

Chapter 86 - Earnings

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Chapter 86 - Earnings

General Rules

Introduction

86000 This chapter deals with the calculation and treatment of earnings in claims for SPC. For SPC earnings¹ include

1. earnings of employed earners²
2. earnings from self-employment³.

1 SPC Act 02, s 17(1), SS CB Act 92, Pt 1 to 5; 2 SPC Regs, reg 17A; 3 Reg 17B, SS Ben (C of E) Regs, reg 11

Number of hours worked

86001 For the purposes of SPC a claimant may work for any number of hours each week without entitlement being affected. The earnings from such employment will however affect the amount of SPC to which the claimant will be entitled.

Earnings of claimant and partner

86002 Earnings are an income for the purposes of SPC. The DM should calculate the income (including earnings) of

1. the claimant **and**
2. any partner of the claimant

in the same way¹. The income should then be treated as the income of the claimant.

1 SPC Regs, reg 14

Polygamous marriages

86003 If a claimant or partner is married polygamously (see DMG Chapter 77) to two or more members of the same household, the earnings of each of the members should be treated as the claimant's income, and should be calculated in the same way¹.

1 SPC Regs, Sch III, para 1(4)

Rounding of fractions

86004 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage¹.

Note: If more than one calculation is involved in deciding the amount of the claimant's earnings, any fraction resulting from each calculation should be rounded to the claimant's advantage.

1 SPC Regs, reg 24A

Effect of earnings

86005 Any earnings from employment as either an employed earner or from self-employment will come within the definition of income¹ for SPC purposes and will

1. be taken into account for the purposes of calculating the GC²
2. count as QI for the SC³.

1 SPC Act 02, s 15(1); 2 s 2(2); 3 s 3(2), SPC Regs, reg 9

86006 The DM will apply certain disregards to the claimant's earnings. Guidance on the disregards which may be applied is at DMG 86110 et seq for employed earners and DMG 86700 et seq for earnings from self-employment.

86007 Earnings are taken into account in SPC in the same way as any other income. The DM will need to establish

1. the first day of the benefit week from which the earnings should be taken into account **and**
2. the weekly amount.

The date from which earnings are taken into account

86008 The date from which the weekly amount of a claimant's net earnings are taken into account depends upon whether

1. there are already regular earnings in payment
 - 1.1 at the date of claim for SPC **or**
 - 1.2 following the end of an AIP **or**
2. earnings become payable whilst SPC is in payment **or**
3. the amount of existing earnings changes.

86009 Where earnings are already in payment at the date of claim for SPC or following the end of an AIP, the net weekly rate of earnings should be taken into account from the first day of the first benefit week of the claim, or the first day of the first benefit week following the end of the AIP.

86010 Where earnings become payable, or the amount of existing earnings changes whilst SPC is in payment, the new amount of earnings should be taken into account from¹

1. the first day of the benefit week in which the earnings become payable or the amount of the earnings changes, if it is practicable to do so **or**
2. the first day of the benefit week following the payment of the new earnings or new amount of earnings if it is not practicable for them to be taken into account from the day described in 1..

1 SS CS (D&A) Regs, Sch 3B, para 2

Calculating the weekly amount of earnings

86011 Where the period for which a payment of earnings is made is a week or less, the weekly amount will be the amount of the payment¹.

1 SPC Regs, reg 17(1)(a)

86012 Where the payment of earnings is for a month the weekly amount should be worked out by

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

1 reg 17(1)(b)(i)

86013 Where the payment of earnings is for a period of three months the weekly amount should be worked out by

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

1 reg 17(1)(b)(ii)

86014 Where the payment of earnings is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 reg 17(1)(b)(iii)

86015 Where the payment of earnings is for more than a week, and DMG 86011 - 86014 do not apply, the weekly amount should be worked out by

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

1 reg 17(1)(b)(iv)

Averaging of amounts

86016 If the claimant's earnings fluctuate and have changed more than once, or the regular pattern of work means that the claimant does not work the same hours every week, the weekly amount of a claimant's earnings should be averaged¹. The DM should work out the average weekly earnings over

1. where the claimant does not work the same hours every week and there is a recognized cycle of work, over the period of the complete cycle, (including any periods where the claimant does no work, but not including any other absences). (See DMG Chapter 20 on establishing a recognized cycle) **or**
2. where 1. does not apply
 - 2.1 the last two payments if those payments are one month or more apart **or**
 - 2.2 the last four payments if the last two payments are less than one month apart **or**
 - 2.3 such other payments as may enable a more accurate average weekly amount to be calculated.

1 SPC Regs, reg 17(2)

86017 The last payments for the purposes of DMG 86016 2.1 and 2.2 are the last payments made to the claimant¹

1. before the date the claim was made or treated as made **or**
2. before a supersession.

1 reg 17(3)

Example

The claimant works two weeks on and one week off.

In the two weeks he actually works he receives earnings of £80 a week.

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

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

The DM calculates that the average weekly amount of earnings is £60, that is

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

and takes that amount into account against the claimant's entitlement.

Final payments of income

86018 From 5.4.04 a new rule was introduced¹ to deal with the treatment of final payments of income. This applies where

1. a claimant has been receiving a regular payment of income **and**
2. that payment is coming to an end or has ended **and**

3. the claimant receives a final payment of that income.

1 SPC Regs, reg 17ZA(1)

Meaning of regular payment

- 86019 “Regular payment” means¹ a payment of income made in respect of a period as described in DMG 86011 - 86016.

1 SPC Regs, reg 17ZA(5)

Period over which final payments are taken into account

- 86020 If the circumstances in DMG 86018 apply¹

1. where a final payment is

- 1.1 less than **or**

- 1.2 equal to

the amount of the previous regular payment, the whole of the final payment shall be treated as being paid in respect of a period equal in length to that of the regular period **or**

2. where a final payment is greater than the amount of the previous regular payment, to the extent that it comprises one or more multiples of that amount, **each multiple** shall be treated as being paid in respect of a period that is equal in length to that of the regular period. Any excess shall be treated as being paid in respect of a further period that is equal in length to that of the regular period.

1 SPC Regs, reg 17ZA(2)

Date final payments are treated as paid

- 86021 A final payment falling within DMG 86020 1. shall be treated as paid¹ on the date the next regular payment would have been paid had payments continued, if not actually paid on that date.

1 SPC Regs, reg 17ZA(3)

Example

Paul's claim to SPC starts on 15.1.04 and his benefit week commences on a Monday. He has been receiving monthly earnings of £120 paid on the last day of the month since the beginning of his claim. The regular weekly amount taken into account on his claim is £27.69 less the appropriate earnings disregard. Paul finishes work on 20.8.04 and on that day receives a final payment of £90. The DM treats this as paid on the last day of the month, i.e. 31.08.04, and takes £20.76 less the disregard into account from BWC 30.8.04 until BWC 20.9.04. From BWC 27.9.04 there is no income to take into account because no payment will be made or treated as made, on 30.9.04.

86022 Each multiple of the final payment falling within DMG 86020 **2.** shall be treated as paid¹ on the dates on which the corresponding number of regular payments would have been made had payments continued.

1 SPC Regs, reg 17ZA(4)

Example

Alan's claim to SPC starts on 10.2.04 and his benefit week commences on a Monday. He has been receiving monthly earnings of £80 paid on the last day of the month since the beginning of his claim. He finishes work on 30.9.04 and on that day receives £150 which is his final earnings together with £70 holiday pay. The DM treats the £80 regular payment as paid on 30.9.04 and the balance of £70 as paid on 31.10.04, the date the next regular payment would have been due. The final payment is taken into account at a weekly rate of £16.15 less the appropriate earnings disregard from BWC 25.10.04 until BWC 22.11.04. On 30.11.04, no payment is either made or treated as made, so no earnings will be taken into account from BWC 29.11.04.

Arrears of earnings

86023 Where the claimant receives payments of arrears of earnings, then the DM should decide

1. how much SPC has been paid to the claimant which would have not been paid if the arrears had been paid on time¹ **and**
2. if the current rate of earnings has changed.

If the earnings have changed the DM must supersede the award of SPC. The superseding decision must take effect on the first day of the benefit week in which the claimant receives the new amount of earnings (or if that is not practicable on the first day of the next following benefit week)².

Note: the figure at **1.** will be the amount of SPC overpaid and may be recovered from the claimant.

1 SSA Act 92, s 74(1); 2 SS CS (D&A) Regs, Sch 3B, para 2

86024 The weekly amount of the arrears for the purposes of determining the overpayment should be calculated by reference to the period that the arrears covers¹. This means that if the arrears period is one month then the weekly amount of the payment should be determined in accordance with DMG 85033, if it is three months then in accordance with DMG 85034 and so on.

1 SPC Regs, reg 17(1)

Example

Mary receives earnings of £25 per week. At the beginning of June Mary tells the DM her earnings have increased to £30 per week and she has received five weeks arrears amounting to £25 for the period 4.5.09 to 5.6.09. The DM supersedes the

award of SPC to take her new regular weekly wage of £30 into account. The £25 arrears relating to the period 4.5.09 to 5.6.09 is a late payment of earnings and the DM calculates the overpayment and the amount to recover by looking at the amount of SPC which would not have been paid if the arrears had been paid on time.

Part-week payments

86025 Part-week payments of SPC may only be made in certain circumstances (see DMG Chapter 79). Any income (including earnings) is ignored for the purposes of calculating a part-week payment¹.

1 SPC Regs, reg 13A(2)

86026 Payments of SPC for periods of less than a full week may also be appropriate in certain other circumstances¹ (see DMG Chapter 79). These should not be confused with part-week payments described at DMG 86024. Where a payment of SPC is appropriate in the circumstances described at DMG 79106, the normal income rules will apply² (see DMG 86011).

1 SS CS (D&A) Regs, Sch 3B, para 4(b); 2 SPC Regs, reg 17(1)

Earnings of employed earners

Introduction

- 86027 This part deals with the calculation and treatment of payments made to SPC claimants who are employed earners. These will usually be earnings paid by an employer, but may be other types of payment.
- 86028 How payments made to employees affect a claim to SPC will depend on
1. whether the work is continuing **or**
 2. whether the work has ended.
- 86029 Earnings from employment as an employed earner which is ongoing whilst the claimant is in receipt of SPC are taken into account, less any appropriate earnings disregard, in the same way as other income.

Earnings of employed earners - explanation of terms

Meaning of employed earner

- 86030 The term employed earner means¹ a person who is gainfully employed in GB
1. under a contract of service **or**
 2. in an office (including any elective office) where payments are taxable under Schedule E (PAYE).

1 SPC Regs, reg 17A(5)

86031 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

86032 The phrase in an office includes directors of limited companies, clergy, LA councillors, Members of Parliament and sub-postmasters and mistresses.

