Chapter H5: Unearned income

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Legislation Used in Chapter H5

Abbreviation	Full title
WR (NI) Order 15	The Welfare Reform (Northern Ireland) Order 2015 No. 2006
SPC Act (NI) 02	State Pension Credit Act (Northern Ireland) 2002
PS (NI) Act 93	Pension Schemes (Northern Ireland) Act 1993
E&T Act (NI) 50	Employment and Training Act (Northern Ireland) 1950
	The National Lottery etc Act 1993
	The Income and Corporation Taxes Act 1988
	Interpretation Act 1978
UC Regs (NI) 16	The Universal Credit Regulations (Northern Ireland) 2016 No. 216
UC (TP) Regs (NI) 16	The Universal Credit (Transitional Provisions) Regulations (Northern Ireland) 2016 No. 226
SPC Regs (NI)	The State Pension Credit Regulations (Northern Ireland) 2003 No. 28
UC, PIP, JSA & ESA (C&P) Regs (NI) 16	The Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations (Northern Ireland) 2016 No. 220
SS (GRB) Regs (NI) 05	The Social Security (Graduated Retirement Benefit) Regulations (Northern Ireland) 2005 No. 121

Chapter H5 - Unearned income

What is unearned income

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

H5002 A claimant's unearned income means[1] any of their income consisting of

1. retirement pension income

2. benefit income

3. foreign benefits

4. spousal maintenance

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

6. employment and training payments paid

6.1 as a substitute for Universal Credit **or**

6.2 for a person's living expenses

7. sports awards

8. certain insurance payments

9. income from an annuity

10. income from a trust

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

12. capital treated as income

13. certain income which is taxable.

1 UC Regs (NI) 16, reg 66(1)

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

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

1 UC Regs (NI) 16, reg 66(1) & reg 74

Retirement pension income

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

1 UC Regs (NI) 16, reg 67; SPC Act (NI) 02, sec 16(1)

Retirement pension

H5005 Retirement pension has to be taken fully into account. For Universal Credit this includes either

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

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

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

H5006 Retirement pension also includes the following elements

1. a Shared Additional Pension payable as a result of divorce[1]

2. Graduated Retirement Benefit earned between 1961 and 1975 under the graduated pension scheme[2]

3. age additions[3].

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

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

1 UC Regs (NI) 16, reg 67(2); SPC Act (NI) 02, sec 16(1)(a)

State Pension

H5008 State Pension replaces Retirement Pension for people reaching pensionable age on or after 6.4.16 and should be taken fully into account[1]. It is either

1. contributory (Category A or B) **or**

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

H5009 State Pension does not consist of individual elements like Retirement Pension (Bereavement Pension, Additional Pension & Graduated Retirement Benefit etc.) and is generally based only on the claimant's National Insurance record. Exceptions to this will be where:

1. the claimant is widowed and inherits a deceased spouse's or civil partner's Additional Pension, deferred Retirement Pension or deferred Graduated Retirement Benefit

2. the claimant receives a transitional rate of State Pension (for women who paid reduced rate National Insurance) **and**

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

4. Increments (of State Pension) for deferred retirement.

1 UC Regs (NI) 16, reg 67; SPC Act (NI) 02, sec 16

Occupational pensions

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

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

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

Meaning of occupational pension scheme

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

1 SPC Act (NI) 02, sec 17; PS (NI) Act 93, sec 1

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

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

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

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

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

are included.

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

Example

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

H5014 The decision maker should take payments into account as an occupational pension if a pensioner who has been in employment that was contracted out of State second Pension is entitled to

1. Guaranteed Minimum Pension instead of additional pension through an occupational pension scheme **and**

2. increments to an occupational pension and Guaranteed Minimum Pension if retirement was deferred.

H5015 – H5018

Personal pensions

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

1. self-employed people **or**

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

1 SPC Act (NI) 02, sec 16(1)(f)

Meaning of personal pension scheme

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

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

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

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

H5021 – H5029

Overseas arrangements

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

1 SPC Act (NI) 02, sec 16(1)(g)

Meaning of overseas arrangement

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

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

2. is administered wholly or primarily outside the United Kingdom **and**

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

4. is not an occupational pension scheme.

