

Chapter 08 - Payment of benefit/Deductions from benefit

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Chapter 08 - Payment of benefit/Deductions from benefit

Payment of benefit

Time and manner of payment

General

08000 The Secretary of State must pay benefit as soon as is reasonably practicable once an award has been made¹. In practice, benefits are generally paid into a claimant's bank account, known as direct payment, on a day and at an interval set out in legislation. Payment may be made by other means, for example cheque, and at other times.

1 SS (C&P) Regs, reg 20

08001 Guidance on payment of benefit follows but other guidance on this subject may be found in benefit specific DMG Chapters -

1. IS Chapter 33
2. JSA Chapter 33
3. ESA Chapter 46
4. AA/DLA Chapter 61
5. SPC Chapter 79.

08002 - 08005

Direct payment

08006 Direct payment is the Department's official term for what was formerly called automated credit transfer. The regulations currently use the term "direct credit transfer"¹.

1 SS (C&P) Regs, reg 21

08007 Benefit may be paid by direct payment into a bank or other account¹. This can only be done by arrangement with the Secretary of State and

1. the person claiming the benefit **or**
2. the person entitled to the benefit **or**

3. the person appointed to act on behalf of the person in 1. and 2. by
 - 3.1 the Secretary of State **or**
 - 3.2 a court.

08008 Benefit under this arrangement may be paid into a bank or other account

1. in the name of
 - 1.1 the person entitled to the benefit **or**
 - 1.2 their spouse or partner **or**
 - 1.3 someone authorized by, or acting on behalf of the person entitled to the benefit **or**
2. in the joint names of the person entitled to the benefit **and**
 - 2.1 their spouse or partner **or**
 - 2.2 someone authorized by or acting on behalf of the person entitled to the benefit.

1 SS (C&P) Regs, reg 21(1)

08009 In relation to joint-claim JSA, the person entitled to benefit is the member of the joint-claim couple who is nominated to receive the benefit¹.

1 SS (C&P) Regs, reg 21(5A)

08010 Benefit paid by direct payment will be paid within seven days of the last day of each successive period of entitlement¹ i.e. interval of payment. In respect of IS, it will be paid within seven days of the time determined for the payment of IS². However the Secretary of State may make different arrangements for paying³

1. arrears of benefit⁴ **or**
2. benefit when the award is ended or for any similar purpose⁵.

1 SS (C&P) Regs, reg 21(3); 2 reg 21(3A); 3 reg 21(4); 4 reg 21(4)(a); 5 reg 21(4)(b)

08011 Payments can be made by direct payment to

1. persons under the age of 18¹
2. persons listed in DMG 08355 after the death of the claimant² **and**
3. appointees³

and payment by this means will discharge the Secretary of State's liability to make payment.

1 SS (C&P) Regs, reg 29; 2 reg 30(2)(a); 3 reg 33(3)

08012 The arrangement as in DMG 08007 may be ended¹

1. by the person entitled to benefit or a person acting on their behalf delivering or sending a notice in writing to an appropriate office, **or**

2. by the Secretary of State, if the arrangement seems to be no longer appropriate to the circumstances of the particular case.

1 SS (C&P) Regs, reg 21(5)

Treatment of fractions of a penny

- 08013 For all benefits other than MA, if the amount payable includes a fraction of a penny, the amount is rounded down if it is less than half a penny, otherwise it is rounded up to the next penny¹. If the amount of MA includes a fraction of a penny, it is rounded up to the next penny².

1 SS (C&P) Regs, reg 28(1); 2 reg 28(2)

Definition of long term benefit

- 08014 Long term benefits¹ are

1. RP of any category
2. SAP
3. WMA
4. WP
5. WPA
6. BA
7. AA/DLA
8. CA
9. IIDB.

1 SS (C&P) Regs, reg 2(1)

08015 - 08049

RP

General

- 08050 Legislation provides that RP is paid in different ways depending on when the person reaches pensionable age and their circumstances at that time.

Identification

- 08051 The following criteria are used to identify which system applies to the time and manner of payment of RP for a particular person. If the person
1. reaches pensionable age before 6.4.10¹ **or**
 2. is a man², who reaches pensionable age on or after 6.4.10 **and**
 - 2.1 was in receipt of SPC for any period which begins on the day four months and four days before the day on which he reaches pensionable age and ends on 5.4.10 **or**
 - 2.2 was in continuous receipt of SPC from 5.4.10 until at least the first day of the period of four months and four days which ends immediately before the day on which he reaches pensionable age

these are “old” cases and guidance in DMG 08054 - 08058 applies. The guidance in DMG 08059 - 08073 applies to all other cases referred to as “new” cases in this guidance.

Note: The period of four months and four days does not include the day they reach pensionable age. If the date they reach pensionable age is 7.9.10, they must have continued to be in receipt of SPC until at least 3.5.10.

1 SS (C&P) Regs, reg 22C(1); reg 26BA(1); 2 reg 22C(7)

Pensionable age

- 08052 Pensionable age¹ is
1. 65 years for a man **or**
 2. 60 years for a woman born before 6.4.50 **or**
 3. the date in Appendix 3 to DMG Chapter 15 for a woman born between 6.4.50 and 5.4.55 **or**
 4. 65 years for a woman born on or after 6.4.55.

1 SS A Act 92, s 191; Pensions Act, Sch 4, para 1

Working age benefit

08053 A working age benefit¹ is

1. BA
2. ESA
3. IB
4. IS
5. JSA
6. WMA
7. WPA
8. WP.

1 SS (C&P) Regs, reg 2(1)

RP - “old cases”

Pay day

08054 The pay day for
RP is Monday¹

except

1. when a person became entitled to RP before 28.9.84, when it is payable on Thursdays
2. where
 - 2.1 a woman was entitled to a WB **or**
 - 2.2 a person was entitled to a BBimmediately before becoming entitled to RP, the RP payday will be the same as the payday determined in accordance with that benefit
3. where a woman becomes entitled to RP immediately following the payment to her husband of an increase of RP for her. Her RP is payable on the same day as her husband's
4. where a particular day has become the appropriate day for any person for the payment of RP. That day remains unchanged
5. the Secretary of State may where payment is by direct payment or in the circumstances of any particular case arrange for the pension to be paid on any day of the week². When this happens the DM will be advised and should take into account the changed pay-day when awarding benefit.

1 SS (C&P) Regs, reg 22; Sch 6, para 5; 2 reg 21

Interval of payment

08055 RP may be paid at intervals of¹

1. four weeks in arrears
2. weekly in advance
3. where the beneficiary agrees, not exceeding 13 weeks in arrears
4. where the weekly amount of benefit is less than £5.00, as specified by the Secretary of State not exceeding 12 months².

1 SS (C&P) Regs, reg 22(1); 2 reg 22(2)

Day payment starts and date of change in the amount of benefit

08056 If the earliest date of entitlement to RP is not the first day of the benefit week, - see DMG 08058 - entitlement starts and benefit is payable from the first day of the following benefit week¹. No benefit is payable for the period from the day entitlement starts to the first pay day.

1 SS (C&P) Regs, reg 16(1)

08057 When there is a change in the rate of RP, including termination of the award, the change, if it would otherwise take effect on a day which is not the first day of the benefit week, takes effect from the first day of the following benefit week¹. The exception to this is if the reason for the termination is the death of the claimant. In this case the award is terminated from the first day of the benefit week immediately following the date of death².

1 SS (C&P) Regs, reg 16(2); 2 reg 16(2D)

Benefit week

08058 The first day of the benefit week is the day of the week on which the benefit is payable¹.

1 SS (C&P) Regs, reg 16(3)(c)

RP - “new cases”

Pay day

08059 The person's pay day is determined by the last two digits of their NINO either

1. as is shown in the following table¹-

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

or

2. on any other day of the week in particular cases as the Secretary of State may arrange².

1 SS (C&P) Regs, reg 22C(2); reg 22C(3); 2 reg 22C(4)

Interval of payment

08060 RP will normally be paid four weeks in arrears¹. The Secretary of State may arrange to pay RP

1. weekly in arrears
2. fortnightly in arrears
3. with the agreement of the beneficiary, 13 weeks in arrears²
4. If the weekly amount of RP is less than £5.00, in arrears at intervals not exceeding 12 months³.

1 SS (C&P) Regs, reg 22(1); reg 22C(2); 2 reg 22C(2); reg 22C(5); 3 reg 22C(6)

Day payment starts and date of change in the amount of benefit

08061 RP is payable from the first day of entitlement¹ if

1. that day is the first day of the benefit week **or**
2. it is not the first day of the benefit week but the circumstances in DMG 08062 apply.

1 SS (C&P) Regs, reg 16(1D); reg 22D(1); reg 22D(2)

08062 The circumstances in DMG 08061 **2.** are¹

1. the person has not deferred entitlement to RP **and**
2. either that person

- 2.1** was in receipt of a working age benefit for a day in the period of eight weeks and one day which ends immediately before the person reaches pensionable age **or**
- 2.2** has reached pensionable age and is a dependent spouse of a person who is in receipt of an ADI under certain legislation².

1 SS (C&P) Regs, reg 16(1D); reg 22D; 2 SS CB Act 92, s 83 & 84

08063 In any other case entitlement starts and RP is payable from the first day of the following benefit week¹. No benefit is payable for any days before that day.

1 SS (C&P) Regs, reg 16(1D)

08064 Any change in the rate of RP takes effect from the date of change¹ if

- 1.** that day is the first day of the benefit week **or**
- 2.** it is not the first day of the benefit week but the circumstances in DMG 08065 apply.

1 SS (C&P) Regs, reg 16(2E)

08065 The circumstances referred to in DMG 08064 **2.** are¹

- 1.** the change of rate is caused by annual uprating **and**
- 2.** the change takes effect later in the same benefit week that the person first became entitled to RP **and**
- 3.** the person has not deferred entitlement to RP² **and**
- 4.** either the person
 - 4.1** was in receipt of a working age benefit for a day in the period of eight weeks and one day which ends immediately before the day they reach pensionable age **or**
 - 4.2** has reached pensionable age and is a dependent spouse of a person who is in receipt of an ADI under certain legislation³.

1 SS (C&P) Regs, reg 16(2E); reg 22D(2); 2 reg 22D(3); 3 SS CB Act 92, s 83 & 84

08066 If the change is annual uprating and the circumstances in DMG 08065 do not apply, any change in the rate of RP takes effect from¹

- 1.** the date of change, if that is the first day of the benefit week **or**
- 2.** the first day of the following benefit week.

1 SS (C&P) Regs, reg 16(2F)

08067 In any other case, the change is effective from the first day of the benefit week in which the change occurs¹.

1 SS (C&P) Regs, reg 16(2E)

Termination of award on death

08068 When the person dies, the award of RP is terminated from the first day of the benefit week immediately following the date of death¹.

1 SS (C&P) Regs, reg 16(2D)

Benefit week

08069 The first day of the benefit week for RP which is paid in arrears is¹ the first day of a seven day period which ends on the day on which benefit is payable in accordance with DMG 08059.

1 SS (C&P) Regs, reg 16(3)(c)(ii)

Daily payment

08070 RP can be paid for individual days where¹

1. RP is payable from the first day of entitlement as in DMG 08061 **2. and**
2. the first day of entitlement is not the first day of the benefit week.

1 SS (C&P) Regs, reg 22D(1); reg 22D(2)

08071 It is paid at the daily rate for the period from the first day of entitlement to the last of that benefit week.

08072 When considering daily payment of RP, benefit week means the period of seven days which ends on the day on which benefit is payable as in DMG 08059¹.

1 SS (C&P) Regs, reg 22D(5)

08073 The daily rate of RP is 1/7th of the weekly rate of that benefit¹. The appropriate weekly rate is that which would have applied in respect of that day if entitlement had started on the first day of that benefit week.

1 SS (C&P) Regs, reg 22D(4)

08074 - 08079

WMA, WPA, BA and WP

Pay day

08080 Awards of WMA, WPA, BA, WP

1. made before 6.4.09 and not migrated, are payable on
 - 1.1 Tuesdays **or**
 - 1.2 such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case **or**

- 1.3 a day which has become the appropriate day for payment for one of these benefits¹
2. made from 6.4.09, or made prior to that date and have been migrated, are payable on²
- 2.1 the day specified based on the last two digits of their NINO as follows -

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

- 2.2 such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case³.

Note: If the Secretary of State changes the claimant's pay day, any days that would have been paid had the change not been made can be paid at the daily rate which is 1/7th of the weekly rate⁴.

1 SS (C&P) Regs, reg 22A(2); 2 reg 22A(3); 3 reg 22A(2); 4 reg 22B(2)

Interval of payment

08081 From 6.4.09 these benefits are normally payable fortnightly in arrears¹. Awards before that date may be payable as in DMG 08080 1. but will be migrated to fortnightly in arrears.

1 SS (C&P) Regs, reg 22A(1)

08082 The Secretary of State may arrange for payment to be made¹

1. weekly in advance
2. weekly in arrears **or**, with the beneficiary's agreement
3. four weeks in arrears
4. 13 weeks in arrears.

1 SS (C&P) Regs, reg 22A(4)

Day payment starts and date of change in the amount of benefit

08083 For awards of BA and WPA made before 6.4.09 if the earliest date of entitlement to benefit is not the first day of the benefit week, entitlement starts and benefit is payable from the first day of the following benefit week¹. From 6.4.09, entitlement starts on the first day that the person satisfies all the conditions² and benefit is paid at the daily rate of 1/7th of the weekly rate³ from the day entitlement starts until the day before the first day of the following benefit week.

1 SS (C&P) Regs, reg 16(1); reg 16(4); 2 reg 22B(1); 3 reg 22B(6)

08084 Any change in the rate of BA, WMA, WPA and WP that would take effect from a day other than the first day of the benefit week will take effect from the first day of the following benefit week¹ except where the award is to be terminated².

1 SS (C&P) Regs, reg 16(2A); 2 reg 16(2B)

Termination of award

08085 When the award is to be terminated, it takes effect from

1. the date of change, when the benefit is paid in arrears¹ **or**
2. the first day of the following benefit week² when the benefit is paid in advance and the award would terminate on a day other than the first day of the benefit week.

1 SS (C&P) Regs, reg 16(2B); 2 reg 16(2C)

08086 If BA, WMA, WPA and WP are paid in arrears and the award terminates on a day other than the last day of the benefit week, the claimant can be paid at the daily rate for the days from the first day of the final benefit week to the last day of entitlement¹. The daily rate of benefit is 1/7th of the weekly rate².

1 SS (C&P) Regs, reg 22B(3); reg 22B(4); reg 22B(5); 2 reg 22B(6)

Benefit week

08087 For the purpose of determining the first day from which these benefits are payable and the effective date of change of rate of long-term benefits, the first day of the benefit week is

1. before 6.4.09, the day of the week on which the long-term benefit is payable
2. from 6.4.09¹,
 - 2.1 if the benefit is paid in advance, the day of the week on which the benefit is payable
 - 2.2 if paid in arrears, the first day of the period of seven days which ends on the day on which the benefit is payable.

1 SS (C&P) Regs, reg 16(3)(c); reg 22; reg 22A

08088 - 08089

Other long term benefits

Pay day

08090 The pay days for other long term benefits are

1. SAP - Monday¹

except

1.1 where RP is payable to the claimant, SAP is payable on the same day as the RP²

1.2 the Secretary of State may arrange for SAP to be payable on such other day of the week as he may, in the circumstances of any particular case, determine³

2. AA/DLA⁴

2.1 AA - Monday

2.2 DLA - Wednesday

2.3 the Secretary of State may however pay AA/DLA on some other day of the week

3. CA - Monday⁵. However, where a person is entitled because of receiving a prescribed payment out of public funds⁶, the allowance is paid on Wednesday

4. IIDB (including increases) - Wednesday⁷.

1 SS (C&P) Regs, Sch 6, para 5A; 2 Sch 6, para 5A(a); 3 Sch 6, para 5A(b); 4 Sch 6, para 1; 5 Sch 6, para 4; 6 SS (ICA) Regs, reg 3; 7 SS (C&P) Regs, Sch 6, para 3

Intervals of payment

08091 These long term benefits may be paid at intervals of¹

1. four weeks in arrears

2. weekly in advance

3. where the beneficiary agrees, not exceeding 13 weeks in arrears

4. where the weekly amount of benefit is less than £5.00, as specified by the Secretary of State not exceeding 12 months².

1 SS (C&P) Regs, reg 22(1); 2 reg 22(2)

AA/DLA

08092 DLA may be paid at any interval as long as it is not more than four weeks¹. Both AA and DLA can be paid at a daily rate in specified circumstances - see DMG 61880 - in which case they are paid weekly or as the Secretary of State directs².

1 SS (C&P) Regs, reg 22(1A); reg 22(1B); 2 reg 25

Day payment starts and date of change in the amount of benefit

- 08093 If the earliest date of entitlement to benefit is not the first day of the benefit week, entitlement starts and benefit is payable from the first day of the following benefit week¹.

1 SS (C&P) Regs, reg 16(1)

- 08094 When there is a change in the rate of one of these long term benefits, including termination of the award, the change, if it would otherwise take effect on a day which is not the first day of the benefit week, takes effect from the first day of the following benefit week¹.

1 SS (C&P) Regs, reg 16(2)

Benefit week

- 08095 For the purpose of determining the first day from which these benefits are payable and the effective date of change of rate of long-term benefits, the first day of the benefit week is

1. before 6.4.09, the day of the week on which the long-term benefit is payable
2. from 6.4.09¹,
 - 2.1 if the benefit is paid in advance, the day of the week on which the benefit is payable
 - 2.2 if paid in arrears, the first day of the period of seven days which ends on the day on which the benefit is payable.

1 SS (C&P) Regs, reg 16(3)(c); reg 22; reg 22A

08096 - 08099

IB, MA and SDA

Pay day

- 08100 Awards made from 6.4.09 will be paid on

1. the day specified based on the last two digits of their NINO as follows¹-

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

2. such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case².

1 SS (C&P) Regs, reg 24(1A); reg 24(1C); 2 reg 24(1B)

Interval of payment

08101 Although these benefits may be paid for individual days, payment is normally fortnightly in arrears¹ unless

1. the weekly amount of IB or SDA is less than £1.00 when it can be paid in arrears at four weekly intervals²
2. the weekly amount of IB is less than £5.00 after reduction for pension payments under relevant legislation³, when it can be paid in arrears at any interval not exceeding 12 months
3. other benefits are in payment
4. the Secretary of State arranges otherwise.

1 SS (C&P) Regs, reg 24(1); 2 reg 24(3); 3 reg 24(3A); SS CB Act 92, s 30DD

Day payment starts and date of change in the amount of benefit

08102 Benefit is payable from the first day for which all the conditions of entitlement are satisfied¹. Similarly any change in the rate of benefit takes effect from the date of that change.

1 SS (C&P) Regs, reg 16(1); reg 16(4)

08103 - 08109

SPC

General

08110 Legislation provides that SPC is paid in different ways depending on when the person reaches pensionable age and their circumstances at that time.

Identification

08111 The following criteria are used to identify which system applies to the time and manner of payment of SPC for a particular person. If the person

1. reaches pensionable age before 6.4.10¹ **or**
2. is a man², who reaches pensionable age on or after 6.4.10 **and**
 - 2.1 was in receipt of SPC for any period which begins on the day four months and four days before the day on which he reaches pensionable age and ends on 5.4.10 **or**

- 2.2** was in continuous receipt of SPC from 5.4.10 until at least the first day of the period of four months and four days which ends immediately before the day on which he reaches pensionable age

these are “old” cases and guidance in DMG 08114 - 08118 applies. The guidance in DMG 08119 - 08123 applies to all other cases referred to as “new” cases in this guidance.

Note: The period of four months and four days does not include the day they reach pensionable age. If the date they reach pensionable age is 7.9.10, they must have continued to be in receipt of SPC until at least 3.5.10.

1 SS (C&P) Regs, reg 26BA(1); 2 reg 22C(7)

Pensionable age

08112 Pensionable age¹ is

1. 65 years for a man **or**
2. 60 years for a woman born before 6.4.50 **or**
3. the date in Appendix 3 to DMG Chapter 15 for a woman born between 6.4.50 and 5.4.55 **or**
4. 65 years for a woman born on or after 6.4.55.

1 SS A Act 92, s 191; Pensions Act, Sch 4, para 1

08113

SPC - “old” cases

Pay day

08114 SPC is paid on Mondays¹

except

1. if RP is in payment to the claimant, it is paid on the same day as RP²
2. on such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case³.

1 SS (C&P) Regs, reg 26B(1); 2 reg 26B(2)(a); 3 reg 26B(2)(b)

Interval of payment

08115 SPC is payable weekly in advance¹ unless the weekly amount of SPC is less than £1.00 when it may be paid at some other interval not exceeding 13 weeks².

1 SS (C&P) Regs, reg 26B(4); 2 reg 26B(5)

Day payment starts and date of change in the amount of benefit

08116 Where the earliest date of entitlement to SPC is not the first day of the benefit week, entitlement starts and SPC is payable from the first day of the following benefit week¹ but in respect of guarantee credit it is payable from the first day of entitlement if²

1. immediately before attaining the qualifying age the claimant was entitled to IS, JSA(IB) or ESA(IR) and is awarded SPC from the day qualifying age is obtained **or**
2. the claimant was entitled to JSA(IB) after attaining the qualifying age and is awarded SPC from the day which falls after the date that entitlement ends.

1 SS (C&P) Regs, reg 16A(1); 2 reg 16A(2)

08117 Any change in the rate of SPC that would take effect from a day other than the first day of the benefit week will take effect from the first day of the following benefit week¹.

1SS (C&P) Regs, reg 16A(3)

Benefit week

08118 Benefit week means where SPC is paid in advance, the period of seven days beginning on the day on which the claimant's SPC is payable¹.

1 SS (C&P) Regs, reg 16A(4); reg 26B

SPC - "New" cases

Pay day

08119 SPC is paid on

1. the day specified based on the last two digits of their NINO as follows¹ -

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

2. such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case².

1 SS (C&P) Regs, reg 26BA(2); 2 reg 26BA(3)

Interval of payment

- 08120 SPC will normally be payable four weekly in arrears. In certain circumstances the Secretary of State may arrange to pay it weekly or fortnightly¹. If the weekly amount of SPC is less than £1.00 it may be payable at any interval not exceeding 13 weeks².

1 SS (C&P) Regs, reg 26BA(1); 2 reg 26BA(4)

Day payment starts and date of change in the amount of benefit

- 08121 Where the earliest date of entitlement to SPC is not the first day of the benefit week, entitlement starts and SPC is payable from the first day of the following benefit week¹ but in respect of guarantee credit it is payable from the first day of entitlement if²

1. immediately before attaining the qualifying age the claimant was entitled to IS, JSA(IB) or ESA(IR) and is awarded SPC from the day qualifying age is obtained **or**
2. the claimant was entitled to JSA(IB) after attaining the qualifying age and is awarded SPC from the day which falls after the date that entitlement ends.

1 SS (C&P) Regs, reg 16A(1); 2 reg 16A(2)

- 08122 Any change in the rate of SPC that would take effect from a day other than the first day of the benefit week will take effect from the first day of the following benefit week¹.

1 SS (C&P) Regs, reg 16A(3)

Benefit week

- 08123 Benefit week means¹

1. where SPC is paid in advance, the period of seven days beginning on the day on which the claimant's SPC is payable
2. where SPC is paid in arrears, the period of seven days ending on the day on which SPC is payable to the claimant.

1 SS (C&P) Regs, reg 16A(4)

08124 - 08129

ESA

Pay day

08130 ESA is paid on

1. the day specified based on the last two digits of their NINO as follows¹ -

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

2. such other day as the Secretary of State may determine where payment is by direct payment or in the circumstances of any particular case².

1 SS (C&P) Regs, reg 26C(1); reg 26C(2); 2 reg 26C(4)

08131 Where the day on which ESA is payable is changed, it is paid at a daily rate of 1/7th of the weekly rate for any days for which payment would have been made but for that change¹.

1 SS (C&P) Regs, reg 26C(4)

Office closure

08132 Where ESA is paid in arrears and payment would be affected by the closure of an office of the DWP or PO because of a public holiday, the Secretary of State may decide to make the payment on any day either

1. wholly in advance **or**
2. partly in advance and partly in arrears

in which case it will for any other purposes be treated as if it was paid in arrears¹.

1 SS (C&P) Regs, reg 26C(7)

08133 Public holiday means¹

1. Christmas Day
2. Good Friday
3. any prescribed Bank Holiday²

4. in Scotland, local holidays.

1 SS (C&P) Regs, reg 26; Sch 7, para 2A(1)(a); 2 Banking and Financial Dealings Act 1971

Interval of payment

08134 Normally ESA is payable fortnightly in arrears but the Secretary of State may arrange in a particular case for it to be paid at a different interval. If the weekly amount of benefit is less than £1.00 it can be paid in arrears at intervals not exceeding 13 weeks¹ but if weekly entitlement amounts to less than 10 pence that allowance is not payable².

1 SS (C&P) Regs, reg 26C(1); reg 26C(3); reg 26C(5); reg 26C(6)

Day payment starts and date of change in amount of benefit

08135 Payment starts on the first day that the person satisfies the conditions of entitlement. Similarly any change in the amount of benefit takes effect from the date of the change¹.

1 SS (C&P) Regs, reg 16(1); reg 16(4)

Benefit week

08136 Benefit week means¹ a period of seven days ending on such day as the Secretary of State may direct.

1 ESA Regs, reg 2(1)

08137 - 08139

IS

Pay day

08140 The Secretary of State may decide on what day to pay IS

1. in respect of any benefit week¹
2. for any part-week².

1 SS (C&P) Regs, reg 26; Sch 7, para 3(2); 2 Sch 7, para 3A

Office closure

08141 Where IS is paid in arrears and payment would be affected by the closure of an office of the DWP or PO because of a public holiday, the Secretary of State may decide to make the payment on any day either

1. wholly in advance **or**
2. partly in advance and partly in arrears

in which case it will for any other purposes be treated as if it was paid in arrears¹.

1 SS (C&P) Regs, reg 26; Sch 7, para 2A(2); Sch 7, para 2A(1)(b); Sch 7, para 2A(3)

08142 Public holiday means¹

1. Christmas Day
2. Good Friday
3. any prescribed Bank Holiday²
4. in Scotland, local holidays.

1 SS (C&P) Regs, reg 26; Sch 7, para 2A(1)(a); 2 Banking and Financial Dealings Act 1971

Interval of payment

08143 IS is normally paid in arrears¹ but will be paid in advance where² the claimant

1. had been involved, or whose partner had been involved, in a trade dispute but who has returned to work with the same employer but such payment will be for only 15 days (beginning with the day the claimant or partner returned to work)
2. is in receipt of WB or BB payable in advance and is not providing or required to provide medical evidence of IfW.

1 SS (C&P) Regs, reg 26; Sch 7, para 1; 2 Sch 7, para 2; Sch 7, para 2ZA

Alignment of IS with relevant SS benefit

08144 Where DMG 08143 does not apply and the claimant is

1. entitled to IS (but see DMG 08145 if entitlement is on the basis of IfW) **and**
2. entitled, or would be entitled to IB, SDA, RP, BB or WB but for
 - 2.1.a failure to satisfy the contribution conditions **or**
 - 2.1.b exhaustion of benefit

IS is paid on the same day at the same interval as the other benefit¹.

1 SS (C&P) Regs, Sch 7, para 3 & 4

08145 IS is paid fortnightly in arrears¹ where

1. DMG 08143 does not apply **and**
2. the claimant is paid IS on the basis of IfW, entitlement to which started on or after 13.4.1995 **and**
3. no IB, SDA, RP, BB or WB is paid to the claimant.

1 SS (C&P) Regs, Sch 7, para 3(1A); Sch 7, para 4

08146 Where the weekly amount of IS payable is less than £1.00, it may be payable at any interval not exceeding 13 weeks¹.

1 SS (C&P) Regs, reg 26, Sch 7, para 5

08147 If a claimant's weekly entitlement amounts to less than

1. £5, in the case of a person who had been involved in a trade dispute but has returned to work **or**
2. 10 pence in any other case

no benefit is payable unless the claimant is entitled to another benefit which may be paid together¹.

1 SS (C&P) Regs, reg 26(4)

Date payment starts

08148 Subject to DMG 08150, where IS is payable in arrears, entitlement begins on the date of claim¹.

1 SS (C&P) Regs, Sch 7, para 6(1)

08149 Subject to DMG 08150, where IS is payable in advance, entitlement normally begins on¹

1. the date of claim, if that is the first day of the benefit week **or**
2. the first day of the following benefit week.

1 SS (C&P) Regs, Sch 7, para 6(2)

08150 When IS is awarded for a definite period, which is not a benefit week or a multiple of such a benefit week, entitlement begins on the date of claim regardless of whether it is paid in arrears or advance¹.

1 SS (C&P) Regs, Sch 7, para 6(2A)

08151 In the case of an advance claim¹, an award is made from a date after the date of claim, entitlement starts on the first day that the conditions of entitlement are satisfied² unless the IS is paid in advance when entitlement begins on

1. the first day that the conditions of entitlement are satisfied, if that is the first day of the benefit week **or**
2. the first day of the following benefit week.

1 SS (C&P) Regs, reg 13; 2 Sch 7, para 6(3)

Benefit week

08152 A benefit week is a period of seven days. It is¹

1. the week for which any relevant SS benefit

- 1.1 is payable, if there is entitlement to such a benefit **or**
- 1.2 would be payable but for
 - 1.2.a the failure to satisfy contribution conditions **or**
 - 1.2.b exhaustion of entitlement **or**
- 2. in any other case, a period of seven days beginning or ending on a day decided by the Secretary of State.

1 SS (C&P) Regs, Sch 7, para 4

08153 Relevant benefit means¹ IB, SDA, RP, WB or BB.

1 SS (C&P) Regs, Sch 7, para 4

08154 - 08159

JSA

Benefit Week

08160 A benefit week means¹ a period of seven days ending with the day determined by the last two digits of the claimant's NINO as is shown in the following table unless the Secretary of State arranges otherwise.

NINO	Pay day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

1 JSA Regs, reg 1(3)

Interval of payment

08161 JSA is normally paid fortnightly in arrears unless in any particular case the Secretary of State arranges otherwise¹.

1 SS (C&P) Regs, reg 26A(1)

08162 JSA can be paid at any interval not exceeding 13 weeks if the weekly amount payable is less than £1.00¹ but if the weekly entitlement amounts to less than 10 pence the allowance is not payable².

1 SS (C&P) Regs, reg 26A(3); 2 JSA Regs, reg 87A

Office closure

08163 Where JSA is paid in arrears and payment would be affected by the closure of an office of the DWP or PO because of a public holiday, the Secretary of State may decide to make the payment on any day either

1. wholly in advance **or**
2. partly in advance and partly in arrears

in which case it will for any other purposes be treated as if it was paid in arrears¹.

1 SS (C&P) Regs, reg 26; Sch 7, para 2A(2); Sch 7, para 2A(1)(b); Sch 7, para 2A(3); reg 26A(2)

08164 Public holiday means¹

1. Christmas Day
2. Good Friday
3. any prescribed Bank Holiday²
4. in Scotland, local holidays.

1 SS (C&P) Regs, reg 26; Sch 7, para 2A(1)(a); 2 Banking and Financial Dealings Act 1971

Date payment starts

08165 The claimant is not usually entitled for the first three days of a JSP. For guidance see DMG 33027.

08166 - 08199

Failure to obtain payment

General

08200 Except in the cases of GRB and single payments of an IIs gratuity¹, normally a person's right, or the right of any person authorised or appointed to act on their behalf², to a payment of benefit ends if they do not obtain the payment within 12 months of the date that right to the payment arose³. See DMG 08206 for guidance on when this period can be extended.

1 SS (C&P) Regs, reg 38(5); 2 reg 38(4); 3 reg 38(1)

Right to payment

08201 A right to payment for the purposes of DMG 08200 can only arise where

1. a sum has been calculated¹ **and**
2. some steps along the administrative process of making payment have been taken, leaving the person with only some relatively mechanical steps to take to obtain payment.

1 R(U) 1/02

Start date of the 12 month period

08202 The period of 12 months within which the person must obtain payment of the benefit starts from the date the right to that payment arose¹. That right is treated as arising on

1. when the payment was made by giving or sending a cheque or other instrument of payment to the person or sending it to a place approved by the Secretary of State for collection²
 - 1.1 the date of the cheque **or**
 - 1.2 the date of any replacement, or if there is more than one, the date of the last one
2. if a cheque or instrument of payment has not been issued but written or oral notice has been given or sent telling the person that the sum contained in the notice is available for collection, the date of the notice or if there is more than one, the date of the first one³
3. in the case of direct payment, the due date for payment of the sum⁴
4. if none of the above apply, the date determined by the Secretary of State⁵.

1 SS (C&P) Regs, reg 38(1); 2 reg 38(1)(a); 3 reg 38(1)(b); 4 reg 38(1)(bb); 5 reg 38(1)(c)

08203 In respect of DMG 08202 **4**, it is not open to the Secretary of State simply to look at the due dates of a period of unpaid arrears and decide whether the person has applied to have the money paid to them. It is confined to situations similar to that where a cheque is sent but not cashed or a person is notified that a sum is waiting for collection¹.

1 R(U) 1/02

08204 If the sum contained in either

1. a cheque **or**
2. a notice

is incorrect, it is still effective for the purpose of identifying the date on which right to payment of that sum arose. If the sum incorrectly notified is less than the full amount due, the Secretary of State will consider payment of the balance¹.

1 SS (C&P) Regs, reg 38(2); reg 38(1)

08205 The date of a cheque or other instrument of payment is¹ the later of either

1. the date of its issue, **or**
2. the earliest date on which payment can be obtained.

1 SS (C&P) Regs, reg 38(3)

Extension of the 12 month period

08206 If the Secretary of State first receives a written request for payment outside the 12 month period, the DM can extend the 12 month period if¹

1. the person had continuous good cause - see DMG Ch 02 - for not requesting payment for the period starting with a day within the 12 month period and continuing to the day that they gave the written request for payment **and**
2. either
 - 2.1 the payment had not been sent or given to the person **or**
 - 2.2 no direct payment had been made to them **or**
 - 2.3 the payment had been issued but had been returned to the Secretary of State and not re-issued as a replacement.

1 SS (C&P) Regs, reg 38(2A)

08207 If the conditions in DMG 08206 are satisfied the right to payment is treated as arising on the day that the DM determines the question. This means that a new 12 month period starts on that day¹.

1 SS (C&P) Regs, reg 38(2A)

08208 - 08249

People unable to act

Appointments by the Secretary of State

08250 A person, or body of people, may apply to the Secretary of State to act on behalf of a claimant, or potential claimant, who is unable to act on their own behalf¹.

1 SS (C&P) Regs, reg 33(1)

08251 The application must be in writing¹ and can be from a

1. person who is at least 18 years old² **or**
2. body of people, for example a firm of solicitors, a Housing Authority or a LA but not an officer of such a group named by their title only (for example, Finance Director)³.

1 SS (C&P) Regs, reg 33(1); 2 reg 33(1); 3 R(SB) 2/87

08252 If no other legal appointment exists¹ in respect of the claimant (see DMG 08253) and the applicant satisfies the conditions in DMG 08251, the Secretary of State may appoint them to act for the claimant, or potential claimant, in all respects relating to any rights that they may be entitled to and to receive and deal on that claimant's behalf with any sums payable to the claimant. Procedural guidance relating to this issue can be found in the Agents, Appointees, Attorneys and Deputies Guide.

1 SS (C&P) Regs, reg 33(1)

08253 People legally appointed to act¹ are

1. a person appointed by the Secretary of State² **or**
2. in England and Wales, a deputy³ with power to claim or receive benefit appointed by the Court of Protection under specific legislation⁴ **or**
3. in England and Wales, a receiver⁵ with power to claim or receive benefit appointed under specific legislation⁶ but treated as a deputy under specific legislation⁷ **or**
4. in Scotland, a judicial factor or any guardian⁸ who is administering the person's estate and with power to claim or receive benefit appointed under specific legislation⁹.

1 SS (C&P) Regs, reg 33(1); 2 reg 33(1); 3 reg 33(1)(c); 4 Mental Health Capacity Act 2005, Part I;

5 SS (C&P) Regs, reg 33(1)(c); 6 Mental Health Act 1983, Part 7;

7 Mental Health Capacity Act 2005; 8 SS (C&P) Regs, reg 33(1)(d);

9 Adults with Incapacity (Scotland) Act 2000

08254 An appointee takes the place of the claimant and assumes all the claimant's responsibilities including any duty to disclose changes of circumstances¹. The Secretary of State may arrange for benefit to be paid to the appointee².

1 R(A) 2/81; 2 SS (C&P) Regs, reg 33(3)

08255 Appointments by the Secretary of State made on or after 11.4.88 allow the appointee to act, subject to the discretion of the Secretary of State, for all SS benefits¹. Any appointments made before that date remain in force but only for benefits in the same Act as the benefit for which the appointment was originally made².

1 SS (C&P) Regs, reg 2(2)(b); reg 33; 2 Inte Act 78, s 16(1); s 23; R(IS) 5/91

08256 With effect from 18.3.05, where someone has been appointed to act for a person unable to act for themselves in respect of a claim or award for HB or CTB

1. under specific legislation¹ by a LA administering HB **or**
2. under specific legislation² by a LA administering CTB

the Secretary of State may, with the permission of the person appointed by the LA, treat them as an appointee for SS Benefit purposes³.

1 Housing Benefit Regs, reg 82(3); Housing Benefit (Persons who have attained the qualifying age for State Pension Credit) Regs, reg 63(3); 2 Council Tax Benefit Regs, reg 68(3); Council Tax Benefit (Persons who have attained the qualifying age for State Pension Credit) Regs, reg 52(3); 3 SS (C&P) Regs, reg 33(1A)

08257 Where the Secretary of State has made an appointment, or treated an appointment as made¹, as in DMG 08252 and DMG 08256,

1. the appointment can be revoked by either party at any time
2. the appointee may resign their appointment after giving the Secretary of State one month's notice in writing
3. the Secretary of State must terminate the appointment when told that a receiver or other person covered by DMG 08253 **2. - 4.** has been appointed.

1 SS (C&P) Regs, reg 33(2)

Person acting at time of claimant's death

08258 See DMG Volume 1 - Decision Making and Appeals when

1. there is a claim proceeding when the claimant dies **or**
2. there was no claim made at the date of death.

08259 - 08299

Benefit paid to someone other than the claimant

Payment to another person

08300 The Secretary of State may direct that all or part of a claimant's benefit entitlement be paid to another person on behalf of the beneficiary where it is necessary to protect the interests of the beneficiary or the dependant for whom the benefit is paid¹.

1 SS (C&P) Regs, reg 34(1)

08301 In joint-claim JSA the Secretary of State may direct that all or part of the benefit may be paid to a person who is not the nominated member of the joint-claim couple where it is necessary to protect the interests of the other member of the couple or both members of that couple¹.

1 SS (C&P) Regs, reg 34(2)

08302 The person who the Secretary of State directs that payment should be made to must be an individual, benefit can not be paid to corporate bodies, for example a firm of solicitors¹.

1 SS (C&P) Regs, reg 34

08303

Payment to a third party

08304 Guidance about deductions that may be made from benefit and paid to third parties¹ including deductions of mortgage interest which must be paid to qualifying lenders² and those which may be paid to qualifying lenders³ can be found in benefit specific DMG Chapters

1.	IS/JSA	Chapter 33
2.	ESA	Chapter 46
3.	SPC	Chapter 79

1 SS (C&P) Regs, reg 35(1); Sch 9; Sch 9B; 2 reg 34A; Sch 9A; 3 reg 34B; Sch 9A

SF payments

08305 Where a SF payment for

1. funeral expenses
2. maternity expenses
3. heating expenses incurred in cold weather

is made wholly or partly in respect of a debt which is or will be due to a third party, payment may be made (and in the case of funeral expenses, shall be made) payable to a third party¹. Where a cheque is made payable to the third party, it may be sent to the SF beneficiary.

1 SS (C&P) Regs, reg 35(2)

Alternative payee - winter fuel payments

08306 Where a person is entitled to a SF WFP¹ **and**

1. that person is a member of
 - 1.1 a couple **or**
 - 1.2 a polygamous marriage **and**
2. that person's partner or another member of the polygamous marriage is receiving IS, JSA(IB) or ESA(IR) **and**
3. both members of the couple or another member of the polygamous marriage are living together within the meaning given in DMG 39913

the WFP may be paid to the other person on behalf of the person entitled to it even if they have not reached the qualifying age for SPC.

1 SS (C&P) Regs, reg 36(2)

Meaning of couple

08307 Couple means¹

1. a man and a woman who are married to each other and are members of the same household
2. a man and a woman who are not married to each other but are LTAHAW
3. two people of the same sex who are civil partners of each other and are members of the same household
4. two people of the same sex who are not civil partners of each other but are living together as if they were civil partners, and for this purpose they are to be regarded as living together as if they were civil partners if they would be regarded as LTAHAW if they were two people of the opposite sex.

1 SS (C&P) Regs, reg 2

Meaning of partner

08308 A partner is one member of a couple¹.

1 SS (C&P) Regs, reg 2

08309 - 08349

Payments after death

General

08350 The Secretary of State may pay or distribute any sum of benefit which is payable¹ where

1. at their date of death, the claimant had not obtained payment of a sum of benefit to which they were entitled **or**
2. a person dies after making a claim and the Secretary of State has appointed someone to proceed with that claim and any related issue of
 - 2.1 revision **or**
 - 2.2 supersession **or**
 - 2.3 appeal.

1 SS (C&P) Regs, reg 30

08351 The following paragraphs give guidance on how such payment or distribution of sums of benefit is to be carried out.

Automatic payment of arrears to spouse or civil partner

08352 Subject to DMG 08353, if, at the time of their death, the deceased was in receipt of

1. RP **or**
 2. SPC **or**
 3. any other benefit combined for payment purposes with either of these benefits
- then, provided that the right to the sum had not been extinguished at the date of death, any arrears of benefit will be paid automatically to a spouse or civil partner on the death of the claimant. No written application is required¹.

1 SS (C&P) Regs, reg 30 (4B)

08353 DMG 08352 will only apply where¹

1. no executor or administrator has been appointed **and**
2. the spouse or civil partner was
 - 2.1 living with the claimant at the time of death **or**
 - 2.2 would have been living with the claimant at the time of death if it were not for the fact that one or both of them were in residential care or a nursing home or hospital.

1 SS (C&P) Regs, reg 30 (4B)

Other cases

08354 In all other cases, the Secretary of State must have a written application requesting payment of such sums of benefit. The application must be made within 12 months of the date of the deceased's death, or within such longer period as the Secretary of State allows in a particular case¹.

1 SS (C&P) Regs, reg 30(4)

08355 On receipt of the written application, except in the case of joint-claim JSA, the Secretary of State may, provided that the right to the sum had not been extinguished at the date of death, and subject to the guidance in DMG 08358, pay or distribute the sum to or amongst the persons over the age of 16 claiming as

1. personal representatives
2. legatees
3. next of kin **or**
4. creditors

of the deceased¹.

Note: The above list is not in priority order.

1 SS (C&P) Regs, reg 30(2) & (3)

08356 "Next of kin" means, in England and Wales, the persons who would take beneficially on an intestacy, and in Scotland, the persons entitled to the moveable estate of the deceased on intestacy¹.

1 SS (C&P) Regs, reg 30(9)

08357 If part or all of the arrears are for the benefit of a person who is under the age of 16, the Secretary of State can pay the arrears provided that the Secretary of State is satisfied that the arrears will be used for the benefit of the person who is under the age of 16¹

1 SS (C&P) Regs, reg 30(2)(b)

Joint-claim JSA

08358 If the deceased was a member of a joint-claim couple, any sums of joint-claim JSA payable should be paid to the other member of that couple¹.

1 SS (C&P) Regs, reg 30(4)

Extinguishment of right to benefit

08359 The rules on extinguishment of right to benefit¹ apply to these payments. In a case to which DMG 08352 1. applies the period of 12 months is calculated from the date on which the right to payment of any sum is treated as having arisen in relation to any of the persons in DMG 08355².

1 SS (C&P) Regs, reg 38; 2 reg 30(3)

08360 - 08389

Suspension of benefit

Doubt on entitlement or payment of benefit

08390 For guidance about suspension of benefit other than on appeal see DMG Volume 1,
For guidance in appeal cases see DMG Volume 1.

Suspension under European Community law

08391 For guidance on suspension under EC law see DMG Volume 2.

08392- 08399

Restrictions on payment of benefit - benefit fraud offences

Introduction

08400 From 1.4.02 legislation¹ came into effect allowing restrictions on the payment of benefit following convictions for second or subsequent benefit fraud offences. This was extended from 1.4.10² to cover other situations involving benefit offences. Determinations as to whether the conditions in DMG 08403 and DMG 08406 apply will be made on behalf of the Secretary of State by a central unit.

1 SS Fraud Act 2001; SS Fraud Act 2001 (Commencement No. 2) Order: SS (Loss of Benefit) Regs; 2 SS Fraud Act 2001, s 6B; s 7; WR Act 09, 2 s 24; Sch 4; The SS (Loss of Benefit) Amendment Regulations 2010

Note: There are certain provisions that apply particularly to IS and JSA (see DMG Chapter 24) and ESA (see DMG Chapter 54) for guidance on these provisions.

Benefits affected - sanctionable benefits

08401 The restrictions on payment of benefit only apply to those benefits, including dependency increases where relevant, which are sanctionable benefits¹. See Appendix 1 for a list of these benefits.

1 SS Fraud Act 2001, s 6A(1)

08402 Some benefits¹ are **not** subject to restrictions on payment following benefit fraud offences. This is because they are not sanctionable - see Appendix 2.

1 SS Fraud Act 2001, s 6A(1) & SS (Loss of Benefit) Regs, reg 19 & 19A

Conditions for restriction on payment

Conviction, administrative penalty or caution for benefit offence

08403 Restrictions on the payment of benefit apply where the offender is entitled to a sanctionable benefit at any time within the disqualification period **and**¹

1. is convicted of one or more benefit offences in any proceedings - but see DMG 08406 if this is a second or subsequent conviction and the offence was committed within five years of the previous conviction² **or**
2. after proper notice agrees to pay an administrative penalty in respect of a benefit offence **or**
3. is cautioned in respect of one or more benefit offences after admitting the offence³.

1 SS Fraud Act 2001, s 6B(1); s 6B(4); s 6B(5); 2 s 6B(3); s 7(1); 3 s 13

08404 The disqualification period in these circumstances is a period of four weeks¹. The first day of this period - DQ-day - depends on the claimant's circumstances² - see DMG 08430.

1 SS Fraud Act 2001, s 6B(11); 2 SS (Loss of Benefit) Regs, reg 1A

08405 Administrative penalty means an arrangement, instigated by the Secretary of State and with the agreement of the offender, to pay an administrative penalty equal to a percentage of the amount overpaid as an alternative to prosecution¹.

1 SS Fraud Act 2001, s 6B(2); SS A Act 1992, s 115A

Second or subsequent conviction for benefit offence

08406 Restrictions on the payment of benefit apply if¹

1. the offender is convicted of a **benefit offence** in two separate sets of proceedings **and**
2. the later offence is committed within the period of five years, after the date of conviction for the earlier offence **and**
3. the later set of proceedings has not previously been taken into account in applying a restriction on payment for a second or subsequent conviction in relation either to the offender or to a member of the offender's family **and**
4. the earlier set of proceedings has not previously been taken into account as the earlier set of proceedings in applying a restriction on payment for a second or subsequent conviction in relation either to the offender or to a member of the offender's family **and**
5. the offender satisfies the conditions of entitlement for a sanctionable benefit at any time within the disqualification period.

1 SS Fraud Act 2001, s 7(1)

08407 The disqualification period in these circumstances is a period of 13 weeks¹. The first day of this period - DQ-day - depends on the claimant's circumstances² - see DMG 08433.

1 SS Fraud Act 2001, s 7(6); 2 SS (Loss of Benefit) Regs, reg 2

08408 - 08419

Conviction

08420 The date of conviction in any proceedings of a benefit offence¹ is the date on which the offender was found guilty of that benefit offence in those proceedings (whenever the person was sentenced) or in the case of DMG 08421 **2.** the date of the order for absolute discharge.

1 SS Fraud Act 2001, s 6C(5)(a); s 7(9)(a)

08421 Conviction¹ includes

1. a conviction where the court makes an order for absolute or conditional discharge or where a Scottish court makes a probation order **or**
2. an order for absolute discharge made by a court of summary jurisdiction in Scotland under certain legislation² without proceeding to a conviction **or**
3. a conviction in Northern Ireland.

1 SS Fraud Act 2001, s 6C(5)(b); s 7(9)(b); 2 Criminal Procedure (Scotland) Act 1995, s 246(3)

Meaning of "benefit offence"

08422 A benefit offence¹ is any criminal offence

1. in connection with a claim for a **disqualifying benefit**
2. in connection with the receipt or payment of a **disqualifying benefit**
3. for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence
4. consisting of an attempt or conspiracy to commit a benefit offence which is committed on or after either
5. 1.4.10 in respect of DMG 80403 **or**
6. 1.4.02, in respect of DMG 80406.

1 SS Fraud Act 2001, s 6B(13); s 7(8)

See Appendix 3 to this Chapter for a list of disqualifying benefits.

08423 The determination day is the day on which the Secretary of State determines that a restriction is applicable under relevant legislation¹ except that in a case where the disqualifying event is an agreement to pay a penalty, the determination day is the 28th day after that day².

1 SS (Loss of Benefit) Regs, reg 1(2); 2 reg 1(2A)

08424 Disqualifying event means¹ the

1. conviction falling within DMG 08403 **1.**
2. agreement falling within DMG 08403 **2.**
3. caution falling within DMG 08403 **3.**

1 SS Fraud Act 2001, s 6B(13)

08425 - 08429

Disqualification period

Conviction, administrative penalty or caution for benefit offence

- 08430 Where the conditions in DMG 08403 are satisfied the disqualification period¹ is a period of four weeks and where on the determination day the offender¹
1. is in receipt of a sanctionable benefit **or**
 2. is a member of a joint-claim couple which is in receipt of a joint-claim JSA **or**
 3. has a family member who is in receipt of IS, JSA, SPC or ESA the date on which the disqualification period starts - DQ-day - is²
 4. for a sanctionable benefit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day **and**
 5. for a sanctionable benefit paid in advance, the first pay day after the end of the period of 28 days beginning with the determination day.

1 SS (Loss of Benefit) Regs, reg 1A(2); 2 reg 1A(3)

- 08431 If DMG 08430 **1.** to **3.** applies on the determination day but ceases to apply before the first day of the disqualification period as in DMG 08430 **4.** and **5.** DQ-day is the first day after the end of the period of 28 days beginning with the determination day¹.

1 SS (Loss of Benefit) Regs, reg 1A(7)

- 08432 In any other case, including where a sanctionable benefit is awarded after the determination day, DQ-day is the first day after the end of the period of 28 days beginning with the determination day¹.

1 SS (Loss of Benefit) Regs, reg 1A(6)

Second or subsequent conviction for benefit offence

- 08433 The disqualification period in respect of the circumstances in DMG 08406 is 13 weeks. Where on the determination day the offender¹
1. is in receipt of a sanctionable benefit **or**
 2. is a member of a joint-claim couple which is in receipt of a joint-claim JSA; **or**
 3. has a family member who is in receipt of IS, JSA, SPC or ESA DQ-day is²
 4. for a sanctionable benefit paid in arrears, the day following the first pay day after the end of the period of 28 days beginning with the determination day
 5. for a sanctionable benefit paid in advance, the first pay day after the end of the period of 28 days beginning with the determination day.

1 SS (Loss of Benefit) Regs, reg 2(2); 2 reg 2(3)

08434 In any other case¹, DQ-day is the first day after the end of the period of 28 days beginning with the determination day on which the Secretary of State decides to award

1. a sanctionable benefit to the offender **or**
2. a joint-claim JSA to a joint-claim couple of which the offender is a member **or**
3. IS, JSA, SPC or ESA to the offender's family member.

1 SS (Loss of Benefit) Regs, reg 2(6)

08435 In DMG 08433 and DMG 08434, DQ-day must be no later than 5 years and 28 days after the date of conviction of the offender for the benefit offence in the later proceedings¹.

1 SS (Loss of Benefit) Regs, reg 2(7)

08436 In these provisions family means¹

1. a couple **or**
2. a couple and any child or person of a prescribed description who is
 - 2.1 a member of the same household **and**
 - 2.2 the responsibility of either or both members of a couple **or**
3. a person who is not a member of a couple and any child or person of a prescribed description who is
 - 3.1 a member of the same household **and**
 - 3.2 the responsibility of that person.

1 SS Fraud Act 2001, s 13; SS CB Act 92, s 137(1)

08437 In respect of SPC, but only for the purposes of the loss of benefit provisions, a person of a prescribed description for the purposes of the definition of family above¹ is a person

1. who is an additional spouse in the case of a polygamous marriage² **or**
2. aged 16 or over who is in F/T education and is treated as a child for CHB purposes³.

1 SS (Loss of Benefit) Regs, reg 3A(7); 2 reg 3A(7)(a); SPC Act 02, s 12(1);

3 SS (Loss of Benefit) Regs, reg 3A(7)(b); SS CB Act 92, s 142

08438 Pay day¹, in relation to sanctionable benefits, is the day on which the benefit is due to be paid.

1 SS (Loss of Benefit) Regs, reg 1(2)

08439

Effect of restriction of benefit

General

08440 An offender has a restriction imposed on the payment of any sanctionable benefit payable to them within the disqualification period but no restriction is applied to any deduction from the benefit made for or in place of CSM¹. In the following paragraphs the offender is the person who is subject to the restriction in the payment of their benefit².

1 SS (Loss of Benefit) Regs, reg 20; 2 reg 1(2)

08441 The restriction of benefit is brought into effect by means of supersession¹. The effective date of that supersession is the first day of the disqualification period².

1 SS CS (D&A) Regs, reg 6(2)(j); 2 reg 7(28)

Sanctionable benefits other than IS, JSA, SPC and ESA

08442 Sanctionable benefits are not payable to the offender for any period during the disqualification period¹ but there are special rules for IS, JSA, SPC and ESA.

1 SS Fraud Act 2001, s 6B(5); s 7(2)

08443 Subject to the special rules for IS, JSA, SPC and ESA, where more than one sanctionable benefit is involved none is payable for any period during the disqualification period.

Amount payable - IS, ESA(IR) and SPC

08444 The amount of benefit payable to an offender or an offender's family member¹ will be reduced by 40% of a single claimant's personal allowance rate during the disqualification period except that the reduction will be 20% if

1. the offender or a member of the offender's family is pregnant or seriously ill²
or
2. in the case of IS and ESA(IR), the offender's applicable amount has been reduced pending the outcome of an appeal against a decision incorporating an IfW determination that they are not incapable of work (whether or not the appeal is successful)³.

1 SS (Loss of Benefit) Regs, reg 3(1)(c); reg 3A(1)(b); 2 reg 3(1)(a); reg 3A(1)(a); 3 reg 3(1)(b)

Amount payable - JSA

08445 JSA is not payable to offenders during the disqualification period¹ but they will have access to hardship applications - see DMG Chapter 35.

1 SS Fraud Act 2001, s 6B(5); s 6B(7); s 7(2); s 7(4); SS (Loss of Benefit) Regs, reg 5

Amount payable - joint-claim JSA - single offender

08446 Payment restrictions apply to any offender who is a member of a joint-claim couple during the disqualification period¹. In these cases, unless the couple qualify for hardship, the other member of the couple who is not the offender may receive either

1. JSA(Cont), if they satisfy the conditions for it **or**
 2. JSA(IB) at a rate equivalent to a single person's applicable amount
- as long as they are not subject to any labour market sanctions².

1 SS (Loss of Benefit) Regs, reg 4; 2 SS Fraud Act 2001, s 8(2)

Amount payable - joint-claim JSA - both offenders

08447 No joint-claim JSA will be payable¹ where both members of the couple would be subject to a sanction for a benefit fraud offence, or one member would be subject to a sanction for a benefit fraud offence and the other is subject to a labour market sanction. But they will have access to hardship applications - see DMG Chapter 35.

1 SS Fraud Act 2001, s 8(2); s 8(4); SS (Loss of Benefit) Regs, reg 11

Rounding

08448 A reduction under these circumstances shall, if it is¹

1. not a multiple of five pence, be rounded to the nearest such multiple **or**
2. a multiple of two and half pence but not of five pence, be rounded to the next lower multiple of five pence.

1 SS (Loss of Benefit) Regs, reg 3(3); reg 3A(4)

Changes in rate of benefit payable - IS, ESA(IR) and SPC

08449 The rate of benefit payable to an offender, or an offender's family member, may change. In such a case

1. the rules for reduction in the benefit payable should be applied to the new rate **and**
2. any adjustment to the reduction will take effect from the first day of the first benefit week to start after the date of change¹.

1 SS (Loss of Benefit) Regs, reg 3(5); reg 3A(5)

08450 When considering reductions in IS, ESA(IR) and SPC benefit week has the same meaning as in the relevant benefit regulations¹.

1 SS (Loss of Benefit) Regs, reg 3(6); reg 3A(6)

08451 - 08459

Court decision set aside

08460 Where a court quashes or sets aside a conviction which had resulted in a decision that a restriction on the payment of benefit was to be imposed

1. that decision may be revised at any time **and**
2. payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act 2001, s 6C(1); s 7(7); s 8(6); s 9(6); SS CS (D&A) Regs, reg 3 (8B)

Right of appeal

08461 There is no right of appeal against a decision that a sanctionable benefit is not payable or is to be reduced following convictions for benefit offences where the only ground of appeal is that

1. any of the convictions was wrong **or**
2. the offender did not commit the benefit offence in respect of which
 - 2.1 there has been agreement to pay an administrative penalty or
 - 2.2 a caution has been accepted¹.

1 SS CS (D&A) Regs, Sch 2, para 27

08462 - 08464

Changes following administrative penalty agreement

08465 This applies to the offender who may be

1. the claimant **or**
2. in the case of a joint-claim JSA, any member of a couple **or**
3. a family member.

08466 Where

1. the offender withdraws their agreement to pay the administrative penalty **or**
2. it is decided that the overpayment to which the agreement relates is not recoverable or due

any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act 2001, s 6C(2); s 8(7); s 9(7); SS CS (D&A) Regs, reg 3(8B)

08467 If, after the offender has agreed to pay an administrative penalty, the amount of the overpayment to which it relates

1. is revised on appeal **or**
2. is revised in accordance with a decision¹

the restrictions imposed following the agreement cease but new restrictions must be considered².

1 SSA 1998; 2 SS Fraud Act 2001, s 6C(3); s 8(8); s 9(8)

08468 If the restrictions cease as in DMG 08467 and there is a new disqualifying event consisting of any person listed in DMG 08465

1. agreeing to pay an administrative penalty in relation to the revised overpayment **or**
2. being cautioned in relation to the offence to which the old agreement relates

the disqualification period relating to the new disqualifying event is reduced by the number of days in the old disqualification period which had expired before the restrictions imposed following the old agreement ceased. In any other case any decision that a restriction on the payment of benefit was to be imposed may be revised at any time and payments and other adjustments made as if no restriction had been imposed¹.

1 SS Fraud Act 2001, s 6C(4); s 8(8); s 9(8)

08469 - 08499

Deductions from benefits for child support maintenance

Introduction

08500 The Child Support, Pensions and Social Security Act 2000 simplifies the way in which CSM is assessed. The new scheme applies to all new and non-linking applications for child support from 3.3.03. Existing cases will be converted to the new scheme from a future date when it is clear that the system is operating properly.

08501 New powers¹ have been introduced allowing deductions to be made for CSM from benefits other than IS and JSA(IB). These powers apply only to cases where maintenance has been assessed under the new rules.

1 SS (C&P) Regs, Sch 9B

08502 Under the new rules, the Child Support Agency will assess a flat rate of maintenance for NRPs in receipt of certain prescribed benefits. DWP will be responsible for administering requests from the Child Support Agency to make deductions from the non-resident parent's benefit in respect of this liability.

Benefits affected

08503 Deductions for CSM liability can be made from the following benefits¹

1. BA
2. Cat A RP
3. Cat B RP
4. Cat C RP
5. Cat D RP
6. IB
7. CA
8. MA
9. SDA
10. IISB
11. WMA
12. WPA
13. WP
14. JSA(C).

Note: Guidance dealing with deductions of CSM from SPC can be found in DMG Chapter 79.

1 SS (C&P) Regs, Sch 9B, para 1

Deductions

08504 The Secretary of State may make a deduction from any of the benefits listed above of the amount of maintenance payable **under the new rules** by the claimant in DMG 08303 and pay it to the PWC¹. That will be a flat rate liability. In addition there is power to make deductions in respect of the transitional amount of maintenance in certain cases when they are converted to the new scheme².

1 SS (C&P) Regs, Sch 9B, para 2(1); 2 Sch 9B, para 1

08505 The Child Support Agency will determine whether a deduction should be made. Preference will be given to making deductions from IS or JSA(IB).

08506 A deduction may only be made from one of the specified benefits in any one week¹.

1 SS (C&P) Regs, Sch 9B, para 2(2)

08507 No deduction may be made unless there remains at least 10p per week of the benefit in addition to the amount of the deduction¹.

1 SS (C&P) Regs, Sch 9B, para 2(3)

Arrears

08508 The Secretary of State may also deduct £1 per week from any of the benefits listed in DMG 08303 towards arrears of CSM¹. The deduction from arrears is **not** dependent on a deduction being made for flat rate maintenance.

1 SS (C&P) Regs, Sch 9B, para 3

08509 - 08599

Eligible Loans Deductions Scheme

Introduction

08600 The ELDS is a scheme whereby repayment of loans to claimants by certain lenders can be made by deductions from benefits. The purpose of the ELDS is to make affordable loans more accessible to those on low incomes who may not be able to use mainstream financial services. It aims to achieve this by reducing the debt recovery risk of lending to low income customers.

08601 The amendments¹ to regulations² allowing deductions from benefit under the ELDS came into effect on 27.12.06.

1 Social Security (Claims and Payments) (Amendment) (No. 2) Regulations 2006; 2 SS (C&P) Regs

08602 The ELDS allows deductions from all the main income-replacement benefits but the guidance in this Chapter deals only with deductions from CA, IB and RP where these benefits are paid separately. The rules are somewhat different where there is a combined payment of IB with IS or RP with SPC. Guidance dealing with how ELDS applies to these combined payments can be found in DMG Chapter 33 for IB/IS and DMG Chapter 79 for RP/SPC.

08603 - 08604

Definitions

Borrower

08605 “Borrower” means¹ a person who

1. has (either alone or jointly) entered into a loan agreement
 - 1.1 with an eligible lender **and**
 - 1.2 in respect of an eligible loan **and**
2. is entitled to an eligible benefit.

1 SS (C&P) Regs, Sch 9, para 7C(2)

Eligible benefits

08606 “Eligible benefits” are¹ CA, IB, RP, IS, JSA and SPC.

1 SS (C&P) Regs, Sch 9B, para 7C(2)

Eligible lender

08607 “Eligible lender” means¹

1. a credit union within the meaning of specific legislation² **or**
2. one of the following bodies provided it is licensed under specific legislation³
 - 2.1 an industrial or Provident society registered under specific legislation⁴
 - 2.2 a charitable institution within the meaning in specific legislation⁵
 - 2.3 a body entered on the Scottish Charity Register under specific legislation⁶
 - 2.4 with effect from 14.4.05, a community interest company for the purposes of specific legislation

which may be determined by the Secretary of State as an appropriate body to which repayments of loans may be made on behalf of borrowers.

Note 1: A credit union is a mutual association formed by people with a common bond such as employees, a union, or a religious group in which pooled savings are made. It provides members with accessible savings, low cost loans and other financial services.

Note 2: Community Interest Companies are limited companies, with special additional features; created for the use of people who want to conduct a business or other activity for community benefit, and not purely for private advantage. This is achieved by a “community interest test” and “asset lock” which ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role.

1 SS (C&P) Regs, Sch 9, para 7C(1); 2 Credit Union Act 1979, s 1; 3 Consumer Credit Act 1974;

4 Industrial and Provident Societies Act 1965, s 1; 5 Charities Act 1992, s 58(1);

6 Charities and Trustee Investment (Scotland) Act 2005

7 Companies (Audit, Investigations and Community Enterprise Act 2004, s 26

Eligible loan

08608 An “eligible loan” is¹ a loan made by a lender who is, at the time the loan was made, an eligible lender. The regulations specify¹ that the following **are not** eligible loans

1. loans secured by a charge or pledge **and**
2. loans which are for the purposes of business or self-employment **and**
3. loans by means of a credit card.

1 SS (C&P) Regs, Sch 9, para 7C(2)

Loan agreement

08609 "Loan agreement" means¹ an agreement between the eligible lender and the borrower in respect of an eligible loan.

1 SS (C&P) Regs, Sch 9, para 7C(1)

08610 - 08614

Deductions from benefit

08615 A DM may make deductions from one eligible benefit where¹ all of the following conditions are satisfied

1. the borrower has failed to make payments as agreed with the eligible lender for a period of 13 weeks before the date of the application and has not resumed making payments **and**
2. the borrower has given written permission to the eligible lender to provide to the Secretary of State personal data within the meaning of specific legislation² **and**
3. the eligible lender has agreed that no interest or other charge will be added to the amount owed at the date of the application **and**
4. no sum is being deducted from eligible benefit under the ELDS³ **and**
5. no sum is being deducted from the borrowers eligible benefit under the Act to recover an overpayment⁴ at the date of application **and**
6. no sum is being deducted from the borrowers eligible benefit under the Act to recover a social fund award⁵ at the date of the application.

*1 SS (C&P) Regs, Sch 9, para 7C (4); 2 Data Protection Act 1998, s 1;
3 SS (C&P) Regs, Sch 9, para 7C (4); 4 SS A Act 92, s 71(8); 5 s 78*

08616 The Secretary of State may only make deductions if¹ the borrower is entitled to an eligible benefit throughout a benefit week.

1 SS (C&P) Regs, Sch 9, para 7C(6)

Deductions from non income-related benefits

08617 Deductions cannot be made from CA if the borrower is entitled to one of the other eligible benefits (IB, RP, IS, JSA or SPC) unless that benefit is insufficient (in the case of IS, JSA or SPC after leaving 10p payable to the claimant) to enable the deduction to be made¹.

1 SS (C&P) Regs, Sch 9, para 7C (7)

08618 Deductions cannot be taken from IB or RP if the borrower is entitled to IS, JSA or SPC, unless that benefit is insufficient (after leaving 10p payable to the claimant) to enable deductions to be made¹.

Note: DMs should refer to DMG Chapter 33 for guidance on ELDS deductions where IB is paid with IS and DMG Chapter 79 where SPC is paid with RP.

1 SS (C&P) Regs, Sch 9, para 7C (7)

Example 1

Denis is entitled to IB at £78.50 per week and IS of £6 per week. The two benefits are paid separately. The DM receives an application from an eligible lender for deductions under the ELDS. The DM decides that no deductions can be taken from IB because, as the rate of deduction is £3.00, there is sufficient IS to enable the deduction to be made.

Example 2

Judith is entitled to IB of £78.50 per week and IS of £1.20 per week. The two benefits are paid separately. The DM decided that ELDS deductions at the rate of £3.00 should be taken from Judith's IB because there was insufficient IS to make the deduction.

08619 Subject to the rules in DMG 08616 and 08618, where the conditions in DMG 08615 are satisfied deductions may be made from one eligible benefit of an amount equal to 5% of the IS personal allowance for a single claimant aged not less than 25¹ rounded up to the nearest multiple of 5p². The personal allowance rate to be used is that which applies as at the benefit week in which the deduction is being made.

Note: Except in the case of IB paid with IS and RP paid with SPC, deductions can only be taken from one eligible benefit. So, if there is insufficient benefit to allow the full deduction to be made the DM cannot make a part deduction from one eligible benefit and part from another.

1 SS (C&P) Regs, Sch 9B, para 7C(3); 2 Sch 9B, para 1(1)

08620 - 08624

Priority between debts

08625 There is no need to consider the order of priority in the cases of CA, RP or IB (except where IB is paid with IS or RP is paid with SPC) because the only other deductions that can be made from these benefits are

1. deductions in respect of new scheme CSM
2. restrictions on the payment of benefit following convictions for benefit fraud
3. deductions to recover overpayments **and**
4. deductions to recover social fund payments.

The first two of these are not subject to the rules setting the priorities as between debts and the last two would preclude ELDS deductions as explained in DMG 08615.

Maximum deductions

08626 Again the rules relating to the maximum total amount of deductions from benefit do not apply to CA, RP, and IB except where IB is paid with IS (see DMG Chapter 33) or where RP is paid with SPC (see DMG Chapter 79).

08627 - 08629

Notification

08630 The DM must notify the borrower and the eligible lender in writing of the decision to make ELDS deductions, as far as practicable, within 14 days of making that decision¹.

1 SS (C&P) Regs, Sch 9, para 7C(5)

Circumstances in which deductions will cease

08631 The Secretary of State must cease making ELDS deductions if¹

1. there is no longer sufficient entitlement to an eligible benefit to enable deductions to be made **or**
2. entitlement to all eligible benefits has ceased **or**
3. a sum is deducted from the borrower's eligible benefit to recover overpaid benefit under the Act² **or**
4. the eligible lender notifies the Secretary of State that he no longer wants to accept payment by deductions **or**
5. the liability to make payment on the loan has ceased **or**
6. the lender has ceased to be an eligible lender **or**
7. the borrower no longer resides in GB.

1 SS (C&P) Regs, Sch 9, para 7C(5); 2 SS A Act 92, s 78(1)

08632 - 08634

Payments of amounts deducted

08635 Payments of sums deducted will be made to the eligible lender¹.

1 SS (C&P) Regs, Sch 9, para 7C(9)

08636 The Secretary of State will notify the borrower in writing of the total sums deducted when¹

1. a written request for this information is received from the borrower **or**
2. the deductions terminate.

1 SS (C&P) Regs, Sch 9, para 7C(11)

08637 - 08999

Appendix 1

List of sanctionable benefits

1. IS
2. JSA (except joint-claim JSA but see DMG 08446 - 08447)
3. IB
4. CA
5. BB - WP, BA, WMA and WPA but not BPT
6. IIDB (except CAA and ESDA paid with an II disablement pension)
7. IDB
8. SPC
9. ESA
10. SDA
11. War Pensions (except CAA and ESDA and mobility supplement)
12. non-passported HB/CTB.

Appendix 2

List of benefits which are not sanctionable benefits

1. MA
2. SMP
3. SSP
4. SAP
5. Ordinary and Additional SPP
6. Health in pregnancy grant
7. WTC
8. CTC
9. Pneumoconiosis (Workers' Compensation) 1979
10. 2008 Diffuse Mesothelioma Scheme
11. joint-claim JSA (but see DMG 08446 - 08447)
12. any RP
13. GRB
14. DLA
15. AA
16. SF payments
17. Christmas Bonus
18. CAA ESDA and mobility supplement paid under war pension legislation
19. CAA and ESDA paid with IIDB
20. BPT
21. passported HB and CTB.

Appendix 3

List of benefits which are disqualifying benefits

1. RP
2. JSA
3. DLA
4. AA
5. CHB
6. GA
7. SF payments
8. Christmas Bonus
9. IIDB including CAA and ESDA
10. War Pensions
11. BPT
12. HB/CTB
13. IS
14. IB
15. CA
16. BB – WP, BA, WMA and WPA
17. IDB
18. SPC
19. ESA
20. SDA.

Chapter 09 - Overpayments, Recoverability, Adjustments and Recoupments

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Chapter 09 - Overpayments, Recoverability, Adjustments and Recoupments

Introduction

09001 This Chapter gives guidance on

1. **Overpayments** - including revision and supersession and the calculation of overpayments (see DMG 09023 - 09150)
2. **Recoverability** - including misrepresentation, failure to disclose and causation (see DMG 09161 - 09300)
3. **Adjustments** - including offsets, abatements and interim payments (see DMG 09320 - 09412)
4. **Recoupments** - payments under the Employment Protection Acts (see DMG 09420 - 09432)

and relates to periods of overpayments beginning **on** or **after** 6.4.87.

09002 If DMs require guidance on periods of overpayments ending **before** 6.4.87, please contact DMA Leeds.

09003 - 09009

Action by the DM

General

- 09010 When the DM is considering an overpayment question involving any of the benefits listed in DMG 09161 they must
1. except where DMG 09026 applies, revise or supersede any relevant awarding decisions¹ **and**
 2. where appropriate, offset the benefit paid against the new amount awarded² **and**
 3. determine the period of any overpayment **and**
 4. calculate the total overpayment, that is, the difference between the amount to which there is entitlement or which is properly payable and the amount which has been paid **and**
 5. calculate the amount of the recoverable overpayment³ **and**
 6. give a decision on the overpayment question, stating
 - 6.1 the amount that is recoverable⁴ **and**
 - 6.2 the period during which the amount was paid⁵ **and**
 - 6.3 the person from whom it is recoverable⁶.

*1 SS A Act 92, s 71(5A); 2 s 71(6); SS (POR) Regs, reg 5; 3 SS A Act 92, s 71(2)(a);
4 s 71(2)(a); 5 s 71(2)(b); 6 s 71(3)*

09011 - 09022

The requirement for revision or supersession

General

09023 The following guidance deals with the requirement for a valid revision or supersession decision to be made before, or at the same time that an overpayment recoverability decision is made. Detailed guidance on revision is in DMG Chapter 03. Detailed guidance on supersession is in DMG Chapter 04.

09024 Overpayments involving the benefits listed in DMG 09161 are only recoverable when the DM has made

1. a new entitlement decision¹ (see DMG 09025) **and**
2. an overpayment recoverability decision² (see DMG 09028 - 09029).

1 R(SB) 7/91; SS A Act 92, s 71(5A); 2 s 71(2)

The new entitlement decision

09025 Except where DMG 09026 applies, the DM must ensure that the new entitlement decision revises or supersedes all the awarding decisions which operated during the period of the overpayment or were varied or reversed on appeal¹. There must be proper decisions altering entitlement for all parts of the period of the alleged overpayment

1. before the date on which the overpayment recoverability decision is made **or**
2. at the same time as the overpayment recoverability decision is made.

1 R(SB) 7/91; SS A Act 92, s 71(5A)

09026 There are exceptions to the general rule at DMG 09025. These are

1. where the facts and circumstances of the misrepresentation or the failure to disclose do not provide a basis for revising or superseding the decision¹ (see DMG 09031) **or**
2. certain JSA overpayments to 16/17 year olds² (see DMG 09295 - 09300).

1 SS (POR) Regs, reg 12; 2 SS A Act, s 71A

Evidence that revision or supersession has taken place

09027 Evidence must be provided to show that revision or supersession has taken place, otherwise the DM will have failed to meet the burden of proof required in overpayment cases¹. If that evidence is unclear to anyone who may read it, for example, when included as evidence in an appeal submission to a FtT, and fails to illustrate that a valid revision or supersession has taken place, then there must be some explanation of what is set out in it². Computer print-outs are commonly presented as evidence that revision or supersession has taken place and these will

usually require such an explanation. If available, a copy of the letter notifying the claimant of the decision will be useful, additional evidence. However, this too will usually require explanation of its contents.

1 R(IS) 2/96; 2 R(IB) 2/04

The overpayment recoverability decision

09028 The DM must make an overpayment recoverability decision at the same time as, or after the new entitlement decision. The decision must state

1. the amount that is recoverable¹ **and**
2. the period during which the amount was paid² **and**
3. the person from whom it is recoverable³.

1 SS A Act 92, s 71(2)(a); 2 s 71(2)(b); 3 s 71(3)

Revision or supersession decision not properly made

09029 If it is realized after an overpayment recoverability decision has been made that there has been no proper alteration of entitlement for all or some part of the period of the alleged overpayment, the recoverability decision in relation to the period not covered is of no force or effect. The DM must ensure that the awarding decisions for the entire period of the alleged overpayment are revised or superseded and a further recoverability decision made.

Revising or superseding recoverability decisions

09030 Overpayment recoverability decisions can be revised or superseded in the same way as any other decision. It is reasonable to revise or supersede a decision that the overpayment was not recoverable where new evidence comes to light that the claimant had previously concealed. However, if evidence was overlooked by the DM in the original decision, revision or supersession may not be appropriate. This is because the claimant may have destroyed evidence which was favourable to them on being told that the overpayment was not recoverable.

Recovery not dependent on revision or supersession

09031 Recovery is not dependent on revision or supersession where the misrepresentation or non-disclosure does not support revising the original decision¹. The DM may still consider recovery but in relation to the payment of benefit and not its award.

Cases covered

- **RP-incomplete decisions**

Decisions awarding Category A RP made before 1.10.86 are incomplete because they were subject to the earnings rule². It is not possible to revise or supersede these awards on account of the claimant's personal earnings. Past and current

awards of an increase for a child³ are also incomplete and cannot be revised or superseded on account of earnings.

- **Correction of accidental errors**

Where an accidental error in a decision can be corrected there should be no revision or supersession. Examples of accidental errors are given in DMG Chapter 03⁴.

- **Irregular encashments**

See DMG 09224 - 09228. The regulations cannot be used to avoid a revision or supersession which could properly be made⁵. The DM should first see whether the revision or superseding provisions apply⁶.

*1 SS A Act 92, s 71(5A); SS (POR) Regs, reg 12; 2 R(P) 3/84; 3 SS CB Act 92, s 80(1);
4 SS CS (D&A) Regs, reg 9A; 5 SS (POR) Regs, reg 12; 6 SS Act 98, s 9, s 10*

09032 - 09039

Calculation of the overpayment - period of the overpayment

Introduction

09040 Guidance on overpayment periods is given at DMG 09041 - 09045. There must be sufficient evidence of an overpayment to support the decision for the whole period concerned. Otherwise, the DM may be unable to prove that an overpayment is recoverable.

Start of the overpayment

09041 Where the DM has evidence that a change of circumstances occurred but the exact date is not known, the claimant should be asked to state the exact date. If

1. after making reasonable efforts, the claimant cannot provide the information, the DM should take the date as the last day of the month involved **or**
2. the claimant refuses to provide the information, the DM should take the date as the first day of the month involved.

The DM may use an earlier or later date if it is unlikely that the change could have occurred on the date fixed as above.

Example

An income is normally payable on a Thursday and the last day of the month is a Sunday. The date of change of circumstances should be taken as the Thursday before the last day of the month.

Start of the recoverable overpayment

Failure to disclose

09042 The DM should note the following

1. the period of a recoverable¹ overpayment starts on the day the claimant's benefit entitlement or payability would have altered had the material fact been disclosed when it occurred². This is because a DM can only decide that an overpayment is recoverable from the date the award would have been revised or superseded had the material fact been notified on time
2. where earnings affect the payability of benefit the claimant or dependant must have received the earnings in question
3. where payment of benefit is affected for a period before the date of receipt, for example where a retrospective pay award is made, any overpayment before that date is not recoverable

4. if earnings cannot immediately be found out in SS benefit cases, the material fact, as at DMG 09042 1., is the starting of work itself
5. in IS, SPC, JSA(IB) and ESA(IR) cases, late payments of income can be recovered³ (see DMG 09370 and for SPC see also DMG 85063 - 85065).

Example

A claimant receiving JSA(IB) starts P/T work on 4 August and is first paid on 15 August. The claimant signs at the Jobcentre on 12 August and on 14 August receives a payment of JSA(IB) only for the fortnight ending 12 August. The claimant discloses working on 27 October. The period of the recoverable overpayment starts on 13 August.

The material fact is the receipt of wages and not the P/T work. Had the 1st wage been disclosed on 15 August it would have affected the amount payable on 26 August.

1 SS A Act 92, s 71; 2 R(SB) 12/84; 3 SS A Act 92, s 74

Misrepresentation

- 09043 The recoverable overpayment starts on the day on which the correct decision would have taken effect, had the claimant not misrepresented. If a misrepresentation occurs on an initial claim for a daily or weekly benefit, the overpayment is recoverable from the beginning of the award.

End of the recoverable overpayment

Failure to disclose

- 09044 Where a claimant has failed to disclose, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before
1. the claimant discloses the material fact(s) as instructed to the office administering their benefit (see DMG 09236) **or**
 2. a third party makes sufficient disclosure (see DMG 09258).

Misrepresentation

- 09045 Where a claimant has misrepresented, the recoverable overpayment stops at the end of the period covered by the payment issued immediately before the claimant contacts the office administering their benefit and corrects the misrepresentation.

09046 - 09059

Calculation of the overpayment - principles affecting particular benefits

Effect of earnings on increases of SS benefits

- 09060 The instructions in the INF4 leaflet (or benefit specific equivalent) require a claimant to disclose a dependant's work.

Pay awards

- 09061 The effect of a pay award on earnings can be calculated at the time the pay award is settled. Although the dependant may not receive the increase until a later date the claimant will know the new amount being earned. Disclosure of the settled award can reasonably be expected.

Fluctuating earnings

- 09062 In the case of fluctuating earnings the claimant is also bound by the instructions in the INF4 leaflet (or benefit specific equivalent).

Example

A claimant was in receipt of RP and increase of RP for a dependant payable on Thursday. He had received a copy of leaflet BR2215 which instructs claimants to report changes in a spouse's earnings. His wife's earnings fluctuated above and below the limit and the 'all or nothing' rule applied. She was paid at 12 noon on Thursdays and told the claimant on Thursday evening of her wages. He disclosed the material fact on Fridays. The claimant's wife worked Monday to Friday, 5 days per week and the earnings for the Monday to Friday period were payable on the following Thursday. The Department was aware that the claimant's wife had fluctuating earnings. The question of an overpayment was referred to the DM and the following schedule drawn up

Calendar week commencing	Retirement Pension payday affected	Earnings payday	Period earnings paid for ("pay weeks")	Earnings received
18 May	29 May	29 May	19 May - 23 May	£30
25 May	5 June	5 June	26 May - 30 May	£40
1 June	12 June	12 June	2 June - 6 June	£70
8 June	19 June	19 June	9 June - 13 June	£60
15 June	26 June	26 June	16 June - 20 June	£35

The earnings limit was £60.50 per week and the earnings earned in one calendar week affected the increase of RP for a dependant due on the pay day immediately following that week as follows

	25 May Sun - Sat	1 June Sun - Sat	8 June Sun - Sat	15 June Sun - Sat	22 June Sun - Sat
Earnings paydays	29 May	5 June	12 June	19 June	26 June
Retirement Pension paydays	29 May	5 June	12 June	19 June	26 June
Amount paid	£30	£40	£70	£60	£35

Note: The earnings pay days are irrelevant to the calculation of the amount of the increase of RP for a dependant payable but are shown because they are relevant to the recoverability of the overpayment.

The result of the above was as follows

Pension payable 29 May, earnings £30, no effect.

Pension payable 5 June, earnings £40, no effect.

Pension payable 12 June, earnings £70, no increase of RP for a dependant payable.

Pension payable 19 June, earnings £60, no effect.

Pension payable 26 June, earnings £35, no effect.

In this case the DM decided that it was reasonable for the claimant to make disclosure of earnings on Fridays. His payment was available to him from Thursday mornings, so even a disclosure on Thursday afternoon (the earliest possible time) would not have prevented the overpayment. The DM therefore decided that none of the overpayment was recoverable.

09063 If the Department was not aware that

1. the claimants dependant had earnings at all **or**
2. the claimants fluctuating earnings had substantially changed for example because of a change of job or taking on an additional job

there may be a small initial non-recoverable overpayment because of the delay in receiving first or increased earnings. But the rest of the overpayment is recoverable because of the claimant's failure to disclose earnings or change in level of earnings. This applies even in odd weeks in which there is no overpayment¹.

1 R(SB) 11/86

09064 - 09065

Earnings not immediately ascertainable

09066 Where the claimant or dependant has earnings which are not immediately ascertainable and the claimant fails to disclose the starting of work the material fact is the starting of work itself. This applies where the earnings affect

1. personal RP **or**
2. an increase for an adult dependant of IB, SDA, RP or DP with US.

This is because had the starting of work been disclosed the Secretary of State would have

1. suspended benefit and considered paying interim payments until information from HMRC was available
2. referred the case to the DM to decide the amount of benefit payable during the period of suspension.

Example

A man in receipt of an increase of IB for his wife fails to disclose that his wife has bought a hairdressing salon which she is operating as a business. She is not a director of the business as it is not a limited company. The claimant is aware of what his wife has done but does not realise he has to disclose it.

When the Department discovers that the claimant's wife was working the Secretary of State suspends payment of the increase of IB, obtains accounts and refers the matter to the DM.

The DM supersedes the decision on the increase of IB for a change of circumstances from the date of the change and decides that the whole of the overpayment is recoverable. This is because had the claimant disclosed that his wife had a business at the time it started the Secretary of State would have suspended payment, superseded the award of benefit and no overpayment would have occurred.

09067 In the case of all SS benefits other than those in DMG 09066 the material fact is still the starting of work where

1. a claimant or dependant has earnings that are not immediately ascertainable **and**
2. the claimant fails to disclose starting work **and**
3. earnings affect benefits other than personal RP and increases for adult dependants of IB, SDA, RP or DisP with US.

This is because had the claimant declared the starting of work the DM would have estimated the claimant's likely earnings and that estimate would become the fact of

earnings. This would apply even if the eventual earnings received were less than the estimate.

Note: There is no need for the DM to estimate in overpayment cases based on the information which **might** have been available at the time. The earnings as eventually revealed when disclosure was made should be taken as the same as the estimate which would have been made.

Example

A man in receipt of IB increase for his wife fails to report that she has set up as a S/E market trader and wholesale vegetable supplier. She owns the business but it is not a limited company.

When the Department discovers that the claimant's wife is working the claimant submits her accounts which show a profit of £50 per week. The claimant states that he did not disclose her business earlier because she did not know whether the profits would be high enough to affect his increase for her.

The DM decides that the whole of the overpayment is recoverable because had the business been disclosed at the time the DM would have estimated earnings to be £100 per week.

09068 - 09078

Calculation of the overpayment - deductions

Introduction

09079 When calculating the amount of a recoverable overpayment, the DM must deduct

1. any amount that has been offset¹ (see DMG 09340 et seq for guidance on offsetting) **and**
2. certain underpayments of IS, JSA(IB), SPC or ESA(IR)².

1 SSA Act 92, s 71(6); SS (POR) Regs, reg 13(a); 2 reg 13(b)

Effect of offsets on overpayments

09080 Where an amount has been offset the DM should deduct that amount from the gross amount calculated as overpaid¹.

Note: A recoverable overpayment cannot be offset².

1 SSA Act 92, s 71(6); SS (POR) Regs, reg 13(a); 2 reg 6

Example 1

The DM supersedes an award of JSA(IB) and decides that it is not payable. ESA(IR) is awarded for the same period. Arrears of ESA(IR) are due under this decision but the JSA(IB) already paid is not offset against and treated as paid on account and the ESA(IR) arrears are paid in full.

There is no offset amount to be deducted when calculating any recoverable JSA(IB) overpayment¹.

Example 2

ESA(IR) is awarded and paid for a period of ten weeks. The DM supersedes this award and decides that ESA(IR) is not payable. JSA(IB) is subsequently awarded for the entire period for which ESA(IR) has been paid and for a further two weeks. Twelve weeks JSA(IB) arrears are due under the subsequent award. The DM revises the award of ESA(IR). The DM is not restricted to offsetting for the common period and the ESA(IR) paid is offset against the whole of the arrears of JSA(IB)².

The DM later notices that a balance of overpaid ESA(IR) remained after offset and the overpayment question is considered. The DM finds that the whole of the ESA(IR) paid is recoverable and reduces the recoverable overpayment by the amount of ESA(IR) which was offset against the JSA(IB)³.

Apart from the examples in this paragraph and in DMG 09340 et seq no other offsets can be made against any overpayments.

1 SSA Act 92, s 71(6); SS (POR) Regs, reg 6; 2 reg 5(1) & 5(2), Case 2; 3 reg 13(1)(a)

Effect of certain underpayments of IS, JSA(IB), SPC or ESA(IR) on recoverable overpayments

09081 In certain circumstances the amount of any recoverable overpayment can be reduced if an underpayment of IS, JSA(IB), SPC or ESA(IR) has occurred¹. If the DM determines when looking at the information

1. presented at the time of the original or any other determination **or**
2. as it would have appeared if the misrepresentation or non-disclosure had already been remedied

that an additional amount should have been payable, that amount should be deducted from the amount of the recoverable overpayment.

1 SS (POR) Regs, reg 13(b)

09082 No deductions should be made for entitlements related to any other claim¹.

Example

The claimant is in receipt of IS for his dependent son. The son claims JSA(IB) from the terminal date after he left school at age 18 but this claim was never put to a DM and his disclosure is not

1. associated with his father's IS award so that an overpayment occurs **and**
2. sufficient as in DMG 09258.

The JSA(IB) payable to the son is not deducted from the overpayment determined recoverable from the father because the father's IS award is unrelated to the son's JSA(IB) award.

1 SS (POR) Regs, reg 13

09083 DMs do not have to show that there is no relevant underpayment¹. If claimants want to rely on an additional entitlement reducing the overpayment it is for them to show on a balance of probabilities there is an underpayment.

1 R(IS) 1/05

Other SPC, IS, JSA(IB) or ESA(IR) awards which cannot be deducted from overpayments

09084 Where an additional amount of SPC, IS, JSA(IB) or ESA(IR) is due on revision or supersession, the additional amount cannot be deducted from the overpayment (the Secretary of State may recover from those arrears)¹. This situation may arise when on being notified of a recoverable overpayment the claimant states that a particular premium should have been paid for the period of the overpayment.

1 SS (POR) Regs, reg 16

Cases where deductions from benefit have been made

09085 Deductions may be made by the Secretary of State from a claimant's benefit for

1. recovery of an existing overpayment¹ **or**
2. repayment of a SF loan² **or**
3. in IS cases, for third party deductions of
 - 3.1 housing costs **or**
 - 3.2 miscellaneous accommodation charges **or**
 - 3.3 service charges for fuel and rent **or**
 - 3.4 fuel charges **or**
 - 3.5 water charges³ **or**
 - 3.6 mortgage interest payments⁴ **or**
 - 3.7 community charge arrears⁵ **or**
 - 3.8 fines⁶ **or**
 - 3.9 CT arrears⁷ **or**
 - 3.10 child maintenance **or**
 - 3.11 eligible loans **or**
 - 3.12 integration loans⁸.

1 SS (POR) Regs, reg 15(2) & 16; 2 SF (Recovery by Deductions from Benefits) Regs, reg 3; 3 SS (C&P) Regs, Sch 9; 4 Sch 9A; 5 Community Charges (Deductions from IS) (Scotland) Regs; Community Charges (Deductions from IS) (No. 2) Regs; 6 SS Fines (Deduction from IS) Regs; 7 Council Tax (Deductions from IS) Regs; 8 SS (C&P) Regs, Sch 9

09086 The DM should include in the calculation

1. any sum deducted as in DMG 09085 1. and 2. during the overpayment period. The recoverable amount for each week of the overpayment is the gross entitlement before any sum is deducted **and**
2. deductions for third party deductions where payment was made to the third party before the misrepresentation or failure to disclose that caused the overpayment was disclosed by the person who misrepresented or failed to disclose.

Note: Direct payments to third parties that are made as a result of Departmental error are not recoverable. This includes payments made because the payment section were not notified that entitlement to IS had ceased.

Example 1

The claimant is entitled to ESA(IR) of £64.30 per week but £5 is deducted to recover an existing overpayment. The claimant returns to F/T work but fails to disclose this. As a result, ESA(IR) is paid for four weeks whilst the claimant is working. When the true position comes to light, the case is referred to a DM. The DM supersedes the ESA(IR) award and decides that £257.20 (four weeks at £64.30 per week) has been overpaid because the claimant failed to disclose the material fact and is recoverable.

Example 2

The claimant is entitled to IS of £85 per week but £8 is deducted to repay a SF loan. Following discovery of the claimant's failure to disclose earnings of £30 per week for ten weeks, the DM supersedes entitlement to IS and decides that because the claimant failed to disclose, an overpayment of £250 is recoverable. The amount payable should have been £60 per week, after taking account of the earnings less a £5 disregard. The difference of £25 was overpaid for ten weeks.

Example 3

The DM determines that a deduction of £15 per week for gas should be made from the claimant's entitlement to JSA(IB) of £100.95 per week. The claimant misrepresents that her partner is working more than 16 hours a week. The claimant is therefore not entitled to benefit and JSA(IB) is overpaid for a period of 20 weeks.

The DM supersedes the award and decides that an overpayment of £1989.00 has been made as a consequence of the misrepresentation and is recoverable.

Included in the calculation are the deductions already paid to the energy supplier before the misrepresentation came to light. The deductions which have not been paid to the energy supplier are not included in the calculation.

09087 - 09095

Deduction of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments

09096 This section (DMG 09096 - 09106) gives guidance on deductions of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments, where decisions on both SS benefit and SPC, IS, JSA(IB) or ESA(IR) claims were made before the overpayment arose. It explains how the DM should calculate the

1. SPC, IS, JSA(IB) or ESA(IR) overpayment or additional entitlement **and**
2. SS benefit overpayment.

Note: "Additional" may mean additional to nil.

09097 SS benefits and SPC, IS, JSA(IB) or ESA(IR) normally affect each other in one of the following ways

Case 1

SS benefit paid on time and taken into account as a resource in determining SPC, IS, JSA(IB) or ESA(IR). No arrears of SS benefit and therefore no question of abatement **or**

Case 2

SS benefit not paid on time and arrears abated by the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time¹ **or**

Case 3

SS benefit not paid on time but reduction of arrears not made. The SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time is recovered later².

*1 SSA Act 92, s 74 & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 8
2 SSA Act 92, s 74, 71(8) & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 7*

Detailed guidance on abatement is contained in DMG 09370 et seq.

Case 1 - SS benefit paid on time, reduction unnecessary

09098 If SPC, IS, JSA(IB) or ESA(IR) has been paid to supplement SS benefit, the circumstances which caused the overpayment of SPC, IS, JSA(IB) or ESA(IR) may also have caused an overpayment of the SS benefit. The DM must base recalculation of SPC, IS, JSA(IB) or ESAS(IR) on the revised or superseded entitlement to the SS benefit. The result may be an additional entitlement to SPC, IS, JSA(IB) or ESA(IR), rather than an overpayment. This additional entitlement to

SPC, IS, JSA(IB) or ESA(IR) may affect the overpayment of SS benefit. The DM should deal with these cases as follows

1. SPC, IS, JSA(IB) and ESA(IR), calculate the difference between the SPC, IS, JSA(IB) or ESA(IR) overpaid and the amount of SPC, IS, JSA(IB) or ESA(IR) payable had the true position been known and the correct entitlement to SS benefit been paid. The result may be an overpayment or an additional entitlement
2. SS benefit, calculate the difference between the SS benefit actually paid and the correct amount of SS benefit payable
3. where the SPC, IS, JSA(IB) or ESA(IR) calculation under the first point results in an additional entitlement to SPC, IS, JSA(IB) or ESA(IR), that additional amount should be deducted from the SS benefit overpayment calculated as in the second point (see Example where the correct SS benefit entitlement is NIL).

Example

A claimant received WMA of £58.85 and IS of £37.65 weekly. It was later discovered that she had married and was living with her new husband who did not work.

Because she was no longer a widow, she was no longer entitled to WMA.

1. The IS calculation is
 - 1.1 IS actually paid £37.65
 - 1.2 amount payable if correct WMA had been known £123.00
 - 1.3 result, an additional IS entitlement £85.35
2. The first WMA calculation is
 - 2.1 WMA paid £58.85
 - 2.2 correct WMA entitlement Nil
3. The final WMA overpayment is the difference between 2.1 and 2.2 less the IS additional entitlement at 1.3. The WMA overpayment is Nil.

Case 2 - SS benefit arrears abated by SPC, IS, JSA(IB) or ESA(IR)

09099 If during the period of an overpayment

1. SPC, IS, JSA(IB) or ESA(IR) is paid pending payment of an SS benefit, or increase of SS benefit **and**

2. the arrears of the SS benefit, when due, are reduced by the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid had the SS benefit been paid on time the amount of the reduction is recoverable as SPC, IS, JSA(IB) or ESA(IR). There is no statutory provision to convert it into the SS benefit.

No entitlement to SPC, IS, JSA(IB), ESA(IR) or SS benefit

09100 Where the withdrawal of SS benefit would not produce entitlement to SPC, IS, JSA(IB) or ESA(IR), and the arrears of SS benefit were previously reduced by SPC, IS, JSA(IB) or ESA(IR) then

1. the SPC, IS, JSA(IB) or ESA(IR) overpayment is the total amount of SPC, IS, JSA(IB) or ESA(IR) actually paid, even though part of the total amount was recovered by reduction of the SS benefit arrears **and**
2. the SS benefit overpayment is the amount of SS benefit actually paid, that is the total payable less any amount by which arrears were reduced.

Example

IS and WMA are claimed at the same time and IS is awarded at £40 per week pending a decision on WMA. WMA is later awarded at £54.20 per week and IS ceases. The WMA arrears are reduced by IS previously paid, to only £14.20 per week for that period.

It is later discovered that the claimant had misrepresented the material fact that throughout her claim she was LTAHAW with a man who was in F/T work.

The DM decides that there was no entitlement to either IS or WMA and revises both decisions (but see DMG 09083 where there is an IS entitlement for the other person with whom the claimant is living).

The IS overpayment is £40 x the number of weeks paid, during the period of reduction.

The WMA overpayment is £14.20 x number of weeks for which arrears were reduced + £54.20 x number of weeks paid, following reduction.

No entitlement to SPC, IS, JSA(IB) or ESA(IR) only

09101 The principles as in DMG 09100 apply where there is no entitlement to SPC, IS, JSA(IB) or ESA(IR) but

1. the SS benefit is unaffected, for instance capital exceeds the prescribed limit **and**
2. SS benefit was previously reduced by SPC, IS, JSA(IB) or ESA(IR).

But the overall result is different because there is no overpayment of SS benefit.

Example

A woman claims IS and MA at the same time and IS is awarded at a £40 per week pending a decision on MA. MA is later awarded at £29.45 per week and IS reduced. The arrears of MA are reduced in full. It is later discovered that the woman had misrepresented the material fact that she had capital of £8000. This did not affect entitlement to MA but removed entitlement to IS.

The IS overpayment is £40 x the number of weeks paid (including the period of reduction) + £10.55 x the number of weeks IS paid in addition to MA.

There is no MA overpayment. The Secretary of State could waive recovery of the amount recovered from the arrears of MA so that the claimant would not be in a worse position than a claimant whose MA was paid on time. But this should not affect the DM's decision in any way.

No entitlement to SS benefit only

09102 Where the material fact affects only the entitlement to the SS benefit and the SS benefit was previously reduced by SPC, IS, JSA(IB) or ESA(IR) the SS benefit overpayment is reduced by the amount of additional SPC, IS, JSA(IB) or ESA(IR) now due.

Example

IS and WMA are claimed at the same time and IS awarded at £40 per week pending a decision on WMA. WMA is later awarded at £54.20 per week and the DM decides on revision that there is no entitlement to IS. The WMA arrears are reduced by the IS previously paid so that WMA of £14.20 per week was paid for that period. It is later discovered that the claimant had misrepresented the material fact that her 'husband' had been married before and that their 'marriage' was invalid. The DM decides that there was no entitlement to WMA.

There is no IS overpayment.

The WMA overpayment is

- £14.20 x number of weeks paid (period of reduction) **plus**
- £14.20 per week for the period after the DM's decision on reduction

The additional IS of £40 a week payable had there been no misrepresentation has been deducted from the overpayment of WMA. (Compare with DMG 09098

Example).

SS benefit and SPC, IS, JSA(IB) or ESA(IR) remain payable

- 09103 Where both SS benefit and SPC, IS, JSA(IB) or ESA(IR) continue to be payable the effect of the reduction is to substitute for an overpayment of SS benefit an overpayment of SPC, IS, JSA(IB) or ESA(IR) during the period of the overpayment.

Deduction of additional SPC, IS, JSA(IB) or ESA(IR) from SS benefit overpayments

- 09104 When SPC, IS, JSA(IB) or ESA(IR) and an SS benefit are claimed at the same time and SPC, IS, JSA(IB) or ESA(IR) is awarded pending a decision on the SS benefit, the arrears of the SS benefit when it is awarded will be abated. If subsequently it is found that the correct entitlement to the SS benefit is less than that originally awarded, the overpayment is calculated as in the following example.

Example

SPC and RP are claimed at the same time and SPC is awarded at £123.00 per week pending a decision on RP. RP is later awarded at £94.10 per week and SPC reduced to £28.90. The award of RP makes no practical difference to the claimant since SPC and RP are paid together at a combined rate of £123.00 a week and all the RP arrears are abated. It is later discovered that the claimant had failed to disclose the fact that his wife had died. The RP properly payable was £58.85.

Adopting the same approach as in DMG 09098 the result is as follows

Period before the award of RP

1. the SPC calculation is
 - 1.1 SPC actually paid £123.00
 - 1.2 amount payable had the true facts been known £96.50
 - 1.3 result, an SPC overpayment £26.50.

Period after the RP award

1. the SPC calculation is
 - 1.1 SPC actually paid £28.90
 - 1.2 SPC payable if correct RP payable £37.65
 - 1.3 result, an additional SPC entitlement £8.75
2. the first RP calculation is
 - 2.1 RP paid £94.10

- 2.2 correct RP entitlement £58.85
- 2.3 RP overpayment is the difference between £94.10 and £58.85 less the additional SPC entitlement £26.50

Where the weekly SPC overpayment during the period of reduction as calculated above is **greater** than the SS benefit overpayment after the period of reduction the same consideration as in DMG 09101 applies.

Case 3 - Reduction of arrears not made

09105 If during the period of an overpayment

- 1. SPC, IS, JSA(IB) or ESA(IR) was paid pending payment of an SS benefit **and**
- 2. the arrears of SS benefit were not reduced

the rate and payability of the SS benefit paid in error is irrelevant when calculating the recoverable SPC, IS, JSA(IB) or ESA(IR) overpayment for the period the SS benefit was not taken into account.

Example

A claimant is paid JSA(IB) of £40 per week for ten weeks. The claimant then receives SS benefit arrears of £200 (10 x £20 a week) due to failure of reduction procedures and JSA(IB) is reduced to £20 a week. At that time it is also discovered that the claimant had earnings after disregard of £30 per week.

If the claimant declared the earnings at the start, JSA(IB) would have been paid at £10 per week for the first ten weeks. As a result the JSA(IB) overpayment is $10 \times (40-10) = £300$. The balance of £10 for ten weeks which should have been recovered from the arrears of the SS benefit, but was not, is not a recoverable overpayment. This is because it was not the consequence of a misrepresentation or failure to disclose. But it is recoverable by other means (see DMG 09393)¹.

1 SSA Act 92, s 74 & para 2, Sch 10; SS (POR) Regs, reg 7 & 8

09106 If the earnings also affect the SS benefit

- 1. a separate calculation should be carried out for that benefit **and**
- 2. the recoverable overpayment of SS benefit should be reduced by the amount recoverable to avoid the same amount being recovered¹ twice.

1 SSA Act 92, s 74

09107 - 09122

Direct payments

- 09123 The guidance in this Chapter explains the recoverability of overpayments made to people paid under direct payment arrangements.
- 09124 In all cases the DM decides the amount and recoverability of the overpayment¹ but if
1. both conditions in DMG 09125 are satisfied the overpayment is recoverable whether or not the claimant has misrepresented or failed to disclose a material fact **or**
 2. both conditions in DMG 09125 are not satisfied the overpayment is only recoverable if the claimant has misrepresented or failed to disclose a material fact.

In cases where the conditions in DMG 09125 **are not satisfied** the DM should apply the guidance contained in the rest of this Chapter.

1 SS (POR) Regs, reg 11(1)

Conditions 1 and 2

- 09125 The conditions referred to in DMG 09124 are¹

Condition 1

The Secretary of State has certified that the overpayment, or a specified part of it, is materially due to the arrangement for payments to be made by direct payment.

Condition 2

Notice of what would happen, if there was any overpayment, was given to the claimant, or to a person acting for the claimant, before they agreed to the arrangement

1. in respect of claims to RP or GRB made by telephone, either orally or in writing **or**
2. in all other cases, in writing.

1 SSA Act 92, s 71(4); SS (POR) Regs, reg 11(2)

- 09126 In deciding whether the Secretary of State is entitled to recover benefit under DMG 09124 and 09125 the DM should under
- **Condition 1**, require a certificate signed by the Secretary of State in the terms described
 - **Condition 2**, find as fact that notice was given as required (see DMG 09129 and 09132)

- 09127 Where the arrangement was agreed to before 6.4.87, DMG 09125 **Condition 2** need not be satisfied if claimants, or persons acting for them, completed a statement at the time direct payment was arranged, that

1. they had read and understood the conditions applying at that time to credit transfer payments **and**
2. they understood that they would have to repay any overpayment, if the decision awarding benefit was reviewed, or varied on appeal¹.

Note: Before deciding that the benefit is recoverable under this provision the DM will need evidence that such a statement was made (see DMG 09130 and DMG 09132).

1 SS (POR) Regs, reg 11(3); SS (C&P) Regs, reg 21

Example

Assuming the supersession of the award takes effect from either the date of change or the first day of the benefit week:

1. if the change takes place before the cut off period and the claimant discloses during the cut off period there is a system caused overpayment;
2. if the change takes place during the cut off period and the claimant discloses after that period there is a system caused overpayment;
3. if the change takes place during the cut off period but the claimant discloses in advance there is not a system caused overpayment;
4. if the change took place before the cut off period and the claimant disclosed on their crediting day but after the account had been credited, that is not a system caused overpayment;
5. if the change takes place on the crediting day but after the account has been credited, that is not a system caused overpayment.

Note: It is possible to have a system caused overpayment followed by a non-recoverable overpayment where a further payment is credited to the claimant's account following their notification of a change of circumstances.

09128 Where all or part of the overpayment is not covered by a certificate (see DMG 09125 **Condition 1**), or notice was not issued or signed (see DMG 09125 **Condition 2**, or DMG 09127), the overpayment, or the overpayment not covered by the certificate, is only recoverable if the claimant has misrepresented or failed to disclose a material fact.

Evidence that notice was given or signed

Strongest evidence

09129 Where the Secretary of State is required to give notice as in DMG 09126 the strongest evidence that the notice was given is

1. where the direct payment form which the claimant completed contains the notice - the completed form **or**
2. where the direct payment form has a "tear-off" to be retained by the claimant - the form completed by the claimant and a specimen uncompleted form showing that the tear off would have been attached **or**
3. where a separate form gives notice to be retained by the claimant - a record on the claimant's papers showing that such a form was issued **or**
4. where the claimant has retained the notice and options two and three do not apply - a copy of the notice as retained by the claimant.

If the Secretary of State supplies none of the above DMG 09131 should be considered.

09130 Where the claimant had to sign a declaration that he had read and understood the conditions relating to direct payment, the best evidence of this is

1. the form the claimant signed **or**
2. a record on the claimant's papers that such a form had been signed, together with a specimen form

If the Secretary of State supplies neither of the above, DMG 09132 should be considered.

Secondary evidence

09131 Where the Secretary of State is required to give notice and none of the evidence as in DMG 09129 is available

1. the Secretary of State may provide a general statement by an officer who administers the benefit paid by direct payment **and**
2. if the general statement states that the benefit branch's procedural arrangements would have prevented the operation of direct payment arrangements unless notice of the conditions had been issued, the decision maker should accept that notice was given **and**
3. if an appeal is made on this point, the Secretary of State's officer may have to be called to give evidence to the tribunal

09132 Where claimants had to sign that they had read and understood the conditions relating to direct payment and evidence as in DMG 09130 is not available

1. the Secretary of State may provide a general statement by an officer who administers the benefit paid by direct transfer **and**
2. if the general statement states that the procedural arrangements would have prevented the operation of direct credit transfer arrangements unless the claimant had signed that he had read and understood its conditions, the DM should accept that this was done **and**
3. if an appeal is made on this point, the DM should consider calling the officer to give evidence to the tribunal.

09133 - 09142

Child maintenance collected by the Department

IS, JSA(IB) and ESA(IR)

09143 If a court order or voluntary payment in respect of child maintenance was collected by the Department for any part of the period of the overpayment and that payment was being treated as income, the DM should do the same in calculating the correct amount of IS, JSA(IB) or ESA(IR) payable and incorrect amount of these benefits paid¹. Any payment of child maintenance not treated as income is ignored.

1 SSA Act 92, s 74A

Example

John is entitled to child maintenance of £50 per week. This is collected by the Department. He is entitled to JSA(IB) of £138 per week because the child maintenance is not treated as relevant income. It is discovered that John has been overpaid and for the period of the overpayment his entitlement is nil. However, although child maintenance has been paid to the Department for the period of overpayment, there is no provision for reducing the overpayment on account of the child maintenance collected by the Department, therefore the recoverable overpayment is the full amount of JSA(IB) entitlement.

Note: Although the claimant is **liable** to repay the full amount of JSA(IB) received, the Secretary of State cannot recover the overpayment twice. The claimant is only **required** to repay the gross overpayment less the amount the Secretary of State has already recovered in the form of child maintenance collected by the Secretary of State for the same period.

The diminishing capital calculation

Misrepresentation or failure to disclose capital

- 09144 If an overpayment occurs because a claimant has misrepresented or failed to disclose an amount of capital that they have, it should be noted that
1. the DM should treat that capital as having been reduced at the end of each quarter from the start of the overpayment period by the amount of SPC, IS, JSA(IB) or ESA(IR) overpaid in that quarter¹. These reductions are cumulative and a quarter means a period of 13 weeks starting with the first day on which the overpayment period began and ending on the 90th day thereafter². This calculation is only valid when deciding the amount recoverable. In cases involving SPC, increases of actual capital within the AIP should be ignored in the application of the diminishing capital calculation
 2. if a repeat claim is made after the period of the overpayment, the DM should decide any entitlement to SPC, IS, JSA(IB) or ESA(IR) by reference to the claimant's actual capital
 3. the DM cannot treat the capital as having been reduced over any period other than a quarter or in any other circumstances³. Applying this does not prevent the normal disregards from being allowed, such as expenses in connection with the sale of a house⁴
 4. the DM does not have to guess what a claimant might have done had they been informed by the Department that capital was over the capital limit.

Note: The capital a claimant possesses includes cases where the capital concerned is possessed by a child or young person who is a member of the family of the claimant and is part of their applicable amount⁵.

1 SS A Act 92, s 71(1); SS (POR) Regs, reg 14(1); 2 reg 14(3); 3 reg 14(2); 4 IS (Gen) Regs, reg 49(a) & 50; 5 R(IS) 10/08

Example

A claimant states that had the capital limit been known the capital would have been used to buy a larger house to avoid it being taken into account as a resource. The DM does not accept this speculation which is entirely different in principle from diminishing capital calculation.

- 09145 The DM should not apply the diminishing capital calculation if
1. it is clear that a diminishing capital calculation does not affect the amount recoverable. For example, the amount of undeclared or under declared capital above the cut off point is considerably greater than the actual amount of "wrongly" paid benefit. But see DMG Chapter 29 for IS and JSA, DMG

Chapter 52 for ESA and DMG Chapter 84 for SPC where the undisclosed capital resource is property **or**

2. the overpayment is not caused by undeclared or under declared capital.

Evidence

09146 It should be noted that

1. the DM needs evidence of all capital changes during the period of the overpayment. This is because the onus is upon the DM to show that tariff income was at a particular level or that capital was over the limit throughout that period
2. in cases where the claimant has failed to make reasonable efforts to provide requested information, the DM may make assumptions about the capital held and in doing so, discharge the burden of proof¹
3. the DM should consider the question with reference to the regulations and case law relevant at the time² if there is any dispute as to whether the capital was available or was income rather than capital.
 - where the capital is in the form of unit trusts, stocks or shares, monthly valuations can be obtained from Benefit Delivery Specialist Operations
 - in the case of stocks, the enquiry should quote the redemption date. Also the exact figure for one particular day of each month is provided as this is the only information held by Benefit Delivery Specialist Operations. The DM should assume a value on the working day after the date of valuation most beneficial to the claimant
 - for unit trusts the valuation provided by Benefit Delivery Specialist Operations is a monthly average figure which should be used for all paydays which fall within the quoted month.

1 R(SB) 34/83; 2 R(SB) 2/83; R(SB) 35/83

Example

Friday 14 August total share value £1,500

Monday 28 September total share value £1,200

Here the DM assumes that the share value dropped to £1,200 on Monday 17 August. The DM should accept alternative evidence unless it can be refuted or is inherently improbable.

Calculating the overpayment

- 09147 As explained at DMG 09144 there is no diminishing capital calculation until the end of the first quarter of the overpayment¹. If the overpayment is for less than a quarter any overpayment should be calculated on the basis of the claimant's actual capital.

1 SS (POR) Regs, reg 14

Example

A claimant fails to disclose receipt of capital of £8050 and JSA(IB) remains in payment at £100 per week for 10 weeks following the receipt of capital. The claimant has been overpaid £100 x 10 = £1,000 despite the fact that capital was only £50 over the limit.

- 09148 At the end of the first quarter following the start of the overpayment (that is 89 days after the first day of the overpayment period) the DM should deduct from the actual capital held on that date the amount of SPC, IS, JSA(IB) or ESA(IR) **overpaid** in the quarter.

Note: This amount is not necessarily the same as the SPC, IS, JSA(IB) or ESA(IR) entitlement during the quarter. For example, payment may have been delayed. It is the Secretary of State responsibility to provide evidence of the amount of SPC, IS, JSA(IB) or ESA(IR) actually paid in the quarter.

- 09149 At the end of the second quarter the DM should deduct from the actual capital held on that date the amount of **overpaid** SPC, IS, JSA(IB) or ESA(IR) in that quarter plus the amount **overpaid** in the first quarter and so on for each successive quarter.
- 09150 The period of the recoverable overpayment should be decided as in DMG 09041 - 09044 even though for part of that period there may be no **recoverable** overpayment because of the diminishing capital calculation. For the purposes of the diminishing capital calculation the start of the overpayment period is the start of the recoverable overpayment period.

09151 - 09160

Recoverability - principles governing benefits

Benefits covered

09161 This guidance applies to the following benefits¹

1. benefits under the Acts²
2. CHB³
3. IS⁴
4. SF payments⁵
5. benefits under repealed Acts⁶
6. Supp B (including HB Supplement and single payments)⁷
7. JSA⁸ (but see DMG 09295 - 09300 for certain overpayments of JSA to 16/17 year olds)
8. SPC⁹
9. ESA¹⁰.

1 SSA Act 92, s 71(11); 2 SS CB Act 92, s 122; SS A Act 92, s 71(11)(a); 3 s 71(11)(f); 4 s 71(11)(b); 5 s 71(11)(e), s 71 ZA; SS CB Act 92, s 138; 6 s 186, Sch 10; 7 s 186, Sch 10; 8 s 71(11)(aa); 9 s 71(11)(ab); 10 s 71(11)(ac)

Benefits not covered

09162 The following payments are not recoverable

1. refunds of NHS charges for prescriptions, dentures, dental treatment, glasses, wigs and fabric supports claimed on or after 1.11.74
2. travelling expenses of patients attending hospital
3. payments for welfare foods
4. travelling expenses for prison visits etc.
5. third party deductions for housing costs, water charges, community charge arrears or fuel made in error to third party after termination of a Supp B/IS award
6. fares to a DWP office
7. Christmas bonus payments
8. HB/CTB
9. any extra-statutory payments
10. interim payments of Supp B made under provisions in being before 6.4.87
11. SSP and statutory paternity pay
12. WC (Supp) and allowances under the PB and MDB.

