242)
 3. PILON
 4. refunds of occupational pension contributions
 5. pension lump sums
 6. payments, remuneration or awards made under employment protection and TU law (see DMG 15230 et seq)
 7. payments in kind (see DMG 15250) income tax refunds
 8. compensation payments (see DMG 15260)
 9. statutory redundancy payments (see DMG 15243).

Payments for period before employment ended

- 15241 When employment ends payments may be due for the employed period, for services already rendered. They are owed under the contract of employment and are due because of the employment itself, not because of the termination. Such payments include
1. final earnings
 2. wages held in hand
 3. commission.

Holiday pay

- 15242 Most employees are entitled to be paid while they are on holiday. When their employment ends they may not have taken all the paid holiday they could have had. They will then receive a payment of holiday pay instead.

Statutory redundancy payments

- 15243 Employees who have been continuously employed for 2 years may be entitled to statutory redundancy payments if they are
1. dismissed by reason of redundancy¹ or
 2. laid off or kept on short time for more than a set number of weeks².

1 ER Act 96, s 135(1)(a); 2 s 135(1)(b) & 148(2)

15244 Not all employees are entitled to statutory redundancy payments, for example members of the armed forces and civil servants. Redundancy type payments may be paid to these employees, for example ex gratia payments and “golden handshakes”. Such payments are not **statutory** payments.

15245 Statutory redundancy pay is based on¹

1. the length of continuous employment
2. the age of the employee
3. the amount of a week's pay.

1 ER Act 96, s 135, 162, 211 & 221

15246 - 15249

Payments in kind

15250 A payment in kind is payment by something other than money. This can be in many forms including

1. goods, for example food or clothes
2. vouchers, for example childcare or gift vouchers
3. free accommodation.

Employment never existed

15251 For employment to have ended, it must first have existed. A payment on termination of employment can be made only where a job has ended. Any payments made for other reasons are not payments on termination of employment.

Example 1

Kirsty is offered a job in a shop. The offer is then cancelled before she can start work. The shop owner pays Kirsty £30 to make up for cancelling the offer. The £30 is paid because of the cancellation. It is not paid because the job ended. It is not earnings.

Example 2

Wladislaw is due to start work in a shop on 21 October. On 14 October the shop owner gives him a £30 advance of wages. On 17 October Wladislaw decides that he no longer wants the job and does not start work. The £30 advance is not paid because the job ended. It is a type of loan. It was meant to last for 1 week and is a payment of income.

Payments not received

- 15252 Payments made on termination of employment are taken into account from the date they are treated as paid¹. That date is based on when the payment is due to be paid. This may not be the same as the date it is **actually** paid (see DMG 15401 et seq).

1 SS Ben (C of E) Regs, reg 7

Delay in payment

- 15253 A payment is due when it is legally due and owing. Any delay in its actual payment does not affect that due date.

Employer withholds payment

- 15254 Employers may not pay the full amount that is due. They may for example make a reduction to pay for cash shortages that the employee is responsible for. Take the full amount due into account if
1. it is a term of the contract that this action can be taken and there is no dispute about the shortage or
 2. the employee agrees to the employer's action or
 3. the money was originally paid to the employee, before being paid to the employer.
- 15255 If there is any doubt or dispute about the reduction, ask for full details. The DM should then take all available evidence into account when deciding the amount due.

Example 1

Jack is due to be paid £500 compensation when his employment ends. He is responsible under his contract of employment for any cash shortages. He agrees with his employer that there is a shortage of £100. The employer deducts this amount from the payment due to him and Jack is paid £400. The full amount of £500 is taken into account, as earnings.

Example 2

Vera is due to be paid £600 compensation when her employment ends. Her employer deducts £100 for a cash shortage that he says is her responsibility. Vera is not responsible for shortages under her contract. She did not agree that the deduction could be made and is disputing the alleged liability. Only the £500 actually paid is taken into account, as earnings.

Payments in lieu of remuneration

- 15256 Payments in lieu of remuneration are paid in place of a person's normal wages or salary and should be treated as earnings and taken into account in the normal way¹.

1 SS Ben (C of E) Regs, reg 9(1)(b)

Payments in lieu of notice

- 15257 Employees are normally entitled to notice before their employment is ended. But employers may not always give them full notice. Employees are then entitled to pay in lieu of notice instead. Such payments are earnings¹ and should be taken into account in the normal way.

1 SS Ben (C of E) Regs, reg 9(1)(c)

Holiday pay

- 15258 If holiday pay is payable more than four weeks after the employment ended or was interrupted it should be disregarded¹.

1 SS Ben (C of E) Regs, reg 9(1)(d)

- 15259 Holiday pay payable within four weeks of the employment ending should be treated as earnings¹ and taken into account in the normal way.

1 SS Ben (C of E) Regs, reg 9(1)(d)

Payments of compensation

- 15260 When employment ends, an employee may receive a payment as compensation for the non-receipt or waiving of the right to PILON. Where all PILON due has been received, no other payment can be compensation.

- 15261 In this context compensation means¹ any payment made in such circumstances other than

1. any bonus or commission (see DMG 15053)
2. PILOR, except any periodic sums paid because employment has ended through redundancy
3. PILON
4. holiday pay except any payable more than four weeks after employment has ended
5. retainers (see DMG 15131)
6. payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 15118)

7. awards made under employment protection and trade union law (see DMG 15230)
8. payments in kind (see DMG 15129)
9. payments for a period when the claimant is on maternity or sick leave (see DMG 15267)
10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment
11. any occupational pension
12. statutory redundancy payments
13. refunds of contributions to which the claimant is entitled under an occupational pension scheme
14. compensation payable under certain education law².

1 SS Ben (C of E) Regs, reg 9(4); 2 Education Reform Act 1988, s 173, 178(3) & (4), ER Act 96

Amount treated as earnings

- 15262 The payment of compensation is earnings if it is the same as or more than the maximum weekly amount¹ set by employment protection law² (Appendix 6 to this chapter).

1 SS Ben (C of E) Regs, reg 9(1)(i)(i); 2 ER Act 96 s 227(1)

- 15263 The period over which the payment is taken into account¹ is the shorter of
1. a period equal to the number of weeks obtained by dividing the net earnings by the maximum weekly amount (less any fraction) **and**
 2. a period equal to the length of the specified period.

Note: The specified period means² a period equal to a week or such other period of notice applicable to that person (or would have been had it not been waived) minus any period where the person has continued to work in that employment.

1 SS Ben (C of E) Regs, reg 6(6); 2 reg 6(8)

Example

Don's employment has come to an end. He was paid a compensation payment of £1,210 and would have received four week's notice but he waived this.

Maximum weekly amount	230
Amount of compensation	1,210
£1,210 divided by £230 = 5	
5 x £230 =	1,150
Remainder	60

The £1,210 compensation is treated as five weeks earnings.

The specified period of four weeks is shorter than the figure produced by the calculation so the payment is taken into account for four weeks.

- 15264 PILON, PILOR or holiday pay may also be received. If the period over which they should be taken into account overlaps with the compensation period put the periods together consecutively¹ to decide the period to which the earnings should be allocated.

1 SS Ben (C of E) Regs, reg 6(3)

- 15265 Where the employment was P/T, treat the payment of compensation as earnings¹ and take it into account over a period equal to one week².

1 SS Ben (C of E) Regs, reg 9(1)(i)(ii); 2 reg 6(7)

Meaning of part-time employment

- 15266 A person is in P/T employment if their hours of work

1. are less than 16 hours a week or
2. where the hours fluctuate to less than 16 hours a week on average¹.

The guidance on averaging earnings in DMG 15452 et seq applies equally to averaging hours of work. Except that for the purposes of averaging hours, holiday periods are disregarded².

1 SS Ben (C of E) Regs, reg 6 (8); 2 reg 6(8)(c)

Payments during sickness or other absences from work

General

- 15267 Any remuneration paid by an employer to a claimant which is for a period throughout which that claimant is

1. on maternity leave or
2. on paternity leave or
3. on adoption leave or
4. absent from work because of illness

should be regarded as earnings¹.

1 SS Ben (C of E) Regs, reg 9(1)(j)

Definitions

- 15268 The following definitions apply to DMG 15267

1. **maternity leave** means¹ a period during which a woman is absent from work because she is pregnant or has given birth to a child, at the end of which she has a right to return to work either
 - 1.1 under the terms of her contract of employment or
 - 1.2 under specific legislation²
2. **paternity leave** means¹ a period of absence from work on leave under specific legislation³
3. **adoption leave** means¹ a period of absence from work on ordinary or additional adoption leave under specific legislation⁴.

1 SS Ben (C of E) Regs, reg 9(4); 2 ER Act 96, Part 8; 3 s 80A or 80B; 4 s 75A or 75B

Statutory paternity pay

- 15269 Statutory paternity pay¹ is payable to employees during their paternity leave where they have average weekly earnings of at least the lower earnings limit. Statutory paternity pay should be included as earnings².

1 SS CB Act 92, Part 12 ZA; 2 s 4(1)(a)

Statutory adoption pay

- 15270 Statutory adoption pay¹ is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the lower earnings limit. Statutory adoption pay should be included as earnings².

1 SS CB Act 92, Part 12 ZB; 2 s 4(1)(a)

Statutory sick pay

- 15271 SSP should be included as earnings¹. If the amount of SSP payable to the dependant is more than the earnings limit for that increase entitlement to or payment of that increase may stop.

1 SS CB Act 92, s 4

Statutory maternity pay

- 15272 SMP should be included as earnings¹. The amount of the earnings is the amount of SMP paid. If no SMP is paid to or for the woman concerned the amount of the SMP to which she is entitled **cannot** be taken into account as earnings. However if payment of SMP has only been deferred and is paid later it should be taken into account when it is paid and allocated to the week in respect of which the payments are made.

1 SS CB Act 92, s 4

Issue of company shares

- 15273 Where shares in a company are issued free to an employee, they should be regarded as earnings of an amount equal to their value as stated on the stock market, on the date of issue.

Example

Where an employee is given 100 £1 shares but the market price on that day gave their value as £2 each, the total amount to be taken into account for earnings is £200.

- 15274 The dividend subsequently paid on these shares should not be regarded as earnings. The period to which the value of the shares should be allocated is dependent upon the reason for their issue. If the shares were issued because of attendance or employment on a particular day the value should be regarded as earnings only in that week. However, if they were issued for employment throughout a particular period the value of the shares should be averaged over that period. See DMG 15430 on bonus payments.

Income from investments

- 15275 For the purposes of calculating a person's earnings, any income derived from capital assets or investments should not as a general rule be included in the calculation.
- 15276 While the view taken by HMRC for income tax purposes of a particular sum is not conclusive evidence that the sum either constitutes or does not constitute earnings for benefit purposes it may be a useful pointer in certain circumstances.
- 15277 In general, a person cannot represent to one authority that a sum is earned income and to another that the same sum is not earnings. Blowing hot and cold in this way is something which the law does not tolerate¹. It should be borne in mind, however, that sums which may be regarded as earnings for SS benefit purposes may not necessarily be accepted as earned income for income tax purposes². Conversely not all income accepted as earned income for taxation purposes is regarded as earnings for benefit purposes. In certain cases, specific enquiry regarding income will need to be made.

1 R(P) 4/67; see also R(P) 1/69; 2 R(P) 1/65

Payments for private health scheme

- 15278 An employer may pay contributions to a private health scheme (for example BUPA) for his employees. The amount of such payments **are earnings** for SS purposes because they are made as a direct result of the person's gainful employment¹. In calculating a person's earnings the amount of such payments should be added to earnings from other sources.

1 SS Ben (C of E) Regs, reg 1(2)

Occupational or personal pension

General

- 15279 Subject to DMG 15292 and DMG 15296 occupational and personal pensions are included as earnings for dependency purposes from

1. 26.11.84 for occupational pension for all benefits except CA¹
2. 6.4.87 for occupational pension for CA² **and**
3. 9.10.89 for personal pensions for all benefits³.

1 SS CB Act 92, s 89(1) & Sch 7, para 7; 2 SS Ben (Dep) Regs, Sch 2, para 9;

3 SS CB Act 92, s 89(1) & (2)

Definition

- 15280 Payments of occupational or personal pensions are **periodical** payments which are made in connection with the ending of a person's employment¹

1. out of money provided wholly or partly by the employer or under arrangements made by the employer **or**
2. out of money provided under an enactment or instrument having the force of law in any part of the UK or elsewhere **or**
3. under a personal pension scheme **or**
4. under a pension scheme registered under specific legislation².

1 SS CB Act 92 s 122(1); 2 Finance Act 2004, s 153

- 15281 Including personal pensions as earnings means that from 9.10.89 the majority of pensions which dependants might be entitled to when they stop work will be included as earnings. Although most personal pensions will be those paid on "retirement" they may also include pensions paid because of illness resulting in a person stopping work.

- 15282 The major difference between personal and occupational pensions is that personal pensions include schemes that have been personally undertaken to provide a pension (apart from any payment due from the employer) when a person stops working. Personal pensions will, providing they fit the definition, include payments made to the **self-employed**.

- 15283 It is only the personal occupational or personal pension of the dependant or “other person” which should be taken into account. A pension which is being paid because of another person’s employment should not be taken into account. For example, the amount of occupational or personal pension received by a widow on account of her late husband’s employment should **not** be taken into account.
- 15284 Occupational or personal pension, or payments for redundancy which are paid as a lump-sum or are not related to a specific period should not be taken into account. Where a person has commuted periodic payments to a lump-sum this payment will not be taken into account. The payment was made at a point in time and was not therefore attributable to any period nor was it a periodical payment because a single payment cannot fall within the normal everyday meaning of “periodical”¹. However, any lump-sum of occupational or personal pension commuted to a periodic payment should be taken into account. DMs should be aware that this may become more common under the new ‘pension flexibilities’ rules that came into force from April 2015 (See DMG Memo [12/15](#)). Where a claimant chooses to withdraw funds under a ‘drawdown’ arrangement, then careful consideration will need to be given as to whether those sums are withdrawn ‘periodically’, as defined here.

1 R(U) 5/85

15285

Amount of occupational or personal pension

- 15286 The amount of occupational or personal pension to be taken into account is the gross amount **less any amount deducted by way of income tax**¹ and **after** any compulsory deductions to enable further entitlement to pension².
- Note:** Previous guidance based on a reported decision of a Commissioner from 1983 was that the amount to be taken into account was **before** the deduction of income tax. However, when the Computation of Earnings Regulations came into force in November 1996, the intention was to align the treatment of occupational and personal pensions with that applicable in the income-related benefits. If DMs have problems arising from this change of guidance they should contact DMA Leeds for advice.

1 SS Ben (C of E) Regs, reg 10(4)(a)(i); 2 R(U) 4/83

- 15287 Redundancy payments may be taken into account in calculating the amount of occupational or personal pension. Where a dependant receives a payment in respect of redundancy it will be necessary to obtain details of how the amount is to be paid.

15288 - 15289

Calculation of weekly amount

- 15290 Where occupational or personal pensions are not paid weekly the weekly amount should be calculated as follows

1. annual payments - divide the amount by 52
2. three monthly payments - divide by 13
3. monthly - multiply by 12 and divide by 52
4. two or more months (but not 3 or 12 months) - divide by the number of months multiply by 12 and divide by 52
5. other cases - divide by the number of days in the period and multiply by 7¹.

1 SS Ben (Dep) Regs, reg 9A

Example

A man in receipt of RP is entitled to an increase for his wife. She has stopped working but is not entitled to her own RP as she is not 60. She receives two pensions from different jobs she has done

- an army pension of £156 a month = £36 a week ($£156 \times 12/52$) **and**
- a pension from another employer of £1,040 a year = £20 a week ($£1040/52$).

Her total earnings are therefore £56 a week.

15291 The calculations in DMG 15290 apply to

1. increases for children under the Act¹ **and**
2. increases for adult dependants under the Act².

These sections of the Act cover most increases of benefit for child or adult dependants.

Note: That although an increase of CA is **not** covered by these sections of the Act (the conditions are set out in the Regulations³), the calculations in DMG 15290 should be applied to increases of CA as no other method of calculation is set out in legislation.

