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DRAFT STATUTORY INSTRUMENTS

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**2013 No.**

**The Jobseeker's Allowance Regulations 2013**

**PART 7**

**Earnings**

**Rounding of fractions**

**53.** Where any calculation under this Part results in a fraction of a penny that fraction must, if it would be to the claimant's advantage, be treated as a penny, but otherwise it must be disregarded.

**Calculation of earnings derived from employed earner's employment**

**54.—**(1) Earnings derived from employment as an employed earner are to be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 57 (calculation of weekly amount of earnings).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks beginning with the date on which the payment is treated as paid under regulation 56 and ending with the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made; or
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (see paragraph (13)) by applying the formula—

$$\frac{E}{J + D}$$

where—

E is the net earnings;

J is the amount of jobseeker's allowance which would be payable had the payment not been made;

D is an amount equal to the total of the sums which would fall to be disregarded from that payment under the Schedule to these Regulations (sums to be disregarded in the calculation of earnings), as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 56.

(3) Earnings derived by a claimant as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 in respect of a period of annual continuous training, whether paid to the claimant alone or together with other earnings derived from the same source, are to be taken into account for a maximum of 15 days in any calendar year—

- (a) in the case of a period of training exceeding 14 days, over a period of 14 days; or
  - (b) in any other case, over a period which is equal to the duration of the training period.
- (4) The period referred to in paragraph (3) over which earnings are to be taken into account is to begin on the date on which they are treated as paid under regulation 56.
- (5) Where earnings are derived from the same source but are not of the same kind and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account, overlap wholly or partly—
- (a) those earnings are to be taken into account over a period equal to the aggregate length of those periods; and
  - (b) that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 56 (date on which earnings are treated as paid).
- (6) In a case to which paragraph (5) applies, earnings falling within regulation 58 (earnings of employed earners) are to be taken into account in the following order of priority—
- (a) earnings normally derived from the employment;
  - (b) any compensation payment;
  - (c) any holiday pay.
- (7) Where earnings to which regulation 58(1)(b) or (c) (earnings of employed earners) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.
- (8) Subject to paragraph (9), the period over which a compensation payment is to be taken into account is to be the period beginning on the date on which the payment is treated as paid under regulation 56 (date on which earnings are treated as paid) and ending—
- (a) subject to sub-paragraph (b), where the person who made the payment represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain, on the expiry date;
  - (b) in a case where the person who made the payment represents that it, or part of it, was paid in lieu of consultation under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(1)</sup>, on the latest of—
    - (i) the date on which the consultation period under that section would have ended;
    - (ii) in a case where sub-paragraph (a) also applies, the expiry date; or
    - (iii) the standard date; or
  - (c) in any other case, on the standard date.
- (9) The maximum period over which a compensation payment may be taken into account under paragraph (8) is 52 weeks from the date on which the payment is treated as paid under regulation 56.
- (10) In this regulation—
- “compensation payment” means any payment to which regulation 58(4) (earnings of employed earners) applies;
  - “the expiry date” means in relation to the termination of a person’s employment—
    - (a) the date on which any period of notice (which means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if they are not entitled to such notice, the period of notice which is customary in the employment in question) applicable to the person was due to expire, or would have expired had it not been waived;

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(1) 1992 (c.52). Section 188 was amended by section 34 of the Trade Union Reform and Employment Rights Act 1993 (c.19) and S.I.s 1995/2587, 1999/1925 and 2010/93.

- (b) subject to paragraph (11), where the person who made the payment represents that the period in respect of which that payment is made is longer than the period of notice referred to in paragraph (a), the date on which that longer period is due to expire; or
- (c) where the person had a contract of employment for a term certain, the date on which it was due to expire;

“the standard date” means the earlier of—

- (a) the expiry date; and
- (b) the last day of the period determined by dividing the amount of the compensation payment by the maximum weekly amount which, on the date on which the payment is treated as paid under regulation 56, is specified in section 227(1) of the Employment Rights Act 1996(2), and treating the result (less any fraction of a whole number) as a number of weeks.