General principles

- 09163 Misrepresentation and failure to disclose have different meanings in law. The DM should decide at the outset, under DMG 09196 et seq and DMG 09234 et seq, which ground is appropriate bearing in mind that
1. both grounds can occur during the period of an overpayment for the same or different parts of that period
 2. the DM should identify each misrepresentation or failure to disclose
 3. the misrepresentation and failure to disclose may be wholly innocent.
- 09164 When considering the recoverability of an overpayment, the law¹ says that
1. where any person
 2. whether fraudulently or otherwise²
 3. misrepresents, **or**
 4. fails to disclose
 5. a material fact, **and**
 6. this results in an overpayment of benefit for any period

the amount of the overpayment is recoverable from the person misrepresenting or failing to disclose that material fact.

1 SS A Act 92, s 71(1); 2 R(SB) 21/82; R(SB) 2/92 Appendix

- 09165 This guidance also applies to the recovery of JSA overpaid to 16/17 year olds in severe hardship cases where the Secretary of State certificate has been revoked¹.

1 SS A Act 92, s 71A

The material fact

- 09166 Material fact means any fact which had it been known about and properly acted upon by the Department would have prevented the overpayment in question. It is a fact which is objectively material to the decision of the Secretary of State to make an award of benefit. Whether the particular person considers it material is of no relevance¹.

1 R(IS) 7/94

Example 1

The disclosure of widowhood is not disclosure of an income from WMA.

Example 2

An overpayment of an increase of IB in respect of a dependant occurred where the claimant had failed to disclose that his wife was in receipt of RP. The overpayment was recoverable from the claimant and the 'material fact' in relation to the overpayment was the payment of RP to the claimant's wife.

09167

Recoverability not dependent on misrepresentation or non-disclosure

09168 The Secretary of State may sometimes recover overpaid benefit even though there was no misrepresentation or failure to disclose a material fact. Guidance on these cases is given as follows

1. overpayments of IS, JSA(IB), SPC and ESA(IR) caused by late payments of income¹ (see DMG 09370)
2. overpaid interim payments (see DMG 09323 - 09339)
3. some overpayments where payment was made by direct payment (see DMG 09123 - 09128).

1 SS A Act 92, s 74, 71(8) & Sch 10; SS CB Act 92, s 122; SS (POR) Regs, reg 8; IS (Gen) Regs, Part V

Non-recoverable overpayments

09169 Overpayments may arise in circumstances other than a misrepresentation or failure to disclose, for example arithmetical errors in a claimant's favour. These should normally be excluded from the calculation of the amount of the overpayment that is recoverable.

SF payments

09170 If a claimant misrepresents or fails to disclose in a claim for a SF¹ payment, the amount recoverable² is the difference between

1. the amount paid **and**
2. the amount which would have been properly payable had all the relevant facts been known.

1 SS CB Act 92, s 138; 2 SS A Act 92, s 71 & 71ZA

09171 - 09174

Recoverability - evidence

Consideration of evidence

09175 The onus of proof that overpaid benefit is recoverable initially rests with the DM¹.

1 SS A Act 92, s 71(1)

09176 The DM should

1. examine the evidence and decide whether it is sufficient to determine the overpayment and the recoverability question¹ **and**
2. make further enquiries where evidence is insufficient **and**
3. bear in mind that if statements made by the DM are contested at any appeal hearing, the FtT will look for supporting evidence².

1 SS A Act 92, s 71; 2 R(SB) 10/86

09177 When considering the evidence the DM should bear in mind that

1. there is no general rule of law that corroboration of a claimant's own evidence is necessary¹
2. the strict rules of evidence do not apply to the decision making authorities
3. the standard of proof required in decision making is less stringent than that required in criminal proceedings
4. a case should be decided on the balance of probabilities and not beyond reasonable doubt.

1 R(1) 2/51; R(SB) 33/85

09178 The practical effect of DMG 09177 is that the DM should only reject a claimant's evidence when it is self-contradictory, or inherently improbable.

Note: Where there is no evidence to support a claimant's statement, the DM should consider all the relevant circumstances before deciding to accept it on the balance of probabilities.

Example 1

The claimant has in the past failed to report changes in the amount of her P/T earnings. On this occasion she says that she told the office in writing of a change but no record of disclosure can be found. The DM decides, on a balance of probability, that the claimant's evidence is inherently improbable and that she did not disclose the latest change in her earnings.

Example 2

A claimant interviewed in connection with an overpayment of benefit says that the change in circumstances leading to the overpayment was reported to Jobcentre Plus in a letter. But in a later interview it is alleged that the claimant's partner called into the office and reported the change. No trace of either disclosure can be found.

The DM decides that the two statements are self contradictory and, on a balance of probabilities, no disclosure of the material fact took place.

09179 If a claimant states disclosure has been made to the office orally or in writing, the DM should

1. ensure that all records, both paper and computer-based have been checked including any linked casepaper, associated file or General Benefit Unit in combined payment of benefits cases **and**
2. give a statement that the above action has been taken.

Destruction of documents

09180 Documents relating to benefit claims are routinely destroyed at intervals. Where this has happened there can be no presumption as to the content of the missing documents¹. DMs can take account of all available evidence, including secondary evidence, and decide on the balance of probabilities what the original documents might have contained.

Note: There is special guidance when recoverability is being considered under direct payment arrangements (see DMG 09123).

Example 1

There is an overpayment because of capital which has not been taken into account. The claim form has been destroyed. The DM obtains a copy of the claim form in use at the time to establish what the claimant was asked. Having established there was a question about how much capital the claimant had, it is possible to ask the question whether, on the balance of probabilities, the claimant properly declared the capital amount, entered the wrong amount, or left the question blank.

Example 2

An SPC overpayment was discovered when the claimant completed form PC2 and disclosed that he was in receipt of an occupational pension. The PC1 claim form had been destroyed. The DM applied the principle² that the law presumes that where administrative processes are conducted, things are done correctly unless it is proven otherwise ie. there must have been an PC1 for the award of benefit to have been made. The fact that the overpayment occurred is far stronger than the possibility that the correct information was on the claim form.

The claimant argued he was sure he had put details of the occupational pension on the PC1, asking why would he put it in the PC2 but not the PC1? The DM considered the claimant's assertion and whether there were any other sources of evidence which would, on the balance of probabilities, support or disprove it.

1 R(IS) 11/92; 2 CS/27/87

09181 There may be cases where it is not possible to reconstruct the contents of the missing documents and DMs cannot show that the claimant misrepresented or failed to disclose. The overpayment is not recoverable unless

1. there is a criminal conviction for an offence which gave rise to the overpayment **or**
2. the claimant says there was misrepresentation or failure to disclose **or**
3. the claimant has made a later misrepresentation in which case the overpayment may be recoverable from the date of that misrepresentation.

Oral admissions

09182 Where documentary evidence to support the overpayment decision cannot be obtained, an oral admission by a claimant may be sufficient evidence for the period to which it relates, if

1. there is a factual record of that admission **or**
2. the officer to whom the admission was made is available to confirm it in writing or in the event of an appeal be called as a witness.

Note: The oral admission by the claimant should contain enough information to support the overpayment decision.

09183 To support a decision on the grounds that a claimant was in paid F/T work the admission must

1. cover the whole of the recoverable part of the overpayment **and**
2. show that the definition of F/T work in the particular benefit regulation is satisfied.

Example

A claimant is in receipt of IS. Sometime after he claims he states that his partner has been working P/T since before his claim.

Enquiries are made of his partner's employer and all the wages details are available.

The DM calculates the overpayment of IS from his date of claim on the basis of the information held by the DWP and decides it is recoverable because of the claimant's admitted innocent misrepresentation.

Criminal conviction

09184 A criminal conviction for an offence which caused an overpayment shifts the burden of proof to the claimant for the period of the charges¹. The DM needs a certificate of conviction stating the charges found guilty of from the appropriate court to show that the conviction is for the benefit and period at issue. Once this has been done the onus shifts to the claimant. This is because the onus of proof on the prosecution in criminal proceedings is a heavier one than on a DM before a tribunal.

1 R(S) 2/80

Refusal to give evidence

09185 If there is some evidence (for example intermittent observation) of undisclosed work

1. the DM should regard the onus of proof as discharged if the claimant refuses to make a statement, **and**
2. since the claimant has refused to state when the work started, it is reasonable to decide that the claimant was in work from the date the suspicion arose.

See DMG Chapter 29 for IS and JSA, DMG Chapter 52 for ESA and DMG Chapter 84 for SPC where a legal personal representative refuses to disclose how the capital in a late claimant's estate arose.

Direct payments

09186 See DMG 09129 about evidence that the required notice was given.

09187 - 09195

Recoverability - misrepresentation

General

09196 Misrepresentation can occur where

1. a written statement made by a claimant in connection with a claim is incorrect or incomplete, even where there has been a full disclosure of the material fact in connection with an earlier claim for benefit¹ **or**
2. a written statement made by an interviewing officer based on information supplied by the claimant is found to be incorrect or incomplete (see DMG 09197) **or**
3. part of a claim form is left blank (see DMG 09198) **or**
4. an oral statement is incorrect or incomplete (see DMG 09199) **or**
5. an instrument of payment is presented for payment following a relevant change of circumstances (see DMG 09200) **or**
6. a coupon ES24JP is signed.

1 R(SB) 3/90

09197 Where a claimant alleges that disclosure of a material fact was made during an interview, but was not properly recorded by the interviewing officer, the DM should

1. consider the written documents and any evidence from the claimant about how the alleged disclosure took place **and**
2. decide, on a balance of probabilities whether the written statement was qualified orally at the interview¹.

Note: The claimant is responsible for the correct completion of forms. The fact that a form was completed on the claimant's behalf does not lift this responsibility².

1 R(SB) 18/85; 2 R(IB) 14/96

Incomplete statements

09198 Misrepresentation is a positive act by the claimant¹. However, it can also be an act of omission. The DM should give particular attention to what a claimant has actually represented on any incomplete statement.

Example 1

Margaret has claimed JSA(Cont) and receives two occupational pensions. At Part 6 of the JSA1 claim form she declares receipt of one pension and is instructed to complete Part 19 of the form if she receives more than one pension. Margaret fails to declare receipt of the second pension. This omission is a misrepresentation.

Example 2

Robert claims an increase of IB for his wife. His wife has boarders and on the claim form he is asked

“Does your spouse or partner have boarders or lodgers? (Yes or No) If yes, please say how much each of them pays”.

Robert makes no entry on this part of the form. The circumstances are such that it is reasonable for the DM to infer that there are no boarders or lodgers. The failure to answer the question is a misrepresentation.

1 R(SB) 9/85

Oral misrepresentation

09199 If there is evidence of information provided orally by a claimant, such as a report on form A6 by the interviewing officer, and that information is found to be incorrect, the DM should regard the oral statement as a misrepresentation.

Note: It is difficult to prove that an oral statement was made and so difficult to prove the misrepresentation where reliance is placed on an oral statement. If the claimant appeals the written record should be produced as evidence, and the interviewing officer may be called as a witness.

Misrepresentation by action

09200 Most payments are now made by direct payment, but in a few cases payment may be made by cheque. Each cheque contains a declaration to be signed by the claimant. In these cases, the DM should refer to the guidance at DMG 09215. In cases where the declaration has not been signed, then the claimant, when presenting the cheque for encashment, represents that they

1. believe there is currently an award in their favour **and**
2. are the beneficiary or they are acting on behalf of the beneficiary or estate.

If they know this is not so that is a misrepresentation.

Circumstantial evidence of misrepresentation

09201 If direct evidence of misrepresentation is unavailable the DM may still consider misrepresentation where there is circumstantial evidence to support this. Examples of circumstantial evidence are

1. the claimant does not deny receiving the payments
2. benefit was paid by means of a cheque
3. the casefile holds evidence of the amount awarded.

Directing further enquiries

09202 The DM

1. should not normally ask for direct evidence to be produced, or for circumstantial evidence to be sought, where it is not already available **and**
2. can usually decide recoverability on the alternative ground of failure to disclose, on the evidence already available (see also DMG 09175 and 09176).

Knowledge of the material fact

09203 Misrepresentation can occur even though a claimant is not aware of the true position¹. For example, if a claimant's wife conceals from him the fact that she has earnings of her own, a statement by the claimant that she has none may still be a misrepresentation.

1 R(SB) 21/82; R(SB) 9/85

09204 Whether a misrepresentation has occurred when the claimant was not aware of the material fact depends partly upon the wording of the declaration on the form that has been signed.

1. There is no misrepresentation¹ if the declaration on the form is qualified, as on many older postal claim forms, for example
"Declaration: as far as I know, the information on this form is true and complete" **and** the claimant was not aware of the material fact at the time of signing

In this case the DM may go on to consider whether the claimant failed to disclose a material fact, if there is evidence that the claimant became aware of the fact at a later date (see DMG 09234).

2. The statement is a misrepresentation if the declaration on the form is not qualified, for example

"Declaration: the information on this form is true and complete".

Whether the claimant knew the material fact is irrelevant. The only exception is where claimants state that they did not know what they were signing (see DMG 09206 and DMG 09207).

1 Jones & Sharples v. CAO [1994] 1 All ER (CA) 225

09205 Where the declaration is made as in DMG 09204 1. and the material fact is income which was not entered on the claim form

1. if the income belongs to the claimant, the DM should accept without further enquiry that the claimant knew that it was being received,
2. if the income belongs to a claimant's partner, the claimant should be asked why it was not declared at the time the form was signed. If the claimant did not know of the income there is no misrepresentation. The DM should go on to consider whether the claimant failed to disclose a material fact. It is important to remember that knowledge of the material fact has to be shown in failure to disclose cases.

09206 A claimant or representative may state that an incorrectly completed form with a signed declaration is not a misrepresentation because the claimant completing the form did not know what they were doing¹. This may happen where someone should have been appointed to run that claimant's affairs, and the claimant completed the forms in question. That claimant may not then be held responsible for the completion.

1 R(IS) 4/06

09207 Where it is claimed that a person is not responsible, the DM should consider the following points¹

1. Non-responsibility is limited to those who are blind, illiterate or do not fully understand a particular form they have signed. This may be caused by poor education, illness or inborn incapacity and can be temporary or permanent.
2. Poor education, illness or inborn incapacity alone is not sufficient to show non-responsibility. People are expected to take reasonable steps to understand what they sign.
3. The burden of proof rests with persons who contend that they are not responsible. Those who are merely content to sign without taking the trouble to find out the general effect of the form cannot claim to be non-responsible.
4. People may contend that they are not responsible because, having signed the form, they believe it had one effect when in fact its effect was quite different. They must show that they had taken steps or been given information which gave grounds for the belief and there was a radical, serious or very substantial difference between what they signed and what they thought they were signing.

5. People are responsible where they were merely mistaken as to the legal effect of the form, whether the mistake was their own or that of an advisor.

Note: Non-responsibility may also be referred to as non est factum, which means “it is not his deed”.

1 Saunders v. Anglian Building Society [1971] AC 1004

09208 - 09214

Declarations on cheques

09215 When a claimant signs a cheque they sign a declaration which states: “I am entitled to the money on this cheque”. Since no mention is made of reporting of facts which could affect the amount of payments, signing the declaration is normally only a misrepresentation where the award of benefit

1. ceased (see DMG 09031 option 3 - irregular encashments) **or**
2. continues and the claimant reports the cheque as lost, stolen or destroyed and a duplicate has been issued (see DMG 09224 – irregular encashments) **or**
3. has been corrected (see DMG 09031 option 2 - correction of accidental errors) **or**
4. was revised or superseded before any declaration is signed.

Declarations on Jobcentre Plus coupons (ES25JP)

09216 Where a claimant does not report a relevant change of circumstance the DM should consider the declaration on the signed coupons (form ES25JP) and, if necessary, the JSA1 claim form to decide whether the claimant misrepresented.

09217 Claimants will have misrepresented by signing a coupon if

1. they have failed to report a change in their own or their dependant’s circumstances (but see DMG 09221 where the change occurs after signing for an advance period) **or**
2. they have done any work which has not been declared.

Example 1

A claimant who signs every fortnight on a Wednesday starts F/T work, continues to sign and does not declare the work. Some time later the Secretary of State receives information that the claimant has been working continuously. The claimant misrepresented on each form ES25JP signed during the period of the overpayment.

Example 2

A claimant making a fresh claim for JSA on form JSA1 does not admit to working as a window cleaner. The situation comes to light many months later by which time a substantial overpayment has occurred. The DM decides that the direct cause of the overpayment was the claimant's misrepresentations on the ES25JP, during the overpayment period.

09218 To rely on misrepresentation on JSA coupons the DM should have

1. all the signed coupons relevant to the overpayment period (but see DMG 09201 and DMG 09219 where only a sample of coupons are available) **or**
2. an admission by the claimant that the misrepresentation had been made, with dates and specific periods covered.

09219 Where

1. only a sample of signed coupons is available for the overpayment period **and**
2. the claimant does not deny receiving the payments

the DM may still consider misrepresentation for those portions of the period for which no coupons are available, on any circumstantial evidence available (see DMG 09201).

09220 Misrepresentation cannot be relied on for any period for which the claimant has been excused signing. Failure to disclose should be considered for that portion of the overpayment period. This is because the payment of benefit was not made in consequence of a declaration.

Example

A claimant does not declare employment which lasts 14 weeks (seven fortnights) and continues to sign for five of the fortnights involved, being excused signing for the remaining two fortnights. The DM decides that the claimant has misrepresented on signing the five coupons and that JSA overpaid in the remaining two fortnights was caused by the claimant's failure to disclose.

09221 If a change of circumstances occurs on a day after the claimant signs for an advance period, there is no misrepresentation on the coupon (see DMG 09222). The DM should consider failure to disclose.

09222 If the claimant is asked whether a specific change is likely to occur in the foreseeable future when signing for an advance period and

1. the reply is recorded **and**
2. there is evidence that the claimant knew of the impending material change when signing the coupon

then the DM may still rely on misrepresentation.

Declarations on JSA1 - compensation or occupational pensions

09223 Claimants will misrepresent if they answer “no” to the relevant question in part six of form JSA1 and they are expecting to receive a compensation or an occupational pension. In order to rely on the claimant’s misrepresentation on form JSA1, where signed coupons are not available

1. there must be evidence, for example from an employer that the claimant knew, when signing form JSA1 that a compensation would be paid, **and**
2. the DM must be able to show that JSA would not have been paid had the question been answered correctly (see DMG 09201 - 09202). Note If there was a considerable delay before the compensation was received this action may not be possible because, had the correct answer been given, it would have been unreasonable to delay awarding JSA.

Irregular encashments

09224 Irregular encashments arise where money has been obtained by the misuse of instrument of payments or by false representation.

Example 1

Instrument of payment stolen and cashed by a third party.

Example 2

Encashment by another person for a period after the death of the claimant. Where there is an overpayment of benefit as a result of late notification of death, the awarding decision must be superseded before the DM can consider whether the overpayment is recoverable¹.

Example 3

Duplicate payment obtained by a false declaration that the original instrument of payment was lost, stolen or destroyed when in fact it was cashed.

Example 4

Alteration of the amount on an instrument of payment.

Example 5

Duplicate or multiple claims (see DMG 09225).

1 SS Act 92, s 71(5A); SS Act 98, s 10(1)

09225 Although payments as a result of duplicate or multiple claims are irregular encashments, there are grounds to revise or supersede the awards as there was

1. no entitlement to any of the payments **or**
2. some entitlement under the person’s real identity but not to the amount paid.

Example 1

A claimant receiving JSA(IB) makes duplicate claims under a variety of names at four other Jobcentre Plus offices. There are grounds to revise the awards on the fraudulent claims. The decisions were made in ignorance of the fact that the claimant was already receiving benefit under the proper name and at the correct rate.

Example 2

Someone with no personal entitlement to ESA(Cont) impersonates a relative and makes a claim in that person's name. ESA(Cont) is awarded on the relative's NI contribution record. There are grounds to revise the award as the decision was made in ignorance of a material fact. The claimant was not the person declared on the claim form and was not entitled to benefit under the true identity.

09226 The DM should consider the following evidence

1. the identity of the person alleged to have misrepresented **and**
2. either the certificate of conviction, where that person has been prosecuted in connection with the irregular encashment, or a written admission, or both a certificate of conviction and a written admission.

As fraud investigations will have been made some or all of the relevant instruments of payment should also be available. The DM may therefore decide recoverability on the evidence of the instrument of payment and the above points in this paragraph.

Note: Where a written admission by the claimant or a certificate of conviction is not available, the DM should consider other evidence. This may be a record of the interview under caution or in Scotland, a record of an oral admission before two witnesses.

09227 Where no instruments of payment are held for some or all of the overpayment period the DM should decide recoverability on

1. the evidence of the certificate of conviction, **or**
2. the admission, **or**
3. any other evidence that may be available.

09228 Conviction shifts the burden of proof from the DM to the claimant (see DMG 09184). But an admission of misrepresentation on its own does not. If no certificate of conviction or cashed instruments of payment are held and the person denies misrepresenting despite an earlier admission, the DM may only satisfy the burden of proof if

1. the denial is inherently improbable or self-contradictory (see DMG 09179), **or**

2. there is other evidence available, for example the testimony of a handwriting expert or direct evidence from a witness such as a PO® clerk, who saw the act of misrepresentation (see DMG 09201).

09229 - 09233

Recoverability - failure to disclose

Secretary of State's instructions

09234 The Secretary of State may require a claimant or beneficiary to provide information or evidence or to notify changes of circumstances that may affect either

1. continuing entitlement to the award of a benefit **or**
2. the payment of benefit¹.

1 SS (C&P) Regs, reg 32(1A); reg 32(1B); JSA Regs, reg 24

Knowledge of the material fact

09235 Claimants have a duty to disclose¹

1. material facts (see DMG 09166) that are known to them **and**
2. material facts (see DMG 09166) which they ought to know by making reasonable enquiries².

Note: The burden of enquiry placed upon them, varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

1 SS (C&P) Regs, reg 32(1); 2 R(SB) 28/83

Example 1

David failed to disclose that his wife had earnings even though she was away from home at regular intervals, leaving the children in his care. In this case, it is reasonable to suppose that David ought to have known why she was absent.

Example 2

Asif's solicitor received £15,000 damages on behalf of his client who did not know that his solicitor had received the money. If Asif is unskilled in business matters it is unreasonable to suppose that he ought to have known about the money unless he

1. had turned a blind eye to whether his solicitor had received the money **or**
2. made enquiries about the receipt of the money.

Disclosure

09236 In order for the claimant to discharge their duty to disclose, a disclosure must

1. be of the material fact itself **and**
2. be made in relation to the claimant's own claim for benefit **and**
3. be made in the manner and to the place instructed by the Secretary of State¹ (see also DMG 09245 - 09246).

1 R(SB) 54/83; R(SB) 15/87; Hinchy v Secretary of State for Work and Pensions; R(IS) 7/05

09237 Except in cases where regulations¹ specifically require the claimant to report changes of circumstances in writing, an oral disclosure will suffice if it meets the above criteria².

1 SS (C&P) Regs, reg 32; JSA Regs, reg 24; 2 R(SB) 12/84

Meaning of failure to disclose

09238 Disclosure means “to reveal”¹. If the relevant DM knows the material fact, a claimant cannot fail to disclose, even though he may have failed in his duty to do so. It should be accepted that the relevant DM has actual knowledge where there is evidence that the information had reached the relevant section.

1 Hinchy v Secretary of State for Work and Pensions EWCA [2003] Civ 138; R(IS) 7/05

Effect of a failure to disclose

09239 Where the claimant has not complied with issued instructions and therefore fails to disclose information or notify a change of circumstances, known as the ‘material fact’ (see DMG 09166), any resulting overpayment may be recoverable from them¹. The recoverable amount is limited to the amount of benefit that would not have been paid if the claimant had actually disclosed at the correct time. However, the DM must ensure that the claimant was under a duty to disclose².

1 SSA Act 92, s 71(1); 2 SS (C&P) Regs, reg 32(1), 32(1A) & 32(1B)

When a failure to disclose arises

09240 A failure to disclose a material fact arises¹

1. when a change of circumstances occurs between written statements of circumstances, e.g. the claim form and a review form, and the change is not reported **or**
2. where a written statement is inaccurate or incomplete.

1 SSA Act 92, s 71(1); SS (C&P) Regs, reg 32

Example

Joe claims JSA on form JSA1 dated 1.9.09. At that time he was not receiving an occupational pension. He is awarded JSA(Cont) from 4.9.09. However, he is subsequently awarded a pension and payments begin on 4.1.10. On 25.2.10, the local office conduct a periodical review of Joe’s entitlement to benefit and he completes a review form declaring that he has been in receipt of an occupational pension since 4.1.10. Joe has failed to declare receipt of an occupational pension throughout the period from 4.1.10 to 24.2.10.

When a failure to disclose does not arise

09241 Disclosure is not expected where the information is within public knowledge and therefore known to the DM.

Example

Frank is in receipt of RP and SPC. He is not expected to report to the office handling his SPC payments that his RP payments have increased due to annual uprating.

Duty to disclose other than for JSA

09242 The claimant must disclose a material fact where they

1. have been clearly and unambiguously advised of the need to disclose the fact¹ **and**
2. were aware of the fact **or**
3. ought to have been aware of the fact by making reasonable enquiries².

Note: The burden of enquiry placed upon the claimant varies from case to case depending on the nature of the material fact and how easily they could have discovered it.

1 R(IB) 4/07; R(IS) 9/06; 2 R(SB) 28/83

Instructions to claimants

09243 Instructions to claimants about the notification of information are usually given in claim forms, notes that accompany claim forms and leaflets. These can be accepted as sufficient to inform the claimant of their obligation to disclose any change of circumstances as listed therein. However, the instructions must be clear and unambiguous¹.

1 R(IS) 9/06; R(IB) 4/07

09244 The claimant should comply with the instructions given to them. They are not entitled to form views about how the benefit system works or what knowledge the relevant DM might have¹. As claim forms and leaflets are periodically updated, the DM will need to ensure that they have a copy of the relevant version when looking at what instructions the claimant has been given and when.

1 Hinchy v Secretary of State for Work and Pensions [2005] 1 WLR 967; R(IS) 7/05

Example

Susan was in receipt of DLA and IS with a DP. She received an INF4 leaflet in relation to her IS award which told her to report if her income went up or down. Her award of DLA came to an end. She did not tell the office administering her IS benefit payments. She failed to disclose the material fact that her level of income had changed. The overpayment of the DP was recoverable from her.

Modification of instructions

- 09245 An officer acting on behalf of the Secretary of State may modify the written instructions given to a claimant about how disclosure should be made. This does not have to be in writing, but it must be specifically in respect of the benefit in question. The officer may say that the information the claimant has disclosed will be passed on to the relevant office where disclosure should ordinarily be made. This would be a modification to the original instruction and the claimant will have discharged their duty to disclose as per DMG 09236.
- 09246 If an officer tells the claimant that there is no need to make a further disclosure, the claimant may understand that the information is not relevant to their benefit entitlement. In these circumstances, the claimant's duty to disclose will have been discharged.

Additional duty to disclose

- 09247 In addition to the duty described in DMG 09242, the claimant also has a duty to disclose if
1. they were aware of the material fact **and**
 2. the fact represented a change of circumstances **and**
 3. it was reasonable to expect the claimant to know that their benefit might be affected by the change in circumstances **and**
 4. they did not report the change as soon as reasonably practicable after it occurred¹ by giving notice of the change
 - 4.1 to the appropriate office² or postal address
 - 4.2 in writing or by telephone **or**
 - 4.3 in whatever form specified by the Secretary of State.

1 SS (C&P) Regs, reg 32(1B); 2 reg 2(1);

Reasonably to be expected

- 09248 The test is what could reasonably be expected of the claimant concerned, having regard to their circumstances. It is not necessary for the claimant to understand the actual impact of the change. The DM must look at the information given to the claimant about
1. the conditions of entitlement to the benefit **and**
 2. why it had been decided that the claimant satisfied those conditions and thus became entitled to the benefit **and**

3. what changes the claimant may have been told to notify.

Example

Martin was in receipt of the mobility component of DLA at the higher rate. He had a hip replacement operation and after a period of recuperation, his mobility has improved. The "Notes" he was given with his claim form included - "We need to know if anything you told us changes about how your illness or disability affects you. Please tell us if things get easier or more difficult for you. And tell us if you need more or less help". This is sufficient to put him under a duty to disclose the improvement in his condition.

Timing of the disclosure

09249 Disclosure has to be made as soon as possible to be effective. However, there is no requirement for a claimant who is aware of a change that is about to take place, to notify the relevant office in advance¹. However, see DMG 09251 - 09252 for JSA claimants.

Example

Karen is entitled to ESA(Cont) and began PWHL on 5.7.10. The earnings limit for PWHL is £93.00 a week, but Karen currently earns £91.00 a week. Karen's employer has told her that she will receive a wage increase in November 2010. Karen is not required to disclose the increase in her earnings until it comes into effect.

1 R(SB) 3/81

Duty to disclose for JSA

09250 **[See DMG Memo 25/10]** Just as for other benefits, the Secretary of State may give the person instructions to notify specific changes in connection with payment of JSA claimed or awarded¹. This may be contained in, for example, information leaflets, letters or notes. Provided that the instruction to disclose a particular fact is clear and unambiguous, an omission to do so will be a breach of their duty to disclose².

1 JSA Regs, reg 24(5); reg 24(5A); 2 R(IB) 4/07; R(IS) 9/06

09251 In addition to the duty set out in DMG 09250 above the claimant must tell the Secretary of State of any change of circumstances which has occurred or they are aware is likely to occur which they might reasonably be expected to know might affect

1. the continuing entitlement to JSA, or in the case of a joint-claim couple, the entitlement of the couple to a joint-claim for JSA **or**
2. the payment of JSA **or**
3. the amount of JSA.

09252 They must notify such changes as soon as reasonably practicable after

1. the change occurs **or**
2. they become aware of the likely change

by giving notice in writing or by telephone, unless the Secretary of State accepts it in another form, to an office of the DWP specified by the Secretary of State¹.

1 JSA Regs, reg 24(7)

Disclosure where one benefit affects another

09253 A claimant's duty to report changes in circumstances may include reporting the award of, or changes to, other benefits where one benefit affects another. The essential fact which the DM should identify is what the Secretary of State directed the claimant to do. The claimant is not entitled to make any assumptions about the administrative arrangements of the department. In particular they are not entitled to assume the existence of infallible channels of communication between one office and another¹.

1 R(IS) 7/05

Example

Edward is in receipt of RP and SPC on behalf of himself and his wife, Barbara. Local office A administers his payments of SPC. Local office B administers his payments of RP. These offices are not in the same building and there are no channels of communication between them. Edward has received leaflet INF4(PC) which instructs him to telephone or write to the office shown in the letter that advised him of his SPC award if a change of circumstances, such as the death of a spouse or partner occurs. The address and telephone number is that of local office A. Edward has received similar instructions to report changes of circumstances, in respect of his RP award, to local office B. When Barbara dies, Edward reports her death to local office B and assumes that the information will be passed on to the relevant officials at local office A. As there is no process for such an exchange of information between local office A and B, Edward has not discharged his duty to disclose until he reports Barbara's death to local office A.

Claimant alleges that disclosure made

09254 Where a claimant alleges that the material fact was disclosed orally or in writing, but no trace of the disclosure can be found, the DM should decide whether disclosure was actually made as per DMG 09177 - 09179. If the DM decides that disclosure

1. was not made, they should consider recoverability of the overpayment in the normal way **or**

2. was made, the DM should consider whether the disclosure was sufficient as in DMG 09236.

09255

Disclosure by person(s) other than the claimant

09256 **[See DMG Memo 25/10]** The duty to disclose which is placed on the claimant, also extends to

1. appointees (see DMG 09280)
2. legally appointed representatives
3. both members of a joint-claim couple (see DMG 09250 – 09252)
4. guardians.

Where recovery is sought from one of the people listed above, the DM must be able to show that the person has a legal duty to disclose.

09257 Where an appointee is in place, a disclosure by them is equivalent to a disclosure by the claimant.

09258 Where an appointee is not in place, disclosure by a third party (other than those listed at DMG 09256) is sufficient only if

1. the information is given in connection with the claimant's own benefit and according to the Secretary of State's instructions **and**
2. the claimant is aware that the information had been given in that way **and**
3. in the circumstances it is reasonable for the claimant to believe it is unnecessary to take any personal action¹.

A casual or incidental disclosure by some other person is not sufficient to satisfy the second or third condition. However, see DMG 09238.

1 R(SB) 15/87

Disclosure at an office which displayed the 'ONE' logo

09259 Offices of the DWP which displayed the 'ONE' logo were a form of one stop shop where there was a mandatory requirement that an office of a participating local authority **should** pass on information relating to SS benefits administered by DWP **except** where it is related solely to benefits administered by the local authority.

09260 Therefore, there can be no failure to disclosure in cases where a claimant made disclosure to an office displaying the 'ONE' logo and the benefit in question was a SS benefit, eg, IS or JSA.

09261 However, DMs should be aware that offices described as a 'One Stop Shop' or a 'One Stop Office' which are run by local councils and are concerned with all matters for which the council have responsibility, have **no** requirement to pass on information relating to SS benefit entitlement. Thus, disclosure to such an office is not sufficient for the claimant to discharge their burden.

09262 - 09265

Recoverability - other considerations

Causation

General

09266 For an overpayment to be recoverable¹, other than as at DMG 09168, the DM must establish whether the overpayment has been caused by a failure to disclose or a misrepresentation of a material fact. If it has, then the necessary causal link has been established and the Secretary of State is entitled to recover the overpayment.

1 SSA Act 92, s 71(1); R(SB) 3/81; R(SB) 21/82; R(SB) 15/87

Causation and failure to disclose

09267 To determine whether an overpayment has been caused by a claimant's failure to disclose a material fact, it is necessary to consider whether the overpayment would still have occurred if there had been proper disclosure of that fact. The DM should note that:

1. if the overpayment **would not** have occurred, **if** there had been proper disclosure of the material fact, a failure to make that disclosure **is** a cause of the overpayment: whereas
2. if the overpayment **would have** occurred, **even if** there had been proper disclosure of the material fact, a failure to make that disclosure **is not** a cause of the overpayment.

Is there a causal link between the failure to disclose and the overpayment

09268 Where there has been a failure to disclose a material fact, the DM should consider whether the necessary causal link with the overpayment exists by establishing the following:

1. what, if any, information about the material fact was received by the Secretary of State and, when
2. what, if anything, happened to that information after it was received by the Secretary of State
3. what, if any, action was taken by the Secretary of State in response to receiving that information

09269 If the material fact which the claimant should have provided has, in fact, been provided by someone else, that does not **necessarily** mean that the claimant's failure to disclose is not a cause of the overpayment. The DM should still establish whether, at any of the stages at DMG 09268 **1., 2. and 3.**, disclosure from the claimant would have prompted the office to which disclosure should have been

made, to take action that would have brought the overpayment to an end sooner than was the case.

- 09270 If, at any stage, it can be shown that the overpayment would have continued regardless of the disclosure of the material fact, then the causal link is broken. The recoverable amount should not therefore include any amount overpaid after the date on which that link is broken.

Example

Office A administers claims for CA. Office B administers claims for RP. Jack has been caring for his wife for a number of years and receives CA. On reaching his 65th birthday, Jack claims and is awarded RP. He does not tell office A about this. However, office B sends a note to office A to advise that RP has been awarded. Julie, the officer in office A that handles Jack's claim, receives the note but is unaware that RP and CA overlap and she takes no action to adjust Jack's CA. There is no causal link between Jack's failure to disclose to office A and the overpayment of CA. Had Jack told office A about his RP, Julie would still not have adjusted the CA. The overpayment would have happened anyway.

Had Julie been aware of the overlapping rules, then she would have taken action to adjust Jack's CA and the overpayment would have come to an end at the time of the adjustment. The whole amount of the overpaid CA would have been recoverable from Jack.

Burden of proof

- 09271 It is for the DM to show that the claimant's failure to disclose was a cause of the overpayment. The DM should have regard to all available records and any background knowledge about office procedures and practices that the DM or other officers hold. If it is not possible to determine what would probably have happened if the claimant had made the required disclosure (eg. because the DM cannot establish what happened to a letter from a third party that contained the required information), the overpayment will not be recoverable.

Number of causes for an overpayment

- 09272 It is possible for there to be more than one cause for an overpayment. For example, the claimant may have failed to disclose a material fact but argues that the Department failed to take reasonable steps on its own initiative that would have brought the material fact that had to be disclosed, to the Department's attention. Both failures helped bring about the overpayment. However, providing that one of the causes was the claimant's failure to disclose, then the causal link is not broken¹.

1 Duggan v CAO; R(SB) 13/89

When is the causal link not broken

09273 Examples of when the causal link is not broken include:

1. wrong assumptions are made about a claimant's circumstances which give rise to an overpayment **or**
2. administrative duties are performed negligently in some way, eg. a failure to link two cases in the same household **or**
3. the discovery of the material fact by an office other than the one to which disclosure must be made¹ **or**
4. receipt by the office to which disclosure must be made, of information that does not allow a revision or supersession to be done, eg. receipt of a letter alleging fraud, but which does not contain sufficient detail to identify the relevant claimant **or**
5. the discovery of information that might allow revision or supersession but the details of which must be put to the claimant first, eg. the receipt of a General Matching Service (GMS) printout.

1 Morrell v Secretary of State for Work and Pensions; R(IS) 6/03

Causation and misrepresentation

09274 To determine whether an overpayment has been caused by a claimant's misrepresentation, it is necessary to consider whether a correction of that misrepresentation, by the claimant, would have made any difference to the overpayment.

As is the case with failure to disclose, when the DM is considering whether the necessary causal link exists, it is useful to establish the following:

1. what, if any, information was received by the Secretary of State and, when
2. what, if anything, happened to that information after it was received by the Secretary of State
3. what, if any, action was taken by the Secretary of State in response to receiving that information

The DM should establish whether, at any of the stages above, correcting the misrepresentation would have prompted the office responsible for the payment of benefit, to take action that would have brought the overpayment to an end sooner than was the case.

Example 1

Stanislav's IS claim form was completed by his wife because of his illiteracy. Stanislav's wife receives a pension, but the questions on the IS claim form relating to pension payments were left unanswered. The DM did not seek to obtain answers to the questions at issue and an award of IS was made regardless. Here it may be

argued that the claim form was incomplete rather than inconsistent and ambiguous and that it contained sufficient information to enable the DM to make an award of IS. Realising his error, Stanislav signed a letter written by his wife giving full details of her pension payments and this was sent to the IS office. On receipt of this letter, action was taken to supersede the award of IS and an overpayment calculated. Here the causal link was broken on receipt of Stanislav's letter. The whole amount of IS overpaid is recoverable from Stanislav.

Example 2

Mohammed claimed IB and IS and answered 'no' to the question on the respective claim forms about whether he receives a pension payment from a former employment. Awards of IB and IS are made on the basis of the information Mohammed has given in his claim forms. Mohammed realises his error and sends a letter to the IB office giving sufficient information to allow a supersession of the IB award. However he makes no mention of the fact that he also receives IS. His IB award is adjusted and Mohammed is liable to repay the overpaid IB up to the point of adjustment. The IB office takes no action to inform the IS office of the pension details. Payment of IS continues unadjusted and because Mohammed has taken no steps to correct the misrepresentation in respect of the IS award, the causal link in respect of the IS overpayment is not broken. Mohammed would be liable to repay all the IS overpaid until such time as the misrepresentation is corrected.

09275 - 09277

Deciding from whom the overpayment is recoverable

09278 An overpayment is recoverable from any person who caused that overpayment because they misrepresented or failed to disclose a material fact¹. Where a person is acting on the claimant's behalf the overpayment may be recoverable from that person, as well as or instead of the claimant². The DM's decision should cover the liability of

1. the claimant **or**
2. both members of a joint-claim couple, in the case of a joint-claim to JSA(IB)
or
3. any person acting on the claimant's behalf.

1 SSA Act 92, s 71(1) & 71(3); 2 R(SB) 9/84, R(IS) 5/00

- 09279 “Any person” may mean¹
1. the claimant, or in the case of a joint claim to JSA(IB), both members of the joint-claim couple **or**
 2. a person, other than the claimant, whose misrepresentation or failure to disclose caused the overpayment.

1 R(SB) 21/82

09280 A claimant may require someone to collect or receive payments on their behalf. These people are known as “other payees”. They may be

1. appointed by the Secretary of State or by a Court because the claimant is incapable of managing their affairs e.g. appointees, receivers, etc. **or**
2. authorized by the claimant e.g. attorneys, nominated agents.

09281 An appointee (see DMG 09280 1.) is fully responsible for acting on the claimant’s behalf in all of the claimant’s benefit dealings. As such they have a duty to disclose as if they were the claimant. This duty arises

1. for those appointed by the Secretary of State, from the undertaking they make to the Secretary of State and from legislation¹ **or**
2. for those appointed by a Court, from legislation².

1 SS (C&P) Regs, reg 32(1); 2 reg 32(1)

09282 Persons authorized by the claimant (see DMG 09280 2.) do not have a duty to disclose but if they do make a disclosure it must be correct and complete. If it is not, a right of recovery exists against them from the date of the disclosure.

09283 Where a person, for example, a partner or appointee, misrepresents or fails to disclose a material fact, a right of recovery exists against the person because they are directly responsible for the misrepresentation/failure to disclose. There may also be a right of recovery against the claimant who has misrepresented or failed to disclose the material fact through them.

Example

Mary is appointee for James who has been in receipt of IS since 1988. In May 1991 Mary completed a form A2 in which she stated that James had savings of £3,200. The award of IS was reviewed on a relevant change of circumstances and adjusted based on this savings figure. In March 1995 it came to light that James’ savings had increased to £5,790. Further enquiries established that the savings had grown between July 1992 and March 1995.

The DM revised the award of IS from July 1992 on a relevant change of circumstances and determined that the overpayment was in consequence of a failure to disclose by Mary, acting as the appointee, and by James, through the appointee. The DM decided that the overpayment is recoverable from both James and Mary.

Note: Appointments end on the death of a claimant but the duty to disclose the death continues.

09284 For the claimant to be liable the DM must establish that the person was authorized by the claimant, or appointed by the Secretary of State, or a court to act for the purposes of the relevant benefit or benefits¹. Where an overpayment occurs on a case where there is an appointee the recoverability decision should cover the liability of both the claimant and the appointee even when only one is found to be liable. The decision should be notified to both parties².

1 R(SB) 9/84; 2 R(IS) 5/03

09285 In most cases where a person appointed by the Secretary of State misrepresents or fails to disclose a material fact the Secretary of State may recover the overpaid benefit from both the appointee and the claimant with two exceptions¹.

1 R(IS) 5/03

09286 The first is where the appointee retained the benefit instead of paying it to, or applying it for, the benefit of the claimant. In this case the overpayment is recoverable only from the appointee unless the claimant is a party to the misrepresentation or failure to disclose. Unless there is evidence to the contrary, DMs can presume that benefit paid to an appointee has been paid to or applied on behalf of the claimant.

09287 The second exception is where the appointee acted with due care and diligence, the overpayment is recoverable only from the claimant. This will occur most often in cases of misrepresentation. It is for the appointee to show that they have exercised due care and diligence. If DMs require guidance on the meaning of due care and diligence, please contact DMA Leeds.

09288 An overpayment is not recoverable from a person, other than those in DMG 09280¹, who assists the claimant by completing a claim form. If the claimant signs that form any misrepresentation or failure to disclose is the claimant's own¹.

1 R(IS) 14/96

09289

Overpayment of personal benefit - ADI in payment

09290 An overpayment of arrears of personal benefit can occur when a dependant misrepresents or fails to disclose that ADI has already been paid for the same period. The overpayment is recoverable from the dependant because

1. there is a causal link between the misrepresentation or failure to disclose and the payment of the arrears of personal benefit **and**
2. the full arrears of personal benefit are not payable to the dependant because the DM would have deducted them from ADI paid had the DM been aware of the true position (see DMG 09350).

Example

A dependant for whom an increase of RP is in payment makes a claim for personal CA on 12 July. Benefit is awarded on 4 October and a payment of arrears from 12 July to 2 October is made to the claimant. When it is found that an ADI was in payment to the claimant's partner the DM revises the CA award for ignorance of a material fact and decides that the CA was not properly payable for the period 12 July to 2 October.

The resulting overpayment is recoverable from the dependant because there was a misrepresentation on the claim for CA. As a result, the payment of arrears was made which would not have otherwise been made.

If the person receiving the ADI fails to report the dependant's receipt of personal CA there may be an overpayment of the increase of RP from 4 October because this should have been adjusted for overlapping benefits. In these circumstances recovery should be considered as in DMG 09234 et seq.

Death of the claimant

- 09291 If the person who misrepresented or failed to disclose dies before a decision is given the executors of the deceased's estate are the duly constituted personal representatives of that estate. The overpayment is recoverable from the executors but limited to the contents of the estate¹.

1 R(SB) 21/82; Secretary of State for Social Services v. Solly

09292 - 09294

Misrepresentation or failure to disclose - 16/17 year olds

09295 Recoverability is decided under special arrangements¹ where misrepresentation or failure to disclose results in overpaid JSA where

1. benefit was awarded to a 16/17 year old following a Secretary of State direction² **and**
2. the overpayment arose during the relevant period (see DMG 09297).

1 SSA Act 92, s 71A(1); 2 JS Act 95, s 16

09296 The DM should revise or supersede the decision awarding JSA before deciding recoverability.

09297 The **relevant period** for the purposes of DMG 09295 is the

1. date the change of circumstances occurred up to and including the date the Secretary of State¹ revokes his direction as a result of that change of circumstance **or**
2. whole of the period covered by a direction which the Secretary of State has revoked² because he is satisfied that he gave it in ignorance of a material fact, or based it on a mistake as to a material fact.

1 SSA Act 92, s 71A(2)(a); 2 s 71A(2)(b)

Secretary of State certificate

09298 Having revoked the direction the Secretary of State may provide a certificate¹ stating

1. that there has been a misrepresentation or failure to disclose **and**
2. the identity of the person responsible for the misrepresentation or failure to disclose **and**
3. that JSA has been paid because of the misrepresentation or failure **and**
4. the period of payment.

1 SSA Act 92, s 71A(3)-(6)

09299 The DM should not consider any questions of recoverability unless the certificate as in DMG 09298 is provided.

The role of the DM

09300 The Secretary of State's certificate is conclusive on all the matters certified¹. The DM decides that

1. there has been a misrepresentation or failure to disclose by the person certified as responsible **and**
2. the misrepresentation or failure caused an overpayment of JSA for the period certified

the Secretary of State is entitled to recover the amount overpaid.

1 SSA Act 92, s 71A(6)

09301 - 09319

Adjustments - prevention of duplication of payments

General

09320 This section explains how the DM deals with payments already made when awarding benefit for a past period. Note that a new award can be made on revision or supersession or appeal as well as on an original claim. For benefits other than IS other provisions¹ may apply.

1 SS (OB) Regs

09321 The purpose of the provisions is to prevent double payment for the same period of

1. two awards of the same benefit **or**
2. awards of certain different benefits **or**
3. an award of benefit and some other types of payment.

09322 Double payments may be prevented by

1. taking interim payments into account (see DMG 09323 et seq)
2. offset (see DMG 09340 et seq)
3. abatement (see DMG 09370 et seq)
4. recoupment (see DMG 09420 et seq)

Separate provisions are made for IIDB offsets (see DMG Chapter 69).

Adjustments - interim payments and their recovery

Introduction

09323 Under certain conditions¹, payments can be made which are not covered by an award of benefit. These payments are made by the Secretary of State and are known as interim payments.

1 SS A Act 92, s 5(1)(r); SS (POR) Regs, reg 2

09324 Whether or not an interim payment is appropriate is a matter at the discretion of the Secretary of State. There is no right of appeal against such a decision¹. DMs are referred to the procedural guidance for the benefit concerned for guidance on when an interim payment should be made.

1 SS CS (D&A) Regs, Sch 2, para 20

09325 Interim payments may be made where the Secretary of State is of the opinion that there is entitlement to benefit (see DMG 09326) and

1. a claim for benefit cannot be made immediately¹ (this includes where it is impractical to satisfy immediately the NINO requirements) **or**
2. there is a claim but it cannot be put to the DM immediately² **or**
3. an award of benefit has been made but it cannot be paid immediately³.

1 SS (POR) Regs, reg 2(1)(a); 2 reg 2(1)(b); 3 reg 2(1)(c);

09326 The test is not whether it is “clear” that the person is entitled to the benefit concerned, it is whether it appears to the Secretary of State that the person is or may be entitled¹. That judgement has to be made on the basis of the information available at the time and in the light of whichever of the three conditions in DMG 09325 applies.

1 R v Secretary of State for Social Security Ex p. Sarwar Getachew and Uranek (High Court April 11, 1995)

Example

Heather is a lone parent. On 1.9.05, she properly completes and returns a claim form for IS to a Jobcentre Plus office. The office is unable to offer an initial work-focused interview until 26.9.05. On 12.9.05 Heather requests an immediate payment. The DM decides that Heather has made a claim in accordance with the Claims and Payments Regulations and that she may be entitled to IS. Finally he decides that it is nonetheless impracticable to determine the claim until Heather has had an opportunity to take part in a work-focused interview. He therefore makes an interim payment.

09327 Interim payments may not be made¹ where there is an appeal outstanding.

1 SS (POR) Regs, reg 2(1A)

09328 When the payment is made, the Secretary of State should notify the claimant in writing that the payment will be taken into account if a later award is made, and that any overpayment will be recoverable¹.

1 SS (POR) Regs, reg 2(2)

09329 There are exceptions to the requirement for written notice. These are where an interim payment

1. of DLA is made to a terminally ill person¹ or one who had been provided with an invalid carriage or other vehicle.
2. of IS or ESA(IR) is made, to a person because a maintenance payment to which they are entitled has not been made².

1 SS (POR) Regs, reg 2(3); 2 reg 2(4)

09330

Taking interim payments into account

09331 When a claim has been made and there is enough evidence for an award to be made the DM can take interim payments into account against the amount awarded¹ if

1. the payment was made in anticipation of the award **and**
2. written notice was given to the claimant at the time of the payment.

1 SS (POR) Regs, reg 3(a)

Example

The Secretary of State makes interim payments of £130 each week for a claimant and adult dependant in anticipation of an award of IB. Written notice is given to the claimant at the time of the payment. It is later found that the dependant had earnings. Entitlement to IB is only £105 weekly. The DM takes the interim payment into account so far as possible and awards no IB arrears.

09332 If the DM

1. cannot take the full amount of the interim payments into account **or**
2. failed to make a decision on that question

the unrecovered amount may be deducted from future payments of the same type to the same person. The DM should take no account of interim payments when awarding benefit¹.

1 SS (POR) Regs, reg 3(a)(ii) & (b)

Overpayments of interim payments

09333 The guidance in this section concerns the recoverability of overpaid interim payments¹. Overpayments of interim payments generally happen

1. when it has not been possible to bring them into account by offsetting them against the award of benefit **or**
2. where the interim payment was greater than the eventual award.

1 SS (POR) Regs, reg 4

09334 In all cases it is for the DM to decide the amount of the overpayment. If the conditions in DMG 09336 - 09339 are

1. satisfied, the overpayment is recoverable whether or not the claimant has misrepresented or failed to disclose a material fact **or**
2. not satisfied, the overpayment is only recoverable¹ if the claimant or any person acting for the claimant has misrepresented or failed to disclose any material fact and the interim payment has been made because of the misrepresentation or failure to disclose and the claimant was advised that repayment would be required of any overpayment that was not offset.

Note: In cases where the conditions in DMG 09336 - 09339 are not satisfied the DM should apply the guidance in the rest of this Chapter, treating the interim payment as if it were an “ordinary” payment of benefit.

1 SSA Act 92 s 71 (1)(b)

When recovery does not depend on misrepresentation or failure to disclose

09335 Recovery of interim payments does not depend on there having been a misrepresentation or failure to disclose when

1. condition one (see DMG 09336) **and**
2. either condition two (see DMG 09337) or condition three (see DMG 09339), is satisfied.

Condition one

09336 On or before the making of the interim payment the claimant must have been given written notice that

1. the interim payment will be brought into account **and**
2. there is a requirement to repay any overpayment¹.

1 SS (POR) Regs, reg 2(2) & 4(1)

Condition two

09337 This condition applies to interim payments made in the following circumstances

1. a claim for benefit is not made in the way laid down for the particular benefit and it is impracticable for such a claim to be made immediately **or**
2. a claim for benefit is made in the way laid down but it is impracticable for it, or an application or appeal which relate to it, to be decided immediately.

09338 Condition two applies where, following an interim payment made in the circumstances in DMG 09337

1. the claimant does not make a claim as soon as practicable after having received the interim payment¹ **or**
2. the claimant makes a claim after receiving the interim payment but then withdraws it² **or**
3. the claimant makes a claim after receiving the interim payment but the Secretary of State deems it withdrawn³ **or**
4. the DM decides the claim but there is no entitlement to benefit⁴ **or**
5. the DM decides the claim but entitlement is less than the amount of the interim payment⁵.

1 SS (POR) Regs, reg 4(3)(a)(i); 2 reg 4(3)(a)(iii); 3 reg 4(3)(a)(i); 4 reg 4(3)(a)(ii); 5 reg 4(3)(a)(ii)

Condition three

09339 This condition applies where

1. benefit is awarded but it is impracticable for the claimant to be paid immediately except by means of an interim payment¹ **and**
2. the interim payment is more than the benefit awarded but not paid²

1 SS (POR) Regs, reg 2(1)(c) & 4(3)(b); 2 reg 4(3)(b)

Adjustments - offsets

Introduction

09340 Where a claimant is due arrears of benefit and has already received payment of the same or a different benefit under an award, the amount paid under the first award for a period covered by the subsequent award must be¹

1. offset against the total amount due under the second award **and**
2. treated as properly paid on account of the arrears up to a maximum of the amount previously paid.

Offsetting is usually needed where an award is varied on appeal or revised or superseded. This applies whether or not the amount of benefit payable under the new award is more than the original.

1 SS (POR) Regs, reg 5(1)

09341 The period of the arrears may include periods that are not common to the two awards. The only restrictions on offsetting¹ are that

1. there must be a period common to the two awards
2. benefit paid can only be offset against arrears due before the date of the new decision² but arrears due for a period of suspension cannot be included in the offset calculation³
3. the circumstances set out in regulations must apply⁴. For guidance on the application of the offset rules to each case see DMG 09343
4. any amount which has been determined to be a recoverable overpayment cannot be offset⁵.

*1 SS (POR) Regs, reg 5; 2 reg 5(1); 3 R(DLA) 2/07; 4 reg 5(2), Case 1-5;
5 SS A Act 92, s 71(1); SS (POR) Regs, reg 6*

09342 The DM should note that

1. the DM can make an offset decision at any time before the arrears are paid
2. whenever possible DMs should include the offset in the new awarding decision.

The DM should ensure that any offset of benefit is dealt with before considering whether any benefit has been overpaid. This is because a recoverable overpayment decision prevents the recoverable amount from being considered for offset later on¹.

1 SS (POR) Regs, reg 6

Payment under an award which is varied on appeal, revised or superseded

09343 Arrears of benefit should be reduced by the amount already paid¹ where

1. a person has been paid benefit or shared additional pension² under an award
and
2. following an appeal, revision or supersession, the same benefit is awarded at a different rate

Arrears of benefit means the whole amount awarded for the period. An offset is needed even where the new award is the same or less than the one it replaces.

1 SS (POR) Regs, reg 5(1), (2) & (6) Case 1; 2 SS CB Act 92, s 55A

Example 1

A claimant is awarded and paid RP. The contribution record is later revised and the DM revises the decision and awards full rate RP. The revised decision includes an offset of the lower rate RP paid against the arrears of the higher rate now awarded. The amount paid under the first award is treated as properly paid on account of the new award.

Example 2

IS is awarded and paid at the incorrect rates of £40 for seven weeks followed by £20 for ten weeks. On appeal the claimant is found to be entitled to £30 per week for the whole period. The arrears under the new award amount to £510. The FtT is able to offset the whole of the amount paid under the previous award (£480).

Example 3

The claimant is awarded an increase of SAP but later their election is changed to a lump sum. The award is revised and the amount of increase already paid is offset against the amount of lump sum now due.

Subsequent award or payment of another benefit in lieu

09344 Where

1. a person has been paid one benefit **and**
2. a different benefit becomes payable

the amount already paid should be offset against the new award¹.

1 SS (POR) Regs, reg 5(1) & (2), Case 2

09345 This usually happens when the conditions for the two benefits cannot be satisfied at the same time. For example a condition for the payment of JSA is that the claimant is capable of work and the condition for IB is that the claimant is incapable of work. A list of incompatible benefits is at DMG Chapter 17 Appendix 1.

Example

A claimant in receipt of JSA suffers a broken leg playing football. JSA is paid for a further three weeks because attendance at the Jobcentre is excused due to the closure of the Jobcentre during a holiday period. A claim for IB is then made from the date of the accident. The DM supercedes and disallows JSA on the ground that the claimant is not capable of work. The DM awards IB instead and offsets the amount of JSA paid, against the arrears of benefit under the new award.

Although JSA was paid at a higher rate than IB for the period in question, there are sufficient arrears of IB to offset the whole of the JSA. This is because the DM did not make the new decision until two weeks after JSA had ceased to be paid and the arrears amounted to five weeks IB.

09346 If a claim is made and the DM knows that another benefit is in payment, the DM should

1. consider the conditions of entitlement for the whole period **and**
2. make a decision including, where necessary, a revision of the original award.

This is very important in the case of a late claim when disqualification may be involved, for example if a woman delays claiming MA and continues to receive JSA into the MAP.

Note: The DM should not make an award from a 'safe date' to avoid the need for an offset decision.

09347 If decisions on the two benefits are normally made by DMs in different offices, the DM dealing with the new benefit should take all the action on the claim, including revision or supersession of the original award. Where necessary, a DM considering revision or supersession in these circumstances should liaise with the DM who is responsible for the benefit concerned.

09348 The DM should take similar action when

1. claimants have been paid benefit to which they are **entitled and**
2. it is later found that it should not have been payable because another benefit has priority.

Example

A claimant is paid WPA. It is later decided that her husband died as a result of an IA and she is entitled to IIDB at a higher rate for the same period. The DM awarding IIDB supersedes the award of WPA and decides that although the claimant is entitled to the benefit, it is not payable because it overlaps with IIDB. The amount paid as WPA is offset and treated as properly paid on account of the arrears of IIDB.

CHB and SDA, IB(Y) or ESA(Y)

09349 The offset provisions apply where either¹

1. a person has been awarded and paid CHB for a period in respect of which SDA, IB(Y) or ESA(Y) is subsequently determined to be payable to the child concerned **or**
2. SDA, IB(Y) or ESA(Y) is awarded and paid for a period in respect of which CHB is subsequently awarded to someone else, the child concerned in the subsequent determination being the beneficiary of the original award.

Example

David becomes entitled to ESA(Y) from 4.8.10. However, his mother has been paid CHB up to and including 15.8.10. The amount of CHB paid to David's mother for the period from 4.8.10 to 15.8.10 should be treated as paid on account of the ESA(Y) now awarded to David for the period from 4.8.10 to 15.8.10.

1 SS (POR) Regs, reg 5(1) & (2), Case 3

Increase of benefit for dependants

09350 When a personal benefit is awarded to someone for whom a dependency increase has been paid, the award of dependency benefit should be revised or superseded¹. The revised or superseded decision should make the dependency benefit

1. not payable **or**
2. payable at a reduced rate

1 SSA Act 92, s 25(1)(b)

- 09351 The provision also applies when it is decided that another person
1. is entitled to dependency benefit **and**
 2. has the right to be paid instead of the person who was originally awarded the dependency increase
- 09352 In both these situations the amount paid under the first award should be offset and treated as paid on account of the later award¹.

1 SS (POR) Regs, reg 5(1) & (2), Case 4

Example 1

A man is paid IB with an increase for his wife who later becomes entitled to IB(Y) in her own right. Arrears of IB(Y) are due for part of the period for which IB was paid. The award of IB is superseded from the date IB(Y) is awarded. The overpayment question is not considered by the DM. The amount of increase of IB paid for the period after IB(Y) is awarded is offset and treated as paid on account of arrears of IB(Y) due.

Example 2

A man who is separated from his wife receives an increase of RP for his child. The child lives with her mother who becomes entitled to IB from a later date. An increase of IB is awarded for the child in priority to the increase of RP. The DM supersedes the award of RP and decides the increase of RP is not payable. The amount of the increase paid to the man from the date IB is awarded is offset and treated as properly paid on account of IB payable to the child's mother.

Increase paid for a partner

- 09353 The offset provisions also apply where
1. an increase of benefit is in payment to a claimant for a partner **and**
 2. that partner is awarded a personal benefit¹

The DM should offset any amount paid as an increase for the partner and treat it as paid on account of the arrears of personal benefit awarded. "Partner" means the same as it does for IS².

1 SS (POR) Regs, reg 5(1) & (2), Case 5; 2 IS (Gen) Regs, reg 2

Example

A man and woman, each receiving JSA(IB), go to live at the same address. The DM determines that they are LTAHAW. The woman's JSA(IB) is superseded and disallowed and the man is paid the rate for a couple. On appeal the tribunal decide that the man and woman are not, and have never been, LTAHAW. The difference between the JSA(IB) payable to the man as one of a couple, and the JSA(IB) payable to him as a single person, is offset and treated as paid on account of the arrears of JSA(IB) due to the woman.

SPC, IS, JSA(IB) and ESA(IR) - effects of deductions from overpayments on subsequent benefit awards

09354 Where

1. the DM decides that there is a recoverable overpayment **and**
2. that overpayment has been reduced by an additional entitlement to SPC, IS¹, JSA(IB) and ESA(IR) (see DMG 09096 et seq) **and**
3. it is then decided that the person with the additional entitlement is due arrears for the period for which the additional entitlement is also due

the DM should offset the additional entitlement against the arrears due for that period².

1 SS (POR) Regs, reg 13(1)(b); 2 reg 5(3)

Example

A recoverable overpayment is caused because an IS claimant represents on his claim form that he does no work, when in fact he is receiving earnings from P/T work. In calculating the overpayment the DM discovers that the claimant has been paid for three children instead of four. The arrears due are deducted from the recoverable overpayment.

Later it is established that the claimant was entitled to DP. The amount due for the fourth child which had been deducted from the overpayment is offset against the arrears of the DP. The offset is limited to the period for which the increase for the fourth child and of DP are both awarded.

09355 If there are still some arrears of benefit which have not been paid, after offsetting as in DMG 09354, the DM cannot offset any additional amount of the recoverable overpayment. Recovery of the overpayment from the remaining arrears may be considered in the normal way.

09356 - 09369

Adjustments - abatements

Introduction

09370 SPC, IS, JSA(IB) or ESA(IR) may be recovered if it would not have been paid if another income had been paid at the correct time¹. There are three methods of recovery². These are

1. abatement of arrears of UK benefits **or**
2. receipt from arrears of EC benefits **or**
3. deductions from benefit or direct from the claimant where neither of the above applies.

1 SS A Act 92, s 74(1)(b) & (2)(b); 2 SS (POR) Regs, reg 7-11

09371

Abatements of United Kingdom benefits

09372 The amount of a prescribed payment of a UK benefit is reduced by the amount calculated as in DMG 09375¹ where

1. the prescribed payment (see DMG 09373) is not made on or before the prescribed date (see DMG 09374) for that payment **and**
2. it is decided that an amount of SPC, IS, JSA(IB) or ESA(IR) has been paid that would not have been paid if the prescribed payment had been made at the correct time.

1 SS A Act 92, s 74(2)

Prescribed payments

09373 A prescribed payment can be

1. any benefit under the Act¹, except a gratuity or WPT²
2. CHB (including OPB³)
3. WDP or WWP which is not a gratuity and any payment which the Secretary of State accepts as similar to such a pension⁴
4. an allowance paid under the Job Release Act⁵
5. training allowance⁶
6. Child maintenance for the initial period⁷ (see DMG 09378)

7. any BB other than BPT⁸
8. receipts from EC benefits⁹
9. JSA(Cont)¹⁰
10. Financial Assistance Scheme payments¹¹
11. ESA(Cont)¹².

1 SS CB Act 92; 2 R(SB) 28/85; 3 SS (POR) Regs, reg 8(1)(b); 4 reg 8(1)(d); 5 reg 8(1)(e); 6 reg 8(1)(f); 7 reg 7(1)(b); 8 reg 8(1)(i); 9 reg 8(1)(j); 10 reg 8(1); 11 reg 8(1)(k); 12 reg 8(1)(l)

Prescribed date

09374 The prescribed date is the date the receipt of, or entitlement to the benefit, would have to be notified to the Secretary of State in time for it to be taken into account in the SPC, IS, JSA(IB) or ESA(IR) assessment¹. This means that an amount can be recovered if the

1. prescribed payment has not been made **and**
2. Secretary of State was notified of entitlement to the payment and the SPC, IS, JSA(IB) or ESA(IR) award could not be revised or superseded.

1 SS (POR) Regs, reg 8(2); R(SB) 28/85

Calculation of amount to be recovered

09375 The amount to be recovered should be worked out (see Annex 2) by comparing the amount of

1. SPC, IS, JSA(IB) or ESA(IR) paid **and**
2. SPC, IS, JSA(IB) or ESA(IR) which would have been paid if the prescribed payment had been made at the correct time.

Note: The amount to be recovered in any week cannot be more than the amount of prescribed benefit which should have been taken into account in that week.

09376

SF payments

09377 SF payments are not part of the SPC, IS, JSA(IB) or ESA(IR) schemes and should not be taken into account for recovery.

Child maintenance

09378 Recovery of IS, JSA(IB) or ESA(IR) from arrears of child maintenance is limited to the amount paid in each week of the initial payment period¹. This is the period between the date on which liability to pay maintenance begins and the date on which regular payments of child maintenance are to start.

1 SS A Act 92, s 74(1)

09379 The initial payment period is made up of maintenance periods of seven days¹. The prescribed date for each payment due within the period is the last day of the

1. seven day maintenance period² **or**
2. initial payment period if that is not a complete seven days³.

1 CS (MAP) Regs, reg 33; 2 SS (POR) Regs, reg 7(3); 3 reg 7(4)

09380 The Child Maintenance and Enforcement Commission will notify the DM of the

1. dates of the initial payment period **and**
2. prescribed dates of each weekly maintenance period during the initial payment period.

09381 The DM should

1. calculate the amount of IS, JSA(IB) or ESA(IR) which would not have been paid if the child maintenance had been paid at the correct time **and**
2. decide the amount of IS, JSA(IB) or ESA(IR) which is recoverable

The Secretary of State will then consider recovery.

Receipts from European Community benefits

09382 From 1.1.94 the guidance in DMG 09383 - 09388 applies to payments of benefits from the EEA¹. This includes EC benefits and those from certain EFTA countries (see DMG Volume 2). For ease of reference these benefits are all referred to as EC benefits in the following paragraphs.

1 EEA Agreement; European Economic Area Act 1993

09383 Where

1. a payment of EC benefit is not made on or before the prescribed date for the payment (see DMG 09385) **and**
2. an amount of SPC, IS, JSA(IB) or ESA(IR) has been paid that would not have been paid if the prescribed payment had been made on the prescribed date

the Secretary of State is entitled to receive from the EC benefit the amount calculated in the latter point¹.

1 SS A Act 92, s 74(2)

European Community benefits

09384 In DMG 09382, an EC benefit is any payment of benefit under the legislation of any EEA country other than the UK¹. But see DMG Volume 2 - International Subjects - where benefit is payable under a member state's legislation before the member state joined the EC or for reciprocal agreements with non EC countries.

1 SS (POR) Regs, reg 8(1)(g)

Prescribed date

09385 In DMG 09383 the prescribed date is the date by which receipt of, or entitlement to the EC benefit would have to be notified to the Secretary of State for it to be taken into account in the assessment¹. This means that receipt from an EC benefit is possible only where

1. the EC benefit has not been paid **and**
2. if it were to be paid the SPC, IS, JSA(IB) or ESA(IR) decision would not be revised or superseded

to take it into account.

1 SS (POR) Regs, reg 8(2)

Calculation of amount to be recovered

09386 Where IPC is aware that SPC, IS, JSA(IB) or ESA(IR) is in payment to the claimant, they ask for payments of arrears of benefit made by EC countries to be paid direct to the Department's account at the Bank of England. The bank deduct charges and commission before notifying the Secretary of State of the

1. net sterling amount due to the claimant **and**
2. period for which it is payable.

When IPC receive this information, the SPC, IS, JSA(IB) or ESA(IR) DM will be asked to determine the amount of EC benefit the Secretary of State is entitled to receive from the sum due to the claimant.

09387 Continuing payments of benefit by EC countries are usually made monthly direct to the claimant. Recovery is not appropriate in these cases as the prescribed payments are made to the claimant (see DMG 09373). See DMG 09406 et seq for further guidance on these cases.

09388 In working out the amount the Secretary of State is entitled to receive, the DM should

1. use the sterling figure obtained when the EC benefit was converted¹ (there is no need to make independent valuations because of the arrangements the Secretary of State has adopted for conversion) **and**
2. allow any banking charges or commission (if not already deducted)².

1 SS (POR) Regs, reg 11; 2 reg 11

Abatements - maintenance cases

09389 The Secretary of State is able to abate¹ prescribed benefits² (see DMG 09391) which are paid for someone for whom the person receiving the benefit is not paying maintenance.

1 SS A Act 92, s 74(3)(c) & Sch 10, para 4(2); 2 SS (POR) Regs, reg 9

09390 This only applies if

1. the prescribed benefit is payable for someone who is in receipt of IS, JSA(IB) or ESA(IR) or for whom a third person is receiving IS, JSA(IB) or ESA(IR) **and**
2. entitlement to IS, JSA(IB) or ESA(IR) had been determined on the basis that maintenance payments had not been made by the person in receipt of the prescribed benefit up to at least the rate of that benefit.

Prescribed benefits

09391 The prescribed benefits are

1. CHB including OPB¹
2. a CDI or ADI payable with any Act benefit²
3. GA³
4. Child's Special Allowance⁴.

1 SS (POR) Regs, reg 9a; 2 reg 9b; 3 reg 9d; 4 reg 9e; SS CB Act 92, s 56

09392 There is no prescribed date for the payment of the prescribed benefit. Once the DM has determined the amount to be recovered, benefit may be withheld and recovered weekly.

Recovery when abatement or receipt procedure not applied or not applicable

09393 The Secretary of State is still entitled to recover an amount of SPC, IS, JSA(IB) or ESA(IR) where

1. abatement or receipt procedures could have been applied but were not **or**
2. abatement or receipt procedures could not have been applied because the income is not covered by DMG 09373, DMG 09382 or DMG 09389 and falls within the regulations¹.

1 IS (Gen) Regs, Part V; SS (POR) Regs, reg 7(1); JSA Regs, Part VIII; SS (POR) Regs, reg. 8(1)

09394 Where DMG 09393 **2.** applies the Secretary of State is entitled to recover the amount of benefit that would not have been paid if the income payment (see DMG 09395) had been made on the prescribed date¹ (see DMG 09396).

1 SS A Act 92, s 74(1)

Prescribed income

09395 Prescribed income¹ is

1. any income to be taken into account under the regulations² **and**
2. any income which, if it were actually paid, would be taken into account under the regulations but only that relating to the initial payment period³.

1 SS A Act 92, s 74(1); SS (POR) Regs, reg 7(1) & 7(1)(a); 2 reg 7(1)(a) & 7(1)(b); IS (Gen) Regs Part V; JSA Regs, Part VIII; SPC Regs, Part III; 3 SS (POR) Regs, 7(1)(b); IS (Gen) Regs Part V Chapter VII A; JSA Regs, Part VIII Chapter VIII

Prescribed date

09396 The prescribed date is¹ if

1. the income is for a period - the first day of that period **or**
2. the income is for a specific day - that day **or**
3. neither of the above apply - the day or period for which it is fair to take the income into account.

1 SS (POR) Regs, reg 7

Calculation

09397 The DM should work out the amount the Secretary of State is entitled to recover by comparing

1. the amount of benefit actually paid **and**
2. the amount of benefit which would have been paid if the prescribed income had been paid on time (for SPC see also DMG 85063 - 85065).

The maximum recovery for any one week should not exceed the prescribed income payable for that week (see DMG 09377 for guidance on SF payments).

Abatement or receipt procedures not applied

09398 Abatement or receipt procedures may not have been applied (see DMG 09393 1.) where a person

1. claims or is in receipt of SPC, IS, JSA(IB) or ESA(IR) **and**
2. informs the Department that a claim has been made for another SS benefit **and**
3. either there is a delay in notifying those administering the SS benefit or the CHB, SPC, IS, JSA(IB) or ESA(IR) award, or those administering the SS benefit or CHB fail to act on the notification that SPC, IS, JSA(IB) or ESA(IR) is in payment.

The Secretary of State is entitled to recover the amount of SPC, IS, JSA(IB) or ESA(IR) which would not have been paid if the SS benefit had been paid on time¹.

1 SS A Act 92, s 74(4)

09399 The Secretary of State is also entitled to make a recovery if the arrears of SS benefit or CHB are not abated because the claimant did not declare that a claim for that benefit had been made.

Note: In this case there may also be a further overpayment if the claimant fails to declare receipt of the SS benefit or CHB¹. The DM should consider the guidance in DMG 09234 et seq.

1 SS A Act 92, s 71(1)

Conversion of foreign currency

09400 Where

1. receipt procedures were not or could not be applied **and**
2. payment is made to the claimant in a currency other than sterling

the DM should decide the value of the payment **for the purposes of the recovery** calculation as being the net amount in sterling the claimant actually received from a bank¹, that is after the deduction of any bank charges or commission.

1 SS (POR) Regs, reg 11

09401 The term bank means¹

1. the Bank of England **or**
2. a bank recognised by the Bank of England².

1 SS (POR) Regs, reg 11; 2 Banking Act 79, s 3-5

09402 The claimant may convert foreign currency to sterling at an institution whose main place of business is outside the UK, if so, that institution may still be treated as a recognised bank by the Bank of England¹ and should then be treated as a bank for the purposes of the recovery calculation.

1 Banking Act 79, s 3(5)

09403 The DM should ask Benefit Delivery Specialist Operations for advice if there is reason to doubt whether

1. a UK bank is a recognised bank **or**
2. a bank whose main place of business is outside the UK is treated as a recognised bank.

09404 Where the claimant has converted foreign currency at a bank not recognised or treated as recognised by the Bank of England or through an informal dealing (for example relatives) the DM should note that

1. the sterling value to be used is the value the claimant would have got had the currency exchange taken place through the Bank of England on the date the exchange actually took place
2. IPC can provide the exchange rate applying from the Monday of any week
3. in the absence of any more detailed information the DM should use the exchange rate at the beginning or end of any week which is most favourable to the claimant.

09405 If an award of a foreign income allowance includes arrears, the DM should convert the value of the foreign currency to sterling before calculating the recoverable amount¹.

1 SS A Act 92, s 74(1); SS (POR) Regs, reg 11

09406 When deciding continuing entitlement the DM should

1. calculate the sterling equivalent of a foreign resource on the exchange rate at the Bank of England on the date each periodical payment of the resource is due
2. take no account of banking charges and commission¹. For example, if the converted amount is £20 and the claimant pays charges of £3 leaving a net amount of £17, the amount to be abated is £20.

1 R(SB) 28/85

09407 - 09410

Who recovery can be made from

Abatement permitted

09411 Where abatement procedures were not or could not be applied as in

1. DMG 09372 - 09381 - recovery can be made only from the person who received the prescribed payment¹.
2. DMG 09389 - 09392 - recovery can be made only from the person who was paid the prescribed benefit².

Example

Mary has been receiving IS for herself and her husband for some years. Her husband then separately claims and is awarded IB. He receives arrears that take no account of the IS already paid to Mary. The IS overpayment that results is recoverable from the husband.

1 SS A Act 92, s 74(4)(a); 2 s 74(4)(b)

Receipt permitted or receipt or abatement not permitted

09412 Where

1. receipt is permitted but not applied **or**
2. neither receipt nor abatement is permitted

recovery can only be made from the person who would have received less SPC, IS, JSA(IB) or ESA(IR) had the benefit or income been paid on time¹.

1 SS A Act 92, s 74(1)

09413 - 09419

Recoupments - payments under the Employment Protection Acts

Introduction

09420 The Secretary of State can recover JSA, IS and ESA(IR) from certain Employment Tribunal awards¹. Recovery is made from the claimant's employer who deducts it from the amount awarded by the Employment Tribunal before payment. This is called recoupment.

1 Employment Tribunals Act 96; EP (Recoupment of JSA & IS) Regs

09421 The recoverable amounts are those which are determined not to be payable¹ following an award by an Employment Tribunal.

1 IS (Gen) Regs, reg 35(g), JSA Regs, reg 98(f)

Recoverable awards

09422 Recovery can be made from the following Employment Tribunal awards

1. guarantee payments¹
2. guarantee payments under a collective agreement or wages order for which an exemption order has been made²
3. remuneration on suspension on medical grounds³
4. unfair dismissal payments under an order for reinstatement or re-engagement, or an award of compensation⁴
5. unfair dismissal payments under an interim order for reinstatement or re-engagement, or an order for the continuation of the contract of employment or for compensation⁵
6. remuneration in pursuance of a protective award⁶
7. payments under an order made following the employer's failure to pay remuneration due to the employee under a protective award⁷.

*1 ER Act 96, s 28; 2 s 35; 3 s 64; 4 s 112, 113 & 124; 5 s 128 & 132;
6 TULR (C) Act 92, s 189; 7 s 192*

09423 The Secretary of State issues a notice to the employer stating the amount to be recouped¹. A copy of the notice is also sent to the claimant². The amount shown on the notice may be overestimated because the Secretary of State rounds up part week payments³.

1 EP (Recoupment of JSA & IS) Regs, reg 8 & 9; 2 reg 8(4); 3 reg 8(2) & (3)

Action by the DM

09424 The case is referred to the DM if

1. the claimant disagrees with the amount of the recovery¹ **or**
2. recoupment has been made and the award of JSA, IS or ESA(IR) is revised or superseded

In these cases the DM needs to calculate the exact amount of benefit paid in the period of the award. Any amount recovered in excess of the DM calculation is refunded to the claimant².

1 EP (Recoupment of JSA & IS) Regs, reg 10(1); 2 reg 8

Claimant does not accept amount notified

09425 If the claimant does not accept the amount shown on the recoupment notice the DM is asked to decide the amount of benefit paid¹. The DM should calculate the exact amount of JSA, IS or ESA(IR) paid to the claimant in the prescribed period.

1 EP (Recoupment of JSA & IS) Regs, reg 10

09426 The prescribed period is for awards listed at

1. DMG 09422 **1.** to **5.** - the period of the award¹ **or**
2. DMG 09422 **6.** to **7.** - the part of the protected period which falls before the date of termination of employment or the date on which the Secretary of State receives details of the employees affected by the award from the employer whichever results in the lower amount being recouped².

1 EP (Recoupment of JSA & IS) Regs, reg 2(3); 2 reg 8(3)

09427 The prescribed period ends when the decision of the Employment Tribunal is given verbally at the hearing or afterwards in writing¹.

1 EP (Recoupment of JSA & IS) Regs, reg 2(3)

Claimant raises other questions on recoupment

09428 An award of JSA, IS or ESA(IR) can be revised or superseded if the claimant raises any question affecting the amount to be recouped¹. The DM should revise or supersede the awarding decision as if

1. the employer had paid the Employment Tribunal award for the prescribed period **and**
2. any JSA, IS or ESA(IR) which is to be recouped had not been paid and was not payable.

1 EP (Recoupment of JSA & IS) Regs, reg 10(1)

Revision or supersession after recoupment action completed

09429 Recoupment action ends when the

1. amount of benefit paid in the prescribed period has been recovered **or**
2. time limit¹ has ended and the Secretary of State has not issued a recoupment notice.

1 EP (Recoupment of JSA & IS) Regs, reg 8(5)

09430 The DM should revise or supersede the awards of JSA, IS or ESA(IR) and take into account the effect of the Employment Tribunal award on entitlement to benefit¹. Any overpayment which has not been recouped should be considered as in DMG 09079 et seq. The Secretary of State will repay to the claimant any amount which has been recovered in excess of the amount recoupable².

1 IS (Gen) Regs, reg 35, JSA Regs, reg 98

2 EP (Recoupment of JSA & IS) Regs, reg 10(3)

Partner or dependant entitled to Employment Tribunal award

09431 JSA, IS and ESA(IR) cannot be recouped from an Employment Tribunal award payable to a claimant's dependant or partner¹.

1 EP (Recoupment of JSA & IS) Regs, reg 8(2)

Employment Tribunal decision varied

09432 The DM may need to give a further decision if the Employment Tribunal award is revised by the Employment Tribunal.

09433 - 09999

Annex 1

Prevention of duplication of payment - particular payment schemes

Introduction

In addition to abatement (see DMG 09370 et seq) and recoupment (see DMG 09420 et seq), there are provisions for recovery from particular payment schemes.

These are

1. RMPS benefit¹
2. RISWR benefit scheme²
3. SRPS benefit³

1 Redundant Mineworkers & Concessionary Coal (Payments Schemes) Order;

2 EC (Iron & Steel Employees Re-adaptation Benefits Scheme) (GB) Regs;

3 Shipbuilding (Redundancy Payments Scheme) (GB) Order

The redundant mineworkers payments scheme

The Secretary of State is entitled to deduct IS and JSA from RMPS.

The RMPS is an occupational pension¹. See benefit specific guidance.

1 SS CB Act 92, s 122(1)

Occupational pensions cannot be taken into account until they are paid. The DM should

1. award the increase of SS benefit taking no account of any RMPS due but unpaid **and**
2. revise/supersede the award when RMPS benefit is paid.

Overpayments

Where late payment of RMPS benefit causes an overpayment of SS benefit or IS or JSA the overpayment is not due to misrepresentation or failure to disclose¹. IS or JSA recovery may be considered (see DMG 09373 - 09406)².

1 SSA Act 92, s 71(1); 2 s 74(1)

The redundant iron and steel employees re-adaptation benefits scheme

The following paragraphs explain the effect on an award of RISWR benefit scheme benefit where

1. RISWR benefit scheme benefit has been claimed but not paid, **and**
2. SS benefit or IS or JSA has been paid in the meantime.

IS cases

When RISWR benefit scheme benefit is awarded, it is reduced by the amount of IS or JSA which the DM decides would not have been paid had the payments of RISWR benefit scheme benefit been made before the IS or JSA claim was decided¹. Normal appeal rights apply.

1 EC (Iron & Steel Employees Re-adaption) Benefits Scheme (GB) Regs as amended art 4(7), 5(9) & 13(1)(iii)

Social Security benefit cases

The RISWR Benefit Scheme is an occupational pension¹. See Benefit Specific Guidance. Unlike RMPS and SRPS it can

1. be earnings for the purpose of dependant's increases **and**
2. cause Unemployment Benefit to be abated

There are provisions allowing RISWR Benefit Scheme benefit to be abated by an amount of SS benefit. But the RISWR Benefit Scheme may only be abated by the amount of SS benefit paid and not by the amount of SS benefit which would not have been paid had RISWR Benefit Scheme benefit been paid before the SS benefit decision.

1 SS CB Act 92, s 122(1) & 175(1); JSA Regs reg 103

Overpayments

The guidance on RMPS benefit also applies to RISWR Benefit Scheme benefit. In considering the amount of any overpayment in SS benefit cases, the DM should bear in mind that abatement may reduce the amount of the overpayment

The shipbuilding redundancy payments scheme

SRPS benefit is paid to shipbuilders made redundant on or before 31 December 86¹.

1 Shipbuilding (Redundancy Payments Scheme) (GB) Order; Amendment Order 82

IS cases

Where IS has been paid pending an award of SRPS benefit the later award of SRPS benefit is reduced by an amount of IS decided by British Shipbuilders¹. In making this decision British Shipbuilders take account of

1. the amount of IS actually paid² (the Secretary of State provides this information) **and**
2. the amount of IS which the DM decides would have been paid had the DM known of the claimant's entitlement to SRPS benefit³ at the time of the original decision

Appeal rights are limited to decisions under the latter point.

1 Shipbuilding (Redundancy Payments Scheme) (GB) Order, art 9; 2 art 9(2); 3 art 9(2)

Social Security benefit cases

The guidance on RMPS benefit also applies to SRPS benefit

Overpayments

The guidance on RMPS benefit also applies to SRPS benefit.

Annex 2

Calculation of amount to be abated - see DMG 09375

Schedule of abatement

CHB				IS		Abatement			
(1) Period to which payment relates	(2) Date payment would be properly payable	(3) Amount payable	(4) Benefit week to which CHB attribut- able	(5) Amount of IS paid	(6) Date IS paid	(7) Amount of CHB to be regarded as a resource	(8) Amount of abate- ment	(9) Prescrib- ed date	(10) Date notification of CHB award received by Secretary of State
				Total abatement					

Chapter 10 - Evidence of age, marriage and death

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Chapter 10 - Evidence of age, marriage and death

Introduction

General

10000 To satisfy the conditions for certain benefits and increases, proof of age, marriage or death of the claimant or some other person is essential. For example, a claim for RP depends on the claimant having reached pensionable age, but a claim for WB or BB depends on the claimant's age, marriage to the deceased and his death.

10001 With other benefits a question arises only in limited circumstances, for example, a claimant in receipt of JSA(IB) has to provide evidence of age when nearing the qualifying age for SPC so that PP can be considered¹.

Note: See DMG Chapter 77 for guidance on the qualifying age for SPC.

1 IS (Gen) Regs, reg 17 & 18 & Sch 2

10002 The onus of providing satisfactory proof of age, marriage or death is on the claimant¹. But the Department should help the claimant as much as possible by

1. advising the claimant about the kind of evidence that may be needed **and**
2. advising how to obtain that evidence **and**
3. undertaking searches to verify the events or dates in question.

1 SS (C&P) Regs, reg 7(1)

10003 Where there is any doubt about the evidence, questions about age, marriage or death are put to the DM. The DM should decide whether or not there is enough evidence to determine the question.

10004 - 10009

Questions where no claim exists

10010 A DM can only give a decision about a person's age, marriage or death as part of an outcome decision on a claim, revision or supersession (see DMG Chapter 01). The DM should not give a decision on such a question raised by a person if

1. the question is not raised as part of a claim for benefit or an application for revision or supersession **or**
2. a decision on the claim for benefit or application for revision or supersession can be given without deciding the question.

10011 A refusal to give a decision on an age, marriage or death question under DMG 10010 will not be an outcome decision and will not carry a right of appeal (see DMG Chapter 01).

10012 - 10029

Types of evidence

Primary evidence

10030 The best evidence of age, marriage or death that can be provided is a certified copy of an entry which has by law to be made in a register concerning the event. The certificates are issued by

1. the Registrar General **or**
2. a Superintendent Registrar **or**
3. a Registrar of Births and Deaths **or**
4. a Registrar of Marriages **or**
5. in Scotland, the Registrar General for Scotland or a District Registrar **or**
6. a member of the clergy of the Church of England **or**
7. a Roman Catholic priest who is authorized to make an entry of marriage in a Register of Marriages¹ **or**
8. a person authorized to keep a register of marriages² for example a Secretary of a Synagogue or a Registering Officer of the Society of Friends having the custody of the Register in which the event is recorded **or**
9. a Marriage Officer³.

Note 1: The certificate of a Marriage Officer relates to marriage of a British subject before a British ambassador, consul or other official on one of Her Majesty's ships in foreign stations or within the lines of British Army or Royal Air Force units serving abroad.

Note 2: Ecclesiastical certificates of Roman Catholic and Jewish marriages are not extracts from a statutory register and can only be used as secondary evidence.

1 Marriage Act 49; 2 s 63; 3 Foreign Marriages Act 1892, s 11

10031 If there are no material differences in the information available, the Secretary of State may accept

1. an extract from an entry in a statutory register **or**
2. a verified entry on Departmental records **or**
3. an extract from the record of the Registrar General **or**
4. in the case of a Jewish marriage, a written statement by a Rabinic Court without reference to the DM.

- 10032 If there is a material difference the Secretary of State will obtain the claimant's observations and refer the case to the DM. Discrepancies in the dates of events will need special attention. In particular, inconsistencies between the age given on a claim form and on a certificate, or as shown by any other available evidence, may cause doubt as to identity.
- 10033 The DM should consider all the evidence to determine whether, in spite of any discrepancies, the other details agree enough to exclude the possibility that the certificate refers to someone other than the claimant.
- 10034 The DM must consider the possibility that information on a statutory certificate may be wrong if there is strong evidence to suggest this¹.

1 R(S) 15/52

- 10035 The DM should accept a certificate issued abroad as the equivalent of a certificate in DMG 10030. If

1. a claimant was born, married or died abroad **and**
2. the certificate produced was issued by the appropriate registration authority abroad

the certificate should be accepted unless there is reason to doubt its validity.

Note: Photocopies of original documents are not primary evidence (see DMG 10040).

Secondary evidence

- 10036 If primary evidence is not available, the Secretary of State will ask for any secondary evidence. This is done before the case is submitted to the DM for decision. Unsupported secondary evidence carries less weight than primary evidence. The DM should ensure that as much information as possible has been obtained, before considering the relative value of each piece of evidence.

10037 - 10039

Photocopied documents

10040 Photocopies of original documents carry little or no weight. But photocopies that are certified as a true copy of the original by a person of good standing carry more weight. A person of good standing is a

1. civil servant **or**
2. member of the United Kingdom foreign service including Her Majesty's overseas civil service, British Diplomatic Service, and consular official **or**
3. doctor or surgeon registered under the law of the country where the declaration is made **or**
4. minister of religion **or**
5. barrister, solicitor or advocate authorized to practise in the country where the declaration is made **or**
6. notary public or any person allowed to administer oaths in the country where the declaration is made **or**
7. an officer of a bank authorized to sign documents on the claimant's behalf **or**
8. magistrate **or**
9. chartered accountant.

10041 - 10049

Evidence of age

Birth certificates

10050 Births must be registered

1. in England and Wales - within 42 days of the date of the birth¹ **and**
2. in Scotland - within 21 days².

1 Births & Deaths Registration Act 1953, s 2;

2 Registration of Births, Deaths & Marriages (Scotland) Act 1965, s 14

10051 A birth certificate is a certified copy of the entry in the Register of Births. A full birth certificate shows the

1. date and place of birth **and**
2. sex of the child **and**
3. forenames of the child **and**
4. parents' names, addresses and occupations.

As well as being satisfactory evidence of the date of birth, a full birth certificate contains evidence of parentage. These details should be presumed correct unless there is strong evidence to the contrary.

10052 There are two other types of birth certificates issued by a Statutory Authority. These are a

1. short form of birth certificate **and**
2. certificate of registration of birth.

Short form of birth certificate

10053 A short form of birth certificate shows the

1. date and place of birth **and**
2. forenames and surname of the child **and**
3. sex of the child **and**
4. registration district and sub-district.

It is accepted by the Secretary of State as satisfactory evidence of age unless identity is in doubt, when supporting evidence is required. This certificate does not contain evidence of parentage. The information given on it enables the full entry in the register to be traced through General Register Office and the recorded parents' names to be obtained.

Certificate of registration of birth

10054 A certificate of registration of birth is not a birth certificate but merely certifies that a birth has been registered and contains the

1. registration district and sub-district **and**
2. date of signature **and**
3. name of the informant **and**
4. sex of the child that has been born (or still born) **and**
5. name of the child - but not in all cases **and**
6. date of birth.

Unless this certificate gives both the surname and forenames of the child, the Secretary of State will not accept it as satisfactory evidence and the case is passed to the DM for a formal decision. The certificate is useful for tracing the record of births through General Register Office and may support other and more definite evidence.

Certificate of baptism

10055 A certificate of baptism is not primary evidence of a date of birth (see DMG 10030). It should be referred to the DM with any other available evidence.

Protestant baptismal certificate

10056 A date of birth given by the claimant or suggested by other evidence may be accepted if

1. it is earlier than the date of baptism (but not by more than one month) **and**
2. there is no conflicting evidence.

If no date of birth is given or suggested, a date one month before the date of baptism should be accepted. But see DMG 10062.

10057 - 10059

Roman Catholic baptismal certificate

10060 If the baptism took place in Eire or Northern Ireland the date of birth given by the claimant or suggested by other evidence may be accepted if it is

1. the same as the date of baptism **or**
2. the day before the baptism.

In any other case the date of baptism should be accepted as the date of birth.

10061 If the baptism took place in Great Britain it will usually have been one to three weeks after the birth. The date of birth may be accepted as

1. the date given by the claimant or suggested by other evidence - if it is in the three weeks before the baptism **or**
2. if no date is given or suggested - a date one week before the date of baptism.

Baptism not within normal periods

10062 Baptism does not always take place within the periods in DMG 10056 - 10061. If other evidence suggests an earlier date of birth, all the evidence must be considered before deciding the date of birth.

Material discrepancies in birth or baptismal certificate

10063 If a birth or baptismal certificate shows a different name from the one by which the claimant has been known (for example due to adoption at an early age and the use of a name given by the adoptive parents) the Secretary of State will obtain evidence linking the two names. If the claimant is unable to produce this evidence the certificate can only be accepted as secondary evidence. The DM should consider it with any other available evidence before accepting that it refers to the claimant.

Adoption certificates

10064 Every adoption order has to be entered in an Adopted Children Register. The entry should be regarded as if it was a certified copy of an entry in the Register of Births¹.

1 Adoption Act 1976, s 50; Adoption (Scotland) Act 1978 s 45

10065 The DM should accept an adoption certificate showing the date of birth as evidence of birth.

10066 - 10069

Secondary evidence of age

10070 Where the Secretary of State does not accept the evidence of age, all the available evidence should be put to the decision maker. A convenient way for the DM to assess the merits of the evidence is to list against each item the date of birth deduced from that item. The DM may then establish the date of birth by considering the items on the list overall. Documents such as birth certificates carry most weight unless their validity is in doubt.

Example (dates used for illustration only)

A man claimed to have been born on 8.8.23. He had no birth certificate and registration of his birth could not be traced. He contended that he was two years younger than his sister who, he alleged, was born on 9.8.21. She had no birth certificate, and the registration of her birth could not be traced.

The evidence in the case was as follows

Nature of evidence	Date of birth deduced
Census return dated April 1931, gave claimant's age 6, sister's age 8	8.8.24
Sister's marriage certificate dated January, 1943 gave sister's age 20	8.8.24
Discharge certificate from Royal Marines gave claimant's date of birth 8.8.23, based on age given on enlistment in February 1942.	8.8.23

For a RP claim, the DM established the man was born on 8.8.24¹.

1 CP 11/49(KL)

10071 Examples of secondary evidence of age include

1. child's certificate of vaccination or health record card
2. entry in Family Bible or other book containing an old entry of date of birth-for example a Birthday book
3. school reports, register or prize
4. confirmation certificate
5. indentures of apprenticeship
6. insurance policy taken out before middle life (see DMG 10072)
7. certificate of service in the Forces or any other employment under the Crown or in the Mercantile Marine
8. Approved Society or Ministry of Labour and National Service records
9. alien's identity book or certificate of naturalization (see DMG 10073)
10. deduction from the proved ages of brothers and sisters
11. statements from employers or acquaintances who have reason to know the claimant's age: For example, a school friend
12. National Health Service medical card
13. passport
14. baptismal certificate.

Remember that unsupported secondary evidence carries less weight than primary evidence (see DMG 10036).

Insurance policies

10072 The value of any statement of age in an insurance policy may vary according to the age admitted at the time the policy began. The DM should bear in mind that an older person may have understated their age. If the policy is endorsed "Age admitted", it can be accepted as reasonably good evidence.

Alien's identity book or certificate of naturalization

10073 The date of birth or statement of age in an alien's identity book or certificate of naturalization may be based solely on the claimant's personal and unsupported statement at the time the document was prepared.

Evidence indicates year of birth only

10074 Sometimes the available evidence may establish the year of birth, but not the day or month. Where

1. a claim for benefit is made **and**
2. entitlement depends upon the claimant reaching a certain age or the rate of benefit payable varies according to the claimant's age

the onus of proving that the age condition is satisfied rests with the claimant. No presumptions can be made in the claimant's favour.

Example 1

A male RP claimant can prove only that he was born in 1946. He is not entitled to RP for any day before 31.12.11.

Example 2

A single ESA claimant can prove only that he was born in 1986. For any day in 2011 falling before 31.12.11 the rate of ESA payable in the assessment phase is that for a single claimant aged less than 25.

Example 3

An IBLT claimant can prove only that he was born in 1973. The relevant period of incapacity for work begins in 2008. The IB age addition should be awarded at the 35 - 44 years rate; there is no presumption that the claimant was born on any day later than 1.1.73.

Example 4

An IS claimant who can prove only that her partner was born in 1931 qualifies for a HPP from 31.12.11.

10075 Once the DM has determined a date of birth using these principles, the DM should apply that date to all subsequent claims for any benefit. If the Secretary of State puts the age question to the DM on another occasion, the DM

1. should consider the question on the evidence then available (see DMG 10003) **and**
2. may be able to reconsider the earlier decision if the claimant has provided additional information.

10076 A claimant must prove that the age condition for entitlement is satisfied for each claim made. The DM need not determine what the claimant's date of birth might be but should decide that

1. the claimant has not established that the relevant age has been reached **and**
2. benefit is therefore not payable or payable at a lower rate.

10077 The decision should show only the year of birth where

1. a question of a person's age is being decided in advance of a claim **and**
2. it is not possible to decide on what day in a year the person was born.

No documentary evidence available

10078 If a claimant cannot produce any documentary evidence to support a date of birth the DM has to decide what the date of birth is on the balance of probability.

10079 A claimant's own statement is evidence and, like any other evidence, it has to be weighed carefully. Confirmation of a claimant's own evidence is not always necessary¹. But, a person cannot give first hand evidence about the date of birth and the DM must therefore consider any further evidence supplied by, for example, any living relatives. The DM should accept the claimant's statement unless there is

1. reason to doubt the claimant's statement **or**
2. other contradictory evidence.

1 R(I) 2/51; R(SB) 33/85

Point in time at which a person reaches a particular age

10080 A person is treated as having reached a particular age in years on the midnight immediately before the anniversary¹. In Scotland, where a person is born on 29 February, the anniversary in any year other than a leap year is 1 March².

1 FLR Act 69, s 9(1); Age of Legal Capacity (Scotland) Act 1991, s 6(1); 2 s 6(2)

Example

Jean is born on 5.5.50. She reaches age 60 at midnight between 4.5.10 and 5.5.10.

10081 - 10087

People born abroad

10088 Persons born abroad can often produce a birth certificate which can be accepted as satisfactory evidence of age. In other cases secondary evidence (see DMG 10071) is obtained and considered in the usual manner.

Claims from immigrants

10089 It may be difficult to verify the age of claimants or their dependants where the birth took place

1. outside the UK **and**
2. in a part of the world where births were not officially registered.

Note: In certain parts of the world, a person's age is far less materially important than it would be in the United Kingdom, and claimants in or from such countries may have little idea how old they really are.

10090 The DM has to determine the date of birth on a balance of probability taking into account all the evidence, explanations and circumstances¹. When doing so the DM should note that

1. an opinion about the claimant's age, based on a physical examination and given by a doctor in this country, is generally good evidence (see DMG 10091)
2. documentary evidence such as sworn affidavits and witness statements, intended to disprove an earlier statement in favour of a later one, are not necessarily sufficiently convincing to disprove the earlier statement.

1 R(P) 1/75

10091 Where DMG 10090 1. applies the weight to be given to this evidence varies according to

1. the nature of the physical examination **and**
2. how far the accepted signs of age are explored **and**
3. the degree of certainty expressed by the opinion (see DMG 10099 et seq).

10092 Where a person makes a claim for benefit, for example RP, which shows a date of birth different from that previously recorded but which is not shown to be verified, DMs should note that

1. a copy of the record sheet should be obtained from HMRC records
2. unless there is reason for doubt they should accept the date of birth on the copy record sheet from HMRC records where the entry is marked as verified
3. where the recorded date of birth is not shown as verified claimants should be asked to confirm in writing

3.1 that they gave that date of birth when registering for NI purposes **and**

3.2 why they did so

4. they should normally accept the date of birth given on registration unless the claimant

4.1 denies giving that date on registration **or**

4.2 now alleges that it is not correct (see DMG 10093). Where this applies claimants should be asked to state in writing why they did not give that date when registering for national insurance **or** why they otherwise dispute the accuracy of that date.

10093 Where 10092 **4.** applies claimants should be asked to state in writing why they

1. did not give that date when registering for national insurance **or**

2. otherwise dispute the accuracy of that date.

10094 Where a claimant produces

1. a passport showing an altered date of birth **or**

2. two passports, the current one showing the claimed date of birth

the DM should establish the reason for the change before deciding which of the dates is to be accepted.

Claimant from Pakistan or Azad Kashmir

10095 Claimants in or from Pakistan or Azad Kashmir may produce a form of birth certificate which

1. includes details such as the father's religion **and** caste **and** the name of the attendant midwife **and**

2. certifies that it is based on old records kept by the village watchman or the police.

However birth registration in Pakistan was not compulsory until 1961¹. No conclusive proof is held of the existence of official birth records in Pakistan before 1961 and at the same time as the birth.

1 Basic Democracies Order 1959; Muslim Family Laws Ordinance 1961

10096 The territory of Azad Kashmir (Free Kashmir) is self-administering but has adopted much of Pakistan's legislation. But the territory is unable to ensure strict compliance with the legislation and documentary evidence of date of birth (including alleged certificates of birth) originating from there cannot generally be relied on. This applies even where

1. it bears authoritative stamps **and**
2. the signatures of persons of official status

the DM should examine such documents critically.

10097 DMG 10095 - 10096 is based upon a statement obtained by the then Head of Contributions Branch when he visited Pakistan and Azad Kashmir (Annex 1 and 2 to this Chapter).

Medical advice on age of claimant where other evidence is unsatisfactory

10098 The DM should consider obtaining medical advice if

1. a claimant alleges a date of birth several years earlier than that recorded at HMRC **and**
2. action as in DMG 10089 et seq does not resolve the issue.

10099 Where DMG 10098 applies the papers should be passed to Medical Services to arrange for the claimant to be physically examined. A medical opinion should be obtained as to whether the results of the examination support

1. the claimant's contention to have reached the age alleged **or**
2. the range of years within which those results show that the claimant's age probably lies.

Note: The medical examination should enable a reasonably reliable assessment of age up to about five years either way.

10100 The papers should include

1. two identical recent photographs of the claimant (as a safeguard against impersonation) **and**
2. where the claimant has provided a passport, two copies of the
 - 2.1 page containing the identity details and photograph (so as to provide something against which the recent photographs can be compared) **and**
 - 2.2 first page (as later proof that the document copied was in fact a passport) **and**
3. a summary of the claimant's environmental history, countries in which the claimant has lived, and for how long.

- 10101 If the examining medical practitioner's report confirms the claimant's alleged date of birth, the DM should accept the date of birth shown on the claim form. If the report does not confirm the alleged date of birth, the DM should disallow the claim on the ground that the claimant has not established that the necessary age has been reached for claiming benefit. The DM does not need to determine the claimant's date of birth.
- 10102 If a claimant appeals against a DM's decision based on medical advice obtained as in DMG 10099 - 10100, the DM's submission to the FtT should include the following "It is generally agreed that there is no medical test or group of medical tests which will enable the age of an adult to be accurately determined, particularly in the higher age groups. It is doubtful whether X-ray appearances alone can enable the age of an individual in middle or old age to be determined within an age range of less than 20 years. There are, however, certain clinical features which when observed and considered by an experienced medical practitioner may enable him to say whether on balance of probability the results of medical examination support an individual's contention that he has reached a stated age or, alternatively, to say within what age group of about 10 years he probably belongs."

Julian Calendar

- 10103 The Julian calendar was in use in the Russian Empire until 1918. A birth certificate for a person born before that date in areas then belonging to the Russian Empire is based on that calendar. If the date of birth shown on the certificate is
1. before March 1900 add twelve days to the date shown **or**
 2. between March 1900 and 1917 add thirteen days.

10104 - 10119

Evidence of marriage

Registration of marriage in Great Britain

10120 A British marriage certificate is evidence of a valid marriage. The onus of proving that it is not valid is on the person who questions it¹. The DM should accept a marriage certificate as proof of marriage unless there are grounds to suspect an obstacle to the marriage such as a material discrepancy between the information on the marriage certificate and the details already held.

1 CG 203/49(KL)

10121 The absence of registration does not invalidate a marriage but it does place the burden of proving its validity on the claimant. A statement by the claimant is useful evidence and corroboration is not necessary. But a person's own evidence can be overruled where it is contradictory or inherently improbable¹ (see DMG Chapter 01).

1 R(I) 2/51; R(SB) 33/85

10122 In England, Wales and Northern Ireland there cannot be a valid marriage without a ceremony¹.

1 Marriage Acts 1949 to 1986

10123 In Scotland a marriage may be by the consent or presumed consent of two parties who are otherwise free to marry (see DMG 10200 et seq.).

10124 Validity of the marriage is presumed¹ where the usual evidence of marriage is not produced **or** is not readily available and it is proved that there was a ceremony of marriage followed by living together for a long period. Whilst there cannot be any definition of a "long period" in terms of a set number of years, DMs may wish to note that a county court has held that, looked at in the light of the realities of contemporary marriage, a period of six and a half years was a "long period" of cohabitation, although it was held that it only just falls within such definition. Each case must be considered on its own facts and will depend on whether or not clear evidence emerges to rebut the presumption.

Note: The presumption described in this paragraph can only be rebutted by clear and convincing evidence.

1 R(U) 1/68, para 13; CAO v. Bath, 21 October 1999, app. to R(G) 1/00

10125 If there is a reason for believing that there was not a valid ceremony but there is a presumption in favour of the marriage, the onus of proof falls on the person challenging the marriage. This onus can only be discharged by evidence clearly disproving the presumption. In law a presumption of marriage cannot easily be disproved; the determining authority requires a high standard of proof.

10126 If doubt exists as to the validity of a marriage, unless it is necessary to establish divorce, the case is referred to the RVU before enquiries are made or the case is submitted to the DM for disallowance.

10127 - 10129

Competing marriage claims

10130 Where two or more people claim to have been married to the same person, for example where each is claiming BB, the two cases should be referred together to the RVU.

10131 A DM can only give a decision about a person's marriage as part of an outcome decision on a claim, revision or supersession¹ (see DMG 10010 - 10011 for further guidance).

1 SS Act 98, s 8, 9 & 10

Ceremonies other than Church of England or Church of Scotland

10132 Certificates may be produced relating to ceremonies other than those performed under the rites of the Church of England or Church of Scotland. Where a statutory certificate or, in a Jewish marriage, a "Beth Din" certificate is produced, the marriage question is not normally referred to the DM. In the following paragraphs, inter-marry means a marriage between people following different customs.

Roman Catholic and Nonconformist marriages

10133 The DM should note that

1. Roman Catholic priests and Nonconformist ministers in England and Wales may be authorized to celebrate marriages without the attendance of a Registrar¹
2. a marriage celebrated in a "registered building" in the presence of an authorized person is a valid marriage, and the position is the same as for marriage in the Church of England.

If the conditions in **2.** are **not** met, the marriage should have been attended by a Registrar, but the Registrar's absence does not invalidate the marriage unless both parties were aware of the need for that official's attendance. In such cases the investigating officer will have obtained a signed statement about the parties' awareness of the need for the attendance of a Registrar before the case is submitted to the DM.

1 Marriage Act 1949, s 44

Jewish marriages

10134 A marriage according to Jewish custom between people of the Jewish religion may be solemnised on giving notice to, and obtaining a certificate from, the Superintendent Registrar. A Jewish marriage is void if

1. the requirements of the Jewish law have not been fully complied with **or**
2. both of the parties, one not being Jewish, knowingly and wilfully inter-marry without having given notice of marriage to the Superintendent Registrar **or** without a certificate of marriage having been issued by the Registrar to whom notice of marriage was given.

If the marriage was not registered, the claimant will have been advised to seek the advice of the Jewish Ecclesiastical Court (Beth Din), and to obtain a written statement from the Court that the marriage was valid according to Jewish law.

Quaker marriages

10135 A marriage according to the customs of the Society of Friends (Quakers) between members of that Society may be solemnised on the authority of a certificate of the Superintendent Registrar to whom notice of marriage must have been given. A Quaker marriage is void if

1. either or both parties to the marriage are not members of the Society and no certificate signed by the Registering Officer of the Society authorizing the marriage has been produced to the Superintendent Registrar **or**
2. both of the parties, one not being a member of the Society, knowingly and wilfully inter-marry without
 - 2.1 having given notice of marriage to the Superintendent Registrar **or**
 - 2.2 a certificate of marriage having been issued by the Registrar to whom notice of marriage was given.

If a Quaker marriage is alleged and a statutory certificate or evidence from the General Register Office cannot be obtained, a signed statement should be obtained from the claimant covering the points mentioned before the case is submitted to the DM.

Comparable position under Scottish law

10136 In Scotland, before 1978

1. Episcopal ministers could marry only persons whose banns had been published both in the Episcopal congregation which the parties attended regularly and in the local (Church of Scotland) Parish Church
2. marriages by Roman Catholic priests or ministers of other churches were valid if they took place after a proclamation of banns in the local Parish church or after notice to the Registrar.
3. marriages according to Jewish or Quaker custom were valid if
 - 3.1 notice to the Registrar had been given **and**
 - 3.2 a certificate has been obtained **and**
 - 3.3 both parties were Jewish or at least one party was a Quaker or an attender associated with them.

In all these cases, the marriage should have been registered with the Registrar of the Parish in which it was solemnised.

10137 Since 1978 a marriage according to any rite may be valid if

1. it follows the issue of a marriage schedule by the District Registrar **and**
2. it is celebrated by an authorised celebrant.

Note: Authorized celebrants include clergymen of the major denominations and members of other religious bodies whose individual nomination is approved by the Registrar General. All religious marriages must be registered at the office of the District Registrar within three days.

Gypsy marriages

10138 A gypsy marriage ceremony is not a valid marriage according to English law¹. In Scotland the DM may need to consider the possibilities of the marriage being one by cohabitation with habit and repute, or one of the other irregular forms of marriage which were abolished from 1.7.40 (see DMG 10200 et seq).

1 R(S) 4/59

10139 - 10144

Marriages within prohibited degrees of relationship

England and Wales

10145 In England and Wales marriage is forbidden between

1. all in the direct line (for example grandfather and granddaughter) **and**
2. all within the second degree (that is any nearer than first cousin) **and**
3. people acting in the place of parents (for example uncle and niece, or grand-uncle and grand-niece) **and**
4. brother and sister, whether full or half-blood.

There is no distinction between legitimate and illegitimate relationship, except in Scotland where illegitimate relationships are ignored when considering whether the marriage falls within the third of these categories.

10146 The rules which forbid marriage between parties descending from a common ancestor may apply when there is a relationship between one of the married parties and the blood relatives of the other¹, for example

1. a man cannot marry his stepchild unless
 - 1.1 both parties have reached the age of 21 **and**
 - 1.2 the younger party has not at any time before reaching the age of 18 been a child of the other party's family
2. a woman cannot marry her daughter's husband unless
 - 2.1 the daughter and the daughter's father are dead **and**
 - 2.2 both parties are over the age of 21.

Any cases covered by this paragraph should be referred to the RVU.

1 Marriage Act 1949, first Sch; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 1

10147 Exceptions from the prohibited degrees of relationship allow a person to marry certain kin of a former spouse. A marriage after 13.4.60 (whether in or out of Great Britain) is not void or voidable because of the relationship between a man and a woman who

1. is the sister, aunt or niece of a former wife of his (living or dead) **or**
2. was formerly the wife of his brother, uncle or nephew (living or dead)¹.

Note: This provision does not apply to Northern Ireland. Words of kinship apply to kin of the whole and of the half-blood.

1 Marriage (Enabling) Act 1960, s 1(1)

- 10148 However, a marriage is not validated¹ if
1. at the time of the marriage either party is domiciled in a country outside GB **and**
 2. under the law of that country there cannot be a valid marriage between the parties.

1 Marriage (Enabling) Act 1960, s 1(3)

- 10149 Under earlier legislation the marriage of persons in the same relationship as those mentioned in DMG 10147 was not void or voidable if the relative was deceased. If such a marriage was before 13.4.60 it was given retrospective validity unless this would make a subsequent lawful marriage of one of the parties bigamous¹.

1 Marriage Act 1949, first Sch, Part 11; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 1

Scotland

- 10150 In Scotland, marriage is forbidden between certain relationships (whether legitimate or illegitimate and whether full or half-blood)¹. These relationships are
1. all in the direct line (for example grandparent and grandchild) **and**
 2. brother and sister **and**
 3. uncle and niece or aunt and nephew **and**
 4. former husband or wife and persons related in the direct line (as above) to the former spouse (for example former husband's father, former wife's son etc) **and**
 5. adoptive parents and children.

A marriage within these relationships is void if it takes place in Scotland or while either party is domiciled in Scotland.

1 Marriage (Scotland) Act 1977, Sch 1; Marriage (Prohibited Degrees of Relationship) Act 1986, Sch 2

Marriage under false names

- 10151 In England and Wales, if banns were published before the marriage and either or both parties were married under false names, the marriage is invalid if
1. the falsification of names was deliberate and with the intention of concealing identity **and**
 2. both parties were aware of the falsification.

If only one party was aware of it or if the marriage was before a Registrar, or took place in church by licence and not after banns, the marriage is valid.

- 10152 In Scotland a marriage may not be invalid even though one or both parties uses a name other than that given to them when their birth was registered. A marriage is null and void if
1. one party misleads the other concerning their identity **and**
 2. this is done in a way that invalidates the consent which is the essential part of the marriage contract.

Marriages celebrated in Great Britain under Hindu or Islamic law

- 10153 The DM should note that
1. marriages celebrated in GB which are polygamous in form (see DMG 10391 and 10409) are not valid unless they also conform with the English or Scottish marriage laws¹
 2. a second marriage is void if evidence is held that an earlier valid marriage whether
 - 2.1 contracted in GB or elsewhere **and**
 - 2.2 monogamous or polygamouswas in being at the time of the registered marriage but was not declared to the registrar.

1 Marriage Act 1949; Marriage (Scotland) Acts 1939 & 1977; R v. Bham [1966] 1 QB 159

- 10154 Where a marriage was celebrated in Scotland but not registered, the DM should consider whether it may be proved by cohabitation with habit and repute (see DMG 10211 - 10220). If there is evidence of an earlier valid marriage which has remained valid throughout the period of the potentially irregular marriage, further enquiries will be needed.

Foreign marriages

- 10155 If a person is married abroad a marriage certificate issued by the appropriate registration authority should normally be accepted as evidence of a valid marriage under the religious or national law of the country in which it is conducted, unless there is
1. evidence which casts doubt as to its validity (see DMG 10157 - 10163) **or**
 2. doubt about the authenticity of the document produced.
- 10156 Where, the marriage takes place in a country which permits polygamy, there may be provisions governing the acceptance of such a marriage as valid for SS purposes if the marriage is monogamous. See DMG 10310 et seq and DMG 10157 - 10163.