*1 SS CB Act 92, s 80 & Sch 7, para 4; 2 s 84, 86 & Sch 7, para 6;
3 SS Ben (Dep) Regs, reg 12(2) & Sch 2; SS (IB for D) Regs 94, reg 11*

Where occupational pension is not included as earnings

15292 For all benefits except CA (see DMG 15294) occupational pension will not be taken into account as earnings where the following conditions are satisfied.

15293 Where the beneficiary

1. is entitled to receive the dependency increase in respect of at least five days in the period 19.11.84 to 24.11.84 **and**
2. would, but for the provisions which came into effect from 26.11.84 that occupational pension is to be taken into account as earnings, be so entitled for at least five days in each consecutive period of seven days, beginning with

26.11.84 until such time as the beneficiary ceases to be entitled to the increase¹.

1 SS (SEB) Regs

15294 For CA, savings provisions state that occupational pension will not be taken into account as earnings where the beneficiary

1. was entitled to receive the increase immediately before 6.4.87 **and**
2. would, but for the provisions including occupational pension as earnings, continue to be entitled to receive it until such time as the beneficiary ceases to be entitled to receive the increase for some other reason¹.

1 SS Ben (Dep) Regs, Sch 2, para 9(2)

15295 In considering whether the savings provisions apply the DM should have regard not only to the dependency benefit but also to the personal benefit in payment. Where entitlement to personal benefit changes, for example from IB to RP, the savings provisions will no longer apply because entitlement to personal benefit ceased from the date of change.

Note: The savings provisions depend upon the person being **entitled to receive** benefit. Where the payment of benefit is reduced to nil by earnings or because of an overlapping benefit, the savings provisions will not apply though basic entitlement to the benefit remains.

Where a personal pension is not included as earnings

15296 Personal pensions will not be included as earnings where

1. the increase was payable for at least one day in the period 2.10.89 to 8.10.89¹ **and**
2. the increase remains continuously payable from and including 9.10.89².

*1 Social Security Benefit (Dependency & Computation of Earnings) Amendment Regulations 1989, reg 4(1);
2 reg 4(5)*

Example

A man is entitled to an increase of RP for his wife who is living with him. She is working and earning £25 a week and is also receiving a personal pension of £35 a week. In the week starting on 11.12.89 she does some more work for which she receives extra pay. Because of this extra pay the increase is not payable on Monday 18.12.89. From 18.12.89 the personal pension can be included as earnings because the increase has not been continuously payable from 9.10.89. For dependency purposes the wife's earnings will be

Up to 10.12.89	£25 from her job
From 11.12.89 to 17.12.89	£40 from her job
From 18.12.89	£25 from her job plus £35 personal pension.

Augmentation grants under the National Assistance Act 1948

- 15297 LAs have power to set up special schemes to provide work for blind persons or other disabled persons either in special workshops or in their own homes¹. As part of these schemes augmentation grants are paid to those workers who, because of their disability are unable to work fast enough to earn a reasonable wage in competitive conditions. The grants bring their income up to a certain minimum standard, and should be regarded as part of their earnings.

1 National Assistance Act 48, s 29

15298 - 15299

Pension protection fund payments

- 15300 Pension protection fund periodic payments are defined as¹
1. any periodic compensation payments made in relation to a person, payable under pension compensation provisions set out in specific legislation²
 2. any periodic payments made in relation to a person, payable under specific legislation³

other than payments made to a surviving dependant of a person entitled to such payments.

1 SS CB Act 92, s 89(3) & s 122(1); 2 Pensions Act 04 s 162(2), Pensions (Northern Ireland) Order 05, art 146(2);

3 Pensions Act 04, s 166, Pensions (Northern Ireland) Order 05, art 150

- 15301 The pension protection fund is a statutory independent public body (a public corporation) set up to compensate members of eligible defined benefit (final salary) schemes whose employers become insolvent leaving the pension scheme unable to meet its liabilities.
- 15302 Following an assessment period, which begins with an assessment date, if the pension protection fund assumes responsibility for a scheme, arrangements will then be made to pay compensation to the scheme members with effect from the start of the assessment period.
- 15303 Broadly speaking the pension protection fund will provide two levels of compensation
1. for individuals who, immediately before the assessment date, have reached their scheme's normal pension age or, regardless of age are already in receipt of a pension on the grounds of ill health, the pension protection fund will pay a 100 per cent level of compensation
 2. for the majority of individuals below their scheme's normal pension age immediately before the assessment date, the pension protection fund will pay a 90 per cent level of compensation, subject to an overall compensation cap.

Note: Compensation derived from post 6.4.97 service will be increased on an annual basis (on 1 January) in line with the Retail Prices Index, capped at 2.5 per cent.

- 15304 Where pension protection fund periodic payments are not paid weekly, the method of calculating the weekly amount is¹ that set out in DMG 15290.

1 SS Ben (Dep) Regs, reg 9A; SS (IB for D) Regs, reg 11

Adult dependency increases to MA, RP, IB and SDA

- 15305 With effect from 14.2.06 pension protection fund periodic payments are to be taken into account as earnings of an adult dependant¹ in the same manner as occupational and personal pensions.

1 SS CB Act 92, s 89(1A)

Adult dependency increases to CA

- 15306 With effect from 5.5.06 pension protection fund periodic payments are to be taken into account as earnings of an adult dependant¹ in the same manner as occupational and personal pensions.

1 SS Ben (Dep) Regs, Sch 2, para 9

15307 - 15309

Amounts not regarded as earnings

Compensation for loss of earnings

- 15310 Compensation paid for loss of business or earnings due to an accident does not count as earnings.

Jury service

- 15311 A person who is called for jury service may receive money to compensate for loss of earnings¹. As this money is not from a gainful employment it should **not** be regarded as earnings for SS purposes

1 Juries Act 74, s 19

Pensions - personal benefit

- 15312 Pensions paid by a former employer are not treated as earnings provided that the payments
1. are for past services **and**
 2. do not import any continuing liability to serve.
- 15313 In the case of pension awarded to an ex-director of a limited liability company or to an ex-partner of a business it may be necessary to ask for a written statement from the company or business secretary or accountant, as to the terms on which the pension was awarded. It should be asked in particular, whether there is any continued liability to serve or to give advice.
- 15314 Similar criteria apply to lump sum payments paid at termination of employment, for example golden handshakes. Where the payment was given as an expression of thanks it is not earnings. Where there is a continuing liability to serve, the payment is earnings and should be allocated to the period to which it relates (see DMG 15400 et seq).
- 15315 For the effect of occupational pensions on increases for adult and child dependants (see DMG 15279 et seq).

Payments of long-term compensation on redundancy made by a local education authority

- 15316 LEAs can make long-term payments of compensation to certain employees who have been made redundant¹. These payments should be regarded as earnings for personal benefit purposes.

1 Colleges of Education (Comp) Regs 75

15317 - 15339

Disregard of final earnings - CA, ADIs and CDIs

General

15340 Subject to DMG 15341, with effect from the first benefit week applicable to the case which starts on or after 1.10.07, any earnings paid or due to be paid from the claimant's employment are disregarded where¹

1. a claim for benefit is made **and**
2. the claimant was in employed earner's employment **and**
3. that employment ended before the date that claimant first satisfied the conditions of entitlement (except insofar as they are affected by earnings to which this disregard applies) in relation to the claim.

Note: This disregard applies to claims for CA and all ADIs (including ADIs to IB) but not to claims for IB or SDA² (but see DMG 15342 below for advice on how the disregard applies to ADIs).

1 SS Ben (C of E) Regs, Sch 1, para 12; 2 Sch 1, para 12(4)

15341 The disregard **does not** apply¹

1. to any payment of occupational or personal pension
2. except where the claimant's employment ended because of retirement at a time when the claimant was of pensionable age (within the meaning given in specific legislation²) to
 - 2.1 retainers
 - 2.2 payments made for periods when the employee was on maternity leave, paternity leave, adoption leave, or was away from work due to illness
 - 2.3 any award or sum of the nature of
 - 2.3.a an Employment Protection award (see DMG 15230 et seq)
 - 2.3.b an award of compensation made under trade union legislation (see DMG 15260 et seq)

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

1 Sch 1, para 12(2); 2 Pensions Act 1995, Sch 4, para 1

Example 1

Kath was employed full time as a nurse. On 28 September, she received her monthly salary for September. On 19 October, Kath's disabled mother suffered a severe stroke and Kath resigned from her job on that day. She was unable to complete her contractual period of notice. Kath claimed CA on and from 22 October. On 31 October, the NHS paid Kath her final earnings, being pay for the period 1 October to 19 October and two weeks' holiday pay. The DM decided that Kath first satisfied the conditions of entitlement for CA on 22 October and so decided that earnings received on 28 September and 31 October should be disregarded. CA was awarded from 22 October.

Example 2

John was employed as a hotel receptionist. He was paid weekly on Fridays. On 16 November, he decided that he had to give up work to look after his disabled son full time and gave a week's notice. On his last day at work on 23 November he received his final earnings, being two week's' wages and one week's holiday pay. He claimed CA on and from 29 November. The DM decided that John first satisfied the conditions of entitlement for CA on 3 December (the first pay day flowing the date of claim). He decided that any earnings John received in respect of his employment as a hotel receptionist should be disregarded. CA was awarded **from 3 December**.

ADIs

15342 Subject to the exceptions in DMG 15431 above, this disregard applies¹ to the final earnings of an adult dependant where the adult dependant for whom the claim for an ADI is made

1. was in employment as an employed earner **and**
2. that employment ended before the day on which the claimant first satisfies the conditions of entitlement **for the parent benefit**.

1 SS Ben (C of E) Regs, Sch 1, para 12(5)

Example 1

On 23 January, George claimed RP and an ADI in respect of his wife who was due to take early retirement at age 55 from her employment as a Personal Secretary on 31 January. George retired at age 65 on 15 February and the DM decided that George was entitled to RP from 15 February. He further decided that, as his wife had ceased work before 15 February, her final earnings could be disregarded and an ADI could also be awarded from 15 February.

Example 2

Michael claimed IB on 13 March and an ADI in respect of his wife Elizabeth. His benefit week started on Tuesday. His wife Elizabeth completed her last day of employment on 28 February. The DM decided that Michael first satisfied the conditions of entitlement for IB on 13 March. He further decided that, as Elizabeth had ceased work before 13 March, her final earnings could be disregarded and an ADI could therefore be awarded with the IB from 13 March.

Example 3

In August, Matthew claimed RP and it was awarded from his 65th birthday on 8 September. On 22 February his wife Jan was dismissed from her employment and on 26 March Matthew claimed an ADI to his RP. The DM decided that the disregard did not apply because Jan had ceased work after the first day that Matthew satisfied the conditions of entitlement for RP.

CDIs

- 15343 Although CDIs were abolished¹ with effect from 6.4.03², there are certain circumstances in which it is possible to make a claim for a CDI under transitional and savings provisions². DMs should seek advice from DMA Leeds in cases where it appears that the disregard may apply to a claim for a CDI.

1 TC Act 02, s 1 and 60 & Sch 6; 2 TC Act 02 (Commencement No. 3 and Savings Provisions) Order 2003

15344 - 15379

Calculation of net earnings

Deductions from gross earnings

15380 Net earnings are gross earnings less¹

1. income tax **and**
2. Primary Class 1 SS contributions **and**
3. half of any sum paid by the employee, towards an occupational or personal pension scheme
4. expenses not reimbursed by employer².

1 SS Ben (C of E) Regs, reg 10(4); 2 R(IS) 16/93

Income tax

15381 Deduct from gross earnings any income tax deducted by the employer.

Note: Scotland has been able to set its own Income Tax rates since 2016. See Appendix 1.

Social Security contributions

15382 SS contributions are often called NI Contributions or NI Conts. Reduce the employee's gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

15383 Deduct from the employee's gross earnings for a normal pay period one half of any amount which

1. a person pays into an occupational pension scheme for that period **or**
2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension scheme for that period **or**
3. a person contributes towards a personal pension scheme for that period.

Example

Patricia earns £50 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her normal pay period is a week. Her pension contribution is changed into a weekly figure ($£26 \times 12 \div 52 = £6$ per week) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£50 - £3 = £47$).

15384 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

1. normally in the form of a pension, all or part of which may be taken as a lump sum
2. payable on death or retirement.

1 PS Act 93, s 1

15385 Personal pension schemes¹ are arrangements between employees, or S/E earners, and pension providers such as insurance companies. They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 PS Act 93, s 1; SS Ben (C of E) Regs, reg 2(1)

15386 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

15387 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

15388 Examples of expenses for which deductions may be made are

1. equipment, tools and stationery
2. overalls and specialist clothing
3. telephone calls made entirely for work purposes
4. travelling costs between different work places and any accommodation costs involved.

15389 The expense must be incurred in direct connection with the employer's trade or business¹. 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 followed².

1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325;

2 R(IS) 16/93

Deduction and disregards

- 15390 Deductions may be made for the provision of child care and in the case of CA for care of a child or severely disabled person (see DMG 15800 et seq).
- 15391 Certain payments may be disregarded when calculating net earnings (see DMG 15760 et seq). Also see DMG 15340 et seq for the circumstances in which certain final earnings can be disregarded.

15392 - 15399

Period over which earnings are taken into account

General

15400 To decide the period over which any earnings from employed earners employment are taken into account the DM needs to establish

1. the date of claim
2. the first day of the claimant's benefit week (see DMG 15425)
3. the date on which the earnings are due to be paid (see DMG 15401 et seq)
4. the date on which the earnings are treated as paid (see DMG 15755 et seq)
5. the period for which the payment is made.

Date on which earnings are due to be paid

15401 To decide the period over which earnings should be taken into account, the DM needs information on the date a payment is due to be paid. This may be different from the date a payment is actually made or received. But earnings are often paid on the date they are due.

15402 The DM should consider the following when deciding the date a payment is due

1. due means legally due, for example under a contract or statutory provision
2. if there is no legal obligation to make the payment on a particular day, the person or body making the payment should be asked when they consider the payment is due
3. the date when the payment is received may be assumed to be the due date where the available evidence does not give a due date¹, or is not considered credible, **and** no further evidence can be obtained.

1 R(SB) 33/83

15403 The date on which a payment of earnings is due will be the normal pay day agreed in the contract of employment. The terms of a contract

1. may be expressed (in writing or verbal) **or** implied (by the actions of or understanding between the two parties) **and**
2. may be varied if both parties agree to it (the variation may be expressed or implied) **or** because of certain action taken by either party (such as dismissal or resignation).

Earnings when employment ends

15404 When employment ends, the date on which a payment of final earnings is due to be made

1. is a mixed question of fact and law **and**
2. depends on the circumstances in which the employment ended and the terms of the contract.

Note: See DMG 15340 et seq for the circumstances in which certain final earnings can be disregarded.

Notice given and worked

15405 Final earnings are payable on the dates agreed in the contract of employment where employment

1. has run its full course, for example a fixed period engagement has reached its end **or**
2. is terminated by the employer after due notice has been given and worked.

15406 This means that the claimant should receive the following payments on the final pay-day (often the last day of employment)

1. the normal week or month's earnings, including any part week or month's earnings
2. wages held in hand
3. holiday pay.

Employment terminated by employer without notice

15407 Employers are legally obliged to pay the following payments on the last day of employment if they terminate employment without due notice¹

1. wages earned between the end of the employee's previous pay period and the last day of employment
2. wages held in hand
3. holiday pay
4. a payment in lieu of notice.

See DMG 15252 if the claimant is due a payment when employment has ended but this has not been paid.

Note: The last day of employment is not necessarily the same as the last day the claimant attended work.

Employment terminated by employee without notice

15408 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay any of the following that are due, on the day that each is due to be paid

1. wages earned between the end of the employee's previous pay period and the last day of employment
2. wages held in hand
3. holiday pay.

15409 - 15424

Period for which payment is made

Identifiable period

15425 Where earnings from employed earners employment are payable in respect of a period they will be allocated to

1. a period equal to benefit week or
2. such number of benefit weeks as comprise the period starting on the date on which the earnings are treated as paid (see DMG 15420) and ending on the day before the date on which earnings of the same kind (excluding payments of bonus or commission or payments made by an employer in respect of periods throughout which the claimant is absent because of sickness or pregnancy) and from the same source would, or would if the employment was continuing, next be treated as paid¹.

