Chapter 26 Employed earners

Earnings of employed earners

Introduction 26001

Meaning of claimant 26004

Calculation of earnings - Jobseeker’s Allowance 26005

Contribution-based Jobseeker’s Allowance 26006

Income-based Jobseeker’s Allowance and Income Support 26007

Income Support only 26009

Earnings - explanation of terms

Meaning of employed earner 26010

Meaning of earnings 26013

Meaning of derived from 26015

Meaning of gross earnings 26016

Meaning of pay period 26017

Calculation of net earnings

Deductions from gross earnings 26020

Income tax 26021

Social security contributions 26022

Occupational pension scheme deductions or personal pension
scheme payments 26023

Expenses not reimbursed by employer 26027

Treatment of particular kinds of payments from employment

Introduction 26037

Employment ended 26038

Accommodation provided by employer 26040

Actors and entertainers 26041

Advance of earnings or loans 26044

Bonus or commission 26045

Broadcasting and publication fees 26046

Cash in lieu of concessionary coal 26047

Directors of limited companies 26048

Establishing a director’s income 26049

Payments as a director or other employee 26050

Share dividend 26056

Debenture interest 26057

Single status payments 26058

Holiday pay 26059

Income tax refunds 26060

Justices of the Peace 26061

Travel allowances and subsistence 26063

Financial loss allowances 26064

District councillors 26065

Basic allowance 26068

Special responsibilities allowance 26069

Childcare and dependent carer’s allowance 26070

Expenses 26071

Payments not claimed 26076

Treatment of expenses 26077

Payments in kind 26080

Payments in lieu of remuneration 26082

Retainers 26083

Service User Groups 26084

Special occupations 26085

Auxiliary coastguards 26087

Part-time members of a fire brigade 26088

Part-time manning or launching of a lifeboat 26089

Territorial army Royal Irish Regiment, The Police Service

of Northern Ireland Reserve or volunteer reservists 26090

Tips 26093

Vouchers and child care cheques 26094

Earnings disregards

Application to claimant and family 26097

Contribution-based Jobseeker’s Allowance 26098

Income-based Jobseeker’s Allowance and Income Support 26099

Disabled people 26102

Repeat claims 26103

Permitted period 26104

Lone parents 26108

Carers 26111

Special occupations 26115

Territorial Army or volunteer reservists 26117

Earnings from one or more occupations 26123

Income-based Jobseeker’s Allowance and Income Support - couples 26125

Couple - £20 disregard does not apply 26126

Couple - £20 disregard also applies 26128

Other cases 26129

Earnings paid for employment which has been interrupted 26130

Earnings payable outside United Kingdom 26132

Earnings paid in a foreign currency 26133

Earnings of a child or young person 26134

Employment and training schemes

General 26150

Employees 26151

Trainees 26152

Training for Success 26157

ApprenticeshipsNI 26159

Notional earnings

Notional earnings - general 26180

Remunerative work 26186

Meaning of voluntary organisation 26187

Meaning of person 26188

Performance of a service 26189

Details of the service performed 26191

When earnings are not to be treated as paid 26195

Meaning of volunteer 26196

Time exchange schemes 26198

Is it reasonable 26199

Carers 26200

Calculation of gross notional earnings 26210

Meaning of in the area 26211

Comparable employment 26212

Payments in kind 26215

Are earnings to be treated as paid 26216

Reasonable rates of pay 26217

Can the person afford to pay 26219

Amount to be taken into account 26225

Deduction for notional income tax 26227

Deduction for notional social security contribution 26229

Onus of proof 26233

Employment protection legislation

Payments - general

Introduction 26300

Types of payments 26302

Treatment of payments - general 26303

When payments are due to be paid 26305

Statutory guarantee payments

General 26314

Employees who do not qualify 26317

Calculation 26319

Employees not entitled 26320

Payments not made by employer 26321

Complaints to a tribunal 26323

Effect of statutory guarantee payments 26326

Jobseeker’s Allowance 26330

Income Support 26331

Collective agreements

Introduction 26335

Terms of an agreement 26338

Changes to agreements 26343

Whether agreement effective 26347

Suspension of agreement 26351

Exemption orders 26359

Application of exemption orders 26361

Payment of wages guaranteed 26364

Calculation 26368

Effect of guaranteed wages payments 26369

Work guaranteed 26371

Short time working instead of redundancy 26381

Approved short time 26384

Night workers 26385

Effect of holidays 26386

Effect of guaranteed work 26389

Suspension from work on medical or maternity grounds

General 26395

Employees not entitled to be paid 26397

Calculation of pay 26399

Complaints to a tribunal 26400

Compensation for unfair dismissal

Introduction 26405

Interim relief 26409

Amount of awards 26410

Period of awards 26414

Effect of awards - Jobseeker’s Allowance 26417

Employer insolvent 26419

Effect of awards - Income Support 26421

Protective awards

Introduction 26422

Terms of an award 26425

Payments not made by employer 26427

Protective award not applied for 26428

Effect of payments 26429

Time off work provisions

General 26440

Complaints to a tribunal 26451

Payments on termination of employment

Payments - general

Introduction 26500

Types of payments 26503

Payments for period before employment ended 26504

Holiday pay 26505

Statutory redundancy payments 26506

Payments in kind 26509

Employment never existed 26510

Payments not received 26515

Delay in payment 26518

Employer withholds payment 26519

Uncashed cheques 26521

British Telecom Newstart Scheme 26522

Whether employment has terminated 26523

Recognised customary or other holidays 26525

Meaning of terminated 26528

Contract terminated immediately before period of absence from work 26534

Employment suspended 26535

Employment resumed 26537

Teachers 26540

Sessional or temporary teachers 26545

Supply teachers 26549

Whether a supply teacher’s employment has terminated during

a school closure 26555

Maternity leave and absence 26560

Suspension on maternity grounds 26566

Claim within 29 weeks of childbirth 26568

Adoption leave 26571

Ordinary paternity leave 26575

Additional paternity leave 26576

Agreement not to work notice 26577

Income Support and payments on termination

General 26580

Payments in lieu of remuneration 26582

Remunerative work 26583

Part-time work 26585

Payments in lieu of notice 26589

Remunerative work 26591

Part-time work 26593

Holiday pay

Employment terminated 26594

Remunerative work 26595

Part-time work 26596

Employment interrupted 26597

Remunerative work 26598

Part-time work 26599

Payments of compensation

Meaning of compensation 26600

Effect of payments of compensation 26602

Part-time work 26603

Remunerative work 26604

Payments for period before employment ended 26615

Remunerative work 26616

Partner’s earnings on retirement 26617

Part-time work 26618

Statutory redundancy payments 26621

Jobseeker’s Allowance and payments on termination

Meaning of compensation payment 26630

Effect of compensation payment 26632

Remunerative work 26634

Part-time work 26636

Payment by someone other than employer 26639

Remuneration for period before employment ended 26640

Remunerative work 26642

Part-time work 26644

Emoluments 26651

Holiday pay

Employment terminated 26652

Remunerative work 26654

Part-time work 26656

Mariners 26657

Employment interrupted 26660

Remunerative work 26661

Part-time work 26662

Statutory redundancy payments 26664

Payments in kind 26667

Bonus payments 26672

Calculation of period compensation payment taken
into account - Jobseeker’s Allowance 26674

When period ends - summary 26678

Maximum period 26683

The expiry date

Meaning of the expiry date 26685

Meaning of period of notice 26686

Entitlement to notice

Contractual and statutory entitlement differs 26687

Statutory right to minimum period 26688

Contractual entitlement 26693

Employment terminated by employee 26699

Employment terminated by mutual agreement 26700

Employee dismissed for misconduct 26701

Notice customary in the employment 26704

Civil servants 26706

Payment made for a period longer than notice period 26710

Payment made for a period shorter than notice period 26713

Fixed term contracts 26714

Date on which notice given 26718

Receipt of notice 26719

Notice 26722

Calculation of date notice runs out 26725

Notice to operate from a future date 26727

Notice shortened or extended 26729

Waiver of notice 26732

Calculation of date notice would have run out 26733

Payment for consultation period in industrial relations law 26740

Calculation of period 26743

Date consultation period would have ended 26744

The standard date - other cases 26750

Meaning of the standard date 26751

Employee works out notice due from employer 26752

No notice due 26755

Calculation of period - the set formula 26760

Amount of compensation 26761

Maximum weekly amount 26763

Number of weeks 26765

Last day of the period 26766

Standard date 26767

Appendix 1 - Territorial or reserve forces

Appendix 2 - Maximum weekly amount

Appendix 3 - Statutory guarantee payments

Appendix 4 - Statutory redundancy payments

Appendix 5 - Examples of the treatment of certain expenses

Statutes commonly referred to in Chapter 26

Full Title Abbreviation

Employment Rights (NI) Order 1996 ER (NI) Order 96

Employment and Training Act (Northern E&T Act (NI) 50

Ireland) 1950

Jobseekers (Northern Ireland) Order 1995 JS (NI) Order 95

Social Security Administration (Northern SS A (NI) Act 92

Ireland) Act 1992

Social Security Contributions and Benefits SS C&B (NI) Act 92

(Northern Ireland) Act 1992

Pension Schemes (Northern Ireland) Pension Schemes (NI)

Act 1993 Act 1993

Statutory Rules commonly referred to in Chapter 26

Short description Full title Abbreviation

Income Support The Income Support IS (Gen) Regs

Regulations (General) Regulations (NI)

 (Northern Ireland) 1987 No. 459

Jobseeker’s Allowance The Jobseeker’s Allowance JSA Regs (NI)

Regulations Regulations (Northern Ireland)

 1996 No. 198

D&A Regulations The Social Security and Child SS (D&A) Regs

 Support (Decisions and (NI)

 Appeals) Regulations

 (Northern Ireland) 1999

 No. 162

Social Security The Social Security SS Amendment

(Capital Limits (Capital Limits and Regs (NI) 2000

and Earnings Earnings Disregards

Disregards Amendment) Amendment) Regulations 2000

Regulations No. 366

(Northern Ireland) 2000

Chapter 26 Employed earners

Earnings of employed earners

Introduction

26001 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.

26002 How payments made to employees affect a claim for Jobseeker’s Allowance or Income Support will depend on

**1.** which benefit has been claimed

**2.** whether the work is continuing

**3.** whether the work has ended.

26003 Differences in the treatment of any payment between Income Support and Jobseeker’s Allowance, will be pointed out throughout this guidance. Guidance on the calculation and treatment of payments made on termination of employment is given in DMG 26500 - 26768. Guidance on payments made under industrial relations law is in DMG 26300 - 26453.

Meaning of claimant

26004 Claimant means1 either

1. one person who claims Jobseeker’s Allowance or Income Support **or**
2. in the case of a joint claim for Jobseeker’s Allowance
3. the couple **or**
4. each member of the couple, as the context requires

*1 JSA (NI) Order 95, art 2(1); IS (Gen) Regs (NI), reg 2(1)*

Calculation of earnings - Jobseeker's Allowance

26005 Earnings are calculated in the same way for both contribution-based Jobseeker’s Allowance1 and income-based Jobseeker’s Allowance2 and include any notional earnings3.

1 JSA Regs (NI), reg 80(1); 2 reg 94-102; 3 reg 105

Contribution-based Jobseeker’s Allowance

26006 It is only the amount of a claimant’s own earnings that affect the amount of contribution-based Jobseeker’s Allowance payable1. The earnings of a claimant’s dependants cannot affect it.

1 JS (NI) Order 95, art 6(1); JSA Regs (NI), reg 80(2)

Income-based Jobseeker’s Allowance and Income Support

26007 Earnings of the claimant or any member of the claimant’s family may be taken into account in the calculation of income-based Jobseeker’s Allowance or Income Support1.

1 JS (NI) Order 95, art 6(3) & 15(2); SS C&B (NI) Act 92, sec 123(1) & 132(1)

 26008

 **Income Support only**

26009 For Income Support only, when a person satisfies the conditions and is in receipt of Mortgage Interest Run-on (see DMG 20530 et seq), any earnings for the period of Mortgage Interest Run-on are to be disregarded in full1.

1 IS (Gen) Regs (NI), Sch 8, para 15C

Earnings - explanation of terms

Meaning of employed earner

26010 The term employed earner means1 a person who is gainfully employed in Northern Ireland or the Republic of Ireland

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

**2.** in an office (including an elective office) with general earnings2.

1 JSA Regs (NI), reg 3; IS (Gen) Regs (NI), reg 2(1); SS C&B (NI) Act 92, sec 2(1)(a)
2 Income Tax (Earnings & Pensions) Act 2003, s 7(3)

26011 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

26012 The phrase in an office includes directors of limited companies, clergy, district councillors, MPs and sub-postmasters and mistresses. General earnings include any wage, salary, fee, gratuity, profit or incidental benefit1.

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

Meaning of earnings

 **[See DMG Memo Vol 5/83 & 9/11]**

26013 Earnings means any pay or profit derived from employment and includes1

**1.** bonus or commission (see DMG 26045)

**2.** payment in lieu of remuneration (see DMG 26082)

**3.** payment in lieu of notice and certain compensation payments made by the employer because the employment has ended (see DMG 26500 et seq)

**4.** holiday pay (see DMG 26059), but not where it is payable more than 4 weeks after the employment ended, or was interrupted (see DMG 32692 for an exception to this rule in trade dispute cases)

**5.** retainers (see DMG 26083)

**6.** payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for

**6.1** the employee’s travelling expenses between home and work (but see DMG 26066 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 DMG 26077)

**7.** Industrial Relations awards2 (see DMG 26300 et seq)

**8.** awards of compensation made for unfair dismissal or redundancy on grounds of involvement in trade union activities3 (see DMG 26302 and 26405)

**9.** any payments made under any legislation or scheme in the Republic of Ireland which is similar to any of the payments in 1-8 above

**10.** 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 deduct4. (see DMG 26094)

 This list is not exhaustive. See DMG 26040 - 26095 for more examples of what are and what are not earnings.

1 JSA Regs (NI), reg 98(1); IS (Gen) Regs (NI). reg 35(1); 2 ER (NI) Order 96, art 59, 147, 151 & 163;
3 ER (NI) Order 96, art 152, 153, 163, 165 & 220 & 136; 4 IS (Gen) Regs (NI), reg 35(1)(k); JSA Regs (NI), reg 98(1)(j)

 **[See DMG Memo Vol 1/97, 3/85, 4/112, 5/88, 6/74, 7/39, 8/41, 9/21, 13/49 & 14/48]**

26014 Earnings does not include 1

**1.** payments in kind (see DMG 26080)

**2.** periodic payments made because employment has ended through redundancy2

**3.** payments made for periods when an employee is on maternity leave, paternity leave or adoption leave or is away from work due to illness (see DMG 26130)

**4.** payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26077)

**5.** payments of occupational pension3

**6.** redundancy payments4 (see DMG 26506)

**7.** any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme5

**8.** any payment of expenses paid to the claimant as a result of participating in a service user group6 (see DMG 26084).

1 JSA Regs (NI), reg 98(2); IS (Gen) Regs (NI), reg 35(2); 2 JSA Regs (NI), reg 98(2)(b); IS (Gen) Regs (NI),reg 35(1)(b);
3 JSA Regs (NI), reg 98(2)(e); IS (Gen) Regs (NI), reg 35(2)(d); 4 ER (NI) Order 96, art 170;
5 JSA Regs (NI), reg 98(2)(g); IS (Gen) Regs (NI), reg 35(2)(e);
6 JSA (Regs) (NI), reg 98(2)(h); IS (Gen) Regs (NI), reg 35(2)(f)

Meaning of derived from

26015 The words “derived from” mean having their origins in1. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 26014. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG Chapter 25).

