

WELFARE TO WORK AND ESA

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INTRODUCTION

- 1 This memo provides ESA DMs with guidance on the treatment of income and the effect of work for participants in employment zone programmes, particularly the “Self-employment Route”. The guidance will be relevant for claimants who are entitled to ESA(IR) and, where appropriate, their partners. ESA(Cont) has no condition of entitlement based on either income or capital. However, where a claimant who is entitled to ESA(Cont) is working then that activity and the level of earnings will determine whether the claimant is within the PWK categories (see DMG Chapter 41).
- 2 For IS and JSA cases, DMs should continue to refer to DMG Chapter 14.

DEFINITIONS

Employment zone

- 3 An EZ means¹ an area within GB which has been selected under specified legislation² as a suitable place to run an EZ programme.

1 ESA Regs, reg 2(1); 2 Welfare Reform and Pensions Act 1999, s 60

Employment zone programme

- 4 An EZ programme is¹ a programme run in an EZ to help JSA claimants obtain sustainable employment.

1 ESA Regs, reg 2(1)

Self-employment route

- 5 Self-employment route means¹ assistance in pursuing S/E earner’s employment whilst participating in
 1. an EZ programme **or**
 2. a programme provided or arrangements made under specified legislation².

1 reg 2(1); 2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2

Special account

- 6 “Special account” means¹ the account into which the gross receipts from trading whilst receiving assistance under the self-employment route are paid. The special account is in the names of the person providing assistance under the self-employment route and the person who is receiving it. Both of them have to authorize withdrawals from the account.

1 ESA Regs, reg 100

Subsistence allowance

- 7 A subsistence allowance is¹ an allowance paid by an EZ contractor to a person taking part in an EZ programme.

1 reg 2(1)

THE SELF-EMPLOYMENT ROUTE

Effect of work - claimant

- 8 Unless paragraph 9 applies, the general rule is that a claimant is treated as not entitled to ESA in any week in which they work¹.

1 reg 40(1)

- 9 The general rule does not apply to a claimant who does work which is exempt work¹.

1 reg 40(2)(2)(f) & reg 45

- 10 Work done whilst receiving assistance in pursuing the self-employed route is exempt¹ so long as the programme or arrangement the claimant is on is set up under the specified legislation (see paragraph 5, above)².

1 reg 45(5); 2 E & T Act 1973 s. 2; Enterprise & New Towns (Scotland) Act 1990, s 2

Effect of work - partners

- 11 A claimant’s entitlement to ESA(IR) is affected if they have a partner who is in remunerative work¹.

1 WR Act 07, Sch 1, Part 2, para 6(1)(f)

- 12 Claimants' partners are treated as not being in remunerative work where they are receiving assistance under the S/E route¹.

1 ESA Regs, reg 43(1)(d)

Receipts - trading whilst on the self-employment route

- 13 Gross receipts from trading whilst on any of the schemes or activities falling within the definition of the self-employment route are

1. not earnings, earnings from self-employment or income other than earnings¹
and
2. paid into a special account² **and**
3. taken into account in a certain way when working out ESA³ (see paragraph 15 et seq below).

1 reg 84; 2 reg 100; 3 reg 101 & 102

Trading after the self-employment route ends

- 14 Gross receipts received after the self-employment route ends are earnings from employment as a S/E earner¹ (see DMG Chapter 50). This is because a person is no longer treated as not employed after the self-employment route ends. Do not take into account the

1. period of training **or**
2. gross receipts received

whilst on the self-employment route when working out those earnings.

1 reg 97

Treatment of income

- 15 Income paid to people who are receiving assistance whilst participating in the self-employment route is subject to special rules¹ as to its calculation and the date that it is taken into account and treated as paid.

1 reg 102

16 The amount taken into account is the amount in the special account at the end of the last day on the self-employment route less

1. a deduction for income tax (see paragraph 19 below) **and**

2. certain disregards¹ (see paragraph 22 below).

The amount is apportioned equally over a period equal in length to the period the person was receiving assistance on the self-employment route starting with the date the payment is treated as paid².