1 SS Ben (C of E) Regs, reg 6(2)(a)

Example 1

A man is entitled to an increase of RP for his wife who resides with him. She works and is paid £30.00 each week on a Friday. The claimant's RP is paid weekly in advance on Monday.

Earnings paid on Friday 6 December will be treated as paid on Monday 2 December and attributed to the period 2 December to 18 December. These earnings affect the ADI in the benefit week 9 December to 15 December.

Example 2

A woman is entitled to an increase of IB for her husband who does not live with her. He works and is paid a salary each month of £162.50 on the last day of the month. The claimant's IB is paid fortnightly in arrears on Wednesday.

Earnings paid on Tuesday 31 December will be treated as paid on Thursday 26 December. Earnings due on Friday 31 January will be treated as paid on Thursday 30 January. The earnings treated as paid on 26 December will be attributed to the five week period 26 December to 29 January at the weekly amount of £37.50. These earnings affect the ADI in the benefit weeks 2 January to 5 February.

Specific types of earnings

15426 A Commissioner's decision¹ dated 28.5.02 gave a fresh interpretation of the rules² concerning the attribution of certain specific types of earnings. DMG 15427 gives guidance on the attribution of the following types of earnings where they are paid in respect of an identifiable period.

1. bonus or commission³
2. PILOR⁴ (except any periodical payments made to a claimant on account of redundancy)
3. PILON⁵
4. holiday pay (except any payable more than four weeks after the termination or interruption of employment⁶)
5. retainers⁷
6. payments for expenses that are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment⁸ (for example payments for the cost of travelling from home to work)
7. awards made under employment protection law⁹
8. remuneration paid by an employer in respect of periods throughout which the claimant was absent because of sickness or maternity¹⁰.

Note: DMs should continue to attribute compensation payments in accordance with the guidance in DMG 15260 to 15265. Also see DMG 15340 et seq for when final earnings can be disregarded.

1 CG/4172/01; 2 SS Ben (C of E) Regs, reg 6(2)(a); 3 reg 9(1)(a); 4 reg 9(1)(b); 5 reg 9(1)(c); 6 reg 9(1)(d); 7 reg 9(1)(e); 8 reg 9(1)(f); 9 reg 9(1)(g); 10 reg 9(1)(h)

15427 The length of the period of attribution¹ applying to the types of earnings listed in DMG 15426 will be the number of benefit weeks between

1. the first day of the benefit week in which the payment is treated as paid **and**
2. the day before the first day of the benefit week in which the next **ordinary** earnings payment would be treated as paid.

1 Cotton v SS for Work and Pensions [2009] EWCA CW 1333

Example 1

George, who was paid monthly on the last day of the month, received a payment in respect of 14 days' holiday pay on termination of employment on 9 May. Benefit is payable on Mondays in advance. The DM decides that the attribution period is three weeks because that is the length of time between the first day of the benefit week in which the holiday pay is due (i.e. 5 May) and the day before the first day of the benefit week in which George's ordinary salary would be due (i.e. 25 May). The DM went on to consider the overlapping payment rules described in DMG 15450.

Example 2

Sarah, who was normally paid her salary on the last calendar day of the month receives a payment of six weeks PILON on 6 June on termination of employment. Benefit is paid on Thursdays in advance. The DM decides that the period of attribution is three weeks because that is the length of time between the first day of the benefit week in which the PILON was due (5 June) and the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (26 June). The DM went on to consider the overlapping payment rules in DMG 15432.

No identifiable period

15428 If the period cannot be identified, the DM should calculate the amount to be taken into account by¹ dividing the claimant's net earnings (see DMG 15380)² by the total of

1. the amount of the relevant earnings limit plus one penny and
2. the amount of any disregards or deductions³ that would have been made on the earnings.

Note: But see DMG 15238 et seq if the payment is made because employment has ended.

1 SS Ben (C of E) Regs, reg 6(2)(b); 2 reg 10(4); 3 reg 10(3), Sch 1 & 2

15429 Fractions of a week are disregarded.

Example

A man claims an increase of IB for his wife. She works and is paid a one-off bonus of £150. The period for which the payment was made is not identifiable.

The £150 payment is divided by £48.25 plus one penny (there are no disregards or deductions).

The DM decides the claimant's income is £50 a week for a period of three weeks.

Different kinds of earnings received for overlapping periods

15430 If different kinds of earnings from employed earners employment are received from the same source, and the periods over which the earnings would be taken into account overlap, the earnings should be taken into account

1. for the total of the periods which apply to each of the different kinds of earnings **and**
2. from the earliest date on which any of those earnings would be treated as paid under 15755 et seq¹ **and**
3. in the following order²
 - 3.1 normal earnings including wages held in hand
 - 3.2 PILON or PILOR
 - 3.3 compensation payment
 - 3.4 holiday pay received within four weeks of the date employment ended.

Note: Pay in lieu of remuneration is paid in place of a person's normal wages or salary.

1 SS Ben (C of E) Regs, reg 6(3); 2 reg 6(4)

Example 1

Michael receives an increase of IB for his wife who works P/T. His benefit week ends on a Wednesday.

Her P/T employment is terminated without notice on 13 December. She receives her normal week's earnings, one week in hand, four days holiday pay and two weeks PILON on 13 December.

The DM decides that the periods over which the earnings would be taken into account overlap.

All of the different types of earnings are treated as paid on Thursday 12 December and are attributed to a period of four weeks

1. the normal weekly earnings and the week in hand payment are taken into account over the period 12 December to 25 December
2. the two weeks' PILON are taken into account over the period 26 December to 1 January
3. the four days holiday pay are taken into account over the period 2 January to 8 January.

Example 2

Catherine was normally paid her salary on the last day of the month. Benefit is payable on Mondays in advance. Catherine left work on 14 May in order to look after her aged mother. On 31 May she received a payment made up of

1. two weeks' normal earnings
2. four weeks' holiday pay **and**
3. six weeks' PILON.

The DM decided that all three elements were due to be paid on 31 May because the employer could rely on the terms of the contract of employment. The DM decided that earnings fell to be attributed to the period 26 May to 7 September.

4. The normal earnings would fall to be attributed from the first day of the benefit week in which they were due (i.e. 26 May) up to the day before the first day of the benefit week in which the next ordinary salary payment would have been due (i.e. 29 June). A period of five weeks.
5. The holiday pay would (but for the overlapping payment rules) be attributed to the first day of the benefit week in which it was due (i.e. 26 May) up to the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (i.e. 29 June). A period of five weeks.
6. The PILON would (but for the overlapping payment rules) be attributed to the period from the first day of the benefit week in which it was due (i.e. 26 May) up to the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (i.e. 29 June). A period of five weeks.
7. As the periods of attribution for the ordinary salary, the holiday pay and the PILON overlap, the DM applied the rules described in DMG 15432. The DM concluded that the total of the periods of attribution was 15 weeks and that this period started on 26 May. Thus the period ended on 7 September. The order of attribution was
8. normal salary 26 May to 29 June
9. PILON 30 June to 3 August
10. holiday pay 4 August to 7 September .

15431 A Commissioner has held¹ that where the attribution period for a payment of earnings has been moved once because of the rule in DMG 15430, it should not be moved a second time. This is because the rules² dealing with overlapping payments only apply where there would be an overlap "but for this paragraph". In the case the Commissioner was dealing with a second overlap that occurred **because of** the application of the rules and so they did not fall to be applied for a second time.

1 CG/4172/01; 2 SS Ben (C of E) Regs, reg 6(3) & (4)

Example

Pamela claimed CA. She had left work in order to care for a close relative. Her last day of employment was 7 July. Under the contract of employment Pamela's salary was payable monthly in arrears on the 25th of each month. The relevant final payments of earnings were

1. on 25 June salary for the period 26 May to 25 June ("the first salary payment")
2. on 25 July a payment made up of
 - 2.1 salary for the period 26 June to 7 July ("the second salary payment")
and
 - 2.2 14 days' holiday pay.

On the facts of the case the DM decided that the holiday pay was legally due on 7 July but that the second salary payment was not legally due until 25 July.

The DM decided that

3. the first salary payment fell to be taken into account from 23 June to 20 July
4. the second salary payment fell to be taken into account from 21 July to 24 August
5. the holiday pay fell to be taken into account from 21 July to 3 August.

But for the overlapping payment rules the holiday pay would have been attributed to the period 7 July (the first day of the benefit week in which it was due) up to 20 July (the day before the first day of the benefit week in which the next **ordinary** salary payment was due).

The effect of the overlapping payment rule was to move this period to 21 July to 3 August. That in turn created an overlap with the attribution of the second salary payment but the DM decided, in accordance with the Commissioner's decision, that the holiday pay could not be moved twice.

Calculation of weekly amount of earnings from employed earners employment

Period of a week or less

- 15432 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment¹ (but see DMG 15452).

1 SS Ben (C of E) Regs, reg 8(1)(a)

Period of a month

15433 Where the payment is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52¹.

1 SS Ben (C of E) Regs, reg 8(1)(b)(i)

Example

A payment of £100 is made for a period of a month. The DM calculates that the weekly amount is £23.07 (£100 x 12/52).

15434

Period of three months

15435 Where the payment is for a period of three months the weekly amount should be worked out by

1. multiplying the amount of the payment by four **and**
2. dividing the result by 52¹.

1 SS Ben (C of E) Regs, reg 8(1)(b)(ii)

Example

A payment of £100 is made for a period of three months. The DM calculates that the weekly amount is £7.69 (£100 x 4/52).

Period of a year

15436 Where the payment is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 SS Ben (C of E) Regs, reg 8(1)(b)(iii)

Period of more than a week

15437 Where the payment is for more than a week, and DMG 15434 - 15436 does not apply, the weekly amount should be worked out by

1. multiplying the amount of the payment by seven **and**
2. dividing the result by the number of days in the period for which the payment is made¹.

1 SS Ben (C of E) Regs, reg 8(1)(b)(iv)

Example

A payment of £100 is made for a period of four weeks. The DM calculates that the weekly amount is £25 (£100 x 7/28).

15438 - 15449

Two payments from same source and of same kind in same benefit week

15450 The weekly amount of earnings taken into account in a benefit week should be restricted where a payment of earnings

1. is or has been paid regularly and
2. two payments from the same source and of the same kind

would be taken into account in the same benefit week. The amount should be restricted to the weekly amount which is treated as paid first¹.

1 SS Ben (C of E) Regs, reg 8(2)

First of two payments due before date of claim

15451 Where the first of the two payments referred to in DMG 15450 was due to be paid before the date of claim the payment should be disregarded¹.

1 SS Ben (C of E) Regs, Sch 1, para 5

Example

A man claims IB on 14 October and is to be paid on Mondays.

He received four weeks occupational pension from his former employer on 27 September, and the next payment is due to be paid on 25 October.

The DM decides that the payment due on 27 September should be treated as paid on 27 September and should be taken into account for the period 27 September - 24 October.

The DM decides that the payment due on 25 October should be treated as paid on 21 October which is the first day of the benefit week in which it is due.

The payment due on 27 September is disregarded because it is a payment of the same kind and from the same source as another payment which is to be taken into account in the same benefit week, and the payment of 27 September was due to be paid before the first benefit week of the claim.

Averaging of amounts

15452 The weekly amount of a person's income from earnings may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognisable cycle of work or
2. five weeks or
3. another period if this means a more accurate weekly amount can be calculated.

1 SS Ben (C of E) Regs, reg 8(3)

15453 The averaging of the weekly amount does not change the other rules on the treatment of earnings such as the date that they are treated as paid. This means that earnings should only be averaged where the claimant is actually in receipt of a payment.

Example 1

John works two weeks on and one week off.

In the two weeks John actually works he works 12 hours a week and receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM decides that the earnings should be averaged over a period of three weeks because that is the period of the recognisable cycle of work.

The DM calculates that John's average weekly earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

This average amount is taken into account from the fourth week. For the first three weeks, the DM used the actual amounts of earnings paid to John before an average figure could be calculated.

Example 2

Maggie works at a school term-time only as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Maggie's earnings during term-time when she is actually in receipt of an income. During the school holidays Maggie receives no earnings so there is no income to take into account.

Identifying a recognisable cycle

- 15454 The DM should see whether there is a pattern, or whether a pattern emerges from the fluctuating earnings over a period of time.

Example 1

Week 1 £40

Week 2 £45

Week 3 £40

Week 4 £40

Week 5 £45

Week 6 £40

There is a regular cycle of 3 weeks (weeks 1 to 3 repeated in weeks 4 to 6). The average weekly earnings are £41.67.

Example 2

Month 1 £180

Month 2 £200

Month 3 £180

Month 4 £200

There is a regular cycle of 2 months. The average monthly earnings are £190.

No recognisable cycle

- 15455 Where there is no pattern the DM should average earnings over 5 weeks or some other period where this would prove more accurate¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC).

Example 1

Week 1 £40

Week 2 £40

Week 3 £45

Week 4 £47

Week 5 £43

There is no recognisable cycle. The average weekly earnings are £43.

- 15456 When one week contains unusually high earnings it may be inappropriate to include that week when averaging earnings¹.

1 NS v SSWP (IS) [2015] UKUT 423 (AAC).

Example

Week 1 £140

Week 2 £40

Week 3 £50

Week 4 £47

Week 5 £43

In this case the DM may choose to disregard week 1 and average earnings over weeks 2 to 5. By doing so, average earnings will be £45.

15457 - 15469

Self-employed earners

Who is a self-employed earner

General

- 15470 A S/E earner is defined in DMG 15006 - 15007
- 15471 A S/E earner enters into a contract for services to a customer
1. on a sole trader basis or
 2. in partnership with others.
- 15472 S/E earners are responsible, to the full extent of their personal fortune, for the debts of the business and are entitled to **either**
1. in the case of a sole trader, all the profits or
 2. if in a partnership, the agreed share of the net profits.
- 15473 A person may be S/E and also have other work as an employed earner, if so the earnings from each employment should be calculated separately.
- 15474 To determine if a claimant is, or has been a S/E earner, the DM should have regard to a number of factors. A determination should be made after weighing up the answers to the following
1. Is the claimant's work supervised? A lack of supervision may point towards self-employment.
 2. Does the claimant have the powers of appointment and dismissal and can they employ a substitute? A power to appoint a substitute may point towards self-employment.
 3. In what form does remuneration take? Taxation paid at source may suggest that the employment is not S/E.
 4. How long in duration are the contracts of work? Short contracts may point towards self-employment.
 5. Does the claimant provide their own equipment? Provision of own equipment may point towards self-employment.
 6. Where does the claimant work? Working from home may point towards self-employment.
 7. Is the person who engages the claimant for work obliged to provide work? If there is no obligation then this may point towards self-employment.

8. Does the claimant have discretion to the hours of work? The greater the discretion, the more likely that the work is self-employment.

Deciding if a person is a self-employed earner

15475 A S/E earner is someone who is gainfully employed. If a S/E earner is not working, this does not mean that the S/E earner has ceased to be gainfully employed.

15476 To decide if a person is gainfully employed the DM should consider

1. if there is a reasonable prospect of work in the near future **and**
2. if the business is a going concern and regarded as such by the person **or** the business's bankers or any creditors or others **and**
3. if the person hopes or intends to restart work in the business when economic conditions improve **and**
4. if the person is undertaking any activities in connection with the self employment **and**
5. if there is work in the pipeline **and**
6. if the person is regarded as S/E by the Secretary of State or HMRC **and**
7. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example, by advertising or by visiting potential customers **and**
8. if the interruption in question is part of the normal pattern of the person's work or work that the person is seeking.

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

15477 All eight factors in DMG 15476 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness
2. seasonal workers
3. sub-contractors **and**
4. share fishermen.

15478 Some of the factors in DMG 15476 may point toward the decision that a person is gainfully employed. Others may not. No one factor is decisive. The DM should decide the weight to give each relevant factor.

15479 The DM should make a decision on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

Example 1

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

1. stoppages during the winter months are a normal feature of his business **and**
2. he has orders in the pipeline **and**
3. his business is regarded as a going concern.

The DM decides that Hugh is gainfully employed as a S/E earner.