1 SPC Act (NI) 02, sec 16(3)

Retirement annuity contracts

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

1 SPC Act (NI) 02, sec 16(1)(h)

Meaning of retirement annuity contract

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

1 SPC Act (NI) 02, sec 16(3)

Foreign annuities or insurance policies

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

1 SPC Act (NI) 02, sec 16(1)(i)

Retirement annuities purchased on divorce

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

1 SPC Act (NI) 02, sec 16(1)(j)

Civil list pensions

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

1 SPC Act (NI) 02, sec 16(1)(k)

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

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

2. voted annually by Parliament.

Equity release schemes

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

1 SPC Act (NI) 02, sec 16(1)(m)

Meaning of equity release scheme

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

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

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

1 SPC Regs (NI), reg 1

H5040 – H5049

Financial Assistance Scheme

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

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

2. the employer is insolvent or no longer exists.

1 SPC Act (NI) 02, sec 16(1)(n)

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

H5052 – H5059

Benefit income

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

1 UC Regs (NI) 16, reg 66(1)(b)

H5061

Jobseeker's Allowance

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

1 UC Regs (NI) 16, reg 66(1)(b)(i)

Employment and Support Allowance

H5063 Employment and Support Allowance should be taken fully into account[1]. Employment and Support Allowance is paid to people who

1. have limited capability for work **and**

2. satisfy the contribution conditions.

1 UC Regs (NI) 16, reg 66(1)(b)(ii)

Carer's Allowance

H5064 Carer's Allowance should be taken fully into account[1]. It is payable to people who have caring responsibilities for a person receiving Attendance Allowance or Disability Living Allowance.

1 UC Regs (NI) 16, reg 66(1)(b)(iii)

Carer Support Payment

H5065 Certain Carer Support Payment is taken into account, but only up to a maximum of the amount a claimant would receive if they had entitlement to Carer's Allowance[1].

1 UC Regs (NI) 16, reg 66(a)(b)(iii)(a)

Bereavement Allowance

H5066 **[See ADM Memo 19/17]** Bereavement Allowance should be taken into account in full[1]. It replaced widow's pension for a person whose spouse died on or after 9.4.01. It may also be paid to a person whose civil partner dies on or after 5.12.05. It is restricted to payment for not more than 52 weeks.

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

1 UC Regs (NI) 16, reg 66(1)(b)(iv)

Widowed Mother's Allowance

H5067 **[See ADM Memo 19/17]** Widowed Mother's Allowance should be taken fully into account[1]. It is paid to some widows whose husbands died before 9.4.01.

1 UC Regs (NI) 16, reg 66(1)(b)(v)

Widowed Parent's Allowance

H5068 **[See ADM Memo 19/17]** Surviving spouses or civil partners may be entitled to Widowed Parent's Allowance. It should be taken fully into account[1].

1 UC Regs (NI) 16, reg 66(1)(b)(vi)

Widow's pension

H5069 **[See ADM Memo 19/17]** The decision maker should take Widow's Pension fully into account[1]. It may still be paid where it is claimed in respect of a death prior to 9.4.01.

Note: Bereavement support payment replaces bereavement benefit for those people whose spouse or civil partner dies on or after 6.4.17 (Bereavement Allowance, Widowed Mothers Allowance, Widowed Parents Allowance and Widows Pension will continue where entitlement currently exists). The regular monthly Bereavement Support Payment is not a prescribed source of unearned income in Universal Credit. It is therefore not taken into account in the Universal Credit assessment.

See DMG Chapter 59 for guidance on Bereavement Support Payment, DMG Chapter 58 for guidance on Widows Benefit and DMG Chapter 63 for guidance on Bereavement Benefit. For guidance on how Bereavement Support Payment impacts on capital in Universal Credit, please see ADM Chapter H2.

1 UC Regs (NI) 16, reg 66(1)(b)(vii)

Maternity allowance

H5070 Maternity allowance should be taken fully into account[1]. It is payable to women who can't get Statutory Maternity Pay.

1 UC Regs (NI) 16, reg 66(1)(b)(viii)

Industrial injuries benefit

H5071 Industrial injuries benefit (but not increases where constant attendance is needed or for exceptionally severe disablement) should be taken fully into account[1]. The additional allowances

1. Reduced earnings allowance **or**

2. Retirement allowance **or**

3. Unemployability supplement

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

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

1 UC Regs (NI) 16, reg 66(1)(b)(ix)

Incapacity benefit

H5072 This is a benefit paid to people who have incapacity for work although it has been replaced by Employment and Support Allowance and no new claims to it can be made. These awards are being reassessed to determine whether they can be converted to Employment and Support Allowance. For Universal Credit purposes, Incapacity Benefit is taken fully into account as unearned income[1].