(11) For the purposes of paragraph (10), if it appears to the Secretary of State in a case to which paragraph (b) of the definition of “expiry date” applies that, having regard to the amount of the compensation payment and the level of remuneration normally received by the claimant when they were engaged in the employment in respect of which the compensation payment was made, it is unreasonable to take the payment into account until the date specified in that paragraph (b), the expiry date is to be the date specified in paragraph (a) of that definition.

(12) For the purposes of this regulation the claimant’s earnings are to be calculated in accordance with regulations 58, 59 and 63.

(13) For the purposes of the number obtained as mentioned in paragraph (2)(c), any fraction is to be treated as a corresponding fraction of a week.

### **Calculation of earnings of self-employed earners**

**55.**—(1) Except where paragraph (2) applies, where a claimant’s income consists of earnings from employment as a self-employed earner the weekly amount of their earnings is to be determined by reference to their average weekly earnings from that employment—

- (a) over a period of one year; or
- (b) where the claimant has recently become engaged in that employment or there has been a change which is likely to affect the normal pattern of business, over such other period as may, in any particular case, enable the weekly amount of their earnings to be determined more accurately.

(2) Where the claimant’s earnings consist of any items to which paragraph (3) applies, those earnings are to be taken into account over a period equal to such number of weeks as is equal to the number obtained (see paragraph (5)) by applying the formula—

$$\frac{E}{J + D}$$

where—

E is the earnings;

J is the amount of jobseeker’s allowance which would be payable had the payment not been made;

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(2) 1996 c.18. Section 227 was amended by paragraph 9 of Schedule 1 to the Apprenticeship, Skills, Children and Learning Act 2009, paragraph 47 of Schedule 7 to the Employment Act 2002 and [S.I. 2011/3006](#).

D is an amount equal to the total of the sums which would fall to be disregarded from the payment under the Schedule to these Regulations (earnings to be disregarded) as is appropriate in the claimant's case.

- (3) This paragraph applies to—
- (a) royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trade mark; or
  - (b) any payment in respect of any—
    - (i) book registered under the Public Lending Right Scheme 1982(3); or
    - (ii) 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 trade mark, or an original contributor to the book or work concerned.

(4) For the purposes of this regulation the claimant's earnings are to be calculated in accordance with regulations 60 to 62.

(5) For the purposes of the number obtained as mentioned in paragraph (2), any fraction is to be treated as a corresponding fraction of a week.

#### **Date on which earnings are treated as paid**

**56.** A payment of earnings to which regulation 54 (calculation of earnings derived from employed earner's employment) applies is to be treated as paid—

- (a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date on which it is due to be paid; or
- (b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

#### **Calculation of weekly amount of earnings**

**57.—**(1) For the purposes of regulation 54 (calculation of earnings derived from employed earner's employment), subject to paragraphs (2) to (5), where the period in respect of which a payment of earnings is made—

- (a) does not exceed a week, the weekly amount is to be the amount of that payment;
- (b) exceeds a week, the weekly amount is to be determined—
  - (i) in a case where that period is a month, by multiplying the amount of the payment by 12 and dividing the product by 52;
  - (ii) in a case where that period is three months, by multiplying the amount of the payment by four and dividing the product by 52;
  - (iii) in a case where that period is a year, by dividing the amount of the payment by 52;
  - (iv) in any other case, by multiplying the amount of the payment by seven and dividing the product by the number equal to the number of days in the period in respect of which it is made.

(2) Where a payment for a period not exceeding a week is treated under regulation 56(a) (date on which earnings are treated as paid) as paid before the first benefit week and a part is to be taken into account for some days only in that week ("the relevant days"), the amount to be taken into account for the relevant days is to be calculated by multiplying the amount of the payment by the number

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(3) The Scheme was initially set out in the Appendix to [S.I. 1982/719](#) and is now set out in Appendix 2 to [S.I. 1990/2360](#).

of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(3) Where a payment is in respect of a period equal to or in excess of a week and a part is to be taken into account for some days only in a benefit week (“the relevant days”), the amount to be taken into account for the relevant days is, except where paragraph (4) applies, to be calculated by multiplying the amount of the payment by the number of relevant days and dividing the product by the number of days in the period in respect of which it is made.

