

# Abbreviations

AA	Attendance Allowance paid under s 64 of the SS (CB) Act 92
"AA"	Attendance Allowance as defined in IS (Gen) Regs, reg 2(1) or JSA, reg 1(3)
ADC	Actual Date of Confinement
ADF	Adviser Discretion Fund
ADI	Adult Dependency Increase
AIP	Assessed Income Period
AMG	Appropriate Minimum Guarantee
AP	Additional Pension
APP	Adoption Pay Period
Art	Article
ASE	Actively seeking employment
AT	Appeal Tribunal
AWT	All Work Test
BA	Bereavement Allowance
BB	Bereavement Benefits
BL	Board and Lodging
BP	Basic Pension/Bereavement Premium
BPT	Bereavement Payment
BTEC	Business and Technology Education Council
BWC	Benefit Week Commencing
BWE	Benefit Week Ending
CA	Carer's Allowance
CAA	Constant Attendance Allowance
Cat	Category
CB	Contributory Benefit
CC	Community Charge
CDI	Child Dependency Increase
CESC	Council of European Social Charter
CHB	Child Benefit
CHB(LP)	Child Benefit for Lone Parents
CMB	Child Maintenance Bonus
CMP	Child Maintenance Premium
CP	Carer Premium
CSM	Child Support Maintenance
CT	Council Tax
CTA	Common Travel Area
CTB	Council Tax Benefit
CTC	Child Tax Credit

CTF	Community Task Force
CTM	Contribution to Maintenance
CWP	Cold Weather Payment
DCP	Disabled Child Premium
DCT	Direct Credit Transfer
DH	Department of Health
Dis G	Disablement Gratuity
Dis P	Disablement Pension
DLA	Disability Living Allowance
DM	Decision Maker
DMA	Decision Making and Appeals
DMG	Decision Makers Guide
DO	District Office
DP	Disability premium
DPTC	Disabled Persons Tax Credit
DWA	Disability Working Allowance
DWP	Department for Work and Pensions
EC	European Community
ECJ	European Court of Justice
ECSMA	European Convention on Social & Medical Assistance
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
EctHR	European Court of Human Rights
EDP	Enhanced Disability Premium
EFC	Earnings factor credits
EEA	European Economic Area
EFTA	European Free Trade Association
ELDS	Eligible loan deduction scheme
Emp O	Employment Officer
EO	Employment Option of New Deal for young people
EO(E)	Employed Employment Option
EO(S/E)	Self-Employed Employment Option of the New Deal for young people
EPP	Enhanced Pensioner Premium
ERC	Employment Rehabilitation Centre
ERA	Employment Retention and Advancement
ESA	Employment and Support Allowance
ESA(Cont)	Employment and Support Allowance (contributory allowance)
ESA(IR)	Employment and Support Allowance (income-related allowance)
ESA(Y)	Employment and Support Allowance for those with limited capability for work in youth

ESDA	Exceptionally Severe Disablement Allowance
ESE scheme	Employment, Skills and Enterprise scheme
ET	Employment Training
ETFO	Environment Task Force Option of New Deal for young people
EU	European Union
EWC	Expected Week of Confinement
EZ	Employment Zone
FamC	Family Credit
FAS	Financial Assistance Scheme
FND	Flexible New Deal
FP	Family Premium
FP(LP)	Family Premium (Lone Parent Rate)
FRIY	Flat Rate Introduction Year
FRM	Flat Rate Maintenance
F/T	Full-Time
FTE	Full-Time Education
FTET	Full-Time Education and Training Option
FtT	First-tier Tribunal
GA	Guardian's Allowance
GB	Great Britain
GC	Guarantee Credit
GCE	General Certificate of Education
GCSE	General Certificate of Secondary Education
GMP	Guaranteed Minimum Pension
GNVQ	General National Vocational Qualification
GP	General Practitioner
GRB	Graduated Retirement Benefit
GRC	Gender Recognition Certificate
GRP	Gender Recognition Panel
HA	Health Authority
HB	Housing Benefit
HBS	Housing Benefit Supplement
HCP	Health care professional
Hep C	Hepatitis C
HIV	Human Immunodeficiency Virus
HM	Her Majesty
HMF	Her Majesty's Forces
HMRC	Her Majesty's Revenue and Customs
HO	Home Office
HPP	Higher Pensioner Premium

HRP	Home Responsibilities Protection
IA	Industrial Accident
IAP	Intensive Activity Period for those aged 25 and over and under 50
IAP for 50+	Intensive Activity Period for those aged 50 or over
IB	Incapacity Benefit
IBLT	Long-term Incapacity Benefit
IBST	Short-term Incapacity Benefit
IBST(H)	Higher rate of short-term Incapacity Benefit
IBST(L)	Lower rate of short-term Incapacity Benefit
IB(Y)	Incapacity Benefit for those incapacitated in youth
IC	Intermittent Custody
IDB	Industrial Death Benefit
IFM	Immediate Family Member
IfW	Incapacity for Work
II	Industrial Injury(ies)
IIDB	Industrial Injuries Disablement Benefit
Incs	Increments (of Retirement Pension)
IND	Immigration and Nationality Department
IPC	International Pension Centre
IPPIW	Immediate Past Period of Incapacity for Work
IS	Income Support
IT	Industrial Tribunal (now Employment Tribunal)
IVA	Invalidity Allowance
IVB	Invalidity Benefit
IVP	Invalidity Pension
IVS	Invalid Vehicle Scheme
JSA	Jobseeker's Allowance
JSA(Cont)	Contribution based JSA
JSAg	Jobseeker's Agreement
JSA(IB)	Income based JSA
JSD	Jobseeker's Direction
JSP	Jobseeking Period
LA	Local Authority
LCW	Limited capability for work
LCWA	Limited capability for work assessment
LCWRA	Limited capability for work related activity
LEA	Local Education Authority
LEC	Local Enterprise Council

LEL	Lower Earnings Limit
LETS	Local Exchange Trading System
LPP	Lone Parent Premium
LPRO	Lone Parent run-on
LQPM	Legally Qualified Panel Member
LRP	Liabile Relative Payment
LSC	Learning and Skills Council
LT	Linking Term
LTACP	Living Together as Civil Partners
LTAHAW	Living Together as Husband And Wife
MA	Maternity Allowance
MAP	Maternity Allowance Period
MB	Maternity Benefit
MG	Maternity Grant
MID	Mortgage Interest Direct
MIRO	Mortgage Interest run-on
MP	Member of Parliament
MPP	Maternity Pay Period
MSC	Maximum Savings Credit
MSP	Member of the Scottish Parliament
MWA	Mandatory Work Activity scheme
NASS	National Asylum Support Service
NCET	National Council for Education and Training
NCIP	Non-Contributory Invalidity Pension
ND	New Deal
NDLP	New Deal for Lone Parents
NDP	New Deal for Partners
NDYP	New Deal for Young People
ND18-24	New Deal for 18-24 year olds
ND25+	New Deal for claimants aged 25 years and over
NHS	National Health Service
NI	National Insurance
NINO	National Insurance Number
NMW	National Minimum Wage
NRP	Non-Resident Parent
NVQ	National Vocational Qualification
OOT	Own Occupation Test
OPB	One Parent Benefit

PA	Personal Adviser
PAYE	Pay As You Earn
PB and MDB	Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefits scheme
PCA	Personal Capability Assessment
PD	Prescribed Disease
PETA	Personal Expenses Transitional Addition
PFA	Person(s) From Abroad
PIE	Period of Interruption of Employment
PILON	Pay In Lieu Of Notice
PILOR	Pay In Lieu Of Remuneration
PIW	Period of Incapacity for Work
PLCW	Period of limited capability for work
PLCWA	Period of limited capability for work assessment
PO	Post Office
POA	Power of Attorney
PP	Pensioner Premium
PPF	Pension Protection Fund
PR	Preserved Right
PSIC	Person Subject to Immigration Control
P/T	Part-Time
PW	Pay-Week
PWC	Person With Care
PWHL	Permitted Work Higher Limit
PWHLs	Permitted Work Higher Limit subsequent period
PWK	Permitted Work
PWLL	Permitted Work Lower Limit
PWP	Permitted Work Period
QB	Qualifying Benefit
QBP	Qualifying Benefit or Pension
QD	Qualifying Days
QEF	Qualifying earnings factor
QI	Qualifying Income
QP	Qualifying Period
QRW	Qualifying remunerative work
QW	Qualifying Week
QWfl	Quarterly Work-focused interview
RA	Retirement Allowance
RBD	Reduced Benefit Direction
RCH	Residential Care Home
REA	Reduced Earnings Allowance
Reg(s)	Regulation(s)

Res A	Residential Allowance
RISWR	Redundant Iron and Steel Employees re-adaptation scheme
RMPS	Redundant Mineworkers Payment scheme
RP	Retirement Pension
RQC	Relevant Qualifying Condition
RVU	Relationship Validation Unit
S	Section (of an Act)
S2P	State Second Pension
SAP	Shared Additional Pension
SAYE	Save As You Earn
SB	Sickness Benefit
SC	Savings Credit
Sch	Schedule (as in an Act)
SCT	Savings Credit Threshold
SDA	Severe Disablement Allowance
SDM	Sector Decision Maker
SDP	Severe Disability Premium
S/E	Self-Employed
Sec	Section (of an Act)
SED	Scottish Education Department
SERPS	State Earnings Related Pension Scheme
Sev DP	Severely Disabled Person
SF	Social Fund
SFFP	Social Fund Funeral Payment(s)
SFO	Social Fund Officer
SHA	Special Hardship Allowance
SI	Statutory Instrument
SIR	Standard Interest Rate
SMG	Standard Minimum Guarantee
SMP	Statutory Maternity Pay
SPC	State Pension Credit
SpTA	Special Transitional Addition
SPW	Supported Permitted Work
SRPS	Shipbuilding Redundancy Payment Scheme
SS	Social Security
SS benefits	Benefits payable under SS(CB) Act 92
SSMG	Sure Start Maternity Grant
SSP	Statutory Sick Pay
SSWP	Secretary of State for Work and Pensions
STCP	Skills Training Conditionality Pilot
Supp B	Supplementary Benefit
SVQ	Scottish Vocational Qualification

TA	Transitional Addition
TBI	Total Benefit Income
TD	Trade Dispute
TE	Transitional Element
TEC	Training and Enterprise Council
TS	Tribunals Service
TU	Trade Union
UB	Unemployment Benefit
UCP	Urgent Case Payment
UEL	Upper Earnings Limit
UK	United Kingdom
US	Unemployability Supplement
UT	Upper Tribunal
VAT	Value Added Tax
VSO	Voluntary Sector Option of New Deal for young people
WA	Widow's Allowance
WB	Widow's Benefit
WBLA	Work Based Learning for Adults
WBLfYP	Work Based Learning for Young People
WBTfA	Work Based Training for Adults
WBTfYP	Work Based Training for Young People
WC	Workmen's Compensation
WC(Supp)	Workmen's Compensation (supplementation) scheme
WCA	Work capability assessment
WDisP	War Disablement Pension
WE	Work Experience
WFHRA	Work focused health related assessment
Wfi	Work-focused Interview
WFP	Winter Fuel Payment
WFTC	Working Families Tax Credit
WMA	Widowed Mother's Allowance
WMA(C)	WMA payable where late husband entitled to Cat C retirement pension
WP	Widow's Pension
WPA	Widowed Parent's Allowance
WP(C)	Widow's Pension payable where late husband entitled to Cat C retirement Pension
WPT	Widow's Payment
WRAC	Work-related activity component



WRAG	Work-related activity group
WTB	Work and training beneficiary(ies)
WTC	Working Tax Credit
WtWB	Welfare to Work Beneficiary
WWP	War Widow's Pension/War Widower's Pension
YT	Youth Training



# Statutes

Full Title	Abbreviation
Asylum and Immigration Act 1996	A & I Act 96
Child Support Act 1991	CS Act 91
Child Support Act 1995	CS Act 95
Children Leaving Care Act 2000	CLC Act 2000
Civil Partnership Act 2004	CP Act 04
Criminal Justice Act 2003	CJ Act 03
Education (Scotland) Act 1962	Ed (Scot) Act 62
Education (Scotland) Act 1980	Ed (Scot) Act 80
Education Act 1944	Ed Act 44
Employment and Training Act 1973	E & T Act 73
Employment Rights Act 1996	ER Act 96
Family Law Act 1986	FL Act 86
Family Law Reform Act 1969	FLR Act 69
Family Law Reform Act 1987	FLR Act 87
Further and Higher Education Act 1992	F & HE Act 92
Further and Higher Education (Scotland) Act 1992	F & HE (Scot) Act 92
Gender Recognition Act 2004	GR Act 04
Health and Social Services and Social Security Adjudication Act 1983	HASSASSA Act 83

Health Services and Public Health Act 1968	HS & PH Act 68
Human Rights Act 1998	HR Act 98
Immigration and Asylum Act 1999	I & A Act 99
Industrial Injuries and Diseases (Old Cases) Act 1975	II & D Old Cases Act 75
Interpretation Act 1978	Inte Act 78
Jobseekers Act 1995	JS Act 95
Learning and Skills Act 2000	L & S Act 2000
Local Government Finance Act 1992	LGF Act 92
Matrimonial and Family Proceedings Act 1984	Mat & Fam Proceedings Act 84
Matrimonial Causes Act 1965	Mat Causes Act 65
Matrimonial Causes Act 1973	Mat Causes Act 73
Mental Capacity Act 2005	M Cap Act 05
Mental Health (Care and Treatment) (Scotland) Act 2003	MH (C & T) (Scot) Act 03
Mental Health Act 1983	MH Act 83
National Assistance Act 1948	NA Act 48
National Health Service (Scotland) Act 1947	NHS (Scot) Act 47
National Health Service (Scotland) Act 1978	NHS (Scot) Act 78
National Health Service Act 1977	NHS Act 77
National Health Service Act 1990	NHS Act 90
National Health Service and Community Care Act 1990	NHS & CC Act 90

National Insurance Act 1965	NI Act 65
National Insurance (Industrial Injuries) Act 1965	NI (II) Act 65
National Insurance contributions Act 2008	NIC Act 08
National Minimum Wage Act 1998	NMW Act 98
Pensions Act 2007	Pensions Act 07
Pensions Act 2008	Pensions Act 08
Pension Schemes Act 1993	PS Act 93
Registered Homes (Amendment) Act 1991	RH (Amdt) Act 91
Registered Homes Act 1984	RH Act 84
Rehabilitation of Offenders Act 1974	ROO Act 74
Social Security Act 1975	SS Act 75
Social Security Act 1985	SS Act 85
Social Security Act 1986	SS Act 86
Social Security Act 1988	SS Act 88
Social Security Act 1989	SS Act 89
Social Security Act 1990	SS Act 90
Social Security Act 1998	SS Act 98
Social Security Administration Act 1992	SS A Act 92
Social Security Contributions and Benefits Act 1992	SS CB Act 92
Social Security Contributions (Transfer of Functions, etc) Act 1999	SSC (ToF) Act 99
Social Security Fraud Act 2001	SS Fraud Act 01

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Social Security (Incapacity for Work) Act 1994	SS (IfW) Act 94
Social Work (Scotland) Act 1968	SW (Scot) Act 68
State Pension Credit Act 2002	SPC Act 02
Tax Credit Act 2002	TC Act 02
Tribunals, Courts and Enforcement Act 2007	TCE Act 07
Teaching and Higher Education Act 1998	T & HE Act 98
Trade Union and Labour Relations (Consolidation) Act 1992	TULR (C) Act 92
Trade Union Reform and Employment Rights Act 1993	TURER Act 93
Welfare Reform Act 2007	WR Act 07
Welfare Reform Act 2009	WR Act 09
Welfare Reform and Pensions Act 1999	WRP Act 99
Workmen's Compensation Act 1925	WC Act 25

# Statutory Instruments

Full Title	Abbreviation
The Accession (Immigration and Worker Registration) Regulations 2004 No. 1219	Accession Regs 2004
The Accession (Immigration and Worker Authorisation) Regulations 2006 No. 3317	Accession Regs 2006
The Additional Pension and Social Security Pensions (Home Responsibilities) (Amendment) Regulations 2001 No. 1323	AP & SS Pens (HR) (Amdt) Regs
The Education (Mandatory Awards) Regulations 1987 No. 1261, 1988 No. 1360, 1989 No. 1458, 1994 No. 3044	Awards Regs
The Child Benefit (General) Regulations 2006 No. 223	CHB (Gen) Regs
The Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 No. 1267	CHB & SS (F & AR) Regs
The Child Support (Maintenance Assessment Procedure) Regulations 1992 No. 1813	CS (MAP) Regs
The Child Support (Maintenance Assessments and Special Cases) Regulations 1992 No. 1815	CS (MASC) Regs
The Child Support (Maintenance Calculations and Special Cases) Regulations 2001 No. 155	CS (MASC) Regs
The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 No. 2349	EP (Recoupment of JSA and IS) Regs

The Employment and Support Allowance Regulations 2008 No. 794	ESA Regs
The Employment and Support Allowance (Transitional Provisions) Regulations 2008 No. 795	ESA (Trans Provs) Regs
The Employment and Support Allowance (Transitional Provisions, Housing Benefit and Council Tax Benefit) (Existing Awards) (No. 2) Regulations 2010 No. 1907	ESA (TP, HB & CTB) (EA) (No. 2) Regs
The Employment Zone Regulations 2000 No. 721	EZ Regs
The Employment Zone Regulations 2003 No. 2438	EZ Regs 2003
The Employment Zones (Amendment) Regulations 2004 No. 1043	EZ Amdt Regs
The First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008 No. 2692	FtT & UT (Composition of Tribunal) Order
The Gender Recognition (Approved Countries and Territories) Order 2005 No. 874	GR (AC & T) Order 05
The Housing Benefit (General) Regulations 1987 No. 1971	HB (Gen) Regs
The Housing Benefit Regulations 2006 No. 213	HB Regs
The Immigration (European Economic Area) Regulations 2006 No. 1003	Imm (EEA) Regs
The Income-related Benefits Schemes (Miscellaneous Amendments) (No. 3) Regulations 1994 No. 1807	IRB Schemes (Misc Amdts) Regs



The Income Support (General) (Jobseeker's Allowance Consequential Amendments) Regulations 1996 No. 206	IS (Gen) (JSA Consequential Amdts) Regs 96
The Income Support (General) Amendment No. 6 Regulations 1991 No. 2334	IS (Gen) Amdt No. 6 Regs
The Income Support (General) Amendment and Transitional Regulations 1995 No. 2287	IS (Gen) Amdts & Transitional Regs 95
The Income Support (General) Amendment No. 3 Regulations 1993 No. 1679	IS (Gen) Amdt No. 3 Regs 93
The Income Support (General) Regulations 1987 No. 1967	IS (Gen) Regs
The Income Support (Transitional) Regulations 1987 No. 1969	IS (Trans) Regs
The Jobseeker's Allowance (Employment, Skills and Enterprise Scheme) Regulations 2011	JSA (ESE Scheme) Regs
The Jobseeker's Allowance (Joint-Claims) Regulations 2000 No. 1978	JSA (JC) Regs
The Jobseeker's Allowance (Mandatory Work Activity Scheme) Regulations 2011	JSA (MWA Scheme) Regs
The Jobseeker's Allowance Regulations 1996 No. 207	JSA Regs
The Jobseeker's Allowance (Transitional Provisions) Regulations 1995 No. 3276	JSA (TP) Regs
The Jobseeker's Allowance (Transitional Provisions) Regulations 1996 No. 2567	JSA (TP) (96) Regs

The Merchant Shipping (Repatriation) Regulations 1979 No. 97	Merchant Shipping (Repatriation) Regs
The National Assistance (Assessment of Resources) Regulations 1992 No. 2977	NA (AR) Regs
The Paternity and Adoption Leave Regulations 2002 No. 2788	PA Regs
The Pneumoconiosis, Byssinosis and Miscellaneous Diseases Benefit Scheme 1983 No. 136	PB & MDB Scheme
The Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008 No. 2692	Qualifications for Appointment of Members to the FtT & UT Order
The Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order 1986 No. 625	Redundant Mineworkers and Concessionary Coal (Payments Schemes) Order
The Students' Allowances (Scotland) Regulations 1987 No. 864, 1991 No. 1522	SA (Scot) Regs
The Shipbuilding (Redundancy Payments Scheme) (Great Britain) Order 1981 No. 916 (Amendment) Order 1982 No. 1090	Shipbuilding (Redundancy Payments Scheme) (GB) Order
The Social Fund Cold Weather Payments (General) Regulations 1988 No. 1724	SFCWP (Gen) Regs
The Social Fund Cold Weather Payments (General) Amendment Regulations	SFCWP (Gen) Amdt Regs

The Social Fund Maternity and Funeral Expenses (General) Regulations 2005 No. 3061	SFMFE (Gen) Regs
The Social Fund Winter Fuel Payment Regulations 2000 No. 729	SFWFP Regs
The Education (Student loans) (Scotland) Regulations	SL (Scot) Regs
The Statutory Maternity Pay (General) Regulations 1986 No. 1960	SMP (Gen) Regs
The State Pension Credit (Consequential, Transitional and Miscellaneous Provisions) Regulations 2002 No. 3019	SPC Cql Regs
The State Pension Credit (Miscellaneous Amendments) Regulations 2004 No. 647	SPC (Misc Amdts) Regs
The State Pension Credit Regulations 2002 No. 1792	SPC Regs
The Social Security (Attendance Allowance) Regulations 1991 No. 2740	SS (AA) Regs
The Social Security (Adjudication) Regulations 1995 No. 1801	SS (Adj) Regs
The Social Security (Airmen's Benefits) Regulations 1975 No. 494	SS (Airmen's Ben) Regs
The Social Security Amendment (Employment Zones) Regulations 2000 No. 724	SS Amdt (EZ) Regs
The Social Security Amendment (Capital Limits and Earnings Disregards) Regulations 2000 No. 2545	SS Amendment Regs 2000

The Social Security Benefit (Dependency) Regulations 1977 No. 343	SS Ben (Dep) Regs
The Social Security Benefit (Dependency) Amendment Regulations 1984 No. 1698	SS Ben (Dep) Amdt Regs
The Social Security Benefit (Computation of Earnings) Regulations 1996 No. 2745	SS Ben (C of E) Regs
The Social Security (Benefit) (Members of the Forces) Regulations 1975 No. 493	SS (Ben) (Members of the Forces) Regs
The Social Security Benefit (Persons Abroad) Amendment Regulations 1994 No. 268	SS Ben (PA) Amdt Regs 94
The Social Security Benefit (Persons Abroad) Regulations 1975 No. 563	SS Ben (PA) Regs
The Social Security (Computation of Earnings) Regulations 1978 No. 1698	SS (C of E) Regs
The Social Security (Claims and Information) Regulations 2007 No. 2911	SS (C&I) Regs
The Social Security (Child Maintenance Bonus) Regulations 1996 No. 3195	SS (CMB) Regs
The Social Security (Claims and Payments) Regulations 1979 No. 628	SS (C&P) Regs 79
The Social Security (Claims and Payments) Regulations 1987 No. 1968	SS (C&P) Regs
The Social Security Commissioners (Procedure) Regulations 1999 No. 1495	SS Commissioners Procedure Regs

The Social Security (Contributions) Regulations 1979 No. 591	SS (Conts) Regs
The Social Security (Contributions) Regulations 2001 No. 1004	SS (Conts) Regs 01
Social Security (Contribution Credits for Parents and Carers) Regulations 2010 No. 19	SS (CC P & C) Regs
The Social Security (Credits) Regulations 1975 No. 556	SS (Credits) Regs
The Social Security (Crediting and Treatment of Contributions, and National Insurance Numbers) Regulations 2001 No. 769	SS (Crediting etc) Regs
The Social Security and Child Support (Decisions and Appeals) Regulations 1999 No. 991	SS CS (D&A) Regs
The Social Security and Child Support (Jobseeker's Allowance) (Miscellaneous Amendment) Regulations 1996 No. 2538	SS & CS (JSA) (Misc Amdt) Regs
The Social Security (Deferral of Retirement Pensions) Regulations 2005 No. 453	SS (Def RP) Regs
The Social Security (Deferral of Retirement Pensions, Shared Additional Pension and Graduated Retirement Benefit) (Miscellaneous Provisions) Regulations 2005 No. 2677	SS (Def RP, SAP & GRB) (Misc Provs) Regs
The Social Security (Disability Living Allowance) Regulations 1991 No. 2890	SS (DLA) Regs
The Social Security (Introduction of Disability Living Allowance) Regulations 1991 No. 2891	SS (Introduction of DLA) Regs
The Social Security and Family Allowances (Polygamous Marriages) Regulations 1975 No. 561	SS & FA (Poly Marr) Regs

The Social Security (General Benefit) Regulations 1982 No. 1408	SS (Gen Ben) Regs
The Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978 No. 393	SS (GRB) (No. 2) Regs
The Social Security (Graduated Retirement Benefit) Regulations 2005 No. 454	SS (GRB) Regs
The Social Security (Habitual Residence) Amendment Regulations 2004 No. 1232	SS Hab Res Regs
The Social Security (Hospital In-Patients) Regulations 1975 No. 555	SS (HIP) Regs
The Social Security (Hospital In-Patients) Regulations 2005 No. 3360	SS (HIP) Regs 05
The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 No. 636	SS (I&A) Cql Amdts Regs
The Social Security (Incapacity Benefit) Regulations 1994 No. 2946	SS (IB) Regs
The Social Security (Incapacity Benefit - Increases for Dependants) Regulations 1994 No. 2945	SS (IB for D) Regs
The Social Security (Incapacity Benefit) (Transitional) Regulations 1995 No. 310	SS (IB) (Trans) Regs
The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 No. 2439	SS (IBWFI) Regs 03
The Social Security (Incapacity Benefit Work-focused Interviews) Regulations 2003 No. 2928	SS (IBWFI) Regs 08

The Social Security (Incapacity for Work and Severe Disablement Allowance) Amendment Regulations 1997 No. 1009	SS (IfW & SDA) Amdt Regs
The Social Security (Incapacity for Work) (General) Regulations 1995 No. 311	SS (IW) (Gen) Regs
The Social Security (Industrial Injuries and Diseases) Miscellaneous Provisions Regulations 1986 No. 1561	SS (II&D) Misc Prov Regs
The Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations 1996 No. 425	SS (II&D) (Misc Amdt) Regs [Revoked from 5 July 99 for the purposes of IISB]
The Social Security (Industrial Injuries) (Airmen's Benefits) Regulations 1975 No. 469	SS (II) (Airmen's Ben) Regs
The Social Security (Industrial Injuries and Diseases) (Miscellaneous Amendments) Regulations 1996 No. 425	SS (II&D) (Misc Amdt) Regs
The Social Security (Industrial Injuries and Adjudication) Miscellaneous Amendments Regulations 1986 No. 1374	SS II (PD & Adj) Misc Amdt Regs
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 4) Regulations 1979 No. 992	SS (II) (PD) Amdt (No. 4) Regs 79
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1983 No. 1094	SS (II) (PD) Amdt (No. 2) Regs 83
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1987 No. 2112	SS (II) (PD) Amdt (No. 2) Regs 87

The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1989 No. 2207	SS (II) (PD) Amdt Regs 89
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1993 No. 862	SS (II) (PD) Amdt Regs 93
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 1993 No. 1985	SS (II) (PD) Amdt (No. 2) Regs 93
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1994 No. 2343	SS (II) (PD) Amdt Regs 94
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (No. 2) Regulations 2003 No. 2190	SS (II) (PD) Amdt (No. 2) Regs 03
The Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1985 No. 967	SS (II) (PD) Regs
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1982 No. 249	SS II (PD) Amdt Regs 82
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 1991 No. 1938	SS II (PD) Amdt Regs 91
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2005 No. 324	SS II (PD) Amdt Regs 05
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2006 No. 586	SS II (PD) Amdt Regs 06
The Social Security (Industrial Injuries) (Prescribed Diseases) Amendment Regulations 2007 No. 811	SS II (PD) Amdt Regs 07



The Social Security (Industrial Injuries) (Reduced Earnings Allowance and Transitional) Regulations 1987 No. 415	SS (II) (REA & Trans) Regs
The Social Security (Industrial Injuries) (Regular Employment) Regulations 1990 No. 256	SS (II)(RE) Regs
The Social Security (Industrial Injuries) Mariners' Benefits) Regulations 1975 No. 470	SS (II) (Mariners' Ben) Regs
The Social Security (Inherited SERPS) Regulations 2001 No. 1085	SS (Inherited SERPS) Regs
The Social Security (Invalid Care Allowance) Regulations 1976 No. 409	SS (ICA) Regs
The Social Security (Jobcentre Plus Interviews for Partners) Regulations 2003 No. 1886	SS (JPIfP) Regs
The Social Security (Jobcentre Plus Interviews) Regulations 2001 No. 3210	SS (JPI) Regs 01
The Social Security (Jobcentre Plus Interviews) Regulations 2002 No. 1703	SS (JPI) Regs 02
The Social Security Lone Parents and Miscellaneous Amendments Regulations 2008 SI 2008 No. 3051	SS (LP & Misc Amdts) Regs
The Social Security (Loss of Benefit) Regulations 2001 No. 4022	SS (Loss of Benefit) Regs
The Social Security (Mariners' Benefits) Regulations 1975 No. 529	SS (Mariners' Ben) Regs
The Social Security (Maternity Allowance) (Work Abroad) Regulations 1987 No. 417	SS (MA) (Work Abroad) Regs

The Social Security (Maternity Allowance) Regulations 1987 No. 416	SS (MA) Regs
The Social Security (Maternity Allowance) (Earnings) Regulations 2000 No. 688	SS (MA) (Earnings) Regs
The Social Security (Maximum Additional Pension) Regulations 2010 No. 426	SS (MAP) Regs
The Social Security (Medical Evidence) Regulations 1976 No. 615	SS (Med Ev) Regs
The Social Security (Miscellaneous Amendments) Regulations 1997 No. 454	SS (Misc Amdts) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2001 No. 652	SS (Misc Amdt) (No. 2) Regs
The Social Security (Miscellaneous Amendments) (No. 2) Regulations 2010 No. 641	SS (Misc Amdt) (No. 2) Regs 2010
The Social Security (National Insurance Number Information: Exemption) Regulations 1997 No. 2676	SS (NINO: Exemption) Regs
The Social Security (Overlapping Benefits) Regulations 1979 No. 597	SS (OB) Regs
The Social Security (Payments on account, Overpayments and Recovery) Regulations 1988 No. 664	SS (POR) Regs
The Social Security (Persons from Abroad) Miscellaneous Amendments Regulations 1996 No. 30	SS (PFA) Misc Amdt Regs 96
The Social Security Benefit (Persons Residing Together) Regulations 1977 No. 956	SS (PRT) Regs

The Social Security (Reciprocal Agreements) Order 1995 No. 767	SS (RA) Order 95
The Social Security (Reciprocal Agreements) Order 1996 No. 1928	SS RA Order
The Social Security (Retirement Pensions etc.) (Transitional Provisions) Regulations 2005 No. 469	SS (RP etc) (Trans Provs) Regs
The Social Security (Severe Disablement Allowance) Regulations 1984 No. 1303	SS (SDA) Regs
The Social Security (Savings for Existing Beneficiaries) Regulations 1984 No. 1696	SS (SEB) Regs
The Social Security (State Pension and National Insurance Credits) Regulations 2009 No. 2206	SS (SP & NIC) Regs
The Social Security (Unemployment, Sickness, and Invalidity Benefit) Regulations 1983 No. 1598	SS (U, S, & IVB) Regs
The Social Security (Widow's and Widower's Invalidity Pensions) Regulations 1978 No. 529	SS (W & W IVP) Regs
The Social Security (Widow's Benefit and Retirement Pensions) Regulations 1979 No. 642	SS (WB & RP) Regs
The Social Security (Widow's Benefit, Retirement Pensions and Other Benefits) (Transitional) Regulations 1979 No. 643	SS (WB, RP & OB) (Trans) Regs
The Social Security (Work-focused Interviews for Lone Parents) and Miscellaneous Amendments Regulations 2000 No. 1926	SS (Wfl for lone parents) Regs
The Social Security (Work-focused Interviews) Regulations 2000 No. 897	SS (Wfl) Regs 00

The Social Security (Working Tax Credit and Child Tax Credit) (Consequential Amendment) Regulations 2003 No. 455	SS (WTC & CTC) (Cons Amdt) Regs
The Statutory Sick Pay Regulations 1982 No. 894	SSP (Gen) Regs
Education (Student Support) Regulations (Northern Ireland) Order SR 1999/192	Support (NI) Order
The Education (Student Support) Regulations	Support Regs
The Tax Credits Act 2002 (Commencement No. 3 and Transitional Provisions and Savings) Order 2003 No. 938	TC Comm No. 3 Order
The Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 No. 2885	TP (FtT) (SEC) Rules
The Tribunal Procedure (Upper Tribunal) Rules 2008 No. 2698	TP (UT) Rules
The Workmen's Compensation (Supplementation) Scheme 1982 No. 1489	WC(S) Scheme

# Chapter 25 - Income (General)

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# Chapter 25 - Income (General)

## Introduction

### General rules

#### Meaning of claimant

25001 Claimant means<sup>1</sup> either

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA
  - 2.1 the couple **or**
  - 2.2 each member of the couple, as the context requires.