1 UC (TP) Regs (NI) 16, reg 26(1) & (2); UC Regs (NI) 16, reg 66

Severe disablement allowance

H5073 This was a benefit paid to people who were unable to work due to sickness or disability and who were unable to claim Incapacity Benefit. No new claims can be made although existing claims may be transitionally protected. These awards are being reassessed to determine whether they can be converted to Employment and Support Allowance. For Universal Credit purposes, Severe Disablement Allowance is taken fully into account as unearned income[1].

1 UC (TP) Regs (NI) 16, reg 26(1) & (2); UC Regs (NI) 16, reg 66

Foreign benefits

H5074 Foreign benefits are[1] any

1. benefit

2. allowance **or**

3. other payment

which is paid under the law of a country outside the United Kingdom and is in the nature of the benefits described in ADM H5060 - H5071. These payments have to be taken fully into account.

1 UC Regs (NI) 16, reg 66(1)(c)

Overpaid existing benefit

H5075 Regulations[1] allow for an overpayment of an existing benefit (excluding a tax credit or joint claim to Jobseekers Allowance) to be recovered as unearned income for any period in which that overpaid existing benefit overlaps with a current assessment period in which Universal Credit also falls to be calculated. Any existing benefit paid in the current assessment period is treated as unearned income by virtue of these regulations. See ADM M6131 for more information.

1 UC (TP) Regs (NI) 16, reg 8

H5076 – H5079

Spousal maintenance

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

1. under a court order **or**

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

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

1 UC Regs (NI) 16, reg 66(1)(d)

Employment and training payments

H5081 Payments made under relevant legislation[1] which are

1. a substitute for Universal Credit **or**

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

are taken fully into account[2].

1 E&T Act (NI) 50, sec 1; 2 UC Regs (NI) 16, reg 66(1)(f)

Sports awards

H5082 Sports award means an award

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

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

1 UC Regs (NI) 16, reg 66(1)(g); National Lottery etc Act 1993, s 23(2)

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

1. English Sports Council[2]

2. Scottish Sports Council

3. Sports Council for Wales

4. Sports Council for Northern Ireland

5. UK Sports Council[3].

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

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

1 UC Regs (NI) 16, reg 66(1)(g)

Living expenses

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

1. food

2. ordinary clothing or footwear

3. household fuel

4. rent or other housing costs

5. rates

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

1 UC Regs (NI) 16, reg 66(2)

Certain insurance payments

H5086 **[See ADM Memo 5/18]** Payments received under an insurance policy which is insuring against the risk of

1. losing income due to

1.1 illness **or**

1.2 accident **or**

1.3 redundancy

are taken fully into account[1].

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

1 UC Regs (NI) 16, reg 66(1)(h)

Income from an annuity

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

1 UC Regs (NI) 16, reg 66(1)(i)

Income from a trust

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

1 UC Regs (NI) 16, reg 66(1)(j)

H5089

Income deemed to yield from capital

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

1 WR (NI) Order 15, Sch 1, para 4(3)(d), UC Regs (NI) 16, reg 66(1)(k)

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

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

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

1 UC Regs (NI) 16, reg 72(1)

Example 1

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

Example 2

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

H5092 ADM H5091 does not apply where[1]

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

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

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

1 UC Regs (NI) 16, reg 72(2)

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

1 UC Regs (NI) 16, reg 72(3)

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

1. interest

2. dividends **and**

3. rental income.

Example 1

Tony has savings of £8,000 held in a bank account. This means, that for the purposes of Tony's award of Universal Credit, the £8,000 is deemed to yield a monthly income of £34.80. At the end of the financial year, the bank credits Tony with £170 interest on the savings. The decision maker treats this £170 as a payment of capital. Tony now has £8,170 in capital yielding a monthly income of £39.15.

Example 2

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

H5095 – H5099

Capital treated as income

H5100 Any sums that are paid

1. regularly **and**

2. with reference to a period of time

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

1 UC Regs (NI) 16, reg 46(3)

Example

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

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

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

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

The above is not exhaustive.