Domicile

10157 Domicile is a legal concept used to link any individual with a particular legal system, and is used to determine which country's laws govern questions of a person's personal status. Domicile and nationality are separate matters. The DM cannot find out where a person is domiciled by finding out that person's nationality. Nor can the DM decide a person's domicile simply by finding out where that person lives. Residence and domicile are not the same thing.

10158 The question of a person's domicile (see DMG 10165) may be important when establishing the validity of a marriage. The DM should not raise the domicile question unless it is necessary. For example, the DM should accept that a marriage is valid unless there is good reason for supposing it is not. Detailed enquiry into the domicile of married parties to establish their capacity to enter into the marriage is not usually necessary.

10159 Under English law a person

1. receives **a domicile of origin** at birth and cannot ever be without a domicile
2. can acquire **a domicile of choice** by residing in a country other than that of the domicile of origin with the intention of staying there either permanently or indefinitely
3. may only abandon a domicile of choice if that person ceases to
 - 3.1 reside **and**
 - 3.2 intend to residethere (it is enough to prove an absence of intention to reside).

Note: When a person abandons a domicile of choice that person either acquires a new domicile of choice or their domicile of origin revives¹.

1 R(G) 1/93

10160 The DM must take into account all the circumstances when deciding whether a person has acquired a domicile of choice, including

1. that person's motive for taking up residence initially **and**
2. whether or not that residence is precarious.

There must be an intention to remain in that country indefinitely. The decision in each case is one of fact¹.

1 Scarman J in the Estate of Fuld (No.3) [1968] p 674, 684

10161 The standard of proof required to show that a person has acquired a domicile of choice is the balance of probabilities. However the degree of proof required to meet this standard can vary according to the subject matter being considered. A strong case must be made to establish a change and to replace the domicile of origin with a domicile of choice¹.

1 Buswell v IRC [1974] 2 All ER 520

10162 There are two elements that must be shown in order to prove that a domicile of choice has been acquired. Firstly the person must have taken up residence in the country concerned. Secondly the person must have the necessary intention. The intention that has to be shown relates to the permanence of the person's residence in the country concerned. The person may have made statements about this but often the intention has to be inferred from the person's actions and the circumstances of the case. It must be shown that the person settled in the relevant country with the intention to "make his home in the new country until the end of his days unless and until something happens to change his mind"¹.

1 Inland Revenue Commissioners v Bullock [1976] 3 All ER 353

10163 The guidance concerning the burden of proof given in DMG Chapter 01 should be applied. Initially the burden lies with the claimant to prove that the conditions for a claim or application are satisfied. The burden of proving that the conditions for revision or supersession are satisfied lies with the person who applies for revision or supersession so, if it is the Secretary of State who seeks to revise or supersede then the onus of proof lies with the DM.

10164 Questions of domicile are likely to arise where a marriage has been contracted abroad or a divorce or decree of nullity of marriage is obtained abroad. In general, a foreign marriage is valid under English and Scottish law if

1. it satisfies the law of the jurisdiction where the marriage takes place **and**
2. each party has capacity according to domicile at the time of the alleged marriage.

10165 The question of domicile may be vital for questions of

1. validity of marriage **and**
2. recognition of divorce **and**
3. decrees of nullity of marriage

when it is necessary to decide which country's laws apply. For example, the domicile of a person who enters into a polygamous or potentially polygamous marriage is crucial in determining whether a marriage is valid under English or Scottish law and in Scottish law the question whether there is an irregular marriage of habit and repute may arise (see DMG 10211).

10166 Domicile is a complex legal concept and the DM should consult the RVU for advice if necessary. DMs should always seek advice where

1. a statutory certificate is not produced **or**
2. they have any doubt about the validity of a marriage **or**
3. there is doubt whether recognition should be given to a porce or decree of nullity of marriage **or**
4. two “marriages” are involved, one under English or Scottish law and the other in a country which permits polygamy **or**
5. a claimant
 - 5.1 has more than one wife under the law of a country which permits polygamy **and**
 - 5.2 maintains that he is domiciled in England and Wales, or Scotland.

Note: For the purpose of 5. a claimant may do this, for example by making an appeal against a decision that the marriage is polygamous in fact (see DMG 10310).

Effect of change of domicile on marriage

10167 The DM should note that

1. a person’s domicile of origin is the country in which he was born (see DMG 10159) **and**
2. if that country is a country which permits polygamy, for example Pakistan, and the person’s only marriage took place there it is potentially polygamous **and**
3. if the person
 - 3.1 moves to GB with the intention of living here permanently **and**
 - 3.2 acquires British domicile as his domicile of choice then that marriage becomes monogamous **and**
4. if
 - 4.1 the person enters into a second marriage in a country which allows polygamy whilst his first marriage still exists **and**
 - 4.2 he remains domiciled in GB then the second marriage will be void but the first marriage remains valid.

Both parties to marriage dead

10168 If a marriage is not proved by direct evidence and both parties to the marriage are dead, a ceremony may be inferred and a valid marriage presumed if

1. there is evidence of cohabitation with repute **and**

2. any children are registered as legitimate, unless in England and Wales there is very strong evidence that there was no such ceremony.

In Scotland a ceremony is not essential to establish marriage by cohabitation with habit and repute.

10169 - 10179

Marriage - provisions applying only in England and Wales

Previous marriage - onus of proof

- 10180 If a DM challenges a marriage on the grounds that the parties were not free to marry, the onus is on the DM to produce
1. evidence that a previous marriage of either party took place and that marriage has not been dissolved **and**
 2. facts from which it can reasonably be inferred that the spouse of the previous marriage was alive at the date of the marriage now in question.

If the DM can do this and the claimant then contends that the former marriage was invalid the onus is on the claimant to prove this contention¹.

1 CG 203/49(KL); R(G) 1/51

- 10181 A marriage which is invalid on the ground that one of the parties was not free to marry does not necessarily constitute the criminal offence of bigamy.
- 10182 The advice of the RVU should be sought in cases where DMG 10180 applies.

Marriage between minors

- 10183 Although persons under 18 years of age are generally required to obtain the consent of certain persons before they can marry¹, lack of consent will not invalidate the marriage.

1 Marriage Act 1949, s 3 as amended by the FLR Act 69

Marriage of persons under 16

- 10184 A marriage where either party is under the age of 16 is void and cannot give title to any benefit on the husband's insurance. This provision has applied since 10.5.29. Before that date a marriage was void if the woman was under the age of 12 or the man was under 14.

Presumption of death

10185 The DM should note that

1. if a married person in England or Wales
 - 1.1 has not seen or heard of their spouse for more than 7 years and wishes to remarry, the Registrar normally requires them to make all possible enquires in the area where, if living, their spouse would be most likely to have been heard of **and**
 - 1.2 finds nothing to suggest that their spouse is still alive or has been living within the last 7 years, they can presume their spouse's death
2. there can be no presumption that a spouse died at any particular time
3. the presumption is sufficient for a person to remarry at a registrar's office if they sign a statement that they have made all the necessary enquiries (see DMG 10466 et seq).

10186 If a person's second spouse dies they should be regarded as being widowed. If there is evidence that the first spouse was alive at the time of the second marriage the second marriage is invalid. For example, in such a situation, a woman cannot be accepted as the widow of her second husband¹.

1 R(G) 1/51

Dissolution of marriage

10187 The signed statement of presumption of death in DMG 10185 **3.** does not validate the second marriage. The marriage is validated by a decree of presumption of death and dissolution of marriage¹ (obtained from the Divorce Division of the High Court). When considering the effect of such a decree the DM should note that

1. a person who obtains a decree and does not remarry is a widow or widower
2. if it is discovered later that the spouse was alive at the time of the decree, the person who obtained the decree is then treated as divorced
3. if a person remarries and later the second spouse dies, the person continues to be treated as being widowed even though it is proved later that the first spouse was alive at the time of the second marriage
4. the decree does not establish that the death occurred at any particular time between the marriage and the decree so its value to a BB claimant is reduced.

Note; Where **3.** applies the decree of presumption of death and dissolution of marriage operates to make the second marriage legal.

1 Mat Causes Act 65, s 14

10188 - 10199

Marriage - provisions applying only in Scotland

10200 Scottish law on marriage is different from English law in some important respects. Under Scottish law the essence of marriage is consent. Once parties have fully and validly exchanged their consent in the way described by the law nothing more is required to create the marriage.

Regular marriage

10201 Before 1.7.40 the only form of regular marriage in Scotland was a marriage celebrated by a minister of a religion of any denomination after

1. proclamation of the banns **or**
2. the publication of a notice by the Registrar of the District in which the party intending to marry was usually resident.

10202 Between 1.7.40 and 31.12.77 a marriage contracted before an authorised registrar, after the publication of notice of intention to marry, was also a regular marriage.

10203 Registration of either of these forms of regular marriage was compulsory. Before 1.7.40 this had to take place within three days. Those contracted before a registrar had to be registered immediately.

10204 Since 1.1.78, the requirements for a regular marriage are the

1. issue of a Marriage Schedule by the District Registrar (after receipt of a marriage notice or approved certificate for each of the parties) **and**
2. solemnisation of the marriage by
 - 2.1 a person who is an authorized celebrant (religious marriage) **or**
 - 2.2 an authorised registrar (civil marriage).

Authorized celebrants include Ministers of major denominations, and members of other religious bodies (not necessarily Christian) whose individual nomination is approved by the Registrar General¹.

1 Marriage (Scotland) Act 1977, s 6 & 8

10205 A religious marriage must be registered at the office of the District Registrar within three days. A registrar must register all marriages solemnised as soon as possible.

10206 A marriage contracted after 1.1.78 which does not comply with DMG 10204 may be void. If a marriage is found or declared to be void the entry relating to it in the register of marriages will be cancelled.

Note: Where a regular marriage is found to be void subsequent cohabitation by the parties may constitute an irregular marriage by cohabitation with habit and repute.

10207 The onus of proving a marriage is on the claimant. Where a marriage certificate is produced, there is a presumption in favour of validity of that marriage unless there is evidence to the contrary. The validity of a regular marriage which has been registered cannot be questioned on the ground that the person who celebrated or solemnized it was not competent or qualified to do so.

10208

Irregular marriage

10209 The following paragraphs give general guidance on irregular marriage in Scotland. These provisions can also apply to people who have previously lived in Scotland where an irregular marriage could have been constituted prior to their leaving. Where the existence of an irregular marriage is claimed, the DM should ask for the opinion of the Department's solicitor via the complex DM JCP Arbroath.

10210 From 1.7.40 the only form of irregular marriage that could be established was marriage by cohabitation with habit and repute¹.

1 Marriage (Scotland) Act 1939

Abolition of marriage by cohabitation with habit and repute

10211 The rule of law by which marriage could be constituted by cohabitation with habit and repute ceased to have effect¹ from 4.5.06². This means that where the cohabitation begins on or after 4.5.06 it will not provide a basis to constitute an irregular marriage.

1 Family Law (Scotland) Act 2006, s 3; 2 The Family Law (Scotland) Act 2006 (Commencement, Transitional Provisions and Savings) Order 2006

10212

Savings provision

10213 However, the rule of law allowing marriage by cohabitation with habit and repute will still apply where the cohabitation with habit and repute

1. ended before 4.5.06 **or**
2. began before, but ended on or after 4.5.06 **or**
3. began before, and continues after 4.5.06¹.

1 Family Law (Scotland) Act 2006, s 3(2)

10214 In many cases therefore it will still be necessary to refer habit and repute cases to The Department's Solicitor via the complex DM JCP Arbroath as described in DMG 10209.

10215 The rule of law allowing marriage by cohabitation with habit and repute will also continue to apply where¹

1. the cohabitation with habit and repute began **on or after 4.5.06 and**
2. the conditions in DMG 10216 are satisfied.

1 Family Law (Scotland) Act 2006, s 3(3)

10216 The conditions referred to in DMG 10215 **2.** are¹ that

1. the cohabitation with habit and repute was between two persons, one of whom is domiciled in Scotland **and**
2. the person with whom the person in **1.** was cohabiting died domiciled in Scotland **and**
3. before the cohabitation with habit and repute began, the persons in **1.** and **2.** purported to enter into a marriage outside the UK **and**
4. in consequence of the purported marriage, the persons in **1.** and **2.** believed themselves to be married to each other and continued in that belief until the death of the person in **2.** **and**
5. the purported foreign marriage was invalid under the law of the country where it took place **and**
6. the person in **1.** became aware of the invalidity of the purported foreign marriage only after the death of the person in **2.**

Note: Thus the status of the marriage is preserved for the surviving spouse if it turns out, after the death of the other spouse, that the foreign marriage was invalid.

1 Family Law (Scotland Act) 2006, s 3(4)

10217 - 10219

Habit and repute

10220 Although irregular marriage by cohabitation with habit and repute will diminish in importance from 4.5.06, the guidance in the following paragraphs is retained because cohabitation in Scotland with habit and repute before 4.5.06 will be relevant to benefits for some time to come.

10221 The basis of marriage by cohabitation with habit and repute as with regular marriage in Scotland is interchange of consent¹. No ceremony is required for such a marriage. Habit and repute arises from both parties

1. cohabiting together openly and constantly as if they were husband and wife
and
2. behaving towards each other as above for such a length of time in the society or neighbourhood of which they are members as to produce a general belief that they are married².

1 R(G) 7/56; 2 R(S) 4/85

10222 An irregular marriage cannot be established if there is an impediment to marriage, for example, one party is already married to someone else or is under 16¹.

1 R(P) 1/51; R(G) 5/83

10223 When considering cohabitation and its duration the DM should note that

1. the cohabitation founded upon must have been in Scotland¹
2. no minimum period has ever been laid down but the length of time which would prove sufficient should be judged in the light of all the circumstances of each case²
3. the period should be measured in years rather than months³
4. where any impediment to marriage has been removed and the parties became aware that they are free to marry, some account may be taken of the period of cohabitation prior to the removal of the impediment, or the parties' knowledge of its removal⁴
5. there must be sufficient period of cohabitation after the removal of the impediment to establish exchange of consent to marry.

1 R(G) 1/71; 2 R(G) 5/83; 3 R(G) 8/56; R(G) 1/71; 4 R(G) 5/83

10224 The DM does not usually need to determine the actual date of a marriage by cohabitation with habit and repute. Most questions arise after the death of one of the parties, so it is enough to determine whether a marriage existed at the date of death.

Note: The date of the removal of an impediment to marriage can never be the date at which an irregular marriage can be regarded as constituted. There has to be some period of cohabitation after this.

10225 There can be no effective consent to marriage¹ if the parties

1. were not aware **or**
2. had no reasonable grounds for believing

that the impediment to marriage had been removed.

1 R(G) 1/55; R(G) 2/82

10226 The parties must cohabit together openly and constantly as if they were husband and wife. Cohabitation as

1. mere cohabitantes **or**
2. lovers **or**
3. man and housekeeper **or**
4. landlady and lodger

is not enough¹.

1 R(S) 4/85

10227 The parties' own view of their relationship is likely to be reflected by the views of others. It is the views of the social network in which the parties lived that is important. If

1. their social contacts are limited to a few neighbours and shopkeepers, a general reputation of marriage in that circle is enough **or**
2. they have a wider social network, the views of neighbours, friends, relatives and colleagues might be important.

The repute need not be universal, but must be general and not seriously divided¹.

1 R(G) 2/82; R(S) 4/85

10228 Presumption of implied consent to marriage arising from cohabitation with habit and repute may be disproved if the parties do not believe in the idea of formal marriage. There can be no presumption of consent to marriage¹ if both parties reject at least some of the package of

1. legal ties **and**
2. constraints of marriage **and**
3. consequences of marriage.

Where there is an intention to marry at some stage in the future, but at present consent only to a relationship which left both free, any presumption of marriage may be disproved.

1 R(G) 4/84

10229 Questions whether parties have contracted an irregular marriage by habit and repute seldom arise while both parties are still alive. Marriage is a contract involving many rights and obligations, for example maintenance and succession rights. It is very difficult for persons who are living together to prove that they have contracted an irregular marriage by habit and repute. There may be adequate reasons for such people not having entered into a regular marriage. But in normal circumstances there is nothing to prevent their arranging a regular marriage¹ if they wish to be married.

1 R(S) 4/85

10230

Irregular marriages before 1.7.40

10231 DMG 10232 - 10233 gives guidance on two other forms of irregular marriage. These were abolished in July 1940 but are still valid if entered into before that date.

10232 Declaration *de praesenti* means all that was necessary to constitute marriage by declaration was that a man and woman should exchange consent to immediate marriage. The consent may be by word of mouth or in writing. As with marriage by cohabitation with habit and repute, the registration of any children resulting from such a marriage as illegitimate is not fatal to the proof of marriage.

10233 Promise *subsequente copula* means a marriage formerly established by a promise of marriage followed by sexual intercourse. The promise must have been given and intercourse have taken place in Scotland.

10234 From 1.7.40 no irregular marriage contracted by either of these ways is valid¹, but any irregular marriage contracted before that date is not affected. Marriage by cohabitation with habit and repute cannot now be registered unless established by Court declarator.

1 Marriage (Scotland) Act 1939

Marriage between minors

10235 The consent of parents or guardians is not required by the law of Scotland even where either one or both of the parties is a minor (a person under 18 years of age). Sometimes minors resident in England and Wales who do not have parental consent to their marriage go to Scotland where they can be married without such consent.

Marriage of persons under 16

10236 A marriage where either person is under the age of 16 is void¹ and cannot give entitlement to any benefit on the husband's insurance. This provision has applied since 10.5.29. Before that date, a marriage was void if the woman was under the age of 12 or the man was under 14.

1 Marriage (Scotland) Act 1977, s 1

10237 - 10249

Void and voidable marriages

Void marriages

10250 A void marriage cannot be treated as valid under any circumstances¹. For benefit purposes it must be regarded as never having existed.

1 R(G) 3/59

10251 In England and Wales a marriage celebrated after 31.7.71 is void¹ if

1. it is not a valid marriage² because
 - 1.1 the parties are within the prohibited degrees of relationship **or**
 - 1.2 either party is under age 16 **or**
2. it is not a valid marriage³ because the parties have knowingly and wilfully intermarried contrary to certain requirements as to the formation of marriage **or**
3. at the time of the marriage either party was already lawfully married **or**
4. the parties are not respectively male and female.

Note 1: See DMG 10145 et seq for guidance on prohibited degrees of relationship.

Note 2: See DMG 10311 for guidance on when a polygamous or potentially polygamous marriage is void.

Note 3: See DMG 10600 et seq for guidance on gender recognition legislation.

*1 Mat Causes Act 73, s 11; R(G) 3/59; 2 Marriage Act 1949, s 1(1) & (2);
3 CAO v. Bath, 21 October 1999, opp. to R(G) 1/00; Marriage Act 1949, s 25 & 49*

10252 In Scotland similar principles apply and a marriage is void if there is

1. lack of capacity because
 - 1.1 one party is under the age of 16 **or**
 - 1.2 of insanity (including intoxication) **or**
2. defect of consent where
 - 2.1 the consent, though apparently given to marriage, is in reality directed towards some other relationship **or**
 - 2.2 the marriage was induced by fraud **or**
 - 2.3 the marriage was induced by force or fear **or**
 - 2.4 the marriage was induced by error **or**
3. illegality where
 - 3.1 at least one of the parties is still subject to a prior **and** subsisting marriage **or**

3.2 the parties are within the prohibited degrees of relationship (see DMG 10145 et seq) **or**

4. non-compliance with certain of the statutory formalities.

10253 A void marriage is regarded as never having taken place. A void marriage may be treated as such by a decree of nullity or by the agreement of both parties. One of the parties may obtain a decree for their own protection, or to acquire certain rights, for example financial support.

10254 See DMG 10288 and 10289 for information on where to look for evidence of a marriage being declared a nullity.

10255 - 10259

Voidable marriages

10260 In England and Wales a voidable marriage is one which is regarded as a valid and subsisting marriage until it is declared null and void¹. It may be voided if

1. the marriage has not been consummated owing to the incapacity of either party or to the wilful refusal of either party to consummate it
2. either party to the marriage did not validly consent to it, whether because of duress, mistake, unsoundness of mind or otherwise
3. at the time of the marriage either party, though capable of giving a valid consent, was suffering (whether continuously or intermittently) from mental disorder² of such a kind or to such an extent as to be unfit for marriage
4. at the time of the marriage one party was suffering from venereal disease in a communicable form
5. at the time of the marriage the woman was pregnant by some person other than the other party.

1 Mat Causes Act 73, s 12; 2 MH Act 83, s 1

10261 In Scotland the only ground upon which a marriage is voidable is impotence.

10262 The operative date declaring the marriage void in a voidable marriage in England and Wales¹ is the date of decree absolute.

1 Mat Causes Act 73

10263 Where the decree was granted after 31.7.71 a voidable marriage remains valid and existing until a decree of nullity obtained by either of the parties (and in the lifetime of both) becomes absolute¹. There is no equivalent statutory provision in Scottish law. The principle that a voidable marriage is void from its commencement once a decree of nullity (in Scotland, until Declaration of Nullity of Marriage) has been pronounced rests on the common law. This principle has been eroded by statutory provisions dealing with, for example, the legitimacy of children.

Note: Different legislation applies in Northern Ireland².

1 Mat Causes Act 73, s 16; 2 Article 18 Mat Causes (NI) Order 1978

10264 A decree of nullity granted after 31.7.71 for a voidable marriage annuls the marriage only after the decree has been made absolute. The marriage is treated as if it had existed up to that time¹ and this

1. deprives a widow of her former entitlement to a service pension² **and**
2. applies to WB.

There is no equivalent provision in Scottish law and before 31.7.71 there was no legislative provision in English law. Under English law before 31.7.71, for NI purposes, it was decided, however, that a valid marriage existed³ from the date of solemnisation to the date that the decree of nullity became absolute.

1 Mat Causes Act 73; 2 Regina v. Secretary of State Ex Parte Ward; 3 R(G) 3/72

10265 Whether a decree of nullity granted after 31.7.71 for a voidable marriage annuls the marriage from the beginning or from the date the decree has been made absolute

1. depends on the law under which the decree is made **and**
2. not on the law under which the marriage was entered into.

Where a woman was married in Scotland but then obtained a decree of nullity in the High Court in Northern Ireland, the marriage existed up to the time the decree has been made absolute¹. This is the case even where the plaintiff is resident in Scotland at the time of obtaining the decree.

1 R(G) 1/85

10266 A decree of nullity on the grounds of DMG 10260 (excluding the ground of unconsummated marriage) will not normally be granted unless proceedings were instituted within three years from the date of marriage. There is discretion to grant a decree when proceedings are instituted after that period¹.

1 Mat & Fam Proceedings Act 84, s 2

10267 For RP purposes there are specific circumstances in which a voidable marriage which has been annulled would be treated as a valid marriage which has been terminated by divorce (see Benefit Specific Guidance).

10268 In cases where a decree of nullity was granted in England and Wales on or after 1.8.71 (and the marriage is voidable as opposed to void) it is not possible to reinstate any WB to which a woman was entitled before the marriage¹.

1 R(G) 1/73; R(G) 2/73

10269 See DMG 10288 and 10289 for where to look for evidence that a marriage has been declared a nullity.

10270 - 10279

Divorce and separation

Decree nisi

10280 The DM should note that

1. in England and Wales every decree of divorce in the first instance is a decree nisi (nisi is Latin for unless)
2. a person may petition for divorce when the marriage has existed for one year or, in exceptional cases, before the end of the one year period¹
3. a decree nisi (which does not exist under Scottish law) does not dissolve a marriage
4. a marriage is dissolved and marital status altered for legal purposes only when the decree is made absolute, normally six weeks after the decree nisi²
5. if a man dies after a decree nisi but before a decree absolute for dissolution of marriage has been granted, his wife becomes his widow, because in law, she is still a married woman.

1 Mat Causes Act 73, s 3; Mat & Fam Proceedings Act 84, s 1;

2 Mat Causes Act 73, s 1(5)

Decree absolute

10281 A woman has the status of a single woman from the first moment of the day on which her decree of divorce is made absolute. But if her husband dies on that day before notice of application to make the decree absolute is lodged with the registrar, the woman has the status of a widow. This is because her marriage was terminated by her husband's death, and not by any judicial act.

10282 Where either party is described as divorced on a marriage certificate, the DM may assume that

1. evidence of divorce was produced at the time of the marriage **and**
2. no further enquiry is necessary

in all other cases an alleged divorce should be verified if it is relevant to the claim.

Decree absolute declared void

10283 A decree absolute may later be declared void, for example because no satisfactory financial arrangements have been made for the other spouse. The effect of this is that the divorce had not been granted. The marriage remains in existence until

1. the death of one of the parties **or**
2. a further order of the court affecting the marital status of the parties is made.

Recognition in United Kingdom of divorce, annulment and legal separation granted in the British Islands

10284 A divorce or annulment granted in any part of the British Islands (England and Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man¹) by a court of civil jurisdiction is regarded as effective throughout any part of the British Islands². A judicial separation (see DMG 10297) obtained in a court of civil jurisdiction, is also recognised throughout any part of the British Islands.

1 Inte Act 78, Sch 1; 2 FL Act 86, s 44

Dissolution of marriage and divorce in Scotland

10285 A marriage recognised by Scottish law can be terminated only by

1. death **or**
2. decree of divorce **or**
3. decree of dissolution of marriage on presumed death of a spouse

when a marriage is dissolved by divorce the parties cease to be husband and wife as soon as the Court's decree is pronounced. There is no decree nisi in Scotland.

10286 Although a decree of divorce has immediate effect, if the decree is reclaimed (appealed) and the appeal is successful the parties are deemed to have been continuously married. A Certificate of divorce, which is the least formal proof of a divorce, is not issued until the reclaiming days have expired. Two other alternative documents are issued in order to prove divorce, a Certified Copy Interlocutor or an Extract Decree of divorce.

10287 The jurisdiction of the courts in marriage depends on the residence of the parties at the time of the marriage. In divorce, the Scottish Courts have jurisdiction if either of the parties to the marriage was

1. domiciled in Scotland on the date when the action for divorce was begun **or**
2. habitually resident in Scotland throughout the period of one year before the date upon which the action was begun.

A divorce granted under the law of any other part of the British Islands is recognised in Scotland. For divorces granted overseas see DMG 10291.

10288 Records of Scottish divorces and of declarators of nullity or marriage are kept at New Register House, Edinburgh. They can be traced if details are given of

1. the date **and** place of divorce or the declarator of nullity of marriage **or**
2. the date **and** place of the marriage which has been dissolved or declared to be a nullity.

10289 For divorces or declarators of nullity of marriage granted before 1.5.84, New Register House may be able to confirm that a divorce or declarator of nullity has been granted but will not hold a copy of the court decree. To obtain a copy of that or to trace a divorce or declarator of nullity of marriage of which New Register House do not have a record, the DM would need to apply to the Extracts Department of the Court of Session in Edinburgh. The Extracts Department will need an approximate year of divorce in order to search for a divorce or declarator of nullity of marriage.

10290 A person who has been married cannot remarry unless the first marriage has been terminated

1. by divorce **or**
2. by death of the spouse **or**
3. by decree of dissolution of marriage on presumed death of the spouse.

The mere disappearance of a spouse whose whereabouts cannot be traced is not enough to make a later marriage valid (see DMG 10470 - 10496).

Foreign divorces, annulments and separations

10291 A question of foreign law is a question of fact¹. If the validity of a foreign divorce is incidental to a benefit question the DM should accept a divorce which was valid under the law of each party's antenuptial domicile². If the validity of the divorce is incidental to the benefit question, then the divorce must also meet the conditions for recognition in the UK (see DMG 10292).

1 R(G) 2/00; Lazard Brothers & Co v. Midland Bank Ltd. H.L. [1933] A.C. 289;

2 R(G) 2/00; Schwebel v. Ungar [1964] 48 Dominion Law Reports (2d) 644

Example 1

A claim to BB is based on a marriage celebrated under the law of Bangladesh. Entitlement to benefit depends on the validity of that marriage. The claimant had been previously married and her previous husband had divorced her by an informal talaq (see DMG 10413). The validity of the divorce is incidental to the validity of the second marriage and the claimant does not have to show that the conditions for recognition of the divorce in DMG 10293 and 10295 are satisfied.

Example 2

In another claim to BB there is a question whether the claimant's marriage was monogamous and this depends on the validity of her husband's divorce from his first wife. The validity of the divorce is an independent question and conditions for recognition in DMG 10292 must be satisfied.

10292 A foreign divorce obtained by means of proceedings (i.e. a decree obtained through the process in the courts of law in the foreign country) is recognised in the UK if

1. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained¹ **and**
2. either party was at that time habitually resident in that country **or** was domiciled in that country **or** a national of that country².

1 FL Act 86, s 46(1)(a); 2 s 46(1)(b)

10293 A foreign divorce obtained otherwise than by means of proceedings¹ is recognised in the UK if

1. the divorce, annulment or legal separation is effective under the law of the country in which it was obtained **and**
2. each party was at that time domiciled in that country **or** either party was domiciled in that country and the other was domiciled in a country where the divorce, annulment or separation is recognised as valid **and**
3. neither party was habitually resident in the UK throughout the period of one year before the date on which it was obtained.

1 FL Act 86, s 46(2); Chaudhary v. Chaudhary [1984] 3 All E.R. 1017

10294 There is no real difference between "ordinary" and "habitual" resident. Each should be given its natural and ordinary meaning¹. For example, in the case of a man who worked in Mexico from 1958 to 1974, it was not in doubt that the person went to Mexico to join an associate company of his former English employers and was expected to be there for several years. It was decided that the man was habitually resident in Mexico at the time of his divorce in 1959².

1 Kapur v. Kapur [1985] Vol 15 Fam Law 22; 2 R(P) 2/90

10295 Recognition may be refused if

1. the divorce, annulment or legal separation was obtained without steps having been taken to give the other party notice of the proceedings **or**
2. either party to the marriage was not given an opportunity to take part in the proceedings¹.

1 FL Act 86, s 51(3)(a)

10296 Any documentary evidence of divorce must be checked for authenticity. Where documentary evidence is not available, an enquiry should be made into the form of the divorce. The DM should obtain evidence of

1. who initiated the divorce
2. how the divorce was negotiated
3. whether the spouse initiating the divorce took proceedings personally or through a representative and, if so, how the representative was authorised to act
4. whether there was any cash transaction, for example the return of all or part of the dowry.

10297 If the husband states that he conducted the proceedings outside GB, the DM should confirm

1. that he was absent from GB at the date of divorce **and**
2. where he was residing during the twelve month period before the date of divorce.

10298 Further guidance on divorce under Hindu law, Islamic law and by native law and custom is given at DMG 10390 - 10443. The DM should refer

1. any cases of doubt or difficulty **and**
2. all cases involving recognition of a foreign divorce where the marriage was celebrated in GB

to the RVU for advice.

Judicial separation

10299 A decree of judicial separation does not dissolve a marriage but only entitles the parties to live apart.

10300 - 10309

Marriage in countries which permit polygamy

10310 From 28.8.72 a marriage celebrated under a law which permits polygamy is treated as having the same consequences as a monogamous marriage for any day throughout which the polygamous marriage is in fact monogamous¹. (From 6.4.75 new statutory provisions applied)². This is described as a potentially polygamous marriage (see DMG 10321). The DM should note that

1. polygamous marriage means a marriage celebrated under a law which permits polygamy³
2. monogamous marriage means a marriage celebrated under a law which does not permit polygamy⁴
3. a polygamous marriage which is in fact monogamous is a polygamous marriage in which neither party has any spouse additional to the other⁵
4. the day on which a polygamous marriage is contracted or terminates for any reason is treated as a day throughout which that marriage was in fact monogamous.

Note: The guidance in 4. only applies if at all times on that day after it was contracted, or before it ended, it was monogamous⁶.

1 National Insurance, Industrial Injuries & Family Allowance (Polygamous Marriages) Regulations; 2 SS & FA (Poly Marr) Regs; 3 reg 1(2); 4 reg 1(2); 5 reg 2(2)(a); 6 reg 2(2)(b)

10311 A polygamous or potentially polygamous marriage is void¹ if it is

1. celebrated after 31.7.71 **and**
2. entered into outside England or Wales **and**
3. either party was domiciled in England or Wales at the time of the marriage.

Note 1: This does not apply in Scotland (see DMG 10325).

Note 2: See DMG 10251 for further guidance on void marriages

1 Mat Causes Act 73, s 11

10312 - 10319

Effect of polygamous marriage on earlier monogamous marriage which still subsists

10320 Where

1. a person enters into a marriage under a law which permits polygamy **and**
2. an earlier marriage of that person under a law which does not permit polygamy still subsists at the time of the later marriage

the earlier marriage does not lose its monogamous characteristics and remains valid.

Note: The same applies if two Muslims contract a marriage which conforms with English law (see DMG 10153) and one of them subsequently contracts a second marriage under a law which permits polygamy.

10321 Whether a marriage is potentially polygamous depends on whether

1. the law under which it was conducted allows polygamy **and**
2. at the time of the marriage, the law of the country which allows polygamy would prevent the parties concerned from entering into a potentially polygamous marriage.

10322 A decision of the Court of Appeal¹ concerned a marriage celebrated under the Muslim religion in Pakistan in 1979 between

1. an English domiciled husband **and**
2. a Pakistani domiciled wife.

The husband later challenged the validity of the marriage on the ground that it was polygamous² (Under Pakistani law a husband, but not a wife, may marry a second spouse during their marriage). The Court of Appeal held that a "polygamous marriage" referred to the capacity of the parties entering into the marriage and not to whether a polygamous marriage was permissible under the appropriate local laws. Neither the husband nor wife could validly contract a second marriage, the husband because of English law and the wife because of Pakistani law. As a result their marriage was monogamous and valid under English law.

¹ *Hussain v Hussain* [1982] 3 WLR 679; 2 Mat Causes Act 73, s 11(d)

10323 The effect of DMG 10322 is to allow men who are domiciled in the UK, like those who are not, to have their Muslim marriages treated as valid in the UK if the marriage in question is in fact monogamous and remains so. But a woman who is domiciled in the UK and who marries a man domiciled elsewhere whose law would allow him to contract polygamy cannot benefit from the ruling in DMG 10322.

Effect of Scottish Law

10324 The provisions¹ under DMG 10311 have no direct equivalent in Scottish law. But a Scottish Court can rule on the validity of a marriage celebrated under a law which permits polygamy. A polygamous marriage is illegal apart from whether it is void as in DMG 10252 where

1. one or both parties are not domiciled in Scotland² **and**
2. a marriage in Scotland between the parties would be void from the beginning under the law of the domicile of one or both parties.

1 Mat Causes Act 73, s 11(d); 2 Marriage (Scotland) Act 1977, s 5(4)(f)

10325 DMG 10321 and 10322 do not apply in Scotland. Under DMG 10324 where a marriage is entered into on a potentially polygamous basis, it is still valid in Scotland unless under the law of the foreign country it could not have been entered into on that basis.

Countries which permit polygamy

10326 Polygamy is permitted in

1. India **and**
2. Pakistan **and**
3. Bangladesh **and**
4. Azad Kashmir **and**
5. most West African countries, including Ghana, and Nigeria **and**
6. Kenya **and**
7. Uganda **and**
8. Yemen.

Polygamous marriages may be contracted under Islamic law, (that is the Muslim religion) and by native law and custom. The position of persons who are Hindu by religion has been changed by legislation in some countries (see DMG 10391 - 10408).

Registration of marriage

10327 In most of these countries there is no statutory provision for the registration of marriages under Hindu law or by native law and custom. But provision is often made for registration of marriages under Islamic law. Claimants married under the Muslim or Muhammadan religion may therefore be able to produce a statutory marriage certificate (see DMG 10409 - 10423).

Evidence of another marriage

10328 The DM should note that

1. evidence of another marriage may be given
 - 1.1 on the marriage certificate on the claimant/husband's signed statement about his marital status **or**
 - 1.2 on claims for increases of benefit for another wife **or**
 - 1.3 for children born before the date of the present marriage
2. if the claimant alleges an earlier marriage has been terminated by death or divorce of another wife before the date of the present marriage, the death or divorce should be proved.
3. if the death or divorce occurred after the date of the present marriage, the marriage, although it may be valid under the law of the country where it was celebrated, will not at all times have been monogamous, and is invalid for any period before 28.8.72.

For the purpose of **3.** the marriage is monogamous in fact from the date of termination, provided there is no other marriage. The marriage therefore has the same effect as a monogamous marriage from the later of the date of termination or 28.8.72 (see DMG 10310).

Secondary and supporting evidence of marriage

10329 When verifying documents the DM should note that

1. all documents produced should be carefully examined to confirm their authenticity
2. they should show
 - 2.1 the seal or rubber stamp of the issuing authority **and**
 - 2.2 the date of issue, which should be the date of the event certified or a date shortly after this **and**
 - 2.3 where provision is made on the document, the amount of the fee paid

3. if the seal or rubber stamp provides for further details to be entered, for example the number of the Union Council, it should be checked that these details are complete
4. if there is any doubt about the authenticity of a document, the case should be referred to the RVU for advice.

10330 Where a statutory marriage certificate is not available, the DM must assess the validity of marriage on the secondary evidence available. An affidavit is only secondary evidence and the DM should not generally accept this without further supporting evidence. Supporting evidence which should have been obtained before the case is referred to the DM includes

1. a full description of the marriage ceremony, including the ages of the parties at marriage
2. whether both parties were present at the ceremony and, if not, who represented the missing party as proxy
3. whether proxy marriages are valid in that country
4. who performed the ceremony
5. what gifts, dowry or bride-price were exchanged (the latter applies only to an African tribal marriage by native law and custom)
6. the names of at least two witnesses to the ceremony.

In addition, the claimant may have chosen to provide details of passport entries.

Note: If there is any doubt about a document's authenticity, the case should be referred to the RVU for advice.

Original statement as to marital status altered

10331 The DM should view a change of story with suspicion and examine it closely where

1. a claim has been disallowed because the marriage is invalid or polygamous **and**
2. the husband denies his original statement as to marital status and seeks to prove that the marriage is valid and monogamous.

The onus is on the claimant to prove that the original statement was incorrect.

10332 - 10339

Effect of Polygamous Marriages Regulations on individual benefits

- 10340 The words marriage, husband, wife and widow describe a matrimonial relationship of a monogamous character and do not include polygamous relationships¹. For example "wife" cannot be extended to include "wives" and therefore an increase of RP cannot be paid in respect of the wives of a polygamous marriage.

1 R(G) 18/52; R(G) 1/70

Retirement Pension - Category A on late husband's contributions

- 10341 A woman widowed under pensionable age may use her late husband's contributions to help her qualify for Cat A RP if

1. she remains a widow up to that age **and**
2. throughout the day on which her husband died her polygamous marriage was in fact monogamous (see DMG 10310).

Note: See DMG Chapter 75 for guidance on pensionable age.

Retirement Pension - Category B

- 10342 If a woman's polygamous marriage is in fact monogamous throughout the day on which the conditions for entitlement to RP on her husband's contributions are satisfied, she is entitled to Cat B RP on her husband's contributions from and including that day¹. That day means

1. in the case of a woman who is already married at the time she reaches pensionable age, the date on which both she and her husband have reached pensionable age and satisfied the conditions for entitlement to RP
2. in the case of a woman who married after reaching reaching pensionable age, the later of the date of the marriage or the date on which they both satisfy the age and retirement conditions.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 SS & FA (Poly Marr) Regs, reg 3(1)

- 10343 If a woman's polygamous marriage is not in fact monogamous on the date on which she would have qualified for Cat B RP on her husband's contributions, she may qualify if her polygamous marriage later becomes in fact monogamous. Entitlement will be from and including the first day throughout which the polygamous marriage is in fact monogamous¹.

1 SS & FA (Poly Marr) Regs, reg 3(1) & (2)

10344 Once a woman has qualified for Cat B RP on her husband's contributions because her polygamous marriage was in fact monogamous on a particular day, the marriage is treated as in fact monogamous for any period falling after that day. This applies whether or not it has at all times been or continues to be in fact monogamous¹. The effect of this is that

1. even if her marriage subsequently becomes actually polygamous, it is not regarded as having come to an end **and**
2. she continues to be entitled to the pension at the married woman's rate until she is widowed or divorced, when the higher rate becomes payable.

1 SS & FA (Poly Marr) Regs, reg 3(1)

10345 A woman is treated as a widow for RP purposes if throughout the day on which her husband died their polygamous marriage was in fact monogamous (see DMG 10310)¹. This means that if she is widowed on or after reaching pensionable age, she can qualify for Cat B RP on her late husband's contributions if the conditions for entitlement are satisfied.

1 SS & FA (Poly Marr) Regs, reg 3(1)

10346 A widow is entitled to Cat B RP on her late husband's contributions when she reaches pensionable age and retires if she

1. was widowed under pensionable age **and**
2. qualified for WP because her polygamous marriage was in fact monogamous throughout the day of her husband's death.

This entitlement is at the same weekly rate as the WP to which she was entitled¹.

1 SS CB Act 92, s 48B(4) & (5)

Retirement Pension - Category C for wives, widows and former wives

10347 A woman whose husband is entitled to Cat C RP is entitled to a Cat C RP at the lower rate if she is over pensionable age and satisfies the conditions for the receipt of RP¹. She has entitlement if their polygamous marriage was in fact monogamous (see DMG 10310) throughout the day on which²

1. she is over pensionable age **and**
2. the prescribed conditions for the award of benefit are otherwise satisfied³.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 SS CB Act 92, s 78(2); 2 SS & FA (Poly Marr) Regs, reg 3(1); 3 reg 3(1)

10348 If their marriage is not in fact monogamous on that date, she may qualify for benefit if the marriage later becomes in fact monogamous, but only from and including the first day throughout which the polygamous marriage is in fact monogamous¹.

1 SS & FA (Poly Marr) Regs, reg 3(2)

10349 Once a woman has qualified for a pension as a married woman under the above provisions she continues to be treated as a married woman even if her marriage subsequently becomes actually polygamous. This means that her pension is paid at the married woman's rate until her husband dies, when she becomes entitled to the higher rate as his widow.

10350 A woman retains her right to a higher rate Cat C RP where

1. she has already qualified for a Cat C RP in her own right as a woman over 60 at 5.7.48 **and**
2. this has been awarded under existing provisions at the higher rate (because her polygamous marriage had not in fact at all times been monogamous).

She retains this right even though she would have qualified for only the married woman's rate if the regulations had come into force earlier.

Retirement Pension - Category D for women

10351 Before 22.12.84 a woman who qualified for Cat D RP in her own right as a person over 80 was treated as a married woman if her polygamous marriage was in fact monogamous throughout the day on which the conditions for the award of that pension were satisfied (see DMG 10310). This meant that the pension was payable at the married woman's lower rate.

10352 From 22.12.84

1. there is only one rate of Cat D RP **and**
2. it is always paid at the higher rate.

This is as a result of EC legislation which aims to remove discrimination on the grounds of sex or marital status in SS matters¹.

1 Directive 79/7/EEC

10353 - 10359

Retirement Pension for divorced women

- 10360 A woman may use her former husband's contributions to enable her to satisfy the conditions for a Cat A BP¹ where
1. her last or only marriage has been terminated by divorce when over pensionable age **and**
 2. her polygamous marriage was monogamous throughout the day it ended (see DMG 10310).

1 SS & FA (Poly Marr) Regs, reg 3(4)

- 10361 A woman may also be able to use her former husband's contributions to qualify for Cat A RP if
1. her last or only marriage has ended by divorce when under pensionable age **and**
 2. she does not re-marry before she reaches pensionable age **and**
 3. her marriage was monogamous throughout the day on which it ended (see DMG 10310).

Retirement Pension Increments for wives and widows

- 10362 A woman who has qualified for Cat B RP because she satisfies the conditions in DMG 10342 - 10346 also qualifies for RP Increments on her husband's insurance as a wife and widow¹. But where her polygamous marriage was not monogamous on

1. the date on which she reached pensionable age **or**
2. the date of her marriage if later

the husband's period of deferment for any period before the date on which her polygamous marriage became in fact monogamous is not taken into account for the wife's Incs. But it may be taken into account for widow's Incs.

1 SS & FA (Poly Marr) Regs, reg 3(3)

Incapacity Benefit

- 10363 A woman is treated as a married woman for benefit for any day throughout which her polygamous marriage is in fact monogamous (see DMG 10310) but not for any other day¹.

1 SS & FA (Poly Marr) Regs, reg 2

Widow's Benefit

- 10364 A widow is entitled to WB if
1. throughout the day on which her husband died their polygamous marriage was in fact monogamous (see DMG 10310) **and**
 2. the conditions for entitlement are otherwise satisfied.

This applies to women who were widowed before 28.8.72 and who would have qualified for benefit under the provisions if they had been introduced at an earlier date. This means that a decision disallowing WB on the grounds that the claimant was not the widow of the deceased because her marriage had and not at all times been monogamous, may be subject to reconsideration on the grounds of a relevant change of circumstances¹.

1 R(G) 3/58

Graduated retirement benefit for widows

- 10365 A woman who is treated as a widow because her polygamous marriage was in fact monogamous throughout the day on which her husband died (see DMG 10310) is entitled to GRB as his widow if the conditions for entitlement are otherwise satisfied.

Dependency increases for benefits other than Income Support

- 10366 A person receiving a benefit paid on a daily basis is entitled to an increase of benefit for a spouse for any day throughout which their polygamous marriage is in fact monogamous (see DMG 10310) if the conditions for entitlement are otherwise satisfied, but not for any other day¹.

1 SS & FA (Poly Marr) Regs, reg 2

- 10367 A person is only entitled to an increase of benefit for a child or children for any day for which the person
1. is entitled **or**
 2. treated as entitled

to CHB for the child or children and the conditions for an increase of benefit are otherwise satisfied.

Note: The provision¹ that a person residing with a spouse is treated as entitled to any CHB to which the spouse is entitled applies for any day throughout which their polygamous marriage is in fact monogamous². This does not however apply for any day when the polygamous marriage is not in fact monogamous.

1 SS CB Act 92, s 122(4); 2 SS & FA (Poly Marr) Regs, reg 2

10368 If, after determination of a claim for CHB made by one or both spouses, the person who claims CDI is not the spouse entitled to CHB, that person may be treated as entitled to CHB¹. In this case both spouses may satisfy the conditions for entitlement to a dependency increase for a child on the basis of

1. actual entitlement to CHB in the case of the spouse receiving CHB **and**
2. treated entitlement to CHB in the case of the spouse not receiving CHB.

The DM should determine which claimant has priority of entitlement to the increase².

1 SS Ben (Dep) Regs, reg 6(1)(a); 2 SS (OB) Regs, reg 15

10369 A person in receipt of a benefit paid on a weekly basis is entitled to an increase of benefit for a spouse for any week if throughout the payday appropriate to that week

1. their polygamous marriage is in fact monogamous (see DMG 10310) **and**
2. the conditions for the increase of benefit are otherwise satisfied.

Income Support

10370 Whilst these provisions¹ do not apply to IS, the question whether two or more people are polygamously married is relevant for IS purposes (see DMG Chapter 23).

1 SS & FA (Poly Marr) Regs

10371 - 10389

Marriage and divorce under Hindu law, Islamic law and by native law and custom

10390 Guidance about marriage and divorce under Hindu law, Islamic law and by native law and custom is given in the following paragraphs. The general form of marriage and divorce under the respective law is described first, followed by modifications of that law in specific countries. The DM should refer any case of doubt or difficulty to the RVU for advice.

Hindu Law

10391 Hindu law permits polygamy. Divorce is not known to general Hindu law because from the Hindu point of view, marriage cannot be dissolved. But this may be modified by custom or by legislation enacted by a particular country.

10392 The essentials of a lawful Hindu marriage are

1. the parties must give their consent to the marriage
2. there must be a ceremony in the presence of witnesses at which both parties are present¹.

1 R(G) 3/74

10393 When considering a Hindu marriage the DM should note that

1. the marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage (for example in one community the ceremony consists merely of the husband winding a piece of cloth around the bride)
2. where the ceremony includes the Saptapadi (that is the taking of 7 steps by the bridegroom and bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken
3. where the marriage is solemnized in the form of Anand Karaj, that is the going round the Granth Sahib by the bride and bridegroom together, the marriage becomes complete and binding as soon as the fourth round has been completed
4. the ceremony is usually performed by a priest of the religion
5. there is no minimum age for marriage except where the particular country's legislation makes provision
6. a couple who marry when children, do not normally start living together until they reach puberty (often not until the age of 17 or 18)

India-The Hindu Marriage Act 1955

- 10394 This Act¹, effective from 18.5.55, applies to all Hindus in India (excluding Azad Kashmir) or domiciled in India. The term Hindu includes any person who is
1. a Hindu by religion in any of its form or developments, including Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj **and**
 2. a Buddhist, Jaina or Sikh by religion.

1 Hindu Marriage Act 1955

- 10395 The main conditions which must be satisfied for a valid marriage are that neither party has a spouse living at the time of the marriage and that the parties are not within the degrees of prohibited relationship. If either of these conditions is not met, the marriage is void. The degrees of prohibited relationship within which two people are not allowed to marry are
1. lineal descendants (for example, parent and child) **and**
 2. brother and sister, uncle and niece, aunt and nephew, cousins.

- 10396 The age rules which apply to a Hindu marriage are that
1. from 1.10.78 the minimum age of marriage for a male is 21 years and for a female 18 years¹
 2. before 1.10.78 the minimum age for marriage was 18 years for a male and 15 years for a female (but a bride less than 18 years must have the consent of her parent or guardian in marriage)
 3. the marriage of a child below the minimum age does not make the marriage invalid.

1 Child Marriage Restraint (Amendment) Act 1978

- 10397 The marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage. Facilities for registering a Hindu marriage may or may not be available.
- 10398 From 18.5.55 the Act affects marriages contracted before that date so that
1. if a Hindu domiciled in India had two wives at 18.5.55 his marriage has not at all times been monogamous and is invalid for SS purposes until 28.8.72
 2. from 28.8.72 DMG 10310 et seq applies
 3. if a Hindu had two wives at some time before 18.5.55 but only one of the marriages subsisted at that date, that marriage is monogamous and valid for SS purposes
 4. if one marriage took place before and the other after 18.5.55, or both were celebrated after 18.5.55. the second marriage is invalid.

10399 Under the Act decrees of judicial separation, decrees of nullity and decrees of divorce are pronounced by the District Courts. These Courts are presided over by a judge and a certificate signed by a Magistrate is not therefore evidence of a valid decree. When considering the issue of divorce the DM should note that

1. a petition for divorce cannot normally be presented
 - 1.1 within one year (three years, before 27.5.76) of the date of the marriage **or**
 - 1.2 within one year (two years, before 27.5.76) of the passing of a decree for judicial separation
2. the respective parties are free to marry again at once when
 - 2.1 a marriage has been dissolved by a decree of divorce **and**
 - 2.2 there is no right of appeal against the decree
3. if there is a right of appeal neither party may marry again until
 - 3.1 30 days after the decree **or**
 - 3.2 until the appeal has been dismissed if an appeal has been lodged within that 30 day period.

Note: Before 27.5.76, the respective parties could not marry again until one year after the decree of divorce.

10400 Although divorce was not known to general Hindu law prior to the Act, it was allowed if the custom of the particular community allowed it. But in each case

1. the custom in question had to be clearly established by evidence to the satisfaction of the court concerned **and**
2. the Indian courts always required strict proof of any custom which in any way modified the general principles of Hindu law.

10401 For a contention of divorce to succeed before 18.5.55, it must have been established by appropriate evidence and reference to authority

1. what the custom was
2. that its forms were observed **and**
3. that the Indian courts have recognised it¹.

10402 The Act preserves rights recognised by custom or conferred by special enactment to obtain the dissolution of a Hindu marriage. The term “custom” is defined in the Act as “any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family”. In the case of an alleged divorce after the Act the absence of Court recognition does not preclude proof of a Hindu custom by other means¹.

1 R(G) 1/70

- 10403 Where a divorce by customary rites is alleged, claimants should be asked to
1. state their religion, eg Sikh or Hindu, and, if they are Hindu, to state their caste and their divorced spouse’s caste and the name of the village where the divorce took place **and**
 2. submit any documentary evidence of the divorce they may hold.

The above information and the claimants’ papers should be referred to the RVU.

Jamaica - The Hindu Marriage Law 1957

10404 This law effective from 19.12.57, applies to marriages between parties where they each belong to and profess the Hindu faith or religion. A marriage since 19.12.57 is void if

1. either party has a wife or husband alive at the time of contracting the marriage **or**
2. the parties are within the degrees of prohibited relationship **or**
3. either party is under the age of 16 at the date of marriage.

10405 When considering DMG 10404 the DM should note that

1. a marriage must be solemnized by a marriage officer who is a priest of the Hindu religion and licensed as a Hindu marriage officer
2. the parties must consent to marry each other in the presence of the marriage officer who solemnizes the marriage
3. consent must be given by a parent or guardian of a party who is a minor, that is a male under 21 years of age or a female (unless a widow or divorcee) who is under 18 years of age
4. a certificate of the marriage must be completed immediately after the ceremony and sent to the Registrar General from whom a copy may be obtained.

Marriages entered into before the law came into force on 19.12.57 may be registered under this law.

Kenya - The Hindu Marriage and Divorce Act 1960

10406 This Act effective from 19.7.60 is similar to the Indian Act in DMG 10394 et seq. A marriage since 19.7.60 is void if at the date of the marriage either party had a husband or wife living. Under the Act a Hindu marriage may only be dissolved through the Courts. A divorce by customary rites, for example through a Panchayat, is no longer recognised.

Uganda - The Hindu Marriage and Divorce Ordinance 1961

10407 The ordinance which is effective from 1.9.61, is similar to the Indian Act in DMG 10394 et seq. A marriage since 1.9.61 is void if at the date of the marriage either party had a husband or wife living. The DM should note that

1. the minimum ages for marriage are 18 years for a male and 16 years for a female
2. where the bride is under 18 years of age the consent of the parent or guardian in marriage must be obtained
3. the marriage is not invalidated by the fact that the parties have not attained the minimum age.

10408 The only divorce recognised by law in Uganda is that granted by the Courts. There is no customary right of divorce. The parties to a divorce may marry again as soon as the decree nisi is made absolute, which is normally six months after the date of the decree nisi.

Islamic law (that is, the Muslim (Muhammadan) religion)

10409 Islamic law permits polygamy. Generally a man is allowed to have up to four wives at a time but a woman may have only one husband at a time.

10410 The minimum ages for marriage under religious law depend upon puberty and the various schools of Islamic law. But the legislation of the particular country may impose a minimum age for marriage.

10411 When considering a marriage under Islamic law, the DM should note that

1. marriage arises from a contract which must be in unmistakable terms
2. the contract is contained in the declaration and acceptance, uttered at one meeting either by the parties themselves on their own behalf or others as proxies for them and in the presence of two witnesses
3. although a priest normally officiates at the marriage contract, recites benedictions and reads from the Koran, etc, relatives often perform the ceremony
4. it is essential that the parties accept the marriage state before at least two witnesses.

10412 Registration of Muslim marriages is common and claimants may be able to produce a statutory marriage certificate or document. Among the countries which provide for registration of marriages under the Muslim religion are

1. Bangladesh
2. Gambia (The)
3. Ghana
4. Jamaica
5. Kenya
6. Malawi
7. Malaysia
8. Pakistan
9. Yemen
10. Uganda.

10413 When considering divorce under Islamic law DMs should note that

1. divorce is brought about by the pronouncement of Talaq
2. it is normally only the husband who has the right to divorce
3. whether the wife has a right to divorce is stated on the marriage certificate because the terms of her right have to be agreed at the time of the marriage
4. Talaq (“divorce thee”) must be pronounced three times in front of two witnesses, orally or in writing
5. they should normally accept a wife’s right to divorce if the necessary entry on the marriage certificate has been made unless there is evidence of a local tradition which prevents it.

10414 Where both parties were living outside GB in a country permitting Talaq, the divorce, subject to DMG 10413, should be accepted although a copy of the divorce letter should be produced. The Talaq procedure is discussed in case law¹. As from 1.1.74 the pronouncement of Talaq in the United Kingdom does not have the effect of terminating a marriage. Proceedings in this country are not regarded as validly dissolving a marriage unless they take place in a court of law².

1 R(G) 2/75; 2 Domicile and Matrimonial Proceedings Act 1973, s 16(1); R(G) 1/94

Bangladesh - the Muslim Family Laws Ordinance 1961

10415 The position in Bangladesh is that all existing laws in force in that territory on 25.3.71 continue in force until repealed, altered or amended. The Muslim Family Laws Ordinance has not been repealed, altered or amended in Bangladesh, and the DM should assume its provisions apply to citizens of Bangladesh as they do to citizens of Pakistan.

Ghana - Muslim marriage and divorce

10416 In Ghana, Muslim

1. marriages must be performed by a licensed Muslim priest **and** registered within a week of the celebration of marriage **and**
2. divorces must be registered within one month of the divorce having been effected **and**
3. marriages and divorces are not valid unless registered.

Note: Certificates of marriage and divorce are issued.

Kenya - Muslim marriage and divorce

10417 If at the time a person contracts a marriage in Kenya in accordance with Muslim law he is already married to another wife

1. under the Kenya Marriage Ordinance **or**
2. under the law of any Christian country **or**
3. in accordance with native law and custom

the marriage under Muslim law is not recognised and is not a valid marriage.

10418 Marriage or divorce under Muslim law must be registered within 7 days of

1. the celebration of the marriage **or**
2. the pronouncement of the divorce.

An attested copy of the entry is provided free to each of the applicants for registration. Failure to register does not make a marriage or divorce invalid provided it would otherwise be valid.

Pakistan - The Muslim Family Laws Ordinance 1961

10419 This ordinance¹, effective from 15.7.61, provides for the registration of marriage and divorce. It sets out conditions for the lawful marriage and divorce of Muslims in Pakistan and Muslim citizens of Pakistan wherever they may be. Those conditions are that

1. marriages if not solemnized by the Nikah Registrar should be reported to him (a copy of the marriage certificate (Nikah Nama) can be obtained from the records kept by Union Councils)
2. even if a person fails to notify the Nikah Registrar, the marriage remains valid; the only penalty is a fine or imprisonment or both
3. the Ordinance permits polygamy, whilst still married a man can contract another marriage with the previous written consent of the Arbitration Council
4. an application for permission for another marriage has to mention
 - 4.1 the reasons for the proposed marriage **and**
 - 4.2 whether the consent of the existing wife or wives has been obtained
5. any marriage taking place without the permission of the Arbitration Council does not become invalid, though sanctions may be applied if any dowries involved are not repaid.

Note: On receipt of an application under 4. the Arbitration Council may grant the permission for another marriage whether or not permission has been obtained from the existing wife or wives.

1 Muslim Family Laws Ordinance 1961

10420 There is no provision under the Ordinance for the registration of marriages which took place before the Ordinance came into force. A Nikah Nama giving a date of marriage earlier than 15.7.61 is not authentic. The marriages of Muslims from Azad Kashmir may have been registered under the Ordinance but often are not.

10421 The provisions which apply to divorce¹ are that

1. as soon as possible after the pronouncement of Talaq the man must
 - 1.1 give the Chairman of the Union Council written notice that Talaq has been pronounced **and**
 - 1.2 supply a copy of the notice to the wife
2. the Chairman has to constitute an Arbitration Council within 30 days of receipt of the notice to bring about a reconciliation between the parties
3. the Arbitration Council has to take all steps necessary to bring about a reconciliation
4. if no reconciliation is made, the divorce becomes effective 90 days after the date of the original notice
5. a man may not marry until the 90 day period has expired but if he does so his marriage is not invalid but he is liable to imprisonment or a fine, or both
6. where a woman is able to divorce her husband the same provisions apply except that any remarriage within the 90 day period is invalid².

Note: If the notice in 1. is not given, the person pronouncing the divorce is punishable by imprisonment or a fine, or both.

1 Muslim Family Laws Ordinance 1961, s 7; 2 s 8

10422 A divorce obtained by Talaq as in DMG 10421 is recognised in the UK as having been obtained by means of proceedings¹ (see DMG 10292). For example, a national of Pakistan habitually resident in the UK can return to Pakistan to commence proceedings under the Muslim Family Laws Ordinance.

1 FL Act 86, s 46

10423 An oral Talaq as in DMG 10413 is obtained otherwise than by means of proceedings (see DMG 10293). An oral Talaq would normally be invalid in Pakistan and Bangladesh because it did not comply with the registration requirements of the Muslim Family Laws Ordinance. A claimant may be able to provide expert evidence that Union Councils were not operative at the relevant time or that Bangladeshi or Pakistani case law has found unregistered divorces valid in similar circumstances to his own case. In the absence of such evidence, the DM should rely on Commissioners' decisions that an unregistered Talaq is not valid¹.

1 R(G) 2/71; R(G) 4/93; R(G) 2/00

10424 - 10429

Native law and custom

- 10430 Many countries recognise marriages by native law and custom and a few, such as China and Hong Kong, by customary rites. The following paragraphs consider those marriages by native law and custom in West African countries. The DM should refer the case to the RVU for advice without further enquiry where a marriage is said to have been
1. celebrated by native law and custom in a country outside West Africa **or**
 2. by customary law other than in Hong Kong.
- 10431 Native law and custom in West African countries generally permits polygamy. Documentary evidence of a marriage by native law and custom is seldom available and the DM should consider all secondary evidence produced, for example passport entries, affidavits, the description of the marriage ceremony, etc.
- 10432 The essential elements of a marriage by native law and custom are
1. consent to the marriage by the bride and the parents of both parties to the marriage **and**
 2. some declaration made in the presence of witnesses **and**
 3. the giving and acceptance of a dowry.
- Marriage may be by proxy if the customary ceremony takes place and the dowry is given and accepted by the relatives of the parties to the marriage.
- 10433 The form of the ceremony reflects the customs of the tribe to which the parties to the marriage belong. It usually includes feasting which can extend over a period. There is no minimum age for marriage, but marriage does not usually take place before the parties have reached puberty, although they may have been “promised” at an early age.
- 10434 The refund of an agreed part of the dowry by the family concerned is essential to a divorce by native law and custom. If this is not done the Customary Courts will not hold that a valid divorce had taken place, even though the divorce was by mutual consent. Either party of the marriage may initiate divorce proceedings. In some countries a divorce is valid only if granted by the Customary Courts.

Ghana

10435 The DM should note that

1. Ghanaian law recognises marriages under native law and custom which permits polygamy
2. marriage by proxy is common
3. the bridegroom does not have to be present provided the ceremony is performed in accordance with native custom
4. the marriage becomes valid once the relatives of the bride, with the consent of the bride, accept the dowry from the relatives of the intended bridegroom
5. there is no provision for registration of marriages and no official certificates are available, although records may sometimes be kept by the Chiefs or the Native Courts
6. where persons are married in a place of worship or before a Registrar, it is unlawful for either of them during its subsistence to contract a marriage by Native law and custom
7. where persons contract a marriage by native law and custom, it is unlawful for either of them during its subsistence to marry in a place of worship or before a Registrar.

10436 A marriage may be dissolved by native law and custom. The DM should refer any such case to the RVU.

Nigeria

10437 Nigerian law recognises marriages contracted under native law and custom which permits polygamy. The Customary Courts only regard as valid a marriage performed before witnesses and relatives in which the customary gifts are exchanged and a wedding feast is held. The essentials of a marriage under customary law are

1. consent to the marriage by the parents of both parties to the marriage and by the parties themselves
2. the giving and acceptance of a dowry or bride price, some part of the price being paid to the bride's father **and**
3. the bride being led to the bridegroom by members of her family.

- 10438 When considering Nigerian marriages the DM should note that
1. the ceremony is varied, sometimes it is quite lengthy, extending over some months
 2. proxy marriages are valid provided there is a ceremony at which the absent party's representative (usually a relative) makes the "pledges" on his behalf
 3. the Nigerian Marriage Ordinance, that is the law on civil and church marriages, provides that a person married under the Ordinance is incapable during its subsistence of contracting a native marriage and such a native marriage is thus void
 4. the Nigerian Marriage Ordinance provides that a person who contracted a native marriage is incapable during its subsistence of contracting a marriage under the Ordinance and such a marriage is void
 5. marriages by native law and custom are not registered nor is any official certificate available.

- 10439 When considering divorce in Nigeria DMs should note that
1. divorce, apart from in the City of Lagos, may be granted by a competent Customary Court after judicial proceedings
 2. either party to the marriage can initiate proceedings
 3. a certified true copy of the proceedings and judgement of divorce cases in Customary Courts can be obtained on payment of a small fee
 4. they should refer cases to the RVU where a divorce is said to have been obtained by native law and custom in the City of Lagos or where it is claimed that there is a tribal custom of extra-judicial divorce.

Hong Kong

10440 For people who are resident there, Hong Kong Law recognises marriages contracted in five different ways which are

1. Chinese Customary Marriage which is a marriage celebrated in conformity with the accepted rites and ceremonies of the parties' families
2. Chinese Modern Marriage in conformity with the Chinese Civil Code of 1930.
3. modern Marriages contracted in China
4. foreign Marriages including marriages contracted in China under the monogamous marriage law of the Chinese People's Government
5. registry Marriages which are marriages contracted under the Hong Kong Marriage Ordinance.

Note 1: For the purpose of 1. usually there is a ceremony, more or less formal, which includes a feast and a dowry for the bride and gifts may be exchanged.

Note 2: For the purpose of 2. there must be an open ceremony (not defined) in the presence of two witnesses. From 7.10.71 all such marriages where the parties had capacity are validated¹.

1 Hong Kong Marriage Reform Ordinance 1971

10441 The minimum age for marriage is 16. Registration was not compulsory, except for Registry marriages, before 7.10.71. From that date all marriages must comply by being registered¹. Polygamy was allowed in customary, modern and reputed marriages. From 7.10.71 all marriages are to be monogamous.

1 Hong Kong Marriage Ordinance 1971

10442 Some Chinese regard themselves as married by habit and repute, no actual ceremony having taken place. The DM should refer these cases to the RVU.

10443 Divorce in unregistered marriages was by mutual consent, sometimes in the presence of witnesses. Occasionally there may be a declaration in writing. The DM should refer all cases to the RVU. From 7.10.71 divorce is obtainable only through the Courts or by giving notice to a designated public officer.

10444 - 10459

Evidence of death

Proof of death

10460 Death is usually proved by registration of the event. But if the alleged death has occurred abroad and a certified extract from the Registrar of Deaths is unobtainable, other evidence can be accepted if it is enough to prove

1. the date of the event **and**
2. the identity of the deceased.

10461 Where death is proved by

1. a statutory certificate **or**
2. reference to the Registrar General **or**
3. a notification issued by the
 - 3.1 Navy, Army or Air Department of the Ministry of Defence **or**
 - 3.2 Registrar General of Shipping and Seamen

it should normally be accepted provided that there is no dispute as to the identity of the deceased.

Note: In a case where the date of death is not established and the documentary evidence shows both the date when the deceased was last seen and the date when the body was found the DM should make every effort to establish a likely date of death.

Inquest held

10462 In **England and Wales**, when a body is found the Coroner is always informed. The subsequent inquest may establish that death occurred some date before discovery of the body. If there has been an inquest the DM should consider obtaining a copy of the Coroner's findings. Other evidence may be a certificate from a doctor who examined the body certifying that from its condition death must have occurred at an earlier specified date.

10463 In **Scotland** fatal accident inquiries are the responsibility of the Procurator Fiscal for the district with which the circumstances of death appear to be most closely connected. The DM should address inquiries to the Procurator Fiscal, or if an inquiry has been held, to the Sheriff Clerk of the Sheriff Court where the Inquiry took place.

Delay in issue of a statutory certificate

- 10464 If there has been a delay in the issue of a statutory certificate, for example if inquest proceedings are adjourned, but there is clear evidence of death such as press notices, police statements, etc, and no doubt as to identity, the Secretary of State may accept such evidence.

Coroner's verdict

- 10465 A Coroner's finding of a date of death is not binding on the statutory authorities. The DM
1. should accept the Coroner's finding if there is no contradictory evidence
 2. may accept a different date of death where the evidence clearly indicates that the finding is incorrect.

Presumption of death by a Court of Law

- 10466 In **England and Wales** where a Court of Law has presumed death, the DM should normally accept this as sufficient for death to be presumed for SS purposes. If the DM holds evidence which was not before the court throwing doubt on the presumption the DM should examine the papers critically before reaching a decision different from that of the court.

- 10467 The DM should note that
1. under English probate law, leave may be given to swear the death (on the basis that death is presumed) for probate purposes (see DMG 10468)
 2. a decree of presumption of death and dissolution of marriage may also be granted by the divorce division of the High Court¹ (see DMG 10185 - 10186).

1 Mat Causes Act 73, s 19

- 10468 For the purpose of DMG 10467 1. the granting of probate does not necessarily involve any finding of fact on the court's part, but leave to swear death is not given lightly. Probate granted under these circumstances is not necessarily accepted as evidence of death. However, in most cases where evidence is sufficient to obtain a grant of probate this should be enough for the DM to accept that death may be presumed

10469 In **Scotland** a decree of presumption of death is conclusive for all purposes¹, and is binding on the DM. If further information comes to light which throws doubt on the presumption the Department may apply for a variation of the decree through the Lord Advocate.

Note: Any payment of benefit made from the date of death to the date of the order of variation is treated as properly paid and as a result no overpayment will have occurred. The effect of the 1977 Act is considered at some length in case law².

1 Presumption of Death (Scotland) Act 1977; 2 R(G) 1/80

Presumption of death on available evidence

10470 Where death cannot be accepted under DMG 10460 - 10469 the DM should weigh the evidence to decide where the balance of probability lies¹. The DM should consider

1. the circumstances of the person's disappearance (eg; exceptionally severe weather conditions, shipping disaster etc)
2. their age and occupation
3. their mode of living
4. their state of health at the date of disappearance
5. whether they had any motive for disappearing, for example financial embarrassment, threat of court proceedings, desertion from forces, or reason for concealing whereabouts from spouse (for example a maintenance order)
6. the period that has elapsed since they were last seen or heard of
7. what steps have been taken to trace them
8. whether any person who would be expected to hear from them or of them if they were alive has in fact heard from them or of them since they left home; if so, where and whether there was any clue to their disappearance in their last letter, etc.

The DM, if satisfied that the fact of death can be accepted, will need to establish the date of death.

1 R(G) 4/57

10471 Where the circumstances of the disappearance

1. point to a particular day, that day should be presumed to be the date of death, for example where the person had fallen overboard from a ship at sea
2. do not point to a particular date of death but point to a period within which death, probably occurred, the DM should presume the latest date in that period to be the date of death.

10472 - 10489

Presumption of death after seven years

England and Wales

10490 Where there is insufficient evidence for death to be presumed under DMG 10470 - 10471, the DM may presume death if satisfied that a person has not been seen or heard of for seven years by the people who would be expected to have seen or heard of that person. The seven year rule is a method of establishing that a person is dead not¹ the date of a person's death.

Note: The relevant case law was made when a ten year rule applied.

1 CG 73/50(KL)

10491 After establishing as in DMG 10490 that the person concerned is dead, the DM should determine the date of death. The DM should decide the question whether a person is dead at a given time on all the evidence available. In particular the DM should consider whether because of

1. the circumstances in which the person was last seen **and**
2. the enquiries made at the time

it is more likely than not that the death occurred at a date earlier than the expiration of seven years, for example the date of disappearance.

Scotland

10492 Where death cannot be accepted under DMG 10460 - 10469 the DM may, in the absence of a decree of court, determine whether a person has died and the date of death¹. This applies if the date of presumption of death which the interested party seeks to show is on or after 1.3.78 and only if the

1. missing person was domiciled in Scotland on the date on which they were last known to be alive or had been habitually resident there throughout the period of one year ending with that date² **or**
2. the interested party
 - 2.1 is the spouse of the missing person **and**
 - 2.2 is domiciled in Scotland at the date of raising the question with the DM or was habitually resident there throughout the period of one year ending with that date³.

Note: Where the missing person is stated to have died before 1.3.78 the DM is bound by Scottish common law then relevant⁴.

1 Presumption of Death (Scotland) Act 1977, s 2(3); R(G) 1/80;

2 Presumption of Death (Scotland) Act 1977, s 1(3)(a); 3 s 1(3)(b); 4 R(G) 1/80

10493 Where the DM is satisfied that the circumstances of the case warrant making a determination of the date of death as in DMG 10492 the DM should decide¹ on the balance of probabilities (see DMG 10470) either that

1. it has been shown that the claimant has died (see DMG 10494) **or**
2. the missing person has not been known to be alive for a period of at least seven years (see DMG 10495 - 10496) .

1 Presumption of Death (Scotland) Act 1977, s 2(3)

10494 Where DMG 10493 **1.** applies the DM should

1. determine the date of death **and**
2. where death has been shown but it is uncertain when, within any period of time, the missing person died, find that the person died at the end of that period.

10495 Where DMG 10493 **2.** applies the DM should find that the missing person died at the end of the day occurring seven years after the date on which the person was last known to be alive.

10496 Also, in applying DMG 10493 **2.** it is still necessary to show that the person is a missing person¹. This involves considering the circumstances of the disappearance of the person claimed to be missing. The circumstances of the disappearance may also be relevant in considering the weight to be given to any evidence that the person is known to be alive².

1 Presumption of Death (Scotland) Act 1977, s 1; 2 R(G) 1/80

Death in a country which permits polygamy

10497 The DM should note that

1. claimants often cannot produce documentary evidence of a wife's death
2. a death certificate showing the death was registered sometime after the death should be checked for authenticity since these are often false
3. a document issued at the time of death, for example a telegram or letter from relatives notifying the death, is more likely to be genuine (see DMG 10498).

10498 If the evidence in DMG 10497 **3.** is not held a statement from a person who

1. was present at the death or funeral **and**
 2. can state that the first wife was dead **and**
 3. can state that the first wife had died before the husband had married again
- is acceptable as secondary evidence.

10499 If there is any doubt about the wife's death, the case should be referred to the RVU.

10500 - 10599

Gender Recognition

Gender Recognition Act

10600 The purpose of the Gender Recognition Act 2004 is to provide transsexual people with legal recognition in their acquired gender. The Act came into force on 4.4.05¹.

1 GR Act 04 (Commencement) Order 2005

10601 - 10604

Gender Recognition Certificate

10605 A person aged 18 or over may make an application for a GRC on the basis of

1. living in the other gender¹ **or**
2. having changed gender under the law of a country or territory outside the UK².

Applications are determined by a GRP³.

1 GR Act 04 s 1(1)(a); 2 s 1(1)(b); 3 s 1(3)

10606 - 10609

The application process

10610 There are three ways of obtaining a GRC, these are described below. In all cases an application must include a statutory declaration as to whether or not the applicant is married¹.

1 GR Act 04, s 3(6)(a)

Fast track applications

10611 If an application on the grounds given in DMG 10605 **1.** is made during the two years beginning with 4.4.05, it can be granted if¹ the GRP is satisfied that the applicant

1. has or has had gender dysphoria, or (in the case of an application made after 3.10.05 has undergone surgical treatment for the purpose of modifying sexual characteristics²) **and**
2. has lived in the acquired gender throughout the period of **six** years ending with the date on which the application is made³ **and**
3. intends to continue to live in the acquired gender until death **and**
4. has provided certain required evidence.

Note: For the purpose of **2.** a statutory declaration that this has happened is required.

1 GR Act 04, s 27; 2 s 27(2); 3 s 27(3)

The evidence requirements

10612 An application under DMG 10611 made within the six months beginning on 4.4.05 must include¹ a report made by

1. a registered medical practitioner **or**
2. a chartered psychologist practising in the field of gender recognition.

1 GR Act 04, s 27(5) & s 3(1)

10613 An application under DMG 10611 based on the applicant having (or having had) gender dysphoria must include¹ a report made by

1. a medical practitioner practising in the field of gender dysphoria **or**
2. a chartered psychologist practising in the field of gender dysphoria which include details of the diagnosis of the applicant's gender dysphoria.

1 GR Act 04, s 27(5) & s 3(2)

10614 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
2. treatment for the purpose of modifying sexual characteristics has been prescribed or is planned

the reports referred to in DMG 10613 must include¹ details of that treatment.

1 GR Act 04, s 27(5) & s 3(3)

10615 -10629

Overseas recognition

[See Memo DMG 20/11]

10630 A person may also apply on the basis of having changed gender under the law of a country or territory outside the UK.

10631 With this type of application, the GRP must grant the application if it is satisfied that¹

1. the country or territory under the law of which the applicant has changed gender is an approved country or territory **and**
2. certain evidence requirements are met.

1 GR Act 04, s 1(2)

10632 An "approved country or territory" means one prescribed as such by an order made by the Secretary of State^{1&2}. A list of approved countries/territories is given at Annex 3.

1 GR Act 04, s 2(4); 2 GR (AC & T) Order 05

The evidence requirements

- 10633 An application under DMG 10605 **2.** must include¹ evidence that the applicant has changed gender under the law of an approved country.

1 GR Act 04 s 3(5)

10634 - 10649

Standard applications

- 10650 The GRP will not consider standard applications until 4.10.05. A standard application may be made if the GRP is satisfied that the applicant¹

1. has or has had gender dysphoria **and**
2. has lived in the acquired gender throughout the period of **two** years ending with the date on which the application is made **and**
3. intends to continue to live in the acquired gender until death **and**
4. complies with certain evidence requirements.

1 GR Act 04, s 2(1)

- 10651 A standard application must include¹

1. a report made by
 - 1.1 a registered medical practitioner practising in the field of gender dysphoria **and**
 - 1.2 another registered medical practitioner (who may, but need not, practise in that field) **or**
2. a report made by
 - 2.1 a chartered psychologist practising in the field of gender dysphoria **and**
 - 2.2 a registered medical practitioner (who may, but need not, practise in that field).

1 GR Act 04, s 3(1)

- 10652 The reports made by a registered medical practitioner or a chartered psychologist must include¹ details of the diagnosis of the applicant's gender dysphoria.

1 GR Act 04, s 3(2)

- 10653 Where

1. the applicant has undergone or is undergoing treatment for the purpose of modifying sexual characteristics **or**
 2. treatment for that purpose has been prescribed or planned for the applicant
- at least one of the reports required under DMG 10651 **1.** or **2.** must include¹ details of that treatment.

1 GR Act 04, s 3(3)

10654 - 10659

Foreign gender change

10660 Unless DMG 10662 applies, the general rule¹ is that a person's gender is not to be regarded as having changed by reason only that it has changed under the law of a country or territory outside the UK.

1 GR Act 04, s 21(1)

10661 Accordingly a person is not to be regarded as married by reason of having entered into a marriage following recognition of a gender change under the law of a country outside the UK¹.

1 GR Act 04, s 21(2)

10662 However a national of another country within the EU or EEA who

1. has been granted legal recognition of their gender change under the law of that country **and**
2. has an enforceable right under EC law to recognition of their acquired gender in the UK

will not need to make an application under DMG 10630¹.

1 GR Act 04, s 21(6)

10663 - 10669

Interim gender recognition certificate

10670 Where the applicant is married or a civil partner, provided the other conditions are satisfied, the GRP will issue an interim GRC¹.

1 GR Act 04, s 4(3)

10671 A court which

1. makes absolute a decree of nullity granted on the ground that an interim GRC has been issued to a party to the marriage or a civil partner **or**
2. grants in Scotland, a decree of
 - 2.1 divorce in respect of a marriage **or**
 - 2.2 dissolution in respect of a civil partnershipon the ground that an interim GRC has been issued

must, on doing so, issue a full GRC¹.

1 GR Act 04, s 5(1)

10672 - 10679

Consequences of issue of certificate

- 10680 Where a full GRC is issued to a person, that person's gender becomes for all purposes the acquired gender¹.

1 GR Act 04, s 9(1)

Parentage

- 10681 The fact that a person's gender has become the acquired gender does not affect the status of the person as the father or the mother of a child¹.

1 GR Act 04, s 12

10682 - 10699

Civil partnerships

Introduction

10700 Legislation¹ provides a new legal framework that will enable recognition of same sex relationships through the new status of civil partner and the new legal relationship of civil partnership. This legislation takes effect from 5.12.05.

1 CP Act 04

10701 A civil partnership is a relationship between two people of the same sex which is formed when they register as civil partners. The law also provides that a person can be treated as having formed a civil partnership by virtue of having registered certain overseas relationships. A civil partnership ends only on death, dissolution or annulment.

10702 - 10709

Eligibility

England and Wales

10710 In England and Wales two people are **not** eligible¹ to register as civil partners if

1. they are not of the same sex
2. either of them is already a civil partner or lawfully married
3. either of them is under 16
4. they are within prohibited degrees of relationship² (see DMG Chapter 11, Appendix 2).

Note: Where **3.** applies 16 and 17 year olds must have the consent of parents or other appropriate persons (such as a guardian).

1 CP Act 04, s 3; 2 Sch 1, Part 1

Scotland

10711 In Scotland, two people are **not** eligible¹ to register as civil partners if

1. they are not of the same sex
2. either of them is married or already in a civil partnership
3. either of them is under 16
4. they are related in a forbidden degree (see DMG Chapter 11, Appendix 2)
5. either of them is incapable of
 - 5.1 understanding the nature of civil partnership **or**
 - 5.2 validly consenting to the formation of a civil partnership.

1 CP Act 04, s 86

10712 - 10714

Registration

England and Wales

10715 Each registration authority (a county council or equivalent) will designate civil partnership registrars. Under the standard procedure, each partner must give notice of the proposed civil partnership to a registration authority and at the same time make declarations as to their eligibility¹. There will follow a minimum 15 day waiting period during which eligibility is confirmed².

1 CP Act 04, s 8; 2 s 10 & 11

10716 Two people are to be regarded as having registered as civil partners once each of them has signed the civil partnership document¹

1. at the invitation of, and in the presence of, a civil partnership registrar **and**
2. in the presence of each other and two witnesses.

The civil partnership registrar and the two witnesses must also sign the document and the civil partnership is then registered². A civil partnership schedule is then issued³.

1 CP Act 04, s 2(1); 2 s 2(3); 3 s 14

Scotland

10717 The Registrar General will appoint district registrars and may appoint one or more assistant registrars in each district¹. In order to register as civil partners each of the intended partners must submit a notice to the district registrar and must make and sign the necessary declaration as to their eligibility². The date of registration will be a date more than 14 days after the publication of the notice of the proposed civil partnership by the district registrar³.

1 CP Act 04, s 87; 2 s 88; 3 s 90

10718 Two people are to be regarded as having registered as civil partners once each of them has signed the civil partnership schedule in the presence of¹

1. each other **and**
2. two witnesses both of whom have attained the age of 16 **and**
3. the authorised registrar

who are present at the registration office or place agreed². The authorised registrar and the two witnesses must also sign the civil partnership schedule³ and the civil partnership is then registered⁴.

1 CP Act 04, s 85(1); 2 s 93; 3 s 85(4); 4 s 95(2)

10719

Void and voidable

England and Wales

- 10720 Where two people register as civil partners in England and Wales, the civil partnership will be void if¹
1. at the time of registration they were not eligible (see DMG 10710) **or**
 2. at the time of registration they both knew
 - 2.1 that due notice of proposed civil partnership had not been given
 - 2.2 that the civil partnership document had not been duly issued
 - 2.3 that the civil partnership document is void because registration occurred outside the relevant time limit
 - 2.4 that the place of registration was not the specified place
 - 2.5 that a civil partnership registrar was not present **or**
 3. the civil partnership document is void because one of the intended civil partners is a child (under the age of 18) and the issue of the civil partnership document has been forbidden by a person whose consent is required for the child to form a civil partnership.

1 CP Act 04, s 49

- 10721 A civil partnership is voidable if¹
1. either partner did not consent to its formation (whether as a result of duress, mistake, unsoundness of mind or otherwise)
 2. at the time of the formation of the civil partnership, either partner, though capable of giving valid consent, was suffering from mental disorder of such a kind or to such extent as to be unfitted for civil partnership
 3. at the time of the formation of the civil partnership, the respondent was pregnant by some person other than the applicant
 4. after the formation of the civil partnership, an interim GRC under specific legislation has been issued to either partner
 5. the respondent is a person whose gender at the time of its formation has become the acquired gender under specific legislation.

1 CP Act 04, s 50

Scotland

- 10722 Where two people register in Scotland as civil partners the civil partnership is void only if¹
1. they were not eligible to do so **or**

2. although they were eligible, either of them did not validly consent to the formation of the partnership.

1 CP Act 04, s 123

10723 - 10729

Dissolution

England and Wales

- 10730 Either civil partner may apply to a court for a dissolution order on the ground that the civil partnership has broken down irretrievably¹.

1 CP Act 04, s 44

- 10731 The applicant must satisfy the court of one or more facts¹. Those facts are
1. that the other partner has behaved in such a way that the applicant cannot reasonably be expected to live with them²
 2. that
 - 2.1 the couple have lived apart for a continuous period of two years immediately preceding the application **and**
 - 2.2 the other partner consents to a dissolution order being made³
 3. that the applicant and the other partner have lived apart for a continuous period of five years immediately preceding the application⁴
 4. that the other partner has deserted the applicant for a continuous period of two years immediately preceding the application⁵.

1 CP Act 04, s 44(3) & (5); 2 s 44(5)(a); 3 s 44(5)(b); 4 s 44(5)(c); 5 s 44(5)(d)

Scotland

- 10732 In Scotland an action for the dissolution of a civil partnership may be brought in the Court of Session or in the sheriff court. The person taking the action is called "the pursuer" and the other partner is "the defender". The court may grant a dissolution decree if it is established that the civil partnership has broken down irretrievably.

- 10733 Irretrievable breakdown is taken to be established if¹
1. since the date of registration, the defender has behaved (whether or not as a result of mental abnormality and whether such behaviour has been active or passive) in such a way that the pursuer cannot reasonably be expected to cohabit with the defender
 2. the defender has wilfully and without reasonable cause deserted the pursuer and during a continuous period of two years immediately succeeding the desertion
 - 2.1 there has been no cohabitation between the parties **and**

- 2.2 the pursuer has not refused a genuine and reasonable offer by the defender to continue to stay together
3. there has been no cohabitation between the civil partners at any time during a continuous period of two years after the date of registration and immediately preceding the bringing of the action, the defender consents to the dissolution
4. there has been no cohabitation between the civil partners at any time during a continuous period of five years after that date and immediately preceding the bringing of the action.

1 CP Act 04, s 117(3)

10734 - 10739

Presumption of death orders

England and Wales

- 10740 In England and Wales on an application by a civil partner, a court may make a presumption of death order if it is satisfied that reasonable grounds exist for supposing that the other partner is dead¹.

1 CP Act 04, s 55

- 10741 In any proceedings before the court, the fact that
1. for a period of seven years or more the other civil partner has been continually absent from the applicant **and**
 2. the applicant has no reason to believe that the other partner has been living within that time

is evidence that the other civil partner is dead until the contrary is proved¹.

1 CP Act 04, s 55(2)

Scotland

- 10742 In Scotland, where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years the Court of Session can issue a decree of presumption of death on an action of declarator¹ if

1. the pursuer of the action and the missing person were registered as civil partners in Scotland **and**
2. it appears to the court to be in the interest of justice to assume jurisdiction in the case².

1 Presumption of Death (Scotland) Act 1977, s 1(1); s 1(3)

10743 - 10749

Overseas relationships

10750 In certain circumstances two people who have registered a relationship outside of the UK are treated as having formed a civil partnership.

Definition

10751 An "overseas relationship" is¹ a relationship which is

1. either a "specified relationship" (see DMG 10752) or one which meets the general conditions (see DMG 10760) **and**
2. registered with a responsible authority in a country or territory outside the UK by two people
 - 2.1 who were of the same sex at the date of registration **and**
 - 2.2 neither of whom is already a civil partner or lawfully married.

1 CP Act 04, s 212

Specified relationships

10752 A specified relationship is one set out in legislation¹. Annex 4 lists the countries and types of relationship that constitute a specified relationship.

Note: Advice may be sought from the RVU on whether the evidence provided shows that there is a specified relationship, properly registered.

1 CP Act 04, s 213 & Sch 20

10753 The Secretary of State has the power to amend the list of specified relationships by means of Statutory Instrument¹.

1 CP Act 04, s 213

10754 - 10759

General conditions

10760 Couples who have registered relationships overseas which are not specified relationships may also be treated as civil partners provided the relationship meets the general conditions¹. These are that, under the law of the relevant country

1. the relationship may not be entered into if either party is already in a registered relationship or lawfully married **and**
2. the relationship is of indeterminate duration **and**
3. the effect of entering into the relationship is that the parties are
 - 3.1 treated as a couple either for general or specified purposes **or**
 - 3.2 treated as married.

Note: DMs should seek advice from the RVU before deciding whether a relationship meets the general conditions and whether it is properly registered.

1 CP Act 04 s 214

10761 - 10999

Annex 1

Records of birth in Pakistan and Bangladesh - 10097

Prior to the operation of the Basic Democracy Order 1959 there was no statutory system of registration of births. Although there was a voluntary system under which in rural areas the village chowkidar would when notified inform the tehsildar for the administrative area (now known as police) this rarely occurred. In urban areas the Municipalities and Cantonment Board Authorities were responsible but it would be unlikely for illiterate parents to notify a birth.

Consequently there are very few contemporaneous records of birth maintained in respect of periods prior to 1960 even in large towns.

Where a person born prior to 1960 seeks a certificate of birth in a rural area he applies to the Union Council Chairman of the place of his birth. Affidavits and declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record maintained under the Basic Democracy Order 1959 and copies of this entry are given as a certificate of birth.

Because under the old system registrations were passed to the administrative officer for the area, and in the belief that it gives some measure of authenticity, some Union Council Chairmen ask the local police officer to put the Police Station stamp on the certificate. The Police Station stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.

Annex 2

Records of birth in Azad Kashmir - DMG 10097

There is no statutory system for the registration of birth in Azad Kashmir but the arrangements under the Basic Democracy Order 1959 are generally followed on a voluntary basis.

Prior to 1947 the village chowkidar might have been informed of a birth in his village. If so he was expected to notify the tehsildar for the administrative area (now police authority) but in many cases he failed to do so. During the 1947 war all records held by the police authorities were lost or destroyed and therefore there are no contemporaneous records prior to 1947 in rural or municipal areas. From 1962 Union Councils were required to pass records of birth to the District Medical Officer but from 1969 records were required To Whom It May Concern: be sent to the Police authority for the area.

A certificate that the date of birth is confirmed by records held by a District Medical Officer does not imply that the District Medical Officer has made enquiries about the date of birth or that he has made any medical examination of the person concerned to establish his age.

When a person born prior to 1948 seeks a certificate of birth he applies to the Union Council Chairman of the place of his birth. Affidavits or declarations are usually obtained from two persons who are often friends or relatives. The date of birth as confirmed by these persons is then entered in the record of registration of births for the current year and notified to the local Police Station. The Union Council Chairman will then give a certified copy of this registration of birth and in some cases it may be taken to the Police Station for insertion of the Police Station stamp. This stamp should not be taken to indicate that the date of birth has been confirmed by records held at the Police Station nor that the police authority is satisfied as to the veracity of statements made in declarations or affidavits.

The document produced by the claimant which purports to be a certificate of birth is not a true copy of a registration of birth made contemporaneously with the birth.

Annex 3

Gender Recognition - List of approved countries and territories (see DMG 10632)

[See Memo DMG 20/11]

The Australian territories of Australian Capital Territory and Northern Territory and the states of New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia,

Austria,

Belgium,

Bulgaria,

the Canadian provinces of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Saskatchewan and the Yukon Territory,

Republic of Cyprus,

Denmark,

Estonia,

Finland,

France,

Germany,

Greece,

Iceland,

Italy,

Japan,

Latvia,

Luxembourg,

Malta,

Moldova,

Netherlands,

New Zealand,

Norway,

Poland,

Romania,

Russian Federation,

Serbia and Montenegro,

Slovakia,

Slovenia,

South Africa,

Spain,

Sweden,

Switzerland,

Turkey,

Ukraine,

the District of Columbia and all of the states of the United States of America except for Idaho, Ohio, Tennessee and Texas.

Annex 4

Civil partnerships - specified relationships - (see DMG 10752)

A relationship is a specified relationship as defined in DMG 10752 if it is registered in a country or territory given in the first column below and fits the description given in the second column

Country or Territory	Description
Andorra	unió estable de parella
Australia: Tasmania	significant relationship
Belgium	the relationship referred to as cohabitation légale, wettelijke samenwoning or gesetzliches zusammenwohnen
Belgium	marriage
Canada	marriage
Canada: Nova Scotia	domestic partnership
Canada: Quebec	the relationship referred to as union civile or as civil union
Denmark	registeret partnerskab
Finland	the relationship referred to as rekisteröity parishude or as registered partnerskab
France	pacte civile de solidarité
Germany	Lebenspartnerschaft
Iceland	staðfesta samvist
Luxembourg	the relationship referred to as partenariat enregistré or eingetragene partnerschaft
Netherlands	geregistreerde partnerschap
Netherlands	marriage
New Zealand	civil union
Norway	registeret partnerskab

Spain	marriage
Sweden	registerat partnerskap
United States of America:	
California	domestic partnership
United States of America:	
Connecticut	civil union
United States of America:	
Maine	domestic partnership
United States of America:	
Massachusetts	marriage
United States of America:	
New Jersey	domestic partnership
United States of America:	
Vermont	civil union

Chapter 11 - Living together as husband and wife or as civil partners

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Chapter 11 - Living together as husband and wife or as civil partners

Introduction

11000 The guidance in this Chapter is to help DMs determine whether two people who live together but are not

1. married to each other **or**
2. a civil partner of each other

are a couple.

11001 “Couple” means¹

1. a man and a woman who are married to each other and are members of the same household **or**
2. a man and a woman who are not married to each other but are LTAHAW **or**
3. two people of the same sex who are civil partners of each other and are members of the same household **or**
4. two people of the same sex who are not civil partners of each other but are LTACP.

Note: Two people of the same sex are to be regarded as LTACP only where they would be regarded as LTAHAW if they were two people of the opposite sex.

1 SS (C&B) Act 1992, s 137; IS (Gen) Regs, reg 2(1); SS (C&P) Regs, reg 2; SFCWP (Gen) Regs, reg 1(2); SFMFE (Gen) Regs, reg 3(1); SS (IFW) (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); SS (CMB) Regs, reg 1(2); SS CS (D&A) Regs, reg 1(3); SFWFP Regs, reg 1(2); SS (BCO) Regs, reg 6(1A); SPC Regs, reg 1(2); ESA Regs, reg 2(1)

11002 The general principle in SS legislation is that couples should be treated in a similar way. For example, a couple who are LTAHAW or LTACP should be treated in the same way as if they were married or in a civil partnership. The principle behind this is that an unmarried couple or couple who are not in a civil partnership should not be treated more or less favourably than a married couple or couple in a civil partnership.

11003 Living together has been part of SS legislation since the beginning of the modern scheme in 1948. The term LTAHAW was introduced from 4.4.77 and means the same as the phrase “cohabiting with a man as his wife” which was used before that date¹.

1 R(G) 3/81; R(SB) 17/81

11004 From 5.12.05 two people of the same sex can form a civil partnership by registering as civil partners of each other¹.

1 CP Act 2004

11005 Two people of the same sex are to be regarded as LTACP if, but only if, had they been two people of the opposite sex, they would be regarded as LTAHAW. This means that the case law on LTAHAW should be applied to LTACP.

DM's consideration

11006 To decide whether the guidance in this chapter is relevant to the case before them, DMs must first consider the following

1. is the benefit one that is affected (See DMG 11010);
2. are the persons concerned members of the same household (See DMG 11015 et seq);
3. would a relationship between the persons concerned be illegal, prohibited, forbidden or a multiple relationship (See DMG 11030 et seq).

11007 - 11009

Benefits affected

11010 The benefits affected are

1. IS¹
2. WP² (but RP paid to a widow based on her late husband's contribution record is not affected by the LTAHAW rules)
3. WMA³
4. BPT⁴
5. WPA⁵
6. BA⁶
7. JSA(IB)⁷
8. SPC⁸
9. ESA(IR)⁹.

In making decisions DMs need to be aware of the effect on HB and CTB.

1 SS CB Act 92, s 124(1); 2 s 38(3); 3 s 37(4)(b); 4 s 36(2); 5 s 39A; 6 s 39B; 7 JS Act 95, s 3(1);

8 SPC Act 2002, s 5; 9 WR Act 07, Sch 1, para 6(1)

11011 - 11014

Members of the same household

11015 Two people who are neither married to each other nor a civil partner of each other **must** be members of the same household if they are to be treated as LTAHAW or LTACP and thus a couple.

11016 Household is not defined in legislation. It should be given its normal everyday meaning. It is a domestic establishment containing the essentials of home life. Household and home are not the same¹. Household may refer to people held together by a particular kind of tie, even if temporarily separated².

1 R(SB) 4/83; 2 Santos v Santos [1972] All ER 246

11017 To be members of the same household means that

1. they live in the same house, flat, apartment, caravan or other dwelling place and neither normally lives in another household **and**
2. they both live there regularly, apart from absences necessary for employment, to visit relatives, etc.

11018 People living in one dwelling are not necessarily living together in the same household. Examples are

- lodgers or students who necessarily share a single gas/electricity supply etc. and may have an arrangement to share costs for items such as food and cleaning materials **or**
- two people who are married to each other or who are a civil partner of each other who separate and refuse to leave the home.

11019 The fact that two people, who are neither married to each other nor a civil partner of each other, are members of the same household does not mean that they are LTAHAW or LTACP and so a couple. DMs should consider

1. what caused them to live together **and**
2. the facts and circumstances that exist while they are living together¹ **and**
3. what their future plans are.

A relationship may resemble LTAHAW or LTACP but consideration of its origins may show it to be something quite different.

1 R(G) 1/79

Example

Two elderly or disabled people may be living in the same household because one provides care for the other or they look to each other for mutual support.

Such a relationship may not be classed as LTAHAW¹ or LTACP where the need for care or support is the main reason. It is not only the reason that caused the parties to live together which is important, but the facts and circumstances that apply after they have done so.

1 R(SB) 35/85

11020 Even if one or both of the two people own or rent other accommodation, they can still be thought of as members of the same household, particularly where the other accommodation is seldom used.

DMs should consider

1. the nature and ownership or tenancy of the accommodation they are living together in **and**
2. the extent to which rooms and facilities are shared **and**
3. the ownership of furniture.

A person cannot be a member of more than one household at the same time. So a person cannot be a member of more than one couple at the same time¹.

1 R(SB) 8/85

11021 - 11029

Illegal relationships, prohibited or forbidden degrees of relationship and multiple relationships

Illegal relationships

- 11030 DMs should not determine that two people are LTAHAW or LTACP if sexual intercourse between them, whether it actually takes place or not, would involve committing a criminal offence such as incest or sexual intercourse with an underage person. For example, DMs should not determine that a man is LTAHAW with a 15 year old girl or LTACP with a 15 year old boy or a man he knows to be his brother.

Prohibited or forbidden degrees of relationship

- 11031 People living together within the prohibited or forbidden degrees of relationship for marriage should be treated as not LTAHAW. A list of the prohibited degrees is included at Appendix 1 to this Chapter.
- 11032 People living together within the prohibited or forbidden degrees of relationship for civil partnership should be treated as not LTACP. A list of the prohibited degrees is included at Appendix 2 to this Chapter.

Multiple relationships

- 11033 Where an unmarried person lives with a married couple, that person cannot be LTAHAW because a marriage is between two people. Similarly a person who lives with a couple who are civil partners cannot be LTACP with either of them.
- 11034 The law does not recognize multiple relationships as it does polygamous marriages. Where the term is used in this guide it means a situation where someone has a relationship similar to marriage with more than one person, but is not married to any of them. When considering whether two people are LTAHAW or LTACP their relationship is compared with that of a married couple. Caselaw describes the elements that feature in the relationship between husband and wife (see DMG 11045). One of these is exclusivity i.e. monogamy. Where the claimant has a multiple relationship they cannot be LTAHAW or LTACP with any of the other members of that relationship. Members of a multiple relationship are treated as single claimants or, if appropriate, lone parents.

Example 1

Alan, Bronwyn and Carol live in the same household but are not married to each other. Alan claims JSA(IB) and states that he is in a multiple relationship with both

Bronwyn and Carol. He is treated as a single claimant. Bronwyn and Carol are also treated as single.

Example 2

Alan, Bronwyn and Carol live in the same household. Alan is married to Bronwyn but in his claim for JSA(IB) states that he is also in a relationship with Carol. Alan is treated as a member of a couple with his wife Bronwyn. Carol is treated as single.

Example 3

Andrew, Brian and Christopher live in the same household. Andrew is the civil partner of Brian but in his claim for JSA(IB) states that he is also in a relationship with Christopher. Andrew is treated as a member of a couple with Brian. Christopher is treated as single.

11035 - 11039

Meaning of living together as husband and wife or living together as civil partners

General

- 11040 The terms LTAHAW and LTACP are not defined in legislation. It is for DMs to determine whether the whole relationship of two people who are neither married to each other nor the civil partner of each other, is that of a couple who are LTAHAW¹ or LTACP.
- 1 R(G) 3/71*
- 11041 Two people of the same sex are to be regarded as LTACP if, but only if, they would be regarded as LTAHAW were they two people of the opposite sex. See DMG 11005.
- 11042 If two people of the same sex are members of the same household and their relationship would not be illegal, prohibited, forbidden or a multiple relationship, DMs should consider in each case the points in DMG 11045 and DMG 11047 to determine whether they are LTACP.
- 11043 If a man and a woman are members of the same household and their relationship would not be illegal, prohibited, forbidden or a multiple relationship, DMs should consider in each case the points in DMG 11045 and DMG 11047 to determine whether the relationship between them is the same as that of a husband and wife.
- 11044 To be treated as LTAHAW or LTACP the relationship has to be the same as that of a married couple. Marriage is where two people join together with the intention of sharing the rest of their lives. There is no single template of what the relationship of a married couple is. It is a stable partnership, not just based on economic dependency but also on emotional support and companionship.
- 11045 All factors of their relationship have to be considered. The significance of each factor can only be determined in the context of all of the factors with none being decisive. There is more to the determination than the cold, observable facts. The characteristics of the relationship of husband and wife may include¹
- mutual love
 - faithfulness
 - public acknowledgement
 - sexual relations
 - shared surname
 - children
 - endurance

- stability
- interdependence
- devotion.

1 Fitzpatrick v Sterling Housing Association

11046 Not all of the characteristics in DMG 11045 need be present and a couple may be treated as LTAHAW or LTACP even though the relationship is unsatisfactory or unhappy.

11047 DMs should consider

1. the sexual relationship of the two people¹ **and**
2. the relationship of the two people concerning money² **and**
3. the general relationship of the two people³.

1 R(G) 3/71; R(SB) 17/81; 2 R(G) 3/71; R(SB) 17/81; 3 R(G) 3/71

11048 In considering the points in DMG 11045 and DMG 11047 DMs should be aware that

1. no single point can decide the question of LTAHAW¹ or LTACP. It is essential to have as much information as possible on all the points to consider them as a whole;
2. where they are looking at a past period, the information gathered should relate to the whole period in question;
3. a determination on whether two people are LTAHAW or LTACP must be based on the evidence available;
4. they should obtain further evidence if living together is reported, to determine if two people are LTAHAW or LTACP;
5. they can accept a signed statement or letter from the claimant saying that they are LTAHAW or are LTACP, as voluntary evidence of LTAHAW or LTACP;
6. they must obtain further evidence to determine when LTAHAW or LTACP began if a disclosure of LTAHAW or LTACP is given after co-residence has begun and the statement or letter does not cover the whole period of co-residence.

1 R(G) 1/71

Sexual relationship

11049 A sexual relationship is an important part of a marriage and therefore of LTAHAW and thus of LTACP. But evidence of a sexual relationship does not, on its own, mean that two people should be thought of as LTAHAW or LTACP. Similarly two people may be LTAHAW¹ or LTACP without having a sexual relationship.

1 R(G) 2/72; R(G) 3/81; R(SB) 17/81

The relationship of two people concerning money

11050 In most husband and wife or civil partnership relationships it would be reasonable to expect financial support of one partner by the other, or the sharing of household costs. DMs should consider the following questions

1. Is one person supported by the other?
2. How is the household income shared or used?
3. Are their resources pooled in a common fund? Is this all their income or only the money, for example, shopping or bills?
4. Is one person bearing the major share of the household expenses, for example mortgage, rent, gas, electricity? Whose name is on the bills?
5. Is there a joint purchase of the property or other mortgage arrangements?
6. Have these financial arrangements always been the same or have they changed? If so how and when?
7. If there are no financial arrangements why not?

If any of the above applies over the long term, it could be an indication of LTAHAW or LTACP. However, two people may be LTAHAW or LTACP even if they keep their finances completely separate. The relationship of two people concerning money has to be looked at in the context of the whole relationship.

11051 DMs should find out about payments made for accommodation or board and lodge arrangements. For example, a person may claim to be a lodger but the amount paid may be unrealistic¹. A person who pays less than would be expected under a true commercial board and lodge arrangement should not be regarded as a lodger. Such an arrangement is more like that of a husband and wife or civil partnership relationship.

1 R(G) 3/71

General relationship

11052 The DM should consider why the two people became members of the same household (see DMG 11019), how they share their lives now and their future plans. The stability of the relationship, children and public acknowledgement can help to indicate what their general relationship is particularly in respect of how they share their lives now.

Stability

11053 Because marriage or civil partnership is entered into as a stable relationship, DMs should consider the stability of the relationship when determining whether two people are LTAHAW or LTACP.

- 11054 Important signs of the relationship's stability include
1. the way in which two people spend their time together **and**
 2. the way that this has changed while they have been together.

11055 A couple do certain activities, together or for one another, such as those listed below. DMs could consider two people as LTAHAW or LTACP, if they do these activities together or for one another, however it may not be conclusive.

1. providing meals and shopping;
2. cleaning and laundry;
3. caring for the members of the household during sickness;
4. decorating;
5. gardening;
6. caring for children.

This list is not complete. DMs should also consider the way in which two people spend their leisure time and whether they take their holidays together.

11056 A statement from the two people that they want to marry or register as civil partners can be regarded as proof of a stable relationship. Two people may be LTAHAW¹ or LTACP when they have no intention to marry or register as civil partners.

1 R(SB) 17/81

11057 It is for DMs to determine at what point a relationship should be regarded as LTAHAW or LTACP. The length of time two people have been together is not proof of the stability of a relationship. There is no specified time limit in determining the stability of the relationship and DMs should consider the following questions

1. is there strong evidence that they have been LTAHAW or LTACP from the time they began living together, that would enable DMs to determine that LTAHAW or LTACP existed from the outset?
2. are they living together as a temporary arrangement without commitment on either side? If so, DMs might determine they are not LTAHAW or LTACP
3. to what extent do they both take responsibility for the activities listed at DMG 11055? Where there is doubt about the stability, DMs might determine two people were not LTAHAW or LTACP.

11058 DMs should not assume a stable relationship exists just because two people have been LTAHAW or LTACP on a previous occasion.

Children

- 11059 When a man and a woman are caring for a child they have had together, there is strong evidence that they are LTAHAW. DMs can also consider
1. a man acting as father to a woman's children **or**
 2. the woman acting as mother to the man's children **or**
 3. one of two people of the same sex caring for the other person's children **or**
 4. two people of the same sex caring for a child they have adopted together **or**
- as evidence that they are LTAHAW or LTACP.

Public acknowledgement

- 11060 If two people have represented themselves to others as husband and wife or civil partners, this is an indication that they are LTAHAW or LTACP. Examples of where such representation could be made are
1. on the electoral register;
 2. in claiming benefits;
 3. in obtaining accommodation;
 4. if their friends and neighbours accept them as a married couple or civil partners;
 5. if one person has assumed the other person's surname.

Future plans

- 11061 Marriage or civil partnership is where two people join together with the intention of sharing the rest of their lives. When considering whether two people are LTAHAW or LTACP their plans for the future can provide important evidence. For example, two friends sharing accommodation will rarely have the intention to share accommodation for the rest of their lives but two people who are LTAHAW or LTACP would be expected to have the intention of sharing their lives together in the long term.

11062 - 11069

Looking again at living together determinations

Temporary absence of one party

11070 A couple should not automatically be regarded as having stopped LTAHAW or LTACP just because of the temporary absence of one of the parties. When DMs determine whether LTAHAW¹ or LTACP continues during a temporary absence, the reason for the absence is an important factor. Absences for the following reasons would not normally mean that the couple have stopped LTAHAW or LTACP

1. work;
2. a period as a hospital in-patient;
3. holiday;
4. a visit to a relative(s);
5. higher education².

1 R(G) 11/59; R(SB) 19/85; 2 R(SB) 30/83

Living together ceases

11071 LTAHAW or LTACP stops when there is a permanent separation of the couple. DMs should accept evidence that one of a couple has left permanently, unless there are reasons for doubt. In which case, more evidence will be needed.

11072 - 11079

Effects on benefits

WMA, WP and WPA

- 11080 WMA, WP and WPA are not payable if the person receiving the benefit is LTAHAW or LTACP¹.

1 SS CB Act 92, s 37(4), s 38(3), s 39A(5)

BPT and BA

- 11081 A BPT and BA cannot be paid if at the time of the spouse or civil partner's death the surviving spouse or civil partner was LTAHAW or LTACP¹.

1 SS CB Act 92, s 36(2); s 39B(5)

IS, JSA(IB), SPC and ESA(IR)

- 11082 A claim for IS, JSA(IB), SPC or ESA(IR) from a couple LTAHAW or LTACP
1. should be made by whichever partner the couple agree shall claim or, if they cannot decide, the Secretary of State will decide for them¹
 2. will treat the income and capital of the couple as those of the claimant², **and** benefit is paid to the claimant for both members of the couple.

1 SS (C&P) Regs, regs 4(3), (3B)(a), 4D(7) & 4(i);

2 SS CB Act 92, s 136(1); JS Act 95, s 13(2); SPC Act 02 s 5; WR Act 07, Sch 1, para 6(2)

Change in determination

- 11083 A decision awarding benefit to a single person should be revised or superseded if it is later determined that they were, or are now, LTAHAW or LTACP (see DMG Chapter 03 for further guidance on revision and DMG Chapter 04 for further guidance on supersession).

Decision already given on another benefit

- 11084 Where it is known that a decision incorporating a determination on LTAHAW or LTACP may have been made on a claim for another benefit DMs should obtain the papers on that earlier claim, before giving a determination.

- 11085 DMs should consider

1. the facts of the current claim **and**
2. the points at DMG 11045 and DMG 11047

before determining whether two people are LTAHAW or LTACP.

11086 DMs should do this

1. even though a different determination may be made on the same set of facts as those in an earlier claim **and**
2. to ensure that the circumstances in which the determination is made show the burden of proof.

There would have to be a good reason for a DM to reach a different determination on LTAHAW or LTACP, based on the same facts. If the DM reaches a different determination it may be necessary to consider revision or supersession of the outcome decision on the other benefit.

11087 - 11999

Appendix 1

Prohibited or forbidden degrees for marriage (see DMG 11031)

A person cannot marry their

1. adoptive child
2. adoptive parent
3. child
4. former adoptive child
5. former adoptive parent
6. grandparent
7. grandchild
8. parent
9. parent's sibling
10. sibling
11. sibling's child
12. child of former civil partner
13. child of former spouse
14. former civil partner of grandparent
15. former civil partner of parent
16. former spouse of grandparent
17. former spouse of parent
18. grandchild of former civil partner
19. grandchild of former spouse.

In the above list "sibling" means a brother, sister, half-brother or half-sister.

For the people mentioned in **1.-11.**, the bar to marriage is absolute.

For the people mentioned in **12.-19.**, they can marry if both parties are aged 21 or over at the time of the marriage and the younger person was never a child in the older person's family up to the age of 18.

Appendix 2

Prohibited or forbidden degrees for civil partnerships (see DMG 11032)

Two people are not eligible to register as civil partners of each other if one falls within the list below in relation to the other

1. adoptive child
2. adoptive parent
3. child
4. former adoptive child
5. former adoptive parent
6. grandparent
7. grandchild
8. parent
9. parent's sibling
10. sibling
11. sibling's child
12. child of former civil partner
13. child of former spouse
14. former civil partner of grandparent
15. former civil partner of parent
16. former spouse of grandparent
17. former spouse of parent
18. grandchild of former civil partner
19. grandchild of former spouse.

In the above list "sibling" means a brother, sister, half-brother or half-sister.

For the people mentioned in **1.-11.**, the bar to registering as civil partners of each other is absolute.

For the people mentioned in **12.-19.**, they can register as civil partners of each other if both parties are aged 21 or over at the time of the registration and the younger person was never a child in the older person's family up to the age of 18.

"child of the family", in relation to another person, means a person who

1. has lived in the same household as that other person **and**
2. has been treated by that other person as a child of their family.

Chapter 12 - Imprisonment

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Mentally disordered persons detained
in legal custody **Appendix 1**

Chapter 12 - Imprisonment

Effect of imprisonment on Social Security benefits

12000 When a person is in prison or detained in legal custody, SS benefits are affected as follows

1. the person is disqualified from receiving any benefit¹ including any dependency increase under specified legislation, but see the exceptions in DMG 12050 - 12079
2. a person receiving benefit will not receive an increase for any dependent spouse, civil partner or person having care of their child who is in prison or detained in legal custody² (see DMG 12110 - 12111).

1 SS CB Act 92, s 113(1)(b); 2 s 113(1)(b)

12001 The SS benefits affected are¹

1. IB
2. MA
3. BPT
4. WMA
5. WP
6. WPA
7. BB
8. RP
9. SAP
10. GRB
11. AA
12. SDA
13. CA
14. DLA
15. IIDB.

1 SS CB Act 92, Parts II-V

12002 Claimants are disqualified from receiving these benefits when they are imprisoned or detained in legal custody following criminal proceedings¹. Disqualification only affects the payability of the benefit not claimants' entitlement to that benefit². This means that when the conditions supporting the disqualification no longer apply, payment of benefit can resume providing all the conditions of entitlement remain satisfied. Unless entitlement has been terminated during the period of imprisonment or detention in legal custody, a claimant should not be required to make a new claim to benefit on release.

1 SS CB Act 92, s 113(1)(b); 2 CDLA/1930/04

12003 - 12014

Effect of imprisonment on JSA, IS, SPC and ESA

12015 For benefit specific guidance on the effect of imprisonment or detention in legal custody on JSA and IS see DMG Chapter 24, for SPC see DMG Chapter 78, for ESA(Cont) see DMG Chapter 53 and for ESA(IR) see DMG Chapter 54.

12016 - 12019

Meaning of imprisonment and detention in legal custody

12020 The term “imprisonment or detention in legal custody” means

1. any detention connected with criminal proceedings¹ **or**
2. imprisonment imposed by a criminal court².

A claimant sentenced to imprisonment as a result of civil proceedings is not disqualified².

1 R(P) 2/57; 2 R(S) 8/79

12021 Imprisonment or detention in legal custody includes detention

1. in a prison or detention centre **or**
2. of a child or young person under the direction of the Secretary of State **or**
3. in a hospital or similar institution as a result of criminal proceedings¹ **or**
4. abroad².

A person in a young offenders' institution is not imprisoned, but is detained in legal custody.

1 SS (Gen Ben) Regs, reg 2(8)(b); 2 R(S) 2/81

12022 Imprisonment or detention in legal custody might be

1. before the proceedings commence, for example custody before a charge **or**
2. before the conclusion of proceedings, for example remand in custody **or**
3. after the proceedings, for example sentenced to prison.

It does not include a period before criminal proceedings begin where the person is released on bail.

12023 The word "detention" describes the physical confinement of a person¹. A period of authorized absence from a place of detention is not a period in which a claimant is

1. kept in a prison **or**
2. detained in legal custody.