1 R(SB) 21/86

Meaning of gross earnings

26016 Gross earnings means the amount of earnings

**1.** **after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment1 (DMG 26027) **but**

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

**2.1** income tax

**2.2** pensions contributions

**2.3** social security contributions (sometimes called National Insurance contributions)

**2.4** trade union 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 decision maker should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings.

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

Meaning of pay period

26017 A pay period is the period for which the employee is, or expects to be, normally paid1. This can be a week, a fortnight, four weeks, a month, or any other period.

1 JSA Regs (NI), reg 1; IS (Gen) Regs (NI), reg 2

26018 - 26019

Calculation of net earnings

Deductions from gross earnings

26020 Net earnings are gross earnings less1

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

**2.** class 1 social security contributions **and**

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

1 JSA Regs (NI), reg 99(4); IS (Gen) Regs (NI), reg 36(3)

Income tax

26021 Deduct from gross earnings any income tax deducted by the employer.

Social security contributions

26022 Social security contributions are often called National Insurance Contributions or NI Conts. Reduce gross earnings by any class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

26023 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 x 12 ÷ 52 = £6 per week) and half of this weekly figure (£6 ÷ 2 = £3) is deducted from her gross weekly earnings (£50 - £3 = £47).

26024 Occupational pension schemes1 are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

**1.** normally in the form of a pension, all or part of which may be taken as a lump sum

**2.** payable on death or retirement.

1 JSA (NI) Order 95, art 2(1); Pensions Schemes (NI) Act 93, sec 1; SS A (NI) Act 92, sec 167

26025 Personal pension schemes1 are arrangements between employees, or self-employed 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 JSA (NI) Order 95, art 2(1); Pensions Scheme (NI) Act 93, sec 1;
SS A (NI) Act 92, sec 167; IS (Gen) Regs (NI), reg 2(1)

26026 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period1.

1 R(FC) 1/90

Expenses not reimbursed by employer

26027 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred1.

1 R(IS) 16/93

26028 Examples of expenses for which deductions may be made under DMG 26027 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.

26029 The expense must be incurred in direct connection with the employer’s trade or business1. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed (see DMG 27192 - 27195). Any decision by Her Majesty’s Revenue and Customs on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed2.

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

26030 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 DMG 26027. Child minding expenses1, 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

26031 See DMG 26062 and 26066 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 26077 for more guidance on the general question of expenses.

26032 - 26036

Treatment of particular kinds of payments from employment

Introduction

26037 The law1 gives some examples of what earnings can include (see DMG 26013). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in DMG 26040 - 26095.

1 JSA Regs (NI), reg 98(1); IS (Gen) Regs (NI), reg 35(1)

Employment ended

26038 Some payments are made to employees because their employment has ended. How these payments affect a claim for Jobseeker’s Allowance or Income Support will depend on

**1.** which benefit has been claimed

**2.** whether the work was part-time

**3.** whether the work was remunerative.

26039 Guidance on the treatment of payments made because employment has ended is given in DMG 26500 et seq.

Accommodation provided by employer

26040 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 decision maker should consider whether to treat the claimant as having earnings or greater earnings (see DMG 26180 et seq).

Actors and entertainers

26041 Decision makers 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 decision maker should decide whether a claimant’s earnings are from employment as a self-employed earner or employment as an employed earner.

26042 In general, because of the nature of an actor’s or entertainer’s employment, the decision maker may find that their earnings are from employment as a self-employed earner. However, it is possible for an entertainer whose general pattern of employment is that of a self-employed earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

26043 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 decision maker deciding the claim to Income Support or Jobseeker’s Allowance 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 self-employed earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the decision maker to decide whether the claimant was employed under a contract of service or otherwise.

 **Note:** From 6.4.14, Her Majesty’s Revenue and Customs treat actors and entertainers as self-employed for National Insurance (and generally tax) purposes1 and they now pay Class 2 or 4 contributions.

1 SS (Categorisation of Earners) (Amdt) Regs 2014

 **Example 1**

 Laura is an actress. She makes a claim for Jobseeker’s Allowance because she has left her partner who was in full-time 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 the 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 decision maker

 **1.** decides that the claimant is gainfully employed as a self-employed earner (see DMG 27019 - 27023)

 **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.

 **Example 2**

 Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually self-employed, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 contributions.

 The decision maker decides that Craig’s employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company, and as such the earnings from that employment are not included in the calculation of the claimant’s earnings as a self-employed earner.

Advance of earnings or loans

26044 Earnings should be taken into account from the date they are treated as paid1. This is based on when they are due to be paid (see DMG Chapter 25). If they are paid before the due date, treat any amount paid as capital until the due date arrives. Then take the amount properly due into account as normal from that date. Any other income loan made by the employer should also be treated as capital2.

1 JSA Regs (NI), reg 94 & 96(1); IS (Gen) Regs (NI), reg 29 & 31(1);
2 JSA Regs (NI), reg 110(5) & Sch 6, para 34; IS (Gen) Regs (NI), reg 48(5) & Sch 9, para 32

**Example**

Conor 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

26045 Payments of bonus or commission should be treated as earnings. DMG Chapter 25 contains guidance on the period over which they should be taken into account.

Broadcasting and publication fees

26046 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 DMG Chapter 27) 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

26047 Employees of British Coal who live in property where solid fuel cannot be used, may receive a cash payment instead of an agreed amount of coal (concessionary coal). Payments made instead of it should be treated as earnings1.

1 R(SB) 2/86

Directors of limited companies

26048 A limited company, of whatever size, is separate from its employees and shareholders1. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director’s income

26049 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.

**Note :** See DMG Chapter 29 when considering the effect of a director’s capital.

Payments as a director or other employee

26050 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.

26051 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.

26052 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.

26053 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.

26054 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 paid1.

1 JSA Regs (NI), reg 105(6); IS (Gen) Regs (NI), reg 42(3)

26055 If a director of a small company is not voted any payment, the decision maker should consider whether the director should be treated as having earnings (see DMG 26180 et seq). In doing so, the decision maker should consider whether the company can afford to pay the director.

Share dividend

26056 Share dividend is income from capital and should be treated as capital1.

1 JSA Regs (NI), reg 110(4); IS (Gen) Regs (NI), reg 48(4)

Debenture interest

26057 Directors may have debentures in a company. Debentures are a type of loan capital. Debenture holders are entitled to a fixed rate of interest. The interest is payable whether the company makes a profit or not. If a director has made a loan to a company, the interest payments should be treated as capital1. If any of the loan itself is repaid, the amount repaid is a repayment of capital.

1 JSA Regs (NI), reg 110(4); IS (Gen) Regs (NI), reg 48(4)

Single status payments

26058 A payment which is made to a person to redress past pay inequalities is a payment of earnings1 and may have to be taken into account if that person is still working for that employer. These payments are sometimes called “single status payments” but may be called something else.

1 JSA Regs (NI), reg 98(1); IS (Gen) Regs (NI), reg 35(1);
Minter v. Kingston Upon Hull City Council [2011] Civ 1155

 **Example**

 Anna is in receipt of income-based Jobseeker’s Allowance 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. Anna’s employer offers her a payment of £7,200. This is paid to Anna with her salary and the decision maker treats it as a payment of earnings.

Holiday pay

26059 Any holiday pay that is payable within 4 weeks of the date employment ended, or was interrupted, should be treated as earnings1. If it is payable more than 4 weeks after the employment has ended, or been interrupted, it should be treated as capital2. Guidance on the effects of holiday pay paid on termination of employment is given in DMG 26594 and 26652.

1 JSA Regs (NI), reg 98(1)(c); IS (Gen) Regs (NI), reg 35(1)(d);
2 JSA Regs (NI), reg 110(3); IS (Gen) Regs (NI), reg 48(3)

Income tax refunds

26060 Earnings of employed earners are taxed under the Pay As You Earn scheme by direct deduction from wages or salary. Any refunds of income tax should be treated as capital1 (see DMG 32782 for the exception to this rule in trade dispute cases).

1 JSA Regs (NI), reg 110(2); IS (Gen) Regs (NI), reg 48(2)

Justices of the Peace

26061 Most Justices of the Peace are members of the public who volunteer to be magistrates. Those who are employed as magistrates are referred to as stipendiary magistrates. In connection with their duties Justices of the Peace and magistrates may receive

**1.** travel allowances

**2.** subsistence1

**3.** financial loss allowances2.

1 Magistrates Courts Act (NI) 1965, sec 12A(1)(a); 2 sec 12A(1)(b)

 26062

Travel allowances and subsistence

26063 Travel allowances and payments of subsistence incurred wholly, exclusively and necessarily in the performance of the Justice of the Peace's duties should be disregarded in full1.

1 JSA Regs (NI), reg 98(2)(d) & Sch 6, para 3; IS (Gen) Regs (NI), reg 35(2)(c) & Sch 9, para 3

Financial loss allowances

26064 Financial loss allowances are paid to compensate Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for

**1.** loss of earnings - these should be treated as pay in lieu of remuneration1 (see DMG 26082)

**2.** loss of social security benefits - these should be treated as income other than earnings

**3.** other expenses that are incurred wholly, exclusively and necessarily in the performance of the Justice of the Peace duties - these should be disregarded in full2.

1 JSA Regs (NI), reg 98(1)(b); IS (Gen) Regs (NI), reg 35(1)(b);
2 JSA Regs (NI), Sch 6, para 3; IS (Gen) Regs (NI), Sch 9, para 3

 26065

District councillors

26066 District councillors are elected office holders and are employed earners1. The official duties and responsibilities of a councillor are known as **approved** duties and vary from council to council. Each council must draw up a scheme2 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

**1.** attendance at a meeting of the council **and**

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

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

**4.** other meetings authorised by the council.

1 R(IS) 6/92; R2/94 (IS); 2 Local Government (Payments to Councillors) Regulations (NI) 81, reg 6

26067 Councillors allowances and expenses are decided by each District Council. They may include

**1.** basic allowance

**2.** special responsibilities allowance

**3.** childcare and dependent Carer’s Allowance

**4.** travel and subsistence allowance.

Expenses incurred in the performance of the councillor’s duties may be deducted from the allowances that are paid (see DMG 26071 et seq).

Basic allowance

26068 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

26069 Councillors with extra responsibilities, for example the leader of a council, can receive an additional special responsibilities allowance. The amount, and how it is paid, is decided by the District Council, but it will usually be paid quarterly. It should be treated as earnings.

Childcare and dependent carer’s allowance

26070 District councils may pay a childcare and dependent carer’s 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 earnings1.

1 IS (Gen) Regs (NI), reg35(1)(f), JSA Regs (NI), reg 98(1)(e)

Expenses

26071 Repayment for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor’s duties, should be fully disregarded1. For example, travel and subsistence allowances2. If the District Council cannot say how much of any payment is for expenses, ask the councillor for details. If the councillor has an income tax assessment, take this into account. Evidence from the councillor should normally be accepted.

1 JSA Regs (NI), reg 98(2)(d); IS (Gen) Regs (NI), reg 35(2)(c) 2 R(IS) 6/92

26072 After expenses in DMG 26071 have been disregarded, the decision maker 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 council (see DMG 26027)1. 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.

1 JSA Regs (NI), reg 98(2)(d); IS (Gen) Regs (NI), reg 35(2)(c)

 **Example**

 Sharon attends three school summer fairs, in her capacity as a district 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 decision maker 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.

26073 The decision maker 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** duties1.

1 JSA Regs (NI), reg 99(4); IS (Gen) Regs (NI), reg 36(3); R(IS) 16/93; R 2/94(IS)

26074 For the purposes of DMG 26072, 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.

26075 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. Decision makers 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 DMG 26071). This is different to the normal treatment of travelling expenses (see DMG 26030). 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.** Subscription to trade unions or other political or professional bodies 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 DMG 26029). The decision maker should establish what proportion of the total household bill can be regarded as arising from the councillor’s work. Unless the decision maker 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 DMG 26020 and DMG 26023).

Payments not claimed

26076 Councillors are entitled to allowances whether they are claimed or not1. If a councillor has not been paid an allowance and payment could be expected, the decision maker should consider taking notional income into account2 (see DMG Chapter 28).

1 R(S) 6/86; 2 JSA Regs (NI), reg 105(2); IS (Gen) Regs (NI), reg 42(2)

Treatment of expenses

26077 Payments made by an employer for expenses which **are not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings1. These can include

**1.** payments for travelling expenses between home and work

**2.** 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 (NI), reg 98(1)(e); IS (Gen) Regs (NI), reg 35(1)(f)

26078 Payments made by an employer for expenses which are wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings1. They are treated as income other than earnings but are fully disregarded2. 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 (NI), reg 98(2)(d); IS (Gen) Regs (NI), reg 35(2)(c); R(FIS) 4/85;
2 JSA Regs (NI), Sch 6, para 3; IS (Gen) Regs (NI), Sch 9, para 3

26079 An employer may pay for an expense from which the employee gets some private benefit. If so, divide the payment into private and business use. The part of the payment for private use is earnings1. The rest, which is for business use, is wholly, exclusively and necessarily incurred, and is not earnings.

1 R(IS) 16/93

**Example**

John 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 John also uses the phone for personal calls, and 50% of the calls made are personal. The decision maker 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 John’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.

Payments in kind

26080 A payment in kind, for example free accommodation, should not be treated as earnings1. Where wages are paid at a reduced rate because of the payment in kind, consider notional earnings (see DMG 26180 et seq).

1 JSA Regs (NI), reg 98(2)(a); IS (Gen) Regs (NI), reg 35(2)(a)

26081 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 DMG 26094)

Payments in lieu of remuneration

26082 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 District councillors for loss of earnings are examples of such payments. Industrial Tribunal compensation awards for a past employment and awards made under sex and race discrimination law can also be payments in lieu of remuneration. Payments made in lieu of remuneration are earnings1.

1 JSA Regs (NI), reg 98(1)(b) & (3); 2 IS (Gen) Regs (NI), reg 35(1)(b); R(SB) 21/86

Retainers

26083 Retainers1 are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings and should not be disregarded. Retainer payments include2

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

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

1 JSA Regs (NI), reg 98(1)(d); IS (Gen) Regs (NI), reg 35(1)(e);
2 JSA Regs (NI), Sch 5, para 1; IS (Gen) Regs (NI), Sch 8, para 1 & 2

Service User Groups

26084 Expenses paid to persons for taking part in a service user group (see DMG 28393) should be fully disregarded. Such expenses are not treated as earnings1, they are income other than earnings and fully disregarded2. Payments other than expenses received for taking part in a service user group (see DMG 28393) should be treated as earnings for

 **1.** Income Support3, **and**

 **2.** income-based Jobseeker’s Allowance4

 and be attributed in the usual way with the appropriate weekly disregards. Decision makers will also need to consider whether the remunerative work rule applies (see DMG Chapters 20 and 41).

1 IS (Gen) Regs (NI), reg 35(2)(f); JSA Regs (NI), reg 98(2)(h)
2 IS (Gen) Regs (NI), Sch 9, para 2A; JSA Regs (NI), Sch 6, para 2A;
3 IS (Gen) Regs (NI), reg 35(1); 4 JSA Regs (NI), reg 98(1)

 **Example 1**

 Jenny is in receipt of income-based Jobseeker’s Allowance. She is involved in a tenants association which discusses Housing Executive housing issues. In return for attending the meetings, Jenny receives £20 from the Housing Executive. As this is paid for attendance and not for expenses the decision maker decides that the payment is a payment of earnings and falls to be taken into account when calculating Jenny’s entitlement to income-based Jobseeker’s Allowance. The payment is subject to the normal weekly earnings disregards.