Meaning of earnings

- 86033 [\[See Memo DMG 11-12\]](#) Earnings means any pay or profit derived from employment and includes¹
1. bonus or commission² (see DMG 86059)
 2. PILOR³ (see DMG 86090 and 86153)
 3. PILON⁴ (see DMG 86156)
 4. holiday pay⁵ (see DMG 86160)
 5. retainers⁶ (see DMG 86091)
 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 work⁷ (but see DMG 86081 for councillors) **or**
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is at work⁸ (see DMG 86085)
 7. 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 deduct⁹ (see DMG 86101)
 8. SSP and SMP¹⁰
 9. statutory paternity pay¹¹
 10. statutory adoption pay¹²
 11. employers sick or maternity pay¹³.

This list is not exhaustive. See DMG 86050 - 86102 for more examples of what are and what are not earnings.

*1 SPC Regs, reg 17A(2); 2 reg 17A(2)(a); 3 reg 17A(2)(b); 4 reg 17A(2)(c); 5 reg 17A(2)(d); 6 reg 17A(2)(e);
7 reg 17A(2)(f)(i); 8 reg 17A(2)(f)(ii); 9 reg 17A(2)(g); 10 reg 17A(2)(h); 11 reg 17A(2)(i);
12 reg 17A(2)(j); 13 reg 17A(2)(k)(i) and (ii)*

86034 Earnings do not include¹

1. payments in kind (see DMG 86088 - 86089)
2. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment²
3. payments of occupational pension³
4. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme⁴
5. any payment of compensation made by an Employment Tribunal because of unfair dismissal or unlawful discrimination⁵.

1 SPC Regs, reg 17A(3); 2 reg 17A(3)(b); 3 reg 17A(3)(c); 4 reg 17A(3)(d); 5 reg 17A(3)(e)

Meaning of derived from

86035 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 86034.

1 R(SB) 21/86

Meaning of gross earnings

86036 Gross earnings means the amount of earnings

1. after the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ but
2. before any authorized deductions are made by the employer. These may include
 - 2.1 income tax
 - 2.2 pension contributions
 - 2.3 SS contributions (sometimes called NI contributions)
 - 2.4 TU subscriptions
 - 2.5 payments under a court order
 - 2.6 recovery of any debt.

Note: Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings².

1 R(IS) 16/93, 2 R(TC) 02/03

Calculation of net earnings

Deductions from gross earnings

- 86037 Net earnings are gross earnings less¹
1. income tax **and**
 2. Class 1 SS contributions **and**
 3. half of any sum paid by the employee towards an occupational or personal pension scheme².

1 SPC Regs, reg 17(10); 2 reg 17A(4A)

Income tax

- 86038 Deduct from gross earnings any income tax deducted by the employer.

Social Security contributions

- 86039 SS contributions are often called National Insurance Contributions. Reduce gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

- 86040 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

Sheila earns £60 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her pay period is a week. Her pension contribution is changed into a weekly figure ($£26 \times 12 \div 52 = £6$ pw) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£60 - £3 = £57$).

- 86041 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are
1. normally in the form of a pension, all or part of which may be taken as a lump sum

2. payable on death or retirement.

1 PS Act 93, s 1; SS Act 86, s 86(1)

86042 Personal pension schemes¹ are arrangements between employees, or S/E earners and pension providers such as insurance companies. They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 PS Act 93, s 1; SS Act 86, s 86(1)

86043 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

86044 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

86045 Examples of expenses for which deductions may be made under DMG 86044 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.

86046 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

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

86047 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 86044. 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

86048 See DMG 86071 or 86076 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 86085 for more guidance on the general question of expenses.

86049

Treatment of particular kinds of payments from employment

Introduction

86050 The SPC legislation¹ provides some examples of what earnings can include. But there are other payments which may count as earnings. Guidance on types of earnings paid during a period of employment is in DMG 86054 - 86102.

1 SPC Regs, reg 17A(2)

Employment ended

86051 Some payments are made to employees because their employment has ended. How payments made to employees affect a claim for SPC will depend on

1. whether the payment was in respect of work which ended before the claim for SPC **or**
2. whether the work ends whilst the claimant is in receipt of SPC.

Employment continuing

86052 Earnings received in respect of work which is either

1. ongoing at the time of the SPC claim **or**
2. commences whilst the claimant is in receipt of SPC

should be taken into account when calculating the claimant's entitlement to GC and SC.

86053 Payments of earnings made where employment is continuing at the time of the claim or which commences during a claim for SPC will be taken into account in the same way as other income, subject to any appropriate earnings disregard.

Accommodation provided by employer

86054 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored.

Actors and entertainers

86055 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

86056 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E

earner, to have periods of employment as an employed earner at the same time as his overall self-employment.

86057 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to SPC to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Example 1

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

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 86217 - 86220)
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 an actor. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a theatre 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 DM decides that Craig's employment with the theatre company was under a contract of service for the 26 weeks when he was engaged by them, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

Advance of earnings or loans

86058 Any advance of earnings or other loan made by the employer is capital for SPC purposes.

Example

Jeffrey earns £50 a week which is due to be paid every fourth Friday. He was last paid £200 on 7 November. On 17 November, he gets an advance of £100 from his employer. The £100 is a payment of capital. The full £200 paid on 5 December is then taken into account (5 December to 1 January = 4 weeks x £50).

Bonus or commission

86059 Payments of bonus or commission should be treated as earnings. See DMG 86005 et seq for guidance on how earnings are taken into account.

Royalties and copyright fees

86060 Payments as described in DMG 86061 are income other than earnings for SPC purposes (see DMG Chapter 85). These include payment 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.

86061 This paragraph applies to¹

1. royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trademark **or**
2. any payment in respect of any
 - 2.1 book registered under the Public Lending Right Scheme 1982 **or**
 - 2.2 work made under any international public lending right scheme that is analogous to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work covered by **2.2** above.

1 SPC Regs, reg 15(5)(f) & (g)

86062 Although the payments described in DMG 86061 are not earnings they shall be treated as though they are earnings for the purposes of SPC, the DM should apply the appropriate earnings disregard¹.

Note: The disregard of these payments only applies to payments in respect of the claimant's or their partner's own work. The disregard does not apply if the royalties have been inherited (see DMG Chapter 85).

1 reg 17(5) & (9)

Directors of limited companies

86063 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

86064 The income of a director can include

1. payments for services as a director or any other employment with the company
2. share dividend
3. debenture interest.

Payments as a director or other employee

86065 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.

86066 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.

86067 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.

86068 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.

86069 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, which should be ignored for SPC.

Holiday pay

86070 Any holiday pay from employment which

1. is ongoing at the time SPC is claimed **or**
2. which began during the SPC claim

should be treated as earnings¹.

1 SPC Regs, reg 17A(2)(d)

Justices of the Peace

86071 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 Justices of the Peace Act 1979, s 12(1)(a); The District Courts (Scotland) Act 1975, s 17

2 Justices of the Peace Act 1979, s 12(1)(b); The District Courts (Scotland) Act 1975, s 17

Travel allowances

86072 Travel allowances incurred wholly, exclusively and necessarily in the performance of the Justice of the Peace's duties should be disregarded in full¹.

1 SPC Regs, reg 17A(3)(b)

Subsistence

86073 Payments of subsistence should be disregarded in full¹.

1 reg 17A(3)(b)

Financial loss allowances

86074 Financial loss allowances are paid to compensate Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for loss of earnings. These should be treated as pay in lieu of remuneration¹.

1 reg 17A(2)(b)

86075

Local Authority councillors

86076 LA councillors are elected office holders and are employed earners¹. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA 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 attendance at

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

1 R(IS) 6/92; 2 Local Authorities (Members' Allowances) Regs 1991, Part II, reg 6

86077 The allowances paid for official duties may include

1. basic allowance
2. special responsibilities allowance
3. childcare and dependant carer's allowance
4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 86081 et seq).

Basic allowance

86078 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

86079 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly. It should be treated as earnings.

Childcare and dependants carers' allowance

86080 LAs may pay a childcare and dependant carers' allowance to those councillors who incur expenditure for the care of their children or dependant relatives whilst undertaking various duties as a councillor. It should be treated as earnings¹.

1 SPC Regs, reg 17A(2)(f)(ii)

Expenses

86081 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties¹, for example travel and subsistence allowances². If the LA cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

1 reg 17A(3)(b); 2 R(IS) 6/92

86082 After expenses in DMG 86081 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillors duties that are not reimbursed to them by the LA¹. The DM should

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

1 R(IS) 16/93

86083 For the purposes of DMG 86082, 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.

86084 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 councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. DMs may need to apply averages and estimates over a period to calculate a weekly deduction

5. travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded. This is different to the normal treatment of travelling expenses. When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself
6. subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance
7. additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance. The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence
8. pension contributions are not an expense. But one half of any sum paid by the councillor towards an occupational or personal pension can be deducted from the gross earnings.

Treatment of expenses

86085 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 SPC Regs, reg 17A(2)(f)

86086 Payments made by an employer for expenses which **are** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings¹ and are ignored for SPC.

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 reg 17A(3)(b); R(FIS) 4/86;

- 86087 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(15) 16/93

Example

Peter 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 Peter also uses the phone for personal calls, and 50% of the calls made are personal. The DM decides that 50% of the amount paid by the employer for the standing and rental charges is an expense wholly, exclusively and necessarily incurred. The remaining 50% is for Peter'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

- 86088 A payment in kind, for example free accommodation, should not be treated as earnings¹.

1 SPC Regs, reg 17A(3)(a)

Note: Payments in kind are not an income for SPC purposes and should therefore be ignored (see DMG 85003 for the definition of income).

- 86089 Payments in kind do not include any payment by non-cash voucher if the value of the voucher has been taken into account when working out the amount of SS contributions to deduct¹.

1 reg 17A(4)

Payments in lieu of remuneration

- 86090 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to Justices of the Peace and LA councillors for loss of earnings are examples of such payments. Payments made in lieu of remuneration are earnings if they are from employment carried out whilst the customer is in receipt of SPC¹, otherwise they are ignored.

1 reg 17A(2)(b); R(SB) 21/86

Retainers

- 86091 Retainers¹ are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings.

1 reg 17A(2)(e)

Special occupations

86092 Some occupations are known as special occupations. These are

1. auxiliary coastguards for coastal rescue activities
2. in Scotland a P/T fire fighter employed by a fire and rescue authority or a joint fire and rescue board under specified legislation¹
3. in England, a P/T fire fighter employed by a fire and rescue authority
4. P/T work manning or launching a lifeboat
5. members of the territorial or reserve forces².

1 Fire (Scotland) Act 2005; 2 SS (Contributions) Regs 2001, Sch 6, Part 1

Auxiliary coastguards

86093 Payments received for watch keeping duties should be treated as earnings. Payments for expenses of coastal rescue activities should also be treated as earnings, unless they were wholly, exclusively and necessarily incurred in the performance of the coastguard's duties.