*1 JS Act 95, s 35(1), IS (Gen) Regs, reg 2(1)*

#### The calculation and treatment of income

25002 This Chapter deals with the calculation and treatment of various types of income and explains

1. how to treat the income of other members of the claimant's family - see DMG 25007 et seq
2. how to decide the period over which an income should be taken into account - see DMG 25031 et seq
3. how to calculate the weekly amount of an income - see DMG 25062 et seq
4. the special rules for modifying the amount taken into account - see DMG 25081 et seq.

25003 Other Chapters deal with other aspects of income, including

1. which incomes are fully or partly disregarded - see DMG Chapter 28
2. when to treat capital as income - see DMG Chapter 28 (for income treated as capital see DMG Chapter 29)
3. when to treat claimants as possessing income they do not possess (known as notional income) - see DMG Chapter 28

4. the treatment of various types of income, including
  - 4.1 earnings of employed earners - see DMG Chapter 26
  - 4.2 earnings from self-employment - see DMG Chapter 27
  - 4.3 income other than earnings - see DMG Chapter 28
  - 4.4 liable relative payments - see DMG Chapter 28
  - 4.5 earnings of share fishermen - see DMG Chapter 27
  - 4.6 income of young claimants and young partners - see DMG, Chapter 30
  - 4.7 how to treat income if the claimant or any member of the claimant's family is involved in a TD - see DMG Chapter 32
  - 4.8 student's income - see DMG Chapter 30
  - 4.9 how to treat income when calculating part weeks - see DMG Chapter 33
  - 4.10 income in urgent cases - see DMG Chapter 31.

## Income - JSA(Cont)

25004 The DM should follow the guidance in this Chapter when determining the amount of a claimant's own earnings in a claim for JSA(Cont). The guidance on other income, and the treatment of income of the members of the claimant's family does not apply to a claim for JSA(Cont).

**Note:** For guidance on the treatment of occupational and personal pensions in JSA(Cont) see DMG Chapter 23.

25005 - 25006

## Income of the claimant's family - JSA(IB) or IS

25007 **[See DMG Memo JSA/IS 64]** In a claim for JSA(IB) or IS, the DM should calculate the income of

1. the claimant's partner **and**
2. a child or young person who is a member of the claimant's family

in the same way as for the claimant<sup>1</sup>. This income should then be treated as the claimant's income<sup>2</sup>. However DMs should consider if the circumstances in DMG 25008 or DMG 25009 applies.

**Note:** The DM should also consider the special rules on the income of a child or young person (see DMG Chapter 28).

*1 JSA Regs, reg 88(1); reg 88ZA; IS (Gen) Regs, reg 23(1); 2 JS Act, s 13(2); SS CB Act 92, s 136(1)*



## Income of a joint-claim couple - JSA(IB)

25008 To calculate the income of a joint-claim couple, the DM should<sup>1</sup>

1. determine the income of each member of the joint-claim couple **and**
2. add together the amount of income calculated for each member.

*1 JSA Regs, reg 88ZA(1)*

## Income of a couple when one member is aged less than 18

25009 Special rules apply<sup>1</sup> when

1. at least one member of a couple is aged less than 18 (for IS or JSA(IB)) **or**
2. one member only of a joint-claim couple is aged less than 18 (JSA(IB) only) **and**
3. certain conditions determine the couple's applicable amount<sup>2</sup>.

These allow some income of a claimant's partner or member of a joint-claim couple to be ignored when calculating income.

*1 reg 88(3) or reg 88ZA(2); IS (Gen) Regs, reg 23(4);*

*2 JSA Regs, Sch 1, paras 1(3)(b), (c), (g) or (h); IS (Gen) Regs, Sch 2, paras 1(3)(b), (c), (f) or (g)*

**Note:** DMG Chapter 30 gives further guidance about applicable amounts and the treatment of resources in these circumstances.

## Polygamous marriage or relationship

25010 **[See DMG Memo JSA/IS 64]** If a claimant or partner is married polygamously to two or more members of the household, the income of

1. each of the members **and**
2. any child or young person who is a member of their family

should be treated as the claimant's income, or in the case of a joint-claim couple the couple's income, and should be calculated in the normal way<sup>1</sup>.

**Note:** In certain circumstances special rules apply<sup>2</sup> to the income of a member of a polygamous marriage who is a partner aged less than 18.

*1 JSA Regs, reg 88(4) & reg 88ZA(3); IS (Gen) Regs, reg 23(3); 2 JSA Regs, reg 88(5); IS (Gen) Regs, reg 23(5)*

25011 In a polygamous relationship, that is, where there is no marriage, the claimant cannot be treated as LTAHAW with any other member of that relationship. The DM should treat each member of the relationship as a single claimant or, if appropriate, as a lone parent. Their income should be calculated accordingly.

## Disregard of fractions

- 25012 Where the calculation of income results in a fraction of a penny, the amount should be rounded to a penny, either up or down, whichever is to the claimant's advantage<sup>1</sup>.

**Note:** If deciding the amount of an income includes more than one calculation, each fraction should be rounded to the claimant's advantage.

*1 JSA Regs, reg 92; IS (Gen) Regs, reg 27*

## Calculating entitlement to JSA(IB) or IS

- 25013 The amount of JSA(IB) or IS a claimant is entitled to is, if there is

1. no income, the applicable amount **or**
2. income, the difference between the income and the applicable amount<sup>1</sup>.

**Note:** If a JSA claimant satisfies the conditions for JSA(Cont) and JSA(IB) see DMG Chapter 23 to decide the amount payable.

*1 JS Act 95, s 3(1)(a) & 4(3); SS CB Act 92, s 124(1)(b) & 124(4)*

- 25014 When calculating whether a claimant is entitled<sup>1</sup>, the DM should

1. calculate the weekly amount of income following the guidance in this part **and**
2. then add any tariff income from capital.

*1 JSA Regs, reg 93; IS (Gen) Regs, reg 28*

- 25015 If the claimant's income in the benefit week is more than the weekly applicable amount, the claimant is not entitled to JSA(IB) or IS.

**Note:** If the date of claim is not the first day of the benefit week, the DM does **not** have to consider the special rules for calculating JSA(IB) or IS for a part week. Because the claimant is not entitled, nothing is payable.

25016 - 25030

# Period over which income is taken into account

## Calculating the period

- 25031 To determine the period over which any income other than income from self-employment is 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 25053 - 25055)
  3. the date on which the income is due to be paid (see DMG 25034 et seq)
  4. the date on which the income is treated as paid (see DMG 25043 et seq) **and**
  5. **either**<sup>1</sup>
    - 5.1 the period for which the payment is made **or**
    - 5.2 the amount of
      - 5.2.a JSA or IS that would be payable without the income **and**
      - 5.2.b any disregard the DM would normally make on the weekly amount of the income.

See DMG Chapter 26 on earnings disregards and DMG Chapter 28 on other income with partial disregards.

**Note 1:** If the income is a payment of earnings when employment ends see DMG 25061 where different kinds of earnings are received for overlapping periods, and DMG Chapter 26 for the period over which the payment is taken into account.

**Note 2:** The guidance in DMG 25034 - 25087 does not apply to income from self-employment.

*1 JSA Regs, reg 94(2); IS (Gen) Regs, reg 29(2)*

25032 - 25033



## Date on which income is due to be paid

- 25034 To determine the period over which income 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 income is often paid on the date it is due.
- 25035 When deciding the date a payment is due the DM should consider that
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
    - 3.1 the available evidence
      - 3.1.a does not give a due date<sup>1</sup> **or**
      - 3.1.b is not considered credible **and**
    - 3.2 no further evidence can be obtained.

*1 R(SB) 33/83*

## Income other than earnings

- 25036 The date when a payment of income is due could be a question of fact or a question of law. For example
1. a claimant or a claimant's former employer may be able to say when a payment of occupational pension was due
  2. a mortgage protection policy would state when payments are due to be made under the policy.

## Earnings

- 25037 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
    - 1.1 express (in writing or verbal) **or**
    - 1.2 implied (by the actions of or understanding between the two parties) **and**

2. may be varied
  - 2.1 if both parties agree to it (the variation may be express or implied) **or**
  - 2.2 because of certain action taken by either party (such as dismissal or resignation).

## **Earnings when employment ends**

25038 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:** When the due date has been established see DMG 25061 where different kinds of earnings are received for overlapping periods, and DMG Chapter 26 for the treatment and effect of the earnings on JSA or IS.

## **Notice given and worked**

25039 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.

25040 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**

25041 Where the employer terminates employment without due notice they are legally obliged to pay on the last day of employment<sup>1</sup>

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 Chapter 26 if the claimant is due a payment when employment has ended but this has not been paid.

**Note 1:** In JSA, pay in lieu of notice is included in the definition of a compensation payment (see DMG Chapter 26).

**Note 2:** The last day of employment is not necessarily the same as the last day the claimant attended work.

*1 R(SB) 23/84*

### **Employment terminated by employee without notice**

25042 Where employment is terminated by the employee without due notice, employers can rely on the contract of employment to pay

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

on the day that each payment is due to be paid.





## Date on which income is treated as paid

25043 The date on which a payment of income is treated as paid may not be the same as the date on which it is due to be paid under DMG 25034 et seq.

**Note:** There are no longer any special rules for the date on which WTC or CTC is treated as paid.

## Income due before the first benefit week of the claim

25044 A payment of income (including WTC) should be treated as paid on the date it was due, if it was due to be paid before the first benefit week of the claim<sup>1</sup>. But see DMG 25076 if the payment is ESA, JSA, IS, MA, IB or SDA.

**Note:** A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 25053 and 25054 **2.1**).

*1 JSA Regs, reg 96(1)(a); IS (Gen) Regs, reg 31(1)(a)*

## Income due in or after the first benefit week of the claim

25045 If a payment (including WTC) was due to be paid in or after the first benefit week of the claim, it should be treated as paid on<sup>1</sup> the first day of the benefit week in which it is

1. due to be paid **or**
2. practicable to take the payment into account (if this rule is used the DM should record the reasons for using it).

But see DMG 25076 if the payment is ESA, JSA, IS, MA, IB, or SDA, or DMG Chapter 33 if the period involved is a part week.

**Note:** A payment of income may be due before the date of claim and still be within the first benefit week (see DMG 25053 and 25054 **2.1**).

*1 JSA Regs, reg 96(1)(b); IS (Gen) Regs, reg 31(1)(b)*

### Example 1

Doug receives IS in arrears. His benefit week ending day is Wednesday.

On Friday 16 August he advises the Department that he has received his first payment of income from an insurance policy on that day. The payment is made on the day it is due.

The DM treats the income as paid on Thursday 15 August which is the first day of the benefit week in which it was due to be paid. The DM takes the income into

account in the payment of IS due for the benefit week ending on Wednesday 21 August.

### **Example 2**

Alice is unemployed and receives JSA(IB) fortnightly in arrears. Her benefit week ending day is Thursday. She attends the Jobcentre on Thursday 21 November, and receives two weeks benefit for the period 8 November to 21 November on 23 November.

On 22 November, Alice advises the Department that her partner received his first payment of P/T earnings on the evening of 21 November. The payment is made on the day it is due.

The DM determines that it is not practicable to take the partner's earnings into account for the benefit week 15 November to 21 November, because benefit has already been paid for that week.

The DM treats the earnings as paid on 22 November, which is the first day of the first week in which it is practicable to take the payment into account. (See DMG 25082 for guidance on the special rule which applies when two payments are taken into account for the same week because of the impracticability rule.)

25046 - 25048

## **Treatment of WTC income paid incorrectly to the claimant**

- 25049 If a person who has ceased employment confirms when they claim IS or JSA that they have notified HMRC of the change in their circumstances, DMs should not treat any payments of WTC paid incorrectly by HMRC as the claimant's income. However, any payments of WTC paid to the claimant prior to any notification by the claimant to HMRC of a change in circumstance should be taken into account as income<sup>1</sup>.

*1 R(IS) 5/99 (Leeves v. CAO)*

### **Example 1**

Janet finished work on Thursday 6.8.09 and made a claim for IS on Friday 7.8.09. Her benefit week ending was a Tuesday. She told the DM that she had been receiving WTC but had notified HMRC that her job had now ended.

HMRC did not end the award and continued to pay WTC to Janet.

Janet was entitled to a four week WTC run on for the period 7.8.09 to 3.9.09. WTC was taken into account by the DM until BWE 1.9.09.

Although Janet continued to receive WTC for several weeks after the run on period the DM decided that the WTC paid incorrectly by HMRC should not be taken into account as it was not Janet's income.

### **Example 2**

Joel finished work on 1.6.09 and made a claim for JSA on 19.6.09. He is in receipt of WTC which the DM takes into account as an income when calculating Joel's entitlement to JSA(IB).

On 19.10.09 Joel informs HMRC that he finished work in June. HMRC ends Joel's award of WTC and calculate an overpayment based on the fact that he had finished work in June but had continued to receive WTC.

The DM supersedes the award of JSA(IB) and no longer takes the WTC into account. The date of the relevant change for the purposes of the supersession is 19.10.09 which was the date that Joel informed HMRC of his change of circumstance. However the DM does not adjust the award of JSA(IB) to take account of that fact that Joel was overpaid WTC for the period prior to the notification to HMRC. This is because at that time, WTC was an income in payment to Joel and there is no disregard for it.

## **Treatment of arrears of income**

- 25050 If the amount of a regular income increases, or the claimant starts to receive a new income, 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 25034). But see DMG 25076 if the income is ESA, JSA, IS, MA, IB or SDA.

### **Arrears paid on due date**

- 25051 Arrears which are paid on the due date should be
1. treated as paid on the first day of the benefit week in which
    - 1.1 they are paid **or**
    - 1.2 it is practicable to take them into account<sup>1</sup> **and**
  2. taken into account
    - 2.1 for a period calculated in the normal way (see DMG 25056 et seq)<sup>2</sup> **and**
    - 2.2 from the date on which they are treated as paid.

*1 JSA Regs, reg 96(1)(b); IS (Gen) Regs, reg 31(1)(b);*

*2 JSA Regs, reg 94(2)(a); IS (Gen) Regs, reg 29(2)(a)*

### Example

The claimant's partner has P/T earnings of £10 weekly due each Thursday. IS is paid in arrears and the claimant's benefit week ends on Tuesday.

The P/T earnings are increased to £11 weekly from 5.7.09, but the agreement says that the increase is not payable until 1.8.09, when payment is made at the new rate with three weeks arrears, a total of £14.

The DM treats the payment as made on 29.7.09.

The new rate of £11 is taken into account in the benefit week beginning 29.7.09, and the £3 arrears are taken into account for the period 29.7.09 to 18.8.09.

The total amount of earnings taken into account in the benefit weeks beginning 29.7.09, 5.8.09 and 12.8.09 is £12 (£11 plus £1 arrears).

From benefit week beginning 19.8.09, the new weekly rate of £11 is taken into account.

### Arrears paid after the due date

25052 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 due date if they were due before the first benefit week of the claim<sup>1</sup>.

The DM should calculate any overpayment and refer the case to the Secretary of State to consider recovery<sup>2</sup>.

*1 JSA Regs, reg 96(1); IS (Gen) Regs, reg 31(1); 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 determines 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.

## Meaning of benefit week

### JSA

25053 In JSA a benefit week<sup>1</sup> is a period of seven days ending with the day determined by the last two digits of the claimant's NINO as shown in the following table unless the Secretary of State arranges otherwise.

NI No.	Day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

*1 JSA Regs, reg 1(3)*

### IS

25054 In IS a benefit week<sup>1</sup>

1. is either
  - 1.1 the week for which the claimant's relevant SS benefit is or would be paid if the claimant satisfied the contribution conditions or had not exhausted entitlement **or**
  - 1.2 in any other case, a period of seven days beginning or ending with a day which the DM directs<sup>2</sup> **and**
2. when calculating the amount of income to take into account, is also a period of seven days ending on
  - 2.1 the day before the first day of the benefit week following the date of claim **or**
  - 2.2 the last day on which IS is paid if it is in payment for less than a week<sup>3</sup>.

*1 SS (C&P) Regs, Sch 7, para 4; 2 Sch 7, para 4; 3 IS (Gen) Regs, reg 2(1)*

25055 Relevant SS benefit means<sup>1</sup>

1. IB
2. BB
3. SDA
4. RP
5. WB.

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



# Period for which payment is made

## Identifiable period

25056 If the period for which a payment is made can be identified, then the length of time for which it is taken into account will depend on whether the payment is monthly or not. Where the period for which the payment is made is

1. a month<sup>1</sup>, it should be taken into account for a period ending with the date immediately before the next monthly payment would have been treated as paid (whether or not the next monthly payment is actually paid) **or**
2. other than a month<sup>2</sup>, it should be taken into account for an equivalent period (for example a payment for a week should be taken into account for a week).

The period begins from the date determined by following the guidance at DMG 25043 et seq.

**Note:** A capital payment that is treated as income will often not be payable for an identifiable period.

*1 JSA Regs, reg 94(2)(a); IS (Gen) Regs, reg 29(2)(a); 2 JSA Regs, reg 94(2)(aa); IS (Gen) Regs, reg 29(2)(aa)*

## Employer's pay arrangements

25057 Where an employer has specific pay arrangements, which mean employees are paid at specific intervals, such as monthly, a payment should be taken into account for a period equal to the pay interval<sup>1</sup>. But see DMG Chapter 26 if the payment is made because the employment has ended.

**Note:** Earnings from holiday pay and compensation payments (see DMG Chapter 26), which are made for part of a day should be taken into account for a day<sup>2</sup>.

*1 R(IS) 10/95; 2 JSA Regs, reg 94(5); IS (Gen) Regs, reg 29(4A)*

### Example

John claimed IS because he was absent from work due to an illness. His BWE day is Monday.

John's employer pays him on the last day of each month. On 31.3.08 John received three weeks SSP of £217.65 [£72.55 x 3 weeks].

The DM decided that the payment should be taken into account for one month at the weekly rate of £50.22 [£217.65 x 12 ÷ 52].

The weekly amount is taken into account for the following period -

BWE 31.3.08 - £50.22

BWE 7.4.08 - £50.22

BWE 14.4.08 - £50.22

BWE 21.4.08 - £50.22

BWE 28.4.08 - £50.22

John's next monthly payment from his employer would be due to be paid on 30.4.08 (treated as paid on 29.4.08) and the weekly amount would be taken into account for the period BWE 5.5.08 to BWE 26.5.08

## Supply teachers

25058 A LA may create a pool or panel of supply teachers. The LA calls on these teachers as and when needed, but the teachers may refuse work if they wish. In these circumstances the DM should note that

1. the supply teachers have a separate contract of employment for each period they work<sup>1</sup> **but**
2. if the LA pays them at regular intervals for the work they have done, each payment should be taken as paid for a period equal to the pay interval<sup>2</sup>.

*1 R(U) 2/87; 2 R(IS) 10/95*

### Example

A supply teacher is paid on the 16th of every month for all the work she has done in the previous month. On 16 October she is paid for the four days she worked during September. The DM takes the payment into account for one month.

## No identifiable period

25059 If the period cannot be identified, the DM should calculate the amount to be taken into account<sup>1</sup>. Where the payment is

1. earnings, by dividing the claimant's net earnings (see DMG Chapter 26)<sup>2</sup> by the total of the
  - 1.1 weekly amount of JSA or IS to which the claimant would have been entitled had the payment not been made **and**
  - 1.2 amount of any disregard<sup>3</sup> that would have been made on the earnings **or**
2. income other than earnings, by deducting any tax paid on the income<sup>4</sup>, and dividing the result by the total of the
  - 2.1 weekly amount of JSA or IS the claimant would have been entitled to had the payment not been made **and**
  - 2.2 amount of any disregard<sup>5</sup> (other than on tax) that would have been made on the income.



**Note:** See DMG Chapter 26 if the payment is made because employment has ended.

*1 JSA Regs, reg 94(2)(b); IS (Gen) Regs, reg 29(2)(b); 2 JSA Regs, reg 99(4); IS (Gen) Regs, reg 36(3); 3 JSA Regs, Sch 6; IS (Gen) Regs, Sch 8; 4 JSA Regs, Sch 7, para 1; IS (Gen) Regs, Sch 9, para 1; 5 JSA Regs, Sch 7; IS (Gen) Regs, Sch 9*

### Example

Sheila is in receipt of JSA(IB) of £40 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Sheila's employer offers her a payment of £7,200. She can agree to accept this sum as a final and full settlement of any unequal treatment claim that she could have brought against her employer. Alternatively, Sheila can have the option of taking a net payment of £720 but this amount would be deducted from any future settlement won through action at an Employment Tribunal or as part of any negotiated settlement between herself and her employer.

Sheila decides to accept the sum of £720 and this is duly paid to her with her salary by the employer. The DM decides that the payment is a payment of earnings but cannot identify a period in respect of which the payment is made. The DM therefore performs the calculation in DMG 25059 1. where:

£720 is divided by £45 (JSA(IB) of £40 plus £5 disregard) = 16

The DM takes the payment into account for 16 weeks at the weekly rate of £45.

- 25060 If the calculation does not result in a whole number of weeks, the balance of the payment should be taken into account for a corresponding fraction of a week<sup>1</sup>.

*1 JSA Regs, reg 94(2)(b); IS (Gen) Regs, reg 29(2)(b)*

### Example

The claimant is paid a one-off bonus of £150. The period for which the payment was made is not identifiable. £5 of a weekly payment of the income would be disregarded. The claimant would be entitled to £65 a week without the payment. The £150 payment is divided by £70 (£65 JSA(IB) plus £5 disregard). The DM determines the claimant's income is £70 a week for a period of 2 1/7 weeks (two weeks and one day).

## Different kinds of earnings received for overlapping periods

- 25061 If different kinds of earnings 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 DMG 25043 et seq<sup>1</sup> **and**
3. in the following order<sup>2</sup>
  - 3.1 in the case of JSA(Cont) or JSA(IB)
    - 3.1.a normal earnings
    - 3.1.b compensation payments
    - 3.1.c holiday pay **or**
  - 3.2 in the case of IS
    - 3.2.a normal earnings including wages held in hand
    - 3.2.b pay-in-lieu of notice or remuneration
    - 3.2.c compensation payment
    - 3.2.d holiday pay received within four weeks of the date employment ended.

**Note 1:** Pay in lieu of remuneration is paid in place of a person's normal wages or salary.

**Note 2:** For JSA, pay in lieu of notice or remuneration is included in the definition of a compensation payment (see DMG Chapter 26).

*1 JSA Regs, reg 94(3); IS (Gen) Regs, reg 29(3); 2 JSA Regs, reg 94(4); IS (Gen) Regs, reg 29(4)*

### **Example**

The claimant is paid IS in arrears and her benefit week ends on a Wednesday.

Her husband's P/T employment is terminated without notice on 23 August, which is after the date of claim. He receives his normal week's earnings, one week in hand, four days holiday pay and two weeks in lieu of notice on 23 August.

The DM determines that the periods over which the earnings would be taken into account overlap.

The earnings are treated as paid on Thursday 22.8.96, and taken into account as follows for a total of four weeks and four days

1. the normal week's earnings and the week in hand payment for the period 22.8.96 - 4.9.96
2. two weeks in lieu of notice for the period 5.9.96 - 18.9.96
3. four days holiday pay for the period 19.9.96 - 22.9.96.

# Calculation of weekly amount

## Period of a week or less

- 25062 Where the period for which a payment is made is a week or less, the weekly amount will be the amount of the payment<sup>1</sup>. But see 25071 et seq and 25086.

*1 JSA Regs, reg 97(1)(a); IS (Gen) Regs, reg 32(1)(a)*

## Period of a month

- 25063 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 52<sup>1</sup>.

*1 JSA Regs, reg 97(1)(b)(i); IS (Gen) Regs, reg 32(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).

## Period of three months

- 25064 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 52<sup>1</sup>.

*1 JSA Regs, reg 97(1)(b)(ii); IS (Gen) Regs, reg 32(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

### Income which is not working tax credit

- 25065 Where the payment of income is for a period of a year the weekly amount should be worked out by dividing the amount of the payment by 52<sup>1</sup>.

*1 JSA Regs, reg 97(1)(b)(iiia); IS (Gen) Regs, reg 32(1)(b)(iiia)*

## Working tax credit

- 25066 Where a payment of WTC is made in respect of a year then the DM should divide the award of WTC by the number of days in the year and multiply the result by 7<sup>1</sup>. This means that the divisor will be either 365 days or, in a leap year, 366 days.

*1 JSA Regs, reg 97(1)(b)(iii); IS (Gen) Regs, reg 32(1)(b)(iii)*

## Period of more than a week

- 25067 Where the payment is for more than a week, and DMG 25063 - 25066 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 made<sup>1</sup>.

*1 JSA Regs, reg 97(1)(b)(iv); IS (Gen) Regs, reg 32(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).

25068 - 25070

## Calculation of amount where only part of payment overlaps benefit week

- 25071 Where a payment for one week or less is treated as paid before the first benefit week of the claim, it may fall to be taken into account for only some days in the first benefit week. The DM should determine the amount to be taken into account by
1. multiplying the amount of the payment by the number of days in the period of the overlap **and**
  2. dividing the result by the number of days in the period for which payment is made<sup>1</sup>.

**Note:** If the period the payment overlaps is a part week see DMG Chapter 33.

*1 JSA Regs, reg 97(2); IS (Gen) Regs, reg 32(2)*

25072 Where a payment is for one week or more, and is to be taken into account for some days only in a benefit week, the DM should determine the amount to be taken into account by

1. multiplying the amount of the payment by the number of days in the period of the overlap **and**
2. dividing the result by the number of days in the period for which the payment is made<sup>1</sup>.

**Note:** If the period the payment overlaps is a part week see DMG Chapter 33.

*1 JSA Regs, reg 97(3); IS (Gen) Regs, reg 32(3)*

### **Example 1**

The claimant receives £400 from a general unemployment insurance policy for a period of four weeks on 8 May.

She claims JSA on 28 May because the payments from the general unemployment insurance policy have stopped. She will be paid weekly in arrears on a Thursday.

The payment is treated as paid on 8 May for the period 8 May to 4 June.

The DM determines that for benefit week ending 6 June 5/28ths of the payment should be taken into account and deducts £71.42 ( $£400 \times 5 = 2000/28 = 71.42$ ).

### **Example 2**

The claimant is unemployed. His benefit week ending day is Wednesday and he is paid JSA(IB) fortnightly in arrears on a Friday.

His partner is sick and had been receiving employer's sick pay.

On Monday 7 December the claimant notifies the DM that his partner's final payment of sick pay has been made on Friday 4 December. This payment is £45 and is for a period of one week and three days.

The DM treats the payment as made on Thursday 3.12.09 (the first day of the claimant's benefit week) for the period 3.12.09 to 12.12.09.

The amount of sick pay taken into account for the period 10.12.09 to 12.12.09 is £13.50 ( $£45 \times 3/10$ ).

25073 Different rules apply if the payment is one of the following benefits

1. IS
2. JSA
3. MA
4. IB
5. SDA
6. ESA.

25074 - 25075

### **Calculating the amount of ESA, JSA, IS, MA, IBST, IBLT or SDA to be taken into account as income in any benefit week**

25076 Special rules apply to payments of ESA, JSA, IS, MA, IBST, IBLT or SDA. If the claimant receives one of these benefits the DM should

1. treat each day's benefit as a separate payment **and**
2. treat each day's benefit as paid on the day of the benefit week that it is paid for<sup>1</sup> **and**
3. take each day's benefit into account for the day it is paid for<sup>2</sup> **and**
4. where part of a payment of one of these benefits is to be taken into account as income for some days only in a specific benefit week (relevant days) and the benefit involved is
  - 4.1 MA, IBST, IBLT or SDA - take into account for the relevant days the amount of benefit payable for those days<sup>3</sup> **or**
  - 4.2 ESA, IS or JSA - take into account for the relevant days an amount calculated by multiplying the weekly amount of the benefit by the number of relevant days and dividing the product by seven<sup>4</sup>.

**Note:** Because payments of ESA, JSA, IS, MA, IBST, IBLT or SDA are made for specific days in each benefit week and payment is attributed to those days, the rules on modifying the amount taken into account at DMG 25081 will not apply to these benefits<sup>5</sup>.

*1 JSA Regs, reg 96(2); IS (Gen) Regs, reg 31(2); 2 JSA Regs, reg 94(2)(a); IS (Gen) Regs, reg 29(2)(a); 3 JSA Regs, reg 97(4)(a); IS (Gen) Regs, reg 32(4)(a); 4 JSA Regs, reg 97(4)(b); IS (Gen) Regs, reg 32(4)(b);*

*5 JSA Regs, reg 97(5); IS (Gen) Regs, reg 32(5)*

**Example 1**

The claimant receives IBLT of £70 for Tuesday 3 December to Monday 9 December. Her benefit week ends on a Monday. The DM takes a payment of £10 into account for each of the seven days in the benefit week. £70 is taken into account altogether in the benefit week.

**Example 2**

The claimant receives IBLT of £20 for Tuesday 3 December to Wednesday 4 December. His benefit week ends on a Monday. The DM takes £10 into account for 3 December and £10 for 4 December. £20 is taken into account altogether in the benefit week ending Monday 9 December.

25077 - 25080





# Modifying the amount taken into account

## Two payments from same source and of same kind in same benefit week

25081 The weekly amount of income taken into account in a benefit week should be restricted where an income

1. is or has been paid regularly **and**
2. two payments
  - 2.1 from the same source **and**
  - 2.2 of the same kind

would be taken into account in the same benefit week following the rules in DMG 25043 et seq<sup>1</sup>. The amount of income should be restricted to the weekly amount which is treated as paid first.

*1 JSA Regs, reg 97(5); IS (Gen) Regs, reg 32(5)*

### Example 1

Lenny is sick and receiving IS weekly in arrears on a Thursday.

He is receiving employer's sick pay fortnightly on a Friday.

He receives two weeks sick pay on 15.5.09 and the DM treats the payment as made on 15.5.09 for the period 15.5.09 to 28.5.09.

As Lenny is due to return to work on 1.6.09 his employer pays his final two weeks sick pay on 26.5.09.

The DM determines that the payment is due to be paid on the date it is actually paid, and treats it as paid on 22.5.09 for the period 22.5.09 to 4.6.09.

As there would be two payments of income of the same kind from the same source to be taken into account for the benefit week 22.5.09 to 28.5.09, the DM restricts the amount of income taken into account to the weekly amount of the first payment.

### Example 2

On 12.8.08, Sonya claims IS. She is a Monday BWE and is in receipt of CA which is paid every four weeks by ACT. She receives a payment on 4.8.08, her next payment is due on 1.9.08. The DM calculates the weekly amount of CA to take into account on the IS award.

On claiming IS the CA Unit changes the way that Sonya's CA is paid. On 1.9.08 Sonya receives four weeks CA and on 8.9.08 she receives one week's CA. Further weekly payments of CA are due each Monday after that date.

The DM determines that as there would be two payments of income of the same kind and from the same source to be taken into account for BWE's 8.9.08 - 22.9.08, the total amount of income to be taken into account for each week is restricted to the weekly amount of CA paid on 1.9.08.

## **Two payments taken into account for same week because of impracticability rule**

25082 The special rules in DMG 25081 do not apply if

1. it is not practicable to take an income into account in the benefit week in which it was due **and**
2. in the next benefit week in which it is practicable to take it into account the claimant receives another payment
  - 2.1. of the same kind **and**
  - 2.2. from the same sourcewhich is to be taken into account in the same week<sup>1</sup>.

In these circumstances both payments should be taken into account in that week, with a separate disregard on each of the payments, if a disregard is appropriate<sup>2</sup>.

*1 JSA Regs, reg 97(5); IS (Gen) Regs, reg 32(5); 2 JSA Regs, Sch 6, para 13 & Sch 7, para 39; IS (Gen) Regs, Sch 8, para 10 & Sch 9, para 37*

### **Example**

Colin is sick and receives IS and IBST weekly in arrears on Mondays.

His payment for 31.8.09 is posted early because that day is a bank holiday.

On 1.9.09 Colin advises the local office that his partner has started P/T work and has received her first weeks P/T earnings on 27.8.09. She is also due to receive another weeks wages on 3.9.09.

The DM determines that it is not practicable to treat the first payment of earnings as paid on the first day of the benefit week in which they were due to be paid, because benefit has already been paid for that week.

They are treated as paid on 1.9.09, the first day of the next benefit week in which it is practicable to take them into account.