 **Example 2**

 Davy is in receipt of income-based Jobseeker’s Allowance. He is an independent member of a Policing and Community Safety Partnership, participation in which requires him to attend a number of meetings every year. Davy is paid expenses incurred in relation to travel and subsistence by his local council as well as an additional flat-rate of £60 for non-specific expenses for each meeting. As Policing and Community Safety Partnerships fall under the definition of “service user group” and these payments are made for expenses, they are not treated as earnings for the purposes of Davy’s award of income-based Jobseeker’s Allowance. They are income other than earnings and are disregarded.

Special occupations

26085 Some occupations are known as special occupations. These are

**1.** auxiliary coastguards for coastal rescue activities

**2.** part-time members of a fire brigade maintained under certain legislation1

**3.** part-time work manning or launching a lifeboat

**4.** members of the territorial or reserve forces2 (Appendix 1)

**5.** persons in the army where service is restricted to part-time service in Northern Ireland3.

1 Fire Services (NI) Order 84; 2 SS (Contributions) Regs 79, Sch 3, Part 1
3 Army Act 92, sec 1; Armed Forces Act 66, sec 2

26086 People in special occupations may receive a bounty payment for their services. If a bounty is paid at intervals of at least one year, it should be treated as capital1. If it is paid more often than once a year, for example quarterly, it should be treated as earnings. The period for which the bounty is payable is of no relevance.

1 JSA Regs (NI), reg 110(1); IS (Gen) Regs (NI), reg 48(1)

Auxiliary coastguards

26087 Payments received for watch keeping duties should be treated as earnings. Payments for expenses of coastal rescue activities should also be treated as earnings, unless they were wholly, exclusively and necessarily incurred in the performance of the coastguard’s duties (see DMG 26014).

Part time members of a fire brigade

26088 Payments for drills, services or retaining fees, should be treated as earnings. Payments for expenses should also be treated as earnings, if they were not wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Part time manning or launching of a lifeboat

26089 Treat payments for drills, services or retaining fees, as earnings. Payments for expenses should also be treated as earnings, unless they are wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Territorial army or volunteer reservists

26090 **[See DMG Memo Vol 4/115 & 5/90]** 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.

26091 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.1

1 JSA Regs (NI), reg 98(1)(e)(i); IS (Gen) Regs (NI), reg 35(1)(f)(i)

26092 Treat other payments, for example drill night pay, as earnings, unless they are for an item wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 26014).

Tips

26093 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

26094 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.

26095 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 social security contributions to deduct1.

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

1 IS (Gen) Regs (NI), reg 35(1)(j); JSA Regs (NI), reg 98(1)(h)

26096 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 earner1 (see DMG 26094 above).

1 IS (Gen) Regs (NI), reg 35(2A); JSA Regs (NI), reg 98(2A)

Earnings disregards

Application to claimant and family

26097 Net earnings should be taken into account less any disregard. The amount of disregard will depend on

**1.** which benefit has been claimed

**2.** whether the earnings are from work in a special occupation

**3.** whether the claimant is single

**4.** who the earnings belong to.

Contribution-based Jobseeker’s Allowance

26098 For contribution-based Jobseeker’s Allowance disregard all the earnings of a claimant’s dependants1. Disregard £5 from the claimant’s own earnings unless the claimant is in a special occupation (see DMG 26084) or is a share fisherman (see DMG Chapter 27)2. In such cases disregard the claimant’s earnings up to a maximum of £203. No other disregards can apply4.

1 JS (NI) Order 95, art 6; JSA Regs (NI), reg 80(2)
2 JSA Regs (NI), Sch 6, para 12; 3 Sch 6, paras 9 & 10;
4 reg 99(3)

Income-based Jobseeker’s Allowance and Income Support

26099 The income of each member of the family is worked out separately in income-based Jobseeker’s Allowance and Income Support. It is then treated as belonging to the claimant. This means that earnings of the claimant’s partner can affect the claim. Earnings of any children or young people in the family may also sometimes affect the claim (see DMG 26134).

26100 Disregards apply equally to the claimant and partner, with an overall maximum limit set for the family. Where more than one disregard applies, the family is normally entitled to only one disregard. This will usually be the highest one, which can be up to £201.

*1 SS Amendment Regs (NI) 2000, reg 3*

26101 The exception to this rule is where amounts can be disregarded as in DMG 26130 - 26133. In such a case, those amounts may be disregarded in addition to the normal maximum set for the family.

Disabled people

26102 A disregard of up to £20 a week1 applies if the claimant

**1.** is entitled to a disability premium2 **or**

**2.** would be entitled to a disability premium but for living in hospital as an in-patient **or**

 **3.** is a member of a couple3 and their applicable amount would

 **3.1** include a disability premium but for a higher pensioner premium being payable **or**

 **3.2** have included a higher pensioner premium but for the claimant living in a place as in **2.** and if so, they would also have satisfied the conditions in **3.1** **or**

 **4.** is entitled to a higher pensioner premium, or would be entitled to a higher pensioner premium but for living in a place set out in **2.**4 **and**

 **4.1** the claimant or partner has reached the qualifying age for State Pension Credit **and**

 **4.2** immediately before reaching that age the partner was working part-time and was entitled to the £20 disregard under **1.** to **3.** **and**

 **4.3** the claimant or partner has continued in part-time work.

1 JSA Regs (NI), Sch 5, para 5(1), Sch 5A, para (1)(1) ; SS Amendment Regs (NI) 2000, reg 3;
IS (Gen) Regs (NI), Sch 8, para 4(1); 2 JSA Regs (NI), Sch 5, para 5(2);Sch 5A, para (1)(2);
IS (Gen) Regs (NI), Sch 8, para 4(2); 3 JSA Regs (NI), Sch 5, para 5(3), Sch 5(A), para (1)(3);
IS (Gen) Regs (NI), Sch 8, para 4(3); 4 JSA Regs (NI), Sch 5, para 5(4), Sch 5A, para (1)(4);
IS (Gen) Regs (NI), Sch 8, para 4(4);

**Repeat claims**

26103 When considering whether the higher disregard again applies, do not take account of breaks in entitlement for any period

**1.** of 8 consecutive weeks or less1 that is

**1.1** on or after the date on which the claimant or partner reaches the qualifying age for State Pension Credit during which

**1.1.a**. the claimant or partner are not in part-time work **or**

**1.1.b.** the claimant is not entitled to Employment and Support Allowance, Jobseeker’s Allowance or Income Support **or**

**1.2** immediately after the date on which the claimant or partner

**1.2.a.** stopped specified training2 **or**

**1.2.b.** gave up an employment rehabilitation programme **or**

**2.** not exceeding the permitted period3 (DMG 26104)

**2.1** which is on or after the date the claimant or partner reaches the qualifying age for State Pension Credit **and**

**2.2** during which the claimant or partner is in remunerative work **or**

**3.** which is4

**3.1** on or after the date the claimant or partner reached the qualifying age for State Pension Credit **and**

**3.2** during which the claimant is not entitled to Employment and Support Allowance, Jobseeker’s Allowance or Income Support because the claimant or partner has been in specified training or on a course at an employment rehabilitation centre.

1 JSA Regs (NI), Sch 5, para 5(7)(a), Sch 5A, para 1(5)(a)(i); IS (Gen) Regs (NI), Sch 8, para 4(7)(a);
2 Dis P (E) Act (NI) 45, sec 2 & 3; E&T Act (NI) 50, sec 1(1)
3 JSA Regs (NI), reg 87(7) & Sch 5, para 5(7)(b) & 21, Sch 5A, para 1(5)(b);
IS (Gen) Regs (NI), reg 3A & Sch 8, para 4(7)(b);
4 JSA Regs (NI), Sch 5, para 5(7)(c), Sch 5A, para 1(5)(c); IS (Gen) Regs (NI),Sch 8, para 4(7)(c)

Permitted period

26104 A claimant can stop getting benefit for a permitted period without losing entitlement to the higher earnings disregard1.

1 JSA Regs (NI), reg 87(7) & Sch 5, para 21; IS (Gen) Regs (NI), reg 3A

26105 Where the claimant or partner starts remunerative work, the permitted period is normally 12 weeks. In other cases the period is 8 weeks. But there is an exception to this rule for Jobseeker’s Allowance.

26106 Where the claimant or partner leaves remunerative work, the permitted period is 8 weeks if they

**1.** are sanctioned for leaving voluntarily or for misconduct1 **or**

**2.** leave the work within 4 weeks of starting it **or**

**3.** at any time in the 13 weeks before they started the work they were

**3.1** engaged in remunerative work **or**

**3.2** in relevant education **or**

**3.3** a student.

1 JS (NI) Order 95, art 22

26107 The permitted period is 12 weeks where the person gives up work but satisfies the trial period rules1 (see DMG Chapter 34).

1 JSA Regs (NI), reg 74(4)

Lone parents

26108 £20 of earnings is disregarded1 if

**1.** DMG 26101-26102 does not apply **and**

**2.** the claimant is a lone parent (see DMG Chapter 22).

1 JSA Regs (NI), Sch 5, para 6; IS (Gen) Regs (NI), Sch 8, para 5 ; SS Amendment Regs (NI), reg 3

 26109 - 26110

Carers

26111 If the disregards in DMG 26101 - 26107 do not apply, a disregard of £20 can be applied1 to a carer’s earnings where

**1.** the claimant’s applicable amount includes a carer’s premium **and**

**2.** the carer

**2.1** is in receipt of Carer’s Allowance **or**

**2.2** at any time in the preceding 8 weeks was in receipt of Carer’s Allowance, or was treated as in receipt of Carer’s Allowance **or**

**2.3** is treated as being in receipt of Carer’s Allowance.

1 JSA Regs (NI), Sch 5, para 7, Sch 5A, para 2; IS (Gen) Regs (NI), Sch 8, para 6A

26112 A carer premium may be awarded for both the claimant and partner where they both have earnings. Only £20 can be disregarded from the total amount of their combined earnings1.

1 JSA Regs (NI), Sch 5, para 7(2), Sch 5A, para 2(2); IS (Gen) Regs (NI), Sch 8, para 6A(2)

26113 If a carer’s partner has earnings from a special occupation (see DMG 26115) the disregard from those earnings should be limited. The limit will be the amount which, when added to the carer’s earnings, will not exceed £201.

1 JSA Regs (NI), Sch 5, para 8, Sch 5A, para 3; IS (Gen) Regs (NI), Sch 8, para 6B

**Example**

Pamela is a carer with part-time earnings of £8 a week. Her partner David is a part-time crew member on a lifeboat, earning £20 a week. Pamela’s earnings are fully disregarded. £12 is disregarded from David’s earnings.

26114 If a carer’s partner has earnings that are not from a special occupation, the disregard from those earnings should be limited. The limit will be the amount, up to £5, which would not, when added to the carer’s earnings, be more than £201.

1 JSA Regs (NI), Sch 5, para 8, Sch 5A, para 3; IS (Gen) Regs (NI), Sch 8, para 6B

**Example 1**

Sam is a carer who has part-time earnings of £17 a week. His partner Rachael, has part-time earnings as a school meals assistant of £10 a week. Sam’s earnings are fully disregarded. Rachael’s earnings will have a £3 disregard (£20 - £17).

**Example 2**

Craig is a carer with part-time earnings of £8 a week. His partner John has part-time earnings as a barman, of £16. Craig’s earnings are fully disregarded. John’s earnings have a £5 disregard.

Special occupations

26115 If the disregards in DMG 26101 - 26114 do not apply, a disregard of £20 can normally be allowed on earnings from special occupations1 (see DMG 26085). This is one of the disregards that can apply when considering the amount of contribution-based Jobseeker’s Allowance payable. See DMG 26117 - 26119 for the exception to this rule.

1 JSA Regs (NI), Sch 5, para 9(1), Sch 5A, para 3; IS (Gen) Regs (NI), Sch 8, para 7(1)

26116 Both members of a couple may have earnings from special occupations. Unless the exception in DMG 26117 applies, only £20 can be disregarded in total.

**Example**

George is a part-time crew member on a lifeboat, earning £14 a week. His partner Molly is a member of the Territorial Army Reserve and also earns £14 a week. George’s earnings are fully disregarded. Molly’s earnings have a £6 disregard (£20 - £14).

Territorial Army or volunteer reservists

Jobseeker’s Allowance

 **[See DMG Memo Vol 4/129, 5/101 & 9/30]**

26117 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 subject to a specific disregard. DMG Chapter 25 provides guidance on the period that the payment is taken into account for.

26118 For contribution-based Jobseeker’s Allowance claimants, 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 contribution-based Jobseeker’s Allowance **less**

 **2.** ten pence1.

1 JSA Regs (NI), Sch 5, para 19(1) & (3)

26119 For income-based Jobseeker’s Allowance and Income Support claimants, any earnings in respect of attendance at annual continuous training, in aggregate with any other earnings that the claimant may have, are disregarded which exceed

 **1.** the claimant’s applicable amount **less**

 **2.** ten pence1.

1 JSA Regs (NI), Sch 5, para 10(2) & (3); IS (Gen) Regs (NI), Sch 8, para 15A(1) & (2)

 **Example**

 On 30.9.12 Jane receives a payment of £532 from the Territorial Army in respect of the time spent away training at camp. She was at camp for 15 days from 3.9.12 to 17.9.12. Her applicable amount for income-based Jobseeker’s Allowance is £67.50

 The decision maker 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 27.9.12 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 27.9.12 to 10.10.12

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

 **5.** for the weeks ending 3.10.12 and 10.10.12 only £67.40 of the earnings are taken into account. This is because this is the amount of Jane’s applicable amount less 10 pence.

 Jane’s Jobseeker’s Allowance resumes at its normal rate of £67.50 from 11.10.12.

 26120 - 26122

Earnings from one or more occupations

26123 A single 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 £201.

1 JSA Regs (NI), Sch 5, para 10; IS (Gen) Regs (NI), Sch 8, para 8

**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.

26124 A claimant may have earnings from a special occupation of less than £20, and have a partner who has a part-time job. Up to £5 can be disregarded from the partner’s earnings unless DMG 26125 applies. The total amount disregarded for the couple can be no more than £201.

1 JSA Regs (NI), Sch 5, para 9(2), Sch 5A, para 3; IS (Gen) Regs (NI), Sch 8, para 7(2)

**Example 1**

Ian earns £20 a week as a part-time member of a lifeboat crew. His partner Kath, earns £30 a week as a cleaner. All of Ian’s earnings are disregarded. Kath’s earnings have no disregard.

**Example 2**

Simon earns £10 a week as a part-time member of a fire brigade. His partner Graham earns £25 a week as a check out operator. All of Simon’s earnings are disregarded. £5 is disregarded from Graham’s earnings.

Income-based Jobseeker’s Allowance and Income Support - couples

26125 In income-based Jobseeker’s Allowance and Income Support there is a £10 disregard that applies to all couples1. How it applies depends on whether

**1.** any other disregard also applies **and**

**2.** one or both of the couple have earnings.

 **Note :** This disregard does not apply in contribution-based Jobseeker’s Allowance.

1 JSA Regs (NI), Sch 5, para 11, Sch 5A, para 6; IS (Gen) Regs (NI), Sch 8, para 6

Couple - £20 disregard does not apply

26126 If the disregards in DMG 26101 - 26124 do not apply, a £10 disregard can be applied to the couple1. If only one of them has earnings, the full £10 can be disregarded from that person’s earnings. It does not matter whether the earnings are the claimant’s or the partner’s.

