

# ADM Chapter S2: JSA & Employed earners

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# Introduction S2001 - S2008

## Introduction

S2001 This Chapter deals with the calculation and treatment of payments made to employed earners. These will usually be earnings paid by an employer, but may be other types of payment.

S2002 How payments made to employees affect an award for JSA will depend on whether the work

**1.** is continuing

**2.** has ended.

S2003 Earnings include notional earnings<sup>1</sup>.

1 JSA Regs 13, reg 50 & regs 53 - 63

S2004 - S2008

# Definitions S2009 - S2019

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## Explanation of terms

S2009 In this guidance the following terms are defined.

## Meaning of employed earner

S2010 The term employed earner means<sup>1</sup> a person who is gainfully employed in GB

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

**2.** in an office (including an elective office) with general earnings<sup>2</sup>.

1 JS Act 95, s 35(1), JSA Regs 13, reg 2(1) & SS CB Act 92, s 2(1)(a);

2 Income Tax (Earnings and Pensions) Act 2003, s 7(3)

S2011 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

S2012 The phrase “in an office” includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses. General earnings include any wage, salary, fee, gratuity, profit or incidental benefit<sup>1</sup>.

1 Income Tax (Earnings and Pensions) Act 2003, s 7(3) & s 62

## Meaning of earnings

S2013 Earnings means any pay or profit derived from employment and includes<sup>1</sup>

1. bonus or commission (see **S2045**)
2. PILOR (see **S2079**)
3. PILON and certain compensation payments made by the employer because the employment has ended (see **S2500** et seq)
4. holiday pay (see **S2059**), but not where it is payable more than four weeks after the employment ended, or was interrupted
5. retainers (see **S2083**)
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 **S2065** 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 at work (see **S2080**)
7. Employment Protection awards<sup>2</sup> (see **S2300** et seq)
8. awards of compensation made under TU legislation<sup>3</sup> (see **S2314** and **S2335**).
9. any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of social security contributions to deduct<sup>4</sup> (see **S2094**).

This list is not exhaustive. See **S2037** – **S2096** for more examples of what are and what are not earnings.

1 JSA Regs 13, reg 58(1); 2 ER Act 96, s 55(4), 68 & 69, 70(1)-(3), 77 & 79, 92(6), 112(3) & (4), 113, 121(a), 128, 132; 3 TULR (C) Act 92, s 156, 157, 189 & 192; 4 JSA Regs 13, reg 58(1)(i)

S2014 [[See memo ADM 06/20](#)] Earnings do not include

1. payments in kind<sup>1</sup> (see **S2077**)
2. periodic payments made because employment has ended through redundancy<sup>2</sup>

3. payments made for periods when an employee is on maternity leave, paternity leave, adoption leave, shared parental leave or is away from work due to illness<sup>3</sup> (see **S2130**)
4. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment<sup>4</sup> (see **S2027**)
5. payments of occupational pension<sup>5</sup>
6. redundancy payments<sup>6</sup> (see **S2506**)
7. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme<sup>7</sup>
8. any payment of expenses paid to the claimant as a result of participating as a service user<sup>8</sup> (see **S2084**)
9. a bounty paid at intervals of at least one year and derived from service in a special occupation<sup>9</sup> (see **S2086**)

1 JSA Regs 13, reg 58(2)(a); 2 reg 58(2)(b); 3 reg 58(2)(c); 4 reg 58(2)(d); 5 reg 58(2)(e);  
6 ER Act 96, s 135; JSA Regs 13, reg 58(2)(f); 7 reg 58(2)(g); 8 reg 58(2)(h); 9 reg 58(2)(i)

## Meaning of derived from

S2015 The words “derived from” mean having their origins in<sup>1</sup>. Payments made for past or present employment should be treated as earnings, unless they are excluded under **S2014**. Work out the period for which earnings are to be taken into account before deciding the claim (see **S2769** et seq).

1 R(SB) 21/86

## Meaning of gross earnings

S2016 Gross earnings means the amount of earnings

**1. after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment<sup>1</sup> (see **S2027**) **but**

**2. before** any authorized deductions are made by the employer. These may include

**2.1** income tax

**2.2** pensions contributions

**2.3** NI contributions

**2.4** TU subscriptions

**2.5** payments under a court order

**2.6** recovery of any debt.

**Note:** Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings<sup>2</sup>.

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

S2017 – S2019

# Calculation of net earnings S2020 - S2036

## Calculation of net earnings

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## Deductions from gross earnings

S2020 Net earnings are gross earnings less<sup>1</sup>

**1.** income tax **and**

**2.** Class 1 NI contributions **and**

**3.** half of any sum paid by the employee, towards an occupational or personal pension scheme.

1 JSA Regs 13, reg 59(3)

## Income tax

S2021 Deduct from gross earnings any income tax deducted by the employer.

**Note:** From April 2016 the Scottish Government can set its own rate of income tax<sup>1</sup>, see ADM Chapter **H3**, Appendix 1

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

## NI contributions

S2022 Reduce gross earnings by any Class 1 contribution deducted by the employer.

## Occupational or personal pension scheme payments

S2023 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 ( $£26 \times 12 \div 52 = £6$  pw) and half of this weekly figure ( $£6 \div 2 = £3$ ) is deducted from her gross weekly earnings ( $£50 - £3 = £47$ ).

S2024 Occupational pension schemes<sup>1</sup> 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 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1)

S2025 Personal pension schemes<sup>1</sup> 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 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1)

S2026 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 period<sup>1</sup>.

1 R(FC) 1/90

### **Expenses not reimbursed by employer**

S2027 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 incurred<sup>1</sup>.

1 R(IS) 16/93

S2028 Examples of expenses for which deductions may be made under **S2027** 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.

S2029 The expense must be incurred in direct connection with the employer's trade or business<sup>1</sup>. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed<sup>2</sup>.

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

S2030 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work would not satisfy the test in S2027. Child minding expenses<sup>1</sup>, and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

1 R(FC) 1/90

S2031 See **S2062** and **S2071** if the claimant is a Justice of the Peace or a councillor. See S2080 for more guidance on the general question of expenses.

S2032 – S2036

# Treatment of particular kinds of payments from employment S2037 - S2096

## Treatment of particular kinds of payments from employment

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## Introduction

S2037 The law<sup>1</sup> gives some examples of what earnings can include (see **S2013**). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in **S2040 – S2096**.

1 JSA Regs 13, reg 58(1)

S2038 – S2039

## Accommodation provided by employer

S2040 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored. Where no other payment is made to the employee, or any payment being made seems too low, the DM should consider whether to treat the claimant as having earnings or greater earnings (see **S2180** et seq).

## Actors and entertainers

S2041 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

S2042 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

S2043 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to JSA to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was

employed under a contract of service or otherwise.

### **Example**

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

- 1.** decides that the claimant is gainfully employed as a S/E earner (see ADM Chapter **S3**)
- 2.** considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fell to be taken into account with her other earnings from self-employment
- 3.** decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

### **Advance of earnings or loans**

S2044 Earnings should be taken into account from the date they are treated as paid<sup>1</sup>. This is based on when they are due to be paid. If they are paid before the due date, ignore any amount paid until the due date arrives. Then take the amount properly due into account as normal from that date. Any other loan made by the employer should not be treated as earnings.

<sup>1</sup> JSA Regs 13, reg 54(2) & 56

### **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 treated as capital. 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**

S2045 Payments of bonus or commission should be treated as earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(1)(a)

## **Broadcasting and publication fees**

S2046 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 (see ADM Chapter **S3**) 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**

S2047 Employees of UK 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 earnings<sup>1</sup>.

1 R(SB) 2/86

## **Directors of limited companies**

S2048 A limited company, of whatever size, is separate from its employees and shareholders<sup>1</sup>. 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**

S2049 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.

### **Payments as a director or other employee**

S2050 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.

S2051 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.

S2052 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.

S2053 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.

S2054 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. If it is not paid to the director, or the director cannot draw it out of the account, it is a debt due. This should be taken into account as income due but not paid<sup>1</sup>.

1 JSA Regs 13, reg 63(1)

S2055 If a director of a small company is not voted any payment, the DM should consider whether the director should be treated as having earnings (see **S2180** et seq). In doing so, the DM should consider whether the company can afford to pay the director.

### **Share dividend**

S2056 Share dividend is income from capital and does not fall to be treated as earnings.

### **Debenture interest**

S2057 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. The interest payments are not payments of earnings.

S2058

## **Holiday pay**

S2059 Any holiday pay that is payable within four weeks of the date employment ended, or was interrupted, should be treated as earnings<sup>1</sup>. If it is payable more than four weeks after the employment has ended, or been interrupted, it is not earnings. Guidance on the effects of holiday pay paid on termination of employment is given at **S2652**.

1 JSA Regs 13, reg 58(1)(c)

## **Income tax refunds**

S2060 Earnings of employed earners are taxed under the PAYE scheme by direct deduction from wages or salary. Any refunds of income tax do not fall to be treated as earnings.

## **Justices of the Peace**

S2061 Those who are employed as magistrates are referred to as District Judges (Magistrates' Court) and were previously known as stipendiary magistrates. In connection with their duties lay Justices of the Peace, sometimes known as volunteer magistrates, may receive

**1.** travel allowances<sup>1</sup>

**2.** subsistence<sup>2</sup>

**3.** financial loss allowances<sup>3</sup>.

1 Courts Act 2003, s 15(1)(a); 2 s 15(1)(b); 3 s 15(1)(c)

## **Travel allowances**

S2062 Travel allowances incurred wholly, exclusively and necessarily in the performance of the lay Justice of the Peace's duties do not count as earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(2)(d)

## Subsistence

S2063 Payments of subsistence do not count as earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(2)(d)

## Financial loss allowances

S2064 Financial loss allowances are paid to compensate lay Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for

**1.** loss of earnings

**2.** loss of SS benefits

**3.** other expenses that are incurred wholly, exclusively and necessarily in the performance of the Justices of the Peace's duties.

Payments for **1.** fall to be treated as earnings<sup>1</sup>. Payments for **2.** and **3.** do not count as earnings.

1 JSA Regs 13, reg 58(1)

## Local authority councillors

S2065 Councillors are

**1.** in England and Wales, a member of

**1.1** a London borough council **or**

**1.2** a county council **or**

**1.3** a district council **or**

**1.4** a parish or community council **or**

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

**1.6** the Council of the Isles of Scilly

**2.** in Scotland, a member of a council for a local government area<sup>1</sup>.

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

S2066 LA councillors are elected office holders and are employed earners<sup>1</sup>. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme<sup>2</sup> for payment of allowances to councillors. This will give information on the official duties of its councillors and the

allowances paid for those duties. The official duties may include attendance at

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

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

S2067 The allowances paid for official duties may include

- 1.** basic allowance
- 2.** special responsibilities allowance
- 3.** childcare and dependent carers' allowance
- 4.** travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see **S2071** et seq).

### **Basic allowance**

S2068 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

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

### **Special responsibilities allowance**

S2069 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly. It should be treated as earnings.

## Childcare and dependent carers' allowance

S2070 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor. It should be treated as earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(1)(e)

## Expenses

S2071 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties<sup>1</sup>, for example travel and subsistence allowances<sup>2</sup>. If the LA cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 JSA Regs 13, reg 58(2)(d); 2 R(IS) 6/92

S2072 After expenses in **S2071** have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA (see **S2027**). The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

## Example

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

S2073 The DM should

1. add together all of the allowances that are paid **and**
2. deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties<sup>1</sup>.

1 JSA Regs 13, reg 58(2)(d); R(IS) 16/93

S2074 For the purposes of **S2072**, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

S2075 Examples of the treatment of certain expenses are as follows

- 1.** Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.
- 2.** Secretarial expenses should only be deducted from the basic allowance.
- 3.** Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.
- 4.** Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. DMs may need to apply averages and estimates over a period to calculate a weekly deduction.
- 5.** Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see **S2071**). This is different to the normal treatment of travelling expenses (see **S2030**). When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.
- 6.** Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.
- 7.** Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see **S2029**). The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.
- 8.** Pension contributions are not an expense. But, one half of any sum paid by the councillor towards an occupational or personal pension can be deducted from the gross earnings (see **S2020** and **S2023**).

## **Payments not claimed**

S2076 Councillors are entitled to allowances whether they are claimed or not<sup>1</sup>. If a councillor has not been paid an allowance and payment could be expected, the DM should consider taking notional

earnings into account<sup>2</sup>.

1 R(S) 6/86; 2 JSA Regs 13, reg 63(1)

## Payments in kind

S2077 A payment in kind, for example free accommodation, should not be treated as earnings<sup>1</sup>. Where wages are paid at a reduced rate because of the payment in kind, consider notional earnings (see **S2180** et seq).

1 JSA Regs 13, reg 58(2)(a)

S2078 Payments in kind do not include any payment by non-cash voucher if it has been taken into account as earnings of an employed earner (see **S2094**).

## Payments in lieu of remuneration

S2079 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to Justices of the Peace and LA councillors for loss of earnings are examples of such payments. Employment Tribunal compensation awards for a past employment and awards made under sex and race discrimination law can also be PILORs. Payments made in lieu of remuneration are earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(1); R(SB) 21/86

## Payments of expenses

S2080 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 earnings<sup>1</sup>. These can include

1. payments for travelling expenses between home and work
2. expenses for the care of a member of the claimant's family
3. school fees for a claimant's child
4. child care costs.

1 JSA Regs 13, reg 58(1)(e)

S2081 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 earnings<sup>1</sup>. These can include

**1.** payments made for travelling expenses and overnight accommodation so that the employee can attend a meeting

**2.** a mileage allowance to run a car for business purposes.

1 JSA Regs 13, reg 58(2)(d); R(FIS) 4/85

S2082 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 earnings<sup>1</sup>. 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.

### **Retainers**

S2083 Retainers<sup>1</sup> 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 and should not be disregarded. Retainer payments include<sup>2</sup>

**1.** statutory guarantee payments **and**

**2.** payments made where a claimant has been suspended on medical or maternity grounds.

1 JSA Regs 13, reg 58(1)(d); 2 JSA Regs 13, Sch , para 1

### **Service user groups**

S2084 Payments other than expenses received for participating as a service user should be treated as earnings for and be attributed in the usual way with the appropriate weekly disregards<sup>1</sup>. A service user is<sup>2</sup>

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

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

**1.1.a** health **or**

**1.1.b** social care **or**

**1.1.c** social housing **or**

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

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

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

**2.1** the Secretary of State in relation to social security or child support functions under relevant legislation<sup>3</sup> **or**

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

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

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

**Note:** DMs will also need to consider whether the remunerative work rule applies (see ADM Chapter **R2**).

1 JSA Regs 13, reg 58(1); 2 reg 3(6); 3 E & T Act 73, s 2

### **Example**

Jenny is in receipt of JSA. She is involved in a tenants association which discusses LA housing issues. In return for attending the meetings, Jenny receives £20 from the LA. The DM decides that the payment is a payment of earnings and falls to be taken into account when calculating Jenny's entitlement to JSA. The payment is subject to the normal weekly earnings disregards.

### **Single status payments**

S2085 A payment which is made to a person to redress past pay inequalities is a payment of earnings<sup>1</sup> 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 JSA Regs 13, reg 58(1); Minter v. Kingston Upon Hull City Council [2011] Civ 1155

## Example

Anna is in receipt of JSA of £40 per week because she works part-time for the local council and her earnings are taken into account. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Anna's employer offers her a payment of £7,200. This is paid to Anna with her salary and the DM treats it as a payment of earnings.

## Special occupations

S2086 Some occupations are known as special occupations. These are service as

1. a P/T fire-fighter in a fire brigade maintained under relevant legislation<sup>1</sup>
2. a P/T fire-fighter employed by a fire and rescue authority
3. a P/T fire-fighter employed by the Scottish Fire and Rescue Service
4. an auxiliary coastguard in respect of coastal rescue services
5. a person engaged in P/T work manning or launching a lifeboat
6. a member of the territorial or reserve forces<sup>2</sup> (see Appendix 1 to this Chapter).

1 Fire and Rescue Services Act 2004;

2 SS (Contributions) Regs 2001, Sch 6, Part 1

People in special occupations may receive a bounty payment for their services. S2014 provides guidance on the treatment of the bounty.

## Auxiliary coastguards

S2087 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.

## Part-time members of a fire brigade

S2088 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.

## **Part-time crewing or launching of a lifeboat**

S2089 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.

## **Territorial army or volunteer reservists**

S2090 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.

S2091 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 earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(1)(e)(i)

S2092 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.

## **Tips**

S2093 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**

S2094 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.

S2095 Earnings of an employed earner include the amount for any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of NI contributions to deduct<sup>1</sup>.

**Note:** The amount taken into account as earnings for SS purposes may be equal, or be more or less than, the face value of the voucher.

1 JSA Regs 13, reg 58(1)(i)

S2096 Payments in kind are not normally taken into account as earnings of an employed earner. Payments in kind do not include any non-cash voucher if it has been taken into account as earnings of an employed earner<sup>1</sup>. (see S2094).

1 JSA Regs 13, reg 58(3)

# Earnings disregards **S2097 - S2149**

## Earnings disregards

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[Special occupations](#) S2115 - S2116

[Reservists](#) S2117 - S2122

[Earnings from one or more occupations](#) S2123 - S2128

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[Earnings paid for employment which has been interrupted](#) S2130 - S2131

[Earnings payable outside United Kingdom](#) S2132

[Earnings paid in a foreign currency](#) S2133 - S2149

## Introduction

S2097 Net earnings should be taken into account less any disregard. The amount of disregard will depend on whether the earnings are from work in a special occupation.

