

# Department for Work and Pensions

ADJUDICATION AND CONSTITUTIONAL ISSUES DIVISION

**DMG Letter 06/06**

**May 2006**

**Dear Decision Maker**

**Incapacity for Work - Permitted Work – Calculation of Earnings**

**[See Memo DMG 21/07]**

## **Introduction**

This letter gives guidance on a decision of the Court of Appeal given on 27.4.06<sup>1</sup>.

*1 Secretary of State for Work and Pensions v Doyle [2006] EWCA Civ 466*

## **Background**

On 3.3.05 a Commissioner held that:

- the Social Security (Computation of Earnings) Regulations 1996 do not apply to the calculation of the amount of a claimant's earnings for the purposes of the incapacity for work permitted work test **and**
- in this context, the weekly amount of a person's self-employed earnings could not be calculated by way of an average<sup>1</sup>.

*1 CIB/4174/2003*

The Secretary of State appealed this decision to the Court of Appeal

## **Court of Appeal judgment**

The Court has overturned the Commissioner's decision and held that the Computation of Earnings Regulations do apply to the calculation of a claimant's earnings for the purposes of the permitted work test.

## **Action to take**

When calculating the weekly amount of the claimant's earnings from either self-employment or employed earner's employment for the purposes of the permitted work test, DMs should apply the Computation of Earnings

Regulations (Volume 3 Chapter 15 of the DMG). This includes the various averaging provisions the regulations contain.

The Court of Appeal's decision does not affect the calculation of the number of hours a claimant works for the purposes of the permitted work test.

### **Annotations**

The number of this letter should be noted against DMG paragraphs 13896, 13905, 13910 and 15000 (main heading), and DMG Memo Vol 3 08/06.

### **Contacts**

If you have any queries about this letter, please write to ACI Division, Room GS36, Quarry House, Leeds. Existing arrangements for such referrals should be followed, as set out in DMG Letter 02/06.

**Yours faithfully**

**Wayne Spencer**