

## MISCELLANEOUS CHANGES TO THE INCOME-RELATED BENEFITS - APRIL 2009

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## INTRODUCTION

- 1 This memo gives guidance on changes to IS, JSA, ESA and SPC law introduced by The Social Security (Miscellaneous Amendments) Regulations 2009 (SI 2009 No 583). The changes come into force on the first day of the first benefit week to commence on or after 6.4.09<sup>1</sup> in relation to the change at paragraph 2.6 below and on 6.4.09<sup>2</sup> for all other changes.

*1 SS (Misc Amdts) Regs 2009, reg 1(4); 2 reg 1(5)*

## CHANGES

- 2 The changes<sup>1</sup>
  1. apply a capital disregard to the Health in Pregnancy Grant
  2. remove references to the “starting rate” of income tax which has now been abolished
  3. add references to “Skills Development Scotland”
  4. remove obsolete references to the Community Care (Direct Payments) Act 1996 and references to residential care and nursing home charges
  5. amend the definition of “contribution” in relation to students and introduce a disregard for the Higher Education Bursary for Care Leavers
  6. align the treatment of royalty and public lending rights payments and include similar payments received from abroad
  7. remove reference to a regulation in order to comply with EC directives in respect of part-time ancillary workers
  8. align ESA law with other IRBs in respect of the attribution of WTC and the 4 week run-on

9. clarify the calculation when determining the period of attribution for a payment of income in ESA other than income from self-employment
10. extend the prescribed categories of persons who can claim IS to include vulnerable young people who remain in relevant education up until the age of 21 and clarify the prescribed category of persons temporarily looking after another person.

*1 IS (Misc Amdts) Regs 2009/583, reg 2, 3, 4 & 9*

## **CAPITAL - HEALTH IN PREGNANCY GRANT**

- 3 A new grant is being introduced by HMRC from April 2009. It will be payable to every woman from the 25th week of pregnancy after they have had appropriate health advice from a health professional. It will be a one off non-taxable payment. This payment is to be disregarded when calculating the capital of the claimant<sup>1</sup>.

*1 IS (Gen) Regs, Sch 10, para 39A; JSA Regs, Sch 8, para 37A; SPC Regs, Sch V, para 23B;  
ESA Regs, Sch 9, para 38A*

## **EARNINGS**

### **Tax changes**

- 4 The “starting rate” of income tax was abolished from April 2008 and replaced by the “basic rate” of income tax. From 6.4.09 the definition of starting rate has been removed<sup>1</sup> and references to starting rate will be replaced by basic rate<sup>2</sup> in guidance on earnings.

*1 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); 2 IS (Gen) Regs, reg 39, 39D & 42;  
JSA Regs, reg 102, 102D, 105 & 163*

## **ROYALTIES DISREGARD**

- 5 Guidance on the treatment of royalty, copyright and public lending right payments is at DMG 27073 et seq for IS/JSA, DMG 50073 et seq for ESA and DMG 85176, 85242 and 86060 for SPC. From the first day of the first benefit week to commence on or after 6.4.09 the treatment of these payments has been aligned across the income related benefits to include<sup>1</sup>

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 IS (Gen) Regs, reg 30(2A); JSA Regs, reg 95(2A); SPC Regs, reg 15(5) & 17(5) & (9); ESA regs, reg 92(2A)*

## **SKILLS DEVELOPMENT SCOTLAND**

- 6 In Scotland, a new skills body has been set up bringing together a number of partner organizations including Careers Scotland, Scottish University for Industry, key skills elements from Scottish Enterprise and key skills elements from Highlands and Island Enterprise. From 6.4.09 to ensure that all terms are covered “Skills Development Scotland” is added<sup>1</sup> to references to “Scottish Enterprise and Highlands and Islands Enterprise”. DMG guidance will be amended to reflect this change.

*1 IS (Gen) Regs, reg 2(1), Sch 1B, Sch 2 & Sch 3; JSA Regs, reg 1(3), 11, 19, 57, 75, 170, Sch A1, Sch 1 & Sch 2; SPC Regs, Sch II & Sch V; ESA Regs, reg 2(1), Sch 4 & Sch 6*

## **STUDENTS**

- 7 The calculation of grant and loan income includes any assessed contribution whether or not it is paid unless an exception applies. DMG 30096 and DMG 30297 give guidance on the prescribed categories of person where only the assessed contribution actually paid is taken into account in the calculation of student income. From 6.4.09 this guidance will be expanded<sup>1</sup> to include students who fall within the new prescribed category of person<sup>2</sup> introduced in paragraph 18 below.