See DMG 12041 for pre-release schemes.

1 R(S) 10/56

12024 - 12029

Period of detention in legal custody

12030 The day on which detention in legal custody starts **is** a day of detention in legal custody. The day of release **is not** a day of detention.

Effect of a pardon

12031 Where

1. disqualification because of imprisonment or detention in legal custody had been imposed **and**
2. a pardon is granted for the offence associated with the imprisonment or detention in legal custody

the disqualification ends because of the pardon. See DMG Chapter 04 for further guidance on supersession for a relevant change of circumstances and when the decision takes effect.

Effect of a successful appeal

12032 Where a person successfully appeals against conviction they are not disqualified for the period of imprisonment or detention in legal custody. See also DMG 12057.

Release on licence

12033 Release on licence means release on parole after completion of a specified part of the original sentence. The following guidance does not cover prisoners on pre-release schemes; guidance on such cases should be sought from DMA Leeds through the usual channels. A person released on licence¹, including on temporary licence, is no longer imprisoned or detained in legal custody. The DM should consider

1. the importance of any specific terms the licence may have **and**
2. the way the terms alter the actual state of the release.

¹ Criminal Justice Act 03, s 237 to 258; Prisoners and Criminal Proceedings (Scotland) Act 1993, Part I; Prisons (Scotland) Act 1989

12034 Conditions are imposed in all cases of release on licence and the person can be returned to prison if they breach these conditions.

12035 There are several early release on licence schemes including

- Parole - where the prisoner is released on the recommendation of the Parole Board after completing a specified part of their original sentence.
- Curfew - more commonly referred to as “tagging”, where a prisoner is released on licence before their automatic release date. The conditions of release require them to wear an electronic tag and remain at home during agreed periods of the day¹.

- Remote monitoring on release - another type of curfew applicable to various types of release on licence².

1 Criminal Justice Act 03, s 253; Prisoners and Criminal Proceedings (Scotland) Act 1993, Part I;

2 Criminal Justice (Scotland) Act 2003, s 40

12036 - 12040

Release on temporary licence

12041 In certain circumstances prisoners may be allowed short periods of release on temporary licence. The purpose of this is either for compassionate reasons or to help the prisoner improve their chances of resettlement after their release. They may find work outside prison to support themselves and their families and spend short periods at home. Prisoners released on temporary licence are not imprisoned or detained in legal custody¹.

1 CAO v Carr; R(IS) 20/95

12042 - 12049

Exceptions to the disqualification provisions

12050 There are exceptions to the provisions disqualifying benefit on imprisonment or detention in legal custody. These are where

1. no penalty is imposed¹ (see DMG 12051) **or**
2. the person is suffering from mental disorder² (see DMG 12070 - 12087) **or**
3. the person is in receipt of GA or death grant³ (see DMG 12088) **or**
4. the person is in receipt of IIDB⁴ (see DMG 12090 - 12091).

1 SS (Gen Ben) Regs, reg 2(2); 2 reg 2(3), (4) & (4A); 3 reg 2(5); 4 reg 2(6)

No penalty imposed

12051 There is no disqualification for receiving certain benefits for imprisonment or detention in legal custody unless at the end of criminal proceedings the court imposes

1. a penalty (see DMG 12054 - 12058) **or**
2. a penalty for fine default¹ (see DMG 12069).

1 SS (Gen Ben) Regs, reg 2(2)

Benefits affected

12052 The benefits affected are¹

1. IB
2. AA
3. DLA
4. WB
5. BB
6. Child's special allowance
7. MA
8. SAP
9. RP
10. SDA
11. IIDB
12. REA
13. IDB

14. CA²

15. RA.

1 SS (Gen Ben) Regs, reg 2(2); 2 SS (ICA) Regs, reg 14

Meaning of Court

12053 Court means¹ any

1. Court in

1.1 UK

1.2 Channel Islands

1.3 Isle of Man

1.4 any place to which the Colonial Prisoners Removal Act 1884 applies **or**

2. Court-Martial within the meaning of the Courts-Martial (Appeals) Act 1968 **or**

3. Courts-Martial Appeal Court.

1 SS (Gen Ben) Regs, reg 2(8)(a)

Meaning of penalty

12054 Penalty¹ is

1. a sentence of imprisonment **or**

2. detention in a young offenders institution **or**

3. an order for detention in a young offenders institution **or**

4. detention in GB as a result of any order made under the Colonial Prisoners Removal Act 1884².

1 SS (Gen Ben) Regs, reg 2(8)(c); 2 reg 2(8)(d)

12055 The term penalty includes a suspended sentence of imprisonment at the end of criminal proceedings, even if it has not taken effect¹.

Note: A suspended sentence does not disqualify a claimant who is not in prison or detained in legal custody.

1 R(S) 1/71

12056 The following are not penalties and so no disqualification is imposed for the period before the end of criminal proceedings during which the person is remanded in custody when

1. a fine is imposed (see DMG 12069) **or**

2. the charge is withdrawn **or**

3. there is a conditional or absolute discharge or acquittal **or**

4. the claimant is detained in hospital by court order following conviction **or**
5. an order putting a person under guardianship is made **or**
6. a Community Rehabilitation order is made.

Penalty cancelled

12057 Where a penalty has been imposed, a Higher Court can later

1. quash the conviction **or**
2. substitute another penalty

with an order which is not a penalty. The effect is as though no penalty had been imposed.

12058 Disqualification will therefore be removed for any relevant period of imprisonment or detention in legal custody. See DMG Chapter 04 for further guidance on supersession and when the decision takes effect.

Suspension

12059 Payment of those benefits listed in DMG 12052 is suspended during the period of remand in legal custody whilst criminal proceedings are continuing and there is a possibility that at the end of those proceedings the claimant would be disqualified¹.

1 SS (Gen Ben) Regs, reg 3(1); reg 3(2)

12060 The suspension covers

1. the period of imprisonment or detention in legal custody¹ **and**
2. any benefit payable during that period even if it is not in respect of that period².

1 SS (Gen Ben) Regs, reg 3(1)(a); 2 reg 3(1)(b)

12061 The provision in DMG 12060 ensures that benefit is not paid to a claimant while they are in prison. Nevertheless, any payment as in DMG 12060 **2.** which becomes payable may be paid to a third party with the agreement of the Secretary of State¹.

1 SS (Gen Ben) Regs, reg 3(3)

12062 Suspension continues even if the claimant is transferred to mental hospital. When the criminal proceedings are concluded the claimant is disqualified from receiving benefit for this period if they are sentenced to a period of imprisonment or are detained or liable to be detained in a mental hospital under certain legislation¹.

1 SS (Gen Ben) Regs, reg 3(2); MH Act 83 s 45A; s 47; Criminal Procedure (Scotland) Act 1995 s 59A; MH (C & T) (Scot) Act 03 s 136.

12063 - 12068

Imprisonment for non-payment of fines

12069 Imprisonment for non-payment of a fine can be the result of civil proceedings. The DM should consider the nature of the original offence if a person is imprisoned for non-payment of a fine. If the original offence was a criminal action, the DM should

1. regard the imprisonment as a criminal offence **and**
2. disqualify from benefit¹.

1 SS (Gen Ben) Regs, reg 2(2)

Mentally disordered persons detained in legal custody

12070 Subject to the exceptions in DMG 12073 disqualification does not apply for any period during which a person is detained in legal custody at the end of criminal proceedings, if it is a period during which that person is liable to be detained in a hospital or similar institution as a person suffering from a mental disorder¹. See Appendix 1 for information about the legislation covering patients concerned in criminal proceedings or under sentence.

1 SS (Gen Ben) Regs, reg 2(3)

12071 “Hospital or similar institution” means¹ any place in which people suffering from mental disorder may receive care or treatment but not at or in a

1. prison **or**
2. detention centre **or**
3. Borstal institution **or**
4. young offenders institution **or**
5. remand centre.

1 SS (Gen Ben) Regs, reg 2(8)(b)

12072 If a person is found to be insane during criminal proceedings so that they cannot be tried or their trial cannot proceed, those proceedings will be treated as completed¹. There will be no disqualification.

1 SS (Gen Ben) Regs, reg 2(8)(g)

12073 The exceptions referred to in DMG 12070 are where the person is

1. detained¹ (or liable to be detained) under specific legislation² which allows a court, which has imposed a term of imprisonment, to direct that the offender be detained in a hospital or similar institution instead of a prison where that offender suffers from a psychopathic disorder **or**
2. serving³ a sentence of imprisonment and is then detained in a mental hospital under specific legislation⁴ which allows the Secretary of State for Justice or Scottish Ministers to order that an offender, suffering from mental disorder, be transferred from prison to detention in a mental hospital.

*1 SS (Gen Ben) Regs, reg 2(3)(a); 2 MH Act 83, s 45A; Criminal Procedure (Scotland) Act 95 s 59A
3 SS (Gen Ben) Regs, reg 2(3)(b); 4 MH Act 83, s 47; MH (C & T) (Scot) Act 03 s 136*

12074 Where there is a hospital direction as in DMG 12073 **1.** or where the person is transferred from prison to a mental hospital as in DMG 12073 **2.** the person will be disqualified for receiving benefits¹.

1 SS (Gen Ben) Regs, reg 2(3)(a) & (b)

12075 A person who is transferred to a mental hospital as in DMG 12074 may recover and be sent back to prison; the normal rules disqualifying prisoners from receiving benefits will apply.

12076 Where a person has been disqualified and is transferred to

1. a hospital **or**
2. similar institution

the disqualification will continue until the date when the person would have been released, had the transfer not been made¹.

1 SS (Gen Ben) Regs, reg 2(4)

12077 In England and Wales, where applicable, the earliest date on which the prisoner would have been expected to be released from prison will be notified in a certificate given to the Secretary of State by an officer acting on behalf of the Secretary of State for Justice¹. A certificate will not be issued where the prisoner was sentenced to life imprisonment.

1 SS (Gen Ben) Regs, reg 2(4)

12078 In Scotland certificates are not issued on any case because the terms of the prisoner's transfer to mental hospital cease at the point that their sentence would have ended¹. Any further detention would require a fresh order which would not be made under the relevant legislation².

1 CSS/239/07; MH (C & T) (Scot) Act 03, s 136, s 217; 2 s 136

12079 For DMG 12077 - 12078 it is enough to know under what legislation the prisoner is held in mental hospital. They will be disqualified if it is under the relevant legislation and there is no certificate.

Life sentences and tariffs

12080 Life sentences (or indeterminate sentences) fall into two categories

1. mandatory life sentences - where a person is convicted of murder, this is the only sentence which can be imposed **and**
2. discretionary life sentences - where the judge holds it to be appropriate in the circumstances of the case or where it is held to be necessary, eg. for public protection.

- 12081 In both cases, the trial judge sets a tariff period which is effectively the “punishment” part of the sentence. Once the tariff date has been reached the Parole Board can consider an application for release. A release direction will only be made if the Parole Board is satisfied that the prisoner would not pose an unacceptable risk to the general public. Otherwise they will remain in prison.
- 12082 A trial judge who decides that the requirements of retribution or deterrence can only be satisfied if the person remains in prison can decline to set a tariff period. In the case of mandatory lifers (see DMG 12080 1.) this is called a ‘whole life order’. It means that a prisoner can never become eligible for a Parole Board review or for release.
- 12083 A prisoner who remains in prison beyond their tariff date does not become eligible for benefits because they are still a prisoner. Similarly, a prisoner with a life sentence (see DMG 12080 1. and 2.) who is transferred¹ to psychiatric hospital for treatment, does not become eligible for benefits when the tariff date has been reached². Such a person would only become eligible for benefits upon release.

*1 MH Act 83, s 45A; s 47; Criminal Procedure (Scotland) Act 95, s 59A; MH (C & T) (Scot) Act 03, s 136;
2 SS (Gen Ben) Regs, reg 2(3), 2(4) & 2(4A)*

Technical Lifers - England and Wales only

- 12084 A High Court judgment¹ dealt with the issue of whether there was unequal treatment under Human Rights legislation between those persons
1. sent to hospital for treatment² without having been given a prison sentence who **are** eligible for benefit **and**
 2. those given a prison sentence and are either–
 - 2.1 sent directly to hospital for treatment³ **or**
 - 2.2 transferred to hospital from prison⁴
- who are **not** eligible for benefit.

*1 Regina (EM and others) v Secretary of State for Work and Pensions [2009] EWHC 454 (Admin);
2 MH Act 83, s 37 & 41; 3 s 45A; 4 s 47*

- 12085 The Court found that the difference in treatment of those persons termed ‘technical lifers’ could not be justified.
- 12086 A ‘technical lifer’ is an administrative classification. It involves the Secretary of State for Justice accepting that the criminal court that heard the individual’s case would have given an order for hospital treatment rather than impose a sentence of imprisonment, if, for example, a suitable bed had been available.
- 12087 The effect of this is that a person given the status of a ‘technical lifer’ should be treated, for the purposes of benefit entitlement, as though they had been sent to hospital for treatment without having been given a prison sentence (see DMG 12084 1. above).

Note: The practice of awarding 'technical lifer' status to eligible prisoners was abandoned in 2005.

Guardian's Allowance and Death Grant

12088 There is no disqualification from GA or death grant during a period of imprisonment or detention in legal custody¹.

1 SS (Gen Ben) Regs, re 2(5)

12089

Industrial Injuries Disablement Benefit

12090 There is no disqualification from IIDB during a period of imprisonment or detention in legal custody. This includes annual uprating and increases in disablement assessments. However, increases in IIDB such as CAA and ESDA will be subject to disqualification¹.

1 SS (Gen Ben) Regs, reg 2(6)

12091 Where the sentence of imprisonment is greater than a year, the amount of IIDB payable should be limited to the total amount of IIDB payable for one year¹. The DM can use any continuous period of a year to calculate a claimant's entitlement, if the claimant has

1. been detained for longer than a year **and**
2. had varying assessments.

This will ensure that the basis of the calculation made is of the greatest benefit to the claimant.

1 SS (Gen Ben) Regs, reg 2(7)

12092 - 12099

Imprisonment or detention in legal custody abroad

12100 When a person is imprisoned or detained in legal custody abroad¹, the same benefit rules apply for

1. disqualification **and**
2. exception from disqualification.

Note: UK benefit rules apply only for imprisonment for a criminal offence. The DM should decide whether the offence for which the claimant is convicted in the other country would be a criminal offence in the UK. A person detained abroad without trial is not disqualified for receiving benefit.

1 R(S) 2/81; SS (Gen Ben) Regs, reg 2(9) & (10)

12101 - 12109

Imprisonment or detention of dependants

Spouse or civil partner

- 12110 The disqualification rules for receiving personal benefit (see DMG 12000 1.) apply equally to an increase of benefit for a spouse or civil partner who is in prison or detained in legal custody. The person receiving the benefit will not receive an increase for that dependant for any period during which their dependent spouse or civil partner is in prison or detained in legal custody¹ (see DMG 12020 - 12041).

1 SS CB Act 92, s 113(1)

Person caring for a child

- 12111 There is no entitlement to an increase of benefit for a person caring for a child or children for
1. any period during which that person is in prison or is detained in legal custody¹
or
 2. any week in which the child is in prison or is detained in legal custody.

1 SS Ben (Dep) Regs, reg 10(2)(d) & Sch 2, para 7(b)(ii)

Fresh claims

- 12112 The rules on increases for a dependent spouse or civil partner affect payment and not entitlement. A fresh claim is not required when benefit is to be restored following a period of imprisonment or detention.

12113 - 12999

Appendix 1

Mentally disordered persons detained in legal custody (See DMG 12070)

Mental Health Act 1983 Part III

- 1 Part III of the Mental Health Act 1983 covers patients concerned in criminal proceedings or under sentence. It contains rules on remands to hospital, hospital and guardianship orders, restriction orders and directions to be made on transfer of prisoners to hospital.

Section 37 - Hospital order

- 2 This section allows the Crown Court to order that a person, who has a mental disorder and who is convicted of an imprisonable offence, be detained in a hospital for treatment. Although they have committed an offence for which a prison sentence could have been imposed, it wasn't. Instead they have received a hospital order which is as much an outcome as being given, for example, a conditional or absolute discharge, a suspended sentence, a probation order. Benefit entitlement should not be affected in such cases. The Scottish equivalent is sections 57A and 58 of the Criminal Procedure (Scotland) Act 1995.

Section 41 - Restriction order

- 3 Where the Court makes a hospital order under section 37, it may also make a restriction order. Where a person is subject to a restriction order the Secretary of State for Justice's consent is required before they may be transferred, given leave of absence or discharged. The Scottish equivalent is section 59 of the Criminal Procedure (Scotland) Act 1995. Benefit entitlement should not be affected in such cases.

Section 45A - Hospital direction and limitation direction

- 4 This section allows the Crown Court when imposing a prison sentence, at the same time to give a hospital direction for immediate admission and detention in hospital. If the person responds to treatment or further treatment will not be beneficial, they will be remitted to prison to continue to serve their sentence. These cases are rare. A hospital direction must be accompanied by a limitation direction, which imposes the same restrictions as a restriction order under section 41. From 10.4.06 a claimant admitted under this section is disqualified from receiving benefit. The Scottish equivalent is section 59A of the Criminal Procedure (Scotland) Act 1995.

Section 47 - Transfer direction

- 5 Section 47 allows the Secretary of State - in practice the Secretary of State for Justice - to direct that a person, serving a prison sentence for an offence, be removed to a hospital for treatment for mental disorder. The person is, in effect, a prisoner for the duration of the sentence which was imposed and is disqualified from receiving benefit during that period. They will only become a hospital in-patient for benefit purposes if they are still in hospital after the date when they would have been automatically released had they remained in prison. The making of a transfer direction can result in the person remaining in hospital long after the date on which they would have been released from prison had a transfer direction not been made. The Scottish equivalent is section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003.

Section 48 - “Remand” transfer direction

- 6 This section provides a similar power to that of section 47 for a person who has not been sentenced. It applies, for example, to people on remand. Such people would be subject to suspension of benefit until they are sentenced. The direction ceases to have effect when the court disposes of the case.

Section 49 - Restriction direction

- 7 When transferring a prisoner to hospital under sections 47 or 48, the Secretary of State - in practice the Secretary of State for Justice - may also impose a restriction direction, which has the same effect on the person as a restriction order under section 41. The effect of this direction on benefits is that disqualification or suspension continues until
1. the automatic release date for a sentenced prisoner **or**
 2. the court disposes of the case for an un-sentenced prisoner.

Chapter 13 - Incapacity for work

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Chapter 13 - Incapacity for work

General

Benefits affected

13000 The following guidance should be used to determine whether a person is capable or incapable of work¹. Unless specified in other legislation the rules apply to any benefit, allowance or advantage where a condition of entitlement is that they are capable or incapable of work.

1 SS (IfW) Act 94; SS CB Act 92, s 171A(1)

13001 The benefits and allowances include IB, SDA, IS and JSA. The advantages include incapacity credits and premiums paid with HB and CTB. The rules do not apply to IIDB¹, SSP² and ESA³.

1 SS CB Act 92, s 171G(1)(a); 2 s 171G(1)(b); 3 WR Act 07, s (1)(3)

13002 A determination on whether a person is, or is treated as, capable or incapable of work for entitlement to any benefit, allowance or advantage also determines entitlement for any other benefit, allowance or advantage for the same period¹.

1 SS CS (D&A) Regs, reg 10

13003 - 13024

The tests of incapacity

13025 There are two tests of incapacity

1. the OOT (see DMG 13200) **and**
2. the PCA (see DMG 13300).

The DM must first determine which test applies.

13026 The OOT applies if the person has been in remunerative work for more than eight weeks in the 21 weeks immediately before the day for which incapacity for work has to be determined and it continues to apply

1. for the first 196 days of the spell of incapacity **or**
2. until the spell of incapacity ends if that is earlier.

Satisfying the test depends upon evidence of incapacity¹ confirming that people are unable to work in their own occupation. This is the job or jobs they had for at least 16 hours a week in more than eight of the 21 weeks before the first day of incapacity² (see DMG 13218).

1 SS (Med Ev) Regs, reg 2; 2 SS CB Act 92, s 171B(3); SS (IW) (Gen) Regs, reg 4 & 5

13027 The PCA applies from the

1. 197th day onwards **or**
2. beginning of the claim if the OOT conditions do not apply¹.

1 SS CB Act 92, s 171B(3)

13028 Satisfying the test depends on the assessment of ability to perform certain functions on the basis of answers to a questionnaire and possible medical examination. Medical statements are not required after the PCA has been assessed¹.

1 SS CB Act 92, s 171C(1); SS (IW) (Gen) Regs, reg 23-28 & Sch

13029 - 13049

Treated as capable of work

13050 There are rules to treat people as capable of work if they

1. cease to provide medical evidence¹ (see DMG 13182 - 13184 for cases where contact with the claimant **has not** been lost and DMG 13652 - 13655 for cases where contact with the claimant **has** been lost) **or**
2. fail without good cause to return the questionnaire for the PCA² (see DMG 13660 - 13668) **or**
3. fail without good cause to attend or submit to a medical examination for the OOT or the PCA³ (see DMG 13676 - 13721) **or**
4. are working, other than in defined categories⁴ (see DMG 13846 - 13980) **or**
5. claim JSA⁵ (see DMG 13725 - 13727) **or**
6. behave inappropriately⁶ (see DMG 13730 - 13813).

1 SS (IW) (Gen) Regs, reg 16A(1); 2 reg 7; 3 reg 8; 4 reg 16; 5 reg 17A; 6 reg 18(2)(b)

13051 - 13074

Treated as incapable of work

13075 Certain people can be treated as incapable of work (see DMG 13550). They are those

1. where the PCA applies, who have certain prescribed severe conditions¹ **or**
2. with a certified infectious or contagious disease² **or**
3. who are hospital in-patients³ **or**
4. who are receiving certain regular treatments⁴ **or**
5. who are WtWBs⁵ **or**

6. in certain circumstances, who are pregnant⁶ or
7. who are engaged in approved work on a trial basis⁷.

1 SS (IW) (Gen) Regs, reg 10; 2 reg 11; 3 reg 12; 4 reg 13; 5 reg 13A(2); 6 reg 14; 7 reg 10A

13076 Provided certain conditions are satisfied, people are treated as incapable of work from the first day it applies until the PCA is carried out¹ (see DMG 13610).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, reg 6(3) & 28

13077 Certain people who do not satisfy the PCA assessment by having enough points must be treated as incapable of work if there are exceptional circumstances in their case¹ (see DMG 13625).

1 SS (IW) (Gen) Regs, reg 27

13078 - 13099

Evidence and information

General

13100 Information or evidence is needed to determine whether a person is capable or incapable of work¹ **except** when considering whether a person

1. who has claimed JSA is capable of work² **or**
2. is to be treated as incapable of work under certain legislation³.

Note: The following paragraphs should be read with the guidance on evidence in DMG Chapter 01.

1 SS (IW) (Gen) Regs, reg 6(1); 2 reg 6(3); 3 regs 10 - 14

13101 Evidence of incapacity should be provided for the day or days of incapacity for work until the person has been assessed for the PCA. Evidence may be

1. self-certification¹ (see DMG 13120) **or**
2. a statement from a doctor² (see DMG 13140) **or**
3. if it is unreasonable to require such a statement, other evidence which is sufficient to show that the person should refrain from work because of some specific disease or bodily or mental disablement³ (see DMG 13160).

*1 SS (Med Ev) Regs, reg 5; 2 reg 2(1); SS (IW) (Gen) Regs, reg 6(1)(a);
3 SS (Med Ev) Regs, reg 2(1A)*

13102 Certain transitionally protected cases are required to provide evidence of incapacity to be exempt from the PCA. If acceptable evidence of incapacity ends, continuing entitlement will be subject to the PCA assessment¹. For SDA cases see DMG Chapter 57.

1 SS (IB) (Trans) Regs, reg 31

13103 - 13119

Evidence

Self-certification

13120 Evidence of incapacity for a spell of incapacity of less than eight days, or for the first seven days of a longer spell of incapacity, may be by self-certification¹. Self-certification is only appropriate for the first seven days of a spell of incapacity.

1 SS (Med Ev) Regs, reg 5(1)

13121 "Spell of incapacity" means a series of four or more consecutive days of incapacity for work and any two such spells not separated by a period of more than eight weeks shall be treated as one spell of incapacity¹.

1 SS (Med Ev) Regs, reg 5(2); SS CB Act 92 s 171B(3)

13122 A self-certificate is a declaration made in writing by the person, in a form approved by the Secretary of State. It should include the information that they have been unfit for work from a date or for a period. It may also include a statement that they expect to continue to be unfit for work¹.

1 SS (Med Ev) Regs, reg 5(2)

13123 - 13139

Doctor's statements

13140 A doctor's statement is a statement given in writing by a doctor. They are made on an approved form¹.

1 SS (Med Ev) Regs, reg 2(1) & Sch 1, Pt 2

13141 A doctor means a registered medical practitioner and includes a medical practitioner outside the UK who is asked for a medical opinion by the Secretary of State. Doctors must be registered or recognized as such in the country in which they pursue a medical practice¹. A statement from a GP, hospital dental officer or consultant can be accepted.

1 SS (IW) (Gen) Regs, reg 2

13142 - 13159

Other evidence

13160 Evidence other than on an approved form or from a registered medical practitioner can be accepted¹ if

1. it is unreasonable to require a doctor's statement **and**
2. the evidence shows that the person should not work because of a specific disease or disablement.

1 SS (Med Ev) Regs, reg 2(1A)

13161 The DM decides what is reasonable in each case. For example, evidence from alternative therapists such as chiropractors, osteopaths, etc can be accepted if the person is usually treated by them as well as, or instead of, a general practitioner.

13162 Depending on the circumstances a declaration that a person is incapable of following a particular occupation and is receiving non-medical treatment such as Christian Science treatment (i.e. treatment through prayer) may be sufficient proof¹.

1 R(S) 9/51

13163 - 13179

Information

- 13180 The DM can ask for any additional information relating to the relevant test to help determine whether a person is capable or incapable of work¹.

1 SS (IW) (Gen) Regs, reg 6(1)(c)

- 13181 Where the PCA applies, information in the form of a questionnaire relating to the person's ability to perform certain activities will be requested¹ unless there is already sufficient information to determine the question².

1 SS (IW) (Gen) Regs, reg 6(1)(b); 2 reg 6(2)

Gap in medical evidence

Contact with claimant not lost

- 13182 If a claimant fails to provide medical evidence for a specific period before incapacity is determined and contact with them has not been lost, payment of benefit may be suspended¹ (see DMG Chapter 04 for guidance on suspension of payment of benefit).

1 SS CS (D&A) Regs, reg 16

- 13183 In such cases, the DM must apply the PCA. The test may need to be applied on the balance of probabilities using all available evidence, including evidence from a previous claim where appropriate. For example, it might not be possible to refer the claimant for medical examination where it is known that they have returned to work or claimed JSA. Where there is little or no evidence, the DM may draw adverse inferences and award no points when scoring the PCA. Advice should be sought from medical services in cases of doubt. Insufficient evidence does not mean that the PCA cannot be applied.

- 13184 Where there is a gap in medical evidence, this does not count as a change of circumstances to justify a decision to supersede the entitlement decision. The DM can suspend payment to the claimant because of the failure to provide medical evidence, but cannot conclude they are not entitled to IB without carrying out the PCA¹. The determination of incapacity for work gives grounds for supersession, not the lack of medical evidence. Once incapacity has been determined, any days not covered by medical evidence will be included in the PCA determination (see DMG 13622).

1 R(IB) 1/05

Contact with claimant lost

- 13185 For cases where medical evidence ceases and contact with the claimant is lost see DMG 13652 - 13655.

13186 - 13199

Own occupation test

The Test

13200 The test is whether a person is incapable, because of some specific disease or mental disablement, of doing work which they could reasonably be expected to do in the occupation in which they were employed¹.

1 SS CB Act 92, s 171B(2)

13201 Separate provisions allow any work as a councillor to be disregarded when determining incapacity for work¹. Work as a councillor includes work as a member of specified bodies². If a person's only qualifying occupation (see DMG 13230) is as a councillor, the PCA should be applied from the outset.

1 SS CB Act 92, s 171F; 2 Local Authority Act 72, s 177(1); Local Government (Scotland) Act 73, s 49(1) & (1A)

13202 Although a person with a severe condition is exempt from the PCA, incapacity during the OOT period must be considered on their capability for their qualifying occupation (see DMG 13230).

13203 Disease may be defined as any abnormality of bodily structure or function, other than those arising directly from physical injury. It is a departure from health identifiable by its signs and symptoms, an abnormality of some sort.

13204 Disablement, which may be bodily or mental, is a state of deprivation or incapacitation of ability measured against the abilities of a normal person. Incapacity can be confirmed by symptoms which are consistent with the presence of some disease. For example, the person may be displaying symptoms such as pain, but the cause may not have been diagnosed.

13205 - 13215

When it applies

13216 The OOT applies when a person has been in remunerative work (see DMG 13218) for more than eight out of the 21 weeks immediately before the day for which incapacity for work has to be determined¹ (see DMG 13249). The person should have worked for at least eight weeks and part of a day to qualify.

1 SS CB Act 92 s 171B(1)

13217 A person who is normally engaged in one occupation for at least 16 hours weekly is treated as being engaged in that work for any week in which there is paid or unpaid leave¹. For example, periods of SSP count as paid leave during the 21 weeks before the first day of incapacity claimed. If SSP is paid for less than 196 days up to the first day of incapacity claimed the OOT will apply for the balance of the 196 days.

1 SS (IW) (Gen) Regs, reg 4(2)(b)

Definitions

13218 “Remunerative work” for any week in the period of 21 weeks means work

1. in one occupation (see DMG 13221) for at least 16 hours weekly for more than eight weeks **and**
2. for which payment was made or expected¹.

Note: When calculating the hours worked in a week, only the time spent engaged in actual working activities falls to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation.

1 SS (IW) (Gen) Regs, reg 4(1)

13219 A “week” means any period of seven days¹.

1 SS (IW) (Gen) Regs, reg 2

13220 “Normally engaged” means under contract of service in the case of an employed person.

13221 “One occupation” means

1. all work of the same kind, whether or not it was for the same employer and whether the person was employed or self employed¹ **or**
2. all work for the same employer².

1 SS (IW) (Gen) Regs, reg 4(2)(a)(i); 2 reg 4(2)(a)(ii)

13222 Provided **all** the work is for the same employer or of the same kind¹

1. separate periods of work (or paid or unpaid leave) in a week can be added to satisfy the “at least 16 hours” condition **and**
2. separate periods of work (or paid or unpaid leave) within the 21 weeks can be added to satisfy the “more than eight weeks” condition.

The “same kind of work” is not defined. It should be taken to mean that the substance of the work remains the same even though the actual tasks could differ².

1 SS (IW) (Gen) Regs, reg 4(2); 2 Johnson v Notts Combined Police Authority 1974 1 WLR 358

Example 1

A school teacher who coaches children in games is performing work of the same kind when taking a class in physics because the substance of the work is teaching.

Example 2

A secretary who carries out various tasks such as word processing, filing and other administrative duties is working primarily as a secretary.

13223 - 13229

Qualifying occupation

13230 Work which is for a total of at least 16 hours a week, and lasts for a total of more than eight weeks in the relevant 21 weeks is from now on referred to as a “qualifying occupation”.

13231 If there is more than one qualifying occupation, the one tested during the OOT period is the last qualifying occupation. **But** if there is more than one qualifying occupation in the last week of the last qualifying occupation period, the test of incapacity has to be satisfied for each¹.

1 SS (IW) (Gen) Regs, reg 5

13232 The table at Annex 1 to this Chapter explains how to decide if the OOT applies and which occupation should be tested.

13233 - 13244

Duration of test

13245 Once the conditions for the OOT are satisfied, the test applies until the earlier of

1. the end of the spell of incapacity **or**
2. 196 days¹.

1 SS CB Act 92, s 171B(3)

13246 A spell of incapacity means four or more consecutive days of incapacity for work. Any two spells of incapacity separated by eight weeks or less are treated as one spell of incapacity¹. The days in between the spells are not days of incapacity².

1 SS CB Act 92, s 171B(3); 2 CAO V Astle

13247 For people who are incapable on certain days because of specific types of treatment, such as dialysis, the spell of incapacity is defined as two days, which need not be consecutive, in a period of seven consecutive days¹. DMG 13550 and Annex 4 to this Chapter give more information on the treatment categories.

1 SS CB Act 92, s 171B(8), SS (IW) (Gen) Regs, reg 13(4)

13248 To calculate the 196 days of the OOT period, a day of incapacity means a day

1. on which the person is incapable of work **or**
2. on which there is entitlement to SSP **or**
3. which falls within the MAP **or**
4. which is treated as a day of IfW¹.

1 SS CB Act 92, s 171B(4)

13249 This means that the OOT automatically applies to a new claim for the balance of 196 days if

1. the OOT applied to the last claim for less than 196 days **and**
2. the break between the claims was eight weeks or less¹.

1 SS CB Act 92, s 171(B)(3)

13250 The OOT conditions should be considered again if

1. the PCA applied to the last claim whether the break between the claims was more or less than eight weeks **or**
2. the OOT applied to the last claim and the break between claims was more than eight weeks.

13251 - 13259

Evidence of incapacity

13260 During the OOT period a person must provide evidence of incapacity for the day or days of incapacity for work. This must confirm that the person is incapable of following their qualifying occupation because of some specific disease or bodily or mental disablement¹ (see DMG 13101).

1 SS (IW) (Gen) Regs, reg 6(1)(a); SS (Med Ev) Regs, reg 2

13261 - 13274

Consideration of evidence

13275 The DM considers whether incapacity for the qualifying occupation can be accepted if

1. the evidence is not provided on the prescribed form (see DMG 13160) **or**
2. there is no evidence of incapacity for any, or all days claimed (see DMG 13280) **or**
3. the diagnosis is doubtful (see DMG 13284) **or**
4. evidence suggests that the person is capable of work (see DMG 13290) **or**
5. a referral for medical advice results in an opinion that someone is capable of resuming their own occupation.

13276 - 13279

No evidence of incapacity

13280 A person must provide evidence of incapacity covering all days within the OOT period. If there is a gap in the evidence of incapacity or evidence ceases, the DM considers whether it is unreasonable for the person to provide a doctor's statement. (see DMG 13101 **3.**).

13281- 13283

Doubtful diagnosis

13284 The DM may request a medical opinion on a person's ability to perform the functions required in the qualifying occupation, if

1. there is doubt about whether the diagnosis means that person is actually incapable of the qualifying occupation (see DMG 13285) **or**
2. the diagnosis is one that is not usually accepted as an incapacity without further enquiries (see DMG 13286) **or**
3. there is no diagnosis (see DMG 13288).

13285 If there is doubt about IfW because of diagnoses such as deafness, blindness (see DMG 13201) or loss of limb the DM should consider

1. whether the person was able to follow the qualifying occupation with these disabilities **and**
2. what has changed to cause them to claim.

The incapacity should be accepted if it has been caused by the sudden loss of faculty or an altered condition.

13286 Some diagnoses raise the question of whether the person is actually incapable. Incapacity should be considered on the facts of each case. For example, pregnancy is not a disease or bodily or mental disablement but may indicate the existence of one. Further enquiries are necessary to establish whether there is a disease or disablement associated with, but going beyond the normal incidents of pregnancy.

13287 The doctor may indicate that the cause of sickness is undiagnosed. This may be because the doctor

1. has not yet identified the condition causing the symptoms **or**
2. may not wish to disclose the true incapacity to protect the person from harmful information.

13288 The DM may accept undiagnosed incapacity initially if satisfied by the available evidence that there is incapacity. This may be based on the person's own account of the symptoms. But if this type of certification continues, the DM should establish what action has been taken to allow a diagnosis to be made including what investigations or treatment are being carried out or considered.

13289

Evidence of capability for work

13290 Doubt may arise if people undertake work or activities which suggest that they are capable of work in their qualifying occupation¹.

1 SS CB Act 92, s 171B(2)

13291 The DM first decides if they should be treated as capable of work because the work is not in the exempt categories¹ (see DMG 13890). If the work is in an exempt category², but the activities involved are the same as for the qualifying occupation, the DM can refer the person for a medical examination.

1 SS (IW) (Gen) Regs, reg 16; 2 reg 17

13292 A person may undertake activities other than work whilst incapable of work. These could include education and training. IfW could be in doubt if the tasks within the activities suggest that the person is actually capable of the functions involved in their qualifying occupation. The DM should ask for a medical opinion if there is doubt.

13293 If the education and training take the form of work experience or trials, these should be considered as work (see DMG 13604, 13846 and 13980).

13294

Fit for qualifying occupation

13295 Medical services will provide an opinion on a person's ability to perform the functions required in the qualifying occupation. They may also collect the information for the PCA at the same time. The PCA report should **not** be used to decide whether it is reasonable to expect the person to resume work in the qualifying occupation or occupations.

13296 The DM should consider all available evidence before deciding whether, on the balance of probabilities¹, the test is no longer satisfied. DMs are not bound to decide on a particular doctor's certification².

1 R(S) 4/56; 2 R(S) 1/64

13297 Medical opinions on incapacity are not conclusive and can be challenged by evidence that is contrary, direct or circumstantial¹. A doctor's statement is poorly equipped to challenge a detailed medical officer's report, nor does it necessarily indicate a disagreement with the report². See DMG Chapter 01 for further guidance.

1 R(S) 4/60; 2 R(S) 7/64

13298 - 13299

Personal capability assessment

The test

13300 The PCA is an assessment of the extent to which a person is able to carry out a range of everyday activities which are relevant to their ability to work. The test is not assessed in respect of a working situation.

13301 Under the PCA the extent of a person's IfW due to

1. specific disease **or**
2. bodily or mental disablement

is assessed by their ability to perform defined activities. The level of ability to perform each activity is measured by points awarded against descriptors. The person must score a set total of points to be incapable of work¹ (see DMG 13416).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, regs 24-27

When it applies

13302 Where the OOT does not apply or has ceased to apply, the test is the PCA. The PCA applies from

1. the end of a spell of 196 days of incapacity **or**
2. the beginning of the claim if the conditions of the OOT are not satisfied¹ (see DMG 13200).

1 SS CB Act 92, s 171C (1)

13303 A PCA carried out before the OOT has ceased to apply can be used in determining a person's capability for work once the PCA is the relevant test¹.

1 SS CB Act 92, s 171C (4)

13304 Where a person has been determined to be incapable of work as a result of a PCA, the Secretary of State can call for a further PCA¹ to determine whether the person is still incapable of work. This applies even if the previous PCA was called for by the Secretary of State.

1 SS CB Act 92, s 171C (5)

Treated as incapable of work

13305 When either the OOT or the PCA is the test of capacity a person is treated as incapable of work if they

1. are WtWBs¹ (see DMG 13600) **or**
2. are incapable of work because of hospitalization, or prescribed conditions² (see DMG 13550) **or**

3. are doing approved work on a trial basis³ (see DMG 13603).

1 SS (IW) (Gen) Regs, reg 13A; 2 regs 11-14; 3 reg 10A

13306 When the PCA is the test of capacity people are treated as incapable of work if they

1. receive certain benefits or have specified medical conditions¹ (see DMG 13350) **or**
2. do not satisfy the PCA but there are exceptional circumstances² (see DMG 13625).

1 SS (IW) (Gen) Regs, reg 10; 2 reg 27

13307 People, other than those who are treated as incapable of work as in DMG 13306 **1.** are treated as incapable of work pending actual assessment, provided certain conditions are satisfied¹ (see DMG 13610 et seq).

1 SS (IW) (Gen) Regs, reg 28

Treated as capable of work

13308 As part of the assessment, people may be asked to provide information about their ability to carry out the activities and attend a medical examination. If they fail without good cause to do either, they can be treated as capable of work¹ (see DMG 13650).

1 SS (IW) (Gen) Regs, regs 7 & 8

13309 - 13349

Exemption from the assessment

General

13350 Where

1. the PCA is the relevant test of a claimant's capacity for work **and**
2. the claimant has a specific health condition (see DMG 13353) **or**
3. is in receipt of certain benefits

they shall be treated as incapable of work on any day where they continue to satisfy one of the conditions in **2.** or **3.** above¹ (see Annex 3 to this Chapter).

1 SS (IW) (Gen) Regs, reg 10

13351 - 13352

Medical evidence

13353 When medical evidence¹ is required to confirm the existence of a specific health condition², this means

1. evidence from a HCP approved by the Secretary of State **or**
2. evidence from any other HCP **or**
3. evidence from a hospital or similar institution **or**
4. such part of that evidence which is the most reliable in the circumstances.

See DMG 13411 for the meaning of “HCP”.

1 SS (IW) (Gen) Regs, reg 2; 2 reg 10

Note: This definition does not apply to the circumstances in DMG 13652.

13354 - 13399

Application of the assessment

Method of assessment

13400 A DM uses evidence and information to carry out the PCA. Generally this is collected by the person completing a questionnaire, which asks for information on their ability to perform specified activities¹.

1 SS (IW) (Gen) Regs, reg 6(1)(b)

13401 A person does not need to complete a questionnaire if the DM

1. already has sufficient information to carry out the PCA¹ **or**
2. can treat the claimant as incapable without carrying out the PCA².

1 SS (IW) (Gen) Regs, reg 6(2); 2 reg 10

13402 If the claimant fails to complete a questionnaire when asked to do so, the DM can proceed to determine capacity without it¹.

1 SS (IW) (Gen) Regs, reg 6(2)

13403 In addition a DM may ask for any other information needed to determine whether the person satisfies the PCA¹.

1 SS (IW) (Gen) Regs, reg 6(1)(c)

13404

13405 In the main, medical reports will be completed electronically. There is no requirement for them to be signed by the examining HCP¹. However the report must identify the status of the HCP, i.e. whether he/she is a doctor or a registered nurse (see DMG 13411).

1 R(IB) 7/05

13406 The DM considers the information contained in the questionnaire and the medical services report. There may be differences between the answers from the person and medical services. The DM then considers the merit of each answer and any other evidence to determine an overall score¹ (see DMG 13425). DMs have to decide what weight to give to this evidence.

1 SS (IW) (Gen) Regs, reg 26

13407 The information in the medical report should be read as a whole and any concerns over inconsistent or improbable entries addressed before a determination of IfW is made.

13408 There should be no changes made to the content of the medical report other than of a very minor nature e.g. a slip of the pen, and these are to be carried out by the same HCP who completed the original. Any other additions or alterations should be provided in a separate document.

13409 The examination report from medical services includes an opinion of a HCP approved by the Secretary of State on whether any prescribed exceptional circumstances apply. The DM should consider that opinion when deciding whether a person can be treated as incapable of work if they do not satisfy the test from the descriptors¹ (see DMG 13625).

1 SS (IW) (Gen) Regs, reg 27

13410

Health care professional

13411 A HCP¹ is

1. a registered medical practitioner **or**
2. a registered nurse **or**
3. a registered occupational therapist or physiotherapist² **or**
4. a member of such other regulated profession as prescribed³.

Note: No other professions have been prescribed at present.

*1 SS (IW) (Gen) Regs, reg 2(1); 2 Health Act 99, s 60;
3 NHS Reform & Health Care Professions Act 02, s 25(3); SS Act 98, s 39(1)*

Qualifying conditions

13412 The PCA is an assessment of the extent to which a person who has some specific disease or bodily or mental disablement is capable, or incapable, of performing specified **activities**¹. The performance of activities is measured by **descriptors** the points from which have to reach a set total for the person to be incapable of work². If the required number of points is not reached the person is not incapable of work³.

1 SS CB Act 92, s 171C(2); SS (IW) (Gen) Regs, reg 24; 2 reg 25 & 26; 3 SS CB Act 92, s 171A(1)

13413 When deciding the extent of a person's incapacity it is a condition that

1. physical descriptors arise from a specific bodily disease or disablement¹ **and**
2. mental descriptors arise from some specific mental illness or disablement.

1 SS (IW) (Gen) Regs, reg 24 & 25(3)

13414 People are assessed for physical descriptors with any prosthesis which has been fitted (such as an artificial limb) or with any aid or appliance normally worn or used (such as a hearing aid)¹.

1 SS (IW) (Gen) Regs, reg 25(2)

13415 The information to be provided for the PCA is contained in legislation¹.

1. **Activity** means an activity referred to in legislation².
2. **Descriptor** means the descriptor referred to in legislation and which describes a person's ability to perform the activity³.

1 SS (IW) (Gen) Regs, reg 2 & Sch, Column 1, reg 2; 2 reg 2; 3 reg 2, Sch, Column 2

13416 A person satisfies the PCA when

1. one or more of the descriptors in the physical disabilities¹ or mental disabilities² apply **and**
2. the total is reached of at least 15 points from the descriptors in the physical disabilities **or** 10 points from the descriptors in the mental disabilities **or** 15 points from the descriptors in both categories³. See DMG 13425 - 13427.

1 SS (IW) (Gen) Regs, Sch, Part I; 2 Sch, Part II; 3 reg 25

13417 The combined score of 15 points for physical and mental descriptors does not have to be considered if the person first reaches

1. 15 points for physical descriptors **or**
2. 10 points for mental descriptors.

13418 - 13424

Calculation of score

- 13425 The following modifications must be applied when determining a person's score
1. if descriptors from both mental and physical disabilities apply, an aggregate score of between six and nine points from the mental disability descriptors is treated as a score of nine points when added to the points from the physical disability descriptors¹ but see DMG 13427 if the score from physical disability descriptors is nil. An aggregate score of less than six points from any of the mental disability descriptors is disregarded²
 2. if the physical disability descriptors for the activities of walking and walking up and down stairs both apply, only the descriptor which attracts the highest score is counted³
 3. in arriving at the total score from the physical disability descriptors, only the descriptor which attracts the highest score in each area of activity is counted⁴
 4. when calculating the total score for mental disability the score for each descriptor is counted⁵.

1 SS (IW) (Gen) Regs, Sch, Part II; reg 26(1)(a); 2 reg 26(1)(b); 3 reg 26(2); 4 reg 26(3); 5 reg 26(4)

- 13426 Other than as in DMG 13425, there is no scoring limitation based on the person's specific disease or bodily disablement. So, for example, a person who cannot walk up and down a flight of twelve stairs without holding on because of their defective sight can score points both for the activity of vision and that of walking up and down stairs¹.

1 R(IB) 3/98

- 13427 When the combined descriptors apply and the total score from the physical descriptors is nil, any score from the mental descriptors is not modified. This applies because nil is not a score.

Example

Physical descriptors points	0
Mental descriptors points	7
Combined points	7

13428 - 13449

Determination of the assessment

Considering the evidence

- 13450 The DM determines whether the assessment is satisfied from the available evidence and information. The normal principles apply to considering the evidence. Guidance is in DMG Chapter 01.
- 13451 The DM considers the evidence and chooses the activities and descriptors which apply.
- 13452 The test of whether a person cannot perform an activity is not whether or not they are physically incapable of performing it. Matters such as pain, discomfort and repeatability are taken into account. A person is not capable of carrying out an activity if they can only do so with excruciating agony or, if having done it once, they are unable to repeat it for hours or days. The extent of a person's ability to repeat the activity in a single stretch and of the intervals at which the person would be able to repeat the performance should be identified. A decision can then be made on whether the person "cannot" or "sometimes cannot" perform the relevant descriptor.
- 13453 Apart from those descriptors in which the word "sometimes" appears, there is no specific requirement that a person must be able to perform the activity in question with "reasonable regularity". Even so regard should be had to some such concept. The real issue is whether, taking an overall view of the person's capacity to perform the activity in question, they should reasonably be considered to be incapable of performing it. The fact that they might occasionally manage to accomplish it, would be of no consequence if, for most of the time, and in most circumstances, they could not do so¹.
- 1 R(IB) 2/99*
- 13454 Where relevant descriptors are expressed in terms that the person "cannot", rather than "sometimes cannot", perform the activity, one should not stray too far from an arithmetical approach that considers what the person's abilities are most of the time¹.
- 1 R(IB) 2/99*
- 13455 Descriptors which state that there is "no problem" carrying out the activity mean that the person has no problem performing the activity or has less of a problem than would satisfy any of the other descriptors for that activity.

Example

Activity 1 descriptor (g) is "no walking problem". Descriptor (f) is "cannot walk more than 800 metres without stopping or severe discomfort". "No walking problem" means no walking problem or less of a problem than would satisfy descriptor 1(f).

- 13456 Where a descriptor refers to a person being able to use a tool or implement, the use referred to is the use to which the tool or implement is normally put. The descriptor is

not satisfied if the person cannot use the tool or implement to the required level with one hand but can with the other.

Example

The person could not hold a pen or pencil in his dominant right hand. He could hold a pen or pencil in his left hand but he could not write legibly with it¹.

1 R(IB) 1/98

13457 Some of the descriptors refer to events which occurred in a specified period before “the day in respect to which it falls to be determined”. At first the relevant period precedes the day the questionnaire is completed. Then the period precedes the day of the examination and so on. As far as possible the DM should consider the specified period immediately before the day the test is decided.

13458 The PCA does not have to be satisfied in respect of each day¹. A person should satisfy the conditions throughout a period. A person whose condition varies from day to day and who would easily satisfy the PCA on three days a week and would nearly satisfy it on the other four days might be incapable of work for the whole week.

1 R(IB) 2/99

13459 A person may have long periods of illness separated by periods of remission lasting some weeks, during which he or she suffers no significant disablement; such a person might be incapable of work during the periods of illness but not be incapable of work during the periods of remission. This is so even if the periods of illness are longer than the periods of remission¹.

1 R(IB) 2/99

13460 Satisfaction of the test is decided on the total of points from the final selection of individual descriptors subject to the specified modifications of the scoring (see DMG 13425).

13461 The DM must record the final scores for each descriptor and the reasons for the decision. Guidance on burden of proof is in DMG Chapter 01.

13462 If the required number of points is not reached the person is not incapable of work¹.

1 SS CB Act 92, s 171A(1)

13463 The PCA determination will apply to any previously undetermined days since the first day claimed for. This means that if there are days for which the person was not treated as incapable of work the PCA determination applies to them.

13464 - 13474

Further claim after determination that person is capable

- 13475 A person may make a new claim and provide medical statements after the DM has determined that they are capable of work. The DM
1. confirms which test of incapacity applies **and**
 2. applies the relevant test of incapacity.
- 13476 If the relevant test is the PCA, the DM may already have sufficient information with which to carry out a new PCA. This could include
1. medical evidence from the previous medical examination **or**
 2. medical evidence provided to support the new claim **or**
 3. any other evidence received by the DM relevant to assessment of the PCA on the new claim.
- 13477 If the DM considers there is sufficient information they should carry out the PCA (See DMG 13450 - 13463).
- 13478 If the DM considers there is insufficient information to carry out the PCA they should consider whether the person can be treated as incapable of work until the PCA is carried out¹ (see DMG 13610 - 13614).

1 SS (IW) (Gen) Regs, reg 28

13479 - 13549

Treated as incapable of work

General

- 13550 Unless they are treated as capable of work because of working¹, people can be treated as incapable of work when the OOT or the PCA apply if they are
1. pregnant and satisfy the prescribed conditions (see DMG 13560) **or**
 2. receiving hospital treatment (see DMG 13570) **or**
 3. receiving regular treatment for certain medical conditions (see DMG 13580)
or
 4. unable to work because of an infectious or contagious disease (see DMG 13590) **or**
 5. incapable for part of a day (see DMG 13595) **or**
 6. WtWBs (see DMG 13600) **or**
 7. engaged in approved work on a trial basis (see DMG 13603).

1 SS (IW) (Gen) Regs, reg 16

- 13551 When the PCA is the relevant test, a person can be treated as incapable of work¹ if they
1. are in receipt of certain benefits **or**
 2. have specific medical conditions.

(See Annex 3 to this Chapter)

1 SS (IW) (Gen) Regs, reg 10

- 13552 People who are not treated as incapable of work as in DMG 13550 and DMG 13551 can be treated as incapable until the PCA is actually assessed¹ (see DMG 13610 et seq).

1 SS (IW) (Gen) Regs, reg 28

- 13553 When the PCA is carried out, if the person is not incapable of work they can nevertheless be treated as incapable if exceptional circumstances apply¹ (see DMG 13625).

1 SS (IW) (Gen) Regs, reg 27

13554 - 13559

Pregnancy

- 13560 Any day within the MAP is treated as a day of IfW unless disqualification applies¹. Days within the MPP can be treated as days of incapacity in certain circumstances² (see DMG Chapter 62).

1 SS CB Act 92, s 30C(2); 2 SS (SMP) Regs, reg 21A

- 13561 A pregnant woman can be treated as incapable of work
1. on any day on which, because of her pregnancy, there is a serious risk to her health or to the health of her unborn child if she does not refrain from work¹
 - 1.1 if the OOT applies, in the qualifying occupation **or**
 - 1.2 if the PCA applies, in any occupation **or**
 2. if she is not entitled to MA or SMP and the expected date of confinement or actual date of confinement has been certified² on any day in the period
 - 2.1 beginning with the first day of the 6th week before the expected week of confinement or the actual date of confinement if that is earlier **and**
 - 2.2 ending on the 14th day after the actual date of confinement' if she would have no entitlement to MA or SMP were she to make a claim in respect of that period³.

1 SS (IW) (Gen) Regs, reg 14(a); 2 SS (Med Ev) Regs, reg 2(3); 3 SS (IW) (Gen) Regs, reg 14(b)

13562 “Sickness of pregnancy”, which can also be described as “emesis”, “hyperemesis”, “hyperemesis gravidarum”, or “morning sickness”, comes within the definition of a disease. This incapacity usually occurs between the 34th and 29th weeks before the expected date of confinement but can also be accepted outside that period when it may include a complication in the pregnancy.

13563 Unless a woman can be treated as incapable of work because of pregnancy, she should provide other evidence of incapacity, for example

1. a complication in the pregnancy **or**
2. an incapacity not related to pregnancy.

13564 - 13569

Hospital

13570 People are treated as incapable of work for any day on which they receive medical or other treatment as in-patients in a hospital or similar institution¹ (see DMG Chapter 18 for guidance on ‘hospital or similar institution’).

1 SS CB Act 92, s 171D(1); SS (IW) (Gen) Regs, reg 12

13571 A hospital in-patient can be treated as incapable of work even if admitted only for investigation of symptoms unless the investigation reveals that admission was due to another factor such as a personality disorder¹.

1 R(S) 1/58; R(S) 6/59

13572 - 13579

Receiving regular treatment

13580 People who receive

1. regular weekly treatment by
 - 1.1 haemodialysis or peritoneal dialysis for chronic renal failure **or**
 - 1.2 total parenteral nutrition for gross impairment of enteric function **or**
2. treatment by
 - 2.1 plasmapheresis **or**
 - 2.2 radiotherapy **or**
 - 2.3 parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs¹

are treated as incapable of work on the days that they receive that treatment.

1 SS CB Act 92, s 171D(1); SS (IW) (Gen) Regs, reg 13

13581 An explanation of the treatments in DMG 13580 is in Annex 4 to this Chapter.

13582 A person who maintains that they are incapable of work for the whole week should be assessed under the relevant test for the days on which they are not engaged in receiving treatment. See DMG 13200 if the relevant test is the OOT or DMG 13300 if it is the PCA.

13583 A person who works during a week in which they receive treatment is treated as

1. incapable of work on the days of treatment **and**
2. capable of work only on the actual days worked¹.

Days of treatment can include any necessary preparation or recuperation if this is specified as part of the treatment.

1 SS (IW) (Gen) Regs, reg 13(3); reg 16

13584 - 13589

Contagious or infectious diseases

13590 People are treated as incapable of work on any day¹ on which they are

1. excluded or abstain from work because of a written request or notice lawfully given under an enactment **or**
2. otherwise prevented from working under an enactment because they
 - 2.1 are a carrier **or**
 - 2.2 have been in contact with a case

of a relevant disease.

1 SS CB Act 92, s 171D; SS (IW) (Gen) Regs, reg 11(1)

Meaning of “enactment”

13591 “Enactment” means¹ one comprised in or in an instrument made under

1. an Act or
2. an Act of the Scottish Parliament.

1 SS (IW) (Gen) Regs, reg 11(2)

Meaning of “relevant disease”

13592 “Relevant disease” means¹

1. in England and Wales, any disease, food poisoning, infection, infectious disease or notifiable disease to which certain legislation² applies
2. in Scotland, any food poisoning or infectious disease to which certain legislation³ applies.

1 SS (IW) (Gen) Regs, reg 11(2); 2 Public Health (Control of Disease) Act 1984 s 20(1); Public Health (Infectious Diseases) Regs 1988, reg 3, reg 9(1), reg 9(2), Sch 1, Sch 3, Sch 4; Public Health (Aircraft) Regs 1979, reg 8, reg 9; Public Health (Ships) Regs 1979, reg 9, reg 10; 3 Health Services and Public Health Act 1968, s 71(1); Public Health (Aircraft) (Scotland) Regs 1971, reg 8, reg 9; Public Health (Ships) (Scotland) Regs 1971, reg 9, reg 10

13593 - 13594

Incapable for part of a day

13595 A person who is incapable of work at the beginning of a day or becomes incapable during the day is treated as incapable of work for the whole day¹. If a person worked on that day they are treated as capable of work unless the work is exempt².

1 SS (IW) (Gen) Regs, reg 15; 2 reg 16

13596 This provision applies where there is a sudden onset of, or recovery from, an incapacitating condition. It does not provide that a person with a variable condition that incapacitates them for part of each day is incapable throughout the whole of every day.

13597 When DMs determine that a person is incapable of work they can consider if this provision applies to treat them as incapable of work for the day at the beginning or end of the period of illness.

13598 Even if a person is treated as incapable of work under this provision any work that they do on that day or on another day in that week may mean that they are to be treated as capable of work. The normal rules on exempt work apply (see DMG 13846).

13599

Welfare to Work Beneficiaries

13600 A person who is a WtWB (see DMG 13640) is treated as incapable of work for a cumulative period of no more than 91 days beginning within the LT and ending on a day not later than 13 weeks from the end of that LT if they

1. claim benefit for any day within that LT **and**
2. provide medical evidence **and**
3. in their IPPIW
 - 3.1 were incapable of work following application of the PCA **or**
 - 3.2 were treated as incapable of work because they were excepted from application of the PCA¹.

1 SS (IW) (Gen) Regs, reg 13A(2)

13601 - 13602

Approved work on a trial basis

13603 People who are

1. incapable of work or treated as incapable of work **and**
2. receiving a prescribed benefit **and**
3. engaged in approved work on a trial basis

are treated as incapable of work on any day in a PIW on which they do any approved work as long as they do not receive or expect to receive any payment of earnings for it¹.

1 SS (IW) (Gen) Regs, reg 10A(1) and (2)

13604 “Approved work”¹ means work arranged in writing for the person with an employer by an officer of the Secretary of State or a person providing services to the Secretary of State and who has been authorized by the Secretary of State for that purpose.

1 SS (IW) (Gen) Regs, reg 10A(4)

13605 “A prescribed benefit”¹ means any benefit, allowance or advantage under prescribed legislation² for which entitlement is dependent on IfW but not SSP, SMP or IIDB.

1 SS (IW) (Gen) Regs, reg 10A(4); 2 SS CB Act 92, JSA Act 95

13606 “Trial basis”¹ means the trial period and other related matters arranged between the person, an officer of the Secretary of State or a person providing services to the Secretary of State and who has been authorized by the Secretary of State for that purpose and an employer in relation to the approved work.

1 SS (IW) (Gen) Regs, reg 10A(4)

13607 People who are treated as incapable of work because they are in approved work on a trial basis must still provide information or evidence to show whether they are capable or incapable of work¹. They are not exempt from the OOT or the PCA.

1 SS (IW) (Gen) Regs, reg 6

13608 A person who is found to be capable of work whilst in approved work on a trial basis can no longer be treated as incapable of work¹ as in DMG 13603.

1 SS (IW) (Gen) Regs, reg 10A(3)

13609

Period before personal capability assessment is determined

General

13610 When a person claims a benefit, credit or advantage on the basis of incapacity for work and the PCA is the relevant test it is possible to treat the person as incapable of work if certain conditions are met but only if the PCA has not been carried out. See DMG 13619 if the conditions are satisfied and DMG 13621 if they are not.

13611 The DM first has to ensure that the

1. PCA applies but has not been carried out
2. person is not in an exempt category
3. person cannot be treated as incapable for another reason (see DMG 13550).

13612 The person can be treated as incapable of work for as long as

1. they provide evidence of incapacity¹ (see DMG 13100 - 13181) **and**
2. certain other conditions are satisfied (see DMG 13613).

1 SS CB Act 92, s 171C(3); SS (IW) (Gen) Regs, reg 28; SS (Med Ev) Regs, regs 2 and 5

Conditions

13613 Evidence of incapacity must be provided for every day until the PCA is actually carried out¹. This must be in the form stipulated in the legislation² (see DMG 13101).

1 SS (IW) (Gen) Regs, reg 28; 2 SS (Med Ev) Regs, reg 2 & 5

13614 A person cannot be treated as incapable of work if¹

1. in the preceding six months it has been determined that they were
 - 1.1 capable of work **or**
 - 1.2 treated as capable of work because of a failure to
 - 1.2.a. return a questionnaire **or**

1.2.b. attend for medical examination **and**

2. the incapacity at the time of the previous determination is not different or significantly worse.

1 SS (IW) (Gen) Regs, reg 28(2)(b)

Last determination

13615 For the purposes of DMG 13614 the last determination includes

1. capable of work determinations under the OOT or PCA for any benefit, allowance or advantage **or**
2. treated as capable of work determinations for any benefit, allowance or advantage because of failure to attend or submit to a medical examination for the OOT or PCA¹ (see DMG 13676), or failure to return the questionnaire for the PCA² (see DMG 13660), unless it now has been returned.

1 SS (IW) (Gen) Regs, reg 8; 2 reg 7

13616 A determination under DMG 13615 must be in relation to entitlement for a benefit, allowance or advantage which depends on a person being incapable of work. A decision in connection with a claim for JSA which is not preceded by a determination that a person is capable of work does not count.

Previous six months

13617 For the purposes of DMG 13614 the preceding six months is calculated by looking back from each day under consideration. The person cannot be treated as incapable of work for the day under consideration if a determination that they were capable of work or treated as capable of work was given within the previous period of six calendar months¹.

1 R(IB) 8/04

Example

Date under consideration	16.6.05
Six-month period is	17.12.04 - 16.6.05

13618 When considering whether the last determination falls within six months of the current determination, the date of the previous determination is the date the PCA was carried out or the person was treated as capable as in DMG 13610¹.

1 R(IB) 8/04

Conditions satisfied

13619 If all conditions are satisfied the person is treated as incapable of work until¹

1. medical evidence ceases **or**

2. the PCA has been carried out **or**
3. they are treated as capable of work because they fail without good cause to
 - 3.1 provide the information in the PCA questionnaire **or**
 - 3.2 attend for or submit to a medical examination.

1 SS (IW) (Gen) Regs, reg 28(2)(a)

13620 If the person has been treated as incapable initially but evidence of incapacity ceases, they can no longer be treated as incapable of work. Any award must be suspended and the PCA determination, when it is made, will apply to any undetermined days.

Conditions not satisfied

13621 If the person cannot be treated as incapable, the claim cannot be decided. The person has to wait for a decision on their claim until, whichever is the sooner of, the

1. PCA actually being carried out **or**
2. expiry of the six-month period.

Personal capability assessment carried out

13622 When the PCA is carried out the determination applies to all days before the PCA determination which have not already been determined. This means that if the person had not been treated as incapable of work for periods because they had not provided medical evidence those periods will be covered by the PCA determination (see DMG 13182 - 13184).

End of six-month period

13623 If the PCA has not been carried out by the time the six-month period ends, the person can be treated as incapable of work as long as they satisfy the conditions in DMG 13613 - 13614.

The table at Annex 2 to this Chapter shows the conditions in DMG 13610 - 13616.

Exceptional circumstances

13624 [[See Memo DMG 22/11](#)] DMs should note that the guidance in DMG 13626 to 13631 relates to the current version of the Regulation as impacted by the “Howker” judgment dated 08.11.02. See Annex 5 for further information about the pre and post “Howker” versions of the Regulation including the impact of further Regulation changes.

- 13625 If the PCA is carried out and it is determined that the person does not satisfy the PCA assessment by having enough points they must nevertheless be treated as incapable of work if they have¹
1. a previously undiagnosed potentially life-threatening condition discovered during the PCA **or**
 2. some specific disease or mental disablement and because of this there would be a substantial risk to the mental or physical health of any person if they were found capable of work **or**
 3. a severe life threatening disease and there is medical evidence that it is uncontrolled or uncontrollable by a recognized therapeutic procedure **or**
 4. medical evidence that they need a major surgical operation or other major therapeutic procedure which is likely to be carried out within three months of the date on which they were examined by the approved HCP.

1 SS (IW) (Gen) Regs, reg 27

Note: See DMG 13353 for the definition of medical evidence.

Substantial risk

- 13626 'Substantial' is not defined and should be given its ordinary meaning. What amounts to 'substantial' is a question which must be determined using all the available evidence and taking account of all the circumstances.
- 13627 The substantial risk can be to the person or to any other person. For example, the person's mental health may be such that they may self-harm or self-neglect or may be violent to others.
- 13628 A person's anxiety or concern about their ability to cope with the demands of work or a return to work, alone does not constitute a substantial risk.
- 13629 A Court of Appeal judgment¹ has said that substantial risk must be determined, not only in the context of work undertaken or in the workplace itself, but also the journey to and from work.

1 Charlton v Secretary of State for Work and Pensions [2009] EWCA Civ 42; R(IB) 2/09

Risk at work

- 13630 The aforementioned judgment states that the DM must consider whether a substantial risk arises in the light of the work which the person might be expected to perform in the workplace he might find himself in. In making this assessment, the DM need only identify a broad range of duties that the person could be capable of, taking into account any training given, the person's aptitude and their disease or disablement.

Example 1

Peter suffers from alcohol dependency syndrome. He has never worked and says that his condition prevents him from undertaking any kind of work. The DM identifies that Peter could undertake straightforward and unstructured, unskilled work without substantial risk to himself or any person. The DM need not identify a particular type of work that Peter could be capable of.

Example 2

Phillip has recently been diagnosed as suffering from epilepsy. For the past four years he has worked as a roofer and scaffolding erector. Phillip says that if he were to return to this work, his health would be at substantial risk as he was often expected to work at great height. The DM determines that Phillip could now undertake closely supervised, indoor or outdoor work, at ground level without risk to himself or any person. The DM need not identify a particular type of work that Phillip could be capable of.

Risk associated with travelling to and from work

13631 In assessing risk associated with journeys to and from work, the DM may find it useful to examine evidence of the person's daily life to identify if travel is undertaken. For example when:

1. going shopping **or**
2. visiting friends **or**
3. attending appointments e.g. at a hospital.

Example

Kim suffers from contact dermatitis and says that any contact with certain metals causes her condition to flare up uncontrollably. She says that there would be a substantial risk to her health if exposed to these metals when travelling to and from work. Evidence of Kim's daily life shows that she drives to and from the shops, takes her children to school in the car and that she used the bus to travel to the medical examination centre. The DM determines that there would be no substantial risk in travelling to and from work.

Severe uncontrolled or uncontrollable disease

13632 There should be medical evidence that the disease is either uncontrolled or uncontrollable by a recognized therapeutic procedure and, if it is uncontrolled, that there is a reasonable cause for it not being controlled by medication or other recognized therapeutic procedure.

Major surgical operation or other major therapeutic procedure

- 13633 'Major' is not defined and should be given its ordinary meaning. What amounts to 'major' is a question of fact which must be determined using all the available evidence and taking account of all the circumstances.
- 13634 The DM must be satisfied that medical evidence exists which confirms that the person needs such an operation or procedure and that it will be carried out in the period of three months immediately following the date of the medical examination. The opinion of an appropriate medical practitioner that the operation is required is sufficient to meet the test even if the HCP and the DM do not agree.
- 13635 The question of whether the operation or therapeutic procedure is likely to occur within the necessary time frame is a matter to be decided on informed opinion based on the situation at the time of the medical examination. The issue is to be decided without benefit of hindsight. The fact that an operation or therapeutic procedure is cancelled or delayed or that a specific date is not yet fixed at the time of the examination for the PCA does not prevent the test from being satisfied even where the actual operation or therapeutic procedure takes place more than three months after the examination.
- 13636 In making this determination DMs should adopt a practical approach taking account of
1. the nature of the disease or disability
 2. the operation or therapeutic procedure
 3. the NHS waiting list practices in the relevant area.
- 13637 Other relevant issues may be whether
1. the claimant has been referred to the relevant specialist
 2. the claimant has been seen by the relevant specialist
 3. any arrangements have been made for the operation or therapeutic procedure and what these are
 4. there are relevant NHS targets.

Welfare to Work Beneficiaries

General

- 13638 The intention of the Welfare to Work initiative is to assist people to move into full time work. It is recognized that they may be reluctant to try work or training particularly if they have been incapable of work for some time. It was decided to identify people whose benefit position would not be compromised if they tried work or training but had to reclaim benefit within a certain period of time.
- 13639 A person who is identified as satisfying the conditions is a WtWB. This means that in a fixed period of time after they have left benefit and have started work or training they can reclaim and benefit from special provisions applicable to a WtWB. A determination that they are a WtWB is relevant to IB, SSP, SDA, RP, IS and JSA. Being a WtWB has different effects for each benefit. Once a person has been identified as a WtWB the DM should consider
1. the benefit specific guidance in DMG **and**
 2. treating the person as incapable of work as in DMG 13600.

Identification

- 13640 A person is a WtWB on any day in a LT¹ if
1. the most recent IPPIW includes more than 196 days of incapacity for work **and**
 2. benefit entitlement stopped at the end of that IPPIW - but see DMG 13641 **and**
 3. they actually started remunerative work within one month of benefit stopping at the end of that IPPIW.

1 SS (IW) (Gen) Regs, reg 13A(1)

- 13641 The reason benefit entitlement stopped must be that the person has been treated as capable of work because
1. they have started remunerative work¹ **or**
 2. if the determination was in respect of the PCA or OOT, they successfully appealed against the outcome decision incorporating that determination².

1 SS (IW) (Gen) Regs, reg 13A(3); 2 reg 13A(3A)

Definitions

13642 “Benefit”¹ means any benefit, allowance or advantage where incapacity for work is a condition of entitlement, but not SSP. For example, benefit includes credits, IS, JSA, HB, CTB disability related premiums and housing costs linking rules.

1 SS (IW) (Gen) Regs, reg 13A(4)

13643 “IPPIW”¹ means the most recent PIW. It can be a single or linked PIW and can include periods of SSP.

1 SS (IW) (Gen) Regs, reg 13A(4)

13644 “LT”¹ means a fixed period of 104 weeks starting on the first day immediately after the last day of a PIW. It can be made up of any type of days, for example, days of incapacity for work, work or unemployment.

1 SS (IW) (Gen) Regs, reg 13A(4)

13645 “Remunerative work”¹ means either

1. work for which payment is made, but not exempt work **or**
2. work which is done in expectation of payment, but not exempt work **or**
3. attendance on a training course for which a training allowance is received under arrangements made under prescribed legislation².

1 SS (IW) (Gen) Regs, reg 13A(4); 2 E & T Act 73, s 2(1); Enterprise & New Towns (Scotland) Act 1990, s 2(3)

Example

A claim to IB is made from 22.3.07. The DM looks at the IPPIW. This started on 5.5.03 and the last day was 6.6.05. Remunerative work started on 7.6.05.

As the person can only be a WtWB in a LT, the DM considers this first. The LT in this case would be 7.6.05 - 4.6.07. The new period of IfW starts within the LT so the DM considers the conditions in DMG 13640 and determines that they are satisfied. This person is a WtWB.

13646 - 13649

Treated as capable of work

General

- 13650 A person may be treated as capable of work if they
1. cease to provide medical evidence¹ (see DMG 13182 - 13184 for cases where contact with the claimant has **not** been lost and DMG 13652 - 13655 for cases where contact with the claimant **has** been lost) **or**
 2. fail without good cause to return the questionnaire for the PCA² (see DMG 13660 - 13668) **or**
 3. fail without good cause to attend or submit to a medical examination for the OOT or PCA³ (see DMG 13676 - 13721) **or**
 4. are working, other than in defined categories⁴ (see DMG 13850 - 13980) **or**
 5. claim JSA⁵ (see DMG 13725 - 13727) **or**
 6. behave inappropriately⁶ (see DMG 13730 - 13813).

1 SS (IW) (Gen) Regs, reg 16A(1); 2 reg 7; 3 reg 8; 4 reg 16; 5 reg 17A; 6 reg 18(2)(b)

- 13651 DMs must be able to show that the conditions placed on the Secretary of State by the legislation have been met if a person is to be treated as capable of work.

Medical evidence ceases

Contact with claimant lost

- 13652 A person may be treated as capable of work¹ if
1. they have supplied medical evidence in accordance with legislation² **and**
 2. the period covered by that medical evidence has ended **and**
 3. the Secretary of State has requested further medical evidence **and**
 4. they have not, within six weeks
 - 4.1 supplied further medical evidence **or**
 - 4.2 otherwise made contact with the Secretary of State to indicate that they wish to have the question of their IfW determined.

1 SS (IW) (Gen) Regs, reg 16A(1) & 16A(2); 2 SS (Med Ev) Regs, regs 2 & 5

Note: The definition of medical evidence at DMG 13353 does not apply here.

- 13653 The six week period begins on
1. the date of the Secretary of State's initial request for further medical evidence
or
 2. the day after the date on which the period covered by the medical evidence has ended
- whichever is the later¹.

1 SS (IW) (Gen) Regs, reg 16A(1)(d)

- 13654 If at the end of the six weeks no further medical evidence is received, or the claimant does not contact the DWP, the DM should treat the claimant as capable of work from the day after the medical evidence expired. The decision is effective from the date of the change¹, which is the date from which the claimant is treated as capable of work.

1 SS CS (D&A) Regs, reg 7(2)(c)(v)

Example

Sophia's current doctor's statement provides her with evidence of incapacity up to and including 19.5.10. A reminder that further medical evidence will be required is issued on 12.5.10. The six weeks period ends on 30.6.10 but Sophia does not contact the DWP by then. She is treated as capable of work from 20.5.10, the day after medical evidence ends.

- 13655 Where the person
1. fails to provide further medical evidence **and**
 2. asks for their IfW to be determined
- the DM should conduct the PCA as normal.

Example

William is covered by a doctor's statement up until 5.7.10. On 13.7.10 the local office receives a letter from him stating that he became fit enough to start work on 12.7.10. The DM may accept this as a request from William for his IfW to be determined for the period from 6.7.10 to 11.7.10.

13656 - 13659

Failure to return the questionnaire for the personal capability assessment

13660 A person who is subject to the PCA can be asked to provide information¹ in the form of a questionnaire

1. relating to their ability to perform the activities referred to in the Schedule **or**
2. that can be used to help them prepare for and find work².

1 SS (IW) (Gen) Regs, reg 6(1)(b)(i); 2 reg 6(1)(b)(ii)

13661 The questionnaire is not required if

1. the person is in an exempt category¹ (see DMG 13350) **or**
2. the person can be treated as incapable of work² (see DMG 13550 **1. - 4.** and **6. - 7.**) **or**
3. the Secretary of State is satisfied that there is sufficient information to decide whether a person is capable or incapable of work without it³ **or**
4. the question of capacity relates to a claim for JSA⁴.

1 SS (IW) (Gen) Regs, reg 6(3)(b); reg 10; 2 reg 6 (3)(b); regs 11 - 14; 3 reg 6(2); 4 reg 6(3)(a)

13662 If they do not return the questionnaire and do not show good cause for that failure they can be treated as capable of work¹ as long as the Secretary of State has not exercised the discretion to proceed without it².

1 SS (IW) (Gen) Regs, reg 7; 2 reg 6(2)

13663 A person is treated as capable of work for failure to return the questionnaire without good cause if the Secretary of State can show that

1. the questionnaire was sent **and**
2. there is no response after six weeks to the first request for the information from the day following the date of issue **and**
3. the Secretary of State has sent a further request at least four weeks after the first letter and at least two weeks have passed since then **and**
4. good cause has not been accepted for the delay beyond the period stated in the two points above¹.

1 SS (IW) (Gen) Regs, reg 7(2)

The Secretary of State's duty

13664 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation to send the questionnaire and the reminder to the person¹. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted².

1 SS (IW) (Gen) Regs, reg 7(2); 2 Inte Act 78, s 7

Has the questionnaire been sent

- 13665 Because the legislation sets time limits which have to be complied with, care must be taken to identify the date the questionnaire was sent. The date of its issue is only an indication of the date on which it was posted. The DM should consider whether the questionnaire actually left the issuing office and was put into the external mail on the date recorded¹.

1 R(IB) 1/00

Has the correct period of time passed

- 13666 The correct period of time must have passed since the first questionnaire was sent. The period of time starts on the day after the questionnaire is sent and ends at midnight on the last day provided for. If the questionnaire is posted to the person's last known address, the date on which it is sent is the date it was posted¹.

1 SS CS (D&A) Regs, reg 2(b)

Example

A questionnaire was sent to John on 1 August. A reminder is due and sent on 30 August. If he still does not return the questionnaire, the first day on which the DM can consider whether he should be treated as capable of work is 14 September.

Good cause

- 13667 If the DM concludes that the Secretary of State has complied with the duty set out in the legislation, they may then go on to consider whether the person had good cause for their failure to return the questionnaire (see DMG 13700).

Questionnaire returned before good cause considered

- 13668 As in DMG 13664 the law imposes time limits on the Secretary of State in relation to the sending of the questionnaire and the reminder. However, there is no law imposing a time limit on the claimant for the return of the questionnaire. Sometimes the questionnaire is returned **after** the time limit imposed on the Secretary of State has expired but **before** the DM has considered whether there was good cause for the earlier failure to return the questionnaire. In these circumstances, the determination cannot be made because it cannot be held that the claimant has failed to return the questionnaire. Instead, normal PCA action should resume.

Example

A questionnaire was sent to John on 1 August. This was not returned so a reminder was sent to him on 30 August. If the questionnaire is not returned, the first day on which the DM could consider making a determination treating John as capable of work is 14 September. The DM receives the case on 24 September to make the determination, but notes that the questionnaire had been received in the office on 21 September. The DM cannot make the determination treating John as capable of work because he has not failed to return the questionnaire. Instead, normal PCA action resumes.

13669 - 13675

Failure to attend or submit to a medical examination

13676 People may be called to attend a medical examination by a HCP approved by the Secretary of State where it has to be determined whether they are capable of work under either the OOT or PCA¹.

1 SS (IW) (Gen) Regs, reg 8 (1)

13677 People are treated as capable of work if they

1. fail without good cause to attend or submit to a medical examination¹ **and**
2. had at least seven days written notice of the examination or agreed to accept a shorter period of notice².

1 SS (IW) (Gen) Regs, reg 8(2); 2 reg 8(3)

The Secretary of State's duty

13678 The DM needs to make sure that the Secretary of State has complied with the duty set out in the legislation that¹

1. a written notice was sent in all cases **and**
2. the notice included the time and place of the examination **and**
3. the notice was sent at least seven days before the date of the examination unless the person had agreed to accept a shorter period of notice **and**
4. if the person had agreed to accept a shorter period of notice, it was posted so as to be received no later than the morning of the day of the examination **and**
5. the examination had not been cancelled.

1 SS (IW) (Gen) Regs, reg 8(3)

13679 If, after calculating the period of time which passed between the date the written notice was sent and the time of the examination, the DM decides that seven days had not elapsed, they should consider whether the person has agreed to accept a shorter period of notice¹. If there is no evidence that the person had agreed to accept a shorter period of notice they cannot be treated as capable of work.

1 SS (IW) (Gen) Regs, reg 8(3)

13680 If the DM cannot confirm that the provisions in DMG 13678 above were met, the person cannot be treated as capable of work.

Has notice been sent

13681 The DM needs to be sure that the person has been sent notice. The DM can accept that it has been sent if there is a record of its issue and no indication that it was not properly addressed, stamped and posted¹. In addition the DM should make sure that the notice was in writing and included the time and place of the medical examination.

1 Inte Act 78, s 7

Have seven days passed

13682 The DM needs to be sure that the correct period of notice has been given. The DM has to decide when the notice was sent. The day after is day one. Seven clear days of notice have to pass before the date of the examination¹.

1 R(IB) 1/00

Example 1

A letter giving the time and place of a medical examination is prepared and placed in the post tray at 3pm on Friday 1st. Because of the timing of the internal post collection it does not reach the post room until Monday lunchtime and leaves the office into the external mail on Monday at 5pm. The appointment is timed for Monday 11th. The recipient does not attend. They cannot be treated as capable of work because if Tuesday 5th is Day one, Monday 11th is Day seven and they have not received seven days clear notice.

Example 2

A letter giving the time and place of a medical examination leaves the office on Wednesday 6th. The appointment is timed for Thursday 14th. The recipient does not attend. They can be treated as capable of work because Thursday 7th is Day one, Thursday 14th is Day eight and they have received at least seven days clear notice.

Has the appointment been cancelled

- 13683 People cannot fail to attend the medical examination if the appointment had already been cancelled by medical services. The DM should investigate any indications that the person had made contact with the issuing office before the time of the examination. This is so that they can satisfy themselves that the appointment had been left open for the person.

Good cause

- 13684 If the DM concludes that the Secretary of State has complied with the duty set out in DMG 13678, they may go on to consider whether the person had good cause for their failure to attend or submit to medical examination (see DMG 13700).

13685 - 13699

Consideration of good cause

- 13700 When a person fails to return the questionnaire for the PCA or fails to attend or submit to medical examination, the DM has to consider whether the person has good cause for their failure. The DM's consideration must include

1. whether the person was outside GB at the relevant time **and**
2. the person's state of health **and**
3. the nature of the disability¹.

1 SS (IW) (Gen) Regs, reg 9

- 13701 The onus of proving good cause lies with the person. The test of good cause is whether the DM judges the reason for non-return or non-attendance to be reasonable and likely on the balance of probabilities. See DMG Chapter 01 for guidance.
- 13702 The person will have been asked to give the reasons for not complying with the Secretary of State's request for information or to attend for or submit to medical examination. The DM should bear in mind the guidance about considering evidence in DMG Chapter 01.
- 13703 The DM may determine that a person is treated as capable of work if
1. they have failed to return the questionnaire **or**
 2. they have failed to attend or submit to an examination **and**
 3. have not replied to enquiries **or**
 4. the reasons given do not amount to good cause.

Good cause - some scenarios

- 13704 Any reasons given for the failure to return the questionnaire should be judged on the balance of probabilities. Whether the reasons for delayed return amount to good cause depends upon whether the DM considers, for example,
1. it was reasonable not to return the questionnaire on this occasion **or**
 2. non receipt by the office or person was more probable than not.
- 13705 If the person contends that they did not receive the questionnaire or the notice of the appointment, DMs should satisfy themselves that it was sent. If it was sent it can be assumed it was delivered unless there is evidence to the contrary.
- 13706 Where the person says the postal difficulties are specific to them or their address, all of their circumstances are to be given fair consideration. They will have to show that they have done enough to ensure as far as is reasonably possible that they receive their mail, special care may be expected in the cases of accommodation addresses and premises in multiple occupation.
- 13707 - 13714
- 13715 If a person says that they were too ill to attend because of the nature of their disability, the DM should ask for evidence to support this. If they are usually able to get out, for example to the doctor or hospital, good cause should only be accepted if it is unreasonable to expect them to have attended on that occasion. Exceptionally, a person may be examined at home if they are unable to travel.
- 13716 A person may say they were too ill to attend because of a condition unrelated to their disability, for example they may say that they had flu at the time of the appointment. If the DM accepts the evidence, they have shown good cause for their non-attendance.
- 13717 Good cause was not accepted in a case where a person had tried to avoid attending several examinations by submitting final certificates. In the particular circumstances the final certificate was irrelevant because it was replaced by an open statement which included the day of the examination¹.
- 13718 If a person attends but refuses to have a physical examination, for example because of religious beliefs, the refusal must be based on reasonable grounds. The DM should normally accept good cause unless it is evident that the refusal is based on a prejudice against or distaste for the examination rather than because of a particular belief¹.

1 R(S) 12/59

1 R(S) 9/51

13719 It is possible for the DM to consider that a person did not have good cause for failure to submit to an examination because of drunkenness, drug abuse or other problem behaviour. However if the behaviour is a symptom of the stated incapacity such as alcoholism rather than an isolated occurrence, the person may have good cause.

13720 In a case where a person did not attend for medical examination because a consultant advised that attendance was not necessary, it was held that, irrespective of a medical advisor's opinion as to capacity for work, a person is obliged to abide by the rules for claiming benefit. None of the matters that have to be taken into account when considering good cause applied¹ and the person had not shown good cause for failing to attend for medical examination.

1 SS (IW) (Gen) Regs, reg 9

13721 A failure to comply with a notice to attend a medical examination will be deliberate, except in cases where the person is unable to make a choice between attendance and non-attendance. The question is whether there is good cause for the deliberate failure to comply with the notice.

13722 - 13724

Claims for jobseeker's allowance

13725 People who are incapable of work, or are treated as incapable of work because they

1. pass the PCA **or**
2. are in an exempt category **or**
3. have exceptional circumstances

can be treated as capable of work for any period during which they claim JSA if certain conditions are satisfied¹.

1 SS (IW) (Gen) Regs, reg 17A

13726 Those conditions are that they

1. have worked or undertaken work preparation activity whilst having the same disease or disablement and since then this disease or disablement has not worsened and they have no further disease or disablement which may affect their capacity for work **or**
2. can show that they have reasonable prospects of obtaining employment.

13727 Work preparation activities include education or training courses or other activities designed to prepare people for work.

13728 - 13729

Inappropriate behaviour and incapacity for work

- 13730 People entitled to any benefit, allowance or advantage other than IIDB, SSP, IB or SDA are treated as capable of work for a maximum of six weeks if they
1. have become incapable of work through their own misconduct **or**
 2. fail without good cause to attend for or submit to medical or other treatment (excluding vaccination, inoculation or major surgery) which would be likely to make them capable of work (see DMG 13760) **or**
 3. fail without good cause
 - 3.1 to refrain from behaviour calculated to delay recovery **or**
 - 3.2 not to be absent from place of residence without leaving word where they may be found¹ (see DMG 13790).

Note: See DMG Chapter 56 (for IB) and DMG Chapter 57 (for SDA) for guidance on when disqualification is appropriate in these cases.

1 SS CB Act 92, s 171E; SS (IW) (Gen) Regs, reg 18(1) & (2)(b)

- 13731 DMG 13730 1. does not apply where a person's IfW is due to
1. pregnancy **or**
 2. a sexually transmitted disease¹.

1 SS (IW) (Gen) Regs, reg 18(1)(a)

- 13732 Guidance on misconduct may be relevant if the type of misconduct being considered would have resulted in
1. dismissal from employment **and**
 2. a JSA sanction (see DMG 34060 et seq).

- 13733 Conduct which is blameworthy, reprehensible, wrong or wilful should be distinguished from involuntary behaviour due to other factors¹.

1 R(S) 2/64

- 13734 A determination to treat as capable of work can apply to misconduct outside a person's employment.
- 13735 Alcoholism is one example of behaviour which may be misconduct if a person became incapable of work as a result of excessive drinking on one occasion. But the mental and physical effects of alcoholism can be an incapacity requiring long spells of treatment, including psychiatric help. Treating as capable of work should not normally be considered in these instances.
- 13736 If a person becomes incapable of work as a result of an accident which occurred while intoxicated but which could have happened if they were sober, incapacity would not be due to misconduct.

- 13737 Drug addiction is similar to alcoholism in that the uncontrolled use of addictive drugs leads to a progressive deterioration in physical or mental condition which can be incapacitating.
- 13738 Treating as capable of work should be applied to the exceptional case where there is clear evidence that the temporary incapacity or the addiction resulted from deliberate decision by a healthy person to experiment with drug taking.
- 13739 When deciding whether to treat as capable of work the DM should judge how far the person's actions have been deliberate and unreasonable rather than thoughtless.
- 13740 Someone who is injured or contracts a disease while committing an illegal act for which they are convicted by a court of law, is subject to being treated as capable of work.

13741 - 13759

Treatment

- 13760 People can be treated as capable of work for a period of six weeks or less if they fail without good cause to attend for, or agree to, medical or other treatment (apart from vaccination, inoculation or major surgery) which
1. has been recommended by the doctor, hospital or similar institution providing the treatment **and**
 2. would be likely to make them capable of work¹.

1 SS (IW) (Gen) Regs, reg 18(1)(b) & (2)(b)

- 13761 Medical treatment means medical, surgical or rehabilitative treatment (including any course of diet or other regime)¹. The treatment has to be for the stated cause of incapacity².

1 SS CB Act 92, s 122(1); 2 R(S) 3/57

- 13762 The person has to prove
1. good cause **and**
 2. that a refusal of treatment was reasonable in the circumstances.

- 13763 If the objection to treatment is on religious grounds, evidence of a firm personal belief is needed to support good cause¹.

1 R(S) 9/51

13764 - 13789

Rules of behaviour

13790 A person is treated as capable of work for six weeks or less for failure without good cause to observe the following rules

1. to refrain from behaviour calculated to delay recovery **and**
2. not to be absent from place of residence without leaving word where the person may be found¹.

1 SS (IW) (Gen) Regs, reg 18(1)(c) & (2)(b)

13791 One example of behaviour considered under both these rules was a person with influenzal bronchitis, who drove 60 miles from home and was not well enough to return for several days. It was decided that the person had

1. undertaken a journey calculated to delay recovery **and**
2. also been absent from home without leaving word.

In view of certain circumstances the period of treating as capable of work was limited to two weeks¹.

1 R(S) 21/52

13792 The word "calculated" does not mean that the person deliberately intends to delay recovery. The question is whether delayed recovery is likely to result from the behaviour¹.

1 R(I) 26/51

13793 Good cause for the behaviour was not proved by a person who had dermatitis of the hands and was whitewashing the kitchen, because the doctor had advised against getting wet¹. Ignorance of the rules of behaviour is not good cause².

1 R(I) 26/51; 2 R(S) 21/72

13794 The second rule about being absent without leaving word does not apply unless the person has somewhere to live. Once the relevant facts are established the person has to prove good cause such as a genuine difficulty in leaving a message¹.

1 R(S) 7/83, R(S) 6/55

13795 - 13809

Period of treating as capable of work

13810 The length of the period of treating as capable of work, which can be from one day to six weeks, depends on the individual circumstances of the case. The DM has to

1. show that a determination to treat as capable of work applies¹ **and**
2. give reasons for the choice of period².

1 R(S) 7/83; 2 R(U) 8/74, R(S) 1/87; R(U) 4/87

13811 For misconduct the period of treating as capable of work can begin on

1. the day following the date of the act of misconduct **or**
2. from the date of the decision if benefit has continued in payment¹.

If the misconduct is repeated, a fresh period of treating as capable of work may be imposed.

1 R(U) 12/59, R(S) 4/61

13812 The period of treating as capable of work for failure to observe the rules of behaviour depends upon the number of times, and the period over which the failure has occurred. Any extenuating circumstances can be taken into account even though good cause has not been proved¹.

1 R(S) 21/52

13813 If, during the period of treating as capable of work, a person

1. submits a closed doctor's statement **and**
2. then makes a further claim,

the determination to treat as capable of work continues for the outstanding part of the original period, unless the determination has been set aside on supersession or appeal.

13814 - 13845

Incapacity for Work and Working

General

13846 The general rule is that a person is treated as capable of work for any week in which they work¹. The exceptions to this are those receiving certain regular treatment² and at the beginning and end of a period of work³ (see DMG 13880).

1 SS (IW) (Gen) Regs, reg 16(1); 2 reg 16(4) & reg 13(3); 3 reg 16(5)

13847 This applies¹ to any person who works who is

1. incapable of work under the OOT or the PCA **or**
2. treated as incapable of work because they
 - 2.1. are exempt from the PCA² **or**
 - 2.2. qualify under the special provisions for
 - 2.2.a. infectious or contagious diseases³ **or**
 - 2.2.b. hospital in-patients⁴ **or**
 - 2.2.c. persons receiving certain regular treatment⁵ **or**
 - 2.2.d. pregnancy⁶ **or**
 - 2.3. are a WtWB⁷ **or**
 - 2.4. were incapable for part of a day⁸ **or**
 - 2.5. do not satisfy the PCA but the exceptional circumstances apply⁹ **or**
 - 2.6. have not as yet been assessed under the PCA¹⁰.

1 SS (IW) (Gen) Regs, reg 16(2); 2 reg 10; 3 reg 11; 4 reg 12; 5 reg 13; 6 reg 14; 7 reg 13A; 8 reg 15; 9 reg 27; 10 reg 28(2)

13848 This does not apply¹ to

1. work as a councillor which is disregarded² (see DMG 13950) **or**
2. approved work³ **or**
3. care of a relative⁴ **or**
4. domestic tasks carried out in the person's own home⁵ **or**
5. any activity done during an emergency solely to protect another person or to prevent serious damage to property or livestock⁶ **or**
6. any of the categories of exempt work⁷.

1 SS (IW) (Gen) Regs, reg 16(3); 2 reg 16(3)(a); 3 reg 16(3)(b) & reg 10A; 4 reg 16(3)(c) & reg 2(1); 5 reg 16(3)(c); 6 reg 16(3)(d); 7 reg 16(3)(e) & reg 17

Definitions

13849 “Week” means a period of seven days beginning with Sunday¹.

1 SS (IW) (Gen) Regs, reg 16(6)

13850 “Work” means any work which a person does, whether or not it is undertaken in expectation of payment¹.

1 SS (IW) (Gen) Regs, reg 16(6)

13851 “Relative” means¹

1. a close relative **or**
2. the other member of a couple **or**
3. a grandparent **or**
4. grandchild **or**
5. uncle **or**
6. aunt **or**
7. nephew **or**
8. niece.

1 SS (IW) (Gen) Regs, reg 2

13852 “Close relative” means¹

1. a parent **or**
2. parent-in-law **or**
3. son **or**
4. son-in-law **or**
5. daughter **or**
6. daughter-in-law **or**
7. step-parent **or**
8. step-son **or**
9. step-daughter **or**
10. brother **or**
11. sister **or**
12. if any of the preceding persons is one member of a couple, the other member of that couple.

Note: References to step relationships and in-laws include relationships arising through civil partnerships.

1 SS (IW) (Gen) Regs, reg 2

13853 “Couple” means¹

1. a man and a woman who are married to each other and are members of the same household **or**
2. a man and a woman who are not married to each other but are LTAHAW **or**
3. two persons of the same sex who are civil partners of each other and are members of the same household **or**
4. two people of the same sex who are not civil partners of each other but are LTACP.

Note: Two people of the same sex are to be regarded as LTACP where they would be regarded as LTAHAW if they were two people of the opposite sex. See DMG Chapter 11 for further guidance on LTAHAW and LTACP.

1 SS (IW) (Gen) Regs, reg 2

Work

13854 The meaning of work is defined (see DMG 13850). It is not employment and there does not have to be a legal contractual relationship.

Example

A publican hires James to conduct two quiz nights per week and expects to pay him for doing this. There is no written contract and James does not usually accept payment when it is offered by the publican. This is work not a hobby because it is done for the commercial enterprise of the publican and James feels morally obliged to the publican to fulfil his agreement with him.

13855 Negligible work is considered under a general principle that the law is not concerned with trivialities. This principle is called “de minimis”. Negligible amounts of work can be disregarded before the specific rules are applied so that the person is not regarded as working on the day or days in question.

13856 Whether work on part of a day is negligible depends on its proportion to the normal working hours, the type of work and the effort required in relation to full normal duties¹. When deciding if work is “de minimis”, the DM should consider the relevant caselaw.

1 R(S) 2/61

13857 The question of negligible work can arise in self-employment when a sick person can still attend to some aspects of a business. Work cannot be considered negligible if it contributes materially to the running of the business or involves a significant amount of supervisory or administrative work. For example if the person occasionally does small jobs such as signing cheques, the contribution to the business can be disregarded as negligible¹.

*1 R(S) 5/51; R(S) 13/52; R(S) 24/52; R(S) 34/52; R(S) 37/52; R(S) 8/55;
R(S) 2/61 ; R(S) 2/74; R(S) 10/79*

13858 - 13879

Date of determination

13880 The determination to treat someone as capable of work applies to the whole week (beginning on a Sunday) during which the work is done, except that a person is only treated as capable of work on the days on which they actually work in the week in which they

1. became incapable **or**
2. start or return to work¹ **or**
3. receive certain regular treatment².

1 SS (IW) (Gen) Regs, reg 16(5); 2 reg 13(3)

Work done before and after incapacity

13881 This applies both when they work

1. before and after the period of incapacity, **or**
2. during a period of incapacity.

For the purposes of the following examples

i = incapable; x = working, treated as capable; c = treated as capable

Example

Colin normally works Monday to Friday each week. He works on Monday and Tuesday but is incapable of work from Wednesday. He is not treated as capable of work for Wednesday to Saturday in that week.

He returns to work on Wednesday two weeks later. He is not treated as capable of work for Sunday to Tuesday of that week.

	Su	M	Tu	W	Th	F	Sa
Week 1		x	x	i	i	i	i
Week 2	i	i	i	i	i	i	i
Week 3	i	i	i	x	x	x	

Work done during incapacity

13882 **Example 1**

Sheila starts work on Wednesday during a period of incapacity. She will be working Wednesday and Thursday for week one and the same for the following two weeks.

The work is not exempt. The DM treats her as capable of work from the Sunday after she first works to the Saturday before she last works.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	i	i	x	x	i	i
Week 2	c	c	c	x	x	c	c
Week 3	i	i	i	x	x	i	i

Example 2

Barbara starts work during a period of incapacity on a Monday. She will be working every Monday, Wednesday and Friday indefinitely. The work is not exempt. The DM treats her as capable of work from the Sunday after her first day of work.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	x	i	x	i	x	i
Week 2	c	c	c	c	c	c	c

Example 3

Darren has been working on a full or P/T basis for a past period of incapacity. He did not declare this work, which has now ended and was not exempt. The DM confirms the days that Darren actually worked and that he worked at least one day in every week. In the week Darren starts work he is treated as capable only on the days he worked. He is then treated as capable for each week from the Sunday after he started work until the Saturday before his last day of work. In the week in which he finished work he is treated as capable only on the days he worked.

Example 4

The circumstances are the same as in example 3 above except that Darren had not worked in every week. Each block of weeks of work is treated separately.

	Su	M	Tu	W	Th	F	Sa
Week 1	i	i	i	x	x	x	x
Week 2	c	x	x	c	x	x	x
Week 3	i	x	x	i	i	i	i
Week 4	i	i	i	i	i	i	i
Week 5	i	i	i	i	x	x	x
Week 6	c	x	x	c	x	x	x

Effect on benefit, allowance or advantage

- 13883 When deciding whether people have entitlement to any benefit, allowance or advantage the effect of treating them as capable of work has to be decided using this guidance in conjunction with benefit-specific guidance. In the examples at DMG 13881 and 13882 there may be individual days of incapacity for which there is no entitlement to benefit because they do not form a PIW. The normal rules on PIWs apply (see DMG Chapter 56).
- 13884 Consideration should also be given to any other linking rules relevant to the benefit, allowance or advantage claimed.

13885 - 13889

Categories of exempt work

Summary

13890 The categories of exempt work are

1. PWK¹ (see DMG 13891)
2. work done whilst test trading as a S/E earner² (see DMG 13934)
3. work as a volunteer³ (see DMG 13931)
4. duties undertaken on either one full day or two half days a week⁴ as
 - 4.1 a panel member who is eligible for appointment under specified legislation⁵ to be such a member **or**
 - 4.2 a member of the DLA Advisory Board (see DMG 13933).

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 reg 17(5); 3 reg 17(6); 4 reg 17(7); 5 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3)

Permitted work

General

- 13891 There are four types of PWK each with its own conditions (see DMG 13892). People can only be in one type of PWK at any one time. They do not need prior medical approval and undertaking PWK will not affect the determination of a person's IfW. If they have two or more jobs the hours and earnings are added together to determine if the work is exempt.

13892 The four types of PWK are

1. SPW¹ (see DMG 13896)
2. PWLL² (see DMG 13905)
3. Specified work, commonly known as PWHL³ (see DMG 13910)
4. PW (PCA exempt)⁴ (see DMG 13911).

1 SS (IW) (Gen) Regs, reg 17(3); 2 reg 17(2); 3 reg 17(4)(a); 4 reg 17(4)(b)

Calculation of weekly earnings

13893 Weekly earnings limits apply in PWK¹ (see Annex 7 to this Chapter). There is no definition of 'earnings' specific to IfW but provision for calculating weekly earnings can be found in other legislation². Guidance on earnings is in DMG Chapter 15.

1 SS (IW) (Gen) Regs, reg 17(1)-(4); 2 SS Ben (C of E) Regs; R(IB) 1/06

13894 When a weekly earnings figure has been identified the DM should apply this figure to any week in which the person has worked¹. This figure will apply for as long as the circumstances current within the period used to calculate it remain the same.

1 SS (IW) (Gen) Regs, reg 16

13895 If a person earns above the weekly earnings limit that figure is used on a week-by-week basis to determine on which days/weeks they are treated as capable of work¹. The person is not treated as capable of work for an indefinite period from the point when the work activity starts. They continue to be incapable of work during weeks in which they do no work to which the regulation applies.

1 SS (IW) (Gen) Regs, reg 16(1)

13896 Where the weekly earnings limit is 16 x NMW, this means the rate of NMW specified in legislation¹ (see Annex 6). Where 16 x NMW includes an amount less than

1. 50p, the amount is rounded up to the nearest 50p, **or**
2. £1, but more than 50p, the amount is rounded up to the nearest £1².

1 The National Minimum Wage Regulations 1999, reg 11; 2 SS (IW) (Gen) Regs, reg 17(10)

Example

Meryl starts work on 9.5.11 for 15 hours weekly. The NMW is 16 x £5.93 = £94.88. As this includes an amount which is more than 50p and less than £1, it is rounded up to £95.00. The DM uses this amount to consider whether Meryl's work is exempt work.

Supported permitted work

13897 SPW is work that is

1. part of a treatment programme done under medical supervision while the person is an in-patient, or is regularly attending as an out-patient of a hospital or similar institution¹ (see DMG Chapter 18 for guidance on 'hospital or similar institution' and DMG 13898 **Example**) **or**
2. supervised by a person employed by
 - 2.1 a public or local authority **or**
 - 2.2 a voluntary organisation (see DMG 13899) **or**
 - 2.3 a Community Interest Company (see DMG 13900)

which provides or finds work for persons with disabilities² (see DMG 13902 **Examples 1 and 2**).

1 SS (IW) (Gen) Regs, reg 17(3)(a); 2 reg 17(3)(b)

13898 SPW is work that is appropriate for people whose disability has stable and established effects with a significant impact on their ability to learn or sustain a traditional job which will always, or for a number of years, prevent them from working more than a few hours each week. However, earnings from SPW must be no more than 16 x NMW¹. There is no limit to the period during which SPW can be done.

1 SS (IW) (Gen) Regs, reg 17(3)

Example

Jennifer is receiving treatment for cancer as an out-patient at the local hospital. Her oncologist is overseeing a treatment programme which aims to discover the beneficial effects of cancer patients attending painting classes. Jennifer enjoys painting as a hobby and agrees to teach the class for 4 hours a week, earning £50.00 a week. The DM accepts that Jennifer is doing SPW.

Voluntary organisation

13899 A voluntary organisation¹ is one that carries out activities otherwise than for profit. It does not include public or local authorities.

1 SS (IW) (Gen) Regs, reg 17(8)

Community Interest Companies

13900 A CIC, as established under relevant legislation¹, is a profit making organisation. However, it is restricted to using its assets and profits for the benefit of the community rather than for the benefit of the owners of the company. DMs should view the official CIC website for a current list of such companies (www.cicregulator.gov.uk).

1 The Companies (Audit, Investigations and Community Enterprise) Act 2004

The support worker

- 13901 The support worker must direct and oversee the performance of the worker regularly although the frequency of contact is not laid down. Some workers may require daily contact, with others it may be as infrequent as, for example, monthly. The extent and the frequency of the support will vary according to the progress each person is making towards a return to full time employment.

The level of supervision

- 13902 The supervision must be more than the normal supports put in place by employers. The support worker will, at least initially, have close involvement in the day to day routine of the worker and, by implication, with the employer. This involvement will be ongoing at regular intervals according to each person's circumstances.

Example 1

Peter's appointee returns from PW1. Peter wants to work in a local market garden for four hours on a Friday afternoon, earning £17 a week. Part 3 of the form PW1 has been completed by Peter's caseworker who works for Kaleidoscope NSF. It is a charitable organisation that supports disabled people in work.

Peter's caseworker will visit him regularly and this support will continue. The DM determines that even though the work is for less than £20 a week and could be PWLL, it should be SPW because the work is supported. He can do this work without it affecting his IfW for as long as his earnings are no more than the set weekly limit and the support continues.

Example 2

Sarah's appointee returns from PW1. It states that Sarah, who has Down's Syndrome, will start work in a supermarket collecting trolleys from the car park and stacking shelves. She will be working for four hours a day each Wednesday and Thursday earning £50 a week. Sarah's work has been arranged by Bexley Twofold, an organisation funded by Bexley Council and Mencap to arrange work for people with disabilities. Sarah's support worker will visit regularly and this support will continue. The DM determines that the work she is doing is SPW. She can do this work without it affecting her IfW for as long as the earnings remain no more than the set weekly limit and the support continues.

13903 - 13904

Permitted work lower limit

- 13905 PWLL is work done in any week for which the earnings do not exceed £20¹. There is no limit to the period during which PWLL can be undertaken. A person will move out of this type of PWK if their earnings in any week are more than £20. They may move into another category of PWK if the relevant conditions are met. Alternatively, they may be treated as capable of work if the relevant conditions are not met².

1 SS (IW) (Gen) Regs, reg 17(2); 2 reg 16

13906 - 13909

Specified work (Permitted work higher limit)

- 13910 Specified work¹, commonly known as PWHL, is work done for less than 16 hours, or an average of less than 16 hours (see DMG 13912) in any week, for which the earnings do not exceed 16 x NMW. It can only be done for a limited period, known as the PWP and, certain conditions must be satisfied before another PWP can start² (see DMG 13920).

1 SS (IW) (Gen) Regs, reg 17(8); 2 reg 17(4)(a)

Permitted work (PCA exempt)

- 13911 This is work which is done
1. for less than 16 hours a week **and**
 2. for which earnings in any week are not more than 16 x NMW **and**
 3. by a person who is treated as incapable of work because¹ they
 - 3.1. have a severe condition² **or**
 - 3.2. are transitionally protected³.

1 SS (IW) (Gen) Regs, reg 17(4)(b); 2 reg 10; 3 SS (IB) (Trans) Regs, reg 31(3) & (5)(c)-(k)

16 hour limit

- 13912 PWHL and PW (PCA exempt) are limited to work of less than 16 hours in a week. This means¹
1. a combined total of less than 16 hours in a week **or**
 2. where the hours fluctuate, an average of less than 16 hours a week in the period of

- 2.1. the cycle in which that week falls, where there is a recognized cycle of work (see example 1) **or**
- 2.2. that week and the four weeks before it if there is no recognized cycle (see examples 2 & 3).

Note: When calculating the number of hours worked in a week, only the time spent engaged in actual working activities falls to be counted, e.g. paid or unpaid travelling time or meal/refreshment breaks are excluded from the calculation.

1 SS (IW) (Gen) Regs, reg 17(8)

Example 1

A person who has an established four week cycle of 0, 8, 8 and 20 hours, has an average of a nine hour week (36 divided by 4) for the period of the cycle. This average is applied to the week in which the 20 hours are worked so that the person is not disallowed for that week.

Example 2

A person with no established cycle who has worked 8, 11, 9, 0 and 17 hours has an average of nine hours (45 hours divided by 5.) This average is applied to the week in which the 17 hours are worked so that the person is not disallowed for that week.

Example 3

A person who works 20 hours on the first week of work but expects to work an average of less than 16 hours in future has an average of four hours a week over the preceding four weeks and the first week of work (20 divided by 5). The person is not disallowed for the week in which the 20 hours are worked.

13913 - 13919

Permitted work period

13920 Where DMG 13910 applies, the first day of a PWP is calculated from the first day of a period of specified work provided that

1. the person has not previously done specified work **or**
2. since the beginning of the last period of specified work, the person has ceased to be entitled to a relevant benefit for a continuous period exceeding 8 weeks **or**
3. not less than 52 weeks have elapsed since the last period of specified work¹.

1 SS (IW) (Gen) Regs, reg 17(4)(a)

Note 1: A 'Relevant benefit' is IB, SDA, IS, HB, CTB and credits, entitlement to which is on the basis of IfW¹.

1 SS (IW) (Gen) Regs, reg 17(8)

- 13921 For the purposes of the PWP, a period of specified work begins on the first day on which any specified work is undertaken and continues for a period of 52 weeks, whether or not any further specified work is undertaken during that period¹.

1 SS (IW) (Gen) Regs, reg 17(9)

Example 1

John is in receipt of IB. On 20.8.09 he starts working for 10 hours a week with earnings of £60.00 a week. This is specified work. John has not previously done any PWK. Therefore his PWP runs from 20.8.09 to 18.8.10. John last works on 20.11.09 but his PWP continues until 18.8.10 even if no further work is done.

Example 2

Susan claims IB from 3.5.06. On her claim form she reports that she has been working for the last five years and continues to work. She earns £50 for five hours work on Thursday each week. This work is specified work. The 52 week period starts on Thursday 4.5.06 and runs until 1.5.07 regardless of whether the work continues.

- 13922 If a person has previously done specified work, they will have to satisfy certain conditions before they can have a further period of specified work¹. See DMG 13920 **2.** and **3.**

1 SS (IW) (Gen) Regs, reg 17(4)(a)

Example 1

David was in receipt of IB and doing PWHL that started on 10.4.06. From 5.6.06 his hours and earnings increase and his work is no longer exempt. He is no longer entitled to a relevant benefit.

At the end of September his hours and earnings drop to within the limits for PWHL and he reclaims on 2.10.06. The previous PWHL from 10.4.06 was specified work. Because he has had a break of more than eight weeks during which he was not entitled to a relevant benefit he starts a new PWP from 2.10.06 (he works on Monday 2.10.06) and the work he is doing is PWHL.

Example 2

Judith is in receipt of IB. On 17.4.06 she starts work 15 hours a week with earnings of £80. In 2005 she did PWHL. Her PWP ended 20.8.05. Her new work is not exempt because there has not been a period of at least 52 weeks since the end of her last PWP.

Example 3

Diane is in receipt of IB. On 17.4.06 she starts work of five hours a week earning £30. She last did PWHL on 29.4.05. She has not had a break in her entitlement to a relevant benefit of more than eight weeks. Her work is not PWHL because only 50 weeks have elapsed since the end of her last PWP. She is treated as capable of work from 17.4.06.

If she reclaims after a further two weeks, she could start a new PWP and her work would be PWHL.

Example 4

Mary starts work that is PWHL. Her PWP starts on 8.5.06. She does this work until 10.6.06. On 7.8.06 she starts another job. She remained entitled to a relevant benefit during the period since she last worked. Her work is PWHL because she is still within her 52 week PWP.

Example 5

For several years Joe had been treated as incapable of work without having to satisfy the PCA. For the last two years he has been working five or six hours each week earning no more than £70. This work was PW (PCA exempt).

On 6.6.08 it is determined that he is no longer exempt from satisfaction of the PCA. His work is no longer PW (PCA exempt). But because the work is within the limits, the first time he next does it he starts a 52 week PWP during which he can continue to work.

13923 - 13925

- 13926 Where a person has a PWP at 10.4.06 and they do work for less than 16 hours a week and their earnings are not more than £81 in any week on or after 10.4.06, the 52 week period begins on the first day of their current PWP. The effect of this is that the 52 week PWP that they can work for includes the period already allowed under PWK rules¹.

1 SS (IW) Amdt Regs, reg 5

Example 1

John has a PWP from 9.1.06 to 9.7.06. As his PWP is ongoing at 10.4.06 it is extended. His 52 week PWP runs from 9.1.06 to 7.1.07.

Example 2

Joanne had a PWP from 12.9.05 to 12.3.06. She last worked 13.12.05. The PWP was not extended. She starts work on 8.5.06. The work is within the weekly limits of hours and earnings. The work cannot be exempt under the transitional provisions because her PWP ended before 10.4.06. She will have to satisfy the conditions in DMG 13920 - 13922 to be able to start a new PWP.

13927 - 13929

Other categories of exempt work

13930 There are three other groups of people who can undertake work which can be exempt work. These are

1. volunteers¹ (see DMG 13931) **and**
2. panel members who are eligible for appointment under specified legislation² to be such members and DLA Advisory Board members who do not attend the tribunal or board on more than one full day or two half days a week³ (see DMG 13932) **and**
3. S/E earners whilst test trading⁴ (see DMG 13934).

1 SS (IW) (Gen) Regs, reg 17(6); 2 The Qualifications for Appointments of Members to the First-tier Tribunal and Upper Tribunal Order 2008, art 2(3); 3 SS (IW) (Gen) Regs, reg 17(7); 4 reg 17(5)

13931 A volunteer is a person who

1. is engaged in voluntary work other than for a close relative (see DMG 13853) **and**
2. the only payment received or due to be paid is expenses reasonably incurred in connection with the work¹.

1 SS (IW) (Gen) Regs, reg 2

13932 A person who is working but does not accept a wage is not necessarily a volunteer. It may be helpful to consider the definition of employment for a person claiming IB and IS¹. This includes any trade, business, profession, office or vocation.

1 SS CB Act 92 s 122(1); IS Gen Regs, reg 2(1)

13933 Work as a panel member who is eligible for appointment under specified legislation¹ to be such a member or a member of the DLA Advisory Board is subject to the condition that the work is not done for more than one full day or two half days a week². 'Week' is the seven days starting on Sunday³. This category of exempt work is not affected by the prescribed earnings and hour limits. A person who works more than one full day or two half days a week is treated as capable of work for the whole week.

1 The Qualifications for Appointments of Members to the First-tier Tribunal or Upper Tribunal Order 2008, art 2(3); 2 SS (IW) (Gen) Regs, reg 17(7); 3 reg 16(6)

- 13934 Work done whilst receiving help to become a S/E earner is exempt work¹ as long as the programme or arrangement the person is on is set up under certain legislation².

1 SS (IW) (Gen) Regs, reg 17(5); 2 E&T Act 1973 s 2; Enterprise & New Towns (Scotland) Act 1990, s 2

13935 - 13949

Particular categories of work

Councillors

- 13950 Separate provisions allow any work as a councillor to be disregarded when determining incapacity for work¹. Work as a councillor includes work as a member of specified bodies². If a person's only qualifying occupation (see DMG 13230) is as a councillor, the PCA should be applied from the outset (see DMG 13201). The work as a councillor should be taken into account when deciding which descriptors apply.

1 SS CB Act 92, s 171F; 2 Local Authority Act 72, s 177(1); Local Government (Scotland) Act 73, s 49(1) & (1A)

- 13951 A councillor means

1. in England and Wales, a member of London borough council **or** a county council **or** a district council **or** a parish or community council **or** the Common Council of the City of London or the Council of the Isles of Scilly **or**
2. in Scotland a member of a regional islands or district council¹.

1 SS CB Act 92, s 171F(2)

- 13952 Guidance on the effect of councillors' allowances on IB and SDA is in DMG Chapter 56. Guidance on the treatment of allowances and expenses is in DMG Chapter 15.

