

SCHEDULE 2

Calculation of earnings

Earnings of employed earners

8.—(1) Subject to sub-paragraphs (2) and (3), “earnings”, in the case of employment as an employed earner means the remuneration or profit derived from the employment and includes—

- (a) any bonus or commission,
 - (b) any payment in lieu of remuneration except any periodic sum paid to an individual on account of the termination of their employment by reason of redundancy,
 - (c) any payment in lieu of notice,
 - (d) any holiday pay except where it is payable more than 4 weeks after the termination or interruption of employment,
 - (e) any payment by way of a retainer,
 - (f) any payment made by the individual'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 employer in respect of—
 - (i) travelling expenses incurred by the individual between their home and place of employment,
 - (ii) expense incurred by the individual under arrangements made for the care of a member of their family owing to the individual's absence from home,
 - (g) any award of compensation made under section 112(4) (the remedies: orders and compensation) or 117(3)(a) (enforcement of order and compensation) of the Employment Rights Act 1996 (remedies and compensation),
 - (h) any such sum as is referred to in section 112(3) of the 1992 Act (certain sums to be earnings for social security purposes),
 - (i) where—
 - (i) a payment of compensation is made in respect of employment which is not part-time employment and that payment is not less than the maximum weekly amount, the amount of the compensation less the deductible remainder, where that is applicable,
 - (ii) a payment of compensation is made in respect of employment which is part-time employment, the amount of the compensation,
 - (j) any remuneration paid by or on behalf of an employer to the individual in respect of a period during which the individual is—
 - (i) on maternity leave or paternity leave,
 - (ii) on adoption leave, or
 - (iii) absent from work because they are ill.
- (2) For the purposes of sub-paragraph (1)(i)(i), the “deductible remainder”—
- (a) applies in cases where dividing the amount of the compensation by the maximum weekly amount produces a whole number plus a fraction, and
 - (b) is equal to the difference between—
 - (i) the amount of the compensation, and
 - (ii) the product of the maximum weekly amount multiplied by the whole number.
- (3) “Earnings” do not include any payment in respect of expenses—

- (a) wholly, exclusively and necessarily incurred in the performance of the duties of the employment, or
 - (b) arising out of the individual participating as a service user.
- (4) The reference in sub-paragraph (3)(b) to the individual participating as a service user is to—
- (a) a person who is being consulted by or on behalf of—
 - (i) a body which has a statutory duty to provide services in the field of health, social care or social housing, or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such services,in their capacity as a user, potential user, carer of a user or person otherwise affected by the provision of those services,
 - (b) a person who is being consulted by or on behalf of—
 - (i) the Secretary of State or the Scottish Ministers in relation to any of their functions in the field of social security or child support under section 2 of the Employment and Training Act 1973(1), or
 - (ii) a body which conducts research or undertakes monitoring for the purpose of planning or improving such functions,in their capacity as a person affected or potentially affected by the exercise of those functions or the carer of such a person, or
 - (c) the carer of a person consulted under sub-paragraphs (a) or (b).
- (5) In this paragraph—
- “adoption leave” means a period of absence from work on ordinary or additional adoption leave under section 75A or 75B of the Employment Rights Act 1996(2),
- “compensation” means any payment made in respect of or on the termination of employment in a case where a person has not received or received only part of a payment in lieu of notice due or which would have been due to them had they not waived their right to receive it, other than—
- (a) any payment specified in sub-paragraph (1)(a) to (h),
 - (b) any payment specified in sub-paragraph (3)
 - (c) any redundancy payment within the meaning of section 135 of the Employment Rights Act 1996,
 - (d) any refund of contributions to which that person was entitled under an occupational pension scheme,
- “maternity leave” means a period during which a person is absent from work because they are pregnant or have given birth to a child, and at the end of which they have the right to return to work either under the terms of their contract or under Part 8 of the Employment Rights Act 1996,
- “part-time employment” has the same meaning as in paragraph 5(7) (calculation of earnings of employed earners),
- “paternity leave” means a period of absence from work on leave under section 80A(3) (entitlement to paternity leave: birth) or 80B(4) (entitlement to paternity leave: adoption) of the Employment Rights Act 1996.

(1) 1973 c. 50. Section 2 was amended by section 25 of the Employment Act 1988 (c. 19), section 29 of the Employment Act 1989 (c. 38) and section 47 of the Trade Union Reform and Employment Rights Act 1993 (c. 19).

(2) 1996 c. 18. Sections 75A and 75B were inserted by section 3 of the Employment Act 2002 (c. 22).

(3) Inserted by the Employment Act 2002 c. 22.

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(4) Inserted by the Employment Act 2002 c. 22.