The DM then considers the earnings due to be paid on 3.9.09, and treats them as paid on 1.9.09 because it is practicable to do so.

Both payments are taken into account in the same benefit week, with a separate disregard on each payment.

## First of two payments due before date of claim

- 25083 Where the first of the two payments referred to in DMG 25081 or 25082 was due to be paid before the date of claim the payment should be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 16 & Sch 7, para 37; IS (Gen) Regs, Sch 8, para 13 & Sch 9, para 35*

### Example

The claimant claimed IS on 5.4.04 and is a Tuesday benefit week ending.

He received four weeks occupational pension from his former employer on 9.3.04, and the next payment is due to be paid on 6.4.04.

The DM determines that the payment due on 9.3.04 should be treated as paid on 9.3.04 and should be taken into account for the period 9.3.04 - 5.4.04.

The DM determines that the payment due on 6.4.04 should be treated as paid on 31.3.04 which is the first day of the benefit week in which it is due.

The payment due on 9.3.04 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 9.3.04 was due to be paid before the first benefit week of the claim.

25084 - 25085

## Averaging of amounts

- 25086 The weekly amount of a claimant's income may be averaged<sup>1</sup> 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 recognizable cycle of work (see DMG Chapter 20 on establishing a recognizable cycle) **or**
2. five weeks **or**
3. another period if this means a more accurate weekly amount can be calculated.

*1 JSA Regs, reg 97(6); IS (Gen) Regs, reg 32(6)*

- 25087 The averaging of the weekly amount of income does not change the other rules on the treatment of income such as the date that it is treated as paid. This means that income can only be averaged where the claimant is actually in receipt of a payment.

### **Example 1**

Robert works two weeks on and one week off.

In the two weeks he 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 determines that the earnings should be averaged over a period of three weeks because that is the period of the recognizable cycle of work.

The DM calculates that the average weekly amount of earnings is £60, that is

$$\frac{80 + 80 + 20}{3}$$

and takes that amount into account against Robert's entitlement.

### **Example 2**

Maggie works at a school term-time only as a classroom assistant. During the school holidays she doesn't work and receives no earnings.

The DM can only average Maggie's earnings during term-time when she is actually in receipt of an income. During the school holidays Maggie receives no earnings so there is no income to take into account.

25088 - 25999

# Chapter 26 - Employed earners

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# Chapter 26 - Employed earners

## Earnings of employed earners

### Introduction

- 26001 This Chapter deals with the calculation and treatment of payments made to employed earners. These will usually be earnings paid by an employer, but may be other types of payment.
- 26002 How payments made to employees affect a claim for JSA or IS will depend on
1. which benefit has been claimed
  2. whether the work is continuing
  3. whether the work has ended.
- 26003 Differences in the treatment of any payment between IS and JSA, will be pointed out throughout this guidance. Guidance on the calculation and treatment of payments made on termination of employment is given in DMG 26500 - 26768. Guidance on payments made under employment protection legislation is in DMG 26300 - 26453.

### Meaning of claimant

- 26004 Claimant means<sup>1</sup> either
1. one person who claims JSA or IS **or**
  2. in the case of a joint claim for JSA
    - 2.1 the couple **or**
    - 2.2 each member of the couple, as the context requires.

*1 JS Act 95, s 35(1), IS (Gen) Regs, Reg 2(1)*

### Calculation of earnings - JSA

- 26005 Earnings are calculated in the same way for both JSA(Cont)<sup>1</sup> and JSA(IB)<sup>2</sup> and include any notional earnings<sup>3</sup>.

*1 JSA Regs, reg 80(1); 2 reg 94-102; 3 reg 105*

## **JSA(Cont)**

- 26006 It is only the amount of a claimant's own earnings that affect the amount of JSA(Cont) payable<sup>1</sup>. The earnings of a claimant's dependants cannot affect it.

*1 JS Act 95, s 4(1); JSA Regs, reg 80(2)*

## **JSA(IB) and IS**

- 26007 Earnings of the claimant or any member of the claimant's family may be taken into account in the calculation of JSA(IB) or IS<sup>1</sup>.

*1 JS Act 95, s 4(3) & 13(2); SS CB Act 92, s 124(1) & 136(1)*

26008

## **IS only**

- 26009 For IS only when a person satisfies the conditions and is in receipt of MIRO (see DMG 20530 et seq), any earnings for the period of MIRO are to be disregarded in full<sup>1</sup>.

*1 IS (Gen) Regs, Sch 8, para 15C*



# Earnings - explanation of terms

## Meaning of employed earner

26010 The term employed earner means<sup>1</sup> a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office (including an elective office) with general earnings<sup>2</sup>.

*1 JSA Regs, reg 3; IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(a);  
2 Income Tax (Earnings and Pensions) Act 2003, s 7(3)*

26011 Employed earners who are gainfully employed under a contract of service include employees who work for a wage or salary.

26012 The phrase in an office includes directors of limited companies, clergy, LA councillors, MPs and sub-postmasters and mistresses.

## Meaning of earnings

26013 Earnings means any pay or profit derived from employment and includes<sup>1</sup>

1. bonus or commission (see DMG 26045)
2. PILOR (see DMG 26082)
3. PILON and certain compensation payments made by the employer because the employment has ended (see DMG 26500 et seq)
4. holiday pay (see DMG 26059), but not where it is payable more than four weeks after the employment ended, or was interrupted (see DMG 32692 for an exception to this rule in trade dispute cases)
5. retainers (see DMG 26083)
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 26065 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 at work (see DMG 26077)
7. Employment Protection awards<sup>2</sup> (see DMG 26300 et seq)
8. awards of compensation made under TU legislation<sup>3</sup> (see DMG 26314 and 26335).

9. Any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of social security contributions to deduct<sup>4</sup> (see DMG 26094).

This list is not exhaustive. See DMG 26040 - 26095 for more examples of what are and what are not earnings.

*1 JSA Regs, reg 98(1); IS (Gen) Regs 35(1); 2 ER Act 96, s 55(4), 68 & 69, 70(1)-(3), 77 & 79, 92(6), 112(3) & (4), 113, 121(a), 128, 132; 3 TULR (C) Act 92, s 156, 157, 189 & 192; 4 IS (Gen) Regs, reg 35(1)(j); JSA Regs, reg 98(1)(h)*

#### 26014 Earnings do not include<sup>1</sup>

1. payments in kind (see DMG 26080)
2. periodic payments made because employment has ended through redundancy<sup>2</sup>
3. payments made for periods when an employee is on maternity leave, paternity leave, adoption leave, or is away from work due to illness (see DMG 26130)
4. payments by an employer for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26077)
5. payments of occupational pension<sup>3</sup>
6. redundancy payments<sup>4</sup> (see DMG 26506)
7. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme<sup>5</sup>
8. any payment of expenses paid to the claimant as a result of participating in a service user group<sup>6</sup> (see DMG 26084).

*1 JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(2); 2 JSA Regs, reg 98(2)(b); IS (Gen) Regs, reg 35(1)(b); 3 JSA Regs, reg 98(2)(e); IS (Gen) Regs, reg 35(2)(d); 4 ER Act 96, s 135; 5 JSA Regs, reg 98(2)(g); IS (Gen) Regs, reg 35(2)(e); 6 JSA Regs, reg 98(2)(h); IS (Gen) Regs, reg 35(2)(f)*

## Meaning of derived from

- 26015 The words “derived from” mean having their origins in<sup>1</sup>. Payments made for past or present employment should be treated as earnings, unless they are excluded under DMG 26014. Work out the period for which earnings are to be taken into account before deciding the claim (see DMG Chapter 25).

*1 R(SB) 21/86*

## Meaning of gross earnings

- 26016 Gross earnings means the amount of earnings

1. **after** the deduction of expenses wholly, exclusively and necessarily incurred in the performance of the employment<sup>1</sup> (see DMG 26027) **but**

2. **before** any authorized 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 subscriptions

2.5 payments under a court order

2.6 recovery of any debt.

**Note:** Where an overpayment of wages is being recovered by means of deductions from the earnings to be taken into account, the DM should not include the amount being recovered to repay the overpayment as part of the gross amount of those earnings<sup>2</sup>.

*1 R(FC) 1/90 & R(IS) 16/93; 2 R(TC) 2/03*

## Meaning of pay period

26017 A pay period is the period for which the employee is, or expects to be, normally paid<sup>1</sup>. This can be a week, a fortnight, four weeks, a month, or any other period.

*1 JSA Regs, reg 1; IS (Gen) Regs, reg 2*

26018 - 26019



# Calculation of net earnings

## Deductions from gross earnings

26020 Net earnings are gross earnings less<sup>1</sup>

1. income tax **and**
2. Class 1 SS contributions **and**
3. half of any sum paid by the employee, towards an occupational or personal pension scheme.

*1 JSA Regs, reg 99(4); IS (Gen) Regs, reg 36(3)*

## Income tax

26021 Deduct from gross earnings any income tax deducted by the employer.

## SS contributions

26022 SS contributions are often called National Insurance Contributions or NI Conts.  
Reduce gross earnings by any Class 1 contribution deducted by the employer.

## Occupational pension scheme deductions or personal pension scheme payments

26023 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 ( $£26 \times 12 \div 52 = £6$  pw) and half of this weekly figure ( $£6 \div 2 = £3$ ) is deducted from her gross weekly earnings ( $£50 - £3 = £47$ ).

26024 Occupational pension schemes<sup>1</sup> 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 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1)*

26025 Personal pension schemes<sup>1</sup> 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 JS Act 95, s 35(1); PS Act 93, s 1; SS Act 86, s 84(1); IS (Gen) Regs, reg 2(1)*

26026 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 period<sup>1</sup>.

*1 R(FC) 1/90*

## **Expenses not reimbursed by employer**

26027 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 incurred<sup>1</sup>.

*1 R(IS) 16/93*

26028 Examples of expenses for which deductions may be made under DMG 26027 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.

26029 The expense must be incurred in direct connection with the employer's trade or business<sup>1</sup>. If there is some element of private use, for example telephone bills, that part of the bill for business use should be allowed (see DMG 27192 - 27195). 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 followed<sup>2</sup>.

*1 Davies v. Gwaun Cae Gurwen Colliery (1924) 2K8 651; Borley v. Ockended (1925) 2K8 325; 2 R(IS) 16/93*

26030 An expense that is in the employee's own interest or benefit, or which merely enables the employee to go to work, would not satisfy the test in DMG 26027. Child minding expenses<sup>1</sup>, and the cost of travel to a single place of work, are examples of expenses that would not satisfy the test.

*1 R(FC) 1/90*

26031 See DMG 26062 and DMG 26066 if the claimant or partner is a Justice of the Peace or a councillor. See DMG 26077 for more guidance on the general question of expenses.

26032 - 26036





# Treatment of particular kinds of payments from employment

## Introduction

- 26037 The law<sup>1</sup> gives some examples of what earnings can include (see DMG 26013). But, there are other payments that count as earnings. Guidance on other types of earnings paid during a period of employment is in DMG 26040 - 26096.

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1)*

## Employment ended

- 26038 Some payments are made to employees because their employment has ended. How these payments affect a claim for JSA or IS will depend on

- which benefit has been claimed
- whether the work was P/T
- whether the work was remunerative.

- 26039 Guidance on the treatment of payments made because employment has ended is given in DMG 26500 et seq.

## Accommodation provided by employer

- 26040 The value of free accommodation provided by an employer, for example to a housekeeper or caretaker, should be ignored. Where no other payment is made to the employee, or any payment being made seems too low, the DM should consider whether to treat the claimant as having earnings or greater earnings (see DMG 26180 et seq).

## Actors and entertainers

- 26041 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.
- 26042 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.
- 26043 The fact that an actor or entertainer has periods of employment during which class 1 National Insurance contributions are payable is not conclusive when deciding

whether that employment is as an employed earner. It is for the DM deciding the claim to IS or JSA to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

### **Example 1**

Laura is an actress. She makes a claim for JSA because she has left her partner who was in F/T employment. Her acting engagements are sporadic, and she is not currently working. She continues to look for work and remains on her agent's books. She has been booked for some future engagements, but nothing substantial, and has not worked for several weeks. She says that she could find more substantial acting work at any time, that being the nature of work. In the year prior to the current claim, the claimant has had a number of engagements in advertising and the theatre as well as three separate, short term, engagements with the BBC to appear in three separate dramatic productions. Her most substantial earnings were derived from these engagements with the BBC. She states that she was actually employed by the BBC under a contract of service and says that the fact that she paid class 1 contributions supports this contention. As such she argues that her earnings from the BBC should not be included when working out her earnings from self-employment. The DM

- decides that the claimant is gainfully employed as a S/E earner (see DMG 27019 - 27023)
- considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fell to be taken into account with her other earnings from self-employment
- decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

### **Example 2**

Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 contributions.

The DM decides that Craig's employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company,

and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

## **Advance of earnings or loans**

- 26044 Earnings should be taken into account from the date they are treated as paid<sup>1</sup>. This is based on when they are due to be paid (see DMG Chapter 25). If they are paid before the due date, treat any amount paid as capital until the due date arrives. Then take the amount properly due into account as normal from that date. Any other loan made by the employer should also be treated as capital<sup>2</sup>.

*1 JSA Regs, reg 94 & 96(1); IS (Gen) Regs, reg 29 & 31(1); 2 JSA Regs, reg 110(5) & Sch 7, para 34; IS (Gen) Regs, reg 48(5) & Sch 9, para 32*

### **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 treated as capital. 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**

- 26045 Payments of bonus or commission should be treated as earnings. DMG Chapter 25 contains guidance on the period over which they should be taken into account.

## **Broadcasting and publication fees**

- 26046 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 (see DMG Chapter 27) 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**

- 26047 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 earnings<sup>1</sup>.

*1 R(SB) 2/86*

## Directors of limited companies

- 26048 A limited company, of whatever size, is separate from its employees and shareholders<sup>1</sup>. 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

- 26049 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.

## Payments as a director or other employee

- 26050 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.
- 26051 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.
- 26052 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.
- 26053 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.
- 26054 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. If it is not paid to the director, or the director cannot draw it out of the account, it is a debt due. This should be taken into account as income due but not paid<sup>1</sup>.

*1 JSA Regs, reg 105(6); IS (Gen) Regs, reg 42(3)*

- 26055 If a director of a small company is not voted any payment, the DM should consider whether the director should be treated as having earnings (see DMG 26180 et seq). In doing so, the DM should consider whether the company can afford to pay the director.

## **Share dividend**

- 26056 Share dividend is income from capital and should be treated as capital<sup>1</sup>.

*1 JSA Regs, reg 110(4); IS (Gen) Regs, reg 48(4)*

## **Debenture interest**

- 26057 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 treated as capital<sup>1</sup>. If any of the loan itself is repaid, the amount repaid is a repayment of capital.

*1 JSA Regs, reg 110(4); IS (Gen) Regs, reg 48(4)*

## **Single status payments**

- 26058 A payment which is made to a person to redress past pay inequalities is a payment of earnings<sup>1</sup> and may have to be taken into account if that person is still working for that employer. These payments are sometimes called “single status payments” but may be called something else.

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1)*

### **Example**

Anna is in receipt of JSA(IB) of £40 per week and works part-time for the local council. She has been offered a payment by her employer to redress historical pay inequalities between female and male employees. Anna’s employer offers her a payment of £7,200. This is paid to Anna with her salary and the DM treats it as a payment of earnings.

## **Holiday pay**

- 26059 Any holiday pay that is payable within four weeks of the date employment ended, or was interrupted, should be treated as earnings<sup>1</sup>. If it is payable more than four weeks after the employment has ended, or been interrupted, it should be treated as capital<sup>2</sup>. Guidance on the effects of holiday pay paid on termination of employment is given in DMG 26594 and 26652.

*1 JSA Regs, reg 98(1)(c); IS (Gen) Regs, reg 35(1)(d); 2 JSA Regs, reg 110(3); IS (Gen) Regs, reg 48(3)*

## Income tax refunds

- 26060 Earnings of employed earners are taxed under the PAYE scheme by direct deduction from wages or salary. Any refunds of income tax should be treated as capital<sup>1</sup> (see DMG 32782 for the exception to this rule in trade dispute cases).

*1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2)*

## Justices of the Peace

- 26061 Those who are employed as magistrates are referred to as District Judges (Magistrates' Court) and were previously known as stipendiary magistrates. In connection with their duties lay Justices of the Peace, sometimes known as volunteer magistrates, may receive

1. travel allowances<sup>1</sup>
2. subsistence<sup>2</sup>
3. financial loss allowances<sup>3</sup>.

*1 Courts Act 2003, s 15(1)(a); 2 s 15(1)(b); 3 s 15(1)(c)*

## Travel allowances

- 26062 Travel allowances incurred wholly, exclusively and necessarily in the performance of the lay Justice of the Peace's duties should be disregarded in full<sup>1</sup>.

*1 JSA Regs, reg 98(2)(d) & Sch 7, para 3; IS (Gen) Regs, reg 35(2)(c) & Sch 9, para 3*

## Subsistence

- 26063 Payments of subsistence should be disregarded in full<sup>1</sup>.

*1 JSA Regs, reg 98(2)(d) & Sch 7, para 3; IS (Gen) Regs, reg 35(2)(c) & Sch 9, para 3*

## Financial loss allowances

- 26064 Financial loss allowances are paid to compensate lay 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 pay in lieu of remuneration<sup>1</sup> (see DMG 26082)
2. loss of SS benefits - these should be treated as income other than earnings
3. other expenses that are incurred wholly, exclusively and necessarily in the performance of the Justices of the Peace's duties - these should be disregarded in full.

*1 JSA Regs, reg 98(1)(b); IS (Gen) Regs, reg 35(1)(b)*

## Local Authority councillors

26065 Councillors are

1. in England and Wales, a member of
  - 1.1 a London borough council **or**
  - 1.2 a county council **or**
  - 1.3 a district council **or**
  - 1.4 a parish or community council **or**
  - 1.5 the Common Council of the City of London **or**
  - 1.6 the Council of the Isles of Scilly
2. in Scotland, a member of a council for a local government area<sup>1</sup>.

*1 Local Government etc (Scotland) Act 1994, s 2*

26066 LA councillors are elected office holders and are employed earners<sup>1</sup>. The official duties and responsibilities of a councillor will vary from LA to LA. Each LA must draw up a scheme<sup>2</sup> for payment of allowances to councillors. This will give information on the official duties of its councillors and the allowances paid for those duties. The official duties may include attendance at

1. a meeting of the authority **and**
2. a sub-committee of the authority **and**
3. a meeting for any other body to which the authority makes appointments **and**
4. other meetings authorized by the authority.

*1 R(IS) 6/92; 2 Local Authorities (Members' Allowances) (England) Regulations 2003, reg 4 & Local Authorities (Allowances for Members) (Wales) Regulations 2007, reg 5*

26067 The allowances paid for official duties may include

1. basic allowance
2. special responsibilities allowance
3. childcare and dependent carers' allowance
4. travel and subsistence allowances.

Expenses incurred in the performance of the councillor's duties may be deducted from the allowances that are paid (see DMG 26071 et seq).

### Basic allowance

26068 The basic allowance is paid at a flat rate and can be paid in a lump sum or by instalments. The basic allowance is earnings and is payable to all councillors

1. for the time they devote to their work **and**

2. to cover costs for which no other payment is made, for example, the use of a councillor's home and telephone. The amount actually used for expenses will vary in each case.

### **Special responsibilities allowance**

- 26069 Councillors with significant extra responsibilities, for example the leader of a council, can receive an additional allowance. The amount, and how it is paid, is decided by the LA, but it will usually be paid quarterly. It should be treated as earnings.

### **Childcare and dependent carers' allowance**

- 26070 LAs may pay a childcare and dependent carers' allowance to those councillors who incur expenditure for the care of their children or dependent relatives whilst undertaking various duties as a councillor. It should be treated as earnings<sup>1</sup>.

*1 IS (Gen) Regs, reg 35(1)(f), JSA Regs, reg 98(1)(e)*

### **Expenses**

- 26071 The DM should disregard any reimbursement to the councillor by the LA, for expenses that were wholly, exclusively and necessarily incurred in the performance of the councillor's duties<sup>1</sup>, for example travel and subsistence allowances<sup>2</sup>. If the LA cannot say how much of any payment is for expenses, ask the councillor for details. Evidence from the councillor should normally be accepted. If the councillor has an income tax assessment, take this into account.

*1 JSA Regs, reg 98(2)(d); IS (Gen) Regs, reg 35(2)(c); 2 R(IS) 6/92*

- 26072 After expenses in DMG 26071 have been disregarded, the DM should deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's duties that are not reimbursed to them by the LA (see DMG 26027). The councillor must justify the amount of each expense, and the amount of expense incurred should be no more than necessary to satisfy the minimum acceptable standard from someone in the councillor's position.

### **Example**

Sharon attends three school summer fairs, in her capacity as a LA councillor. At each one she donates a small gift for a raffle. She provides evidence of her allowance for the month of July, and claims the amount she spent on the gifts as an expense. The DM decides that such an expense is no more than the necessary minimum from a person in the claimant's position, and decides that the expense was wholly, exclusively and necessarily incurred in the performance of her duties as a councillor.



26073 The DM should

1. add together all of the allowances that are paid **and**
2. deduct any expenses that are wholly, exclusively and necessarily incurred in the performance of the councillor's **official** duties<sup>1</sup>.

*1 JSA Regs, reg 99(4); IS (Gen) Regs, reg 36(3); R(IS) 16/93*

26074 For the purposes of DMG 26072, if the expenses are wholly, necessarily and exclusively incurred in the performance of **constituency work**, those expenses should only be deducted from the basic allowance. This is because this allowance is paid to every councillor and not for any specific duties.

26075 Examples of the treatment of certain expenses are as follows

1. Postage and stationery expenses that arise from the role of being a councillor rather than official duties should only be deducted from the basic allowance.
2. Secretarial expenses should only be deducted from the basic allowance.
3. Dependants' care costs cannot be deducted as an expense. This is because they are expenses incurred in order to enable councillors to perform their duties rather than necessary for the performance of them.
4. Clothing and footwear expenses wholly, exclusively and necessarily incurred in the performance of a councillor's duties should be deducted from the basic allowance. The amount of expense incurred in any week cannot always be calculated only by reference to the price paid in any week. A longer term view may be necessary to establish the actual expenditure incurred. This may involve determining or estimating how much of the use was, is or will be council use rather than private or other use. DMs may need to apply averages and estimates over a period to calculate a weekly deduction.
5. Travelling expenses should be disregarded from the basic allowance unless they are covered by the travel allowance which is already disregarded (see DMG 26071). This is different to the normal treatment of travelling expenses (see DMG 26030). When councillors travel from home to the council office or any other work place, for example surgeries, and governor's meetings it is not just travelling to work it is part of the work itself.
6. Subscriptions to trade unions or other political or professional bodies such as the Association of Labour Councillors should be deducted from the basic allowance.
7. Additional costs incurred because of the use of the home as an office, for example heating and lighting should be deducted as an expense from the basic allowance (see DMG 26029). The DM should establish what proportion of the total household bill can be regarded as arising from the councillor's work. Unless the DM is considering a past period, the cost of expenses such as heating and lighting may not be known until some time in the future. In

these circumstances an estimated figure should be agreed with the claimant taking account of any relevant evidence.

8. Pension contributions are not an expense. But, one half of any sum paid by the councillor towards an occupational or personal pension can be deducted from the gross earnings (see DMG 26020 and DMG 26023).

## Payments not claimed

- 26076 Councillors are entitled to allowances whether they are claimed or not<sup>1</sup>. If a councillor has not been paid an allowance and payment could be expected, the DM should consider taking notional income into account<sup>2</sup> (see DMG Chapter 28).

*1 R(S) 6/86; 2 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2)*

## Treatment of expenses

- 26077 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 earnings<sup>1</sup>. These can include

1. payments for travelling expenses between home and work
2. expenses for the care of a member of the claimant's family
3. school fees for a claimant's child
4. child care costs.

*1 JSA Regs, reg 98(1)(e); IS (Gen) Regs, reg 35(1)(f)*

- 26078 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 earnings<sup>1</sup>. They are treated as income other than earnings but are fully disregarded<sup>2</sup>. These can include

1. payments made for travelling expenses and overnight accommodation so that the employee can attend a meeting
2. a mileage allowance to run a car for business purposes.

*1 JSA Regs, reg 98(2)(d); IS (Gen) Regs, reg 35(2)(c); R(FIS) 4/85; 2 JSA Regs, Sch 7, para 3; IS (Gen) Regs, Sch 9, para 3*

- 26079 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 earnings<sup>1</sup>. 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.

## Payments in kind

- 26080 A payment in kind, for example free accommodation, should not be treated as earnings<sup>1</sup>. Where wages are paid at a reduced rate because of the payment in kind, consider notional earnings (see DMG 26180 et seq).

*1 JSA Regs, reg 98(2)(a); IS (Gen) Regs, reg 35(2)(a)*

- 26081 Payments in kind do not include any payment by non-cash voucher if it has been taken into account as earnings of an employed earner (see DMG 26094).

## Payments in lieu of remuneration

- 26082 Payments made in lieu of remuneration are paid in place of a person's normal wages or salary. Payments made to Justices of the Peace and LA councillors for loss of earnings are examples of such payments. Employment Tribunal compensation awards for a past employment and awards made under sex and race discrimination law can also be PILORs. Payments made in lieu of remuneration are earnings<sup>1</sup>.

*1 JSA Regs, reg 98(1)(b) & (3); IS (Gen) Regs, reg 35(1)(b); R(SB) 21/86*

## Retainers

- 26083 Retainers<sup>1</sup> 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 and should not be disregarded. Retainer payments include<sup>2</sup>

1. statutory guarantee payments **and**
2. payments made where a claimant has been suspended on medical or maternity grounds.

*1 JSA Regs, reg 98(1)(d); IS (Gen) Regs, reg 35(1)(e); 2 JSA Regs, Sch 6, para 1; IS (Gen) Regs, Sch 8, paras 1 & 2*

## Service User Groups

26084 Payments other than expenses received for taking part in a service user group (see DMG 28393) should be treated as earnings for

IS<sup>1</sup>, and

JSA(IB)<sup>2</sup>

and be attributed in the usual way with the appropriate weekly disregards. DMs will also need to consider whether the remunerative work rule applies (see DMG Chapters 20 and 41).

*1 IS (Gen) Regs, reg 35(1); 2 JSA Regs, reg 98(1)*

### Example

Jenny is in receipt of JSA(IB). She is involved in a tenants association which discusses LA housing issues. In return for attending the meetings, Jenny receives £20 from the LA. The DM decides that the payment is a payment of earnings and falls to be taken into account when calculating Jenny's entitlement to JSA(IB). The payment is subject to the normal weekly earnings disregards.

## Special occupations

26085 Some occupations are known as special occupations. These are

1. auxiliary coastguards for coastal rescue activities
2. in Scotland a P/T firefighter employed by a fire and rescue authority or a joint fire and rescue board under specified legislation<sup>1</sup>
3. in England, a P/T firefighter employed by a fire and rescue authority
4. P/T work crewing or launching a lifeboat
5. members of the territorial or reserve forces<sup>2</sup> (see Appendix 1 to this Chapter).

*1 Fire (Scotland) Act 2005; 2 SS (Contributions) Regs 2001, Sch 6, Part 1*

26086 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 treated as capital<sup>1</sup>. 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.

*1 JSA Regs, reg 110(1); IS (Gen) Regs, reg 48(1)*

### Auxiliary coastguards

26087 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 26014).

## **Part-time members of a fire brigade**

- 26088 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 26014).

## **Part-time crewing or launching of a lifeboat**

- 26089 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 26014).

## **Territorial army or volunteer reservists**

- 26090 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.
- 26091 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 earnings<sup>1</sup>.

*1 JSA Regs, reg 98(1)(e)(i); IS (Gen) Regs, reg 35(1)(f)(i)*

- 26092 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 26014).

## **Tips**

- 26093 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**

- 26094 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.

26095 Earnings of an employed earner include the amount for any payment made by a non-cash voucher that has been taken into account as earnings for the purposes of working out the amount of SS contributions to deduct<sup>1</sup>.

**Note:** The amount taken into account as earnings for SS purposes may be equal, or be more or less than, the face value of the voucher.

*1 IS (Gen) Regs, reg 35(1)(j); JSA Regs, reg 98(1)(h)*

26096 Payments in kind are not normally taken into account as earnings of an employed earner. Payments in kind do not include any non-cash voucher if it has been taken into account as earnings of an employed earner.<sup>1</sup> (see DMG 26094 above).

*1 IS (Gen) Regs, reg 35(2A); JSA Regs, reg 98(2A)*

# Earnings disregards

## Application to claimant and family

26097 Net earnings should be taken into account less any disregard. The amount of disregard will depend on

1. which benefit has been claimed
2. whether the earnings are from work in a special occupation
3. whether the claimant is single
4. who the earnings belong to.

## JSA(Cont)

26098 For JSA(Cont) disregard all the earnings of a claimant's dependants<sup>1</sup>. Disregard £5 from the claimant's own earnings unless the claimant is in a special occupation (see DMG 26084) or is a share fisherman (see DMG Chapter 27)<sup>2</sup>. In such cases disregard the claimant's earnings up to a maximum of £20<sup>3</sup>. No other disregards can apply<sup>4</sup>.

*1 JS Act 95, s 4(1); JSA Regs, reg 80(2); 2 Sch 6, para 12; 3 Sch 6, paras 9 & 10; 4 JSA Regs, reg 99(3)*

## JSA(IB) and IS

26099 The income of each member of the family is worked out separately in JSA(IB) and IS. It is then treated as belonging to the claimant. This means that earnings of the claimant's partner can affect the claim. Earnings of any children or young people in the family may also sometimes affect the claim (see DMG 26134).

26100 Disregards apply equally to the claimant and partner, with an overall maximum limit set for the family. Where more than one disregard applies, the family is normally entitled to only one disregard. This will usually be the highest one, which can be up to £20<sup>1</sup>.

*1 SS Amendment Regs 2000, reg 3*

26101 The exception to this rule is where amounts can be disregarded as in DMG 26130 - 26133. In such a case, those amounts may be disregarded in addition to the normal maximum set for the family.

## Disabled people

26102 A disregard of up to £20 a week<sup>1</sup> applies if the claimant

1. is entitled to a DP<sup>2</sup> **or**
2. would be entitled to a DP but for living in hospital as an in patient **or**

3. is a member of a couple<sup>3</sup> and their applicable amount would
  - 3.1 include a DP but for an HPP being payable **or**
  - 3.2 have included an HPP but for the claimant living in a place as in 2. and if so, they would also have satisfied the conditions in 3.1 **or**
4. is entitled to an HPP, or would be entitled to an HPP but for living in a place set out in 2.<sup>4</sup> **and**
  - 4.1 the claimant or partner has reached the qualifying age for SPC **and**
  - 4.2 immediately before reaching that age he or the partner was working P/T and was entitled to the £20 disregard under 1. to 3. **and**
  - 4.3 the claimant or partner has continued in P/T work.

*1 JSA Regs, Sch 6, para 5(1), Sch 6A, para 1(1); IS (Gen) Regs, Sch 8, para 4(1); SS Amendment Regs 2000, reg 3; 2 JSA Regs, Sch 6, para 5(2), Sch 6A, para 1(2); IS (Gen) Regs, Sch 8, para 4(2); 3 JSA Regs, Sch 6, para 5(3), Sch 6A, para 1(3); IS (Gen) Regs, Sch 8, para 4(3); 4 JSA Regs, Sch 6, para 5(4), Sch 6A, para 1(4); IS (Gen) Regs, Sch 8, para 4(4)*

## Repeat claims

26103 When considering whether the higher disregard again applies, do not take account of breaks in entitlement for any period

1. of eight consecutive weeks or less<sup>1</sup> that is
  - 1.1 on or after the date on which the claimant or partner reaches the qualifying age for SPC during which
    - 1.1.a the claimant or partner are not in P/T work **or**
    - 1.1.b the claimant is not entitled to JSA, ESA or IS **or**
  - 1.2 immediately after the date on which the claimant or partner
    - 1.2.a stopped specified training<sup>2</sup> **or**
    - 1.2.b gave up an employment rehabilitation programme **or**
2. not exceeding the permitted period<sup>3</sup> (see DMG 26104)
  - 2.1 which is on or after the date the claimant or partner reaches the qualifying age for SPC **and**
  - 2.2 during which the claimant or partner is in remunerative work **or**
3. which is<sup>4</sup>
  - 3.1 on or after the date the claimant or partner reached the qualifying age for SPC **and**



- 3.2** during which the claimant is not entitled to JSA, ESA or IS because the claimant or partner has been in specified training or on a course at an ERC.