(4) Except in the case of a payment which it has not been practicable to treat under regulation 56(b) as paid on the first day of the benefit week in which it is due to be paid, where a payment of income from a particular source is or has been paid regularly and that payment falls to be taken into account in the same benefit week as a payment of the same kind and from the same source, the amount of that income to be taken into account in any one benefit week is not to exceed the weekly amount determined under paragraph (1)(a) or (b), as the case may be, of the payment which under regulation 56(b) (date on which earnings are treated as paid) is treated as paid first.

(5) Where the amount of the claimant’s earnings fluctuates and has changed more than once, or a claimant’s regular pattern of work is such that they do not work every week, paragraphs (1) to (4) may be modified so that the weekly amount of their earnings is determined by reference to their average weekly earnings—

- (a) if there is a recognisable cycle of work, over the period of one complete cycle (including, where the cycle involves periods in which the claimant does no work, those periods but disregarding any other absences);
- (b) in any other case, over a period of five weeks or such other period as may, in the particular case, enable the claimant’s average weekly earnings to be determined more accurately.

### **Earnings of employed earners**

**58.**—(1) Subject to paragraphs (2) and (4), “earnings” means in the case of employment as an employed earner, any remuneration or profit derived from that employment and includes—

- (a) any bonus or commission;
- (b) any compensation payment;
- (c) any holiday pay except any payable more than four weeks after the termination or interruption of employment but this exception does not apply to a person who is, or would be, prevented from being entitled to a jobseeker’s allowance by section 14 of the Act (trade disputes);
- (d) any payment by way of a retainer;
- (e) any payment made by the claimant’s employer in respect of expenses not wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the claimant’s employer in respect of—
  - (i) travelling expenses incurred by the claimant between their home and place of employment;
  - (ii) expenses incurred by the claimant under arrangements made for the care of a member of their family owing to the claimant’s absence from home;
- (f) any payment or award of compensation made under section 112(4), 113, 117(3)(a), 128, 131 or 132 of the Employment Rights Act 1996 (the remedies: orders and compensation, the orders, enforcement of order and compensation, interim relief)(4);

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(4) Section 112(4) was amended by paragraph 36 of Schedule 7 to the Employment Act 2002 (c.22), section 8 of the Public Interest Disclosure Act 1998 (c.23) and Schedule 9 to the Employment Relations Act 1999 (c.26). Section 117(3)(a) was amended by paragraph 37 of Schedule 7 to the Employment Act 2002, section 8 of the Public Interest Disclosure Act 1998

- (g) any payment made or remuneration paid under section 28, 34, 64, 68 or 70 of the Employment Rights Act 1996 (right to guarantee payments, remuneration on suspension on medical or maternity grounds, complaints to employment tribunals)(5);
  - (h) any award of compensation made under section 156, 161 to 166, 189 or 192 of the Trade Union and Labour Relations (Consolidation) Act 1992 (compensation for unfair dismissal or redundancy on grounds of involvement in trade union activities, and protective awards)(6);
  - (i) the amount of any payment by way of a non-cash voucher which has been taken into account in the computation of a person's earnings in accordance with Part 5 of Schedule 3 to the Social Security (Contributions) Regulations 2001.
- (2) "Earnings" does not include—
- (a) subject to paragraph (3), any payment in kind;
  - (b) any periodic sum paid to a claimant on account of the termination of their employment by reason of redundancy;
  - (c) any remuneration paid by or on behalf of an employer to the claimant in respect of a period throughout which the claimant is on maternity leave, paternity leave or adoption leave or is absent from work because they are ill;
  - (d) any payment in respect of expenses wholly, exclusively and necessarily incurred in the performance of the duties of the employment;
  - (e) any occupational pension;
  - (f) any redundancy payment within the meaning of section 135(1) of the Employment Rights Act 1996;
  - (g) any lump sum payment made under the Iron and Steel Re-adaptation Benefits Scheme(7);
  - (h) any payment in respect of expenses arising out of the claimant's participation as a service user.
- (3) Paragraph (2)(a) does not apply in respect of any non-cash voucher referred to in paragraph (1) (i).
- (4) In this regulation, "compensation payment" means any payment made in respect of the termination of employment other than—
- (a) any remuneration or emolument (whether in money or in kind) which accrued in the period before the termination;
  - (b) any holiday pay;
  - (c) any payment specified in paragraphs (1)(f), (g), or (h) or (2);
  - (d) any refund of contributions to which the person was entitled under an occupational pension scheme.