S2098 Disregard £5 from the claimant's earnings unless the claimant is in a special occupation (see **S2086**) or is a share fisherman (see ADM Chapter **S3**)<sup>1</sup>. In such cases disregard the claimant's earnings up to a maximum of £20<sup>2</sup>.

1 JSA Regs 13, Sch, paras 5 & 6; reg 73; 2 Sch 6, para 7 & reg 73

S2099 - S2114

## Special occupations

S2115 A disregard of £20 can normally be allowed on earnings from special occupations<sup>1</sup> (see **S2086**).

This is one of the disregards that can apply when considering the amount of JSA payable. See **S2117** for the exception to this rule.

1 JSA Regs 13, Sch, para 6

S2116

## Reservists

S2117 Members of the territorial or reserve forces (see Appendix 1 to this Chapter) may attend an annual training camp (known as “annual continuous training”) which can last for up to 15 days. Payment in respect of the time at camp is taken into account as earnings but there is a specific disregard<sup>1</sup>.

1 JSA Regs, Sch, para 12(2)

S2118 Any earnings in respect of attendance at annual continuous training, in aggregate with any other earnings that the claimant may have, are disregarded to the extent of

**1.** the claimant's personal rate of JSA **less**

**2.** ten pence<sup>1</sup>.

1 JSA Regs 13, Sch, para 12(1) & (3)

## Example

On 29.9.13 Jane receives a payment of £532 from the Army Reserves in respect of the time spent away training at camp. She was at camp for 15 days from 2.9.13 to 16.9.13. Her personal rate for JSA is £71.

The DM decides that the payment in respect of time spent at camp

**1.** is taken into account, subject to the appropriate disregards

**2.** is to be treated as paid on 26.9.13 because that is the first day of the benefit week in which it is received

**3.** is attributed for a period of 14 days because it is payment specifically in respect of duties performed at a camp lasting in excess of 14 days. It is therefore taken into account from 26.9.13 to 9.10.13

**4.** that the weekly amount of the payment is determined to be £248.26

**5.** for the weeks ending 2.10.13 and 9.10.13 only £70.90 of the earnings are taken into account. This is because this is the amount of Jane's personal rate less 10 pence.

Jane's JSA resumes at its normal rate of £71 from 10.10.13.

S2119 – S2122

## Earnings from one or more occupations

S2123 A claimant may have earnings from a special occupation of less than £20, and also have another job. Up to £5 can be disregarded from the other job. The total amount disregarded can be no more than £20<sup>1</sup>.

1 JSA Regs 13, Sch, para 7

### Example

Peter earns £5 a week as an auxiliary coastguard and £20 a week as a waiter. His earnings as a coastguard are fully disregarded and £5 is disregarded from his earnings as a waiter.

S2124 – S2128

## Other cases

S2129 If none of the conditions in **S2115 – S2123** is satisfied a personal disregard of £5 a week should be allowed<sup>1</sup>.

1 JSA Regs 13, Sch, para 5

## Earnings paid for employment which has been interrupted

S2130 Disregard earnings from employment that has been interrupted<sup>1</sup>, for example by a period of sickness.

1 JSA Regs 13, Sch, para 1(1)(b)

S2131 This disregard does not include

1. retainers (including guarantee payments)
2. earnings where the claimant has been suspended from employment.

## **Earnings payable outside United Kingdom**

S2132 Earnings may be payable in a country outside the UK. If they cannot be transferred to the UK, disregard them for as long as their transfer is prevented<sup>1</sup>.

1 JSA Regs 13, Sch, para 9

## **Earnings paid in a foreign currency**

S2133 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments<sup>1</sup>.

1 JSA Regs 13, Sch, para 10

S2134 – S2149

# Employment and training schemes S2150 - S2179

## Employment and training schemes

[General](#) S2150 - S2154

[Work based learning - Skill Build and Training for Work \(Wales & Scotland\)](#) S2155 - S2156

[Employment rehabilitation programmes](#) S2157 - S2158

[Work based Training for Young People and Modern Apprenticeships](#) S2159 - S2179

## General

S2150 Employment and training schemes are funded out of public funds by the Young People's Learning Agency for England, the Chief Executive of Skills Funding or by or on behalf of the Secretary of State for Business, Innovation and Skills, Scottish Enterprise, the Highlands and Islands Enterprise, Skills Development Scotland or Welsh Ministers. Where a person is on such a scheme, establish whether they are

### 1. employees

**1.1** in remunerative work **or**

**1.2** in P/T work **or**

### 2. trainees.

S2151 Employees get a wage from their employer. Treat the wage as earnings. If the work is remunerative there will be no entitlement to benefit. If the work is P/T, take the net earnings into account, less any disregard (see **S2097** et seq).

S2152 - S2154

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

S2155 Work Based Learning (TfW in Scotland and WBL - SB in Wales) is a voluntary scheme for the long term unemployed in Scotland and Wales. It is provided by Scottish Enterprise, the Highlands and Islands

Enterprise and Skills Development Scotland or the Welsh Ministers<sup>1</sup>. 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

S2156 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.

### **Employment rehabilitation programmes**

S2157 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.

S2158 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.

### **Work based Training for Young People and Modern Apprenticeships**

S2159 WBTfYP (Skillseeker's 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).

S2160 Young people on WBTfYP (Skillseeker's 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.

S2161 – S2179

# Notional earnings S2180 - S2299

## Notional earnings

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[Earnings due but not paid](#) S2234 - S2299

## General

S2180 Notional earnings are earnings that a person does not actually have, but is treated as having. The DM should treat the claimant or any other member of the family as having notional earnings where<sup>1</sup>

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

**2.** that person

**2.1** makes no payment of earnings **or**

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

The rate for comparable employment in the area is a question of fact and must be based on evidence. It should not be assumed to be the national minimum wage. If the notional income rules are satisfied the DM must take into account at least the national minimum wage rate relevant to the claimant, unless one of the situations in **S2183** applies.

**Note:** Any reference to NMW means the hourly rate specified in relevant legislation<sup>2</sup>.

S2181 The national minimum wage provides that in most cases workers will be paid at least a standard hourly rate, dependant on their age and whether they are receiving accredited training.

S2182 Not all the money paid to a worker counts for the purposes of the national minimum wage. Also the hours for which national minimum wage should be paid depends on the type of work the worker is doing.

**Note:** If DMs are unable to decide whether the national minimum wage applies or to calculate the national minimum wage for a particular claimant further guidance should be sought from DMA Leeds.

S2183 The DM should not take notional earnings into account<sup>1</sup> where the claimant

1. satisfies the DM that the means of the person for whom the service is performed, are not enough to pay, or to pay more for the service **or**
2. is engaged by a charitable or voluntary organization or is a volunteer and the DM is satisfied that it is reasonable for the services to be provided free of charge.

1 JSA Regs 13, reg 63(4), reg 63(5)(a)

S2184 The DM should not take notional earnings into account where the claimant is participating in a work placement which is approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement commences<sup>1</sup> and for which the claimant receives no payment.

1 JSA Regs 13, reg 63(5)(b)

S2185 In **S2184** “work placement” means<sup>1</sup> work which

1. is practical work experience **and**
2. is not performed in expectation of payment.

1 JSA Regs 13, reg 63(10)

## **Remunerative work**

S2186 Where a service is being performed for some payment or in the expectation of payment, consider whether the remunerative work exclusion applies (see ADM Chapter **R2**). Meaning of voluntary organization

S2187 Voluntary organization means<sup>1</sup> a body that is not a

1. public authority **or**

## 2. LA

whose activities are not carried out for profit.

1 JSA Regs 13, reg 2(2)

### Meaning of person

S2188 The meaning of “person” as used in **S2180 1.** and **2.** includes<sup>1</sup>

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

1 R(SB) 13/86

### Performance of a service

S2189 A service performed for another person benefits that person. That benefit may be in not having to employ someone else to do the work. It might also be in getting extra work done at little, or no, cost.

S2190 A service may be performed even where there is a close family relationship<sup>1</sup>, for example mother and son. In such cases there may be no formal arrangement. The person for whom the service is performed is referred to as the employer in **S2233.**

1 R(SB) 3/92

### Details of the service performed

S2191 There may be a low rate of payment, or no payment at all being made for the service. If so, compare it with other employment by finding out

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

## When earnings are not to be treated as paid

S2195 Do not treat the claimant as having earnings where

**1.** the claimant

**1.1** works for a charitable or voluntary organization, for example Attend (formerly the League of Hospital Friends) **or**

**1.2** is a volunteer **and**

**2.** it is reasonable for the service to be provided free of charge.

## Meaning of volunteer

S2196 Volunteers<sup>1</sup> in this context are people who often have no connection to any charitable or voluntary organization. They perform, of their own free will, a service for another person. They do so without any legal obligation and expect no payment.

1 R(IS) 12/92

S2197 A person may hope or expect to be paid for their services at a later date. If payment is to be made for work currently being done, the person is not a volunteer. If payment is to be for work done at a future date, the person may still be a volunteer.

## Example

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

## Time exchange schemes

S2198 Participation in a time-exchange scheme is not voluntary work, but as the nature of the scheme is not to make any payment in cash, it is treated in the same way as voluntary work as far as the effect on JSA is concerned. The hours worked by the claimant are “banked” with the scheme and can be exchanged for the same amount of time from another member who will provide their skills to the claimant.

## Is it reasonable

S2199 There is no definition of reasonable. The question should be considered based on the circumstances of each case<sup>1</sup>. No exhaustive list can be given of relevant factors but they may include matters such as

1. whether the person providing the services is getting anything in return (for example, training which may assist the person in obtaining employment could be seen as reasonable)
2. the length of time for which the services have been offered (the shorter the period, the more reasonable it may be)
3. claimants are expected to do their best to avoid dependency on benefits. They should seek paid work wherever possible.

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

1 R(IS) 12/92

## Carers

S2200 The claimant may be caring for a sick or disabled relative. In such a situation it is often reasonable for the services to be provided free of charge. In considering this the DM should take account of all the relevant circumstances. In particular the DM should take into account matters such as

1. the general background of the way in which the claimant came to be caring for the relative
2. what options would be available if they stopped providing the care
3. the nature and frequency of the care provided
4. the expectations of the family members concerned
5. their housing arrangements
6. whether the person gave up work to look after the relative.

S2201 The DM may consider that it is **not** reasonable for the services to be provided free of charge. The question of notional earnings may then need to be considered. The DM should take into account matters such as

1. the means of the person cared for
2. whether they have talked about their financial relationship, and if so, what the results were

3. what would happen if the claimant made a charge for the care.

**Note:** Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the service to be provided free of charge.

### **Example 1**

Timothy is a single man aged 45. He lives with and looks after his elderly disabled father. His father's only income is RP and AA. Timothy is an only child and he gave up work to look after his father. Timothy is a volunteer in looking after his father. It is reasonable for him to provide his services free of charge.

### **Example 2**

Julie is 22. She lives with and looks after her disabled cousin. Her cousin gets a large weekly income from a trust fund. Julie did not give up a job to look after her cousin. The family did not expect that she should be responsible for looking after her cousin. It is not reasonable for Julie to provide her services free of charge.

## **Fine payment work - England and Wales**

S2202 Fine payment work has been introduced for people who are genuinely unable to pay their fine. Claimants are allowed to do unpaid work in the voluntary sector as an alternative. When the work is done the fine is regarded as paid. A fines officer works out the number of hours the offender is required to work to discharge the fine. The offender is allowed to reduce the number of hours he is required to work by paying part of the fine.

S2203 Offenders who are genuinely unable to pay their fine will be able to work off their fine at a fixed rate<sup>1</sup>. In these circumstances notional income should not be applied as offenders are not depriving themselves of income. They do not have the opportunity to be paid for the work they are doing, it is done to comply with a court order. Offenders cannot be said to be performing a service when they are complying with a court order.

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

## **Supervised Attendance Orders - Scotland**

S2204 These orders<sup>1</sup> are similar to fine payment work in England and Wales. They provide a community-based alternative to imprisonment for failure to pay a fine, substituting the unpaid portion of a fine for a period of constructive activity which is organised by the social work department.

1 Criminal Procedure (Scotland) Act 1995, s 235 - 237 & Sch 7

S2205 The period of these orders can vary between 10 and 100 hours. The activity undertaken often includes elements of social education, financial management and unpaid work. The granting of these orders discharges the fine<sup>1</sup>.

1 Criminal Procedure (Scotland) Act 1995, s 235(6)

S2206 – S2209

## Calculation of gross notional earnings

S2210 The maximum amount of notional earnings that can be taken into account is the lower of

1. the market rate for comparable employment in the area **and**
2. the means of the person to pay for the service.

But, the DM should take into account at least the national minimum wage rate relevant to the claimant. See **S2180** for meaning of National Minimum Wage.

## Meaning of in the area

S2211 In the area means the normal travel to work area. When considering this point, take account of where the claimant lives and works.

## Comparable employment

S2212 It is not identical or equivalent employment that has to be identified, but comparable employment. Work of a different type can be comparable if the skills and experience needed are similar to those being used.

S2213 Work of the same type will usually be comparable. But it may not always be paid at the same rate. Rates of pay can be affected by the employee's

1. skills
2. age
3. seniority
4. experience.

S2214 Do not assume that the highest rate paid is the normal rate for the job. If the amounts paid vary, compare the available evidence with the pay and requirements of the claimant's job.

## Payments in kind

S2215 Payments in kind are not earnings<sup>1</sup>. Payments in kind should not be taken into account when looking at whether a person is paid, or paid less, than the rate for comparable employment<sup>2</sup>.

1 JSA Regs 13, reg 58(2)(a); 2 R(IS) 2/98

## Example

Blossom works as a shop assistant for ten hours per week. She receives payment of £7 in cash and goods to the value of £35 each week. The goods to the value of £35 are payment in kind and are disregarded. The DM considers what the market rate for the job is and calculates notional earnings at £42 per week. He decides it is reasonable to deduct the £7 cash payment from the notional earnings and takes £35 per week into account.

## Are earnings to be treated as paid

S2216 Consider whether it is reasonable to treat earnings as paid by taking into account

**1.** whether the employer

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

**1.2** makes no payment **and**

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

## Reasonable rates of pay

S2217 The rate paid for comparable employment in the area is a question of fact. It should not be assumed to be the national minimum wage. If earnings are not immediately ascertainable, the DM treats the claimant as possessing earnings that are reasonable in the circumstances<sup>1</sup>. The DM must treat the claimant as possessing at least the national minimum wage rate that is relevant to them. See **S2180** for meaning of National Minimum Wage.

1 JSA Regs 13, reg 63(3)

S2218 The parts of the job which would normally attract earnings, or more earnings, should be identified. Ignore hours spent under training or supervision, unless the cost is outweighed by the work performed.

### **Can the person afford to pay**

S2219 The claimant may say that the employer is unable to pay. If this is the case, the claimant must submit evidence, so that the DM can consider the question. This could be

- 1.** in the case of a S/E trader, the accounts, bank statements and details of trading turnover **or**
- 2.** in the case of an individual, details of that person's resources and outgoings.

S2220 Where the service is for a person, take account of that person's actual means. This is not the amount by which their income would exceed a notional benefit level<sup>1</sup>. It is the amount of money that they actually have available to them.

1 R(SB) 3/92

S2221 The DM should consider what is reasonable in each case. Where the employer is getting income related benefits they will not normally have the means to pay. But this general rule may not always apply. For example, where the "employer" gets benefits or other payments to pay for their personal care.

S2222 – S2224

### **Amount to be taken into account**

S2225 After determining the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

S2226 From the resulting figure, make notional deductions for

- 1.** income tax **and**
- 2.** Class 1 NI contributions.

### **Deduction for notional income tax**

S2227 Income tax is made up of

1. a personal allowance - given to everyone
2. a married couple's allowance - which can be claimed by a member of a married couple
3. an additional personal allowance - given in special cases for a child or young person.

S2228 Calculate the notional income tax to be deducted<sup>1</sup>.

1 JSA Regs 13, reg 63(8)

### **Deduction for notional NI contribution**

S2229 The deduction depends on the claimant's circumstances. Employed earners between 16 and pension age have to pay NI contributions. This is subject to the amount of their earnings. Contributions are payable at a standard rate between a lower and upper earnings limit<sup>1</sup> (see ADM Chapter S2 **Appendix 2**).

1 JSA Regs 13, reg 63(8)(b)

S2230 Some married women can pay NI contributions at a reduced rate. These are women who

1. had chosen to pay the reduced rate before 12.5.77 **and**
2. were married before 6.4.77 **and**
3. have continued to renew their certificate of election.

S2231 The right to pay reduced rate contributions ends if the woman

1. gets divorced or her marriage is annulled **or**
2. becomes a widow, and has not become entitled to WB **or**
3. loses her right to WB for a reason other than remarrying **or**
4. has had no earnings on which Class 1 contributions are payable and has not been S/E in any two consecutive tax years since 5.4.78.

S2232 Standard rate deductions should be made unless there is a current certificate of election.

## Onus of proof

S2233 In general, the burden of proof rests on the DM<sup>1</sup>. But that is not always the case. The onus of proving that the employer does not have the means to pay falls on the claimant. The DM then considers what reasonable amount of notional earnings should be taken into account.

1 R(SB) 13/86

## Earnings due but not paid

S2234 Any earnings which are due to be paid to the claimant but have not been paid have to be treated as possessed by the claimant<sup>1</sup>. Where a claimant is treated as possessing earnings due but not paid then the earnings should be calculated as actual earnings<sup>2</sup>.