*1 JSA Regs, Sch 6, para 5(7)(a), Sch 6A, para 1(5)(a)(i); IS (Gen) Regs, Sch 8, para 4(7)(a); 2 E & T Act 73, s 2; Enterprise & New Towns (Scotland) Act 90, s 2; 3 JSA Regs, reg 87(7) & Sch 6, para 5(7)(b), Sch 6A, paras 1(5)(b) & 21; IS (Gen) Regs, Sch 8, para 4(7)(b); 4 JSA Regs, Sch 6, para 5(7)(c), Sch 6A, para 1(5)(c); IS (Gen) Regs, Sch 8, para 4(7)(c)*

## Permitted period

- 26104 A claimant can stop getting benefit for a permitted period without losing entitlement to the higher earnings disregard<sup>1</sup>.

*1 JSA Regs, reg 87(7) & Sch 6, para 21; IS (Gen) Regs, reg 3A*

- 26105 Where the claimant or partner starts remunerative work, the permitted period is normally twelve weeks. In other cases the period is eight weeks. But there is an exception to this rule for JSA.

- 26106 Where the claimant or partner leaves remunerative work, the permitted period is eight weeks if they

1. are sanctioned for leaving voluntarily or for misconduct<sup>1</sup> **or**
2. leave the work within four weeks of starting it **or**
3. at any time in the 26 weeks before they started the work they were
  - 3.1 engaged in remunerative work **or**
  - 3.2 in relevant education **or**
  - 3.3 a student.

*1 JS Act 95, s 19*

- 26107 The permitted period is twelve weeks where the person gives up work but satisfies the trial period rules<sup>1</sup> (see DMG Chapter 34).

*1 JSA Regs, reg 74(4)*

## Lone parents

- 26108 £20 of earnings is disregarded<sup>1</sup> if

1. DMG 26101 - 26102 does not apply **and**
2. the claimant is a lone parent (see DMG Chapter 22).

*1 Sch 6, para 6; IS (Gen) Regs, Sch 8, para 5; SS Amendment Regs 2000, reg 3*

26109 - 26113

## Carers

26114 If the disregards in DMG 26101 - 26107 do not apply, a disregard of £20 can be applied<sup>1</sup> to a carer's earnings where

1. the claimant's applicable amount includes a CP **and**
2. the carer
  - 2.1 is in receipt of CA **or**
  - 2.2 at any time in the preceding eight weeks was in receipt of CA, or was treated as being in receipt of CA **or**
  - 2.3 is treated as being in receipt of CA.

*1 JSA Regs, Sch 6, para 7; Sch 6A, para 2; IS (Gen) Regs, Sch 8, para 6A*

26115 A CP may be awarded for both the claimant and partner where they both have earnings. Only £20 can be disregarded from the total amount of their combined earnings<sup>1</sup>.

*1 JSA Regs, Sch 6, para 7(2); Sch 6A, para 2(2); IS (Gen) Regs, Sch 8, para 6A(2)*

26116 If a carer's partner has earnings from a special occupation (see DMG 26118) the disregard from those earnings should be limited. The limit will be the amount which, when added to the carer's earnings, will not exceed £20<sup>1</sup>.

*1 JSA Regs, Sch 6, para 8; Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 6B*

### Example

Pamela is a carer with P/T earnings of £8 a week. Her partner David is a P/T crew member on a lifeboat, earning £20 a week. Pamela's earnings are fully disregarded. £12 is disregarded from David's earnings.

26117 If a carer's partner has earnings that are not from a special occupation, the disregard from those earnings should be limited. The limit will be the amount, up to £5, which would not, when added to the carer's earnings, be more than £20<sup>1</sup>.

*1 JSA Regs, Sch 6, para 8; Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 6B*

### Example 1

Sanjay is a carer who has P/T earnings of £17 a week. His partner Gita, has P/T earnings as a school meals assistant of £10 a week. Sanjay's earnings are fully disregarded. Gita's earnings will have a £3 disregard (£20 - £17).

### Example 2

Craig is a carer with P/T earnings of £8 a week. His partner John has P/T earnings as a barman, of £16. Craig's earnings are fully disregarded. John's earnings have a £5 disregard.

## Special occupations

- 26118 If the disregards in DMG 26101 - 26117 do not apply, a disregard of £20 can normally be allowed on earnings from special occupations<sup>1</sup> (see DMG 26084). This is one of the disregards that can apply when considering the amount of JSA(Cont) payable. See DMG 26120 for the exception to this rule.

*1 JSA Regs, Sch 6, para 9(1); Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 7(1)*

- 26119 Both members of a couple may have earnings from special occupations. Unless the exception in DMG 26120 applies, only £20 can be disregarded in total.

### Example

George is a P/T crew member on a lifeboat, earning £14 a week. His partner Molly is a member of the Territorial Army Reserve and also earns £14 a week. George's earnings are fully disregarded. Molly's earnings have a £6 disregard (£20 - £14).

## Territorial Army or volunteer reservists

- 26120 Members of the territorial or reserve forces (see Appendix 1 to this Chapter) may stop getting JSA or IS because of that employment. Earnings may then be due for a period when the claimant was not entitled to benefit.

- 26121 Take any such earnings into account as normal, if the reason JSA or IS stops is because<sup>1</sup>

1. the claimant's earnings were more than the prescribed amount **or**
2. the claimant's income was more than the applicable amount.

*1 JSA Regs, Sch 6, para 19; Sch 6A, para 5; IS (Gen) Regs, Sch 8, para 15A*

- 26122 If JSA or IS stops for any other reason, disregard any earnings due for the period when the claimant was not entitled<sup>1</sup>. For example, because the claimant fails to satisfy the labour market tests. Attendance of an annual training camp is an example of when this might happen.

*1 JSA Regs, Sch 6, para 19; Sch 6A, para 5; IS (Gen) Regs, Sch 8, para 15A*

### Example

Arthur gets JSA and earns £25 a week in the Territorial Army, paid four weekly in arrears. He receives £100 on 24 October and then goes on a 2 week annual camp from 7 November to 20 November. He does not get JSA for that period, because he is not available. When he is attending the camp his pay increases from £25 to £100 a week.

On 21 November, he is due earnings of £250 for

24 October - 6 November 2 @ £25 = £ 50

7 November - 20 November 2 @ £100 = £200

The earnings due for the period when Arthur was not entitled to JSA (7.11.96 - 20.11.96) are disregarded. The remaining earnings are taken into account as normal.

## Earnings from one or more occupations

- 26123 A single claimant may have earnings from a special occupation of less than £20, and also have another job. Up to £5 can be disregarded from the other job. The total amount disregarded can be no more than £20<sup>1</sup>.

*1 JSA Regs, Sch 6, para 10; Sch 6A, para 4; IS (Gen) Regs, Sch 8, para 8*

### Example

Peter earns £5 a week as an auxiliary coastguard and £20 a week as a waiter. His earnings as a coastguard are fully disregarded and £5 is disregarded from his earnings as a waiter.

- 26124 A claimant may have earnings from a special occupation of less than £20, and have a partner who has a P/T job. Up to £5 can be disregarded from the partner's earnings unless DMG 26125 applies. The total amount disregarded for the couple can be no more than £20<sup>1</sup>.

*1 JSA Regs, Sch 6, para 9(2); Sch 6A, para 3; IS (Gen) Regs, Sch 8, para 7(2)*

### Example 1

Ian earns £20 a week as a P/T member of a lifeboat crew. His partner Kath, earns £30 a week as a cleaner. All of Ian's earnings are disregarded. Kath's earnings have no disregard.

### Example 2

Simon earns £10 a week as a P/T member of a fire brigade. His partner Graham earns £25 a week as a check out operator. All of Simon's earnings are disregarded. £5 is disregarded from Graham's earnings.

## JSA(IB) and IS - couples

- 26125 In JSA(IB) and IS there is a £10 disregard that applies to all couples<sup>1</sup>. How it applies depends on whether

1. any other disregard also applies **and**
2. one or both of the couple have earnings.

**Note:** This disregard does not apply in JSA(Cont).

*1 JSA Regs, Sch 6, para 11; Sch 6A, para 6; IS (Gen) Regs, Sch 8, para 6*

## **Couple - £20 disregard does not apply**

- 26126 If the disregards in DMG 26101 - 26124 do not apply, a £10 disregard can be applied to the couple<sup>1</sup>. If only one of them has earnings, the full £10 can be disregarded from that person's earnings. It does not matter whether the earnings are the claimant's or the partner's.

*1 JSA Regs, Sch 6, para 11(a); Sch 6A, para 6(1); IS (Gen) Regs, Sch 8, para 6(a)*

- 26127 If they both have earnings, apply the disregard to the claimant's earnings first. Any amount of disregard left can then be disregarded from the partner's earnings. The total amount disregarded for the couple can not be more than £10.

### **Example 1**

Pat is a barperson earning £20 a week. Her partner Stan does not work. Pat's earnings have a £10 disregard.

### **Example 2**

Gordon earns £20 a week as a club pianist. His partner Hazel earns £7 a week as a cleaner. Gordon's earnings have a £10 disregard. Hazel's earnings have no disregard.

### **Example 3**

Michelle earns £7 a week as a typist. Her partner Annette earns £20 a week as a salesperson. Michelle's earnings are disregarded in full and £3 (£10 - £7) is disregarded from Annette's earnings.

## **Couple - £20 disregard also applies**

- 26128 One or more of the £20 disregards in DMG 26101 - 26124 may apply. If the total amount disregarded is
1. £10 or more, apply the appropriate disregard, the couple disregard does not apply, **or**
  2. less than £10, disregard the amount of the earnings that makes the total disregarded £10<sup>1</sup>.

*1 JSA Regs, Sch 6, para 11(b); Sch 6A, para 6(2); IS (Gen) Regs, Sch 8, para 6(b)*

### **Example 1**

Paul is a carer and earns £30 a week. His partner Steve, earns £26 a week as a barman. Paul's earnings have a £20 disregard. Steve's earnings have no disregard.

### **Example 2**

Haydn earns £3 as an auxiliary coastguard. His partner Pauline, earns £20 a week as an assistant in a care home. All of Haydn's earnings are disregarded. £7 is disregarded from Pauline's earnings.

## Other cases

- 26129 If none of the conditions in DMG 26101 - 26128 is satisfied a personal disregard of £5 a week should be allowed<sup>1</sup>.

*1 JSA Regs, Sch 6, para 12; IS (Gen) Regs, Sch 8, para 9*

## Earnings paid for employment which has been interrupted

- 26130 Disregard earnings from employment that has been interrupted<sup>1</sup>, for example by a period of sickness. SSP, SMP, Statutory Paternity Pay and Statutory Adoption Pay are examples of other payments that might be made. SSP, SMP, Statutory Paternity Pay and Statutory Adoption Pay should be taken into account as income (see DMG Chapter 28).

*1 JSA Regs, Sch 6, para 1(1)(b) ; IS (Gen) Regs, Sch 8, para 1(1)(b)*

- 26131 This disregard does not include

1. retainers (including guarantee payments)
2. earnings where the claimant has been suspended from employment.

## Earnings payable outside United Kingdom

- 26132 Earnings may be payable in a country outside the UK. If they cannot be transferred to the UK, disregard them for as long as their transfer is prevented<sup>1</sup>.

*1 JSA Regs, Sch 6, para 14; IS (Gen) Regs, Sch 8, para 11*

## Earnings paid in a foreign currency

- 26133 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission payments<sup>1</sup>.

*1 JSA Regs, Sch 6, para 15; IS (Gen) Regs, Sch 8, para 12*

## Earnings of a child or young person

**[See DMG Memo JSA/IS 64]**

- 26134 Earnings of a child or young person should be disregarded in full unless<sup>1</sup>

1. FTE has ended **and**
2. the child or young person is in remunerative work in the period when they are treated as still being in FTE.

*1 JSA Regs, Sch 6, para 17 & 18; IS (Gen) Regs, Sch 8, para 14 & 15*

26135 Where the child or young person is still treated as in FTE (see DMG 26134), disregard £20 if

**1. DCP**

**1.1** is included in the child's applicable amount **or**

**1.2** would be included but for the child living in a care home **and**

**2.** the child's earning capacity is not less than 75% of that normally expected.

In all other cases where the child or young person is still treated as in FTE, disregard £5.

26136 After applying the appropriate disregard, ignore the excess of income over the child's personal allowance and any DCP<sup>1</sup>.

*1 JSA Regs, reg 106(4); IS (Gen) Regs, reg 44(4)*

**Example**

Andy gets JSA for himself and his children. His son Wayne, aged 16, left school on 28.6.96 and is treated as still being in FTE. On 1.7.96, Wayne starts work as an apprentice printer, working 40 hours a week, for £65.

On 5.7.96 Wayne gets his first wage of £65. DCP is not payable, so £5 is disregarded from Wayne's earnings. This leaves £60, which is more than the personal allowance in payment for Wayne (£28.85). The excess (£31.15) is ignored, leaving £28.85 to be taken into account.

26137 - 26149





# Employment and training schemes

## General

26150 Employment and training schemes are funded out of public funds by the Young People's Learning Agency for England, the Chief Executive of Skills Funding or by or on behalf of the Secretary of State for Business, Innovation and Skills, Scottish Enterprise, the Highlands and Islands Enterprise, Skills Development Scotland or Welsh Ministers. Where a person is on such a scheme, establish whether they are

1. employees
  - 1.1 in remunerative work **or**
  - 1.2 in P/T work **or**
2. trainees.

## Employees

26151 Employees get a wage from their employer. Treat the wage as earnings. If the work is remunerative there will be no entitlement to benefit. If the work is P/T, take the net earnings into account, less any disregard (see DMG 26097 et seq).

## Trainees

26152 Trainees get a training allowance with no income tax or SS contributions deducted<sup>1</sup>. Treat these allowances as other income and take them into account in full<sup>2</sup> except for

1. travelling expenses repaid to the trainee (see DMG Chapter 14) unless the same expenses have already been disregarded as student income (see DMG Chapter 30)<sup>3</sup>
2. living away from home allowance (see DMG 28195)
3. training premium (see DMG 14417)
4. childminding costs paid direct to the childminder<sup>4</sup> (see DMG Chapter 14)
5. training bonus<sup>5</sup> (see DMG Chapter 29)
6. discretionary payments made under Employment and Training Law intended to meet or help meet the special needs of a person undertaking a qualifying course<sup>6</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 JSA Regs, reg 101(1); IS (Gen) Regs, reg 40(1);  
3 JSA Regs, Sch 7, para 63(2); IS (Gen) Regs, Sch 9, para 65(2); 4 JSA Regs, reg 105(10);  
IS (Gen) Regs, reg 42(4); 5 JSA Regs, Sch 9, para 32; IS (Gen) Regs, Sch 10, para 30;  
6 JSA Regs, Sch 7, para 14 ; IS (Gen) Regs, Sch 9, para 13 ; E & T Act 1973, s 2*

## **Work based learning - Skill Build and Training for Work (Wales and Scotland)**

- 26155 Work Based Learning (TfW in Scotland and WBL - SB in Wales) is a voluntary scheme for the long term unemployed in Scotland and Wales. It is provided by Scottish Enterprise, the Highlands and Islands Enterprise and Skills Development Scotland or the Welsh Ministers<sup>1</sup>. 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*

- 26156 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.

## **Employment rehabilitation programmes**

- 26157 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.
- 26158 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.

## **Work based Training for Young People and Modern Apprenticeships**

- 26159 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)  
**and**
- 6. are not benefiting from any other Government scheme (for example WBLA).

26160 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.

26161 - 26179



# Notional earnings

## Notional earnings - general

26180 Notional earnings are earnings that a person does not actually have, but is treated as having. The DM should treat the claimant or any other member of the family as having notional earnings where<sup>1</sup>

1. they perform a service for another person **and**
2. that person
  - 2.1 makes no payment of earnings **or**
  - 2.2 pays less than the rate paid for a comparable employment in the area.

The rate for comparable employment in the area is a question of fact and must be based on evidence. It should not be assumed to be the national minimum wage. If the notional income rules are satisfied the DM must take into account at least the national minimum wage rate relevant to the claimant, unless one of the situations in DMG 26183 applies.

*1 JSA Regs, reg 105(13); IS (Gen) Regs, reg 42(6)*

26181 The national minimum wage was introduced from 1.4.99 and provides that in most cases workers will be paid at least a standard hourly rate, dependant on their age and whether they are receiving accredited training.

26182 Not all the money paid to a worker counts for the purposes of the national minimum wage. Also the hours for which national minimum wage should be paid depends on the type of work the worker is doing.

**Note:** If DMs are unable to decide whether the national minimum wage applies or to calculate the national minimum wage for a particular claimant further guidance should be sought from DMA (Leeds).

26183 The DM should not take notional earnings into account<sup>1</sup> where the claimant, the claimant's partner or any member of the family

1. satisfies the DM that the means of the person for whom the service is performed, are not enough to pay, or to pay more for the service **or**
2. is engaged by a charitable or voluntary organization or is a volunteer and the DM is satisfied that it is reasonable for the services to be provided free of charge **or**
3. provides a service under an employment or training programme (see DMG Chapter 21) if
  - 3.1 no training allowance is payable to the claimant or the claimant's partner for the programme **or**

- 3.2** where such an allowance is payable it is for the sole purpose of reimbursement of travelling or meal expenses to the person participating in the programme.

*1 JSA Regs, reg 105(13), reg 105(13A); IS (Gen) Regs, reg 42(6), reg 42(6A)*

- 26184 The DM should not take notional earnings into account where the claimant is participating in a work placement which is approved by the Secretary of State (or a person providing services to the Secretary of State) before the placement commences<sup>1</sup> and for which the claimant receives no payment.

*1 JSA Regs, reg 105(13A)(c); IS (Gen) Regs, reg 42(6A)(d)*

- 26185 In DMG 26184 “work placement” means<sup>1</sup> work which

1. is practical work experience **and**
2. is not performed in expectation of payment.

*1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 42(6AA)*

### **Remunerative work**

- 26186 Where a service is being performed for some payment or in the expectation of payment, consider whether the remunerative work exclusion applies (see DMG Chapter 20). If JSA is in payment, consider also whether the availability conditions are satisfied.

### **Meaning of voluntary organization**

- 26187 Voluntary organization means<sup>1</sup> a body that is not a

1. public authority **or**
2. LA

whose activities are not carried out for profit.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(2)*

### **Meaning of “person”**

- 26188 The meaning of “person” as used in DMG 26180 **1.** and **2.** includes<sup>1</sup>

1. a limited company
2. a corporate body
3. an individual.

*1 R(SB) 13/86*

### **Performance of a service**

- 26189 A service performed for another person benefits that person. That benefit may be in not having to employ someone else to do the work. It might also be in getting extra work done at little, or no, cost.

- 26190 A service may be performed even where there is a close family relationship<sup>1</sup>, for example mother and son. In such cases there may be no formal arrangement. The person for whom the service is performed is referred to as the employer in DMG 26233.

*1 R(SB) 3/92*

### **Details of the service performed**

- 26191 There may be a low rate of payment, or no payment at all being made for the service. If so, compare it with other employment by finding out

1. who is benefiting from the service
2. why it is being provided
3. when it is being provided (for example, during the day, night, or both)
4. where it is provided
5. who suggested that it be provided
6. what duties are involved
7. how many hours each day, or week, are spent on those duties.

26192 - 26194

### **When earnings are not to be treated as paid**

- 26195 Do not treat the claimant as having earnings where

1. the claimant
  - 1.1 works for a charitable or voluntary organization, for example Attend (formerly the League of Hospital Friends) **or**
  - 1.2 is a volunteer **and**
2. it is reasonable for the service to be provided free of charge.

### **Meaning of volunteer**

- 26196 Volunteers<sup>1</sup> in this context are people who often have no connection to any charitable or voluntary organization. They perform, of their own free will, a service for another person. They do so without any legal obligation and expect no payment.

*1 R(IS) 12/92*

- 26197 A person may hope or expect to be paid for their services at a later date. If payment is to be made for work currently being done, the person is not a volunteer. If payment is to be for work done at a future date, the person may still be a volunteer.

### **Example**

Sinead starts unpaid work for the Church of England Childrens Society in January. On 1st March she becomes a paid employee for the society as a permanent F/T fundraiser. The voluntary work she did in January and February was not done in expectation of payment. During that time she was a volunteer.

### **Time exchange schemes**

- 26198 Participation in a time-exchange scheme is not voluntary work, but as the nature of the scheme is not to make any payment in cash, it is treated in the same way as voluntary work as far as the effect on JSA(IB) is concerned. The hours worked by the claimant/partner are “banked” with the scheme and can be exchanged for the same amount of time from another member who will provide their skills to the claimant. Exceptionally where expenses are reimbursed they should be treated as other income (see DMG 28393).

### **Is it reasonable**

- 26199 There is no definition of reasonable. The question should be considered based on the circumstances of each case<sup>1</sup>. No exhaustive list can be given of relevant factors but they may include matters such as

1. whether the person providing the services is getting anything in return (for example, training which may assist the person in obtaining employment could be seen as reasonable)
2. the length of time for which the services have been offered (the shorter the period, the more reasonable it may be)
3. claimants are expected to do their best to avoid dependency on benefits. They should seek paid work wherever possible.

**Note:** Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the claimant to provide the services free of charge.

*1 R(IS) 12/92*

### **Carers**

- 26200 The claimant or partner may be caring for a sick or disabled relative. In such a situation it is often reasonable for the services to be provided free of charge. In considering this the DM should take account of all the relevant circumstances. In particular the DM should take into account matters such as

1. the general background of the way in which the claimant came to be caring for the relative
2. what options would be available if they stopped providing the care



3. the nature and frequency of the care provided
4. the expectations of the family members concerned
5. their housing arrangements
6. whether the person gave up work to look after the relative.

26201 The DM may consider that it is **not** reasonable for the services to be provided free of charge. The question of notional earnings may then need to be considered. The DM should take into account matters such as

1. the means of the person cared for
2. whether they have talked about their financial relationship, and if so, what the results were
3. what would happen if the claimant made a charge for the care.

**Note:** Whether it is reasonable for the employer to pay is not relevant here. The important point is whether it is reasonable for the service to be provided free of charge.

#### **Example 1**

Timothy is a single man aged 45. He lives with and looks after his elderly disabled father. His father's only income is RP and AA. Timothy is an only child and he gave up work to look after his father. Timothy is a volunteer in looking after his father. It is reasonable for him to provide his services free of charge.

#### **Example 2**

Julie is 22 and unemployed. She lives with and looks after her disabled cousin. Her cousin gets a large weekly income from a trust fund. Julie did not give up a job to look after her cousin. The family did not expect that she should be responsible for looking after her cousin. It is not reasonable for Julie to provide her services free of charge.

## **Fine Payment Work - England and Wales**

26202 Fine payment work has been introduced for people who are genuinely unable to pay their fine. Claimants are allowed to do unpaid work in the voluntary sector as an alternative. When the work is done the fine is regarded as paid. A fines officer works out the number of hours the offender is required to work to discharge the fine. The offender is allowed to reduce the number of hours he is required to work by paying part of the fine.

- 26203 Offenders who are genuinely unable to pay their fine will be able to work off their fine at a fixed rate<sup>1</sup>. In these circumstances notional income should not be applied as offenders are not depriving themselves of income. They do not have the opportunity to be paid for the work they are doing, it is done to comply with a court order. Offenders cannot be said to be performing a service when they are complying with a court order.

*1 The Discharge of Fines by Unpaid Work (Prescribed Hourly Sum) Regulations 2004 (S.I. 2004 No. 2196), reg 2*

## **Supervised Attendance Orders - Scotland**

- 26204 These orders<sup>1</sup> are similar to fine payment work in England and Wales. They provide a community-based alternative to imprisonment for failure to pay a fine, substituting the unpaid portion of a fine for a period of constructive activity which is organised by the social work department.

*1 Criminal Procedure (Scotland) Act 1995, s 235 - 237 & Sch 7*

- 26205 The period of these orders can vary between 10 and 100 hours. The activity undertaken often includes elements of social education, financial management and unpaid work. The granting of these orders discharges the fine<sup>1</sup>.

*1 s 235(6)*

26206 - 26209

## **Calculation of gross notional earnings**

- 26210 The maximum amount of notional earnings that can be taken into account is the lower of

1. the market rate for comparable employment in the area **and**
2. the means of the person to pay for the service.

But, the DM should take into account at least the national minimum wage rate relevant to the claimant.

## **Meaning of in the area**

- 26211 In the area means the normal travel to work area. When considering this point, take account of where the claimant or partner lives and works.

## **Comparable employment**

- 26212 It is not identical or equivalent employment that has to be identified, but comparable employment. Work of a different type can be comparable if the skills and experience needed are similar to those being used.

26213 Work of the same type will usually be comparable. But it may not always be paid at the same rate. Rates of pay can be affected by the employee's

1. skills
2. age
3. seniority
4. experience.

26214 Do not assume that the highest rate paid is the normal rate for the job. If the amounts paid vary, compare the available evidence with the pay and requirements of the claimant's job.

### **Payments in kind**

26215 Payments in kind are not earnings<sup>1</sup>. Payments in kind should not be taken into account when looking at whether a person is paid, or paid less, than the rate for comparable employment<sup>2</sup>.

*1 JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(2); 2 R(IS) 2/98*

#### **Example**

Blossom works as a shop assistant for ten hours per week. She receives payment of £7 in cash and goods to the value of £35 each week. The goods to the value of £35 are payment in kind and are disregarded. The DM considers what the market rate for the job is and calculates notional earnings at £42 per week. He decides it is reasonable to deduct the £7 cash payment from the notional earnings and takes £35 per week into account.

### **Are earnings to be treated as paid**

26216 Consider whether it is reasonable to treat earnings as paid by taking into account

1. whether the employer
  - 1.1 pays less than the going rate for similar employment in the area **or**
  - 1.2 makes no payment **and**
2. a reasonable rate of pay for the job they are doing.

### **Reasonable rates of pay**

26217 The rate paid for comparable employment in the area is a question of fact. It should not be assumed to be the national minimum wage. If earnings are not immediately ascertainable, the DM treats the claimant as possessing earnings that are reasonable in the circumstances.<sup>1</sup> The DM must treat the claimant as possessing at least the national minimum wage rate that is relevant to them.

*1 IS (Gen) Regs, reg 42(5); JSA Regs, reg 105(12)*

26218 The parts of the job which would normally attract earnings, or more earnings, should be identified. Ignore hours spent under training or supervision, unless the cost is outweighed by the work performed.

### **Can the person afford to pay**

26219 The claimant may say that the employer is unable to pay. If this is the case, the claimant must submit evidence, so that the DM can consider the question. This could be

1. in the case of a S/E trader, the accounts, bank statements and details of trading turnover **or**
2. in the case of an individual, details of that person's resources and outgoings.

26220 Where the service is for a person, take account of that person's actual means. This is not the amount by which their income would exceed a notional benefit level<sup>1</sup>. It is the amount of money that they actually have available to them.

*1 R(SB) 3/92*

26221 The DM should consider what is reasonable in each case. Where the employer is getting JSA(IB) or IS they will not normally have the means to pay. But this general rule may not always apply. For example, where the "employer" gets benefits, or other payments, to pay for their personal care.

26222 - 26224

### **Amount to be taken into account**

26225 After determining the gross amount of notional earnings, deduct any actual earnings paid. Actual earnings should be calculated in the normal way.

26226 From the resulting figure, make notional deductions for

1. income tax **and**
2. Class 1 SS contributions.

### **Deduction for notional income tax**

26227 Income tax is made up of

1. a personal allowance - given to everyone
2. a married couple's allowance - which can be claimed by a member of a married couple
3. an additional personal allowance - given in special cases for a child or young person.

26228 Calculate the notional income tax to be deducted<sup>1</sup> as in DMG Chapter 27.

*1 JSA Regs, reg 105(15); IS (Gen) Regs, reg 42(8)*

## **Deduction for notional SS contribution**

26229 The deduction depends on the claimant's circumstances. Employed earners between 16 and pension age have to pay SS contributions. This is subject to the amount of their earnings. Contributions are payable at a standard rate between a lower and upper earnings limit<sup>1</sup> (see DMG Chapter 27 Appendix 2).

*1 JSA regs, reg 105(15)(b); IS (Gen) Regs, reg 42(8)(b)*

26230 Some married women can pay SS contributions at a reduced rate. These are women who

1. had chosen to pay the reduced rate before 12.5.77 **and**
2. were married before 6.4.77 **and**
3. have continued to renew their certificate of election.

26231 The right to pay reduced rate contributions ends if the woman

1. gets divorced or her marriage is annulled **or**
2. becomes a widow, and has not become entitled to WB **or**
3. loses her right to WB for a reason other than remarrying **or**
4. has had no earnings on which Class 1 contributions are payable and has not been S/E in any two consecutive tax years since 5.4.78.

26232 Standard rate deductions should be made unless there is a current certificate of election.

## **Onus of proof**

26233 In general, the burden of proof rests on the DM<sup>1</sup>. But that is not always the case. The onus of proving that the employer does not have the means to pay falls on the claimant. The DM then considers what reasonable amount of notional earnings should be taken into account.

*1 R(SB) 13/86*

26234 - 26299



# Employment protection legislation

## Payments - general

### Introduction

26300 When working out periods of continuous employment (in order to work out legislative rights that are dependant on the total length of employment with a particular employer) no distinction is made between part-time and full time service<sup>1</sup>. Periods in either type of work count when working out periods of continuous employment.

*1 ER Act 96, s 211, 212(1) & 212(3)*

26301 The effect of payments or awards made under employment protection legislation on claims for JSA or IS 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
4. which benefit has been claimed.

### Types of payments

26302 There are many different types of payments and awards including

1. statutory guarantee payments (see DMG 26314)
2. guarantee payments under a collective agreement or wages order (see DMG 26335)
3. remuneration while suspended from work on medical or maternity grounds (see DMG 26395)
4. awards made by an Employment Tribunal or Employment Appeal Tribunal for unfair dismissal (see DMG 26405)
5. interim relief pending determination of a claim for unfair dismissal (see DMG 26409)
6. remuneration under a protective award (see DMG 26422)
7. statutory redundancy payments (see DMG 26506)
8. payments for certain time off work (see DMG 26440).

## Treatment of payments - general

- 26303 Most payments under employment protection legislation should be treated as earnings<sup>1</sup> (see DMG 26013 et seq). Take them into account in the normal way.

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1)*

- 26304 Statutory redundancy payments<sup>1</sup> are the exception to this general rule. They should be ignored for JSA(Cont) but taken into account as capital for JSA(IB) or IS. Included at Appendix 4 to this Chapter is a table showing how the amount of statutory redundancy payable is calculated.

*1 JSA Regs, reg 98(2); IS (Gen) Regs, reg 35(1)*

### When payments are due to be paid

- 26305 A payment is due to be paid when it is due and owing. But, notional income rules allow for earnings which are due on termination of employment because of redundancy, but which have not been paid<sup>1</sup>, to be ignored for IS and JSA purposes. A payment is no longer due if the right to enforce payment of it is lost.

*1 JSA Regs, reg 105(7)(d); IS (Gen) Regs, reg 42(3C)*

- 26306 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.

- 26307 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.

- 26308 A complaint may be settled before the Employment Tribunal gives a decision. Any payments made are payments on termination of employment.

26309 - 26313



# Statutory guarantee payments

## General

26314 Some employees working short time or who are laid off can get statutory guarantee payments. These are payable when an employer is unable to provide work<sup>1</sup>. Bad weather or a drop in business are examples of when this might happen. Statutory guarantee payments cannot be paid for any day after employment has terminated.

*1 ER Act 96, s 28*

26315 Payments are made for days on which the employee would normally be required to work. Those days are fixed in the contract of employment. A fresh contract can be drawn up by agreement between the employer and employee.

26316 A contract may provide for work only on certain days of the week. The employee normally has to work on those days but not on other days. Statutory guarantee payments are only payable for the days the employee is contracted to work.

## Employees who do not qualify

26317 Statutory guarantee payments are not payable to employees who

1. usually work outside GB under their contracts of employment<sup>1</sup>
2. have not been continuously employed by their employer for at least one month<sup>2</sup>
3. have no normal working hours fixed by a contract of employment<sup>3</sup>, for example some insurance agents and sales representatives
4. are engaged in share fishing and paid only by a share of the profits or earnings of a fishing boat<sup>4</sup>
5. are members of the police service and armed forces<sup>5</sup>.

**Note:** Most employees on off-shore oil and gas rigs in British sectors of the Continental Shelf are entitled to payments.

*1 s 141(2); 2 s 29(1); 3 s 28(1); 4 s 199(2); 5 s 200(1) & 192(2)*

26318 Statutory guarantee payments are also not payable if the Secretary of State has made an exemption order<sup>1</sup> (see DMG 26359 and Appendix 5 to this Chapter).