Example 2

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

1. he has been unable to pay the rent on his shop and the landlord is threatening eviction **and**
2. his bank has advised that the business should be wound up **and**
3. he still has an advertisement in the Yellow Pages.

The DM decides that the business is no longer a going concern and that Ira is not gainfully employed.

Example 3

Stephen is a S/E electrician. Stephen has just finished one contract and work on the next contract is not due to start for another couple of weeks. Stephen states that

1. he still regards himself as S/E, he has only claimed because he has no work at the moment **and**
2. he is advertising for work all the time.

The DM decides that Stephen is gainfully employed as a S/E earner.

Sickness

15480 If a S/E earner is unable to work in the business due to sickness, the DM should

1. consider the guidance at DMG 15476 **and**
2. decide if the S/E earner is still currently self employed.

15481 A S/E earner will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of the self employment.

Example 1

Ann-Marie is a S/E dentist. She is the only dentist in the practice. She has been unable to work because she is suffering from flu. She is unable to work for a total of two weeks.

The DM decides that Anne-Marie remains a S/E earner and calculates the earnings to be taken into account.

Example 2

Marlon is a S/E plumber, he is a sole trader. He has broken his leg and has been advised by his doctor to avoid work for six months. Marlon's business activity depends entirely on his ability to work.

The DM decides, in this case, that self employment has ceased and no earnings fall to be calculated.

Example 3

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

The DM decides that Roseanne remains a S/E earner and calculates the earnings to be taken into account.

15482 - 15489

Assessment period for self-employed earners

General

15490 The normal weekly earnings of a S/E earner should be calculated by using the

1. gross receipts (see DMG 15534) and
2. expenses paid out (see DMG 15580)

during the assessment period. Different rules apply for royalties and copyright payments.

Business trading for less than a year

15491 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹.

1 SS Ben (C of E) Regs, reg 11(1)(b)

Example

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

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

Business trading for more than a year

15492 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year¹ (but see DMG 15563).

1 SS Ben (C of E) Regs, reg 11(1)(a)

15493 The year does not need to be the year immediately before the claim. If profit or loss accounts are available for the last trading year the DM can use these as the assessment period. The profit and loss accounts should be converted to a cash flow basis (see DMG 15521 - 15530).

15494 A year means a period of

1. 365 days or
2. 366 days if the assessment period includes the February of a leap year.

Change likely to affect the normal pattern of trading

15495 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹. The period does not need to be made up of complete weeks.

1 SS Ben (C of E) Regs, reg 11(1)(b)

15496 The assessment period should

1. start on the date the change affecting the pattern of the business occurred **and**
2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

15497 The earnings would then be averaged over that period and apportioned on a weekly basis until the figures for the following week or month become available. The assessment period would then be extended. The assessment period would

1. start on the date the change affecting the pattern of business occurred **and**
2. end on the date that the new figures became available.

15498 This procedure should continue until the assessment period has been extended to one year and the earnings can be averaged over that year (see DMG 15491). In most cases this procedure will provide the most accurate determination of a S/E earners earnings (but see DMG 15499).

Example

Carlo is S/E, he buys and sells Italian wine. On 9 August Carlo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers.

The DM decides

1. Carlo is gainfully employed
2. that the receivership is a change that has affected the normal pattern of trading
3. that the assessment period is from 9 August (the date the change affecting the pattern of business occurred) to 30 October (the date that the most recent figures for gross receipts and expenses are available).

The earnings for the assessment period are averaged for that period and apportioned on a weekly basis until 30 November when the figures for the following month become available.

At this point the DM extends the assessment period. The assessment period is now 9 August to 30 November. The earnings for this period are averaged and apportioned on a weekly basis until 31 December when the figures for the following month become available.

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

15499 When deciding the assessment period the DM should consider the facts of each case carefully. A period that does not start with the first day of the interruption may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

15500 The DM should be satisfied that any change

1. has affected or
2. is likely to affect

the normal pattern of trading.

Example 1

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

The DM decides that

1. there had been a change that had affected the normal pattern of business
and
2. the assessment period starts from the date of the fire.

Example 2

Omar works part time as a S/E draughtsman providing technical drawings for builders. Most of his work comes from one particular building firm. Six months ago the building firm went into receivership.

The DM decides that

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

New businesses

15501 When a person starts up a new business no income should be taken into account until the S/E earner starts to receive actual earnings. When the first payment of earnings is received the DM should use the assessment period

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

15502 The assessment period should be extended every week or month until a yearly assessment is possible (see DMG 15497). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see DMG 15503).

Example

Linda claims an increase of IB for her husband Gareth. Her benefit week ending day is a Monday. On 5 February Gareth starts work as a S/E pine furniture maker.

The DM decides that the assessment period is 4 - 10 February.

The earnings are taken into account for that period up to and including 17 February when the figures for the following week become available.

At this point the DM extends the assessment period. The assessment period is now 4 - 17 February. The earnings for this period are averaged and apportioned on a weekly basis up to and including 24 February when further figures are available.

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

15503 When deciding the assessment period for new businesses the DM should consider the facts of each case carefully. A period that does not start with the first day of self-employment may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

Royalties and copyright payments

15504 Earnings from S/E may include royalties or sums paid periodically for or in respect of any copyright¹

1. royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; **or**
2. any payment in respect of any

- 2.1 book registered under the Public Lending Right Scheme 1982, or
- 2.2 work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trade mark, or an original contributor to the book or work concerned.

1 SS Ben (C of E) Regs 2009, reg 1(2); 2 reg 11(2) and (2A)

15505 Earnings in the form of royalties and copyright payments have a different assessment period to that in DMG 15490. Each payment should be taken into account for the number of weeks excluding part weeks calculated by dividing the amount of the payment by

1. the amount of the relevant earnings limit plus one penny and
2. the correct disregard (see DMG 15760 et seq)¹.

1 SS Ben (C of E) Regs, reg 11(2)

15506 The attribution period should begin¹ on the date on which the payment is treated as paid².

1 SS Ben (C of E) Regs, reg 11(3); 2 reg 7

Example

Libby receives royalties of £500 on 15 November. Her husband receives an increase of IB for her and his benefit week ends Monday. The payment is taken into account as follow

		£
• relevant earnings limit plus one penny	=	48.26
• Appropriate earnings disregard	=	nil
• total		<u>48.26</u>
•		
• Number of whole weeks is	=	500 = 10
•		48.26
• the payment is treated as paid on 12 November and is taken into account for 10 weeks from 12 November.		

15507 If during the period calculated under DMG 15505 another payment of royalties or copyright is received, the further payment should be treated separately as in DMG 15505. If the period extends beyond that calculated for the first payment, the second payment should be taken into account from the end of that period.

Example

(See **Example** at DMG 15506)

Libby receives a further payment of royalties of £600 on 5 December that is taken into account as follows

- number of whole weeks is $= \frac{600}{48.26} = 12$
- the payment is treated as paid on 3 December and is taken into account for 12 weeks from 3 December.

Expenses deducted from royalty or copyright payment

15508 The S/E earner may have to pay expenses on receipt of the royalty or copyright payment. These expenses are deductible if they are

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

1 SS Ben (C of E) Regs, reg 13(1)(a) & 13(4)(a)

Example 1

Dermot writes a book between June and December and it is on sale from the beginning of the following January. The first copyright payment is received on 2 June. There are no expenses paid out in the attribution period of the payment. The DM decides that no expenses should be deducted from the payment.

Example 2

Seeta writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Seeta's book is published in March and the first copyright is received on 1 May of the same year.

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

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

Income tax, Social Security contributions and qualifying premium payments deducted from a royalty or copyright payment

15509 The DM should consider deductions for

1. income tax (see DMG 15654 et seq) **and**

2. SS contributions (see DMG 15681 et seq) **and**
3. half of any premiums for personal pensions (see DMG 15693) or retirement annuity contract (see DMG 15696)

from the royalty or copyright payment¹.

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

1 SS Ben (C of E) Regs, reg 13(4)(b) & 13(4)(c)

Date on which royalties or copyright payments are treated as paid

- 15510 Payments by way of royalties or copyright are treated as paid as described at DMG 15755 et seq.

15511 - 15519

Calculation of normal weekly earnings

General

15520 DMG 15521 et seq provide guidance on the calculation of earnings of most S/E earners. Special rules apply to

1. child minders (see DMG 15723)
2. crofts or small holdings (see DMG 15725)
3. farmers (see DMG 15726)
4. hotels, guests houses, bed and breakfast establishments etc (see DMG 15728)
5. board and lodging accommodation and subletting (see DMG 15729)
6. partnerships (see DMG 15731)
7. renting out property (see DMG 15743)
8. seasonally S/E (see DMG 15747)
9. share fishermen (see DMG 15710 et seq)
10. sub-contractors (see DMG 15748).

Cash flow

15521 To calculate the amount of earnings the DM will need evidence of

1. the gross receipts (see DMG 15534) **actually received**, not money owed to the business **and**
2. expenses defrayed, that is, **actually paid for**, not unpaid bills

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

15522 S/E earner should be asked to submit details of

1. the business **and**
2. **actual** gross receipts and expenditure

during the assessment period.

15523 The actual gross receipts and expenditure figures provided should be accepted as accurate unless

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

Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and that, as above, there is no reason to doubt and they are not unrepresentative of the current trading position.

Accounts

- 15524 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the gross receipts and expenses paid.
- 15525 A set of accounts consists of two main statements
1. the **balance sheet**: that is, a statement of the financial position of a business at a given date **and**
 2. the **profit and loss account**: that is, a summary of the results of a business's transactions for a period ending on the date of the balance sheet.
- 15526 Accounts are prepared using accounting principles. Accounts may include **anticipated** receipts and expenses for the accounting period. The anticipated amounts are not
1. gross receipts as they have not been received by the business **or**
 2. allowable expenses as they have not been paid for.
- 15527 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing
1. accounts that are calculated on a cash flow basis **or**
 2. evidence of the gross receipts and expenses paid.
- 15528 The figures provided in DMG 15527 should be accepted as accurate unless
1. there is reason to doubt **or**
 2. they are unrepresentative of the current trading position.
- Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and that, as above, there is no reason to doubt and they are not unrepresentative of the current trading position.
- 15529 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example
1. bank receipts
 2. purchase receipts
 3. expenses for a different assessment period.

15530 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example

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

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

Income tax certificate

15531 The DM should not accept as conclusive evidence of the weekly net profit an

1. income tax certificate **or**
2. accountant's statement of the net profit figure that is acceptable for tax purposes.

Method of calculation

15532 To calculate the earnings of a S/E earner the DM should

1. establish the **gross receipts** of the business during the assessment period (see DMG 15534) **and**
2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see DMG 15590) **and**
3. deduct from any remaining figure amounts for notional income tax (see DMG 15654 et seq) **and** notional SS contributions (see DMG 15682 et seq) **and** half of any premium paid for a personal pension scheme (see DMG 15694) **or** a retirement annuity contract (see DMG 15696) **and**
4. deduct the correct **disregard(s)** (see DMG 15760).

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

15533 The whole process can be summarised as follows

Gross receipts	less
allowable expenses	less
notional income tax	less
notional SS contributions	less
half of any personal pension scheme or retirement annuity contract	divided by
the number of days in the assessment period	multiplied by
7 to give a weekly figure	equals
the weekly net profit	less
any disregards that apply	equals
the weekly earnings to be taken into account.	

Gross receipts

15534 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt¹. DMG 15563 provides guidance for payments received that relate to a period different to the assessment period.

1 SS Ben (C of E) Regs, reg 13(4)

15535 The gross receipts of a business include

1. any payments for goods and services provided (see DMG 15536)
2. earnings payable abroad (see DMG 15537)
3. certain allowances paid to assist in carrying on the business¹ (see DMG 15540)
4. any business subsidies or payments of compensation (see DMG 15542)
5. personal drawings (see DMG 15543)
6. income from letting or subletting (see DMG 15547)
7. sale of certain business assets (see DMG 15548)
8. tips and gratuities (see DMG 15549)
9. payments in kind (see DMG 15551)
10. any VAT receipts (see DMG 15560).

1 SS Ben (C of E) Regs, reg 12(1); E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2

Payments received for goods and services provided

15536 All

1. cash and
2. cheque and
3. credit card payments

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

Earnings payable abroad

15537 Money that is due to be paid to a business in a country outside the UK should be included as a gross receipt only when it is received by the business, for example when it is paid

1. to any branch or official representative of the business or
2. into any business account.

15538 Except where the claimant is absent from GB and not disqualified from receiving benefit, where the payment is made in a currency other than sterling, any

1. bank charge or
2. commission

payable for converting the payment into sterling should be disregarded¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(b)

15539 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(a)

Example

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

Gross receipts (including the £1000 received abroad)	= £5000
Deductions for allowable expenses, notional income tax	= £2500
and SS contributions and half of a premium	
for a person pension	

Net profit	= £2500
divided by the number of weeks in the assessment period	= £48.07 less
Special disregard for earnings abroad (£1000 divided by 52)	= £19.23
Earnings to be taken into account (£48.07 - £19.23)	= £28.84.

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM looks again at the earnings disregard for the year and the amount of the earnings to be taken into account increases to £48.07.

Schemes to help with self-employment

- 15540 An allowance may be payable under certain schemes to assist people to become self employed¹. In a business partnership one or all of the partners may be receiving payments.

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

- 15541 Any allowance paid into the S/E earner's business bank account during the assessment period should be included in the gross receipts of the business¹.

1 SS Ben (C of E) Regs, reg 12(1)

Business subsidies or payments of compensation

- 15542 Some business may receive
1. subsidies, for example businesses involving farming or agriculture receive subsidies from the Department for the Environment, Food and Rural Affairs, or the European Community or
 2. payment of compensation from another person because of disruption to the business. For example payments of compensation awarded because of Bovine Spongiform Encephalopathy.

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

Personal drawings

- 15543 A S/E person may draw money from the business for day to day expenses. These drawings, known as personal drawings, are in anticipation of profits or business income and should be included as part of the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.

15544 Where drawings are made in excess of the profits of the business the excess should be disregarded. Money taken from the business in excess of profits comes from

1. capitalised profits from earlier years **or**
2. increased borrowing.

The drawings are withdrawals from the capital of the business.

15545 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the gross receipt. If it has, the amount of the drawings should be added back to the amount of the gross receipts.

15546 A S/E person who is a sole owner of, or a partner in, a business may pay interest to the business on money taken as personal drawings. These payments should be included in the gross receipts of the business.

Example 1

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

The DM decides

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

Example 2

Rachel is a S/E earner. Her assessment period is twelve months. She produces evidence of her gross receipts and expenses for the assessment period.

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

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

The DM decides

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

Income from letting or subletting

- 15547 Income from letting or subletting can only be taken into account under the Computation of Earnings Regulations if the claimant is undertaking it by way of a business as a self employed earner. For guidance on when this will be the case see DMG 15470 et seq and DMG 15743 et seq.

Sale of certain business assets

- 15548 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business¹.

1 R(FC) 1/97

Example

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

Tips and gratuities

- 15549 Tips or gratuities received in response to the service provided by a S/E earner, for example as a hairdresser, taxi driver or coach driver, should be included in the gross receipts of the business.
- 15550 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example, on personal grounds should not be included in the gross receipts of the business.

Payments in kind

- 15551 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the gross receipts of the business.

Example

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

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

15552 - 15559

Value Added Tax

15560 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

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

If **a** exceeds **b** the S/E person pays the difference to HMRC. If **b** exceeds **a** the S/E person receives the difference from HMRC.

15561 Where

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

the difference should be included in the gross receipts of the business. This is the amount that **b** exceeds **a**.

Note: VAT can also be an allowable expense of the business, see DMG 15591.

Capital receipts

15562 Capital receipts do not form part of the gross receipts of the business¹. For example

- 1. loans
- 2. injections of capital
- 3. grants from the Prince's Trust **and**
- 4. proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see DMG 15548).

1 R(FC) 1/97

Income for a different period

15563 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

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

1 SS Ben (C of E) Regs, reg 13(11)

15564 It is not intended that every payment is assessed individually over a period different to the assessment period. This should be the exception rather than the rule. So, any payment for a period

1. equal to or shorter than the assessment period should be assessed over the full length of the assessment period or
2. longer than the assessment period should be converted on a pro rata basis to represent the length of the assessment period.