Part-time members of a fire brigade

86094 Payments for drills, services or retaining fees, should be treated as earnings. Payments for expenses should also be treated as earnings, if they were not wholly, exclusively and necessarily incurred in the performance of the duties.

Part-time manning or launching of a lifeboat

86095 Treat payments for drills, services or retaining fees, as earnings. Payments for expenses should also be treated as earnings, unless they are wholly, exclusively and necessarily incurred in the performance of the duties.

Territorial army or volunteer reservists

86096 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.

86097 Payments for travelling expenses between the volunteer's home and place of duty, for example the drill hall, are also not wholly, exclusively and necessarily incurred. Such payments should be treated as earnings¹.

1 SPC Regs, reg 17A(2)(f)(i)

86098 Treat other payments, for example drill night pay, as earnings, unless they are for an item wholly, exclusively and necessarily incurred in the performance of the duties.

Tips

86099 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

86100 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.

86101 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 purpose of working out the amount of SS contributions to deduct¹.

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

1 SPC Regs, reg 17A(2)(g)

86102 Payments in kind are not normally taken into account as earnings of an employed earner for SPC. Payments in kind do not include any non-cash voucher if it has been taken into account as earnings of an employed earner for the purposes of working out the amount of SS contributions to deduct¹.

1 reg 17A(4)

86103 - 86109

Earnings disregards

Application to claimant and partner

- 86110 Net earnings should be taken into account less any disregard. The amount of disregard will depend on
1. whether the earnings are from work in one of the occupations listed at DMG 86113
 2. whether the claimant is single
 3. who the earnings belong to.
- 86111 Disregards apply equally to the claimant and partner. The amount of the claimant's or partner's earnings to disregard is normally¹
1. £5 in the case of a claimant with no partner **or**
 2. £10 in the case of a claimant who has a partner **or**
 3. £20 where the claimant or partner satisfy the conditions in DMG 86113 - 86120.

1 SPC Regs, Sch VI, para 5

Lone parents

- 86112 £20 of earnings is disregarded if the claimant is a lone parent¹. This includes a lone grandparent who is responsible for a grandchild. For the purposes of this disregard
1. lone parent means a person who has no partner and who is responsible for, and a member of the same household as, a child **and**
 2. child means a person treated as a child or qualifying young person for child benefit purposes².

1 Sch VI, para 1; 2 SS CB Act 92, Pt IX

Note: For the definition of qualifying young person see DMG Chapter 20.

Special occupations

- 86113 £20 of earnings from employment
1. as a P/T fireman¹
 2. as an auxiliary coastguard in respect of coast rescue activities
 3. manning or launching a lifeboat if the employment is P/T
 4. as a member of any territorial or reserve force
- should be disregarded².

1 Fire (Scotland) Act 2005, 2 SPC Regs, Sch VI, para 2

86114 Where the claimant is engaged in one or more of the occupations at DMG 86113 1. - 4. and also has earnings from another occupation, the total amount disregarded from the earnings from all of the occupations taken together should not exceed £20.00 in any week¹.

1 SPC Regs, Sch VI, para 2A

86115 Where the claimant and partner are both employed in one or more of the occupations at DMG 86113, the disregard is restricted to a maximum of £20.00¹.

1 Sch VI, para 4A(1)(b)

Carers

86116 £20 of earnings should be disregarded where the

1. claimant **or**
2. partner **or**
3. both the claimant and partner

are carers¹.

1 Sch VI, para 3(1)

86117 The claimant or partner is a carer for the purposes of the £20 disregard if their SPC includes an additional amount in accordance with DMG 78100¹.

1 Sch VI, para 3(2)

Disabled people

86118 A disregard of £20 per week applies where a claimant or their partner

1. is in receipt of
 - 1.1 long term IB¹
 - 1.2 SDA²
 - 1.3 "AA"³
 - 1.4 DLA⁴
 - 1.5 mobility supplement⁵
 - 1.6 the disability or severe disability elements of WTC⁶
 - 1.7 ESA⁷ **or**
2. is registered blind by a LA⁸ **or**
3. has had an award of IS, ESA(IR) or JSA(IB) during the 8 weeks ending on the day they become entitled to SPC⁹ **and**
 - 3.1 had earnings taken into account in the award of IS, ESA(IR) or JSA(IB) to which the £20 earnings disregard applied **and**

- 3.2 the person whose earnings qualified for the disregard continues in employment after the termination of the IS, ESA(IR) or JSA(IB) award **and**
 - 3.3 there is no break of more than 8 weeks in the person's entitlement to SPC or in their employment from the first day for which SPC is awarded **or**
4. immediately before reaching pensionable age¹⁰ had
- 4.1 an award of SPC **and**
 - 4.2 had earnings to which a disregard of £20 applied because they were in receipt of either
 - 4.2.a Long Term Incapacity Benefit **or**
 - 4.2.b SDA **and**
 - 4.3 there is no break of more than 8 weeks in the person's entitlement to SPC since reaching pensionable age.

Note: A person should be treated as blind if they are registered as blind by a LA in England and Wales or certified blind and in consequence register as blind in a register maintained by or on behalf of a regional or island council in Scotland. The DM must be satisfied that the person is registered as blind. This is because they might be registered as partially sighted rather than blind. A person who is registered as partially sighted should not be treated as blind. Make enquiries of the LA concerned if there is any doubt.

1 SPC Regs, Sch VI, para 4(1)(a)(i); 2 para 4(1)(a)(ii); 3 para 4(1)(a)(iii); 4 para 4(1)(a)(iv); 5 para 4(1)(a)(v); 6 para 4(1)(a)(vi); 7 para 4(1)(a)(vii); 8 para 4(1)(b); 9 para 4(2) & 4(4)(a); 10 para 4(3) & 4(4)(b)

86119

More than one disregard applies

86120 Where

- 1. a claimant with no partner satisfies the conditions for more than one of the disregards at DMG 86112 - 86118 **or**
- 2. in the case of a couple, both partners satisfy the conditions for one or more of the disregards mentioned at DMG 86113 - 86118

the maximum amount that may be disregarded from the earnings of the claimant or partner is restricted to £20.00 in total¹.

1 Sch VI, para 4A(1)

Example 1

Graham is a P/T firefighter. He also receives CA in respect of his elderly mother. His earnings as a P/T firefighter are £50.00. The DM restricts the amount disregarded from Graham's earnings to £20.00.

Example 2

Sandra works P/T from her home, earning £50.00 per week, and also receives CA in respect of caring for her elderly mother. Sandra lives with her husband who is in receipt of "AA". The DM restricts the amount disregarded from Sandra's earnings to £20.00.

Claimant and partner both have earnings and more than one disregard applies

86121 Where the claimant and partner

1. both have earnings **and**
2. both satisfy the conditions for the £20.00 earnings disregard **and**
3. the amount to be disregarded from the earnings of **one** of the couple is less than £20.00

the DM should restrict the amount disregarded from the earnings of the other member of the couple so that the total amount disregarded from the earnings of both members of the couple does not exceed £20.00¹.

1 SPC Regs, Sch VI, para 4A(2)

Example

Colin assists with the launching of a lifeboat on a P/T basis. In one week he earns £15.00. His partner Molly also works P/T in a local shop, earning £30.00 per week. Molly also receives CA for caring for her brother. The DM disregards all of Colin's earnings and £5.00 of Molly's earnings.

86122 The maximum amount which may be disregarded from the earnings of a claimant and partner cannot exceed £20.00 per week.

86123 Where

1. one member of the couple is in employment mentioned in DMG 86113 **and**
2. the other member of a couple is in employment **other than** as mentioned at DMG 86113

the amount that can be disregarded from the earnings of the member of the couple who is not in employment mentioned at DMG 86113 is restricted so that the total amount disregarded for the couple does not exceed £20.00¹.

1 SPC Regs, Sch VI, para 2B

86124 - 86140

Earnings paid in a foreign currency

86141 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 Sch VI, para 7

86142 - 86149

Payments on termination of employment

General

86150 Any earnings derived from employment which ended before the first day of entitlement to SPC should be disregarded in full¹.

1 SPC Regs, Sch VI, para 6

86151 Employees may be entitled to certain payments when their employment ends. These include

1. PILOR (see DMG 86153)
2. PILON (see DMG 86156)
3. holiday pay (see DMG 86070 and 86160)
4. statutory redundancy payments (see DMG 86162).

86152 How such payments affect a claim for SPC depends on

1. what type of payment is involved
2. when the payment is due to be made
3. when the work ended.

Payments in lieu of remuneration

86153 PILOR is paid in place of a person's normal wages or salary. How it affects a claim for SPC depends on whether the work ends before the claim for SPC or while the claimant is in receipt of SPC.

Work ends before date of entitlement to SPC

86154 Where the work ends before the date on which the claimant becomes entitled to SPC, PILOR is disregarded¹.

1 Sch VI, para 6

Work ends whilst SPC is in payment

86155 If the work ends after the date on which the claimant becomes entitled to SPC the PILOR should be treated as earnings and taken into account in the normal way.

Payments in lieu of notice

- 86156 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 PILON instead. For SPC, such payments are earnings¹.

1 SPC Regs, reg 17A(2)(c)

- 86157 How PILON affects a claim for SPC depends on whether the work ended before the claim for SPC or whilst the claimant is in receipt of SPC.

Work ends before date of entitlement to SPC

- 86158 Where the work ends before the date on which the claimant becomes entitled to SPC, any PILON received in connection with that work is disregarded¹.

1 Sch VI, para 6

Work ends whilst SPC is in payment

- 86159 If the work ends whilst the claimant is in receipt of SPC any PILON should be treated as earnings and taken into account in the normal way.

Holiday pay

- 86160 If holiday pay is payable in respect of work which ends before the date on which the claimant becomes entitled to SPC, it should be disregarded¹.

1 Sch VI, para 6

- 86161 Holiday pay in respect of employment carried out whilst SPC is in payment should be treated as earnings and be taken into account in the usual way.

Statutory redundancy payments

- 86162 Employees may receive statutory redundancy payments on termination of their employment. Such payments should be taken into account as capital.

86163 - 86199

Self-employed earners

General

86200 This part deals with the calculation and treatment of the earnings of S/E earners.

Who is a self-employed earner

86201 A S/E earner is a person who is gainfully employed

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

S/E earner includes people employed outside of GB in employment which would be classed as employment as a S/E earner if the employment was in GB. It also includes people undertaking employment as a S/E earner where that employment is disregarded when working out social security contributions¹.

Note: A person may also be employed as an employed earner. This does not stop the person being S/E.

1 SPC Regs, reg 17B; SS Ben (C of E) Regs, reg 2(1)

86202 A S/E earner enters into a contract for services to a customer

1. on a sole trader basis **or**
2. in partnership with others.

86203 S/E earners are responsible, to the full extent of their personal fortune, for the debts of the business and are entitled to **either**

1. in the case of a sole trader, all the profits **or**
2. if in a partnership, the agreed share of the net profits.