1 JSA Regs 13, reg 63(1); 2 reg 63(6)

S2235 **S2234** does not apply to any earnings due to paid where the claimant has lost their employment through redundancy<sup>1</sup>.

1 JSA Regs 13, reg 63(2)

S2236 – S2299

# Employment protection legislation S2300 - S2313

## Employment protection legislation

[Introduction](#) S2300 - S2301

[Types of payments](#) S2302

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### Introduction

S2300 When working out periods of continuous employment (in order to work out legislative rights that are dependant on the total length of employment with a particular employer) no distinction is made between part-time and full time service<sup>1</sup>. Periods in either type of work count when working out periods of continuous employment.

1 ER Act 96, s 211, 212(1) & 212(3)

S2301 The effect of payments or awards made under employment protection legislation on claims for JSA 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
4. which benefit has been claimed.

### Types of payments

S2302 There are many different types of payments and awards including

1. statutory guarantee payments (see **S2314**)
2. guarantee payments under a collective agreement or wages order (see **S2335**)
3. remuneration while suspended from work on medical or maternity grounds (see **S2395**)

4. awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal (see **S2405**)
5. interim relief pending determination of a claim for unfair dismissal (see **S2409**)
6. remuneration under a protective award (see **S2422**)
7. statutory redundancy payments (see **S2506**)
8. payments for certain time off work (see **S2440**).

## Treatment of payments

S2303 Most payments under employment protection legislation should be treated as earnings<sup>1</sup> (see **S2013** et seq). Take them into account in the normal way.

1 JSA Regs 13, reg 58(1)

S2304 Statutory redundancy payments<sup>1</sup> are the exception to this general rule. They should be ignored.

1 JSA Regs 13, reg 58(2)(f)

## When payments are due to be paid

S2305 A payment is due to be paid when it is due and owing. But, notional income rules allow for earnings which are due on termination of employment because of redundancy, but which have not been paid<sup>1</sup>, to be ignored. A payment is no longer due if the right to enforce payment of it is lost.

1 JSA Regs 13, reg 63(2)

S2306 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.

S2307 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.

S2308 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

# Statutory guarantee payments S2314 - S2334

## Statutory guarantee payments

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## General

S2314 Some employees working short time or who are laid off can get statutory guarantee payments. These are payable when an employer is unable to provide work<sup>1</sup>. Bad weather or a drop in business are examples of when this might happen. Statutory guarantee payments cannot be paid for any day after employment has terminated.

1 ER Act 96, s 28

S2315 Payments are made for days on which the employee would normally be required to work. Those days are fixed in the contract of employment. A fresh contract can be drawn up by agreement between the employer and employee.

S2316 A contract may provide for work only on certain days of the week. The employee normally has to work on those days but not on other days. Statutory guarantee payments are only payable for the days the employee is contracted to work.

## Employees who do not qualify

S2317 Statutory guarantee payments are not payable to employees who

1. usually work outside GB under their contracts of employment<sup>1</sup>
2. have not been continuously employed by their employer for at least one month<sup>2</sup>
3. have no normal working hours fixed by a contract of employment<sup>3</sup>, for example some insurance agents and sales representatives
4. are engaged in share fishing and paid only by a share of the profits or earnings of a fishing boat<sup>4</sup>
5. are members of the police service and armed forces<sup>5</sup>.

**Note:** Most employees on off-shore oil and gas rigs in British sectors of the Continental Shelf are entitled to payments.

1 ER Act 96, s 141(2); 2 s 29(1); 3 s 28(1); 4 s 199(2); 5 s 200(1) & 192(2)

S2318 Statutory guarantee payments are also not payable if the Secretary of State has made an exemption order<sup>1</sup> (see S2359).

**Note:** The exemption order is made by the Secretary of State responsible for employment legislation.

1 ER Act 96, s 35

## Calculation

S2319 Statutory guarantee payments<sup>1</sup> can be paid for the number of days that an individual is normally contracted to work in a week (up to a maximum of five days per week<sup>2</sup>) in any period of three months<sup>3</sup>. Thus if an employee is contracted to work three days per week he can only claim for three days in any three month period, or if he works for six days per week he can only claim for five days in any three month period. Limits on their amount and extent may be varied by order of the Secretary of State<sup>4</sup>. Whether those limits are revised or superseded each year depends on whether the retail prices index for September is higher (or lower) than the index for the previous September<sup>5</sup>. See **Appendix 3** to this Chapter for details of the amounts payable.

1 ER Act 96; s 30; 2 s 31(3)-(5); 3 s 31(2); 4 s 31(7) & Employment Relations Act 1999 s 34; 5 s 34

## Employees not entitled

S2320 An employee is not entitled to a guarantee payment if

1. there is no work because employees of the same or an associated employer<sup>1</sup> are involved in

**1.1 a strike or**

**1.2** a lock out **or**

**1.3** other industrial action **or**

**2.** an employer's offer of suitable alternative work has been unreasonably refused by the employee<sup>2</sup> **or**

**3.** reasonable requirements imposed by the employer to ensure that the employee's services are available have not been met<sup>3</sup>.

1 ER Act 96, s 29(3); 2 s 29(4); 3 s 29(5)

## **Payments not made by employer**

S2321 Guarantee payments may not have been paid for the first five workless days in a three month period. The employee and employer should be asked to state the reason. If they say that it is because a condition is not satisfied, the DM should normally accept that statement.

S2322 The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see **S2317**) or there may be no good reason given. The DM should make a determination based on the available evidence.

## **Complaints to a tribunal**

S2323 Employees may complain to an Employment Tribunal that they have not received all the payments that they should have<sup>1</sup>. If this is confirmed the employer will be ordered to pay any amount owing<sup>2</sup>. Settlements can also be reached by conciliation or arbitration.

1 ER Act 96, s 34(1); 2 s 34(2)

S2324 Where such a complaint is outstanding the DM cannot determine whether an employee is due to be paid statutory guarantee payments. That question can only be decided by

- 1.** Employment Tribunals
- 2.** an Employment Appeal Tribunal
- 3.** the Court of Appeal
- 4.** the Court of Session (in Scotland).

S2325 It may be a long time before a decision is made on an employee's complaint. Do not wait until the

tribunal's decision is known before deciding the claim. The DM can allow the claim then revise the award once a decision is made.

## Effect of statutory guarantee payments

S2326 The period over which a payment is taken into account depends on the date it is due to be paid<sup>1</sup>. That date is not always clear. It may not be the date they are actually paid.

1 JSA Regs 13, reg 56

S2327 A decision can only be made when all the evidence is available. The DM should find out

1. when any payments are due to be paid **and**
2. how many days are to be paid **and**
3. when the payments will actually be paid.

S2328 In cases of doubt the DM should contact the employer. The employer may be making a guarantee payment, or may say that one is due. That evidence should normally be accepted. The claimant's own evidence can also be accepted. Any decision by a tribunal must always be accepted.

S2329 Statutory guarantee payments are payable only for the first five days of lay off in a three month period. They cannot be paid for any other days. Payments for other days will usually be because of a collective agreement or wages order (see **S2335** et seq).

S2330 Statutory guarantee payments should be taken into account as earnings<sup>1</sup>

1 JSA Regs 13, reg 58(1)(g)

S2331 – S2334

# Collective agreements S2335 - S2394

## Collective agreements

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## Introduction

S2335 Some employers have agreements with their employees for when there is a shortage of work. These collective agreements guarantee employees

1. a minimum payment of wages **or**
2. a minimum amount of work **or**
3. both.

S2336 There may be enough work available so that employees can work, or earn, as much as is guaranteed. The agreement may not then be applied. But employees will still have the benefit of it. Their position will be the same as if it had been applied<sup>1</sup>.

S2337 National agreements are sometimes made for an industry<sup>1</sup>. They do not always cover all the workers in that industry. Some employers may not be associated with the agreement. Others may have their own local agreements which are different.

1 TULR (C) Act 92, s 178(1)

## **Terms of an agreement**

S2338 Employees may have to place their services at the employer's disposal. They may have to be available and willing to work for the employer. This can be for some or all of the working days in the week.

S2339 What an employee must do will often be set out in the agreement. The employer's guarantee will also be in the agreement. Consider both when looking at an agreement.

S2340 An agreement may not always say what the employee must do. If wages are guaranteed, the employee's services are assumed to be at the employer's disposal on every working day<sup>1</sup>. If work is guaranteed, the employee's services are assumed to be at the employer's disposal for the guaranteed period.

1 R(U) 21/56 (T)

S2341 An agreement may be subject to a separate arrangement between the parties involved. Take this into account when deciding the effects of the agreement<sup>1</sup>.

1 R(U) 21/56 (T)

S2342 Agreements are not affected by changes in the hours or days to be worked. This is so even if part of the time worked is outside the normal hours or days<sup>1</sup>.

1 R(U) 1/75

## **Changes to agreements**

S2343 Changes to agreements cannot be made until they are known to the employer and employees. They will then usually be jointly agreed and adopted. Make sure that up to date evidence of any agreement is obtained.

S2344 Employers may follow an agreement that they are not a party to. In such cases there may be a

delay in learning of any changes made. There may also be a delay in carrying out those changes<sup>1</sup>.

1 R(U) 40/56

S2345 Changes to an agreement cannot affect the JSA claimant responsibility tests for a past period. They can also have no effect on the remunerative work exclusion for a past period. This is so even if it is agreed that the change should take effect for a past period.

S2346 Employers may make backdated payments, because of a change to an agreement. The DM will need to find out when those payments were due to be paid. Employers will usually be able to give this information.

## **Whether agreement effective**

S2347 An agreement may be legally enforceable. If it is not followed, court action can be taken. This is the case where

- 1.** the agreement includes a written statement that the parties intend it to be a legally enforceable contract<sup>1</sup> **or**
- 2.** the terms of the agreement are part of an individual's terms of employment. They then gain legal effect by being part of the contract between employer and employee incorporated either expressly or by inference.

1 TULR (C) Act 92, sec 179

S2348 Agreements remain effective even if employers do not exercise their rights under them. For example, employers may waive their rights to an employee's services. The DM should take this into account when considering the employee's availability.

S2349 An employer may not fulfil the terms of a guarantee. Even so, the employee remains under the obligation imposed by the agreement. Such a situation does not usually last long. It may be ended by

- 1.** the employer being persuaded to fulfil the guarantee **or**
- 2.** the agreement being properly suspended **or**
- 3.** the employment being terminated.

S2350 Once employment ends a guarantee agreement can no longer apply. If an employee is later re-employed an agreement may start to apply again. The agreement may take account of an employee's previous period of employment.

## **Suspension of agreement**

S2351 If an agreement is properly suspended it stops being effective. Some agreements provide for automatic suspension, for example where production is affected by an industrial dispute. The suspension period will usually be the same as the stoppage of work.

S2352 Production may be affected by other forms of protest. For example, a political protest. Whether this leads to an automatic suspension will depend on the wording of the agreement. If it refers simply to an industrial dispute there will be no automatic suspension.

S2353 Agreements may be suspended by employers and trade unions acting together. Written statements will then be made confirming the suspension and giving the date from which the suspension applies. This must be a current or future date. Agreements cannot be suspended for a past period.

S2354 A suspension can be applied part-way through a working week. It will remove employees obligations for days on or after the date it applies. It will not remove them for any day before.

S2355 The suspension of any agreement may apply to

- 1.** an individual employee **or**
- 2.** a group of employees **or**
- 3.** the employees of one employer in a federation of employers.

S2356 Employees may say that an agreement no longer applies to them. The DM should ask for details of the suspension. Employers will usually be able to supply these.

S2357 An employer may act alone and suspend a guarantee without the agreement of employees. Employees may then accept the change in their terms of employment by continuing to work under the new terms. See **S2343** if the employees do not accept the change.

S2358 Some agreements set out the circumstances in which they can be revived after being suspended. The date from which this will be effective will depend on the terms of the agreement.

## Exemption orders

S2359 Where there is a collective agreement in force, the DM can make an exemption order<sup>1</sup>. This order stops employees from being entitled to statutory guarantee payments (**S2314** et seq). **Appendix 5** lists employers who are subject to such orders.

1 ER Act 96, s 35

S2360 An exemption order may be made where the agreement allows employees to

1. have access to independent arbitration and adjudication **or**
2. appeal to an industrial tribunal.

## Application of exemption orders

S2361 An order only applies where an employer is a party to the agreement. This can be as a single employer or as a member of an organization. The exemption order gives details of all parties to the agreement.

S2362 An order cannot apply where employers follow the agreement but are not party to it. In such a case employees will not be affected by an exemption order. They will be able to get statutory guarantee payments.

S2363 Employees are not entitled to payments where a collective agreement is suspended. If an exemption order has been made they will also not be entitled to statutory guarantee payments. This is because the exemption order continues to apply until it is revoked.

## Payment of wages guaranteed

S2364 Employees may be entitled to guaranteed payments of wages. These are not statutory guarantee payments and are not usually paid at the same time.

S2365 A guaranteed payment of wages is only payable if the employee is covered by an agreement. An employee is covered if

1. the agreement is in force **and**
2. the employer is a party to it **and**
3. the employee is within its terms **and**
4. the employment has not been terminated.

**Note:** Employees are within the terms of an agreement where they are the type of employee defined and have served any qualifying period required.

S2366 In national agreements the guarantee week is usually the pay week quoted in the agreement. Employers who use a different pay week have a locally agreed variation to those agreements. The week used will be the employee's normal pay week.

S2367 If a payment is guaranteed for a working week the payment covers the whole of that week. This is so regardless of how the amount is decided. The phrase "during working hours" used in this context means every working day.

## Calculation

S2368 The amount to be paid under an agreement is usually

1. a part of a normal week's wage **or**
2. equivalent to payment for a set number of hours at the basic rate.

## Effect of guaranteed wages payments

S2369 Before determining the effect of guaranteed wages payments the DM should find out

1. whether a current collective agreement applies to the employee
2. whether a payment of wages is payable under the terms of any such agreement
3. when any payment is due to be paid
4. the amount that is due to be paid
5. whether an exemption order has been made.

S2370 Any guaranteed payment of wages due to be paid should be treated as earnings<sup>1</sup> Take it into account in the normal way.

1 JSA Regs 13, reg 58(1)

## Work guaranteed

S2371 Some employees are guaranteed employment for a limited number of days or hours each week. Take any such employment into account when considering the question of the claimant's availability.

S2372 If employers cannot provide guaranteed work, payments may have to be made instead. Details of guarantees should be in the agreement.

S2373 An agreement which guarantees employment for a full working week should be clear. An agreement for an unlimited period should also be clear. Other agreements may not be so easily understood. For example, the agreement may use vague terms which are not defined.

S2374 Employees usually have to be available and willing to work **for their employer** for a guaranteed period. They have to place their services at the disposal of the employer for that period. The phrase "during working hours" in this context means that guaranteed period.

S2375 The guaranteed period may be shown in terms of days, shifts or hours. Employment may be

guaranteed for

**1.** a limited number of days **or**

**2.** a limited number of hours **or**

**3.** a limited number of weeks.

S2376

S2377 If employment is guaranteed

**1.** for set days or shifts, the employee should work those days or shifts

**2.** for a number of hours, the employer can say when the employee should work. This may be on some or all of the working days in the week.

S2378 Employers usually let employees know when they are not needed for work. This does not remove the obligation imposed by the agreement. It also does not alter the terms of any agreement<sup>1</sup>.

1 R(U) 2/58

S2379 Employees may work for the full number of days in some weeks but not in others. Any unworked days may be identified by comparing the weeks worked.

### **Example**

Louis is guaranteed two days work a week. He must be available and willing to work for his employer on those days. In alternate weeks he works two days, Monday and Tuesday. In the other weeks he only works one day, Tuesday. In the one day weeks, Monday is the other day on which he has an obligation to his employer<sup>1</sup>.

1 R(U) 22/56 (T)

S2380 It may not be possible to identify a day on which the employee should have worked. Take the day as being the last "unworked working day" in the guarantee week. That is a day on which the employee would work in a standard working week.

## Short time working instead of redundancy

S2381 Approved short time is sometimes worked as an alternative to redundancy. Some agreements allow the guarantee to be reduced when this happens. The reduction depends on the terms of the agreement but is usually

1. a percentage reduction, based on the reduction of the normal working week by the short time **or**
2. the amount of time lost.

Ask to see a copy of the agreement if there is any doubt.

S2382 A decision to work short time instead of redundancy cannot affect a past period. It will usually be made before the beginning of the pay week. Those affected will be told before the beginning of that week.

S2383 A decision can also be made part way through a pay week. Even so it can only have effect from a current or future date. If work is lost because of an emergency it cannot be decided later that it was short time. During such an emergency the normal guarantee will apply. Approved short time

S2384 Short time working usually means the loss of one or more complete days of work. In a standard five day week, each day lost is one fifth of that week. A five day guarantee would then be reduced by one fifth for each day lost.

### Example 1

Katy has a standard five day working week, Monday to Friday. The guarantee is for five days. Because of approved short time working, she only works Wednesday to Friday. Her standard working week has reduced by two fifths (40%). The guarantee is also reduced by 40%, to three days.

### Example 2

Wally has a five day working week. The guarantee only covers four of those days. Short time working of four days is introduced. His guarantee reduces by the amount of time lost. It is reduced by one day to three days.

## **Night workers**

S2385 Night workers usually work for a standard number of shifts. Where that number is reduced because of short time working, any guarantee will reduce by an equal amount.

## **Effect of holidays**

S2386 Holidays during short time working are treated in the same way as holidays during normal working. They remain holidays even when they fall on days when the employee may not be working.

S2387 Guarantee agreements may have details of what should happen in weeks when there are holidays. The guarantee period may simply be reduced by the number of days of holiday. Or it may be reduced by the same percentage as the normal working week is reduced.