1 JSA Regs (NI), Sch 5, para 11(a), Sch 5A, para 6(1); IS (Gen) Regs (NI), Sch 8, para 6(a)

26127 If they both have earnings, apply the disregard to the claimant’s earnings first. Any amount of disregard left can then be disregarded from the partner’s earnings. The total amount disregarded for the couple cannot be more than £10.

**Example 1**

Pat is a barperson earning £20 a week. Her partner Stan does not work. Pat’s earnings have a £10 disregard.

**Example 2**

Gordon earns £20 a week as a club pianist. His partner Hazel earns £7 a week as a cleaner. Gordon’s earnings have a £10 disregard. Hazel’s earnings have no disregard.

**Example 3**

Michelle earns £7 a week as a typist. Her partner Annette earns £20 a week as a salesperson. Michelle’s earnings are disregarded in full and £3 (£10 - £7) is disregarded from Annette’s earnings.

Couple - £20 disregard also applies

26128 One or more of the £20 disregards in DMG 26101 - 26124 may also apply. If the total amount disregarded is

 **1.** £10 or more, apply the appropriate disregard, the couple disregard does not apply **or**

 **2.** less than £10, disregard the amount of the earnings that makes the total disregarded £101.

1 JSA Regs (NI), Sch 5, para 11(b), Sch 5A, para 6(2); IS (Gen) Regs (NI), Sch 8, para 6(b)

**Example 1**

Paul is a carer and earns £30 a week. His partner Steve, earns £26 a week as a barman. Paul’s earnings have a £20 disregard. Steve’s earnings have no disregard.

**Example 2**

Harry earns £3 as an auxiliary coastguard. His partner Pauline, earns £20 a week as an assistant in a home. All of Harry’s earnings are disregarded. £7 is disregarded from Pauline’s earnings.

Other cases

26129 If none of the conditions in DMG 26101 - 26128 is satisfied a personal disregard of £5 a week should be allowed1.

1 JSA Regs (NI), Sch 5, para 12; IS (Gen) Regs (NI), Sch 8, para 9

Earnings paid for employment which has been interrupted

26130 Disregard earnings from employment that has been interrupted1, for example by a period of sickness. Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay are examples of other payments that might be made. Statutory Sick Pay, Statutory Maternity Pay, Statutory Paternity Pay and Statutory Adoption Pay should be taken into account as income (see DMG Chapter 28).

1 JSA Regs (NI), Sch 5, para 1(b); IS (Gen) Regs (NI), Sch 8, para 1(1)(b)

26131 **[See DMG Memo Vol 1/74, 2/17, 4/89, 5/76, 6/60, 8/15, 9/6 & 14/40]** 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

26132 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 prevented1.

1 JSA Regs (NI), Sch 5, para 14; IS (Gen) Regs (NI), Sch 8, para 11

Earnings paid in a foreign currency

26133 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments1.

1 JSA Regs (NI), Sch 5, para 15; IS (Gen) Regs (NI), Sch 8, para 12

Earnings of a child or young person

 **[See DMG Memo Vol 4/37, 5/30 & 6/23]**

26134 Earnings of a child or young person should be disregarded in full unless1

**1.** full-time education has ended **and**

**2.** the child or young person is in remunerative work in the period when they are treated as still being in full-time education.

1 JSA Regs (NI), Sch 5, para 17 & 18; IS (Gen) Regs (NI), Sch 8, para 14 & 15

26135 Where the child or young person is still treated as in full-time education (DMG 26134), disregard £20 if

**1.** disabled child premium

**1.1** is included in the child’s applicable amount **or**

**1.2** would be included but for the child living in a nursing or residential care home **and**

**2.** the child’s earning capacity is not less than 75% of that normally expected.

 In all other cases where the child or young person is still treated as in full-time education, disregard £5.

26136 After applying the appropriate disregard, ignore the excess of income over the child’s personal allowance and any disabled child premium1.

1 JSA Regs (NI), reg 106(4); IS (Gen) Regs (NI), reg 44(4)

**Example**

Andy gets Jobseeker’s Allowance for himself and his children. His son Wayne, aged 16, left school on 28.06.96 and is treated as still being in full-time education. On 01.07.96, Wayne starts work as an apprentice printer, working 40 hours a week, for £65.

On 05.07.96 Wayne gets his first wage of £65 disabled child premium is not payable, so £5 is disregarded from Wayne’s earnings. This leaves £60, which is more than the personal allowance in payment for Wayne (£28.85). The excess (£31.15) is ignored, leaving £28.85 to be taken into account.

26137 - 26149

Employment and training schemes

General

26150 Employment and training schemes are usually funded by the Department for the Economy or the Department for Communities. Where a person is on such a scheme, establish whether they are

**1.** employees

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

**1.2** in part-time work **or**

**2.** trainees.

Employees

26151 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 part-time, take the net earnings into account, less any disregard (see DMG 26097 et seq).

Trainees

26152 Trainees get a training allowance with no income tax or social security contributions deducted1. Treat these allowances as other income and take them into account in full2 except for

 **1.** travelling expenses repaid to the trainee unless the same expenses have already been disregarded as student income (see DMG Chapter 30)3

**2.** living away from home allowance (see DMG 28195)

**3.** training premium

**4.** childminding costs paid direct to the childminder4

**5.** training bonus5 (see DMG Chapter 29)

**6.** discretionary payments made under Employment and Training Law intended to meet or help meet the special needs of a person undertaking a qualifying course6.

1 JSA Regs (NI), reg 1(2); IS (Gen) Regs (NI), reg 2(1); 2 JSA Regs (NI), reg 103(1);IS (Gen) Regs (NI), reg 40(1);
3 JSA Regs (NI), Sch 6, para 14; IS (Gen) Regs (NI), Sch 9, para 13; 4 JSA Regs (NI), reg 105(10);
IS (Gen) Regs (NI), reg 42(4); 5 JSA Regs (NI), Sch 7, para 32; IS (Gen) Regs (NI), Sch 10, para 30;
6 JSA Regs (NI), Sch 6, para 14; IS (Gen) Regs (NI), Sch 9, para 13; E & T Act (NI) 1950, sec 2

 26153 - 26156

Training for Success

26157 Training for Success aims to progress participants to higher level training, further education or employment by providing training to address personal and social development needs, develop occupational skills and employability skills and, where necessary, Essential Skills training. It targets those who are unemployed and are under 18 years of age or under 22 for those with a disability or under 24 for those from an in-care background.

26158 Participants on Training for Success automatically qualify for an Education Maintenance Allowance of £40 per week. Travel, lodging and childcare allowances may be paid depending on individual circumstances.

ApprenticeshipsNI

26159 ApprenticeshipsNI aims to provide participants with the opportunity to take part in a Level 2 / Level 3 apprenticeship. ApprenticeshipsNI is open to those who have reached school leaving age, are in permanent employment and contracted to work a minimum of 21 hours per week. The apprentice is in paid employment from day one. The Department for the Economy pays the full cost of the directed ‘off the job’ training element. The apprentices follow a national training framework, which leads to attainment of a Vocational Qualification at Level 2 or 3, Essential Skills and a Technical Certificate.

26160 - 26179

Notional earnings

Notional earnings - general

26180 Notional earnings are earnings that a person does not actually have, but is treated as having. The decision maker should treat the claimant or any other member of the family as having notional earnings where1

**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 decision maker must take into account **at least** the national minimum wage rate relevant to the claimant, unless one of the situations in DMG 26183 applies..

1 IS (Gen) Regs (NI), reg 42(6); JSA Regs (NI), reg 105(13)

26181 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.

26182 Not all the money paid to a worker counts for the purposes of the National Minimum Wage. Also the hours for which the National Minimum Wage should be paid depends on the type of work the worker is doing.

 **Note :** If decision makers 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 Decision Making Services.

26183 The decision maker should not take notional earnings into account1 where the claimant, the claimant’s partner or any member of the family

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

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

 **3.** provides a service under an employment or training programme (see DMG Chapter 21) if

 **3.1** no training allowance is payable to the claimant or the claimant’s partner for the programme **or**

 **3.2** where such an allowance is payable it is for the sole purpose of reimbursement of travelling or meal expenses to the person participating in the programme.

1 JSA Regs (NI), reg 105(13), reg 105(13A); IS (Gen) Regs (NI), reg 42(6), reg 42(6A)

26184 The decision maker should not take notional earnings into account where the claimant is participating in a work placement which is approved by the Department before the placement commences1 and for which the claimant receives no payment.

1 JSA Regs (NI), reg 105(13A)(c); IS (Gen) Regs (NI), reg 42(6A)(d)

26185 In DMG 26184 “work placement” means1 work which

 **1.** is practical work experience **and**

 **2.** is not performed in expectation of payment.

1 JSA Regs (NI), reg 105(17); IS (Gen) Regs (NI), reg 42(6AA)

Remunerative work

26186 Where a service is being performed for some payment or in the expectation of payment, consider whether the remunerative work exclusion applies (see DMG Chapter 20). If Jobseeker’s Allowance is in payment, consider also whether the availability conditions are satisfied.

Meaning of voluntary organisation

26187 Voluntary organisation means1 any association carrying on or proposing to carry on any activities otherwise than for the purpose of gain by the association or by individual members of the association.

1 JSA Regs (NI), reg 1(2); IS (Gen) Regs (NI), reg 2(1)

Meaning of “person”

26188 The meaning of “person” as used in DMG 26180 **1.** and **2.** includes1

**1.** a limited company

**2.** a corporate body

**3.** an individual.

1 R(SB) 13/86

Performance of a service

26189 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.

26190 A service may be performed even where there is a close family relationship1, 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 DMG 26233.

1 R(SB) 3/92 (Appendix)

Details of the service performed

26191 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.

 26192 - 26194

When earnings are not to be treated as paid

26195 Do not treat the claimant as having earnings where

**1.** the claimant

**1.1** works for a charitable or voluntary organisation, 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

26196 Volunteers1 in this context are people who often have no connection to any charitable or voluntary organisation. 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

26197 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 in the local children's home in January. On 1st March she becomes a paid employee at the home when she takes a permanent post as a care assistant. 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

26198 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 income-based Jobseeker’s Allowance is concerned. The hours worked by the claimant/partner 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. Exceptionally where expenses are reimbursed they should be treated as other income (see DMG 28393).

Is it reasonable

26199 There is no definition of reasonable. The question should be considered based on the circumstances of each case1. 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

26200 The claimant or partner 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 decision maker should take account of all the relevant circumstances. In particular the decision maker 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

26201 The decision maker may decide 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 decision maker 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 Retirement Pension and Attendance Allowance. 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 and unemployed. 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.

 26202 - 26209

Calculation of gross notional earnings

26210 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 decision maker should take into account at least the national minimum wage rate relevant to the claimant.

Meaning of in the area

26211 In the area means the normal travel to work area. When considering this point, take account of where the claimant or partner lives and works.

Comparable employment

26212 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.

26213 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.

26214 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

26215 Payments in kind are not earnings1. 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 employment2.

1 JSA Regs (NI), reg 98(2); IS (Gen) Regs (NI), reg 35(2); 2 R(IS) 2/98

 **Example**

 Blossom works as a shop assistant for 10 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 decision maker considers what the market rate for a 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

26216 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

26217 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 decision maker treats the claimant as possessing earnings that are reasonable in the circumstances1. The decision maker must treat the claimant as possessing at least the national minimum wage rate that is relevant to them.

1 IS (Gen) Regs (NI), reg 42(5); JSA Regs (NI), reg 105(12)

26218 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

26219 The claimant may say that the employer is unable to pay. If this is the case, the claimant must submit evidence so that the decision maker can consider the question. This could be

**1.** in the case of a self-employed 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.

26220 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 level1. It is the amount of money that they actually have available to them.

1 R(SB) 3/92 (Appendix)

26221 The decision maker should decide what is reasonable in each case. Where the employer is getting income-based Jobseeker’s Allowance or Income Support 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.

 26222 - 26224

Amount to be taken into account

26225 After deciding the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

26226 From the resulting figure, make notional deductions for

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

**2.** class 1 social security contributions.

Deduction for notional income tax

26227 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.

26228 Calculate the notional income tax to be deducted1 as in DMG Chapter 27.

*1 JSA Regs (NI), reg 105(15); IS (Gen) Regs (NI), reg 42(8)*

Deduction for notional social security contribution

26229 The deduction depends on the claimant’s circumstances. Employed earners between 16 and pension age have to pay social security contributions. This is subject to the amount of their earnings. Contributions are payable at a standard rate between a lower and upper earnings limit1. See DMG Chapter 27 Appendix 2.

1 JSA Regs (NI), reg 105(15)(b); IS (Gen) Regs (NI), reg 42(8)(b)

26230 Some married women can pay social security contributions at a reduced rate. These are women who

**1.** had chosen to pay the reduced rate before 12.05.77 **and**

**2.** were married before 06.04.77 **and**

**3.** have continued to renew their certificate of election.

26231 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 Widow’s Benefit **or**

**3.** loses her right to Widow’s Benefit for a reason other than remarrying **or**

**4.** has had no earnings on which class 1 contributions are payable and has not been self-employed in any two consecutive tax years since 05.04.78.

26232 Standard rate deductions should be made unless there is a current certificate of election.

Onus of proof

26233 In general, the burden of proof rests on the decision maker1. 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 decision maker then considers what reasonable amount of notional earnings should be taken into account.

1 R(SB) 13/86

26234 - 26299

Industrial Relations legislation

Payments - general

Introduction

26300 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 service1. Periods in either type of work count when working out periods of continuous employment.

1 EP (P/T Employees) Regs (NI) 95

26301 The effect of payments or awards made under industrial relations legislation on claims for Jobseeker’s Allowance or Income Support 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

26302 There are many different types of payments and awards including

**1.** statutory guarantee payments (see DMG 26314)

**2.** guarantee payments under a collective agreement or wages order (see DMG 26335)

**3.** remuneration while suspended from work on medical or maternity grounds (see DMG 26395)

**4.** awards made by an Industrial Tribunal for unfair dismissal (see DMG 26405)

**5.** interim relief pending determination of a claim for unfair dismissal (see DMG 26409)

**6.** remuneration under a protective award (see DMG 26422)

**7.** statutory redundancy payments (see DMG 26506)

**8.** payments for certain time off work (see DMG 26440).

Treatment of payments - general

26303 Most payments under industrial relations legislation should be treated as earnings1 (see DMG 26013 et seq). Take them into account in the normal way.

1 JSA Regs (NI), reg 98(1); IS (Gen) Regs (NI), reg 35(1)

26304 Statutory redundancy payments1 are the exception to this general rule. They should be ignored for contribution-based Jobseeker’s Allowance but taken into account as capital for income-based Jobseeker’s Allowance or Income Support. Included at Appendix 4 to this Chapter is a table showing how the amount of statutory redundancy payable is calculated.

1 JSA Regs (NI), reg 98(2); IS (Gen) Regs (NI), reg 35(1)

When payments are due to be paid

26305 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, which have not been paid1, to be ignored for Income Support and Jobseeker’s Allowance purposes. A payment is no longer due if the right to enforce payment is lost.