Example

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

The DM decides that

1. the payment should be multiplied by 13 and divided by 26 and
2. the resulting sum should be added to any other gross receipts of the business.

15565 - 15579

Business expenses

Conditions for deducting business expenses

15580 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that¹

1. was paid out wholly and exclusively for the purposes of the business² **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred³ (see DMG 15586) **and**
4. is an allowable expense (see DMG 15590).

1 SS Ben (C of E) Regs, reg 13(4); 2 reg 13 (9)(a); 3 reg 13(8)

Wholly and exclusively

15581 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business¹. Any such payment should be deducted in full, subject to the rules in DMG 15580.

1 SS Ben (C of E) Regs, reg 13(4)(a)

Expenses for both business and private use

15582 If expenditure is for both business and private use, for example

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

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

15583 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

15584 The DM should normally accept the evidence of

1. the S/E earner **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax purposes **and** the Secretary of State for SS contributions¹.

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

15585 Examples of expenses that may be apportioned between private and business use are¹

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

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

Example 1

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

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

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

Example 2

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

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

Example 3

Serena is a dressmaker who works at home using an electric sewing machine. She uses an electric fire to heat the room when working. A quarterly electric bill is included as a business expense but no breakdown is given of business and private use.

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

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

Reasonably incurred

15586 The term “reasonably incurred” is not defined in regulations. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

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

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

15587 To decide what is reasonable the DM should have regard to the circumstances of each individual's case¹, including the level of the person's earnings².

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

15588 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive¹.

1 R(G) 7/62

15589 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

Allowable business expenses

15590 If the conditions in DMG 15580 1. - 3. are met, all day to day expenses of a business are allowable, including¹

1. accountancy charges
2. advertising costs
3. certain capital repayments on a loan used to²
 - 3.1 replace an item of equipment or machinery that has worn out in the course of the business **or**
 - 3.2 become outdated **or**
 - 3.3 repair an existing asset (for these purposes an asset includes buildings, plant machinery, vehicles or equipment),

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

4. cleaning of business premises

5. employee's wages before any deductions, including wages payable to a partner, but not a business partner
6. employer's contribution to an employee's pension scheme
7. employer's secondary Class 1 SS contributions
8. heating and lighting
9. hire or rental costs, but not any capital or purchase elements
10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair exceeds any sum paid or due to be paid under an insurance policy for that repair³
11. interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see the third point above⁴
12. legal fees for the running of the business, but not with the setting up or expansion of the business
13. payment in kind for work done for the business - the monetary value is allowed
14. rent, council tax, water charges and insurance premiums on the business premises
15. stationery
16. stock purchases
17. sundries, if the DM is satisfied that the expenses are allowable
18. telephone, fax or internet connection
19. transport, for example business use of the car including petrol costs, road fund license, insurance and servicing, but excluding any home to work costs
20. VAT (see DMG 15591)⁵.

This list is not exhaustive.

*1 SS Ben (C of E) Regs, reg 13(4); 2 reg 13(7); 3 reg 13(9)(b)(ii); 4 reg 13(9)(b)(iii);
5 reg 13(9)(b)(i)*

Example 1

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

The DM decides that

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

Example 2

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

The DM decides that

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

Example 3

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

The DM decides that

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

Value Added Tax

15591 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

- a** VAT collected from customers - known as output Tax **and**
- b** VAT paid by the self employed person to suppliers - known as input Tax.

If **a** exceeds **b** S/E person pays the difference to HMRC. If **b** exceeds **a** the self employed person receives the difference from HMRC.

15592 Where

- a** a business is registered for VAT **and**
- b** in the assessment period the amount paid to HMRC is greater then the amount received in the same period the difference should be taken into account as an expense¹. This is the amount that **a** exceeds **b**.

Note: VAT can also be a gross receipt of the business (see DMG 15560).

1 SS Ben (C of E) Regs, reg 13(8)(b)(i)

15593 - 15599

Expenditure for a different period

- 15600 Any business expenditure paid out in the assessment period may be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

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

1 SS Ben (C of E) Regs, reg 13(ii)

- 15601 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

- 15602 Any expense for a period

1. equal or shorter than the assessment period should be assessed over the full length of the assessment period or
2. longer than the assessment period should be converted on a pro rata basis to represent the length of the assessment period.

Example

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

The DM decides

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

15603 - 15619

Expenses not allowed

General

15620 Business expenses that should not be allowed are

1. those expenses where the conditions for deducting a business expense are not met (see DMG 15580)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. any loss incurred before the start of the assessment period¹ or in any other employment²
6. repayment of capital on loans except where DMG 15590 applies
7. business entertainment expenses
8. losses incurred on the disposal of a capital asset
9. payments into a contingency fund to safeguard against future bad debts³
10. personal drawings on income and capital
11. money on goods used for personal consumption
12. where the claimant provides accommodation in his own home either by way of subletting or providing B/L, any expenses incurred in providing that accommodation (including any expenses incurred in providing board as well as lodging).

1 SS Ben (C of E) Regs, reg 13(6); 2 reg 13(12); 3 reg 13(8)

Capital expenditure

15621 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. The DM should not allow capital expenditure as a business expense¹.

1 SS Ben (C of E) Regs, reg 13(6)(a)

Example

Paul is a mobile hairdresser. He buys a replacement car for cash. The replacement car is a fixed asset of the business. The money used to buy it is capital expenditure. The DM does not allow a deduction. But if Paul had taken out a loan to buy the car, repayments of capital and interest would have been allowed as expenses (see DMG 15590).

Depreciation

15622 Depreciation of a capital, or fixed, asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear, during the assessment period.

15623 If there are fixed assets accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense¹.

1 SS Ben (C of E) Regs, reg 13(6)(b)

Sums used in setting up or expanding a business

15624 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business¹. This applies to expenditure on, for example

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

Note: If a business loan has been obtained the DM should consider interest on the loan (see DM 15590) and allow as an expense other items that are ongoing regular expenses.

1 SS Ben (C of E) Regs, reg 13(5)(c)

Loss incurred before the beginning of the assessment period

15625 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period¹.

1 SS Ben (C of E) Regs, reg 13(5)(d)

Loss incurred in any other employment

15626 A person may

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

The earnings from each employment should be assessed separately.

- 15627 Any business loss in one employment should not be offset against the earnings of another employment¹.

1 SS Ben (C of E) Regs, reg 13(12)

Example

Thomas is a market trader and a S/E music teacher. The market stall runs at a loss. The DM decides

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

Repayment of capital on business loans

- 15628 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset¹ (see DMG 15590).

1 SS Ben (C of E) Regs, reg 13(6)(e)

Business entertainment

- 15629 Any expense claimed for providing business entertainment, for example

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

should not be allowed as a business expense¹.

1 SS Ben (C of E) Regs, reg 13(6)(f)

Loss on disposal of a capital asset

- 15630 When an asset is sold for less than the value shown in the books of the business the difference is referred to as the "loss on disposal" and is accepted as a loss for accounting purposes. But the DM should not

1. allow the loss as an expense **or**
2. include the proceeds from the sale of the asset as a gross receipt of the business (see DMG 15548).

Payments into contingency funds

- 15631 Any payments into a contingency fund set up to safeguard against future bad debts should not be allowed as a business expense. This is an allocation of funds rather than an expense.

Personal drawings

- 15632 Personal drawings may be shown as a

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

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

Personal consumption

- 15633 The DM should not allow any money spent on goods for personal consumption as a business expense.

- 15634 Personal consumption is not limited to food products. It could include a range of items, for example

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

- 15635 The DM should not assume

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

- 15636 If the business is one where personal consumption is likely to arise, for example

1. a farmer or
2. a grocer

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

15637 - 15649

Calculation of income tax, Social Security contributions and qualifying premium

Introduction

15650 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 15654 et seq) **and**
2. Class 2 SS contributions (see DMG 15685 at seq) **and**
3. Class 4 SS contributions (see DMG 15690 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 15694) or retirement annuity contract (see DMG 15696).

1 SS Ben (C of E) Regs, reg 13(4)(b) & (c)

15651 The DM should base deductions for income tax and class 2 and class 4 SS contributions (see DMG 15650) on the chargeable income for the assessment period.

Chargeable income

15652 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

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

1 SS Ben (C of E) Regs, reg 14(3); 2 reg 14(3)(b); 3 reg 13(5); 4 reg 13(4)(a)

15653 The calculation at DMG 15652 should not include any deductions for

1. notional income tax **or**
2. SS contributions **or**
3. premiums for a personal pension scheme or retirement annuity contract.

Deduction for notional income tax

- 15654 The DM should calculate the deduction for notional income tax using the tax allowance and tax rates for the tax assessment year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Tax allowances.

- 15655 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only.

The rates of the income tax allowances are in Appendix 1. Note that since 2016, Scotland has been able to set its own income tax rates.

Personal allowance

- 15656 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (Appendix 1), but for benefit purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

- 15657 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1.

Note: From April 2016 the Scottish Government can set its own rate of income tax¹. See Appendix 1 for more details.

1 The SS (Scottish Rate of Income Tax etc.) Amendment Regs 2016

15668 - 15679

Calculation of deduction

- 15680 To decide the notional amount of income tax to be deducted from a S/E earner's chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to 3.
3. deduct the personal allowance (Appendix 1)
 - 3.1 in full if the assessment period is a year **or**
 - 3.2 on a pro rata basis if the assessment period is less than a year

4. multiply the first £37,400 (09/10 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (Appendix 1)
5. round up where necessary.

1 SS Ben (C of E) Regs, reg 14(1)

Deduction for notional Class 2 Social Security contributions

15681 A Class 2 contribution is a flat rate contribution.

Liability for a Class 2 contribution

15682 The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. A S/E earner is not liable for Class 2 contributions if they are

1. of pension age (see DMG 15683) or
2. a married woman with a non-paying election (see DMG 15688) or
3. a person whose profits are below a minimum amount or the small profits thresholds (see DMG 15686).

The Class 2 rates are in Appendix 2.

15683 Pension age is

1. 65 years for a man or
2. 60 years for a woman born before 6.4.50 or
3. the date in Appendix 3 for a woman born between 6.4.50 and 5.4.55 or
4. 65 years for a woman born on or after 6.4.55¹.

1 SS CB Act 92, s 122(1); Pensions Act 95, Sch 4

15684 A S/E person is liable to pay Class 2 contributions for each week or part-week of self employment unless, for a complete contribution week, the person

1. has earnings below the small profits threshold or
2. receives IB/ESA or is incapable of work or
3. receives MA or
4. is a prisoner or
5. receives US or CA or
6. is a married woman or widow who has a valid election not to pay Class 2 contributions (see DMG 15688).

Note: A contribution week is a period of seven days beginning at midnight between Saturday and Sunday.

Calculation of the Class 2 contribution

15685 The deduction for the notional SS contributions should be based on the rate of Class 2 contributions current at the time the DM determines the claim or review. To calculate the amount the DM should

1. establish the chargeable income **and**
2. decide if a deduction should not be made on the grounds of small earnings **and**
3. decide the number of weeks that there is a liability **and**
4. multiply the weekly rate (Appendix 2 to this Volume) by the number of weeks that there is a liability.

Small profits threshold

15686 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small profits threshold (formerly the small earnings exception level). See Appendix 2 for the applicable rates.

15687 If the S/E person has chargeable income below the small profits threshold no contribution should be deducted even if contributions are being made¹.

1 SS Ben (C of E) Regs, reg 14(2)(a)

Married woman's election

15688 If the S/E person is a married woman or widow who has a valid non-paying election at the effective date, there is no liability to pay Class 2 contributions¹ and no deduction should be made from the chargeable income.

1 SS CB Act 92, s 19(4)(b); SS (Conts) Regs, reg 100 & 101

15689 A S/E woman married before 6.4.77 had the right until 11.5.77 to elect not to pay Class 2 contributions. A woman who made an election was given a certificate of election (CF 383) to show that there was no liability. The election will end if

1. it is cancelled by the woman **or**

2. there are two consecutive tax years after 5.4.78 when there is no period of self-employment or no liability to pay Class 1 contributions as an employed earner, for example she has been unemployed or had earnings below the lower earnings limit or
3. the marriage ends by divorce or annulment or
4. she loses her right to WB (unless this is because she has remarried) or
5. she becomes a widow and, after the first 26 weeks, has not become entitled to WB¹.

Once cancelled the election cannot be renewed.

1 SS (Conts) Regs, reg 101

Deduction for notional Class 4 Social Security contributions

- 15690 A Class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels (Appendix 2 to this Volume). These payments are in addition to Class 2 contributions.

Liability for Class 4 contributions

- 15691 S/E people who are not liable for Class 4 contributions include people who are
1. of pension age (see DMG 15683) or
 2. sleeping partners, that is a business partner who supplies capital and takes a share of the profits but takes no active part in the running of the business.

Calculation of Class 4 deduction

- 15692 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the date the DM determines the claim or revises/supersedes the previous decision. The DM should
1. establish the chargeable income **and**
 2. decide the number of weeks in the assessment period **and**
 3. deduct the lower earnings limit from chargeable income up to the upper earnings limit (if there are less than 52 weeks in the assessment period the DM should calculate this on a pro rata basis) **and**
 4. multiply the remaining figure by the percentage rate to give the notional contribution figure. No account should be taken of evidence of actual payments made or due.

The Class 4 rates are in Appendix 2.

Example 1

Assessment period is 52 weeks.

Chargeable income is £8,260.85

Class 4 - Lower level is £7,530

- Upper level is £26,000

Chargeable income 8,260.85 **less**

lower level 7,530.00

Profit 730.85 x 6% = 43.85

Notional Class 4 contributions for 52 weeks is £43.86.

Example 2

Assessment period is 39 weeks or 273 days.
365

Chargeable income for this period is £7,600.

Class 4 - Lower level is $7530 \times \frac{273}{365} = \frac{2,055,690}{365} = 5632.03$

Chargeable income 7,600.00 **less**

lower level 5,632.03

Profit 1,967.97 x 6% = 118.08

Notional Class 4 contribution for 52 weeks is £118.15.

Premiums for personal pension schemes and retirement annuity contracts

15693 When calculating S/E earnings the DM should deduct from the chargeable income half of any premium for a

1. personal pension scheme **or**
2. retirement annuity contract

for the relevant assessment period¹.

1 SS Ben (C of E) Regs, reg 11

Personal pensions

15694 A personal pension is a fund that provides an income on retirement for employees¹ or the self employed². This may be done by

1. buying an annuity **or**
2. taking an income from the pension fund.

1 SS Ben (C of E) Regs, reg 2(1); PS Act 93, s 1; 2 SS Ben (C of E) Regs, reg 2(1); Income and Corporation Taxes Act 88, Part XIV, Chapter IV

- 15695 Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income to be paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

Retirement annuity contracts

- 15696 Before 1.7.88 people could buy retirement annuity contracts, these are similar to personal pensions¹. They were usually taken out by S/E people.

1 SS Ben (C of E) Regs, reg 2(1); Income and Corporation Taxes Act 88, Chapter III

- 15697 People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

15698 - 15709

Particular forms of self-employment

Share fishermen

15710 A share fisherman is¹

1. a person who
 - 1.1 usually works in the fishing industry,
 - 1.2 is self employed,
 - 1.3 is the master or a crew member of a fishing boat crewed by more than one person **and**
 - 1.4 is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat **or**
2. a person who
 - 2.1 was a person who worked as above, but has permanently stopped such work because of age or ill health,
 - 2.2 usually works (and has not ceased to usually work)
 - 2.2.a ashore in GB (see DMG Chapter 07),
 - 2.2.b as S/E,
 - 2.2.c making or mending any gear belonging to a fishing boat or performing other services that help, or are connected with, a fishing boat **and**
 - 2.3 is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat.

1 SS Ben (C of E) Regs, reg 13(1)(c)

15711 The master and all the members of the crew of a fishing boat are within the definition at DMG 15710. This includes those who do a specialist job, such as an engineman, cook or firefighter, as long as they are paid at least partly by a share in the earnings of the fishing boat¹.