## **Example**

Mario has a five day working week, Monday to Friday, but is now on short time. The guarantee is for four days a week. If he is on holiday in a pay week, the guarantee will reduce by the same percentage as his working week.

He works Monday to Wednesday, does not work Thursday, and is on holiday on Friday. His normal working week is reduced by the holiday from five days to four. The period of the guarantee is also reduced by one fifth (20%) from four days to  $3\frac{1}{4}$  days.

S2388 A holiday may fall on a day in the reduced guarantee period. If so, it has the effect of further reducing that period by a day. If it falls on a day that would not be covered by the guarantee it has no further effect.

## **Effect of guaranteed work**

S2389 Whenever work is guaranteed, consider whether the remunerative work exclusion applies and also, whether the work availability requirement is satisfied.

S2390 – S2394

# Suspension from work on medical or maternity grounds S2395 - S2404

## Suspension from work on medical or maternity grounds

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[Employees not entitled to be paid](#) S2397 - S2398

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### General

S2395 Employees may be suspended from work under certain health and safety law. This can be on medical or maternity grounds<sup>1</sup>. Employees may be entitled to be paid while they are suspended<sup>2</sup>. Take payments into account in the normal way<sup>3</sup>.

1 ER Act 96, s 64 & s 66; 2 s 64 & s 68; 3 JSA Regs 13, reg 58(1)(g)

S2396

### Employees not entitled to be paid

S2397 Employees lose the right to be paid if they unreasonably refuse the employer's offer of suitable alternative work. This applies whatever the reason for the suspension<sup>1</sup>.

1 ER Act 96, s 65(4)(a), s 68(2), s 66

S2398 Employees who are suspended on medical grounds also lose the right to be paid if<sup>1</sup>

1. they are incapable of work due to sickness **or**
2. they do not meet their employer's reasonable requirements ensuring that their services are available.

1 ER Act 96, s 65(3) & (4)(b)

## Calculation of pay

S2399 Employees suspended on

1. maternity grounds can be paid for as long as they are suspended<sup>1</sup>
2. medical grounds have a limit to the payment period. This is a maximum of 26 weeks<sup>2</sup>.

The amount payable in either case is a normal week's pay for each week of the suspension<sup>3</sup>.

1ER Act 96, s 68(1), s 66; 2 s 64(1); 3 s 69(1), s 66

## Complaints to a tribunal

S2400 Employees may complain to a tribunal that they have not received their full entitlement<sup>1</sup>. If this is confirmed the employer will be ordered to pay any amount owing. That amount is not due to be paid until the question has been decided by the tribunal.

1 ER Act 96, s 64, 68 & 70

S2401 – S2404

# Compensation for unfair dismissal S2405 - S2421

## Compensation for unfair dismissal

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## Introduction

S2405 Employees have the right to complain<sup>1</sup> to an Employment Tribunal if they think that their dismissal was unfair. If this is confirmed the tribunal can

**1.** make an order for reinstatement or re-engagement<sup>2</sup> **or**

**2.** award compensation

**2.1** when no such order is made<sup>3</sup> **or**

**2.2** if such an order is made but its terms are not fully met by the employer<sup>4</sup>.

1 ER Act 96, s 111; 2 s 113, s 114, 115 & 116(1-4); 3 s 112(4); 4 s 117, 118 & 111

S2406 Under an order for reinstatement, employees should be treated as if they had not been dismissed. All rights and privileges must be returned to them. This includes payment of any arrears they would have had but for the dismissal.

S2407 Under an order for re-engagement employees should be re-employed in a similar job to that which they lost. The terms will be set out in the order. These can include the payment of any arrears that they would otherwise have had.

S2408 It may be a long time before the tribunal make their decision. Do not wait until then before deciding the claim. The DM can revise the award once the decision is made.

## Interim relief

S2409 Some employees can apply to the tribunal for interim relief while waiting for a decision. This can only happen where the reason for the dismissal is connected with

1. TU membership or activities<sup>1</sup> **or**
2. the status or activities of employee representatives (redundancy and business transfers)<sup>2</sup> **or**
3. health and safety at work matters<sup>3</sup>.

1 TULR (C) Act 92, s 161-166; 2 ER Act 96 s 128-132; 3 s 128-132

## Amount of awards

S2410 An award of compensation can be made up of

1. a basic award, based on age and length of service<sup>1</sup> (equal to the statutory redundancy payment to which the employee would have been entitled had they been dismissed for redundancy) **and**
2. an amount to compensate for any loss suffered because of the dismissal<sup>2</sup>

1 ER Act 96, s 118(1)(a) & 119; TULR (C) Act 92, s 156; 2 ER Act 96, s 118(1)(b) & 123

S2411 The amount awarded may be reduced to take account of

1. wages that might have been earned if the employee had properly looked for other work after being dismissed<sup>1</sup> **or**
2. the employees conduct **or**
3. work which the employee may be expected to get at a lower wage than was earned in the former job **or**
4. any redundancy payment that the employee was paid **or**
5. any payment awarded under Sex Discrimination or Race Relations law<sup>2</sup>.

**Note:** This list is not exhaustive.

1 R(U) 6/85; 2 ER Act 96, s 126

S2412 Under certain recoupment law<sup>1</sup>, the award can also be adjusted to take account of the amount of benefit received over the relevant period. This amount is then recovered from the former employer by the DM (see ADM **D1301** et seq). But this only applies to formal awards and where the employee has

claimed or had been granted JSA.

## 1 The Employment Protection (Recoupment of JSA and IS) Regs 1996

S2413 Recoupment law does not always apply, for example where the award is made under Sex Discrimination or Race Relations law. Even so, the tribunal will normally reduce the award by the amount of benefit paid for the period of the award. In such cases it is unlikely that action will be taken to recover the amount of any benefit overpaid.

### **Period of awards**

S2414 The period of the award may be cut, for example where expected weekly wages are more than was paid in the former job. An Employment Tribunal will usually give details in its decision when this happens. The period covered by the award should also be given.

S2415 If the period is not clearly stated, or there is any doubt, make a decision based on the available evidence. It may be possible to work out what was intended from the text of the decision. Only do this where there is clear evidence of the tribunal's intention.

### **Example**

Ishaq earns £200 a week as a machinist. On 7.10.13, he is sacked by his employer and complains to a tribunal. On 3.2.14 the tribunal decide that he was unfairly dismissed and award him £2000 compensation. The award is from 7.10.13 and has not been cut for any reason. There are no details given of what period the award covers. The DM decides that it was clearly intended to be for 10 weeks (10 x £200 = £2000) from 7.10.13.

S2416 Always make sure that the amount and period of an award are known. The most reliable source of such information is the Employment Tribunal. Employees should also be able to give these details.

### **Effect of awards**

S2417 Awards of compensation should be treated as earnings<sup>1</sup>. Take them into account over the period for which they were awarded. There are two exceptions to this rule. These are where

**1.** the payment is due to be paid more than 52 weeks after the date the employment ended **or**

**2.** the award is compensation for loss suffered by the employee because of the dismissal<sup>2</sup> **and**

**2.1** it remains unpaid **and**

**2.2** the former employer is insolvent at the time the DM is making a decision (see **S2419**).

1 JSA Regs 13, reg 58(1)(f); 2 ER Act 96, s 118(1)

S2418 Awards as in **S2417 1.** and **2.** should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch , para 3

## **Employer insolvent**

S2419 In England and Wales, employers are insolvent<sup>1</sup> if they

**1.** have been officially declared bankrupt **or**

**2.** have made a composition (a legal compromise agreement) or arrangement with their creditors **or**

**3.** have died and their estate is to be administered under a bankruptcy order **or**

**4.** are companies **and**

**4.1** a winding up order is made **or**

**4.2** an administration order is made **or**

**4.3** a resolution for voluntary winding up is passed **or**

**4.4** debenture holders with a floating charge on the company have

**4.4.a** appointed a receiver or manager **or**

**4.4.b** taken possession of charged company property **or**

**4.5** a voluntary arrangement is approved.

1 ER Act 96, s 183(2)(a)

S2420 In Scotland employers are insolvent<sup>1</sup> if

**1.** a sequestration award is made on their estate **or**

**2.** a trust deed is executed for their creditors **or**

**3.** there is a composition contract **or**

**4.** they have died and a judicial factor is to divide their insolvent estate among their creditors **or**

**5.** they are companies **and**

**5.1** a winding up order is made **or**

**5.2** an administration order is made **or**

**5.3** a resolution for voluntary winding up is passed **or**

**5.4** a voluntary arrangement is approved **or**

**5.5** a receiver is appointed.

1 s 183(2)(b)

S2421

# Protective awards S2422 - S2439

## Protective awards

[Introduction](#) S2422 - S2424

[Terms of an award](#) S2425 -S2426

[Payments not made by employer](#) S2427

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## Introduction

S2422 Employers must consult their employees' representatives in good time about certain redundancy proposals<sup>1</sup>. Those representatives may be

1. elected by the employees **or**
2. representatives of a recognized TU.

1 TULR (C) Act 92, s 188

S2423 Employers who mean to dismiss at least 20 employees within 90 days or less must start to consult at least

1. 90 days before the first dismissal, if they mean to dismiss 100 or more employees **or**
2. 30 days before the first dismissal, if they mean to dismiss 20 - 99 employees.

S2424 Employee representatives can complain to a tribunal if an employer does not correctly follow the rules. The Employment Tribunal can then make a protective award if the complaint is confirmed.

## Terms of an award

S2425 Under a protective award employers must make payments to any employees who have been made redundant. They must also pay any who have not been dismissed but whose representatives

should have been consulted. The payments must be made for a protected period, which begins with the earlier of

- 1.** the date on which the first of the dismissals takes effect **or**
- 2.** the date of the award.

S2426 The period will last for as long as the tribunal decide is reasonable in the circumstances. It cannot last for more than

- 1.** 90 days, if 100 or more employees are to be made redundant within 90 days **or**
- 2.** 30 days, if 20 - 99 employees are to be made redundant within 90 days.

## **Payments not made by employer**

S2427 Employers may not pay all that they should do under a protective award. Employees can then complain to an Employment Tribunal<sup>1</sup>. If the complaint is confirmed the employer will be ordered to pay any amount owing.

1 TULR (C) Act 92, s 192

## **Protective award not applied for**

S2428 There may be cases where

- 1.** the employer has not followed the rules **and**
- 2.** the employee representative has not complained to an Employment Tribunal **and**
- 3.** the employer has paid the redundant employees in lieu of consultation.

A payment in lieu of consultation is a payment in lieu of remuneration and falls within the definition of earnings<sup>1</sup>.

1 JSA Regs 13, reg 58(1)

## **Effect of payments**

S2429 Payments made under a protective award are earnings<sup>1</sup>. They should be taken into account in the normal way.

S2430 - S2439

# Time off work provisions S2440 - S2499

## Time off work provisions

[General](#) S2440 - S2450

[Complaints to a tribunal](#) S2451 - S2499

### General

S2440 Under employment protection law, employees may be allowed time off during normal working hours

1. for duties as a TU or elected employee representative<sup>1</sup>
2. for TU activities<sup>2</sup>
3. for public duties<sup>3</sup>
4. to look for work or make arrangements for training<sup>4</sup>
5. for antenatal care<sup>5</sup>
6. for occupational pension scheme trustees<sup>6</sup>
7. to make arrangements for dependants<sup>7</sup>
8. to undertake study or training if they are a young person<sup>8</sup>.

1 ER Act 96, s 61; 2 TULR(C) Act 92, s 170; 3 ER Act 96, s 50; 4 s 52; 5 s 55; 6 s 58; 7 s 57A; 8 s 63A

S2441 Employees may be entitled to be paid while they are taking this time off. Any payments due are earnings<sup>1</sup>. Take them into account in the normal way.

1 JSA Regs 13, reg 58(1)

S2442 – S2450

## Complaints to a tribunal

S2451 Employees may complain to a tribunal that they have not been allowed to take time off<sup>1</sup>. If this is confirmed the tribunal may make an award of compensation. The amount will be what the tribunal considers fair in the circumstances, taking into account any loss suffered.

1 TULR (C) Act 92, s 168(4) & 170(4); ER Act 96, s 51(1), 54(1), 57, 57B(1), 60(1)(a), 63(1)(a), 63C(1)(a)

S2452 Employees may also complain that they have not received their full entitlement to payment<sup>1</sup>. If this is confirmed the employer will be ordered to pay the amount that the tribunal finds is due.

1 TULR (C) Act 92, s 169(5) & 172; ER Act 96, s 54(1)(b), 57(1)(b), 60(1)(b), 63(1)(b), 63C(1)(b)

S2453 A DM cannot decide whether an employee is due to be paid. That question can only be decided by the tribunal. Any amount awarded by the tribunal is not due to be paid until the question has been decided. It should not be taken into account until then.

S2454 – S2499

# Payments on termination of employment S2500 - S2522

## Payments on termination of employment

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[Types of payments](#) S2503 - S2509

[Employment never existed](#) S2510 - S2514

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### Introduction

S2500 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 ended<sup>1</sup>. They are not paid for any other reason. They would not be paid but for the employment ending.

1 R(U) 4/92

S2501 The effects of these payments depends on

1. what type of payment is involved
2. when the payment is due to be made
3. which benefit has been claimed
4. whether there is an unworked or waived period of notice
5. whether the work that has ended was remunerative or P/T
6. when the work ended.

S2502

## Types of payments

S2503 There are many different types of payments that might be made. These include

1. payments due for any period before the employment ended (see **S2504**)
2. holiday pay (see **S2505**)
3. PILON
4. refunds of occupational pension contributions
5. pension lump sums
6. payments, remuneration or awards made under employment protection and trade union law (see **S2300** et seq)
7. payments in kind (see **S2509**)
8. income tax refunds (see **S2060**)
9. compensation payments (see **S2600** and **S2630**)
10. statutory redundancy payments (see **S2506**).

### Payments for period before employment ended

S2504 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

S2505 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

S2506 Employees who have been continuously employed for two years may be entitled to statutory redundancy payments if they are

1. dismissed by reason of redundancy<sup>1</sup> or
2. laid off or kept on short time for more than a set number of weeks<sup>2</sup>.

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

S2507 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.

S2508 Statutory redundancy pay is based on<sup>1</sup>

1. the length of continuous employment
2. the age of the employee
3. the amount of a week’s pay (see **Appendix 2** to this Chapter for the maximum amount that can be used).

1 ER Act 96, s 162

## Payments in kind

S2509 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, but not if the amount of any voucher has been taken into account as earnings of an employed earner (see **S2093**)
3. free accommodation.

## Employment never existed

S2510 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 a payment of 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 one week and is a payment of income.

S2511 – S2514

## **Payments not received**

S2515 Notional income rules allow for earnings which are due on termination of employment as a result of redundancy, but which have not been paid, to be ignored<sup>1</sup>.

1 JSA Regs 13, reg 63(2)

S2516 Any benefit which would not have been paid if the claimant had received the earnings due to him at the right time will be recovered when those earnings are paid.

S2517 In the case of insolvent employers, benefits paid will be deducted from the amount awarded by the Insolvency Service. In these circumstances, cumulative totals do not accumulate on JSA for the period covered by an Insolvency Service payment. In cases where JSA has been paid prior to the Insolvency Service award, cumulative totals will need to be adjusted to reduce them as appropriate.

**Note:** In all other cases benefit paid will be recovered under existing procedures.

## **Delay in payment**

S2518 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**

S2519 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.

S2520 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.

### **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.

## **Uncashed cheques**

S2521 A cheque does not form part of a person's actual resources until it has been cleared through the banking system. The question of notional resources may need to be considered where a claimant receives a cheque which

- 1.** the claimant is refusing to cash **or**
- 2.** has been returned by the claimant to the employer.

## **British Telecom Newstart Scheme**

S2522 This is a programme where employees agree to terminate their employment in return for a

payment. It is not a redundancy programme. As it is a voluntary scheme those who opt for it do not receive PILON but they do receive a payment based on the length of service and salary. This payment falls into the definition of compensation payment<sup>1</sup> (see **S2630**).

1 JSA Regs 13, reg 58(1)(b) & (4)

# Whether employment has terminated S2523 - S2629

## Whether employment has terminated

[Recognised, customary or other holidays](#) S2525 - S2527

[Meaning of terminated](#) S2528 - S2533

[Contract terminated immediately before period of absence from work](#) S2534 - S2539

[Teachers](#) S2540 - S2559

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[Adoption leave](#) S2571 - S2574

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[Agreement not to work notice](#) S2577 - S2629

## Introduction

S2523 Employees may be temporarily away from work because

1. of a recognized, customary, or other holiday **or**
2. time off has been allowed under employment protection law (see **S2440**).

S2524 Employees who are away from work temporarily may continue to be employed. Their employment is not terminated.

## Recognised, customary or other holidays

S2525 Employment will not have terminated if a claimant is absent because of a holiday, or an absence authorised by the employer.

S2526 When considering if an absence from work is because of a holiday, DMs should<sup>1</sup>

- 1.** have regard to the reality of the situation **and**
- 2.** consider the claimant's contractual entitlement to holidays **and**
- 3.** only treat as a holiday the weeks of the holiday for which the claimant is actually paid.

1 R(JSA) 5/03

S2527 An employee will generally be entitled to four weeks annual leave under the relevant legislation<sup>1</sup>. DMs should assume that the claimant is entitled to four weeks paid annual leave unless there is evidence of entitlement to more than four weeks.

1 The Working Time Regulations 1998

## Meaning of terminated

S2528 Terminated is not defined in the legislation. It should be given its ordinary meaning<sup>1</sup>. Termination of employment should also be given its ordinary meaning.

