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STATUTORY INSTRUMENTS

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**1991 No. 2887**

**The Disability Working Allowance (General) Regulations 1991**

**PART V**

**INCOME AND CAPITAL**

*CHAPTER II*

*NORMAL WEEKLY INCOME*

**Calculation of income on a weekly basis**

**15.**—(1) For the purposes of section 20(6A) of the Act (conditions of entitlement to disability working allowance), the income of a claimant shall be calculated on a weekly basis—

- (a) by ascertaining in accordance with this Chapter and Chapter V of this Part (other income) the amount of his normal weekly income; and
- (b) by adding to that amount the weekly income calculated under regulation 40 (calculation of tariff income from capital).

(2) For the purposes of paragraph (1) “income” includes capital treated as income under regulation 28 (capital treated as income) and income which a person is treated as possessing under regulation 29 (notional income).

**Normal weekly earnings of employed earners**

**16.**—(1) Subject to regulation 19, where the claimant’s income consists of earnings from employment as an employed earner, his normal weekly earnings shall be determined by reference to his earnings from that employment in accordance with the following provisions of this regulation.

(2) Subject to paragraph (7), where the claimant is paid weekly, his normal weekly earnings shall be determined by reference to his earnings over 5 consecutive weeks in the 6 weeks immediately preceding the week in which the date of claim falls.

(3) Subject to paragraph (7), where at the date of claim there is a trade dispute or period of short-time working at the claimant’s place of employment, then his normal weekly earnings shall be determined by reference to his earnings over the 5 weeks immediately preceding the start of that dispute or period of short-time working.

(4) Subject to paragraph (7), where the claimant is paid monthly, his normal weekly earnings shall be determined by reference to his earnings—

- (a) over a period of 2 months immediately preceding the week in which the date of claim falls; or
- (b) where, at the date of claim, there is a trade dispute or a period of short-time working at his place of employment, over a period of 2 months immediately preceding the date of the start of that dispute or period of short-time working.

(5) Subject to paragraph (7), whether or not paragraph (2), (3) or (4) applies, where a claimant's earnings fluctuate or are not likely to represent his weekly earnings, his normal weekly earnings shall be determined by reference to his weekly earnings over such other period preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(6) Where a claimant's earnings include a bonus or commission which is paid within 52 weeks preceding the week in which the date of claim falls, and the bonus or commission is paid separately or relates to a period longer than the period relating to the other earnings with which it is paid, his normal weekly earnings shall be treated as including an amount calculated in accordance with regulation 23 (calculation of bonus or commission).

(7) Where at the date of claim—

(a) the claimant—

(i) has been in his employment; or

(ii) after a continuous period of interruption exceeding 13 weeks, has resumed his employment; or

(iii) has changed the number of hours for which he is contracted to work; and

(b) the period of his employment or the period since he resumed his employment or the period since the change in the number of hours took place, as the case may be, is less than 9 weeks,

paragraph (8).

(8) In a case to which this paragraph applies, the Secretary of State shall require the claimant's employer to furnish an estimate of the claimant's average likely earnings for the period for which he will normally be paid and the claimant's normal weekly earnings shall be determined by reference to that estimate.

(9) For the purposes of this regulation—

(a) the claimant's earnings shall be calculated in accordance with Chapter III of this Part;

(b) "a period of short-time working" means a continuous period not exceeding 13 weeks during which the claimant is not required by his employer to be available to work the full number of hours normal in his case under the terms of his employment.

### **Normal weekly earnings of self-employed earners**

**17.**—(1) Subject to regulation 19 (periods to be disregarded), where a claimant's income consists of earnings from employment as a self-employed earner, his normal weekly earnings shall be determined, subject to paragraph (2), by reference to his weekly earnings from that employment—

(a) except where sub-paragraph (b) applies, over a period of 26 weeks immediately preceding the week in which the date of claim falls; or

(b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period of at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim, over that period; or

(c) over such other period of weeks preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(2) In paragraph (1)(b)—

(a) "balance sheet" means a statement of the financial position of the employment disclosing its assets, liabilities and capital at the end of the period in question;

- (b) “profit and loss account” means a financial statement showing the net profit or loss of the employment for the period in question; and
- (c) “trading account” means a financial statement showing the revenue from sales, the cost of those sales and the gross profit arising during the period in question.

(3) Subject to regulation 19, where the claimant has been in employment as a self-employed earner for less than the period specified in paragraph (1)(a), his normal weekly earnings shall be determined by reference to an estimate of his likely weekly earnings over the 26 weeks next following the date of claim.

(4) For the purposes of this regulation, the claimant’s earnings shall be calculated in accordance with Chapter IV of this Part.

### **Normal weekly income other than earnings**

**18.**—(1) Subject to paragraph (2), a claimant’s normal weekly income which does not consist of earnings shall be determined by reference to his weekly income over a period of 26 weeks immediately preceding the week in which the date of claim falls or over such period immediately preceding that week as may, in any particular case, enable his normal weekly income to be determined more accurately.

(2) Where a claimant’s income consists of any payments made by a person, whether under a court order or not, for the maintenance of any member of his family, and those payments are made or due to be made at regular intervals, his normal weekly income shall be determined—

- (a) if before the date of claim those payments are made at regular intervals, by reference to the normal weekly amount;
- (b) if they are not so made, by reference to the average of such payments received in the 13 weeks immediately preceding the week in which the date of claim falls.

(3) For the purposes of this regulation, income other than earnings shall be calculated in accordance with Chapter V of this Part.

### **Periods to be disregarded**

**19.** For the purposes of ascertaining a claimant’s normal weekly earnings there shall be disregarded—

- (a) for the purposes of regulation 16(1) (normal weekly earnings of employed earners), in the case of an employed earner—
  - (i) any period in the assessment period where the earnings of the claimant are irregular or unusual;
  - (ii) any period in the assessment period in which a bonus or commission to which regulation 16(6) applies is paid where that bonus or commission is in respect of a period longer than the period relating to the other earnings with which it is paid;
- (b) in the case of a self-employed earner, any week or period of weeks in the assessment period during which no activities have been carried out for the purposes of the business,

and his normal weekly earnings shall be determined by reference to his weekly earnings in the remainder of that period and in such a case any reference in these Regulations to a claimant’s assessment period shall be construed as a reference to the latter period.

### **Calculation of weekly amount of income**

**20.**—(1) For the purposes of regulations 16 and 18 (normal weekly income), where the period in respect of which a payment is made—

- (a) does not exceed a week, the weekly amount shall be the amount of that payment;
  - (b) exceeds a week, the weekly amount shall 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 3 months, by multiplying the amount of the payment by 4 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 7 and dividing the product by the number equal to the number of days in the period in respect of which it is made.
- (2) For the purposes of regulation 17 (normal weekly earnings of self-employed earners) the weekly amount of earnings of a claimant shall be determined—
- (a) except where sub-paragraph (b) applies, by dividing his earnings received in the assessment period or, as the case may be, estimated for that period by the number equal to the number of weeks in that period;
  - (b) in a case where regulation 17(1)(b) applies, by multiplying his earnings relevant to the assessment period (whether or not received in that period) by 7 and dividing the product by the number equal to the number of days in that period.