1 JSA Regs (NI), reg 105(7)(d); IS (Gen) Regs (NI), reg 42(3C)

26306 Employers sometimes appeal against Industrial 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.

26307 Employers and employees sometimes agree a settlement after an Industrial 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.

26308 A complaint may be settled before the Industrial Tribunal gives a decision. Any payments made are payments on termination of employment.

26309 - 26313

Statutory guarantee payments

General

26314 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 work1. 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 (NI) Order 96, art 60

26315 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.

26316 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

26317 Statutory guarantee payments are not payable to employees who

**1.** usually work outside Northern Ireland under their contracts of employment1

**2.** have not been continuously employed by their employer for at least a month2

**3.** have no normal working hours fixed by a contract of employment3, 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 boat4

**5.** are members of the police service and armed forces5.

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

1 ER (NI) Order 96, art 239(2); 2 art 61(1); 3 art 62(1); 4 art 242(2); 5 ER (NI) Order 96, art 243 & 237

26318 Statutory guarantee payments are also not payable if the Department has made an exemption order1. (See DMG 26359 and Appendix 5 to this Chapter).

 **Note :** The exemption order is made by the Department responsible for employment legislation.

1 ER (NI) Order 96, art 67

Calculation

26319 Statutory guarantee payments1 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 week2) in any period of three months3. 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 Department4. 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 September5. See Appendix 3 to this Chapter for details of the amounts payable.

1 ER (NI) Order 96, art 62; 2 art 63(3)-(5); 3 art 63(2); 4 art 63(7) & ER Act 99 sec 34; 5 sec 34

Employees not entitled

26320 An employee is not entitled to a guarantee payment if

**1.** there is no work because employees of the same or an associated employer1 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 employee2 **or**

**3.** reasonable requirements imposed by the employer to ensure that the employee’s services are available have not been met3.

1 ER (NI) Order 96, art 61(3); 2 art 61(4); 3 art 61(5)

Payments not made by employer

26321 Guarantee payments may not have been paid for the first 5 workless days in a 3 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 decision maker should normally accept that statement.

26322 The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see DMG 26317). Or there may be no good reason given. The decision maker should make a decision based on the available evidence.

Complaints to a tribunal

26323 Employees may complain to an Industrial Tribunal that they have not received all the payments that they should have1. If this is confirmed the employer will be ordered to pay any amount owing2. Settlements can also be reached by conciliation or arbitration.

1 ER (NI) Order 96, art 66(1); 2 art 66(3)

26324 Where such a complaint is outstanding the decision maker cannot determine whether an employee is due to be paid statutory guarantee payments. That question can only be decided by

 **1.** Industrial Tribunals **or**

 **2.** the Court of Appeal for Northern Ireland.

26325 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 on the claim. The decision maker can allow the claim then revise or supersede the award as appropriate once a decision is made.

Effect of statutory guarantee payments

26326 The period over which a payment is taken into account depends on the date it is due to be paid1. That date is not always clear. It may not be the date they are actually paid.

1 JSA Regs (NI), reg 96(1); IS (Gen) Regs (NI), reg 31(1)

26327 A decision can only be made when all the evidence is available. The decision maker 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.

26328 In cases of doubt the decision maker 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.

26329 Statutory guarantee payments are payable only for the first 5 days of lay off in a 3 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 DMG 26335 et seq).

Jobseeker’s Allowance

26330 Statutory guarantee payments should be taken into account as earnings1 for both elements of Jobseeker’s Allowance.

1 JSA Regs (NI), reg 98(1)(ff)

Income Support

26331 Statutory guarantee payments should be taken into account as earnings1 for Income Support purposes.

1 IS (Gen) Regs (NI), reg 35(1)(gg)

26332 - 26334

Collective agreements

Introduction

26335 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.

26336 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 applied1.

1 R(U) 23/55

26337 National agreements are sometimes made for an industry1. 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 IR (NI) Order 92, art 2(1)

Terms of an agreement

26338 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.

26339 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.

26340 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 day1. 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)

26341 An agreement may be subject to a separate arrangement between the parties involved. Take this into account when deciding the effects of the agreement1.

1 R(U) 21/56 (T)

26342 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 days1.

1 R(U) 1/75

Changes to agreements

26343 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.

26344 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 changes1.

1 R(U) 40/56

26345 Changes to an agreement cannot affect the Jobseeker’s Allowance labour market 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.

26346 Employers may make backdated payments, because of a change to an agreement. The decision maker 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

26347 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 contract1 **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 IR (NI) Order 92, art 26

26348 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 decision maker should take this into account when considering the employee’s availability.

26349 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.

26350 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

26351 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.

26352 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.

26353 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.

26354 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.

26355 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.

26356 Employees may say that an agreement no longer applies to them. The decision maker should ask for details of the suspension. Employers will usually be able to supply these.

26357 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.

26358 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

26359 Where there is a collective agreement in force, the Department can make an exemption order1. This order stops employees from being entitled to statutory guarantee payments (see DMG 26314 et seq)

1 ER (NI) Order 96, art 67

26360 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

26361 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 organisation. The exemption order gives details of all parties to the agreement.

26362 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.

26363 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

26364 Employees may be entitled to guaranteed payments of wages. These are not statutory guarantee payments and are not usually paid at the same time.

26365 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.

26366 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.

26367 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

26368 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

26369 Before deciding the effect of guaranteed wages payments the decision maker 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.

26370 Any guaranteed payment of wages due to be paid should be treated as earnings1 for both Jobseeker’s Allowance and Income Support. Take it into account in the normal way.

1 JSA Regs (NI), reg 98(1); IS (Gen) Regs (NI), reg 35(1) & 42(2)

Work guaranteed

26371 Some employees are guaranteed employment for a limited number of days or hours each week. For Jobseeker’s Allowance, take any such employment into account when considering the question of the claimant’s availability.

26372 If employers cannot provide guaranteed work, payments may have to be made instead. Details of guarantees should be in the agreement.

26373 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.

26374 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.

26375 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.

 26376

26377 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.

26378 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 agreement1.

1 R(U) 2/58

26379 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 2 days work a week. He must be available and willing to work for his employer on those days. In alternate weeks he works 2 days, Monday and Tuesday. In the other weeks he only works 1 day, Tuesday. In the 1 day weeks, Monday is the other day on which he has an obligation to his employer1.

1 R(U) 22/56 (T)

26380 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

26381 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.

26382 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.

26383 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

26384 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 5 day working week, Monday to Friday. The guarantee is for 5 days. Because of approved short time working, she only works Wednesday to Friday. Her standard working week has reduced by 2/5 (40%). The guarantee is also reduced by 40%, to 3 days.

**Example 2**

Wally has a 5 day working week. The guarantee only covers 4 of those days. Short time working of 4 days is introduced. His guarantee reduces by the amount of time lost. It is reduced by 1 day to 3 days.

Night workers

26385 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

26386 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.

26387 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**

Mark has a 5 day working week, Monday to Friday, but is now on short time. The guarantee is for 4 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 5 days to 4. The period of the guarantee is also reduced by 1/5 (20%) from 4 days to 3¼ days.

26388 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

26389 Whenever work is guaranteed, consider whether the remunerative work exclusion applies. If Jobseeker’s Allowance has been claimed consider also whether the availability conditions are satisfied.

26390 - 26394

Suspension from work on medical or maternity grounds

General

26395 Employees may be suspended from work under certain health and safety law. This can be on medical or maternity grounds1. Employees may be entitled to be paid while they are suspended2. Any payments due are earnings for contribution-based Jobseeker’s Allowance, income-based Jobseeker’s Allowance and Income Support3. Take them into account in the normal way.

1 ER (NI) Order 96, art 96 & 98; 2 art 96(1) & 100(1);
3 JSA Regs (NI), reg 98(1)(f)f); IS (Gen) Regs (NI), reg 35(1)

 26396

Employees not entitled to be paid

26397 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 suspension1.

1 ER (NI) Order 96, arts 97(4) & 100(2)

26398 Employees who are suspended on medical grounds also lose the right to be paid if1

**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 **or**

**3.** they were originally employed

**3.1** under a contract

**3.1.a** for a fixed term of 3 months or less **or**

**3.1.b** for 3 months or less for a specific task **and**

**3.2** have not been continuously employed for 3 months or more.

1 ER (NI) Order 96, art 97

Calculation of pay

26399 Employees suspended on

**1.** maternity grounds can be paid for as long as they are suspended1

**2.** medical grounds have a limit to the payment period. This is a maximum of 26 weeks2.

 The amount payable in either case is a normal week’s pay for each week of the suspension3.

1 ER (NI) Order 96, art 100(1); 2 art 96(1); 3 art 101(1)

Complaints to a tribunal

26400 Employees may complain to a tribunal that they have not received their full entitlement1. 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 (NI) Order 96, art 102

26401 - 26404

Compensation for unfair dismissal

Introduction

26405 Employees have the right to complain1 to an Industrial Tribunal if they think that their dismissal was unfair. If this is confirmed the tribunal can

**1.** make an order for reinstatement or re-engagement2 **or**

**2.** award compensation

**2.1** when no such order is made3 **or**

**2.2** if such an order is made but its terms are not fully met by the employer4.

1 ER (NI) Order 96, art 145; 2 arts 147, 148 & 149; 3 art 146(4); 4 art 151

26406 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.

26407 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.

26408 It may be a long time before the tribunal make their decision. Do not wait until then before deciding the claim. The decision maker can revise the award once the decision is made.

Interim relief

26409 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.** trade union membership or activities1 **or**

**2.** the status or activities of employee representatives (redundancy and business transfers)2 **or**

**3.** health and safety at work matters3.

1 ER (NI) Order 96, arts 163-165; 2 arts 163-165; 3 arts 163-165

Amount of awards

26410 An award of compensation can be made up of

**1.** a basic award, based on age and length of service1. This is 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 (for example, loss of future earnings) suffered because of the dismissal2 **and**

**3.** a special award of compensation, where the reason for the dismissal is related to3

**3.1** trade union membership **or**

**3.2** the status or activities of employee representatives elected for consultation about redundancies and business transfers **or**

**3.3** health and safety at work matters.

1 ER (NI) Order 96, art 153; arts 157 & 158; 3 arts 132, 134 & 136

26411 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 dismissed1 **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 Fair Employment law2.

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

1 R(U) 6/85; 2 ER (NI) Order 96, arts 157-160

26412 Under certain recoupment law1, 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 Department (see DMG 09420 et seq). But this only applies to formal awards and where the employee has claimed or had been granted Jobseeker’s Allowance or Income Support.

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

26413 Recoupment law does not always apply, for example where the award is made under Sex Discrimination or Fair Employment 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

26414 The period of the award may be cut, for example where expected weekly wages are more than was paid in the former job. An Industrial Tribunal will usually give details in its decision when this happens. The period covered by the award should also be given.

26415 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**

John earns £200 a week as a machinist. On 07.10.96, he is sacked by his employer and complains to a tribunal. On 03.02.97, the tribunal decide that he was unfairly dismissed and award him £2000 compensation. The award is from 07.10.96 and has not been cut for any reason. There are no details given of what period the award covers. The decision maker decides that it was clearly intended to be for 10 weeks (10 x £200 = £2000) from 07.10.96.

26416 Always make sure that the amount and period of an award are known. The most reliable source of such information is the Industrial Tribunal. Employees should also be able to give these details.

Effect of awards - Jobseeker’s Allowance

26417 Awards of compensation should be treated as earnings1. 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 dismissal2 **and**

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

**2.2** the former employer is insolvent at the time the decision maker is making a decision (see DMG 26419).

1 JSA Regs (NI), reg 98(1)(f); 2 ER (NI) Order 96, art 157

26418 Awards as in DMG 26417 **1.** and **2.** should be disregarded1.

1 JSA Regs (NI), Sch 5, para 3

Employer insolvent

26419 In Northern Ireland, employers are insolvent1 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 (NI) Order 96, art 228

 26420

Effect of awards - Income Support

26421 Awards of compensation should normally be treated as earnings1. They should be taken into account from the date they are treated as paid2. This does not include payments to compensate for the loss of the job itself (rather than for loss of earnings) or for injury to feelings. Such payments should be treated as capital.

1 IS (Gen) Regs (NI), reg 35(1)(g) & (h); 2 reg 31(1)

Protective awards

Introduction

26422 Employers must consult their employees’ representatives in good time about certain redundancy proposals1. Those representatives may be

**1.** elected by the employees **or**

**2.** representatives of a recognised trade union.

1 ER (NI) Order 96, art 216

26423 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.

26424 Employee representatives can complain to a tribunal if an employer does not correctly follow the rules. The Industrial Tribunal can then make a protective award if the complaint is confirmed.

Terms of an award

26425 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.

26426 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

26427 Employers may not pay all that they should do under a protective award. Employees can then complain to an Industrial Tribunal1. If the complaint is confirmed the employer will be ordered to pay any amount owing.

1 ER (NI) Order 96, art 217

Protective award not applied for

26428 There may be cases where

**1.** the employer has not followed the rules **and**

**2.** the employee representative has not complained to an Industrial 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 earnings1.

1 IS (Gen) Regs (NI), reg 35(1)(b)

Effect of payments

26429 Payments made under a protective award are earnings1 for both Jobseeker’s Allowance and Income Support. They should be taken into account in the normal way.

1 JSA Regs (NI), reg 98(1)(g); IS (Gen) Regs (NI), reg 35(1)(h)

26430 - 26439

Time off work provisions

General

26440 Under industrial relations law, employees may be allowed time off during normal working hours

**1.** for duties as a trade union or elected employee representative1

**2.** for trade union activities2

**3.** for public duties3

**4.** to look for work or make arrangements for training4

**5.** for ante-natal care5

**6.** for occupational pension scheme trustees6

**7.** to make arrangements for dependants7

**8.** to undertake study or training if they are a young person8.

1 ER (NI) Order, art 89; 2 art 92 - 95; 3 art 78; 4 art 80; 5 art 83; 6 art 86; 7 art 85A; 8 art 91A

26441 Employees may be entitled to be paid while they are taking this time off. Any payments due are earnings1. Take them into account in the normal way.

1 JSA Regs (NI), reg 98(1); IS Gen) Regs (NI), reg 35(1)

 26442 - 26450

Complaints to a tribunal

26451 Employees may complain to a tribunal that they have not been allowed to take time off1. 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 ER (NI) Order 96, arts 79, 82, 85, 88, 91 & 95

26452 Employees may also complain that they have not received their full entitlement to payment1. If this is confirmed the employer will be ordered to pay the amount that the tribunal finds is due.

1 ER (NI) Order 96, arts 82(1), 88(5), 91(5), 95(5)

26453 A decision maker 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.

26454 - 26499

Payments on termination of employment

Payments - general

Introduction

26500 Employees may be entitled to certain payments on termination of employment, that is, when their employment ends. Payments for the termination of the employment are made because the employment has ended1. They are not paid for any other reason. They would not be paid but for the employment ending. From 01.10.07 legislation2 was amended to change the way certain payments made on the termination of employment are treated for Income Support and Jobseeker’s Allowance purposes.