1 R(U) 7/68(T); R(U) 8/68(T)

S2529 When a contract of employment is terminated, the employment under it is also terminated. This happens as soon as rights and obligations under the contract end<sup>1</sup>. Whether there is any intention of resuming the employment is not relevant.

1 R(U) 7/68 (T)

S2530 A decision may be made to terminate a contract from a future date. It is the date of termination and not the date of the decision that is relevant.

S2531 There is a distinction between the contract itself and any employment under it<sup>1</sup>. A contract may continue during a period when the person employed under it does no work. It may also continue when the person employed is not expected to work, for example

- 1.** when there is a temporary lay-off **or**
- 2.** during a period of holiday (even if wages are not paid for the holiday).

1 R(U) 8/68 (T)

S2532 Whether a contract has terminated is a question of fact to be decided on the available evidence. Employers may say that an employment has been terminated. That does not necessarily mean that it has terminated. Employment cannot be terminated without employees being given notice of that fact<sup>1</sup>.

Notice cannot be given retrospectively.

1 Brown v. Southall & Knight (1980) ICR 617

### **Example**

Russell is on 2 weeks paid holiday from work. On Friday his employer sends him a letter stating that his employment will end on Saturday. Russell is entitled to one week's notice. He is abroad and does not get the letter until Monday. The employment does not end until Monday, when Russell gets the letter and has a reasonable opportunity to read it.

S2533 It should usually be accepted that a contract has terminated

- 1.** when due notice of termination has been given, received and has expired **or**
- 2.** if a payment in lieu of notice has been made (except for in the example at **S2532**) **or**
- 3.** at the end of an engagement which was for a fixed period.

### **Contract terminated immediately before period of absence from work**

S2534 DMs should decide that an employee is still in employment where the contract of employment

- 1.** is still current **or**
- 2.** ends at the beginning of what would be a period of absence even if the contract continued and it is expected that the employee will return to that employment after the absence because
  - 2.1** there is an express agreement (written or verbal) **or**
  - 2.2** it is reasonable to assume that a long standing practice of re-employment will continue.

### **Employment suspended**

S2535 Employees may be temporarily laid off when there is no work. In such cases the contract of employment may not be terminated. Employment may be simply suspended.

S2536 During a period of suspension the situation may change. It may become clear that the contract has terminated. The employment should then be regarded as terminated from the date the contract

ends.

## **Employment resumed**

S2537 People may still be employed, under a continuing or running contract, where

- 1.** they were expected to resume their employment on a later fixed date **and**
- 2.** they return to that employment as arranged **and**
- 3.** there is no evidence of any fresh arrangement for their re-appointment.

S2538 The number of times this may have happened should be taken into account<sup>1</sup>. For example, a person may have resumed their employment many times without the need for re-appointment. This would suggest that they are employed under a running contract.

1 R(U) 8/68 (T); R(U) 7/68

### **Example 1**

Nigel is a violinist working P/T as a music teacher. He was originally employed for a fixed period of one term in 2000. He continued teaching at the school for many years without having to be re-appointed.

At the end of the summer term in 2013, he received no formal notification of discharge or re-employment. Early in the summer holidays the understanding between him and his employer was that he would resume next term. There was no evidence of any fresh arrangement for re-appointment.

It was decided that he was employed under a running contract. During the 2000 summer holiday his employment was merely suspended, not terminated<sup>1</sup>.

1 R(U) 8/68 (T)

### **Example 2**

Angus is a printer's warehouseman employed on a basis known in the trade as "casual". His union allocates him to one of a number of employers for night shift work, one night at a time.

After a night's work he receives his pay for that night and his P45 is handed back to him. He does not know whether he will work for the same employer, or at all, on the next night. It is decided that at the end of each night's work the employment is terminated<sup>1</sup>.

1 R(U) 7/68(T)

S2539 People may be employed under a series of fixed term contracts. Under employment protection law<sup>1</sup> these people may be regarded as being in continuous employment. For example, when redundancy and unfair dismissal is being considered. Such a decision is only for the purposes of the employment protection legislation. It is not relevant for JSA purposes. It should not influence the DM in determining whether employment has terminated.

1 ER Act 96

## Teachers

S2540 Teachers and lecturers may not be permanent members of school or college staff. In all such cases ask to see the contract of employment and examine

- 1.** the provisions about the period of appointment **and**
- 2.** any requirement for notice to terminate the employment.

S2541 The period of the appointment may not have been given. If notice is needed to terminate the employment, find out whether notice was given. If it was, find out how and when it was given. If there is no satisfactory evidence that proper notice was given, the contract may not have been terminated.

S2542 The terms of the employment may not be in the contract itself. They may be set out in some other document. For example, an LEA's "Conditions of Employment and Tenure of Teacher". Ask for a copy of the relevant document.

S2543 The claimant or employer may say that no written contract of employment was issued. Ask for a copy of the letter of appointment and any other letters about the terms of the appointment.

S2544 Most teachers who are not permanent members of staff fall into one of two groups. This is usually the case for those working in LEA schools. The groups are

- 1.** sessional or temporary teachers, employed for a fixed period, normally of an academic term or year
- 2.** supply, casual, or occasional teachers, employed to cover for the absences of others.

## **Sessional or temporary teachers**

S2545 Contracts and letters of appointment are usually clear when the employment is for a fixed period. The fixed period will be quoted and will usually be for academic terms or years.

S2546 A fresh contract or letter of appointment may be issued at the start of any later period. In such a case there is a series of agreements<sup>1</sup>. Employment is terminated at the end of each period.

1 R(U) 8/68

S2547 Teachers may continue employment after the end of the first fixed period. Their periods of employment may be separated only by school holidays. If there is no evidence of re-appointment it may be that their employment is continuous. Their separate periods of employment could be a continuation of the first appointment period.

S2548 Consider the terms of the original appointment carefully. Find out exactly how and when it was agreed that the employment would resume. Make sure that all the facts are obtained before making a decision.

## **Supply teachers**

S2549 Supply teachers have their names on an LEA list of teachers who

- 1.** are willing to take employment at short notice **and**
- 2.** may be offered employment as and when vacancies arise due to absences (usually through sickness).

S2550 Employment may be offered on a day to day basis, for example when it is not known how long an absentee will be off work. It may also be offered for an indefinite or set period, for example, to cover maternity leave.

S2551 When supply teachers are added to the list, they may be sent a letter advising them of that fact. They may also be advised of what might happen, for example, that employment may be offered as and when vacancies arise. Any such written notification is not a contract of employment.

S2552 The letter places no obligation on the LEA to offer employment. The teacher is not obliged to accept any vacancies offered<sup>1</sup>. When there is a vacancy the teacher is contacted, by telephone or in writing, and offered employment.

1 R(U) 2/87

S2553 A written contract may not always be issued. For example, where the period of employment offered is short. Such employment terminates as soon as the duties for the period covered by the offer are finished<sup>1</sup>.

1 R(U) 2/87

S2554 The period of employment offered may include a school holiday. For example, it may be for an open or a closed period that stretches over a holiday. To decide whether employment continues during the holiday, the DM should find out

1. what provision was made for terminating the appointment **and**
2. whether there was a definite agreement about what would happen after the holiday. For example, was it agreed that employment would continue at the start of the next term (or half term) or because it is reasonable to assume that a longstanding practice of re-employment will continue<sup>1</sup>.

1 R(JSA) 5/03

### **Whether a supply teacher's employment has terminated during a school closure**

S2555 It is likely that a supply teacher's employment will have terminated where<sup>1</sup>

1. the period of employment ends immediately before a school holiday **and**
2. there is no definite agreement about whether the claimant will be returning to the employment at the start of the following term **and**
3. the claimant has no established cycle of work which includes school holidays.

1 R(JSA) 5/03

S2556 – S2559

### **Maternity leave and absence**

S2560 Under employment law<sup>1</sup>, all pregnant employees have the right to at least 26 weeks **ordinary maternity leave**, regardless of their length of service. Additional maternity leave may also be taken<sup>2</sup>.

S2561 In both type of cases, employees should generally return to

1. their original employer (or successor)
2. the same job
3. on terms and conditions no less favourable than those which applied before the absence.

S2562 Employees entitled to 26 weeks ordinary maternity leave must return to work at the end of that period. Additional maternity leave will start immediately after ordinary maternity leave and continue for up to a further 26 weeks.

S2563 Employees continue to be employed during the 26 week ordinary maternity leave period. It counts towards the employee's period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

S2564 The employment contract will continue in a very restricted form during a period of additional maternity leave, but may also be ended during this period by agreement, resignation or dismissal. Statutory continuity of service will count any periods of additional maternity leave; but contractual length of service does not have to.

S2565

### **Suspension on maternity grounds**

S2566 Some employees may be suspended from work on maternity grounds. This can happen if there is a health and safety risk to new or expectant mothers that cannot be removed. Such employees are normally entitled to be paid while they are suspended.

S2567 Employees continue to be employed during the maternity suspension period. It counts towards the period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

### **Claim within 29 weeks of child-birth**

S2568 A woman may make a claim within 29 weeks of having given birth. That claim may include a period which would have been a holiday but for the maternity leave. Find out whether she has any contractual right to return to work in addition to her statutory right.

S2569 The contract may not have continued during the 29 week period. For example, the woman may have to be re-appointed or re-employed rather than simply resume her duties.

S2570 Employment should then normally be regarded as terminated on the last day for which wages or salary was paid. This is so even though the employer has a statutory duty to re-employ the woman if she exercises her right to return.

### **Adoption leave**

S2571 Adoption leave<sup>1</sup> means a period of absence from work on ordinary or additional adoption leave under relevant legislation<sup>2</sup>.

1 PA Regs, reg 2(1) & 3; JSA Regs 13, reg 2(2); 2 Employment Rights Act 1996, s 75A & 75B

S2572 Employees who adopt a child under the age of 18 have the right to 26 weeks ordinary adoption leave<sup>1</sup>. A further 26 weeks of additional adoption leave will also be available<sup>2</sup>.

1 PA Regs, reg 18(1); 2 reg 20(2)

S2573 Employees continue to be entitled to their normal terms and conditions of employment during the 26 weeks of ordinary adoption leave and during the 26 weeks additional adoption leave<sup>1</sup>.

1 PA Regs, reg 19

S2574 Following a period of adoption leave, employees have the right to return to the same job<sup>1</sup>.

## **Paternity leave**

### **Ordinary paternity leave**

S2575 Ordinary paternity leave<sup>1</sup> means a period of absence from work on leave following the birth or adoption of a child under relevant legislation<sup>2</sup>. It is available to employed parents who

- 1.** have or expect to have parental responsibility for a new child **and**
- 2.** are the biological father of the child or are the mother's husband or partner **and**
- 3.** have completed at least 26 weeks continuous service with their employer up to and including the 15th week before the baby is due **and**
- 4.** have told their employer of their intention to take leave by the end of the 15th week before the expected week of the child's birth.

1 JSA Regs 13, reg 2(2); 2 ER Act 1996, s 80A & 80B

### **Additional paternity leave**

S2576 Additional paternity leave means<sup>1</sup> a period of absence from work on leave following the birth or adoption of a child under relevant legislation<sup>2</sup>. The period of absence cannot exceed 26 weeks.

1 JSA Regs 13, reg 1(3); 2 ER Act 1996, s 80AA & 80BB

## **Agreement not to work notice**

S2577 Many employees are entitled to notice before their employment is ended. Their employment does not terminate until that notice period ends where they

- 1.** are given the full period of notice that they are entitled to **and**
- 2.** do not have to work that notice **and**
- 3.** get their normal salary for the notice period.

This is sometimes called gardening leave.

S2578 – S2629

# Payments on termination S2630 - S2674

## Payments on termination

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[Effect of compensation payments](#) S2632 - S2638

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[Remuneration for period before employment ended](#) S2640 - S2650

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## Meaning of compensation payment

S2630 Compensation payment means<sup>1</sup> any payment made for the termination of employment other than

1. payments for any period before the employment ended (see **S2640** et seq)
2. “emoluments” (whether in money or in kind) accrued before the employment ended (see **S2651**)
3. holiday pay (see **S2652** et seq)
4. certain payments, remuneration or awards under employment law and trade union law, including awards of compensation (see **S2300 – S2453**)
5. statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see **S2664 – S2666**)
6. payments in kind (see **S2667**)
7. refunds of contributions to which the claimant is entitled under an occupational pension scheme
8. payments of occupational pensions (see ADM **Chapter S1**)

**9.** periodic sums paid because of redundancy (see **S2014**)

**10.** payments for a period when the claimant is on maternity or sick leave (see **S2130**)

**11.** payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see **S2078**)

**12.** any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme.

1 JSA Regs 13, reg 58(4)

S2631 The DM must show that a payment of compensation has been received. How the payment is described is not binding. A payment of PILON is a compensation payment for the purposes of JSA.

## **Effect of compensation payments**

S2632 The DM should determine

- 1.** if a compensation payment has been received (see **S2630**) **and**
- 2.** the period covered by the compensation payment (see **S2675** et seq) **and**
- 3.** if the claim is affected by the compensation payment (see **S2633** et seq).

S2633 How compensation payments affect a claim depends on whether the work that has ended was remunerative or P/T.

## **Remunerative work**

S2634 A payment of compensation may be received on termination of remunerative work (see ADM **Chapter S1**). These payments should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 1

S2635

## **Part-time work**

S2636 The work that ended may be P/T, which is **not** remunerative. If it ended **on** or **after** the first day of

entitlement treat, any compensation payment<sup>1</sup> as earnings from the date on which it is due to be paid. Take it into account for the period covered by the payment<sup>2</sup> (see **26675** et seq). If it ended **before** the first day of entitlement any compensation payment should be disregarded<sup>3</sup>.

1 JSA Regs 13, reg 58(4); 2 reg 54(8); 3 Sch, para 2

S2637 – S2638

## **Payment by someone other than employer**

S2639 Compensation is normally paid by the employer, but may be paid by someone else. It is compensation regardless of who pays, for example

- 1.** LAs may make payments where people have to give up employment handling food and drink under public health laws
- 2.** one company taking over another may discharge that other company's obligations to pay compensation
- 3.** the government may make payments in lieu of notice to employees of an insolvent employer under employment protection law<sup>1</sup>.

1 ER Act 96, s 182, 184(1), (2) & (4), 185, 186 & 187; TULR (C) Act 92, Sch 2

## **Remuneration for period before employment ended**

S2640 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. Such pay is due because of the employment itself not because of its termination. It is not a compensation payment.

S2641 Severance payments may be made when employment ends. Such payments may be worked out on past years of service in the employment. But they are not made for a period before the employment ended. They will not be exempt from the definition of a compensation payment<sup>1</sup>.

1 R(U) 5/92

## **Remunerative work**

S2642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded<sup>1</sup>. This includes any payments held in hand by the employer, when the

employment ends. It does not include any

1. awards made under employment protection or trade union law (including “out of court” settlements)
2. retainers including
  - 2.1. statutory guarantee payments
  - 2.2. payments made where a person has been suspended on medical or maternity grounds.

1 JSA Regs 13, Sch, para 1

S2643

### **Part-time work**

S2644 The employment that ends may have been P/T, that is **not** remunerative (see ADM Chapter **R2**). How this affects the claim will depend on when the employment ended.

S2645 If employment ends **before** the first day of entitlement disregard any earnings except<sup>1</sup> any

1. payment by way of a retainer including
  - 1.1. statutory guarantee payments
  - 1.2. payments made where a person has been suspended on medical or maternity grounds.
2. awards made under employment protection or trade union law (including “out of court” settlements).

1 JSA Regs 13, Sch, para 2

S2646 If employment ends **on or after** the first day of entitlement, take any earnings from it into account in the normal way.

S2647 The employment will not have ended where

1. the contract of employment is still current **or**
2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant will resume employment after the period of absence because

**2.1** there is some express arrangement that employment will resume **or**

**2.2** it is reasonable to assume that a long standing practice of re-employment will continue.

S2648 – S2650

## Emoluments

S2651 Emoluments are forms of profit or gain from employment, including perks or advantages of the employment. They may be in money or in kind. They accrue while the claimant is employed but may not be paid until the employment ends. Examples are

**1.** payments made for items that the employer had previously agreed to pay, for example subscriptions to a private health scheme, or payment of a child's school fees

**2.** payments of employees' expenses incurred during the employment, for example a car mileage allowance, travelling expenses, or the cost of overnight accommodation

**3.** rights under a share option agreement<sup>1</sup>

**4.** pension lump sums, where entitlement accrued during working life and not simply because of the employment ending. Employees are automatically entitled to such lump sum payments from their pension schemes.

**5.** lump sum payments of commuted pension where entitlement to the pension accrued before the employment ended. These may be paid under schemes that allow employees to cash in part of their weekly pension entitlement. The amount cashed in is then taken as a lump sum.

**Note:** This does not include any part of the sum paid because of enhancement due to the employment ending. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

**Note:** In **4.**, this does not include any part of the lump sum paid because of enhancement due to the employment ending, for example in an early retirement or redundancy package. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

1 R(U) 5/92

## Holiday pay

### Employment terminated

S2652 A person may receive a payment of holiday pay on the termination of employment. If the holiday

pay is payable before the first day of entitlement it should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 1

S2653

### **Remunerative work**

S2654 Where the employment was remunerative the holiday pay should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 1(1)

S2655

### **Part-time work**

S2656 The employment that ended may have been P/T and therefore **not** remunerative. If it ended **on** or **after** the first day of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that the amount of JSA payable may be reduced for the appropriate period. Any holiday pay payable more than four weeks after the P/T work ended should not be treated as earnings. If it ended **before** the first day of entitlement the holiday pay should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 2

### **Mariners**

S2657 Special rules apply to mariners<sup>1</sup> employed on vessels not used wholly or mainly for the disposal of sludge.