Example

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

H5102 Where

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

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

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

1 UC Regs (NI) 16, reg 46(4)

H5103 – H5109

Other income that is taxable

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

1 Income Tax (Trading and Other Income) Act 2005, Part 5; 2 UC Regs (NI) 16, reg 66(1)(m)

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

1. receipts from intellectual property (for example, royalty payments)
2. income from films and sounds recordings
3. certain telecommunication rights
4. income received as a settler
5. income from estates in administration.

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

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

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

Example

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

Note 1: It is not relevant whether the rental income is above or below the 'rent a room' tax relief limits.

Note 2: If a self-employed claimant is renting out rooms in their house as part of conducting a trade, for example running a Bed & Breakfast then that income would be taken into account in the same way as other earnings.

H5113 – H5119

Personal injury payments

H5120 There are rules to cover where an amount of money has been

1. awarded to **or**

2. agreed by or on behalf of

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

1 UC Regs (NI) 16, reg 75(1)

Regular payments

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

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

2. by an agreement

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

Note 1: The agreement referred to in **2.** must be reached **after** the date that the injury occured[2].

Note 2: This includes regular payments made under the Victims' Payments Scheme in respect of injuries sustained during the Troubles[3]. See ADM Chapter H2: Capital disregards for details.

1 UC Regs (NI) 16, reg 75(2); 2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ 162; 3 Victims' Payments Regs 2020, reg 26(1)

Payments under an annuity

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

1 UC Regs (NI) 16, reg 75(3)

Award held in trust

H5123 Where the personal injury award is held in trust any

1. capital of the trust **and**

2. income from the trust

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

1 UC Regs (NI) 16, reg 75(4)

Award administered by the court

H5124 Where a personal injury award

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

2. can only be disposed by direction of the court

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

1 UC Regs (NI) 16, reg 75(5)

Other cases

H5125 Where a personal injury award

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

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

3. has not been disposed of

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

1 UC Regs (NI) 16, reg 75(6)

H5126 – H5139

Special compensation schemes

H5140 Any payment of capital or income[1] from a scheme approved by the Secretary of State for the purposes of this regulation or from a trust established with funds provided by the Secretary of State for the purpose of

1. providing compensation or support in respect of

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

1.2 infection from contaminated blood products **or**

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

1.4 the London Emergencies Trust **or**

1.5 the We Love Manchester Emergency Fund **or**

1.6 persons who during World War 2

1.6.a were interned **or**

1.6.b suffered forced labour **or**

1.6.c suffered injury **or**

1.6.d suffered property loss **or**

1.6.e suffered the loss of a child **or**

1.7 persons who have been the subject of historical institutional child abuse in the United Kingdom **or**

1.8 the National Emergencies Trust **or**

1.9 the Child Migrants Trust **or**

1.10 the Windrush compensation schemes **or**

1.11 a Post Office compensation payment[2] **or**

1.12 a Grenfell Tower payment[3] **or**

1.13 the Church of England Redress Scheme[4] **or**

1.14 vaccine damage payments

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

1.14.b the partner of a person referred to in **1.14.a** receives a payment which is derived from that payment from that person or their estate **or**

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

1.15 miscarriage of justice compensation payment

1.15.a a person who receives a miscarriage of justice payment under relevant legislation[6] **or**

1.15.b the partner of a person referred to in **1.15.a** receives a payment which is derived from that payment from that person or their estate **or**

1.15.c the payment is made to the personal representative of a person who was the victim of a miscarriage of justice or to their partner from their estate **or**

1.16 the Mother and Baby Institutions Payment Scheme[7] **or**

2. supporting persons with a disability to live independently in their accommodation

is fully disregarded[8].

1 UC Regs (NI) 16, reg 76(1); 2 reg 76(1A)(e); 3 reg 76(1B); 4 reg 76(1C); 5 reg 76(1C); 6 reg 76(1D); 7 reg 76(1CA); 8 reg 76(1)(b)

H5141 The schemes and trusts covered by ADM H5140 include

1. The Macfarlane Trusts

2. the Eileen Trust ("The Fund")

3. MFET Limited

4. The Scottish infected blood support scheme

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

6. The Thalidomide Trust.

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

H5142 – H5144

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

H5145 Payments made to the

1. partner

2. parent

3. son or daughter

of the diagnosed or infected person or from their estate (including payments received from the trust or scheme), will be disregarded if they would be disregarded in the assessment of State Pension Credit[1] (see DMG Chapter 84).