86204 A person may be S/E and also have other work as an employed earner. If so, the earnings from each employment should be calculated separately.

86205

Claims from self-employed earners

86206 When considering a claim that includes a S/E earner the DM should decide if

1. the person is currently gainfully employed as a S/E earner (see DMG 86217 - 86222) **and**
2. any earnings are to be taken into account.

- 86207 If the S/E earner has ceased self-employment, the DM should consider
1. if there are any earnings to be taken into account **and**
 2. if there are any capital assets from the business **and**
 3. if any capital assets from the business should be disregarded (see DMG 86231 and Chapter 84).

Directors of limited companies

- 86208 A limited company is a legal person¹ and is different from a sole trader or partnership because
1. the company belongs to its shareholders, who share in any distributed profits according to the size of their individual shareholding **and**
 2. the liability of each shareholder is limited to
 - 2.1 the initial cost of the shares **and**
 - 2.2 the amount of any of the company's borrowing that the shareholder has stood as personal guarantor for.

1 R(SB) 57/83

- 86209 A limited company, of whatever size, is separate from its employees, officers 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 company² and is an employed earner.

1 R(SB) 57/83; 2 McMillan v. Guest 1942, AC 561

Earnings of self-employed earners

- 86210 In the case of S/E earners, earnings means the gross receipts (see DMG 86300) from the employment¹.

1 SPC Regs, reg 17B(4)(a); SS Ben (C of E) Regs, reg 12(1)

- 86211 S/E earnings do not include¹
1. charges paid to the claimant in return for providing board and lodging accommodation in their own home **or**
 2. any payments made by an LA to a claimant for providing children with foster care² **or**
 3. payments made by a voluntary organisation under child care law to prevent children being taken into care³ **or**
 4. payments made by an LA, HA or voluntary organization to a claimant for a person who
 - 4.1 is not normally a member of the claimant's household **and**

4.2 who is temporarily in the claimant's care⁴

5. any sports award⁵.

Note: A sports award is made by one of the Sports Councils named in the National Lottery legislation out of sums allocated to it for distribution under that legislation.

*1 SPC Regs, reg 17B(4)(b); SS Ben (C of E) Regs, reg 12; 2 Children Act 1989, s 23(2)(a); Children (Scotland) Act 1995, s 26; Looked After Children (Scotland) Regulations 2009, regs 33 & 51;
3 Children Act 1989, s 59(1)(a); 4 NA Act 48, s 26(3A); NHS Act 77, s 16A & 16BA;
National Health Service Act 2006, s 18(2)(c); National Health Service (Wales) Act 2006, s 11;
5 National Lottery etc. Act 1993, s 23(2)*

Board and lodging accommodation

86212 Board and lodging accommodation¹ is accommodation

1. where the charge for the accommodation includes some cooked or prepared meals that are both

1.1 cooked or prepared by someone who is not

1.1.a the person provided with accommodation **or**

1.1.b a member of the family of the person provided with accommodation **and**

2. eaten in that accommodation or associated premises.

1 SPC Regs, reg 1(2)

86213 - 86215

Deciding if a person is a self-employed earner

86216 A S/E earner is someone who is gainfully employed. If a S/E earner is not working, this does not mean that the S/E earner has ceased to be gainfully employed.

86217 To determine if a person is gainfully employed the DM should consider

1. if there is a reasonable prospect of work in the near future **and**

2. if the business is a going concern and regarded as such by

2.1 the person **or**

2.2 the business's bankers **or**

2.3 any creditors **or**

2.4 others **and**

3. if the person hopes or intends to restart work in the business when economic conditions improve **and**

4. if the person is undertaking any activities in connection with the self-employment **and**

5. if there is work in the pipeline **and**

6. if the person is regarded as S/E by HMRC **and**
7. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example,
 - 7.1 by advertising **or**
 - 7.2 by visiting potential customers **and**
8. if the interruption in question is part of the normal pattern of the
 - 8.1 person's work **or**
 - 8.2 work that the person is seeking.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29

86218 All eight factors in DMG 86217 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

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

86219 Some of the factors in DMG 86217 may point towards the fact that a person is gainfully employed. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

86220 The DM should make a determination on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

Example 1

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

1. he and his bank regard his business as a going concern
2. he has orders in the pipeline, for which he is arranging the order of materials
3. he is still regarded as S/E by HMRC
4. he is still advertising for work
5. stoppages during the winter months are a normal feature of the business.

The DM then considers the guidance at DMG 86217 - 86219 and determines, in this case, that Hugh remains gainfully employed as a S/E earner.

Example 2

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

1. he has been unable to pay the rent on his shop and the landlord is threatening eviction
2. his business has debts and the bank has advised that the business should be wound up
3. he can not find a way of boosting his trade
4. there is no work in the pipeline
5. at present he is still regarded as S/E by HMRC
6. he still has an advertisement in the Yellow Pages.

The DM considers the guidance at DMG 86217 - 86219 and determines, in this case, that Donald is not gainfully employed.

Example 3

Trevor is 62 years old and claims SPC. He is a S/E electrician. He sub-contracts for other contractors. Trevor states that he has just finished one contract and work on the next contract is not due to start for another couple of weeks. Trevor states that

1. he still regards himself as S/E and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at DMG 86217 - 86219 and determines, in this case, that Trevor remains gainfully employed as a S/E earner.

Sickness

86221 If a S/E earner is unable to work in the business due to sickness, the DM should consider

1. the guidance at DMG 86217 - 86219 **and**
2. if the S/E earner remains gainfully employed as a S/E earner.

86222 A S/E earner will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of the self employment.

Example 1

Philip is a S/E dentist. He is the only dentist in the practice. He claims SPC as he has been unable to work because he is suffering from flu. He is unable to work for a total of two weeks. During that time

1. the receptionist re-books the appointments Philip had during his period of sickness
2. the receptionist continues to send out reminders for regular check-ups and books any new appointments
3. Philip is still regarded as S/E by HMRC
4. the bank still regards the business as a going concern.

The DM considers the guidance at DMG 86217 - 86219 and determines, in this case, that Philip remains gainfully employed as a S/E earner.

Example 2

Marlon is a S/E gardener. He is a sole trader. He claims SPC as he has broken his leg and has been advised by his doctor to avoid work for six months. Marlon states that

1. his business activity depends entirely on his ability to work and until his leg has healed he cannot undertake any work in connection with his business
2. he has had to advise customers that he is unable to carry out the work that he had arranged so that they can find alternatives
3. he and his bank do not consider the business as a going concern
4. he intends to restart work in the business when his leg has healed so he has not removed any of his advertisements in case any work can be arranged for when he returns to work.

The DM considers the guidance at DMG 86217 - 86219 and determines, in this case, that self-employment has ceased, there are no earnings to be calculated and any business assets can be disregarded (see DMG Chapter 84).

Example 3

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

The DM considers the guidance at DMG 86217 - 86219 and determines, in this case, that Roseanne remains gainfully employed as a S/E earner. The DM calculates the earnings to be taken into account.

86223 - 86229

Self-employment ceased

86230 If the DM determines that self-employment has ceased, DMG 86231 - 86233 should be considered.

Capital

86231 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 84 provides guidance on the valuation of business assets and the disregards that can apply.

Earnings from self-employment that has ceased

86232 If a person has been engaged in work as a S/E earner which has ended before the claim to SPC any earnings from that self-employment are fully disregarded¹.

Note: This does not apply in the case of royalties or copyright payments (see DMG Chapter 85).

1 SPC Regs, Sch VI, para 6

Example

James was S/E. He last worked on 11.11.03. He received earnings on that day. He claims SPC on 12.11.03.

The DM determines that James has ceased to be a S/E earner on 11.11.03. The earnings received on that date are disregarded.

Income derived from business when self-employment has ceased

86233 Where a person has ceased to be a S/E earner the assets of the business may continue to produce income. For example, premises owned by a former shopkeeper may be leased to another person. Any actual income derived from the assets should be disregarded as income from capital¹.

1 Sch V, Part I, para 9

86234 - 86249

Assessment period for self-employed earners

- 86250 The normal weekly earnings of a S/E earner should be calculated by using the
1. gross receipts (see DMG 86300) **and**
 2. expenses paid out (see DMG 86350)
- during the assessment period. Different rules apply for royalties and copyright payments.

Business trading for less than a year

- 86251 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings more accurately than would be the case if they were calculated over a year¹.

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

Example

Stan claims SPC on Monday 3 November. He is a S/E window cleaner. He started doing occasional window cleaning jobs in February of the same year, but it was not until May that the business really got off the ground.

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

Business trading for more than a year

- 86252 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year¹ (but see DMG 86341 - 86342).

1 reg 11(1)(a)

- 86253 The year does not need to be the year immediately before the claim or the date the claim is looked at. If profit and loss accounts are available for the last trading year the DM can use these as the assessment period. The profit and loss accounts should be converted to a cash flow basis (see DMG 86281).

- 86254 A year means a period of
1. 365 days **or**
 2. 366 days if the assessment period includes the February of a leap year.

Change likely to affect the normal pattern of trading

86255 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings more accurately than if they were calculated over a year¹. The period does not need to be made up of complete weeks.

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

86256 The assessment period should

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

86257 The earnings would then be averaged over that period and apportioned on a weekly basis until the figures for the following week become available. The assessment period would then be extended. The assessment period would

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

The DM should supersede if the new figures affect entitlement to SPC. Where entitlement is not affected, a decision not to supersede should be made if the claimant asked for earnings to be looked at again. For further guidance on supersession including the effective date rule, see DMG Chapter 04.

86258 This procedure should continue until the assessment period has been extended to one year and the earnings can be averaged over that year. In most cases this procedure will provide the most accurate determination of a S/E earner's earnings.

Example 1

Carlo is S/E. On 11.08.03 his business goes into receivership. He continues to trade but he has lost some of his suppliers and customers. On 7.11.03 he claims SPC.

The DM determines

1. Carlo is gainfully employed as a S/E earner
2. that the receivership is a change that has affected the normal pattern of business
3. that the assessment period is from 11.8.03 (the date the change affecting the pattern of business occurred) to 30.10.03 (the date that the most recent figures for gross receipts and expenses are available).

The earnings for the assessment period are averaged for that period and apportioned on a weekly basis until 30.11.03 when the figures for the following month become available.

At this point the DM supersedes the SPC award and extends the assessment period. The assessment period is now 11.8.03 to 30.11.03. The earnings for this period are averaged and apportioned on a weekly basis until 31.12.03 when the figures for the following month become available.

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

Example 2

Jean is 62 years old and in receipt of SPC. Her husband is a S/E taxi driver who has taken on a second taxi cab to hire out to increase business from 1.7.08. The DM determines that

1. this is a change that has affected the normal pattern of business **and**
2. sets a new assessment period from 1.7.08 up to the present date.