1 R(U) 4/92; 2 JSA Regs (NI), Sch 5; IS (Gen) Regs (NI), Sch 8

26501 The effects of these payments on Jobseeker’s Allowance and Income Support 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 part-time

**6.** when the work ended.

26502 Guidance on how payments affect

**1.** Income Support is in DMG 26580 - 26622

**2.** Jobseeker’s Allowance is in DMG 26630 - 26768.

Types of payments

26503 There are many different types of payments that might be made. These include

**1.** payments due for any period before the employment ended (see DMG 26504)

**2.** holiday pay (see DMG 26505)

**3.** pay in lieu of notice

**4.** refunds of occupational pension contributions

**5.** pension lump sums

**6.** payments, remuneration or awards made under industrial relations law (see DMG 26300 et seq)

**7.** payments in kind (see DMG 26509)

**8.** income tax refunds (see DMG 26060)

**9.** compensation payments (see DMG 26600 and 26630)

**10.** statutory redundancy payments (see DMG 26506).

Payments for period before employment ended

26504 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

26505 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

26506 Employees who have been continuously employed for 2 years may be entitled to statutory redundancy payments if they are

**1.** dismissed by reason of redundancy1 **or**

**2.** laid off or kept on short time for more than a set number of weeks2.

1 ER (NI) Order 96, art 170(1)(a); 2 arts 170(1)(b) & 183(1)

26507 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.

26508 Statutory redundancy pay is based on1

**1.** the length of continuous employment

**2.** the age of the employee

**3.** the amount of a week’s pay (See Appendix 2 for the maximum amount that can be used).

 **Note :** Appendix 4 to this Chapter shows how many weeks pay employees are entitled to.

1 ER (NI) Order 96, art 197

Payments in kind

26509 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 DMG 26093)

**3.** free accommodation.

Employment never existed

26510 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 a payment of capital.

**Example 2**

William 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 William 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.

 26511 - 26514

Payments not received

26515 Notional income rules allow for earnings which are due on termination of employment as a result of redundancy1, but which have not been paid, to be ignored for Income Support and Jobseeker’s Allowance purposes2.

1 JSA Regs (NI), reg 71(2); 2 JSA Regs (NI), reg 105(7)(d); IS (Gen) Regs (NI), reg 42(3C)

26516 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.

26517 In the case of insolvent employers, benefits paid will be deducted from the amount awarded by the Redundancy Payments Branch. In these circumstances, cumulative totals do not accumulate on contribution-based Jobseeker’s Allowance for the period covered by a Redundancy Payments Branch payment. In cases where contribution-based Jobseeker’s Allowance has been paid prior to the Redundancy Payments Branch 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

26518 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

26519 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.

26520 If there is any doubt or dispute about the reduction, ask for full details. The decision maker 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

26521 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

26522 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 payment in lieu of notice but they do receive a payment based on the length of service and salary. This payment falls into the definition of “compensation payment”1 (see DMG 26600 and DMG 26630).

1 JSA Regs (NI), reg 98

Whether employment has terminated

26523 Employees may be temporarily away from work because

**1.** of a recognised, customary, or other holiday (see DMG 26800 et seq) **or**

**2.** time off has been allowed under industrial relations law (see DMG 26440).

26524 Employees who are away from work temporarily may continue to be employed. Their employment is not terminated.

Recognised, customary or other holidays

26525 Employment will not have terminated if a claimant is absent because of a holiday, or an absence authorised by the employer.

26526 When considering if an absence from work is because of a holiday, decision makers should1

 **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

26527 An employee will generally be entitled to 4 weeks annual leave under the relevant legislation1. Decision makers should assume that the claimant is entitled to 4 weeks paid annual leave unless there is evidence of entitlement to more than 4 weeks.

1 The Working Time Regulations 1998

Meaning of terminated

26528 Terminated is not defined in the legislation. It should be given its ordinary meaning1. Termination of employment should also be given its ordinary meaning.

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

26529 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 end1. Whether there is any intention of resuming the employment is not relevant.

1 R(U)7/68(T)

26530 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.

26531 There is a distinction between the contract itself and any employment under it1. 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)

26532 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 fact1. 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.

26533 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 DMG 26532) **or**

**3.** at the end of an engagement which was for a fixed period.

Contract terminated immediately before period of absence from work

26534 Decision makers 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 had 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

26535 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.

26536 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

26537 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.

26538 The number of times this may have happened should be taken into account1. 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 part-time as a music teacher. He was originally employed for a fixed period of one term in 1982. He continued teaching at the school for many years without having to be re-appointed.

At the end of the summer term in 1994, 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 1994 summer holiday his employment was merely suspended, not terminated1.

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 not at all, on the next night. It is decided that at the end of each night’s work the employment is terminated1.

1 R(U) 7/68 (T)

26539 People may be employed under a series of fixed term contracts. Under industrial relations law1 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 industrial relations law. It is not relevant for Jobseeker’s Allowance and Income Support purposes. It should not influence the decision maker in deciding whether employment has terminated.

1 ER (NI) Order 96

Teachers

26540 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.

26541 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.

26542 The terms of the employment may not be in the contract itself. They may be set out in some other document. Ask for a copy of the relevant document.

26543 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.

26544 Most teachers who are not permanent members of staff fall into one of two groups. 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

26545 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.

26546 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 agreements1. Employment is terminated at the end of each period.

1 R(U)8/68

26547 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.

26548 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

26549 Supply teachers have their names on an Local Education and Libraries Board 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).

26550 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.

26551 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.

26552 The letter places no obligation on the Local Education and Libraries Board to offer employment. The teacher is not obliged to accept any vacancies offered1. When there is a vacancy the teacher is contacted, by telephone or in writing, and offered employment.

1 R(U)2/87

26553 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 finished1.

1 R(U)2/87

26554 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 decision maker 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 continue1.

1 R(JSA) 5/03

Whether a supply teacher’s employment has terminated during a school closure

26555 It is likely that a supply teacher’s employment will have terminated where1

 **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

 26556 - 26559

Maternity leave and absence

26560 Under employment law1, 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 taken2.

1 ER (NI) Order 96, art 103-117; 2 Maternity & Parental Leave etc (Amdt) Regs (NI) 06;
Paternity & Adoption Leave (Amdt) Regs (NI) 06

26561 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.

26562 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.

26563 Employees continue to be employed during the 26 week ordinary maternity leave period. It counts towards the employee’s period of continuous employment for

**1.** seniority

**2.** pension rights

**3.** other personal length of service payments, for example pay increments.

26564 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.

 26565

Suspension on maternity grounds

26566 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.

26567 Employees continue to be employed during the maternity suspension period. It counts towards the period of continuous employment for

**1.** seniority

**2.** pension rights

**3.** other personal length of service payments, for example pay increments.

Claim within 29 weeks of childbirth

26568 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.

26569 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.

26570 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

26571 Adoption leave1 means a period of absence from work on ordinary or additional adoption leave under relevant legislation2.

1 SS PA Regs (NI) 2002, reg 2(1) & 3(2)(a); IS (Gen) Regs (NI), reg 2(1); JSA Regs (NI), reg 1(2);
 2 Employment Rights (NI) Order 1996, art 107A & 107B

26572 Employees who adopt a child under the age of 18 have the right to 26 weeks adoption leave1. A further 26 weeks of additional adoption leave will also be available2.

 1 SS PA Regs (NI) 2002, reg 18(1); 2 reg 20(2)

26573 Employees continue to be entitled to their normal terms and conditions of employment during the 26 weeks of ordinary adoption leave. The contract of employment continues during 26 weeks additional adoption leave and contractual benefits and obligations such as

 **1.** compensation in the event of redundancy

 **2.** periods of notice

remain in force1.

1 SS PA Regs (NI) 2002, reg 21

26574 Following a period of adoption leave, employees have the right to return to the same job1.

1 SS PA Regs (NI) 2002, reg 26;

Paternity leave

Ordinary paternity leave

26575 Ordinary paternity leave1 means a period of absence from work on leave following the birth or adoption of a child under relevant legislation2. 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 15th week before the expected week of the child’s birth.

1 SS PA Regs (NI) 2002, reg 2(1) & 3(2)(b); JSA Regs (NI), reg 1(2); 2 Employment Rights (NI) Order 1996, art 112A & B

Additional paternity leave

26576 Additional paternity leave means1 a period of absence from work on leave following the birth or adoption of a child under relevant legislation2. The period of absence cannot exceed 26 weeks.

1 JSA Regs (NI), reg 1(2); 2 Employment Rights (NI) Order 1996, art 112A & 112B

Agreement not to work notice

26577 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.

26578 - 26579

Income Support and payments on termination

General

26580 Employees may be entitled to certain payments when their employment ends. These include

**1.** payments in lieu of remuneration (see DMG 26582)

**2.** payments in lieu of notice (see DMG 26589)

**3.** holiday pay (see DMG 26594)

**4.** payments of compensation (see DMG 26600)

**5.** payments due for any period before the employment ended (see DMG 26615)

**6.** statutory redundancy payments (see DMG 26621)

**7.** income tax refunds (see DMG 26061).

26581 How such payments affect a claim for Income Support depends on

**1.** what type of payment is involved

**2.** when the payment is due to be made

**3.** whether there is an unworked or waived period of notice

**4.** whether the work that has ended was remunerative or part-time

**5.** when the work ended.

Payments in lieu of remuneration

26582 Payments in lieu of remuneration are paid in place of a person’s normal wages or salary. How they affect a claim for Income Support depends on whether the work that has ended was remunerative or part-time.

Remunerative work

26583 Where the employment was remunerative the payment in lieu of remuneration should be disregarded1.

1 IS (Gen) Regs (NI), Sch 8, para 1(2)

 26584

Part-time work

26585 The employment that ended may have been part-time, that is **not** remunerative. If it ended **on or** **after** the date of claim the payment in lieu of remuneration should be treated as earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the payment in lieu of remuneration should be disregarded1.

1 IS (Gen) Regs (NI), Sch 8, para 2

 26586 - 26588

Payments in lieu of notice

26589 Employees are normally entitled to notice before their employment is ended. But employers may not always give them full notice. Employees are then entitled to payments in lieu of notice instead. For Income Support, such payments are earnings1.

1 IS (Gen) Regs (NI), reg 35(1)(c)

26590 How payments in lieu of notice affects a claim for Income Support depends on whether the work that ended was remunerative or part-time.

Remunerative work

26591 Where the employment was remunerative the pay in lieu of notice should be disregarded1.

1 IS (Gen) Regs (NI), Sch 8, para 1(1)

 26592

Part-time work

26593 The employment that ended may have been part-time, that is **not** remunerative. If it ended **on or** **after** the first day of entitlement the pay in lieu of notice should be treated as earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the pay in lieu of notice should be disregarded1.

1 IS (Gen) Regs (NI), Sch 8, para 2

Holiday pay

Employment terminated

26594 If holiday pay is payable more than 4 weeks after the employment terminated or was interrupted it should be treated as capital1. See DMG 32692 for the exception to this

 rule in trade dispute cases.

1 IS (Gen) Regs (NI), reg 35(1)(d) & 48(3)

Remunerative work

26595 Where the employment was remunerative the holiday pay should be disregarded1. However if employment was suspended, earnings should be taken into account in the normal way.

1 IS (Gen) Regs (NI), Sch 8, para 1(1)

Part-time work

26596 The employment that ended may have been part-time, that is **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 Income Support may be reduced for the appropriate period. If it ended **before** the date of claim the holiday pay should be disregarded1.

1 IS (Gen) Regs (NI), Sch 8, para 2

Employment interrupted

26597 Holiday pay payable more than four weeks after the employment was interrupted should be treated as capital1. How it affects a claim for Income Support depends on whether the work that has been interrupted was remunerative or part-time.

1 IS (Gen) Regs (NI), reg 35(1)(d)

Remunerative work

26598 Where employment is interrupted before the first day of entitlement all holiday pay is disregarded1 unless the employment has been suspended.

1 IS (Gen) Regs (NI), Sch 8, para 1(1)(b)

Part-time work

26599 If part time employment is interrupted **on or after** the first day of entitlement then holiday pay is taken into account in the normal way but any holiday pay payable more than four weeks after the interruption should be treated as capital. If part-time employment is suspended all earnings should be taken into account in the normal way1.

1 IS (Gen) Regs (NI), Sch 8, para 2(2)

Payments of compensation

Meaning of compensation

26600 A payment is compensation only if

**1.** it is made for or on the termination of employment **and**

**2.** claimants have

**2.1** not received any payment in lieu of notice which they are due **or**

**2.2** only received part of the payment in lieu of notice they are due **or**

**2.3** not received any or all of the payment in lieu of notice they are due because they have waived their right to it1.

 A payment made for or on the termination of employment is not compensation if claimants have worked all their notice and been paid for it or if they have received all the payment in lieu of notice they are due.

 **Note :** The rules on payments of compensation for Income Support are different to the rules for Jobseeker’s Allowance (see DMG 26630).

1 IS (Gen) Regs (NI), reg 35(3)(a)

26601 Payments of compensation do not include

**1.** any bonus or commission (see DMG 26045)

**2.** payment in lieu of remuneration, except any periodic sums paid because employment has ended through redundancy

**3.** payment in lieu of notice1

**4.** holiday pay

**5.** retainers (see DMG 26083)

**6.** payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 26077)

**7.** awards made under industrial relations law including any award of compensation (see DMG 26300 et seq)

**8.** any employment protection entitlement for employees suspended from work on medical or maternity grounds (see DMG 26395)

**9.** any pay made under the legislation of, or under any scheme operating in the Republic of Ireland which is similar to any income in **1.** to **8.** above

**10.** payments in kind (see DMG 26080 and DMG 26509)

**11.** payments for a period when the claimant is on maternity or sick leave (see DMG 26130)

**12.** payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)

**13.** any occupational pension

**14.** statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26621 - 26622)

**15.** refunds of contributions to which the claimant is entitled under an occupational pension scheme

**16.** any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme2.

1 IS (Gen) Regs (NI), reg 35(3); 2 reg 35(3)(a)(ii)

**Example**

Julia, who is a lone parent, claims Income Support because she has been made redundant. She is entitled to four weeks notice. She did not work any notice because her job ended on the day her employer gave her notice. Her employer says her final wages included

**1.** three weeks holiday pay

**2.** a payment for statutory redundancy

**3.** an ex-gratia payment.

The employer did not pay her any payment in lieu of notice because Julia waived her right to it.

The decision maker decides the ex-gratia payment is compensation because Julia waived her right to the four weeks notice she was entitled to. Holiday pay and the payment for statutory redundancy are not compensation.

Effect of payments of compensation

26602 The effect of payments of compensation on Income Support depends on whether the

**1.** work which has ended was part-time or remunerative (see DMG 26603 - 26604) **and**

**2.** payment of compensation is earnings1 (see DMG 26603) **and**

**3.** payment of compensation which is earnings overlaps with other kinds of earnings (see DMG Chapter 25)2.

1 IS (Gen) Regs (NI), reg 35(1)(j); 2 reg 29(3)

Part-time work

26603 Claimants are in part-time work if they work and are not treated as being in remunerative work1 (see DMG Chapter 20 for guidance on the remunerative work rules). All the payment of compensation is earnings if the work ended **on or after** the first day of entitlement2.

1 IS (Gen) Regs (NI), reg 35(3)(c) & 29(4D)(a); 2 Sch 8, para 2

 **Example**

 Whilst off work sick, Jane’s employer terminates her part-time employment and pays her a goodwill payment. The payment is not in lieu of notice but was a compensation payment. Jane is not treated as being in remunerative work for the purposes of attributing that payment because whilst she is off sick she is not in remunerative work.

Remunerative work

26604 If a person was in remunerative work then the payment of compensation is disregarded1.

1 IS (Gen) Regs (NI), reg 5(5) & Sch 8, para 1

 26605 - 26614

Payments for period before employment ended

26615 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. How it affects a claim for Income Support depends on whether the work that has ended was remunerative or part-time.