*1 IS (Gen) Regs, reg 61(1), 66A(4)(a)(ii); 2 Sch 1B, para 15A*

## **Definition of contribution**

- 8 DMG 30100 - 30101 and DMG 51834 - 51835 give guidance on the meaning of contribution. From 6.4.09 this definition has been expanded to include the parents' partner as a contributor<sup>1</sup>.

*1 reg 61(1); JSA Regs, reg 130; ESA Regs, reg 131(1)*

## Higher education bursary for care leavers

- 9 A new bursary for care leavers who enter higher education has been introduced in England. From 6.4.09 legislation has been amended<sup>1</sup> to disregard this bursary when calculating grant income for IS, JSA and ESA purposes. DMG guidance will be expanded to reflect this change.

*1 IS (Gen) Regs, reg 62(2)(k); JSA Regs, reg 131(2)(j); ESA regs, reg 132(2)(j)*

## REMUNERATIVE WORK

### Calculating average hours of remunerative work - JSA claims only

- 10 DMG 20314 advises DMs that the advice in DMG 20317 where a yearly cycle with school holidays or similar vacations is involved should not be followed in JSA cases as the legislation was found to be inconsistent with the equal treatment directive. This advice still stands, however, the relevant JSA legislation has now been removed<sup>1</sup>. DMG 20316 advises what to do in JSA cases.

*1 SS (Misc Amdt) Regs 2009/583, reg 4(4)*

## ESA - INCOME OTHER THAN EARNINGS

### Attribution of WTC

#### Date on which WTC is treated as paid

- 11 DMG 48053 provides guidance on the date that WTC and CTC are treated as paid when calculating an award of ESA(IR). From 6.04.09 the guidance at DMG 48053 is amended to
1. remove reference to CTC **and**
  2. adjust the rule which determines the date that WTC is treated as paid (this will have particular relevance in WTC “run on” cases).
- 12 Unless paragraph 13 (below) applies, from 06.04.09 WTC should be treated as paid
1. where the award of WTC begins on the first day of a benefit week, on that day **or**
  2. on the first day of the benefit week that follows the date the award of WTC begins

until the last day of the last benefit week that coincides with or immediately follows the last day for which the award of that tax credit is made<sup>1</sup>.

*1 ESA Regs, reg 93(3)*

13 From 06.04.09 where an award of WTC continues for 4 weeks after a person has

1. stopped work **or**
2. started working less than 16 hours a week

WTC is treated as paid on the first day of the benefit week in which the 4 week period begins until the last day of the last benefit week that coincides with or precedes the last day for which the award of WTC is made<sup>1</sup>.

*1 reg 93(4)*

### **Example**

Iain is awarded ESA(IR) of £94.95 per week from 20.04.09 after his employment comes to an end on 17.04.09. He is also entitled to WTC of £70 per week and is paid a WTC run-on by HMRC to 15.05.09.

Iain's BWE is a Wednesday. The DM treats the WTC as being paid on 16.04.09. This is because Iain's first benefit week runs from 16.04.09 to 22.04.09 (see DMG 48058 2.1).

The DM takes WTC into account until 13.05.09 (because the last day of the WTC award does not coincide with a last day of a benefit week and 13.05.09 is the last day of the benefit week that precedes the last day of WTC). From 14.05.09 there is no WTC to be taken into account.

### **Calculation of weekly amount of WTC**

14 DMG 48083 provides guidance on how to calculate the weekly amount of income to take into account for ESA when the payment of income is in respect of a year. From 06.04.09 ESA legislation is amended to provide a new method of calculation where the income for the purposes of ESA(IR) is an award of WTC in respect of a year. For any other yearly income the calculation at DMG 48083 still applies.

15 Where an award of WTC is made in respect of a year then the DM should divide the award of WTC by the number of days in the year and multiply the result by 7<sup>1</sup>. This means that the divisor will either be 365 days or, in a leap year, 366 days.

*1 reg 94(1)(b)(iii)*

## Example

Cath makes a claim for ESA. Her partner is in receipt of WTC. The award of WTC is in respect of a year. The amount of the WTC award is £1,800. There are 365 days in the year. The DM calculates the weekly amount of WTC by dividing £1,800 by 365 and then multiplying the result by 7. This gives a result of £34.51 (see DMG 48018 on the disregard of fractions).