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and Schedule 9 to the Employment Relations Act 1999. Section 128 was amended by S.I. 2010/493. Sections 131 and 132 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8).

- (5) Sections 34 and 70 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and S.I. 2011/1133. Section 64 was amended by S.I. 1999/3232.
- (6) Section 156 was amended by paragraph 56 of Schedule 1 to the Employment Rights Act 1996 and S.I. 2011/3006. Section 161 was amended by paragraph 12 of Schedule 1 to the Employment Relations Act 2004 (c.24). Sections 162, 165 and 192 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8). Section 164 was amended by paragraph 69 of Schedule 8 to the Trade Union Reform and Employment Rights Act 1993. Section 166 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 and paragraph 22 of Schedule 7 to the Trade Union Reform and Employment Rights Act 1993. Section 189 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 and S.I.s 1995/2587 and 1999/1925.
- (7) The Scheme is set out in regulation 4 of, and the Schedule to, the European Communities (Iron and Steel Employees Re-adaptation Benefits Scheme) (No.2) Regulations 1996/3182.

### Calculation of net earnings of employed earners

**59.**—(1) For the purposes of regulation 54 (calculation of earnings of employed earners), the earnings of a claimant derived from employment as an employed earner to be taken into account are to be, subject to paragraph (2), their net earnings.

(2) There is to be disregarded from a claimant's net earnings, any sum, where applicable, specified in the Schedule to these Regulations.

(3) For the purposes of paragraph (1) net earnings are to be calculated by taking into account the gross earnings of the claimant from that employment less—

- (a) any amount deducted from those earnings by way of—
  - (i) income tax;
  - (ii) primary Class 1 contributions payable under the Benefits Act; and
- (b) half of any sum paid by the claimant in respect of a pay period (the period in respect of which a claimant is, or expects to be, normally paid by their employer, being a week, a fortnight, four weeks, a month or other longer or shorter period as the case may be) by way of a contribution towards an occupational or personal pension scheme.

### Earnings of self-employed earners

**60.**—(1) Subject to paragraph (2), “earnings”, in the case of employment as a self-employed earner, means the gross receipts of the employment.

(2) “Earnings” does not include—

- (a) where a claimant is involved in providing board and lodging accommodation for which a charge is payable, any payment by way of such a charge;
- (b) any payment made to the claimant with whom a person is accommodated by virtue of arrangements made—
  - (i) under section 22C(2), (3), (5) or (6)(a) or (b) of the Children Act 1989 (provision of accommodation and maintenance for a child whom the local authority is looking after)(**8**);
  - (ii) by a local authority under section 26 of the Children (Scotland) Act 1995 (manner of provision of accommodation to child looked after by local authority)(**9**); or
  - (iii) by a local authority under regulation 33 or 51 of the Looked After Children (Scotland) Regulations 2009 (fostering and kinship care allowances and fostering allowances)(**10**); or
  - (iv) by a voluntary organisation under section 59(1)(a) of the Children Act 1989 (provision of accommodation by voluntary organisations)(**11**);
- (c) any payment made to the claimant for a person (“the person concerned”), who is not normally a member of the claimant's household but is temporarily in the claimant's care, by—
  - (i) the National Health Service Commissioning Board(**12**);
  - (ii) a local authority but excluding payments of housing benefit made in respect of the person concerned;

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(8) 1989 c.41. Section 22C was inserted by section 8(1) of the Children and Young Persons Act 2008 (c.23).