Remunerative work

26616 If the work was remunerative, earnings due for the period of that employment should normally be disregarded1. This includes any payments held in hand by the employer when the employment ends. It does not include any

**1.** retainers 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 industrial relations law (including “out of court” settlements).

1 IS (Gen) Regs (NI), Sch 8, para 1

Partner’s earnings on retirement

26617 Any earnings paid or due to be paid to the claimant’s partner should be disregarded where1

 **1.** the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in the UK) **and**

 **2.** the partner has reached the qualifying age for State Pension Credit on retirement **and**

 **3.** the earnings were paid or due to be paid because of the partner’s retirement.

1 IS (Gen) Regs (NI), Sch 8, para 1A

Part-time work

26618 The work that ends may have been part-time. If it ended **on or after** the first day of entitlement take any earnings into account in the normal way.

26619 If it ended **before** the first day of entitlement disregard all earnings with the exception of retainers1 (this includes statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds). Retainers should be taken into account in the normal way.

1 IS (Gen) Regs (NI), Sch 8, para 2

26620 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 customer or partner 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.

**Note :** For further guidance on whether employment has terminated see DMG 26523 - 26577.

Statutory redundancy payments

26621 Employees may receive statutory redundancy payments on termination of their employment. Such payments should be taken into account as capital.

26622 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments, for example severance payments 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 treated as capital.

 26623 - 26629

Jobseeker’s Allowance and payments on termination

Meaning of compensation payment

26630 For Jobseeker’s Allowance compensation payment means1 any payment made for the termination of employment other than

**1.** payments for any period before the employment ended (see DMG 26640 et seq)

**2.** “emoluments” (whether in money or in kind) accrued before the employment ended (see DMG 26651)

**3.** holiday pay (see DMG 26652 et seq)

**4.** certain payments, remuneration or awards made under industrial relations law including awards of compensation (see DMG 26300 - 26453)

**5.** statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26664 - 26666)

**6.** payments in kind (see DMG 26667)

**7.** refunds of contributions to which the claimant is entitled under an occupational pension scheme

**8.** payments of occupational pensions (DMG Chapter 28)

**9.** periodic sums paid because of redundancy (see DMG 26014)

**10.** payments for a period when the claimant is on maternity or sick leave (see DMG 26130)

**11.** payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)

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

 **Note :** The rules on compensation payments for Jobseeker’s Allowance are different to the rules for Income Support (see DMG 26600).

1 JSA Regs (NI), reg 98(2) & (3)

26631 The decision maker must show that a payment of compensation has been received. How the payment is described is not binding. A payment of pay in lieu of notice is a compensation payment for the purposes of Jobseeker’s Allowance.

Effect of compensation payments

26632 The decision maker should determine

**1.** if a compensation payment has been received (see DMG 26630) **and**

**2.** the period covered by the compensation payment (see DMG 26675 et seq) **and**

**3.** if the claim is affected by compensation payment (see DMG 26633 et seq).

26633 How compensation payments affect a claim depends on whether the work that has ended was remunerative or part-time.

Remunerative work

26634 A payment of compensation may be received on termination of remunerative work (see DMG Chapter 20). These payments should be disregarded1.

1 JSA Regs (NI), Sch 5, para 1

 26635

Part-time work

26636 The work that ended may be part-time which is **not** remunerative. If it ended **on or after** the first day of entitlement, treat any compensation payment1 as earnings from the date on which it is due to be paid. Take it into account for the period covered by the payment2 (see DMG 26675 et seq). If it ended **before** the first day of entitlement any compensation payment should be disregarded3.

1 JSA Regs (NI), reg 98(1)(b); 2 reg 94(6); 3 Sch 5, para 2

 26637 - 26638

Payment by someone other than employer

26639 Compensation is normally paid by the employer, but may be paid by someone else. It is compensation regardless of who pays, for example

**1.** City, District or Borough Councils 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.** Department for the Economy may make payments in lieu of notice to employees of an insolvent employer under industrial relations law1.

1 ER (NI) Order 96, art 229

Remuneration for period before employment ended

26640 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.

26641 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 payment1.

1 R(U) 5/92

Remunerative work [See DMG Memo Vol1/106, 2/61, 3/94, 4/133, 5/103, 7/44, 9/32, 10/66, 12/20, 13/65 & 14/60]

26642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded1. This includes any payments held in hand by the employer, when the employment ends. It does not include any

**1.** awards made under industrial relations 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 (NI), Sch 5, para 1

26643 If remunerative work has ended because of retirement, disregard any earnings due to be paid for that employment if on retirement the partner

**1.** is entitled to Retirement Pension **or**

**2.** would be entitled if the contribution conditions were satisfied1 **or from 6.4.16**

**3.** is entitled to a state pension **or**

**4.** would be entitled if the number of qualifying years were met2.

1 JSA Regs (NI), Sch 5, para 1A;
2 The Pensions (2015 Act)(Consequential, Supplementary and Incidental Amendments) Order (NI) 2015, art 13

Part-time work

26644 The employment that ends may have been part time, that is **not** “remunerative” (see DMG 20070 et seq). How this affects the claim will depend on when the employment ended.

26645 If employment ends **before** the date of claim disregard any earnings except1 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 industrial relations law (including “out of court” settlements).

1 JSA Regs (NI), Sch 5, para 2

26646 If employment ends **on or after** the first day of entitlement, take any earnings from it into account in the normal way.

26647 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 customer or partner will resume employment after the period pf absence because

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

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

 26648 - 26650

Emoluments

26651 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 agreement1

**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 1 :** For **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.

 **Note 2 :** For **5.** 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.

1 R(U) 5/92

Holiday pay

26652 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 disregarded1.

1 JSA Regs (NI), Sch 5, para 1

 26653

Remunerative work

26654 Where the employment was remunerative the holiday pay should be disregarded1.

1 JSA Regs (NI), Sch 5, para 1(1)

 26655

Part-time work

26656 The employment that ended may have been part-time 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 Jobseeker’s Allowance payable may be reduced for the appropriate period. Any holiday pay payable more than four weeks after the part-time work ended should be treated as capital. If it ended **before** the first day of entitlement the holiday pay should be disregarded1.

1 JSA Regs (NI), Sch 5, para 2

Mariners

26657 Special rules apply to mariners1 employed on vessels **not** used wholly or mainly for the disposal of sludge.

1 SS (Mariners Benefits) Regs (NI), reg 2; JSA Regs (NI), reg 165(2)

26658 Such mariners are not regarded as available for employment (see DMG Chapter 21) 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.

26659 Where the employment has terminated holiday pay should be disregarded1.

1 JSA Regs (NI), Sch 5, para 1

Employment interrupted

26660 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 interruption1 treated as capital.

1 JSA Regs (NI), reg 98(1)(c)

Remunerative work

26661 Where employment was remunerative and is suspended any holiday pay is taken into account in the normal way.

Part-time work

26662 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 after1 is treated as capital.

1 JSA Regs (NI), reg 98(1)(c)

 26663

Statutory redundancy payments

26664 Employees may receive statutory redundancy payments on termination of employment. Such payments are capital. They should be ignored for contribution-based Jobseeker’s Allowance but taken into account as capital for income-based Jobseeker’s Allowance.

26665 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 DMG 26630). This means that where part-time employment ceases **on or after** the first day of entitlement the decision maker should calculate the period over which the compensation payment should be taken into account.

26666 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 part-time employment ceases **on or after** the first day of entitlement the decision maker should calculate the period over which the compensation payment1 is to be taken into account (see DMG 26675 et seq).

1 JSA Regs (NI), reg 98(3)

Payments in kind

26667 Payments in kind (see DMG 26509) are not compensation payments1. They are not earnings and should be disregarded for both elements of Jobseeker’s Allowance2.

1 JSA Regs (NI), reg 98(3); 2 reg 103(6) & Sch 6, para 22

 26668 - 26671

Bonus payments

26672 A person may receive a bonus payment on the termination of employment. The decision maker should consider the facts of each case to decide 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 1**

Terry 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 4 months. The loyalty bonus of £150 was paid when Terry left in June. Terry claims Jobseeker’s Allowance.

The decision maker 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 4 months **and**

**2.** earnings which are disregarded because remunerative work has ended (see DMG 26634).

26673

Calculation of period compensation payment taken into account - Jobseeker's Allowance

26674 From 1.10.07 DMG 26675 - 26768 will only be considered in cases where claimant’s part-time work terminates **on or after** the first day of entitlement. **All** retainers will continue to be taken into account in the normal way, as will **all** earnings where employment has been suspended.

26675 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 DMG 26768).

26676 The period starts on the date on which the payment is treated as paid1 (see DMG Chapter 25). When it ends will depend on what the employer says about the payment. 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 **3.** **or**

**4.** for another reason.

1 JSA Regs (NI), reg 94(6) & 96; 2 IR (NI) Order 76, art 49

26677 The period will end1 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 DMG 26714) **or**

**2.** the date on which any consultation period would have ended (see DMG 26744) **or**

**3.** the standard date, which is worked out using a set formula (see DMG 26750).

1 JSA Regs (NI), reg 94(6)

When period ends - summary

26678 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 date1.

1 JSA Regs (NI), reg 94(6)(a)

26679 Where an employer says that the compensation payment is in lieu of notice or because of early termination of a fixed term contract, is in lieu, the period ends on the later of1

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

**2.** the standard date.

1 JSA Regs (NI), reg 94(6)(a) & (b)

 26680

26681 In any other case, for example, where an employer says that the compensation payment is not of any nature1, the period ends on the standard date2.

1 R(U) 1/94; JSA Regs (NI), reg 94(6)(c)

26682 The guidance at DMG 26678 - 26681 is summarised in a flowchart at DMG 26768.

Maximum period

26683 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 paid1. This is so even where payments are made for longer periods.

1 JSA Regs (NI), reg 94(7)

**Example**

Employment ends on 20 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 20 October to 17 October of the following year, 52 weeks after.

 26684

The expiry date

Meaning of the expiry date

26685 The expiry date means1

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

**1.1** was due to run out under statute, contract or custom (see DMG 26687 and 26704) **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 DMG 26710) **or**

**3.** the date on which any fixed term contract was due to end (see DMG 26714).

1 JSA Regs (NI), reg 94(8)(b)

Meaning of period of notice

26686 Period of notice means1 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 (NI), reg 94(8)(b)(i)

Entitlement to notice

Contractual and statutory entitlement differs

26687 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 DMG 26693) **and**

**2.** any statutory minimum (see DMG 26688).

Statutory right to minimum period

26688 Industrial relations law gives most employees the right to a minimum period of notice1. The exceptions are

**1.** crew members on ships registered in the UK, employed under crew agreements approved by the Department2

**2.** employees who work wholly or mainly outside Northern Ireland3, unless

**2.1** they ordinarily work in Northern Ireland for the same employer **or**

**2.2** their contract of employment is governed by the law of Northern Ireland

**3.** crown servants and members of the armed forces4

**4.** employees who have broken their contract of employment (see DMG 26701).

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

1 ER (NI) Order 96, art 118; 2 art 242; 3 art 239; 4 arts 236 & 237; 5 art 240

26689 Employees must have been continuously1 employed for 1 month or more before being entitled to minimum notice2 under statute. The amount of notice they should get depends on how long they have been employed. They should be given at least

**1.** 1 week’s notice, if they have been continuously employed for less than 2 years

**2.** 1 week’s notice for each year of employment, if they have been continuously employed for between 2 and 12 years

**3.** 12 weeks notice if they have been continuously employed for 12 years or more.

1 ER (NI) Order 96, Part X; art 118

26690 Employees who have been continuously employed for 4 weeks or more should give their employers at least 1 week’s notice1. This does not increase with longer service.

1 ER (NI) Order 96, art 118

26691 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.

 26692

Contractual entitlement

26693 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.

26694 If there is evidence that this may have happened for example, if the employer pays more payment in lieu of notice 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.

26695 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.

26696 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.

26697 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment1. The decision maker should decide 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

26698 The decision maker should note that

**1.** employees may be paid payment in lieu of notice 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

26699 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

26700 Employees are entitled to notice if they agree to an employer’s suggestion or give in to their pressure (see DMG 26732 where rights to notice are waived). Employers may still make payments in such circumstances. The decision maker should ask for evidence of the circumstances that led up to the termination. A decision can then be made as to whether the initiative came from the employer or the employee.

Employee dismissed for misconduct

26701 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.

26702 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 payment in lieu of notice 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.

26703 Where it is accepted that no notice is due, there can be no expiry date. The standard date should then be used (see DMG 26750).

Notice customary in the employment

26704 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.

26705 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 out1.

1 JSA Regs (NI), reg 94(8)(b)

Civil servants

26706 Civil servants have no statutory or contractual rights to notice. The decision maker 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.

26707 Departments frequently run voluntary early retirement or severance schemes. Publications that advertise such schemes may also provide evidence of customary notice.

26708 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.

26709 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 3 months before the employment ends. Both parties have agreed that the notice period is 3 months. The customary notice is also 3 months.

**Example 2**

Employee and employer agree that the employee will leave on a particular date. That date is 1 month from the date on which the agreement is made. There is an implicit agreement to 1 month’s notice and the customary notice is therefore 1 month.

Payment made for a period longer than notice period

26710 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 DMG 26686). This does not apply if the

**1.** claimant had a fixed term contract (see DMG 26714) **or**

**2.** decision maker considers it unreasonable (see DMG 26711)1.

1 JSA Regs (NI), reg 94(8)(b)(ii) & (9)

**Example**

Max claims Jobseeker’s Allowance after being made redundant. He is entitled to 12 weeks notice. Max works 6 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 12 weeks payment in lieu of notice.

The decision maker does not have to consider a longer period because the employer says she has paid Max 12 weeks payment in lieu of notice which is no more than the period of notice he was entitled to.

**Note :** The decision maker would have to consider whether it is reasonable to extend the expiry date to the date the longer period would have run out if the employer had said she paid more than 12 weeks payment in lieu of notice.

26711 To decide if it is unreasonable to extend the expiry date to the date when the longer period would have run out, the decision maker should take into account

**1.** the amount of the compensation payment **and**

**2.** the level of pay normally received by the claimant in the employment1 **and**

**3.** any other relevant fact2.

1 JSA Regs (NI), reg 94(9); 2 R(SB) 6/88

26712 The expiry date is the date when the

**1.** longer period is due to run out if the decision maker does not consider it unreasonable1 **or**

**2.** period of notice (see DMG 26686) runs out (see DMG 26725) if the decision maker does consider it unreasonable2.

1 JSA Regs (NI), reg 94(8)(b)(ii); 2 reg 94(9)

**Example** **1**

Brian earns £150 a week. He is entitled to 4 weeks notice. He gets £900 pay in lieu of notice when his employment ends which the employer says is for 6 weeks.

The decision maker decides the expiry date is the date when the 6 weeks pay in lieu of notice runs out because it is not unreasonable as the payment made by the employer is equal to the pay Brian would normally earn over 6 weeks.

**Example 2**

Susan earns £200 a week. She is entitled to 4 weeks notice. She gets £800 pay in lieu of notice when her employment ends which the employer says is for 26 weeks.

The decision maker 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 Susan would normally earn over 4 weeks.

Payment made for a period shorter than notice period

26713 The decision maker should calculate the period over which a compensation payment should be taken into account as normal (see DMG 26675 et seq) where

**1.** an employer pays **or**

**2.** an employee accepts, for whatever reason

a compensation payment of a period shorter than the notice period1.