## General rules on income

### Period for which a payment of income is made - no identifiable period

- 16 DMG 48073 provides guidance on how to calculate the period for which a payment of income other than earnings from self-employment should be taken into account. From 06.04.09 this guidance is amended so that the reference to “ESA(IR)” in DMG 48073 1.1 and 2.1 is simply to “ESA”<sup>1</sup>. This is to clarify that the calculation described in DMG 48073 can be applied when calculating earnings for the purposes of permitted work and ESA(Cont) (see DMG 48007). There is no other change to the calculation.

*1 ESA Regs, reg 91(2)(c)*

## CONDITIONS OF ENTITLEMENT - PRESCRIBED CATEGORIES OF PERSON

### Person temporarily looking after another person

- 17 DMG 20110 describes the category where a person is temporarily looking after another person. This category has been amended to clarify that where the person is looking after a child because their parent or usual carer is ill, the illness of the parent or usual carer must only be temporary<sup>1</sup>.

*1 IS (Gen) Regs, Sch 1B, para 3(a)*

### Second chance learning

- 18 A new category of prescribed person is introduced to include vulnerable young people who remain in education beyond the age of 20 up to the age of 21<sup>1</sup>. To satisfy this category, the person (“P”) must

1. be under age 21 **and**
2. be undertaking a course of full-time non-advanced education<sup>2</sup> **and**

3. be accepted to attend, enrolled on or began the course before they were 19  
**and**
4. have
  - 4.1 no parent or any person acting in place of a parent<sup>3</sup> **or**
  - 4.2 live away from P's parent and any person acting in place of a parent<sup>3</sup>  
because
    - 4.2.a P is estranged from P's parents and any person acting in place of  
a parent<sup>3</sup> **or**
    - 4.2.b P is in physical or moral danger **or**
    - 4.2.c there is a serious risk to P's physical or mental health **or**
  - 4.3 P is living away from P's parents and any person acting in place of P's  
parents<sup>4</sup> where P's parents or any person acting in place of P's parents<sup>4</sup>  
are unable financially to support P and are
    - 4.3.a chronically sick or mentally or physically disabled<sup>5</sup> **or**
    - 4.3.b detained in custody pending trial or sentence upon conviction or  
under a sentence imposed by a court **or**
    - 4.3.c prohibited from entering or re-entering Great Britain.

*1 IS (Gen) Regs, Sch 1B, para 15A; 2 CHB (Gen) Regs, reg 3(2)(a) or (b); 3 IS (Gen) Regs, reg 13(3)(a)(i);  
4 reg 13(3)(a)(ii); 5 reg 13(3)(b)*

## **REMOVAL OF REDUNDANT PROVISIONS**

### **Payments from an LA in lieu of community care services**

#### **IS & JSA**

- 19 DMG 28424 provides guidance on the disregard which applies to payments made by an LA under specific legislation in lieu of community care services. From 6.4.09 reference to the specific legislation has been amended to reflect legislation currently in force. The legal footnotes to DMG 28424 and to the example should say:

*"1 JSA Regs, Sch 7, para 56; IS (Gen) Regs, Sch 9, para 58; SW (Scot) Act 68, s 12B;  
Health and Social Care Act 2001, s 57"*

## **ESA**

- 20 DMG 51312 provides guidance on the disregard which applies to payments made by an LA under specific legislation in lieu of community care services. From 6.4.09 reference to the specific legislation has been amended to reflect legislation currently in force. The legal footnotes to DMG 51312 and to the example should say:

*"1 ESA Regs, Sch 8, para 53; SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57"*

## **ANNOTATIONS**

Please annotate the number of this memo (DMG Memo 09/09) against the following DMG paragraphs:

14028, 20008, 20048, 20110, 20189, 20314, 20316, 21554, 21760, 23062, 23435, 26150, 27073, 27288, 27934, 27935, 28424, 29425, 30096, 30100, 30296, 30297, 30326, 41481, 44246, 48007, 48053, 48073, 48083, 49176, 49183, 50073, 51312, 51834, 51905, 51916, 52362 (Heading), 78222, 84542, 85039, 85176, 85242, 86060,

## **CONTACTS**

If you have any queries about this memo, please write to Decision Making and Appeals (DMA) Leeds, GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in Memo DMG 26/08 - Obtaining legal advice and guidance from DMA Leeds.

**DMA Leeds: March 2009**