86259 When considering the assessment period the DM should consider the facts of each case carefully. A period that does not start with the first day of the interruption may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

86260 The DM should be satisfied that any change

1. has affected **or**
2. is likely to affect

the normal pattern of trading.

Example 1

Barry owns and runs a small garage. He is in receipt of SPC because his income is below the AMG. Barry reports that there has been a fire in his workshop which has badly damaged equipment. This has meant that Barry is no longer able to offer a repairs or maintenance service to his customers.

The DM determines that

1. there has been a change that has affected the normal pattern of business **and**
2. sets a new assessment period from the date of the fire up to the present date.

Example 2

Peter is a S/E bricklayer. The business has been trading for several years. Peter claims SPC because a period of snowy weather stopped him from working. He was unable to work for 10 days.

The DM determines that, although the bad weather might be a change, it was not one that would affect the normal pattern of business. The normal pattern of business would include times in the winter when building work could not be done.

Note: Weather conditions that are exceptional for the area could be regarded as a change affecting the normal pattern of business.

Example 3

Morris is a S/E shop keeper. He has been in business for nine years. Morris has not been getting SPC as his income was more than the AMG. He claims SPC as a recent storm has blown off part of his shop roof and he is unable to trade until his roof is mended as there are too many leaks.

The DM decides that the damage caused by bad weather is a change that has affected the normal pattern of business. The DM decides that the assessment period starts from the date of the storm.

86261 - 86269

New businesses

86270 A person may start up a new business whilst in receipt of SPC. No income should be taken into account until the S/E earner starts to receive actual earnings. When the first payment of earnings is received, the DM should use the assessment period

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

86271 The assessment period should be extended every week or month until a yearly assessment is possible. In most cases this procedure will provide the most accurate determination of a S/E earner's earnings.

Example

Gareth is in receipt of SPC. His benefit week runs from Monday to Sunday. On Tuesday 9.12.08 he starts work as a S/E pine furniture maker.

The DM determines that the assessment period is 8.12.08 to 14.12.08.

The earnings received in that assessment period are taken into account for benefit week commencing 15.12.08, during which figures for the next week become available.

At this point, the DM supersedes the award and extends the assessment period. The assessment period is now 8.12.08 - 21.12.08. The earnings received in this period are averaged and apportioned on a weekly basis until 28.12.08 when further figures are available.

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

86272 When determining the assessment period for new businesses the DM should consider the facts of each case carefully. A period that does not start with the first day of the self-employment may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

86273 - 86279

Calculation of normal weekly earnings

86280 DMG 86281 - 86454 provide guidance on the calculation of earnings of most S/E earners. Specific guidance is given for

1. child minders
2. crofts or small holdings
3. farmers
4. hotels, guest houses, bed and breakfast establishments etc.
5. local exchange trading schemes
6. partnerships
7. renting out property
8. seasonally S/E
9. sub-contractors
10. actors and entertainers
11. share fishermen.

Evidence - cash flow

86281 To calculate the amount of earnings the DM will need evidence of

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

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

86282 On a new or repeat claim the onus is on the S/E earner to provide the evidence necessary to support the claim. A claimant who is S/E or whose partner is S/E should be asked to submit details of

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

during the assessment period.

86283 The figures regarding the gross receipts and expenditure provided by the S/E earner should be accepted as accurate unless

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

Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure or receipt is separately detailed and **1.** or **2.** does not apply.

Accounts

- 86284 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the gross receipts and expenses paid for.
- 86285 A set of accounts consists of two main statements
1. the **balance sheet**: that is, a statement of the financial position of a business at a given date **and**
 2. the **profit and loss account**: that is, a summary of the results of a business's transactions for a period ending on the date of the balance sheet.
- 86286 Accounts are prepared using accounting principles. Accounts may include anticipated receipts and expenses for the accounting period. The anticipated amounts are not
1. gross receipts as they have not been received by the business **or**
 2. allowable expenses as they have not been paid for.
- 86287 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing
1. accounts that are calculated on a cash flow basis **or**
 2. evidence of the gross receipts and expenses paid.
- 86288 The figures provided by the S/E earner as evidence of actual amounts received and expenses paid out should be accepted as accurate unless
1. there is reason to doubt **or**
 2. they are unrepresentative of the current trading position.
- Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and **1.** or **2.** does not apply.
- 86289 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example
1. bank receipts
 2. purchase receipts
 3. expenses for a different assessment period.

86290 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example

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

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

Income tax certificate

86291 The DM should not accept, as conclusive evidence of the weekly net profit, an

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

Method of calculation

86292 To calculate the earnings of a S/E earner the DM

1. should establish the gross receipts of the business during the assessment period (see DMG 86300) **and**
2. deduct from the gross receipts the allowable expenses that have been paid out during the assessment period (see DMG 86380) **and**
3. deduct from the remaining figure amounts for
 - 3.1 notional income tax (see DMG 86490 et seq) **and**
 - 3.2 notional SS contributions (see DMG 86500 et seq) **and**
 - 3.3 half any premium paid for a
 - 3.3.a personal pension scheme (see DMG 86521) **or**
 - 3.3.b a retirement annuity contract (see DMG 86523) **and**
4. deduct the correct disregard(s) (see DMG 86700)

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

86293	The whole process can be summarised as follows	
	gross	less
	allowable	less
	notional income tax	less
	notional SS contributions	less
	half of any personal pension scheme or retirement annuity contract	divided by
	the number of days in the assessment period	multiplied by
	7 to give a weekly figure	equals
	the weekly net profit	less
	any disregards that apply	Equals
	the weekly earnings figure to take into account	

86294 - 86299

Gross receipts

86300 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt¹. DMG 86341 provides guidance for payments received that relate to a different period to the assessment period.

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

- 86301 The gross receipts of a business include
1. any payments for goods and services provided (see DMG 86302)
 2. earnings payable abroad (see DMG 86303)
 3. certain allowances paid to assist in carrying on the business (see DMG 86306)
 4. any business subsidies or payments of compensation (see DMG 86310)
 5. personal drawings (see DMG 86311)
 6. income from letting or sub-letting (see DMG 86320)
 7. sale of certain business assets (see DMG 86321)
 8. tips and gratuities (see DMG 86322)
 9. payments in kind (see DMG 86324)
 10. any VAT receipts (see DMG 86325)

Payment received for goods and services provided

86302 All

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

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

Earnings payable abroad

86303 Money that is due to be paid to a business in a country outside the UK should be included as a gross receipt only when it is received by the business, for example when it is paid

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

86304 Where the payment is made in a currency other than sterling, the value of the payment is the sterling equivalent on the day the payment is made¹. Any

1. bank charges **or**
2. commission

payable for converting the payment into sterling should be disregarded².

1 SPC Regs, reg 17(6); 2 Sch VI, para 7

86305 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 Sch IV, para 15

Example

Derek is S/E on a P/T basis in an import/export business. During the assessment period his business received £1,000 in a country that was, and currently is, prohibiting the transfer of funds to the UK. The DM calculates the earnings as follows

Gross receipts (including the £1,000 received abroad)	=	£5,000
Deductions for allowable expenses, notional income tax and SS contributions and half of a premium for a personal pension	=	£2,500

Net profit	=	£2,500	
Divided by the number of weeks in the assessment period	=	£48.07	less
Normal earnings disregard	=	£5.00	less
Special disregard for earnings aboard (£1,000 divided by 52)	=	£19.23	
Earnings to be taken into account (£48.07 - £5.00 - £19.23)	=	£23.84	

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM revises or supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

Schemes to help with self-employment

- 86306 An allowance may be payable under certain schemes to assist people to become S/E. For further guidance see DMG Chapter 14. In a business partnership one or all of the partners may be receiving payments.
- 86307 Any allowance paid into the S/E earner's business bank account during the assessment period should be included in the gross receipts of the business¹.

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

86308 - 86309

Business subsidies or payments of compensation

- 86310 Some businesses may receive
1. subsidies, for example businesses involving farming or agriculture receive subsidies from the Department for Environment, Food and Rural Affairs, or the European Community **or**
 2. payment of compensation from another person because of disruption to the business. For example payments of compensation awarded because of foot and mouth disease.

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

Personal drawings

- 86311 A S/E person may draw money from the business for day to day expenses. These drawings, known as personal drawings, are in anticipation of profits or business income and should be included as part of the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.
- 86312 Where drawings are made in excess of the profits of the business they should be treated as capital. Money taken from the business in excess of profits comes from
1. capitalized profits from earlier years **or**
 2. increased borrowing.
- In 1. or 2. the drawings are withdrawals from the capital of the business.
- 86313 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the gross receipt. If it has, the amount of the drawings should be added back to the amount of the gross receipts.
- 86314 A S/E earner who is a sole owner of, or partner in, a business may pay interest to the business on money taken as personal drawings. These payments should be included in the gross receipts of the business.

Example 1

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

The DM determines

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

Example 2

Kathleen is in receipt of SPC, she is a S/E earner. Her assessment period is twelve months. She produces evidence of her gross receipts and expenses for the assessment period.

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

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

The DM determines

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

86315 - 86319

Income from letting or sub-letting

- 86320 Any income from letting or sub-letting of business premises or land should be included in the gross receipts of the business. Any expenses connected with the letting should be included with other business expenses.

Sale of certain business assets

- 86321 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business¹.

1 R(FC) 1/97

Example

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

Tips and gratuities

- 86322 Tips or gratuities received in response to the service performed by a S/E earner, for example as a hairdresser, taxi driver or coach driver, should be included in the gross receipts of the business.
- 86323 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example on personal grounds, should not be included in the gross receipts of the business.

Payments in kind

- 86324 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the gross receipts of the business.

Example

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

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

Value Added Tax

86325 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

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

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

86326 Where

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

the difference should be included in the gross receipts of the business. This is the amount that DMG 86325 **2.** exceeds DMG 86325 **1.**.

Note: VAT can also be an allowable expense of the business, see DMG 86391.

86327 - 86339

Capital receipts

86340 Capital receipts do **not** form part of the gross receipts of the business. For example

1. loans
2. injections of capital
3. grants from the Prince's Trust **and**
4. proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see DMG 86321).

Earnings for a different period

86341 A payment of earnings **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

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

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

86342 It is not intended that every payment is assessed individually over a period different to the assessment period. This should be the exception rather than the rule. So, any payment for a period

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

Example

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

The DM considers that

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

86343 - 86349

Business expenses

Conditions for deducting business expenses

86350 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that¹

1. was paid out wholly and exclusively for the purposes of the business² **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred³ (see DMG 86370) **and**
4. is an allowable expense (see DMG 86380).

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

Wholly and exclusively

86351 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business¹. Any such payment should be deducted in full, subject to DMG 86350 **2. - 4.**

1 reg 13(4)(a)

Expenses for both business and private use

86352 If expenditure is for both business and private use, for example

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

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

86353 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

86354 The DM should normally accept the evidence of

1. the S/E earner **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax and contribution purposes¹.