13953 - 13959

Community service

- 13960 Community service should not be regarded as work. Courts will take account of a person's incapacity and the type and extent of activities prescribed by the court should be appropriate to the incapacity.

13961 - 13964

Magistrates

- 13965 Magistrates who only receive expenses should be considered as volunteers (see DMG 13931).

13966 - 13969

Work that includes caring and domestic tasks

13970 People who care for other people's children or adults should be considered within the definition of work (see DMG 13850 and 13852). Care of relatives, whether or not in the claimant's home, and domestic tasks in the claimant's own home, are not work. The work can be paid or unpaid¹.

1 SS (IW) (Gen) Regs, reg 16(3); reg 16(6)

13971 The types of work will include adult placement schemes, foster parents, pre-adoption situations, child minders and nannies. Each case should be considered individually under the following paragraphs, to decide if the activity is actually work before the exempt work conditions are applied.

13972 Care means to provide for or look after and should be interpreted broadly. It includes personal care, such as bodily functions but can also include domestic tasks such as cooking, shopping, cleaning and supervision of children.

13973 Domestic tasks is not defined but means "of the home, household or family affairs". Examples of domestic tasks are preparing and cooking food, shopping, cleaning, washing clothes or dishes, making beds. 13974 In addition to taking place in their own home a domestic task must relate to their home, household or family affairs. Personal care such as attending to bodily functions or supervision or education of children, are domestic tasks if carried out for a member of the family (including a close relative). If carried out for others the tasks do not relate to the home, household or family affairs. A person who provided accommodation and food to students was found to be working¹.

1 R(IB) 1/03

13975 Looking after a child or children other than relatives will include fostering and pre-adoption situations. In these cases the child is living as part of the family and their care will normally consist of domestic tasks in the person's home unless the care includes activities which do not relate to the home, household or family affairs.

13976 Placement of difficult, mentally ill or sick children will attract an allowance as well as expenses in recognition of the extra supervision, education or care necessary. The allowance can be regarded as being for work over and above the normal domestic tasks in the person's home, and is subject to the prescribed earnings and hours limits.

13977 If the earnings do not exceed the weekly limit, the hours attributable to the work element of the placement should be estimated to see if these are less than 16.

13978 Other activities carried out in the person's home, such as child minding other than of relatives, or tuition, should be regarded as work. Although child minding may include some tasks which could be said to be domestic, the activity as a whole does not relate to the home, household or family affairs. All the hours which the children spend with the minder require supervision and should therefore be treated as work which is then subject to the earnings and hours limits.

13979

Work trials

13980 Work trials are normally available to unemployed people. If a person attends a work trial whilst incapable of work the DM should

1. consider if the work is within the definition (see DMG 13846 - 13848)
2. if the work is within the definition, decide if it can be accepted as in an exempt category (see DMG 13890) or is approved work (see DMG 13620)

if the work is not in an exempt category or approved work on a trial basis, treat the person as capable of work.

If the work is not work within the definition, decide if the activities involved mean that IfW should be questioned (see DMG 13290).

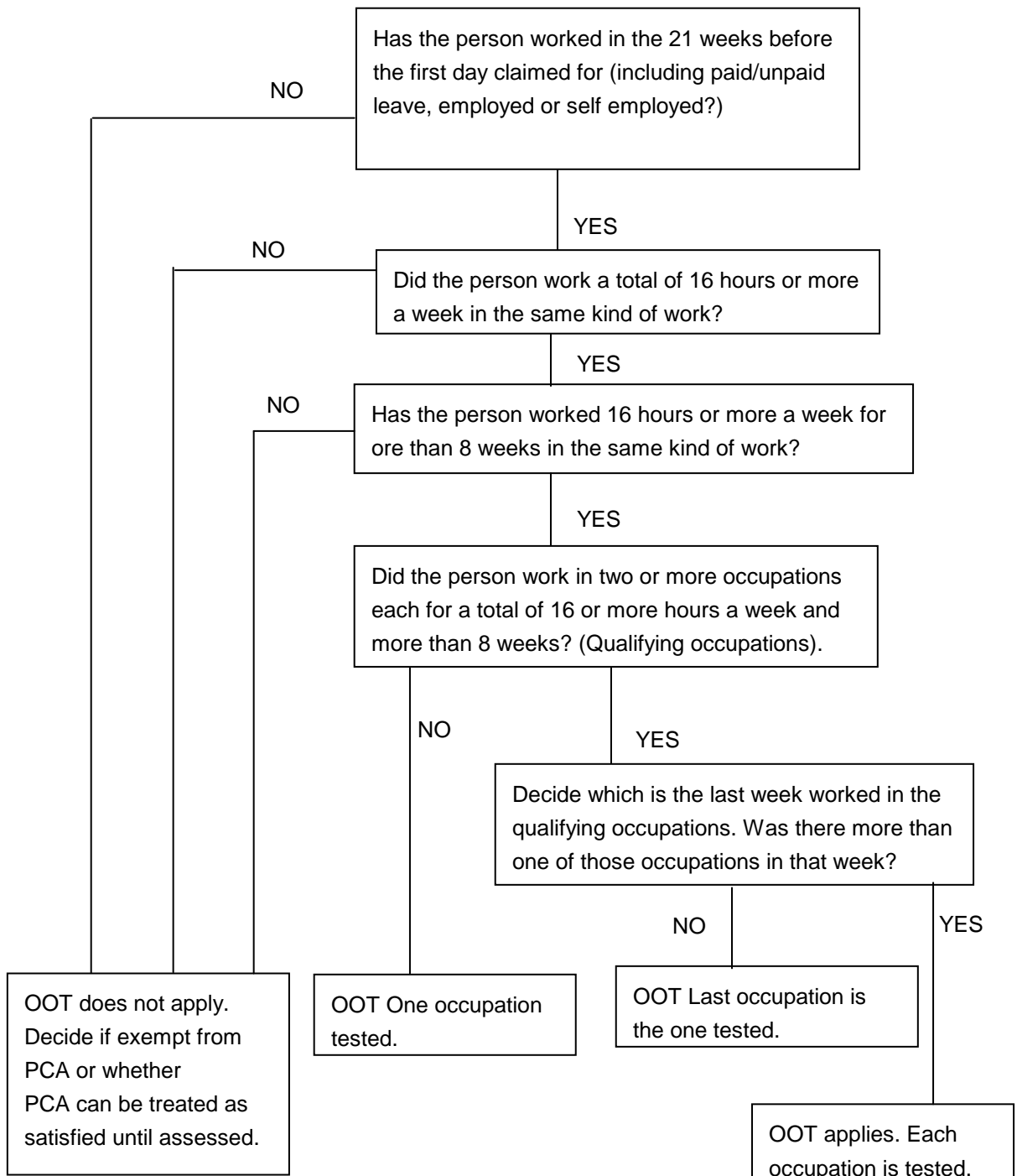
13981 - 13999

Annex 1

Conditions for satisfying the OOT

Flowchart for DMG 13200

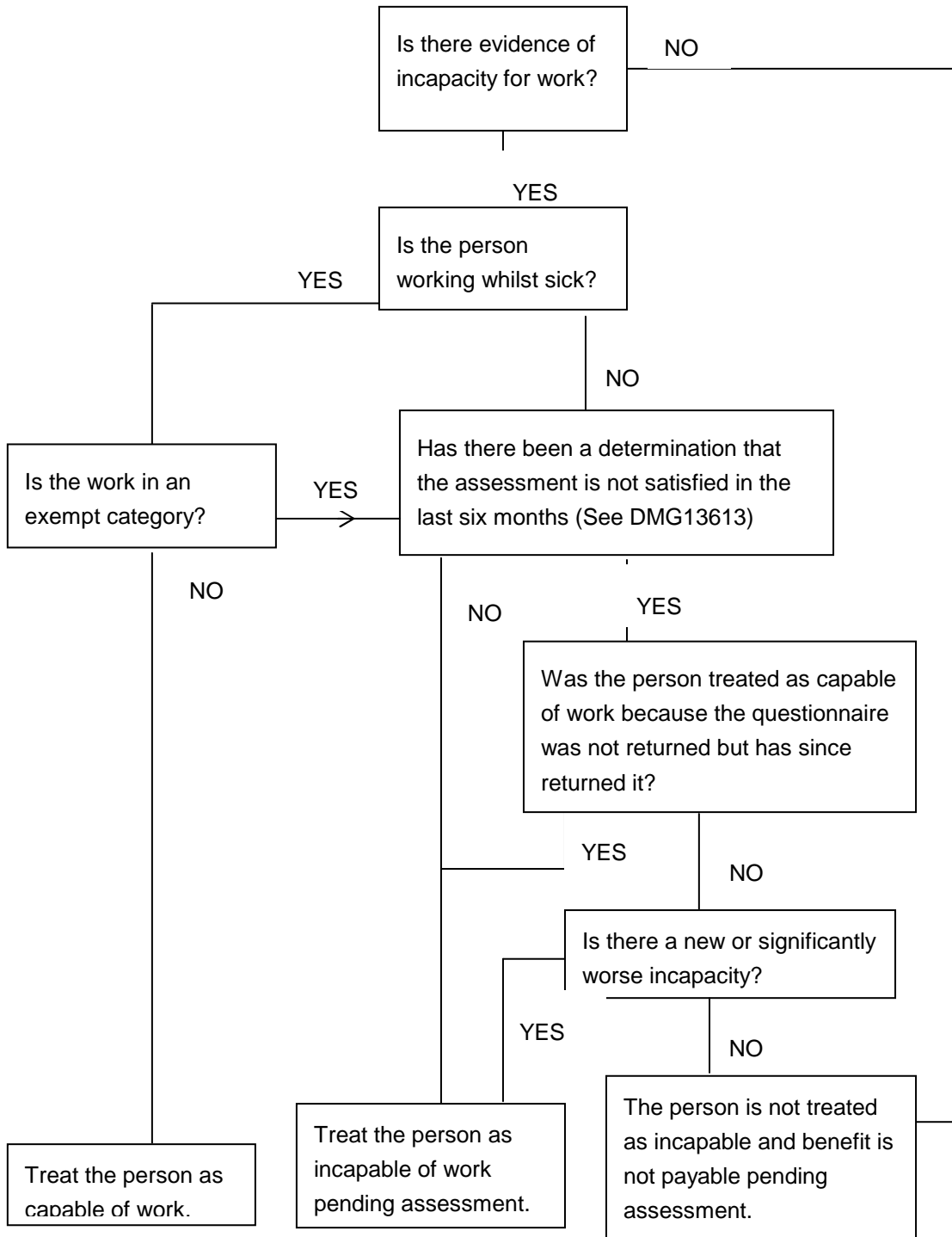
The table does not apply if a claim links with a previous spell of incapacity which was less than 196 days (see DMG 13249)



Annex 2

Conditions for treating the person as incapable of work pending assessment

Flowchart for DMG 13610 et seq



Annex 3

Categories exempt from the personal capability assessment

(See DMG 13350)¹

1 SS (IW) (Gen) Regs, reg 10

Decided on available evidence

- A person who is in receipt of the highest rate care component of DLA an increase of disablement pension for constant attendance which is greater than the lower rate or at the higher rate¹ for forces² CAA or an increase of constant attendance allowance for civilians³.

1 SS CB Act 92, s 104 & Sch 4, part V, para 2(a)-2(b); SS (Gen) Regs, reg 10;

2 Naval Military & Air Forces etc (Disablement and Death) Service Pensions Order 1983;

3 Personal Injuries (Civilian) Scheme 83, Art 14 & Sch 3, para 3(a)

- A person who is 80% disabled and entitled to IIDB¹ WDisP or² disablement pension under the Personal Injuries Civilian Scheme³.

1 SS CB Act 92, s 103; 2 Naval Military & Air Forces etc (Disablement & Death)

Service Pensions Order 83; 3 Personal Injuries (Civilian) Scheme 83

- A person for whom there is evidence which establishes not less than 80% disability for SDA.
- A person who has a progressive disease whose death in consequence of that disease can reasonably be expected within six months.
- A person who is registered as blind in a register compiled by a LA¹ or, in Scotland, has been certified as blind in a register maintained by or on behalf of a regional or islands council.

1 National Assistance Act 1948, (Welfare Service) s 29(4)(g)

- A person who has tetraplegia, persistent vegetative state, dementia, paraplegia or uncontrollable involuntary movements or ataxia which effectively renders the sufferer functionally paraplegic.

Decided on medical evidence

- A person for whom there is medical evidence of a severe learning disability (which for the purposes of this regulation, means a condition which results from the arrested or incomplete physical development of the brain, or severe damage to the brain, and which involves severe impairment of intelligence and social functioning).
- a severe and progressive neurological or muscle wasting disease.
- an active and progressive form of inflammatory polyarthritis.

- a progressive impairment of cardio-respiratory function which severely and persistently limits effort tolerance.
- dense paralysis of the upper limb, trunk and lower limb on one side of the body.
- multiple effects of impairment of function of the brain or nervous system causing severe and irreversible motor, sensory, and intellectual deficits.
- manifestations of severe and progressive immune deficiency states characterized by the occurrence of severe constitutional disease, opportunistic infections or tumour formation.
- a severe mental illness involving the presence of mental disease which severely and adversely affects a person's mood or behaviour and which severely restricts their social functioning or awareness of their immediate environment.

Annex 4

Regular treatment categories

(See DMG 13580)

List of treatments

People are treated as incapable of work for any day on which they receive

- regular weekly treatment by haemodialysis for chronic renal failure, or peritoneal dialysis for chronic renal failure **or** total parenteral nutrition for gross impairment of enteric function
- treatment by plasmapheresis, parenteral chemotherapy with cytotoxic drugs, anti-tumour agents or immuno-suppressive drugs¹ or radiotherapy.

1 SS (IW) (Gen) Regs, reg 13

Explanation of treatments

Chemotherapy

Chemotherapy means treatment with cell-killing (cytotoxic) drugs. They are used mainly in the treatment of cancer; quite often a combination of several drugs is used. The aim is to kill cancer cells, but inevitably other cells are also damaged, especially blood cells.

Treatment is intermittent, usually for one or two days every four to six weeks. People having chemotherapy often feel very unwell for a few days after each course of treatment.

Plasmapheresis

Plasmapheresis is a process by which harmful substances can be removed from the bloodstream. Blood is taken from the person's vein, and the fluid part (plasma) containing the harmful substance is separated from the blood cells and removed. The blood cells are then mixed with an appropriate substitute fluid and returned to the person.

Radiotherapy

Radiotherapy is the use of X-rays to kill cancer cells. It is given as a series of administrations, with varying intervals between doses. Persons undergoing radiotherapy often fell very unwell for a few days after each dose.

Renal dialysis

Renal dialysis is used in the treatment of kidney (renal) failure. It is the process whereby waste products, which would usually be excreted in the main by the kidneys, are artificially removed from the body. There are two forms of dialysis: haemodialysis and peritoneal dialysis.

In haemodialysis, blood is circulated from the person's arm into a machine which removes the waste substances; the cleansed blood is then returned to the person. Haemodialysis is usually carried out two or three times a week.

In peritoneal dialysis the process involves introducing fluid into the abdomen through a permanently-positioned tube (an in dwelling catheter). Harmful waste products are removed from the blood into this fluid through the inner lining of the abdomen (the peritoneum). After some hours, the fluid is drained from the abdomen and replaced with a fresh volume, and the cycle is repeated on a continuous basis.

Total parenteral nutrition

Total parenteral nutrition is a recent development in the treatment of serious intestinal conditions such as Crohn's disease. It is a way of ensuring adequate nutrition when normal absorption of food and fluid from the gut is impossible as a result of severe disease.

A fine tube (catheter) is inserted into a major vein in the neck, and is held in permanent position; its end is capped when not in use. A special feeding solution, three to five litres in all, is pumped through the catheter using a special pump mounted on a stand. The process takes eight to fourteen hours, and is usually carried out overnight.

For most people, the need for total parenteral nutrition will be life-long.

Annex 5

The effect of the “Howker” judgment on Regulation 27 of the Social Security (Incapacity for Work) (General) Regulations 1995

(See DMG 13624 and DMG 13626 to DMG 13631)

Pre Howker (i.e. prior to 08.11.02) - the regulation reads as follows

27(1) A person who does not satisfy the all work test shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which -

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the all work test by a doctor approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the all work test.

Post Howker (i.e. since 08.11.02) - the regulation reads as follows

27(1) A person who does not satisfy the all work test shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which -

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition which has been discovered during the course of a medical examination carried out for the purposes of the all work test by a doctor approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the all work test,

Added as a result of the “Howker” judgment

“he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work”.

Post Howker (i.e. since 08.11.02) - the regulation (as impacted by other Regulation) reads as follows (changes shown in *italics*)

27(1) A person who *is not incapable of work in accordance with the personal capability assessment* shall be treated as incapable of work if any of the circumstances set out in paragraph (2) apply to him.

(2) The circumstances are that -

(a) he is suffering from a severe life-threatening disease in relation to which -

(i) there is medical evidence that the disease is uncontrollable, or uncontrolled, by a recognised therapeutic procedure, and

(ii) in the case of a disease which is uncontrolled, there is a reasonable cause for it not to be controlled by a recognised therapeutic procedure;

(b) he suffers from a previously undiagnosed potentially life-threatening condition; which has been discovered during the course of a medical examination carried out for the purposes of the *personal capability assessment by a health care professional* approved by the Secretary of State;

(c) there exists medical evidence that he requires a major surgical operation or other major therapeutic procedure and it is likely that that operation or procedure will be carried out within three months of the date of a medical examination carried out for the purposes of the *personal capability assessment*,

Added as a result of the “Howker” judgment

“he suffers from some specific disease or bodily or mental disablement and, by reasons of such disease or disablement, there would be a substantial risk to the mental or physical health of any person if he were found capable of work”.

Annex 6

NMW rates

(See DMG 13896)

Date	Hourly rate
1.10.10	£5.93

Annex 7

Exempt work – weekly earnings limits

(See DMG 13893)

From	Weekly earnings limit
13.4.95	£44.00
8.4.96	£45.50
7.4.97	£46.50
6.4.98	£48.00
12.4.99	£49.50
10.4.00	£58.50
2.10.00	£59.50
9.4.01	£60.50
1.10.01	£66.00
1.10.02	£67.50
1.10.03	£72.00
1.10.04	£78.00
1.10.05	£81.00
1.10.06	£86.00
1.10.07	£88.50
1.10.08	£92.00
1.10.09	£93.00
1.10.10	£95.00

Chapter 14 - Welfare to Work

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Chapter 14 - Welfare to Work

New Deal and Employment Zone programmes

Self-employment route

Definition

14000 **[See memo DMG 09/09] [See Memo DMG 26/09]** 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 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3);
2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2*

Remunerative work

14001 People are treated as not being in remunerative work where they are receiving assistance under the self-employed route¹.

1 JSA Regs, reg 53(bb); IS (Gen) Regs, reg 6(1)(dd)

14002 - 14009

Receipts - trading whilst on the self-employment route

14010 Gross receipts from trading whilst on any of the schemes or activities falling within the definition of the self-employment route (see DMG 14000) are

1. not earnings, earnings from self-employment or income other than earnings¹
and
2. paid into a special account² (see DMG 14012 - 14015) **and**
3. taken into account in a certain way when working out IS and JSA³ (see DMG 14000 - 14040).

*1 JSA Regs, reg 88A, IS (Gen) Regs, reg 23A; 2 JSA Regs, reg 102A; IS (Gen) Regs, reg 39A;
3 JSA Regs, reg 102B&C; IS (Gen) Regs, reg 39 B&C*

Trading after the self-employment route ends

14011 Gross receipts received after the self-employment route ends are earnings from employment as a S/E earner¹. This is because a person is no longer treated as not employed after the self-employed 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. See Benefit Specific Guidance on IS and JSA for guidance on how earnings from employment as a S/E earner are worked out.

1 IS (Gen) Regs, reg 37; JSA Regs, reg 100

Example

Sinead starts trading from 1.12.03 as a freelance journalist whilst on EO(S/E) of NDYP. She continues to trade after the EO(S/E) of NDYP ends on 30.5.03. She is entitled to JSA from 31.5.03 because she is working on average for less than 16 hours a week. The DM decides

1. Sinead is in employment as a S/E earner from 31.5.03 **and**
2. the assessment period for working out earnings from that employment starts on 31.5.03 **and**
3. the earnings should be worked out in accordance with benefit specific guidance **and**
4. gross receipts from trading whilst on the EO(S/E) of NDYP should be worked out in accordance with DMG 14000 - 14040.

Special account

14012 Gross receipts from trading whilst on the self-employment route are paid into a special account¹. The special account is in the names of the person providing the self-employment route and the person who is on it. Both of them have to authorize withdrawals from the account.

1 IS (Gen) Regs, reg 39A; JSA Regs, reg 102A

14013 Withdrawals from the account are only allowed to meet the expenses of trading. Withdrawals are not allowed to meet the personal expenses of the person who is on the self-employment route.

14014 The amount in the account at the end of the last day of the self-employment route is paid to the claimant. The date the amount is due depends on whether the person is entitled to IS or JSA within a 13 week period after the self employment route ends.

Date payment from special account is due to be paid

14015 The amount in the special account at the end of the last day a person is on the self-employment route is due to be paid immediately after

1. the self-employment route ends if the person is not entitled to IS or JSA immediately after the self-employment route ends **or**
2. entitlement to IS or JSA ends if entitlement ends within a period of 13 weeks after the self-employment route ends starting with the day after the self employment route ends **or**

3. a period of 13 weeks starting with the day after the self-employment route ends if the person is entitled to IS or JSA throughout that period.

Example 1

Charles starts trading as a window cleaner whilst on the EO(S/E) of the NDYP. He continues to trade after the EO(S/E) of the NDYP ends. The EO(S/E) of NDYP ends on 25.7.03. He is not entitled to IS or JSA after the EO(S/E) of the NDYP ends because he is in remunerative work. Money in the special account at the end of the last day on the EO(S/E) of NDYP is due to be paid on 26.7.03.

Example 2

Anwara starts trading as a designer of jewellery whilst on the EO(S/E) of NDYP. She continues to trade after the EO(S/E) of NDYP ends on 19.9.03 working ten hours a week on average. Her husband is claiming IS for himself, Anwara and their children. Money in the special account at the end of the last day on the EO(S/E) of NDYP is due to be paid on 20.9.03 because Anwara is not entitled to IS or JSA as her husband is getting IS for her.

Example 3

Gemma starts trading as a computer consultant whilst on the EO(S/E) of NDYP. She is entitled to JSA after the EO(S/E) of NDYP ends on 28.2.03 because she works less than 16 hours a week as a computer consultant. Her business picks up and she starts working 18 hours a week on average. The DM decides that Gemma is not entitled to JSA from 1.4.03 because she is in remunerative work. Money in the special account at the end of the last day on the EO(S/E) of NDYP is due to be paid on 1.4.03 because

1. 1.4.03 is the day after entitlement to JSA ends **and**
2. entitlement to JSA ends within the period from 1.3.03, the day after the EO(S/E) ends **to** 30.5.03 which is 13 weeks after the EO(S/E) ends.

Example 4

Sean starts trading as a windscreen fitter whilst on the EO(S/E) of NDYP. He is entitled to JSA after the EO(S/E) ends on 30.5.03 because he works less than 16 hours a week. Money in the special account at the end of the last day on the EO(S/E) is due to be paid on 30.8.03 because that is the day immediately after a period of 13 weeks, starting with the day after the EO(S/E) ends.

14016 - 14019

Income - money in the special account

- 14020 Income paid to people who are receiving assistance in pursuing S/E earners employment will be subject to special rules as to its calculation and the date that it is taken into account and treated as paid.

Date payment treated as paid

14021 The date on which payment of money in the special account at the end of the last day on the EO(S/E) 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 IS (Gen) Regs, reg 39C(3)(b); JSA Regs, reg 102C(3)(b)

Example

Martin has been continuously in receipt of JSA since EO(S/E) ended on 5.2.99. His BWE is Wednesday. Money in the special account is due to be paid on 8.5.99 which is during a benefit week. The payment is treated as paid on Thursday, 6.5.99, because that is the first day of the benefit week.

14022 For IS, if it is not due to be paid during a benefit week, it is treated as paid on the day of the week which corresponds to the first day of the benefit week for the first claim for IS made after the EO(S/E) ends by the

1. person **or**
2. partner of the person

who was on the EO(S/E)¹. See example at DMG 14021.

1 IS (Gen) Regs, reg 39C (3)(a)

14023 For JSA, if it is not due to be paid during a benefit week, it is treated as paid on the day of the week which corresponds to the first day of the benefit week for the first claim for JSA made after the EO(S/E) ends by the

1. person **or**
2. partner of the person

who was on the EO(S/E)¹.

1 JSA Regs, reg 102C(3)(a)

Example

Ron's wife Pamela was on the EO(S/E). EO(S/E) ended on 3.6.99. Payment of money in the special account was due to be paid on 4.6.99. Neither Ron or Pamela were in receipt of IS or JSA when the payment was due. So, payment was not due during a benefit week.

Benefit is subsequently claimed for the couple as follows

Pamela claims IS on 28.6.99; her BWE is Wednesday,

Ron claims JSA on 19.7.99; his BWE is Thursday,

Ron claims IS on 23.8.99; his BWE is Monday,

Pamela claims JSA on 13.9.99; her BWE is Tuesday.

The payment of money in the special account is treated as paid on

- 3.6.99 for the claim made for IS by Pamela on 28.6.99 because 3.6.99 is a Thursday and that day corresponds with the first day of the benefit week for that claim
- 4.6.99 for the claim made for JSA by Ron on 19.7.99 because 4.6.99 is a Friday and that day corresponds with the first day of the benefit week for that claim
- 3.6.99 for the claim made for IS by Ron on 23.8.99 because 3.6.99 is a Thursday and that day corresponds with the first day of the benefit week for the first claim made for IS after the EO(S/E) ended
- 4.6.99 for the claim made for JSA by Pamela on 13.9.99 because 4.6.99 is a Friday and that day corresponds with the first day of the benefit week for the first claim made for JSA after the EO(S/E) ended.

Period payment taken into account

14024 The period over which the payment of money in the special account is taken into account is equal in length to the period the person was on the EO(S/E). The period starts with the date the payment is treated as paid¹.

1 IS (Gen) Regs, reg 39C(2); JSA Regs, reg 102C(2)

Example

Grace was on the EO(S/E) from 3.8.98 to and including 29.1.99, 180 days. The money in the special account is due to be paid on 1.5.99. Her BWE is Thursday. The payment is treated as paid on 30.4.99. The payment is taken into account from 30.4.99 to and including 26.10.99 because 26.10.99 is 180 days from 30.4.99 which is the date the period starts.

Amount taken into account

14025 The amount taken into account is the amount in the account at the end of the last day on the EO(S/E) less

1. a deduction for income tax **and**
2. certain disregards¹.

The amount is apportioned equally over the whole of the period the payment is taken into account² (see DMG 14024). See example at DMG 14041.

1 IS (Gen) Regs, reg 39C(1); JSA Regs, reg 102C(1); 2 IS (Gen) Regs, reg 39C(2); JSA Regs, reg 102C(2)

Fractions

14026 Fractions of a penny are rounded up or down depending on whether it is to a person's advantage¹. It is an advantage to have less income taken into account.

1 IS (Gen) Regs, reg 27; JSA Regs, reg 92

Deduction for income tax

14027 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 EO(S/E)².

1 IS (Gen) Regs, reg 39D(1)(a); JSA Regs, reg 102D(1)(a); 2 IS (Gen) Regs, reg 39D(3); JSA Regs, reg 102D(3)

14028 **[See memo DMG 09/09]** 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 EO(S/E)². The rate of tax charged on the chargeable income after deduction for personal allowances is the

1. starting rate **or**
2. **lower** rate and the basic rate if the amount to be taxed is over the limit of income which is taxed at the lower rate³.

Note: The law does not say what date should be used to decide which personal allowances are applicable. Nor does it say the date to use to decide which rates of tax to apply. It is for the DM to decide which date to use for these purposes.

1 Income and Corporation Taxes Act 1988, s 257(1); 2 IS (Gen) Regs, reg 39D(1)(b); JSA Regs, reg 102D(1)(b); 3 IS (Gen) Regs, reg 39D(1)(c); JSA Regs, reg 102D(1)(c)

14029 Guidance on the personal allowances which can be deducted and on the starting and basic rates of income tax is in benefit specific guidance.

14030 The amount

1. for personal allowances **and**
2. taxed at the starting rate

is worked out on a pro-rata basis if the period over which the payment in the special account is taken into account (see DMG 14024) is less than a year¹.

1 IS (Gen) Regs, reg 39C(2) & 39D(2); JSA Regs, reg 102C(2) & 102D(2)

14031 - 14039

Disregards

14040 An amount is disregarded from the payment of money in the special account for each benefit week it is taken into account¹. The amount which is disregarded is the equivalent of certain disregards which apply to earnings².

1 IS (Gen) Regs, reg 39C(4); JSA Regs, reg 102C(4); 2 IS (Gen) Regs, Sch 8, para 4 to 6B & 9; JSA Regs, Sch 6, para 5 to 8 & 11 to 12

14041 Guidance on the disregards of earnings is in appropriate sections of benefit specific guidance. DMs should decide which disregard the person who was on the EO(S/E) is entitled to and deduct that amount.

14042 - 14049

Capital acquired under the self-employment route

14050 Any sum of capital acquired by a person who is receiving or has received assistance under the S/E Employment Option of the ND 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

1. establishing **or**

2. carrying on

the commercial activity in respect of which such assistance is or was received¹.

1 JSA Regs, Sch 8, para 47; IS (Gen) Regs, Sch 10, para 52

14051 - 14099

New Deal

New Deal for Young People

What is New Deal for Young People

14100 NDYP is a programme aimed at getting young claimants on JSA into work. When they first become eligible, claimants enter the gateway where they

1. are helped to find non-subsidized employment **or**
2. select an appropriate option.

By the end of the gateway, claimants who are still on JSA will be instructed to attend an option.

14101 The options are

1. the EO, which includes
 - 1.1 the EO(E)
 - 1.2 the EO(S/E) of NDYP
2. the VSO
3. the ETFO
4. the FTET.

Qualifying conditions

14102 NDYP applies to claimants who

1. are aged 18 to 24 **and**
2. have claimed JSA for at least six months (claimants who only get credits are also included).

Note: Some people, for example the disabled or those recently released from LA care, can choose the NDYP before they have claimed JSA for six months. But they must have made a claim for JSA.

14103 - 14106

Gateway

14107 The gateway to the NDYP can last for up to four months. The gateway is a period when

1. advisers assist claimants to find non-subsidized employment or consider the barriers to finding work

2. adviser and claimant draw up an action plan of what the claimant will do to find and become ready to work
3. the claimant is expected to stay on JSA (as long as the claimant continues to satisfy the conditions for receipt of JSA in particular that they are available, ASE and have a JSAg.).

Note: A JSAg can be amended to reflect what the claimant has agreed to do in their NDYP plan.

14108 - 14110

14111 If the claimant has a particular problem (for example, homelessness, drugs or alcohol dependency), the adviser may refer the claimant to an appropriate organization for help during the gateway. Young people will receive specialist help at the same time as they are preparing to find work or take a NDYP option.

14112 Advisers

1. encourage claimants to consider the NDYP options **and**
2. help them to decide the most appropriate option.

14113 If they choose the EO(S/E), people in the gateway receive

1. a one day awareness session about self-employment **and**
2. a short course or one-to-one counselling giving training **and**
3. expert advice **and**
4. help to draw up a business plan.

They can choose the FTET if they are unable to enter the EO(S/E) immediately.

14114 If claimants

1. reach the end of the gateway period **and**
 2. have not applied for or been successful in finding a place on an option
- the adviser will give them a letter requiring them to attend a particular option.

Tasters

14115 If claimants find it difficult to select an option, they can be offered a taster. Tasters give claimants a chance to try out one of the options for a short time. Claimants are not paid for doing a taster and can stay on JSA during a taster as long as they satisfy the conditions for receipt of JSA. In particular that they are available and have a JSAg. They can be treated as ASE if they do a taster of a NDYP option for three days or more in a benefit week. This is because they are taking part in an employment or training programme for which a training allowance is not payable¹.

¹ JSA Regs, reg 19(1)(q) & 19(3)

Adviser discretion fund

14116 ND PA's may pay a discretionary award of ADF, up to a maximum of £300, for any goods and services needed to support the claimant with jobsearch, or help them overcome barriers which prevent them applying for or taking a job. It may be paid for a number of expenses including the costs of

- clothing for interviews
- travel for jobsearch
- buying essential tools
- transport costs.

14117

Employed employment option

14118 The EO(E)

1. is for people aged 18 to 25 immediately before entry **and**
2. lasts for up to 26 weeks.

14119 An employer who employs a claimant under this route receives a subsidy of

1. £60 a week where the claimant is F/T (at least 30 hours a week) **or**
2. £40 a week where the claimant is P/T (at least 24 hours a week except for carers and people with a physical or mental condition who are allowed to restrict the number of hours they are available to work, for JSA).

The employer may also receive £750 towards the cost of training. The employer pays a wage to the claimant which must be at least the amount of the subsidy.

14120 For all purposes claimants on the EO(E) are in employed earner's employment.

14121 - 14131

Self-Employed employment option

14132 The EO(S/E)

1. is for people aged 18 to 25 immediately before entry **and**
2. lasts for up to 26 weeks.

14133 The EO(S/E) includes assistance in doing S/E work¹. Whilst on the EO(S/E) claimants

1. receive a training allowance from the Secretary of State which includes a mandatory top-up payment (an NDYP grant - £400) payable by instalments, (see DMG 29503) **and**

2. are treated as not employed and as participating in arrangements for training under employment and training law² if they receive or are entitled to receive a training allowance (**NB**: this only applies for their participation in NDYP³) **and**
3. may start trading.

1 JSA Regs, reg 75 (1)(a)(ii)(aa); 2 E & T Act 73, s 2; 3 New Deal (Misc Provs) Order 98

Note: See DMG 14000 - 14050 for further guidance on the EO(S/E).

14134 - 14140

Voluntary sector option

14141 The VSO¹

1. is for people aged 18 to 25 immediately before entry **and**
2. lasts for up to six months **and**
3. includes a work placement **or** employed earner's employment (a waged option) in the voluntary sector **and**
4. must include training, support and job search.

1 JSA Regs, reg 75(1)(a)(ii)(bb)

14142

14143 Whilst on a VSO work placement claimants

1. receive a training allowance from the Secretary of State which includes a mandatory top-up payment (a NDYP grant - £400) payable by instalments **and**
2. are treated as not employed and participating in arrangements for training under employment and training law¹ if they receive or are entitled to receive a training allowance.

Note: This only applies for their participation in NDYP².

1 E & T Act 73, s 2; 2 New Deal (Misc Provs) Order 98

14144

Environment task force option

14145 The ETFO¹

1. is for people aged 18 to 25 immediately before entry **and**
2. lasts for up to six months **and**
3. includes a work placement **or** employed earner's employment (a waged option) in an environment task force **and**
4. must include training, support and job search.

1 JSA Regs, reg 75(1)(a)(ii)(cc)

14146 - 14149

Full-Time education and training option

14150 The FTET¹

1. is for people aged 18 to 25 immediately before entry **and**
2. lasts for up to one year **and**
3. must include some or all of the following: education, training, work experience, support in job search skills.

1 JSA Regs, reg 75(1)(b)(ii)

14151 Claimants on a FTET receive a training allowance from the Secretary of State. Claimants are treated as

1. being not employed **and**
2. participating in arrangements for training under employment and training law¹ if they receive or are entitled to receive a training allowance.

Note: This only applies for their participation in NDYP².

1 E & T Act 73, s 2; 2 New Deal (Misc Provns) Order 1998

Training allowance

14152 If the claimant was on JSA(IB) just before joining a NDYP option (other than EO(E), the amount of training allowance is paid at 10p a week less than what would otherwise be the JSA(IB) rate, so the DM

1. awards 10p JSA(IB) per week (this allows access to passported benefits)
2. **decides** that the claimant does not have to be available, have a JSAG or be ASE for JSA purposes whilst receiving the training allowance¹.

1 JSA Regs, reg 170 & 1(3)

14153 - 14199

Disregards - Income - IS and JSA(IB)

Child care expenses

14200 All child care expenses reimbursed to claimants for their participation in any NDYP option are disregarded in full¹.

1 IS (Gen) Regs, Sch 9 para 13; JSA Regs, Sch 7, para 14

14201 - 14211

Expenses for special needs

14212 Payments for the special needs of people on the FTET of NDYP, may be made by the DWP. The payments come from a discretionary fund and may be made to either the provider or the participant. The expenses that may be covered include

- special equipment needs (including those for people with special needs)
- exceptional costs of travel
- the cost of training away from home
- child care expenses.

Payments from the discretionary fund to meet, or help meet, special needs are disregarded¹.

1 IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14

Note: The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28426.

Mandatory top-up payments

14213 A mandatory top-up payment is made to a person participating in the following ND options

- the EO(S/E) (see DMG 14000)
- the VSO
- the ETFO
- the FTET.

14214 An income payment may be disregarded¹ if it is

1. a mandatory top-up payment **and**
2. paid under employment and training law² **and**
3. paid in respect of the participation in the options listed at DMG 14213.

1 IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14; 2 E & T Act 73, s 2

Note: The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28426.

Training allowances/training premiums

14215 The DM should fully disregard¹ travelling expenses paid to the claimant and any training premium (see DMG 14216) paid under certain statutory provisions regarding employment and training law². These disregards apply when the claimant is

1. attending certain training courses **or**

2. attending a course at an ERC.

Note: A disregard should not be allowed for the personal training allowance. Living away from home allowance may also be paid. (See DMG 28195).

1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13; Employment Action (Miscellaneous Provisions) Order 91; 2 E & T Act 73, s 2, Enterprise and New Towns (Scotland) Act 90, s 2

14216 A training premium may be paid with a training allowance or on its own. A training premium is

1. usually paid in addition to expenses and other extras **and**
2. assists participants to train for employment **and**
3. paid under specific employment and training law¹.

Note: Other training premiums or incentives which are not paid under specific employment and training law are taken fully into account.

1 E & T Act 73, s 2

14217 - 14224

Sanctions in JSA

14225 Where claimants have been in the EO(E) of NDYP, a variable sanction applies. (See DMG 34035 et seq).

Where claimants have been in the

1. EO(S/E) **or**
2. ETFO **or**
3. FTET **or**
4. VSO

of the NDYP, a fixed sanction period applies. (See DMG 14522 et seq)

14226 - 14259

Linked periods for jobseeking periods in JSA

14260 Any periods for which claimants on NDYP

1. are on the E/O(S/E) **or**
2. are not entitled to JSA because they are on the waged option of the VSO or ETFO **and**
 - 2.1 are in remunerative work **or**
 - 2.2 their income exceeds the applicable amount **or**
 - 2.3 their earnings exceeds the prescribed amount

are linked periods¹ for the purposes of calculating jobseeking periods in JSA.

1 JSA Regs, reg 48(2)(f)

14261 - 14299

New Deal claimants aged 25 years and over

Introduction

14300 ND for claimants aged 25 years and over can be based either on educational courses or on Intensive Activity periods.

New Deal 25+ education based

14301 This is the original ND25+ programme. It encourages claimants to get new or better skills by following employment - related courses of education. Currently there are no claimants doing qualifying courses under the relevant legislation¹.

1 JSA Regs, reg 17A

Entry

14302 The claimant must¹

1. be 25 years and over **and**
2. have made a claim for JSA **and**
3. have been receiving benefit for at least two years within a JSP when the course starts **and**
4. be undertaking a qualifying course with the agreement of an Emp O.

1 reg 17A(2)

Definitions for New Deal 25+ education based

Benefit

14303 Benefit means¹ IS, JSA or credits and autocredits received by a person approaching retirement or which would have been received if they were needed.

1 reg 17A(7)

Casual employment

14304 Casual employment means¹ employment from which the employee can be released

1. without having to give notice **or**
2. if notice has to be given, before the end of the vacation.

1 reg 17A(7)

Employment officer

14305 Employment officer means any officer who acts on behalf of the Secretary of State¹.

1 JSA Regs, reg 4

Examination

14306 Examination means an examination related to the qualifying course that is confirmed as such in a document signed on behalf of the establishment where the course is taken¹.

1 reg 4

Full time employment

14307 F/T employment means work of 16 hours a week or more, or 16 hours a week or more on average, where the hours of work fluctuate¹.

1 reg 72(3B) & 51(1)(a)

Full time student

14308 F/T student is explained in DMG Chapter 30¹.

1 reg 1(3)

14309 - 14320

Qualifying course

14321 A qualifying course¹ is one that

1. helps the person to gain or enhance skills needed for employment or seeking employment or a particular occupation (an employment related course)² **and**
2. lasts no more than twelve consecutive months **and**
3. is a course described in certain legislation³ (see Annex 1 and 2 to this Chapter).

*1 reg 17A(7); 2 reg 1(3); 3 Further & Higher Education Act 92, Sch 2;
Further & Higher Education (Scotland) Act 92, s 6*

Note: Employment officers can decide that a course is a qualifying course for a claimant even if it is above the level of the courses mentioned in Annex 1 and 2 to this Chapter¹.

1 JSA Regs, reg 17A (8)

Term-time

14322 Term-time means the period confirmed as such for the claimant in a document signed on behalf of the establishment where the ND25+ course is taken¹.

1 reg 4

Vacation

14323 Vacation means any period falling within the period of study (see DMG 30218 et seq.) that is not term-time¹.

1 JSA Regs, reg 4

New Deal 25+ education-based - JSA

Note: Currently there are no claimants doing ND25+ qualifying courses under the relevant legislation¹.

1 reg 17A

Treated as available

14324 Claimants can be treated as available¹ as in DMG 14325, and 14326 if

1. they are aged 25 or over² **and**
2. they have agreed with an Emp O that they can undertake a qualifying course³ **and**
3. they have made a claim for JSA or are treated as having made a claim⁴ **and**
4. they have been receiving, at the time the qualifying course starts or is due to start, IS as an unemployed person **or** JSA, for two years or more within a JSP⁵ **and**
5. they⁶
 - 5.1 have not previously undertaken a qualifying course for at least part of which they were treated as available as in DMG 14325 or 14326 **or**
 - 5.2 have previously undertaken a qualifying course for at least part of which they were treated as available as in DMG 14325 or 14326 but the length of this, when added to the length of the current qualifying course is not more than one year (the “length of” a course means the period beginning with the start of the course and ending with the last day of the course) **or**
 - 5.3 had good cause for giving up or failing to attend a previous qualifying course for at least part of which they were treated as available as in DMG 14325 or 14326 **or**
 - 5.4 have been receiving IS as an unemployed person or asylum seeker, UB or JSA for two years or more since the last day of the most recent previous qualifying course for at least part of which they were treated as available as in DMG 14325 or 14326. The “last day” means the latter of the date on which the last day of the course falls or the date on which the final examination of that course is completed⁷.

*1 reg 17A(1); 2 reg 17A(2)(a); 3 reg 17A(3); 4 reg 17A(2)(b) & 4;
5 reg 17A(2)(b); 6 reg 17A(4), (6), (7A) & (7B); 7 reg 17A(7)*

Note: Claimants can have weeks for which they get an NI credit counted towards the qualifying period if they get NI credits because¹

1. of JSA² **or**
2. they are approaching retirement (autocredits)³ **or**
3. of UB (prior to 7.10.96)⁴.

(Claimants who do not receive autocredits only because they do not need them in that year can still have weeks when they would have otherwise received autocredits counted towards the qualifying period.)

1 JSA Regs, reg 17A(7); 2 SS (Credits) Regs, reg 8A; 3 reg 9A; 4 reg 9 as in force before 7.10.96.

Availability in term time

14325 Claimants are treated as available for employment in any benefit week¹ which is entirely or partly in term-time if²

1. they are undertaking a qualifying course as F/T students **and**
2. they provide, within five calendar days of being asked to do so by an Emp O, a document signed by them and on behalf of the establishment at which they are undertaking the qualifying course in a form acceptable to an Emp O confirming that they are

2.1 attending the establishment when required to attend **and**

2.2 making satisfactory progress on the course.

Note: The rules³ under which claimants are regarded as not available if they are full time students do not apply in any benefit week which is entirely or partly in the period of study⁴.

1 SS (Credits) Regs, reg 4; 2 JSA Regs, reg 17A(3)(a), 3 reg 15(a); 4 reg 17A(1)

Availability during examinations and vacation

14326 Claimants are treated as available for any benefit week¹

1. during any part of which they are taking examinations for their qualifying course² **or**
2. wholly in a vacation from their qualifying course if they are willing and able to take up at once any casual employment³.

1 reg 4; 2 reg 17A(3)(b); 3 reg 17A(3)(c)

Actively seeking employment in term time

14327 Claimants are treated as ASE in any benefit week¹ falling wholly or partly in term-time during which they are treated as available as in DMG 14325².

1 reg 4, 2 reg 21A(1)(a)

Actively seeking employment during examinations and vacations

- 14328 Claimants are treated as ASE for any benefit week¹
1. in which they are taking examinations as in DMG 14326 1. **or**
 2. wholly in a vacation from a qualifying course if²
 - 2.1 they are treated as available in accordance with DMG 14326 2. **and**
 - 2.2 they take such steps as they can reasonably be expected to take to have the best prospects of getting employment for which they are available under DMG 14326 2..

1 JSA Regs, reg 4; 2 reg 21A(1)(b) & (c)

14329

New Deal 25+ Intensive Activity period based

14330 ND25+ has two elements - the Gateway and the IAP. During the Gateway claimants receive advisory interviews. Attendance at these interviews is mandatory and claimants may lose entitlement to JSA if they fail to attend. The provisions available during the Gateway are, in the main, voluntary but claimants can be issued with a JSD under the normal rules if an employment officer thinks it necessary. Participants remain on JSA throughout the Gateway if they continue to satisfy the conditions to receive it.

14331 Claimants who do not get employment whilst in the Gateway must participate in the IAP if they are at least 25 years old but under 60 years old on the first required entry date to the IAP.

14332 In the IAP participants will receive a training allowance which includes a normal amount of JSA. The content of the IAP varies according to the needs of the individual. If people remain unemployed at the end of the IAP they move to a further period of advisory help called the 'Follow-through' period designed to capitalize on the gains made during the IAP. They return to JSA if they continue to satisfy the conditions for its receipt. Further guidance is in DMG Chapter 21.

14333 - 14334

Entry

- 14335 Jobcentres will accept onto the ND25+ programme claimants who
1. are 25 years and over **and**
 2. have claimed JSA for at least 18 out of the previous 21 months (claimants who only get credits are also included).

Note: Some people will have access to ND25+ before they have claimed JSA for 18 months. But they must have made a claim for JSA.

14336 -14339

Definitions for New Deal 25+ Intensive Activity period based

Claimant

14340 Claimant means either an individual who has claimed JSA or each member of a joint-claim couple.

Facilities

14341 This means the facilities provided for the person whilst they are taking part in the Intensive Activity period¹.

1 ND (Misc Prov) Order 2001

Intensive Activity period

14342 This is a programme¹

1. provided by or on behalf of the Secretary of State under relevant legislation²
and
2. for a person aged 25 years or over but less than 60 years on the first required entry date **and**
3. which usually lasts for between 13 and 26 weeks but can last for up to 52 weeks **and**
4. which consists of one or more of
 - 4.1 assistance in pursuing self-employment
 - 4.2 education and training
 - 4.3 work experience
 - 4.4 assistance with job search
 - 4.5 motivation and skills training
 - 4.6 employed earner's employment.

1 SS Amdt (ND) Regs, reg 6; JSA Regs, reg 75; IS (Gen) Regs, regs 51(3A); 2 E & T Act 73 s 2

14343

Self-employment route

14344 The self-employment route¹ means assistance in pursuing self-employed earner's employment whilst participating in the

1. ND employed option **or**
2. EZ programme **or**
3. IAP.

1 SS Amdt (EZ) (No. 2) Regs, reg 2; SS Amdt (ND) Regs, reg 2; JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)

Training allowance

14345 This is a payment made directly by the Secretary of State to a person who is taking part in the IAP in connection with their participation¹.

1 E & T Act 73, s 2

14346 - 14349

Employment

14350 Whilst on ND25+ claimants may be offered a job which may be subsidized (the employer receives a subsidy of up to £75 per week) or unsubsidized.

14351 The normal rules on remunerative work, earnings and sanctions apply to claimants whether the employment in question is subsidized or unsubsidized.

14352 - 14355

Self-employment support as part of the Intensive Activity period

14356 People in self-employment support as part of the IAP are treated as not employed during any period they receive, or are eligible to receive a training allowance¹. See DMG 14000 for further guidance on the self-employment route.

1 s 2

14357 People in self-employment support as part of the IAP may also receive

1. a mandatory top-up payment **or**
2. payment for expenses in connection with their participation in self-employment support as part of the IAP.

The mandatory top-up payment and payment of expenses are treated as a grant and not a training allowance for any period people on self-employment support as part of the IAP, are treated as not employed.

14358 People in the IAP may change from receiving help in getting work as a S/E earner to receiving help in getting work as an employed earner if it has been decided they will not succeed as a S/E earner. They are no longer in self-employment support as part of the IAP from the date of change.

14359 - 14364

Disregards - income - IS and JSA(IB)

Child care expenses

14365 All child care expenses reimbursed to claimants for their participation in the IAP are disregarded in full¹.

1 SS Amdt (ND) Regs, reg 12; IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14

Mandatory top-up payment

14366 A mandatory top-up payment is made to a person participating in the following ND options

- the EO(S/E) (see DMG 14000)
- ND25+ IAP.

14367 An income payment may be disregarded¹ if it is

1. a mandatory top-up payment **and**
2. paid under employment and training law² **and**
3. paid in respect of the participation in the options listed at DMG 14366.

1 IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14; 2 E & T Act 73, s 2

Note: The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28427.

Training allowances/training premiums

14368 The DM should fully disregard¹ travelling expenses paid to the claimant and any training premium (see DMG 14369) paid under certain statutory provisions regarding employment and training law². These disregards apply when the claimant is

1. attending certain training courses **or**
2. attending a course at an ERC.

Note: A disregard should not be allowed for the personal training allowance. Living away from home allowance may also be paid. (See DMG 28195).

1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13; Employment Action (Miscellaneous Provisions) Order 91; 2 E & T Act 73, s 2, Enterprise and New Towns (Scotland) Act 90, s 2

14369 A training premium may be paid with a training allowance or on its own. A training premium is

1. usually paid in addition to expenses and other extras **and**
2. paid to assist participants to train for employment **and**
3. paid under specific employment and training law¹.

Note: Other training premiums or incentives which are not paid under specific employment and training law are taken fully into account.

1 E & T Act 73, s 2

14370 - 14374

Sanctions in JSA

14375 If a claimant¹

1. loses a place on the IAP through misconduct **or**
2. having been notified by an Emp O of a place, without good cause
 - 2.1 gives up or fails to attend **or**
 - 2.2 refuses or fails to apply for **or**
 - 2.3 refuses when offered **or**
 - 2.4 neglects to avail themselves of a reasonable opportunity of a place on the IAP

the DM should impose a sanction for two, four or 26 weeks. See DMG 14500.

1 JSA Regs, reg 75(1)(a)(iv)

14376 - 14379

Linked periods for jobseeking periods in JSA

14380 Any period during which a claimant on ND25+ was

1. participating in the IAP **and**
2. not entitled to JSA because
 - 2.1 they were considered to be in remunerative work **or**
 - 2.2 their earnings exceeded the prescribed amount **or**
 - 2.3 their income exceeded the applicable amount

is a linked period¹ for the purposes of calculating jobseeking periods in JSA.

1 reg 48(2)(f)(ii)

14381 - 14399

New Deal for lone parents or partners

What is New Deal for lone parents or partners

14400 NDLP or NDP is a Welfare to Work programme. The objectives are to

1. help and encourage lone parents on IS to improve their prospects and living standards by taking up and increasing paid work **and**
2. improve the job readiness of lone parents on IS to increase their employment opportunities¹.

The Secretary of State may approve other schemes for lone parents if they support the objectives of NDLP or NDP.

1 The New Deal for lone parents Operational Vision - October 1998 HSSS 98 3255 [LP 19]

14401 NDLP and NDP is open to lone parents or partners who

1. are not working or who work less than 16 hours per week **and**
2. are in receipt of certain benefits including IS **and**
3. for NDLP whose youngest child is aged under 16.

NDLP and NDP offers participants advice and support in finding work, including self-employment.

14402 Participation in NDLP or NDP or approved schemes is voluntary. Lone parents may undertake work experience as part of their participation.

14403 Work experience may be undertaken with more than one employer. Normally, employers will not pay lone parents who are undertaking work experience. Lone parents will keep a record of a period and number of hours of work experience.

14404 - 14409

Assistance in pursuing self-employment

14410 Claimants who receive assistance in pursuing self-employment as part of NDLP or NDP are eligible to receive a top-up payment or a payment to assist with expenses incurred as a result of participating on the scheme. Such payments are treated as a training allowance¹ for the purpose of IS and “training premium” for all other purposes. Whilst receiving such payments claimants are treated as not engaged in remunerative work². See DMG 14000 for further guidance on the self-employment route of the employment option.

1 New Deal (Lone Parents) (Miscellaneous Provisions) Order 2001 (S.I. 2001 No. 2915), reg 2(2)(a);

2 IS(Gen) Regs, reg 6(1)(d) & (dd)

14411 - 14414

Disregards - income - IS and JSA(IB)

Child care expenses

14415 All child care expenses reimbursed to claimants for their participation in NDLP or a scheme approved by the Secretary of State as supporting the objectives of NDLP are disregarded in full¹.

Note: The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28427.

1 SS Amdt (ND) Regs, reg 12; IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14

14416

Training allowances/training premiums

14417 The DM should fully disregard¹ travelling expenses paid to the claimant and any training premium (see DMG 14418) paid under employment and training law².

Note: A disregard should not be allowed for the personal training allowance. Living away from home allowance may also be paid. (See DMG 28195).

1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13; Employment Action (Miscellaneous Provisions) Order 91; 2 E & T Act 73, s 2, Enterprise and New Towns (Scotland) Act 90, s 2

14418 A training premium may be paid with a training allowance or on its own. A training premium is

1. usually paid in addition to expenses and other extras **and**
2. assists participants to train for employment **and**
3. paid under specific employment and training law¹.

Note: Other training premiums or incentives which are not paid under specific employment and training law are taken fully into account.

1 E & T Act 73, s 2

14419 - 14449

Gateway to work course

What is it

14450 The Gateway to work course

1. is primarily intended for participants in ND18-24, but may be offered to some people participating in ND25+ or other unemployed people
2. will typically be offered in weeks five and six of the ND18-24 Gateway stage
3. is intended to improve job prospects, increase employability by developing effective workplace behaviours, attitudes and "soft" skills, and enable young people to take maximum advantage of an appropriate ND Option
4. is full-time for up to two weeks and
5. will include sessions on active jobsearch skills, timekeeping, self-presentation and teamworking, and what employers look for in applications.

14451 The course is a mandatory employment programme. For details of sanctions see DMG 14500.

14452 - 14499

New Deal Sanctions and hardship in JSA

Introduction

14500 General guidance on sanctions and hardship in JSA are in DMG Chapters 34 and 35. The following paragraphs give guidance on the special rules that apply to ND.

14501 - 14507

Employment officer

14508 An Emp O is any officer who acts on behalf of the Secretary of State¹. The legislation allows other people to be authorized as Emp Os². Annex 5 and 7 give details of the people the Secretary of State has authorized as Emp Os in relation to sanctions.

1 JS Act 95, s 19(10)(a) and 20A(9); 2 s 19(10)(a) and 20A(9)

14509 - 14521

Fixed period sanctions

Two or four week sanctions

14522 **[See Memo DMG 11/09]** A sanction of two benefit weeks¹ should be imposed unless the sanction

1. is for a NDYP offence, and a previous NDYP sanction started within the twelve month period before the date the DM decides to impose a sanction² **or**
2. is for a ND25+ IAP offence, and a previous ND25+ IAP sanction started within the twelve month period before the date the DM decides to impose a sanction³

in which case a sanction of four weeks should be imposed.

1 JSA Regs, reg 69(1)(a); 2 reg 69(1)(b)(ii)(bb) and (iii); 3 reg 69(1)(b)(ii)(cc) and (iii)

14523 - 14527

26 week sanctions

14528 It is **not** possible for a 26 week sanction to be imposed without there ever having been a four week sanction. Neither is it possible for more than one four week sanction to be imposed for a ND option offence within a twelve month period.

14529 **[See Memo DMG 11/09]** The DM should decide that JSA is not payable for 26 weeks if¹

1. they determine that JSA is not payable to claimants because they committed a NDYP sanctionable offence on or after 6.3.00 **and**

2. the claimant has previously been sanctioned two or more times for a NDYP offence **and**
3. there is not more than twelve months between the date the determination in 1. was given and the start date of the last four or 26 week sanction for a NDYP offence given before the determination in 1..

Note: Failure to comply with a JSD can never be a NDYP offence.

1 JSA Regs, reg 69(1)(c)

14530 The critical factors are that a 26 week sanction applies only

1. where the previous sanction was a four week sanction for a NDYP offence¹, or a 26 week sanction for a NDYP offence² **and**
2. no more than twelve months have elapsed between the start date of the previous sanction and the day on which the latest determination is being made³.

1 reg 69(1)(b)(ii)(bb); 2 reg 69(1)(c); 3 reg 69(1)(c)(iii)

14531 It can be seen that the wording in DMG 14530 above does not require the start date of the previous sanction to have been within the period of twelve months preceding the start date of the latest determination. It merely stipulates that not more than twelve months must have **elapsed** between the two dates.

Example

Jenny is a JSA claimant and her benefit week ends on a Thursday. On Tuesday 2 May 2000, a DM determines that JSA is not payable to Jenny because of a NDYP offence. This is her first ND offence, so the period of sanction is of two weeks duration (5 May to 18 May), and begins on Friday 5 May (the first day of the benefit week following the date of the determination).

On Friday 5 May, the DM makes another determination that JSA is not payable to Jenny because of a second NDYP offence. This first date on which JSA was not payable to her on the previous occasion is 5 May. This does **not** fall within the period of twelve months **preceding** the date of the second determination (5 May).

The duration of the second period of sanction is, therefore, two weeks (12 May to 25 May), and it will start on 12 May (the first day of the benefit week following the date of the determination).

On Wednesday 17 May, the DM makes another determination that JSA is not payable to Jenny because of a third NDYP offence. The first date on which JSA was not payable to her on the previous occasion is 12 May. This does fall within the twelve months preceding the date of the third determination (17 May), but there has not yet been a sanction under regulation 69(1)(b)(ii)(bb) or 69(1)(c)(i). The duration of the third period of the sanction cannot, therefore, be for 26 weeks, but will be for four weeks (19 May to 15 June).

On Thursday 18 May, the DM makes another determination that JSA is not payable to Jenny because of a fourth NDYP offence. The first date on which JSA was not payable to her on the previous occasion is 19 May and no more than twelve months have elapsed between that date (19 May) and the date of the fourth determination (18 May). There has been a sanction under regulation 69(1)(ii)(bb). The duration of the fourth period of sanction (19 May to 16 November) is therefore 26 weeks.

Any further sanction for NDYP offence which is determined on any date which is not more than twelve months after the start of the 26 week sanction, will be for 26 weeks.

14532 - 14534

14535 If there is any further offence relating to the IAP **and**

1. the claimant has previously been sanctioned on two or more occasions for an offence relating to the IAP **and**
2. the first date on which JSA was not payable for the new offence prior to the DM deciding that JSA is not payable for the new offence falls within twelve months preceding the new decision date

a sanction of 26 weeks should be imposed¹.

1 JSA Regs, reg 69(1)(d)

14536

JSA(IB) payable even when there is a 26 week fixed period sanction

14537 Where a claimant has been sanctioned¹, JSA(IB) is still payable for the period in DMG 14538 if²

1. a fixed period sanction of 26 weeks is imposed for the first time **and**
2. the Secretary of State gives notice in writing to the claimant that they are no longer required to participate in the
 - 2.1 EO(S/E) **or**
 - 2.2 VSO **or**
 - 2.3 ETFO **or**
 - 2.4 FTET of NDYP **or**
 - 2.5 IAP of the ND25+.

Note: If another fixed 26 week sanction is imposed, JSA(IB) is no longer payable in respect of the first 26 week sanction period.

1 JS Act 95, s 19 & 20A; 2 JSA Regs, reg 69(3)

14538 The period for which JSA(IB) is payable¹

1. begins on the later of
 - 1.1 the date specified in the notice at DMG 14537 2. as being the date on which the claimant is no longer required to participate **or**
 - 1.2 the day four weeks after the first day on which JSA was not payable as in DMG 14537 1. **and**
2. ends on the last day of the period for which JSA was not payable as in DMG 14537 1. .

Note: If the claimant is again sanctioned for any reason, JSA(IB) ceases to be payable for the period of that sanction².

1 JSA Regs, reg 69(4)(a) & (b); 2 reg 69(4)(c)

14539 - 14569

Good Cause

New Deal for young people

14570 Claimants who commit NDYP offences which would otherwise lead to a sanction will have good cause if, before they commit the sanctionable offence in question, an Emp O has not given or sent them a written notice

1. mentioning the relevant NDYP option **and**
2. warning them that if they give up or fail to attend, **or** refuse or fail to apply for after being notified of **or** refuse to accept when offered, **or** neglect to avail of a reasonable opportunity, a place on a NDYP option then JSA could stop or be reduced¹.

Note: See DMG 14508 for the definition of an Emp O.

1 reg 73(2A)

14571 Where the NDYP option in question is the EO(S/E) or a waged option on Environment Task Force or VSO, the DM should disregard the level of pay when deciding whether the claimant has good cause¹.

1 JS Act, s 19(9); JSA Regs, reg 75(5)

New Deal 25+ education based

14572 **Note:** Currently there are no claimants doing qualifying courses under the relevant legislation¹.

Claimants will have good cause for giving up or failing to attend a F/T ND25+ course if²

1. they gave it up or failed to attend it less than four weeks after the first day of the period of study³ **or**

2. they gave it up or failed to attend it because they lacked ability **or**
3. the F/T ND25+ course was not suitable.

Note: A week in this paragraph means a period of seven consecutive days⁴.

1 JSA Regs, reg 17A; 2 reg 73(2B)(b); 3 reg 4; 4 reg 75(2)

14573 For these purposes a F/T ND25+ course is suitable if it is suitable for the particular claimant, taking into account¹

1. their personal capacity, for example, to learn, to concentrate
2. their ability or potential to acquire particular skills
3. their preference
4. the level of qualification aimed for
5. the length of the course
6. the proportion of course that the claimant has already completed.

1 reg 73(4)

Example

Joe starts a ND25+ course. The first day of the period of study is 6.7.98. He leaves the ND25+ course on 3.8.98. He automatically has good cause as he left it less than four weeks after the first day of the period of study.

14574 - 14575

New Deal 25+ Intensive Activity period based

14576 Claimants who commit offences which would otherwise lead to a sanction will have good cause if, before they commit the sanctionable offence in question, an Emp O has not given or sent them a written notice

1. mentioning the relevant ND25+ IAP **and**
2. warning them that if they
 - 2.1 give up or fail to attend **or**
 - 2.2 refuse or fail to apply after being notified **or**
 - 2.3 neglect to avail of a reasonable opportunitya place on a ND25+ IAP then JSA could stop or be reduced¹.

Note: See DMG 14508 for the definition of an Emp O.

1 reg 73(2A)

14577 - 14579

Hardship

Claimants not in a vulnerable group who are subject to a New Deal sanction

14580 A claimant who is not a member of a vulnerable group (see DMG Chapter 35) cannot be a person in hardship and cannot get hardship payments if the claimant has been sanctioned for either

1. an offence relating to the NDYP other than the EO(E) **or**
2. an offence relating to the IAP of ND for persons aged 25 - 59¹.

Note: The EO(E) of the NDYP is employed earners employment. The normal hardship rules apply to someone sanctioned in relation to that option.

1 JSA Regs, reg 140(4A)

14581 A joint-claim couple, neither of whom is a member of a vulnerable group, are not a couple in hardship and cannot get hardship payments if either or both members of the couple have been sanctioned for

1. an offence relating to the NDYP, other than the EO(E) **or**
2. an offence relating to the IAP of ND for persons aged 25 - 59¹.

Note: The EO(E) of the NDYP is employed earners employment. The normal hardship rules apply to someone sanctioned in relation to that option.

1 reg 146A(5)

14582 Where DMG 14580 or 14581 applies the claimant is not a person in hardship for the period starting on the first day for which JSA is not payable under the sanction and ending on the later of

1. the last day on which the claimant is or the joint-claim couple are required to participate in the ND option or the IAP **or**
2. the date 14 days after the day on which the sanction first had effect¹.

Note: The claimant will remain a person not in hardship throughout the sanction period if required to participate in a ND option or the IAP throughout the sanction period.

1 regs 140A(1) & 146B(1)

Example 1

Ruth is in a non-vulnerable group. She is sanctioned for four weeks for leaving a ND option for a second time. She does not complete her option during the four week sanction period. She is not a person in hardship throughout the four week sanction.

Example 2

Rupert is in a non-vulnerable group. He leaves a ND option two weeks before completing it and is sanctioned for four weeks as this is his second offence. One week into the sanction he returns to the option and completes it. He is not required to participate in an option after that.

For the first week of the sanction Rupert is not a person in hardship.

For the second and third weeks of the sanction Rupert receives full rate JSA despite the sanction as he is receiving a training allowance¹.

For the fourth week of the sanction Rupert can be a person in hardship (if he satisfies the condition to be so), as he is no longer required to participate in a ND option.

1 JSA Regs, reg 74A

New Deal for young people or Intensive Activity period sanction imposed whilst hardship payments are being made

14583 Unless DMG 14584 applies if a claimant

1. is not in a vulnerable group **and**
2. was a person in hardship before the period of a NDYP or IAP sanction **and**
3. remains a person in hardship after the NDYP or IAP sanction has ended **and**
4. is not within a sanction period for another NDYP or IAP offence

the claimant returns to being a person in hardship after the NDYP or IAP sanction period ends¹.

1 reg 140A(2) & (3)

Example 1

Joanne has been sanctioned for 20 weeks from Tuesday 11 November to Monday 30 March for refusing employment. She is not in a vulnerable group but from Tuesday 25 November she is paid hardship payments because she is in hardship. On Friday 6 February Joanne leaves a NDYP option early. On Wednesday 25 February the DM sanctions her for two weeks from Tuesday 3 March to Monday 16 March. She is not a person in hardship from Tuesday 3 March to Monday 16 March. The DM decides that she is still a person in hardship on Tuesday 17 March so hardship payments resume.

Example 2

Stuart has been sanctioned for 20 weeks from Tuesday 11 November to Monday 30 March for refusing employment. He is not a vulnerable group but from Tuesday 25 November he is paid hardship payments because he is in hardship. On Friday 5 December Stuart loses a place on the IAP of ND for claimants aged 25 - 49 due to misconduct. On Monday 29 December the DM sanctions him for two weeks from Tuesday 6 January to Monday 19 January.

He is not a person in hardship from Tuesday 6 January to Monday 19 January. Stuart is referred to another place on the IAP on Monday 12 January, which he refuses to take. On Monday 2 February the DM sanctions him for the refusal for four weeks from Tuesday 10 February to Monday 9 March. He is not a person in hardship for the period Tuesday 10 February to Monday 9 March. The DM decides that Stuart is still a person in hardship on Tuesday 10 March so hardship payments resume.

14584 DMG 14583 does not apply where the NDYP sanction relates to the employed employment option. The employed employment option of the NDYP is employed earners employment¹. The claimant will remain a person in hardship during the period of the sanction.

1 SS Amdt (EP) Regs, reg 2(4)(b)

14585 Unless DMG 14586 applies, members of joint-claim couple

1. neither of whom is a member of a vulnerable group **and**
2. who were a couple in hardship before the period of a NDYP sanction or IAP sanction **and**
3. who remain a couple in hardship after the NDYP or IAP sanction has ended **and**
4. who are not within a sanction period for another NDYP or IAP offence

return to being a couple in hardship after the ND sanction period ends¹.

1 JSA Regs, reg 146(B)(2) & (3)

14586 DMG 14585 does not apply where the NDYP sanction relates to the employed employment option. The employed employment option of the NDYP is employed earners employment¹. The couple will remain a couple in hardship during the period of the sanction.

1 SS Amdt (EP) regs, reg 2(4)(b)

14587 - 14599

Employment zones

Introduction

14600 **[See Memo DMG 26/09]** The aim of EZs is to provide assistance in those areas where high levels of long term unemployment tend to be concentrated. Programmes are run locally by private sector bodies known as EZ contractors. The intention is that no-one who participates in an Jobcentre Plus programme should be financially disadvantaged.

14601 An EZ contractor is defined¹ as a person who is undertaking the provision of facilities in respect of an EZ programme on behalf of the Secretary of State for Work and Pensions.

1 SS Amdt (EZ) Regs, reg 2(1)

14602 Funds are used to set up personal job accounts for each participant which can be used as flexibly as possible to help them obtain sustainable employment (e.g. to pay for training). Employment in this context means¹

1. employment under a contract of service **or**
2. a contract of apprenticeship **or**
3. under a contract for services **or**
4. otherwise than under a contract

and includes self employment and holding an office (e.g. as a director of a company).

1 EZ Regs, reg 4

14603 - 14624

14625 The EZ programme operates in the areas shown in Annex 3. EZ programme means¹ a programme established by the Secretary of State under certain legislation, which is designed to help JSA claimants to obtain sustainable employment. Employment here means² employment

1. under a contract of service **or**
2. under a contract of apprenticeship **or**
3. under a contract for services **or**
4. otherwise than under a contract

Note: Employment includes self employment and holding an office (e.g. as a director of a company).

1 EZ Regs 2003, reg 1(2); 2 reg 1(3)

Referral to an Employment Zone programme

14626 An Emp O can direct a JSA claimant¹

1. who

1.1 is 25 years old or older **and**

1.2 normally lives within an EZ **or**

1.3 the address for payment of their JSA is in an EZ

to participate in an EZ programme if the conditions in DMG 14627 are satisfied **or**

2. who

2.1 is 18 years or older but less than 25 years **and**

2.2 normally lives within an EZ **or**

2.3 the address for payment of their JSA is in an EZ

to participate in an EZ programme if the conditions in DMG 14628 are satisfied.

Note: An Emp O is any officer of DWP who acts on behalf of the Secretary of State and people designated as such by the Secretary of State (see Annex 4)². The Emp O must notify the claimant in writing that they are required to participate in the EZ programme³.

1 EZ Regs 2003, reg 2; 2 reg 1(2); 3 reg 2(3)

14627 The conditions are¹ that in the period immediately before the date on which the direction to attend the EZ programme was made the claimant

1. was entitled to JSA for a continuous period of at least 18 months **or**

2. was entitled to JSA for at least 18 months out of the last 21 months **or**

3. in the last twelve months had

3.1 participated in either

3.1.a an EZ programme **or**

3.1.b a pilot EZ programme **and**

3.1.c did not complete the programme

1 reg 2(1); EZ Amdt Regs, reg 2(c)

14628 The conditions¹ are that the claimant has

1. participated in NDYP or an EZ programme and in the period immediately before the date on which the direction to attend the EZ programme was made the claimant was entitled to JSA for

1.1 a continuous period of at least six months **or**

1.2 at least six months and any breaks in that claim do not exceed 28 days in total **or**

2. in the last twelve months had participated in an EZ programme or a pilot EZ programme and left the programme before finishing it.

NB: From 24.4.06 NDYP includes the Gateway to Work provision.

1 EZ Regs 2003, reg 2(2)

14629 If there is more than one EZ contractor providing an EZ programme in the claimant's zone, the claimant may choose which contractor they want¹ unless they

1. have previously begun but not completed an EZ programme provided by a particular contractor² **or**

2. fail to choose a contractor when asked to do so by an Emp O³.

1 reg 2(5); 2 reg 2(6); 3 reg 2(7)

14630 If DMG 14629 **1.** applies, an Emp O may direct the claimant to take part in the programme with the same contractor as before.

14631 If DMG 14629 **2.** applies, an Emp O may direct him to take part in the programme with a particular contractor.

14632 "The claimant's zone" means¹ the EZ in which

1. the claimant normally lives **or**

2. the claimant's address for payment of JSA is located.

1 reg 2(8)

14633 "Employment zone contractor" means¹ a person who is providing an EZ programme on behalf of the Secretary of State.

1 reg 2(8)

14634 - 14638

Others who can enter an Employment Zone programme

14639 If a JSA claimant requests a direction to an EZ programme an Emp O can direct that claimant to participate if¹

1. the claimant's personal circumstances put him at a significant disadvantage in getting employment **and**

2. he normally lives within an EZ or his address for payment of JSA is within an EZ **and**

3. if they are 18 years or older but less than 25 years and they have participated in an NDYP programme.

1 reg 3

14640 Where a JSA claimant has previously participated in¹

1. an EZ programme **or**
2. an EZ programme under the pilots

in the previous twelve months but did not complete it and is required to participate in a new EZ programme, the time spent completing the previous EZ programme will count towards their participation in the new EZ programme for the purposes of determining

3. what stage of the EZ programme they are in² **and**
4. whether they have to satisfy the labour market conditions of entitlement³.

1 EZ Regs 2003, reg 2(4); 2 reg 4; 3 reg 5

14641 - 14654

The first stage

14655 The first stage lasts for a maximum of 28 days excluding public holidays¹. During this time participants have their employability needs assessed and, with the help of a personal adviser, agree an action plan to help them back to work. A claimant begins the first stage on the day he attends the initial interview². The first stage ends on the day specified by an Emp O in a notice in writing to the claimant, subject to it not lasting for more than four weeks³.

Note: The initial interview is an interview with an Emp O who is an EZ programme adviser following a direction given as in DMG 14626 or 14639⁴.

1 reg 4(1)(a); 2 reg 4(2); 3 reg 4(3); 4 reg 4(2)

14656 "Public holiday" means¹ Christmas Day, Good Friday or a day which is a bank holiday under certain legislation² in any part of Great Britain.

1 reg 4(6); 2 Banking and Financial Dealings Act 1971

The second stage

14657 The second stage lasts for a maximum of 26 weeks¹. During this time participants undertake the activities identified in their action plan. A claimant begins the second stage on the day specified by an Emp O in a notice in writing to the claimant². The second stage ends on the day specified by an Emp O in a notice in writing to the claimant, subject to it not lasting for more than 26 weeks³.

1 EZ Regs, reg 4(1)(b); 2 reg 4(4); 3 reg 4(5)

14658 - 14999

Annex 1

Further and Higher Education Act 1992, Schedule 2 - 14321

1. A course that prepares students to obtain a vocational qualification which is, or falls within a class, for the time being approved by the Secretary of State.
2. A course that prepares students to qualify for the General Certificate of Secondary Education **or** the General Certificate of Education at Advanced Level or Advanced Supplementary Level (including Special Papers).
3. A course for the time being approved by the Secretary of State that prepares students for entry to a course of higher education.
4. A course that prepares students for entry to another course falling within **1.** to **3.** above.
5. A course for basic literacy in English.
6. A course to improve the knowledge of English of those for whom English is not the language spoken at home.
7. A course to teach the basic principles of mathematics.
8. In relation to Wales, a course for proficiency or literacy in Welsh.
9. A course to teach independent living and communication skills to persons having learning difficulties that prepares them for entry to another course falling within **4.** to **8.** above.

Note: Job Centres hold a list of vocational qualifications which gives the courses that come within Schedule 2.

Annex 2

Further and Higher Education (Scotland) Act 1992, Schedule 2 - 14321

1. A programme of learning that prepares students for a vocational qualification.
2. A programme of learning that prepares students for a Scottish Examination Board qualification **or** a General Certificate of Education qualification of England and Wales or Northern Ireland.
3. A programme of learning that prepares students for access to higher education.
4. A programme of learning designed to help those whose first language is not English to achieve any level of competence in the English language.
5. A programme of learning that provides instruction to those who have a learning difficulty who are participating in a programme that falls in **1. to 4.**
and
6. A programme of learning designed mainly to prepare people to participate in any programme of learning that falls in **1. to 5.**

Note: Job Centres hold a list of vocational qualifications which gives the courses that come within Schedule 2.

Annex 3

Designation of Employment Zones for the purpose of the Employment Zones Regulations 2003

In the exercise of the powers conferred upon him by section 60 of the Welfare Reform and Pensions Act 1999, the Secretary of State hereby designates the areas listed below as employment zones for the purpose of the Employment Zones Regulations 2003 (S.I. 2003/2438) with effect from 23 April 2007.

1. The Birmingham Employment Zone.

The area designated as the Birmingham Employment Zone consists of:

The following wards within the City of Birmingham:

Acoccks Green, Aston, Bordesley Green, Edgbaston, Handsworth Wood, Harborne, Hodge Hill, Kingstanding, Ladywood, Lozells and East Handsworth, Nechells, Oscott, Perry Barr, Quinton, Shard End, Sheldon, Soho, South Yardley, Stechford and Yardley North, Stockland Green, Tyburn, Washwood Heath, the ward of Bartley Green except the following postcodes:

B29 4HD	B29 4HE	B29 5RN	B29 5RP	B29 5RR	B29 5RS
B29 5RT	B29 5RU	B29 5TY	B29 5UA	B29 5UF	B29 5UG
B29 5UT	B29 5UW	B29 5UY	B29 5XA	B29 5XB	B29 5XD
B29 5XE	B29 5XG	B29 5XP	B29 5XR	B29 5XS	B29 5XY
B29 5XZ	B29 5ZE	B31 1DE	B31 1DF	B31 1DR	B31 1DS
B31 1DT	B31 1DW	B31 1DX	B31 1DZ	B31 1EF	B31 1EP
B31 1ER	B31 1ES	B31 1ET	B31 1EU	B31 1EW	B31 1EX
B31 1EY	B31 1EZ	B31 1HA	B31 1HB	B31 1HD	B31 1HF
B31 1HG	B31 1HY	B31 1PN	B31 1TT	B32 3DU	B32 3DX
B32 3DY	B32 3DZ	B32 3EA	B32 3XL		

the ward of Erdington except the following postcodes:

B23 5JX	B23 5JY	B23 5LB	B23 5LD	B23 5QQ	B23 5QY
B24 0HD	B72 1AG	B72 1AJ	B73 5JR		

the ward of Sparkbrook except the following postcodes:

B12 9LX	B12 9LY	B12 9LZ	B12 9NA	B12 9NB	B12 9ND
B12 9NE	B12 9NG	B12 9NH	B12 9NJ	B12 9NL	B12 9NN
B12 9NQ	B12 9NR	B12 9NS	B12 9NT	B12 9NU	B12 9NW
B12 9NX	B12 9PE	B12 9PG	B12 9PH	B12 9PL	B12 9PN
B12 9PQ	B12 9PR	B12 9PS	B12 9PT	B12 9PU	B12 9PW
B12 9PX	B12 9PY	B12 9QA	B12 9QB	B12 9QD	B12 9QE
B12 9QF	B12 9RN	B12 9RP	B12 9RR	B12 9RS	B12 9RW
B12 9SE	B12 9ZA				

the ward of Springfield except the following postcodes:

B13 0AG	B13 0AH	B13 0AJ	B13 0AL	B13 0AN	B13 0AP
B13 0AQ	B13 0AR	B13 0AS	B13 0AT	B13 0AU	B13 0AW
B13 0AX	B13 0AY	B13 0BA	B13 0BB	B13 0BG	B13 0BH
B13 0BJ	B13 0BL	B13 0BN	B13 0TA	B13 0TB	B13 0TF
B13 0TG	B13 0TH	B13 0TJ	B13 0TQ	B13 0TT	B13 0TU
B13 0TX	B13 0TY	B13 0UA	B13 0UB	B13 9JN	B13 9JP
B13 9JQ	B13 9JR	B13 9JS	B13 9JW	B13 9JX	B13 9LE
B13 9LF	B13 9LG	B13 9LQ	B13 9LS	B13 9LT	B13 9LU
B13 9LX	B13 9LY	B13 9LZ	B13 9NA	B13 9ND	B13 9NG
B13 9NH	B13 9NJ	B13 9NL	B13 9NN	B13 9NR	B13 9NS
B13 9NT	B13 9NU	B13 9NX	B13 9PX	B13 9PY	B13 9PZ
B13 9QD	B13 9QE	B13 9QF	B13 9QG	B13 9QH	B13 9QJ
B13 9QL	B13 9QN	B13 9QP	B13 9QR	B13 9QW	B13 9XA
B13 9XB	B13 9XD	B13 9XE	B13 9XG	B13 9XH	B13 9XJ
B13 9XL	B13 9YD	B13 9YE	B13 9YF	B13 9YP	B13 9YQ
B13 9YR	B13 9YS				

the following postcodes within the ward of Moseley and Kings Heath:

B12 8QD	B12 9AA	B13 8AT	B13 8AY	B13 8AZ	B13 8BA
B13 8BB	B13 8BD	B13 8BE	B13 8BH	B13 8BJ	B13 8BL
B13 8BN	B13 8BQ	B13 8BS	B13 8BT	B13 8BU	B13 8BW
B13 8BX	B13 8DG	B13 8DQ	B13 8ED	B13 8EE	B13 8EF
B13 8EG	B13 8EH	B13 8EJ	B13 8EL	B13 8EN	B13 8HR
B13 8HS	B13 8HT	B13 8HW	B13 9AA	B13 9AB	B13 9AD
B13 9AE	B13 9AF	B13 9AG	B13 9AH	B13 9AJ	B13 9AN
B13 9AP	B13 9AR	B13 9AS	B13 9AU	B13 9AW	B13 9AX
B13 9AY	B13 9BA	B13 9BE	B13 9BN	B13 9BP	B13 9BS
B13 9BT	B13 9BU	B13 9BX	B13 9BY	B13 9BZ	B13 9DA
B13 9DB	B13 9DE	B13 9DF	B13 9DH	B13 9DL	B13 9DN
B13 9DP	B13 9DQ	B13 9DS	B13 9DT	B13 9DU	B13 9DX
B13 9DY	B13 9DZ	B13 9EA	B13 9EB	B13 9ED	B13 9EX
B13 9FE	B13 9FF	B13 9HB	B13 9HD	B13 9HE	B13 9HF
B13 9HH	B13 9HJ	B13 9HL	B13 9HN	B13 9HP	B13 9HR
B13 9HS	B13 9HT	B13 9HU	B13 9JF	B13 9JG	B13 9JT
B13 9XN	B13 9XP	B13 9XR	B13 9XS	B13 9XT	B13 9XU
B13 9XW	B13 9XX	B13 9XY	B13 9XZ	B13 9YA	B13 9YB
B13 9YJ	B13 9YL	B13 9YN	B13 9YW		

the following postcodes within the ward of Selly Oak:

B29 5SL	B29 6SS	B29 6ST	B29 6SU	B29 6SX	B29 6SY
B29 6TA	B29 6TB	B29 6TD	B29 6TE	B29 6TF	B29 6TG
B29 6TR	B29 6TS				

2. The Brent and Haringey Employment Zone

The area designated as the Brent and Haringey Employment Zone consists of:

- a) All wards within the London Borough of Brent.
- b) All wards within the London Borough of Haringey.

c) The following areas within the London Borough of Camden:

those areas within the wards of Fortune Green, West Hampstead or Kilburn with a postcode beginning NW6.

d) The following areas within the London Borough of Westminster:

those areas within the wards of Queen's Park, Harrow Road, Maida Vale, Little Venice, Abbey Road or Westbourne with a postcode beginning NW6, W9 2 or W9 3.

3. The Brighton and Hove Employment Zone

The area designated as the Brighton and Hove Employment Zone consists of:

All wards within the City of Brighton and Hove.

4. The Doncaster Employment Zone

The area designated as the Doncaster Employment Zone consists of:

a) All wards within the Borough of Doncaster.

b) The following areas in the Borough of Rotherham:

those areas within Swinton ward with a postcode beginning S64 5U,

those areas within the wards of Wath or Hooper with a postcode beginning S63 6 or S63 7,

those areas within the wards of Silverwood, Swinton or Wath with a postcode beginning S64 8, or one of the following postcodes:

S64 5SG	S64 5SH	S64 5SJ	S64 5SL	S64 5SN	S64 5SQ
S64 5SW	S64 5SY	S64 5TA	S64 5TD	S64 5TE	S64 5TF
S64 5TG	S64 5TH	S64 5TN	S64 5TQ	S64 5TW	S64 5TX
S64 5TY	S64 5TZ				

5. The Heads of the Valleys, Caerphilly and Torfaen Employment Zone

The area designated as the Heads of the Valleys, Caerphilly and Torfaen Employment Zone consists of:

a) All electoral divisions within Blaenau Gwent County Borough.

b) All electoral divisions within Caerphilly County Borough.

c) All electoral divisions within Merthyr Tydfil County Borough.

d) All electoral divisions within Torfaen County Borough.

6. The Glasgow Employment Zone

The area designated as the Glasgow Employment Zone consists of:

All wards within Glasgow City.

7. The Liverpool and Sefton Employment Zone

The area designated as the Liverpool and Sefton Employment Zone consists of:

- a) All wards within the City of Liverpool.
- b) The following wards within the Borough of Sefton:

Church, Derby, Ford, Linacre, Litherland, Netherton and Orrell, St Oswald,
the ward of Victoria except the following postcodes:

L23 2RA	L23 2RB	L23 2RD	L23 2RE	L23 2RJ	L23 2RL
L23 2RN	L23 2RP	L23 2RR	L23 2RS	L23 2RT	L23 2RU
L23 2RY	L23 2RZ	L23 2UF	L23 2UL	L23 2UP	L23 2UQ
L23 2UR	L23 2US	L23 2UT	L23 2UU	L23 2UX	L23 2UY
L23 2UZ	L23 2WZ	L23 2XA	L23 2XH	L23 2XN	L23 9TD
L23 9TH	L23 9TJ				

the following postcodes within the ward of Manor:

L23 0SG	L23 0SN	L23 0SQ	L23 0TF	L23 0TH	L23 9SR
L30 0RG	L30 0RL				

8. The Middlesbrough, Redcar and Cleveland Employment Zone

The area designated as the Middlesbrough, Redcar and Cleveland Employment Zone consists of:

- a) All wards within the Borough of Middlesbrough.
- b) All wards within the Borough of Redcar and Cleveland.

9. The North West Wales Employment Zone

The area designated as the North West Wales Employment Zone consists of:

- a) All electoral divisions within Isle of Anglesey County.
- b) All electoral divisions within Conwy County Borough.
- c) All electoral divisions within Gwynedd County.
- d) All electoral divisions within Denbighshire County.
- e) The following electoral division within Wrexham County Borough:
Llangollen Rural.

10. The Nottingham Employment Zone

The area designated as the Nottingham Employment Zone consists of:

The areas identified by the following postcodes within the City of Nottingham:

NG1, NG2, NG3, NG5, NG6, NG7, NG11.

11. The Plymouth Employment Zone

The area designated as the Plymouth Employment Zone consists of:

a) All wards within the City of Plymouth.

b) The following wards within the District of South Hams:

Ivybridge Woodlands, Ivybridge Central, Ivybridge Filham.

c) The following wards within the Borough of West Devon:

Bere Ferrers, Bridestowe, Buckland Monachorum, Burrator, Mary Tavy, Tavistock North, Tavistock South, Tavistock South West, Milton Ford, Tamarside, Thrushel, Walkham.

12. The Southwark Employment Zone

The area designated as the Southwark Employment Zone consists of:

a) All wards within the London Borough of Southwark.

b) The following area within the London Borough of Lewisham:

the area within the ward of Evelyn with the postcode SE8 5EQ.

13. The Tower Hamlets and Newham Employment Zone

The area designated as the Tower Hamlets and Newham Employment Zone consists of:

a) All wards within the London Borough of Tower Hamlets.

b) The following wards within the London Borough of Newham:

Royal Docks, Stratford and New Town, Forest Gate North, Forest Gate South, Green Street West, West Ham, Plaistow North, Plaistow South, Canning Town North, Canning Town South, Custom House.

Annex 4

People designated as Employment Officers for the Employment Zone programme

Designation of employment officers and employment zone programme advisers who are persons designated to use and supply Social Security information in connection with employment zones for the purposes of the Employment Zones Regulations 2003

By this Order, made for the purposes of sections 60 and 72 of the Welfare Reform and Pensions Act 1999 (c. 30) and sections 8(3) and 19(10)(a) of the Jobseekers Act 1995 (c. 18) and under the powers conferred upon the Secretary of State by those sections of those Acts of Parliament and all other powers enabling him in that behalf:

1. With effect from 23 April 2007, I hereby designate as an employment officer and employment zone programme adviser who is designated to use and supply social security information, any employee of

- a) Pertemps Employment Alliance Limited;
- b) Reed in Partnership PLC;
- c) Working Links (Employment) Limited;
- d) WorkDirections UK Limited;
- e) The Wise Group;
- f) TNG Workzone Limited and
- g) Pelcombe Training Limited

for the limited purpose of performing those functions listed in paragraph 2 in the course of the operation of an employment zone programme operated under the Employment Zones Regulations 2003 (S.I. 2003/2438).

2. The functions of a person designated as an employment officer who is an employment zone programme adviser by this Order are those of:

- a) specifying the time and place at which a claimant may be required to attend to participate in the employment zone programme;
- b) requiring a claimant to provide information and evidence;
- c) notifying a claimant of a situation in employment;
- d) giving a jobseeker's direction; and
- e) giving notices under regulation 4 of the Employment Zones Regulations 2003.

Chapter 15 - Earnings for non-income-related benefits

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Chapter 15 - Earnings for non-income-related benefits

Introduction

Scope of guidance

15000 The guidance in this chapter concerns the calculation of the weekly amount of earnings of employed earners **and** self-employed earners for the purposes of

1. benefits under certain legislation¹
2. the exempt work provision for IfW²
3. CA
4. ADI and CDI.

Note: This chapter does not provide guidance for JSA, IS, ESA or SPC. For guidance on earnings for those benefits please refer to the relevant chapters of the DMG.

1 SS CB Act 92 Parts II - IV; SS Ben (C of E) Regs, reg 3(1); 2 R(IB) 1/06

15001 The guidance applies to cases where payment of or entitlement to benefit in any benefit week beginning on or after 25.11.96 is affected by a person's earnings¹. Any questions about entitlement to benefit before 25.11.96 should be sent to DMA Leeds.

1 SS Ben (C of E) Regs, reg 18(2)

15002 For guidance relating to employed earners, see DMG 15020. See DMG 15470 for guidance on S/E earners and for guidance on issues common to both see DMG15755.

General application

15003 The amount of the earnings to be taken into account¹ is the whole of the earnings after making the deductions² and allowing the disregards³ provided for.

1 reg 3(2); 2 reg 10; 3 reg 13

Definition of employed earner

15004 The term employed earner means¹ a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including an elective office) where payments are taxable under Schedule E (PAYE).

1 reg 2(1)

15005 The term employed earner includes¹

1. anyone in employment outside GB that would be classed as employed earners employment if it were in GB **and**
2. anyone in employment where liability for contributions is disregarded².

1 SS Ben (C of E) Regs, reg 2(1); 2 SS CB Act 92 s 2(2)(a)

Definition of self-employed earner

15006 A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earners employment¹.

1 SS Ben (C of E) Regs, reg 2(1)

15007 The term S/E earner includes¹

1. anyone in employment outside GB that would be classed as self-employed earners employment if it were in GB **and**
2. anyone in employment where liability for contributions is disregarded².

1 reg 2(1); 2 SS CB Act 92, s 2(2)(a)

15008 - 15009

Gainful employment

15010 Both employed earners and self-employed earners must be in gainful employment.

15011 An employment should be regarded as gainful if a person is

1. engaged in it with a desire, hope and intention of obtaining remuneration or profit in return for services or efforts¹ **or**
2. is in fact paid for the services performed, whether or not there was any desire, hope or intention of obtaining remuneration².

1 CP 7/49; 2 R(P) 1/65

15012 It is immaterial that

1. a person may have arranged (for example, by deed or covenant) for the remuneration to be paid direct to some other person or body (for example, a charity). The remuneration so assigned must be regarded as earnings and disposal of those earnings does not mean that the employment ceases to be gainful
2. there may be no contract of service or for services¹
3. the employment in which a person is engaged is disregarded in relation to liability for contributions²

4. the remuneration is derived from an employment abroad³.

1 CWU 42/50; 2 SS Ben (C of E) Regs, reg 2(1); 3 reg 2(1); R(P) 1/70

Rounding of fractions

- 15013 Any calculation which results in a fraction of a penny should be treated as a whole penny if it would be to the claimant's advantage, otherwise it should be disregarded¹. Where a calculation involves more than one stage, the rounding process is only applied to the final calculation.

1 SS Ben (C of E) Regs, reg 5

Notional Earnings

Earnings not known

- 15014 Where it is not possible to find out what the claimant's earnings are at the time the DM is making the decision, the claimant is treated as having such earnings as is reasonable in the circumstances taking into account the number of hours worked and the earnings paid for comparable employment in the area¹.

1 SS Ben (C of E) Regs reg 4(1)

No earnings or earnings less than for comparable employment

- 15015 On 11.11.02 a Commissioner decided¹ that the regulation² which permits a DM to take into account notional earnings where a person is working for nothing or for less than that paid for comparable employment in the area was **ultra vires**.

1 R(IB) 7/03; 2 SS Ben (C of E) Regs, reg 4(2)

- 15016 This means that, in these circumstances, a claimant cannot be treated as possessing earnings which that person does not in fact possess. As the notional earnings provisions are not available DMs should consider the National Minimum Wage Provisions. See DMG 15017 - 15019.

National minimum wage

- 15017 The National Minimum Wage Act 98 and the National Minimum Wage Regulations 99 came into force on 1.4.99. The NMW affects most workers over the age of 18 who must be paid at or above the minimum rates from that date. Even if they want to, employees cannot agree with their employers to accept a wage lower than the NMW.
- 15018 HMRC is responsible for enforcing the NMW legislation (on behalf of the Department for Business, Innovation and Skills). There are NMW enforcement teams located at HMRC offices around the country. There is also a NMW Helpline on 0845 6000 678 that gives advice and guidance, including information on how to make a complaint.
- 15019 Where a DM has evidence that an employer is breaching NMW legislation, consideration should be given to reporting the matter to the HMRC.

Employed earners

Definitions

Meaning of employed earner

- 15020 The definition of an employed earner is in DMG 15004 - 15005.
- 15021 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.
- 15022 The phrase "in an office" includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses.
- 15023

Meaning of earnings

- 15024 Earnings means any pay or profit derived from employment and includes¹
1. bonus or commission (see DMG 15053)
 2. PILOR (see DMG 15131)
 3. PILON and certain compensation payments made by the employer because the employment has ended (see DMG 15238 et seq)
 4. holiday pay (see DMG 15090), but not where it is payable more than four weeks after the employment ended, or was interrupted
 5. retainers (see DMG 15132)
 6. payment made by the employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment, including any payment made by the employer for
 - 6.1 the employee's travelling expenses between home and work (but see DMG 15096 et seq for councillors) **or**
 - 6.2 any expenses that the employee may have for the care of a family member while the employee is away from home (see DMG 15118)
 7. Employment Protection awards² (see DMG 15230 et seq)
 8. awards of compensation made under trade union legislation³ (see DMG 15260 et seq)
 9. payments made for periods when an employee is on maternity, paternity or adoption leave or is away from work due to illness⁴ (see DMG 15267 et seq)
 10. payments of occupational pension⁵ (see DMG 15279) and personal pension.

This list is not exhaustive. See DMG 15050 et seq for more examples of what are and what are not earnings.

1 SS Ben (C of E) Regs, reg 2(1); reg 9(1); 2 ER Act 96, s 28, 35, 64, 68, 112, 113, 114, 115, 116, 117, 128, 129, 132;

3 Trade Union and Labour Relations (Consolidation) Act 92, s 156, 157, 189 & 192;

4 SS Ben (C of E) Regs, reg 9(1)(j); 5 SS CB Act 92, s 89

15025 Earnings does not include¹

1. payments in kind
2. periodic payments made because employment has ended through redundancy²
3. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment³ (see DMG 15118)
4. payments in respect of expenses arising out of a claimant's participation in a service user group⁴.

1 SS Ben (C of E) Regs, reg 9(1); 2 reg 9(1)(b); 3 reg 9(3); 4 reg 9(3)

Meaning of derived from

15026 The words "derived from" mean having their origins in¹. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 15025. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG 15400 et seq).

1 R(SB) 21/86

Meaning of service user group

15027 A service user group¹ is a group of individuals that is consulted, in consequence of a function under certain legislation, by **or on behalf** of certain bodies or authorities for the purposes of monitoring and advising on their

1. policies which affect or may affect persons in the group, **or**
2. services which are used (or may potentially be used) by those persons.

1 SS Ben (C of E) Regs, reg 9(4)

15028 The bodies or authorities and the associated legislation are

1. in Scotland, a Health Board, Special Health Board or Agency² **or**
2. a landlord authority³ **or**
3. a public authority⁴ **or**
4. a best value authority⁵ **or**
5. in Scotland, an LA landlord or registered social landlord⁶ **or**
6. a relevant English or Welsh health body⁷ **or**

7. a Local Health Board in Wales⁸ **or**
8. the Commission or the Office of the Health Professions Adjudicator⁹ **or**
9. the regulator or registered provider¹⁰ **or**
10. an LA or public authority in GB as a result of a function provided for under an enactment.

Note 1: A public authority includes any person whose functions include functions of a public nature¹¹.

Note 2: An enactment includes legislation made in or under an Act of the Scottish Parliament¹².

*1 SS Ben (C of E) Regs, reg 9(4); 2 NHS (Scot) Act 78, s 2B; 3 Housing Act 1985, s 105;
 4 Disability Discrimination Act 1995, s 49A; 5 Local Government Act 1999, s 3;
 6 Housing (Scotland) Act 2001, s 53; 7 National Health Service Act 2006, s 242;
 8 National Health Service (Wales) Act 2006, s 183; 9 Health and Social Care Act 2008, s 4, 5 or 108;
 10 Housing and Regeneration Act 2008, s 98, 193 or 196; 11 SS Ben (C of E) Regs, reg 9(4); 12 reg 9(4)*

Example 1

The General Social Care Council (GSCC) is required under legislation to promote high standards in the training of social care workers. It does this through inspection and regulation. Frank has had the help of a social worker in the past. Frank and other individuals have been invited to attend a training programme for social workers as visitors to monitor and advise on the training policies of the GSCC from the perspective of people who have used social work services. The DM determines that Frank is a service user.

Example 2

Claire is an unpaid carer and looks after her elderly father. Occasionally the LA ask Claire to take part in consultations to discuss the role of unpaid carers in the community and the services provided by the LA. The LA as a best value authority has a general duty under legislation to do this. The DM determines that Claire is a service user.

15029 - 15039

Meaning of gross earnings

15040 Gross earnings means the amount of earnings

1. **after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment¹ (see DMG 15380) **but**
2. **before** any authorised deductions are made by the employer. These may include

- 2.1 income tax
- 2.2 pensions contributions
- 2.3 SS contributions (sometimes called NI contributions)
- 2.4 TU subscription
- 2.5 payments under a court order
- 2.6 recovery of any debt
- 2.7 recovery of wages overpaid².

1 R(FC) 1/90; R(IS) 16/93; 2 R(TC) 2/03

Meaning of pay period

15041 A pay period is the period for which the employee is, or expects to be, normally paid¹. This can be a week, a fortnight, 4 weeks, a month, or any other period.

1 SS Ben (C of E) Regs, reg 2(1)

15042 - 15049

Treatment of particular kinds of payments

Introduction

- 15050 DMG 15024¹ gives some examples of what earnings can include. But, there are other payments that count as earnings.

1 SS Ben (C of E) Regs, reg 9(1)

Accommodation provided by employer

- 15051 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored.

Advance of earnings or loans

- 15052 Earnings should be taken into account from the date they are treated as paid¹. This is based on when they are due to be paid (see DMG 15401 et seq). If they are paid before the due date, disregard them until the due date arrives². Then take the amount properly due into account as normal from that date. Any other income made by way of a loan made by the employer should be treated in the same way.

1 reg 7; 2 Sch 1, para 11

Example

Cameron earns £50 a week which is due to be paid every 4th Friday. He was last paid £200 on 8 November. On 18 November, he gets an advance of £100 from his employer. The £100 is disregarded. The full £200 due to be paid on 6 December is then taken into account (6 December to 2 January = 4 weeks x £50).

Bonus or commission

- 15053 Payments of bonus or commission should be treated as earnings. DMG 15425 et seq contains guidance on the period over which they should be taken into account.

Broadcasting and publication fees

- 15054 Fees and royalties should be treated as earnings, no matter how often or infrequently they are paid. They can be for employment or self employment and include payments for

1. taking part in radio or television plays, commercials and documentaries
2. repeat showings of plays, commercials and documentaries
3. interviews with press reporters
4. published items.

Cash in lieu of concessionary coal

15055 Former employees of British Coal who live in property where solid fuel cannot be used, may receive a cash payment instead of an agreed amount of coal (concessionary coal). Payments made instead of it should be treated as earnings¹.

1 R(SB) 2/86

Directors of limited companies

15056 A limited company, of whatever size, is separate from its employees and shareholders¹. This means that the profits of the company do not belong to the directors. A director of a limited company is an office holder in the company, and is an employed earner.

1 R(SB) 57/83

Establishing a director's income

15057 The income of a director can include

1. payments for services as a director or any other employment with the company
2. share dividend
3. debenture interest.

15058 - 15069

Payments as a director or other employee

15070 Directors have no legal right to receive payment for their services as a director, but can still be voted payment. Or they may be entitled to payments under the company's Articles of Association. Any payments voted to a director or to which they are so entitled should be taken into account as earnings.

15071 A director may also be employed by the company for another reason, for example as a sales manager. Such a person has a contract of employment with the company and is entitled to a salary. Any salary should be taken into account as earnings.

- 15072 If a director in a small company does no other work in it, the services provided will be limited and the amount of payment expected will be small. If the director also does other work in the company, then more payment will be expected.
- 15073 Many small companies operate with only two directors, for example the claimant and partner. Such companies normally obtain contracts and pay employees a salary for work done. Any earnings paid to the claimant will usually be for work done as an employee of the company.
- 15074 Directors may leave earnings that they are entitled to in a company bank account. If the director is free to draw on the account at any time, the money is actual income. It should be taken into account as actual earnings.

15075

Share dividend

- 15076 Share dividend is income from capital and should be disregarded.

Debenture interest

- 15077 Directors may have debentures in a company. Debentures are a type of loan capital. Debenture holders are entitled to a fixed rate of interest. The interest is payable whether the company makes a profit or not. If a director has made a loan to a company, the interest payments should be disregarded. If any of the loan itself is repaid, the amount repaid should similarly be disregarded.

15078 - 15089

Holiday pay

- 15090 Any holiday pay that is payable within 4 weeks of the date employment ended, or was interrupted, should be treated as earnings¹. If it is payable more than 4 weeks after the employment has ended, or been interrupted, it should be disregarded². Guidance on the effects of holiday pay paid on termination of employment is given in DMG 15258.

1 SS Ben (C of E) Regs, reg 9(1)(d)

Income tax refunds

- 15091 Earnings of employed earners are taxed under the PAYE scheme by direct deduction from wages or salary. Any refunds of income tax should be disregarded¹.

1 Sch 1, para 10

Justices of the Peace

15092 Most Justices of the Peace are members of the public who volunteer to be magistrates. In England and Wales a Justice of the Peace who is not a District Judge is a Lay Justice¹. Those people who were employed as magistrates and referred to as stipendiary magistrates are now known as District Judges (Magistrates Courts)². In connection with their duties Lay Justices may receive

1. travel allowances³
2. subsistence⁴
3. financial loss allowances⁵.

1 Courts Act 2003, s 9; 2 Access to Justice Act 1999; 3 Courts Act 2003, s 15(1)(a); 4 s 15(1)(b); 5 s 15(1)(c)

15093 In Scotland, Justices of the Peace sit in District Courts, where they have not been replaced by Justice of the Peace Courts, and in Justice of the Peace Courts. Justices of the Peace in Scotland may receive¹

1. travel allowances
2. subsistence allowances
3. financial loss allowances.

1 District Courts (Scotland) Act 1975, s 17(1); Criminal Proceedings etc (Reform) (Scotland) Act 2007, s 68(4) & (5)

Travel allowances and subsistence

15094 Travel allowances and payments of subsistence incurred wholly, exclusively and necessarily in the performance of the Lay Justice's or Justice of the Peace's duties should be disregarded in full¹.

1 SS Ben (C of E) Regs, reg 9(1)(f) & 9(3)

Financial loss allowances

15095 Financial loss allowances are paid to compensate Lay Justices and Justices of the Peace for specific losses and other expenses that they incur. Allowances are paid for

1. loss of earnings - these should be treated as PILOR¹ (see DMG 15131)
2. loss of SS benefits - these should be disregarded
3. other expenses that are incurred wholly, exclusively and necessarily in the performance of the duties of the Lay Justice or Justice of the Peace - these should be disregarded in full.

1 reg 9(1)(b)

Local Authority councillors

15096 LA councillors are elected office holders and are employed earners¹. The system for payment of allowances and reimbursement of expenses in Scotland is different from that in England and Wales.

1 R(IS) 6/92

England and Wales

15097 An LA must draw up a scheme¹ for payment of councillors' allowances. This will give information on the official duties of its councillors and the allowances paid for those duties. The allowances paid for official duties may include a

1. basic allowance
2. special responsibilities allowance
3. dependants' carers' allowance
4. travelling and subsistence allowance
5. co-optees' allowance.

*1 Local Authorities (Member's Allowances) (England) Regulations 2003, reg 4(1);
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 5*

15098 Basic allowance is payable to all councillors in England and Wales. The amount of the basic allowance in respect of each year will be the same for each councillor in the LA but it may differ from LA to LA¹.

*1 Local Authorities (Member's Allowances) (England) Regulations 2003, reg 4;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 7*

15099 - 15107

15108 Each LA in England and Wales may pay a special responsibility allowance for each year to those councillors who have responsibilities which fall within certain categories¹. The authority has to identify the special responsibilities for which the allowance is to be paid and the amounts of allowance to be paid for them. Special responsibility allowance should be treated as earnings.

1 The Local Authorities (Members' Allowances)(England) Regulations, reg 5; Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 8

15109 LAs may pay a dependants' carers' allowance to those councillors who necessarily incur expenditure for the care of their children or dependants whilst undertaking various duties as a councillor¹. See DMG 15800 et seq. on care charges.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 7;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 8*

15110 LAs may pay an allowance in respect of travelling and subsistence undertaken in connection with or relating to their duties as councillors which are specified and which fall into certain categories¹.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 8;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 15*

15111 LAs may pay an allowance for each year in respect of attendance at conferences and meetings¹.

*1 The Local Authorities (Members' Allowances) (England) Regulations, reg 9;
Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 19*

Scotland

15112 In Scotland there are four grades of LA councillors¹. The level of remuneration paid to a councillor depends on their grade and the banding of the LA. In addition councillors are entitled to mileage allowance for travel². There is no entitlement to any other allowance but councillors are entitled to reimbursement of certain expenses subject to a maximum rate³. The Civic Head of the Council may be entitled to reimbursement of additional receipted expenditure⁴. Certain elements of the councillors' remuneration and expenses are taxable and subject to NI contributions as an employed earner.

*1 Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007, reg 4;
2 Local Government (Allowances and Expenses) (Scotland) Regulations reg 5; 3 reg 4; 4 reg 3*

Expenses - England, Wales and Scotland

15113 Repayment for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties, should be fully disregarded. For example, travel and subsistence allowances.

15114 If the LA cannot say how much of any payment is for expenses, ask the councillor for details. If the councillor has an income tax assessment, take this into account. Evidence from the councillor should normally be accepted.

15115 Councillors have to do a lot of their work at home. This means that they may have additional expenses which are wholly, exclusively and necessarily incurred in the performance of their duties. Any such expenses which are not repaid to them by the LA should be deducted when calculating net earnings (see DMG 15387).

15116 When councillors travel from home to the council office, or any other work place, it is not just travelling to work. It is a part of the work itself. Disregard any travelling expenses incurred in that work. This is different to the normal treatment of travelling expenses (see DMG 15388).

15117

Reimbursement of expenses

15118 Payments made by an employer for expenses which are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are earnings¹. These can include

1. payments for travelling expenses between home and work
2. school fees for a claimant's child.

1 SS Ben (C of E) Regs, reg 9(1)(f)

15119 Payments made by an employer for expenses which **are** wholly, exclusively and necessarily incurred in the performance of the duties of the employment are not earnings¹ and are fully disregarded. These can include

1. payments made for
 - 1.1 travelling expenses
 - 1.2 overnight accommodation
so that the employee can attend a meeting
2. a mileage allowance to run a car for business purposes.

Note: See also DMG 15387 to 15389 for cases where an employee incurs allowable expenses but no reimbursement is made by the employer.

1 reg 9(3)

15120 An employer may pay for an expense from which the employee gets some private benefit. If so, divide the payment into private and business use. The part of the payment for private use is earnings¹. The rest, which is for business use, is wholly, exclusively and necessarily incurred, and is not earnings.

1 R(IS) 16/93

Example

Winston uses his own private telephone for work purposes. His employer pays the standing and rental charges for the telephone and 50% of the calls. This is because Winston also uses the phone for personal calls, and 50% of the calls made are personal. The DM decides that 50% of the amount paid by the employer for the standing and rental charges is an expense wholly, exclusively and necessarily incurred. The remaining 50% is for Winston's personal use and so is earnings. The amount paid by the employer for calls is wholly, exclusively and necessarily incurred and is not earnings.

15121 - 15129

Payments in kind

- 15130 A payment in kind, for example free accommodation, should not be treated as earnings.

Payments in lieu of remuneration

- 15131 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to lay Justices, Justices of the Peace and LA councillors for loss of earnings are examples of such payments. ET compensation awards for a past employment and awards made under sex and race discrimination law can also be PILOR. Such payments are earnings¹.

1 SS Ben (C of E) Regs, reg 9(1)(b)

Retainers

- 15132 Retainers¹ are payments made for a period when no actual work is done, for example to employees of school meals services during the school holidays. These should be treated as earnings.

1 reg 9(1)(e)

Special occupations

- 15133 Some occupations are known as special occupations. These are

1. auxiliary coastguards for coastal rescue activities
2. P/T members of a fire brigade maintained under certain legislation¹
3. P/T firefighters employed by a fire and rescue authority²
4. P/T work manning or launching a lifeboat
5. members of the territorial or reserve forces³ (see Annex 4 to this Chapter).

*1 Fire (Scotland) Act 2005; 2 Fire and Rescue Services Act 2004, s 1;
3 SS (Contributions) Regs, Sch 3, Part 1*

- 15134 People in special occupations may receive a bounty payment for their services. If a bounty is paid at intervals of at least one year, it should be disregarded. If it is paid more often than once a year, for example quarterly, it should be treated as earnings. The period for which the bounty is payable is of no relevance.

Auxiliary coastguards

- 15135 Payments received for watch keeping duties should be treated as earnings. Payments for expenses of coastal rescue activities should also be treated as earnings, unless they were wholly, exclusively and necessarily incurred in the performance of the coastguard's duties (see DMG 15387).

Part-time members of a fire brigade

- 15136 Payments for drills, services or retaining fees, should be treated as earnings. Payments for expenses should also be treated as earnings, if they were not wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Part-time manning or launching of a lifeboat

- 15137 Treat payments for drills, services or retaining fees, as earnings. Payments for expenses should also be treated as earnings, unless they are wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Territorial army or volunteer reservists

- 15138 Members of the Territorial Army or Royal Navy/Royal Air Force volunteer forces may receive a training expenses allowance, paid at a flat rate. The allowance is for meals and other incidental expenses while on duty. It is not for expenses wholly, exclusively and necessarily incurred in the performance of the duties and should be treated as earnings.
- 15139 Payments for travelling expenses between the volunteer's home and place of duty, for example the drill hall, are also not wholly, exclusively and necessarily incurred. Such payments should be treated as earnings¹.

1 SS Ben (C of E) Regs, reg 9(1)(f)

- 15140 Treat other payments, for example drill night pay, as earnings, unless they are for an item wholly, exclusively and necessarily incurred in the performance of the duties (see DMG 15387).

Tips

- 15141 Tips are expected in some jobs, for example hairdressers, waiters and bar staff. They may be made because of the services rendered by the employee in the course of the employment. The average weekly amount of any such tips received should be included in the calculation of earnings. Do not include tips made as gifts on grounds that are personal to the recipient and unconnected with the employment.

Vouchers and child care cheques

15142 An employee may receive vouchers instead of, or as well as, earnings. These can include

1. luncheon vouchers
2. child care vouchers
3. child care cheques.

15143 Any vouchers received are payments in kind and should be disregarded in full.

Payment in return for an undertaking as to conduct

15144 Some employees may receive a payment from an employer or former employer in return for an undertaking to behave or not to behave in a certain way. These payments are earnings¹, even though the undertaking may not be legally enforceable.

1 SS CB Act 92, s 4(4)(b)

Example

A former employee of a pharmaceutical company undertakes not to reveal information about products under development to any new employer. In return for the undertaking he is paid a lump sum on leaving his former employment.

Ancillary school workers

Description

15145 The description "ancillary school workers" refers to members of the non-teaching staff of educational establishments and mainly comprises

1. school meals workers
2. general domestic **and**
3. clerical staff (for example secretaries, clerks, librarians).

Special considerations apply to such workers where the question of earnings falls to be considered during the school holiday periods. These considerations apply only to those workers whose employment has not been terminated at the end of a school term.

15146 When the educational establishment at which they work is closed between terms, certain ancillary school workers may be entitled to **paid holidays** and/or **special payments**.

Paid holiday

15147 A person may be entitled to paid holidays. In this case the person is still under contract of employment during the paid holiday and has earnings.

Special payments

15148 A person may be entitled to special payment(s) sometimes described as “retaining fees”, for periods other than paid holiday. These payments may fall into two categories

1. those which are mainly an inducement to return to the employment (Example 1)¹ and
2. those where the payment is conditional upon an undertaking to resume work when required (Example 2)². When a claim for increase of benefit is made for an adult dependant for a period for which such a special payment is made, decision makers are advised to ask for copies of the terms of service (which may be included in the letter of appointment or may be separately notified to employees) in order to decide whether a particular ancillary school worker is to be regarded as gainfully employed and in receipt of earnings under a contract of employment.

1 R(U) 6/68; 2 R(U) 6/70

Example 1

A cleaner at a university residential hostel, received 2 weeks holiday pay at the beginning of the 6 weeks university vacation. On resuming work at the end of the vacation she received a payment of £40, described by the employer as a retaining fee, at the rate of £10 a week for the 4 weeks in which her services were not required following the 2 weeks of paid holiday. It was held that the claimant was not gainfully occupied in an employment since the £40 was not paid by way of wages or reward for services rendered during the 4 weeks, nor was it paid in consideration of the claimant agreeing to be available to serve if required, but as an inducement to resume the employment.

Example 2

A person employed in a school meals service was paid a retaining fee in respect of the school holiday of six weeks. The payment was made in two equal instalments; the first at the beginning and the second the day after the end of the school holidays. To be entitled to a retaining fee employees must undertake to return to work at the end of the period during which the schools are closed.

The retaining fee is earnings because it derived from a gainful occupation and is payable under the terms of the contract of employment. Further, the fee although paid in two instalments, was a payment in respect of the whole period of the six weeks holiday, and for the purpose of fixing the rate of earnings must be spread evenly over the period.