**Note:** The exemption order is made by the Secretary of State responsible for employment legislation.

*1 s 35*

## Calculation

26319 Statutory guarantee payments<sup>1</sup> can be paid for the number of days that an individual is normally contracted to work in a week (up to a maximum of five days per week<sup>2</sup>) in any period of three months<sup>3</sup>. Thus if an employee is contracted to work three days per week he can only claim for three days in any three month period, or if he works for six days per week he can only claim for five days in any three month period. Limits on their amount and extent may be varied by order of the Secretary of State<sup>4</sup>. Whether those limits are revised or superseded each year depends on whether the retail prices index for September is higher (or lower) than the index for the previous September<sup>5</sup>. See Appendix 3 to this Chapter for details of the amounts payable.

*1 ER Act 96; s 30; 2 s 31(3)-(5); 3 s 31(2); 4 s 31(7) & Employment Relations Act 1999 s 34; 5 s 34*

## Employees not entitled

26320 An employee is not entitled to a guarantee payment if

1. there is no work because employees of the same or an associated employer<sup>1</sup> are involved in
  - 1.1 a strike **or**
  - 1.2 a lock out **or**
  - 1.3 other industrial action **or**
2. an employer's offer of suitable alternative work has been unreasonably refused by the employee<sup>2</sup> **or**
3. reasonable requirements imposed by the employer to ensure that the employee's services are available have not been met<sup>3</sup>.

*1 ER Act 96, s 29(3); 2 s 29(4); 3 s 29(5)*

## Payments not made by employer

26321 Guarantee payments may not have been paid for the first five workless days in a three month period. The employee and employer should be asked to state the reason. If they say that it is because a condition is not satisfied, the DM should normally accept that statement.

26322 The reason given may seem unlikely. For example, the condition quoted may not be one that would stop payment being due (see DMG 26317). Or there may be no good reason given. The DM should make a determination based on the available evidence.

## Complaints to a tribunal

26323 Employees may complain to an Employment Tribunal that they have not received all the payments that they should have<sup>1</sup>. If this is confirmed the employer will be ordered to pay any amount owing<sup>2</sup>. Settlements can also be reached by conciliation or arbitration.

*1 ER Act 96, s 34(1); 2 s 34(2)*

26324 Where such a complaint is outstanding the DM cannot determine whether an employee is due to be paid statutory guarantee payments. That question can only be decided by

- Employment Tribunals
- an Employment Appeal Tribunal
- the Court of Appeal
- the Court of Session (in Scotland).

26325 It may be a long time before a decision is made on an employee's complaint. Do not wait until the tribunal's decision is known before deciding the claim. The DM can allow the claim then revise the award once a decision is made.

## Effect of statutory guarantee payments

26326 The period over which a payment is taken into account depends on the date it is due to be paid<sup>1</sup>. That date is not always clear. It may not be the date they are actually paid.

*1 JSA Regs, reg 96(1); IS (Gen) Regs, reg 31(1)*

26327 A decision can only be made when all the evidence is available. The DM should find out

1. when any payments are due to be paid **and**
2. how many days are to be paid **and**
3. when the payments will actually be paid.

26328 In cases of doubt the DM should contact the employer. The employer may be making a guarantee payment, or may say that one is due. That evidence should normally be accepted. The claimant's own evidence can also be accepted. Any decision by a tribunal must always be accepted.

26329 Statutory guarantee payments are payable only for the first five days of lay off in a three month period. They cannot be paid for any other days. Payments for other days will usually be because of a collective agreement or wages order (see DMG 26335 et seq).

## **JSA**

- 26330 Statutory guarantee payments should be taken into account as earnings<sup>1</sup> for both elements of JSA.

*1 JSA Regs, reg 98(1)(ff)*

## **IS**

- 26331 Statutory guarantee payments should be taken into account as earnings<sup>1</sup> for IS purposes.

*1 IS (Gen) Regs, reg 35(1)(gg)*

26332 - 26334

# Collective agreements

## Introduction

- 26335 Some employers have agreements with their employees for when there is a shortage of work. These collective agreements guarantee employees
1. a minimum payment of wages **or**
  2. a minimum amount of work **or**
  3. both.
- 26336 There may be enough work available so that employees can work, or earn, as much as is guaranteed. The agreement may not then be applied. But employees will still have the benefit of it. Their position will be the same as if it had been applied<sup>1</sup>.
- 1 R(U) 23/55*
- 26337 National agreements are sometimes made for an industry<sup>1</sup>. They do not always cover all the workers in that industry. Some employers may not be associated with the agreement. Others may have their own local agreements which are different.

*1 TULR (C) Act 92, s 178(1)*

## Terms of an agreement

- 26338 Employees may have to place their services at the employer's disposal. They may have to be available and willing to work for the employer. This can be for some or all of the working days in the week.
- 26339 What an employee must do will often be set out in the agreement. The employer's guarantee will also be in the agreement. Consider both when looking at an agreement.
- 26340 An agreement may not always say what the employee must do. If wages are guaranteed, the employee's services are assumed to be at the employer's disposal on every working day<sup>1</sup>. If work is guaranteed, the employee's services are assumed to be at the employer's disposal for the guaranteed period.
- 1 R(U) 21/56 (T)*
- 26341 An agreement may be subject to a separate arrangement between the parties involved. Take this into account when deciding the effects of the agreement<sup>1</sup>.
- 1 R(U) 21/56 (T)*
- 26342 Agreements are not affected by changes in the hours or days to be worked. This is so even if part of the time worked is outside the normal hours or days<sup>1</sup>.

*1 R(U) 1/75*

## Changes to agreements

26343 Changes to agreements cannot be made until they are known to the employer and employees. They will then usually be jointly agreed and adopted. Make sure that up to date evidence of any agreement is obtained.

26344 Employers may follow an agreement that they are not a party to. In such cases there may be a delay in learning of any changes made. There may also be a delay in carrying out those changes<sup>1</sup>.

*1 R(U) 40/56*

26345 Changes to an agreement cannot affect the JSA labour market tests for a past period. They can also have no effect on the remunerative work exclusion for a past period. This is so even if it is agreed that the change should take effect for a past period.

26346 Employers may make backdated payments, because of a change to an agreement. The DM will need to find out when those payments were due to be paid. Employers will usually be able to give this information.

## Whether agreement effective

26347 An agreement may be legally enforceable. If it is not followed, court action can be taken. This is the case where

1. the agreement includes a written statement that the parties intend it to be a legally enforceable contract<sup>1</sup> **or**
2. the terms of the agreement are part of an individual's terms of employment. They then gain legal effect by being part of the contract between employer and employee incorporated either expressly or by inference.

*1 TULR (C) Act 92, sec 179*

26348 Agreements remain effective even if employers do not exercise their rights under them. For example, employers may waive their rights to an employee's services. The DM should take this into account when considering the employee's availability.

26349 An employer may not fulfil the terms of a guarantee. Even so, the employee remains under the obligation imposed by the agreement. Such a situation does not usually last long. It may be ended by

1. the employer being persuaded to fulfil the guarantee **or**
2. the agreement being properly suspended **or**
3. the employment being terminated.

26350 Once employment ends a guarantee agreement can no longer apply. If an employee is later re-employed an agreement may start to apply again. The agreement may take account of an employee's previous period of employment.

## **Suspension of agreement**

26351 If an agreement is properly suspended it stops being effective. Some agreements provide for automatic suspension, for example where production is affected by an industrial dispute. The suspension period will usually be the same as the stoppage of work.

26352 Production may be affected by other forms of protest. For example, a political protest. Whether this leads to an automatic suspension will depend on the wording of the agreement. If it refers simply to an industrial dispute there will be no automatic suspension.

26353 Agreements may be suspended by employers and trade unions acting together. Written statements will then be made confirming the suspension and giving the date from which the suspension applies. This must be a current or future date. Agreements cannot be suspended for a past period.

26354 A suspension can be applied part-way through a working week. It will remove employees obligations for days on or after the date it applies. It will not remove them for any day before.

26355 The suspension of any agreement may apply to

1. an individual employee **or**
2. a group of employees **or**
3. the employees of one employer in a federation of employers.

26356 Employees may say that an agreement no longer applies to them. The DM should ask for details of the suspension. Employers will usually be able to supply these.

26357 An employer may act alone and suspend a guarantee without the agreement of employees. Employees may then accept the change in their terms of employment by continuing to work under the new terms. See DMG 26343 if the employees do not accept the change.

26358 Some agreements set out the circumstances in which they can be revived after being suspended. The date from which this will be effective will depend on the terms of the agreement.

## Exemption orders

- 26359 Where there is a collective agreement in force, the DM can make an exemption order<sup>1</sup>. This order stops employees from being entitled to statutory guarantee payments (DMG 26314 et seq). Appendix 5 lists employers who are subject to such orders.

*1 ER Act 96, s 35*

- 26360 An exemption order may be made where the agreement allows employees to

1. have access to independent arbitration and adjudication **or**
2. appeal to an industrial tribunal.

### **Application of exemption orders**

- 26361 An order only applies where an employer is a party to the agreement. This can be as a single employer or as a member of an organization. The exemption order gives details of all parties to the agreement.

- 26362 An order cannot apply where employers follow the agreement but are not party to it. In such a case employees will not be affected by an exemption order. They will be able to get statutory guarantee payments.

- 26363 Employees are not entitled to payments where a collective agreement is suspended. If an exemption order has been made they will also not be entitled to statutory guarantee payments. This is because the exemption order continues to apply until it is revoked.

## Payment of wages guaranteed

- 26364 Employees may be entitled to guaranteed payments of wages. These are not statutory guarantee payments and are not usually paid at the same time.

- 26365 A guaranteed payment of wages is only payable if the employee is covered by an agreement. An employee is covered if

1. the agreement is in force and
2. the employer is a party to it and
3. the employee is within its terms and
4. the employment has not been terminated.

**Note:** Employees are within the terms of an agreement where they are the type of employee defined and have served any qualifying period required.



- 26366 In national agreements the guarantee week is usually the pay week quoted in the agreement. Employers who use a different pay week have a locally agreed variation to those agreements. The week used will be the employee's normal pay week.
- 26367 If a payment is guaranteed for a working week the payment covers the whole of that week. This is so regardless of how the amount is decided. The phrase "during working hours" used in this context means every working day.

### **Calculation**

- 26368 The amount to be paid under an agreement is usually
1. a part of a normal week's wage **or**
  2. equivalent to payment for a set number of hours at the basic rate.

### **Effect of guaranteed wages payments**

- 26369 Before determining the effect of guaranteed wages payments the DM should find out
1. whether a current collective agreement applies to the employee
  2. whether a payment of wages is payable under the terms of any such agreement
  3. when any payment is due to be paid
  4. the amount that is due to be paid
  5. whether an exemption order has been made.

- 26370 Any guaranteed payment of wages due to be paid should be treated as earnings<sup>1</sup> for both JSA and IS. Take it into account in the normal way.

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1) & 42(2)*

### **Work guaranteed**

- 26371 Some employees are guaranteed employment for a limited number of days or hours each week. For JSA, take any such employment into account when considering the question of the claimant's availability.
- 26372 If employers cannot provide guaranteed work, payments may have to be made instead. Details of guarantees should be in the agreement.

- 26373 An agreement which guarantees employment for a full working week should be clear. An agreement for an unlimited period should also be clear. Other agreements may not be so easily understood. For example, the agreement may use vague terms which are not defined.
- 26374 Employees usually have to be available and willing to work **for their employer** for a guaranteed period. They have to place their services at the disposal of the employer for that period. The phrase "during working hours" in this context means that guaranteed period.
- 26375 The guaranteed period may be shown in terms of days, shifts or hours. Employment may be guaranteed for
1. a limited number of days **or**
  2. a limited number of hours **or**
  3. a limited number of weeks.
- 26376
- 26377 If employment is guaranteed
1. for set days or shifts, the employee should work those days or shifts
  2. for a number of hours, the employer can say when the employee should work.  
This may be on some or all of the working days in the week.
- 26378 Employers usually let employees know when they are not needed for work. This does not remove the obligation imposed by the agreement. It also does not alter the terms of any agreement<sup>1</sup>.
- 1 R(U) 2/58*
- 26379 Employees may work for the full number of days in some weeks but not in others. Any unworked days may be identified by comparing the weeks worked.

### **Example**

Louis is guaranteed two days work a week. He must be available and willing to work for his employer on those days. In alternate weeks he works two days, Monday and Tuesday. In the other weeks he only works one day, Tuesday. In the one day weeks, Monday is the other day on which he has an obligation to his employer<sup>1</sup>.

*1 R(U) 22/56 (T)*

- 26380 It may not be possible to identify a day on which the employee should have worked. Take the day as being the last "unworked working day" in the guarantee week. That is a day on which the employee would work in a standard working week.

## Short time working instead of redundancy

26381 Approved short time is sometimes worked as an alternative to redundancy. Some agreements allow the guarantee to be reduced when this happens. The reduction depends on the terms of the agreement but is usually

1. a percentage reduction, based on the reduction of the normal working week by the short time **or**
2. the amount of time lost.

Ask to see a copy of the agreement if there is any doubt.

26382 A decision to work short time instead of redundancy cannot affect a past period. It will usually be made before the beginning of the pay week. Those affected will be told before the beginning of that week.

26383 A decision can also be made part way through a pay week. Even so it can only have effect from a current or future date. If work is lost because of an emergency it cannot be decided later that it was short time. During such an emergency the normal guarantee will apply.

### Approved short time

26384 Short time working usually means the loss of one or more complete days of work. In a standard five day week, each day lost is one fifth of that week. A five day guarantee would then be reduced by one fifth for each day lost.

#### Example 1

Katy has a standard five day working week, Monday to Friday. The guarantee is for five days. Because of approved short time working, she only works Wednesday to Friday. Her standard working week has reduced by two fifths (40%). The guarantee is also reduced by 40%, to three days.

#### Example 2

Wally has a five day working week. The guarantee only covers four of those days. Short time working of four days is introduced. His guarantee reduces by the amount of time lost. It is reduced by one day to three days.

### Night workers

26385 Night workers usually work for a standard number of shifts. Where that number is reduced because of short time working, any guarantee will reduce by an equal amount.

## **Effect of holidays**

- 26386 Holidays during short time working are treated in the same way as holidays during normal working. They remain holidays even when they fall on days when the employee may not be working.
- 26387 Guarantee agreements may have details of what should happen in weeks when there are holidays. The guarantee period may simply be reduced by the number of days of holiday. Or it may be reduced by the same percentage as the normal working week is reduced.

### **Example**

Mario has a five day working week, Monday to Friday, but is now on short time. The guarantee is for four days a week. If he is on holiday in a pay week, the guarantee will reduce by the same percentage as his working week.

He works Monday to Wednesday, does not work Thursday, and is on holiday on Friday. His normal working week is reduced by the holiday from five days to four. The period of the guarantee is also reduced by one fifth (20%) from four days to 3¼ days.

- 26388 A holiday may fall on a day in the reduced guarantee period. If so, it has the effect of further reducing that period by a day. If it falls on a day that would not be covered by the guarantee it has no further effect.

## **Effect of guaranteed work**

- 26389 Whenever work is guaranteed, consider whether the remunerative work exclusion applies. If JSA has been claimed consider also whether the availability conditions are satisfied.

26390 - 26394

# Suspension from work on medical or maternity grounds

## General

- 26395 Employees may be suspended from work under certain health and safety law. This can be on medical or maternity grounds<sup>1</sup>. Employees may be entitled to be paid while they are suspended<sup>2</sup>. Any payments due are earnings for JSA(Cont), JSA(IB) and IS<sup>3</sup>. Take them into account in the normal way.

*1 ER Act 96, s 64 & s 66; 2 s 64 & s 68; 3 JSA Regs, reg 98(1)(ff); IS (Gen) Regs, reg 35(1)(gg)*

26396

## Employees not entitled to be paid

- 26397 Employees lose the right to be paid if they unreasonably refuse the employer's offer of suitable alternative work. This applies whatever the reason for the suspension<sup>1</sup>.

*1 ER Act 96, s 65(4)(a), s 68(2), s 66*

- 26398 Employees who are suspended on medical grounds also lose the right to be paid if<sup>1</sup>

1. they are incapable of work due to sickness **or**
2. they do not meet their employer's reasonable requirements ensuring that their services are available.

*1 s 65(3) & (4)(b)*

## Calculation of pay

- 26399 Employees suspended on

1. maternity grounds can be paid for as long as they are suspended<sup>1</sup>
2. medical grounds have a limit to the payment period. This is a maximum of 26 weeks<sup>2</sup>.

The amount payable in either case is a normal week's pay for each week of the suspension<sup>3</sup>.

*1 s 68(1), s 66; 2 s 64(1); 3 s 69(1), s 66*

## Complaints to a tribunal

26400 Employees may complain to a tribunal that they have not received their full entitlement<sup>1</sup>. If this is confirmed the employer will be ordered to pay any amount owing. That amount is not due to be paid until the question has been decided by the tribunal.

*1 ER Act 96, s 64, 68 & 70*

26401 - 26404

# Compensation for unfair dismissal

## Introduction

26405 Employees have the right to complain<sup>1</sup> to an Employment Tribunal if they think that their dismissal was unfair. If this is confirmed the tribunal can

1. make an order for reinstatement or re-engagement<sup>2</sup> **or**
2. award compensation
  - 2.1 when no such order is made<sup>3</sup> **or**
  - 2.2 if such an order is made but its terms are not fully met by the employer<sup>4</sup>.

*1 ER Act 96, s 111; 2 s 113, s 114, 115 & 116(1-4); 3 s 112(4);  
4 s 117, 118 & 111*

26406 Under an order for reinstatement, employees should be treated as if they had not been dismissed. All rights and privileges must be returned to them. This includes payment of any arrears they would have had but for the dismissal.

26407 Under an order for re-engagement employees should be re-employed in a similar job to that which they lost. The terms will be set out in the order. These can include the payment of any arrears that they would otherwise have had.

26408 It may be a long time before the tribunal make their decision. Do not wait until then before deciding the claim. The DM can revise the award once the decision is made.

## Interim relief

26409 Some employees can apply to the tribunal for interim relief while waiting for a decision. This can only happen where the reason for the dismissal is connected with

1. TU membership or activities<sup>1</sup> **or**
2. the status or activities of employee representatives (redundancy and business transfers)<sup>2</sup> **or**
3. health and safety at work matters<sup>3</sup>.

*1 TULR (C) Act 92, s 161-166; 2 ER Act 96 s 128-132; 3 s 128-132*

## Amount of awards

26410 An award of compensation can be made up of

1. a basic award, based on age and length of service<sup>1</sup> (equal to the statutory redundancy payment to which the employee would have been entitled had they been dismissed for redundancy) **and**
2. an amount to compensate for any loss suffered because of the dismissal<sup>2</sup>

*1 ER Act 96, s 118(1)(a) & 119; TULR (C) Act 92, s 156; 2 ER Act 96, s 118(1)(b) & 123*

26411 The amount awarded may be reduced to take account of

1. wages that might have been earned if the employee had properly looked for other work after being dismissed<sup>1</sup> **or**
2. the employees conduct **or**
3. work which the employee may be expected to get at a lower wage than was earned in the former job **or**
4. any redundancy payment that the employee was paid **or**
5. any payment awarded under Sex Discrimination or Race Relations law<sup>2</sup>.

**Note:** This list is not exhaustive.

*1 R(U) 6/85; 2 ER Act 96, s 126*

26412 Under certain recoupment law<sup>1</sup>, the award can also be adjusted to take account of the amount of benefit received over the relevant period. This amount is then recovered from the former employer by the DM (see DMG 09420 et seq). But this only applies to formal awards and where the employee has claimed or had been granted JSA or IS.

*1 The Employment Protection (Recoupment of JSA and IS) Regs 1996*

26413 Recoupment law does not always apply, for example where the award is made under Sex Discrimination or Race Relations law. Even so, the tribunal will normally reduce the award by the amount of benefit paid for the period of the award. In such cases it is unlikely that action will be taken to recover the amount of any benefit overpaid.



## Period of awards

- 26414 The period of the award may be cut, for example where expected weekly wages are more than was paid in the former job. An Employment Tribunal will usually give details in its decision when this happens. The period covered by the award should also be given.
- 26415 If the period is not clearly stated, or there is any doubt, make a decision based on the available evidence. It may be possible to work out what was intended from the text of the decision. Only do this where there is clear evidence of the tribunal's intention.

### Example

Ishaq earns £200 a week as a machinist. On 7.10.96, he is sacked by his employer and complains to a tribunal. On 3.2.97, the tribunal decide that he was unfairly dismissed and award him £2000 compensation. The award is from 7.10.96 and has not been cut for any reason. There are no details given of what period the award covers. The DM decides that it was clearly intended to be for 10 weeks (10 x £200 = £2000) from 7.10.96.

- 26416 Always make sure that the amount and period of an award are known. The most reliable source of such information is the Employment Tribunal. Employees should also be able to give these details.

## Effect of awards - JSA

- 26417 Awards of compensation should be treated as earnings<sup>1</sup>. Take them into account over the period for which they were awarded. There are two exceptions to this rule. These are where

1. the payment is due to be paid more than 52 weeks after the date the employment ended **or**
2. the award is compensation for loss suffered by the employee because of the dismissal<sup>2</sup> **and**
  - 2.1 it remains unpaid **and**
  - 2.2 the former employer is insolvent at the time the DM is making a decision (see DMG 26419).

*1 JSA Regs, reg 98(1)(f); 2 ER Act 96, s 118(1)*

- 26418 Awards as in DMG 26417 1. and 2. should be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 3*

## Employer insolvent

26419 In England and Wales, employers are insolvent<sup>1</sup> if they

1. have been officially declared bankrupt **or**
2. have made a composition (a legal compromise agreement) or arrangement with their creditors **or**
3. have died and their estate is to be administered under a bankruptcy order **or**
4. are companies **and**
  - 4.1 a winding up order is made **or**
  - 4.2 an administration order is made **or**
  - 4.3 a resolution for voluntary winding up is passed **or**
  - 4.4 debenture holders with a floating charge on the company have
    - 4.4.a appointed a receiver or manager **or**
    - 4.4.b taken possession of charged company property **or**
  - 4.5 a voluntary arrangement is approved.

*1 ER Act 96, s 183(2)(a)*

26420 In Scotland employers are insolvent<sup>1</sup> if

1. a sequestration award is made on their estate **or**
2. a trust deed is executed for their creditors **or**
3. there is a composition contract **or**
4. they have died and a judicial factor is to divide their insolvent estate among their creditors **or**
5. they are companies **and**
  - 5.1 a winding up order is made **or**
  - 5.2 an administration order is made **or**
  - 5.3 a resolution for voluntary winding up is passed **or**
  - 5.4 a voluntary arrangement is approved **or**
  - 5.5 a receiver is appointed.

*1 s 183(2)(b)*

## Effect of awards - IS

- 26421 Awards of compensation should normally be treated as earnings<sup>1</sup>. They should be taken into account from the date they are treated as paid<sup>2</sup>. This does not include payments to compensate for the loss of the job itself (rather than for loss of earnings) or for injury to feelings. Such payments should be treated as capital.

*1 IS (Gen) Reg, reg 35(1)(g) & (h); 2 reg 31(1)*



# Protective awards

## Introduction

26422 Employers must consult their employees' representatives in good time about certain redundancy proposals<sup>1</sup>. Those representatives may be

1. elected by the employees **or**
2. representatives of a recognized TU.

*1 TULR (C) Act 92, s 188*

26423 Employers who mean to dismiss at least 20 employees within 90 days or less must start to consult at least

1. 90 days before the first dismissal, if they mean to dismiss 100 or more employees **or**
2. 30 days before the first dismissal, if they mean to dismiss 20 - 99 employees.

26424 Employee representatives can complain to a tribunal if an employer does not correctly follow the rules. The Employment Tribunal can then make a protective award if the complaint is confirmed.

## Terms of an award

26425 Under a protective award employers must make payments to any employees who have been made redundant. They must also pay any who have not been dismissed but whose representatives should have been consulted. The payments must be made for a protected period, which begins with the earlier of

1. the date on which the first of the dismissals takes effect **or**
2. the date of the award.

26426 The period will last for as long as the tribunal decide is reasonable in the circumstances. It cannot last for more than

1. 90 days, if 100 or more employees are to be made redundant within 90 days **or**
2. 30 days, if 20 - 99 employees are to be made redundant within 90 days.

## Payments not made by employer

- 26427 Employers may not pay all that they should do under a protective award. Employees can then complain to an Employment Tribunal<sup>1</sup>. If the complaint is confirmed the employer will be ordered to pay any amount owing.

*1 TULR (C) Act 92, s 192*

## Protective award not applied for

- 26428 There may be cases where

1. the employer has not followed the rules **and**
2. the employee representative has not complained to an Employment Tribunal **and**
3. the employer has paid the redundant employees in lieu of consultation.

A payment in lieu of consultation is a payment in lieu of remuneration and falls within the definition of earnings<sup>1</sup>.

*1 IS (Gen) Regs, reg 35(1)(b)*

## Effect of payments

- 26429 Payments made under a protective award are earnings<sup>1</sup> for both JSA and IS. They should be taken into account in the normal way.

*1 JSA Regs, reg 98(1)(g); IS (Gen) Regs, reg 35(1)(h)*

26430 - 26439

# Time off work provisions

## General

26440 Under employment protection law, employees may be allowed time off during normal working hours

1. for duties as a TU or elected employee representative<sup>1</sup>
2. for TU activities<sup>2</sup>
3. for public duties<sup>3</sup>
4. to look for work or make arrangements for training<sup>4</sup>
5. for antenatal care<sup>5</sup>
6. for occupational pension scheme trustees<sup>6</sup>
7. to make arrangements for dependants<sup>7</sup>
8. to undertake study or training if they are a young person<sup>8</sup>.

*1 ER Act 96, s 61; 2 TULR(C) Act 92, s 170; 3 ER Act 96, s 50; 4 s 52; 5 s 55; 6 s 58; 7 s 57A; 8 s 63A*

26441 Employees may be entitled to be paid while they are taking this time off. Any payments due are earnings<sup>1</sup>. Take them into account in the normal way.

*1 JSA Regs, reg 98(1); IS (Gen) Regs, reg 35(1)*

26442 - 26450

## Complaints to a tribunal

26451 Employees may complain to a tribunal that they have not been allowed to take time off<sup>1</sup>. If this is confirmed the tribunal may make an award of compensation. The amount will be what the tribunal considers fair in the circumstances, taking into account any loss suffered.

*1 TULR (C) Act 92, s 168(4) & 170(4); ER Act 96, s 51(1), 54(1), 57, 57B(1), 60(1)(a), 63(1)(a), 63C(1)(a)*

26452 Employees may also complain that they have not received their full entitlement to payment<sup>1</sup>. If this is confirmed the employer will be ordered to pay the amount that the tribunal finds is due.

*1 TULR (C) Act 92, s 169(5) & 172; ER Act 96, s 54(1)(b), 57(1)(b), 60(1)(b), 63(1)(b), 63C(1)(b)*

26453 A DM cannot decide whether an employee is due to be paid. That question can only be decided by the tribunal. Any amount awarded by the tribunal is not due to be paid until the question has been decided. It should not be taken into account until then.

26454 - 26499





# Payments on termination of employment

## Payments - general

### Introduction

26500 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 ended<sup>1</sup>. They are not paid for any other reason. They would not be paid but for the employment ending. From 1.10.07 legislation<sup>2</sup> was amended to change the way certain payments made on the termination of employment are treated for IS and JSA purposes. Guidance has been amended to reflect these changes.

*1 R(U) 4/92; 2 JSA Regs, Sch 6; IS (Gen) Regs, Sch 8*

26501 The effects of these payments on JSA and IS depends on

1. what type of payment is involved
2. when the payment is due to be made
3. which benefit has been claimed
4. whether there is an unworked or waived period of notice
5. whether the work that has ended was remunerative or P/T
6. when the work ended.

26502 Guidance on how payments affect

1. IS is in DMG 26580 - 26622
2. JSA is in DMG 26630 - 26768.

### Types of payments

26503 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 26504)
2. holiday pay (see DMG 26505)
3. PILON
4. refunds of occupational pension contributions
5. pension lump sums
6. payments, remuneration or awards made under employment protection and trade union law (see DMG 26300 et seq)

7. payments in kind (see DMG 26509)
8. income tax refunds (see DMG 26060)
9. compensation payments (see DMG 26600 and 26630)
10. statutory redundancy payments (see DMG 26506).

### **Payments for period before employment ended**

26504 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**

26505 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**

26506 Employees who have been continuously employed for two years may be entitled to statutory redundancy payments if they are

1. dismissed by reason of redundancy<sup>1</sup> **or**
2. laid off or kept on short time for more than a set number of weeks<sup>2</sup>.

*1 ER Act 96, s 135(1)(a); 2 s 135(1)(b) & 148(1)*

26507 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.

26508 Statutory redundancy pay is based on<sup>1</sup>

1. the length of continuous employment
2. the age of the employee
3. the amount of a week's pay (see Appendix 2 to this Chapter for the maximum amount that can be used).

**Note:** Appendix 4 to this Chapter shows how many weeks pay employees are entitled to.

*1 ER Act 96, s 162*

## **Payments in kind**

26509 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, but not if the amount of any voucher has been taken into account as earnings of an employed earner (see DMG 26093)
3. free accommodation.

## **Employment never existed**

26510 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 a payment of capital.

### **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 one week and is a payment of income.

26511 - 26514

## Payments not received

- 26515 Notional income rules allow for earnings which are due on termination of employment as a result of redundancy<sup>1</sup>, but which have not been paid, to be ignored for IS and JSA purposes<sup>2</sup>.

*1 JSA Regs, reg 71(2); 2 reg 105(7)(d); IS (Gen) Regs, reg 42(3C)*

- 26516 Any benefit which would not have been paid if the claimant had received the earnings due to him at the right time will be recovered when those earnings are paid.
- 26517 In the case of insolvent employers, benefits paid will be deducted from the amount awarded by the Redundancy Payments Service. In these circumstances, cumulative totals do not accumulate on JSA(Cont) for the period covered by a Redundancy Payments Service payment. In cases where JSA(Cont) has been paid prior to the Redundancy Payments Service award, cumulative totals will need to be adjusted to reduce them as appropriate.

**Note:** In all other cases benefit paid will be recovered under existing procedures.

## Delay in payment

- 26518 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

- 26519 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.
- 26520 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.

### **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.

### **Uncashed cheques**

26521 A cheque does not form part of a person's actual resources until it has been cleared through the banking system. The question of notional resources may need to be considered where a claimant receives a cheque which

1. the claimant is refusing to cash **or**
2. has been returned by the claimant to the employer.

### **British Telecom Newstart Scheme**

26522 This is a programme where employees agree to terminate their employment in return for a payment. It is not a redundancy programme. As it is a voluntary scheme those who opt for it do not receive PILON but they do receive a payment based on the length of service and salary. This payment falls into the definition of "compensation payment"<sup>1</sup> (see DMG 26600 and DMG 26630).

*1 JSA Regs, reg 98*



## Whether employment has terminated

26523 Employees may be temporarily away from work because

1. of a recognized, customary, or other holiday **or**
2. time off has been allowed under employment protection law (see DMG 26440).

26524 Employees who are away from work temporarily may continue to be employed. Their employment is not terminated.

### Recognised, customary or other holidays

26525 Employment will not have terminated if a claimant is absent because of a holiday, or an absence authorised by the employer.

26526 When considering if an absence from work is because of a holiday, DMs should<sup>1</sup>

1. have regard to the reality of the situation **and**
2. consider the claimant's contractual entitlement to holidays **and**
3. only treat as a holiday the weeks of the holiday for which the claimant is actually paid.

*1 R(JSA) 5/03*

26527 An employee will generally be entitled to four weeks annual leave under the relevant legislation<sup>1</sup>. DMs should assume that the claimant is entitled to four weeks paid annual leave unless there is evidence of entitlement to more than four weeks.

*1 The Working Time Regulations 1998*

### Meaning of terminated

26528 Terminated is not defined in the legislation. It should be given its ordinary meaning<sup>1</sup>. Termination of employment should also be given its ordinary meaning.

*1 R(U) 7/68(T); R(U) 8/68(T)*

26529 When a contract of employment is terminated, the employment under it is also terminated. This happens as soon as rights and obligations under the contract end<sup>1</sup>. Whether there is any intention of resuming the employment is not relevant.

*1 R(U) 7/68(T)*

26530 A decision may be made to terminate a contract from a future date. It is the date of termination and not the date of the decision that is relevant.

26531 There is a distinction between the contract itself and any employment under it<sup>1</sup>. A contract may continue during a period when the person employed under it does no

work. It may also continue when the person employed is not expected to work, for example

1. when there is a temporary lay-off **or**
2. during a period of holiday (even if wages are not paid for the holiday).

*1 R(U) 8/68(T)*

26532 Whether a contract has terminated is a question of fact to be decided on the available evidence. Employers may say that an employment has been terminated. That does not necessarily mean that it has terminated. Employment cannot be terminated without employees being given notice of that fact<sup>1</sup>. Notice cannot be given retrospectively.