1 R(U) 10/51

Meaning of fishing boat

15712 “Fishing boat” means¹ a boat that is used

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

Note: Sea fish includes shellfish, salmon and migratory trout.

1 Merchant Shipping Act 1995, s 313(1)

Meaning of usually works

15713 A DM can decide that a person “usually works....” if the person has

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

Meaning of profits or gross earnings of the fishing boat

15714 The profits or gross earnings of the fishing boat are the money received for the catch. People are paid by a share of the profits or gross earnings of the fishing boat if

1. the fishermen sell the catch themselves (either retail or wholesale) and share at least some of the profits between them or
2. the fishermen catch the fish for someone who then pays them a piece-rate wage¹.

1 CU 495/49(KL)

Method of calculation of weekly earnings

15715 The guidance on calculating earnings from self-employment applies equally to share fishermen.

15716 To calculate the earnings of a share fisherman the DM

1. should establish the **gross receipts** of the boat during the assessment period (including any payment covered in the second point in DMG 15719) **and**
2. deduct from the gross receipts the **allowable expenses** of the boat, and the share fisherman, taking care to avoid duplication **and**
3. calculate the person's share of the sum remaining at 2 according to the agreement for distributing the proceeds of the catch¹ **and**
4. deduct from the figure in 3 amounts for notional income tax (see DMG 15654) **and** notional Social Security contributions (see DMG 15682 and DMG 15690 et seq) and half of any premium (see DMG 15693) paid for a personal pension scheme or a retirement annuity contract **and**
5. deduct the correct **disregard(s)** (see DMG 15760).

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

1 SS Ben (C of E) Regs, reg 13(1)(b)

15717 The evidence that a share fisherman should provide depends on whether the share fisherman is

1. an owner or part owner of a boat or
2. a regular crew member.

Share fisherman is an owner or part owner of a boat

15718 A share fisherman who is the owner or part owner of a boat should be asked for details of the

1. gross receipts and expenses of the boat for the assessment period **and**
2. agreement for sharing the proceeds of the catch.

Share fisherman is a regular crew member

15719 A share fisherman who is a regular crew member of a boat should be asked

1. to approach the boat owner for details of the gross receipts and expenses of the boat during the assessment period and arrangement for sharing the proceeds of the catch **and**
2. if the boat owner pays the employee's portion of any SS contribution or cost of provisions (such as food) or cost of replacement gear or clothing **and**
3. if the sum declared for gross receipts is the income received by the boat before or after any of these payments have been made.

15720 If the conditions for deducting an expense are met (see DMG 15580) the DM should allow as an expense payments covered in the second point in DMG 15719 that have not been deducted from the gross receipts figure. This will be in addition to any other allowable expenses incurred by all members of the sharing scheme.

15721 If the gross receipts figure is net of any deductions covered in the second point in DMG 15719 those amounts should be added back to establish the correct gross receipts figure. The DM should then consider the deductions in the normal way.

Shared expenses

15722 Expenses of the boat may not always be attributable to all the sharers in the scheme. The owner may bear all, or part, of the cost of certain items. The DM should establish the expenses that are

1. common to all the sharers **and**
2. peculiar to the owner or owners.

Example 1

Arthur is a boat owner, he has three other share fishermen aboard. The boat, the owner and each of the three sharers take 20% of the profit after deduction of expenses.

Arthur's share would be 40% of the net profit and that of the other share fishermen aboard would be 20% of the net profit.

In each case the DM should consider deductions for tax, SS contributions and half of any premium for a personal pension scheme or a retirement annuity contract.

Example 2

Andrew is a part owner of a boat, there is one other owner and one other share fisherman. The boat takes 60% of the gross profits and the two owners and the third sharer divide the remainder equally. The owners meet all expenses.

The third sharer would receive 13.33% of the gross receipts while Andrew and his partner, would receive 43.33% of the gross receipts less 50% of the allowable expenses.

In each case the DM should then consider deductions for tax, SS contributions and half of any premium for a personal pension scheme or a retirement annuity contract.

Child minders

15723 A child minder is a person who engages in a contract for services to care for another person's child in return for payment. Most child minders

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

15724 To calculate a child minder's normal weekly earnings the DM should

1. decide the assessment period in the normal way **and**
2. calculate the gross receipts for that period **and**
3. calculate the chargeable income as one third of the gross receipts during the assessment period¹ but make no deductions for business expenses **and**
4. calculate a deduction for income tax and SS contributions and half of any premium for a personal pension scheme or retirement annuity contract.

1 SS Ben (C of E) Regs, reg 14(3)(b)

Example

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

The DM decides

1. that no expenses should be deducted from the gross receipts **and**
2. that the chargeable income is £424.67 (1/3 of £1,280) **and**
3. the income tax, SS contributions and premiums that are to be deducted from the chargeable income.

Crofts or small holdings

15725 Earnings from a croft or small holding should be decided on the same basis as a small business. The person should produce an annual statement giving details of

1. income from sales, subsidies, etc **and**
2. expenditure, including for example, seed, fertiliser, feed and labour.

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

Farmers

15726 A farmer in need of financial assistance may seek advice from a surveyor, land agent, valuer or some other similar professional to ensure that they are taking advantage of any schemes or subsidies that they administer. This includes enquiries about compensation payments because of Bovine Spongiform Encephalopathy.

15727

Hotels, guest houses, bed and breakfast establishments

15728 The DM should apply the normal rules when considering whether a person running a hotel, guest house, lodging house or bed and breakfast establishment is self employed.

Board and lodging accommodation and subletting

15729 Where the claimant provides B/L in his own home or sublets his own home by way of a business, the normal rules for calculating earnings from self employment **do not apply**. In the case of

1. B/L, the guidance in DMG 15768 et seq
2. subletting, the guidance in DMG 15762 et seq

should be applied but see Appendix 7 for guidance relating to the period 26.1.07 - 1.10.07.

Bars and restaurants in hotels, guest houses

15730 Income from bars and restaurants where services are provided that are not included in the board and lodging charge should be treated as earnings from self-employment. The DM should decide the assessment period and calculate the gross receipts and allowable expenses in the normal way.

Partnerships

15731 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

15732 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners¹.

1 Partnership Act 1890, s 24

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

1 Partnership Act 1890, s 4(2)

Calculation of a business partner's normal weekly earnings

15733 Before calculating a partner's share of the net profit of the business, the DM should ensure that the gross receipts include the following for all partners

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

15734 To calculate the normal weekly earnings of a business partner¹, the DM should decide the assessment period **and**

1. total the gross receipts of the whole business **and**
2. deduct any allowable expenses incurred by the whole business **and**
3. calculate the partner's share of the resulting "net profit"². The partner's share will be
 - 3.1 the share set out in the deed of partnership, if there is one **or**
 - 3.2 the shares agreed in an express or implied agreement between the partners **or**
 - 3.3 an equal share³ if neither of these apply, for example, if there are four partners, each partner's share is 25% **and**
4. deduct from the partner's share an amount for income tax **and** SS contributions calculated on the amount of the partner's share **and**
5. deduct half of any premium for a personal pension scheme or a retirement annuity contract.

1 SS Ben (C of E) Regs, reg 13; 2 reg 13(5); 3 Partnership Act 1890, s 24

Example 1

Daniel is one of two partners in a building firm. There is a deed of partnership that states that Daniel will receive 40% of the profits and the other partner 60%.

The gross receipts for the business during the assessment period are £10,600. The allowable expenses are £5,400. The DM decides that Daniel's share of the profits is £2,080, calculated as follows

	£
Gross receipts	10,600
Less allowable expenses	5,400
	= 5,200
Divided by Daniel's share - 40%	= 2,080

The DM then deducts from £2,080 amounts for notional income tax and SS contributions, half of a premium for a personal pension scheme or retirement annuity contract.

Example 2

Agnes and her brother are partners in a small pottery business. There is no deed of partnership or other agreement that profits should be shared unevenly.

The gross receipts of the business during the assessment period are £8,750. Allowable expenses are £4,562. The DM decides that Agnes share of the net profit is £2,094, calculated as follows

	£
Gross receipts	8,750
Less allowable expenses	4,562
	= 4,188
divided by Agnes's share - 50%	= 2,094

The DM then deducts from £2,094 amounts for notional income tax and SS contributions. Agnes was not paying premiums for a retirement annuity contract or a personal pension scheme.

15735 - 15739

Salaried partners

15740 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ or
2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

15741 The DM should

1. consider the facts of each case **and**
 2. examine the relationship between the person and the other parties
- to decide if the salaried partner is a S/E earner.

15742 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

1. calculate the chargeable income **and**
2. deduct tax, SS contributions and any premiums for a personal pension scheme or retirement annuity contract

from the partner's share of the chargeable income.

Renting out property as a business

15743 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

1 R(FC) 2/92

15744 A person who

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

is not conducting a business. The property is primarily an investment.

Example

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

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

The DM decides that Neil is not operating a business.

15745 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

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

are factors that need to be considered.

15746 If the DM decides that a person is conducting a business from renting out properties, the income, that is the rent, is a gross receipt of the business.

Example

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

The flats and houses are all let to tenants and Michael collects the rent and does the repairs and maintenance.

The DM decides that Michael is a S/E earner and calculates Michael's earnings. The rental income is regarded as part of the gross receipts.

Seasonally self employed

15747 If a S/E earner is seasonally S/E the DM should

1. consider the guidance at DMG 15476 **and**
2. decide if the S/E earner is still currently self employed.

Example 1

Paul owns and runs a fairground ride. Between November and February the ride is put into storage and Paul looks for other work.

The DM decides that Paul is not gainfully employed and no earnings should be taken into account.

Example 2

Andrew owns a fairground business. He organises venues and arranges publicity. People who own rides contact him and pay him so that they can be part of his fair.

During November and February there are no venues and Andrew receives no money, but Andrew uses this time to organise his working year. There are reasonable prospects of work.

The DM decides that Andrew is gainfully employed.

Example 3

Alan runs a business providing pleasure boat trips between April and September. During the winter months Alan arranges for some advertising, but other than that he undertakes no activities in connection with the business.

The DM decides that Alan is not gainfully employed during the winter months and that no earnings should be taken into account.

Example 4

Eric is a S/E gardener. There is much less work available in the winter but Eric still works on average one week in three. Eric continues to seek work and there are reasonable prospects of work in the near future.

The DM decides, in this case, that Eric is gainfully employed.

Example 5

Joyce owns a bed and breakfast establishment. Her busy times are from April to October. From October to March she takes bookings and deposits for the next season, she also arranges for any repairs and decorating to be done. There may be a small number of guests between October and March.

The DM decides that Joyce is gainfully employed.

Sub-contractors

- 15748 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

Example

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

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

15749 The DM should

1. consider the guidance at 15476 **and**
2. decide if the S/E sub-contractor is still currently self employed.

15750 - 15754

Guidance common to both employed and self-employed earners

Date on which earnings are treated as paid

General

15755 Earnings from employment, whether employed earners or S/E are treated as paid

1. on the first day of the benefit week following the benefit week in which the payment is due to be paid¹, for Category A RP - non-resident spouse², Category C RP - non-resident wife³, US - non-resident spouse⁴, MA - all ADIs⁵ and CA - resident spouse and person having care of child(ren)⁶ or
2. on the first day of the benefit week in which the payment is due⁷ for all other cases.

*1 SS Ben (C of E) Regs, reg 7(a); 2 reg 7(b); 3 SS CB Act 92, s 83(2)(b) & 84(2)(b);
4 s 83(2)(b) & 85(2); 5 Sch 7, para 6(1)(a)(ii); 6 s 82(2);
7 SS Ben (Dep) Regs, Sch 2, para 7*

Treatment of arrears of earnings

15756 If the amount of regular earnings increases, or a person starts to receive earnings for the first time, the first payment may include arrears. The treatment of the arrears will depend on whether they were paid on the date on which they were due to be paid (see DMG 15401).

Arrears paid on due date

15757 Arrears which are paid on the due date should be

1. treated as paid on the first day of the benefit week in which they are paid or the first day of the benefit week following that in which they are paid¹ and
2. taken into account for the same period as the persons normal earnings period² and from the date on which they are treated as paid.

1 SS Ben (C of E) Regs, reg 7; 2 reg 6

Example

The claimant's partner has earnings of £40 weekly due each Thursday. IB including an ADI is paid in arrears and the claimant's benefit week ends on Tuesday.

The earnings are increased to £55 weekly from 29 November, but the agreement says that the increase is not payable until 26 December, when payment is made at the new rate with three weeks arrears, a total of £100.

The DM treats the payment as made on 25 December. The new rate of £55 is taken into account in the benefit week beginning 25 December, and the £45 arrears are taken into account for the same period.

From benefit week beginning 1 January, the new weekly rate of £55 is taken into account.

Arrears paid after the due date

15758 Arrears paid after the due date should be treated as paid

1. on the first day of the benefit week in which they were due **or**
2. on the first day of the benefit week following that in which they were due¹.

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

1 SS Ben (C of E) Regs, reg 7; 2 SS A Act 92, s 74

Example

The claimant normally receives an occupational pension monthly in arrears on the last day of each month.

The pension increases from 1 April each year, first payment at the higher rate being due on 30 April.

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

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

15759 Benefit week¹ means

1. any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid **or**
2. the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of 7 days prior to that period.

1 SS Ben (C of E) Regs, reg 2(1)

Payments to be disregarded

General

15760 Disregards should be applied in the following circumstances when calculating a person's net earnings from employment or self-employment

1. payments for living and accommodation costs made by persons normally residing with the employed or S/E earner
2. payments from sub letting
3. payments from providing board and lodging accommodation
4. earnings payable abroad or in foreign currency
5. fostering allowances
6. payments for persons temporarily in care.

Contributions to accommodation and living costs

15761 The DM should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not boarders or subtenants¹.

1 SS Ben (C of E) Regs, Sch 1, para 1

Income from Sub Tenants and Board and Lodging - period from 26.1.07 to 1.10.07

15762 The rules for calculating income from providing B/L within the dwelling occupied as the home were the subject of a Commissioner's decision dated 26.1.07. The Commissioners decision also applied to the treatment of payments from sub-tenants. The regulations were amended with effect from 1.10.07 which had the result that, with effect from the first benefit week applicable to the particular case which starts on or after 1.10.07 the method of calculating the amount of a claimant's earnings from S/E by way of

1. payments for providing B/L in their own home is that described in DMG 15768 et seq and
2. payments from subtenants is that described in DMG 15764 (but note the change effective from 7.4.08 set out in DMG 15767).

Note: In addition it was made clear that expenses incurred in providing B/L in the home or in subletting the home could not be allowed as an expense (see DMG 15620.12).

- 15763 It should be rare now for DMs to be calculating income from B/L and sub-letting for the period between 26.1.07 and 1.10.07. Guidance on the effect of the Commissioner's decision during this period can be found in Appendix 7. DMs are particularly directed to the guidance in Appendix 7 on how the decision-making and appeals rules work in relation to this Commissioner's decision.

Income from subletting

Position prior to 26.1.07 and from 1.10.07 to 6.4.08

- 15764 If a claimant receives payments by way of rent from a subtenant, the DM should first decide whether these payments are earnings derived from S/E. For guidance on what constitutes S/E see DMG 15475 et seq. In order for payments for subletting to be earnings from S/E, the claimant must be subletting by way of a business.
- 15765 Where a person sublets part of the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. **For each** subtenant who is contractually liable to pay rent

1. add together all payments made in respect of one week
2. deduct £4
3. deduct a further £9.25 if the payment(s) include an amount for heating.

Note: Where a person normally resides with another, any payments towards living and accommodation costs should be disregarded². For the position from 7.4.08 see DMG 15767 below.

1 SS Ben (C of E) Regs, Sch 1 para 2; 2 Sch 1, para 1

Position between 26.1.07 and 1.10.07

- 15766 During this period a Commissioner's decision applied (see DMG 15762 and Appendix 7).

Position from 7.4.08

- 15767 With effect from the first benefit week applicable to the case which starts on or after 7.4.08, where, by way of a business as a S/E earner, a person sublets part of the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. **For each** subtenant who is contractually liable to pay rent

1. add together all payments made in respect of one week
2. disregard the whole amount if it is less than £20, otherwise disregard £20.