Allocation of payments

15149 If it is decided that the dependant has earnings in a holiday period comprised partly of holiday pay and partly of a special payment and the employment authority has not related the payments to specific weeks in the period, the holiday pay should ordinarily be allocated to the first week(s) of the holiday and the special payment to the remaining weeks. However, where it would be to a claimant's advantage to attribute the payments in some different way, this should be done.

Example

For the 6 week period of the summer holiday, a school meals assistant is to be paid holiday pay of £60 a week for 2 weeks plus a special payment of £80, all of which is regarded as earnings. Her husband falls sick at the beginning of the second week of the holiday period and claims Incapacity Benefit, including an increase for his wife. He remains sick for 4 weeks.

His wife should be treated as receiving £60 holiday pay for the first week of the holiday and £20 special pay for each of the 4 succeeding weeks. By attributing the payments in this way, the claimant would be entitled to an increase for his wife throughout the period of his incapacity.

If his incapacity lasted for at least 5 weeks, no increase would be payable for the fifth week because the remaining holiday pay (£60) would necessarily be attributed to it.

Allocation of payments should not be made to weeks where no benefit considerations arise, for example to weeks occurring after a claimant has again become fit for work.

15150 - 15175

Employment and training schemes

General

15176 The main schemes organised and funded by the DWP are the various ND schemes (see DMG Chapter 14).

15177 In addition there are a number of employment and training programmes provided by the Learning and Skills Council for England, Skills Development Scotland or provided by or on behalf of the Secretary of State for Children, Schools and Families, Business, Innovation and Skills, Scottish Enterprise, the Highlands and Islands Enterprise or the National Assembly for Wales.

15178 Where a person is on such a scheme, DMs will need to establish whether they are

1. employees (or self-employed) **or**
2. trainees.

Employees

15179 Employees get a wage from their employer. Treat the wage as earnings.

Trainees

15180 Trainees get a training allowance with no income tax or SS contributions deducted. These allowances should not be treated as earnings, but see Chapter 17 for guidance on overlapping benefits.

15181 - 15184

Work based learning - Skill Build and Training for Work (Wales and Scotland)

15185 Work Based Learning, (TfW in Scotland and WBL - SB in Wales) are voluntary schemes for the long term unemployed. They are provided by Scottish Enterprise, the Highlands and Islands Enterprise and Skills Development Scotland or the Welsh Ministers¹. Schemes may be known locally by a name other than Work Based Learning. Local Jobcentre Plus offices can confirm whether a particular scheme is Work Based Learning.

1 TfW (Miscellaneous Provisions) Order 1995

15186 There are two groups who are treated differently depending on whether a training allowance is payable

1. those receiving or eligible to receive a training allowance, who are treated as trainees
2. those receiving or entitled to receive remuneration from the employer providing the training facilities who are treated as employees.

15187 - 15189

Employment rehabilitation programmes

15190 Employment rehabilitation programmes are for adults who, because of illness, injury or disability, may need help to improve their employment prospects. Courses can last up to six months and are also known as Work Choice.

15191 People taking part in employment rehabilitation programmes are trainees. Treat any payments in the same way as a training allowance. Payments can include

1. an allowance for attending the course
2. travelling expenses
3. an allowance for midday meals.

15192 - 15193

Work Based Training for Young People and Modern Apprenticeships

15194 WBTfYP (Skillseeker's in Scotland) and Modern Apprenticeships provide training for young people who

1. have reached the minimum school leaving age
2. are not attending school or college F/T as a pupil or student
3. are not in higher education
4. are not in custody as prisoners or on remand
5. are not overseas nationals subject to
 - 5.1 employment restrictions **or**
 - 5.2 a time limit on their stay in GB (other than a refugee or asylum seeker)
6. are not benefiting from any other Government scheme (for example WBLA).

15195 Young people on WBTfYP (Skillseeker's in Scotland) and Modern Apprenticeships can be employees or trainees with wages or training allowances. Employee status is more common on Modern Apprenticeships. Courses may vary in length and typically may be around two years on WBTfYP or three on Modern Apprenticeships. See DMG Chapter 34 for further details.

15196 - 15197

Employment retention and advancement scheme

15198 The employment retention and advancement (ERA) scheme¹ involves a study of different methods to help people stay in work and improve their career prospects including financial incentives known as ERA payments. People eligible for ND25+, NDLP and people receiving WTC can volunteer to participate in the scheme.

1 Employment & Training Act 73, s 2

15199 ERA payments should be treated in the same way as a training allowance

15200 - 15201

Employment credit schemes

15202 Employment credit schemes can be given many different names such as

1. Claim and Save
2. Work Credit
3. Enterprise Projects
4. Enterprise Rehearsal Schemes
5. Employment Credits.

15203 They are run by various bodies, including LAs. Their aim is to provide training and work experience for the long-term unemployed.

15204 People taking part in an employment credit scheme must

1. have a contract of service consistent with a liability to pay the Class 1 SS contribution **and**
2. remain available for employment **and**
3. be employed on average for less than 16 hours a week **and**
4. be part of an arrangement under which credits are earned and converted into earnings at the end of the contract.

15205 People on these schemes will usually receive part of their earnings each week. The balance of earnings is credited throughout the rest of the contract. Any amount owing is then paid as a lump sum at the end of the contract.

15206 If an ADI is in payment at the end of the contract, find out

1. the date the lump sum is due to be paid **and**
2. the period for which the payment is made. This should be the period over which the credits have been earned.

15207 Take the lump sum into account as earnings from the date it is due to be paid. Attribute it at a weekly rate over a period equal to the period worked.

15208 - 15211

Local exchange trading systems

General

15212 Local exchange trading systems are associations that allow participants to exchange goods and services with others in the community.

15213 Members of local exchange trading systems list their offers of, and requests for, goods and services in a directory and then trade them using a system of credits. These can be given many different names such as

1. bobbins
2. brads
3. newberries
4. beacons
5. acorns.

Participation in a local exchange trading system scheme

15214 Participating in a local exchange trading systems scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

Local exchange trading system credits

15215 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. They are considered taxable income for Income Tax purposes.

15216 Credits should be taken into account as earnings. Their value will be equivalent to the number of credits awarded for the particular goods or services involved at the relevant exchange rate.

15217 The DM should firstly find out whether the organisers of the scheme have equated the credits to a sterling equivalent. This may have been done for HMRC or VAT purposes. If so, that equivalent can be used as the exchange rate.

- 15218 If a sterling equivalent is not available the DM should decide the question based on the circumstances of each case. In doing so the DM may consider factors such as
1. how the transaction price is arrived at
 2. whether the amount of credits earned varies with the type of work performed
 3. what the exchange value of a credit is (what does it buy)
 4. whether the claimant works in the cash economy as well as in the local exchange trading system economy
 5. what the average local rate of pay is for the particular work performed.

15219 - 15229

Payments made under employment protection legislation

Introduction

- 15230 The effect of payments or awards made under employment protection legislation depends on
1. what type of payment is involved
 2. when the payment was due to be made
 3. whether the payment has actually been made.

Types of payments

- 15231 There are many different types of payments and awards including
1. statutory guarantee payments
 2. guarantee payments under a collective agreement or wages order
 3. remuneration while suspended from work on medical or maternity grounds
 4. awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal
 5. interim relief pending determination of a claim for unfair dismissal
 6. remuneration under a protective award
 7. statutory redundancy payments
 8. payments for certain time off work.

Treatment of payments

15232 Most payments under employment protection legislation should be treated as earnings¹ (see DMG 15024 et seq). Take them into account in the normal way.

1 SS Ben (C of E) Regs, reg 9(1)

15233 Statutory redundancy payments¹ are the exception to this general rule. They should be ignored.

1 reg 9(1)(b)

When payments are due to be paid

15234 A payment is due to be paid when it is due and owing. It does not matter that it is unlikely to be paid, for example where the former employer is in liquidation, or is insolvent. It is no longer due if the right to enforce payment of it is lost.

15235 Employers sometimes appeal against Employment Tribunal decisions awarding payments. Until the appeal is decided, entitlement to any award will be in doubt. Any payment will not be due to be paid until the employer's appeal is dismissed.

15236 Employers and employees sometimes agree a settlement after an Employment Tribunal has made an award. Any settlement varies the award made. The award itself is due and owing until the agreement has been carried out. It is then replaced by the agreement and is no longer due to be paid.

15237 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

Payments on termination of employment

Introduction

15238 The following guidance should be read together with DMG 15340 et seq which describes a disregard that applies in CA, ADIs and CDIs to payments of final earnings. Employees may be entitled to certain payments on termination of employment, that is, when their employment ends. Payments for the termination of the employment are made because the employment has ended¹. They are not paid for any other reason. They would not be paid but for the employment ending.

1 R(U) 4/92

15239 The effects of these payments depends on

1. what type of payment is involved
2. when the payment is due to be made
3. whether there is an unworked or waived period of notice
4. when the work ended.

Types of payments

- 15240 There are many different types of payments that might be made. These include
1. payments due for any period before the employment ended (see DMG 15241)
 2. holiday pay (see DMG 15242)
 3. PILON
 4. refunds of occupational pension contributions
 5. pension lump sums
 6. payments, remuneration or awards made under employment protection and TU law (see DMG 15230 et seq)
 7. payments in kind (see DMG 15250) income tax refunds
 8. compensation payments (see DMG 15260)
 9. statutory redundancy payments (see DMG 15243).

Payments for period before employment ended

- 15241 When employment ends payments may be due for the employed period, for services already rendered. They are owed under the contract of employment and are due because of the employment itself, not because of the termination. Such payments include
1. final earnings
 2. wages held in hand
 3. commission.

Holiday pay

- 15242 Most employees are entitled to be paid while they are on holiday. When their employment ends they may not have taken all the paid holiday they could have had. They will then receive a payment of holiday pay instead.

Statutory redundancy payments

- 15243 Employees who have been continuously employed for 2 years may be entitled to statutory redundancy payments if they are
1. dismissed by reason of redundancy¹ **or**
 2. laid off or kept on short time for more than a set number of weeks².

1 ER Act 96, s 135(1)(a); 2 s 135(1)(b) & 148(2)

15244 Not all employees are entitled to statutory redundancy payments, for example members of the armed forces and civil servants. Redundancy type payments may be paid to these employees, for example ex gratia payments and “golden handshakes”. Such payments are not **statutory** payments.

15245 Statutory redundancy pay is based on¹

1. the length of continuous employment
2. the age of the employee
3. the amount of a week’s pay.

1 ER Act 96, s 135, 162, 211 & 221

15246 - 15249

Payments in kind

15250 A payment in kind is payment by something other than money. This can be in many forms including

1. goods, for example food or clothes
2. vouchers, for example childcare or gift vouchers
3. free accommodation.

Employment never existed

15251 For employment to have ended, it must first have existed. A payment on termination of employment can be made only where a job has ended. Any payments made for other reasons are not payments on termination of employment.

Example 1

Kirsty is offered a job in a shop. The offer is then cancelled before she can start work. The shop owner pays Kirsty £30 to make up for cancelling the offer. The £30 is paid because of the cancellation. It is not paid because the job ended. It is not earnings.

Example 2

Wladislaw is due to start work in a shop on 21 October. On 14 October the shop owner gives him a £30 advance of wages. On 17 October Wladislaw decides that he no longer wants the job and does not start work. The £30 advance is not paid because the job ended. It is a type of loan. It was meant to last for 1 week and is a payment of income.

Payments not received

- 15252 Payments made on termination of employment are taken into account from the date they are treated as paid¹. That date is based on when the payment is due to be paid. This may not be the same as the date it is **actually** paid (see DMG 15401 et seq).

1 SS Ben (C of E) Regs, reg 7

Delay in payment

- 15253 A payment is due when it is legally due and owing. Any delay in its actual payment does not affect that due date.

Employer withholds payment

- 15254 Employers may not pay the full amount that is due. They may for example make a reduction to pay for cash shortages that the employee is responsible for. Take the full amount due into account if
1. it is a term of the contract that this action can be taken and there is no dispute about the shortage **or**
 2. the employee agrees to the employer's action **or**
 3. the money was originally paid to the employee, before being paid to the employer.
- 15255 If there is any doubt or dispute about the reduction, ask for full details. The DM should then take all available evidence into account when deciding the amount due.

Example 1

Jack is due to be paid £500 compensation when his employment ends. He is responsible under his contract of employment for any cash shortages. He agrees with his employer that there is a shortage of £100. The employer deducts this amount from the payment due to him and Jack is paid £400. The full amount of £500 is taken into account, as earnings.

Example 2

Vera is due to be paid £600 compensation when her employment ends. Her employer deducts £100 for a cash shortage that he says is her responsibility. Vera is not responsible for shortages under her contract. She did not agree that the deduction could be made and is disputing the alleged liability. Only the £500 actually paid is taken into account, as earnings.

Payments in lieu of remuneration

- 15256 Payments in lieu of remuneration are paid in place of a person's normal wages or salary and should be treated as earnings and taken into account in the normal way¹.

1 SS Ben (C of E) Regs, reg 9(1)(b)

Payments in lieu of notice

- 15257 Employees are normally entitled to notice before their employment is ended. But employers may not always give them full notice. Employees are then entitled to pay in lieu of notice instead. Such payments are earnings¹ and should be taken into account in the normal way.

1 reg 9(1)(c)

Holiday pay

- 15258 If holiday pay is payable more than four weeks after the employment ended or was interrupted it should be disregarded¹.

1 reg 9(1)(d)

- 15259 Holiday pay payable within four weeks of the employment ending should be treated as earnings¹ and taken into account in the normal way.

1 reg 9(1)(d)

Payments of compensation

- 15260 When employment ends, an employee may receive a payment as compensation for the non-receipt or waiving of the right to PILON. Where all PILON due has been received, no other payment can be compensation.

- 15261 In this context compensation means¹ any payment made in such circumstances other than

1. any bonus or commission (see DMG 15053)
2. PILOR, except any periodic sums paid because employment has ended through redundancy
3. PILON
4. holiday pay except any payable more than four weeks after employment has ended
5. retainers (see DMG 15132)
6. payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 15118)

7. awards made under employment protection and trade union law (see DMG 15230)
8. payments in kind (see DMG 15130)
9. payments for a period when the claimant is on maternity or sick leave (see DMG 15267)
10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment
11. any occupational pension
12. statutory redundancy payments
13. refunds of contributions to which the claimant is entitled under an occupational pension scheme
14. compensation payable under certain education law².

1 SS Ben (C of E) Regs, reg 9(4); 2 Education Reform Act 1988, s 173, 178(3) & (4), ER Act 96

Amount treated as earnings

15262 The payment of compensation is earnings if it is the same as or more than the maximum weekly amount¹ set by employment protection law² (Appendix 6 to this Volume).

1 SS Ben (C of E) Regs, reg 9(1)(i)(i); 2 ER Act 96 s 227(1)

15263 To work out the amount of earnings divide the amount of compensation by the maximum weekly amount. Take that fraction away from the compensation¹. The amount left is earnings.

1 SS Ben (C of E) Regs, reg 9(1)(i)(i) & (2)

Example	£
Maximum weekly amount	230
Amount of compensation	1,210
£1,210 divided by £230 = 5	
5 x £230 =	1,150
Remainder	60

The £1,210 compensation is treated as five weeks earnings.

15264 PILON, PILOR or holiday pay may also be received. If the period over which they should be taken into account overlaps with the compensation period put the periods together consecutively¹ to decide the period to which the earnings should be allocated.

1 reg 6(3)

15265 Where the employment was P/T, treat the payment of compensation as earnings¹ and take it into account over a period equal to one week².

1 SS Ben (C of E) Regs, reg 9(1)(i)(ii); 2 reg 6(7)

Meaning of part-time employment

15266 A person is in P/T employment if their hours of work

1. are less than 16 hours a week **or**
2. where the hours fluctuate to less than 16 hours a week on average¹.

The guidance on averaging earnings in DMG 15452 et seq applies equally to averaging hours of work. Except that for the purposes of averaging hours, holiday periods are disregarded².

1 reg 6 (8); 2 reg 6(8)(c)

Payments during sickness or other absences from work

General

15267 Any remuneration paid by an employer to a claimant which is for a period throughout which that claimant is

1. on maternity leave **or**
2. on paternity leave **or**
3. on adoption leave **or**
4. absent from work because of illness

should be regarded as earnings¹.

1 reg 9(1)(j)

Definitions

15268 The following definitions apply to DMG 15267

1. **maternity leave** means¹ a period during which a woman is absent from work because she is pregnant or has given birth to a child, at the end of which she has a right to return to work either
 - 1.1 under the terms of her contract of employment **or**
 - 1.2 under specific legislation²
2. **paternity leave** means¹ a period of absence from work on leave under specific legislation³

3. **adoption leave** means¹ a period of absence from work on ordinary or additional adoption leave under specific legislation⁴.

1 SS Ben (C of E) Regs, reg 9(4); 2 ER Act 96, Part 8; 3 s 80A or 80B; 4 s 75A or 75B

Statutory paternity pay

- 15269 Statutory paternity pay¹ is payable to employees during their paternity leave where they have average weekly earnings of at least the lower earnings limit. Statutory paternity pay should be included as earnings².

1 SS CB Act 92, Part 12 ZA; 2 s 4(1)(a)

Statutory adoption pay

- 15270 Statutory adoption pay¹ is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the lower earnings limit. Statutory adoption pay should be included as earnings².

1 Part 12 ZB; 2 s 4(1)(a)

Statutory sick pay

- 15271 SSP should be included as earnings¹. If the amount of SSP payable to the dependant is more than the earnings limit for that increase entitlement to or payment of that increase may stop.

1 s 4

Statutory maternity pay

- 15272 SMP should be included as earnings¹. The amount of the earnings is the amount of SMP **paid**. If no SMP is paid to or for the woman concerned the amount of the SMP to which she is entitled **cannot** be taken into account as earnings. However if payment of SMP has only been deferred and is paid later it should be taken into account when it is paid and allocated to the week in respect of which the payments are made.

1 s 4

Issue of company shares

- 15273 Where shares in a company are issued free to an employee, they should be regarded as earnings of an amount equal to their value as stated on the stock market, on the date of issue.

Example

Where an employee is given 100 £1 shares but the market price on that day gave their value as £2 each, the total amount to be taken into account for earnings is £200.

- 15274 The dividend subsequently paid on these shares should not be regarded as earnings. The period to which the value of the shares should be allocated is dependent upon the reason for their issue. If the shares were issued because of attendance or employment on a particular day the value should be regarded as earnings only in that week. However, if they were issued for employment throughout a particular period the value of the shares should be averaged over that period. See DMG 15430 on bonus payments.

Income from investments

- 15275 For the purposes of calculating a person's earnings, any income derived from capital assets or investments should not as a general rule be included in the calculation.
- 15276 While the view taken by HMRC for income tax purposes of a particular sum is not conclusive evidence that the sum either constitutes or does not constitute earnings for benefit purposes it may be a useful pointer in certain circumstances.
- 15277 In general, a person cannot represent to one authority that a sum is earned income and to another that the same sum is not earnings. Blowing hot and cold in this way is something which the law does not tolerate¹. It should be borne in mind, however, that sums which may be regarded as earnings for SS benefit purposes may not necessarily be accepted as earned income for income tax purposes². Conversely not all income accepted as earned income for taxation purposes is regarded as earnings for benefit purposes. In certain cases, specific enquiry regarding income will need to be made.

1 R(P) 4/67; see also R(P) 1/69; 2 R(P) 1/65

Payments for private health scheme

- 15278 An employer may pay contributions to a private health scheme (for example BUPA) for his employees. The amount of such payments **are earnings** for SS purposes because they are made as a direct result of the person's gainful employment¹. In calculating a person's earnings the amount of such payments should be added to earnings from other sources.

1 SS Ben (C of E) Regs, reg 1(2)

Occupational or personal pension

General

15279 Subject to DMG 15292 and DMG 15296 occupational and personal pensions are included as earnings for dependency purposes from

1. 26.11.84 for occupational pension for all benefits except CA¹
2. 6.4.87 for occupational pension for CA² **and**
3. 9.10.89 for personal pensions for all benefits³.

*1 SS CB Act 92, s 89(1) & Sch 7, para 7; 2 SS Ben (Dep) Regs, Sch 2, para 9;
3 SS CB Act 92, s 89(1) & (2)*

Definition

15280 Payments of occupational or personal pensions are **periodical** payments which are made in connection with the ending of a person's employment¹

1. out of money provided wholly or partly by the employer or under arrangements made by the employer **or**
2. out of money provided under an enactment or instrument having the force of law in any part of the UK or elsewhere **or**
3. under a personal pension scheme **or**
4. under a pension scheme registered under specific legislation².

1 s 122(1); 2 Finance Act 2004, s 153

15281 Including personal pensions as earnings means that from 9.10.89 the majority of pensions which dependants might be entitled to when they stop work will be included as earnings. Although most personal pensions will be those paid on "retirement" they may also include pensions paid because of illness resulting in a person stopping work.

15282 The major difference between personal and occupational pensions is that personal pensions include schemes that have been personally undertaken to provide a pension (apart from any payment due from the employer) when a person stops working. Personal pensions will, providing they fit the definition, include payments made to the **self-employed**.

15283 It is only the personal occupational or personal pension of the dependant or "other person" which should be taken into account. A pension which is being paid because of another person's employment should not be taken into account. For example, the amount of occupational or personal pension received by a widow on account of her late husband's employment should **not** be taken into account.

15284 Occupational or personal pension, or payments for redundancy which are paid as a lump-sum or are not related to a specific period should not be taken into account. Where a person has commuted periodic payments to a lump-sum this payment will not be taken into account. The payment was made at a point in time and was not therefore attributable to any period nor was it a periodical payment because a single payment cannot fall within the normal everyday meaning of "periodical"¹. However, any lump-sum of occupational or personal pension commuted to a periodic payment should be taken into account.

1 R(U) 5/85

15285

Amount of occupational or personal pension

15286 The amount of occupational or personal pension to be taken into account is the gross amount **less any amount deducted by way of income tax**¹ and **after** any compulsory deductions to enable further entitlement to pension².

Note: Previous guidance based on a reported decision of a Commissioner from 1983 was that the amount to be taken into account was **before** the deduction of income tax. However, when the Computation of Earnings Regulations came into force in November 1996, the intention was to align the treatment of occupational and personal pensions with that applicable in the income-related benefits. If DMs have problems arising from this change of guidance they should contact DMA Leeds for advice.

1 SS Ben (C of E) Regs, reg 10(4)(a)(i); 2 R(U) 4/83

15287 Redundancy payments may be taken into account in calculating the amount of occupational or personal pension. Where a dependant receives a payment in respect of redundancy it will be necessary to obtain details of how the amount is to be paid.

15288 - 15289

Calculation of weekly amount

15290 Where occupational or personal pensions are not paid weekly the weekly amount should be calculated as follows

1. annual payments - divide the amount by 52
2. three monthly payments - divide by 13
3. monthly - multiply by 12 and divide by 52
4. two or more months (but not 3 or 12 months) - divide by the number of months multiply by 12 and divide by 52
5. other cases - divide by the number of days in the period and multiply by 7¹.

1 SS Ben (Dep) Regs, reg 9A

Example

A man in receipt of RP is entitled to an increase for his wife. She has stopped working but is not entitled to her own RP as she is not 60. She receives two pensions from different jobs she has done

- an army pension of £156 a month = £36 a week ($£156 \times 12/52$) **and**
- a pension from another employer of £1,040 a year = £20 a week ($£1040/52$).

Her total earnings are therefore £56 a week.

15291 The calculations in DMG 15290 apply to

1. increases for children under the Act¹ **and**
2. increases for adult dependants under the Act².

These sections of the Act cover most increases of benefit for child or adult dependants.

Note: That although an increase of CA is **not** covered by these sections of the Act (the conditions are set out in the Regulations³), the calculations in DMG 15290 should be applied to increases of CA as no other method of calculation is set out in legislation.

*1 SS CB Act 92, s 80 & Sch 7, para 4; 2 s 84, 86 & Sch 7, para 6;
3 SS Ben (Dep) Regs, reg 12(2) & Sch 2; SS (IB for D) Regs 94, reg 11*

Where occupational pension is not included as earnings

15292 For all benefits except CA (see DMG 15294) occupational pension will not be taken into account as earnings where the following conditions are satisfied.

15293 Where the beneficiary

1. is entitled to receive the dependency increase in respect of at least five days in the period 19.11.84 to 24.11.84 **and**
2. would, but for the provisions which came into effect from 26.11.84 that occupational pension is to be taken into account as earnings, be so entitled for at least five days in each consecutive period of seven days, beginning with 26.11.84 until such time as the beneficiary ceases to be entitled to the increase¹.

1 SS (SEB) Regs

15294 For CA, savings provisions state that occupational pension will not be taken into account as earnings where the beneficiary

1. was entitled to receive the increase immediately before 6.4.87 **and**
2. would, but for the provisions including occupational pension as earnings, continue to be entitled to receive it until such time as the beneficiary ceases to be entitled to receive the increase for some other reason¹.

1 SS Ben (Dep) Regs, Sch 2, para 9(2)

15295 In considering whether the savings provisions apply the DM should have regard not only to the dependency benefit but also to the personal benefit in payment. Where entitlement to personal benefit changes, for example from IB to RP, the savings provisions will no longer apply because entitlement to personal benefit ceased from the date of change.

Note: The savings provisions depend upon the person being **entitled to receive** benefit. Where the payment of benefit is reduced to nil by earnings or because of an overlapping benefit, the savings provisions will not apply though basic entitlement to the benefit remains.

Where a personal pension is not included as earnings

15296 Personal pensions will not be included as earnings where

1. the increase was payable for at least one day in the period 2.10.89 to 8.10.89¹ **and**
2. the increase remains continuously payable from and including 9.10.89².

*1 Social Security Benefit (Dependency & Computation of Earnings) Amendment Regulations 1989, reg 4(1);
2 reg 4(5)*

Example

A man is entitled to an increase of RP for his wife who is living with him. She is working and earning £25 a week and is also receiving a personal pension of £35 a week. In the week starting on 11.12.89 she does some more work for which she receives extra pay. Because of this extra pay the increase is not payable on Monday 18.12.89. From 18.12.89 the personal pension can be included as earnings because the increase has not been continuously payable from 9.10.89. For dependency purposes the wife's earnings will be

Up to 10.12.89	£25 from her job
From 11.12.89 to 17.12.89	£40 from her job
From 18.12.89	£25 from her job plus £35 personal pension.

Augmentation grants under the National Assistance Act 1948

15297 LAs have power to set up special schemes to provide work for blind persons or other disabled persons either in special workshops or in their own homes¹. As part of these schemes augmentation grants are paid to those workers who, because of their disability are unable to work fast enough to earn a reasonable wage in competitive conditions. The grants bring their income up to a certain minimum standard, and should be regarded as part of their earnings.

1 National Assistance Act 48, s 29

15298 - 15299

Pension protection fund payments

15300 Pension protection fund periodic payments are defined as¹

1. any periodic compensation payments made in relation to a person, payable under pension compensation provisions set out in specific legislation²
2. any periodic payments made in relation to a person, payable under specific legislation³

other than payments made to a surviving dependant of a person entitled to such payments.

*1 SS CB Act 92, s 89(3) & s 122(1); 2 Pensions Act 04 s 162(2), Pensions (Northern Ireland) Order 05, art 146(2);
3 Pensions Act 04, s 166, Pensions (Northern Ireland) Order 05, art 150*

15301 The pension protection fund is a statutory independent public body (a public corporation) set up to compensate members of eligible defined benefit (final salary) schemes whose employers become insolvent leaving the pension scheme unable to meet its liabilities.

15302 Following an assessment period, which begins with an assessment date, if the pension protection fund assumes responsibility for a scheme, arrangements will then be made to pay compensation to the scheme members with effect from the start of the assessment period.

15303 Broadly speaking the pension protection fund will provide two levels of compensation

1. for individuals who, immediately before the assessment date, have reached their scheme's normal pension age or, regardless of age are already in receipt of a pension on the grounds of ill health, the pension protection fund will pay a 100 per cent level of compensation
2. for the majority of individuals below their scheme's normal pension age immediately before the assessment date, the pension protection fund will pay a 90 per cent level of compensation, subject to an overall compensation cap.

Note: Compensation derived from post 6.4.97 service will be increased on an annual basis (on 1 January) in line with the Retail Prices Index, capped at 2.5 per cent.

- 15304 Where pension protection fund periodic payments are not paid weekly, the method of calculating the weekly amount is¹ that set out in DMG 15290.

1 SS Ben (Dep) Regs, reg 9A; SS (IB for D) Regs, reg 11

Adult dependency increases to MA, RP, IB and SDA

- 15305 With effect from 14.2.06 pension protection fund periodic payments are to be taken into account as earnings of an adult dependant¹ in the same manner as occupational and personal pensions.

1 SS CB Act 92, s 89(1A)

Adult dependency increases to CA

- 15306 With effect from 5.5.06 pension protection fund periodic payments are to be taken into account as earnings of an adult dependant¹ in the same manner as occupational and personal pensions.

1 SS Ben (Dep) Regs, Sch 2, para 9

15307 - 15309

Amounts not regarded as earnings

Compensation for loss of earnings

- 15310 Compensation paid for loss of business or earnings due to an accident does not count as earnings.

Jury service

- 15311 A person who is called for jury service may receive money to compensate for loss of earnings¹. As this money is not from a gainful employment it should **not** be regarded as earnings for SS purposes

1 Juries Act 74, s 19

Pensions - personal benefit

- 15312 Pensions paid by a former employer are not treated as earnings provided that the payments
1. are for past services **and**
 2. do not import any continuing liability to serve.
- 15313 In the case of pension awarded to an ex-director of a limited liability company or to an ex-partner of a business it may be necessary to ask for a written statement from the company or business secretary or accountant, as to the terms on which the pension was awarded. It should be asked in particular, whether there is any continued liability to serve or to give advice.
- 15314 Similar criteria apply to lump sum payments paid at termination of employment, for example golden handshakes. Where the payment was given as an expression of thanks it is not earnings. Where there is a continuing liability to serve, the payment is earnings and should be allocated to the period to which it relates (see DMG 15400 et seq).
- 15315 For the effect of occupational pensions on increases for adult and child dependants (see DMG 15279 et seq).

Payments of long-term compensation on redundancy made by a local education authority

- 15316 LEAs can make long-term payments of compensation to certain employees who have been made redundant¹. These payments should be regarded as earnings for personal benefit purposes.

1 Colleges of Education (Comp) Regs 75

15317 - 15339

Disregard of final earnings - CA, ADIs and CDIs

General

15340 Subject to DMG 15341, with effect from the first benefit week applicable to the case which starts on or after 1.10.07, any earnings paid or due to be paid from the claimant's employment are disregarded where¹

1. a claim for benefit is made **and**
2. the claimant was in employed earner's employment **and**
3. that employment ended before the date that claimant first satisfied the conditions of entitlement (except insofar as they are affected by earnings to which this disregard applies) in relation to the claim.

Note: This disregard applies to claims for CA and all ADIs (including ADIs to IB) but not to claims for IB or SDA² (but see DMG 15342 below for advice on how the disregard applies to ADIs).

1 SS Ben (C of E) Regs, Sch 1, para 12; 2 Sch 1, para 12(4)

15341 The disregard **does not** apply¹

1. to any payment of occupational or personal pension
2. except where the claimant's employment ended because of retirement at a time when the claimant was of pensionable age (within the meaning given in specific legislation²) **to**

2.1 retainers

2.2 payments made for periods when the employee was on maternity leave, paternity leave, adoption leave, or was away from work due to illness

2.3 any award or sum of the nature of

2.3.a an Employment Protection award (see DMG 15230 et seq)

2.3.b an award of compensation made under trade union legislation (see DMG 15260 et seq)

including any payment made following the settlement of a complaint to an employment tribunal or of court proceedings.

1 Sch 1, para 12(2); 2 Pensions Act 1995, Sch 4, para 1

Example 1

Kath was employed full time as a nurse. On 28 September, she received her monthly salary for September. On 19 October, Kath's disabled mother suffered a severe stroke and Kath resigned from her job on that day. She was unable to complete her contractual period of notice. Kath claimed CA on and from 22 October. On 31 October, the NHS paid Kath her final earnings, being pay for the period 1 October to 19 October and two weeks' holiday pay. The DM decided that Kath first satisfied the conditions of entitlement for CA on 22 October and so decided that earnings received on 28 September and 31 October should be disregarded. CA was awarded from 22 October.

Example 2

John was employed as a hotel receptionist. He was paid weekly on Fridays. On 16 November, he decided that he had to give up work to look after his disabled son full time and gave a week's notice. On his last day at work on 23 November he received his final earnings, being two week's' wages and one week's holiday pay. He claimed CA on and from 29 November. The DM decided that John first satisfied the conditions of entitlement for CA on 3 December (the first pay day flowing the date of claim). He decided that any earnings John received in respect of his employment as a hotel receptionist should be disregarded. CA was awarded **from 3 December**.

ADIs

15342 Subject to the exceptions in DMG 15431 above, this disregard applies¹ to the final earnings of an adult dependant where the adult dependant for whom the claim for an ADI is made

1. was in employment as an employed earner **and**
2. that employment ended before the day on which the claimant first satisfies the conditions of entitlement **for the parent benefit**.

1 SS Ben (C of E) Regs, Sch 1, para 12(5)

Example 1

On 23 January, George claimed RP and an ADI in respect of his wife who was due to take early retirement at age 55 from her employment as a Personal Secretary on 31 January. George retired at age 65 on 15 February and the DM decided that George was entitled to RP from 15 February. He further decided that, as his wife had ceased work before 15 February, her final earnings could be disregarded and an ADI could also be awarded from 15 February.

Example 2

Michael claimed IB on 13 March and an ADI in respect of his wife Elizabeth. His benefit week started on Tuesday. His wife Elizabeth completed her last day of employment on 28 February. The DM decided that Michael first satisfied the conditions of entitlement for IB on 13 March. He further decided that, as Elizabeth had ceased work before 13 March, her final earnings could be disregarded and an ADI could therefore be awarded with the IB from 13 March.

Example 3

In August, Matthew claimed RP and it was awarded from his 65th birthday on 8 September. On 22 February his wife Jan was dismissed from her employment and on 26 March Matthew claimed an ADI to his RP. The DM decided that the disregard did not apply because Jan had ceased work after the first day that Matthew satisfied the conditions of entitlement for RP.

CDIs

- 15343 Although CDIs were abolished¹ with effect from 6.4.03², there are certain circumstances in which it is possible to make a claim for a CDI under transitional and savings provisions². DMs should seek advice from DMA Leeds (in accordance with the procedures set out in Memo DMG 26/08) in cases where it appears that the disregard may apply to a claim for a CDI.

1 TC Act 02, s 1 and 60 & Sch 6; 2 TC Act 02 (Commencement No. 3 and Savings Provisions) Order 2003

15344 - 15379

Calculation of net earnings

Deductions from gross earnings

15380 Net earnings are gross earnings less¹

1. income tax **and**
2. Primary Class 1 SS contributions **and**
3. half of any sum paid by the employee, towards an occupational or personal pension scheme
4. expenses not reimbursed by employer².

1 SS Ben (C of E) Regs, reg 10(4); 2 R(IS) 16/93

Income tax

15381 Deduct from gross earnings any income tax deducted by the employer.

Social Security contributions

15382 SS contributions are often called NI Contributions or NI Conts. Reduce the employee's gross earnings by any Class 1 contribution deducted by the employer.

Occupational pension scheme deductions or personal pension scheme payments

15383 Deduct from the employee's gross earnings for a normal pay period one half of any amount which

1. a person pays into an occupational pension scheme for that period **or**
2. is deducted by the employer from a payment of earnings as a contribution to an occupational pension scheme for that period **or**
3. a person contributes towards a personal pension scheme for that period.

Example

Patricia earns £50 a week and is paid weekly. She pays £26 a month into a personal pension scheme. Her normal pay period is a week. Her pension contribution is changed into a weekly figure ($£26 \times 12 \div 52 = £6$ per week) and half of this weekly figure ($£6 \div 2 = £3$) is deducted from her gross weekly earnings ($£50 - £3 = £47$).

15384 Occupational pension schemes¹ are arrangements by which an employer provides benefits for employees based on service. The benefits may be provided by the employer or through a pension provider. Benefits are

1. normally in the form of a pension, all or part of which may be taken as a lump sum
2. payable on death or retirement.

1 PS Act 93, s 1

15385 Personal pension schemes¹ are arrangements between employees, or S/E earners, and pension providers such as insurance companies. They provide benefits independently of any employer (although an employer may still make contributions to such a scheme). Benefits are payable as annuities which may provide lump sum and pension payments payable on death or retirement.

1 s 1; SS Ben (C of E) Regs, reg 2(1)

15386 Where a person pays contributions into both an occupational and a personal pension scheme, the deduction from gross earnings should be one half of the total payments made for the pay period¹.

1 R(FC) 1/90

Expenses not reimbursed by employer

15387 An expense that is not repaid to an employee by the employer should be deducted from earnings if it is incurred in the performance of the duties of the employment and is wholly, exclusively and necessarily incurred¹.

1 R(IS) 16/93

15388 Examples of expenses for which deductions may be made are

1. equipment, tools and stationery
2. overalls and specialist clothing
3. telephone calls made entirely for work purposes
4. travelling costs between different work places and any accommodation costs involved.

15389 The expense must be incurred in direct connection with the employer's trade or business¹. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed. Any decision by HMRC on the apportionment of expenses may be taken into account as evidence. If there is no doubt, that decision can normally be followed².

*1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325;
2 R(IS) 16/93*

Deduction and disregards

- 15390 Deductions may be made for the provision of child care and in the case of CA for care of a child or severely disabled person (see DMG 15800 et seq).
- 15391 Certain payments may be disregarded when calculating net earnings (see DMG 15760 et seq). Also see DMG 15340 et seq for the circumstances in which certain final earnings can be disregarded.

15392 - 15399

Period over which earnings are taken into account

General

15400 To decide the period over which any earnings from employed earners employment are taken into account the DM needs to establish

1. the date of claim
2. the first day of the claimant's benefit week (see DMG 15425)
3. the date on which the earnings are due to be paid (see DMG 15401 et seq)
4. the date on which the earnings are treated as paid (see DMG 15755 et seq)
5. the period for which the payment is made.

Date on which earnings are due to be paid

15401 To decide the period over which earnings should be taken into account, the DM needs information on the date a payment is due to be paid. This may be different from the date a payment is actually made or received. But earnings are often paid on the date they are due.

15402 The DM should consider the following when deciding the date a payment is due

1. due means legally due, for example under a contract or statutory provision
2. if there is no legal obligation to make the payment on a particular day, the person or body making the payment should be asked when they consider the payment is due
3. the date when the payment is received may be assumed to be the due date where the available evidence does not give a due date¹, **or** is not considered credible, **and** no further evidence can be obtained.

1 R(SB) 33/83

15403 The date on which a payment of earnings is due will be the normal pay day agreed in the contract of employment. The terms of a contract

1. may be expressed (in writing or verbal) **or** implied (by the actions of or understanding between the two parties) **and**
2. may be varied if both parties agree to it (the variation may be expressed or implied) **or** because of certain action taken by either party (such as dismissal or resignation).

Earnings when employment ends

15404 When employment ends, the date on which a payment of final earnings is due to be made

1. is a mixed question of fact and law **and**
2. depends on the circumstances in which the employment ended and the terms of the contract.

Note: See DMG 15340 et seq for the circumstances in which certain final earnings can be disregarded.

Notice given and worked

15405 Final earnings are payable on the dates agreed in the contract of employment where employment

1. has run its full course, for example a fixed period engagement has reached its end **or**
2. is terminated by the employer after due notice has been given and worked.

15406 This means that the claimant should receive the following payments on the final pay-day (often the last day of employment)

1. the normal week or month's earnings, including any part week or month's earnings
2. wages held in hand
3. holiday pay.

Employment terminated by employer without notice

15407 Employers are legally obliged to pay the following payments on the last day of employment if they terminate employment without due notice¹

1. wages earned between the end of the employee's previous pay period and the last day of employment
2. wages held in hand
3. holiday pay
4. a payment in lieu of notice.

See DMG 15252 if the claimant is due a payment when employment has ended but this has not been paid.

Note: The last day of employment is not necessarily the same as the last day the claimant attended work.

Employment terminated by employee without notice

15408 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay any of the following that are due, on the day that each is due to be paid

1. wages earned between the end of the employee's previous pay period and the last day of employment
2. wages held in hand
3. holiday pay.

15409 - 15424

Period for which payment is made

Identifiable period

15425 Where earnings from employed earners employment are payable in respect of a period they will be allocated to

1. a period equal to benefit week **or**
2. such number of benefit weeks as comprise the period starting on the date on which the earnings are treated as paid (see DMG 15420) and ending on the day before the date on which earnings of the same kind (excluding payments of bonus or commission or payments made by an employer in respect of periods throughout which the claimant is absent because of sickness or pregnancy) and from the same source would, or would if the employment was continuing, next be treated as paid¹.

1 SS Ben (C of E) Regs, reg 6(2)(a)

Example 1

A man is entitled to an increase of RP for his wife who resides with him. She works and is paid £30.00 each week on a Friday. The claimant's RP is paid weekly in advance on Monday.

Earnings paid on Friday 6 December will be treated as paid on Monday 2 December and attributed to the period 2 December to 18 December. These earnings affect the ADI in the benefit week 9 December to 15 December.

Example 2

A woman is entitled to an increase of IB for her husband who does not live with her. He works and is paid a salary each month of £162.50 on the last day of the month. The claimant's IB is paid fortnightly in arrears on Wednesday.

Earnings paid on Tuesday 31 December will be treated as paid on Thursday 26 December. Earnings due on Friday 31 January will be treated as paid on Thursday 30 January. The earnings treated as paid on 26 December will be attributed to the five week period 26 December to 29 January at the weekly amount of £37.50. These earnings affect the ADI in the benefit weeks 2 January to 5 February.

Specific types of earnings

15426 A Commissioner's decision¹ dated 28.5.02 gave a fresh interpretation of the rules² concerning the attribution of certain specific types of earnings. DMG 15427 gives guidance on the attribution of the following types of earnings where they are paid in respect of an identifiable period.

1. bonus or commission³
2. PILOR⁴ (except any periodical payments made to a claimant on account of redundancy)
3. PILON⁵
4. holiday pay (except any payable more than four weeks after the termination or interruption of employment⁶)
5. retainers⁷
6. payments for expenses that are **not** wholly, exclusively and necessarily incurred in the performance of the duties of the employment⁸ (for example payments for the cost of travelling from home to work)
7. awards made under employment protection law⁹
8. remuneration paid by an employer in respect of periods throughout which the claimant was absent because of sickness or maternity¹⁰.

Note: DMs should continue to attribute compensation payments in accordance with the guidance in DMG 15260 to 15265. Also see DMG 15340 et seq for when final earnings can be disregarded.

1 CG/4172/01; 2 SS Ben (C of E) Regs, reg 6(2)(a); 3 reg 9(1)(a); 4 reg 9(1)(b); 5 reg 9(1)(c); 6 reg 9(1)(d); 7 reg 9(1)(e); 8 reg 9(1)(f); 9 reg 9(1)(g); 10 reg 9(1)(h)

15427 The length of the period of attribution¹ applying to the types of earnings listed in DMG 15426 will be the number of benefit weeks between

1. the first day of the benefit week in which the payment is treated as paid **and**
2. the day before the first day of the benefit week in which the next **ordinary** earnings payment would be treated as paid.

1 Cotton v SS for Work and Pensions [2009] EWCA CW 1333

Example 1

George, who was paid monthly on the last day of the month, received a payment in respect of 14 days' holiday pay on termination of employment on 9 May. Benefit is payable on Mondays in advance. The DM decides that the attribution period is three weeks because that is the length of time between the first day of the benefit week in which the holiday pay is due (i.e. 5 May) and the day before the first day of the benefit week in which George's ordinary salary would be due (i.e. 25 May). The DM went on to consider the overlapping payment rules described in DMG 15450.

Example 2

Sarah, who was normally paid her salary on the last calendar day of the month receives a payment of six weeks PILON on 6 June on termination of employment. Benefit is paid on Thursdays in advance. The DM decides that the period of attribution is three weeks because that is the length of time between the first day of the benefit week in which the PILON was due (5 June) and the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (26 June). The DM went on to consider the overlapping payment rules in DMG 15432.

No identifiable period

15428 If the period cannot be identified, the DM should calculate the amount to be taken into account by¹ dividing the claimant's net earnings (see DMG 15380)² by the total of

1. the amount of the relevant earnings limit plus one penny **and**
2. the amount of any disregards or deductions³ that would have been made on the earnings.

Note: But see DMG 15238 et seq if the payment is made because employment has ended.

1 SS Ben (C of E) Regs, reg 6(2)(b); 2 reg 10(4); 3 reg 10(3), Sch 1 & 2

15429 Fractions of a week are disregarded.

Example

A man claims an increase of IB for his wife. She works and is paid a one-off bonus of £150. The period for which the payment was made is not identifiable.

The £150 payment is divided by £48.25 plus one penny (there are no disregards or deductions).

The DM decides the claimant's income is £50 a week for a period of three weeks.

Different kinds of earnings received for overlapping periods

15430 If different kinds of earnings from employed earners employment are received from the same source, and the periods over which the earnings would be taken into account overlap, the earnings should be taken into account

1. for the total of the periods which apply to each of the different kinds of earnings **and**
2. from the earliest date on which any of those earnings would be treated as paid under 15755 et seq¹ **and**
3. in the following order²
 - 3.1 normal earnings including wages held in hand
 - 3.2 PILON or PILOR
 - 3.3 compensation payment
 - 3.4 holiday pay received within four weeks of the date employment ended.

Note: Pay in lieu of remuneration is paid in place of a person's normal wages or salary.

1 SS Ben (C of E) Regs, reg 6(3); 2 reg 6(4)

Example 1

Michael receives an increase of IB for his wife who works P/T. His benefit week ends on a Wednesday.

Her P/T employment is terminated without notice on 13 December. She receives her normal week's earnings, one week in hand, four days holiday pay and two weeks PILON on 13 December.

The DM decides that the periods over which the earnings would be taken into account overlap.

All of the different types of earnings are treated as paid on Thursday 12 December and are attributed to a period of four weeks

1. the normal weekly earnings and the week in hand payment are taken into account over the period 12 December to 25 December
2. the two weeks' PILON are taken into account over the period 26 December to 1 January
3. the four days holiday pay are taken into account over the period 2 January to 8 January.

Example 2

Catherine was normally paid her salary on the last day of the month. Benefit is payable on Mondays in advance. Catherine left work on 14 May in order to look after her aged mother. On 31 May she received a payment made up of

1. two weeks' normal earnings
2. four weeks' holiday pay **and**
3. six weeks' PILON.

The DM decided that all three elements were due to be paid on 31 May because the employer could rely on the terms of the contract of employment. The DM decided that earnings fell to be attributed to the period 26 May to 7 September.

4. The normal earnings would fall to be attributed from the first day of the benefit week in which they were due (i.e. 26 May) up to the day before the first day of the benefit week in which the next ordinary salary payment would have been due (i.e. 29 June). A period of five weeks.
5. The holiday pay would (but for the overlapping payment rules) be attributed to the first day of the benefit week in which it was due (i.e. 26 May) up to the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (i.e. 29 June). A period of five weeks.
6. The PILON would (but for the overlapping payment rules) be attributed to the period from the first day of the benefit week in which it was due (i.e. 26 May) up to the day before the first day of the benefit week in which the next **ordinary** salary payment would have been due (i.e. 29 June). A period of five weeks.
7. As the periods of attribution for the ordinary salary, the holiday pay and the PILON overlap, the DM applied the rules described in DMG 15432. The DM concluded that the total of the periods of attribution was 15 weeks and that this period started on 26 May. Thus the period ended on 7 September. The order of attribution was
8. normal salary 26 May to 29 June
9. PILON 30 June to 3 August
10. holiday pay 4 August to 7 September .

15431 A Commissioner has held¹ that where the attribution period for a payment of earnings has been moved once because of the rule in DMG 15430, it should not be moved a second time. This is because the rules² dealing with overlapping payments only apply where there would be an overlap "but for this paragraph". In the case the Commissioner was dealing with a second overlap that occurred **because of** the application of the rules and so they did not fall to be applied for a second time.

1 CG/4172/01; 2 SS Ben (C of E) Regs, reg 6(3) & (4)

Example

Pamela claimed CA. She had left work in order to care for a close relative. Her last day of employment was 7 July. Under the contract of employment Pamela's salary was payable monthly in arrears on the 25th of each month. The relevant final payments of earnings were

1. on 25 June salary for the period 26 May to 25 June ("the first salary payment")
2. on 25 July a payment made up of
 - 2.1 salary for the period 26 June to 7 July ("the second salary payment")
and
 - 2.2 14 days' holiday pay.

On the facts of the case the DM decided that the holiday pay was legally due on 7 July but that the second salary payment was not legally due until 25 July.

The DM decided that

3. the first salary payment fell to be taken into account from 23 June to 20 July
4. the second salary payment fell to be taken into account from 21 July to 24 August
5. the holiday pay fell to be taken into account from 21 July to 3 August.

But for the overlapping payment rules the holiday pay would have been attributed to the period 7 July (the first day of the benefit week in which it was due) up to 20 July (the day before the first day of the benefit week in which the next **ordinary** salary payment was due).

The effect of the overlapping payment rule was to move this period to 21 July to 3 August. That in turn created an overlap with the attribution of the second salary payment but the DM decided, in accordance with the Commissioner's decision, that the holiday pay could not be moved twice.

Calculation of weekly amount of earnings from employed earners employment

Period of a week or less

15432 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment¹ (but see DMG 15452).

1 SS Ben (C of E) Regs, reg 8(1)(a)

Period of a month

15433 Where the payment is for a month the weekly amount should be worked out by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52¹.

1 SS Ben (C of E) Regs, reg 8(1)(b)(i)

Example

A payment of £100 is made for a period of a month. The DM calculates that the weekly amount is £23.07 (£100 x 12/52).

15434

Period of three months

15435 Where the payment is for a period of three months the weekly amount should be worked out by

1. multiplying the amount of the payment by four **and**
2. dividing the result by 52¹.

1 reg 8(1)(b)(ii)

Example

A payment of £100 is made for a period of three months. The DM calculates that the weekly amount is £7.69 (£100 x 4/52).

Period of a year

15436 Where the payment is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52¹.

1 reg 8(1)(b)(iii)

Period of more than a week

15437 Where the payment is for more than a week, and DMG 15434 - 15436 does not apply, the weekly amount should be worked out by

1. multiplying the amount of the payment by seven and
2. dividing the result by the number of days in the period for which the payment is made¹.

1 reg 8(1)(b)(iv)

Example

A payment of £100 is made for a period of four weeks. The DM calculates that the weekly amount is £25 (£100 x 7/28).

15438 - 15449

Two payments from same source and of same kind in same benefit week

15450 The weekly amount of earnings taken into account in a benefit week should be restricted where a payment of earnings

1. is or has been paid regularly **and**
2. two payments from the same source **and** of the same kind

would be taken into account in the same benefit week. The amount should be restricted to the weekly amount which is treated as paid first¹.

1 SS Ben (C of E) Regs, reg 8(2)

First of two payments due before date of claim

15451 Where the first of the two payments referred to in DMG 15450 was due to be paid before the date of claim the payment should be disregarded¹.

1 Sch 1, para 5

Example

A man claims IB on 14 October and is to be paid on Mondays.

He received four weeks occupational pension from his former employer on 27 September, and the next payment is due to be paid on 25 October.

The DM decides that the payment due on 27 September should be treated as paid on 27 September and should be taken into account for the period 27 September - 24 October.

The DM decides that the payment due on 25 October should be treated as paid on 21 October which is the first day of the benefit week in which it is due.

The payment due on 27 September is disregarded because it is a payment of the same kind and from the same source as another payment which is to be taken into account in the same benefit week, and the payment of 27 September was due to be paid before the first benefit week of the claim.

Averaging of amounts

15452 The weekly amount of a person's income may be averaged¹ if the income varies or the regular pattern of work means that the claimant does not work every week. The DM should average over

1. a complete cycle if there is a recognisable cycle of work **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

1 SS Ben (C of E) Regs, reg 8(3)

Example

John works two weeks on and one week off.

In the two weeks John actually works he works 15 hours a week and receives earnings of £80 a week.

In the third week, he receives a retainer of £20.

The DM decides that the earnings should be averaged over a period of three weeks because that is the period of the recognisable cycle of work.

The DM calculates that John's average weekly earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

Identifying a recognisable cycle

15453 The DM should see whether there is a pattern, or whether a pattern emerges from the fluctuating earnings over a period of time.

Example 1

Week 1 £40

Week 2 £45

Week 3 £40

Week 4 £40

Week 5 £45

Week 6 £40

There is a regular cycle of 3 weeks (weeks 1 to 3 repeated in weeks 4 to 6). The average weekly earnings are £41.67.

Example 2

Month 1 £180

Month 2 £200

Month 3 £180

Month 4 £200

There is a regular cycle of 2 months. The average monthly earnings are £190.

No recognisable cycle

- 15454 Where there is no pattern the DM should average earnings over 5 weeks or some other period where this would prove more accurate.

Example 1

Week 1 £40

Week 2 £40

Week 3 £45

Week 4 £47

Week 5 £43

There is no recognisable cycle. The average weekly earnings are £43.

- 15455 When one week contains unusually high earnings it may be inappropriate to include that week when averaging earnings.

Example

Week 1 £140

Week 2 £40

Week 3 £50

Week 4 £47

Week 5 £43

In this case the DM may choose to disregard week 1 and average earnings over weeks 2 to 5. By doing so, average earnings will be £45.

15456 - 15469

Self-employed earners

Who is a self-employed earner

General

15470 A S/E earner is defined in DMG 15006 - 15007

15471

15472 A S/E earner enters into a contract for services to a customer

1. on a sole trader basis **or**
2. in partnership with others.

15473 S/E earners are responsible, to the full extent of their personal fortune, for the debts of the business and are entitled to **either**

1. in the case of a sole trader, all the profits **or**
2. if in a partnership, the agreed share of the net profits.

15474 A person may be S/E and also have other work as an employed earner, if so the earnings from each employment should be calculated separately.

Deciding if a person is a self-employed earner

15475 A S/E earner is someone who is gainfully employed. If a S/E earner is not working, this does not mean that the S/E earner has ceased to be gainfully employed.

15476 To decide if a person is gainfully employed the DM should consider

1. if there is a reasonable prospect of work in the near future **and**
2. if the business is a going concern and regarded as such by the person **or** the business's bankers or any creditors or others **and**
3. if the person hopes or intends to restart work in the business when economic conditions improve **and**
4. if the person is undertaking any activities in connection with the self employment **and**
5. if there is work in the pipeline **and**
6. if the person is regarded as S/E by the Secretary of State or HMRC **and**

7. if the person claims to be anxious for work in the S/E occupation, trade or business. Is the person making it known that the business can take on work?¹. For example, by advertising or by visiting potential customers **and**
8. if the interruption in question is part of the normal pattern of the person's work or work that the person is seeking.

1 Vandyk v. Minister of Pensions & National Insurance [1955] IQ29

15477 All eight factors in DMG 15476 should be considered in **all** cases where a person who has been working as a S/E earner is now without work. This includes

1. people unable to work because of sickness
2. seasonal workers
3. sub-contractors **and**
4. share fishermen.

15478 Some of the factors in DMG 15476 may point toward the decision that a person is gainfully employed. Others may not. No one factor is decisive. The DM should decide the weight to give each relevant factor.

15479 The DM should make a decision on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

Example 1

Hugh is the sole owner of a small roofing firm. Work has stopped temporarily because of the bad weather. He states that

1. stoppages during the winter months are a normal feature of his business **and**
2. he has orders in the pipeline **and**
3. his business is regarded as a going concern.

The DM decides that Hugh is gainfully employed as a S/E earner.

Example 2

Ira runs a business that supplies and fits doors and windows. Because of the competition in the area the business has received fewer and fewer orders, until now there are none. Ira states that

1. he has been unable to pay the rent on his shop and the landlord is threatening eviction **and**
2. his bank has advised that the business should be wound up **and**
3. he still has an advertisement in the Yellow Pages.

The DM decides that the business is no longer a going concern and that Ira is not gainfully employed.

Example 3

Stephen is a S/E electrician. Stephen has just finished one contract and work on the next contract is not due to start for another couple of weeks. Stephen states that

1. he still regards himself as S/E, he has only claimed because he has no work at the moment **and**
2. he is advertising for work all the time.

The DM decides that Stephen is gainfully employed as a S/E earner.

Sickness

15480 If a S/E earner is unable to work in the business due to sickness, the DM should

1. consider the guidance at DMG 15476 **and**
2. decide if the S/E earner is still currently self employed.

15481 A S/E earner will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of the self employment.

Example 1

Ann-Marie is a S/E dentist. She is the only dentist in the practice. She has been unable to work because she is suffering from flu. She is unable to work for a total of two weeks.

The DM decides that Anne-Marie remains a S/E earner and calculates the earnings to be taken into account.

Example 2

Marlon is a S/E plumber, he is a sole trader. He has broken his leg and has been advised by his doctor to avoid work for six months. Marlon's business activity depends entirely on his ability to work.

The DM decides, in this case, that self employment has ceased and no earnings fall to be calculated.

Example 3

Roseanne is the owner of a fish and chip shop. She has had a serious operation and has been advised by her doctor to avoid work for three months. Roseanne states that the fish and chip shop continues to trade with day to day management taken over by her sister-in-law.

The DM decides that Roseanne remains a S/E earner and calculates the earnings to be taken into account.

15482 - 15489

Assessment period for self-employed earners

General

15490 The normal weekly earnings of a S/E earner should be calculated by using the

1. gross receipts (see DMG 15534) **and**
2. expenses paid out (see DMG 15580)

during the assessment period. Different rules apply for royalties and copyright payments.

Business trading for less than a year

15491 If the business has been trading for less than a year, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹.

1 SS Ben (C of E) Regs, reg 11(1)(b)

Example

Liam is a S/E window cleaner. He started doing occasional window cleaning jobs in February but it was not until May of the same year that the business really got off the ground.

The DM decides to use an assessment period starting from 1 May to 31 October as the figures produced for this period would most accurately reflect the current level of earnings.

Business trading for more than a year

15492 If the business has been trading for more than a year and there is no change likely to affect the normal pattern of business, the assessment period should be a year¹ (but see DMG 15563).

1 reg 11(1)(a)

15493 The year does not need to be the year immediately before the claim. If profit or loss accounts are available for the last trading year the DM can use these as the assessment period. The profit and loss accounts should be converted to a cash flow basis (see DMG 15521 - 15530).

15494 A year means a period of

1. 365 days **or**
2. 366 days if the assessment period includes the February of a leap year.

Change likely to affect the normal pattern of trading

15495 If there has been a change that is likely to affect the normal pattern of trading, the assessment period should be a period that will allow the DM to calculate the earnings most accurately¹. The period does not need to be made up of complete weeks.

1 SS Ben (C of E) Regs, reg 11(1)(b)

15496 The assessment period should

1. start on the date the change affecting the pattern of the business occurred **and**
2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

15497 The earnings would then be averaged over that period and apportioned on a weekly basis until the figures for the following week or month become available. The assessment period would then be extended. The assessment period would

1. start on the date the change affecting the pattern of business occurred **and**
2. end on the date that the new figures became available.

15498 This procedure should continue until the assessment period has been extended to one year and the earnings can be averaged over that year (see DMG 15491). In most cases this procedure will provide the most accurate determination of a S/E earners earnings (but see DMG 15499).

Example

Carlo is S/E, he buys and sells Italian wine. On 9 August Carlo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers.

The DM decides

1. Carlo is gainfully employed
2. that the receivership is a change that has affected the normal pattern of trading
3. that the assessment period is from 9 August (the date the change affecting the pattern of business occurred) to 30 October (the date that the most recent figures for gross receipts and expenses are available).

The earnings for the assessment period are averaged for that period and apportioned on a weekly basis until 30 November when the figures for the following month become available.

At this point the DM extends the assessment period. The assessment period is now 9 August to 30 November. The earnings for this period are averaged and apportioned on a weekly basis until 31 December when the figures for the following month become available.

The DM continues with this procedure until the assessment period has been extended to one year.

15499 When deciding the assessment period the DM should consider the facts of each case carefully. A period that does not start with the first day of the interruption may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

15500 The DM should be satisfied that any change

1. has affected **or**
2. is likely to affect

the normal pattern of trading.

Example 1

Barry owns and runs a small garage, he has been S/E for four years. Two months ago there was a fire in the garage workshop that badly damaged equipment. This meant that Barry was not able to offer a repairs or maintenance service to his customers.

The DM decides that

1. there had been a change that had affected the normal pattern of business
and
2. the assessment period starts from the date of the fire.

Example 2

Omar works part time as a S/E draughtsman providing technical drawings for builders. Most of his work comes from one particular building firm. Six months ago the building firm went into receivership.

The DM decides that

1. there had been a change that had affected the normal pattern of business
and
2. the assessment period starts from the date Omar lost his major customer.

New businesses

15501 When a person starts up a new business no income should be taken into account until the S/E earner starts to receive actual earnings. When the first payment of earnings is received the DM should use the assessment period

1. starting on the first day of the benefit week in which the person started self employment **and**
2. ending on the last day of the benefit week in which actual earnings are received.

15502 The assessment period should be extended every week or month until a yearly assessment is possible (see DMG 15497). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see DMG 15503).

Example

Linda claims an increase of IB for her husband Gareth. Her benefit week ending day is a Monday. On 5 February Gareth starts work as a S/E pine furniture maker.

The DM decides that the assessment period is 4 - 10 February.

The earnings are taken into account for that period until 17 February when the figures for the following week become available.

At this point the DM extends the assessment period. The assessment period is now 4 - 17 February. The earnings for this period are averaged and apportioned on a weekly basis until 24 February when further figures are available.

The DM continues with this procedure until the assessment period has been extended to one year.

15503 When deciding the assessment period for new businesses the DM should consider the facts of each case carefully. A period that does not start with the first day of self-employment may sometimes give a more accurate determination of the S/E earner's earnings. If so, that period should be used instead.

Royalties and copyright payments

15504 Earnings from S/E may include royalties or sums paid periodically for or in respect of any copyright. This covers¹

1. 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**
2. any payment in respect of any

- 2.1 book registered under the Public Lending Right Scheme 1982, **or**
- 2.2 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.

1 SS Ben (C of E) Regs 2009, reg 1(2); 2 reg 11(2) and (2A)

15505 Earnings in the form of royalties and copyright payments have a different assessment period to that in DMG 15490. Each payment should be taken into account for the number of weeks excluding part weeks calculated by dividing the amount of the payment by

- 1. the amount of the relevant earnings limit plus one penny **and**
- 2. the correct disregard (see DMG 15760 et seq)¹.

1 reg 11(2)

15506 The attribution period should begin¹ on the date on which the payment is treated as paid².

1 reg 11(3); 2 reg 7

Example

Libby receives royalties of £500 on 15 November. Her husband receives an increase of IB for her and his benefit week ends Monday. The payment is taken into account as follow

		£
• relevant earnings limit plus one penny	=	48.26
• Appropriate earnings disregard	=	nil
• total		<u>48.26</u>
•		
• Number of whole weeks is	=	500 = 10
•		48.26
• the payment is treated as paid on 12 November and is taken into account for 10 weeks from 12 November.		

15507 If during the period calculated under DMG 15505 another payment of royalties or copyright is received, the further payment should be treated separately as in DMG 15505. If the period extends beyond that calculated for the first payment, the second payment should be taken into account from the end of that period.

Example

(See **Example** at DMG 15506)

Libby receives a further payment of royalties of £600 on 5 December that is taken into account as follows

- number of whole weeks is $= \frac{600}{48.26} = 12$
- the payment is treated as paid on 3 December and is taken into account for 12 weeks from 3 December.

Expenses deducted from royalty or copyright payment

15508 The S/E earner may have to pay expenses on receipt of the royalty or copyright payment. These expenses are deductible if they are

1. wholly and exclusively for the purpose of that employment **and**
2. paid out in the attribution period of the payment¹.

1 SS Ben (C of E) Regs, reg 13(1)(a) & 13(4)(a)

Example 1

Dermot writes a book between June and December and it is on sale from the beginning of the following January. The first copyright payment is received on 2 June. There are no expenses paid out in the attribution period of the payment. The DM decides that no expenses should be deducted from the payment.

Example 2

Seeta writes a book. She agrees with her accountant that she will pay her accountancy fees when she receives her first payment. Seeta's book is published in March and the first copyright is received on 1 May of the same year.

Seeta pays her accountant using the money from the copyright payment. The DM decides to deduct the accountant's bill as an expense because

1. the accountant's bill is an expense that is wholly and exclusively for the purpose of Seeta's employment **and**
2. it is defrayed in the attribution period of the copyright payment.

Income tax, Social Security contributions and qualifying premium payments deducted from a royalty or copyright payment

15509 The DM should consider deductions for

1. income tax (see DMG 15654 et seq) **and**

2. SS contributions (see DMG 15681 et seq) **and**
3. half of any premiums for personal pensions (see DMG 15693) or retirement annuity contract (see DMG 15696)

from the royalty or copyright payment¹.

Note: The DM should take care not to duplicate any deduction for a personal pension or retirement annuity contract. A deduction for such a premium may already be deducted from another assessment period.

1 SS Ben (C of E) Regs, reg 13(4)(b) & 13(4)(c)

Date on which royalties or copyright payments are treated as paid

15510 Payments by way of royalties or copyright are treated as paid in the way described in DMG 15420 et seq.

15511 - 15519

Calculation of normal weekly earnings

General

15520 DMG 15521 et seq provide guidance on the calculation of earnings of most S/E earners. Special rules apply to

1. child minders (see DMG 15723)
2. crofts or small holdings (see DMG 15725)
3. farmers (see DMG 15726)
4. hotels, guests houses, bed and breakfast establishments etc (see DMG 15728)
5. board and lodging accommodation and subletting (see DMG 15729)
6. partnerships (see DMG 15731)
7. renting out property (see DMG 15743)
8. seasonally S/E (see DMG 15747)
9. share fishermen (see DMG 15710 et seq)
10. sub-contractors (see DMG 15748).

Cash flow

15521 To calculate the amount of earnings the DM will need evidence of

1. the gross receipts (see DMG 15534) **actually received**, not money owed to the business **and**
2. expenses defrayed, that is, **actually paid for**, not unpaid bills

for the assessment period. This is known as cash flow and evidence should be presented on a cash flow basis.

15522 S/E earner should be asked to submit details of

1. the business **and**
2. **actual** gross receipts and expenditure

during the assessment period.

15523 The actual gross receipts and expenditure figures provided should be accepted as accurate unless

1. there is reason to doubt **or**
2. they are unrepresentative of the current trading position.

Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and that, as above, there is no reason to doubt and they are not unrepresentative of the current trading position.

Accounts

- 15524 A person may submit a set of accounts as evidence of S/E earnings. Accounts provide some, but not all, of the information required by the DM to decide the amount of the gross receipts and expenses paid.
- 15525 A set of accounts consists of two main statements
1. the **balance sheet**: that is, a statement of the financial position of a business at a given date **and**
 2. the **profit and loss account**: that is, a summary of the results of a business's transactions for a period ending on the date of the balance sheet.
- 15526 Accounts are prepared using accounting principles. Accounts may include **anticipated** receipts and expenses for the accounting period. The anticipated amounts are not
1. gross receipts as they have not been received by the business **or**
 2. allowable expenses as they have not been paid for.
- 15527 If accounts are submitted as evidence the S/E person should be asked to provide evidence of actual amounts received and expenses paid so that the evidence can be converted into a cash flow basis. The S/E person can do this by providing
1. accounts that are calculated on a cash flow basis **or**
 2. evidence of the gross receipts and expenses paid.
- 15528 The figures provided in DMG 15527 should be accepted as accurate unless
1. there is reason to doubt **or**
 2. they are unrepresentative of the current trading position.
- Supporting evidence of every item of expenditure, or receipt, is not always required. Totals for the assessment period are acceptable provided that each type of expenditure, or receipt is separately detailed and that, as above, there is no reason to doubt and they are not unrepresentative of the current trading position.
- 15529 The S/E person should be asked any questions that cannot be resolved. It may be necessary for the S/E person to provide further supporting evidence, for example
1. bank receipts
 2. purchase receipts
 3. expenses for a different assessment period.

15530 As profit and loss accounts are prepared using normal accounting principles, they include certain entries that would not be included in a cash flow account. For example

1. the value of stock at the start and end of the accounting period
2. money owed to the business by debtors
3. money owed by the business to creditors
4. depreciation of assets of the business.

As the DM is considering the S/E person's cash flow, these will not be allowable expenses.

Income tax certificate

15531 The DM should not accept as conclusive evidence of the weekly net profit an

1. income tax certificate **or**
2. accountant's statement of the net profit figure that is acceptable for tax purposes.

Method of calculation

15532 To calculate the earnings of a S/E earner the DM should

1. establish the **gross receipts** of the business during the assessment period (see DMG 15534) **and**
2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see DMG 15590) **and**
3. deduct from any remaining figure amounts for notional income tax (see DMG 15654 et seq) **and** notional SS contributions (see DMG 15682 et seq) **and** half of any premium paid for a personal pension scheme (see DMG 15694) **or** a retirement annuity contract (see DMG 15696) **and**
4. deduct the correct **disregard(s)** (see DMG 15760).

The figure that is left is the earnings that should be taken into account.

15533	The whole process can be summarised as follows	
	Gross receipts	less
	allowable expenses	less
	notional income tax	less
	notional SS contributions	less
	half of any personal pension scheme or retirement annuity contract	divided by
	the number of days in the assessment period	multiplied by
	7 to give a weekly figure	equals
	the weekly net profit	less
	any disregards that apply	equals
	the weekly earnings to be taken into account.	

Gross receipts

15534 Any payment of income actually received by the business during the assessment period, regardless of when it is earned should be included as a gross receipt¹. DMG 15563 provides guidance for payments received that relate to a period different to the assessment period.

1 SS Ben (C of E) Regs, reg 13(4)

- 15535 The gross receipts of a business include
1. any payments for goods and services provided (see DMG 15536)
 2. earnings payable abroad (see DMG 15537)
 3. certain allowances paid to assist in carrying on the business¹ (see DMG 15540)
 4. any business subsidies or payments of compensation (see DMG 15542)
 5. personal drawings (see DMG 15543)
 6. income from letting or subletting (see DMG 15547)
 7. sale of certain business assets (see DMG 15548)
 8. tips and gratuities (see DMG 15549)
 9. payments in kind (see DMG 15551)
 10. any VAT receipts (see DMG 15560).

1 reg 12(1); E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 90, s 2

Payments received for goods and services provided

15536 All

1. cash **and**
2. cheque **and**
3. credit card payments

received in return for goods and services supplied, should be included as a gross receipt of the business.

Earnings payable abroad

15537 Money that is due to be paid to a business in a country outside the UK should be included as a gross receipt only when it is received by the business, for example when it is paid

1. to any branch or official representative of the business **or**
2. into any business account.

15538 Except where the claimant is absent from GB and not disqualified from receiving benefit, where the payment is made in a currency other than sterling, any

1. bank charge **or**
2. commission

payable for converting the payment into sterling should be disregarded¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(b)

15539 Any payment due to the business in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 Sch 1, para 4(a)

Example

Derek is S/E on a part time basis in an import/export business. During the assessment period his business received £1000 in a country that was, and currently is, prohibiting the transfer of funds to the United Kingdom. The DM calculates the earnings as follows

Gross receipts (including the £1000 received abroad)	= £5000
Deductions for allowable expenses, notional income tax and SS contributions and half of a premium for a person pension	= £2500

Net profit	= £2500
divided by the number of weeks in the assessment period	= £48.07 less
Special disregard for earnings abroad (£1000 divided by 52)	= £19.23
Earnings to be taken into account (£48.07 - £19.23)	= £28.84.

During the year that the earnings are taken into account, the country lifts its prohibition against the transfer of funds to the UK. The DM looks again at the earnings disregard for the year and the amount of the earnings to be taken into account increases to £48.07.

Schemes to help with self-employment

- 15540 An allowance may be payable under certain schemes to assist people to become self employed. In a business partnership one or all of the partners may be receiving payments.
- 15541 Any allowance paid into the S/E earner's business bank account during the assessment period should be included in the gross receipts of the business¹.

1 SS Ben (C of E) Regs, reg 12(1)

Business subsidies or payments of compensation

- 15542 Some business may receive
1. subsidies, for example businesses involving farming or agriculture receive subsidies from the Department for the Environment, Food and Rural Affairs, or the European Community **or**
 2. payment of compensation from another person because of disruption to the business. For example payments of compensation awarded because of Bovine Spongiform Encephalopathy.

Such payments should be included in the gross receipts of the business.

Personal drawings

- 15543 A S/E person may draw money from the business for day to day expenses. These drawings, known as personal drawings, are in anticipation of profits or business income and should be included as part of the gross receipts of the business. It is possible for personal drawings to exceed the eventual profit.

15544 Where drawings are made in excess of the profits of the business the excess should be disregarded. Money taken from the business in excess of profits comes from

1. capitalised profits from earlier years **or**
2. increased borrowing.

The drawings are withdrawals from the capital of the business.

15545 If personal drawings are declared the DM should establish if the amount has been deducted from the amount shown as the gross receipt. If it has, the amount of the drawings should be added back to the amount of the gross receipts.

15546 A S/E person who is a sole owner of, or a partner in, a business may pay interest to the business on money taken as personal drawings. These payments should be included in the gross receipts of the business.

Example 1

Joseph is a S/E earner. His assessment period is twelve months. He produces evidence of his gross receipts and expenses for the assessment period. Personal drawings are shown as an expense and are not included in the gross receipts of the business.

The DM decides

1. that the personal drawings should be added to the gross receipts of the business **and**
2. allowable expenses should be deducted from this new gross receipts figure.

Example 2

Rachel is a S/E earner. Her assessment period is twelve months. She produces evidence of her gross receipts and expenses for the assessment period.

Personal drawings are shown as an expense and are not included in the gross receipts of the business. It appears from the figures that the personal drawings may exceed any profit.

The DM calculates the net profit without including the personal drawings as a gross receipt of the business. This calculation shows that the personal drawings exceed the net profit of the business.

The DM decides

1. that personal drawings equal to the amount of the net profit previously calculated should be added to the gross receipts of the business **and**
2. allowable expenses should be deducted.

Income from letting or subletting

- 15547 Income from letting or subletting can only be taken into account under the Computation of Earnings Regulations if the claimant is undertaking it by way of a business as a self employed earner. For guidance on when this will be the case see DMG 15470 et seq and DMG 15743 et seq.

Sale of certain business assets

- 15548 The amount received from the sale of a capital asset should not be included in the gross receipts of the business, unless the asset was part of the stock in trade of the business¹.

1 R(FC) 1/97

Example

Adam runs a business that manufactures computers. The sale of these computers is included in the gross receipts of the business. But when Adam sells a computer that he uses to keep his business records on, the amount received for this computer is not included in the gross receipts of the business.

Tips and gratuities

- 15549 Tips or gratuities received in response to the service provided by a S/E earner, for example as a hairdresser, taxi driver or coach driver, should be included in the gross receipts of the business.
- 15550 Any tips or gratuities that are made as a gift unconnected to the self-employment, for example, on personal grounds should not be included in the gross receipts of the business.

Payments in kind

- 15551 If a S/E person is paid in kind the DM should decide a monetary value equal to what would have been paid and include this amount in the gross receipts of the business.

Example

Terry is a S/E electrician. He does some work for a local farmer. The farmer pays Terry for the work in the form of farm produce.

The DM values the produce at what it would have cost if bought from the farmer (or a local grocer), and includes that amount in the gross receipts of the business.

15552 - 15559

Value Added Tax

15560 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

- a** VAT collected from customers - known as output tax **and**
- b** VAT paid by the S/E person to supplier - known as input tax.

If **a** exceeds **b** the S/E person pays the difference to HMRC. If **b** exceeds **a** the S/E person receives the difference from HMRC.

15561 Where

- 1. a business is registered for VAT **and**
- 2. in the assessment period the amount received is greater than the amount paid to HMRC

the difference should be included in the gross receipts of the business. This is the amount that **b** exceeds **a**.

Note: VAT can also be an allowable expense of the business, see DMG 15591.

Capital receipts

15562 Capital receipts do not form part of the gross receipts of the business¹. For example

- 1. loans
- 2. injections of capital
- 3. grants from the Prince's Trust **and**
- 4. proceeds from the sale of business assets, unless that asset was part of the stock in trade of the business (see DMG 15548).

1 R(FC) 1/97

Income for a different period

15563 A payment of income **may** be assessed over a period different to the assessment period if the normal weekly amount of the item of income can be established more accurately¹.

Note: The DM should not consider any payment made before or after the assessment period.

1 SS Ben (C of E) Regs, reg 13(11)

15564 It is not intended that every payment is assessed individually over a period different to the assessment period. This should be the exception rather than the rule. So, any payment for a period

1. equal to or shorter than the assessment period should be assessed over the full length of the assessment period **or**
2. longer than the assessment period should be converted on a pro rata basis to represent the length of the assessment period.

Example

Ryan is a S/E earner. He receives a payment that is a half-yearly payment under a long-term contract. As the level of trading has changed recently due to a fire on the business premises the assessment period used is 13 weeks.

The DM decides that

1. the payment should be multiplied by 13 and divided by 26 **and**
2. the resulting sum should be added to any other gross receipts of the business.

15565 - 15579

Business expenses

Conditions for deducting business expenses

15580 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that¹

1. was paid out wholly and exclusively for the purposes of the business² **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred³ (see DMG 15586) **and**
4. is an allowable expense (see DMG 15590).

1 SS Ben (C of E) Regs, reg 13(4); 2 reg 13 (9)(a); 3 reg 13(8)

Wholly and exclusively

15581 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business¹. Any such payment should be deducted in full, subject to the rules in DMG 15580.

1 reg 13(4)(a)

Expenses for both business and private use

15582 If expenditure is for both business and private use, for example

1. a business that is run from home **or**
2. there is only one vehicle for both business and private use

the DM should apportion the cost. Only the portion of the expenditure that is wholly attributable to the business can be deducted.

15583 It is a common practice for a S/E person to put private expenses through a business account. If a set of accounts has been submitted as evidence of expenses the DM should establish the amount of the expenses paid out for the business.

15584 The DM should normally accept the evidence of

1. the S/E earner **or**
2. an accountant **or**
3. any apportionment already agreed by HMRC for tax purposes **and** Secretary of State for Social Security contributions¹.

1 R(FC) 1/91; R(IS) 13/91

15585 Examples of expenses that may be apportioned between private and business use are¹

1. telephone calls and telephone rental
2. motor expenses such as fuel, road fund license (sometimes called road tax), insurance premiums, servicing, maintenance or repair charges
3. fuel costs and standing charges for gas and electricity.

1 R(FC) 1/91; R(IS) 13/91

Example 1

Indra runs a business from her home. She uses the telephone for private and business use. The total cost of telephone charges in the assessment period is £300.

Indra provides evidence that HMRC have agreed that the apportionment is 60% for business use and 40% for personal use.

The DM decides that £180 of the expenses have been reasonably incurred and allows this amount when calculating Indra's net profit.

Example 2

Greg uses a car for both business and private use. The total cost in the assessment period is £750. Greg provides information that 55% of the cost is for business use and 45% is for personal use.

The DM decides that this is reasonable and allows £412.50 as an expense.

Example 3

Serena is a dressmaker who works at home using an electric sewing machine. She uses an electric fire to heat the room when working. A quarterly electric bill is included as a business expense but no breakdown is given of business and private use.

The DM apportions the expenses so that only the part that is wholly and exclusively for the business is allowed. To do this the DM makes a decision based on all of the facts, including

1. the size of the working area in relation to the rest of the rooms
2. how many other people live in the home
3. what amount Serena thinks represents business use
4. how many hours are spent working and using the appliances
5. what other electrical appliances are used in the home.

Reasonably incurred

15586 The term “reasonably incurred” is not defined in regulations. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

1. appropriate to the business **and**
2. necessary to the business **and**
3. not excessive.

The DM should consider the nature of the business, level of trading and if there are any employees.

15587 To decide what is reasonable the DM should have regard to the circumstances of each individual’s case¹, including the level of the person’s earnings².

1 R(P) 2/54; 2 R(G) 1/56

15588 If expenditure on a particular item is necessary to enable the person to run the business, the whole of that expenditure may be a deductible expense unless there is evidence that it is excessive¹.

1 R(G) 7/62

15589 If the DM is not satisfied that the whole of an expense is reasonably incurred only the part that is considered to be reasonable should be allowed as a deduction against gross receipts.

Allowable business expenses

15590 If the conditions in DMG 15580 1. - 3. are met, all day to day expenses of a business are allowable, including¹

1. accountancy charges
2. advertising costs
3. certain capital repayments on a loan used to²
 - 3.1 replace an item of equipment or machinery that has worn out in the course of the business **or**
 - 3.2 become outdated **or**
 - 3.3 repair an existing asset (for these purposes an asset includes buildings, plant machinery, vehicles or equipment),

but only to the extent that the loan exceeds any sum paid or due to be paid under an insurance policy for that repair, for example, labour may not be covered by the policy

4. cleaning of business premises

5. employee's wages before any deductions, including wages payable to a partner, but not a business partner
6. employer's contribution to an employee's pension scheme
7. employer's secondary Class 1 SS contributions
8. heating and lighting
9. hire or rental costs, but not any capital or purchase elements
10. income spent on the repair of an existing business asset, but only to the extent that cost of the repair exceeds any sum paid or due to be paid under an insurance policy for that repair³
11. interest payable on a mortgage, loan, credit sale, consumer credit agreement or a hire purchase agreement - this does not include any capital element, but see the third point above⁴
12. legal fees for the running of the business, but not with the setting up or expansion of the business
13. payment in kind for work done for the business - the monetary value is allowed
14. rent, council tax, water charges and insurance premiums on the business premises
15. stationery
16. stock purchases
17. sundries, if the DM is satisfied that the expenses are allowable
18. telephone, fax or internet connection
19. transport, for example business use of the car including petrol costs, road fund license, insurance and servicing, but excluding any home to work costs
20. VAT (see DMG 15591)⁵.

This list is not exhaustive.

*1 SS Ben (C of E) Regs, reg 13(4); 2 reg 13(7); 3 reg 13(9)(b)(ii); 4 reg 13(9)(b)(iii);
5 reg 13(9)(b)(i)*

Example 1

Jayne is a mobile hairdresser. She takes out a loan to buy a replacement car as her existing car is beyond repair.

The DM decides that

1. the loan is used to replace a car with a similar item and the capital repayments are allowable **and**
2. interest payments on the loan are allowable.

Example 2

Dermot is a builder. He takes out a loan to buy an additional van after taking on an employee.

The DM decides that

1. the capital repayments on the loan are not allowable because the loan is for an additional item **and**
2. interest payments on the loan are allowable.

Example 3

Giles is a farmer. He takes out a loan to replace a tractor but decides to buy a combine harvester instead.

The DM decides that

1. the capital repayments on the loan are not allowable because the loan is for a different piece of machinery **and**
2. interest payments on the loan are allowable.

Value Added Tax

15591 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

- a VAT collected from customers - known as output Tax **and**
- b VAT paid by the self employed person to suppliers - known as input Tax.

If a exceeds b S/E person pays the difference to HMRC. If b exceeds a the self employed person receives the difference from HMRC.

15592 Where

- a a business is registered for VAT **and**
- b in the assessment period the amount paid to HMRC is greater than the amount received in the same period the difference should be taken into account as an expense¹. This is the amount that **a** exceeds **b**.

Note: VAT can also be a gross receipt of the business (see DMG 15560).

1 SS Ben (C of E) Regs, reg 13(8)(b)(i)

15593 - 15599

Expenditure for a different period

15600 Any business expenditure paid out in the assessment period may be assessed over a period different to the assessment period if the normal weekly amount of that item of expenditure can be established more accurately¹.

Note: The DM should not deduct an expense paid before or after the assessment period.

1 SS Ben (C of E) Regs, reg 13(ii)

15601 It is not intended that every expense is assessed individually over a period different to the assessment period. This should be the exception rather than the rule.

15602 Any expense for a period

1. equal or shorter than the assessment period should be assessed over the full length of the assessment period **or**
2. longer than the assessment period should be converted on a pro rata basis to represent the length of the assessment period.

Example

Dominic is a S/E taxi driver. He started trading six months ago. The assessment period is 26 weeks. In that time the annual road fund license and insurance on the taxi was paid.

The DM decides

1. that the expenses should be multiplied by 26 (the length of the assessment period) and divided by 52 **and**
2. the resulting figure should be added to any other allowable expenses.

15603 - 15619

Expenses not allowed

General

15620 Business expenses that should not be allowed are

1. those expenses where the conditions for deducting a business expense are not met (see DMG 15580)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. any loss incurred before the start of the assessment period¹ or in any other employment²
6. repayment of capital on loans except where DMG 15590 applies
7. business entertainment expenses
8. losses incurred on the disposal of a capital asset
9. payments into a contingency fund to safeguard against future bad debts³
10. personal drawings on income and capital
11. money on goods used for personal consumption
12. where the claimant provides accommodation in his own home either by way of subletting or providing B/L, any expenses incurred in providing that accommodation (including any expenses incurred in providing board as well as lodging).

1 SS Ben (C of E) Regs, reg 13(6); 2 reg 13(12); 3 reg 13(8)

Capital expenditure

15621 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. The DM should not allow capital expenditure as a business expense¹.

1 reg 13(6)(a)

Example

Paul is a mobile hairdresser. He buys a replacement car for cash. The replacement car is a fixed asset of the business. The money used to buy it is capital expenditure. The DM does not allow a deduction. But if Paul had taken out a loan to buy the car, repayments of capital and interest would have been allowed as expenses (see DMG 15590).

Depreciation

15622 Depreciation of a capital, or fixed, asset is the amount that the value of that asset is estimated to have reduced, due to age or wear and tear, during the assessment period.

15623 If there are fixed assets accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense¹.

1 SS Ben (C of E) Regs, reg 13(6)(b)

Sums used in setting up or expanding a business

15624 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business¹. This applies to expenditure on, for example

1. fixed assets of the business, including fixtures and fittings or the cost of larger premises **or**
2. non-recurring costs such as legal services in obtaining a lease.

Note: If a business loan has been obtained the DM should consider interest on the loan (see DM 15590) and allow as an expense other items that are ongoing regular expenses.

1 reg 13(5)(c)

Loss incurred before the beginning of the assessment period

15625 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period¹.

1 reg 13(5)(d)

Loss incurred in any other employment

15626 A person may

1. have more than one employment as a S/E earner **or**
2. be both a S/E earner and an employed earner, for example a director.

The earnings from each employment should be assessed separately.

15627 Any business loss in one employment should not be offset against the earnings of another employment¹.

1 SS Ben (C of E) Regs, reg 13(12)

Example

Thomas is a market trader and a S/E music teacher. The market stall runs at a loss. The DM decides

1. that the loss from the market stall is not an allowable expense against the gross receipts from teaching music **and**
2. to calculate the net profit from each self-employment separately.

Repayment of capital on business loans

15628 The DM should not allow the repayment of the capital part of a business loan as a business expense unless it is for replacement or repair of an asset¹ (see DMG 15590).

1 reg 13(6)(e)

Business entertainment

15629 Any expense claimed for providing business entertainment, for example

1. business lunches **or**
2. hospitality in connection with the business

should not be allowed as a business expense¹.

1 reg 13(6)(f)

Loss on disposal of a capital asset

15630 When an asset is sold for less than the value shown in the books of the business the difference is referred to as the "loss on disposal" and is accepted as a loss for accounting purposes. But the DM should not

1. allow the loss as an expense **or**
2. include the proceeds from the sale of the asset as a gross receipt of the business (see DMG 15548).

Payments into contingency funds

15631 Any payments into a contingency fund set up to safeguard against future bad debts should not be allowed as a business expense. This is an allocation of funds rather than an expense.

Personal drawings

15632 Personal drawings may be shown as a

1. trading expense of the business **or**
2. withdrawal of capital on the balance sheet (if produced).

In either case, the drawings should not be allowed as a business expense.

Personal consumption

15633 The DM should not allow any money spent on goods for personal consumption as a business expense.

15634 Personal consumption is not limited to food products. It could include a range of items, for example

1. paint
2. spare parts
3. building materials
4. drinks.

15635 The DM should not assume

1. personal consumption **or**
2. if the S/E person is a partner, that the figure for personal consumption will be the same for each partner.

15636 If the business is one where personal consumption is likely to arise, for example

1. a farmer **or**
2. a grocer

and no figure has been declared, enquiries should be made about the nature and value of any produce or goods consumed or used.

15637 - 15649

Calculation of income tax, Social Security contributions and qualifying premium

Introduction

15650 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for¹

1. income tax (see DMG 15654 et seq) **and**
2. Class 2 SS contributions (see DMG 15685 at seq) **and**
3. Class 4 SS contributions (see DMG 15690 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 15694) or retirement annuity contract (see DMG 15696).

1 SS Ben (C of E) Regs, reg 13(4)(b) & (c)

15651 The DM should base deductions for income tax and class 2 and class 4 SS contributions (see DMG 15650) on the chargeable income for the assessment period.

Chargeable income

15652 The chargeable income¹, that is, the income chargeable for tax, for the assessment period is the amount of earnings

1. in the case of a S/E child minder, one third of the gross receipts of that employment² **or**
2. in the case of a partnership, the person's share of
 - 2.1 the gross receipts of the employment less
 - 2.2 any allowable business expenses³ **or**
3. in any other case, the person's
 - 3.1 gross receipts of the employment less
 - 3.2 any allowable expenses⁴.

1 reg 14(3); 2 reg 14(3)(b); 3 reg 13(5); 4 reg 13(4)(a)

15653 The calculation at DMG 15652 should not include any deductions for

1. notional income tax **or**
2. SS contributions **or**
3. premiums for a personal pension scheme or retirement annuity contract.

Deduction for notional income tax

15654 The DM should calculate the deduction for notional income tax using the tax allowance and tax rates for the tax assessment year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

Tax allowances.

15655 A tax allowance is an amount of income a person can earn or receive in a tax year without paying tax. There are a number of tax allowances, but for the purposes of calculating the earnings of a S/E earner, DMs should have regard to the personal allowance only.

The rates of the income tax allowances are in Appendix 1.

Personal allowance

15656 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (Appendix 1), but for benefit purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

Tax rates

15665 The tax rate is the percentage of taxable income payable to HMRC. Taxable income is the amount of income remaining after deducting tax allowances. The rate is in Appendix 1.

15666 - 15679

Calculation of deduction

15680 To decide the notional amount of income tax to be deducted from a S/E earner's chargeable income the DM should¹

1. establish the chargeable income
2. establish the personal allowance appropriate to the S/E earner. If it
 - 2.1 is equal to or greater than the chargeable income there will be no notional income tax to deduct **or**
 - 2.2 is less than the chargeable income, go to 3.
3. deduct the personal allowance (Appendix 1)
 - 3.1 in full if the assessment period is a year or
 - 3.2 on a pro rata basis if the assessment period is less than a year

4. multiply the first £37,400 (09/10 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (Appendix 1)
5. round up where necessary.

1 SS Ben (C of E) Regs, reg 14(1)

Deduction for notional Class 2 Social Security contributions

15681 A Class 2 contribution is a flat rate contribution.

Liability for a Class 2 contribution

15682 The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. A S/E earner is not liable for Class 2 contributions if they are

1. of pension age (see DMG 15683) **or**
2. a married woman with a non-paying election (see DMG 15688) **or**
3. a person whose profits are below a minimum amount or who holds a small earnings exception certificate (see DMG 15686).

The Class 2 rates are in Appendix 2.

15683 Pension age is

1. 65 years for a man **or**
2. 60 years for a woman born before 6.4.50 **or**
3. the date in Appendix 3 for a woman born between 6.4.50 and 5.4.55 **or**
4. 65 years for a woman born on or after 6.4.55¹.

1 SS CB Act 92, s 122(1); Pensions Act 95, Sch 4

15684 A S/E person is liable to pay Class 2 contributions for each week or part-week of self employment unless, for a complete contribution week, the person

1. is exempt because of a small earnings exception certificate **or**
2. receives IB or is incapable of work **or**
3. receives MA **or**
4. is a prisoner **or**
5. receives US or CA **or**
6. is a married woman or widow who has a valid election not to pay Class 2 contributions (see DMG 15688).

Note: A contribution week is a period of seven days beginning at midnight between Saturday and Sunday.

Calculation of the Class 2 contribution

15685 The deduction for the notional SS contributions should be based on the rate of Class 2 contributions current at the time the DM determines the claim or review. To calculate the amount the DM should

1. establish the chargeable income **and**
2. decide if a deduction should not be made on the grounds of small earnings **and**
3. decide the number of weeks that there is a liability **and**
4. multiply the weekly rate (Appendix 2 to this Volume) by the number of weeks that there is a liability.

Small earnings exception

15686 If a person's annual income from S/E is below a certain level (Appendix 2 to this Volume) that person may be given a certificate of small earnings exception (form CF17) by the Contributions Agency. A S/E person with a small earnings exception certificate has no liability to pay Class 2 contributions during the tax year that the CF17 is issued for¹.

1 SS CB Act 92, s 11(4)

15687 If the S/E person has chargeable income below the small earnings exception level whether or not one has been applied for, no contribution should be deducted even if contributions are being made¹.

1 SS Ben (C of E) Regs, reg 14(2)(a)

Married woman's election

15688 If the S/E person is a married woman or widow who has a valid non-paying election at the effective date, there is no liability to pay Class 2 contributions¹ and no deduction should be made from the chargeable income.

1 SS CB Act 92, s 19(4)(b); SS (Conts) Regs, reg 100 & 101

15689 A S/E woman married before 6.4.77 had the right until 11.5.77 to elect not to pay Class 2 contributions. A woman who made an election was given a certificate of election (CF 383) to show that there was no liability. The election will end if

1. it is cancelled by the woman **or**

2. there are two consecutive tax years after 5.4.78 when there is no period of self-employment or no liability to pay Class 1 contributions as an employed earner, for example she has been unemployed or had earnings below the lower earnings limit **or**
3. the marriage ends by divorce or annulment **or**
4. she loses her right to WB (unless this is because she has remarried) **or**
5. she becomes a widow and, after the first 26 weeks, has not become entitled to WB¹.

Once cancelled the election cannot be renewed.

1 reg 101

Deduction for notional Class 4 Social Security contributions

15690 A Class 4 contribution is a deduction of a fixed percentage of the annual profits of a business when these profits fall within lower and upper levels (Appendix 2 to this Volume). These payments are in addition to Class 2 contributions.

Liability for Class 4 contributions

15691 S/E people who are not liable for Class 4 contributions include people who are

1. of pension age (see DMG 15683) **or**
2. sleeping partners, that is a business partner who supplies capital and takes a share of the profits but takes no active part in the running of the business.

Calculation of Class 4 deduction

15692 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the date the DM determines the claim or revises/supersedes the previous decision. The DM should

1. establish the chargeable income **and**
2. decide the number of weeks in the assessment period **and**
3. deduct the lower earnings limit from chargeable income up to the upper earnings limit (if there are less than 52 weeks in the assessment period the DM should calculate this on a pro rata basis) **and**
4. multiply the remaining figure by the percentage rate to give the notional contribution figure. No account should be taken of evidence of actual payments made or due.

The Class 4 rates are in Appendix 2.

Example 1

Assessment period is 52 weeks.

Chargeable income is £8,260.85

Class 4 - Lower level is £7,530

- Upper level is £26,000

Chargeable income 8,260.85 **less**

lower level 7,530.00

Profit 730.85 x 6% = 43.85

Notional Class 4 contributions for 52 weeks is £43.86.

Example 2

Assessment period is 39 weeks or 273 days.
365

Chargeable income for this period is £7,600.

Class 4 - Lower level is $7530 \times \frac{273}{365} = 5632.03$

Chargeable income 7,600.00 **less**

lower level 5,632.03

Profit 1,967.97 x 6% = 118.08

Notional Class 4 contribution for 52 weeks is £118.15.

Premiums for personal pension schemes and retirement annuity contracts

15693 When calculating S/E earnings the DM should deduct from the chargeable income half of any premium for a

1. personal pension scheme **or**
2. retirement annuity contract

for the relevant assessment period¹.

1 SS Ben (C of E) Regs, reg 11

Personal pensions

15694 A personal pension is a fund that provides an income on retirement for employees¹ or the self employed². This may be done by

1. buying an annuity **or**
2. taking an income from the pension fund.

1 reg 2(1); PS Act 93, s 1; 2 SS Ben (C of E) Regs, reg 2(1); Income and Corporation Taxes Act 88, Part XIV, Chapter IV

- 15695 Taking an income from the pension fund allows the purchase of an annuity to be delayed up to the age of 75. The amount of income to be paid from the fund is recalculated every three years. At the age of 75 an annuity must be purchased.

Retirement annuity contracts

- 15696 Before 1.7.88 people could buy retirement annuity contracts, these are similar to personal pensions¹. They were usually taken out by S/E people.

1 SS Ben (C of E) Regs, reg 2(1); Income and Corporation Taxes Act 88, Chapter III

- 15697 People with these pensions are entitled to buy an annuity at any time between the ages of 60 and 75. They are not allowed to take an income from the fund before an annuity is purchased.

15698 - 15709

Particular forms of self-employment

Share fishermen

15710 A share fisherman is¹

1. a person who
 - 1.1 usually works in the fishing industry,
 - 1.2 is self employed,
 - 1.3 is the master or a crew member of a fishing boat crewed by more than one person **and**
 - 1.4 is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat **or**
2. a person who
 - 2.1 was a person who worked as above, but has permanently stopped such work because of age or ill health,
 - 2.2 usually works (and has not ceased to usually work)
 - 2.2.a ashore in GB (see DMG Chapter 07),
 - 2.2.b as S/E,
 - 2.2.c making or mending any gear belonging to a fishing boat or performing other services that help, or are connected with, a fishing boat **and**
 - 2.3 is paid for that work wholly or partly by a share of the profits or gross earnings of the fishing boat.

1 SS Ben (C of E) Regs, reg 13(1)(c)

15711 The master and all the members of the crew of a fishing boat are within the definition at DMG 15710. This includes those who do a specialist job, such as an engineman, cook or firefighter, as long as they are paid at least partly by a share in the earnings of the fishing boat¹.

1 R(U) 10/51

Meaning of fishing boat

15712 "Fishing boat" means¹ a boat that is used

1. for or in connection with fishing for sea fish **and**
2. in order to make a profit.

Note: Sea fish includes shellfish, salmon and migratory trout.

1 Merchant Shipping Act 1995, s 313(1)

Meaning of usually works

- 15713 A DM can decide that a person “usually works....” if the person has
1. done that job for some time **or**
 2. only recently started it but intends to follow it in the future.

Meaning of profits or gross earnings of the fishing boat

- 15714 The profits or gross earnings of the fishing boat are the money received for the catch. People are paid by a share of the profits or gross earnings of the fishing boat if
1. the fishermen sell the catch themselves (either retail or wholesale) and share at least some of the profits between them **or**
 2. the fishermen catch the fish for someone who then pays them a piece-rate wage¹.

1 CU 495/49(KL)

Method of calculation of weekly earnings

- 15715 The guidance on calculating earnings from self-employment applies equally to share fishermen.
- 15716 To calculate the earnings of a share fisherman the DM
1. should establish the **gross receipts** of the boat during the assessment period (including any payment covered in the second point in DMG 15719) **and**
 2. deduct from the gross receipts the **allowable expenses** of the boat, and the share fisherman, taking care to avoid duplication **and**
 3. calculate the person's share of the sum remaining at **2** according to the agreement for distributing the proceeds of the catch¹ **and**
 4. deduct from the figure in **3** amounts for notional income tax (see DMG 15654) **and** notional Social Security contributions (see DMG 15682 and DMG 15690 et seq) and half of any premium (see DMG 15693) paid for a personal pension scheme or a retirement annuity contract **and**
 5. deduct the correct **disregard(s)** (see DMG 15760).

The figure that is left is the earnings that should be taken into account.

1 SS Ben (C of E) Regs, reg 13(1)(b)

15717 The evidence that a share fisherman should provide depends on whether the share fisherman is

1. an owner or part owner of a boat **or**
2. a regular crew member.

Share fisherman is an owner or part owner of a boat

15718 A share fisherman who is the owner or part owner of a boat should be asked for details of the

1. gross receipts and expenses of the boat for the assessment period **and**
2. agreement for sharing the proceeds of the catch.

Share fisherman is a regular crew member

15719 A share fisherman who is a regular crew member of a boat should be asked

1. to approach the boat owner for details of the gross receipts and expenses of the boat during the assessment period and arrangement for sharing the proceeds of the catch **and**
2. if the boat owner pays the employee's portion of any SS contribution or cost of provisions (such as food) or cost of replacement gear or clothing **and**
3. if the sum declared for gross receipts is the income received by the boat before or after any of these payments have been made.

15720 If the conditions for deducting an expense are met (see DMG 15580) the DM should allow as an expense payments covered in the second point in DMG 15719 that have not been deducted from the gross receipts figure. This will be in addition to any other allowable expenses incurred by all members of the sharing scheme.

15721 If the gross receipts figure is net of any deductions covered in the second point in DMG 15719 those amounts should be added back to establish the correct gross receipts figure. The DM should then consider the deductions in the normal way.

Shared expenses

15722 Expenses of the boat may not always be attributable to all the sharers in the scheme. The owner may bear all, or part, of the cost of certain items. The DM should establish the expenses that are

1. common to all the sharers **and**
2. peculiar to the owner or owners.

Example 1

Arthur is a boat owner, he has three other share fishermen aboard. The boat, the owner and each of the three sharers take 20% of the profit after deduction of expenses.

Arthur's share would be 40% of the net profit and that of the other share fishermen aboard would be 20% of the net profit.

In each case the DM should consider deductions for tax, SS contributions and half of any premium for a personal pension scheme or a retirement annuity contract.

Example 2

Andrew is a part owner of a boat, there is one other owner and one other share fisherman. The boat takes 60% of the gross profits and the two owners and the third sharer divide the remainder equally. The owners meet all expenses.

The third sharer would receive 13.33% of the gross receipts while Andrew and his partner, would receive 43.33% of the gross receipts less 50% of the allowable expenses.

In each case the DM should then consider deductions for tax, SS contributions and half of any premium for a personal pension scheme or a retirement annuity contract.

Child minders

15723 A child minder is a person who engages in a contract for services to care for another person's child in return for payment. Most child minders

1. work from their own homes **and**
2. are registered with the LA **and**
3. are restricted to the number of children they care for at any one time.

15724 To calculate a child minder's normal weekly earnings the DM should

1. decide the assessment period in the normal way **and**
2. calculate the gross receipts for that period **and**
3. calculate the chargeable income as one third of the gross receipts during the assessment period¹ but make no deductions for business expenses **and**
4. calculate a deduction for income tax and SS contributions and half of any premium for a personal pension scheme or retirement annuity contract.

1 SS Ben (C of E) Regs, reg 14(3)(b)

Example

Fleur is a S/E child minder. Her assessment period is 13 weeks. The gross receipts for that period are £1,280.

The DM decides

1. that no expenses should be deducted from the gross receipts **and**
2. that the chargeable income is £424.67 (1/3 of £1,280) **and**
3. the income tax, SS contributions and premiums that are to be deducted from the chargeable income.

Crofts or small holdings

15725 Earnings from a croft or small holding should be decided on the same basis as a small business. The person should produce an annual statement giving details of

1. income from sales, subsidies, etc **and**
2. expenditure, including for example, seed, fertiliser, feed and labour.

This statement should be used to calculate the person's net profit.

Farmers

15726 A farmer in need of financial assistance may seek advice from a surveyor, land agent, valuer or some other similar professional to ensure that they are taking advantage of any schemes or subsidies that they administer. This includes enquiries about compensation payments because of Bovine Spongiform Encephalopathy.

15727

Hotels, guest houses, bed and breakfast establishments

15728 The DM should apply the normal rules when considering whether a person running a hotel, guest house, lodging house or bed and breakfast establishment is self employed.

Board and lodging accommodation and subletting

15729 Where the claimant provides B/L in his own home or sublets his own home by way of a business, the normal rules for calculating earnings from self employment **do not apply**. In the case of

1. B/L, the guidance in DMG 15768 et seq
2. subletting, the guidance in DMG 15762 et seq

should be applied but see Appendix 7 for guidance relating to the period 26.1.07 - 1.10.07.

Bars and restaurants in hotels, guest houses

15730 Income from bars and restaurants where services are provided that are not included in the board and lodging charge should be treated as earnings from self-employment. The DM should decide the assessment period and calculate the gross receipts and allowable expenses in the normal way.

Partnerships

15731 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

15732 People can enter into a partnership under an agreement that may be written, for example a deed of partnership, verbal or implied. A deed of partnership includes details of how any profit or loss is shared between the partners. In the absence of an agreement any profit should be shared equally among the partners¹.

1 Partnership Act 1890, s 24

Calculation of a business partner's normal weekly earnings

15733 Before calculating a partner's share of the net profit of the business, the DM should ensure that the gross receipts include the following for all partners

1. allowances from schemes to help with self-employment
2. personal drawings
3. expenses covering business and private use.

15734 To calculate the normal weekly earnings of a business partner¹, the DM should decide the assessment period **and**

1. total the gross receipts of the whole business **and**
2. deduct any allowable expenses incurred by the whole business **and**

3. calculate the partner's share of the resulting "net profit"². The partner's share will be
 - 3.1 the share set out in the deed of partnership, if there is one or
 - 3.2 the shares agreed in an express or implied agreement between the partners or
 - 3.3 an equal share³ if neither of these apply, for example, if there are four partners, each partner's share is 25% **and**
4. deduct from the partner's share an amount for income tax **and** SS contributions calculated on the amount of the partner's share **and**
5. deduct half of any premium for a personal pension scheme or a retirement annuity contract.

1 SS Ben (C of E) Regs, reg 13; 2 reg 13(5); 3 Partnership Act 1890, s 24

Example 1

Daniel is one of two partners in a building firm. There is a deed of partnership that states that Daniel will receive 40% of the profits and the other partner 60%.

The gross receipts for the business during the assessment period are £10,600. The allowable expenses are £5,400. The DM decides that Daniel's share of the profits is £2,080, calculated as follows

	£
Gross receipts	10,600
Less allowable expenses	5,400
	= 5,200
Divided by Daniel's share - 40%	= 2,080

The DM then deducts from £2,080 amounts for notional income tax and SS contributions, half of a premium for a personal pension scheme or retirement annuity contract.

Example 2

Agnes and her brother are partners in a small pottery business. There is no deed of partnership or other agreement that profits should be shared unevenly.

The gross receipts of the business during the assessment period are £8,750. Allowable expenses are £4,562. The DM decides that Agnes share of the net profit is £2,094, calculated as follows

	£
Gross receipts	8,750
Less allowable expenses	4,562
	= 4,188
divided by Agnes's share - 50%	= 2,094

The DM then deducts from £2,094 amounts for notional income tax and SS contributions. Agnes was not paying premiums for a retirement annuity contract or a personal pension scheme.

15735 - 15739

Salaried partners

15740 A salaried partner may be an employed or S/E earner. A salaried partner may be a person who

1. receives a salary as remuneration and maybe a profit-related bonus. This type of salaried partner is an employed earner¹ **or**
2. may be paid a fixed salary not based on profit. But in addition is included in the partnership deed and is entitled to a share of the profits. This type of salaried partner is a S/E earner.

1 Ross v. Parkins 1871, LR 20 Eq 331

15741 The DM should

1. consider the facts of each case **and**
2. examine the relationship between the person and the other parties

to decide if the salaried partner is a S/E earner.

15742 If a S/E salaried partner receives a salary from the business in addition to a share of the business profit, the salary should not be deducted before arriving at the total net profit to be shared between partners. The DM should

1. calculate the chargeable income **and**
2. deduct tax, SS contributions and any premiums for a personal pension scheme or retirement annuity contract

from the partner's share of the chargeable income.

Renting out property as a business

15743 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business¹.

1 R(FC) 2/92

- 15744 A person who
1. has a single property that is not the home **and**
 2. lets the property to tenants **and**
 3. collects rents and does any repairs

is not conducting a business. The property is primarily an investment.

Example

Neil inherits a house from his parents. Neil lives elsewhere with his family.

After trying for six months to sell the inherited property without success, he decides to let the house on a nine month contract to four students. Neil collects the rent once a month and carries out occasional minor repairs.

The DM decides that Neil is not operating a business.

- 15745 A person who joins with others to buy properties so that they can be let as flats or offices could be said to be conducting a business. The

1. number of properties involved **and**
2. long term intentions of the person

are factors that need to be considered.

- 15746 If the DM decides that a person is conducting a business from renting out properties, the income, that is the rent, is a gross receipt of the business.

Example

Michael has a partnership with another person in a business. The business has been set up to buy land and property for sale and let to tenants. Michael and his partner own a garage with two flats above it and two terraced houses on the same street.

The flats and houses are all let to tenants and Michael collects the rent and does the repairs and maintenance.

The DM decides that Michael is a S/E earner and calculates Michael's earnings. The rental income is regarded as part of the gross receipts.

Seasonally self employed

- 15747 If a S/E earner is seasonally S/E the DM should

1. consider the guidance at DMG 15476 **and**
2. decide if the S/E earner is still currently self employed.

Example 1

Paul owns and runs a fairground ride. Between November and February the ride is put into storage and Paul looks for other work.

The DM decides that Paul is not gainfully employed and no earnings should be taken into account.

Example 2

Andrew owns a fairground business. He organises venues and arranges publicity. People who own rides contact him and pay him so that they can be part of his fair.

During November and February there are no venues and Andrew receives no money, but Andrew uses this time to organise his working year. There are reasonable prospects of work.

The DM decides that Andrew is gainfully employed.

Example 3

Alan runs a business providing pleasure boat trips between April and September. During the winter months Alan arranges for some advertising, but other than that he undertakes no activities in connection with the business.

The DM decides that Alan is not gainfully employed during the winter months and that no earnings should be taken into account.

Example 4

Eric is a S/E gardener. There is much less work available in the winter but Eric still works on average one week in three. Eric continues to seek work and there are reasonable prospects of work in the near future.

The DM decides, in this case, that Eric is gainfully employed.

Example 5

Joyce owns a bed and breakfast establishment. Her busy times are from April to October. From October to March she takes bookings and deposits for the next season, she also arranges for any repairs and decorating to be done. There may be a small number of guests between October and March.

The DM decides that Joyce is gainfully employed.

Sub-contractors

- 15748 A sub-contractor is a S/E person who enters into a contract with another contractor to do a particular job, and is most commonly found in the construction industry.

Example

A firm of builders contract to build a house extension for Tony. They sub-contract the electrical work to Lee. Lee is a S/E sub-contractor and not an employee of either the building firm or Tony.

When Lee completes the work he moves to a different contract that may be for further work with the building firm or for a different contractor.

15749 The DM should

1. consider the guidance at 15476 **and**
2. decide if the S/E sub-contractor is still currently self employed.

15750 - 15754

Guidance common to both employed and self-employed earners

Date on which earnings are treated as paid

General

15755 Earnings from employment, whether employed earners or S/E are treated as paid

1. on the first day of the benefit week following the benefit week in which the payment is due to be paid¹, for Category A RP - non-resident spouse², Category C RP - non-resident wife³, US - non-resident spouse⁴, MA - all ADIs⁵ and CA - resident spouse and person having care of child(ren)⁶ **or**
2. on the first day of the benefit week in which the payment is due⁷ for all other cases.

*1 SS Ben (C of E) Regs, reg 7(a); 2 reg 7(b); 3 SS CB Act 92, s 83(2)(b) & 84(2)(b);
4 s 83(2)(b) & 85(2); 5 Sch 7, para 6(1)(a)(ii); 6 s 82(2);
7 SS Ben (Dep) Regs, Sch 2, para 7*

Treatment of arrears of earnings

15756 If the amount of regular earnings increases, or a person starts to receive earnings for the first time, the first payment may include arrears. The treatment of the arrears will depend on whether they were paid on the date on which they were due to be paid (see DMG 15401).

Arrears paid on due date

15757 Arrears which are paid on the due date should be

1. treated as paid on the first day of the benefit week in which they are paid or the first day of the benefit week following that in which they are paid¹ **and**
2. taken into account for the same period as the persons normal earnings period² and from the date on which they are treated as paid.

1 SS Ben (C of E) Regs, reg 7; 2 reg 6

Example

The claimant's partner has earnings of £40 weekly due each Thursday. IB including an ADI is paid in arrears and the claimant's benefit week ends on Tuesday.

The earnings are increased to £55 weekly from 29 November, but the agreement says that the increase is not payable until 26 December, when payment is made at the new rate with three weeks arrears, a total of £100.

The DM treats the payment as made on 25 December. The new rate of £55 is taken into account in the benefit week beginning 25 December, and the £45 arrears are taken into account for the same period.

From benefit week beginning 1 January, the new weekly rate of £55 is taken into account.

Arrears paid after the due date

15758 Arrears paid after the due date should be treated as paid

1. on the first day of the benefit week in which they were due **or**
2. on the first day of the benefit week following that in which they were due¹.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery².

1 SS Ben (C of E) Regs, reg 7; 2 SS A Act 92, s 74

Example

The claimant normally receives an occupational pension monthly in arrears on the last day of each month.

The pension increases from 1 April each year, first payment at the higher rate being due on 30 April.

Due to administrative problems, the increase is not paid until 30 June, when the claimant receives the new amount for the month of June and arrears for April and May.

The DM decides that the arrears for April and May were due to be paid on 30 April and 31 May, and treats them as paid on the first day of the benefit week in which each was due to be paid.

15759 Benefit week¹ means

1. any period of 7 days corresponding to the week in respect of which the relevant social security benefit is due to be paid **or**
2. the period of 7 days ending on the day before the first day of the first such week following the date of claim or any one of the consecutive periods of 7 days prior to that period.

1 SS Ben (C of E) Regs, reg 2(1)

Payments to be disregarded

General

15760 Disregards should be applied in the following circumstances when calculating a person's net earnings from employment or self-employment

1. payments for living and accommodation costs made by persons normally residing with the employed or S/E earner
2. payments from sub letting
3. payments from providing board and lodging accommodation
4. earnings payable abroad or in foreign currency
5. fostering allowances
6. payments for persons temporarily in care.

Contributions to accommodation and living costs

15761 The DM should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not boarders **or** subtenants¹.

1 SS Ben (C of E) Regs, Sch 1, para 1

Income from Sub Tenants and Board and Lodging - period from 26.1.07 to 1.10.07

15762 The rules for calculating income from providing B/L within the dwelling occupied as the home were the subject of a Commissioner's decision dated 26.1.07. The Commissioners decision also applied to the treatment of payments from sub-tenants. The regulations were amended with effect from 1.10.07 which had the result that, with effect from the first benefit week applicable to the particular case which starts on or after 1.10.07 the method of calculating the amount of a claimant's earnings from S/E by way of

1. payments for providing B/L in their own home is that described in DMG 15768 et seq **and**
2. payments from subtenants is that described in DMG 15764 (but note the change effective from 7.4.08 set out in DMG 15767).

Note: In addition it was made clear that expenses incurred in providing B/L in the home or in subletting the home could not be allowed as an expense (see DMG 15620.12).