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

86355 Examples of expenses that may be apportioned between private and business use are¹

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

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

Example 1

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

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

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

Example 2

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

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

Example 3

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

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

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

86356 - 86369

Reasonably incurred

86370 The term “reasonably incurred” is not defined in regulations. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

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

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

86371 To determine what is reasonable the DM should have regard to the circumstances of each individual's case¹, including the level of the person's earnings².

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

86372 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive¹.

1 R(G) 7/62

86373 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

86374 - 86379

Allowable business expenses

86380 If the conditions in DMG 86350 **1. - 3.** are met, all day to day expenses of a business are allowable, including¹

1. accountancy charges
2. advertising costs
3. certain capital repayments on a loan used to²
 - 3.1 replace an item of equipment or machinery that has
 - 3.1.a worn out in the course of the business **or**
 - 3.1.b become outdated **or**
 - 3.2 repair an existing asset, but only to the extent that the loan exceeds any sum paid or due to be paid under an insurance policy for that repair, for example, labour may not be covered by the policy
4. cleaning of business premises

5. employee's wages before any deductions, including wages payable to a partner, but not a business partner (see DMG 86390)
6. employer's contribution to an employee's pension scheme
7. employer's secondary Class 1 SS contributions
8. heating and lighting
9. hire or rental costs, but not any capital or purchase elements
10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair exceeds any sum paid or due to be paid under an insurance policy for that repair³
11. interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see 3.⁴
12. legal fees for the running of the business, but not with the setting up or expansion of the business
13. payment in kind for work done for the business - the monetary value is allowed
14. rent, council tax, water charges and insurance premiums on the business premises
15. stationery
16. stock purchases
17. sundries, if the DM is satisfied that the expenses are allowable
18. telephone, fax or telex
19. transport, for example business use of the car including petrol costs, road fund license, insurance and servicing, but excluding any home to work costs
20. VAT⁵.

This list is not exhaustive.

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

86381 For the purpose of DMG 86380 **3.2** an asset includes buildings, plant machinery, vehicles or equipment.

Example 1

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

The DM determines that

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

Example 2

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

The DM determines that

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

Example 3

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

The DM determines that

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

86382 - 86389

Partner's earnings from the business

86390 The earnings of a partner (but not a business partner) who is employed in the business should be allowed as a business expense (see DMG 86380 **5.**). The wage should not be added back to the business accounts to offset any loss¹.

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

Example

Rita runs a dress-making business from home. She is in receipt of SPC. Her business is making a loss of £50 per week. The accounts show that Rita pays her partner £45 per week for book keeping.

For SPC purposes their income is

Rita	Nil
Partner	£45.00
Total	£45.00 per week.

Value Added Tax

86391 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

1. VAT collected from customers - known as output Tax **and**
2. VAT paid by the S/E person to suppliers - known as input Tax.

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

86392 Where

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

the difference should be taken into account as an expense¹. This is the amount that DMG 86391 **1.** exceeds DMG 86391 **2.**.

Note: VAT can also be a gross receipt of the business.

1 SS Ben (C of E) Regs, reg 13(9)(b)(i)

86393 - 86399

Expenditure for a different period

86400 Any business expenditure paid out in the assessment period **may** be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

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

1 reg 13(11)

86401 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

86402 Any expense for a period

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

Example

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

The DM determines

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

86403 - 86409

Expenses not allowed

86410 Business expenses that should not be allowed are

1. those expenses where the conditions for deducting a business expense are not met (see DMG 86350)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. any loss incurred
 - 5.1 before the start of the assessment period¹ **or**
 - 5.2 in any other employment²
6. repayment of capital on loans except where DMG 86380 **3.** applies
7. business entertainment expenses
8. losses incurred on the disposal of a capital asset
9. payments into a contingency fund to safeguard against future bad debts³
10. personal drawings on income and capital
11. money on goods used for personal consumption.

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

Capital expenditure

86411 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. In line with HMRC, fixed assets include items such as tools, equipment, machinery and vehicles used in the business. The DM should not allow capital expenditure as a business expense¹.

1 reg 13(6)(a)

Example

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

Depreciation

86412 Depreciation of a capital, or fixed, asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear, during the assessment period.

86413 If there are fixed assets accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense¹.

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

86414 - 86420

Sums used in setting up or expanding a business

86421 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business¹. This applies to expenditure on, for example

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

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

1 reg 13(6)(c)

Loss incurred before the beginning of the assessment period

86422 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period¹.

1 reg 13(6)(d)

86423 - 86429

Loss incurred in any other employment

86430 A person may

1. have more than one employment as a S/E earner **or**

2. be both a S/E earner and an employed earner, for example a director.

The earnings from each employment should be assessed separately.

- 86431 Any business loss in one employment should **not** be offset against the earnings of another employment¹. Also, any loss made by one member of the family should not be offset against the earnings of another member.

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

Example

Thomas is in receipt of SPC. His partner is a market trader and a S/E music teacher. The market stall runs at a loss. The DM considers that the loss from the market stall is not an allowable expense against the gross receipts from teaching music and calculates the net profit from each self-employment separately.

Repayment of capital on business loans

- 86432 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset¹ (see DMG 86380 3.).

1 reg 13(6)(e)

86433 - 86439

Business entertainment

- 86440 Any expense claimed for providing business entertainment, for example

1. business lunches **or**
 2. hospitality in connection with the business
- should not be allowed as a business expense¹.

1 reg 13(6)(f)

Loss on disposal of a capital asset

- 86441 When an asset is sold for less than the value shown in the books of the business the difference is referred to as the "loss on disposal" and is accepted as a loss for accounting purposes. But the DM should not

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

Payments into contingency funds

86442 Any payments into a contingency fund set up to safeguard against future bad debts should not be allowed as a business expense. This is an allocation of funds rather than an expense.

86443 - 86449

Personal drawings

86450 Personal drawings may be shown as a

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

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

Personal consumption

86451 The DM should not allow any money spent on goods for personal consumption as a business expense.

86452 Personal consumption is not limited to food products. It could include a range of items, for example

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

86453 The DM should not assume

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

86454 If the business is one where personal consumption is likely to arise, for example

1. a farmer **or**
2. a grocer

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

86455 - 86469

Calculation of income tax, social security contributions and qualifying premium

Introduction

86470 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 86490 et seq) **and**
2. Class 2 SS contributions (see DMG 86500 at seq) **and**
3. Class 4 SS contributions (see DMG 86510 et seq) **and**
4. half of any premium for a
 - 4.1 personal pension scheme (see DMG 86521) **or**
 - 4.2 retirement annuity contract (see DMG 86523).

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

86471 The DM should base deductions for DMG 86470 **1. - 3.** on the chargeable income for the assessment period.

86472 - 86479

Chargeable income

86480 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

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

1 reg 12(1), SPC Regs, reg 17B(5); 2 SS Ben (C of E) Regs, reg 13(10); 3 SPC Regs, reg 17B(5), SS Ben (C of E) Regs, reg 13(4)(a)

86481 The calculation at DMG 86480 1. - 3. should not include any deductions for

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

86482 - 86489

Deduction for notional income tax

86490 The DM should use the tax rates and allowances for the tax year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Example

Andrew makes a claim for SPC in June 2004. The DM accepts as evidence of his earnings his cash flow accounts up to the tax year ending the previous April. The tax rates and allowances used to calculate the notional tax deduction are those for the previous tax year.

Tax allowances

86491 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only. The rates of income tax allowances are in Appendix 1 to this Chapter.

Personal allowance

86492 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (see Appendix 1 to this Chapter), but for SPC purposes only the personal allowance for a person aged under 65 is deducted even if another personal allowance appears to apply.

Example

Harry is in receipt of SPC. He is aged 67 and operates a small S/E business from home. The DM calculates his personal allowance as £4,895 even though it appears that £7,040 would apply.

Tax rates

86493 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1 to this Chapter.

86494

Calculation of deduction

86495 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to **3**.
3. deduct the personal allowance (see Appendix 1 to this Chapter)
 - 3.1 in full if the assessment period is a year **or**
 - 3.2 on a pro rata basis if the assessment period is less than a year
4. multiply the first £34,800 (08/09 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (see Appendix 1 to this Chapter)
5. round up where necessary.

Note: Prior to 2008/2009 tax year there were 2 rates of tax, a starting rate and a basic rate. (See Example 2 below and Appendix 1 to this Chapter).

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

Example 1

Sam is a married man aged 62. He works P/T as a S/E gardener and claims SPC. The DM determines that the assessment period is for a year and calculates the chargeable income for the assessment period as £15,500.

The DM also determines that the married couple's allowance is appropriate. The DM calculates the notional income tax as follows

	£	
Chargeable income	- 15,500.00	less
Claimant's personal allowance (08/09 rates)	- 6,035.00	
	= 9,465.00	
£9,465.00 at 20%	= 1,893.00	
Total notional income tax	= 1,893.00	

Example 2

Angela is S/E. She is in receipt of SPC. The assessment period is 13 weeks.

	£	
Chargeable income	- 15,500.00	less
Claimant's personal allowance (£4,895 x 91/365) (05/06 rates)	- <u>1,220.39</u>	
	= 14,279.61	
The first £521.06 (£2,090 x 91/365) at 10%	- 52.10	
The remainder (£13,758.55) at 22%	<u>3,026.88</u>	
Total notional income tax	= 3,078.98	

86496 - 86499

Deduction for notional Class 2 Social Security contributions

86500 A Class 2 contribution is a flat rate contribution. The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. The Class 2 rates are in Appendix 2 to this chapter.

Liability for a Class 2 contribution

86501 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small earnings exception level (see Appendix 2 to this Chapter). However as liability for SS contributions ends at state pension age, a deduction should not be taken if the earner is over state pension age.

86502 The DM should only consider the chargeable income when deciding if a deduction for Class 2 should be made. If appropriate, a deduction should still be made even if the claimant holds a small earnings exception certificate.

86503 - 86504

Calculation of the Class 2 contribution

86505 The deduction for the notional Class 2 contribution should be based on the rate of Class 2 contributions and small earnings exception level current at the time the DM determines the claim or makes a supersession¹. Take no account of any increases in the contribution rates or small earnings exception level. To calculate the amount of the deduction the DM should

1. establish the chargeable income² **and**
2. determine if a deduction should not be made on the grounds of small earnings **and**
3. multiply the weekly rate (see Appendix 2 to this chapter) by the number of weeks in the assessment period.

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

86506 - 86509

Deduction for notional Class 4 Social Security contributions

86510 A Class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels (see Appendix 2 to this Chapter). These payments are in addition to Class 2 contributions.

Note: Liability for SS contributions ends at state pension age.