*1 Brown v. Southall & Knight (1980) ICR 617*

### **Example**

Russell is on 2 weeks paid holiday from work. On Friday his employer sends him a letter stating that his employment will end on Saturday. Russell is entitled to one week's notice. He is abroad and does not get the letter until Monday. The employment does not end until Monday, when Russell gets the letter and has a reasonable opportunity to read it.

26533 It should usually be accepted that a contract has terminated

1. when due notice of termination has been given, received and has expired **or**
2. if a payment in lieu of notice has been made (except for in the example at DMG 26532) **or**
3. at the end of an engagement which was for a fixed period.

### **Contract terminated immediately before period of absence from work**

26534 DMs should decide that an employee is still in employment where the contract of employment

1. is still current **or**
2. ends at the beginning of what would be a period of absence even if the contract continued and it is expected that the employee will return to that employment after the absence because
  - 2.1 there is an express agreement (written or verbal) **or**
  - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.



## Employment suspended

- 26535 Employees may be temporarily laid off when there is no work. In such cases the contract of employment may not be terminated. Employment may be simply suspended.
- 26536 During a period of suspension the situation may change. It may become clear that the contract has terminated. The employment should then be regarded as terminated from the date the contract ends.

## Employment resumed

- 26537 People may still be employed, under a continuing or running contract, where
1. they were expected to resume their employment on a later fixed date **and**
  2. they return to that employment as arranged **and**
  3. there is no evidence of any fresh arrangement for their re-appointment.
- 26538 The number of times this may have happened should be taken into account<sup>1</sup>. For example, a person may have resumed their employment many times without the need for re-appointment. This would suggest that they are employed under a running contract.

*1 R(U) 8/68(T); R(U) 7/68*

### Example 1

Nigel is a violinist working P/T as a music teacher. He was originally employed for a fixed period of one term in 1982. He continued teaching at the school for many years without having to be re-appointed.

At the end of the summer term in 1994, he received no formal notification of discharge or re-employment. Early in the summer holidays the understanding between him and his employer was that he would resume next term. There was no evidence of any fresh arrangement for re-appointment.

It was decided that he was employed under a running contract. During the 1994 summer holiday his employment was merely suspended, not terminated<sup>1</sup>.

*1 R(U) 8/68 (T)*

### Example 2

Angus is a printer's warehouseman employed on a basis known in the trade as "casual". His union allocates him to one of a number of employers for night shift work, one night at a time.

After a night's work he receives his pay for that night and his P45 is handed back to him. He does not know whether he will work for the same employer, or at all, on

the next night. It is decided that at the end of each night's work the employment is terminated<sup>1</sup>.

*1 R(U) 7/68(T)*

26539 People may be employed under a series of fixed term contracts. Under employment protection law<sup>1</sup> these people may be regarded as being in continuous employment. For example, when redundancy and unfair dismissal is being considered. Such a decision is only for the purposes of the employment protection legislation. It is not relevant for JSA and IS purposes. It should not influence the DM in determining whether employment has terminated.

*1 ER Act 96*

## Teachers

26540 Teachers and lecturers may not be permanent members of school or college staff. In all such cases ask to see the contract of employment and examine

1. the provisions about the period of appointment **and**
2. any requirement for notice to terminate the employment.

26541 The period of the appointment may not have been given. If notice is needed to terminate the employment, find out whether notice was given. If it was, find out how and when it was given. If there is no satisfactory evidence that proper notice was given, the contract may not have been terminated.

26542 The terms of the employment may not be in the contract itself. They may be set out in some other document. For example, an LEA's "Conditions of Employment and Tenure of Teacher". Ask for a copy of the relevant document.

26543 The claimant or employer may say that no written contract of employment was issued. Ask for a copy of the letter of appointment and any other letters about the terms of the appointment.

26544 Most teachers who are not permanent members of staff fall into one of two groups. This is usually the case for those working in LEA schools. The groups are

1. sessional or temporary teachers, employed for a fixed period, normally of an academic term or year
2. supply, casual, or occasional teachers, employed to cover for the absences of others.

## Sessional or temporary teachers

26545 Contracts and letters of appointment are usually clear when the employment is for a fixed period. The fixed period will be quoted and will usually be for academic terms or years.

26546 A fresh contract or letter of appointment may be issued at the start of any later period. In such a case there is a series of agreements<sup>1</sup>. Employment is terminated at the end of each period.

*1 R(U) 8/68*

26547 Teachers may continue employment after the end of the first fixed period. Their periods of employment may be separated only by school holidays. If there is no evidence of re-appointment it may be that their employment is continuous. Their separate periods of employment could be a continuation of the first appointment period.

26548 Consider the terms of the original appointment carefully. Find out exactly how and when it was agreed that the employment would resume. Make sure that all the facts are obtained before making a decision.

### **Supply teachers**

26549 Supply teachers have their names on an LEA list of teachers who

1. are willing to take employment at short notice **and**
2. may be offered employment as and when vacancies arise due to absences (usually through sickness).

26550 Employment may be offered on a day to day basis, for example when it is not known how long an absentee will be off work. It may also be offered for an indefinite or set period, for example, to cover maternity leave.

26551 When supply teachers are added to the list, they may be sent a letter advising them of that fact. They may also be advised of what might happen, for example, that employment may be offered as and when vacancies arise. Any such written notification is not a contract of employment.

26552 The letter places no obligation on the LEA to offer employment. The teacher is not obliged to accept any vacancies offered<sup>1</sup>. When there is a vacancy the teacher is contacted, by telephone or in writing, and offered employment.

*1 R(U) 2/87*

26553 A written contract may not always be issued. For example, where the period of employment offered is short. Such employment terminates as soon as the duties for the period covered by the offer are finished<sup>1</sup>.

*1 R(U) 2/87*

26554 The period of employment offered may include a school holiday. For example, it may be for an open or a closed period that stretches over a holiday. To decide whether employment continues during the holiday, the DM should find out

1. what provision was made for terminating the appointment **and**

2. whether there was a definite agreement about what would happen after the holiday. For example, was it agreed that employment would continue at the start of the next term (or half term) or because it is reasonable to assume that a longstanding practice of re-employment will continue<sup>1</sup>.

*1 R(JSA) 5/03*

### **Whether a supply teacher's employment has terminated during a school closure**

26555 It is likely that a supply teacher's employment will have terminated where<sup>1</sup>

1. the period of employment ends immediately before a school holiday **and**
2. there is no definite agreement about whether the claimant will be returning to the employment at the start of the following term **and**
3. the claimant has no established cycle of work which includes school holidays.

*1 R(JSA) 5/03*

26556 - 26559

### **Maternity leave and absence**

26560 Under employment law<sup>1</sup>, all pregnant employees have the right to at least 26 weeks **ordinary maternity leave**, regardless of their length of service. Additional maternity leave may also be taken<sup>2</sup>.

*1 ER Act 96, s 71; 2 s 73; Maternity & Parental Leave etc 1999, SI 1999 No. 3312*

26561 In both type of cases, employees should generally return to

1. their original employer (or successor)
2. the same job
3. on terms and conditions no less favourable than those which applied before the absence.

26562 Employees entitled to 26 weeks ordinary maternity leave must return to work at the end of that period. Additional maternity leave will start immediately after ordinary maternity leave and continue for up to a further 26 weeks.

26563 Employees continue to be employed during the 26 week ordinary maternity leave period. It counts towards the employee's period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

26564 The employment contract will continue in a very restricted form during a period of additional maternity leave, but may also be ended during this period by agreement, resignation or dismissal. Statutory continuity of service will count any periods of additional maternity leave; but contractual length of service does not have to.

26565

### **Suspension on maternity grounds**

26566 Some employees may be suspended from work on maternity grounds. This can happen if there is a health and safety risk to new or expectant mothers that cannot be removed. Such employees are normally entitled to be paid while they are suspended.

26567 Employees continue to be employed during the maternity suspension period. It counts towards the period of continuous employment for

- seniority
- pension rights
- other personal length of service payments, for example pay increments.

### **Claim within 29 weeks of child-birth**

26568 A woman may make a claim within 29 weeks of having given birth. That claim may include a period which would have been a holiday but for the maternity leave. Find out whether she has any contractual right to return to work in addition to her statutory right.

26569 The contract may not have continued during the 29 week period. For example, the woman may have to be re-appointed or re-employed rather than simply resume her duties.

26570 Employment should then normally be regarded as terminated on the last day for which wages or salary was paid. This is so even though the employer has a statutory duty to re-employ the woman if she exercises her right to return.

### **Adoption leave**

26571 Adoption leave<sup>1</sup> means a period of absence from work on ordinary or additional adoption leave under relevant legislation<sup>2</sup>.

*1 PA Regs, reg 2(1) & 3; IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3);*

*2 Employment Rights Act 1996, s 75A & 75B*

26572 Employees who adopt a child under the age of 18 have the right to 26 weeks ordinary adoption leave<sup>1</sup>. A further 26 weeks of additional adoption leave will also be available<sup>2</sup>.

*1 PA Regs, reg 18(1); 2 reg 20(2)*

26573 Employees continue to be entitled to their normal terms and conditions of employment during the 26 weeks of ordinary adoption leave and during the 26 weeks additional adoption leave<sup>1</sup>. 1 reg 1926574 Following a period of adoption leave, employees have the right to return to the same job<sup>1</sup>.

*1 reg 26*

## **Paternity leave**

26575 Paternity leave<sup>1</sup> means a period of absence from work on leave following the birth or adoption of a child under relevant legislation<sup>2</sup>. It is available to employed parents who

1. have or expect to have parental responsibility for a new child **and**
2. are the biological father of the child or are the mother's husband or partner **and**
3. have completed at least 26 weeks continuous service with their employer up to and including the 15th week before the baby is due **and**
4. have told their employer of their intention to take leave by the end of the 15th week before the expected week of the child's birth.

*1 reg 2(1) & 3; 2 ER Act 1996, s 80A & 80B*

26576 Eligible employees have the right to choose either one week, or two consecutive weeks paternity leave. They are also entitled to return to the same job when the paternity leave ends.

## **Agreement not to work notice**

26577 Many employees are entitled to notice before their employment is ended. Their employment does not terminate until that notice period ends where they

1. are given the full period of notice that they are entitled to **and**
2. do not have to work that notice **and**
3. get their normal salary for the notice period.

This is sometimes called gardening leave.

26578 - 26579

# Income Support and payments on termination

## General

- 26580 Employees may be entitled to certain payments when their employment ends. These include
1. payments in lieu of remuneration (see DMG 26582)
  2. payments in lieu of notice (see DMG 26589)
  3. holiday pay (see DMG 26594)
  4. payments of compensation (see DMG 26600)
  5. payments due for any period before the employment ended (see DMG 26615)
  6. statutory redundancy payments (see DMG 26621)
  7. income tax refunds (see DMG 26060).
- 26581 How such payments affect a claim for IS 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. whether the work that has ended was remunerative or P/T
  5. when the work ended.

## Payments in lieu of remuneration

- 26582 Payments in lieu of remuneration are paid in place of a person's normal wages or salary. How they affect a claim for IS depends on whether the work that has ended was remunerative or P/T.

## Remunerative work

- 26583 Where the employment was remunerative the PILOR should be disregarded<sup>1</sup>.
- 1 IS (Gen) Regs, Sch 8, para 1(1)*
- 26584

## Part-time work

- 26585 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the first day of entitlement the PILOR should be treated as

earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the PILOR should be disregarded<sup>1</sup>.

*1 IS (Gen) Regs, Sch 8, para 2*

26586 - 26588

## Payments in lieu of notice

- 26589 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 PILON instead. For IS, such payments are earnings<sup>1</sup>.

*1 IS (Gen) Regs, reg 35(1)(c)*

- 26590 How PILON affects a claim for IS depends on whether the work that ended was remunerative or PT.

## Remunerative work

- 26591 Where the employment was remunerative the PILON should be disregarded<sup>1</sup>.

*1 IS (Gen) Regs, Sch 8, para 1(1)*

26592

## Part-time work

- 26593 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the first day of entitlement the PILON should be treated as earnings and taken into account in the normal way. If it ended **before** the first day of entitlement the PILON should be disregarded<sup>1</sup>.

*1 IS (Gen) Regs, Sch 8, para 2*

## Holiday pay

### Employment terminated

- 26594 If holiday pay is payable more than four weeks after the employment terminated, it should be treated as capital<sup>1</sup>. See DMG 32692 for the exception to this rule in trade dispute cases.

*1 IS (Gen) Regs, reg 35(1)(d) & 48(3)*

## Remunerative work

- 26595 Where the employment was remunerative the holiday pay should be disregarded<sup>1</sup>. However if employment was suspended earnings should be taken into account in the normal way.

*1 IS (Gen) Regs, Sch 8, para 1(1)*



## Part-time work

- 26596 The employment that ended may have been P/T, that is **not** remunerative. If it ended **on or after** the first day of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that IS may be reduced for the appropriate period. If it ended **before** the first day of entitlement the holiday pay should be disregarded<sup>1</sup>.

*1 IS (Gen) Regs, Sch 8, para 2*

## Employment interrupted

- 26597 Holiday pay payable more than four weeks after the employment was interrupted should be treated as capital<sup>1</sup>. How it affects a claim for IS depends on whether the work that has been interrupted was remunerative or P/T.

*1 reg 35(1)(d)*

## Remunerative work

- 26598 Where employment is interrupted before the first day of entitlement all holiday pay is disregarded<sup>1</sup> unless the employment has been suspended.

*1 Sch 8, para 1(1)(b)*

## Part-time work

- 26599 If part-time employment is interrupted **on or after** the first day of entitlement then holiday pay is taken into account in the normal way but any holiday pay payable more than four weeks after the interruption should be treated as capital. If part-time employment is suspended all earnings should be taken into account in the normal way<sup>1</sup>.

*1 Sch 8, para 2(2)*

## Payments of compensation

### Meaning of compensation

- 26600 A payment is compensation only if
1. it is made for or on the termination of employment **and**
  2. claimants have
    - 2.1 not received any PILON which they are due to **or**
    - 2.2 only received part of the PILON they are due to **or**
    - 2.3 not received any or all of the PILON they are due to because they have waived their right to it<sup>1</sup>.

A payment made for or on the termination of employment is not compensation if claimants have worked all their notice and been paid for it or if they have received all the PILON they are due to.

**Note:** The rules on payments of compensation for IS are different to the rules for JSA (see DMG 26630).

*1 IS (Gen) Regs, reg 35(3)(a)*

26601 Payments of compensation do not include

1. any bonus or commission (see DMG 26045)
2. PILOR, except any periodic sums paid because employment has ended through redundancy
3. PILON
4. holiday pay
5. retainers (see DMG 26083)
6. payments for expenses which are not wholly, exclusively and necessarily incurred in the performance of the duties of the employment (see DMG 26077)
7. awards made under employment and trade union law, including any award of compensation (see DMG 26300 et seq)
8. payments in kind (see DMG 26080 and 26509)
9. payments for a period when the claimant is on maternity or sick leave (see DMG 26130)
10. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)
11. any occupational pension
12. statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26621 - 26622)
13. refunds of contributions to which the claimant is entitled under an occupational pension scheme
14. compensation payable under certain education law<sup>1</sup>
15. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme<sup>2</sup>.

*1 Education Reform Act 1988, s 173 & 178(3) & (4); 2 IS (Gen) Regs, reg 35(3)(a)*

### Example

Julia, who is a lone parent, claims IS because she has been made redundant. She is entitled to four weeks notice. She did not work any notice because her job ended

on the day her employer gave her notice. Her employer says her final wages included

1. three weeks holiday pay
2. a payment for statutory redundancy
3. an ex-gratia payment.

The employer did not pay her any PILON because Julia waived her right to it.

The DM decides the ex gratia payment is compensation because Julia waived her right to the four weeks notice she was entitled to. Holiday pay and the payment for statutory redundancy are not compensation.

### **Effect of payments of compensation**

- 26602 The effect of payments of compensation on IS depends on whether the
1. work which has ended was P/T or remunerative (see DMG 26603 - 26604) **and**
  2. payment of compensation is earnings (see DMG 26603) **and**
  3. payment of compensation which is earnings overlaps with other kinds of earnings (see DMG Chapter 25)<sup>1</sup>.

*1 IS (Gen) Regs, reg 29(3)*

### **Part-time work**

- 26603 Claimants are in P/T work if they work and are not treated as being in remunerative work<sup>1</sup> (see DMG Chapter 20 for guidance on the remunerative work rules) All the payment of compensation is earnings if the work ended **on or after** the first day of entitlement<sup>2</sup>.

*1 IS (Gen) reg 35(3)(c) & 29(4D)(a); 2 Sch 8, para 1*

#### **Example:**

Whilst off work sick, Jane's employer terminates her part-time employment and pays her a goodwill payment. The payment is not in lieu of notice but was a compensation payment. Jane is not treated as being in remunerative work for the purposes of attributing that payment because whilst she is off sick she is not in remunerative work.

### **Remunerative work**

- 26604 If a person was in remunerative work then the payment of compensation is disregarded<sup>1</sup>.

*1 IS (Gen) reg 5(5) & Sch 8, para 1*

## Payments for period before employment ended

- 26615 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. How it affects a claim for IS depends on whether the work that has ended was remunerative or P/T.

### Remunerative work

- 26616 If the work was remunerative, earnings due for the period of that employment should normally be disregarded<sup>1</sup>. This includes any payments held in hand by the employer when the employment ends. It does not include any
1. retainers including
    - 1.1. statutory guarantee payments
    - 1.2. payments made where a person has been suspended on medical or maternity grounds
  2. awards made under employment protection or trade union law (including “out of court” settlements).

*1 IS (Gen) Regs, Sch 8, paras 1 & 2*

### Partner’s earnings on retirement

- 26617 Any earnings paid or due to be paid to the claimant’s partner should be disregarded where<sup>1</sup>
1. the partner was engaged in remunerative work as an employed earner (or would have been if the employment had been in the UK) **and**
  2. the partner has reached the qualifying age for SPC on retirement **and**
  3. the earnings were paid or due to be paid because of the partners retirement.

*1 IS (Gen) Sch 8, para 1A*

### Part-time work

- 26618 The work that ends may have been P/T. If it ended **on or after** the first day of entitlement take any earnings into account in the normal way.
- 26619 If it ended **before** the first day of entitlement disregard all earnings with the exception of retainers<sup>1</sup> (this includes statutory guarantee payments and payments made where a person has been suspended on medical or maternity grounds). Retainers should be taken into account in the normal way (see DMG 26083).

*1 IS (Gen) Sch 8, para 2*

- 26620 The employment will not have ended where
1. the contract of employment is still current **or**
  2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because
    - 2.1 there is some express arrangement that employment will resume **or**
    - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

**Note:** For further guidance on whether employment has terminated, see DMG 26523 - 26577.

## **Statutory redundancy payments**

- 26621 Employees may receive statutory redundancy payments on termination of their employment. Such payments should be taken into account as capital.
- 26622 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments, for example severance payments may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is treated as capital.

26623 - 26629



# Jobseeker's Allowance and payments on termination

## Meaning of compensation payment

26630 For JSA compensation payment means<sup>1</sup> any payment made for the termination of employment other than

1. payments for any period before the employment ended (see DMG 26640 et seq)
2. "emoluments" (whether in money or in kind) accrued before the employment ended (see DMG 26651)
3. holiday pay (see DMG 26652 et seq)
4. certain payments, remuneration or awards under employment law and trade union law, including awards of compensation (see DMG 26300 - 26453)
5. statutory redundancy payments (and payments made in lieu of statutory redundancy payments) (see DMG 26664 - 26666)
6. payments in kind (see DMG 26667)
7. refunds of contributions to which the claimant is entitled under an occupational pension scheme
8. payments of occupational pensions (see DMG Chapter 28)
9. periodic sums paid because of redundancy (see DMG 26014)
10. payments for a period when the claimant is on maternity or sick leave (see DMG 26130)
11. payments for expenses wholly, exclusively and necessarily incurred in the performance of the employment (see DMG 26078)
12. any lump sum payments received under the Iron and Steel Re-adaption Benefits Scheme.

**Note:** The rules on compensation payments for JSA are different to the rules for IS (see DMG 26600).

*1 JSA Regs, reg 98(2) & (3)*

26631 The DM must show that a payment of compensation has been received. How the payment is described is not binding.

## Effect of compensation payments

26632 The DM should determine

1. if a compensation payment has been received (see DMG 26630) **and**

2. the period covered by the compensation payment (see DMG 26675 et seq) **and 1**
3. if the claim is affected by the compensation payment (see DMG 26633 et seq).

26633 How compensation payments affect a claim depends on whether the work that has ended was remunerative or P/T.

### Remunerative work

26634 A payment of compensation may be received on termination of remunerative work (see DMG Chapter 20). These payments should be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 1*

26635

### Part-time work

26636 The work that ended may be P/T, which is **not** remunerative. If it ended **on** or **after** the first day of entitlement treat any compensation payment<sup>1</sup> as earnings from the date on which it is due to be paid. Take it into account for the period covered by the payment<sup>2</sup> (see DMG 26675 et seq). If it ended **before** the first day of entitlement any compensation payment should be disregarded<sup>3</sup>.

*1 reg 98(1)(b); 2 reg 94(6); 3 Sch 6, para 2*

26637 - 26638

### Payment by someone other than employer

26639 Compensation is normally paid by the employer, but may be paid by someone else. It is compensation regardless of who pays, for example

1. LAs may make payments where people have to give up employment handling food and drink under public health laws
2. one company taking over another may discharge that other company's obligations to pay compensation
3. The Department of Trade and Industry may make payments in lieu of notice to employees of an insolvent employer under employment protection law<sup>1</sup>.

*1 ER Act 96, s 182, 184(1), (2) & (4), 185, 186 & 187; TULR (C) Act 92, Sch 2*

### Remuneration for period before employment ended

26640 Pay may have accrued in the period before the employment ended, for example final earnings or wages held in hand. Such pay is due because of the employment itself not because of its termination. It is not a compensation payment.



- 26641 Severance payments may be made when employment ends. Such payments may be worked out on past years of service in the employment. But they are not made for a period before the employment ended. They will not be exempt from the definition of a compensation payment<sup>1</sup>.

*1 R(U) 5/92*

## **Remunerative work**

- 26642 When remunerative work ends earnings due to be paid for the period of that employment should normally be disregarded<sup>1</sup>. This includes any payments held in hand by the employer, when the employment ends. It does not include any
1. awards made under employment protection or trade union law (including “out of court” settlements)
  2. retainers including
    - 2.1. statutory guarantee payments
    - 2.2. payments made where a person has been suspended on medical or maternity grounds.

*1 JSA Regs, Sch 6, para 1*

- 26643 If the remunerative work of the claimant’s partner has ended because of retirement, disregard any earnings due to be paid for that employment if on retirement the partner
1. is entitled to RP **or**
  2. would be entitled if the contribution conditions were satisfied<sup>1</sup>.

*1 Sch 6, para 1A*

## **Part-time work**

- 26644 The employment that ends may have been P/T, that is **not** remunerative (see DMG Volume 4, Chapter 20). How this affects the claim will depend on when the employment ended.
- 26645 If employment ends **before** the first day of entitlement disregard any earnings except<sup>1</sup> any
1. payment by way of a retainer including
    - 1.1. statutory guarantee payments
    - 1.2. payments made where a person has been suspended on medical or maternity grounds.
  2. awards made under employment protection or trade union law (including “out of court” settlements)

*1 Sch 6, para 2*

26646 If employment ends **on or after** the first day of entitlement, take any earnings from it into account in the normal way.

26647 The employment will not have ended where

1. the contract of employment is still current **or**
2. the contract of employment comes to an end before the beginning of a period of absence and it is expected that the claimant or partner will resume employment after the period of absence because
  - 2.1 there is some express arrangement that employment will resume **or**
  - 2.2 it is reasonable to assume that a long standing practice of re-employment will continue.

26648 - 26650

## Emoluments

26651 Emoluments are forms of profit or gain from employment, including perks or advantages of the employment. They may be in money or in kind. They accrue while the claimant is employed but may not be paid until the employment ends. Examples are

1. payments made for items that the employer had previously agreed to pay, for example subscriptions to a private health scheme, or payment of a child's school fees
2. payments of employees' expenses incurred during the employment, for example a car mileage allowance, travelling expenses, or the cost of overnight accommodation
3. rights under a share option agreement<sup>1</sup>
4. pension lump sums, where entitlement accrued during working life and not simply because of the employment ending. Employees are automatically entitled to such lump sum payments from their pension schemes.

**Note:** This does not include any part of the lump sum paid because of enhancement due to the employment ending, for example in an early retirement or redundancy package. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

5. lump sum payments of commuted pension where entitlement to the pension accrued before the employment ended. These may be paid under schemes that allow employees to cash in part of their weekly pension entitlement. The amount cashed in is then taken as a lump sum.

**Note:** This does not include any part of the sum paid because of enhancement due to the employment ending. If the evidence shows that this may be the case, ask the employer for full details of any enhancement.

*1 R(U) 5/92*

## Holiday pay

### Employment terminated

- 26652 A person may receive a payment of holiday pay on the termination of employment. If the holiday pay is payable before the first day of entitlement it should be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 1*

26653

### Remunerative work

- 26654 Where the employment was remunerative the holiday pay should be disregarded<sup>1</sup>.

*1 Sch 6, para 1(1)*

26655

### Part-time work

- 26656 The employment that ended may have been P/T and therefore **not** remunerative. If it ended **on** or **after** the first day of entitlement the holiday pay should be treated as earnings and taken into account in the normal way. This means that the amount of JSA payable may be reduced for the appropriate period. Any holiday pay payable more than four weeks after the P/T work ended should be treated as capital. If it ended **before** the first day of entitlement the holiday pay should be disregarded<sup>1</sup>.

*1 Sch 6, para 2*

### Mariners

- 26657 Special rules apply to mariners<sup>1</sup> employed on vessels not used wholly or mainly for the disposal of sludge.

*1 SS (Mariners Benefits) Regs 1975, reg 2; JSA Regs, reg 166(2)*

- 26658 Such mariners are not regarded as available for employment (see DMG Chapter 21) on any day in the period of leave where

1. they are entitled to leave with pay when a voyage ends, **and**
2. their employment is terminated before the end of that period of leave.

- 26659 Where the employment has terminated holiday pay should be disregarded<sup>1</sup>.

*1 Sch 6, para 1*

## Employment interrupted

- 26660 If employment is interrupted **on** or **after** the first day of entitlement all holiday pay is taken into account in the normal way with any payable more than four weeks after the interruption<sup>1</sup> treated as capital.

*1 JSA Regs, reg 98(1)(c)*

## Remunerative work

- 26661 Where employment was remunerative and is suspended any holiday pay is taken into account in the normal way.

## Part-time work

- 26662 Where part-time employment is suspended any holiday pay received **on** or **after** the first day of entitlement is taken into account in the normal way but any payable more than four weeks after<sup>1</sup> is treated as capital.

*1 reg 98(1)(c)*

26663

## Statutory redundancy payments

- 26664 Employees may receive statutory redundancy payments on termination of employment. Such payments are capital. They should be ignored for JSA(Cont) but taken into account as capital for JSA(IB).
- 26665 An employer may pay employees more redundancy pay than they are entitled to under the law. Any excess is not exempt from the definition of a compensation payment (see DMG 26630). This means that where P/T employment ceases **on** or **after** the first day of entitlement the DM should calculate the period over which the compensation payment should be taken into account.
- 26666 Some employees may not receive statutory redundancy payments that they are entitled to. Redundancy **type** payments for example severance, ex-gratia or golden handshakes may be paid instead. In these circumstances only an amount of such a payment up to the level of the employee's actual entitlement to a statutory redundancy payment is capital. Where P/T employment ceases **on** or **after** the first day of entitlement the DM should calculate the period over which the compensation payment is to be taken into account (see DMG 26675 et seq).

*1 reg 98(3)*

## Payments in kind

- 26667 Payments in kind (see DMG 26509) are not compensation payments<sup>1</sup>. They are not earnings and should be disregarded for both elements of JSA<sup>2</sup>.

*1 JSA Regs, reg 98(3); 2 reg 103(6) & Sch 7, para 22*

26668 - 26671

## Bonus payments

- 26672 A person may receive a bonus payment on the termination of employment. The DM should consider the facts of each case to determine if the bonus payment is a compensation payment. Facts to be considered include

1. why has the bonus payment been made **and**
2. does the employer normally run a bonus scheme to reward employees for length of service, quality of work etc. If so, how much is normally paid?

### Example 1

Perry was in remunerative work for the period from January to June. His employer promised him a loyalty bonus if he worked for the company for over four months. The loyalty bonus of £150 was paid when Perry left in June. Perry claims JSA.

The DM decides that the loyalty bonus is

1. not a compensation payment because the bonus payment was a reward for working for the employer for over four months **and**
2. earnings which are disregarded because remunerative work has ended (see DMG 26634).

26673



# Calculation of period compensation payment taken into account - Jobseeker's Allowance

26674 From 1.10.07 DMG 26675 - 26768 will only be considered in cases where claimant's P/T work terminates **on** or **after** the first day of entitlement. **All** retainers will continue to be taken into account in the normal way, as will **all** earnings where employment has been suspended.

26675 The period over which a compensation payment is taken into account is a continuous period. It is not affected by the days on which a person would normally have worked (see flowchart at DMG 26768).

26676 The period starts on the date on which the payment is treated as paid<sup>1</sup> (see DMG Chapter 25). When it ends will depend on what the employer says about the payment. The payment may be wholly or partly

1. in lieu of notice **or**
2. because of the early termination of a contract of employment for a term certain (a "fixed term contract") **or**
3. for a combination of the reasons listed in 1. and 2. **or**
4. for another reason.

*1 JSA Regs, reg 94(6) & 96; 2 TULR (C) Act 92, s 188-192*

26677 The period will end<sup>1</sup> on the

1. expiry date, which is based on
  - 1.1 the period of notice **or**
  - 1.2 the date when any fixed term contract was due to run out (see DMG 26714) **or**
2. date on which any consultation period would have ended (see DMG 26744) **or**
3. standard date, which is worked out using a set formula (see DMG 26750).

*1 JSA Regs, reg 94(6)*

## When period ends - summary

26678 Where an employer says that the compensation payment is

1. in lieu of notice or because of the early termination of a fixed term contract **and**
  2. **not** also in lieu of consultation
- the period ends on the expiry date<sup>1</sup>.

*1 reg 94(6)(a)*

26679 Where an employer says that the compensation payment is in lieu of notice or because of early termination of a fixed term contract, the period ends on the later of<sup>1</sup>

1. the expiry date **or**
2. the standard date.

*1 JSA Regs, reg 94(6)(a) & (b)*

26680

26681 In any other case, for example, where an employer says that the compensation payment is not of any nature<sup>1</sup>, the period ends on the standard date<sup>2</sup>.

*1 R(U) 1/94; 2 JSA Regs, reg 94(6)(c)*

26682 The guidance at DMG 26678 - 26681 is summarized in a flowchart at DMG 26768.

## **Maximum period**

26683 The period over which a compensation payment can be taken into account is limited to 52 weeks from the date on which the payment is treated as paid<sup>1</sup>. This is so even where payments are made for longer periods.

*1 reg 94(7)*

### **Example**

Employment ends on 20th October. Compensation of 62 weeks is due to be paid on that day. The payment would normally be taken into account up to 26 December of the following year. It is a compensation payment so it can only be taken into account for the period 20th October to 17th October of the following year, 52 weeks after.

26684



# The expiry date

## Meaning of the expiry date

26685 The expiry date means<sup>1</sup>

1. the date on which any period of notice
  - 1.1 was due to run out under statute, contract or custom (see DMG 26687 and 26704) **or**
  - 1.2 would have run out had it not been waived **or**
2. where the period of notice is longer, than the period given in **1.1.**, the date on which that longer period runs out (see DMG 26725) **or**
3. the date on which any fixed term contract was due to end (see DMG 26714).

*1 JSA Regs, reg 94(8)(b)*

## Meaning of period of notice

26686 Period of notice means<sup>1</sup> the period of notice of termination of employment

1. that a person is entitled to by
  - 1.1 statute **or**
  - 1.2 contract (whichever is the longer) **or**
2. if they are not entitled to such notice, the period of notice which is customary in the employment.

*1 reg 94(8)(b)(i)*

## Entitlement to notice

### Contractual and statutory entitlement differs

26687 The period of notice to which the claimant is entitled is the longer of

1. the period to which the claimant is entitled by contract (see DMG 26693) **and**
2. any statutory minimum (see DMG 26688).

## Statutory right to minimum period

26688 Employment protection law gives most employees the right to a minimum period of notice<sup>1</sup>. The exceptions are

1. crew members on ships registered in the UK, employed under crew agreements approved by the Secretary of State<sup>2</sup>
2. crown servants and members of the armed forces<sup>3</sup>
3. employees who have broken their contract of employment (see DMG 26701).