(9) 1995 c.36. Section 26 was amended by Schedule 3 to the Adoption and Children (Scotland) Act 2007 (asp 4) and paragraph 9 of Schedule 1 to the Children and Young Persons Act 2008.

(10) S.I. 2009/210. Regulation 33 was amended by S.S.I. 2009/290.

(11) Section 59(1)(a) was amended by section 49 of the Children Act 2004 (c.31).

(12) The National Health Service Commissioning Board is established by section 1H of the National Health Service Act 2006 (c.41), as inserted by section 9 of the Health and Social Care Act 2012 (c.7).



- (iii) a voluntary organisation;
  - (iv) the person concerned pursuant to section 26(3A) of the National Assistance Act 1948<sup>(13)</sup>;
  - (v) a clinical commissioning group established under section 14D of the Health Service Act<sup>(14)</sup>; or
  - (vi) a Local Health Board established by an order made under section 11 of the Health Service (Wales) Act;
- (d) any sports award.
- (3) In this regulation, “board and lodging accommodation” means—
- (a) accommodation provided to a person or, if they are a member of a family, to them or any other member of their family, for a charge which is inclusive of—
    - (i) the provision of that accommodation; and
    - (ii) at least some cooked or prepared meals which are cooked or prepared (by a person other than the person to whom the accommodation is provided or a member of their family) and consumed in that accommodation or associated premises; or
  - (b) accommodation provided to a person in a hotel, guest house, lodging house or some similar establishment,

except accommodation provided by a close relative of theirs or of any other member of their family, or other than on a commercial basis.

### Calculation of net profit of self-employed earners

**61.**—(1) For the purposes of regulation 55 (calculation of earnings of self-employed earners), the earnings of a claimant to be taken into account are—

- (a) in the case of a self-employed earner who is engaged in employment on their own account, the net profit derived from that employment;
- (b) in the case of a self-employed earner whose employment is carried on in partnership, or is that of a share fisherman within the meaning of regulation 67, the claimant’s share of the net profit derived from that employment less—
  - (i) an amount in respect of income tax and of national insurance contributions payable under the Benefits Act calculated in accordance with regulation 62 (deduction of tax and contributions for self-employed earners); and
  - (ii) half of any premium paid in the period that is relevant under regulation 55 in respect of a personal pension scheme.

(2) There is to be disregarded from a claimant’s net profit any sum, where applicable, specified in paragraphs 1 to 11 of the Schedule to these Regulations.

(3) For the purposes of paragraph (1)(a) the net profit of the employment is, except where paragraph (9) applies, to be calculated by taking into account the earnings of the employment over the period determined under regulation 55 (calculation of earnings of self-employed earners) less—

- (a) subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment;
- (b) an amount in respect of—
  - (i) income tax; and

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<sup>(13)</sup> 1948 c.29. Section 26(3A) was inserted by section 42 of the National Health Service and Community Care Act 1990 (c.19)

<sup>(14)</sup> Section 14D was inserted by section 25 of the Health and Social Care Act 2012.