1 SS Ben (C of E) Regs, Sch 1, para 2

Example

The claimant owns a large house with 7 rooms which he sublets. The claimant makes no contributions towards a personal pension scheme. Each subtenant pays rent weekly. Subtenants 1, 2, 3 and 4 each pay £45pw. Subtenants 5 and 6 each pay £28pw. Subtenant 7 pays £18pw. The DM calculated the amount of earnings to be taken into account as follows

1 x £18 (fully disregarded)	= £Nil
4 x (£45 - £20 = £25)	= £100 pw
2 x (£28 - £20 = £8)	= £16 pw
Total Weekly Income	= £116 pw

The DM went on to calculate deductions for notional tax and NI contributions.

Income from board and lodging

- 15768 The following guidance applies with the exception of the period 26.1.07 to 1.10.07 when a Commissioner's decision had effect. For guidance on the effect of the Commissioner's decision see DMG 15762 and Appendix 7 to this chapter.
- 15769 Income from providing B/L accommodation in the claimant's own home should only be taken into account as earnings where the board and lodging is provided on a commercial basis by way of self employment. For guidance on when a claimant is to be regarded as S/E see DMG 15475 et seq.
- 15770 Where a person provides B/L accommodation within the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. For **each person** for whom B/L is provided
1. add together all the payments made for board and lodging for one week
 2. deduct £20
 3. deduct 50% of any excess over £20.

1 SS Ben (C of E) Regs, Sch 1, para 3

Example

The claimant had two boarders. In the week in question one boarder paid £55 for a four night stay and the other paid £12 daily for a five night stay. The DM calculated the amount of income to be taken into account as follows

Boarder 1	£
Payments for the week	- 55.00
Deduct £20	- 20.00
	= 35.00
Deduct 50% of the remainder	- 17.50
Total for boarder 1	= 17.50

Boarder 2	£
Payments for the week (£12 x 5	- 60.00
Deduct £20	- 20.00
	= 40.00
Deduct 50% of the remainder	- 20.00
Total for boarder 2	= 20.00
Grand total (boarder 1 plus boarder 2)	= 37.50.

Board and lodging accommodation

15771 B/L accommodation is accommodation¹

1. where the charge for the accommodation includes some cooked or prepared meals that are both cooked or prepared by someone who is not the person provided with accommodation or a member of the family of the person provided with accommodation **and** eaten in that accommodation or associated premises **or**
2. provided to a person in a hotel, guest house, lodging house (see DMG 15764), **or** similar establishment **or**
3. that is not provided by a close relative (see DMG 15765) of the person provided with accommodation or a member of the family of the person provided with accommodation or is provided on a commercial basis.

1 SS Ben (C of E) Regs, reg 2(1)

15772 A lodging house

1. is not a private house in which rooms are rented, even if services such as the provision of and washing of bed linen are provided **and**
2. is a place where accommodation is offered on a long-term basis **and**
3. is the kind of establishment that may have a sign outside offering accommodation.

15773 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister **and**
2. where any of those persons is one of a couple, the other member of that couple (see DMG 15800 for the meaning of “couple”).

Note: With effect from 5.12.05 the terms parent-in-law, son-in-law and daughter-in-law include the parent, son or daughter of a civil partner². Also the terms step-parent, step-son and step-daughter include the step-parent, step-son and step-daughter of a civil partner².

*1 SS Ben (C of E) Regs, reg 2(1); 2 Civil Partnership Act 2004 s 246;
Civil Partnership Act 2004 (Relationships Arising Through Civil Partnership) Order 2005, Sch, para 66*

Earnings payable abroad

15774 Any earnings from employment which are payable in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(a)

15775 - 15779

Earnings paid in a foreign currency

15780 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(b)

Fostering allowances

15781 The DM should fully disregard¹ payments made by or on behalf of

1. an LA under its duty to provide
 - 1.1 accommodation **and**
 - 1.2 maintenance

for a child whom it is looking after² or

2. a voluntary organisation under prescribed legislation³
3. a care authority in Scotland⁴

*1 SS Ben (C of E) Regs, Sch 1, para 6; 2 Children Act 89, s 23(2)(a); Social Work (Scotland) Act 68, s 21;
3 Children Act 89, s 59(1)(a); 4 Boarding Out and Fostering of Children (Scotland) Regs 85, reg 9*

Payments for persons temporarily in care

15782 Any payments to a claimant or to an adult dependant for whom a increase of benefit has been claimed from

1. a clinical commissioning group¹
2. the NHS Commissioning Board
3. an LA
4. a voluntary organisation

for someone who is not normally a member of that person's household but is temporarily in their care are disregarded in full².

1 SS Ben (C of E) Regs, reg 2(1); National Health Service Act 2006, s 14D; 2 SS Ben (C of E) Regs, Sch 1, para 7

15783 - 15794

Deduction for child care charges

Benefits other than Carer's Allowance

15795 A deduction from net earnings, up to a maximum of £60 per week¹, can be made for relevant child care charges where the employed or S/E earner is

1. a lone parent or
2. a member of a couple both of whom are engaged in employment or
3. a member of a couple where one member is engaged in employment and the other is incapacitated and they are incurring "relevant child care charges"¹.

1 SS Ben (C of E) Regs, reg 10(2) & 13(2); Sch 2, para 1

15796 - 15799

Meaning of "couple"

15800 "Couple" means two people who are¹

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

1 SS Ben (C of E) Regs, reg 2(1)

Meaning of "lone parent"

15801 "Lone parent" means¹

1. a person with no partner and who is responsible for a child² and
2. that child is a member of the persons household.

1 SS Ben (C of E) Regs, reg 2(1); 2 SS CB Act 92, s 142

Meaning of "incapacitated"

15802 "Incapacitated"¹ for the purposes of DMG 15795 means that

1. CTB or HB is payable to the 'other member' or the partner and the applicable amount includes a DP or a HPP following on from a DP or
2. because of the "other members" incapacity one of the following is payable: AFIP, IBLT, AA, SDA, DLA, CAA, PIP, an increase under a war pension or Industrial Injuries scheme, similar to AA, DLA or CAA or
3. one of the benefits as in AA, DLA, CAA, PIP or an increase under a war pension or Industrial Injuries scheme similar to these, was payable to the "other member" but had ceased to be payable due to that person becoming a

patient, **other than** a person who is serving a sentence imposed by a court in a prison or youth custody institution, who is regarded as receiving free in-patient treatment² or

4. a similar benefit to any of those described in the first two points above under Northern Ireland law or
5. the “other member” has an invalid carriage or other vehicle provided (in any part of the UK under the Invalid Vehicle Scheme³.

1 SS Ben (C of E) Regs, Sch 2, para 8; 2 SS HIP Regs; 3 NHS Act 1977, s 5(2)(a), Sch 2; NHS (Scotland) Act 1978, s 46; Art 30(1); Health and Personal Social Services (Northern Ireland) Order 72

Meaning of “relevant child care charges”

15803 “Relevant child care charges”¹ means the charges paid by someone for the care of a child of their family who is under age eleven at the beginning of the benefit week² except those paid

1. for the child’s compulsory education or
2. by either member of a couple to the other for a child for whom either is responsible.

1 SS Ben (C of E) Regs, Sch 2, para 2; 2 Sch 2, para 3

15804 To qualify the care must be provided by one of the following¹

1. a childminder or day care provider registered under specific legislation²
2. where the child is aged eight but under eleven at the beginning of the benefit week, out of school hours by a school on school premises, or by a LA
3. a child care scheme run on Crown property where registration under specific legislation³ is not required
4. certain schools or other establishments exempted from registration under specific legislation⁴
5. provided the care provided is childminding or day care of children within the meaning of specific legislation⁵ (see DMG 15805),
 - 5.1 persons registered under specific Scottish legislation⁶
 - 5.2 LAs registered under specific Scottish legislation⁷.

1 SS Ben (C of E) Regs, Sch 2, para 2; 2 Children Act 1989, s 71 or Part XA; 3 s 71; 4 s 71(16) & Sch 9, paras 3 or 4 or Part XA; 5 Regulation of Care (Scotland) Act 2001, s 2(17); 6 Public Services Reform (Scotland) Act 2010, s 59(1); 7 s 83(1)

Childminding (Scotland)

- 15805 Under Scottish legislation¹, childminding is defined as looking after children on domestic premises for reward for more than two hours in any day².

1 Regulation of Care (Scotland) Act, s 2(17); 2 s 2(21)

- 15806 A person who

1. is a parent or relative of a child or
2. has parental responsibilities (as defined in Scottish law¹) for a child or
3. is a foster parent with whom a child is placed by a LA or
4. maintains a foster child (as defined in Scottish law²)

is **not** childminding when looking after that child³.

*1 Children (Scotland) Act 1984, s 1(3); 2 Foster Children (Scotland) Act 1984;
3 Regulation of Care (Scotland) Act 2001, s 2(18)*

- 15807 A person who

1. looks after a child for one set of parents ("the first parents") or
2. in addition also looks after another child for a different set of parents ("the second parents")

is **not** childminding in the circumstances set out in DMG 15808¹.

1 Regulation of Care (Scotland) Act 2001, s 2(19)

- 15808 The circumstances in which a person in DMG 15807 is **not** childminding (within the definition in Scottish law) are where the work consists of looking after the child

1. where DMG 15807 1. applies, wholly or mainly in the first parents' home, or the second parents' home, or both or
2. where DMG 15807 2. applies wholly or mainly in the first parents' home, or the second parents' home, or both.

Day care (Scotland)

- 15809 In Scotland, "day care" of children means¹ a service which consists of any form of care (whether or not provided in the form of an educational activity) which is

1. supervised by a responsible person and
2. provided for children on premises other than domestic premises

whether or not that care is provided on a regular basis. A person does not provide day care for any day during which the service is provided for two hours or less².

1 Regulation of Care (Scotland) Act 2001, s 2(20); 2 s 2(21)

Calculation of the average weekly child care charge

Child care charges paid weekly

15810 Where child care charges are paid weekly, the average weekly charge shall be calculated as follows¹

1. add together the child care charges from the most recent four full school term-time weeks and divide the result by four

Note: "School term-time" means the school term-time applicable to the child being cared for. The number of term-time weeks in a year should be treated as 39 and non term-time weeks as 13.

2. multiply the answer at 1. by 39. This figure becomes amount A (average weekly school term-time charge)
3. add together the child care charges from the most recent 2 out of school term-time weeks and divide the result by 2
4. multiply the answer at 3. by 13. This figure becomes amount B (average weekly out of school term-time charge)
5. then apply the formula $A + B \div 52 = \text{average weekly child care charges}$ ¹ (result rounded up to a whole penny)
6. deduct the amount at 5. (up to a maximum of £60) from the net weekly earnings.

1 SS Ben (C of E) Regs, Sch 2, para 4

Example

1. Four full term-time weeks are £30, £30, £25, £30
Total = $£115 \div 4 = £28.75$
2. $A = £28.75 \times 39 = £1121.25$
3. Two out of term-time weeks £50, £50. Total = $£100 \div 2 = £50$
4. $B = £50 \times 13 = £650$
5. $A (£1121.25) + B (£650) \div 52 = £34.07$ average weekly child care charges
6. Claimant's net weekly earnings £150 less £34.07 = £115.93.

15811 Where the child care charges are

1. weekly paid **and**
2. for a child not yet attending school

the average weekly cost is calculated by averaging the charges over the most recent four full weeks before the date of claim¹.

1 SS Ben (C of E) Regs, Sch 2, para 5 & 6

Child care charges paid monthly

- 15812 Where child care charges are paid monthly, whether or not the child is attending school, the average weekly charge is calculated¹
1. where the charges are for a fixed monthly amount - by multiplying that amount by twelve and dividing by 52 or
 2. where the charges are for a varying monthly amount - by adding together the charges for the previous twelve months and dividing by 52.

1 SS Ben (C of E) Regs, Sch 2, para 6

Insufficient information

- 15813 Where there is no information or insufficient information to calculate the average weekly charge as in DMG 15805
1. an estimate should be obtained from the childminder/person providing the care or
 2. information provided by the claimant should be used to calculate the average weekly child care charge¹.

1 SS Ben (C of E) Regs, Sch 2, para 7

Carer's Allowance

- 15814 A claimant who
1. is entitled to CA and
 2. incurs relevant care charges¹ through being unable, because of their work, to care for either the severely disabled person in respect of whom entitlement to CA arises or any child under age 16 at the beginning of the benefit week in respect of whom the claimant or partner is entitled to CHB

can have those charges deducted from their net profit² or net earnings³ subject to a maximum deduction of 50% of the net profit or net earnings.

1 SS Ben (C of E) Regs, Sch 3, para 2; 2 reg 13(3)(b); 3 reg 10(3)(b)

- 15815 For the charges to be deductible the care must not be provided by a close relative of either the severely disabled person or the claimant. In this context "close relative" means parent, son, daughter, brother, sister or partner¹.

1 SS Ben (C of E) Regs, Sch 3, para 2

15816 - 15999

Appendix 1

Notional deductions for income tax (see DMG 15650 - 15680)

Income tax allowances

1. The personal income tax allowance for someone under 65 is as follows.

	12/13	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£	£
Personal under 65	8,105	9,440	10,000	10,600	11,000	11,500	11,850

Basic rates of tax

2. Income tax is payable on taxable income.

Note: there are different rates for Scotland from 18/19 – see 3 below.

£			
11/12	-	1 – 35,000	at basic rate of 20%
12/13	-	1 – 34,370	at basic rate of 20%
13/14	-	1 – 32,010	at basic rate of 20%
14/15	-	1 – 31,865	at basic rate of 20%
15/16	-	1 – 31,785	at basic rate of 20%
16/17	-	1 – 32,000	at basic rate of 20%
17/18	-	1 – 33,500	at basic rate of 20%
18/19	-	1 – 34,500	at basic rate of 20%

3. Scottish Income Tax Rates

18/19	-	1 – 13,850	at starter tax rate of 19%
	-	13,851 – 24,000	at basic rate of 20%
	-	24,001 – 43,430	at intermediate rate of 21%

Appendix 2

Notional deductions for Social Security contributions (see DMG 15681 et seq)

Class 1 contributions

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

Earnings Bands 11/12

Earnings	Percentage rates	Earnings Limits 11/12
		Lower earnings limit
1. £139 or less weekly	NIL	weekly £102
		Upper earnings limit
2. £139.01 or more weekly to UEL	12%	weekly £817
3. £817.01 weekly and above	2%	

Earnings Bands 12/13

Earnings	Percentage rates	Earnings Limits 12/13
		Lower earnings limit
1. £146 or less weekly	NIL	weekly £107
		Upper earnings limit
2. £146.01 or more weekly to UEL	12%	weekly £817
3. £817.01 weekly and above	2%	

Earnings Bands 13/14

Earnings	Percentage rates	Earnings Limits 13/14
		Lower earnings limit
1. £149 or less weekly	NIL	weekly £109
		Upper earnings limit
2. £149.01 or more weekly to UEL	12%	weekly £797
3. £797.01 weekly and above	2%	

Earnings Bands 14/15

Earnings	Percentage rates	Earnings Limits 14/15
		Lower earnings limit
1. £153 or less weekly	NIL	weekly £111
		Upper earnings limit
2. £153.01 or more weekly to UEL	12%	weekly £805
3. £805.01 weekly and above	2%	

Earnings Bands 15/16

Earnings	Percentage rates
1. £155 or less weekly	NIL
2. £155.01 or more weekly to UEL	12%
3. £815.01 weekly and above	2%

Earnings Limits 15/16

Lower earnings limit
weekly £112

Upper earnings limit
weekly £815

Earnings Bands 16/17

Earnings	Percentage rates
1. £155 or less weekly	NIL
2. £155.01 or more weekly to UEL	12%
3. £827.01 weekly and above	2%

Earnings Limits 16/17

Lower earnings limit
weekly £112

Upper earnings limit
weekly £827

Earnings Bands 17/18

Earnings	Percentage rates
1. £157 or less weekly	NIL
2. £157.01 or more weekly to UEL	12%
3. £866.01 weekly and above	2%