**Note:** Most employees on offshore oil and gas platforms in British sectors of the Continental Shelf are entitled to notice.

*1 ER Act 96, s 86; 2 s 199; 3 s 191 & 192*

26689 Employees must have been continuously<sup>1</sup> employed for one month or more before being entitled to minimum notice<sup>2</sup> under statute. The amount of notice they should get depends on how long they have been employed. They should be given at least

1. one week's notice, if they have been continuously employed for less than two years
2. one week's notice for each year of employment, if they have been continuously employed for between two and twelve years
3. twelve weeks notice if they have been continuously employed for twelve years or more.

*1 part XIV; 2 s 86*

26690 Employees who have been continuously employed for four weeks or more should give their employers at least one week's notice<sup>1</sup>. This does not increase with longer service.

*1 s 86*

26691 Fixed term employees on a determinate fixed term contract have the end date of their contract notified to them at the start of their contract, and those on project work have the same right to legislative notice as other employees.

26692

## **Contractual entitlement**

- 26693 The period of notice due under a contract is usually stated in the contract. But that period may be extended by agreement between the employer and employee, for example by a redundancy agreement. The period of notice agreed then becomes the period due under the contract.
- 26694 If there is evidence that this may have happened for example, if the employer pays more PILON than was due under the written contract ask to see a copy of the agreement. If there is no written agreement, ask to see any other evidence of the change.
- 26695 Contractual entitlement is affected if the agreement gives the employee a legal right to a longer period. In such a case, the employee is contractually entitled to the longer period. If the agreement simply provides for more compensation than would otherwise be due, contractual entitlement is not affected.
- 26696 The period of notice due may not be stated in writing. If so, ask the employer and employee whether it was agreed verbally. If it was and they agree on the period due, that period will be the period due by contract.
- 26697 There may be no written or verbal contract. Under common law a reasonable period of notice is an implied term of a contract of employment<sup>1</sup>. The DM should consider what is reasonable taking account of all the circumstances and the custom in the type of employment.

*1 R(U)37/53; R(U)4/56(T); R(U)10/58; R(U)10/64; R(U)5/74*

- 26698 The DM should note that
1. employees may be paid PILON at the same rate as their earnings. The period might then be considered to be the period implied under their contracts
  2. the higher an employee's rate of pay and status, the longer the period of notice should be
  3. an employee's length of service and status can be compared with other employees, whose contractual entitlement is known.

## **Employment terminated by employee**

- 26699 An employee is not entitled to notice from the employer if it was the employee's initiative to end the employment.

## **Employment terminated by mutual agreement**

- 26700 Employees are entitled to notice if they agree to an employer's suggestion or give in to their pressure (see DMG 26732 where rights to notice are waived). Employers may still make payments in such circumstances. The DM should ask for evidence of the circumstances that led up to the termination. A determination can then be made as to whether the initiative came from the employer or the employee.

## **Employee dismissed for misconduct**

- 26701 Employers may pay compensation even if they have dismissed employees without notice, for example for breach of contract, or misconduct. This is known as summary dismissal. Contracts of employment often state the offences that will attract summary dismissal.
- 26702 Employees who have broken their contracts are not usually entitled to notice. But an employer may not be sure that summary dismissal was justified, and may pay compensation. If the employer
1. says that PILON has been paid as per statute or contract, accept the employer's statement and treat the claimant as being entitled to notice
  2. does not say that the payments were in lieu of notice, accept the claimant has no right to notice but not where there is clear evidence to the contrary.
- 26703 Where it is accepted that no notice is due, there can be no expiry date. The standard date should then be used (see DMG 26750).

## **Notice customary in the employment**

- 26704 Not all employees are entitled to statutory notice. Some employees have contractual entitlement. Some have neither statutory nor contractual rights to notice, for example civil servants.
- 26705 In such cases, the expiry date is based on the period of notice normally given in the employment. This is known as the notice customary in the employment. The expiry date is the date on which the customary notice is or would be due to run out<sup>1</sup>.

*1 JSA Regs, reg 94(8)(b)*

## Civil servants

- 26706 Civil servants have no statutory or contractual rights to notice. The DM will need to find out what is customary. Evidence can be found in publications detailing the terms and conditions of service for civil servants, such as the
1. Civil Service Management Code
  2. Pay and Conditions of Service Code
  3. relevant Departmental codes.
- 26707 Departments frequently run voluntary early retirement or severance schemes. Publications that advertise such schemes may also provide evidence of customary notice.
- 26708 Customary notice may vary according to how the employment ends. Where there is compulsory redundancy, it is customary for departments to give
1. 6 months notice to all except casual staff (subject to 2. and 3.)
  2. 9 months to those aged over 60 with between 10 and 25 years service
  3. 12 months to those aged over 60 with less than 10 years service.
- Note:** The periods in 2. and 3. cannot be extended past the 65th birthday.
- 26709 Where redundancy is voluntary, it is customary for most Departments to negotiate notice with the employee. Such notice is either explicitly or implicitly agreed.

### Example 1

Employee and employer agree that the employee will work for another three months before the employment ends. Both parties have agreed that the notice period is three months. The customary notice is also three months.

### Example 2

Employee and employer agree that the employee will leave on a particular date. That date is one month from the date on which the agreement is made. There is an implicit agreement to one month's notice and the customary notice is therefore one month.

## Payment made for a period longer than notice period

- 26710 The expiry date is the date the longer period would have been due to run out if the employer says a compensation payment has been paid for a period longer than the period of notice (see DMG 26686). This does not apply if the
1. claimant had a fixed term contract (see DMG 26714) **or**
  2. DM considers it unreasonable (see DMG 26711)<sup>1</sup>.

*1 JSA Regs, reg 94(8)(b)(ii) & (9)*

### Example

Max claims JSA after being made redundant. He is entitled to twelve weeks notice. Max works six weeks of his period of notice after being given notice by his employer. His employer says that the payment which was made to Max when he finished work included twelve weeks PILON.

The DM does not have to consider a longer period because the employer says she has paid Max twelve weeks PILON which is no more than the period of notice he was entitled to.

**Note** The DM would have to consider whether it is unreasonable to extend the expiry date to the date the longer period would have run out if the employer had said she paid more than twelve weeks PILON.

26711 To determine if it is unreasonable to extend the expiry date to the date when the longer period would have run out, the DM should take into account

1. the amount of the compensation payment **and**
2. the level of pay normally received by the claimant in the employment<sup>1</sup> **and**
3. any other relevant fact<sup>2</sup>.

*1 JSA Regs, reg 94(9); 2 R(SB) 6/88*

26712 The expiry date is the date when the

1. longer period is due to run out if the DM does not consider it unreasonable<sup>1</sup> **or**
2. period of notice (see DMG 26686) runs out (see DMG 26725) if the DM does consider it unreasonable<sup>2</sup>.

*1 JSA Regs, reg 94(8)(b)(ii); 2 reg 94(9)*

### Example 1

Brian earns £150 a week. He is entitled to four weeks notice. He gets £900 PILON when his employment ends which the employer says is for six weeks.

The DM decides the expiry date is the date when the six weeks PILON runs out because it is not unreasonable as the payment made by the employer is equal to the pay Brian would normally earn over six weeks.

### Example 2

Amrit earns £200 a week. She is entitled to four weeks notice. She gets £800 PILON when her employment ends which the employer says is for 26 weeks.

The DM decides the expiry date is the date when the period of notice runs out because it is unreasonable to extend the expiry date as the payment made by the employer is equal to the pay Amrit would normally earn over four weeks.

## Payment made for a period shorter than notice period

26713 The DM should calculate the period over which a compensation payment should be taken into account as normal (see DMG 26675 et seq) where

1. an employer pays **or**
2. an employee accepts, for whatever reason

a compensation payment for a period shorter than the notice period<sup>1</sup>.

*1 R(U) 1/94*

### Example

Joan was in remunerative work until 28.2.97. She claims JSA. On termination of her employment, her employer pays two weeks PILON because this is all the employer could afford to pay. Joan's contract states that she is entitled to four weeks notice.

The DM calculates the period over which the compensation payment (PILON) should be taken into account and determines that the expiry date applies. The compensation payment is taken into account for the period that the notice was due to run out under Joan's contract, that is four weeks.

## Fixed term contracts

26714 Some employees have contracts of service that state the period of the employment, for example a number of years. These are called contracts for a term certain or fixed term contracts.

26715 Not all such contracts provide simply for employment for a stated period. Some provide that employment can

1. end during the stated period, providing notice is received **or**
2. continue after the end of the stated period until notice is received.

26716 Where an employee was employed under a fixed term contract, ask to see a copy of it. Where the employee was entitled to notice, the guidance in DMG 26687 et seq should be applied.

26717 A fixed term contract may end before completion of the employment period provided. Payment may then be made as compensation for the early termination of the contract. The amount paid is not relevant. The expiry date is the date on which the contract was due to expire<sup>1</sup>.

*1 JSA Regs, reg 94(6)(a) & (8)(b)(iii)*

## Date on which notice given

- 26718 When considering the period of notice, the DM must first establish the date notice was given.

## Receipt of notice

- 26719 Notice is given only when it is

1. received by
  - 1.1 the employee<sup>1</sup> **or**
  - 1.2 the employer **or**
  - 1.3 someone acting on their behalf **or**
2. mutually agreed between the parties involved.

*1 Brown v. Southall & Knight (1980) ICR 617 at 626-9*

- 26720 To be effective notice must be received by the employee or someone acting officially on their behalf. A notification of proposed redundancies sent to the DM<sup>1</sup> is not notice to terminate the employment.

*1 TULR (C) Act 92, s 193*

- 26721 Notice is given when both the employee and employer know that the employee will leave on a specific date.

### Example 1

Cleo is on holiday abroad. On Friday 15th November her employer posts her notice that her employment will end on Friday 22nd November. She returns home and reads the letter on Friday 29th November. Notice is given on 29th November.

### Example 2

On Friday 3rd May, Eric's employer posts him notice that his employment will end on Friday 10th May. Eric is on holiday, but rings home on Tuesday 7th May. His mother reads the notice to him over the phone. He returns home and reads the notice himself on Friday 17 May. Notice has been given on Tuesday 7th May.

## Notice

- 26722 Notice can be given orally or in writing. It must be definite and clear. Notice cannot be valid if it states that one party can withdraw without the agreement of the other. It is valid if it shows that notice could be withdrawn by mutual consent.



### Example

An employer sends a letter giving the date on which an employee must leave under a voluntary redundancy scheme. It advises that the employee can withdraw if the financial estimates given are wrong. It says that the notice can be withdrawn by mutual agreement. The letter does not count as valid notice unless and until the employee indicates their acceptance.

- 26723 A provisional date of termination in a general statement is not effective notice. Whether any notification or announcement is notice to terminate employment is a question of fact. It may simply be a general warning of closure or an intention to reduce staffing<sup>1</sup>.

*1 R(U) 6/73; R(U) 4/80*

### Example 1

On Tuesday 14th May Diana is warned by letter that there will be redundancies. She is told that her name is on the list of employees to be made redundant. The employer proposes to give formal notice on Friday 17th May.

On Monday 20th May she receives notice that her employment will end on Friday 24th May. Notice is received on Monday 20th May. The letter of 14th May is only a warning letter and is not effective notice.

### Example 2

In January, employees receive notice that their factory will be closing on a gradual basis. This is probably going to start in March and end in November. This general notice of the intended closure is not effective notice.

26724

## Calculation of date notice runs out

- 26725 The date on which a period of notice runs out must be decided. Do not count the day on which the notice is received. For example, an employee entitled to one week's notice, receives notice on Monday. That notice runs out on the following Monday. This applies even if

1. notice is received before the employee has done any work on that day **or**
2. it is stated that the week's notice runs out before the date calculated.

**Note:** This does not apply where notice is to operate from a future date.

- 26726 Where a month's notice is due, the date that notice runs out will vary. It will depend on whether notice was received on the last day of the month or not<sup>1</sup>.

*1 R(U) 5/73; R(U) 9/73*

### Example 1

Enya is dismissed without notice on 14th June. She is entitled to one month's notice. Her notice period runs out on 14th July.

### Example 2

Frank is dismissed without notice on 29th February. He is entitled to one month's notice. His notice period runs out on 31st March.

## Notice to operate from a future date

- 26727 Notice can operate from a future date<sup>1</sup>. It may be given before the employment terminates but not have effect until after then.

*1 Adams v GKN Sankey Ltd [1980] IRLR 416*

- 26728 The employer must state that the notice is to run from a future date. This may be implicitly or explicitly. It does not apply where the employer simply attributes the PILON to a future period. When working out when such a period of notice runs out, include the date it is said to operate from.

### Example 1

A letter of notice is prepared on Friday 17th May, but is dated Monday 20th May. It is handed to the employee personally on 17th May. The letter says that employment will end on Friday 17th May. The employee is entitled to one week's notice.

The employer is implicitly saying that notice will run from a future date, Monday 20th May. Notice was received by the employee on 17th May. A period of one week from and including Monday 20th May ends on Sunday 26th May, that is when the notice runs out.

### Example 2

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May and that her notice is to run from Monday 27th May. She is entitled to one week's notice.

The employer is explicitly saying that notice will run from a future date, Monday 27th May. The employee received notice on 17th May. A period of one week from and including Monday 27th May ends on Sunday 2nd June, when the notice runs out.

### Example 3

A letter of notice is prepared on Friday 17th May and is dated 17th May. It is handed to the employee personally on that same date. It tells her that employment will end on 17th May. She is entitled to one week's notice.

The letter also says that the employer is to pay her £150 PILON for the period Monday 27th May to Saturday 1st June. This is because she has got holiday pay for week beginning 20th May.

In this case the employer is not saying that notice will run from a future date. The employee received notice on Friday 17th May. It runs out on Friday 24th May.

**Note:** See DMG 26652 for the treatment of holiday pay.

## Notice shortened or extended

26729 Employment may not always end on the date given in the notice. Before that date arrives, further notice may be received that it will end on a different date. The employer and employee might also agree that the notice period should be shortened or lengthened.

26730 When this happens notice does not have to be given again. Do not recalculate the notice from any later date<sup>1</sup>. Full notice does have to be given again if

1. notice is cancelled rather than shortened **or**
2. employer and employee enter into a new contract of employment, rather than lengthening the notice period.

*1 Mowlem Northern Ltd v Watson [1990] IRLR 500*

26731 Where there is a new contract the notice due is the period to which the employee is entitled under it. It may also be the period which is customary in the employment.

## Waiver of notice

26732 Rights to notice may be given up (waived)<sup>1</sup>. There may be evidence that this has happened. For example, employees may sign agreements waiving their rights to notice. Employees waive their rights when they

1. leave their employment voluntarily **or**
2. agree with their employers to leave without serving out notice or getting PILON.

*1 ER Act 96, s 86(3)*

## Calculation of date notice would have run out

26733 Where notice has been waived, the expiry date is the date that the notice would have run out. Employees leaving voluntarily, or mutually agreeing to leave, would be entitled to the amount of notice that the employer must give. The amount that has to be given by the employee is not relevant. There may be clear evidence of the date that the notice would have run out.

### **Example**

On Monday 6th May, Angus is given notice that he is to be made redundant. The letter says that his employment will end on Friday 30th August. He is entitled to twelve weeks notice. He is also told that if he wants to leave on Friday 31st May he can do so by agreeing to it in writing. He agrees to leave on Friday 31st May.

In this case the notice would have run out on Friday 30th August. That is the date on which his employment would have ended if he had not waived his right to notice.

- 26734 In most cases there will be no evidence of the date when notice would have run out. Work it out from the date the employer and employee both knew exactly when the employee would leave. Do not include that date in the calculation.

### **Example 1**

On Friday 6th September Freda tells her employer that she will be leaving on Friday 13th September. She has to give her employer one week's notice. The employer would have had to give her six week's notice. Freda is paid compensation.

Freda waives her right to notice by leaving voluntarily. The DM calculates the date that notice would have run out.

There is no evidence of the date notice would have run out so it is worked out from the 6th September. That is the date when both Freda and her employer knew when the employment would end. Six weeks from the 6th September, excluding that day, ends on Friday 18th October. That is when the notice period would have run out.

### **Example 2**

An employer advertises a voluntary redundancy scheme. Employees are told that if they are accepted under the scheme they must leave their employment on Friday 28th June.

Kevin, who is entitled to twelve weeks notice, applies on a form dated Monday 6th May. He hands the form to his employer on that date. On Monday 20th May, his employer gives him a letter dated that day, telling him that he has been accepted on the scheme.

It details the payments that Kevin will be entitled to. It also confirms that the date of leaving will be Friday 28th June, subject to Kevin's written agreement to the terms offered. On Tuesday 21st May Kevin signs his agreement and posts it the same day. His employer gets it on Thursday 23rd May.

Kevin has waived his rights to notice by leaving with mutual agreement. The date notice would have run out is worked out from Thursday 23rd May. That is the date when both Kevin and his employer know that the employment will definitely end on Friday 28th June. 12 weeks from Thursday 23rd May, excluding 23rd May, ends on Thursday 15th August, when the notice period would have run out.

26735 - 26739

## Payment for consultation period in employment protection law

26740 There are rules that must be followed before employees can be made redundant<sup>1</sup>. One of these is that employers have to consult employees' representatives as soon as possible. Those representatives may be

1. elected by the employees **or**
2. representatives of a recognized trade union.

DMG 26423 gives further details.

*1 TULR (C) Act 92, s 188-192; TURER Act 93, s 34*

26741 Employees representatives can complain to an Employment Tribunal if an employer does not follow the rules. The Employment Tribunal can then make a protective award (see DMG 26422). If the employer fails to pay, the employee can complain to an Employment Tribunal.

26742 An employer may dismiss employees as redundant without consulting the employees representatives. The employer may then pay compensation. This is often in return for the representatives not complaining to an Employment Tribunal.

### Calculation of period

26743 Some or all of a payment of compensation may be said to be in lieu of consultation. The period over which it is taken into account will end on the later of<sup>1</sup>

1. the date on which the consultation period would have ended (see DMG 26744)
2. the expiry date, where the payment is also PILON or because of early termination of a fixed term contract (see DMG 26685 et seq)
3. the standard date (see DMG 26750).

**Note:** See DMG 26679 and flowchart at DMG 26768.

*1 JSA Regs, reg 94(6)(b)*

### Date consultation period would have ended

26744 The date the consultation period would have ended depends on

1. the number of employees that the employer dismissed, or intended to dismiss, as redundant **and**
2. the period within which they were to be made redundant.

26745 The consultation period ends on

1. the 90th day after consultations began, if 100 or more employees are to be dismissed within 90 days **or**
2. the 30th day after consultations began, if 20 or more employees are to be dismissed within 90 days.

26746 The 30 and 90 days start on the day that consultations began. If consultations did not begin before employment ended, the period starts on the day after the employment ended. When working out the consultation period, all seven days of the week should be used.

**Example 1**

An employer intends to dismiss 250 employees as redundant within 90 days. Consultations with the unions start on 6th May. Ida's employment ends on 31st May. She gets compensation in lieu of consultation. The period of consultation starts on 6th May and ends on 3rd August.

**Example 2**

An employer intends to dismiss 120 employees as redundant within 90 days. Consultations with the unions have not begun when Noel's employment ends on 31st May. He gets compensation in lieu of consultation. The period starts on 1st June and ends on 29th August.

26747 - 26749

## The standard date - other cases

26750 Compensation is taken into account over a period starting on the date it is treated as paid<sup>1</sup> (see DMG Chapter 25). When that period ends depends on what the employer says about it. Unless the employer says that some or all of the compensation was paid

1. in lieu of notice (see DMG 26686) **or**
2. on account of the early termination of a fixed term contract (see DMG 26714)

the standard date should be applied (see DMG 26679 - 26681).

*1 JSA Regs, reg 96 & 94*

## Meaning of the standard date

26751 The standard date means<sup>1</sup> the earlier of

1. the expiry date (see DMG 26685 et seq) **and**
2. the last day of the period worked out by using a set formula (see DMG 26760).

*1 reg 94(8)(c)*

## Employee works out notice due from employer

26752 The expiry date is the last day of the notice period due to an employee. But employees who get compensation may stay in their employment for the whole of that period. The expiry date will then be the last day of that employment. That will also be the standard date.

26753 Employees may not be allowed to stay in their employment for the full notice period due. The expiry date will then be after the last day of employment. The standard date will also be after the last day of that employment.

26754 Some employees may be allowed to work for longer than the notice period due to them. Their expiry date will then be before the last day of their employment. The standard date will also be before the employment ends.

## No notice due

26755 In some cases there may be no period of notice due to an employee. For example, they may

1. have been dismissed summarily due to misconduct (see DMG 26701) **or**
2. be in employment where no notice is due under contract, statute, or by custom, for example, MPs or clergy.

26756 In such cases, an expiry date cannot be worked out. The standard date will then be the last day of the period worked out by using the set formula.

26757 - 26759

## Calculation of period - the set formula

26760 The DM should

- determine the amount of compensation the claimant is due
- divide that amount by the maximum weekly amount
- round any fraction down to a whole number
- treat that number as a period of weeks
- work out when a period of that length would end.

## Amount of compensation

26761 Employers must give employees a written statement showing how the redundancy payment has been worked out<sup>1</sup>. If there is any doubt, ask to see a copy of the statement.

*1 ER Act 96, sec 165*

26762 The exception to this rule is where an Employment Tribunal makes an award, stating the amount to be paid. The employer does not then have to provide a written statement. The Employment Tribunal report will give details of the amount due.

## Maximum weekly amount

26763 The maximum weekly amount is set by employment protection law<sup>1</sup> (see Appendix 2) and can change<sup>2</sup>. It is used to work out

1. awards of compensation for unfair dismissal **and**
2. redundancy payments **and**
3. payments made by the Department of Trade and Industry to employees of insolvent businesses.

*1 s 227(1); 2 Employment Rights (Increase of Limits) Order*

26764 Divide the amount of compensation due by the maximum weekly amount. Always use the figure that is set on the date that the compensation is due<sup>1</sup>. This is so regardless of the claimant's earnings from the employment.

*1 JSA Regs, reg 94(8)(c)(ii)*



## Number of weeks

- 26765 The result of the calculation in DMG 26764 must be rounded down to the nearest whole number. That number is treated as a number of weeks. For this purpose week means a period of seven consecutive days<sup>1</sup>.

*1 JS Act 95, s 35(1)*

## Last day of the period

- 26766 The DM should work out the period starting on the date the compensation is treated as paid<sup>1</sup>. The period will then last for the relevant number of weeks. It will end on the last day of that period.

*1 JSA Regs, reg 96 & 94*

## Standard date

- 26767 Compare the last day of the period worked out as in DMG 26766 with the expiry date (see DMG 26685). The standard date is the earlier of the two dates.

### Example 1

Liam is entitled to six weeks notice and is given notice on 27 June. His employment ends on 11 July. Notice would have run out on 8 August. He is due to be paid £4,000 by his employer on 11 July (£2,408 is statutory redundancy pay, £200 is holiday pay and the rest is ex gratia). The maximum weekly amount is £280.

Compensation is  $\text{£}4,000 - \text{£}2,608 = \text{£}1,392$  divided by  $\text{£}280 = 4$  (rounded down).

A period of four weeks starting on 11 July ends on 7 August.

The standard date is the earlier of 8 August (the expiry date) and 7 August (the date worked out using the set formula).

The standard date in this case is 7 August.

### Example 2

Lynn is entitled to three calendar months notice. On 31 May she is dismissed without notice. Notice would have run out on 31 August. She gets an ex gratia payment of £2,570 on 1 June. The maximum weekly amount is £280.

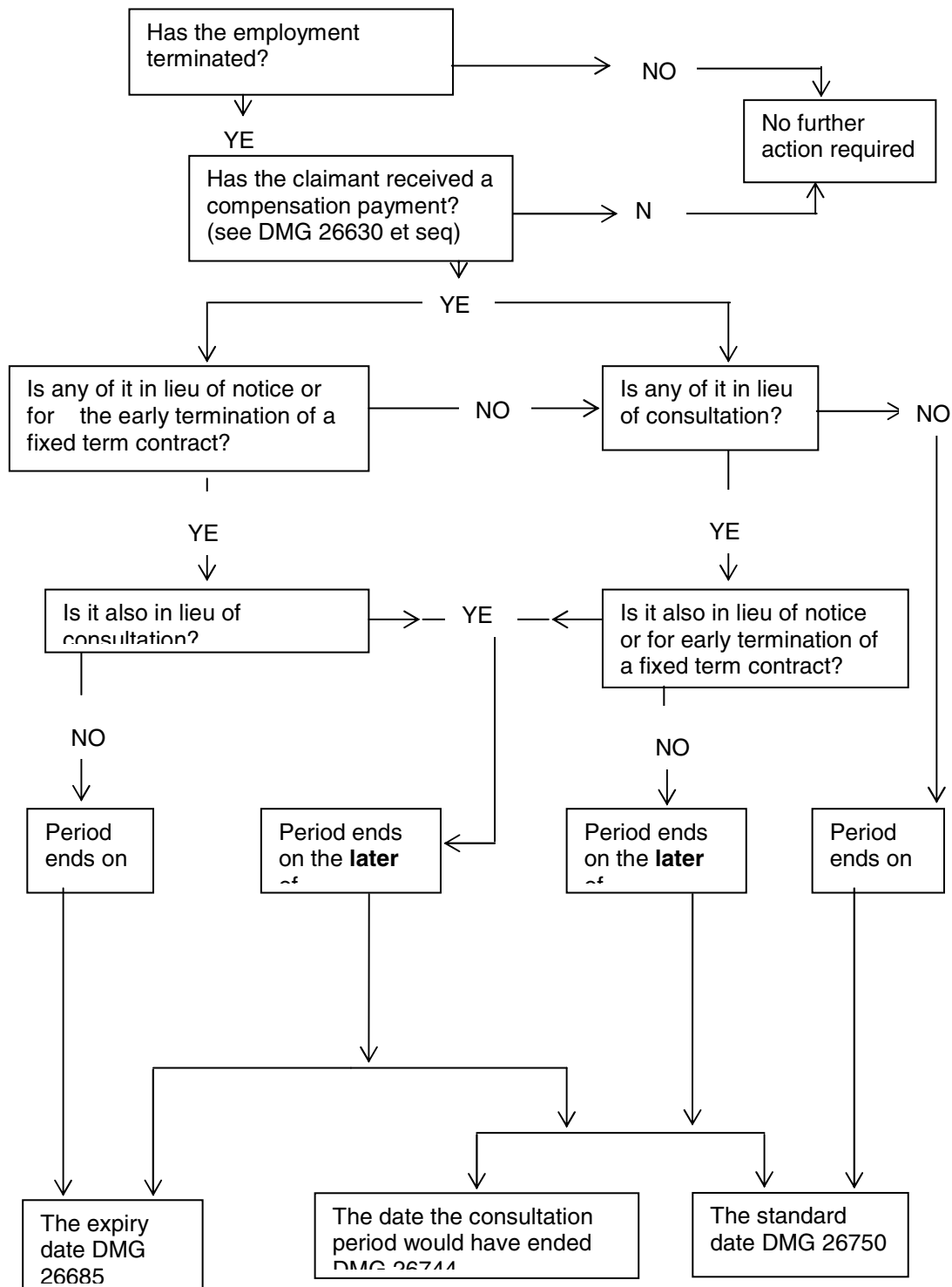
$\text{£}2,570$  divided by  $\text{£}280 = 9$  (rounded down). A period of nine weeks starting on 1 June ends on 2 August.

The standard date is the earlier of 31 August (the expiry date) and 2 August (the date worked out using the formula). The standard date in this case is 2 August.

- 26768 The guidance in DMG 26675 - 26767 is summarized in the following flowchart which should only be considered in cases where the claimant's P/T work terminates **on** or **after** the first day of entitlement.

26769 - 26999

## Calculation of period for JSA - flowchart



# Appendix 1

## **Territorial or reserve forces**

Territorial or reserve forces prescribed in SS (Contributions) Regs 2001, Sch 6, Part I.

Royal Naval Reserve

Royal Marines Reserve

Army Reserve

Royal Fleet Reserve

Territorial Army

Royal Air Force Reserve

Royal Auxiliary Air Force

Royal Irish Regiment (to the extent that its members are not members of the regular naval, military or air forces of the Crown)



## Appendix 2

### Maximum weekly amount

Payable under section 227 of the Employment Rights Act 1996.

	£
From 1.2.00	230
From 1.2.01	240
From 1.2.02	250
From 1.2.03	260
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 3

### Statutory guarantee payments

Amount payable to employees under section 31 of the Employment Rights Act 1996.

	£
From 1.2.00	16.10 per day
From 1.2.01	16.70 per day
From 1.2.02	17.00 per day
From 1.2.03	17.30 per day
From 1.2.04	17.80 per day
From 1.2.05	18.40 per day
From 1.2.06	18.90 per day
From 1.2.07	19.60 per day
From 1.2.08	20.40 per day
From 1.2.09	21.50 per day
From 1.2.10	21.20 per day
From 1.2.11	22.20 per day





# Appendix 4

## Statutory redundancy payments

### Calculation of amount

Redundancy pay under section 135 of the Employment Rights Act 1996.

1. the length of time an employee was continuously employed **and**
2. the age of the employee **and**
3. the amount of a week's pay.

The table on the next page shows how many weeks' pay employees are entitled to.

To use the table, read off the employee's age and number of complete years service.

**Note:** The maximum number of years that can be used is 20.

The table will then show how many weeks pay the employee is entitled to.

The table starts at age 20, because no one below this age can get a redundancy payment.

Periods of employment before age 18 do not count.

### Reduction in amount

The amount awarded is reduced where the employee is aged between 64 and 65.

The reduction is 1/12 for each complete month by which their age exceeds 64.

Service (years)	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Age (years)																			
20	1	1	1	1	-														
21	1	1½	1½	1½	1½	-													
22	1	1½	2	2	2	2	-												
23	1½	2	2½	3	3	3	3	-											
24	2	2½	3	3½	4	4	4	4	-										
25	2	3	3½	4	4½	5	5	5	5	-									
26	2	3	4	4½	5	5½	6	6	6	6	-								
27	2	3	4	5	5½	6	6½	7	7	7	7	-							
28	2	3	4	5	6	6½	7	7½	8	8	8	8	-						
29	2	3	4	5	6	7	7½	8	8½	9	9	9	9	-					
30	2	3	4	5	6	7	8	8½	9	9½	10	10	10	10	-				
31	2	3	4	5	6	7	8	9	9½	10	10½	11	11	11	11	-			
32	2	3	4	5	6	7	8	9	10	10½	11	11½	12	12	12	12	-		
33	2	3	4	5	6	7	8	9	10	11	11½	12	12½	13	13	13	13	-	
34	2	3	4	5	6	7	8	9	10	11	12	12½	13	13½	14	14	14	14	-
35	2	3	4	5	6	7	8	9	10	11	12	13	13½	14	14½	15	15	15	15
36	2	3	4	5	6	7	8	9	10	11	12	13	14	14½	15	15½	16	16	16
37	2	3	4	5	6	7	8	9	10	11	12	13	14	15	15½	16	16½	17	17
38	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	16½	17	17½	18
39	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	17½	18	18½
40	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	18½	19
41	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	19½
42	2½	3½	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½
43	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
44	3	4½	5½	6½	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½
45	3	4½	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
46	3	4½	6	7½	8½	9½	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½
47	3	4½	6	7½	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
48	3	4½	6	7½	9	10½	11½	12½	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½
49	3	4½	6	7½	9	10½	12	13	14	15	16	17	18	19	20	21	22	23	24
50	3	4½	6	7½	9	10½	12	13½	14½	15½	16½	17½	18½	19½	20½	21½	22½	23½	24½
51	3	4½	6	7½	9	10½	12	13½	15	16	17	18	19	20	21	22	23	24	25
52	3	4½	6	7½	9	10½	12	13½	15	16½	17½	18½	19½	20½	21½	22½	23½	24½	25½
53	3	4½	6	7½	9	10½	12	13½	15	16½	18	19	20	21	22	23	24	25	26
54	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	20½	21½	22½	23½	24½	25½	26½
55	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22	23	24	25	26	27
56	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	23½	24½	25½	26½	27½
57	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25	26	27	28
58	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	26½	27½	28½
59	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28	29
60	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	29½
61	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
62	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
63	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30
64	3	4½	6	7½	9	10½	12	13½	15	16½	18	19½	21	22½	24	25½	27	28½	30

# Appendix 5

## **Exemptions granted from statutory guarantee payments**

### **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)

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)

Building and Allied Trade Joint Industries Council (from 29.9.89)

# Chapter 27 - Self-employed earners and share fishermen

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# Chapter 27 - Self-employed earners and share fishermen

## Self-employed earners - Jobseeker's Allowance and Income Support

### General

27000 This Chapter deals with the calculation and treatment of the earnings of S/E earners and share fishermen. The guidance for

1. S/E earners applies to
  - 1.1 JSA(Cont), but only the claimant's own earnings affect the amount of JSA(Cont) payable<sup>1</sup> **and**
  - 1.2 JSA(IB) **and**
  - 1.3 IS **and**
2. share fishermen explains that the calculation of a share fisherman's earnings is different for
  - 2.1 JSA(Cont) **and**
  - 2.2 JSA(IB) and IS.