1 R(U) 1/94

**Example**

Joan was in remunerative work until 28.02.97. She claims Jobseeker’s Allowance. On termination of her employment, her employer pays 2 weeks pay in lieu of notice because this is all the employer could afford to pay. Joan's contract states that she is entitled to 4 weeks notice.

The decision maker calculates the period over which the compensation payment (pay in lieu of notice) should be taken into account and decides 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 4 weeks.

Fixed term contracts

26714 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 (FTCs).

26715 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.

26716 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 DMG 26687 et seq should be applied.

26717 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 expire1.

1 JSA Regs (NI), reg 94(6)(a) & (8)(b)(iii)

Date on which notice given

26718 When considering the period of notice, the decision maker must first establish the date notice was given.

Receipt of notice

26719 Notice is given only when it is

**1.** received by

**1.1** the employee1 **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

26720 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 Department1 is not notice to terminate the employment.

1 IR (NI) Order 76, art 50

26721 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

26722 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.

26723 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 staffing1.

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.

 26724

Calculation of date notice runs out

26725 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.

26726 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 not1.

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 1 month’s notice. His notice period runs out on 31st March.

Notice to operate from a future date

26727 Notice can operate from a future date1. It may be given before the employment terminates but not have effect until after then.

1 Adams v GKN Sankey Ltd [1980] IRLR 416

26728 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 pay in lieu of notice 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 1 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 1 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 1 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 1 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 1 week’s notice.

The letter also says that the employer is to pay her £150 pay in lieu of notice 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 DMG 26652 for the treatment of holiday pay.

Notice shortened or extended

26729 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.

26730 When this happens notice does not have to be given again. Do not recalculate the notice from any later date1. 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

26731 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

26732 Rights to notice may be given up (waived)1. 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 pay in lieu of notice.

1 ER (NI) Order 96, art 118(3)

Calculation of date notice would have run out

26733 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 12 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.

26734 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 1 week’s notice. The employer would have had to give her 6 weeks notice. Freda is paid compensation.

Freda waives her right to notice by leaving voluntarily. The decision maker 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 know when the employment would end. 6 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 12 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.

26735 - 26739

Payment for consultation period in industrial relations law

26740 There are rules that must be followed before employees can be made redundant1. 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 recognised trade union.

 DMG 26423 gives further details.

1 IR (NI) Order 76, arts 49-53

26741 Employees representatives can complain to an Industrial Tribunal if an employer does not follow the rules. The Industrial Tribunal can then make a protective award (see DMG 26424). If the employer fails to pay, the employee can complain to an Industrial Tribunal.

26742 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 Industrial Tribunal.

Calculation of period

26743 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 of1

**1.** the date on which the consultation period would have ended (see DMG 26744)

**2.** the expiry date, where the payment is also pay in lieu of notice or because of early termination of a fixed term contract (see DMG 26685 et seq)

**3.** the standard date (see DMG 26750).

**Note :** See DMG 26679 and flowchart at DMG 26768.

1 JSA Regs (NI), reg 94(6)(b)

Date consultation period would have ended

26744 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.

26745 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.

26746 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 7 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.

26747 - 26749

The standard date - other cases

26750 Compensation is taken into account over a period starting on the date it is treated as paid1. (See DMG Chapter 25) 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 DMG 26686) **or**

**2.** on account of the early termination of a fixed term contract (see DMG 26714)

 the standard date should be applied (see DMG 26679 - 26681).

1 JSA Regs (NI), reg 96 & 94

Meaning of the standard date

26751 The standard date means1 the earlier of

**1.** the expiry date (see DMG 26685 et seq) **and**

**2.** the last day of the period worked out by using a set formula (see DMG 26760).

1 JSA Regs (NI), reg 94(8)(c)

Employee works out notice due from employer

26752 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.

26753 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.

26754 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

26755 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 DMG 26701) **or**

**2.** be in employment where no notice is due under contract, statute, or by custom, for example, Members of Parliament or clergy.

26756 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.

 26757 - 26759

Calculation of period - the set formula

26760 The decision maker should

**1.** decide the amount of compensation the claimant is due

**2.** divide that amount by the maximum weekly amount

**3.** round any fraction down to a whole number

**4.** treat that number as a period of weeks

**5.** work out when a period of that length would end.

Amount of compensation

26761 Employers must give employees a written statement showing how the redundancy payment has been worked out1. If there is any doubt, ask to see a copy of the statement.

1 ER (NI) Order 96, art 200

26762 The exception to this rule is where an Industrial Tribunal makes an award, stating the amount to be paid. The employer does not then have to provide a written statement. The Industrial Tribunal report will give details of the amount due.

Maximum weekly amount

26763 The maximum weekly amount is set by industrial relations law1 (Appendix 2) and can change2. It is used to work out

**1.** awards of compensation for unfair dismissal **and**

**2.** redundancy payments **and**

**3.** payments made by the Department for Employment and Learning to employees of insolvent businesses.

1 ER (NI) Order 96, art 23; 2 Employment Protection (Increase of Limits) Order (NI)

26764 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 due1. This is so regardless of the claimant’s earnings from the employment.

1 JSA Regs (NI), reg 94(8)(c)(ii)

Number of weeks

26765 The result of the calculation in DMG 26764 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 7 consecutive days1.

1 JS (NI) Order 95, art 2(2)

Last day of the period

26766 The decision maker should work out the period starting on the date the compensation is treated as paid1. The period will then last for the relevant number of weeks. It will end on the last day of that period.

1 JSA Regs (NI), reg 96 & 94

Standard date

26767 Compare the last day of the period worked out as in DMG 26766 with the expiry date (see DMG 26685). The standard date is the earlier of the 2 dates.

**Example** **1**

Liam is entitled to 6 weeks notice and is given notice on 27th June. His employment ends on 11th July. Notice would have run out on 8th August. He is due to be paid £4,000 by his employer on 11th 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 4 weeks starting on 11th July ends on 7th August.

The standard date is the earlier of 8th August (the expiry date) and 7th August (the date worked out using the set formula).

The standard date in this case is 7th August.

**Example 2**

Lynn is entitled to 3 calendar months notice. On 31st May she is dismissed without notice. Notice would have run out on 31st August. She gets an ex gratia payment of £2,570 on 1st June. The maximum weekly amount is £280.

£2,570 divided by £280 = 9 (rounded down)

A period of 9 weeks starting on 1st June ends on 2nd August.

The standard date is the earlier of 31st August (the expiry date) and 2nd August (the date worked out using the formula).

The standard date in this case is 2nd August.

26768 The guidance in DMG 26675 to 26767 is summarised in the following flowchart which should only be considered in cases where the claimant’s part-time work terminates **on or after** the first day of entitlement.

 26769 - 26999

**Calculation of period for Jobseeker’s Allowance - flowchart**

Has the employment terminated?

No further action required

Has the claimant received a compensation payment? See DMG 26630 et seq

Is any of it in lieu of consultation?

Is any of it in lieu of notice or for the early termination of a fixed term contract?

Is it also in lieu of notice or for early termination of a fixed term contract?

Is it also in lieu of consultation?

Period ends on

Period ends on the **later** of

Period ends on the **later** of

Period ends on

The standard date DMG 26750

The date the consultation period would have ended DMG 26744

The expiry date DMG 26685

Noo

Yes

No

Yes

No

No

Yes

Yes

Yes

No

No

Appendix 1

Territorial or reserve forces

 Territorial or reserve forces prescribed in Social Security (Contributions) Regs 1979, Sch 3, Part I.

Royal Naval Reserves, including

 Women’s Royal Naval Reserve

 Queen Alexandra’s Royal Naval Nursing Service Reserve

 Royal Marines Reserve

 Army Reserves, including

 Regular Army Reserve of Officers

 Regular Reserves

 Long Term Reserve

 Army Pensioners

 Territorial and Army Volunteer Reserve

 Royal Air Force Reserves, including

 Royal Air Force Reserve of Officers

 Women’s Royal Air Force Reserve of Officers

 Royal Air Force Volunteer Reserve

 Women’s Royal Air Force Volunteer Reserve

 Class E Reserve of Airmen

 Princess Mary’s Royal Air Force Nursing Reserve

 Officers on the Retired List of the Royal Air Force

 Royal Air Force Pensioners.

Appendix 2

Maximum weekly amount

 Amounts specified in article 23 of the Employment Rights (NI) Order 1996.

 **£**

 From 01.02.00 230

 From 01.02.01 240

 From 01.02.02 250

 From 11.05.03 260

 From 21.03.04 270

 From 06.02.05 280

 From 26.03.06 290

 From 04.02.07 310

 From 01.02.08 330

 From 01.02.09 350

 From 01.10.09 380

 From 01.02.11 400

 From 01.02.12 430

 From 01.02.13 450

 From 06.04.14 464

 From 06.04.15 475

 From 06.04.16 479

 From 06.04.17 489

 From 06.04.18 508

 From 06.04.19 525

Appendix 3

Statutory guarantee payments

 Amount payable to employees under article 63 of the Employment Rights (NI) Order 1996.

 **£**

 From 01.02.00 16.10 per day

 From 01.02.01 16.70 per day

 From 01.02.02 17.00 per day

 From 11.05.03 17.30 per day

 From 21.03.04 17.80 per day

 From 06.02.05 18.40 per day

 From 26.03.06 18.90 per day

 From 04.02.07 19.60 per day

 From 01.02.08 20.40 per day

 From 01.02.09 21.50 per day

 From 01.02.10 21.20 per day

 From 01.02.11 22.20 per day

 From 01.02.12 23.50 per day

 From 01.02.13 24.20 per day

 From 06.04.14 25.00 per day

 From 06.04.15 26.00 per day

 From 06.04.16 26.00 per day

 From 06.04.17 27.00 per day

 From 06.04.18 28.00 per day

 From 06.04.19 29.00 per day

Appendix 4

Statutory redundancy payments

Calculation of amount

 Redundancy pay under article 197 of the Employment Rights (NI) Order 1996 is based on

 **1.** the length of time an employee was continuously employed **and**

 **2.** the age of the employee **and**

 **3.** the amount of a week’s pay.

 The table on the next page shows how many weeks’ pay employees are entitled to.

 To use the table, read off the employee’s age and number of complete years service.

 **Note** The maximum number of years that can be used is 20.

 The table will then show how many weeks pay the employee is entitled to.

 The table starts at age 20, because no one below this age can get a redundancy payment.

 Periods of employment before age 18 do not count.

Reduction in amount

 The amount awarded is reduced where the employee is aged between 64 and 65. The reduction is 1/12 for each complete month by which their age exceeds 64.

Appendix 4.1

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Service (years)** | **2** | **3** | **4** | **5** | **6** | **7** | **8** | **9** | **10** | **11** | **12** | **13** | **14** | **15** | **16** | **17** | **18** | **19** | **20** |
| **Age (years)** |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **20** | 1 | 1 | 1 | 1 |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **21** | 1 | 1½ | 1½ | 1½ | 1½ |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **22** | 1 | 1½ | 2 | 2 | 2 | 2 |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **23** | 1½ | 2 | 2½ | 3 | 3 | 3 | 3 |  |  |  |  |  |  |  |  |  |  |  |  |
| **24** | 2 | 2½ | 3 | 3½ | 4 | 4 | 4 | 4 |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **25** | 2 | 3 | 3½ | 4 | 4½ | 5 | 5 | 5 | 5 |  |  |  |  |  |  |  |  |  |  |
| **26** | 2 | 3 | 4 | 4½ | 5 | 5½ | 6 | 6 | 6 | 6 |  |  |  |  |  |  |  |  |  |
| **27** | 2 | 3 | 4 | 5 | 5½ | 6 | 6½ | 7 | 7 | 7 | 7 |  |  |  |  |  |  |  |  |
| **28** | 2 | 3 | 4 | 5 | 6 | 6½ | 7 | 7½ | 8 | 8 | 8 | 8 |  |  |  |  |  |  |  |
| **29** | 2 | 3 | 4 | 5 | 6 | 7 | 7½ | 8 | 8½ | 9 | 9 | 9 | 9 |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **30** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 8½ | 9 | 9½ | 10 | 10 | 10 | 10 |  |  |  |  |  |
| **31** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 9½ | 10 | 10½ | 11 | 11 | 11 | 11 |  |  |  |  |
| **32** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 10½ | 11 | 11½ | 12 | 12 | 12 | 12 |  |  |  |
| **33** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 11½ | 12 | 12½ | 13 | 13 | 13 | 13 |  |  |
| **34** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 12½ | 13 | 13½ | 14 | 14 | 14 | 14 |  |
| **35** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 13½ | 14 | 14½ | 15 | 15 | 15 | 15 |
| **36** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 14½ | 15 | 15½ | 16 | 16 | 16 |
| **37** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 15½ | 16 | 16½ | 17 | 17 |
| **38** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 16½ | 17 | 17½ | 18 |
| **39** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 17½ | 18 | 18½ |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **40** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 18½ | 19 |
| **41** | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 19½ |
| **42** | 2½ | 3½ | 4½ | 5½ | 6½ | 7½ | 8½ | 9½ | 10½ | 11½ | 12½ | 13½ | 14½ | 15½ | 16½ | 17½ | 18½ | 19½ | 20½ |
| **43** | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 |
| **44** | 3 | 4½ | 5½ | 6½ | 7½ | 8½ | 9½ | 10½ | 11½ | 12½ | 13½ | 14½ | 15½ | 16½ | 17½ | 18½ | 19½ | 20½ | 21½ |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **45** | 3 | 4½ | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 |
| **46** | 3 | 4½ | 6 | 7½ | 8½ | 9½ | 10½ | 11½ | 12½ | 13½ | 14½ | 15½ | 16½ | 17½ | 18½ | 19½ | 20½ | 21½ | 22½ |
| **47** | 3 | 4½ | 6 | 7½ | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| **48** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 11½ | 12½ | 13½ | 14½ | 15½ | 16½ | 17½ | 18½ | 19½ | 20½ | 21½ | 22½ | 23½ |
| **49** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **50** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 14½ | 15½ | 16½ | 17½ | 18½ | 19½ | 20½ | 21½ | 22½ | 23½ | 24½ |
| **51** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
| **52** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 17½ | 18½ | 19½ | 20½ | 21½ | 22½ | 23½ | 24½ | 25½ |
| **53** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 |
| **54** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 20½ | 21½ | 22½ | 23½ | 24½ | 25½ | 26½ |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **55** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| **56** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 23½ | 24½ | 25½ | 26½ | 27½ |
| **57** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25 | 26 | 27 | 28 |
| **58** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 26½ | 27½ | 28½ |
| **59** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28 | 29 |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| **60** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28½ | 29½ |
| **61** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28½ | 30 |
| **62** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28½ | 30 |
| **63** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28½ | 30 |
| **64** | 3 | 4½ | 6 | 7½ | 9 | 10½ | 12 | 13½ | 15 | 16½ | 18 | 19½ | 21 | 22½ | 24 | 25½ | 27 | 28½ | 30 |

Appendix 5

 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 for one week. 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, or will be council use rather than private or other use. Decision makers may need to apply averages and estimates over a period to calculate a weekly deduction.

**5.** travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded. This is different to the normal treatment of travelling expenses (see DMG 26030). 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.** subscription to trade unions or other political or professional bodies 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 DMG 26029). The decision maker should establish what proportion of the total household bill can be regarded as arising from the councillor's work.

 Unless the decision maker 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.