1 ESA Regs, reg 102(1); 2 reg 102(2)

17 The date on which payment of money in the special account is treated as paid depends on whether or not it is due to be paid during a benefit week. It is treated as paid on the first day of the benefit week if it is due to be paid in that week¹.

1 reg 102(3)(b)

18 If it is due to be paid before the first benefit week in which the participant or participant's partner first claims ESA(IR) following the last day on which assistance under the self-employment route was received it is treated as paid on the day of the week in which it is due to be paid which corresponds to the first day of the benefit week¹.

1 reg 102(3)(a)

Deduction for income tax

19 A deduction for income tax is worked out on the amount of chargeable income and as if that income is the only income to be taxed¹. Chargeable income is the amount in the special account at the end of the last day on the self-employment route².

1 reg 103(1)(a); 2 reg 103(3)

20 A deduction is made from the amount of chargeable income for certain personal allowances under income tax law¹ which are applicable to the person who was on the self-employment route². The rate of tax charged after deductions for personal allowances is the basic rate³.

1 Income Tax Act 2007, s 35 & s 45 to 55; 2 ESA Regs, reg 103(1)(b); 3 reg 103(1)(c)

- 21 If the period over which the payment in the special account is taken into account is less than a year, the amount for personal allowances and basic rate tax is worked out on a pro-rata basis¹.

1 ESA Regs, reg 103(2)

Disregard as for earnings

- 22 An amount is disregarded from the payment of money in the special account for each benefit week it is taken into account¹. The amount disregarded is the equivalent of a disregard which applies to earnings².

1 reg 102(4); 2 Sch 7, para 7(1)

EMPLOYMENT ZONES AND NOTIONAL INCOME FOR ESA(IR)

- 23 Participants in the second stage of EZ programmes receive a subsistence allowance from the EZ contractor, calculated so as to leave 50p JSA in payment.
- 24 Where the amount of subsistence allowance paid in any benefit week is less than the amount of JSA(IB) that the person would have received in that benefit week less 50p, the DM should treat the claimant as possessing the difference between the actual amount of subsistence allowance paid and the correct amount of subsistence allowance payable¹. Paragraph 23, above, provides guidance on the correct amount of subsistence allowance which should be payable.

1 reg 108(2)

DISREGARDS FOR ESA(IR)

Income other than earnings

Self-employment route

- 25 Disregards are available for participants in the self-employment route. Any payment made to a person who is receiving, or who has received assistance under the self-employment route shall be disregarded if it is
1. to meet expenses wholly and necessarily incurred whilst carrying on that activity
or

2. used or is intended to be used to maintain repayments on a loan taken out by that person to establish or carry on his business¹.

1 ESA Regs, Sch 8, para 55(1)

- 26 In order for the disregard in paragraph 25 to apply, the payments have to be paid to the participant from the special account¹.

1 Sch 8, para 55(2)

Subsistence allowance

- 27 Where the amount of subsistence allowance paid to a person in a benefit week exceeds the amount of JSA(IB) they would have received in that benefit week less 50p, then the excess amount of subsistence allowance is disregarded¹.

1 Sch 8, para 58

Grants in employment zones

- 28 Any discretionary grant paid by an EZ contractor to an EZ participant is disregarded¹ including

1. any fee
2. any grant
3. any loan.

The above is not exhaustive.

1 Sch 8, para 59

Capital acquired under the self-employment route

- 29 Any sum of capital acquired by a person who is receiving or has received assistance under the self-employment route is disregarded for a period of 52 weeks from the date that it was acquired. This disregard applies where the capital was required for the purpose of establishing or carrying on the commercial activity in respect of which such assistance is or was received¹.

1 Sch 9, para 46

ANNOTATIONS

Please annotate the number of this memo (26/09) against the following DMG paragraphs:

14000 (Heading), 14600 (Heading), 41256, 41483, 50477, 51120, 51275 (Heading), 51292, 51456 (Heading), 52495 (Heading),

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: July 2009