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

1 UC Regs (NI) 16, reg 76(3)

H5146 – H5149

Notional income

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

1 WR (NI) Order 15, Sch 1, para 4(3)(a); UC Regs (NI) 16, reg 74

Income upon application

H5151 Decision makers should treat an income that

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

2. has not been applied for[1]

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

1 UC Regs (NI) 16, reg 74(1)

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

1 UC Regs (NI) 16, reg 74(2)

Example

Ronnie is in receipt of Universal Credit and he also cares for his elderly mother. Although Ronnie cares for his mother and may qualify for Carer's Allowance if a claim was made for it, the decision maker cannot treat the Carer's Allowance as notional income.

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

1. gather evidence **and**

2. consider all the qualifying conditions for the income.

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

Example

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

Notional retirement pension income upon application

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

1. have not applied for **and**

2. would be expected to be entitled to.

1 UC Regs (NI) 16, reg 74(3)

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

1 UC Regs (NI) 16, reg 74(4)

Retirement pension and State Pension - notional income

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

1 SPC Regs (NI), reg 18(1)

Example

On 1 November Alice claimed Universal Credit. Her partner John has reached qualifying age for State Pension Credit and is not in receipt of any retirement pension.

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

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

H5157 For Universal Credit purposes retirement pension includes[1]

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

2. non-contributory (Category C or D) retirement pension

3. a shared additional pension payable as a result of divorce

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

5. any age additions.

Note: For Universal Credit purposes State Pension has the meaning in H5008-09.

1 UC Regs (NI) 16, reg 67; SPC Act (NI) 02, sec 16(1)(a)-(e)

Deferring retirement pension and state pension

H5158 **[See ADM Memo 4/24]** The rules on deferring retirement pension allow people who have deferred claiming their pension for at least twelve months from April 2005 to have the choice between taking extra retirement pension or a lump sum payment for the additional retirement pension accrued. State Pension has its own rules on deferment see - DMG Chapter 74 for more details.

H5159 Where a claimant to whom ADM H5156 applies

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

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

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

1 SS C&B (NI) Act 92, Sch 5; SS (GRB) Regs (NI), Sch 1;
2 SPC Regs (NI), reg 18(1B)

Example

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

Sally has deferred her retirement pension for 18 months.

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

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

Deferring retirement pension whilst an overlapping benefit is in payment

H5160 Where a claimant to whom ADM H5156 applies is in receipt of an overlapping benefit or allowance, the amount of retirement pension income they are treated as having[1] is the retirement pension that they are entitled to minus the amount of the benefit or allowance in payment.

1 SPC Regs (NI), reg 18(1CA)

H5161 Where a claimant to whom ADM H5156 applies is in receipt of an overlapping benefit or allowance - which would result in an adjustment to be made to the amount of retirement pension payable - they are treated as having[1] the retirement pension income minus the adjustment which would be made to it.

1 SPC Regs (NI), reg 18(1CB)

Example

Jack has been deferring his retirement pension for two years. His partner has claimed Universal Credit.

Jack receives £46.95 a week Carer's Allowance that is taken fully into account.

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

The decision maker decides to treat Jack as having notional retirement pension income of £33.05 a week (£80 retirement pension less £46.95 Carer's Allowance).

H5162 – H5169

Occupational pension schemes - notional income

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

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

1 SPC Regs (NI), reg 18(1D)

Example

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

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

Personal pensions

General

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

1 PS (NI) Act 93, sec 1; 2 Income and Corporation Taxes Act 1988, Part XIV, chapter IV

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

1 UC Regs (NI) 16, reg 66(1)(a) & 67; 2 SPC Act (NI) 02, sec 1(6); 3 UC Regs (NI) 16, reg 74(3)

H5173 A person could

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

2. purchase an annuity

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

4. do nothing and leave the fun untouched.

Income and capital drawdown

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

1 UC Regs (NI) 16, Sch 10, para 10

H5175 Where a claimant chooses to

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

2. take the whole sum

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

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

1 UC Regs (NI) 16, reg 46(3)

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

1. after every drawdown of capital

2. after every drawdown of income which exceeds the applicable notional income amount (see ADM H5178 et seq) **or**

3. upon the claimant's request.