- 15763 It should be rare now for DMs to be calculating income from B/L and sub-letting for the period between 26.1.07 and 1.10.07. Guidance on the effect of the Commissioner's decision during this period can be found in Appendix 7. DMs are particularly directed to the guidance in Appendix 7 on how the decision-making and appeals rules work in relation to this Commissioner's decision.

Income from subletting

Position prior to 26.1.07 and from 1.10.07 to 6.4.08

- 15764 If a claimant receives payments by way of rent from a subtenant, the DM should first decide whether these payments are earnings derived from S/E. For guidance on what constitutes S/E see DMG 15475 et seq. In order for payments for subletting to be earnings from S/E, the claimant must be subletting by way of a business.

- 15765 Where a person sublets part of the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. **For each** subtenant who is contractually liable to pay rent

1. add together all payments made in respect of one week
2. deduct £4
3. deduct a further £9.25 if the payment(s) include an amount for heating.

Note Where a person normally resides with another, any payments towards living and accommodation costs should be disregarded². For the position from 7.4.08 see DMG 15767 below.

1 SS Ben (C of E) Regs, Sch 1 para 2; 2 Sch 1, para 1

Position between 26.1.07 and 1.10.07

- 15766 During this period a Commissioner's decision applied (see DMG 15762 and Appendix 7).

Position from 7.4.08

- 15767 With effect from the first benefit week applicable to the case which starts on or after 7.4.08, where, by way of a business as a S/E earner, a person sublets part of the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. **For each** subtenant who is contractually liable to pay rent

1. add together all payments made in respect of one week
2. disregard the whole amount if it is less than £20, otherwise disregard £20.

1 SS Ben (C of E) Regs, Sch 1, para 2

Example

The claimant owns a large house with 7 rooms which he sublets. The claimant makes no contributions towards a personal pension scheme. Each subtenant pays rent weekly. Subtenants 1, 2, 3 and 4 each pay £45pw. Subtenants 5 and 6 each pay £28pw. Subtenant 7 pays £18pw. The DM calculated the amount of earnings to be taken into account as follows

1 x £18 (fully disregarded)	= £Nil
4 x (£45 - £20 = £25)	= £100 pw
2 x (£28 - £20 = £8)	= £16 pw
Total Weekly Income	= £116 pw

The DM went on to calculate deductions for notional tax and NI contributions.

Income from board and lodging

- 15768 The following guidance applies with the exception of the period 26.1.07 to 1.10.07 when a Commissioner's decision had effect. For guidance on the effect of the Commissioner's decision see DMG 15762 and Appendix 7 to this chapter.
- 15769 Income from providing B/L accommodation in the claimant's own home should only be taken into account as earnings where the board and lodging is provided on a commercial basis by way of self employment. For guidance on when a claimant is to be regarded as S/E see DMG 15475 et seq.
- 15770 Where a person provides B/L accommodation within the dwelling occupied as the home, the DM should calculate the income to be taken into account as follows¹. For **each person** for whom B/L is provided
1. add together all the payments made for board and lodging for one week
 2. deduct £20
 3. deduct 50% of any excess over £20.

1 Sch 1, para 3

Example

The claimant had two boarders. In the week in question one boarder paid £55 for a four night stay and the other paid £12 daily for a five night stay. The DM calculated the amount of income to be taken into account as follows

Boarder 1		£
Payments for the week	-	55.00
Deduct £20	-	20.00
	=	35.00
Deduct 50% of the remainder	-	17.50
Total for boarder 1	=	17.50
Boarder 2		£
Payments for the week (£12 x 5)	-	60.00
Deduct £20	-	20.00
	=	40.00
Deduct 50% of the remainder	-	20.00
Total for boarder 2	=	20.00
Grand total (boarder 1 plus boarder 2)	=	37.50.

Board and lodging accommodation

15771 B/L accommodation is accommodation¹

1. where the charge for the accommodation includes some cooked or prepared meals that are both cooked or prepared by someone who is not the person provided with accommodation **or** a member of the family of the person provided with accommodation **and** eaten in that accommodation or associated premises **or**
2. provided to a person in a hotel, guest house, lodging house (see DMG 15764), **or** similar establishment **or**
3. that is not provided by a close relative (see DMG 15765) of the person provided with accommodation or a member of the family of the person provided with accommodation or is provided on a commercial basis.

1 SS Ben (C of E) Regs, reg 2(1)

15772 A lodging house

1. is not a private house in which rooms are rented, even if services such as the provision of and washing of bed linen are provided **and**
2. is a place where accommodation is offered on a long-term basis **and**
3. is the kind of establishment that may have a sign outside offering accommodation.

15773 A close relative is¹

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister **and**
2. where any of those persons is one of a couple, the other member of that couple (see DMG 15800 for the meaning of “couple”).

Note: With effect from 5.12.05 the terms parent-in-law, son-in-law and daughter-in-law include the parent, son or daughter of a civil partner². Also the terms step-parent, step-son and step-daughter include the step-parent, step-son and step-daughter of a civil partner².

1 SS Ben (C of E) Regs, reg 2(1); 2 Civil Partnership Act 2004 s 246; Civil Partnership Act 2004 (Relationships Arising Through Civil Partnership) Order 2005, Sch, para 66

Earnings payable abroad

15774 Any earnings from employment which are payable in a country outside the UK that prohibits the transfer of funds to the UK should be disregarded for as long as that restriction applies¹.

1 SS Ben (C of E) Regs, Sch 1, para 4(a)

15775 - 15779

Earnings paid in a foreign currency

15780 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments.

1 Sch 1, para 4(b)

Fostering allowances

15781 Any payments for children accommodated with the claimant or with an adult dependant for whom an increase of benefit has been claimed are disregarded in full¹ if they are made by

1. an LA under its power and responsibility to provide accommodation and maintenance for a child whom it is looking after²
2. a voluntary organisation under prescribed legislation³
3. a care authority in Scotland⁴.

*1 Sch 1, para 6; 2 Children Act 89, s 23(2)(a); Social Work (Scotland) Act 68, s 21;
3 Children Act 89, s 59(1)(a); 4 Boarding Out and Fostering of Children (Scotland) Regs 85, reg 9*

Payments for persons temporarily in care

15782 Any payments to a claimant or to an adult dependant for whom a increase of benefit has been claimed from

1. an HA
2. an LA
3. a voluntary organisation

for someone who is not normally a member of that persons household but is temporarily in their care are disregarded in full¹.

1 SS Ben (C of E) Regs, Sch 1, para 7

15783 - 15794

Deduction for child care charges

Benefits other than Carer's Allowance

15795 A deduction from net earnings, up to a maximum of £60 per week¹, can be made for relevant child care charges where the employed or S/E earner is

1. a lone parent **or**
2. a member of a couple both of whom are engaged in employment **or**
3. a member of a couple where one member is engaged in employment and the other is incapacitated and they are incurring "relevant child care charges"¹.

1 SS Ben (C of E) Regs, reg 10(2) & 13(2); Sch 2, para 1

15796 - 15799

Meaning of "couple"

15800 "couple" means¹

1. a man and woman who are married to each other and are members of the same household **or**
2. a man and woman who are not married to each other but are LTAHAW **or**
3. two people of the same sex who are civil partners of each other and are members of the same household **or**
4. two people of the same sex who are not civil partners of each other but are living together as if they were civil partners.

1 reg 2(1)

Meaning of "lone parent"

15801 "Lone parent" means¹

1. a person with no partner and who is responsible for a child² **and**
2. that child is a member of the persons household.

1 reg 2(1); 2 SS CB Act 92, s 142

Meaning of "incapacitated"

15802 "Incapacitated"¹ for the purposes of DMG 15800 means that

1. CTB or HB is payable to the 'other member' or the partner and the applicable amount includes a DP **or** a HPP following on from a DP **or**

2. because of the “other members” incapacity one of the following is payable: IBLT, AA, SDA, DLA, CAA, an increase under a war pension or Industrial Injuries scheme, similar to AA, DLA or CAA **or**
3. one of the benefits as in AA, DLA, CAA **or** an increase under a war pension or Industrial Injuries scheme similar to these, was payable to the “other member” but had ceased to be payable due to that person becoming a patient, **other than** a person who is serving a sentence imposed by a court in a prison or youth custody institution, who is regarded as receiving free in-patient treatment² **or**
4. a similar benefit to any of those described in the first two points above under Northern Ireland law **or**
5. the “other member” has an invalid carriage or other vehicle provided (in any part of the UK under the Invalid Vehicle Scheme³.

1 SS Ben (C of E) Regs, Sch 2, para 8; 2 SS HIP Regs; 3 NHS Act 1977, s 5(2)(a), Sch 2; NHS (Scotland) Act 1978, s 46; Art 30(1); Health and Personal Social Services (Northern Ireland) Order 72

Meaning of “relevant child care charges”

15803 “Relevant child care charges”¹ means the charges paid by someone for the care of a child of their family who is under age eleven at the beginning of the benefit week² except those paid

1. for the child’s compulsory education **or**
2. by either member of a couple to the other for a child for whom either is responsible.

1 SS Ben (C of E) Regs, Sch 2, para 2; 2 Sch 2, para 3

15804 To qualify the care must be provided by one of the following¹

1. a childminder or day care provider registered under specific legislation²
2. where the child is aged eight but under eleven at the beginning of the benefit week, out of school hours by a school on school premises, or by a LA
3. a child care scheme run on Crown property where registration under specific legislation³ is not required
4. certain schools or other establishments exempted from registration under specific legislation⁴
5. provided the care provided is childminding or day care of children within the meaning of specific legislation⁵ (see DMG 15805),
 - 5.1 persons registered under specific Scottish legislation⁶
 - 5.2 LAs registered under specific Scottish legislation⁷.

1 Sch 2, para 2; 2 Children Act 1989, s 71 or Part XA; 3 s 71; 4 s 71(16) & Sch 9 paras 3 or 4 or Part XA; 5 Regulation of Care (Scotland) Act 2001, s 21(17); 6 s 7(1); 7 s 33(1)

Childminding (Scotland)

15805 Under Scottish legislation¹, childminding is defined as looking after children on domestic premises for reward for more than two hours in any day².

1 Regulation of Care (Scotland) Act, s 2(17); 2 s 2(21)

15806 A person who

1. is a parent or relative of a child **or**
2. has parental responsibilities (as defined in Scottish law¹) for a child **or**
3. is a foster parent with whom a child is placed by a LA **or**
4. maintains a foster child (as defined in Scottish law²)

is **not** childminding when looking after that child³.

*1 Children (Scotland) Act 1984, s 1(3); 2 Foster Children (Scotland) Act 1984;
3 Regulation of Care (Scotland) Act 2001, s 2(18)*

15807 A person who

1. looks after a child for one set of parents (“the first parents”) **or**
2. in addition also looks after another child for a different set of parents (“the second parents”)

is **not** childminding in the circumstances set out in DMG 15808¹.

1 Regulation of Care (Scotland) Act 2001, s 2(19)

15808 The circumstances in which a person in DMG 15807 is **not** childminding (within the definition in Scottish law) are where the work consists of looking after the child

1. where DMG 15807 1. applies, wholly or mainly in the first parents’ home, or the second parents’ home, or both **or**
2. where DMG 15807 2. applies wholly or mainly in the first parents’ home, or the second parents’ home, or both.

Day care (Scotland)

15809 In Scotland, “day care” of children means¹ a service which consists of any form of care (whether or not provided in the form of an educational activity) which is

1. supervised by a responsible person **and**
2. provided for children on premises other than domestic premises

whether or not that care is provided on a regular basis. A person does not provide day care for any day during which the service is provided for two hours or less².

1 s 2(20); 2 s 2(21)

Calculation of the average weekly child care charge

Child care charges paid weekly

15810 Where child care charges are paid weekly, the average weekly charge shall be calculated as follows¹

1. add together the child care charges from the most recent four full school term-time weeks and divide the result by four
Note: "School term-time" means the school term-time applicable to the child being cared for. The number of term-time weeks in a year should be treated as 39 and non term-time weeks as 13.
2. multiply the answer at 1. by 39. This figure becomes amount A (average weekly school term-time charge)
3. add together the child care charges from the most recent 2 out of school term-time weeks and divide the result by 2
4. multiply the answer at 3. by 13. This figure becomes amount B (average weekly out of school term-time charge)
5. then apply the formula $A + B \div 52 =$ average weekly child care charges¹ (result rounded up to a whole penny)
6. deduct the amount at 5. (up to a maximum of £60) from the net weekly earnings.

1 SS Ben (C of E) Regs, Sch 2, para 4

Example

1. Four full term-time weeks are £30, £30, £25, £30
Total = $\pounds 115 \div 4 = \pounds 28.75$
2. $A = \pounds 28.75 \times 39 = \pounds 1121.25$
3. Two out of term-time weeks £50, £50. Total = $\pounds 100 \div 2 = \pounds 50$
4. $B = \pounds 50 \times 13 = \pounds 650$
5. $A (\pounds 1121.25) + B (\pounds 650) \div 52 = \pounds 34.07$ average weekly child care charges
6. Claimant's net weekly earnings $\pounds 150$ less $\pounds 34.07 = \pounds 115.93$.

15811 Where the child care charges are

1. weekly paid **and**
2. for a child not yet attending school

the average weekly cost is calculated by averaging the charges over the most recent four full weeks before the date of claim¹.

1 SS Ben (C of E) Regs, Sch 2, para 5 & 6

Child care charges paid monthly

15812 Where child care charges are paid monthly, whether or not the child is attending school, the average weekly charge is calculated¹

1. where the charges are for a fixed monthly amount - by multiplying that amount by twelve and dividing by 52 **or**
2. where the charges are for a varying monthly amount - by adding together the charges for the previous twelve months and dividing by 52.

1 Sch 2, para 6

Insufficient information

15813 Where there is no information or insufficient information to calculate the average weekly charge as in DMG 15805

1. an estimate should be obtained from the childminder/person providing the care **or**
2. information provided by the claimant should be used to calculate the average weekly child care charge¹.

1 Sch 2, para 7

Carer's Allowance

15814 A claimant who

1. is entitled to CA **and**
2. incurs relevant care charges¹ through being unable, because of their work, to care for either the severely disabled person in respect of whom entitlement to CA arises or any child under age 16 at the beginning of the benefit week in respect of whom the claimant or partner is entitled to CHB

can have those charges deducted from their net profit² or net earnings³ subject to a maximum deduction of 50% of the net profit or net earnings.

1 Sch 3, para 2; 2 reg 13(3)(b); 3 reg 10(3)(b)

15815 For the charges to be deductible the care must not be provided by a close relative of either the severely disabled person or the claimant. In this context "close relative" means parent, son, daughter, brother, sister or partner¹.

1 Sch 3, para 2

15816 - 15999

Appendix 1

Notional deductions for income tax (see DMG 15380 - 15680)

Income tax allowances

1. The personal income tax allowance for someone under 65 is as follows.

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Personal under 65	4,745	4,895	5,035	5,225	6,035	6,475	6,475	7,475

Basic rates of tax

2. Income tax is payable on taxable income.

£		
06/07	- 1 - 2,150	at lower rate of 10%
	2,151 - 33,300	at basic rate of 22%
07/08	- 1 - 2,230	at lower rate of 10%
	2,231 - 34,600	at basic rate of 22%
08/09	- 1 - 34,800	at basic rate of 20%
09/10	- 1 - 37,400	at basic rate of 20%.
10/11	- 1 - 37,400	at basic rate of 20%
11/12	- 1 - £35,000	at basic rate of 20%

Appendix 2

Notional deductions for Social Security contributions (see DMG 15681 et seq)

Class 1 contributions

1. The Class 1 SS contribution for any week or month is based on the percentage rate appropriate to the band that the estimated gross earnings fall.

Earnings Bands 04/05

Earnings	Percentage rates	Earnings Limits 04/05
		Lower earnings limit
1. £91 or less weekly	NIL	weekly £79
£395.01		monthly £343
		Upper earnings limit
2. £91.01 or more weekly to UEL	11%	weekly £610
£395.01 or more monthly to UEL		monthly £2,644
3. £595.01 and above	1%	

Earnings Bands 05/06

Earnings	Percentage rates	Earnings Limits 05/06
		Lower earnings limit
1. £94 or less weekly	NIL	weekly £79
		Upper earnings limit
2. £94.01 or more weekly to UEL	11%	weekly £630
3. £630.01 weekly and above	1%	

Earnings Bands 06/07

Earnings	Percentage rates	Earnings Limits 06/07
		Lower earnings limit
1. £97 or less weekly	NIL	weekly £84
		Upper earnings limit
2. £97 or more weekly to UEL	11%	weekly £645
3. £645 weekly and above	1%	

Earnings Bands 07/08

Earnings	Percentage rates
1. £100 or less weekly	NIL
2. £100 or more weekly to UEL	11%
3. £670 weekly and above	1%

Earnings Limits 07/08

Lower earnings limit weekly £87
Upper earnings limit weekly £670

Earnings Bands 08/09

Earnings	Percentage rates
1. £105 or less weekly	NIL
2. £105 or more weekly to UEL	11%
3. £770 weekly and above	1%

Earnings Limits 08/09

Lower earnings limit weekly £90
Upper earnings limit weekly £770

Earnings Bands 09/10

Earnings	Percentage rates
1. £110 or less weekly	NIL
2. £110.01 or more weekly to UEL	11%
3. £844.01 weekly and above	1%

Earnings Limits 09/10

Lower earnings limit weekly £95
Upper earnings limit weekly £844

Earnings Bands 10/11

Earnings	Percentage rates
1. £110 or less weekly	NIL
2. £110.01 or more weekly to UEL	11%
3. £844.01 weekly and above	1%

Earnings Limits 10/11

Lower earnings limit weekly £97
Upper earnings limit weekly £844

Earnings Bands 11/12

Earnings	Percentage rates
1. £139 or less weekly	NIL
2. £139.01 or more weekly to UEL	12%
3. £817.01 weekly and above	2%

Earnings Limits 11/12

Lower earnings limit weekly £102
Upper earnings limit weekly £817

Class 2 contributions

1. The weekly rates of Class 2 contributions are as follows.

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Ordinary Class 2 rate	2.05	2.10	2.10	2.20	2.30	2.40	2.40	2.50
Share fisherman rate	2.70	2.75	2.75	2.85	2.95	3.05	3.05	3.15

Small earnings exception

1. The rates of the small earnings exception are as follows.

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Earnings limit	4,215	4,345	4,465	4,635	4,825	5,075	5,075	5,315

Class 4 contributions

2. The weekly rates of Class 4 contributions are as follows.

	04/05	05/06	06/07	07/08	08/09	09/10	10/11	11/12
	£	£	£	£	£	£	£	£
Lower level	4,745	4,895	5,035	5,225	5,435	5,715	5,715	7,225
Higher level	31,720	32,760	33,540	34,840	40,040	43,875	43,875	42,475
Percentage rate (taxable profits between lower & higher levels)	8%	8%	8%	8%	8%	8%	8%	9%
Percentage rate (taxable profits over higher level)	1%	1%	1%	1%	1%	1%	1%	2%

Appendix 3

Pension age (see DMG 15683)

Period within which woman's birthday falls	Day pension age reached
6.4.50 - 5.5.50	6.5.2010
6.5.50 - 5.6.50	6.7.2010
6.6.50 - 5.7.50	6.9.2010
6.7.50 - 5.8.50	6.11.2010
6.8.50 - 5.9.50	6.1.2011
6.9.50 - 5.10.50	6.3.2011
6.10.50 - 5.11.50	6.5.2011
6.11.50 - 5.12.50	6.7.2011
6.12.50 - 5.1.51	6.9.2011
6.1.51 - 5.2.51	6.11.2011
6.2.51 - 5.3.51	6.1.2012
6.3.51 - 5.4.51	6.3.2012
6.4.51 - 5.5.51	6.5.2012
6.5.51 - 5.6.51	6.7.2012
6.6.51 - 5.7.51	6.9.2012
6.7.51 - 5.8.51	6.11.2012
6.8.51 - 5.9.51	6.1.2013
6.9.51 - 5.10.51	6.3.2013
6.10.51 - 5.11.51	6.5.2013
6.11.51 - 5.12.51	6.7.2013
6.12.51 - 5.1.52	6.9.2013
6.1.52 - 5.2.52	6.11.2013
6.2.52 - 5.3.52	6.1.2014

6.3.52 - 5.4.52	6.3.2014
6.4.52 - 5.5.52	6.5.2014
6.5.52 - 5.6.52	6.7.2014
6.6.52 - 5.7.52	6.9.2014
6.7.52 - 5.8.52	6.11.2014
6.8.52 - 5.9.52	6.1.2015
6.9.52 - 5.10.52	6.3.2015
6.10.52 - 5.11.52	6.5.2015
6.11.52 - 5.12.52	6.7.2015
6.12.52 - 5.1.53	6.9.2015
6.1.53 - 5.2.53	6.11.2015
6.2.53 - 5.3.53	6.1.2016
6.3.53 - 5.4.53	6.3.2016
6.4.53 - 5.5.53	6.5.2016
6.5.53 - 5.6.53	6.7.2016
6.6.53 - 5.7.53	6.9.2016
6.7.53 - 5.8.53	6.11.2016
6.8.53 - 5.9.53	6.1.2017
6.9.53 - 5.10.53	6.3.2017
6.10.53 - 5.11.53	6.5.2017
6.11.53 - 5.12.53	6.7.2017
6.12.53 - 5.1.54	6.9.2017
6.1.54 - 5.2.54	6.11.2017
6.2.54 - 5.3.54	6.1.2018
6.3.54 - 5.4.54	6.3.2018
6.4.54 - 5.5.54	6.5.2018
6.5.54 - 5.6.54	6.7.2018
6.6.54 - 5.7.54	6.9.2018

6.7.54 - 5.8.54	6.11.2018
6.8.54 - 5.9.54	6.1.2019
6.9.54 - 5.10.54	6.3.2019
6.10.54 - 5.11.54	6.5.2019
6.11.54 - 5.12.54	6.7.2019
6.12.54 - 5.1.55	6.9.2019
6.1.55 - 5.2.55	6.11.2019
6.2.55 - 5.3.55	6.1.2020
6.3.55 - 5.4.55	6.3.2020

Appendix 4

Territorial or reserve forces (see DMG 15133)

Territorial or reserve forces prescribed in Social Security (Contributions) Regulations 1979, Schedule 3, Part I

Royal Naval Reserves, including

Women's Royal Naval Reserve

Queen Alexandra's Royal Naval Nursing Service Reserve

Royal Marines Reserve

Army Reserves, including

Regular Army Reserve of Officers

Regular Reserves

Long Term Reserve

Army Pensioners

Territorial and Army Volunteer Reserve

Royal Air Force Reserves, including

Royal Air Force Reserve of Officers

Women's Royal Air Force Reserve of Officers

Royal Air Force Volunteer Reserve

Women's Royal Air Force Volunteer Reserve

Class E Reserve of Airmen

Princess Mary's Royal Air Force Nursing Reserve

Officers on the Retired List of the Royal Air Force

Royal Air Force Pensioners.

Appendix 5

Exemptions granted from statutory guarantee payments (see DMG 15231)

Employers covered by National Agreements for the following industries

Civil engineering construction

Demolition and dismantling (from 2.2.77)

British footwear manufacturing industry (from 4.7.77)

National Council for the steeplejack and lightning conductor engineering industries (from 1.8.77)

Paper making and board making industry (from 15.8.77)

Smiths Food Group factories at Paulsgrove, Stockport, Great Yarmouth and Fleetwood (from 5.9.77)

Cut Sole associates (from 8.9.77)

Fibreboard Packing Case (from 18.10.77)

Refractory Construction Industry (from 1.11.77)

Multiwall Sack manufacturing industry (from 4.11.77)

Tudor Food Products (from 11.1.78)

British Carton Association (from 14.3.78)

Henry Wiggin and Co Ltd (from 19.4.78)

National Joint Council for Workshops for the Blind (from 27.6.78)

Card Clothing industry (from 13.7.78)

Motor vehicle retail and repair industry (from 14.12.78)

The Contractors Plant Association (from 23.2.81)

Wire and wire ropes industries (from 12.9.87)

Rowntree Mackintosh Confectionery Ltd (from 6.9.89)

Building and Allied Trade Joint Industries Council (from 29.9.89)

Airflow Streamlines plc (from 18.12.89)

G and G Kynock plc (from 21.5.90)

Bridon Ropes (from 27.12.90)

National Joint Council for Building Industries (from 1.7.94)

Appendix 6

Maximum weekly amount (See DMG 15262 - 15263)

Amounts specified in section 227(1) of the Employment Rights Act 1996.

From 1.2.04	270
From 1.2.05	280
From 1.2.06	290
From 1.2.07	310
From 1.2.08	330
From 1.2.09	350
From 1.10.09	380
From 1.2.11	400

Appendix 7

S/E earnings from B/L and Subletting-position between 26.1.07 and 1.10.07

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INTRODUCTION

- 1 This Annex gives guidance about a Commissioner's decision which radically altered the way in which DMs were to calculate earnings from S/E where the person concerned is providing BL accommodation on a commercial basis **in their own home**. The decision also affected the treatment of payments from sub-tenants.
- 2 **The Commissioner's decision only has effect from 26.1.07 until 1.10.07** when an amendment restored the policy intention (but see the guidance in paragraphs 15 to 19 about how the decision-making rules apply).

THE COMMISSIONER'S DECISION

Background

3 On 3.5.05, a Commissioner decided¹ that the Computation of Earnings Regulations did not apply when earnings had to be calculated for the purposes of exempt work for IfW. This was reversed by the Court of Appeal² on 27.4.06 (see DMG Letter 06/06). However the Court remitted the case back to the Commissioner for him to decide the amount of the claimant's earnings.

1 CIB/4174/2003; 2 Secretary of State for Work and Pensions v Doyle [2006] EWCA Civ 466

4 In the second part of his decision¹, dated 26.1.07, the Commissioner analysed the way in which the Computation of Earnings Regulations worked in relation to the claimant's earnings from providing BL accommodation in their own home.

Note: The commissioner's decision does not apply where BL accommodation is provided elsewhere than in the claimant's home. In these cases earnings from S/E should be calculated in the normal way and the disregard² will not apply.

1 CIB/4174/2003; 2 SS Ben (C of E) Regs, Sch 1, para 3

What the Commissioner decided

5 The Commissioner held that three sums must be deducted when calculating earnings from providing BL accommodation in the claimants own home.

1. For each boarder, the first £20 of the payments made, plus 50% of the remainder, must be excluded from the gross earnings.
2. All expenses wholly and exclusively defrayed in the assessment period for the purposes of the employment must be deducted from the gross receipts in the process of calculating the net profit.
3. For each boarder, the first £20 of the payments made, plus 50% of the remainder, must **again** be deducted, this time from the net earnings.

Paragraphs 6 to 11 set out the Commissioners reasoning in more detail and give an example of each stage of the process.

6 Payments for providing BL are earnings from S/E and specific regulations¹ govern the way in which the amount to be taken into account as earnings should be calculated.

1 regs 11 to 14

7 "Earnings" from S/E is defined¹ as the gross receipts of the employment. However the regulations add that² "earnings" shall not include the payments to be disregarded in specific paragraphs³ of Schedule 1.

1 reg 12(1); 2 reg 12(2)(a); 3 Sch 1 paras 1,2 &3

- 8 One of these paragraphs¹ sets out the disregard which applies where the claimant provides BL accommodation in their home.

1 SS Ben (Cof E) Regs, Sch 1 para 3

- 9 The Commissioner held that the first step in calculating the earnings to be taken into account in respect of a person providing BL accommodation in their own home was therefore to deduct the disregards from the gross receipts.

Example 1

A CA claimant has four rooms in her house which are occupied by boarders. She provides bed and breakfast at the rate of £35 per night. The DM set an assessment period of 52 weeks. All four rooms were occupied throughout this period and the gross receipts were £50,960. The DM decided that his first step was to deduct the total disregards that would apply during the assessment period. He calculated the total disregards as follows

Each boarder pays £245 pw - £20 = £225, 50% of £225 = £112.50 pw.

Weekly disregard per boarder = (£20 + £112.50) = £132.50

Multiplied by 4 = £530. Multiplied by 52 = £27,560

£50,960 (gross receipts) - £27,560 (disregard) = £23,400 pa ("earnings").

- 10 The Commissioner held that the second step is to calculate the net profit by deducting from "earnings" **all** expenses wholly and exclusively defrayed¹ and half of any pension paid² during the assessment period and amounts for notional income tax, SS contributions³.

Note: All of the expenses defrayed must be deducted. No account can be taken of the fact that a disregard has already been applied.

1 reg 13(4)(a); 2 reg 11(4)(c); 3 reg 11(4)(b) & reg 14

Example 2

Continuing the calculation in **Example 1**, the DM established that the total expenses (food, linen, laundry etc) incurred by the claimant in providing BL during the assessment period were £10,180. The claimant was not making any pension payments. The DM calculated the net profit as follows

"Earnings"	£23,400
Less expenses	£10,180
Chargeable Income	£13,220
Less income tax personal allowance	£5,225

Taxable Income	£7,995
10% rate applied to first £2,230	£223
22% rate applied to remaining £5,765	£1,268.30
Less total notional tax (£223 + £1,268.30)	£1,491.30
52 x Class 2 contributions at £2.20	£114.40
Class 4 on chargeable income in excess of £5,225 (13,220 - £5,225 = £7,995) x 8%	£639.60
Total notional SS contributions (£114.40 + £639.60)	£754
Net Profit (£23,400 - £10,800 - £1,491.30 - £754)	= £10,974.70

- 11 The Commissioner found that this was not the end of the calculation. The regulation dealing with the calculation of earnings from S/E **also** requires¹ that a deduction be made from net profit of “any sum, where applicable, specified in Schedule 1”. Thus the BL disregard had to be deducted **once again**, this time from the net profit.

1 SS Ben (C of E) Regs, reg 13(2)(a)

Example 3

Continuing with the calculation in **Examples 1** and **2**, the DM deducted the BL disregard again as follows

Net Profit	£10,974.70
Less BL disregard (see Example 1 for how this was calculated)	£27,560.00
Earnings to be taken into account	= £ NIL

SUB-TENANTS

- 12 If a claimant receives payments by way of rent from a sub-tenant, the DM should first decide whether these payments are earnings derived from S/E. For guidance on what constitutes S/E (see DMG 15475) et seq. In order for payments for subletting to be earnings from S/E, the claimant must be subletting by way of a business.

- 13 In the light of the way the Commissioner has analysed the Computation of Earnings Regulations, it is clear that the way in which earnings from S/E, by way of payments from sub-tenants must follow that analysis from now on. In calculating earnings from subletting the DM must therefore follow the three steps set out by the Commissioner.

Example

The claimant has a large house which she occupies together with five sub-tenants. Each sub-tenant pays £60 pw (inclusive of heating). During the 52 week assessment period the claimant received a total of £15,600. The DM calculated the amount of earnings to be taken into account as follows

Total receipts		£15,600
Less disregards (£4 + £9.25) x 5 = £66.25 x 52		£3,445
		= £12,155
Less expenses		£2,600
Chargeable Income	£9,555	
Less notional tax		£685
Less notional SS contributions		£460.80
Net Profit		= £8,409.20
Less Disregard again		£3,445
Annual earnings to be taken into account		£4,964.20
Weekly earnings to be taken into account		£95.46

EFFECT OF THE COMMISSIONER’S DECISION

- 14 Between 26.1.07 and 1.0.07, the Commissioner’s decision is binding case law in relation to the calculation of earnings from providing BL in the claimant’s own home or subletting made under the Computation of Earnings Regulations.

DECISION-MAKING AND APPEALS

Relevant Determination

- 15 The Commissioner's decision is a relevant determination¹ (see DMG 04290 - 04292 for further guidance). It was made on 26.1.07 (and sent to the parties in March 2007).

1 SS Act 98, s 27

Revision and supersession

- 16 Where a person applies for a decision to be looked at again, and the decision is erroneous in law in the light of the relevant determination, the DM should
1. revise for official error¹ if the decision to be revised was made on or after 26.1.07 **or**
 2. supersede² for error of law if the decision to be superseded was made up to and including 25.1.07.

1 s 9; SS CS (D&A) Regs, reg 1(3) & 3(5)(a); 2 SS Act 98, s 10

- 17 Where the decision is revised, the effective date is the date the original decision took effect¹. DMs should note that where this is before the date of the relevant determination, periods before 26.1.07 should be decided in accordance with the interpretation of the law before that date i.e. as though the relevant determination had not been made².

1 s 9(3); 2 s 27(3)(a)

- 18 Where the decision is superseded, the new decision is effective from 26.1.07¹.

1 SS CS (D&A) Regs, reg 7(6)

- 19 Where the decision is revised or superseded in accordance with paragraphs 16 to 18 a further supersession will be needed to apply the change of law that took effect from 1.10.07.

Appeals

- 20 Where an appeal is outstanding against a decision that is affected by the Commissioner's decision, the DM should consider whether it should be lapsed and the decision revised as in paragraphs 15 and 16 (see also DMG 06160). If it cannot be revised, then the Commissioner's decision should be brought to the tribunal's attention in a further submission.

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Increases for children and qualifying young persons

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Chapter 16 - Dependency increases

Increases for children and qualifying young persons

Abolition of certain child dependency increases

Introduction

16000 Certain CDIs have been abolished¹. DMG 16003 -16013 provides guidance on this and on the transitional and savings arrangements². The guidance on CDIs in DMG 16015 et seq is retained for transitional cases and benefits not affected (see DMG 16002).

1 TC Act 02, s 1(3)(e); 2 TC Comm No. 3 Order, art. 3

Benefits affected

16001 The benefits affected are

1. IBST at the higher rate or where the claimant is over pensionable age¹
2. IBLT²
3. RP (Cat A, Cat B and Cat C)³
4. WMA⁴
5. WPA⁵
6. CA⁶
7. SDA⁷.

Note: See DMG Chapter 75 for guidance on pensionable age

1 SS CB Act 92, s 80; 2 s 80; 3 s 80; 4 s 80; 5 s 80; 6 s 90; 7 Welfare Reform and Pensions Act 1999 (Commencement No. 9 and Transitional and Savings Provisions) Order 2000, art. 4

Benefits not affected

16002 CDIs payable with

1. US
2. IIDB
3. WC
4. IDB

are **not** affected and consequently the guidance given in DMG 16003 - 16013 does not apply to them.

New claims for child dependency increases received on or after 6.4.03

16003 Where a claim for a CDI is made

1. on or after 6.4.03 **and**
2. in respect of a period that starts before 6.4.03 **and**
3. that period includes 5.4.03 **and**
4. that period continues after 5.4.03

the DM should allow¹ the claim subject to the normal conditions of entitlement to the CDI being satisfied.

1 TC Comm No. 3 Order, art. 3(1) & 3(2)(b)

16004 Where a claim for a CDI is made

1. on or after 6.4.03 **but**
2. in respect of a period wholly prior to 6.4.03

the DM should deal with the claim as if it had been made before 6.4.03.

16005 - 16009

Existing awards of child dependency increase from 6.4.03

16010 Where a claimant is entitled to and being paid a CDI on 5.4.03, the CDI entitlement and payability will continue¹ (subject to the normal conditions for entitlement and payability being satisfied).

1 TC Comm No. 3 Order, art. 3(1) & (2)(a)

16011 Once entitlement to a CDI to a relevant benefit ceases, that person can no longer claim a CDI for a period after 6.4.03, unless DMG 16002 applies¹.

1 TC Comm No. 3 Order, art. 3(3)(b)

16012 Where a parent benefit has been terminated by means of a revision, supersession or appeal, any CDI payable with that parent benefit will also be terminated. Where the parent benefit is subsequently re-awarded following a revision, supersession or appeal, the CDI can be reclaimed. The CDI must be reclaimed within 3 months of the date the parent benefit is re-awarded. The CDI would be payable from either

1. the date of termination of the original award¹ **or**
2. the first date in respect of which the parent benefit is re-awarded whichever is the later².

1 TC Comm No. 3 Order, art. 3(3)(c); 2 SS (C&P) Regs, reg 6 (19-23)

16013 Where there is entitlement to a CDI on 6.4.03 and that CDI ceases to be payable, it can be reinstated provided the period of non-payability is 57 days or less. If there is no payability for 58 days or more, entitlement to the CDI terminates¹.

1 TC Comm No.3 Order, art 3(3)(a)

16014

Child dependency increases - transitional cases & benefits not affected

Introduction

16015 The guidance at DMG 16021 - 16095 is retained for cases where CDIs are retained under transitional protection and for CDIs to the benefits listed in DMG 16002.

Note: CDIs include increases for qualifying young persons¹.

1 WR Act 09, s 37(1)

Civil Partnerships

16016 From 5.12.05 a civil partnership is a relationship between two people of the same sex which is formed when they register as civil partners¹ (see DMG Chapter 10 for further guidance).

1 CP Act 04

16017 As CDIs now only continue in a small number of benefits and in transitionally protected cases, it seems unlikely that many cases will be affected by the registration of a civil partnership. DMs who encounter problems in relation to the effect of a civil partnership on a CDI should submit queries to DMA Leeds.

16018 - 16020

Unemployability supplement

16021 US was abolished on 6.4.87. But where

1. the claimant was in receipt of US immediately before 6.4.87 **or**
2. the claimant claimed US before 6.4.87 but the award was not made until after that date **or**
3. an award was made for a period starting before 6.4.87 but benefit was not received until after that date¹

entitlement to US will continue² providing the other conditions are satisfied.

1 SS CB Act 92, s 103(7) & (8); Sch 3, para 4; 2 s 103(7)(8); Sch 3, para 4

16022 Where the savings provisions in DMG 16021 are satisfied entitlement to an increase of IIDB with US for a child or qualifying young person continues¹. Where dependency arises on or after 6.4.87, for example by the birth of a child, entitlement to the increase can be established providing the conditions in DMG 16021 are satisfied.

1 SS A Act 92, s 155

Example

A married man receives IIDB with US before 6.4.87 and remains continuously in receipt of the benefit. On 4.12.98 his wife gives birth to a child and he claims an increase for the child. The conditions for entitlement to the increase are satisfied. As he satisfies the savings provisions, he is entitled to the increase. Benefit is paid from 9.12.98.

Claim and duration

- 16023 A claim for an increase of benefit should be made in the prescribed manner and within the time limit¹ (see DMG Chapter 02). When making a claim an increase is regarded as a separate benefit².

1 SS A Act 92, s 1; 2 SS (C&P) Regs, reg 2(3)

- 16024 There can be no entitlement to an increase of benefit unless there is entitlement to personal benefit. In RP and WB the personal benefit must also contain a BP¹. Where the personal benefit is not **payable** because of the overlapping benefits provisions, the increase can still be payable (see DMG Chapter 17).

1 SS CB Act 92, s 61

- 16025 The overlapping benefit provisions affect only the rate or amount of benefit **payable** to a person. They do not affect entitlement to the benefit¹. Where the personal benefit is not **payable** because of earnings the increase can still be paid (see DMG Chapter 15).

1 SS (OB) Regs, reg 16

- 16026 An increase is payable from and including the first day of entitlement to the last date of entitlement. Where the benefit is payable on a weekly basis the increase is payable from the first pay day on which all the conditions of entitlement and payability are satisfied¹.

1 SS (C&P) Regs, reg 16

- 16027 If the claimant is no longer entitled to CHB because the qualifying young person is in receipt of IB(Y)¹ or ESA(Y)², entitlement to an increase of benefit stops from and including the Monday of the week in which IB(Y) or ESA(Y) is awarded. Entitlement to an increase of a weekly paid benefit stops from that same Monday where that is the payday, otherwise entitlement will stop from the next pay-day following that Monday.

1 CHB (Gen) Regs, reg 8(2)(c); 2 reg 8(2)(e)

Rate of benefit

- 16028 An increase for a child or qualifying young person is not affected by an incomplete contribution record. If there is entitlement to the personal benefit, there is entitlement to an increase for a child or qualifying young person at the full rate¹.

1 SS CB Act 92, s 60(4)-(6)

Entitlement and payability

16029 DMs should note the difference between entitlement¹ and payability. Although benefit may not be payable, entitlement may remain².

1 [1984] 1 WLR 1353; 2 SS CB Act 92, s 122(1)

Entitlement

16030 The basic conditions for **entitlement** to an increase are that the claimant

1. must be entitled **or** treated as entitled to CHB **and**
2. should not be treated under DMG 16064 as not entitled.

This is known as the “child benefit test” (see DMG 16050).

16031 Where a person is **not** entitled to CHB but there is a doubt whether they can be treated as entitled, the DM should consider whether the claimant

1. is living with their spouse **or**
2. is living with
 - 2.1 a parent of the child or qualifying young person **and**
 - 2.2 the child or qualifying young person.

16032 Where a claimant is living with

1. a parent of the child or qualifying young person **and**
2. the child or qualifying young person

but is **not** the child’s or qualifying young person’s parent, the DM should consider whether the claimant is or has been wholly or mainly maintaining the child or qualifying young person (see DMG 16550 et seq).

Payability

16033 An increase of benefit is **payable** only if

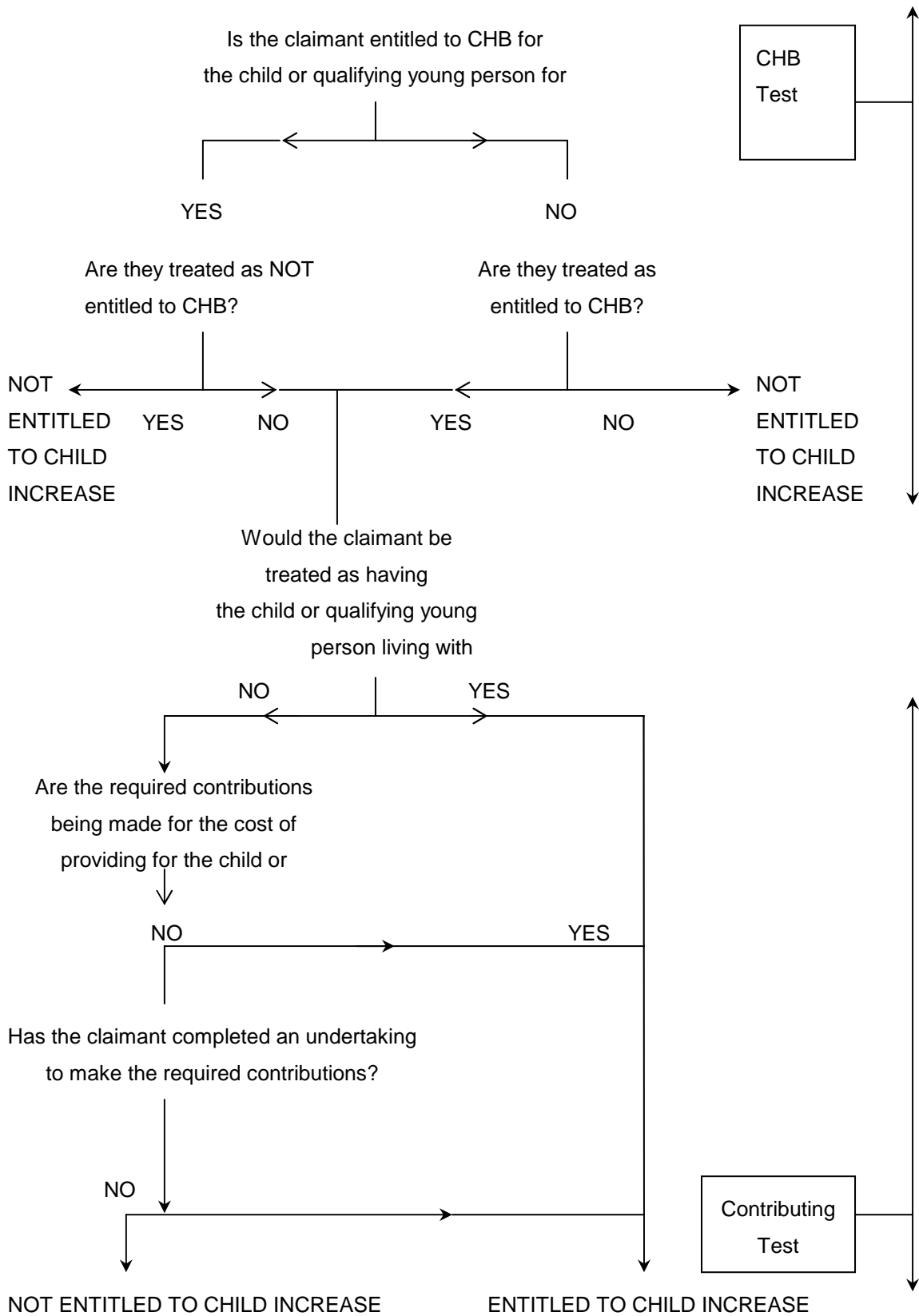
1. the child or qualifying young person is treated as living with the claimant¹ (see DMG 16341) **or**
2. the claimant and their spouse or civil partner, jointly if they are living together, are maintaining the child or qualifying young person at a weekly rate equal to or more than the amount of the dependant’s increase.

Note: Where **2.** applies, if CHB is payable to the claimant, or the spouse if they live together, an amount equal to the amount of CHB must also be included in the maintenance. This is known as the “contributing test”².

1 SS CB Act 92, s 143(2)-(4); 2 s 81(1) & (2)

- 16034 The “contributing test” and the “wholly or mainly maintaining test” are completely separate questions. Guidance on the contributing test is at DMG 16510 et seq and the wholly or maintaining test at DMG 16550 et seq.
- 16035 Where the CHB test is satisfied but the contributing test is not, the claimant may be treated as satisfying the contributing test subject to certain conditions (see DMG 16095).
- 16036 The diagram on the following page shows how the CHB and contributing tests work (see DMG 16050 et seq).
- 16037 Payment of an increase for a child or qualifying young person may also be affected
1. by the earnings of the
 - 1.1 spouse **or**
 - 1.2 civil partner **or**
 - 1.3 “other person” **or**
 2. if the child or qualifying young person is receiving free in-patient treatment **or**
 3. if the child or qualifying young person is receiving an overlapping benefit.

16038 - 16039



Definition of child, qualifying young person and parent

Definition of child

16040 A child is a person who has not reached the age of 16^d.

1 SS CB Act 92, s 122(1) & 142(1)

Definition of qualifying young person

16041 A qualifying young person is a person who is not a child¹ and who

1. has not reached a prescribed age **and**
2. satisfies other conditions².

Note: No-one who reached the age of 19 before 10.4.06 can be a qualifying young person³.

1 WR Act 09, s 37(2); SS CB Act 92, s 122(1) & 142(2); 2 CHB (Gen) Regs, reg 2 – 8; 3 reg 2(5)

16042 DMG 16127 – 16134 gives guidance on the prescribed age and other conditions for ADI purposes. That guidance also applies for the purpose of DMG 16041.

Definition of parent

16043 The term parent includes

1. the natural parent of an illegitimate child or qualifying young person
2. a step-parent¹
3. adoptive parents²
4. the parties to a marriage where the child is born in England or Wales as a result of artificial insemination³.

*1 SS CB Act 92, s 147(3); SS (IB for D) Regs, reg 1(2); SS Ben (Dep) Regs, reg 1(2);
2 R(SB) 24/86; 3 FLR Act 87, s 27*

Step-parents

16044 A step-parent is a person who marries someone who is the parent of a child or qualifying young person. It does not matter whether the child or qualifying young person was the legitimate child of a previous marriage or illegitimate¹.

1 R(S) 9/83

16045 A step-relationship between a man and a child or qualifying young person continues to exist

1. after the death of the child's or qualifying young person's mother¹
2. after the marriage between the man and the child's or qualifying young person's mother has ended by divorce

even though either, or both of them might then remarry with different partners².

1 R(F) 1/79; 2 R(S) 4/81

Adoptive parents

16046 A child or qualifying young person who has been legally adopted is the dependant of the adoptive parents **not** of the natural parents¹. From the date of the adoption order the adoptive parents should be regarded as the parents of the child or qualifying young person.

1 Children Act 1975; R(SB) 24/86

Child born following artificial insemination

16047 Where a child is born in England or Wales as a result of artificial insemination and the woman was

1. at the time of the insemination part of a valid marriage¹ **or** a marriage that either the husband or wife considered to be valid² **and**
2. artificially inseminated with the semen of a man other than her husband³

the child is treated as a child of the husband and wife⁴. That child cannot be treated as a child of any other person.

1 FLR Act 87, s 27(1)(a); 2 s 27(2); 3 s 27(1)(b); 4 s 27(1)

16048 The child is treated as a child of the marriage unless it is proved to a Court that the husband did not agree to the insemination¹.

1 FLR Act 87, s 27(1)

16049

Child benefit and contributing tests

Child benefit test

16050 Entitlement to CHB is a basic condition for entitlement to an increase of benefit for a

1. child or qualifying young person¹ **and**
2. person caring for a child or qualifying young person² (but see DMG 16125 - 16134).

*1 SS CB Act 92, s 80(1); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2;
2 SS CB Act 92, s 82, 85 & 86A; Sch 2, para 2*

16051 DMs at the Child Benefit Centre decide questions on a person's entitlement to CHB. To be entitled to an increase for a child or qualifying young person¹, the DM dealing with the dependency claim should decide whether a person is

1. entitled to² **or**
2. treated as entitled to

CHB for the child or qualifying young person.

1 SS CB Act 92, s 80(1); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, Part 1; 2 SS CB Act 92, s 82, 85, 86A; Sch 2, Part II

Entitled to child benefit

16052 A person is entitled to CHB if that person is responsible for

1. a child or qualifying young person **or**
2. children or qualifying young persons¹.

Note: See DMG 16040 for the definition of child and DMG 16041 for the definition of qualifying young person.

1 SS CB Act 92, s 141

16053 A week for CHB purposes is defined as a period of seven days beginning Monday¹.

1 SS CB Act 92, s 147(1)

16054 Although there may be **entitlement** to CHB, it may not be **payable** for any week while the claimant remains entitled to CHB, entitlement to the increase of benefit also remains¹.

1 R(P) 3/85

16055

16056 Although the claimant would continue to be entitled to CHB for the purposes of deciding entitlement to the increase, the claimant can be treated as not entitled to CHB (see DMG 16064).

Treated as entitled to child benefit

16057 A person who is living with a spouse is treated as entitled to any CHB the spouse is entitled to¹.

1 SS CB Act 92, s 122(4)

16058 A person is treated as entitled to CHB for any period during which

1. CHB has been awarded to a parent of that child or qualifying young person and both

1.1 the child or qualifying young person **and**

1.2 the claimant

are residing with that parent **and**

2. the person is

2.1 wholly or mainly maintaining the child or qualifying young person (see DMG 16550) **or**

2.2 also a parent of that child or qualifying young person¹ (see DMG 16032).

1 SS Ben (Dep) Regs, reg 4A(1)

16059 The only circumstances in which a person may be treated as entitled to CHB are where CHB has been awarded to a parent of that child, and the child and the person are both living with that parent.

16060

16061 Entitlement to CHB starts from and including the first Monday following the birth of the child. A person is treated as entitled to CHB from the Monday of the week in which the child was born¹.

1 SS Ben (Dep) Regs, reg 4A(1)(b)

Absence abroad

16062 Where a person in GB, including Northern Ireland claims an increase of benefit and

1. that person, or their spouse or civil partner if residing together, is entitled to the family benefits of a country outside the UK under either European Community regulations or reciprocal convention **and**

2. there is no entitlement to CHB

the claimant is treated as entitled to CHB for the period of entitlement to family benefits¹.

1 SS Ben (Dep) Regs, reg 4A(4); SS Ben (PA) Regs, reg 13A; Social Security (Northern Ireland Reciprocal Arrangements) Regulations, reg 2; Regulation (EEA) 1408/71; SS (IB for D) Regs, reg 6(2)

16063 Where

1. the person and the child or qualifying young person **or**
2. the child or qualifying young person

is absent from GB see DMG Chapter 07.

Treated as not entitled to child benefit

16064 A person who is entitled to CHB for a child or qualifying young person but who is not a parent of the child or qualifying young person is treated as not being entitled to that benefit if the child or qualifying young person

1. is not living with the claimant but is living with a parent¹
2. is living with the claimant and a parent but the claimant is not wholly or mainly maintaining the child or qualifying young person² (see DMG 16550).

1 SS Ben (Dep) Regs, reg 4B(1)(a); 2 reg 4B(2)

Example

A grandfather is entitled to CHB for his daughter's child and claims an increase of his benefit for that child. But the child lives with the mother and not the grandfather. He is treated as not entitled to CHB.

16065 A person who is entitled to CHB is treated as not being entitled in respect of any day after the child or qualifying young person has died¹.

1 SS Ben (Dep) Regs, reg 4B(1)(c)

16066 A claimant is treated as not entitled to CHB where entitlement to that benefit remains but is not payable because of the provisions in DMG 16054¹.

1 SS Ben (Dep) Regs, reg 4B(3); SS (IB for D) Regs, reg 7(3)

16067 CHB entitlement depends on the claimants situation at the start of the week¹. The claimant therefore should be treated as not entitled to CHB from the Monday following the changes in DMG 16054.

1 SS CB Act 92, s 147(1)

16068 Where the qualifying young person receives IS awarded from a Monday the claimant is treated as not entitled to CHB from that date. However, where the IS is awarded from any other day the claimant is treated as not entitled to CHB from the Monday following.

16069 Where a claimant is treated as not entitled to CHB, entitlement to an increase for a child or qualifying young person also stops. Entitlement to an increase of IB or SDA stops from the same day that the claimant is treated as not entitled to CHB. Entitlement to an increase of RP, CA, WMA, WPA and IIDB with US stops from

1. the next payday following the date the claimant is treated as not entitled to CHB¹ **or**
2. the same day that the claimant is treated as not entitled to CHB where that is a payday.

1 SS (C&P) Regs, reg 16

Example 1

A claimant is entitled to an increase of IBLT for a qualifying young person. On Tuesday 3.5.11 the qualifying young person starts paid work. CHB is not payable from Monday 9.5.11. From 9.5.11 the claimant is treated as not entitled to CHB. There is no entitlement to the increase of IBLT from and including 9.5.11.

Example 2

A claimant is entitled to an increase of CA for a qualifying young person, which is paid on a Wednesday. On Tuesday 27.9.11 the qualifying young person begins advanced education. CHB is not payable from Monday 3.10.11. Also, from 3.10.11 the claimant is treated as not entitled to CHB. The last payday on which the increase is paid is 28.9.11. There is no entitlement to the increase from and including 5.10.11.

- 16070 Where entitlement has stopped in the circumstances in DMG 16069, a new claim will normally be required for entitlement to the increase to be considered again.

No entitlement to child benefit at time of claim

- 16071 The DM should delay making a decision on CDIs until the outcome of the claim for CHB is known where it

1. has not been made by the claimant, spouse or civil partner **or**
2. has been made but has not yet been decided.

- 16072 The DM should defer making a decision on the increase to allow the Secretary of State to take suitable action if¹

1. a CHB claim has not been made **and**
2. it is not known whether the claimant, spouse or civil partner intend to make a claim.

If there is no evidence that a claim for CHB is about to be made, the DM should disallow the claim for CDI because the claimant is not entitled, or not treated as entitled to CHB.

1 SS (C&P) Regs, reg 9(3); R(S) 3/80

- 16073 The claimant, spouse or civil partner may claim and be awarded CHB retrospectively, for the period for which CDI was claimed and disallowed.

Disallowance of a claim for CDI disposes of that claim. The DM cannot supersede the decision because of a relevant change of circumstances.

16074 Where a decision is superseded, based on a relevant change of circumstances the superseding decision does not have effect before the date on which it is decided the change took place.

16075 The claimant cannot make a new claim for that period, as the DM is prevented from a second decision being made for the period already disallowed¹. The only way in which the earlier period can be reconsidered is if the claimant appeals against the original disallowance.

1 R(S) 1/83

Children or qualifying young persons in local authority care who spend periods at home or elsewhere

16076 If a child or qualifying young person has been in the care of a LA for

1. eight weeks for at least one day a week
2. any of the reasons referred to in the Benefit Specific Guidance

entitlement to CHB for that child or qualifying young person normally ends¹. Child Benefit Centre DMs make this decision. They also decide whether entitlement to CHB is re-established, either by the original or a different claimant.

1 SS CB Act 92, Sch 9, para 1; CHB (Gen) Regs, reg 18

Example

A claim for CDI can be made for a child in care who is ordinarily allowed home to spend each weekend with a parent. The parent need not have been entitled to CHB before the child was taken into care.

16077 During the first eight weeks in care, entitlement to CHB and CDI continues¹. The child or qualifying young person is treated as living with the CHB claimant². This does not apply, however, where the child or qualifying young person has gone to live with the claimant less than eight weeks before going into care.

1 CHB (Gen) Regs, reg 16(1); 2 SS CB Act 92, s 143(2)

16078 After the eighth week of care when entitlement to CHB normally ceases, there may be revived or continued entitlement¹. The Child Benefit Centre DM decides entitlement on a new claim.

1 CHB (Gen) Regs, reg 16(1)

16079 Entitlement to CHB is for the weeks in which the child or qualifying young person spends the whole of at least one day with the claimant¹, even though this day may not be a Monday. All awards or reinstatement of CHB are made on the basis that the child or qualifying young person is living with the claimant². Where CHB is awarded

in these circumstances, entitlement to CDI for the child or qualifying young person is established³.

1 CHB (Gen) Regs, reg 16(2); 2 SS CB Act 92, s 143(1)(a); 3 s 80(1) & 81(1); WR Act 09, s 37(1)

Procedural arrangements

16080 Cases where the CHB test is satisfied are rarely referred to the DM at the beginning of the claim. If the CHB test is satisfied but the claimant is not contributing for each child or qualifying young person at the prescribed weekly rate, an undertaking to contribute will be sought. Cases referred to the DM at the beginning of a claim are those where

1. doubt arises in the satisfaction of the CHB test **or**
2. the CHB test is apparently satisfied, but not the contributing test, and the claimant has not responded to the invitation to sign the undertaking or has refused to sign it.

But see DMG 16059 - 16060 on the limited effect of undertakings from 26.11.84.

16081 Where

1. doubt arises about the satisfaction of the CHB test **and**
2. there is no question of postponing a decision **and**
3. the DM decides that the CHB test is not satisfied

the claim should be disallowed because the claimant is not entitled to CHB and cannot be treated as entitled (see DMG 16057 - 16060).

16082 Where the CHB test is apparently satisfied, but not the contributing test, the claimant is given the opportunity of signing the undertaking. In this case, unless the DM considers the contributing test is satisfied, disallowance is appropriate because insufficient contributions have been made (see DMG 16059 - 16060). An example of the DM considering the contribution test to be satisfied is where the claimant's cash contribution is increased by contributions in kind and therefore no undertaking is required.

16083 - 16089

Contributing test - increases for children and qualifying young persons

16090 Although a claimant may satisfy the CHB test and be entitled to a CDI the CDI will not be payable unless

1. the child or qualifying young person is living with the claimant¹ **or**
2. the contributing test is satisfied.

1 SS CB Act 92, s 81(1) & (2); WR Act 09, s 37(1)

16091 The DM should only consider the contributing test where the claimant is

1. entitled to CHB **and**
2. not living with the child or qualifying young person.

Note: The test should also be considered where the claimant continues to be treated as entitled to CHB as in DMG 16058. But these cases will be rare.

16092 The test is satisfied if the

1. the claimant **or**
 2. the claimant and spouse or civil partner if they are residing together
- contributes to the cost of providing for the child or qualifying young person.

16093 To satisfy the test the contribution must be

1. at a weekly rate not less than the amount of the CDI payable **plus**
2. the amount of CHB payable to the claimant or the claimant and spouse or civil partner if they are residing together.

16094 Where the CDI is reduced because of an overlapping benefit, it is this reduced rate that the claimant must contribute¹.

1 R(S) 10/81

Contributing test treated as satisfied

16095 Except in an increase of CA, if the CHB test is satisfied, but the contributing test is not, the claimant is treated as satisfying the contributing test if

1. a written agreement is made to make the right contributions¹ **and**
2. on receiving the increase the contributions² are made.

1 SS Ben (Dep) Regs, reg 5(1)(a); 2 reg 5(1)(b)

16096 - 16099

Undertaking to contribute

16100 An undertaking must be completed at or about the beginning of the period for which a CDI is claimed. The contributing test cannot be treated as satisfied on the basis of an agreement completed a week or more after the start of the period when the CDI was claimed¹. Agreements should be obtained quickly if loss of benefit is to be avoided.

1 R(U) 3/78

Child or qualifying young person “living with”

16101 Even when the CHB test has been satisfied a CDI is not payable unless

1. the child or qualifying young person is living with or treated as living with the claimant **or**
2. the required contributions are being made towards the cost of providing for the child or qualifying young person.

16102 The term “living with” is not defined in legislation. Each case must be decided on its own particular facts, after taking into account all the circumstances. “Living with” is not the same as “residing together” or with “presence under the same roof” and does not necessarily involve the exercise of care and control¹.

1 R(F) 2/79

16103 A child or qualifying young person who is not actually living with a person in a particular week should be treated as living with them if, in the 16 weeks prior to the week in question, any absences of the child or qualifying young person did not exceed 56 days in total¹. Any periods of absence of the child or qualifying young person due to

1. full-time education by attendance at a recognized educational establishment **or**
2. undergoing medical or other treatment as an in-patient in a hospital or similar institution **or**
3. being in residential accommodation made by special arrangement²

should be disregarded³. The maximum number of days of absence which can be disregarded under **2.** and **3.** is 84 days⁴.

1 SS CB Act 92, s 143(2); 2 National Health Service Act 2006, Sch 20; National Health Service (Wales) Act 2006, Sch 15; Children Act 1989; SW (Scot) Act 68; NHS (Scot) Act 78, s 37; Ed (Scot) Act 80; Mental Health (Scotland Act 1984; Children (Scotland) Act 1995; 3 SS CB Act 92, s 143(3); 4 CHB (Gen) Regs, reg 10

16104

Increases for adults

General

Benefits that can be increased

16105 The rate of certain benefits may be increased for an adult dependant. Although for some of these the increase has now been abolished there may be continuing entitlement if certain conditions are satisfied. See DMG 16106 - 16112. The table below shows the benefits that may be increased and the dependants concerned. The guidance on ADIs in DMG 16114 - 16211 is retained for transitional cases and those benefits not affected.

Benefit	Wife	Husband	People with care of child or qualifying young person	Civil Partner
IB	X	x	x	x
MA	X	x		x
SDA	X	x	x	x
IIDB (with US)	x	x	x	x
RP (Cat A)	X	x	x	
RP (Cat C)	X	x		
CA	X	x	x	x
Old Cases	X	x	x	x
US with WC	x	x	x	x

Incapacity benefit and severe disablement allowance

16106 An increase may be claimed if the claimant is entitled to IB or SDA.

Maternity allowance

16107 ADIs for MA were abolished for claims made on or after 6.4.10¹ but a woman will continue to have entitlement to an ADI where her MA is payable for a MAP² which

1. begins before 6.4.10 **and**
2. ends on or after 6.4.10³.

1 WR Act 09, s 15(1); 2 SS CB Act 92, s 35(2); 3 WR Act 09, s 15(2)(a)

Carer's allowance

16108 ADIs for CA were abolished for claims made on or after 6.4.10¹ but a claimant will continue to have entitlement to an ADI² until 6.4.20 or the date on which entitlement to an ADI ends³ if it is earlier, where

1. they applied for an ADI before 6.4.10 from a date no later than 5.4.10 **and**
2. immediately before 6.4.10 they are
 - 2.1 entitled to an ADI **or**
 - 2.2 would be entitled to an ADI if the earnings rule⁴ did not apply.

Note 1: 2.1 will apply where the amount of ADI payable is extinguished under the overlapping benefit provisions⁵.

Note 2: 2.2 only applies if entitlement has been established by actual payment of ADI prior to the earnings extinguishing payability.

1 WR Act 09, s 15(1); 2 s 15(3); s 15(2)(b); 3 s 15(3); 4 SS CB Act 92, s 92; 5 SS (OB) Regs, reg 10

Example

Brian claims CA and has entitlement from 8.3.10. He claims an ADI for his wife Paula. However, Paula works and has earnings of £100 a week. The DM disallows the increase. Paula stops work on 30.7.10. Brian is not entitled to an ADI when Paula stops work.

Unemployability supplement

16109 US was abolished from 6.4.87. However entitlement to US will continue^d where the claimant

1. was in receipt of US immediately before 6.4.87 **or**
2. claimed US before 6.4.87 for a period starting before 6.4.87 but the award was not made until after that date **or**
3. an award was made before 6.4.87 for a period starting before 6.4.87 but benefit was not received until after that date

providing the other conditions for entitlement are satisfied. Further guidance is in Benefit Specific Guidance.

1 SS CB Act 92, Sch 7, para 1

16110 Where the savings provisions in DMG 16109 are satisfied, entitlement to an ADI of IIDB (with US) will also continue¹. Where dependency arises on or after 6.4.87 entitlement to an ADI can be established providing the conditions in DMG 16109 are satisfied for the personal benefit.

1 SS CB Act 92, Sch 7, para 6(1)

Category A and category C retirement pension

16111 ADIs for Cat A and Cat C RP were abolished for claims made on or after 6.4.10. However, claimants² will continue to have entitlement to an ADI where they have applied for an ADI³ before 6.4.10 and immediately before 6.4.10 they were

1. entitled to an ADI **or**
2. would be entitled to an ADI if the earnings rule⁴ did not apply.

1 Pensions Act 07, s 4(1); s 4(2); 2 s 4(6); 3 s 4(5); 4 SS CB Act 92, s 92

06112 If the circumstances in DMG 16111 apply, claimants will continue to have entitlement to an ADI until¹ whichever is the earlier, or the earliest, of

1. 6.4.20 **or**
2. the date on which entitlement to an ADI ends **or**
3. the date the claimant's wife attains pensionable age.

1 Pensions Act 07, s 4(7)

Entitlement to more than one increase

16113 A claimant cannot be entitled to an increase for more than one adult dependant under the same provisions for the same period¹. But the claimant may be entitled

1. to an increase for different dependants for different periods under the same provisions **and**
2. to an increase of different benefits for the same period under more than one of the provisions for the same or for different adult dependants.

Where the personal benefits are incompatible, entitlement to an increase of both benefits cannot be for the same period. There is also a restriction on a man's right to an increase of Cat A or Cat C RP for a woman caring for a child or qualifying young person (see DMG 16162).

1 SS CB Act 92, s 82(5); s 88

16114 Where more than one increase is payable for the same period, their combined amount cannot exceed the standard rate of increase¹.

1 SS (OB) Regs, reg 9

Claim and duration

- 16115 Claims for an increase of benefit should be made in the prescribed manner and within the time limits¹ (see DMG Chapter 02). When making a claim an increase is regarded as a separate benefit².

1 SS A Act 92, s 1; 2 SS (C&P) Regs, reg 2(3)

- 16116 There is no entitlement to an increase for any period where there is no entitlement to the personal benefit concerned. For RP and WB there is a further condition that the personal benefit contains a basic pension¹. Where the personal benefit is not **payable** because of the overlapping benefit provisions the increase may still be payable (see DMG Chapter 17).

1 SS CB Act 92, s 61(1)

- 16117 These provisions affect only the rate or amount of benefit **payable** to a person. They do not affect entitlement to the benefit or any rights or obligations which depend on entitlement to the benefit¹.

1 SS (OB) Regs, reg 16

- 16118 Except where the benefit is payable weekly, an increase is payable from and including the first day of entitlement to the last day¹. Where the benefit is payable on a weekly basis the increase is payable from the first payday on which all the conditions of entitlement and payability are satisfied.

1 SS (C&P) Regs, reg 16

Rate of increase

- 16119 Standard rate of increase means the amount specified¹ as the increase in the benefit for an adult dependant².

1 SS CB Act 92, Sch 4, Part IV; 2 SS Ben (Dep) Regs, reg 1(2)

- 16120 Where the rate of the personal benefit is linked to a contribution record, the rate of the increase is also linked to that record. In Cat A RP cases where

1. the second contribution condition is not satisfied **and**
2. RP is based on BP due at a reduced percentage rate¹

the amount of the increase is due at the same reduced percentage rate².

1 SS CB Act 92, s 44(3)(a); 2 SS (WB & RP) Regs, reg 6

- 16121 Where

1. an increase of IBST is being paid **and**
2. the claimant is over pensionable age

the amount of the increase is linked to the rate of RP payable had the claimant retired. If the contribution conditions for RP are not satisfied the amount of increase is reduced to the same percentage rate as the RP.

1 SS CB Act 92, s 25 & 87; SS (WB & RP) Regs, reg 13; SS (IB for D) Regs, reg 13

Entitlement and payability

16122 DMs should note the difference between entitlement and payability. Although benefit may not be payable, for example due to earnings, entitlement may remain¹.

1 [1984] 1 WLR 1353

16123 - 16124

Increase for a partner

Increase for a spouse or civil partner

Meaning of child

16125 A child is a person who has not reached the age of 16¹.

1 SS CB Act 92 s 122 & 142

Meaning of qualifying young person

16126 A qualifying young person is a person who is not a child¹ and who

1. has not reached a prescribed age **and**
2. satisfies other conditions².

Note 1: No-one who reached the age of 19 before 10.4.06 can be a qualifying young person³.

Note 2: See DMG 16127 – 16134 for guidance on the prescribed age and other conditions.

1 SS CB Act 92, s 122(1) & 142(2); 2 CHB (Gen) Regs, reg 2 - 8 ; 3 reg 2(5)

Education and training condition

16127 This condition applies to a person who has not reached age 20¹ **and**

1. is undertaking a course of full-time education which is not advanced education and not provided by virtue of his employment or any office held but which is provided
 - 1.1 at a school or college² **or**
 - 1.2 elsewhere but is approved by HMRC Commissioners and the full-time education was being received there when that person was still a child³ **or**
2. is undertaking approved training that is not provided through a contract of employment⁴ **or**
3. having undertaken a course of full-time education as in 1. has been accepted or is enrolled on a further course of full-time education⁵ **or**
4. having undertaken a course of full-time education or approved training as in 1. or 2. has been accepted or is enrolled on further approved training⁶.

1 CHB (Gen) Regs, reg 3(1); 2 reg 3(2)(a)(i); 3 reg 3(2)(a)(ii) & 3(3); 4 reg 3(2)(c); 5 reg 3(2)(b); 6 reg 3(2)(d)

16128 A person aged 19 can only satisfy the conditions in DMG 16127 1. and 2. if

1. the education or training began **or**
 2. the person was accepted or enrolled on the education or training
- before they were 19¹.

1 CHB (Gen) Regs, reg 3(4)

16 year olds (15 year olds in Scotland)

- 16129 A 16 year old (in Scotland also a 15 year old) who has left relevant education or training will still be a qualifying young person until the 31st August following their 16th birthday¹. Where a person reaches age 16 (in Scotland also age 15) on 31st August, that person will still be a qualifying young person until 1st September².

1 CHB (Gen) Regs, reg 4(1) & 4(2); reg 4(3)

Extension period for 16 and 17 year olds

- 16130 The extension period¹

1. begins on the first day of the week after that in which the 16/17 year old ceased to be in education or training **and**
2. ends 20 weeks later.

Note: If the young person reaches age 18 before the period in **2.**, the extension period ends on the CHB payday after their 18th birthday.

1 CHB (Gen) Regs, reg 5

- 16131 This period applies to people aged under 18

1. who have ceased to be in education or training **and**
2. who are registered for work, education or training with a qualifying body¹ **and**
3. who are not engaged in remunerative work **and**
4. whose extension period has not expired **and**
5. where, immediately before the extension period began, the person who is responsible for them was entitled to CHB for them **and**
6. where the person who is responsible for them has made
 - 6.1 a written request to the HMRC Commissioners **or**
 - 6.2 a request by other means acceptable to the HMRC Commissionerswithin three months of the education or training ceasing for the payment of CHB during the extension period

and so are still a qualifying young person by virtue of being in the CHB extension period².

Note: Whilst the young person is under 18, CHB can be extended every time the conditions in DMG 16130 and 16131 are satisfied.

1 CHB (Gen) Regs, reg 5(4);2 reg 5(2)

Interruptions

16132 Up to the age of 20, where a person's education or training has been interrupted and immediately before it was interrupted they were a qualifying young person under the conditions in DMG 16127 - 16131, they will remain a qualifying young person for the duration of the interruption.

16133 Subject to the exception in DMG 16134, the condition in DMG 16132 will only apply where the period of interruption is

1. one of up to six months duration, even if it began before the person was 16, but only to the extent that it is considered to be reasonable in the opinion of the HMRC Commissioners¹ **or**
2. due to illness or disability and for a period that is considered reasonable in the opinion of the HMRC Commissioners².

1 CHB (Gen) Regs, reg 6(3)(a); reg 6(3)(b)

16134 Where the period of interruption is or is likely to be immediately followed by a period during which the person

1. has provision made to undertake non approved training **or**
2. is receiving advanced education **or**
3. is receiving education by virtue of his employment or any office held

then they will not satisfy the condition¹ in DMG 16133.

1 CHB (Gen) Regs, reg 6(4)

Carer's allowance

16135 If DMG 16108 applies, there is entitlement to an increase of CA for an adult dependant¹ for any period during which²

1. the claimant is residing with a spouse or civil partner **and**
2. that spouse or civil partner is not engaged in any employment for which their weekly earnings exceed the amount of the increase.

1 SS CB Act 92, s 90; 2 SS Ben (Dep) Regs, reg 12(2) & Sch 2, Part II

- 16136 If the spouse's or civil partner's earnings are more than the amount of the increase, entitlement to the increase ends. However a fresh claim is not required¹ for entitlement to be considered again (see DMG 16253).

1 SS CB Act 92, s 92

Industrial injuries disablement benefit (with unemployability supplement)

- 16137 IIDB (with US) can be increased¹ for any period during which the claimant is
1. residing with a spouse or civil partner **or**
 2. contributing to the maintenance of a spouse or civil partner at a weekly rate not less than the increase payable.

1 SS CB Act 92, Sch 7, para 6(1)(a)

- 16138 The increase is not payable in any benefit week where
1. the claimant is residing with a spouse or civil partner **and** that spouse's or civil partner's earnings exceed the weekly rate of JSA (Cont) for a person aged 25 or over¹ **or**
 2. the claimant is not residing with their spouse or civil partner **and** that spouse's or civil partner's earnings exceed the standard rate of increase².

1 SS Ben (Dep) Regs, reg 8(2); 2 reg 8(6)

Incapacity benefit and severe disablement allowance

- 16139 The weekly rate of IB and SDA can be increased¹ for any period for which
1. the claimant is residing with a spouse or civil partner **and** either²
 - 1.1 that spouse or civil partner has reached their qualifying age **or**
 - 1.2 the claimant is entitled to CHB in respect of a child or qualifying young person **or**
 2. the claimant has a spouse or civil partner who has reached their qualifying age and who is not residing with them but the beneficiary is contributing to the maintenance of that spouse or civil partner at a weekly rate not less than the amount of the ADI³.

1 SS CB Act 92, s 86A; 2 SS (IB for D) Regs, reg 9(1)(a); 3 reg 9(1)(b)

- 16140 Qualifying age¹ means
1. for a woman – pensionable age **or**
 2. for a man – the age which would be pensionable age for a woman born on the same date as the man.

Note: See DMG Chapter 75 for guidance on pensionable age.

1 SPC Act 02, s 1(6)

Maternity allowance

16141 If DMG 16107 applies, the weekly rate of MA can be increased¹ for any period during which

1. the claimant is residing with her husband or civil partner **or** is contributing to their maintenance at a weekly rate not less than the standard rate of increase **and**
2. the claimant's husband or civil partner does not have weekly earnings exceeding the standard rate of increase.

1 SS CB Act 92, s 82(2)

Increase for a wife

Category A and category C retirement pension

16142 If DMG 16111 applies, a Cat A or Cat C RP can be increased¹ for any period during which the claimant is

1. residing with his wife **or**
2. contributing to his wife's maintenance at a weekly rate not less than the amount of the ADI payable.

1 SS CB Act 92, s 83

16143 There is no entitlement to an increase of Cat A or Cat C RP where

1. the claimant is residing with his wife **and** the wife's earnings in the preceding benefit week exceed the weekly rate of JSA (Cont) for a person aged 25 or over¹ **or**
2. the claimant is not residing with his wife **and** the wife's earnings exceed the standard rate of increase².

1 SS Ben (Dep) Regs, reg 8(2); 2 SS CB Act 92, s 83(2)(b)

Example

A man claims and is awarded RP on 8.11.04 together with an increase for his wife who does not live with him. His benefit payday is Monday. His wife starts work on 15.11.04. Her payday is Friday.

On 19.11.04 she receives £80 net. The earnings are treated as paid on 22.11.04. The earnings in the benefit week beginning 22.11.04 affect the increase of RP in the same week. As the earnings exceed the standard rate of increase, there is no entitlement to the increase from 22.11.04 to 28.11.04.

16144 Before 16.9.85 an increase was payable subject to a tapered earnings rule. This rule continues to apply in certain cases (see DMG 16290).

16145 - 16149

Increase for a husband

Category A retirement pension

16150 If DMG 16111 applies, Cat A RP can be increased where the claimant's entitlement to it began immediately after a period during which she was entitled to an increase of IB for her spouse or civil partner¹ and either she is²

1. residing with her husband **or**
2. contributing to his maintenance at a weekly rate not less than the amount of the increase which is payable.

1 SS CB Act 92, s 84(1)(a); 2 s 84(2)

16151 There is no entitlement to an increase of Cat A RP where

1. the claimant is residing with her husband **and** the husband's earnings in the preceding benefit week exceed the weekly rate of JSA (Cont) for a person aged 25 or over¹ **or**
2. the claimant is not residing with her husband **and** the husband's earnings exceed the standard rate of increase².

1 SS Ben (Dep) Regs, reg 8(2); 2 SS CB Act 92, s 84(2)(b)

16152 The residence, maintenance and earnings conditions must be satisfied continuously. Entitlement to an increase of Cat A RP stops¹ if a husband

1. stops residing with the claimant **or**
2. is not sufficiently maintained by the claimant **or**
3. who is not residing with the claimant, in any week earns in excess of the specified amount.

1 SS CB Act 92, s 84(1)(b)

16153 - 16158

Persons caring for a child or qualifying young person

MA, Cat A and Cat C RP and IIDB (with US)

16159 Where there is continuing entitlement to MA¹, Cat A and Cat C RP² and IIDB (with US)³ these benefits can be increased for a person who has care of a child or qualifying person where that person

1. is neither the claimant's spouse or civil partner nor a child or qualifying young person **and**
2. the claimant is entitled to CHB for the child or qualifying young person and
3. either
 - 3.1 the person concerned is
 - 3.1.a residing with the claimant⁴ **or**
 - 3.1.b employed by the claimant in an employment where the weekly expenses incurred by the claimant are not less than the standard rate of increase **and** was employed before the claimant became incapable of work or entitled to a Cat A or Cat C RP or the need for employment first arose after the claimant became incapable of work or entitled to Cat A or Cat C RP⁵ **or**
 - 3.2. the claimant is contributing to the maintenance of the person concerned at a weekly rate of the standard rate of increase or more⁶.

1 SS CB Act 92, s 82(4); 2 s 85; 3 Sch 7, para 6(1)(b);

4 SS Ben (Dep) Regs, reg 10(2)(b)(i); 5 reg 10(2)(b)(ii); 6 reg 10(2)(b)(iii)

16160 There is no entitlement where the person having care is

1. absent from GB¹ unless
 - 1.1 the person is residing with the claimant outside GB **and**
 - 1.2 the claimant is not disqualified for receiving that benefit because of absence from GB² **or**
2. imprisoned or detained in legal custody³ (see DMG Chapter 12).

1 SS Ben (Dep) Regs, reg 10(2)(c); 2 reg 10(3); 3 reg 10(2)(d)

Restriction of increase of Category A retirement pension

16161 There is no entitlement to an increase of Cat A RP for a person caring for a child or qualifying young person if the claimant's spouse or civil partner is entitled to Cat B or Cat C RP¹.

1 SS CB Act 92, s 85(2A)

Restriction of increase of Category C retirement pension

- 16162 There is no entitlement to an increase of Cat C RP for a person caring for a child or qualifying young person if¹ the claimant's spouse is entitled to Cat B or Cat C RP¹.
1 SS CB Act 92, s 85(3)

Incapacity benefit and severe disablement allowance

- 16163 IB and SDA¹ can be increased for an adult who
1. resides with the claimant **and**
 2. cares for a child or qualifying young person for whom the claimant is entitled to CHB².
- 1 SS Ben (Dep) Regs, reg 12; 2 SS (IB for D) Regs, reg 9(1)(c)*

- 16164 IB and SDA¹ can also be increased for an adult who
1. does not reside with the claimant **and**
 2. cares for a child or qualifying young person for whom the claimant is entitled to CHB².
- 1 SS Ben (Dep) Regs, reg 12; 2 SS (IB for D) Regs, reg 9(1)(d)*

Treated as entitled to child benefit

- 16165 For the purposes of DMG 161632, the claimant is treated as if he were entitled to CHB for a child or qualifying young person throughout any period during which¹
1. CHB has been awarded to a parent of that child or qualifying young person
 2. that parent resides with the claimant **and**
 3. either
 - 3.1 the child or qualifying young person is being wholly or mainly maintained by the claimant **or**
 - 3.2 the claimant is also a parent of the child or qualifying young person.
- 1 SS (IB for D) Regs, reg 9 (2B)(a)*

Example 1

Amanda and Frederick are not married and live together with their two children Paul and James. Amanda cares for the children and is entitled to and receives CHB for them. Frederick is entitled to IB and claims an ADI for Amanda. The DM decides that Frederick can be treated as entitled to CHB¹ and that therefore he is entitled to an ADI².

Example 2

Pat and Edward are not married but live together with two children Esther and Dan. Pat is their mother. She cares for the children and receives CHB for them. Edward is not the children's father but wholly maintains them. Edward is entitled to IB and claims an ADI for Pat. The DM decides that Edward is treated as entitled to CHB³ for the children and that therefore he is entitled to an ADI⁴.

1 SS (IB for D) Regs, reg 9(2B)(a)(ii); 2 reg 9(1)(c); 3 reg 9(2B)(a)(i); 4 reg 9(1)(c)

Period between birth and first day of entitlement to child benefit

16166 Where an ADI is awarded for an adult having care of a child or qualifying young person in the circumstances¹ set out in DMG 16163

1. the claimant **or**
2. the claimant's spouse or civil partner with whom the claimant is residing **or**
3. a parent (other than the claimant) who would satisfy the conditions in DMG 16165 if they were entitled to CHB

shall be treated as entitled to CHB in respect of a child from the Monday of the (Monday to Sunday) week in which the child was born².

1 SS (IB for D) Regs, reg 9(1)(c); 2 reg 9(2B)(b)

Example

Bruce and Nancy live together but are not married. On Tuesday 14.11.06 Nancy gives birth to their son Jack. Nancy is entitled to CHB for Jack from Monday 20.11.06. The DM treats Nancy as being entitled to CHB from Monday 13.11.06.

Foreign family benefits

16167 Where an ADI would be payable to an adult caring for a child or qualifying young person in the circumstances¹ set out in DMG 16163 and

1. the claimant **or**
2. the claimant's spouse or civil partner with whom the claimant is living **or**
3. a parent (other than the claimant) who would satisfy the conditions in DMG 16165 if they were entitled to CHB

is (under an agreement made with the government of another country outside the UK) entitled to the family benefits of that country in respect of the child or qualifying young person and is not entitled to CHB, then that person shall, for the purposes of entitlement to an ADI to IB be treated as if they were entitled to CHB².

1 SS (IB for D) Regs, reg 9(1)(c); 2 reg 9(2C)

Example

Markus and Anna live together in GB with their two children Christian and Alex. They are not married. Markus looks after the children. He receives Swedish family benefits for the children and is not entitled to CHB. Anna is entitled to IB and claimed an increase for Markus. The DM decided that for the purposes of entitlement to the ADI, Markus was entitled to CHB which in turn meant that Anna could be treated as entitled to CHB. The DM awarded the ADI accordingly.

Carer's allowance

16168 If DMG 16108 applies, the weekly rate of CA can be increased for a person who has care of a child or qualifying young person¹ for any period where the person is neither the claimant's spouse or civil partner nor a child or qualifying young person and

1. has care of a child or qualifying young person for whom the claimant is entitled to CHB **and**
2. resides with the claimant **and**
3. is not engaged in employment other than caring for the child or qualifying young person referred to in paragraph 1. (see DMG 16210) from which the earnings exceed the standard rate of increase.

1 SS Ben (Dep) Regs, Sch 2, para 7(b)

16169 There is no entitlement where¹ the person caring for the child or qualifying young person is

1. imprisoned or detained in legal custody **or**
2. absent from GB, except where the person caring for the child or qualifying young person is residing with the claimant outside GB and the claimant is entitled to CA.

1 SS Ben (Dep) Regs, Sch 2, para 7 (g)(ii)-(iv)

Care of child or qualifying young person

16170 Having care of a child or qualifying young person does not mean having the "main care", for example it does not mean that the amount of care undertaken must be more than the care given by the claimant¹. The number of hours during which the claimant or the spouse or civil partner and the carer spend with the child² or qualifying young person is irrelevant.

1 CS 726/49(KL); 2 R(S) 20/54

16171 The test is whether the carer

1. performs, to a substantial extent, those duties with which the child or qualifying person needs help **or**
2. exercises supervision over the child or qualifying young person which is one of the needs of childhood.

16172 The duties might occur only for a few hours in a day.

Example 1

A woman who is employed by the claimant from 9 am to 2.30 pm seven days a week to do household tasks, including buying and washing the child's clothes, cleaning the child's bedroom and cooking the child's mid-day meal. The woman has care of the child. What she does for the child is a substantial part of the child's care¹.

1 CS 726/49(KL)

Example 2

In the case of an older child, who might need little more than the general supervision of a parent, no-one else can satisfy the test of care while the child is living with the parent¹.

1 CS 726/49(KL)

16173 The test in DMG 16171 is not satisfied when the child or qualifying young person is at boarding school. The provisions refer to the person caring for a child or qualifying young person not merely being employed for the purpose of caring for a child or qualifying young person. In a case in which a man claimed an increase for his housekeeper the Commissioner held that she did not have the care of the child while the child was away at school. During the term the housekeeper had no opportunity of performing duties for which a child needs assistance or of exercising any supervision¹. The child's absence from home was not for a visit of short duration.

1 R(S) 17/54

Temporary interruption of care of child or qualifying young person

- 16174 There are no statutory provisions for temporary interruptions in the care of a child or qualifying young person. But DMs should not disallow for brief periods of interruption (for example holidays and sickness).

Employed by the claimant

- 16175 In deciding whether a person is employed by the claimant, it does not matter whether that person is employed only by the claimant or by several people at the same time. If it is decided that the person is employed by the claimant, the employment condition is satisfied¹.

1 SS Ben (Dep) Regs, reg 10(2)(b)(ii)

- 16176 Although it is accepted that a person is employed by the claimant it must still be established that the person employed has care of the child or qualifying young person.

- 16177 There is no requirement that the employment is for the purpose of caring for the child or qualifying young person. The "employed by" test can be satisfied by employment which is unrelated to the running of the claimant's household.

16178

Person caring for child or qualifying young person changes

- 16179 Benefit may be increased where a person has care of the child or qualifying young person¹. The increase is not confined to one person throughout the period of claim.

1 SS CB Act 92, s 82 & 85(2); SS Ben (Dep) Regs, reg 12(2) & Sch 2, para 7

- 16180 If the person caring for the child or qualifying young person changes, there may be entitlement to the increase if

1. there was necessity for the care **and**
2. a person was employed

before the claimant became incapable of work or entitled to Cat A or Cat B RP. The DM should consider the need for care of the child or qualifying young person and not the person caring.

- 16181 Where the person caring for the child or qualifying young person changes after the claimant became incapable of work or entitled to Cat A or Cat B RP there will be

entitlement to the increase for the second person, subject to the other conditions being satisfied. But a fresh claim for the second person will be needed.

16182 - 16189

Need arose after entitlement begins

16190 If the person was not employed by the claimant before the need to claim, the DM should consider whether the need for the employment first arose after this date. Some examples of changes of circumstances which could account for the employment of the person are

1. the death of the claimant's spouse or civil partner
2. the claimant takes on additional domestic responsibilities such as the care of a child or qualifying young person or elderly person
3. a daughter or son who took some part in running the home leaves home.

16191 A claimant whose spouse or civil partner has died after claiming benefit may, while still employed, have had the child or qualifying young person looked after by a relative. Shortly after claiming benefit the claimant may employ a person to care for the child or qualifying young person. The DM should accept that the necessity for the employment first arose after the claim was made.

16192 If a MA claimant employs a person to run her household or for any other purpose during the MAP because of pregnancy or confinement, the DM should accept that the need arose after the claim was made.

16193 If the

1. claimant is living with the spouse or civil partner **and**
2. spouse or civil partner is in employment

the person who has care of the child or qualifying young person may be employed by the claimant's spouse, or civil partner and not by the claimant.

Weekly expenses incurred by the claimant

16194 A claimant may only be entitled to an increase of benefit for a person who is

1. caring for a child or qualifying young person **and**
2. employed by the claimant

if the claimant's weekly expenses for the employment are not less than the standard rate of the increase. These expenses usually consist of the gross wage or salary paid to the person by the claimant plus the claimant's share of any employed earner's contribution payable for the employment.

- 16195 The DM should look at the claimant's expenses and not simply the amount received by the person caring. Expenses as in DMG Chapter 15 can also be taken into account provided they are actually incurred by the claimant. For example, if a claimant spends £10 a week taking a child to a child minder that amount should be taken into account as an expense incurred by the claimant.
- 16196 There is no prescribed test that expenses incurred by the claimant should be reasonably incurred.

Child minder

- 16197 Some people employ a child minder to look after a child while one or both parents work. In many cases there will be little doubt that the minder has the care of the child and that the minder is employed by the claimant.
- 16198 It does not matter that several different people are also employing that person. Where that person is being employed by several different people an increase of benefit may already be in payment to one or more of those people for the child minder. No adjustment is necessary under the overlapping benefits provisions¹.

1 SS (OB) Regs, reg 9

16199 - 16209

Earnings - person having care of a child or qualifying young person

16210 In calculating the earnings of a person having care of a child or qualifying young person no account should be taken of any earnings derived from employment by the beneficiary in caring for a child or qualifying young person for whom the beneficiary is entitled to CHB¹. Where the person resides with or is maintained by the claimant, any other earnings will affect payment of the increase. Where the person is employed by, but does not reside with claimant any other earnings should be ignored.

1 SS Ben (Dep) Regs, reg 8(5) & Sch 2, para 7(b)(iii); SS (IB for D) Regs, reg 10(3)

Example

A man in receipt of IBLT claims an increase of benefit for a woman residing with him who has care of his child. He is entitled to CHB for that child. For this care she is paid £40 a week by the claimant. In addition, she has other gainful employment from which her earnings are £15 per week.

The standard rate of increase is £36.60 and as a result the amount at which the earnings would cause the increase not to be payable is also £36.60.

In total the woman earns £55 per week. However, £40 is from the employment by the claimant caring for the child and can therefore be disregarded. The earnings to be taken into account are £15 per week. No adjustment is necessary.

16211 Where earnings are taken into account, they affect an increase in the same way as increases for a spouse or civil partner.

16212 - 16219

Earnings

Earnings - child dependants

16220 Where the claimant is one of two persons who are

1. spouses or civil partners living together **or**
2. an unmarried couple who are LTAHAW or a same-sex couple who are LTACP

and the other person had earnings in the benefit week before that in which the increase is to be paid, the amount of the increase may be reduced by those earnings¹.

1 SS CB Act 92, s 80(3)-(7) & 90(b) & Sch 7, para 4; SS Ben (Dep) Regs, Sch 2, para 2A-2C

16221 The benefits affected¹ are

1. IBST(H)
2. RP
3. IBLT
4. SDA
5. IIDB (with US)
6. CA.

1 SS CB Act 92, s 80(2) & 90(b) & Sch 7, para 4

16222 Where the claimant's partner had earnings of £205 or more in the benefit week before that in which the increase is to be paid, no increase will be paid for the first child or qualifying young person¹. After this, the rule operates in steps of £27. For each multiple of £27 by which the earnings exceed £205, the increase for a further child or qualifying young person will not be payable².

*1 SS CB Act 92, s 80(4)(a) & Sch 7, para 4(4)(a); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, para 2B(a);
2 SS CB Act 92, s 80(4)(b) & Sch 7, para 4(4)(b); WR Act 09, s 37(1); SS Ben (Dep) Regs, Sch 2, para 2B(b)*

Example

A claimant is living with his wife and they have three children.

Earnings in previous week	Increase payable for
Nil to £204	three children
£205 to £231	two children
£232 to £258	one child
£259 or more	no children.

The DM 's decision does not remove entitlement but only affects the payment of CDIs.

- 16223 Earnings affect payment of the increase from
1. the pay-day (for IIDB (with US), RP and CA) **and**
 2. the period of seven days ending on the day benefit is due to be paid (for IB and SDA)

following the week in which the earnings are calculated.

Earnings for less than a week

- 16224 When considering the earnings rule the DM should consider the **total** earnings in the previous week. Where the claimants partner does not work for a full week, the earnings from the days worked may still affect the whole benefit to be paid in the next week. If that person works only one day but on that day earns more than the prescribed weekly amount, no increase is paid in the next week.

Occupational and personal pensions

- 16225 Payments of occupational and personal pension are taken into account when calculating earnings unless savings provisions apply (see DMG Chapter 15).

16226 - 16249

“All or nothing” earnings rule - adult dependants

16250 From 16.9.85 all increases are subject to the “all or nothing” earnings rule, that is if the earnings are over a certain amount no increase is due. But note the savings provisions for the “tapered” earnings rule (see DMG 16290). The “all or nothing” earnings rule is linked to the amount of **either**

1. the standard weekly rate of JSA(Cont) for a person aged 25 or over **or**
2. the standard rate of the increase.

Entitlement or payability

16251 Earnings can affect

1. entitlement to the increase **or**
2. the payability of the increase.

But where entitlement to the increase ends because of the dependant’s earnings, the award should continue but the increase is not payable for the weeks affected by those earnings¹.

1 SS CB Act 92, s 92

16252 This provision only operates by keeping a current award in force. If the earnings are too high at the beginning of a claim and earnings affect entitlement the DM should either

1. disallow the increase **or**
2. consider an advance award¹.

1 SS (C&P) Regs, reg 13

16253 Where either entitlement or payability ends only because of the dependant’s earnings there will be no need for a fresh claim when the earnings fall below the specified limit.

Week in which earnings rule is to be applied

16254 For all increases of benefit, earnings will be attributed to complete benefit weeks and will affect payment of benefit either in the same or the following benefit week.

16255 Where an adult dependant is in employed earners employment or is S/E and receives payments in respect of royalties or copyright, any earnings will be treated as paid on the first day of the benefit week

1. following the benefit week in which the payment is due to be paid¹ where there is an increase of
 - 1.1 Cat A RP for a non-resident spouse²
 - 1.2 Cat C RP for a non-resident spouse³
 - 1.3 US for a non-resident spouse or civil partner⁴
 - 1.4 MA for any adult dependant⁵
 - 1.5 CA for a resident spouse or civil partner and person having care of
 - 1.5.a a child **or**
 - 1.5.b children **or**
 - 1.5.c a qualifying young person **or**
 - 1.5.d qualifying young persons⁶ **or**
2. in which the payment is due⁷ where there is an increase of
 - 2.1 Cat A RP for a resident spouse and person having care of
 - 2.1.a a child **or**
 - 2.1.b children **or**
 - 2.1.c a qualifying young person **or**
 - 2.1.d qualifying young persons⁸
 - 2.2 Cat C RP for a resident wife and person having care of
 - 2.2.a a child **or**
 - 2.2.b children **or**
 - 2.2.c a qualifying young person **or**
 - 2.2.d qualifying young persons⁹
 - 2.3 US for a resident spouse¹⁰ or civil partner
 - 2.4 IB¹¹ and SDA¹² for any adult dependant.

1 SS Ben (C of E) Regs, reg 7(a); 2 SS CB Act 92, s 83(2)(b) & 84(2)(b);

3 s 83 (2)(b); 4 Sch 7 para 6(1)(a)(ii); 5 s 82(2);

6 SS Ben (Dep) Regs, Sch 2 para 7; 7 SS Ben (C of E) Regs 7(b);

8 SS CB Act 92, s 83(2)(a), 84(2)(a) & 85(2); 9 s 83(2)(a) & 85(2);

10 Sch 7 para 6(1)(a)(i); 11 s 86A; 12 s 90

Benefit weeks affected by earnings

16256 For the ADI where earnings are treated as paid on first day of the benefit week following the benefit week in which the payment is due to be paid, earnings attributed

to a benefit week will affect payment of the ADI in the same benefit week. For the ADI where earnings are treated as paid on the first day of the benefit week in which payment is due, earnings attributed to a benefit week affect payment of the increase in the following benefit week.

Example 1

A man is entitled to an increase of RP for his wife who resides with him. She works and is paid £30.00 each week on a Friday. The claimant's RP is paid weekly in advance on Monday.

Earnings paid on Friday 6.12.96 will be treated as paid on Monday 2.12.96 and attributed to the period 2.12.96 to 8.12.96. These earnings affect the ADI in the benefit week 9.12.96 to 15.12.96.

Example 2

A Woman is entitled to an increase of IB for her husband who does not live with her. He works and is paid a salary each month of £162.50 on the last day of the month. The claimant's IB is paid fortnightly in arrears on Wednesday.

Earnings paid on Tuesday 31.12.96 will be treated as paid on Thursday 26.12.96. Earnings due on Friday 31.1.97 will be treated as paid on Thursday 30.1.97. The earnings treated as paid on 26.12.96 will be attributed to the five week period 26.12.96 to 29.1.97 at the weekly amount of £37.50. These earnings affect the ADI in the benefit weeks 2.1.97 to 5.2.97.

16257 - 16269

Earnings for less than a week

16270 A dependency increase may be claimed where the dependant does not work for a full week. This may be where the employment is part time or where full time work begins in the middle of a week. If the dependant earns more than the weekly earnings limit, the increase is not payable.

Example

An ADI is in payment for IB, payday Monday. On Wednesday 20.11.96 the dependant starts full time work and is due to be paid on Friday. The earnings for Wednesday, Thursday and Friday exceed the earnings limit. As the earnings in the week commencing on 18.11.96 are in excess of the limit and are treated as paid on 19.11.96, no increase is payable from 26.11.96.

16271 - 16279

Occupational or personal pension included as earnings

- 16280 Payments of occupational or personal pension are taken into account as earnings when calculating the earnings of an adult dependant¹ unless savings provisions apply². See DMG Chapter 15 for guidance on what constitutes an occupational or personal pension.

1 SS CB Act 92, s 89; 2 SS (SEB) Regs, reg 2(1) & (2)

16281 - 16284

Pension protection fund payments included as earnings

- 16285 PPF periodic payments are taken into account as earnings when calculating the earnings of an adult dependant¹. See DMG Chapter 15 for guidance on these payments.

1 SS CB Act 92, s 89(1A); SS Ben (Dep) Regs, Sch 2, para 9

16286 - 16289

Tapered earnings rule - adult dependants

Savings provisions

16290 Before 16.9.85 there was a tapered earnings rule. The effect of this rule is to make the increase payable in full if the dependant's weekly earnings are less than the amount specified. Where the earnings exceed that amount, the weekly rate of the increase is reduced where the excess

1. is less than £4, by 5p for each complete 10p of the excess
2. is more than £4, by 5p for each 10p of the excess up to £4, and by 5p for each complete 5p of any further excess.

16291 The tapered earnings rule applied to an increase of

1. IB¹
2. SDA
3. RP (Cat A and Cat C)
4. IIDB (with US)

for a wife residing with the claimant or a woman caring for a child or qualifying young person and residing with the claimant.

1 SS (IB) (Trans) Regs, reg 25(2)(f)

16292 The tapered earnings rule was abolished from 16.9.85. But there are savings provisions¹ (see DMG 16293).

*1 SS (IB) (Trans) Regs, reg 24(4); SS Ben (Dep) Regs, reg 8(6);
Social Security Benefit (Dependency) Amendment Regulations 1992, reg 4*

16293 The tapered earnings rule may continue to apply, if it is more favourable to the claimant and the claimant

1. was entitled to an increase on 14.9.85 or for a period including that day **and**
2. remains continuously entitled to that increase on or after that day¹.

1 SS Ben (Dep) Regs, reg 8(6); Social Security Benefit (Dependency) Amendment Regulations 1992, reg 4

16294 The savings provisions continued with the introduction of IB. However they will cease to apply where¹

1. no IB(LT has been paid for a continuous period of at least 57 days **or**
2. no ADI has been paid for a continuous period of at least 57 days **or**
3. the ADI has not been adjusted because of the dependant's earnings for a continuous period of at least 57 days.

1 SS (IB) (Trans) Regs, reg 25(3)

16295 The tapered earnings rule does not apply in any week where the dependant's earnings exceed £81.50¹.

1 SS (IB) (Trans) Regs, reg 25(4)

16296 Where the dependant becomes involved in a trade dispute entitlement to the increase may end. If entitlement ends the savings provisions may no longer apply.

16297 The savings provisions cease to apply where a claimant moves between benefits. For example where a claimant who is entitled to IB and continues to benefit from the tapered earnings rule becomes entitled to RP the tapered earnings rule will no longer apply¹.

1 R(P) 4/93

Week to which tapered earnings is to be applied

16298 The guidance in DMG 16254 et seq applies equally to tapered earnings cases.

16299 - 16309

Trade disputes

Dependant involved in trade dispute

16310 Although the other conditions for entitlement to an increase may be satisfied, a claimant is not entitled to an increase for an adult dependant when that dependant

1. is not entitled to JSA **or**
 2. would not have been entitled had there otherwise been entitlement to JSA
- as a result of being involved in a trade dispute¹.

1 SS CB Act 92, s 91

16311 People who have lost employment or withdrawn their labour because of a trade dispute are not entitled to JSA¹.

1 JS Act 95, s 14

Benefits affected

16312 These provisions¹ affect increases of

1. IB
2. MA
3. RP (Cat A or Cat C)
4. SDA
5. CA

for an increase for a wife, husband, civil partner or person caring for a child or qualifying young person

1 SS CB Act 92, s 91

Decision on disentitlement

16313 In deciding whether a claimant is entitled to an ADI the DM should follow the decision on the dependant's entitlement to JSA. Where the decision on JSA entitlement is delayed the DM should defer making a decision on the increase.

16314 In practice, a case in which an adult dependant appears to be connected with a trade dispute should not be referred to the DM until the basic information concerning that person's involvement in the dispute has been obtained.

16315 - 16320

Effective date of disentitlement

- 16321 Where the dependant is not entitled to JSA because of their involvement in a trade dispute, entitlement to the increase of¹
1. IB, MA and SDA stops from the first day for which the dependant is, or would have been, disentitled²
 2. RP (Cat A or Cat C) and CA stops from the next payday following the first day for which the dependant is, or would have been disqualified³.

1 SS CB Act 92, s 91; 2 SS (C & P) Regs, reg 16(4); 3 reg 16, 22 & Sch 6

Further claim following disentitlement

- 16322 Entitlement to the ADI stops if a disallowance is appropriate¹. A new claim should be made before entitlement is considered again.

1 SS CB Act 92, s 91

- 16323 For an increase of Cat A RP for a dependent husband, the conditions of residence, maintenance and earnings must be satisfied continuously¹. If entitlement stops because one of these conditions is not satisfied, it cannot be reinstated (see DMG 16154). However, if there is a period of disentitlement because the dependant was involved in a trade dispute, the entitlement can be restored following the end of the period of disentitlement on receipt of a new claim. This is provided the conditions of residence, maintenance and earnings were satisfied continuously.

1 SS CB Act 92, s 91(1)(b) & (2)

16324 - 16329

Appeals to a First-tier Tribunal

- 16330 Where a claimant appeals against disentitlement, advice should be obtained from the DM who gave the decision on the trade dispute.
- 16331 The appeal papers should be sent to the Appeals Manager who will consider whether the grounds of appeal give grounds for reconsidering the original decision. If there are no grounds for revising the original decision, DM who gave the decision on the trade dispute will prepare draft paragraphs on the trade dispute for inclusion in the submission to the FtT.

Effects on savings provisions of disentitlement

16332 With effect from 16.9.85, new earnings rules were introduced for adult dependants. However, savings provisions for earlier cases provided for the “tapered” earnings rule still to apply where the claimant

1. was entitled to an increase of one of the specified benefits on 14.9.85 or for a period including that day **and**
2. remains continuously entitled to that increase on or after that day.

16333 Where an unfavourable decision is given¹, entitlement to the increase will stop. As a result the savings provisions are no longer satisfied and the “tapered” earnings rule no longer applies when entitlement to an increase arises again.

1 SS CB Act 92, s 91

16334 Similarly, where the claimant is not entitled to receive the increase because of disentitlement, the savings provisions which relate to the inclusion of occupational pension as earnings will no longer be satisfied.

16335 - 16339

Residence of one person with another

Residing with - general

- 16340 The questions of whether a person is residing with another person arises in
1. treating as entitled to CHB where spouses are residing together¹ **and**
 2. treating as entitled to CHB where the claimant is residing with the parent and child or qualifying young person² **and**
 3. the contributing test³ **and**
 4. the earnings rule⁴.

1 SS CB Act 92, s 122(3); SS (IB for D) Regs, reg 6(1);

2 SS Ben (Dep) Regs, reg 4A(1); 3 SS CB Act 92, s 81(3);

4 s 80(3), Sch 7, para 4(3); SS Ben (Dep) Regs, Sch 2, para 2A(a)(i)

Distinction between “living with”, “living together” and “residing together”

- 16341 The “living with” question occurs in
1. the contributing test¹ **and**
 2. treating as entitled to CHB where a man is **not** living with the child or qualifying young person².
- Note:** the provision in 2. has been repealed but still applies in certain situations³.
- 1 SS CB Act 92, s 81(1) & (2); 2 SS Ben (Dep) Regs, reg 4A(2);*
3 SS Ben (Dep) Amdt Regs, reg 3

- 16342 For a married couple “living with” and “living together”, a man and his wife shall not be treated as living together unless
1. they are permanently living in separation either by agreement or under an order of a court **or**
 2. one of them has deserted the other and the separation incident to the desertion has not come to an end.

- 16343 In deciding whether a husband and wife are residing together the interpretation in DMG 16342 should **not** be used. The definition should only be used where “living with” or “living together” are the words used¹.

1 R(U) 11/62

16344 - 16349

Deciding residence questions

16350 Whether a person

1. is or was residing with another person **or**
2. whether people are residing together

should be decided in accordance with legal provisions¹ which provide that people are not to be regarded as having stopped residing together only because of a temporary absence².

1 SS Ben (PRT) Regs; 2 reg 2(4)

16351 For increases of benefit for RP (Cat A and Cat C) for a husband¹ or person caring² the provisions at DMG 16150 do not apply. This is because these increases are not specified in legal provisions³. Also, an increase of IB, CA or IIDB (with US) for a person caring for a child or qualifying young person are not covered. This is because the law only applies to spouses and civil partners.

1 SS CB Act 92, s 84; 2 s 85; 3 SS Ben (PRT) Regs, reg 2(2)(a)

16352 The question of residence should be considered with regard to the particular circumstances of the case being decided. In the guidance on residence a number of different situations considered by the Commissioners are referred to. The DM should be careful in applying these decisions in other cases unless the circumstances of the case are the same.

16353 Generally when considering “residence” it should be given its ordinary meaning in the English language, for example to dwell permanently or for a considerable time to have one’s settled or usual abode, to live in or at a particular place¹. This is a general definition and DMs should refer to the rest of the guidance on residence before deciding any questions.

1 CG 32/49 (KL)

European Community law and conventions with other countries

16354 The effect of the EC law and reciprocal agreements is that some people who are absent from GB may be treated as being in GB (see DMG Chapter 07). This does not mean that they should be accepted as residing together if, apart from that provision, they would not be treated so. Where entitlement to benefit is conditional on the satisfaction of the residence test, it should be decided in the light of the facts of the case.

16355 -16359

People living in the same accommodation

16360 The residence test is normally satisfied where the people concerned have their common home under the same roof. It is not important

1. who is the tenant or owner of the house in which they live **or**
2. whether it is the dependant or claimant who is the head of the household¹.

But where the relationship is that of owner and tenant or lodger (that is, a commercial relationship) the test is not satisfied (see DMG 16353)².

1 CU 201/50; 2 CU 257/50

16361 Payment of rent or board does not prevent the DM deciding that people are residing together. A man and wife or civil partners who live in the same household can be accepted as residing together even though one of the couple pays the other a weekly amount for board.

16362 If a husband and wife are living under the same roof it should be presumed that they are residing together. Strong evidence would be required for another conclusion to be reached. If either of the parties states that residence has ended but the couple still live under the same roof, the onus is on that person to show that they are living separately¹.

1 R(P) 14/52

16363 A husband and wife may not be residing together although they are living in the same house. This may occur where the couple live in separate parts of the same house and do nothing for each other¹.

1 R(S) 11/53

16364 People may reside together although due to accommodation difficulties, a large amount of time is spent separately. For example a husband and wife who are living in the same prescribed accommodation but due to accommodation difficulties sleep in separate dormitories can be accepted as residing together¹. In this situation the separation is against their will. In contrast it could not be accepted that a couple who live in the same hotel but choose to occupy separate bedrooms are residing together.

1 R(P) 15/56

Whether residence has ended

16365 Where two people have lived together in the same home but are now physically apart the first question to consider is whether residence together has stopped. If residence together has ended it must be considered whether the absence is temporary.

16366 It should not be accepted that people are residing together or that an absence is temporary where the people concerned have never resided together¹.

1 Salton v. New Beeston Cycle Co [1899] ICH 77

Partners - absence in hospital

16367 For the purposes of an increase of

1. IB for a spouse or civil partner **and**
2. RP (Cat A and Cat C) for a wife **and**
3. SDA for a spouse or civil partner **and**
4. CA for a spouse or civil partner **and**
5. IIDB (with US) for a spouse or civil partner

a husband and wife should still be treated as residing together if either or both of them are in hospital. This provision applies whether the absence is temporary or permanent¹.

1 SS Ben (PRT) Regs, reg 2(2)

16368 Despite this provision, a husband and wife or civil partner may have stopped residing together if one or both of them is in hospital. This may happen where residence has ended for a reason other than absence in hospital¹. For example where before admission to hospital the couple had stopped residing together or since admission one of the couple had deserted the other. A decision that residence has ended should not be given just because of the length of absence in hospital².

1 R(S) 8/60; 2 R(S) 8/60

16369 As the relevant legislation¹ refers only to spouses and civil partners, the rule in DMG 16367 does not apply to increases of

1. RP (Cat A and Cat C) for a husband or a person caring for a child or qualifying young person
2. IB, CA, or IIDB (with US) for a person caring for a child or qualifying young person.

In considering these increases of benefit, the DM should not decide that residence has ended where the absence is only due to admission to hospital. The DM should decide these cases by using the guidance in DMG 16360 - 16366.

1 SS (Ben) (PRT) Regs reg 2(2)

Partners - absence because of work

16370 When a spouse or civil partner works away from home and returns regularly each weekend, the DM should decide that residence has not ended.

16371 - 16379

Temporary absence

16380 Two people should not be regarded as having stopped residing together where the absence is only temporary¹. There is no statutory definition of a temporary absence and no period of time is specified after which an absence can no longer be regarded as temporary. Each case must be decided on its circumstances².

1 SS Ben (PRT) Regs, reg 2(4); CAO & Secretary of State v Ahmed and others; 2 R(S) 1/85

16381 An absence which is not permanent is not necessarily a temporary absence¹. The test is whether an absence is

1. merely temporary **or**
2. not merely temporary².

An indefinite absence is not a temporary absence³. But an absence is not of indefinite length if there is a date beyond which it cannot continue.

1 R(S) 1/85; 2 R(I) 37/55; 3 R(S) 1/85

16382 Except where there are special circumstances, an absence of more than twelve months cannot be regarded as temporary¹. The DM should consider

1. the relationship of the people concerned **and**
2. the circumstances of the separation **and**
3. the amount of contact **and**
4. how long the absence has lasted **and**
5. how much longer it is expected to last **and**
6. the intentions of the people concerned about further contact or resumption of residence **and**
7. the purpose of the absence².

1 R(S) 9/55; R(U) 16/62; 2 CAO & Secretary of State v Ahmed and others

16383 An absence which has been accepted as temporary can be regarded as other than temporary at any time. This decision could be made because for example

1. either or both of the people concerned do not intend to resume residence together **or**
2. the length of the absence and there being no indication to show that residence will resume in the foreseeable future.

- 16384 Once a DM has decided that
1. the absence is not temporary **and**
 2. that residence has ended

that absence cannot again be accepted as temporary if the couple state an intention to reside together again. In this situation residence together cannot be accepted unless the couple actually reside together (see DMG 16350) for example in the same home.

Note: The eventual end of the absence does not make that absence only temporary¹.

1 R(S) 1/85

- 16385 If the couple had already decided to resume residence when the DM
1. gave the decision **and**
 2. was ignorant of that intention

there may be grounds for superseding the decision. If the circumstances of a particular case prevent a couple residing together again their intention will not be a decisive factor¹.

1 R(S) 10/83

Period of absence known or reasonably certain

- 16386 Where the period of absence is known or can be guessed with reasonable certainty, for example where it is due to
1. imprisonment¹
 2. employment away from home **or**
 3. a period of study or training

the DM should consider the factors set out below (see also DMG 16382).

1 CS 541/50

- 16387 A husband and wife or civil partners whose absence from each other would not at the most exceed three years and would probably be substantially less, is treated as a temporary absence¹.

Example

A husband's two year absence from his wife because of national service² was treated as a temporary absence.

Decisions should be the same involving absence due to military service, unless there are other factors which show that residence has ended.

1 CS 541/50; 2 R(S) 6/54

16388 A claimant who had already been absent from GB for three years was treated as only temporarily absent. The claimant had always intended to return to GB and at the date of the decision there were reasonable prospects of his return within the next six months.

1 R(S) 9/55

16389 A decision on whether an absence for a **known or reasonably certain** period is temporary is not affected by the date of the decision. If at the start of the period the absence was temporary then the same decision should be reached if it were made later in the period¹. This is because where the absence is for a certain or nearly certain period the situation will be the same at any time during the absence as at the beginning. Where the length of absence is

1. not known or is uncertain **or**
2. there is a change of intention by one or both of the parties

the DM may reach a different decision if a decision is given later in the period. In reaching that decision the DM has the advantage of hindsight².

1 CS 541/50; 2 R(S) 10/83

Incapacity benefit

16390 Where a claimant is entitled to an increase of IB for an adult¹, other than the spouse or civil partner of the claimant, and the adult is **either**

1. absent from GB **or**
2. in prison or detained in legal custody

the claimant is not entitled to the increase.

1 SS (IB for D) Regs, reg 9, 1(c) or (d) & reg 14

16391 The claimant may be entitled to the increase where the person

1. is absent from GB **and**
2. resides with the claimant who is also temporarily absent from GB and not disqualified from receiving IB¹.

1 SS Ben (PA) Regs

Period of absence unknown or uncertain

16392 Where an absence has been accepted as temporary, the DM should consider whether there is any reasonable prospect of it ending in the foreseeable future after the absence has lasted for a year.

16393 Unless there are special circumstances, the foreseeable future should be not more than six months. Where there are special circumstances the period is not limited to either six months or any other particular period. If the DM decides that reasonable prospects of return do exist, the absence can continue to be regarded as temporary and the case looked at again at six monthly intervals.