1 SS (Mariners Benefits) Regs 1975, reg 2

S2658 Such mariners are not regarded as available for employment (see ADM Chapter **R4**) on any day in the period of leave where

- 1.** they are entitled to leave with pay when a voyage ends, **and**
- 2.** their employment is terminated before the end of that period of leave.

S2659 Where the employment has terminated holiday pay should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 1

## Employment interrupted

S2660 If employment is interrupted **on** or **after** the first day of entitlement all holiday pay is taken into account in the normal way with any payable more than four weeks after the interruption<sup>1</sup> not treated as earnings.

1 JSA Regs 13, reg 58(1)(c)

## Remunerative work

S2661 Where employment was remunerative and is suspended any holiday pay is taken into account in the normal way.

## Part-time work

S2662 Where part-time employment is suspended any holiday pay received **on** or **after** the first day of entitlement is taken into account in the normal way but any payable more than four weeks after<sup>1</sup> is not treated as earnings.

1 JSA Regs 13, reg 58(1)(c)

S2663

## Statutory redundancy payments

S2664 Employees may receive statutory redundancy payments on termination of employment. Such payments are capital and do not affect JSA.

S2665 An employer may pay employees more redundancy pay than they are entitled to under the law. Any excess is not exempt from the definition of a compensation payment (see S2630). This means that where P/T employment ceases **on** or after the first day of entitlement the DM should calculate the period over which the compensation payment should be taken into account.

S2666 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments for example severance, ex-gratia or golden handshakes may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is capital. Where P/T employment ceases **on** or **after** the first day of entitlement the DM should calculate the period over which the compensation

payment is to be taken into account (see **S2675** et seq).

## Payments in kind

S2667 Payments in kind (see **S2509**) are not compensation payments<sup>1</sup>. They are not earnings and should not be taken into account.

1 JSA Regs 13, reg 58(2)

S2668 – S2671

## Bonus payments

S2672 A person may receive a bonus payment on the termination of employment. The DM should consider the facts of each case to determine if the bonus payment is a compensation payment. Facts to be considered include

1. why has the bonus payment been made **and**
2. does the employer normally run a bonus scheme to reward employees for length of service, quality of work etc. If so, how much is normally paid?

### Example

Perry was in remunerative work for the period from January to June. His employer promised him a loyalty bonus if he worked for the company for over four months. The loyalty bonus of £150 was paid when Perry left in June. Perry claims JSA.

The DM decides that the loyalty bonus is

1. not a compensation payment because the bonus payment was a reward for working for the employer for over four months **and**
2. earnings which are disregarded because remunerative work has ended (see S2634).

S2673 – S2674

# Calculation of period compensation payment taken into account

## S2675 - S2684

### Calculation of period compensation payment taken into account

[When period ends - summary](#) S2675 - S2677

[Maximum period](#) S2683 - S2684

S2675 The period over which a compensation payment is taken into account is a continuous period. It is not affected by the days on which a person would normally have worked (see flowchart at **S2768**).

S2676 The period starts on the date on which the payment is treated as paid<sup>1</sup> (see **S2769** et seq). When it ends will depend on what the employer says about the payment<sup>2</sup>. The payment may be wholly or partly

- 1.** in lieu of notice **or**
- 2.** because of the early termination of a contract of employment for a term certain (a “fixed term contract”) **or**
- 3.** for a combination of the reasons listed in **1.** and **2.** **or**
- 4.** for another reason.

1 JSA Regs 13, reg 54(8), reg 56; 2 TULR (C) Act 92, s 188-192

S2677 The period will end<sup>1</sup> on the

- 1.** expiry date, which is based on
  - 1.1** the period of notice **or**
  - 1.2** the date when any fixed term contract was due to run out (see **S2714**) **or**
- 2.** date on which any consultation period would have ended (see **S2744**) **or**
- 3.** standard date, which is worked out using a set formula (see **S2750**).

1 JSA Regs 13, reg 54(8)

## When period ends - summary

S2678 Where an employer says that the compensation payment is

**1.** in lieu of notice or because of the early termination of a fixed term contract **and**

**2. not** also in lieu of consultation

the period ends on the expiry date<sup>1</sup>.

1 JSA Regs 13, reg 54(10)

S2679 Where an employer says that the compensation payment is in lieu of notice or because of early termination of a fixed term contract, the period ends on the later of<sup>1</sup>

**1.** the expiry date **or**

**2.** the standard date.

1 JSA Regs 13, reg 54(8)(b)

S2680

S2681 In any other case, for example, where an employer says that the compensation payment is not of any nature<sup>1</sup>, the period ends on the standard date<sup>2</sup>.

1 R(U) 1/94; 2 JSA Regs 13, reg 54(8)(c)

S2682 The guidance at **S2678** – **S2681** is summarized in a flowchart at **S2768**.

## Maximum period

S2683 The period over which a compensation payment can be taken into account is limited to 52 weeks from the date on which the payment is treated as paid<sup>1</sup>. This is so even where payments are made for longer periods.

1 JSA Regs 13, reg 54(9)

## Example

Employment ends on 20th October. Compensation of 62 weeks is due to be paid on that day. The payment would normally be taken into account up to 26 December of the following year. It is a

compensation payment so it can only be taken into account for the period 20th October to 17th October of the following year, 52 weeks after.

S2684

# The expiry date S2685 - S2739

## The expiry date

[Meaning of the expiry date](#) S2685

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## Meaning of the expiry date

S2685 The expiry date means<sup>1</sup>

**1.** the date on which any period of notice

**1.1** was due to run out under statute, contract or custom (see **S2687** and **S2704**) or

**1.2** would have run out had it not been waived or

**2.** where the period of notice is longer, than the period given in **1.1**, the date on which that longer period runs out (see **S2725**) or

**3.** the date on which any fixed term contract was due to end (see **S2714**).

## Meaning of period of notice

S2686 Period of notice means<sup>1</sup> the period of notice of termination of employment

**1.** that a person is entitled to by

**1.1** statute **or**

**1.2** contract (whichever is the longer) **or**

**2.** if they are not entitled to such notice, the period of notice which is customary in the employment.

1 JSA Regs 13, reg 54(10)(a)

## Entitlement to notice

### Contractual and statutory entitlement differs

S2687 The period of notice to which the claimant is entitled is the longer of

**1.** the period to which the claimant is entitled by contract (see **S2693**) **and**

**2.** any statutory minimum (see **S2688**).

### Statutory right to minimum period

S2688 Employment protection law gives most employees the right to a minimum period of notice<sup>1</sup>. The exceptions are

**1.** crew members on ships registered in the UK, employed under crew agreements approved by the Secretary of State<sup>2</sup>

**2.** crown servants and members of the armed forces<sup>3</sup>

**3.** employees who have broken their contract of employment (see **S2701**).

**Note:** Most employees on offshore oil and gas platforms in British sectors of the Continental Shelf are entitled to notice.

1 ER Act 96, s 86; 2 s 199; 3 s 191 & 192

S2689 Employees must have been continuously<sup>1</sup> employed for one month or more before being entitled to minimum notice<sup>2</sup> under statute. The amount of notice they should get depends on how long they have been employed. They should be given at least

1. one week's notice, if they have been continuously employed for less than two years
2. one week's notice for each year of employment, if they have been continuously employed for between two and twelve years
3. twelve weeks notice if they have been continuously employed for twelve years or more.

1 ER Act 96, part XIV; 2 s 86

S2690 Employees who have been continuously employed for four weeks or more should give their employers at least one week's notice<sup>1</sup>. This does not increase with longer service.

1 ER Act 96, s 86

S2691 Fixed term employees on a determinate fixed term contract have the end date of their contract notified to them at the start of their contract, and those on project work have the same right to legislative notice as other employees.

S2692

### **Contractual entitlement**

S2693 The period of notice due under a contract is usually stated in the contract. But that period may be extended by agreement between the employer and employee, for example by a redundancy agreement. The period of notice agreed then becomes the period due under the contract.

S2694 If there is evidence that this may have happened for example, if the employer pays more PILON than was due under the written contract ask to see a copy of the agreement. If there is no written agreement, ask to see any other evidence of the change.

S2695 Contractual entitlement is affected if the agreement gives the employee a legal right to a longer period. In such a case, the employee is contractually entitled to the longer period. If the agreement simply provides for more compensation than would otherwise be due, contractual entitlement is not affected.

S2696 The period of notice due may not be stated in writing. If so, ask the employer and employee whether it was agreed verbally. If it was and they agree on the period due, that period will be the period due by contract.

S2697 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment<sup>1</sup>. The DM should consider what is reasonable taking account of all the circumstances and the custom in the type of employment.

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

S2698 The DM should note that

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

### **Employment terminated by employee**

S2699 An employee is not entitled to notice from the employer if it was the employee's initiative to end the employment.

### **Employment terminated by mutual agreement**

S2700 Employees are entitled to notice if they agree to an employer's suggestion or give in to their pressure (see **S2732** where rights to notice are waived). Employers may still make payments in such circumstances. The DM should ask for evidence of the circumstances that led up to the termination. A determination can then be made as to whether the initiative came from the employer or the employee.

### **Employee dismissed for misconduct**

S2701 Employers may pay compensation even if they have dismissed employees without notice, for example for breach of contract, or misconduct. This is known as summary dismissal. Contracts of employment often state the offences that will attract summary dismissal.

S2702 Employees who have broken their contracts are not usually entitled to notice. But an employer may not be sure that summary dismissal was justified, and may pay compensation. If the employer

**1.** says that PILON has been paid as per statute or contract, accept the employer's statement and treat the claimant as being entitled to notice

**2.** does not say that the payments were in lieu of notice, accept the claimant has no right to notice but not where there is clear evidence to the contrary.

S2703 Where it is accepted that no notice is due, there can be no expiry date. The standard date should then be used (see **S2750**).

## **Notice customary in the employment**

S2704 Not all employees are entitled to statutory notice. Some employees have contractual entitlement. Some have neither statutory nor contractual rights to notice, for example civil servants.

S2705 In such cases, the expiry date is based on the period of notice normally given in the employment. This is known as the notice customary in the employment. The expiry date is the date on which the customary notice is or would be due to run out<sup>1</sup>.

1 JSA Regs 13, reg 54(10)

### **Civil servants**

S2706 Civil servants have no statutory or contractual rights to notice. The DM will need to find out what is customary. Evidence can be found in publications detailing the terms and conditions of service for civil servants, such as the

- 1.** Civil Service Management Code
- 2.** Pay and Conditions of Service Code
- 3.** relevant Departmental codes.

S2707 Departments frequently run voluntary early retirement or severance schemes. Publications that advertise such schemes may also provide evidence of customary notice.

S2708 Customary notice may vary according to how the employment ends. Where there is compulsory redundancy, it is customary for departments to give

- 1.** 6 months notice to all except casual staff (subject to **2.** and **3.**)
- 2.** 9 months to those aged over 60 with between 10 and 25 years service
- 3.** 12 months to those aged over 60 with less than 10 years service.

**Note:** The periods in **2.** and **3.** cannot be extended past the 65th birthday.

S2709 Where redundancy is voluntary, it is customary for most Departments to negotiate notice with the employee. Such notice is either explicitly or implicitly agreed.

### **Example 1**

Employee and employer agree that the employee will work for another three months before the employment ends. Both parties have agreed that the notice period is three months. The customary notice is also three months.

### **Example 2**

Employee and employer agree that the employee will leave on a particular date. That date is one month from the date on which the agreement is made. There is an implicit agreement to one month's notice and the customary notice is therefore one month.

## **Payment made for a period longer than notice period**

S2710 The expiry date is the date the longer period would have been due to run out if the employer says a compensation payment has been paid for a period longer than the period of notice (see **S2686**). This does not apply if the

- 1.** claimant had a fixed term contract (see **S2714**) or
- 2.** DM considers it unreasonable (see **S2711**)<sup>1</sup>.

1 JSA Regs 13, reg 54(10)

### **Example**

Max claims JSA after being made redundant. He is entitled to twelve weeks notice. Max works six weeks of his period of notice after being given notice by his employer. His employer says that the payment which was made to Max when he finished work included twelve weeks PILON.

The DM does not have to consider a longer period because the employer says she has paid Max twelve

weeks PILON which is no more than the period of notice he was entitled to.

**Note:** The DM would have to consider whether it is unreasonable to extend the expiry date to the date the longer period would have run out if the employer had said she paid more than twelve weeks PILON.

S2711 To determine if it is unreasonable to extend the expiry date to the date when the longer period would have run out, the DM should take into account

1. the amount of the compensation payment **and**
2. the level of pay normally received by the claimant in the employment<sup>1</sup> **and**
3. any other relevant fact<sup>2</sup>.

1 JSA Regs 13, reg 54(11); 2 R(SB) 6/88

S2712 The expiry date is the date when the

1. longer period is due to run out if the DM does not consider it unreasonable<sup>1</sup> **or**
2. period of notice (see **S2686**) runs out (see **S2725**) if the DM does consider it unreasonable<sup>2</sup>.

1 JSA Regs 13, reg 54(10) 2 reg 54(11)

### **Example 1**

Brian earns £150 a week. He is entitled to four weeks notice. He gets £900 PILON when his employment ends which the employer says is for six weeks.

The DM decides the expiry date is the date when the six weeks PILON runs out because it is not unreasonable as the payment made by the employer is equal to the pay Brian would normally earn over six weeks.

### **Example 2**

Amrit earns £200 a week. She is entitled to four weeks notice. She gets £800 PILON when her employment ends which the employer says is for 26 weeks.

The DM decides the expiry date is the date when the period of notice runs out because it is unreasonable to extend the expiry date as the payment made by the employer is equal to the pay Amrit would normally earn over four weeks.

## Payment made for a period shorter than notice period

S2713 The DM should calculate the period over which a compensation payment should be taken into account as normal (see S2675 et seq) where

1. an employer pays **or**
2. an employee accepts, for whatever reason

a compensation payment for a period shorter than the notice period<sup>1</sup>.

1 R(U) 1/94

### Example

Joan was in remunerative work until 28.2.14. She claims JSA. On termination of her employment, her employer pays two weeks PILON because this is all the employer could afford to pay. Joan's contract states that she is entitled to four weeks notice.

The DM calculates the period over which the compensation payment (PILON) should be taken into account and determines that the expiry date applies. The compensation payment is taken into account for the period that the notice was due to run out under Joan's contract, that is four weeks.

## Fixed term contracts

S2714 Some employees have contracts of service that state the period of the employment, for example a number of years. These are called contracts for a term certain or fixed term contracts.

S2715 Not all such contracts provide simply for employment for a stated period. Some provide that employment can

1. end during the stated period, providing notice is received **or**
2. continue after the end of the stated period until notice is received.

S2716 Where an employee was employed under a fixed term contract, ask to see a copy of it. Where the employee was entitled to notice, the guidance in **S2687** et seq should be applied.

S2717 A fixed term contract may end before completion of the employment period provided. Payment may then be made as compensation for the early termination of the contract. The amount paid is not relevant. The expiry date is the date on which the contract was due to expire<sup>1</sup>.

1 JSA Regs 13, reg 54(10)

## **Date on which notice given**

S2718 When considering the period of notice, the DM must first establish the date notice was given.

## **Receipt of notice**

S2719 Notice is given only when it is

**1.** received by

**1.1** the employee<sup>1</sup> **or**

**1.2** the employer **or**

**1.3** someone acting on their behalf **or**

**2.** mutually agreed between the parties involved.

1 Brown v. Southall & Knight (1980) ICR 617 at 626-9

S2720 To be effective notice must be received by the employee or someone acting officially on their behalf. A notification of proposed redundancies sent to the DM<sup>1</sup> is not notice to terminate the employment.

1 TULR (C) Act 92, s 193

S2721 Notice is given when both the employee and employer know that the employee will leave on a specific date.

### **Example 1**

Cleo is on holiday abroad. On Friday 15th November her employer posts her notice that her employment will end on Friday 22nd November. She returns home and reads the letter on Friday 29th November. Notice is given on 29th November.

### **Example 2**

On Friday 3rd May, Eric's employer posts him notice that his employment will end on Friday 10th May.

Eric is on holiday, but rings home on Tuesday 7th May. His mother reads the notice to him over the phone. He returns home and reads the notice himself on Friday 17 May. Notice has been given on Tuesday 7th May.

## **Notice**

S2722 Notice can be given orally or in writing. It must be definite and clear. Notice cannot be valid if it states that one party can withdraw without the agreement of the other. It is valid if it shows that notice could be withdrawn by mutual consent.

## **Example**

An employer sends a letter giving the date on which an employee must leave under a voluntary redundancy scheme. It advises that the employee can withdraw if the financial estimates given are wrong. It says that the notice can be withdrawn by mutual agreement. The letter does not count as valid notice unless and until the employee indicates their acceptance.

S2723 A provisional date of termination in a general statement is not effective notice. Whether any notification or announcement is notice to terminate employment is a question of fact. It may simply be a general warning of closure or an intention to reduce staffing<sup>1</sup>.

1 R(U) 6/73; R(U) 4/80

## **Example 1**

On Tuesday 14th May Diana is warned by letter that there will be redundancies. She is told that her name is on the list of employees to be made redundant. The employer proposes to give formal notice on Friday 17th May.

On Monday 20th May she receives notice that her employment will end on Friday 24th May. Notice is received on Monday 20th May. The letter of 14th May is only a warning letter and is not effective notice.