Calculation of Class 4 deduction

86511 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the time the DM determines the claim or makes a supersession¹. Take no account of any increases in the percentage rate and lower and upper levels. The DM should

1. establish the chargeable income **and**
2. decide the number of weeks in the assessment period (if there are less than 52 weeks in the assessment period the DM should calculate **3.** on a pro rata basis) **and**
3. deduct the LEL from chargeable income up to the UEL **and**
4. multiply the remaining figure by the percentage rate to give the notional contribution figure. No account should be taken of evidence of actual payments made or due.

The Class 4 rates are in Appendix 2 to this chapter.

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

Example 1

Assessment period is 52 weeks

Chargeable income is £7,590

Class 4 - Lower level is £4,895

- Upper level is £32,760

Chargeable income is £7,590 **less**

Lower level £4,895

Profit £2,695 x 8% = £215.60

Notional Class 4 contributions for 52 weeks is £215.60.

Example 2

Assessment period is 39 weeks or $\frac{273}{365}$ days

Chargeable income for is period is £7,100

Class 4 - lower level is $\frac{£4,895 \times 273}{365} = £3,661.19$

Chargeable income	£7,100 less
Lower level	£3,661.19
Profit	£3,438.81 x 8% = £275.10
Notional Class 4 contributions for 39 weeks is £275.10	

86512 - 86519

Premiums for personal pension schemes and retirement annuity contracts

86520 When calculating S/E earnings, the DM should deduct from the chargeable income half of any premium for a

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

for the relevant assessment period¹.

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

Example

Sanjay is in receipt of SPC, his partner Gita runs a small business from home. Her earnings are calculated over a period of a year. Gita makes contributions under a retirement annuity contract on a monthly basis. The relevant assessment period is a year.

The DM should calculate the contributions on a yearly basis and deduct half of this sum from the net profit.

Personal pensions

86521 A personal pension¹ is a fund that provides an income on retirement for employees or the S/E. This may be done by

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

1 SPC Regs, reg 17B(2)(b)

86522 Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income to be paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

Retirement annuity contracts

86523 Before 1.7.88 people could buy retirement annuity contracts, these are similar to personal pensions¹. They were usually taken out by S/E people.

1 Income and Corporation Taxes Act 88, Chapter III

86524 People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

86525 - 86529

Particular forms of self-employment

Child minders

86530 A child minder is a person who engages in a contract for services to care for another person's child in return for payment. Most child minders

1. work from their own homes **and**
2. are registered with the LA **and**
3. are restricted to the number of children they care for at any one time.

86531 To calculate a child minder's normal weekly earnings the DM should

1. determine the assessment period in the normal way **and**
2. calculate the gross receipts for that period **and**
3. calculate the chargeable income as **one third** of the gross receipts during the assessment period¹ but make no deductions for business expenses **and**
4. calculate a deduction for
 - 4.1 income tax **and**
 - 4.2 SS contributions **and**
 - 4.3 half of any premium for a
 - 4.3.a personal pension scheme **or**
 - 4.3.b retirement annuity contract **and**
5. deduct any disregard.

1 SS Ben (C of E) Regs, reg 14(3)(b)

Example

Florence is a S/E child minder who is in receipt of SPC. Her assessment period is 13 weeks. The gross receipts for that period are £1,280.

The DM determines

1. that no expenses should be deducted from the gross receipts **and**
2. that the chargeable income is £426.67 (1/3 of £1,280) **and**
3. the income tax, SS contributions and premiums that are to be deducted from the chargeable income.

86532 - 86539

Crofts or small holdings

86540 Earnings from a croft or small holding should be decided on the same basis as a small business. The person should produce an annual statement giving details of

1. income from sales, subsidies, etc **and**
2. expenditure, including for example, seed, fertiliser, feed and labour.

This statement should be used to calculate the person's net profit.

86541 - 86544

Farmers

86545 A farmer in need of financial assistance may first seek advice from a surveyor, land agent, valuer or some other similar professional to ensure he is taking advantage of any schemes or subsidies, such as those administered by Department for Environment, Food and Rural Affairs Rural Payments Agency, that may be available.

86546 Department for Environment, Food and Rural Affairs are unable to supply opinions about the amount of work involved in particular farms or their likely returns. However DMs may consult the Department for Environment, Food and Rural Affairs website (www.defra.gov.uk - Economics and statistics page) for information about total farm income for the type of enterprise in question.

86547 - 86549

Hotels, guest houses, bed and breakfast establishments

86550 The DM should note that payments received by claimants for providing board and lodging accommodation in their own home are not earnings¹. These payments are income other than earnings. (See DMG Chapter 85).

86551 If the board and lodging accommodation is not being provided in the dwelling occupied as the home, the payments should be taken into account as earnings from self-employment.

1 SPC Regs, reg 17B(4)(b)

Bars and restaurants in hotels, guest houses

86552 Income from bars and restaurants where services are provided that are not included in the board and lodging charge should be treated as earnings from self-employment. The DM should determine the assessment period and calculate the gross receipts and allowable expenses in the normal way.

86553 - 86555.

Local exchange trading systems

86556 LETS are associations that allow participants to exchange goods and services with others in the community.

86557 LETS members list their offers of, and requests for, goods and services in a directory and then trade them using a system of credits. These can be given many different names such as

1. bobbins
2. brads
3. newberries
4. beacons
5. acorns.

Participating in a local exchange trading system scheme

86558 Participating in a LETS should be regarded as work. The credits obtained are payment for the goods or services provided.

Local exchange trading credits

86559 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. Credits are considered taxable income by HMRC.

86560 Credits can be treated as

1. capital **or**
2. earnings

depending on the circumstances of each case. Credits are **not** payments in kind.

86561 If a person

1. undertakes occasional, personal transactions for credits, for example selling an item of furniture, the credits received should be treated as capital **and**
2. is gainfully employed as a S/E earner and receives credits as payment for services provided, those credits should be included in the gross receipts of the business and are subject to the appropriate disregard.

86562 The value of credits is equivalent to the number of credits awarded for the particular goods or services at the relevant exchange rate.

86563 The DM should firstly find out whether the organisers of the scheme have equated the credits to a sterling equivalent. This may have been done for HMRC or VAT purposes. If so, that equivalent can be used as the exchange rate.

86564 If a sterling equivalent is not available the DM should consider the question based on the circumstances of each case, including

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

86565 - 86569

Partnerships

86570 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

86571 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners¹.

1 Partnership Act 1890, s 24

86572 The conditions under which a partnership is formed, operates or ends, are governed by the terms of a partnership deed or agreement together with the provisions of the Partnership Act 1890. For most purposes, the terms of the deed or agreement prevail over the provisions of the Act. Where a deed or agreement exists, it becomes a legal document and its interpretation is a matter of law.

86573 The legal status of a partnership should not be confused with that of a company, in that a partnership has no legal personality in law. At any one time the assets and liabilities of the partnership are (subject to the partnership deed or agreement and the Partnership Act 1890), the joint and several assets and liabilities of the partners.

Note: Scottish Law on the legal status of a partnership differs.

86574 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or Partnership Act 1890 may continue to impose rights and obligations on the parties following dissolution, providing further time for the winding up of its affairs. Further delays may result from legal challenges concerning the partnership's affairs.

86575 Where a partnership ends and the claimant has finished employment in the business, a reasonable period of time is allowed for the claimant to dispose of any assets before they are regarded as capital for benefit purposes. In considering that period of time, regard should be had to any legal obligations and restrictions imposed by the partnership deed or the Partnership Act 1890.

86576 The sale of assets may sometimes provide an income receipt as opposed to a capital receipt (e.g. the sale of "work in hand" or "stock in trade" might well be considered as resulting in an income receipt and not represent capital). Any such decisions should be based on the principles of commercial accountancy. The decision would need to reflect the approach taken by an accountant or HMRC to such questions.

Calculation of a business partner's normal weekly earnings

86577 Before calculating a partner's share of the net profit of the business, the DM should ensure that the gross receipts include the following for **all** partners

1. allowances from schemes to help with self-employment
2. personal drawings
3. expenses covering business and private use.

86578 To calculate the normal weekly earnings of a business partner, the DM should determine the assessment period **and**

1. total the gross receipts of the whole business **and**
2. deduct any allowable expenses incurred by the whole business **and**
3. calculate the partner's share of the resulting "net profit"¹. The partner's share will be
 - 3.1 the share set out in the deed of partnership, if there is one **or**
 - 3.2 the shares agreed in an express or implied agreement between the partners **or**
 - 3.3 an equal share² if neither 3.1 nor 3.2 apply, for example, if there are four partners, each partner's share is 25% **and**
4. deduct from 3. an amount for
 - 4.1 income tax **and**
 - 4.2 SS contributions
 - 4.3 calculated on the amount at 3. **and**
5. deduct half of any premium for a
 - 5.1 personal pension scheme **or**

5.2 a retirement annuity contract and

6. deduct any disregard.

1 SPC Regs, reg 17B(5)(a); 2 Partnership Act 1890, s 24

Example 1

Daniel is one of two partners in a building firm. He is in receipt of SPC. There is a deed of partnership that states that Daniel will receive 40% of the profits and the other partner 60%. The gross receipts for the business during the assessment period are £10,600. The allowable expenses are £5,400. The DM decides that Daniel's share of the profits is £2,080, calculated as follows

	£
Gross receipts	10,600
Less allowable expenses	5,400
	= 5,200
Divided by Daniel's share - 40%	= 2,080

The DM then deducts from £2,080 amounts for notional income tax and SS contributions, half of a premium for a personal pension scheme or retirement annuity contract and the appropriate disregard.

Example 2

Agnes and her brother are partners in a small pottery business. Agnes is in receipt of SPC. There is no deed of partnership or other agreement that profits should be shared unevenly. The gross receipts of the business during the assessment period are £8,750. Allowable expenses are £4,562. The DM determines that Agnes share of the net profit is £2,094, calculated as follows

	£
Gross receipts	8,750
Less allowable expenses	4,562
	= 4,188
Divided by Agnes's share - 50%	= 2,094

The DM then deducts from £2,094 amounts for notional income tax, SS contributions and the appropriate disregard. Agnes was not paying premiums for a retirement annuity contract or a personal pension scheme.

86579

Salaried partners

86580 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ **or**
2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

86581 The DM should

1. consider the facts of each case **and**
2. examine the relationship between the person and the other parties

to decide if the salaried partner is a S/E earner.

86582 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

1. calculate the chargeable income **and**
2. deduct tax, SS contributions and any premiums for a personal pension scheme or retirement annuity contract

from the partner's share of the chargeable income.

86583 - 86589

Renting out property as a business

86590 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

1 R(FC) 2/92

86591 A person who

1. has a single property that is not the home **and**
2. lets the property to tenants **and**
3. collects rents and does any repairs

is not conducting a business. The property is primarily an investment. See DMG Chapter 85 for the treatment of income from capital.

Example

Trevor inherits a house from his sister. Trevor lives elsewhere with his family.