Example

John is in receipt of Universal Credit. His partner, Lisa, who is of State Pension Credit qualifying age, has a pension pot of £40,000 which she doesn't wish to access at the amount but might do at a later stage. The decision maker calculates that as an annuity income, this would produce £2,000 per annum or £166.67 per month. This is based on 100% of the rate of annuity that the pension pot would generate (see ADM H5178 et seq). The figure of £166.67 is taken into account as notional income. Lisa then decides to draw down £8,000 as capital, leaving £32,000 in her pension pot. The decision maker reassesses the notional income figure based on 100% of the rate of annuity that the remaining amount in the pension pot would generate.

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

H5178 Treat a person who has reached qualifying age for State Pension Credit who

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

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

2.1 has deferred taking all or part of the income from the fund **or**

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

as having a notional income[1].

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

Amount of notional income

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

1 SPC Regs (NI), reg 18(3)

From what date should the decision maker take notional income into account

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

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

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

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

Example

Holly is in receipt of Universal Credit. Her husband, Bernard, is of qualifying age for State Pension Credit.

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

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

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

The decision maker decides that Bernard should be treated as having a notional income of £23 a week from the first day of the assessment period in which the personal pension would have been paid. For the purposes of Universal Credit, this is calculated as a monthly income of £99.67 (£23 X 12/52)

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

H5181 Treat a person who has reached qualifying age for State Pension Credit who

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

2. has a retirement annuity contract

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

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

Amount of notional income

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

1 SPC Regs (NI), reg 18(4)

From what date should the decision maker take notional income into account

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

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

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

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

Example

Dan is in receipt of Universal Credit. His wife, Fiona, is of qualifying age for State Pension Credit. On 1 November the decision maker receives evidence that Fiona has a retirement annuity contract.

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

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

The decision maker decides that Fiona should be treated as having a notional income of £30 a week from the first day of the assessment period in which the income would have been paid. For the purposes of Universal Credit this is calculated as a monthly income of £130.00 (£30 X 52/12)

Meaning of money purchase benefits

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

1 SPC Regs (NI), reg 18(5); PS (NI) Act 93, sec 176(1)

What is a pension fund holder

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

1. trustees **or**

2. managers **or**

3. administrators

of the scheme or contract concerned.

1 SPC Regs (NI), reg 1(2)

Who is a person who derives entitlement

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

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

Information and evidence

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

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

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

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

1 UC, PIP, JSA & ESA (C&P) Regs (NI) 16, reg 38

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

Lump sums on retirement

H5191 At the point that

1. an annuity is bought **or**

2. an income is taken

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

Actual income

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

1. paid under an annuity bought with funds from a

1.1 personal or occupational pension scheme **or**

1.2 retirement annuity contract **or**

2. withdrawn from a personal or occupational pension scheme.

Provision under a retirement annuity contract

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

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

Retirement annuity contract - notional income

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

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

H5195 – H5199

Calculation of unearned income

General

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

Note: Month means calendar month[3].

1 UC Regs (NI) 16, reg 73(1); 2 reg 73(5); 3 Interpretation Act 1978, Sch 1

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

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

1 UC Regs (NI) 16, reg 73(2)

H5202 This means that

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

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

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

4. annual payments are divided by 12[4].

1 UC Regs (NI) 16, reg 73(2)(a); 2 reg 73(2)(b); 3 reg 73(2)(c); 4 reg 73(2)(d)

Example

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

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

$$N\ x\ (Mx12/365)$$

where

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

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

1 UC Regs (NI) 16, reg 73(3)

Example

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

$$17\ x\ (248.52x12/365)$$

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

H5204 – H5209

Fluctuating income

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

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

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

2.1 three months **or**

2.2 some other period which enables the income to be determined more accurately.

1 UC Regs (NI) 16, reg 73(4)(a); 2 reg 73(4)(b)

Meaning of identifiable cycle

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

Example 1

month 1 £50 income received

month 2 £60 income received

month 3 £50 income received

month 4 £50 income received

month 5 £60 income received

month 6 £50 income received

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

Example 2

month 1 £100 income received

month 2 £180 income received

month 3 £100 income received

month 4 £180 income received

There is an identifiable cycle of 2 months.

Example 3

month 1 £100 income received

month 2 £85 income received

month 3 £90 income received

month 4 £20 income received

month 5 £125 income received

There is no identifiable cycle.

H5212 – H5999

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