Earnings Limits 17/18

Lower earnings limit
weekly £113

Upper earnings limit
weekly £866

Earnings Bands 18/19

Earnings	Percentage rates
1. £162 or less weekly	NIL
2. £162.01 or more weekly to UEL	12%
3. £892.01 weekly and above	2%

Earnings Limits 18/19

Lower earnings limit
weekly £116

Upper earnings limit
weekly £892

Class 2 contributions

1. The weekly rates of Class 2 contributions are as follows.

	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£
Ordinary Class 2 rate	2.70	2.75	2.80	2.80	2.85	2.95
Share fisherman rate	3.35	3.40	3.40	3.45	3.50	3.60

Small earnings exception/Small profits threshold

1. The rates of the small earnings exception and small profits threshold are as follows.

	12/13	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£	£
Earnings limit	5,595	5,725	5,885	5,965	5,965	6,025	6,205

Class 4 contributions

2. The weekly rates of Class 4 contributions are as follows.

	12/13	13/14	14/15	15/16	16/17	17/18	18/19
	£	£	£	£	£	£	£
Lower level	7,605	7,755	7,956	8,060	8,060	8,164	8,424
Higher level	42,475	41,450	41,865	42,358	43,000	45,000	46,350
Percentage rate (taxable profits between lower & higher levels)	9%	9%	9%	9%	9%	9%	9%
Percentage rate (taxable profits over higher level)	2%	2%	2%	2%	2%	2%	2%

Appendix 3

Pension age (see DMG 15683)

Period within which woman's birthday falls	Day pension age reached
6.4.50 - 5.5.50	6.5.2010
6.5.50 - 5.6.50	6.7.2010
6.6.50 - 5.7.50	6.9.2010
6.7.50 - 5.8.50	6.11.2010
6.8.50 - 5.9.50	6.1.2011
6.9.50 - 5.10.50	6.3.2011
6.10.50 - 5.11.50	6.5.2011
6.11.50 - 5.12.50	6.7.2011
6.12.50 - 5.1.51	6.9.2011
6.1.51 - 5.2.51	6.11.2011
6.2.51 - 5.3.51	6.1.2012
6.3.51 - 5.4.51	6.3.2012
6.4.51 - 5.5.51	6.5.2012
6.5.51 - 5.6.51	6.7.2012
6.6.51 - 5.7.51	6.9.2012
6.7.51 - 5.8.51	6.11.2012
6.8.51 - 5.9.51	6.1.2013
6.9.51 - 5.10.51	6.3.2013
6.10.51 - 5.11.51	6.5.2013
6.11.51 - 5.12.51	6.7.2013
6.12.51 - 5.1.52	6.9.2013
6.1.52 - 5.2.52	6.11.2013
6.2.52 - 5.3.52	6.1.2014

6.3.52 - 5.4.52	6.3.2014
6.4.52 - 5.5.52	6.5.2014
6.5.52 - 5.6.52	6.7.2014
6.6.52 - 5.7.52	6.9.2014
6.7.52 - 5.8.52	6.11.2014
6.8.52 - 5.9.52	6.1.2015
6.9.52 - 5.10.52	6.3.2015
6.10.52 - 5.11.52	6.5.2015
6.11.52 - 5.12.52	6.7.2015
6.12.52 - 5.1.53	6.9.2015
6.1.53 - 5.2.53	6.11.2015
6.2.53 - 5.3.53	6.1.2016
6.3.53 - 5.4.53	6.3.2016
6.4.53 - 5.5.53	6.5.2016
6.5.53 - 5.6.53	6.7.2016
6.6.53 - 5.7.53	6.9.2016
6.7.53 - 5.8.53	6.11.2016
6.8.53 - 5.9.53	6.1.2017
6.9.53 - 5.10.53	6.3.2017
6.10.53 - 5.11.53	6.5.2017
6.11.53 - 5.12.53	6.7.2017
6.12.53 - 5.1.54	6.9.2017
6.1.54 - 5.2.54	6.11.2017
6.2.54 - 5.3.54	6.1.2018
6.3.54 - 5.4.54	6.3.2018
6.4.54 - 5.5.54	6.5.2018
6.5.54 - 5.6.54	6.7.2018
6.6.54 - 5.7.54	6.9.2018

6.7.54 - 5.8.54	6.11.2018
6.8.54 - 5.9.54	6.1.2019
6.9.54 - 5.10.54	6.3.2019
6.10.54 - 5.11.54	6.5.2019
6.11.54 - 5.12.54	6.7.2019
6.12.54 - 5.1.55	6.9.2019
6.1.55 - 5.2.55	6.11.2019
6.2.55 - 5.3.55	6.1.2020
6.3.55 - 5.4.55	6.3.2020

Appendix 4

Territorial or reserve forces (see DMG 15133)

Territorial or reserve forces prescribed in Social Security (Contributions) Regulations 1979, Schedule 3, Part I

Royal Naval Reserves, including

- Women's Royal Naval Reserve

- Queen Alexandra's Royal Naval Nursing Service Reserve

Royal Marines Reserve

Army Reserves, including

- Regular Army Reserve of Officers

- Regular Reserves

- Long Term Reserve

- Army Pensioners

Territorial and Army Volunteer Reserve

Royal Air Force Reserves, including

- Royal Air Force Reserve of Officers

- Women's Royal Air Force Reserve of Officers

- Royal Air Force Volunteer Reserve

- Women's Royal Air Force Volunteer Reserve

- Class E Reserve of Airmen

- Princess Mary's Royal Air Force Nursing Reserve

- Officers on the Retired List of the Royal Air Force

- Royal Air Force Pensioners.

Appendix 5

Exemptions granted from statutory guarantee payments (see DMG 15231)

Employers covered by National Agreements for the following industries

Civil engineering construction

Demolition and dismantling (from 2.2.77)

British footwear manufacturing industry (from 4.7.77)

National Council for the steeplejack and lightning conductor engineering industries
(from 1.8.77)

Paper making and board making industry (from 15.8.77)

Smiths Food Group factories at Paulsgrove, Stockport, Great Yarmouth and
Fleetwood (from 5.9.77)

Cut Sole associates (from 8.9.77)

Fibreboard Packing Case (from 18.10.77)

Refractory Construction Industry (from 1.11.77)

Multiwall Sack manufacturing industry (from 4.11.77)

Tudor Food Products (from 11.1.78)

British Carton Association (from 14.3.78)

Henry Wiggin and Co Ltd (from 19.4.78)

National Joint Council for Workshops for the Blind (from 27.6.78)

Card Clothing industry (from 13.7.78)

Motor vehicle retail and repair industry (from 14.12.78)

The Contractors Plant Association (from 23.2.81)

Wire and wire ropes industries (from 12.9.87)

Rowntree Mackintosh Confectionery Ltd (from 6.9.89)

Building and Allied Trade Joint Industries Council (from 29.9.89)

Airflow Streamlines plc (from 18.12.89)

G and G Kynock plc (from 21.5.90)

Bridon Ropes (from 27.12.90)

National Joint Council for Building Industries (from 1.7.94)

Appendix 6

Maximum weekly amount (See DMG 15262 - 15263)

Amounts specified in section 227(1) of the Employment Rights Act 1996.

From 1.2.05	280
From 1.2.06	290
From 1.2.07	310
From 1.2.08	330
From 1.2.09	350
From 1.10.09	380
From 1.2.11	400
From 1.2.12	430
From 1.2.13	450
From 6.4.14	464
From 6.4.15	475
From 6.4.16	479
From 6.4.17	489
From 6.4.18	508

Appendix 7

S/E earnings from B/L and Subletting-position between 26.1.07 and 1.10.07

Contents	Paragraphs
Introduction	1 - 2
The Commissioner's decision	
Background	3 - 4
What the Commissioner decided	5 - 11
Sub-tenants	12 - 13
Effect of the Commissioner's decision	14
Decision-making and appeals	
Relevant determination	15
Revision and supersession	16 - 18
Appeals	19
Annotations	
Contacts	

INTRODUCTION

- 1 This Annex gives guidance about a Commissioner's decision which radically altered the way in which DMs were to calculate earnings from S/E where the person concerned is providing BL accommodation on a commercial basis **in their own home**. The decision also affected the treatment of payments from sub-tenants.
- 2 **The Commissioner's decision only has effect from 26.1.07 until 1.10.07** when an amendment restored the policy intention (but see the guidance in paragraphs 15 to 19 about how the decision-making rules apply).

THE COMMISSIONER'S DECISION

Background

- 3 On 3.5.05, a Commissioner decided¹ that the Computation of Earnings Regulations did not apply when earnings had to be calculated for the purposes of exempt work for IfW. This was reversed by the Court of Appeal² on 27.4.06 (see DMG Letter 06/06). However the Court remitted the case back to the Commissioner for him to decide the amount of the claimant's earnings.

1 CIB/4174/2003; 2 Secretary of State for Work and Pensions v Doyle [2006] EWCA Civ 466

- 4 In the second part of his decision¹, dated 26.1.07, the Commissioner analysed the way in which the Computation of Earnings Regulations worked in relation to the claimant's earnings from providing BL accommodation in their own home.

Note: The commissioner's decision does not apply where BL accommodation is provided elsewhere than in the claimant's home. In these cases earnings from S/E should be calculated in the normal way and the disregard² will not apply.

1 CIB/4174/2003; 2 SS Ben (C of E) Regs, Sch 1, para 3

What the Commissioner decided

- 5 The Commissioner held that three sums must be deducted when calculating earnings from providing BL accommodation in the claimants own home.
1. For each boarder, the first £20 of the payments made, plus 50% of the remainder, must be excluded from the gross earnings.
 2. All expenses wholly and exclusively defrayed in the assessment period for the purposes of the employment must be deducted from the gross receipts in the process of calculating the net profit.
 3. For each boarder, the first £20 of the payments made, plus 50% of the remainder, must **again** be deducted, this time from the net earnings.

Paragraphs 6 to 11 set out the Commissioners reasoning in more detail and give an example of each stage of the process.

- 6 Payments for providing BL are earnings from S/E and specific regulations¹ govern the way in which the amount to be taken into account as earnings should be calculated.

1 regs 11 to 14

- 7 "Earnings" from S/E is defined¹ as the gross receipts of the employment. However the regulations add that² "earnings" shall not include the payments to be disregarded in specific paragraphs³ of Schedule 1.

1 reg 12(1); 2 reg 12(2)(a); 3 Sch 1, paras 1, 2 & 3

- 8 One of these paragraphs¹ sets out the disregard which applies where the claimant provides BL accommodation in their home.

1 SS Ben (Cof E) Regs, Sch 1, para 3

- 9 The Commissioner held that the first step in calculating the earnings to be taken into account in respect of a person providing BL accommodation in their own home was therefore to deduct the disregards from the gross receipts.

Example 1

A CA claimant has four rooms in her house which are occupied by boarders. She provides bed and breakfast at the rate of £35 per night. The DM set an assessment period of 52 weeks. All four rooms were occupied throughout this period and the gross receipts were £50,960. The DM decided that his first step was to deduct the total disregards that would apply during the assessment period. He calculated the total disregards as follows

Each boarder pays £245 pw - £20 = £225, 50% of £225 = £112.50 pw.

Weekly disregard per boarder = (£20 + £112.50) = £132.50

Multiplied by 4 = £530. Multiplied by 52 = £27,560

£50,960 (gross receipts) - £27,560 (disregard) = £23,400 pa ("earnings").

- 10 The Commissioner held that the second step is to calculate the net profit by deducting from "earnings" all expenses wholly and exclusively defrayed¹ and half of any pension paid² during the assessment period and amounts for notional income tax, SS contributions³.

Note: All of the expenses defrayed must be deducted. No account can be taken of the fact that a disregard has already been applied.

1 reg 13(4)(a); 2 reg 11(4)(c); 3 reg 11(4)(b) & reg 14

Example 2

Continuing the calculation in **Example 1**, the DM established that the total expenses (food, linen, laundry etc) incurred by the claimant in providing BL during the assessment period were £10,180. The claimant was not making any pension payments. The DM calculated the net profit as follows

"Earnings"	£23,400
Less expenses	£10,180
Chargeable Income	£13,220
Less income tax personal allowance	£5,225

Taxable Income	£7,995	
10% rate applied to first £2,230	£223	
22% rate applied to remaining £5,765	£1,268.30	
Less total notional tax (£223 + £1,268.30)		£1,491.30
52 x Class 2 contributions at £2.20	£114.40	
Class 4 on chargeable income in excess of £5,225 (13,220 - £5,225 = £7,995) x 8%	£639.60	
Total notional SS contributions (£114.40 + £639.60)		£754
Net Profit (£23,400 - £10,800 - £1,491.30 - £754)		= £10,974.70

- 11 The Commissioner found that this was not the end of the calculation. The regulation dealing with the calculation of earnings from S/E **also** requires¹ that a deduction be made from net profit of “any sum, where applicable, specified in Schedule 1”. Thus the BL disregard had to be deducted **once again**, this time from the net profit.

1 SS Ben (C of E) Regs, reg 13(2)(a)

Example 3

Continuing with the calculation in **Examples 1 and 2**, the DM deducted the BL disregard again as follows

Net Profit	£10,974.70
Less BL disregard (see Example 1 for how this was calculated)	£27,560.00
Earnings to be taken into account	= £ NIL

SUB-TENANTS

- 12 If a claimant receives payments by way of rent from a sub-tenant, the DM should first decide whether these payments are earnings derived from S/E. For guidance on what constitutes S/E (see DMG 15475) et seq. In order for payments for subletting to be earnings from S/E, the claimant must be subletting by way of a business.

- 13 In the light of the way the Commissioner has analysed the Computation of Earnings Regulations, it is clear that the way in which earnings from S/E, by way of payments from sub-tenants must follow that analysis from now on. In calculating earnings from subletting the DM must therefore follow the three steps set out by the Commissioner.

Example

The claimant has a large house which she occupies together with five sub-tenants. Each sub-tenant pays £60 pw (inclusive of heating). During the 52 week assessment period the claimant received a total of £15,600. The DM calculated the amount of earnings to be taken into account as follows

Total receipts	£15,600
Less disregards ($£4 + £9.25) \times 5 = £66.25 \times 52$	£3,445
	= £12,155
Less expenses	£2,600
Chargeable Income	£9,555
Less notional tax	£685
Less notional SS contributions	£460.80
Net Profit	= £8,409.20
Less Disregard again	£3,445
Annual earnings to be taken into account	£4,964.20
Weekly earnings to be taken into account	£95.46

EFFECT OF THE COMMISSIONER'S DECISION

- 14 Between 26.1.07 and 1.10.07, the Commissioner's decision is binding case law in relation to the calculation of earnings from providing BL in the claimant's own home or subletting made under the Computation of Earnings Regulations.

DECISION-MAKING AND APPEALS

Relevant Determination

- 15 The Commissioner's decision is a relevant determination¹ (see DMG 04290 - 04292 for further guidance). It was made on 26.1.07 (and sent to the parties in March 2007).

1 SS Act 98, s 27

Revision and supersession

- 16 Where a person applies for a decision to be looked at again, and the decision is erroneous in law in the light of the relevant determination, the DM should
1. revise for official error¹ if the decision to be revised was made on or after 26.1.07 or
 2. supersede² for error of law if the decision to be superseded was made up to and including 25.1.07.

1 SS Act 98, s 9; SS CS (D&A) Regs, reg 1(3) & 3(5)(a); 2 SS Act 98, s 10

- 17 Where the decision is revised, the effective date is the date the original decision took effect¹. DMs should note that where this is before the date of the relevant determination, periods before 26.1.07 should be decided in accordance with the interpretation of the law before that date i.e. as though the relevant determination had not been made².

1 SS Act 98, s 9(3); 2 s 27(3)(a)

- 18 Where the decision is superseded, the new decision is effective from 26.1.07¹.

1 SS CS (D&A) Regs, reg 7(6)

- 19 Where the decision is revised or superseded in accordance with paragraphs 16 to 18 a further supersession will be needed to apply the change of law that took effect from 1.10.07.

Appeals

- 20 Where an appeal is outstanding against a decision that is affected by the Commissioner's decision, the DM should consider whether it should be lapsed and the decision revised as in paragraphs 15 and 16 (see also DMG 06160). If it cannot be revised, then the Commissioner's decision should be brought to the tribunal's attention in a further submission.

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