## **Example 2**

In January, employees receive notice that their factory will be closing on a gradual basis. This is probably going to start in March and end in November. This general notice of the intended closure is not effective notice.

S2724

## Calculation of date notice runs out

S2725 The date on which a period of notice runs out must be decided. Do not count the day on which the notice is received. For example, an employee entitled to one week's notice, receives notice on Monday. That notice runs out on the following Monday. This applies even if

1. notice is received before the employee has done any work on that day **or**
2. it is stated that the week's notice runs out before the date calculated.

**Note:** This does not apply where notice is to operate from a future date.

S2726 Where a month's notice is due, the date that notice runs out will vary. It will depend on whether notice was received on the last day of the month or not<sup>1</sup>.

1 R(U) 5/73; R(U) 9/73

### Example 1

Enya is dismissed without notice on 14th June. She is entitled to one month's notice. Her notice period runs out on 14th July.

### Example 2

Frank is dismissed without notice on 29th February. He is entitled to one month's notice. His notice period runs out on 31st March.

## Notice to operate from a future date

S2727 Notice can operate from a future date<sup>1</sup>. It may be given before the employment terminates but not have effect until after then.

1 Adams v GKN Sankey Ltd [1980] IRLR 416

S2728 The employer must state that the notice is to run from a future date. This may be implicitly or explicitly. It does not apply where the employer simply attributes the PILON to a future period. When working out when such a period of notice runs out, include the date it is said to operate from.

### Example 1

A letter of notice is prepared on Friday 17th May, but is dated Monday 20th May. It is handed to the employee personally on 17th May. The letter says that employment will end on Friday 17th May. The

employee is entitled to one week's notice.

The employer is implicitly saying that notice will run from a future date, Monday 20th May. Notice was received by the employee on 17th May. A period of one week from and including Monday 20th May ends on Sunday 26th May, that is when the notice runs out.

### **Example 2**

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May and that her notice is to run from Monday 27th May. She is entitled to one week's notice.

The employer is explicitly saying that notice will run from a future date, Monday 27th May. The employee received notice on 17th May. A period of one week from and including Monday 27th May ends on Sunday 2nd June, when the notice runs out.

### **Example 3**

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May. She is entitled to one week's notice.

The letter also says that the employer is to pay her £150 PILON for the period Monday 27th May to Saturday 1st June. This is because she has got holiday pay for week beginning 20th May.

In this case the employer is not saying that notice will run from a future date. The employee received notice on Friday 17th May. It runs out on Friday 24th May.

**Note:** See **S2652** for the treatment of holiday pay.

## **Notice shortened or extended**

S2729 Employment may not always end on the date given in the notice. Before that date arrives, further notice may be received that it will end on a different date. The employer and employee might also agree that the notice period should be shortened or lengthened.

S2730 When this happens notice does not have to be given again. Do not recalculate the notice from any later date<sup>1</sup>. Full notice does have to be given again if

**1.** notice is cancelled rather than shortened **or**

2. employer and employee enter into a new contract of employment, rather than lengthening the notice period.

1 Mowlem Northern Ltd v Watson [1990] IRLR 500

S2731 Where there is a new contract the notice due is the period to which the employee is entitled under it. It may also be the period which is customary in the employment.

## **Waiver of notice**

S2732 Rights to notice may be given up (waived)<sup>1</sup>. There may be evidence that this has happened. For example, employees may sign agreements waiving their rights to notice. Employees waive their rights when they

1. leave their employment voluntarily **or**

2. agree with their employers to leave without serving out notice or getting PILON.

1 ER Act 96, s 86(3)

## **Calculation of date notice would have run out**

S2733 Where notice has been waived, the expiry date is the date that the notice would have run out. Employees leaving voluntarily, or mutually agreeing to leave, would be entitled to the amount of notice that the employer must give. The amount that has to be given by the employee is not relevant. There may be clear evidence of the date that the notice would have run out.

### **Example**

On Monday 6th May, Angus is given notice that he is to be made redundant. The letter says that his employment will end on Friday 30th August. He is entitled to twelve weeks notice. He is also told that if he wants to leave on Friday 31st May he can do so by agreeing to it in writing. He agrees to leave on Friday 31st May.

In this case the notice would have run out on Friday 30th August. That is the date on which his employment would have ended if he had not waived his right to notice.

S2734 In most cases there will be no evidence of the date when notice would have run out. Work it out from the date the employer and employee both knew exactly when the employee would leave. Do not include that date in the calculation.

### **Example 1**

On Friday 6th September Freda tells her employer that she will be leaving on Friday 13th September. She has to give her employer one week's notice. The employer would have had to give her six week's notice. Freda is paid compensation.

Freda waives her right to notice by leaving voluntarily. The DM calculates the date that notice would have run out.

There is no evidence of the date notice would have run out so it is worked out from the 6th September. That is the date when both Freda and her employer knew when the employment would end. Six weeks from the 6th September, excluding that day, ends on Friday 18th October. That is when the notice period would have run out.

## **Example 2**

An employer advertises a voluntary redundancy scheme. Employees are told that if they are accepted under the scheme they must leave their employment on Friday 28th June.

Kevin, who is entitled to twelve weeks notice, applies on a form dated Monday 6th May. He hands the form to his employer on that date. On Monday 20th May, his employer gives him a letter dated that day, telling him that he has been accepted on the scheme.

It details the payments that Kevin will be entitled to. It also confirms that the date of leaving will be Friday 28th June, subject to Kevin's written agreement to the terms offered. On Tuesday 21st May Kevin signs his agreement and posts it the same day. His employer gets it on Thursday 23rd May.

Kevin has waived his rights to notice by leaving with mutual agreement. The date notice would have run out is worked out from Thursday 23rd May. That is the date when both Kevin and his employer know that the employment will definitely end on Friday 28th June. 12 weeks from Thursday 23rd May, excluding 23rd May, ends on Thursday 15th August, when the notice period would have run out.

S2735 – S2739

# Payment for consultation period in employment protection law S2740 - S2749

## Payment for consultation period in employment protection law

[Calculation of period](#) S2743

[Date consultation period would have ended](#) S2744 - S2749

S2740 There are rules that must be followed before employees can be made redundant<sup>1</sup>. One of these is that employers have to consult employees' representatives as soon as possible. Those representatives may be

1. elected by the employees **or**
2. representatives of a recognized trade union.

S2423 gives further details.

1 TULR (C) Act 92, s 188-192; TURER Act 93, s 34

S2741 Employees representatives can complain to an Employment Tribunal if an employer does not follow the rules. The Employment Tribunal can then make a protective award (see **S2422**). If the employer fails to pay, the employee can complain to an Employment Tribunal.

S2742 An employer may dismiss employees as redundant without consulting the employees representatives. The employer may then pay compensation. This is often in return for the representatives not complaining to an Employment Tribunal.

## Calculation of period

S2743 Some or all of a payment of compensation may be said to be in lieu of consultation. The period over which it is taken into account will end on the later of<sup>1</sup>

1. the date on which the consultation period would have ended (see **S2744**)

**2.** the expiry date, where the payment is also PILON or because of early termination of a fixed term contract (see **S2685** et seq)

**3.** the standard date (see **S2750**).

**Note:** See **S2679** and flowchart at **S2768**.

1 JSA Regs 13, reg 54(8)

## **Date consultation period would have ended**

S2744 The date the consultation period would have ended depends on

- 1.** the number of employees that the employer dismissed, or intended to dismiss, as redundant **and**
- 2.** the period within which they were to be made redundant.

S2745 The consultation period ends on

- 1.** the 90th day after consultations began, if 100 or more employees are to be dismissed within 90 days  
**or**
- 2.** the 30th day after consultations began, if 20 or more employees are to be dismissed within 90 days.

S2746 The 30 and 90 days start on the day that consultations began. If consultations did not begin before employment ended, the period starts on the day after the employment ended. When working out the consultation period, all seven days of the week should be used.

### **Example 1**

An employer intends to dismiss 250 employees as redundant within 90 days. Consultations with the unions start on 6th May. Ida's employment ends on 31st May. She gets compensation in lieu of consultation. The period of consultation starts on 6th May and ends on 3rd August.

### **Example 2**

An employer intends to dismiss 120 employees as redundant within 90 days. Consultations with the unions have not begun when Noel's employment ends on 31st May. He gets compensation in lieu of consultation. The period starts on 1st June and ends on 29th August.

S2747 – S2749

# The standard date - other cases **S2750 - S2768**

## The standard date - other cases

[Meaning of the standard date](#) S2751

[Employee works out notice due from employer](#) S2752 - S2754

[No notice due](#) S2755 -S2759

[Calculation of period - the set formula](#) S2760 - S2768

[Calculation of period for JSA - flowchart](#)

S2750 Compensation is taken into account over a period starting on the date it is treated as paid<sup>1</sup>. When that period ends depends on what the employer says about it. Unless the employer says that some or all of the compensation was paid

1. in lieu of notice (see **S2686**) or
2. on account of the early termination of a fixed term contract (see **S2714**)

the standard date should be applied (see **S2679 – S2681**).

1 JSA Regs 13, reg 56 & 54

## Meaning of the standard date

S2751 The standard date means<sup>1</sup> the earlier of

1. the expiry date (see **S2685** et seq) and
2. the last day of the period worked out by using a set formula (see **S2760**).

1 JSA Regs 13, reg 54(10)

## Employee works out notice due from employer

S2752 The expiry date is the last day of the notice period due to an employee. But employees who get compensation may stay in their employment for the whole of that period. The expiry date will then be the last day of that employment. That will also be the standard date.

S2753 Employees may not be allowed to stay in their employment for the full notice period due. The expiry date will then be after the last day of employment. The standard date will also be after the last day of that employment.

S2754 Some employees may be allowed to work for longer than the notice period due to them. Their expiry date will then be before the last day of their employment. The standard date will also be before the employment ends.

## **No notice due**

S2755 In some cases there may be no period of notice due to an employee. For example, they may

- 1.** have been dismissed summarily due to misconduct (see **S2701**) or
- 2.** be in employment where no notice is due under contract, statute, or by custom, for example, MPs or clergy.

S2756 In such cases, an expiry date cannot be worked out. The standard date will then be the last day of the period worked out by using the set formula.

S2757 – S2759

## **Calculation of period - the set formula**

S2760 The DM should

- determine the amount of compensation the claimant is due
- divide that amount by the maximum weekly amount
- round any fraction down to a whole number
- treat that number as a period of weeks
- work out when a period of that length would end.

## Amount of compensation

S2761 Employers must give employees a written statement showing how the redundancy payment has been worked out<sup>1</sup>. If there is any doubt, ask to see a copy of the statement.

1 ER Act 96, sec 165

S2762 The exception to this rule is where an Employment Tribunal makes an award, stating the amount to be paid. The employer does not then have to provide a written statement. The Employment Tribunal report will give details of the amount due.

## Maximum weekly amount

S2763 The maximum weekly amount is set by employment protection law<sup>1</sup> (see Appendix 2) and can change<sup>2</sup>. It is used to work out

1. awards of compensation for unfair dismissal **and**
2. redundancy payments **and**
3. payments made by the government to employees of insolvent businesses.

1 ER Act 96, s 227(1); 2 Employment Rights (Increase of Limits) Order

S2764 Divide the amount of compensation due by the maximum weekly amount. Always use the figure that is set on the date that the compensation is due<sup>1</sup>. This is so regardless of the claimant's earnings from the employment.

1 JSA Regs 13, reg 54(10)

## Number of weeks

S2765 The result of the calculation in **S2764** must be rounded down to the nearest whole number. That number is treated as a number of weeks. For this purpose week means a period of seven consecutive days<sup>1</sup>.

1 JSA Regs 13, reg 2(2)

## Last day of the period

S2766 The DM should work out the period starting on the date the compensation is treated as paid<sup>1</sup>. The period will then last for the relevant number of weeks. It will end on the last day of that period.

## Standard date

S2767 Compare the last day of the period worked out as in **S2766** with the expiry date (see **S2685**). The standard date is the earlier of the two dates.

### Example 1

Liam is entitled to six weeks notice and is given notice on 27 June. His employment ends on 11 July. Notice would have run out on 8 August. He is due to be paid £4,000 by his employer on 11 July (£2,408 is statutory redundancy pay, £200 is holiday pay and the rest is ex gratia). The maximum weekly amount is £280.

Compensation is  $£4,000 - £2,608 = £1,392$  divided by  $£280 = 4$  (rounded down).

A period of four weeks starting on 11 July ends on 7 August.

The standard date is the earlier of 8 August (the expiry date) and 7 August (the date worked out using the set formula).

The standard date in this case is 7 August.

### Example 2

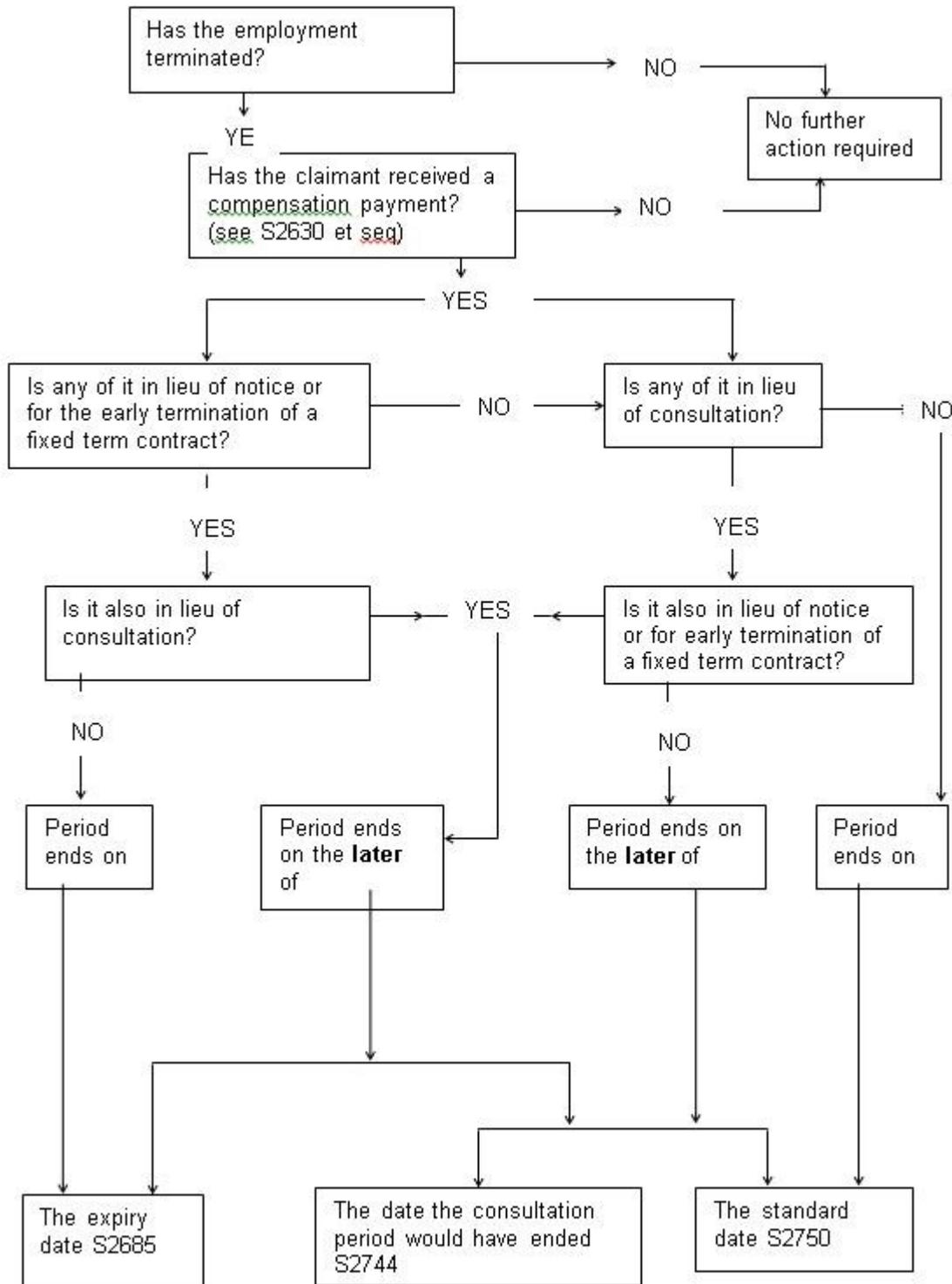
Lynn is entitled to three calendar months notice. On 31 May she is dismissed without notice. Notice would have run out on 31 August. She gets an ex gratia payment of £2,570 on 1 June. The maximum weekly amount is £280.

$£2,570$  divided by  $£280 = 9$  (rounded down). A period of nine weeks starting on 1 June ends on 2 August.

The standard date is the earlier of 31 August (the expiry date) and 2 August (the date worked out using the formula). The standard date in this case is 2 August.

S2768 The guidance in **S2675 – S2767** is summarized in the following flowchart which should only be considered in cases where the claimant's P/T work terminates **on** or **after** the first day of entitlement.

# Calculation of period for JSA - flowchart



# The calculation and treatment of earnings S2769 - S2770

## The calculation and treatment of earnings

[Introduction](#) S2769

[Disregard of fractions](#) S2770

### Introduction

S2769 The following guidance deals with

- 1.** how to decide the period over which earnings should be taken into account - see **S2771** et seq
- 2.** how to calculate the weekly amount of earnings - see **S2799** et seq
- 3.** the special rules for modifying the amount taken into account - see **S2806** et seq.

### Disregard of fractions

S2770 Where the calculation of earnings results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage<sup>1</sup>.