- (ii) national insurance contributions payable under the Benefits Act, calculated in accordance with regulation 62 (deductions of tax and contributions for self-employed earners); and
  - (c) half of any premium paid in the period determined under regulation 55 in respect of a personal pension scheme.
- (4) For the purposes of paragraph (1)(b), the net profit of the employment is to be calculated by taking into account the earnings of the employment over the period determined under regulation 55 less, subject to paragraphs (5) to (7), any expenses wholly and exclusively incurred in that period for the purposes of that employment.
- (5) Subject to paragraph (6), no deduction is to be made under paragraph (3)(a) or (4) in respect of—
  - (a) any capital expenditure;
  - (b) the depreciation of any capital asset;
  - (c) any sum employed or intended to be employed in the setting up or expansion of the employment;
  - (d) any loss incurred before the beginning of the period determined under regulation 55;
  - (e) the repayment of capital on any loan taken out for the purposes of the employment;
  - (f) any expenses incurred in providing business entertainment.
- (6) A deduction is to be made under paragraph (3)(a) or (4) in respect of the repayment of capital on any loan used for—
  - (a) the replacement in the course of business of equipment or machinery; and
  - (b) the repair of an existing business asset except to the extent that any sum is payable under an insurance policy for its repair.
- (7) The Secretary of State must not make a deduction under paragraph (3)(a) or (4) in respect of any expenses where the Secretary of State is not satisfied that the expense has been incurred or, having regard to the nature of the expense and its amount, that it has been reasonably incurred.
- (8) A deduction under paragraph (3)(a) or (4)—
  - (a) must not be made in respect of any sum unless it has been incurred for the purposes of the business;
  - (b) must be made in respect of—
    - (i) the excess of any Value Added Tax paid over Value Added Tax received in the period determined under regulation 55;
    - (ii) any income expended in the repair of an existing asset except to the extent that any sum is payable under an insurance policy for its repair;
    - (iii) any payment of interest on a loan taken out for the purposes of the employment.
- (9) Where a claimant is engaged in employment as a child-minder the net profit of the employment is to be one-third of the earnings of that employment, less—
  - (a) an amount in respect of—
    - (i) income tax; and
    - (ii) national insurance contributions payable under the Benefits Act, calculated in accordance with regulation 62 (deductions of tax and contributions for self-employed earners); and
  - (b) half of any premium paid in the period determined under regulation 55 in respect of a personal pension scheme.

(10) Notwithstanding regulation 55 and paragraphs (1) to (9), the Secretary of State may assess any item of a claimant's income or expenditure over a period other than that determined under regulation 55 provided that the other period may, in the particular case, enable the weekly amount of that item of income or expenditure to be determined more accurately.

(11) Where a claimant is engaged in employment as a self-employed earner and they are engaged in one or more other employments as a self-employed or employed earner, any loss incurred in any one of their employments is not to be offset against their earnings in any other of their employments.

### **Deduction of tax and contributions for self-employed earners**

**62.**—(1) Subject to paragraph (2), the amount to be deducted in respect of income tax under regulation 61(1)(b)(i), (3)(b)(i) or (9)(a)(i) (calculation of net profit of self-employed earners) is to be calculated—

- (a) on the basis of the amount of chargeable income; and
- (b) as if that income were assessable to income tax at the basic rate of tax less only the personal allowance to which the claimant is entitled sections 35 and 38 to 40 of the Income Tax Act 2007 (personal reliefs)(**15**) as is appropriate to their circumstances.

(2) If the period determined under regulation 55 is less than a year, the earnings to which the basic rate of tax is to be applied and the amount of the personal allowance deductible under paragraph (1) is to be calculated on a pro rata basis.

(3) Subject to paragraph (4), the amount to be deducted in respect of national insurance contributions under regulation 61(1)(b)(i), (3)(b)(ii) or (9)(a)(ii) is to be the total of—

- (a) the amount of Class 2 contributions payable under section 11(1) or, as the case may be, 11(3) of the Benefits Act(**16**) at the rate applicable at the date of claim except where the claimant's chargeable income is less than the amount specified in section 11(4) of that Act (small earnings exception) for the tax year in which the date of claim falls; and
- (b) the amount of Class 4 contributions (if any) which would be payable under section 15 of that Act (Class 4 contributions recoverable under the Income Tax Acts)(**17**) at the percentage rate applicable at the date of claim on so much of the chargeable income as exceeds the lower limit but does not exceed the upper limit of profits and gains applicable for the tax year in which the date of claim falls.

(4) If the period determined under regulation 55 is less than a year—

- (a) the amount specified for the tax year referred to in paragraph (3)(a) is to be reduced pro rata; and
- (b) the limits referred to in paragraph (3)(b) are to be reduced pro rata.

(5) In this regulation “chargeable income” means—

- (a) except where sub-paragraph (b) applies, the earnings derived from the employment less any expenses deducted under regulation 61(3)(a) or, as the case may be, (4);
- (b) in the case of employment as a child minder, one-third of the earnings of that employment.