16394 If the DM decides that residence together has ended, the decision to supercede should take effect from the day the superseding decision is made, not from the date of the original decision. If the DM originally decided that the absence was temporary because of the couple's stated intention, a decision that this is unlikely does not affect their original intention. In this situation the grounds for supersession would be on a change of circumstances.

16395 In contrast, if the evidence shows that the couple **never** intended to reside together again the grounds for supersession would be based on a mistake of fact. In this case the effective date of the superseding decision may be the date of the original decision.

16396 DMG 16397 - 16401 gives guidance on examples the DM should consider when making a decision on absence.

16397 At the date of decision the claimant and his mother, who was in Italy, had been separated for three years. There was no intention to resume residence together and no prospect of it happening within a year. It was decided that the claimant and his mother were not residing together¹ (compare with DMG 16354)².

1 R(S) 10/55; 2 R(S) 9/55

16398 A claimant had been absent from his wife for 24 years because of his employment as a merchant seaman. In that time he visited his wife from time to time and supported his wife and family during his absence. The evidence showed that he intended to return to his family when he retired and at the date of the hearing had already bought an air ticket for the journey home. It was decided that the absence was only temporary and that the claimant and his wife are to be treated as residing together.

16399 A claimant who had been absent from his wife for about four years was treated as only temporarily absent and as a result the residence test was satisfied. There was no estrangement and the separation was caused only by force of circumstances which included the claimant's health. The claimant sent his wife money whenever he could (although not enough to satisfy the maintenance test had that question arisen) and he was in regular contact with her. Two years after the start of the separation he returned home for a visit lasting four weeks. It was decided that it was the claimant's intention to resume residence and that he had reasonable prospects of being able to do so.

- 16400 The absence of a Pakistani from his wife, also a native of Pakistan, which had lasted for about 2 years, was treated as temporary. Until he came to GB to get work, the claimant and his wife had lived together in Pakistan. It was their intention to set up home in GB as soon as the necessary arrangements, financial and otherwise, could be made. There was evidence that the claimant was in a position to carry out his intention and that his wife and children were likely to join him in GB within a few months.
- 16401 In a case similar case where the separation of the spouses had lasted over 4 years and the evidence showed that there was no reasonable prospect of an early ending of it, this was treated as not temporary absence.

Absence for parts of a week only

- 16402 Residence can be accepted where the absence is for part of a week. Residence should normally be accepted where the absence is due to one person being away for parts of a week due to their employment.

Example

A claimant was admitted to hospital before he could take up permanent residence with a woman. He remained there for over 2 years. Since his discharge from hospital, the claimant had lived with his father from Monday to Friday each week. At week-ends and holidays he lived with the woman. This situation existed because the claimant's disability needed a great amount of nursing and because the woman had to go out to work to maintain her child. The claimant was treated as residing with the child's mother for the purposes of the CHB test¹ although the parties did not reside together all the time.

1 SS Ben (Dep) Regs, reg 4A(1)

Resumption of residence together

- 16403 Where after having been apart a couple resume residence together, with the intention that it will be permanent, a new period of residence begins. Any subsequent separation should be considered in the normal way without regard to the previous absence¹.

1 R(S) 25/54

16404 -16409

Maintenance

Maintenance - basic provisions

16410 A person claiming an increase of benefit for a dependant may be required to show that the dependant is being maintained to a specified extent. This is referred to as the maintenance test. The test is applied in two periods which are

1. the pre-claim period **and**
2. the period of claim.

16411 To satisfy the maintenance test the claimant must

1. when incapable of work or not entitled to Cat A or Cat B RP, contribute to the dependant's maintenance at a rate not less than the amount of the increase received for that person¹ (this is described as the "period of claim") **and**
2. in the pre-claim period have contributed in the case of
 - 2.1 an adult dependant to the dependant's maintenance at a weekly rate not less than the standard rate of increase² (see DMG 16469 - 16470)
or
 - 2.2 a child dependant more than half of the maintenance cost of the child or qualifying young person³ (see DMG 16550).

1 SS Ben (Dep) Regs, reg 2(1)(a) & 11(1)(a); SS (IB for D) Regs, reg 2(1)(a) & 12(1)(a);

2 SS Ben (Dep) Regs, reg 11(1)(a); SS (IB for D) Regs, reg 12(1)(a);

3 SS Ben (Dep) Regs, reg 2(1)(b); SS (IB for D) Regs, reg 2(1)(b)

Meaning of "contributing to the maintenance" and "maintaining"

16412 The expressions "maintenance", "maintaining" and "contributing to the maintenance" are not defined. When deciding a question of maintenance the DM should note that

1. the question whether a person has been and/or is being maintained by another person should be decided on the facts of the case (the DM should not speculate as to what the position might have been¹)
2. the maintenance test
 - 2.1 must be decided on what the claimant has actually contributed **and**
 - 2.2 cannot be decided on the amount of any legal liability to contribute²
3. where claimants state they are paying as much as they can afford the test should not be modified (if the amounts contributed are insufficient the appropriate maintenance test will not be satisfied³)

4. “maintaining” does not mean that the contributor has to ensure that the money is used for the purposes of maintenance, but the contributor must take all practical steps to provide the money⁴
5. maintenance whether in cash or kind must be readily available for the use of the dependant⁵
6. if a claimant pays money for the support of a child or qualifying young person to a spouse who passes it on to someone looking after the child or qualifying young person, the money is a contribution from the claimant and not the spouse because the spouse is merely passing the money on.

Note: For the purpose of 5. a contributor may pay a regular sum into a bank account for a dependant. But if the dependant or the person responsible for the dependant does not know about it the claimant cannot be said to be maintaining the dependant.

1 CI 38/50; 2 CSI 50/49; R(U) 3/66 para 8; 3 R(S) 1/52; 4 CS 638/49; 5 R(F) 9/61

16413 Also when deciding a question of maintenance the DM should consider DMG 16414 - 16416 which are examples of Commissioners decisions.

16414 A claimant contributed the increase of benefit he received for his daughter into the family fund out of which she was maintained¹. He and other members of the family were also maintained out of this fund. It was decided that the claimant was not maintaining his daughter because other people were maintained out of the fund.

1 CS 801/49

16415 In considering the wholly or mainly maintaining test in the case of a claimant whose wife, a hospital in-patient, had been allowed home for a few days, a person who provides accommodation and sustenance for an occasional visitor is not “wholly or mainly maintaining” that visitor. Maintenance must be continuous¹.

1 R(S) 26/51

16416 In a case where the dependant, a hospital in-patient, was allowed home each weekend and for holidays, Commissioners said that in their view “a claimant cannot be said to be wholly or mainly maintaining unless he wholly or mainly maintains that person for at last 2 consecutive weeks¹.”

1 R(I) 15/54

16417 A person who makes only intermittent contributions can still satisfy the quite different “contributing” test by means of those contributions for isolated weeks during the period of the claim if the test was satisfied in the pre-claim period.

Burden of proof

16418 The burden of proving that the “wholly or mainly maintaining” or “the contributing test” is satisfied rests with the claimant. In a case in which the wholly or mainly maintaining test applied, information about the family fund from which the dependant was maintained was not known and on the evidence the Commissioner felt unable to

assume that the claimant satisfied the test. He held that the claimant had not proved that he satisfied the test¹.

1 R(U) 37/52

Maintenance established due to benefit erroneously paid

16419 If

1. an incorrect rate of benefit has been paid to a claimant **and**
2. the claimant has used the extra money to maintain the dependant

discovery of the error ends the period of maintenance unless the maintenance condition is satisfied on other grounds¹. See also DMG 16523 for the conditions under which the claimant may again become entitled to the increase.

1 CS 254/50

Pre-claim period

16420 The pre-claim period for increase of

1. IB, SDA or IIDB (with US) is a period when the claimant was not incapable of work **and**
2. RP is a period when the claimant was not entitled to a Cat A or Cat B RP.

Note: The period during which the pre-claim test is to be satisfied is not defined.

IB, SDA, IIDB (with US) and RP

16421 For the purposes of an increase of IB,SDA, IIDB (with US) and RP, the pre-claim test period should be taken to be a period, of whatever length, ending

1. immediately or shortly before the beginning of the period of incapacity **or**
2. before the date of entitlement.

In an increase of these benefits it can include periods of unemployment, non-employment, self-employment, imprisonment and (in RP cases only) incapacity.

Note: The period during which the pre-claim test is to be satisfied is not defined.

16422 In the case of a claim to IB the pre-claim period is the period immediately before the claimant becomes incapable of work. This is irrespective of whether

1. entitlement to IB starts at some time **after** incapacity started (Example 1) **or**
2. there is entitlement to the CDI immediately following the claimant becoming incapable (Example 2).

Example 1

A person who has been in employment becomes incapable of work. During the first part of the incapacity, SSP is in payment and this is eventually followed by IB. The pre-claim period is the period when the claimant was not incapable and not the period when SSP was in payment.

Example 2

A person under pensionable age becomes incapable of work and claims IBST(L)t which is eventually followed by IBST(H). When the claimant becomes entitled to IBST(H), CDI is claimed. The “pre-claim” period is the period when the claimant was not incapable of work.

Dependency arises after specified time

16423 If the dependency arises after the claimant first became, incapable or entitled, the maintenance condition in the pre-claim period¹ does not apply. The claimant does not have to show that contributions were made at more than half the cost of maintenance in the pre-claim period.

1 SS Ben (Dep) Regs, reg 2(1)(b) & 11(1)(a)

16424 Where dependency first arises after the specified time, the only maintenance condition to be satisfied is that the claimant is contributing at not less than the required weekly rate. A claimant cannot be expected to satisfy this condition until the increase in question has been actually received¹. As a result, where dependency first arises after the specified time

1. the test in the pre-claim period does not apply **and**
2. the maintenance test should be regarded as satisfied².

A claimant will therefore be entitled to the benefit providing the amount of the increase of benefit received is contributed towards the maintenance of the other person on receipt of the actual benefit.

1 CS 58/49 (KL); R(S) 7/89; 2 SS Ben (Dep) Regs, reg 2(1)(a) & 11(1)(a)

16425 Dependency may arise after the specified time where during a current claim the claimant

1. assumes responsibility for a new dependant **or**
2. begins to contribute at the required weekly rate towards the maintenance of a person who was formerly a dependant but for whom the claimant did not satisfy the maintenance condition in the pre-claim period.

Example

If a person, to whom the claimant is not married, and their children begin residing with the claimant, the CHB test would need to be satisfied for both dependants. The maintenance test would also need to be satisfied for the person caring for the child.

16426 A claimant who begins or resumes maintenance of a person may be able to show, by making contributions at the required weekly rate, that actual dependency has arisen after the time when they were in employment, not incapable of work, etc, and that they are contributing at the required rate¹. The claimant cannot establish that they have been contributing by making, for example, one payment to cover 13 weeks in arrears.

1 CU 303/50

16427 The claimant should establish that contributions are currently being made on a regular basis. There is no authority, statutory or otherwise, concerning a minimum requirement for the satisfaction of this condition, but in cases mentioned in DMG 16411 the DM should not accept that dependency has arisen and that the claimant is contributing at the required weekly rate until contributions at that rate have been made for a period of 13 weeks.

16428 Where the claimant has contributed, and satisfies all other conditions for entitlement to an increase, the DM should award the increase from the beginning of the 13 week period. Where it is necessary to supersede the original award in order to award the increase, the ground for the superseding decision will be that the payments are a relevant change of circumstances.

16429 There may be cases where the claimant shows that they are prepared to contribute at the required rate although in the pre-claim period up to the date of claim their contributions, though regular and established, were not quite sufficient to satisfy the maintenance condition. In these cases it might be possible to accept that dependency has arisen and that the claimant is contributing at the required weekly rate after the payment at the required rate for less than 13 weeks.

16430 - 16439

Maintenance test - period of claim

16440 If the DM decides that the claimant contributed at the required weekly rate during the pre-claim period, the claimant must contribute the required weekly amount by passing on the increase to the dependant. In cases where the dependency increase is payable at a reduced rate, the claimant is required to pay only the amount of the dependency increase actually in payment¹.

1 R(I) 10/51

16441 If the claimant fails to pass on the increase the DM may be asked to supersede the award. Guidance on contributing at the required weekly rate during the periods of claim is in DMG 16510 - 16513.

16442 - 16449

Maintenance test satisfied in pre-claim period - increase not payable

16450 Although a claimant may have satisfied the maintenance condition in the pre-claim period, an increase of benefit for the dependant may not be **payable**, either from the beginning of the claim or some later date, for a reason other than failure to satisfy a maintenance condition for example because

1. of the overlapping benefit provisions **or**
2. the dependant's earnings exceed the limit.

16451 The increase may be put back into payment from the date the grounds which affected payment ceased to exist, for example when the partner's earnings are below the limit.

16452 It does not matter when considering re-instatement that no contributions were made to the dependant's maintenance during the period when the increase was not payable. The length of time for which the claimant did not contribute is immaterial. The claimant does not have to account for the failure to contribute. But where the period exceeds 12 months, it may be necessary to obtain a written undertaking from the claimant to contribute at a weekly rate of not less than the amount of the increase before payment is restored.

16453 - 16459

Maintenance test satisfied in pre-claim period - no entitlement to increase

16460 Although a claimant may have satisfied the maintenance condition in the pre-claim period, there may be no **entitlement** to the increase, either from the beginning of the claim or some later date, for a reason other than the failure to satisfy a maintenance condition.

16461 A fresh claim for the increase should be made before entitlement can be considered again. But where the disentitlement is on grounds other than the failure to contribute, the guidance in DMG 16451 on the interval in which no contributions are paid can also be applied to this situation.

16462 A claimant who

1. has been awarded an increase of benefit **and**
2. then is not entitled because of failure to pay over the amount of the increase

may again become entitled if it can be shown that contributions are being made at the required rate. The claimant must show that contributions have resumed at the required rate and that there is a firm intention to continue to do so, for example by signing an undertaking.

16463 The period the claimant must have resumed contributing before it is accepted that they are contributing at the required rate will vary with each case. It will depend on the claimant's past record of contributions, the reason for the lapse and its duration. It might vary from one week in the case of a minor lapse to a maximum of 13 weeks in an extreme case.

16464 - 16468

Adult dependant - pre-claim period

16469 Cases where

1. the claimant states that contributions are being made to the required extent
and
2. the dependant confirms this

will not ordinarily be referred to the DM (see also DMG 16473).

16470 Where DMG 16469 does not apply and a question arises whether the claimant contributed at the required weekly rate, it is a question of fact to be decided on the individual circumstances of the case. The DM must consider each case individually. Some of the factors to be taken into account are

1. the period between the date of separation of the wife, husband or civil partner and the first payment of a contribution
2. the date the person first took care of the child or qualifying young person
3. whether the claimant had been in full employment since the dates in **1.** and **2.**
4. the pattern of payment of contributions.

16471 If before incapacity etc, the claimant has contributed at the required rate over a substantial period, the condition will be satisfied. The rate at which the claimant was contributing should be decided by reference to the rate at which the claimant was liable for, example by court order, to contribute or had the intention of contributing.

16472 Where payment includes arrears, the amount of arrears should be allocated to a current week and if appropriate to future weeks. Short interruptions in contributions may be disregarded. In a longer pre-claim period it may be possible to disregard longer periods (see DMG 16420 - 16422).

Contributions end or reduce during pre-claim period

16473 A claimant may have made substantial contributions to the maintenance of a dependant, perhaps for many years, but for a short period before becoming incapable of work or entitled to RP contributions may have ceased, or have been reduced. The DM should consider

1. the reason for the end or reduction **and**
2. the future intentions **and**
3. the prospects of the claimant being able to carry out these intentions.

16474 If the end or reduction is likely only to be temporary and due, for example, to the state of the claimant's health, the DM should decide that contributions were made to the required extent. This will not be the case if the reduction or cessation is clearly final, for example

1. there is no longer a court order **or**
2. the sum required and which the claimant paid under any order was less than the amount of the increase.

Contributions increased during pre-claim period

16475 Where the dependant confirms that the claimant is contributing at the required weekly rate, the case will not be referred to the DM. Exceptionally, however, it may be revealed, for example because of information held in connection with an earlier claim, that contributions were until recently made at less than the required weekly rate.

16476 In deciding whether a claimant has contributed at the required weekly rate, the DM should consider

1. the reason for the increase in contributions **and**
2. whether the increased rate is likely to continue.

16477 Contributions may increase where, for example

1. the sum required under a Court order had recently been increased and the claimant had contributed at the new increased rate **or**
2. irrespective of a Court order, a claimant had agreed to increase the rate of contributions and there was no reason to doubt that contributions would continue to be made at the increased rate.

Note: An example of **2.** is when the claimant resumed work after an earlier spell of unemployment or incapacity on realizing that contributions up to that time were insufficient to enable the rate of benefit to be increased for the dependant.

Increase in benefit rates

16478 A person's contributions in the pre-claim period are usually related to the amount which would have to be contributed in order to qualify for an increase of benefit if a claim were made (the standard rate of increase). Where a claim is made shortly after an increase in benefit rates, contributions in the pre-claim period which were made before the increase will have been made at less than the required rate. If the contributions made before the increase in rates satisfied the test which applied at that time they should be treated as if they had been made at the new rate¹

1 SSA Act 92, s 155(6)

16479 There may, however, be a period between the date when the increased rates started and the date from which the increase of benefit is claimed, in which the claimant's contributions, though at a weekly rate of at least the pre-increase rate, have not reached the new level. If the contribution is brought up to the required level from the date when the increased rate started and there is nothing to suggest that the claimant will not continue to contribute at this higher weekly rate, the condition in the pre-claim period may be regarded as satisfied¹.

1 R(S) 1/59

16480 The DM should take into account

1. the rate at which the payments are being made and whether these have been made regularly
2. the period of time since the rates of benefit were changed
3. whether the claimant in fact satisfied the test before the date of the change in rate and if so, for how long
4. whether the claimant has paid the amount necessary to bring the contributions paid since up to the new rate and whether there is an intention to continue to contribute at that increased rate.

Example

In a case involving a claimant who had contributed at the standard rate of increase for a period of over ten years but because of an increase of rates of benefit did not do so for a period of just under three months before the date of claim, it was accepted that the test in the preclaim period was satisfied¹. It was not considered necessary for the claimant to pay arrears to bring his contributions up to the required rate in order to satisfy the test. An acceptance of a lapse of three months in making contributions at the required rate should be treated as exceptional. It would only be justifiable if the claimant had been making regular contributions of a substantial amount, for example at a rate sufficient to have satisfied the test, before the increase in benefit rates.

1 SS Ben (Dep) Regs, reg 11(1)

Insufficient contributions made in pre-claim period

16481 A Commissioner decided that the test in the pre-claim period was not satisfied by a claimant who contributed sufficiently to his wife's maintenance to satisfy the statutory conditions for an increase of Sickness Benefit for at least 9½ years but insufficient to do so for approximately ten months immediately preceding the date of his claim, even though the deficiency was only 5p a week.

1 SS Ben (Dep) Regs, reg 11(1)

16482 A claimant who

1. during the pre-claim period has contributed to the maintenance of the dependant at a rate below the standard rate **and**
2. does not satisfy the test¹

may be prepared from the date of claim or some later date to contribute at the required weekly rate. Where a claimant contributes for a period, dependency may arise during the period of the claim and should be considered as in DMG 16423 - 16429.

1 SS Ben (Dep) Regs, reg 11(1)

Rate of dependency increase

16483 The amount of ADI varies according to

1. the benefit claimed **and**
2. for IBST whether the claimant is under or over pensionable age¹.

1 SS CB Act 92, Sch 4, Part IV

16484 To qualify for an ADI where the dependant does not reside with the claimant, the claimant will need to have contributed at the rate of the increase during the pre-claim period unless dependency has arisen after the specified time¹.

1 SS Ben (Dep) Regs, reg 11(1)(b); SS (IB for D) Regs, reg 12

16485 An IB claimant is deemed to satisfy DMG 16484 if, within one month of having been entitled to an increase of IBST, they become entitled to an increase of IBLT¹.

1 SS Ben (Dep) Regs, reg 11(2); SS (IB for D) Regs, reg 12(2)

Incapacity benefit

16486 The increase of IBST for people over pensionable age¹ will be the relevant percentage of the amount specified². The relevant percentage means the percentage specified³.

1 SS CB Act 92, s 87; 2 Sch 4, Part IV, Col 3, para 1A; 3 SS (WB & RP) Regs, reg 6(3B)

16487 Where IBST is paid at the IBLT rate¹ the increase will be paid at the relevant percentage of

1. IBST **or**
2. IBLT

whichever is the greater.

1 SS CB Act 92, s 30A(2)(b), 30B(4) & 87

16488 - 16490

Definition of contributions - contributing test

Contributions in kind

16491 Where cash contributions are less than the sum required or where no cash contributions are made at all, the decision maker should consider any contributions in kind¹. These contributions may include

1. the provision of clothing
2. gifts (for example on birthdays and at Christmas)
3. money spent on holidays or outings
4. the provision of services and facilities (for example accommodation and transport - but see DMG 16493 for the provision of a home).

1 R(I) 10/51

16492 Any case in which the outcome of the claim depends upon the treatment of contributions in kind should be decided as speedily as possible otherwise entitlement to benefit may be lost¹.

1 R(U) 3/66; R(F) 1/73

16493 Provision of a home may be regarded as a contribution to the maintenance of a dependant who is not residing with the claimant, but particular care is necessary in considering such provision since much depends on the nature of the provision and the intention of the persons involved.

1 R(U) 3/66; 2 R(U) 2/65

16494 The DM should also consider whether the expenditure is a contribution to the dependant's maintenance and, if so, to what period it should be attributed and what its value is expressed as a weekly sum.

16495 Money spent by a claimant in travelling to visit a dependant should not be accepted as a contribution to the maintenance of the dependant (see DMG 16567).

Dependant in hospital

16496 Where the dependant is in hospital and

1. the claimant is not making direct contributions in cash towards the maintenance **or**
2. the contributions are at less than the required weekly rate

the DM should take account of any contributions in kind (see DMG 16596).

16497 Expenses which may be regarded as contributions to the dependant's maintenance will normally be for items not provided by the hospital authorities, for example sweets, toiletries, additional clothing, stationery. Provision of these may be in kind or where there are shopping facilities, in cash¹. The test is satisfied if the claimant gives the specific sum for the purpose of maintenance. The claimant does not have to show that the contribution is in fact used for that purpose (see DMG 16196).

Note: The claimant's visiting expenses should not be regarded as a contribution to the patient's maintenance.

1 R(I) 10/51

16498 Payments for amenity bed accommodation¹ should count as a contribution by the person paying them to the cost of maintenance of the patient.

1 NHS Act 77, s 63; NHS (Scot) Act 78, s 55

16499 Where the dependant in hospital is a person caring for a child or qualifying young person, the conditions for entitlement to an increase other than the maintenance condition may not be satisfied (see DMG 16170).

Dependant transferred to hospital during period of claim

16500 If a dependant is admitted to hospital and

1. an increase of benefit already in payment is conditional upon the satisfaction of the maintenance conditions **or**
2. because of the circumstances of the admission the residence conditions are no longer satisfied

the claimant should prove that the dependant has been maintained from the date of admission.

16501 The decision maker may assume that the claimant continues to maintain the dependant during the first four weeks after the date when they are regarded as having ceased to reside together to allow

1. a reasonable time for the claimant to make suitable arrangements **and**
2. for probable additional expenses, for example for extra clothing and other necessities for the dependant.

After four weeks the cost of maintenance must be calculated as in DMG 16620 and be taken into account.

Payments under an agreement or Court order

16502 A man who is legally liable to make payments of maintenance can obtain tax relief on those payments by deducting from them prior to payment, the basic rate of tax. These reduced payments should be regarded for maintenance purposes as contributions at the gross amount referred to in the relevant order, deed or agreement. Voluntary payments of maintenance do not qualify for tax relief.

Note: The maintenance received by the dependant is regarded as income and therefore the dependant is liable to pay income tax on that amount. However as the maintenance payments are not derived from gainful employment, for SS purposes they are not earnings.

Dependant owes money to claimant or is in possession of claimant's assets

16503 If dependant

1. owes a claimant money **or**
2. is in possession of assets belonging to the claimant

the assets, money owed or notional interest on these amounts are not contributions to the dependant's maintenance.

16504 Guidance on what may be regarded as contributions to a person's maintenance is also contained in DMG 16550 which deals with the "wholly or mainly maintaining" test. In particular the DM should consider

1. provision of accommodation (see DMG 16587 - 16590)
2. contributions in kind (see DMG16596)
3. income from an asset (see DMG 16570)
4. net income of a person (see DMG 16567)
5. cost of travel (see DMG 16567).

16505 - 16509

Allocation of contributions - contributing test

Contributing at a weekly rate

16510 The DM should decide whether a person is contributing, or has contributed, at a particular weekly rate, taking account of all the facts of the situation. A claimant may not have contributed the required amount week by week but may, for example, have contributed

1. fixed amounts fortnightly or monthly in advance or in arrears **or**
2. lump sums designed to cover specific periods.

If the contributions when averaged are equal to the required weekly amount, the DM should accept that the claimant is contributing, or has contributed, at the required weekly rate.

1 R(U) 25/58; 2 SS Ben (Dep) Regs, reg 11

16511 If the claimant has not contributed to the cost of maintenance for the whole of the period in question, the DM should consider whether there are portions of that period during which the claimant has in fact contributed. Guidance on allocation of payments in cash or kind is in DMG 16596.

16512 Money spent on gifts should normally be allocated to the week following that in which the gifts are given. But where

1. the claimant contributes in cash **and**
2. contributions fall slightly short of the required amount

it would be reasonable to average any additional expenditure on gifts over the year if it would satisfy the test throughout the year.

16513 Money spent on an outing may be

1. allocated to the week in which it was incurred **or**
2. spread over a period

whichever is in the best interests of the claimant. For example expenditure on an outing each month could be allocated to the week in which the outing took place or spread over the month. Money spent on clothes should be treated in the same way as money spent on gifts.

16514 - 16519

Regular lump sum payments

- 16520 In considering cash payments the DM should note
1. the pattern and rate of payments **and**
 2. the claimant's intentions **and**
 3. the rate at which the claimant is liable to contribute for example by court order.
- 16521 Regular lump sum payments which are clearly intended to cover a specific period may be accepted as contributions for that period provided that the interval between payments is not excessive. For example, a claimant who arranges to contribute monthly, either in advance or in arrears is clearly contributing to the cost of maintenance during the period covered by the payment. On the other hand, a claimant who
1. has failed to contribute for a period of three months **and**
 2. then makes a payment of arrears for that period
- should not be regarded as contributing to the cost of maintenance during those months.
- 16522 A period of three months should not be regarded as a rigid "cut off" period; this will vary from case to case. In the absence of any evidence to the contrary it would be reasonable to regard the lapse in payments as temporary where it does not last more than six weeks. Therefore, a person who had been prevented from contributing over a lengthy period because they were seriously ill in hospital would merit sympathetic consideration.

Intermittent lump sum payments

- 16523 Where a claimant had made intermittent payments and it is not possible to accept that contributions to the cost of maintenance had been made throughout the period of the claim, the DM should consider the effect of the individual payments.
- 16524 Where the sum is more than the required amount the balance should be allocated to future weeks.
- 16525 Where a lump sum payment of arrears of maintenance is made, whether or not under the direction of a court, such payment does not constitute a contribution to the cost of maintenance for a past period. This is on the basis that, during that period, some person or body other than the claimant must have maintained the dependant. These payments cannot therefore establish or revive title retrospectively. Payment of arrears should be allocated to the week in which they were made and to future weeks where appropriate.

16526 The allocation of the sum to the week of payment and following weeks should be to the claimant's best advantage taking into account the number of weeks to which the sum might be allocated (see also DMG 16540).

Allocation where overpayment has occurred

16527 The guidance in DMG 16523 - 16526 applies where

1. an increase has been awarded **and**
2. the claimant had made only isolated payments during the period of claim **and**
3. the DM has to assess the amount of the overpayment when superseding the award of the increase.

The aim should be to allocate the isolated payments to the week following the week of payment and following weeks in order as to keep the overpayment to a minimum.

Income support recovery from arrears of benefit

16528 Amounts of IS recovered from arrears of a SS benefit can be treated as contributions of maintenance made by the person claiming the benefit. This ensures that a claimant does not lose any rights to continued payments of dependant's benefits because of the non-payment of arrears of dependant's benefit.

16529 The claimant should not be any better off than if the arrears had been paid and they had then been paid immediately to the dependant. Therefore, sums which have been deducted from benefit payable to a dependant should be treated as payments of maintenance made on the date on which the sums were deducted, but must be allocated to the period for which the SS benefit was payable¹.

1 SS Ben (Dep) Regs, reg 4

Court order - payments greater than contributing test

16530 Where under a court order the claimant is required to pay a sum greater than is required to satisfy the contributing test for the same period, allocation of intermittent contributions in accordance with the court order could result in little credit being given for substantial contributions. Allocation of these contributions should therefore be considered to the claimant's best advantage (see DMG 16523). See DMG 16621 on the allocation of payments made under a court order for the household fund test.

16531 - 16539

Allocation of contributions between dependants

- 16540 Any sums paid by the claimant as a contribution towards either or both
1. the maintenance of the spouse or civil partner
 2. the cost of providing for one or more children or qualifying young persons
- must be allocated between these dependants to produce the most favourable result for the claimant¹.

1 SS Ben (Dep) Regs, reg 3(1)

- 16541 However, sums paid towards the maintenance of a spouse or civil partner may not be allocated towards the cost of providing for a child, children, qualifying young person or qualifying young persons or vice versa unless
1. the spouse or civil partner is entitled or treated as entitled to CHB for those children or qualifying young persons¹ **and**
 2. the claimant
 - 2.1 is entitled or treated as entitled to CHB for the children or qualifying young persons for the period in question² **or**
 - 2.2 would have been entitled had the contributions been at the required rate.

1 SS Ben (Dep) Regs, reg 3(2); 2 reg 3(3)

- 16542 Since 26.11.84 the only circumstance in which a person can be treated as entitled to CHB is where that person is residing with the child or qualifying young person and parent who is entitled to CHB¹. As a result an allocation involving children or qualifying young persons² can only be made where
1. the spouses or civil partner and children or qualifying young persons are residing together **or**
 2. the claimant, who is not residing with the parent and children or qualifying young persons, is entitled to CHB.

1 SS CB Act 92, s 122(3); SS Ben (Dep) Regs, reg 4A(1); 2 reg 3

16543 - 16549

Wholly or mainly maintaining

16550 To be entitled to an increase of benefit for

1. a child or qualifying young person **or**
2. a person caring for a child or qualifying young person

the claimant must be entitled or treated as entitled to CHB. In order to establish entitlement to CHB the claimant may have to show that in the pre-claim period they were wholly or mainly maintaining a person, that is contributing more than one half of the cost of the person's maintenance¹.

1 SS Ben (Dep) Regs, regs 4A(1) & 2(1)

16551 The legislation does not specify a method of assessment as to whether a claimant is contributing more than half of the cost of the dependant's maintenance. The principles of the assessment known as the "family fund" or "household fund" method (see DMG 16554 et seq) should be applied to claims for all increases for dependants¹.

1 R(I) 1/57

16552 Where the calculation shows that a claimant is contributing exactly half of the cost of maintaining the dependant it can normally be assumed that the wholly or mainly maintaining test is satisfied¹.

1 R(U) 37/52

16553 The calculation may not be applicable in every case. It should not be used where its application would result in a decision which would clearly be at variance with the evidence of the family circumstances.

Household fund method

16554 The method assumes that a household pools part of its resources into a common fund to provide for its common needs, for example housing, food, clothing and general household requisites. The household fund consists of all the contributions made, either in cash or kind, towards the common needs of the members of the group forming that household, together with any contributions from outside sources which are intended for the maintenance of one or more members of the group. Once the contributions to the common fund have been assessed, the unit of maintenance is calculated by dividing that total by the number of members in the group. This calculation gives the average cost of maintaining each member. This figure is then compared with the contribution of each contributor. Surpluses or deficiencies can be seen, and the DM can calculate whether the claimant is contributing a surplus to the fund of at least half the unit cost of maintenance and whether that surplus can be applied to the dependant in question.

- 16555 The main points for consideration are
1. the composition of the household
 2. the contributions made to the common fund
 3. the calculation of the unit cost of maintenance for each member of the household (see DMG 16606 - 16608).

Composition of the household

- 16556 The household includes all the people who are
1. living together **and**
 2. maintained out of the household fund

whether or not they are related by blood or marriage. It should include the children or qualifying young persons for whom the claim is made but should exclude boarders and lodgers.

- 16557 Where two or more distinct households are living in the same premises or sharing common conveniences such as accommodation, lighting, heating and cooking but maintain separate household funds, the DM should consider only the household where the dependant is a member.

- 16558 Each member of the household aged 14 or over should be regarded as one unit for calculation purposes, and each child under 14 as half a unit¹.

1 R(S) 12/83

- 16559 Where one member is
1. periodically away from home **and**
 2. not maintained from the household fund during those absences

that person should be regarded as a fraction of a "unit" depending upon the average amount of time spent at home.

Example

A seaman who came home on leave on average for 10 days every 3 months and made no extra contribution to the fund during those periods apart from the regular allotment from his wages, was regarded as being one ninth of a unit.

- 16560 To calculate the household fund as it existed when the claimant was in employment, the household composition at that time should be used, and no account should be taken of changes caused by the claimant becoming unemployed or incapable of work¹.

1 CS 52/50

Contributions to the household fund

16561 The household fund is the total expenditure of the household on the provision of shelter, food, clothing and general household requisites for all its members. Any contribution from any person which helps to meet one of these needs counts as a contribution towards that fund. Shelter should be regarded as including the cost of such services as lighting and heating which are incidental to the provision of accommodation.

16562 The fund comprises of

1. the contributions of the members who are maintained out of it **and**
2. any contributions from other sources which are clearly for the maintenance of one or more members of the household.

16563 The weekly income of the household must first be established. This includes

1. the net earnings of each member of the household **and**
2. other income coming in, for example SS benefits and IS, maintenance payments under court orders or agreements¹.

1 R(S) 12/83

16564 To count as a contribution to the household, any expenditure must

1. be for the maintenance of one or more members of the household **or**
2. relieve the fund of a charge which it would otherwise have to meet.

The whole of the wages or other income of a member of the household does not usually go into the household fund. A proportion will be retained for various items of personal expenditure.

16565 Whilst making a direct contribution to the fund, members may also buy clothing or meals out of the money retained for personal use. The DM should establish for each contributor to the fund

1. the direct contribution to the fund **and**
2. the amount spent on items for personal use which would normally be a responsibility of the fund.

16566 Money spent by individuals on their meals relieves the fund of the cost of providing those meals and may count as a contribution to the fund. A member may also save the fund certain expenditure by being the owner of the house in which the household lives. Any such extra expenditure by the member or the value of this form of savings to the fund should be added to that member's direct contribution.

Net income

16567 To calculate the net income, the DM should deduct from the gross income

1. income tax¹
2. SS contributions, where payable²
3. maintenance payments for people not present in the household
4. the cost of travel to and from work.

Note: The cost of travel to and from work is neither a contribution to the maintenance of the worker in question nor of any other member of the household. It is as an expense of the employment and should be deducted from the income before it is applied to the household fund.

1 R(S) 12/83; 2 R(S) 12/83

Subsistence payments - member spends time away from home

16568 Where a member of the household

1. spends nights away from home because of work **and**
2. is paid subsistence for that night or those nights by the employer

that payment should be taken as a contribution to that person's subsistence. It does not matter whether the person makes a profit or loss on the payment. The subsistence should not be regarded as a contribution to the household fund.

16569 In calculating the household fund where a person is away from the home on certain nights, the unit cost should be reduced in proportion to the time spent away from home. Therefore a member who spends two complete days and nights away from home will require only five-sevenths of the normal adult unit cost.

Income from an asset

16570 Income received by a dependant from an asset given or provided by some other person counts as a contribution by that person to the maintenance of the dependants for example

1. proceeds from the sale of a business **or**
2. share of a business, transferred to the dependant by the claimant **or**
3. proceeds the dependant was allowed to retain from the sale of a house owned by the claimant¹.

1 R(I) 37/54; R(S) 6/52

Withdrawals from savings

- 16571 A withdrawal from savings used to meet the needs of a household should be treated as a contribution to the household fund, and it should be spread over the number of weeks during which it was used.

Refund of income tax

- 16572 In calculating a person's earnings, the figure to be taken into account is that existing in the pre-claim period. If at a later date a refund of income tax is received for that period it should be disregarded in the calculation.

Payments by boarder or tenant

- 16573 Where the accommodation is owned by a member of the household any payments made by a boarder or by a tenant of furnished rooms should be excluded from the calculation of the fund. If, however, any of the resulting profit is paid into the fund, it should be regarded as a contribution by the person who renders the services or provides the furnished accommodation.

Contributions by people outside the household

- 16574 Where a contribution towards the maintenance of a member of the household is made from outside the household, the whole of the contribution must be included in the fund, regardless of how the person to whom it is paid may spend it¹. These contributions should be dealt with in accordance with DMG 16504 **3.** and **4.** and DMG 16540.

1 CS 52/50

Treatment of certain pensions and other allowances

- 16575 When certain pensions and other allowances are paid to members of the household or direct to the household fund it may not always be clear, who is the contributor. DMG 16576 - 16586 gives guidance on individual benefits and allowances.

Category B retirement pension and composite category A retirement pension

- 16576 Cat B RP payable to a wife on her husband's contributions should be regarded as a contribution by the husband¹ and should not be specifically related to the wife's maintenance. The AP of Cat B RP must be regarded as a contribution from a wife to the household fund. Where a married woman is entitled to reduced rate Cat A RP which is increased by part of the Cat B RP, the Cat A portion of her RP should be

regarded as her own contribution to the fund. The portion derived from her husband's contributions should be regarded as a contribution from her husband.

1 C(P) 96/50(KL); R(S) 12/83

Child benefit and guardian's allowance

- 16577 CHB and GA should be regarded as a contribution from an outside source and included in the total contributions to the household fund from which the unit cost and the surpluses and deficiencies are calculated. It should not be specifically allocated to the children or qualifying young persons for whom it is paid nor to reduce the deficit of any particular member or members of the household. The application of the formula in DMG 16540 will show what part of the claimant's surplus goes to meeting the dependants' deficit.

Severe disablement allowance

- 16578 SDA should be regarded as a contribution from the person who is entitled to the benefit. Although the benefit is non-contributory, if the person who is entitled leaves the household the household fund will suffer financially¹.

1 R(S) 2/85

Dependency increases and allowances

- 16579 Increases of benefits for dependants should be regarded as part of the income of the person by whom they are received, and not the separate income of the dependants (but see increases of WMA). Allowances for dependants paid to disabled ex-service personnel as part of a disability pension should be treated in the same way. Dependant's allowance, emergency grant or children's allowance paid for service with HMF should be regarded as part of the income of the serving person, and contributed to the family fund maintaining those dependants.

Workmen's compensation - allowances for children

- 16580 Allowances paid under WC legislation for the dependent children of a deceased workman should not be treated as the personal income of the recipient. Under WC legislation such dependent children have a right to compensation separate and distinct from that of the widow. Their allowances should, therefore, be treated as their own contribution to the household fund for their own maintenance.

Widow's pension

- 16581 WP under SS legislation or under a Royal Warrant is the personal income of the recipient (but see also WMA).

Educational maintenance grants

- 16582 A maintenance grant received from an education authority for a child or qualifying young person continuing at school should normally be treated as though it was the child's or qualifying young person's own contribution to the household fund for the child's or qualifying young person's own maintenance. This rule may be varied where there is evidence that the grant was awarded to enable the parent or guardian to meet the extra expense of school clothing, sports equipment etc. That part of the grant which is used to meet such extra expense should be entirely disregarded in calculating the amount of the fund.

Income support and jobseeker's allowance

- 16583 IS and JSA should be regarded as a contribution by the person entitled to it.

Housing benefit

- 16584 HB should be regarded as a contribution by the person entitled to it.

Widowed mother's allowance

- 16585 Only the personal element of WMA should be treated as a contribution to the household fund by the mother for her own maintenance. The dependency element should be regarded as a contribution by her to the maintenance of the children or qualifying young persons it covers¹.

1 R(I) 20/60

Attendance allowance and disability living allowance

- 16586 Unless there are exceptional circumstances AA and DLA should be treated as a contribution to the fund by the person for whom the allowance is paid¹.

1 R(I) 1/57

Provision of accommodation

- 16587 If a person owns the house occupied by the household and therefore saves the common fund from expenditure on rent, the value of that saving should be calculated as in DMG 16588 - 16590 and added to any cash contribution the person may make.
- 16588 The rental value of the house should be estimated by assuming that the household were renting the identical house in identical circumstances. Where the owner of the house has also bought the furniture the rental value to be estimated should be that of a furnished house. The DM should ask the claimant for an estimate of rental value. If

1. the claimant is unable or refuses to do this **or**
2. there are doubts about the validity of the evidence provided

the DM should request independent valuation from the District Valuer¹.

1 CI 151/50

- 16589 If the owner of the property is paying the mortgage out of their own pocket, the amount of these payments should be disregarded as far as the household fund is concerned. But if the mortgage repayments are being made out of the household fund, the owner's contribution to the fund should be reduced by the amount of the repayment. Repairs should be dealt with on the same basis as mortgage payments. The reason for this rule is that the purchase of the house is a personal contract between the purchaser and the building society or other organization which has granted the mortgage. Therefore, if the purchaser is unable to pay the mortgage payments and these are paid out of the household fund, these payments are helping the purchaser to meet a personal liability and to acquire a valuable asset. The amount of the purchaser's contribution to the fund, whether actual or notional should be reduced by any mortgage payments made out of the fund
- 16590 If a member of the household pays the mortgage on behalf of the prospective owner of the property, the effect of that payment on the household fund depends upon whether the person would have made a higher contribution to the fund had they not paid the mortgage. Therefore, if by paying the mortgage their contribution to the fund was lower than it otherwise would have been, the payment should be regarded as a contribution to the fund and the prospective owner's contribution to the fund should be reduced by the amount of the payment. On the other hand, if a payment of the mortgage had no effect upon their contributions to the fund, the transaction should be regarded as a private matter between the parties concerned, with no consequent effect upon the fund.
- 16591 Where
1. the house is held on a tenancy **and**
 2. the main rent is paid by the household fund **and**
 3. part of the house is sub-let
- the proceeds of sub-letting, whether or not they exceed the main rent payable for the house, should be taken into account as an addition to the household fund.
- 16592 Where, the tenancy is held by one particular member of the household who pays the rent out of their own pocket, the proceeds of any sub-letting should be regarded as the income of that member of the household. Their contribution to the fund will be the amount of the main rent less the proceeds from sub-letting.

Accommodation provided by an employer

16593 Where the claimant lives in a house

1. provided by the employer **and**
2. in which they are required to live as one of the conditions of employment

the rental value of that house does not count as the person's earnings¹. The rental value of the house should not be regarded as a contribution from the claimant but as a contribution from the employer, to the household in general.

1 SS Ben (C of E) Regs, reg 3(1)(a)(iii)

16594 Conversely, where the claimant

1. lives in a house provided by an employer **and**
2. is not required as one of the conditions of employment to live in that house

the rental value of the house is regarded as earnings and therefore their contribution to the household fund.

16595 If the employer pays for the electricity used in the household and pays the council tax of the household the cost of these items should be regarded as

1. the earnings of the claimant whether or not they are required to live in the house **and**
2. their contribution to the fund.

Contribution in kind

16596 Any contribution in kind to the common fund should be included in assessing a person's contribution for maintenance purposes. Therefore, the market value of coal received by a miner should be included as part of their contribution¹.

1 CI 111/50

16597 Where a person

1. buys an article such as a television set, a washing machine or a piece of furniture for the use of the household **and**
2. pays for it by hire-purchase or by a credit account

that person's weekly contribution to the fund should be calculated by dividing the normal retail price of the article by the number of weeks of its estimated life.

16598 Where this calculation proves difficult and it is known that the item in question can be rented, the weekly amount of a notional rent may be regarded as the claimant's contribution to the fund. This alternative method will, in most cases, provide a higher contribution to the fund but the difference is likely to be small.

16599 Where the item is bought with cash, the amount paid should be divided by the number of weeks of the estimated life of the article in question.

Child or qualifying young person spends periods with parent outside the household

16600 Quite often a child or qualifying young person spends weekends or longer holidays with a parent who lives outside the household. In these circumstances the amount which that parent spends on the child or qualifying young person during these periods for food, accommodation, clothing etc. should be

1. regarded as a contribution to the household fund **and**
2. used to reduce the deficient contribution of the child or qualifying young person in question.

Child's or qualifying young person's school fees paid by parent outside the household

16601 Some parents who are living outside the household, pay the child's or qualifying young person's school fees. Their payments should be treated as contributions to the household fund and allocated specifically to reduce the child's or qualifying young person's deficiency. This is because unless that parent paid the fees it would be necessary for them to be paid from the household fund and therefore the fund is saved that additional charge.

Contributor deliberately withholds contributions to the fund

16602 The amount of the household fund and its distribution would be affected if a person, who is maintained out of the fund, refuses to contribute or deliberately reduces their contribution. If this situation was accepted that person could claim to be a dependant of another member of the household by retaining the whole or part of their income in order to spend it other than upon the cost of maintenance.

16603 Where the whole income of an alleged dependant is not at least equal to their share of maintenance from the household fund, any retention of income should not be allowed to diminish the value of their contribution.

Contributor with some exceptional requirement or personal liability

16604 In certain cases it may be permissible if it can be shown that the amount retained is for some exceptional requirement or personal liability which existed when the claimant was in employment, for example an insurance premium¹. Conversely, a contributor cannot include as part of their contribution, the cost of any items which would not be borne by the household fund. For example, a contributor to the household fund cannot include as part of their contribution the value of tools or special clothing bought for their occupation.

1 CI 11/50; CI 266/50

16605 If an individual has exceptional needs which are paid out of the fund, the cost of the exceptional needs is deducted from the fund before any calculation is made. For example, if a contributor to a family fund is a diabetic and has to have special foods, their contribution to the fund is reduced by the extra cost of these foods.

Calculation of maintenance costs

16606 When the composition of both the household and the household fund has been decided, the DM can then

1. calculate the cost of maintenance of each person in the household **and**
2. decide whether or not the claimant's contribution to the dependant is at least half of that cost.

16607 The first stage is to calculate the unit cost of maintenance for each person who uses the fund. This is done by dividing the total fund by the number of units maintained out of it.

16608 The second stage is to decide whether the claimant can be regarded as contributing more than half the cost of maintenance of the person caring for the children or qualifying young persons for whom an increase of benefit is claimed. Where appropriate DMG 16609 - 16614 should be applied.

16609 If a member of the household does not contribute to the common fund enough to cover the cost of their own maintenance, the amount of the deficiency should be recorded.

16610 If a member of the household contributes more than the cost of their own maintenance, the amount of the surplus should be recorded.

16611 If a person contributes to the fund but is living elsewhere so that their maintenance is not a charge on the fund, the whole of their contribution should be recorded as a surplus.

16612 Where an outside contributor or a person as in DMG 16611 makes a contribution towards the maintenance of one or more persons under the terms of a court order, a legally binding agreement or a clearly defined voluntary agreement, the total contribution should

1. initially be included in the fund for the purpose of calculating the unit cost of maintenance **and**
2. then allocated to reduce the deficiencies of the persons for whom the contribution is being made.

This contribution should not be shown as a surplus as in DMG 16611 This should be done before applying the calculation in DMG 16613

16613 The deficiencies recorded under DMG 16609 should be regarded as being met by the contributors mentioned in DMG 16610 - 16611 in proportion to their surpluses. In other words, the part of the claimant's surplus which is to be allocated to the dependant is that part which bears the same ratio to their total surplus as the dependant's deficiency does to the total deficiencies. The deficiency of the dependant for whom increase of benefit is claimed should not be regarded as a first charge on the claimant's surplus.

16614 To find the amount of the claimant's contribution to the maintenance of a dependant, the following formula can be applied

$$\frac{\text{Dependant's deficiency}}{\text{Total deficiency recorded x claimant surplus}}$$

16615 Set out below are some examples of how the calculation is applied. The basic facts of the case apply to all the examples. The details of the fund are changed in each example.

Basic facts

A man becomes incapable of work and claims an increase of IB for a child. The claimant is not a parent of the child and is not entitled to CHB for the child. It is a basic condition of entitlement to the increase that the claimant is or can be treated as entitled to CHB. As a result the DM must decide whether he can be treated as entitled to CHB¹. The claimant must show that in the pre-claim period he was wholly or mainly maintaining the child.

1 SS Ben (Dep) Regs, reg 4A(1)

Example 1

Before becoming incapable of work the claimant was in employment. The parent of the child and the child were both residing with the claimant when he was not incapable of work. In the pre-claim period the only contributions were the claimant's earnings and the CHB for the child.

Units	Contribution	Surplus or deficiency
1	claimant £150	+ £85.68
1	parent -	- £64.32
½	child -	- £32.16

child benefit £10.80

Total units - 2½

Total contribution - £160.80

Unit cost of maintenance $\frac{£160.80}{2\frac{1}{2}} = £64.32$.

The claimant's surplus must be allocated to the deficiencies of the parent and the child in accordance with DMG 16607. The ratio of the deficiencies is parent two-thirds and child one-third. Therefore the surplus is allocated -

Parent = 2/3 or £57.12

Child = 1/3 or £28.56

As the claimant is contributing more than half the cost of maintenance he can be treated as entitled to CHB

Example 2

Before becoming incapable of work the claimant was unemployed and in receipt of contribution based JSA(Cont). The parent of the child and the child were both residing with the claimant when he was not incapable of work. In the pre-claim period the only contributions were the claimant's JSA and the CHB in respect of the child

Units	Contribution	Surplus or deficiency
1	claimant £47.90	+ £14.42
1	parent -	- £23.48
½	child -	- £16.74

child benefit £10.80

Total contribution - **£58.70**

Unit cost of maintenance $\frac{£58.70}{2\frac{1}{2}} = £23.48$

The surplus is allocated as follows -

Parent = $\frac{2}{3}$ or £9.62

Child = $\frac{1}{3}$ or £4.81.

As a result the claimant would satisfy the CHB test.

Example 3

Before becoming incapable of work the claimant was in employment earning £150 a week. The parent of the child and child were both residing with the claimant when he was not incapable of work. In addition the other parent of the child, who is not living in the household, contributes £25 a week to the maintenance of the child

Units	Contribution	Surplus or deficiency
1	claimant £150	+ £75.68
1	parent -	- £74.32
$\frac{1}{2}$	child -	- £37.16
	child benefit £10.80	
	maintenance £25	

Total units - $2\frac{1}{2}$

Total contribution - £185.80

Unit cost of maintenance = £185.80

$2\frac{1}{2}$ = £74.32.

The amount paid as maintenance specifically for the child must be allocated to the maintenance of the child. As the payment of £25 to the child's maintenance is more than half the unit cost of maintenance of the child the person paying that sum must be regarded as maintaining the child. As a result the claimant does not satisfy the CHB test.

Example 4

Before becoming incapable of work the claimant was unemployed. However entitlement to JSA(Cont) was exhausted and the claimant was during the pre-claim period in receipt of JSA(IB). This along with the CHB for the child was the only contribution to the fund. The person and the child were both residing with the claimant in the pre-claim period.

Units	Contribution	Surplus or deficiency
1	claimant £91.65	+ £50.67
1	parent -	- £40.98
½	child -	- £20.49

child benefit £10.80

Total units - 2½

Total contribution - £102.45

Unit cost of maintenance £102.45

2½ = £40.98

The surplus is allocated as follows -

parent = 2/3 or £33.78

child = 1/3 or £16.89

As a result the claimant would satisfy the CHB test.

Child is a student at university or college

- 16616 There are special considerations where the child is a university or college student. The DM should decide whether the claimant is wholly or mainly maintaining the student. It may not always be necessary to apply the full provisions of the household fund calculation. The amount of any annual grant payable to the student by the LA should be established.
- 16617 The maintenance element of a grant paid to a F/T student by a LA is intended to cover the academic terms as well as the Christmas, New Year and Easter holidays. It does not cover the summer holiday. But the maintenance element of a grant paid to a student on a sandwich course is intended to cover the duration of the course exclusive of holidays.

- 16618 Any part of the grant which is directly attributable to the extra cost of the college or university training, for example books, travel, separate accommodation, should be deducted from the grant before it is added to the household fund as the student's contribution. The other income to the fund should be accepted and assessed as set out in DMG 16554 - 16555. Account should also be taken of any annual amount for which the claimant is directly responsible for the student, for example any annual parental contribution to the grant the claimant is required to make.
- 16619 During holiday periods it may also be necessary to take into account any extra contribution made by the dependant from any earnings. The unit cost of maintenance should be assessed and, if it is clear at that stage that the claimant is wholly or mainly maintaining the child, the CHB test should be regarded as satisfied.

Child or qualifying young person in hospital at time of claim

- 16620 If the child or qualifying young person is in hospital at the date an increase is claimed, it will not be possible to apply the household fund method to decide whether the claimant was wholly or mainly maintaining. A comparison should be made between
1. the claimant's contribution to the dependant **and**
 2. the cost of food and accommodation by the hospital.

For advice on expenses which may be regarded as contributions to the dependant's maintenance see DMG 16491.

Allocations under court orders or legally binding agreements

- 16621 If, under the terms of a court order or legally binding agreement
1. a person is bound to pay over a certain sum regularly towards the maintenance of an individual dependant **and**
 2. the terms of the order or agreement are complied with
- any allocation under the order or agreement should be taken into account in any household fund or other maintenance calculation.
- 16622 If the amount allocated exceeds one half the unit cost of maintenance of that dependant, that person must be regarded as mainly maintaining the dependant¹. This is the case even where the dependant is
1. contributing more than one half the unit cost of their own maintenance **or**
 2. being maintained from some other source.

16623 Where there is a court order or legally binding agreement in force the amount specified in the order or agreement for the maintenance of a particular dependant must initially be allocated to that dependant. But where

1. the dependant is the husband, wife or civil partner of the contributor **and**
2. the amount allocated to the dependants exceeds the unit cost of maintenance

the surplus can be allocated to produce the most favourable result for the claimant¹.

1 SS Ben (Dep) Regs, reg 3(1)

16624 A contribution to the maintenance of a person caring for a child or qualifying young person cannot be reallocated in this manner. Surplus contributions made for a husband, wife, civil partner, child or qualifying young person cannot be reallocated to help satisfy the wholly or mainly maintaining test in relation to the person caring for a child or qualifying young person.

16625 Payments of arrears cannot be added to the maintenance paid in any particular week¹.

1 R(U) 25/58

16626 The principles described in DMG 16621 may also be applied whether or not the contribution from outside the household is made under the terms of a

1. court order **or**
2. legally binding agreement.

16627 DMs should note that

1. the contributions in question should be clearly identifiable under a voluntary agreement as being for the maintenance of a particular dependant **or**
2. it should be clear from the circumstances of the case that the contributions are intended to be for the maintenance of a particular dependant or dependants¹ (see also DMG 16612).

1 CU 544/50

Recovery of income support from arrears of dependency benefit

16628 Where the needs of the dependant have been taken into account in assessing IS payable

1. to the dependant **or**
2. to some other person other than the claimant

all or part of the IS may in some circumstances be recovered from SS benefit payable to the claimant for the dependant.

16629 Any deduction under those provisions from benefit payable to a claimant for an adult or child dependant for any week is deemed to be contribution of the same amount by the claimant to the maintenance of the dependant for the same week¹.

1 SS Ben (Dep) Regs, reg 4

Person partly maintained by two or more claimants

16630 There are special provisions for cases where a person is partly maintained by two or more claimants, each of whom could be entitled to an increase of benefit if they were wholly or mainly maintaining that person¹.

1 SS Ben (Dep) Regs, reg 2(2); 2 reg 4A(1)

16631 The wholly or mainly maintaining test applies for the CHB test and in particular whether a person can be treated as entitled to CHB. The only circumstances in which a person can be treated as entitled to CHB is where that person is residing with the child or qualifying young person and parent who is entitled to CHB.

16632 As a result, the provisions cannot operate for those rival claimants who are not residing with the child or qualifying young person and the parent entitled to CHB. In this type of case the wholly or mainly maintaining test must be applied only to the claimant actually residing in the household.

16633 Where

1. a child or qualifying young person is partly maintained by two or more people who reside in the household **and**
2. the total contributions made by those other persons would satisfy the wholly or mainly maintaining test

the child or qualifying young person is treated as wholly or mainly maintained by the claimant who contributes the larger or largest amount.

16634 If the contributions are equal, the dependant is treated as maintained by the elder or eldest of the claimants or by the one designated in writing by a majority of the contributing claimants. The increase of benefit may pass from one contributing claimant to another when the majority of the contributing claimants revoke a designation and designate another of their number to receive the increase.

16635 If the one who has been receiving the increase ceases to be entitled to benefit and there are still two or more claimants who are contributing to the dependant's maintenance the provisions should be applied again to those claimants.

16636 This special provision can be applied only to two or more claimants, that is, the contributors must, at the time to which the claim relates, actually be entitled to a benefit for which an increase of benefit may be paid¹.

1 CS 547/49

16637 The application of the household fund rules, sometimes results in two people being treated as contributing equally to the maintenance of a person for whom increase of benefit is claimed. As it cannot be decided accurately how the fund is distributed among the people maintained out of it, there will be an element of doubt as to which of two apparently equal contributors is in fact providing the main maintenance. If only one of the contributors has made a claim for benefit it may be assumed that the claimant is contributing the greater amount and therefore mainly maintaining the child or qualifying young person.

Wholly or mainly maintaining test satisfied

16638 Where, following application of the household fund method of calculation, the claimant can be accepted as wholly or mainly maintaining the child or qualifying young person, the test should be regarded as satisfied until it is clear that it has come to an end¹. This also applies where no household fund test was applied because dependency did not arise until after the specified time.

1 CS 58/49 (KL); R(S) 12/83

16639 Where the household situation remains the same and the claimant contributes to the child's or qualifying young person's maintenance not less than the amount of increase received, the test should be regarded as satisfied. In this situation it will in practice be hard to show that the claimant is not contributing the amount of the increase.

Contributing test

16640 The DM should supersede the decision awarding the increase¹ where

1. an award is made on the basis that the claimant is contributing towards the cost of maintaining a child or qualifying young person at a rate not less than the required rate **and**
2. it is then discovered that the claimant is not doing this.

1 SS A Act 92, s 25(1)

16641 The DM may be asked to look again at the award of the increase where the claimant has paid over less than the total amount of contributions required to satisfy the contributing test for the whole period of the claim. The DM should consider whether, looking at the period as a whole

1. the claimant can still be regarded as contributing at the required weekly rate even though there are some gaps in payment **or**

2. that the total amount paid over is slightly less than the total amount required to satisfy the contributing test for every week.

16642 The DM should not supersede the decision awarding the increase if satisfied that the claimant can still be regarded as contributing at the required rate. But if the DM is not satisfied, the aim should be to allocate the isolated payments to the weeks of payment and succeeding weeks in such a manner, taking into account the provisions in DMG Chapter 16, as to keep the overpayment to a minimum.

16643 The DM should not supersede the decision awarding the increase to any case in which the claimant has contributed the full amount although they may not have done so immediately. The DM may be asked to look again at the award of the increase because a considerable period has elapsed between the date on which the

1. increase was paid to the claimant **and**
2. claimant contributed to the maintenance of the child or qualifying young person.

16644 Where an overpayment has occurred, unless the claimant can show that there was no misrepresentation or failure to disclose (see DMG Chapter 09) they must be required to repay not merely the difference between the

1. amount they were required to contribute **and**
2. lesser amount they actually contributed

but the whole of the amount paid to them¹.

1 R(U) 11/71

16645 - 16649

Special cases

Rival child dependency claimants - priority of entitlement

- 16650 There is special provision¹ for priority of entitlement where
1. a man is entitled to an increase of Cat A or Cat C RP for a child or qualifying young person **and**
 2. at the same time, his wife is entitled to an increase of Cat B or Cat C RP for the same child or qualifying young person.

Guidance on this is set out in the Benefit Specific Guidance.

1 SS (OB) Regs, reg 15

Widowed mother's allowance

- 16651 A widow who has established entitlement to WMA is entitled to an increase of that benefit for children or qualifying young persons for whom she is entitled to CHB. The children or qualifying young persons must be
1. a son or daughter of the woman and her late husband (this may include a child born after the death of the husband) **or**
 2. a child or qualifying young person for whom her late husband was, immediately before his death, entitled to CHB **or**
 3. if the woman and her late husband were residing together immediately before his death, a child or qualifying young person for whom she was then entitled to CHB¹.

1 SS CB Act 92, s 37(2) & 80(5)

- 16652 Where a widow's entitlement to WMA is based upon the provisions referred to in the Benefit Specific Guidance her late husband should be treated as entitled to CHB for the purpose of satisfying the test in DMG 16651 for any child or qualifying young person for whom
1. a previous husband of the widow by a marriage which ended with that husband's death was, immediately before his death, entitled or treated as entitled to CHB **and**
 2. the widow was entitled or treated as entitled to CHB immediately before the death of her late husband¹.

Where the death of the previous husband took place before 4.4.77, the condition in **the first part** is satisfied if, at the date of his death, the child or qualifying young person in question was a child of his family. Where the death of the late husband

took place before 4.4.77, the condition in the second part is satisfied if, at the date of his death, the child or qualifying young person was a child of the widow's family².

1 SS (WB & RP) Regs, reg 16(2); 2 reg 16(3)

Unemployability supplement with workmen's compensation

16653 A claimant who is entitled to US⁴ has the same right to payment for a child or adult dependant as if the injury or disease were one for which IIDB was payable.

Entitlement to US arises where a claimant

1. has been on or after 5.7.48 entitled to WC **and**
2. could be treated as incapable of work and likely to remain permanently incapable.

1 SS CB Act 92; SS (Gen Ben) Regs, reg 42

16654 A claim for an increase for a child or adult dependant is treated as if it were a claim for an increase of IIDB¹. But a claimant is not entitled to payment under these provisions for more than one injury or disease, or during any period for which they are entitled IIDB (with US). The abolition of US from 6.4.87 has no effect on this².

1 SS (Gen Ben) Regs, reg 45; 2 SS CB Act 92, Sch 8, para 8(6)

16655 Where a claimant is entitled to an increase for a child or qualifying young person under these provisions¹ there may also be entitlement for an increase for a woman having the care of a child or qualifying young person². Exceptionally, however, a claimant cannot be entitled to an increase for a child or qualifying young person for whom an increase is payable under the PB and MDB scheme. Therefore, they cannot be entitled to an increase for a woman having the care of that child or qualifying young person³.

1 SS (Gen Ben) Regs, reg 45; 2 SS Ben (Dep) Regs, reg 10; 3 PB & MDB Scheme, Art 6(i)(b)

Former constables and firefighters

16656 There is no provision¹ for awarding entitlement to payments for dependants as if the injury or disease were one in respect of which IIDB was for the time being payable. ADIs are not payable to former constables and fire-fighters whose entitlement to US².

1 SS (Gen Ben) Regs, reg 44; 2 reg 45

16657-16999

Chapter 17 - Overlapping benefits

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Chapter 17 - Overlapping benefits

Introduction

17000 This Chapter contains guidance on the prevention of duplication of payment of benefit where a claimant is entitled to

1. two or more personal benefits **or**
2. an increase of two or more benefits for the same dependant **or**
3. an increase of benefit for a dependant who is entitled to a personal benefit **or**
4. OPB and CDI.

Note: Personal benefit means¹ any benefit, pension or allowance except a SAP whether under certain legislation² or not, which is not a dependency benefit, and includes JSA(Cont) and ESA(Cont).

1 SS (OB) Regs, reg 2(1); 2 SS CB Act 1992

17001 Guidance also covers the situation where two or more claimants are entitled to an increase of the same or different benefits for the same dependant.

17002 Guidance covering the adjustment of Invalidity Addition on account of AP and GMP is in DMG Chapter 75.

Benefits not covered

17003 Not all benefits overlap and the guidance in this Chapter does not apply to them. Benefits that do not overlap are those that are incompatible - see DMG 17004 - and those not payable out of public funds - see DMG 17005.

Incompatible benefits

17004 Benefits can only overlap where there is entitlement to both or all of those benefits. There can be no overlap where entitlement to one benefit is prevented by entitlement to another benefit. These benefits are referred to as being incompatible. See Appendix 1 for a list of incompatible benefits.

Benefits not payable out of public funds

17005 The overlapping benefit rules apply only to pensions, allowances or benefits payable out of public funds¹. Public funds means funds controlled by the United Kingdom Government and does not include payments made

1. by any non-United Kingdom government including European Community Member States². Guidance on the effect of European Community benefits on

United Kingdom benefits is in DMG Volume 2, - International Subjects, but see DMG 17119 for training allowances from the European Social Fund

2. by the United Kingdom Government on behalf of any other government
3. from any fund controlled by a Local Authority even if the fund comes from government grants, for example a police pension paid from a general county account of a county council controlling a police force³
4. by a nationalized industry³.

Note: An allowance paid directly or indirectly by the European Social Fund is paid out of public funds⁴.

1 R(P) 13/56; R(P) 5/56; 2 R(P) 5/86; 3 R(P) 13/86; 4 R(IS) 10/98

17006 - 17039

Adjustment between different personal Act benefits

17040 In this Part the term Act benefit refers to benefits provided for under specific legislation¹ and includes

1. JSA(Cont)
2. IB
3. MA
4. BB
5. RP
6. AP and GRB. These benefits are treated as separate personal benefits and overlap in certain situations (See DMG 17064)
7. SDA and CA, subject to DMG 17180
8. age addition, subject to DMG 17063
9. ESA(Cont).

1 SS CB Act 92, Parts II & III; WR Act 07; JS Act 95

17041 Except for those benefits referred to in DMG 17042, all personal Act benefits are subject to the rules described in DMG 17050 to 17061 concerning adjustment when more than one personal Act benefit is payable.

17042 The excepted benefits and payments which are not adjusted and do not require another personal Act benefit to be adjusted on account of them being payable¹ are

1. WPT
2. BPT
3. any other sum which is not paid for a period
4. AA
5. DLA.

Note: SAP is not a personal Act benefit².

1 SS (OB) Regs, reg 4(2); 2 reg 2(1) definition of "personal benefit"

17043 - 17049

Method of adjustment

- 17050 Where a claimant is entitled to two or more personal Act benefits the DM should follow the steps in DMG 17051 - 17061 to identify which benefit takes precedence and how to make the adjustment to the other.

First step

- 17051 If one of the benefits is a contributory benefit and the other is not, the contributory benefit takes precedence and the non-contributory benefit is the one to be adjusted. This is done by deducting the amount of the contributory benefit from the amount of the non-contributory benefit¹. The amount of the contributory benefit is payable in full but only the balance of the non-contributory benefit, if any, is payable.

1 SS (OB) Regs, reg 4(5)(a)

Example

A claimant in receipt of SDA at the rate of £59.45 becomes entitled to reduced basic Category A RP at £48.83. RP is a contributory benefit while SDA is non-contributory, therefore RP is paid in full together with a balance of £10.62 SDA.

Second step

- 17052 If DMG 17051 does not apply, and one of the benefits is payable weekly the general rule is that the benefit payable on a weekly basis takes precedence and the other benefit is to be adjusted. This is done by deducting the amount of the weekly benefit from the amount of the non-weekly benefit. The amount of the benefit payable on a weekly basis is payable in full but only the balance, if any, of the non-weekly benefit is payable¹. See DMG 17053 if the claimant has applied for the benefit payable on a weekly basis to be adjusted.

1 SS (OB) Regs, reg 4(5)(b)(ii)

- 17053 Where DMG 17051 does not apply and one of the benefits is payable weekly, the beneficiary may make an application to have the weekly benefit adjusted. The application to have the weekly benefit adjusted can be made at any time but only applies to payments due after the application has been made. In this case the benefit not payable on a weekly basis takes precedence and the other benefit is adjusted. This is done by deducting the amount of the benefit not payable on a weekly basis from the amount of the benefit payable on a weekly basis. The amount of the benefit not paid on a weekly basis is payable in full, but only the balance, if any, of the benefit payable on a weekly basis is payable¹.

1 SS (OB) Regs, reg 4(5)(b)(i)

Example

A woman in receipt of WP of £97.65 is entitled to IB of £91.40 basic rate. WP is a weekly and IB a daily benefit. Before the payment due on 12.5.10 she applies to have her WP adjusted and to keep the whole of her IB. She therefore receives IB from 12.5.10 and only the balance of her WP - £6.25. For the period before 12.5.10 when she made the application, she receives full WP and her IB is extinguished.

17054 - 17059

Third step

17060 If neither DMG 17051 nor DMG 17052 - 17053 apply, the total amount payable is

1. the amount of the highest benefit **or**
2. where the benefits are payable at the same rate, the amount of one of them¹.

1 SS (OB) Regs, reg 4(5)(c)

17061 Where two or more benefits are still payable after adjustment, the total amount payable cannot be greater than the amount arrived at in DMG 17060¹.

1 SS (OB) Regs, reg 4(5)(c)

Exceptions and modifications

17062 The guidance in DMG 17050 - 17061 is modified for the benefits in DMG 17063 - 17069.

Age addition

17063 Age addition is an increase of RP for claimants over age 80¹. An age addition can only be reduced by another age addition².

1 SS CB Act 92, s 79; 2 SS (OB) Regs, reg 4(3)

Additional Pension or Graduated Retirement Benefit

17064 Where

1. AP or GRB is payable with two or more of the personal benefits in DMG 17040 **or**
2. the claimant is over pension age and is entitled to one or more benefits which includes AP or GRB **and** IB at the RP rate

the AP or GRB is treated as part of the personal benefit with which it is payable¹.

1 SS (OB) Regs, reg 4(4)(a)

17065 Where a further adjustment is necessary against a third benefit the claimant is treated as having a single long-term benefit including the highest amount, before adjustment, of

1. AP **or**
2. GRB **or**
3. the total of AP and GRB payable with one of the benefits¹

1 SS (OB) Regs, reg 4(4)(c)

Example

A man is in receipt of SDA at the weekly rate of £59.45. On 12.5.10 he becomes entitled to a Category A RP made up of

Basic Pension	£48.83	(50% of the standard rate due to deficient contribution record)
Additional Pension	£23.50	
Graduated Retirement Benefit	£1.96.	

The basic RP rate is paid in full with a balance of £10.62 SDA. As AP and GRB are only payable with one of the benefits, they are unaffected by the overlap provisions and are paid in full.

Widows and Incapacity Benefit

17066 There were special provisions¹ applying to widows who before 13.4.95 were under pension age and entitled to WMA or WP and IB. These provisions do not apply to IB unless the modified savings provisions apply². These benefits should be adjusted as in DMG 17068.

1 SS (OB) Regs, reg 3(3) (revoked); 2 SS (IB) (Conseq & Trans Amendi & Savings) Regs 95, reg 14(9) & (10)

17067 Under the special provisions the total amount of WMA or WP and IB was made up of

1. the sum of the Basic Pensions up to the standard rate of Cat A RP¹ **and**
2. the sum of the AP up to the prescribed maximum².

1 SS CB Act 92, s 44(3)(a); 2 SS (MAP) Regs, reg 3

17068 Under the modified provisions, the total amount of WMA or WP and IBLT is made up of

1. an amount equal to the basic rate of IBLT or the basic rate of WMA or WP or the higher of the two **and**

2. the sum of IB payable at the additional rate and the AP payable with WMA or WP

up to the prescribed maximum.

Example

A woman is entitled to IBLT made up of £61.15 basic rate. She is widowed on 18.11.96 and becomes entitled to WP from 19.11.96 made up of £56.87 Basic Pension and £66.40 AP. As there is no AP with IB, the AP payable with WP is unaffected

WP is a weekly and IB a daily benefit. Before the payment due on 26.11.96 she applies to have her WP adjusted and to keep the whole of her IB. She therefore receives IB at the rate of £61.15 and WP AP of £66.40 from 26.9.95, her WP Basic Pension is extinguished. From 19.11.96 to 25.11.96 she receives full WP, as this was paid before the date of application, and a balance of IB.

- 17069 Where the special provisions no longer apply, the DM should adjust IB and WB as in DMG 17064.

Example

A woman is entitled to a transitional award of IBLT made up of

£61.15 basic rate and

£10.00 additional rate.

She is widowed on 18.9.95 and becomes entitled to WP from 19.11.96 made up of

£56.87 Basic Pension and

£66.40 AP

WP is a weekly and IB a daily benefit. Before the payment due on 26.11.96 she applies to have her WP adjusted and to keep the whole of her IB. She therefore receives IB at the rate of £71.15 from 26.11.96 and a balance of £52.12 Widow's Pension. From 19.11.96 to 25.11.96 she receives full WP as this was paid before the date of application, and her IB is extinguished.

17070 - 17084

Adjustment of personal Act benefits by personal industrial injuries and non-Act benefits

17085 Personal Act benefits are adjusted for personal II and non-Act benefits before any adjustment has been made for other personal Act benefits under DMG 17040. The Act benefits in Column 1 below are reduced by the II and non-Act benefits in Column 2¹.

1 SS (OB) Regs, reg 6(1) & Sch 1

Column 1	Column 2
JSA (Cont)	US and training allowance
IBST	US and training allowance
MA	training allowance
WA, BA, WPA, and benefit under specific legislation ¹ corresponding to WMA and WP	US; IDB or war pension death benefit payable to a widow, widower or surviving civil partner; training allowance (except where the column 1 benefit is WA)
RP (of any category but excluding age addition, AP and GRB, IB, SDA, ESA(Cont) and CA	US (see DMG 17099); IDB or war pension death benefit payable to the claimant as the surviving spouse or civil partner; training allowance (see DMG 17101 - 17123)
AA, DLA care component	CAA and any benefit based on need for attendance under any PB and MDB scheme (see DMG Ch 73), WC(Supp) scheme (see DMG Ch 73), service pensions instrument (see DMG 18092) or 1914-1918 War Injuries Scheme (See DMG 17100)
IVA, or an age increase of IBLT	an age increase to IIDB; US and an additional allowance payable to a person who is entitled to US under any PB and MDB scheme, Service Pensions Instrument or 1914-1918 War Injuries Scheme
US	Any other US

Increase of disablement pension (see Treatment allowance (see DMG 17098)
DMG 17097) during hospital treatment

1 SS CB Act 92, s 78(9)

Industrial Injuries and non-Act benefits

- 17086 The II and non-Act benefits referred to in Column 2 of DMG 17085 are
1. US and age related increases
 2. CAA awarded under the II scheme¹
 3. any personal injuries scheme² payment made under certain legislation³
 4. any service pensions instrument (see DMG 17092)
 5. the PB and MDB (see Benefit Specific Guidance)
 6. the WC (Supp) (see Benefit Specific Guidance) the general benefit rules for former constables and firefighters⁴
 7. IDB⁵
 8. war pension death benefit (see DMG 17095)
 9. training allowances (see DMG 17101).

*1 SS CB Act 92, Sch 7, Part I, s 104; 2 SS (OB) Regs, reg 2(1);
3 Personal Injuries (Emergency Provisions) Act 1939; Pensions (Navy, Army, Air Force and
Mercantile Marine) Act 1939;
4 SS CB Act 92, Sch 8, Part II; 5 Sch 7, Part VI*

Armed Forces Compensation Scheme

17087 The Armed Forces Compensation Scheme is a no fault compensation scheme which covers death, illnesses or injures attributable to or significantly aggravated by service where the illness first presented or the incident occurred on or after 6.4.05. Under the terms of this scheme a lump sum will be payable to service or ex-service personnel based on a tariff according to the seriousness of the condition. A Guaranteed Income Payment, payable for life, will also be paid where there has been a loss of earning capacity and to surviving partners where the service person's death was caused by service.

17088 Lump sums and income from the Armed Forces Compensation Scheme **do not** overlap with personal act benefits. The scheme was established under specific legislation¹ to which no reference is made in the Overlapping Benefit Regulations.

1 Armed Forces (Pensions and Compensation) Act 2004

17089 The War Pensions Scheme will continue to run parallel to the Armed Forces Compensation Scheme for existing beneficiaries and for those people who claim for illness or injury sustained prior to 6.4.05 during service in the Armed Forces.

17090 - 17091

Service pensions instrument

17092 A service pensions instrument¹ is any instrument that provides pensions or other benefits for disablement or death due to service

1. in the armed forces of the Crown, **or**
2. under British command to members of the Polish² naval detachment mentioned in the agreement between the UK and Polish governments of 18.11.39 or armed forces organized and employed under British command under the agreement of 5.8.40, **or**
3. in a nursing or other auxiliary service of any of the armed forces of the Crown, **or**
4. any other organization established under the control of the Defence Council or formerly established under the control of the Admiralty, Army Council or Air Council.

1 SS (OB) Regs, reg 2(1); 2 Polish Resettlement Act 1947, s 1(1)

17093 Disregard any

1. extra statutory payments **and**
2. any part of the payment based on length of service.

17094 Payments under

1. Royal Warrants **or**
2. Dispensing or Allied Instruments

are statutory payments since they cover specified sets of circumstances or are subject to Treasury approval. Payments made in similar circumstances but without Dispensing Instruments in mercantile marine and civilian cases are extra-statutory and should be ignored. If there is any doubt as to whether a payment is statutory the decision maker should direct that further enquiries be made of the paying authority.

War pension death benefit

17095 War pension death benefit¹ is death benefit paid as a pension or allowance under

1. any Personal Injuries Scheme (see DMG 17086 **3.**)
2. any Service Pensions Instrument (see DMG 17092)

1 SS (OB) Regs, reg 2(1)

17096 It does not include

1. a rent allowance
2. a grant payable because the claimant is in receipt of a pension and is 65 or over
3. a pension or allowance calculated on the claimant's needs.

Disablement Pension

17097 A “disablement pension” is defined¹ as including a disablement payment on a pension basis and retired pay or pension in respect of any disablement, wound, injury or disease.

1 SS (OB) Regs, reg 2(1)

Treatment Allowance

17098 “Treatment Allowance” means¹

1. an allowance payable under
 - 1.1 any PB and MDP scheme, **or**
 - 1.2 a Service Pensions Instrument **and**
2. payable only to a person undergoing a course of
 - 2.1 medical
 - 2.2 surgical **or**
 - 2.3 rehabilitative treatment

in consequence of a disablement in respect of which a pension may or has been paid, or in respect of which an allowance is payable to a person pending the determination of the question of whether that person is entitled to such a pension.

1 SS (OB) Regs, reg 2(1)

Unemployability supplement

17099 In this Chapter the term unemployability supplement refers not only to US paid under the Industrial Injuries Benefits Schemes but also to an increase on account of unemployability under

1. any PB and MDP scheme
2. any WC scheme
3. any Service Pensions Instrument

17100

Training allowance

17101 Subject to DMG 17123 Training allowance means¹ an allowance payable

1. out of public funds (see DMG 17005) by a government department or by or on behalf of
 - 1.1 Scottish Enterprise
 - 1.2 Highlands and Islands Enterprise
 - 1.3 Young People's Learning Agency for England, the Chief Executive of Skills Funding
 - 1.4 the National Assembly for Wales
 - 1.5 the Secretary of State
2. for a person's or a dependant's maintenance
3. for a period during which the person is following a course of training or instruction provided by, or under arrangements made or approved by, or on behalf of the government department in the first point above or approved by
 - 3.1 Scottish Enterprise
 - 3.2 Highlands and Islands Enterprise
 - 3.3 the National Assembly for Wales **or**
 - 3.4 Secretary of State.

1 SS (OB) Regs, reg 2(1)

17102 - 17103

New Deal for Young People

17104 NDYP is a programme aimed at getting young claimants on JSA into work.

17105 There are four options for ND

1. Employment Option (EO)
2. Voluntary Sector Option (VSO)
3. Environment Task Force Option (ETFO)
4. Full-time Education and Training Option (FTET).

17106 Claimants undertaking the work placement option of the VSO or the ETFO and those taking the S/E route of the EO receive a training allowance. The ND grant paid to these participants is also a training allowance¹.

1 New Deal (Misc Provs) Order 1998

17107 Claimants undertaking the FTET do not receive a ND grant but receive a training allowance¹.

1 New Deal (Misc Provs) Order 1998

New Deal for 25 year old and over

17108 Payments made directly by the Secretary of State to persons taking part in the IAP or the IAP for 50+ in connection with their participation are treated as a training allowance¹.

1 New Deal (Misc Provs) Order 2001

17109 - 17114

Training premium and training bonus

17115 People taking part in the schemes may receive a training allowance made up of

1. a basic allowance **and**
2. a training premium **and**
3. a training bonus.

For overlapping benefit purposes the premium and bonus should be disregarded¹. The allowance will overlap only on days on which the claimant actually takes part in the programme including days spent on job search.

1 SS (OB) Regs, reg 2(1)

17116 -17118

Training allowances from the European Social Fund

- 17119 The European Social Fund provides support for programmes of vocational training and job creation. It does not run schemes itself but contributes financial assistance to organizations. Expenditure covered includes training costs and payments to trainees and dependants. If a scheme is run by a public authority the Fund can meet up to half the eligible costs. If it is run by a private organization the Fund may match the costs provided by public authority support.
- 17120 Payments made directly or indirectly by the European Social Fund are payments out of public funds. So, when deciding whether particular payments are a training allowance DMs will need to consider whether the conditions in DMG 17101 **2.** and **3.** are satisfied.
- 17121 The European Social Fund Division within the DWP has overall accountability for the European Social Fund in England. Regional Government Offices are responsible for managing and making payments from the fund in the regions of England. The Scottish Executive is responsible for delivery of European Social Fund in Scotland.
- 17122 DMs should therefore accept that, where a course of training or instruction is funded (in whole or in part) by the European Social Fund, it is approved by a Government Department¹. This includes where the course is run by a private organization.

1 R(IS) 10/98

Allowances which are not training allowances for overlapping benefits purposes

- 17123 Although they may be known as training allowances the following should be disregarded
1. allowances paid by any government department because a person is following a course of full time education or is training as a teacher¹
 2. scholarships except state scholarships grants for the purchase of books
 3. salaries paid under the name of training allowances by health authorities and boards of governors of teaching hospitals
 4. training allowances paid under the DWP's Analogous Industrial Injuries scheme during any period in which the claimant is not following a course of training or instruction. This is because a trainee who is incapable is not regarded as following the course.

1 SS (OB) Regs, reg 2(1)

17124 - 17129

Special provisions where Category A Retirement Pension or transitional Incapacity Benefit (Long Term) is reduced by Industrial Death Benefit or War Pension Death Benefit

17130 Special provisions restrict the reduction of Cat A RP¹ and transitional IBLT² where IDB or War Pension Death Benefit is payable. Where there is some entitlement to

1. a Cat A RP Basic Pension **or**
2. transitional IBLT basic rate based on the claimant's own contributions

the amount of Pension or basic rate payable is not reduced below that amount. In effect the IDB or War Pension Death Benefit only reduces that part of Cat A RP or transitional IBLT which has been calculated on the contributions of the late spouse or civil partner.

1 SS (OB) Regs, reg 6(5); 2 SS (IB) (Conseq & Trans Amdt & Savings) Regs 95, reg 14(11)

Example

A woman is in receipt of a War Widow's Pension at the weekly rate of £117.30. She becomes entitled to Cat A RP at the reduced weekly rate of £60.54 (62% of the standard rate). As her husband had a full contribution record she would be entitled to a basic Cat B RP of £97.65. Her Cat A RP is therefore topped up by £37.11 to the standard rate of £97.65¹. The War Widow's Pension overlaps with her Cat A² but does not reduce it below the rate based on her own contributions³. She therefore receives War Widow's Pension of £117.30 and Cat A RP of £60.54.

1 SS CB Act 92, s 52(2); 2 SS (OB) Regs, reg 6(1); 3 reg 6(5)

17131 The overlap does not affect RP increments or Invalidity Addition.

17132 - 17139

Adjustment of Child Dependency Increase

17140 Many benefits no longer have provision for CDIs but where they do or entitlement is retained through transitional and savings provisions, a CDI is adjusted by any other CDI payable for that same child for the same period irrespective of whether it is payable to the same or different claimants¹. The method of adjustment is determined by the benefits involved.

Note: No adjustment is required for CHB².

1 SS (OB) Regs, reg 7(1); 2 reg 8(1)

17141 Where the CDI is payable under the Act¹ and any other CDI would be payable for the same child and for the same period they should be adjusted as in DMG 17050 et seq. if they are CDIs payable under

1. the Act (but see the **Note** to this paragraph) and includes
 - 1.1 US
 - 1.2 IIDB
 - 1.3 WC
 - 1.4 IDB
 - 1.5 another Act benefit where entitlement is retained through transitional and savings provisions (see DMG 16000)
- 2 Personal Injuries Scheme or Service Pensions Instrument
3. PB and MDP scheme 4. training allowances (see DMG 17101).

Note: Where one of the benefits is IDB or GA see DMG 17142, and DMG 17180 where SDA or CA are involved.

1 SS Act 1975; SS CB Act 1992

Adjustment of Child Dependency Increase involving Industrial Death Benefit or Guardian's Allowance

17142 Where one of the CDIs a claimant is entitled to is a CDI under

1. the Act **or**
2. the PB and MDB Scheme

the IDB or GA payable for that child takes precedence and is payable in full¹. The amount of the IDB or GA CDI is deducted from the amount of the other CDI and only the balance of that CDI, if any, is payable.

1 SS (OB) Regs, reg 7(1); reg 7(4)

17143 Where a claimant is entitled to a CDI under

1. any Personal Injuries Scheme **or**
2. a Service Pensions Instrument **or**
3. any scheme by way of a training allowance

these CDIs take precedence and are payable in full. The amount of these CDIs is deducted from the amount of the IDB or GA CDI and only the balance of IDB or GA, if any, is payable¹.

1 SS (OB) Regs, reg 7(1); reg 7(5)

17144 - 17149

Adjustment of Adult Dependency Increase

17150 Many benefits no longer have provision for ADIs but where they do or entitlement is retained through transitional or savings provisions, a claimant cannot be entitled to an ADI for the same period for more than one person.

17151 Adjustment will be required¹ where

1. one claimant is entitled to two or more ADIs for the same or different adult dependants **or**
2. different claimants are entitled to an ADI for the same dependant.

1 SS (OB) Regs, reg 9(1)

17152 Where more than one of the following ADIs would be payable for the same dependant they should be adjusted as in DMG 17050 et seq.

1. Act ADIs
2. US increases awarded under the schemes listed at DMG 17086 1. - 6. (excluding the general benefit rules for former constables and firefighters)
3. training allowances (See DMG 17101).

See DMG 17180 where SDA or CA are involved.

Persons having care of children

17153 An ADI for a person having care of a child should not be reduced or cause reduction where

1. the claimant employs the dependant to look after a child and does not reside with the dependant
2. another claimant is entitled to an ADI for the same dependant on the same basis¹.

1 SS (OB) Regs, reg 9(3)

17154 - 17159

Adjustment of Child or Adult Dependency Increases by personal benefits

17160 Where a claimant has entitlement to one of the dependency benefits in DMG 17141
1. or DMG 17152 1. and that dependant has entitlement to

1. one of the personal benefits in DMG 17040 or DMG 17086 1. - 7. **or**
2. a training allowance¹ (see DMG 17101)

the amount of dependency benefit payable is reduced or extinguished by the amount
of the personal benefit².

1 E & T Act 73, s 1; 2 SS (OB) Regs, reg 10(1)

17161 Where more than one personal benefit is involved, make any adjustments as in
DMG 17050 first. Make any adjustment to the personal benefit because of free in-
patient treatment before the overlapping benefit adjustment.

Persons having care of children

17162 An ADI for a person having care of a child should not be reduced or cause reduction
on account of any personal benefit payable to that person where the claimant

1. employs the dependant to look after a child **and**
2. does not reside with the dependant¹.

1 SS (OB) Regs, reg 10(3)

17163 - 17169

Order of adjustment

17170 Before considering adjustment of benefits in the order set out below the DM should check that the benefits in question are not incompatible (see DMG 17004). If they are not incompatible the order of adjustment is as follows

1. make adjustments due for other reasons, for example, earnings and Invalidation Addition/AP adjustments. This is because the overlapping benefits provisions take account of amounts payable. An exception to this is with hospital in-patients where an adjustment for overlapping benefits should be carried out before any hospital in-patient deduction¹
2. deduct personal Industrial Injuries and non-Act benefits from personal Act benefit²
3. deduct personal Act benefit from other personal Act benefit³
4. deduct Act and non-Act dependency benefit from other Act dependency benefit⁴
5. deduct Act and non-Act personal benefit payable to dependants in their own right from Act dependency benefit payable for them⁵
6. make any hospital in-patient adjustments⁶ (see DMG 17161 for exception).

1 SS (HIP) Regs, reg 18; 2 SS (OB) Regs, reg 6(1); 3 reg 4; 4 reg 7, reg 9; 5 reg 10; 6 reg 18

17171 - 17179

Special rules for severe disablement allowance and carer's allowance

17180 The special rules for SDA and CA are¹

1. instead of taking into account separately the payable amounts of personal, ADI and CDI they should be totalled and adjustment made by using this total and the total amount the other benefit involved including dependency increases but excluding AP and GRB
2. the amount of benefit payable after adjustment should not be less than the sum of the amounts which would have been payable by way of SDA or CA as personal and dependency benefit.

1 SS (OB) Regs, reg 12

Note: The special rules do not apply where an increase for a dependant would be reduced by a personal benefit payable to, or for, that dependant as in 17160.

17181 - 17189

Dual claims for increase for same dependant

General

- 17190 Where there is more than one claimant with entitlement to an increase for a dependant, the claimants may decide amongst themselves who should claim the increase. Where this applies a written notice signed by
1. one of the claimants where there are two competing claims **or**
 2. a majority of claimants where there are more than two competing claims
- should be sent to the Secretary of State specifying the person to be entitled to the increase. The notice does not apply to any period for which an increase has already been paid¹. Where a notice is not sent to the Secretary of State priority of entitlement should be decided as in DMG 17195 -17196.

1 SS (OB) Regs, reg 15(5)

- 17191 If a person with priority of title receives dependency increase at a lower rate than another person who would be entitled but for that priority, that other person shall receive the difference between the two rates¹.

1 SS (OB) Regs, reg 15(6)

- 17192 Where a person has priority of entitlement for a period during which a dependency increase has been paid to another person, see DMG Chapter 09.

- 17193 Any person who has title to a dependency increase but for these provisions should be treated as entitled for the purpose of any other provisions which depend on entitlement¹.

1 SS (OB) Regs, reg 16

Child dependants

- 17194 Where
1. a man would be entitled to an increase of Cat A or Cat C RP **and**
 2. his wife would be entitled to an increase of Cat A or Cat C RP
- for the same child or children the man will be entitled to the increase and his wife will not. He is also treated as entitled for the purposes of determining entitlement during any period for which he would be entitled¹ but for the operation of any provision of the Act, except where he is disqualified because of imprisonment or detention in legal custody².

1 SS (OB) Regs, reg 15(2); 2 SS CB Act 92, s 113(1)(b)

17195 Where DMG 17190 does not apply, entitlement should be decided in the following order to the person¹

1. who has been awarded CHB **or**
2. who is treated as entitled to CHB on the basis of residence with the spouse **or**
3. with whom the child is living **or**
4. who is a parent of the child.

1 SS (OB) Regs, reg 15(3)

Adult dependants

17196 Where

1. DMG 17190 does not apply **and**
2. more than one person would be entitled to an increase of benefit for an adult dependant
3. entitlement should be decided in the following order to the person who is¹
 - 3.1 the spouse or civil partner of the dependant **or**
 - 3.2 the person residing with the dependant.

1 SS (OB) Regs, reg 15(4)

17197 - 17199

Child Benefit, One Parent Benefit and Child Dependency Increase

17200 There is no adjustment between personal Act and dependency Act benefits and basic CHB¹.

1 SS (OB) Regs, reg 8(1)

17201 There is no entitlement to OPB where there is entitlement to certain specified benefits¹ (see Benefit Specific Guidance). The overlapping benefit provisions only apply where there is entitlement for the same period to

- a CDI with IBST (where the claimant is over pension age or benefit is payable at the higher rate) **or** IBLT or SDA and
- OPB in respect of the same child.

Where these conditions are satisfied the weekly rate of the CDI is reduced by the amount of the OPB².

1 CHB & SS (F & AR) Regs, reg 2(4)(a); 2 reg 8(2)

Higher rate of Child Benefit for eldest child

17202 Where the higher rate of CHB for the only, elder or eldest child payable under savings provisions to certain lone parents¹ (“the higher lone parent rate”) is in payment then any child’s special allowance or CDI payable for that child is reduced by²

1. the difference between
 - 1.1 the higher lone parent rate (from April 2004, £17.55) **and**
 - 1.2 the rate for a second or subsequent child (from April 2004, £11.05)
2. **less** £3.65.

1 CHB & SS (F & AR) Regs, reg 2(1)(a)(ii) & CHB & SS (F & AR) (Amendment) Regs 98; 2 SS (OB) Regs, reg 8(2)

Example

Marie is a single parent receiving WMA with an increase of £11.35 for a dependent child retained under transitional provisions. The DM calculated that this should be reduced by

$$£17.55 - £11.05 = £6.50 \text{ less } £3.65 = £2.85$$

and the CDI was reduced by £2.85 to £8.50.

17203 Where the rate of CHB for the only elder or eldest child (“the normal only/elder/eldest rate”) ¹ is in payment then any child’s special allowance or CDI payable for that child is reduced by²

1. the difference between
 - 1.1 the normal only/elder/eldest rate (from April 2004, £16.50) **and**
 - 1.2 the rate for a second or subsequent child (from April 2004, £11.05)
2. **less** £3.65.

1 CHB & SS (F & AR) Regs, reg 2(1)(a)(i); 2 SS (OB) Regs, reg 8(3)

Example

Marjorie receives an increase of IBLT for her only child under transitional provisions.

The amount of this CDI is £11.35. The DM decided that this had to be reduced by

$£16.50 - £11.05 = £5.45$ less $£3.65 = £1.80$.

and the CDI was reduced by £1.80 to £9.55.

17204 - 17209

Adjustment for part weeks

17210 Where a weekly benefit is reduced by an overlapping benefit the reduction takes effect from the date the overlap begins and ends when the overlap ends. The normal provisions where changes of circumstances take effect from the following payday¹ do not apply.

1 SS (C&P) Regs, reg 16

17211 Where an adjustment is made for part of a week all benefits, apart from MA, are deemed to be payable at a daily rate of one-seventh of the weekly rate. MA is deemed to be payable at a daily rate of one-sixth of the weekly rate¹.

Note: With effect from 1.10.06 (with respect to women whose expected week of confinement falls on or after 1.4.07), MA is also deemed to be payable at a daily rate of one-seventh of the appropriate weekly rate.

1 SS (OB) Regs, reg 14

17212 - 17219

Miscellaneous provisions

Dependency benefit claimed while claimant entitled to personal training allowance

- 17220 Dependency benefit payable under the Act is not payable if the claimant is receiving a personal benefit by way of a training allowance. This provision does not apply where the training allowance has itself been adjusted by reference to any benefit under the Act¹.

1 SS (OB) Regs, reg 11

17221 - 17229

Retrospective adjustments of training allowance

- 17230 Any retrospective adjustment to a training allowance should be disregarded unless there is evidence that the claimant agreed to such an adjustment¹.

1 E & T Act 73

Effect of overlap on entitlement

- 17231 The principles of overlap affect only the amount of benefit payable. They do not affect entitlement to the benefit or any rights or obligations under the Act which depend upon a person being entitled to the benefit¹.

1 SS (OB) Regs, reg 16

Prevention of double adjustment

- 17232 Any benefit under the Act should not be reduced by any Act or non-Act benefit which has already been adjusted by reference to that benefit¹.

1 SS (OB) Regs, reg 17

Relinquishment

- 17233 A claimant may try to relinquish entitlement to a benefit by returning the payment to the Secretary of State. This is treated as an application for supersession on the grounds that the claimant no longer consents to receive the award. See DMG Chapter 04 for further guidance.

- 17234 If the DM refuses to supersede the award so as to end entitlement, the benefit remains payable for overlapping benefit purposes. This is because payable means simply "due and owing" and a sum is due and owing unless and until the claimant has lost the right to enforce it.

17235 - 17999

APPENDIX 1

Incompatible personal benefits - DMG 17004

In the table below, the benefits listed in Column 1 are incompatible with those in Column 2.

Column 1	Column 2
WPA	BA
JSA(Cont), RP, SMP, SSP	ESA(Cont)
ESA(Cont), IB, MA, RP, SDA, SMP, SSP	JSA(Cont)
ESA(Cont), IB, JSA(Cont), SSP	RP
ESA(Cont), IB, JSA(Cont), MA, SSP	SMP
ESA(Cont), IB, JSA(Cont), MA, RP, SMP	SSP
REA	US
WMA	WP
AA	DLA

Chapter 18 Hospital In-Patients

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Chapter 18 - Hospital In-Patients

Introduction

Scope of Chapter 18

18000 With effect from 10.4.06 the old Hospital In-Patients Regulations¹ were revoked². The result was that hospital downrating ceased to apply to the benefits to which those regulations applied (see the list in DMG 18010).

Note: For guidance on the effect of hospitalization on IS and JSA see DMG Vol 4 Chapter 24 and for SPC see Vol 13 Chapter 78.

1 SS (HIP) Regs 75; 2 SS (HIP) Regs 05, reg 9

18001 This Chapter therefore now only gives guidance on when a person is to be regarded as a hospital in-patient for the purposes of AA and DLA plus some minor matters relating to the payability of ADIs and CDIs when the claimant or both the claimant and the dependant have been hospital in-patients for 52 weeks or more.

18002 - 18009

Benefits affected

18010 The following benefits were subject to the Hospital In-Patients Regulations 1975¹

1. IB
2. Bereavement Allowance
3. WA
4. WMA
5. WPA
6. WP
7. Benefits corresponding to WMA or WP²
8. Age addition
9. SDA
10. RP of any category (including GRP)
11. Unemployability Supplement (transitionally protected claims)
12. IDB (widow's and widower's pension)
13. ADIs to the benefits listed in DMG 16110³
14. Any CDIs to the benefits listed at DMG 16001 that remain payable after 6.4.03 under transitional arrangements and any CDIs listed in DMG 16002³.

1 SS (HIP) Regs 75, reg 4(b) & Sch 2; 2 SS CB Act 02 s 78; 3 SS (HIP) Regs 75, reg 2(1) definition of "dependency benefits"

18011 - 18019

In-patients

Free in-patient treatment

Deciding free in-patient treatment

18020 There are five points to consider when deciding whether a person is receiving free in-patient treatment. The person must be all of the following

1. maintained free of charge
2. receiving medical or other treatment
3. in a hospital or similar institution
4. an in-patient
5. receiving free in-patient treatment under prescribed legislation¹ **or** in a hospital or similar institution maintained or administered by the Defence Council.

Note: A person who does not meet any one of these conditions is not receiving free in-patient treatment. The decision maker does not need to consider the other conditions.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

Maintained free of charge

18021 A person is treated as being maintained free of charge¹ in a hospital or similar institution unless

1. accommodation and services are being provided for that person as a private patient² **or**
2. the person is meeting the full cost of their maintenance as a private patient in a private hospital.

1 SS (HIP) Regs 05, reg 2(4); SS (AA) Regs, reg 6; SS (DLA) Regs, reg 8; 2 NHS Act 77, s 65; NHS (Scot) Act 78, s 57 & Sch 7A, para 14; NHS & CC Act 90, Sch 2, para 14

18022 In any other circumstances the person is treated as maintained free of charge. For example when

1. a payment is made by the patient for an amenity bed but the treatment is provided under the National Health Service¹
2. a patient is in paid work outside the hospital during the day and pays an amount to the HA or Health Board based on earnings towards maintenance and incidental costs²
3. a person is a patient in a nursing home being funded under arrangements made by the HA or Health Board³.

1 NHS Act 77, s 64; NHS (Scot) Act 78, s 55; 2 NHS Act 77, s 64; NHS (Scot) Act 78, s 56; 3 NHS Act 77; NHS (Scot) Act 78

Burden of proof

18023 The burden of proving that a person is not being maintained free of charge rests with that person¹.

1 CS 591/49

Medical or other treatment

18024 To be treated as a hospital in-patient a person must be receiving

1. medical treatment (for example surgical treatment or administration of drugs and injections) **or**
2. other treatment which includes nursing services by professionally trained staff in the form of observation, therapy, support appropriate to the persons needs, advice and training in domestic and social skills.

It does not include straightforward care and attention by unqualified staff.

18025 Whether a person is receiving treatment is a question of fact. It cannot be assumed that because one person is receiving treatment in a hospital or similar establishment, that another person in the same establishment can automatically be regarded as receiving treatment. But the fact that a person is an in-patient in a hospital is strong evidence that the person is receiving medical or other treatment¹.

1 R(S) 26/54

18026 A person does not have to receive treatment throughout each day (midnight to midnight) for the day to be included in a period of in-patient treatment. The condition is satisfied if a person receives treatment at some time during the day¹.

1 R(S) 4/84

18027 Whether the decision maker should treat a person as receiving treatment depends on the circumstances of the individual. The decision maker cannot assume that because one person receives treatment in an establishment treated as a hospital or similar institution, another person in the same establishment is automatically regarded as receiving treatment¹.

1 R(P) 1/67

Hospital or similar institution

Hospital

18028 A hospital¹ is any of the following

1. an institution for the reception and treatment of persons suffering from illness, the reception and treatment of persons during convalescence, persons needing medical rehabilitation
2. a maternity home
3. in Scotland, any institution for dental treatment maintained in connection with a dental school
4. a clinic, dispensary or out-patient department maintained in connection with any of these homes or institutions.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

18029 Illness includes¹

1. mental disorder **or**
2. any illness or disability needing medical treatment **or** dental treatment **or** nursing.

1 NHS Act 77, s 128; NHS (Scot) Act 78, s 108

18030 Mental disorder means

1. in England and Wales¹ mental illness **or** arrested or incomplete development of the mind **or** psychopathic disorder **or** any other disorder or disability of the mind
2. in Scotland² any form of mental illness **or** mental handicap.

1 MH Act 83, s 1(2); 2 Mental Health (Scotland) Act 1984, s 1(2)

Similar institution

18031 Similar institution is not defined. If an institution does not satisfy the definition of hospital, the decision maker should decide as a question of fact whether it is similar to a hospital taking into account

1. the purpose of the institution **and**
2. the type of treatment provided **and**
3. the level of care offered.

18032 A hospital or similar institution also includes those

1. maintained by or on behalf of the¹ Department of Health, Welsh Office, Scottish Office Home and Health Department (these include special hospitals such as Broadmoor and Rampton and the State Hospital in Scotland) **or**
2. maintained by or on behalf of the Defence Council, for example an army, navy or air force hospital.

1 NHS Act 77, s 4; NHS (Scot) Act 78, s 102

Examples of hospitals or similar institutions

18033 A hostel or residential care home providing accommodation and social care to former alcoholics or drug addicts is not a similar institution to a hospital. An institution caring for former alcoholics, drug addicts or psychiatric patients which provides a degree of medical treatment or rehabilitation by trained nursing staff may be a similar institution to a hospital.

A nursing home providing appropriate nursing care by professionally trained nurses is a hospital. Medical or other treatment does not have to be the majority service provided to patients or be the main reason for the stay in the nursing home. But if the provision of nursing care is minimal, for example rarely expected, the nursing home may not be a hospital.

In-patient

18034 "In-patient" is not defined and should be given its ordinary meaning of a patient who occupies a bed in a hospital **or** similar institution rather than an out-patient who attends hospital daily or from time to time for treatment or to be attended to¹.

Note: The question of whether a person is an in-patient should be judged on the facts of each case.

1 R(I) 27/59; R(S) 8/51

18035 Examples of when a person would be included as an in-patient are where the person is

- a long term patient and spends part of each day away from the hospital¹
- provided with meals by close relatives
- a nurse treated in the nursed sick bay of the hospital in which the nurse works².

1 R(S) 4/84; 2 R(S) 2/52

18036 Examples of when a person would not be included as an in-patient are where the person is

- receiving treatment at home during the period a rehabilitation centre is closed for a holiday¹
- a matron receiving treatment in ordinary living quarters at a hospital².

1 R(I) 14/56; 2 R(S) 28/52

Prescribed legislation

18037 A person is an in-patient if they are receiving free in-patient treatment under prescribed legislation¹. But in deciding whether a person is to be treated as an in-patient, the decision maker should consider the terms under which the treatment is given rather than whether the hospital or similar institution is directly managed by

- the Department of Health **or**
- the Scottish Office Home and Health Department **or**
- a Health Authority in England and Wales **or**
- a Health Board in Scotland **or**
- a National Health Service Trust.

Health Authorities and Health Boards have a variety of duties under National Health Service legislation and not all of them mean that a person is receiving free in-patient treatment.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

England and Wales

18038 Health Authorities acting on behalf of the Secretary of State can

- arrange for long term health care in a nursing home or residential care home for a person whom they assess as needing that care¹ (in this case the service must be provided free of charge and the Health Authority is responsible for the full cost). If **this** applies the person is receiving free in-patient treatment under prescribed legislation **or**
- contribute to the cost of care through payments to a Local Authority, voluntary organisation or housing association² for social care **or** accommodation **or** housing costs for a person who does not need in-patient care from the National Health Service **or**
- make grants to voluntary organisations³ towards the cost of care for a person who does not need in-patient care from the National Health Service.

1 NHS Act 77, s 23; 2 Health Services & Public Health Act 1968, s 64; 3 NHS Act 77, s 28A

Scotland

18039 Health Boards acting on behalf of the Secretary of State for Scotland can

- provide accommodation and services needed to meet all reasonable requirements¹
- make the necessary arrangements to meet all reasonable requirements². (If services are provided under this option the Health Board is responsible for the full cost).

1 NHS (Scot) Act 78, s 36; 2 s 37

Services provided under National Health Service legislation

18040 Examples of services under National Health Service legislation are¹

- hospital accommodation
- other accommodation for the purpose of any service the Secretary of State has the power to provide
- medical services
- nursing services
- facilities which the Secretary of State considers appropriate as part of the health service for the prevention of illness **or** care of persons suffering from illness **or** after care of persons who have suffered from illness.

These services may be provided in cash or kind under arrangements made with the private or voluntary sector.

1 NHS Act 77; NHS (Scot) Act 78, s 36 & 37

Imprisonment

18041 A person who is admitted to the hospital wing of a prison is not regarded as receiving free in-patient treatment because these wings are administered by

1. the Home Office **or**
2. in Scotland, the Scottish Office Prisons Directorate.

18042 - 18049

Community care arrangements

Arrangements by Primary Care Trusts, Health Authorities and Health Boards

18050 As part of a community care programme, a Primary Care Trust, Health Authority or Health Board may make a variety of arrangements with care homes (including nursing homes) or hostels for

1. the continuing care of a patient **or**
2. a person in the community to be admitted directly to one of these homes.

The DM should consider DMG 18020 to decide whether the person is receiving free in-patient treatment in the home or hostel (see Benefit Specific Guidance if the LA is involved in the arrangements).

18051 Examples of arrangements made by Primary Care Trusts, HAs and Health Boards under community care programmes are

1. setting up their own homes or hostels
2. contracting with private and voluntary sector homes for the provision of accommodation and services
3. contracting with a voluntary agency to find suitable placements for patients
4. any combination of the above.

Points to consider

18052 The DM should consider the following when deciding whether the person is receiving free in-patient treatment in the new accommodation.

18053 When deciding whether the new accommodation is a hospital or similar institution the DM should consider the definition in DMG 18028 et seq. The DM should not compare the new accommodation with the person's previous hospital accommodation.

18054 If the arrangements between the Primary Care Trust, HA or Health Board and the home or hostel are under any of the provisions of the prescribed legislation¹ DMG 18020 is satisfied.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

18055 If a HA or Health Board helps a voluntary sector home by awarding a grant or loan under other legislation¹ DMG 18020 is not satisfied, but if the HA or Health Board have a contractual agreement to pay a grant for future financial years, this may be

evidence that the agreement has been made under prescribed legislation², and the person may be receiving free in-patient treatment.

*1 HS & PH Act 68, s 64; NHS (Scot) Act 78, s 16B;
2 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90*

18056 A HA or Health Board may agree to provide help to a home on the assumption that the person will not be treated as receiving free in-patient treatment for IS or JSA(IB) purposes. For example they may agree to pay the difference between

1. ordinary applicable amounts of IS or JSA(IB) **and**
2. the amount charged for the home.

Note: If the agreement is made under prescribed legislation¹, the HA or Health Board is responsible for the full cost of the accommodation and services no matter what the agreement states.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

18057 A HA or Health Board can provide financial assistance or services, for example they may provide trained nursing staff. If the home reimburses

1. the **full** cost of the services to the HA or Health Board, DMG 18020 is not satisfied and the person is not receiving free in-patient treatment **or**
2. part of the cost of the services, the arrangement may be under prescribed legislation¹.

1 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90

18058 The arrangement between the HA or Health Board must include continuing help. If a placement is found without any continuing commitment from the HA or Health Board to fund the care, DMG 18020 is not satisfied. For example a hospital social worker may help a patient who is about to be discharged to find a suitable nursing home.

Local authority placements

18059 LAs have responsibilities for placing people in care homes including those providing nursing as well as residential care¹. LAs

1. contract with the home owners **and**
2. are often responsible for the full cost of the placement **and**
3. may be helped with funding from a HA or Health Board².

If a LA has made the placement, the conditions in DMG 18020 are not satisfied because the placement has not been arranged under prescribed legislation³. Any funding from the HA or Health Board does not affect the placement.

*1 NA Act 48; SW (Scot) Act 68; 2 NHS Act 77, s 28A; NHS (Scot) Act 78;
3 NHS Act 77; NHS (Scot) Act 78; NHS & CC Act 90*

Continuing care - NHS responsibilities

Legal Background

18060 Under the NHS Act¹ the Secretary of State for Health is under a duty to provide facilities for the care of persons suffering from illness and the after-care of persons who have suffered from illness¹. Services under the Act must be provided free of charge² except in so far as the making or recovery of charges is expressly provided for by law.

Note: This paragraph and DMG 18061 to 18069 describe law and case law that applies in England and Wales and the guidance has no direct application to Scotland where the law is different.

1 NHS Act 77, s 3(1)(e); 2 s 1(2)

18061 Accordingly Primary Care Trusts acting on behalf of the Secretary of State can arrange for long term care in a care home for a person whom they assess as needing that care¹. In such a case the service must be provided free of charge and the HA is responsible for the full cost.

1 s 23

18062 LAs may make arrangements for providing residential accommodation for persons over 18 who by reason of age, illness, disability or any other circumstances are in need of care and attention which is not otherwise available to them¹. LAs can charge for this provision.

1 NA Act 48, s 21

18063 In July 1999 the Court of Appeal¹ considered where the borderline lay between the duties of LAs and the duties of the NHS as regards providing nursing care. The Court held that it is lawful for LAs to provide nursing services where they are

1. merely incidental to the provision of accommodation which a LA is under a duty to provide **and**
2. of a nature which it can be expected that an authority whose primary responsibility is ordinarily to provide social services can be expected to provide.

1 R v North and East Devon Health Authority ex parte Coughlan [2000] 3 All ER CA 850

The Health Ombudsman's report

18064 In February 2003 the Health Service Commissioner for England (known as the Health Ombudsman) issued a report called "NHS Funding for Long Term Care of Older and Disabled People".

- 18065 The Ombudsman found a number of defects in the way in which decisions had been made regarding whether a person should be provided with continuing care in a home free of charges under the NHS or by an LA with charges payable.
- 18066 Among the Ombudsman's recommendations were that Strategic Health Authorities and Primary Care Trusts should
1. review the criteria used and the way they had been applied since 1996 **and**
 2. make efforts to remedy any consequent financial injustice to patients where the criteria, or the way they were applied, were not clearly appropriate or fair. This would include attempting to identify patients who may wrongly have been made to pay for their care in a home and making appropriate recompense to them or their estates.
- 18067 Where, following a review of the criteria it is decided that a claimant should be fully funded by the NHS in a home providing care then, provided the DM is satisfied that the care home concerned is a similar institution to a hospital, the claimant will be a hospital in-patient from the date the Primary Care Trust makes a decision that continuing care should be provided.
- 18068 As, with effect from 10.4.06, hospital downrating at 52 weeks was abolished, such a decision by a Primary Care Trust will have no effect on the amount of the benefits listed in DMG 18010 after that date.
- 18069 If a period before 10.4.06 is involved, DMs are advised that payments made to compensate claimants for the period during which they were wrongly charged for care do not mean that those claimants were hospital in-patients for the period covered by the compensation. These claimants were not in fact being maintained free of charge while undergoing medical or other treatment as in-patients under NHS legislation during that period. Payment of compensation does not alter that fact.

18070 - 18119

Adjustment of benefit after twelve weeks

Child in hospital

18120 Prior to 10.4.06, if a dependent child had been in hospital continuously for twelve weeks or more payment of an increase of benefit for that child would continue only if the beneficiary

1. regularly had expenses for the child such as costs of visits, comforts, pocket money **or**
2. made or had made some payment to the child or some other person for the benefit of the child¹.

1 SS (HIP) Regs, reg 13

18121 From 10.4.06 the rule described in DMG 18120 was abolished.

18122 - 18129

Abolition of 52 Week Downrating

18130 With effect from 10.4.06 the Hospital In-Patient Regulations 1975 were revoked. This meant that hospital downrating at 52 weeks ceased to apply to any of the benefits listed in DMG 18010.

Date the change took effect

18131 Revocation came into force on different dates depending upon the benefit involved as follows

1. in the case of a claimant in receipt of IB or SDA, from 10.4.06¹
2. in the case of a claimant in receipt of any of the benefits listed at DMG 18010 other than IB or SDA²
 - 2.1 on 10.4.06 if that is the claimant's appropriate payday
 - 2.2 otherwise, the next payday appropriate to that claimant immediately following 10.4.06.

1 SS (HIP) Regs, 05 reg 1(b)(ii); 2 reg 1(b)(i)

18132 - 18139

Residual Rules

18140 Although hospital downrating has effectively been abolished certain rules concerning payability of ADIs and CDIs remain.

ADIs and CDIs

Claimant in hospital for 52 weeks

18141 Where the claimant is in hospital as an in-patient and has received free in-patient treatment for 52 weeks or more, any ADI or CDI will cease to be payable unless¹ the claimant applies to the Secretary of State to pay the increase to

1. the dependant **or**
2. some other person who
 - 2.1 is approved by the Secretary of State **and**
 - 2.2 satisfies the Secretary of State that they will apply the increase for the benefit of the dependant.

1 SS (HIP) Regs 05, reg 2(2)

Both claimant and dependant in hospital for 52 weeks

18142 Where both the claimant and the dependant for whom an ADI or CDI is paid are hospital in-patients and both have received free in-patient treatment for 52 weeks or more, that ADI or CDI will cease to be payable unless¹ the claimant applies to the Secretary of State to pay the ADI or CDI to

1. the dependant **or**
2. some other person who
 - 2.1 is approved by the Secretary of State **and**
 - 2.2 satisfies the Secretary of State that they will apply the increase for the benefit of a child of the beneficiary.

1 reg 2(3)

18143 - 18149

Prisoners

18150 For guidance on the effect of hospitalization on prisoners see DMG Chapter 12.

18151 - 18999