**Note:** If deciding the amount of earnings includes more than one calculation, each fraction should be rounded to the claimant's advantage.

# Period over which earnings are taken into account S2771 - S2773

## Period over which earnings are taken into account

[Calculating the period S2771 - S2773](#)

### Calculating the period

S2771 To determine the period over which earnings 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 **S2790**)
3. the date on which earnings are due to be paid (see **S2774** et seq)
4. the date on which earnings are treated as paid (see **S2782** et seq) **and**
5. either<sup>1</sup>

**5.1** the period for which the payment is made **or**

**5.2** the amount of

**5.2.a** JSA that would be payable without the earnings **and**

**5.2.b** any disregard the DM would normally make on the weekly amount of the earnings.

**Note:** If the payment is in respect of when employment ends see **S2798** where different kinds of earnings are received for overlapping periods.

1 JSA Regs 13, reg 54(2);

S2772 – S2773

# Date on which earnings are due to be paid S2774 - S2781

## Date on which earnings are due to be paid

[Earnings when employment ends S2777 - S2781](#)

S2774 To determine 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.

S2775 When deciding the date a payment is due the DM should consider that

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
  - 3.1 the available evidence
    - 3.1.a does not give a due date<sup>1</sup> **or**
    - 3.1.b is not considered credible **and**
  - 3.2 no further evidence can be obtained.

1 R(SB) 33/83

S2776 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
  - 1.1 express (in writing or verbal) **or**
  - 1.2 implied (by the actions of or understanding between the two parties) **and**
2. may be varied
  - 2.1 if both parties agree to it (the variation may be express or implied) **or**

**2.2** because of certain action taken by either party (such as dismissal or resignation).

## **Earnings when employment ends**

S2777 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.

## **Notice given and worked**

S2778 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.

S2779 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**

S2780 Where the employer terminates employment without due notice they are legally obliged to pay on the last day of employment<sup>1</sup>

- 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.

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

1 R(SB) 23/84

### **Employment terminated by employee without notice**

S2781 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay

- 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

on the day that each payment is due to be paid.

## Date on which earnings are treated as paid S2782 - S2790

### Date on which earnings are treated as paid

[Earnings due before the first benefit week of the claim](#) S2783

[Earnings due in or after the first benefit week of the claim](#) S2784 - S2786

[Treatment of arrears of earnings](#) S2787 - S2790

S2782 The date on which earnings treated as paid may not be the same as the date on which it is due to be paid under S2774 et seq.

### Earnings due before the first benefit week of the claim

S2783 A payment of earnings should be treated as paid on the date it was due, if it was due to be paid before the first benefit week of the claim<sup>1</sup>.

**Note:** A payment of may be due before the date of claim and still be within the first benefit week (see **S2790**).

1 JSA Regs 13, reg 56(a)

### Earnings due in or after the first benefit week of the claim

S2784 If a payment was due to be paid in or after the first benefit week of the claim, it should be treated as paid on<sup>1</sup> the first day of the benefit week in which it is

**1.** due to be paid **or**

**2.** practicable to take the payment into account (if this rule is used the DM should record the reasons for using it).

1 JSA Regs 13, reg 56(b)

### Example

Alice is unemployed and receives JSA fortnightly in arrears. Her benefit week ending day is Thursday. She attends the Jobcentre on Thursday 21 November, and receives two weeks benefit for the period 8 November to 21 November on 23 November.

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

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

The DM treats the earnings as paid on 22 November, which is the first day of the first week in which it is practicable to take the payment into account. (See **S2807** for guidance on the special rule which applies when two payments are taken into account for the same week because of the impracticability rule.)

S2785 The practicability rule cannot apply where notification is received in time for the income to be taken into account in the correct benefit week but it is not actioned until after the payment of JSA has been made.

S2786

## Treatment of arrears of earnings

S2787 If the amount of a regular payment increases, or the claimant starts to receive a new payment, 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 **S2774**).

### Arrears paid on due date

S2788 Arrears which are paid on the due date should be

**1.** treated as paid on the first day of the benefit week in which

**1.1** they are paid **or**

**1.2** it is practicable to take them into account<sup>1</sup> **and**

**2.** taken into account

**2.1** for a period calculated in the normal way (see S2791 et seq)<sup>2</sup> **and**

**2.2** from the date on which they are treated as paid.

1 JSA Regs 13, reg 56; 2 reg 54(2)(a)

### Example

The claimant has P/T earnings of £10 weekly due each Thursday. The claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £11 weekly from 12.7.13, but the agreement says that the increase is not payable until 1.8.13, when payment is made at the new rate with three weeks arrears, a total of £14.

The DM treats the payment as made on 31.7.13.

The new rate of £11 is taken into account in the benefit week beginning 31.7.13, and the £3 arrears are taken into account for the period 31.7.13 to 20.8.13.

The total amount of earnings taken into account in the benefit weeks beginning 31.7.13, 7.8.13 and 14.8.13 is £12 (£11 plus £1 arrears).

From benefit week beginning 21.8.13, the new weekly rate of £11 is taken into account.

### **Arrears paid after the due date**

S2789 Arrears paid after the due date should be treated as paid

- 1.** on the first day of the benefit week in which they were due **or**
- 2.** on the due date if they were due before the first benefit week of the claim<sup>1</sup>.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery<sup>2</sup>.

1 JSA Regs 13, reg 56(a); 2 SS A Act 92, s 74

### **Example**

The claimant normally receives monthly earnings in arrears on the last day of each month.

The claimant's earnings increase from 1 April each year, first payment at the higher rate being due on 30 April.

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

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

## Meaning of benefit week

S2790 A benefit week<sup>1</sup> is a period of seven days ending with the day determined by the last two digits of the claimant's NINO as shown in the following table unless the Secretary of State arranges otherwise.

NI No.	Day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

<sup>1</sup> JSA Regs 13, reg 2(2)

## Period for which payment is made S2791 - S2798

### Period for which payment is made

[Identifiable period](#) S2791 - S2795

[No identifiable period](#) S2796 - S2797

[Different kinds of earnings received for overlapping periods](#) S2798

### Identifiable period

S2791 If the period for which a payment of earnings is made can be identified, then the length of time for which it is taken into account will depend on whether the payment is monthly or not. Where the period for which the payment is made is

1. a month<sup>1</sup>, it should be taken into account for a period ending with the date immediately before the next monthly payment would have been treated as paid (whether or not the next monthly payment is actually paid) **or**
2. other than a month<sup>2</sup>, it should be taken into account for an equivalent period (for example a payment for a week should be taken into account for a week).

The period begins from the date determined by following the guidance at **S2782** et seq.

1 JSA Regs 13, reg 54(2)(a); 2 JSA Regs 13, reg 54(2)(b)

### Employer's pay arrangements

S2792 Where an employer has specific pay arrangements, which mean employees are paid at specific intervals, such as monthly, a payment should be taken into account for a period equal to the pay interval<sup>1</sup>.

**Note:** Earnings from holiday pay and compensation payments which are made for part of a day should be taken into account for a day<sup>2</sup>.

1 R(IS) 10/95; 2 JSA Regs 13, reg 54(7)

### Supply teachers

S2793 An LA may create a pool or panel of supply teachers. The LA calls on these teachers as and when needed, but the teachers may refuse work if they wish. In these circumstances the DM should note that

1. the supply teachers have a separate contract of employment for each period they work<sup>1</sup> **but**

2. if the LA pays them at regular intervals for the work they have done, each payment should be taken as paid for a period equal to the pay interval<sup>2</sup>.

1 R(U) 2/87; 2 R(IS) 10/95

### Example

A supply teacher is paid on the 16th of every month for all the work she has done in the previous month. On 16 October she is paid for the four days she worked during September. The DM takes the payment into account for one month.

### Reservists

S2794 Earnings which a claimant has derived from being a member of a reserve force

1. in respect of a period of annual continuous training for a maximum of 15 days in any calendar year **or**
2. in respect of their first year of training for a maximum of 43 days in a year which begins with their first day of training<sup>1</sup>

are treated in accordance with ADM **S2795**.

1 JSA Regs 13, reg 54(3)(a)

S2795 The earnings, whether paid to the claimant alone or together with other earnings derived from the same source, have to be taken into account

1. in accordance with the table<sup>1</sup> below where this is applicable **or**
2. in any other case, over a period equal to the number of days of the training period<sup>2</sup>.

1 JSA Regs 13, reg 54(3)(c); 2 reg 54(3)(b)

Period of training in days	Period of time over which earnings are to be taken into account in days
8 to 10	7
15 to 17	14
22 to 24	21

29 to 31	28
36 to 38	35
43	42

### Example 1

Dylan is in receipt of JSA and has also recently joined the Army Reserve. He takes part in a training exercise as part of his first year in the Reserve. Dylan receives payment in respect of his participation. The payment is for 16 days training. The DM takes the payment of earnings into account for a period of 14 days from the date that it is treated as paid (see ADM **S2782** et seq) as a weekly amount (see ADM **S2799** et seq). The payment is subject to a disregard.

### Example 2

Helen is in receipt of JSA and has also recently joined the Army Reserve. She takes part in a training exercise as part of her first year in the Reserve. Helen receives payment in respect of her participation. The payment is for 13 days training. The DM takes the payment of earnings into account for a period of 13 days from the date that it is treated as paid (see ADM **S2782** et seq) as a weekly amount (see ADM **S2799** et seq). The payment is subject to a disregard.

## No identifiable period

S2796 If the period for which a payment is made cannot be identified (i.e. it's not in respect of a week, month etc) then the DM should determine the number of weeks over which a payment has to be taken into account by applying the formula<sup>1</sup>

$$\frac{E}{J + D}$$

where-

E is the amount of net earnings

J is the amount of JSA which would be payable had the payment not been made

D is an amount equal to the total of the sums disregarded from the payment.

## Example

Sheila is in receipt of JSA of £40 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Sheila's employer offers her a payment of £7,200. She can agree to accept this sum as a final and full settlement of any unequal treatment claim that she could have brought against her employer. Alternatively, Sheila can have the option of taking a net payment of £720 but this amount would be deducted from any future settlement won through action at an Employment Tribunal or as part of any negotiated settlement between herself and her employer.

Sheila decides to accept the sum of £720 and this is duly paid to her with her salary by the employer. The DM decides that the payment is a payment of earnings but cannot identify a period in respect of which the payment is made. The DM therefore performs the calculation in **S2796** where:

£720 is divided by £45 (JSA of £40 plus £5 disregard) = 16

The DM takes the payment into account for 16 weeks at the weekly rate of £45.

S2797 If the calculation does not result in a whole number of weeks, the balance of the payment should be taken into account for a corresponding fraction of a week<sup>1</sup>.

1 JSA Regs 13, reg 54(13)

## Example

The claimant is paid a one-off bonus of £150. The period for which the payment was made is not identifiable. £5 of a weekly payment of the income would be disregarded. The claimant would be entitled to £65 a week without the payment. The £150 payment is divided by £70 (£65 JSA plus £5 disregard). The DM determines the claimant's income is £70 a week for a period of 2 1/7 weeks (two weeks and one day).

## Different kinds of earnings received for overlapping periods

S2798 If different kinds of earnings 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 **S2782** et seq<sup>1</sup>  
**and**

**3.** in the following order<sup>2</sup>

**3.1.** normal earnings

**3.2.** compensation payments

**3.3.** holiday pay

**Note:** Pay in lieu of remuneration is paid in place of a person's normal wages or salary. Pay in lieu of notice or remuneration is included in the definition of a compensation payment

1 JSA Regs 13, reg 54(5); 2 reg 54(6)

# Calculation of weekly amount S2799 - S2805

## Calculation of weekly amount

[Period of a week or less](#) S2799

[Period of a month](#) S2800

[Period of three months](#) S2801

[Period of a year](#) S2802

[Period of more than a week](#) S2803

[Calculation of amount where only part of payment overlaps benefit week](#) S2804 - S2805

## Period of a week or less

S2799 Where the period for which earnings are paid is a week or less, the weekly amount will be the amount of the payment<sup>1</sup>. But see **S2804** et seq and **S2812**.

1 JSA Regs 13, reg 57(1)(a)

## Period of a month

S2800 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 52<sup>1</sup>.

1 JSA Regs 13, reg 57(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).

## Period of three months

S2801 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 52<sup>1</sup>.

1 JSA Regs 13, reg 57(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

S2802 Where the payment of income is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52<sup>1</sup>.

1 JSA Regs 13, reg 57(1)(b)(iii)

### Period of more than a week

S2803 Where the payment is for more than a week, and **S2800 – S2802** 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 made<sup>1</sup>.

1 JSA Regs 13, reg 57(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).

### Calculation of amount where only part of payment overlaps benefit week

S2804 Where a payment for one week or less is treated as paid before the first benefit week of the claim, it may fall to be taken into account for only some days in the first benefit week. The DM should determine the amount to be taken into account by

1. multiplying the amount of the payment by the number of days in the period of the overlap **and**

2. dividing the result by the number of days in the period for which payment is made<sup>1</sup>.

**Note:** If the period the payment overlaps is a part week see ADM Chapter **S1**.

1 JSA Regs 13, reg 57(4)

S2805 Where a payment is for one week or more, and is to be taken into account for some days only in a benefit week, the DM should determine the amount to be taken into account by

1. multiplying the amount of the payment by the number of days in the period of the overlap **and**

2. dividing the result by the number of days in the period for which the payment is made<sup>1</sup>.

**Note:** If the period the payment overlaps is a part week see ADM Chapter **S1**.

1 JSA Regs 13, reg 57(3)

### **Example**

The claimant receives £400 from a general unemployment insurance policy for a period of four weeks on 8 May.

She claims JSA on 28 May because the payments from the general unemployment insurance policy have stopped. She will be paid weekly in arrears on a Thursday.

The payment is treated as paid on 8 May for the period 8 May to 4 June.

The DM determines that for benefit week ending 6 June 5/28ths of the payment should be taken into account and deducts £71.42 ( $£400 \times 5 = 2000/28 = 71.42$ ).

## Modifying the amount taken into account S2806 - S2999

### Modifying the amount taken into account

[Two payments from same source and of same kind in same benefit week](#) S2806

[Two payments taken into account for same week because of impracticability rule](#) S2807

[First of two payments due before date of claim](#) S2808 - S2810

[Averaging of amounts](#) S2811 - S2999

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

S2806 The weekly amount of earnings taken into account in a benefit week should be restricted where

**1.** the payment is or has been paid regularly **and**

**2.** two payments

**2.1** from the same source **and**

**2.2** of the same kind

would be taken into account in the same benefit week following the rules in S2782 et seq<sup>1</sup>. The amount should be restricted to the weekly amount which is treated as paid first.

1 JSA Regs 13, reg 57(4)

### Two payments taken into account for same week because of impracticability rule

S2807 The special rules in **S2806** do not apply if

**1.** it is not practicable to take a payment into account in the benefit week in which it was due **and**

**2.** in the next benefit week in which it is practicable to take it into account the claimant receives another payment

**2.1.** of the same kind **and**

**2.2.** from the same source

which is to be taken into account in the same week<sup>1</sup>.

In these circumstances both payments should be taken into account in that week, with a separate disregard on each of the payments, if a disregard is appropriate<sup>2</sup>.

1 JSA Regs 13, reg 57(4); 2 JSA Regs 13, Sch, para 8

## First of two payments due before date of claim

S2808 Where the first of the two payments referred to in **S2806** or **S2807** was due to be paid before the date of claim the payment should be disregarded<sup>1</sup>.

1 JSA Regs 13, Sch, para 11

S2809 – S2810

## Averaging of amounts

S2811 The weekly amount of earnings may be averaged<sup>1</sup> if the earnings vary 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 recognizable cycle of work (see ADM Chapter **R2** on establishing a recognizable cycle) **or**
- 2.** five weeks **or**
- 3.** another period if this means a more accurate weekly amount can be calculated.

1 JSA Regs 13, reg 57(5)

S2812 The averaging of the weekly amount of earnings does not change the other rules on its treatment such as the date that it is treated as paid. This means that earnings can only be averaged where the claimant is actually in receipt of a payment.

### Example 1

Robert works two weeks on and one week off.

In the two weeks he 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 determines that the earnings should be averaged over a period of three weeks because that is

the period of the recognizable cycle of work.

The DM calculates that the average weekly amount of earnings is £60, that is

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

3

and takes that amount into account against Robert's entitlement. 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 Robert 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 are no earnings to take into account.

S2813 – S2999

# **Appendix 1 - Territorial or reserve forces**

## **Appendix 1**

### **Territorial or reserve forces prescribed in SS (Contributions) Regs 2001, Sch 6, Part I.**

Royal Naval Reserve

Royal Marines Reserve

Army Reserve

Royal Fleet Reserve

Territorial Army

Royal Air Force Reserve

Royal Auxiliary Air Force

Royal Irish Regiment (to the extent that its members are not members of the regular naval, military or air forces of the Crown)

## Appendix 2 - Maximum weekly amount

### Appendix 2

**Payable under section 227 of the Employment Rights Act 1996.**

**[See ADM Memo 06/19, ADM Memo 03/20, ADM Memo 05/21, ADM Memo 10/22, ADM memo 08-23, ADM Memo 03/24](#)**

£

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 5.4.18 508

From 6.4.19 525

## **Appendix 3 - Statutory guarantee payments**

### **Appendix 3**

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

**£**

From 1.2.12 23.50 per day

From 1.2.13 24.20 per day

From 6.4.14 25.00 per day

From 6.4.15 26.00 per day

From 6.4.16 26.00 per day

From 6.4.17 27.00 per day

From 6.4.18 28.00 per day

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