After trying for six months to sell the inherited property without success, he decides to let the house on a nine month contract to four students. Trevor collects the rent once a month and carries out occasional minor repairs.

After the property has been let for six months Trevor claims SPC. The DM determines that Trevor is not operating a business. The DM then goes on to consider how to treat the value of the house and the rental income.

86592 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

1. number of properties involved **and**

2. long term intentions of the person

are factors that need to be considered.

86593 If the DM determines that a person is conducting a business from renting out properties, the income, that is the rent, should not be treated as capital. The income has not been obtained from capital, but from the person's business. The property was used as an asset. The rent is a gross receipt of the business.

Example

Michael has a partnership with another person in a business. The business has been set up to buy land and property for sale and let to tenants. Michael and his partner own a garage with two flats above it and two terraced houses on the same street.

The flats and houses are all let to tenants and Michael collects the rent and does the repairs and maintenance. All business activity takes 15 hours per week. Michael claims SPC.

The DM determines that Michael is a S/E earner and that all of the properties are business assets that can be disregarded¹. The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

1 SPC Regs, Sch V, para 9

86594 - 86599

Seasonally self-employed

86600 If a S/E earner is seasonally S/E the DM should:

1. consider the guidance at DMG 86217 - 86220 **and**

2. determine if the S/E earner remains gainfully employed as a S/E earner.

Example

Shaun is S/E as an amusement arcade owner. He made a claim for SPC in October because the summer season had ended. Shaun stated that

1. he and his creditors regarded the business as a going concern. This is because he anticipated that his business would start up again in the following April when the holiday trade would re-commence
2. in April, when the holiday trade would re-commence he intends to start work again in the amusement arcade
3. he still undertakes some activities in the business. He is currently redecorating the arcade. He plans to renovate and maintain the electrics and make minor repairs before April. He also plans to update the alarm system. He is also looking to update some of the machines in the arcade
4. his accountant only submits figures from April to September each year. It is normal for him to only work between April and September each year.

The DM considers the guidance at DMG 86217 - 86220 and decides, in this case, that Shaun remains gainfully employed as a S/E earner. As there had been no changes that had affected the normal pattern of trading the DM determines that the assessment period for the earnings should be one year.

86601 - 86604

Sub-contractors

86605 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

Example

A firm of builders contract to build a house extension for Tony. They sub-contract the electrical work to Rob. Rob is a S/E sub-contractor and not an employee of either the building firm or Tony.

When Rob completes the work he moves to a different contract that may be for further work with the building firm or for a different contractor.

86606 If a S/E sub-contractor claims SPC the DM should consider

1. the guidance at DMG 86217 - 86220 **and**
2. if the S/E sub-contractor remains gainfully employed as a S/E earner.

Example

Stanley is 62 and claims SPC. He is a S/E electrician. He sub-contracts for other contractors. Stanley has claimed SPC because he has just finished one contract and work on the next contract is not due to start for another couple of weeks.

Stanley states that

1. he still regards himself as S/E and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at DMG 86217 - 86220 and determines, in this case, that Stanley remains gainfully employed as a S/E earner.

Actors and entertainers

- 86607 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.
- 86608 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.
- 86609 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to SPC to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

Example 1

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

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 86217 - 86220)
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 an actor. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a theatre 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 DM decides that Craig's employment with the theatre company was under a contract of service for the 26 weeks when he was engaged by them, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

86610 - 86618

Share fishermen

86619 A share fisherman is a S/E earner. One difference between a

1. share fisherman **and**
2. business partner

is that the share fisherman pays a higher rate of Class 2 contributions (see Appendix 2 to this Chapter). Class 4 liability is the same (see Appendix 2 to this Chapter).

86620 Earnings should only be taken into account when a person is a S/E earner. A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earner's employment.

S/E earner includes people employed outside of GB in employment which would be classed as employment as a S/E earner if the employment was in GB. It also includes people undertaking employment as a S/E earner where that employment is disregarded when working out social security contributions¹.

Note: A share fisherman may also be employed in another occupation as an employed earner. This does not stop that share fisherman being S/E.

1 SPC Regs, reg 17B; SS Ben (C of E) Regs, reg 2(1)

Claims from share fishermen

86621 The rules for calculating the earnings of a share fisherman are the same as for any other self employed claimant who is in partnership with another person. DMs should contact DMA Leeds if further guidance on dealing with claims from share fishermen is required.

86622 - 86699

Disregard of earnings from self-employment

86700 The following disregards should be applied to the net profit of a S/E earner.

Earnings payable abroad

86701 Money that is paid to the business in a country outside the UK should be treated as a gross receipt if it is received by the business. For example, when it is paid

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

86702 Any gross receipts that are received by the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 SPC Regs, Sch IV, para 15

Example

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

Gross receipts (including the £1000 received abroad)	=	£5000
Deductions for allowable expenses, notional income tax and SS contributions and half of a premium for a personal pension	=	£2500
Net profit	=	£2500
Divided by the number of weeks in the assessment period (52)	=	£48.07
Normal earnings disregard	=	£5.00 less
Special disregard for earnings abroad (£1000 divided by 52)	=	£19.23
Earnings taken into account (£48.07 - £5.00 - £19.23).	=	£23.84

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

86703 - 86704

Earnings paid in a foreign currency

- 86705 Where earnings are paid in a foreign currency the value of the payment is the sterling equivalent on the date the payment is made¹. Disregard any amount charged for changing the payment into sterling, for example banking charges and commission payments².

1 SPC Regs, reg 17(6); 2 Sch VI, para 7

Earnings disregard

- 86706 The relevant earnings disregard (see DMG paras 86110 - 86141) should be applied.
86707 - 86999

Appendix 1

Notional deductions for income tax

Main income tax allowances

1. The main income tax allowances are as follows.

		04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
		£	£	£	£	£	£	£	£
Additional personal		-	-	-	-	-	-	-	-
Personal	under 65	4,745	4,895	5,035	5,225	6,035	6,475	6,475	7,475
Personal	65-74	6,830	7,040	7,280	7,550	9,030	9,490	9,490	9,940
Personal	75 & over	6,950	7,170	7,420	7,690	9,180	9,640	9,640	10,090
Married couple	under 65	-	-	-	-	-	-	-	-
Married couple	65-74	-	-	-	-	-	-	-	-
Married couple	70-74 and born before 6.4.35	5,725	5,905	-	-	-	-	-	-
Married couple	75 & over	-	5,975	-	-	-	-	6,965	7,295

Basic rates of tax

2. Income tax is payable on taxable income

	£	
04/05	1 - 2,020	at starting rate of 10%
	2,021 - 31,400	at basic rate of 22%
05/06	1 - 2,090	at starting rate of 10%
	2,091 - 32,400	at basic rate of 22%
06/07	1 - 2,150	at starting rate of 10%
	2,151 - 33,300	at basic rate of 22%
07/08	1 - 2,230	at starting rate of 10%
	2,231 - 34,600	at basic rate of 22%
08/09	1 - 34,800	at basic rate of 20%
09/10	1 - £37,400	at basic rate of 20%
10/11	1 - £37,400	at basic rate of 20%
	over £37,400	higher rate of 40%
	over £150,000	additional rate of 50%
11/12	1 - £35,000	at basic rate of 20%
	over £35,000	higher rate of 40%
	over £150,000	additional rate of 50%

Appendix 2

Notional deductions for Social Security contributions

Class 1 contributions

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

2. Earnings Bands 04/05		Earnings Limits 04/05
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £79
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £343
		UEL
		weekly £610 monthly £2,644

Primary threshold

No contributions are payable on weekly earnings of £91 or less or monthly earnings of £395 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £91.01 and £610 per week and at 1% for earnings above £610 per week.

3. Earnings Bands 05/06**Earnings Limits 05/06**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £82 monthly £356
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	UEL weekly £630 monthly £2,730

Primary threshold

No contributions are payable on weekly earnings of £94 or less or monthly earnings of £407 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £94.01 and £630 per week and at 1% for earnings above £630 per week.

4. Earnings Bands 06/07

Earnings	Percentage rates
1. up to LEL	NIL
2. LEL to UEL	11% of earnings that exceed LEL up to UEL

5. Earnings Bands 07/08

Earnings	Percentage rates
1. up to LEL	NIL
2. LEL to UEL	11% of earnings that exceed LEL up to UEL

6. Earnings Bands 08/09**Earnings Limits 08/09**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £90
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £390

UEL

weekly £770

monthly £3,337

Primary threshold

No contributions are payable on weekly earnings of £105.00 or less or monthly earnings of £453.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £105.01 and £770.00 per week and at 1% for earnings above £770.00 per week.

7. Earnings**Earnings Limits 09/10****Bands 09/10****Earnings****Percentage rates****LEL**

1. up to LEL

NIL

Weekly £95

2. LEL to UEL

11% of earnings that
exceed LEL up to UEL

Monthly £412

UEL

Weekly £844

Monthly £3,656

Primary threshold

No contributions are payable on weekly earnings of £110 or less or monthly earnings of £476 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £110.01 and £844 per week and at 1% for earnings above £844 per week.

8. Earnings**Earnings Limits 10/11****Bands 10/11****Earnings****Percentage rates****LEL**

1. up to LEL

NIL

Weekly £97

2. LEL to UEL

11% of earnings that
exceed LEL up to UEL

Monthly £420

UEL

Weekly £844

Monthly £3,656

Primary threshold

No contributions are payable on weekly earnings of £110 or less or monthly earnings of £476 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £110.01 and £844 per week and at 1% for earnings above £844 per week.

9. Earnings Bands 11/12 **Earnings Limits 11/12**

Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £102
2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442
		UEL
		Weekly £817
		Monthly £3,540

Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

Class 2 contributions

9. The weekly rate of Class 2 contributions are as follows

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Ordinary Class 2 rate	2.05	2.10	2.10	2.20	2.30	2.40	2.40	2.50
Share fisherman rate	2.70	2.75	2.75	2.85	2.95	3.05	3.05	3.15

Small earnings exception

10. The rates of the small earnings exception are as follows

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Earnings Limit	4,215	4,345	4,465	4,635	4,825	5,075	5,075	5,315

Class 4 contributions

11. The weekly rates of Class 4 contributions are as follows

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Lower level	4,745	4,895	5,035	5,225	5,435	5,715	5,715	7,225
Higher level	31,720	32,760	33,540	34,840	40,040	43,875	43,875	42,475
Percentage rate	8% of 4,745 to 31,720 per year 1% above 31,720	8% of 4,895 to 32,760 per year 1% above 32,760	8% of 5,035 to 33,540 per year 1% above 33,540	8% of 5,225 to 34,840 per year 1% above 34,840	8% of 5,435 to 40,040 per year 1% above 40,040	8% of 5,715 to 43,875 per year. 1% above 43,875	8% of 5,715 to 43,875 per year 1% above 43,875	9% of 7,225 to 42,475 per year 2% above 42,475