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(15) 2007 c.3. Section 35 was amended by section 4 of the Finance Act 2009 (c.10) and sections 3 and 4 of the Finance Act 2012 (c.14). Section 38 was amended by S.I. 2011/2926. Section 40 was amended by paragraph 55 of Schedule 9 to the Finance Act 2008 (c.9).

(16) Section 11 was amended by paragraph 12 of Schedule 3 to the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2) and S.I. 2012/807.

(17) Section 15 was amended by paragraph 420 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c.5), sections 2 and 3 of the National Insurance Contributions Act 2002 (c.19), section 13 of the Limited Liability Partnerships Act 2000 (c.12) and S.I.s 2011/938 and 2012/807.

## Notional earnings

63.—(1) Subject to paragraph (2), any earnings which are due to be paid to the claimant but have not been paid to the claimant, are to be treated as possessed by the claimant.

(2) Paragraph (1) does not apply to any earnings which are due to an employed earner on the termination of their employment by reason of redundancy but which have not been paid to them.

(3) Where a claimant's earnings are not ascertainable at the time of the determination of the claim or of any revision or supersession, the Secretary of State must treat the claimant as possessing such earnings as is reasonable in the circumstances of the case having regard to the number of hours worked and the earnings paid for comparable employment in the area.

(4) Subject to paragraph (5), where—

- (a) a claimant performs a service for another person; and
- (b) that person makes no payment of earnings or pays less than that paid for a comparable employment in the area,

the Secretary of State must treat the claimant as possessing such earnings (if any) as is reasonable for that employment unless the claimant satisfies the Secretary of State that the means of that person are insufficient for that person to pay or to pay more for the service.

(5) Paragraph (4) does not apply—

- (a) to a claimant who is engaged by a charity or voluntary organisation or who is a volunteer if the Secretary of State is satisfied in any of those cases that it is reasonable for the claimant to provide those services free of charge;
- (b) to a claimant who is participating in a work placement approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement starts.

(6) Where a claimant is treated as possessing any earnings under paragraphs (1) or (2), regulations 54 to 62 apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if it were actual earnings which the claimant does possess.

(7) Where a claimant is treated as possessing any earnings under paragraphs (3) or (4), regulations 54 to 62 apply for the purposes of calculating the amount of those earnings as if a payment had actually been made and as if they were actual earnings which the claimant does possess, except that—

- (a) regulation 59(3) does not apply; and
- (b) the claimant's net earnings are to be calculated by taking into account the earnings which the claimant is treated as possessing less the amounts referred to in paragraph (8).

(8) The amounts mentioned in paragraph (7)(b) are—

- (a) where the period over which the earnings which the claimant is treated as possessing are to be taken into account is—
  - (i) a year or more, an amount in respect of income tax equivalent to an amount calculated in accordance with paragraph (11);
  - (ii) less than a year, the earnings to which the starting rate of tax is to be applied and the amount of the personal allowance deductible under this paragraph are to be calculated on a pro rata basis;
- (b) where the weekly amount of the earnings which the claimant is treated as possessing is not less than the lower earnings limit, an amount representing primary Class 1 contributions under the Benefits Act, calculated by applying to those earnings the initial and main primary percentages in accordance with section 8(1)(a) and (b) of that Act<sup>(18)</sup>; and

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(18) Section 8 was substituted by section 1 of the National Insurance Contributions Act 2002 (c.19).

(c) half of any sum payable by the claimant in respect of a pay period by way of a contribution towards an occupational or personal pension scheme.

(9) Paragraphs (1), (3) and (4) do not apply in respect of any amount of earnings derived from employment as an employed earner, arising out of the claimant's participation as a service user.

(10) In this regulation, "work placement" means practical work experience which is not undertaken in expectation of payment.

(11) For the purposes of paragraph (8)(a)(i), the amount is calculated by applying to those earnings—

(a) the starting rate of tax in the year of assessment; or as the case may be

(b) the starting rate and the basic rate of tax in the year of assessment,

less only the personal allowance to which the claimant is entitled under sections 35 and 38 to 40 of the Income Tax Act 2007 (personal reliefs) as is appropriate to the claimant's circumstances.