*1 JS Act 95, s 4(1); JSA Regs, reg 80(2)*

### Meaning of claimant

27001 Claimant means<sup>1</sup> either

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA
  - 2.1 the couple **or**
  - 2.2 each member of the couple, as the context requires.

*1 JS Act 95, s 35(1), IS (Gen) Regs, Reg 2(1)*

### Who is a self-employed earner

27002 A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earners employment<sup>1</sup>.

**Note:** A person may also be employed as an employed earner. This does not stop the person being S/E.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(b)*

- 27003 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.
- 27004 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 (see DMG 27400), the agreed share of the net profits.
- 27005 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.

## Claims from self-employed earners

- 27006 Where the DM is considering whether the claimant and / or partner is a S/E earner then it is important to keep that determination separate from the issue of remunerative work (see DMG Chapter 20).
- 27007 In order to deal with claims where the question of self-employment arises, DMs should apply the following four questions in this order<sup>1</sup>: Is the claimant
1. still employed as a S/E earner i.e. still trading
    - 1.1 if the answer is no then they will not be in employment and earnings from past employment can be disregarded<sup>2</sup> **or**
    - 1.2 if the answer is yes the DM considers question 2
  2. carrying out activities connected to the self-employment or in a period of non-activity which is a normal incident of the cycle of work
    - 2.1 if the answer is no the DM considers question 4
    - 2.2 if the answer is yes the DM considers question 3
  3. in remunerative work<sup>3</sup> i.e. is the work 16 hours (24 hours in respect of a partner) or more a week
    - 3.1 if the answer is yes the claimant is not entitled to JSA or IS
    - 3.2 if the answer is no the DM considers question 4
  4. in receipt of earnings that are to be taken into account<sup>4</sup> and in respect of what period are the earnings to be taken into account<sup>5</sup>.

**Note 1:** See DMG 27020 for guidance on whether the claimant is still trading.

**Note 2:** A claimant could be in remunerative work if they are carrying out activities or it is a period of non-activity which is a normal incident in the cycle of work so they are treated as engaged in work. See DMG Chapter 20 for guidance on remunerative work.

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**Note 3:** To calculate the assessment period in order to determine the weekly earnings of a S/E earner, see the guidance at DMG 27051 et seq.

*1 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09; 2 JSA Regs, Sch 6, para 4; IS (Gen) Regs, Sch 8, para 3; 3 JSA Regs, reg 51(1); IS (Gen) Regs, reg 5(1) & (1A); 4 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1); 5 JSA Regs, reg 95(1)(a) & (b); IS (Gen) Regs, reg 30(1)(a) & (b)*

27008 If the S/E earner has ceased self-employment the DM should consider if

1. there are any capital assets from the business **and**
2. any capital assets from the business should be disregarded (see DMG 27031 - 27033 and DMG 29366 et seq).

## Directors of limited companies

27009 A limited company is a legal person<sup>1</sup> and is different from a sole trader or partnership because

1. the company belongs to its shareholders, who share in any distributed profits according to the size of their individual holding **and**
2. the liability of each shareholder is limited to the number of shares taken, or the amount that the shareholder has stood as personal guarantor for. The shareholder is not liable for any amount above the amount unpaid on shares (if any) or the amount guaranteed **and**
3. if 2. does not apply, liability for debts is limited to the company's capital.

*1 R(SB) 57/83*

27010 A limited company, of whatever size, is separate from its employees, officers and shareholders<sup>1</sup>. 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<sup>2</sup> and is an employed earner (see DMG 26048).

*1 R(SB) 57/83; 2 McMillan v Guest 1942, AC 561*

## Earnings of self-employed earners

27011 In S/E cases, earnings are the gross receipts (see DMG 27125) of the employment<sup>1</sup>.

*1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)*

27012 S/E earnings do not include<sup>1</sup>

1. charges paid to the S/E earner in return for providing BL accommodation (see DMG 27013) **or**
2. any of the payments in DMG 28380 and 28384 (fostering allowances and payments for people temporarily in the claimant's care)
3. any sports award<sup>2</sup> (see DMG 20480).

*1 IS (Gen) Regs, reg 37(2); JSA Regs, reg 100(2); 2 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); National Lottery etc. Act 1993, s 23(2)*

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## Board and lodging accommodation

27013 BL accommodation is accommodation<sup>1</sup>

1. where the charge for the accommodation includes some cooked or prepared meals that are both
  - 1.1 cooked or prepared by someone who is not
    - 1.1.a the person provided with accommodation **or**
    - 1.1.b a member of the family of the person provided with accommodation **and**
  - 1.2 eaten in that accommodation or associated premises **or**
2. provided to a person in a
  - 2.1 hotel **or**
  - 2.2 guest house **or**
  - 2.3 lodging house (see DMG 27014) **or**
  - 2.4 similar establishment **or**
3. that is
  - 3.1 not provided by a close relative (see DMG 27015 - 27016) of
    - 3.1.a the person provided with accommodation **or**
    - 3.1.b a member of the family of the person provided with accommodation **or**
  - 3.2 provided on a commercial basis.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

27014 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.

27015 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, half-brother, sister, half-sister **and**
2. the partner of any of those persons in 1..

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); R(SB) 22/87*

27016 For the purposes of DMG 27015, a child who is adopted becomes

1. a child of the adoptive parents **and**

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2. the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship<sup>1</sup>.

*1 R(SB) 22/87*

27017 - 27019

## **Deciding if a person is a self-employed earner**

27020 To determine whether a person is still trading and therefore still employed as a S/E earner, the DM should consider the following:

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
  - 2.1 the person **or**
  - 2.2 the business's bankers **or**
  - 2.3 any creditors **or**
  - 2.4 others **and**
3. if the person is genuinely available for and actively seeking alternative work **and**
4. if the person hopes or intends to restart work in the business when economic conditions improve **and**
5. if the person is undertaking any activities in connection with the self employment **and**
6. if there is work in the pipeline **and**
7. if the person is regarded as S/E by HMRC **and**
8. 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?<sup>1</sup>. For example,
  - 8.1 by advertising **or**
  - 8.2 by visiting potential customers **and**
9. if the interruption in question is part of the normal pattern of the
  - 9.1 person's work **or**
  - 9.2 work that the person is seeking.

Not all of these questions will be relevant to whether a person is still employed as a S/E earner and the ones that are may not carry equal weight. It will depend on the facts of the particular case. These questions will also be relevant when considering

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the separate question of remunerative work if it is determined that self-employment continues<sup>2</sup>.

*I Vandyk v. Minister of Pensions & National Insurance [1955] 1Q29; 2 JC v SSWP (JSA) [2008] UKUT 40 (AAC), R (JSA) 1/09*

27021 All nine factors in DMG 27020 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.

27022 Some of the factors in DMG 27020 may point toward the fact that a person is trading as S/E. Others may not. No one factor is decisive. The DM should consider the weight to give each relevant factor.

27023 The DM should make a determination on gainful employment based on a balanced view of the evidence. These are matters of individual judgement for the DM concerned.

#### **Example 1**

Hugh claims JSA. He is the sole owner of a small roofing firm. Work has stopped temporarily because of the bad weather. He states that

1. he and his bank regard his business as a going concern
2. he has orders in the pipeline, for which he is arranging the order of materials
3. he is still regarded as S/E by HMRC
4. he is still advertising for work
5. stoppages during the winter months are a normal feature of his business.

The DM then considers the guidance at DMG 27020 - 27023 and determines, in this case, that Hugh remains gainfully employed as a S/E earner because he is still trading.

#### **Example 2**

Ira claims JSA. He 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
2. his business has debts and the bank has advised that the business should be wound up
3. he can not find a way of boosting his trade

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4. there is no work in the pipeline
5. at present he is still regarded as S/E by HMRC
6. he still has an advertisement in the Yellow Pages.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Ira is not gainfully employed and no longer trading.

### Example 3

Stephen claims JSA. He is a S/E electrician. He sub-contracts for other contractors. Stephen has claimed JSA because he 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 and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Stephen remains gainfully employed as a S/E earner because he is still trading.

## Sickness

27024 If a S/E earner is unable to work in the business due to sickness, the DM should consider

1. the guidance at DMG 27020 - 27023 **and**
2. if the S/E earner remains gainfully employed as a S/E earner.

27025 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

Anne-Marie is a S/E dentist. She is the only dentist in the practice. She claims IS as she has been unable to work because she is suffering from flu. She is unable to work for a total of two weeks. During that time

1. the receptionist re-books the appointments Anne-Marie had during her period of sickness
2. continues to send out reminders for regular check-ups and books any new appointments
3. she is still regarded as S/E by HMRC
4. the bank still regards the business as a going concern.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Anne-Marie remains gainfully employed as a S/E earner because she is still trading.

### **Example 2**

Marlon is a S/E plumber. He is a sole trader. He claims IS as he has broken his leg and has been advised by his doctor to avoid work for six months. Marlon states that

1. his business activity depends entirely on his ability to work and until his leg has healed he cannot undertake any work in connection with his business
2. he has had to advise customers that he is unable to carry out the work that he had arranged so that they can find alternative contractors
3. he and his bank do not consider the business as a going concern
4. he intends to restart work in the business when his leg has healed so he has not removed any of his advertisements in case any contracts can be arranged for when he returns to work.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that self-employment has ceased there are no earnings to be calculated and any business assets can be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)*

### **Example 3**

Roseanne is the owner of a fish and chip shop. She claims IS because 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 considers the guidance at DMG 27020 - 27023 and determines, in this case, that Roseanne remains gainfully employed as a S/E earner because her business is still trading. The DM calculates the earnings to be taken into account.

27026 - 27030

## **Self-employment ceased**

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27031 If the DM determines that self-employment has ceased DMG 27032 - 27035 should be considered.

## Capital

27032 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 29 provides guidance on the valuation of business assets and the disregards that can apply.

## Earnings from self-employment that has ceased

27033 If a person has been engaged in

1. remunerative work as a S/E earner **or**
2. P/T self-employment

and that employment has ceased, any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see DMG 27073 - 27081)<sup>1</sup>.

*1 JSA Regs, Sch 6, para 4; IS (Gen) Regs, Sch 8, para 3*

### Example

James was S/E. He last worked on 11.11.02. His business ceased to trade on 11.11.02. He received earnings on that day. He claims JSA on 12.11.02.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11.11.02 are disregarded.

## Income derived from business when self-employment has ceased

27034 Where a person has ceased to be a S/E earner the assets of the business may continue to produce income. For example, premises owned by a former shopkeeper may be leased to another person. Such income should be regarded as income derived from capital.

27035 The treatment of that income will depend upon how the capital assets are treated. For example

1. income derived from certain disregarded capital remains income (see DMG Chapter 28) **and**
2. in other cases, income derived from capital remains capital (see DMG Chapter 29).

27036 - 27050



## Assessment period for self-employed earners

27051 The normal weekly earnings of a S/E earner should be calculated by using the

1. gross receipts (see DMG 27125) **and**
2. expenses paid out (see DMG 27190)

during the assessment period. Different rules apply for royalties, copyright payments and Public Lending Rights payments.

### Business trading for less than a year

27052 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 accurately<sup>1</sup>.

*1 JSA Regs, reg 95(1)(b); IS (Gen) Regs, reg 30(1)(b)*

#### Example

Liam claims JSA on Monday 4 November. He is a P/T S/E window cleaner. He started doing occasional window cleaning jobs in February of the same year but it was not until May that the business really got off the ground.

The DM uses 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

27053 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 year<sup>1</sup> (but see DMG 27167 - 27168).

*1 JSA Regs, reg 95(1)(a); IS (Gen) Regs, reg 30(1)(a)*

27054 The year does not need to be the year immediately before the claim or the date the claim is looked at. 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 27101 - 27111).

27055 A year means a period of

1. 365 days **or**
2. 366 days if the assessment period includes the February of a leap year.

27056 - 27059

## Change likely to affect the normal pattern of trading

27060 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 accurately<sup>1</sup>. The period does not need to be made up of complete weeks.

*1 JSA Regs, reg 95(1)(b); IS (Gen) Regs, reg 30(1)(b)*

27061 The assessment period should

1. normally start on the date the change affecting the pattern of the business occurred (but see DMG 27064) **and**
2. end on the date that the most recent figures regarding earnings and expenses are available, for example, the next week or month.

27062 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.

The DM should supersede if the new figures affect entitlement to IS or JSA. Where entitlement is not affected, a decision not to supersede should be made if the claimant asked for earnings to be looked at again. For further guidance on supersession including the effective date rule, see DMG Chapter 04.

27063 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 27053). In most cases this procedure will provide the most accurate determination of a S/E earners earnings (but see DMG 27064).

### Example

Carlo is S/E, he buys and sells Italian wine. On 9.8.02 Carlo's business goes into receivership. He continues to trade but he lost some of his suppliers and customers. On 1.11.02 Carlo claims JSA.

The DM determines

1. Carlo is gainfully employed but not in remunerative work
2. that the receivership is a change that has affected the normal pattern of trading
3. that the assessment period is from 9.8.02 (the date the change affecting the pattern of business occurred) to 30.10.02 (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 30.11.02 when the figures for the following month become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 9.8.02 to 30.11.02. The earnings for this period are averaged and apportioned on a weekly basis until 31.12.02 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.

27064 When considering 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.

27065 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. Barry claims JSA because two months prior to his claim 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 determines that

1. there had been a change that had affected the normal pattern of business  
**and**
2. the assessment period is from the date of the fire up to the week before the JSA claim.

#### **Example 2**

Omar works P/T as a S/E draughtsman providing technical drawings for builders. Most of his work comes from one particular building firm. Omar claims JSA because six months before the claim the building firm went into receivership.

The DM determines 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.

### Example 3

Dougal is a S/E roofer. The business has been trading for five years. Dougal claims JSA because a period of snowy weather stopped him from working. The period he was unable to work was ten days.

The DM determines that, although the bad weather might be a change, it was not one that would affect the normal pattern of business. The normal pattern of business would include times in the winter when roofing work could not be done.

**Note:** Weather conditions that are exceptional for the area could be regarded as a change affecting the normal pattern of business.

### Example 4

Morris is a S/E shop keeper. He has been in business for nine years. Morris claims JSA because a recent storm has blown off part of his shop roof. He is unable to trade until his roof is mended because there are too many leaks.

The DM decides that the bad weather is a change that has affected the normal pattern of business. The DM decides the assessment period starts from the date of the storm.

27066 - 27068

## New businesses

27069 A person may start up a new business

1. at the same time as claiming JSA or IS **or**
2. whilst in receipt of JSA or IS.

The DM should consider if that person has started remunerative work.

27070 If the work is not remunerative work 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 S/E **and**
2. ending on the last day of the benefit week in which actual earnings are received.

27071 The assessment period should be extended every week or month until a yearly assessment is possible (see DMG 27062). In most cases this procedure will provide the most accurate determination of a S/E earner's earnings (but see DMG 27072).

### Example

Gareth is in receipt of JSA(IB). His benefit week ending day is a Monday. On 6.2.02 he starts work as a S/E pine furniture maker working twelve hours per week.

The DM determines

1. Gareth is not in remunerative work **and**
2. that the assessment period is 5.2.02 - 11.2.02.

The earnings are taken into account for that period until 18.2.02 when the figures for the following week become available.

At this point the DM supersedes the JSA award and extends the assessment period. The assessment period is now 5.2.02 - 18.2.02. The earnings for this period are averaged and apportioned on a weekly basis until 25.2.02 when further figures are available.

The DM continues with this procedure until the assessment period has been extended to one year.

- 27072 When determining 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, copyright payments and Public Lending Right payments

- 27073 Earnings as described in DMG 27074 paid during an award of benefit have a different assessment period to that in DMG 27051 - 27072.

- 27074 This paragraph applies to<sup>1</sup>

1. royalties or other sums paid as a consideration for the use of, or the right to use, any copyright, design, patent or trademark **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 similar to the Public Lending Right Scheme 1982

where the claimant is the first owner of the copyright, design, patent or trademark, or an original contributor to the book or work covered by **2.2** above.

*1 IS (Gen) Regs, reg 30 (2A); JSA Regs, reg 95(2A)*

27075 Each payment should be taken into account for the number of weeks (including part of a week) calculated by dividing the amount of the payment by

1. the amount of JSA or IS that would have been paid if the earnings had not been received **and**
2. the correct disregard (see DMG 27470)<sup>1</sup>.

*1 JSA Regs, reg 95(2), Sch 6 & Sch 6A; IS (Gen) Regs, reg 30(2) & Sch 8*

27076 The attribution period should begin<sup>1</sup>

1. where JSA or IS is paid in arrears, on the first day of the benefit week in which the payment is received **or**
2. where IS is paid in advance, on the first day of the benefit week
  - 2.1 if the payment was received on that day **or**
  - 2.2 following receipt of the payment, if the payment was not received on the day in 2.1..

*1 JSA Regs, reg 96; IS (Gen) Regs, reg 31; SS (C & P) Regs, reg 26A*

### Example

Libby is a lone parent in receipt of IS that is payable on a Monday in arrears. She receives royalties of £500 on 15.11.02. Libby has been paid IS to benefit week ending 25.11.02. The payment is taken into account as follows

				£
1.	current weekly rate	=		75.10
2.	appropriate earnings disregard	=		20.00
3.	total of weekly IS + disregard	=		95.10
4.	number of weeks is		5	<u>24.50</u>
				95.10
5.	the payment is taken into account for			
5.1	five weeks is at £95.10 per week - no IS payable for the period 12.11.02 to 16.12.02 <b>and</b>			
5.2	one week at £24.50 but £20.00 is disregarded - IS of £70.60 (£75.10 - £4.50 (£24.50 - £20.00)) is payable on 23.12.02.			

The overpayment question is referred to the DM.

27077 If at the end of the period calculated under DMG 27075

1. a further claim for JSA or IS is made **and**
2. another payment of royalties or copyright has been received during that period

the further payment should be treated separately as in DMG 27075. 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 the example at DMG 27076).

Libby receives a further payment of royalties of £600 on 5.12.02 that is taken into account as follows

1. number of weeks is  $\frac{600}{95.10} = 6 \frac{29.40}{95.10}$
2. the payment is taken into account for
  - 2.1 six weeks at £95.10 per week (the first three weeks overlap with the last four weeks in DMG 27076) - no IS is payable during the period 3.12.02 to 13.1.03 **and**
  - 2.2 one week at £29.40 but £20.00 is disregarded - IS of £70.70 (£80.10 - £9.40 (£29.40 - £20.00)) is payable on 20.1.03.

27078- 27079

## Expenses deducted from royalty, copyright payment or Public Lending Right payment

27080 The S/E earner may have to pay expenses on receipt of the royalty, copyright payment or Public Lending Right 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 payment<sup>1</sup>.

*1 JSA Regs, reg 95(3); reg 101(1)(a); 101(4)(a); IS (Gen) Regs, reg 30(3); reg 38(1)(a); reg 38(3)(a)*

### Example 1

Dermot writes a book between June and December 2001 and it is on sale from 1.1.02. The first copyright payment is received on 3.6.02. 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 2002 and the first copyright is received on 1.5.02.

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, SS contributions and qualifying premium payments deducted from a royalty, copyright payment or Public Lending Right payment**

27081 The DM should consider deductions for

1. income tax (see DMG 27270 et seq) **and**
2. SS contributions (see DMG 27297 et seq) **and**
3. half of any premiums for personal pensions (see DMG 27326)

from the royalty, copyright payment or Public Lending Right payment<sup>1</sup>.

**Note:** The DM should take care not to duplicate any deduction for a personal pension. A deduction for such a premium may already be deducted from another assessment period.

*1 JSA Regs, 95(3), 101(1)(a) & 101(4)(b) & (c); IS (Gen) Regs, reg 30(3), 38(1)(a) & 38(3)(b) & (c)*

27082 - 27099

## Calculation of normal weekly earnings

27100 DMG 27101 - 27244 provide guidance on the calculation of earnings of most S/E earners. Specific guidance is given for

1. child minders (see DMG 27350)
2. crofts or small holdings (see DMG 27361)
3. farmers (see DMG 27370)
4. hotels, guest houses, bed and breakfast establishments etc (see DMG 27380)
5. local exchange trading schemes (see DMG 27385)
6. partnerships (see DMG 27400)
7. renting out property (see DMG 27425)
8. seasonally S/E (see DMG 27440)
9. share fishermen (see DMG 27750 et seq)
10. sub-contractors (see DMG 27450).

### Evidence - cash flow

27101 To calculate the amount of earnings the DM will need evidence of

1. the gross receipts (see DMG 27125) **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.

27102 On a new or repeat claim to JSA or IS, the onus is on the S/E earner to provide the evidence necessary to support the claim. A claimant who is S/E or whose partner is S/E should be asked to submit details of

1. the business **and**
2. **actual** gross receipts and expenditure

during the assessment period.

27103 The figures provided in DMG 27102 2. 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 **1.** or **2.** does not apply.

27104

## Accounts

- 27105 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 for.
- 27106 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.
- 27107 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.
- 27108 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.
- 27109 The figures provided in DMG 27108 **1.** and **2.** 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 **1.** or **2.** does not apply.
- 27110 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.



27111 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.

27112 - 27115

### **Income tax certificate**

27116 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**

27117 To calculate the earnings of a S/E earner the DM

1. should establish the **gross receipts** of the business during the assessment period (see DMG 27125) **and**
2. deduct from the gross receipts the **allowable expenses** that have been paid out during the assessment period (see DMG 27206) **and**
3. deduct from any remaining figure amounts for
  - 3.1 notional income tax (see DMG 27270 et seq) **and**
  - 3.2 notional SS contributions (see DMG 27297 et seq) **and**
  - 3.3 half of any premium paid for a personal pension scheme (see DMG 27326) **and**
4. deduct the correct **disregard(s)** (see DMG 27470).

The figure that is left is the earnings that should be taken into account.

27118 The whole process can be summarized as follows

gross	<b>less</b>
allowable	<b>less</b>
notional income tax	<b>less</b>
notional SS contributions	<b>Less</b>
half of any personal pension scheme	<b>divided by</b>
the number of days in the assessment period	<b>multiplied by</b>
7 to give a weekly figure	<b>equals</b>
the weekly net profit	<b>less</b>
any disregards that apply	<b>equals</b>
the weekly earnings to be taken into account	

27119 - 27124

## Gross receipts

27125 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 receipt<sup>1</sup>. DMG 27167 provides guidance for payments received that relate to a period different to the assessment period.

*1 JSA Regs, reg 101(4); IS (Gen) Regs, reg 38(3)*

27126 The gross receipts of a business include

1. any payments for goods and services provided (see DMG 27127)
2. earnings payable abroad (see DMG 27128)
3. certain allowances paid to assist in carrying on the business<sup>1</sup> (see DMG 27135)
4. any business subsidies or payments of compensation (see DMG 27138)
5. personal drawings (see DMG 27139)
6. income from letting or sub-letting (see DMG 27154)

7. sale of certain business assets (see DMG 27155)
8. tips and gratuities (see DMG 27156)
9. payments in kind (see DMG 27158)
10. any VAT receipts (see DMG 27160).

*1 JSA Regs, reg 100(1) & 19(1)(r); IS (Gen) Regs, reg 37(1); E & T Act 73, s 2;  
Enterprise and New Towns (Scotland) Act 90, s 2*

## **Payments received for goods and services provided**

27127 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**

27128 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.

27129 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 disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 15; IS (Gen) Regs, Sch 8, para 12*

27130 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 applies<sup>1</sup>.

*1 JSA Regs, Sch 6, para 14; IS (Gen) Regs, Sch 8, para 11*

## Example

Derek is S/E on a P/T 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 UK. 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 personal pension	=	£2500
Net profit	=	£2500
Divided by the number of weeks in the assessment period	=	£48.07 <b>less</b>
Normal earnings disregard	=	£5.00 <b>less</b>
Special disregard for earnings abroad (£1000 divided by 52)	=	£19.23
Earnings to be taken into account (£48.07 - £5.00 - £19.23)	=	£23.84

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 revises or supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

27131 - 27134

## Schemes to help with self-employment

27135 An allowance may be payable under certain schemes to assist people to become S/E. For further guidance see DMG Volume 3, Chapter 14. In a business partnership one or all of the partners may be receiving payments.

27136 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 business<sup>1</sup>.

<sup>1</sup> JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)

27137

## **Business subsidies or payments of compensation**

27138 Some businesses 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 EC **or**
2. payment of compensation from another person because of disruption to the business. For example payments of compensation awarded because of BSE.

Such payments should be included in the gross receipts of the business.

## **Personal drawings**

27139 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.

27140 Where drawings are made in excess of the profits of the business they should be treated as capital in the hands of the claimant. Money taken from the business in excess of profits comes from

1. capitalized profits from earlier years **or**
2. increased borrowing.

In **1.** or **2.** the drawings are withdrawals from the capital of the business.

27141 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.

27142 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 in receipt of JSA(IB), he 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 determines

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 in receipt of JSA(IB), she 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 determines

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.

27143 - 27153

### **Income from letting or sub-letting**

- 27154 Any income received from letting or sub-letting of business premises or land should be included in the gross receipts of the business. Any expense connected with the letting should be included with other business expenses.

### **Sale of certain business assets**

- 27155 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 business<sup>1</sup>.

*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

- 27156 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.
- 27157 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

- 27158 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 P/T S/E electrician in receipt of JSA. 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.

27159

## VAT

- 27160 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

1. VAT collected from customers - known as output tax **and**
2. VAT paid by the S/E person to supplier - known as input tax.

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

- 27161 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 DMG 27160 **2.** exceeds DMG 27160 **1.**.

**Note:** VAT can also be an allowable expense of the business, see DMG 27211.

27162 - 27165

## Capital receipts

27166 Capital receipts do **not** form part of the gross receipts of the business<sup>1</sup>. 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 27155).

*1 R(FC) 1/97*

## Income for a different period

27167 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 accurately<sup>1</sup>.

**Note:** The DM should not consider any payment made before or after the assessment period.

*1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)*

27168 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 in receipt of JSA. 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 considers 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.

27169 - 27189



## Business expenses

### Conditions for deducting business expenses

27190 When calculating the net profit of a S/E earner the DM should deduct from the gross receipts any business expense that<sup>1</sup>

1. was paid out wholly and exclusively for the purposes of the business<sup>2</sup> **and**
2. was paid out during the assessment period **and**
3. was reasonably incurred<sup>3</sup> (see DMG 27198) **and**
4. is an allowable expense (see DMG 27206).

*1 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a); 2 JSA Regs, reg 101(9)(a); IS (Gen) Regs, reg 38(8)(a);*

*3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)*

### Wholly and exclusively

27191 An expense is wholly and exclusively paid out when it has been incurred only for the purpose of the business<sup>1</sup>. Any such payment should be deducted in full, subject to DMG 27190 2. - 4..

*1 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a)*

### Expenses for both business and private use

27192 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.

27193 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.

27194 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 and contribution purposes<sup>1</sup>.

*1 R(FC) 1/91; R(IS) 13/91*

27195 Examples of expenses that may be apportioned between private and business use are<sup>1</sup>

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 is in receipt of JSA. She 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 determination based on all 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.

27196 - 27197

## Reasonably incurred

27198 The term “reasonably incurred” is not defined in legislation. 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.

27199 To determine what is reasonable the DM should have regard to the circumstances of each individual's case<sup>1</sup>, including the level of the person's earnings<sup>2</sup>.

*1 R(P) 2/54; 2 R(G) 1/56*

27200 The DM may have to consider if it is reasonable for a person to reduce the hours worked to below the remunerative work level by employing someone to do part of the work of the business. To determine if this expense is reasonably incurred the DM should consider all of the circumstances of the individual case including if the

1. person is capable of doing the work **and**
2. evidence suggests that the person is employing another so that the remunerative work condition is satisfied and the person can claim JSA or IS.

The DM may conclude that the expense of employing another person is not reasonably incurred, therefore cannot be deducted from the gross receipts.

27201 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 excessive<sup>1</sup>.

*1 R(G) 7/62*

27202 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.

27203 - 27205

## Allowable business expenses

27206 If the conditions in DMG 27190 1. - 3. are met, all day to day expenses of a business are allowable, including<sup>1</sup>

1. accountancy charges
2. advertising costs
3. certain capital repayments on a loan used to<sup>2</sup>
  - 3.1 replace an item of equipment or machinery that has
    - 3.1.a worn out in the course of the business **or**
    - 3.1.b become outdated **or**
  - 3.2 repair an existing asset, 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 (see DMG 27210)
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 repair<sup>3</sup>
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 3.<sup>4</sup>
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 telex
19. transport, for example business use of the car including petrol costs, road fund license, insurance and servicing
20. VAT (see DMG 27211).<sup>5</sup>

This list is not exhaustive.

*1 JSA Regs, reg 101(4)(a), reg 101 (5), reg 101(6), reg 101(8); reg 163(3); IS (Gen) Regs, reg 38(3)(a), reg 38(4), reg 38(5), reg 38(7); 2 JSA Regs, reg 101(7); reg 163(3); IS (Gen) Regs, reg 38(6); 3 JSA Regs, reg 101(9)(b)(ii); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(ii); 4 JSA Regs, reg 101(9)(b)(iii); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(iii); 5 JSA Regs, reg 101(9)(b)(i); reg 163(3); IS (Gen) Regs, reg 38(8)(b)(i)*

27207 For the purpose of DMG 27206 **3.2** an asset includes buildings, plant machinery, vehicles or equipment.

#### **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 determines 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 determines 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 determines 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.

27208 - 27209

## Partner's earnings from the business

- 27210 The earnings of a partner (but not a business partner) who is employed in the business should be allowed as a business expense (see DMG 27206 5.). The wage should not be added back to the business accounts to offset any loss<sup>1</sup>.

*1 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11)*

### Example

Rose runs a dress-making business from home. She is in receipt of JSA(IB). Her business is making a loss of £50 per week. The accounts show that Rose pays her husband £45 per week for book keeping.

For JSA purposes their income is

Rose	NIL
husband	£45

total £45 per week.

## VAT

- 27211 A S/E person who is registered for VAT is required to submit three monthly returns to HMRC showing amounts of

1. VAT collected from customers - known as output tax **and**
2. VAT paid by the S/E person to suppliers - known as input tax.

If **1.** exceeds **2.** the S/E person pays the difference to HMRC. If **2.** exceeds **1.** the S/E person receives the difference from HMRC.

- 27212 Where

1. a business is registered for VAT **and**
2. 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 expense<sup>1</sup>. This is the amount that DMG 27211 **1.** exceeds DMG 27211 **2.**.

**Note:** VAT can also be a gross receipt of the business (see DMG 27161).

*1 JSA Regs, reg 101(9)(b)(i); IS (Gen) Regs, reg 38(8)(b)(i)*

27213

## Expenditure for a different period

- 27214 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 accurately<sup>1</sup>.

**Note:** The DM should not deduct an expense paid before or after the assessment period.

*1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)*

- 27215 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.

- 27216 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 before he claimed JSA. The assessment period is 26 weeks. In that time the annual road fund license and insurance on the taxi was paid.

The DM determines

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.

27217 - 27219

## Expenses not allowed

- 27220 Business expenses that should not be allowed are

1. those expenses where the conditions for deducting a business expense are not met (see DMG 27190)
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

- 5.1 before the start of the assessment period<sup>1</sup> or
- 5.2 in any other employment<sup>2</sup>
- 6. repayment of capital on loans except where DMG 27206 3. 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 debts<sup>3</sup>
- 10. personal drawings on income and capital
- 11. money on goods used for personal consumption.

*1 JSA Regs, reg 101(6); IS (Gen) Regs, reg 38(5); 2 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11);  
3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)*

## Capital expenditure

- 27221 Capital expenditure is the expenditure on fixed assets, sometimes called capital assets. In line with HMRC practise, fixed assets include items such as tools, equipment, machinery and vehicles used in the business. The DM should not allow capital expenditure as a business expense<sup>1</sup>.

*1 JSA Regs, reg 101(6)(a); IS (Gen) Regs, reg 38(5)(a)*

### Example

Paul is a mobile hairdresser. He buys a replacement car with 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 27206).

## Depreciation

- 27222 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.
- 27223 If there are fixed assets, accounts will always show depreciation as a business expense. The DM should not allow depreciation as a business expense<sup>1</sup>.

*1 JSA Regs, reg 101(6)(b); IS (Gen) Regs, reg 38(5)(b)*

27224 - 27225

## Sums used in setting up or expanding a business

- 27226 The DM should not allow as a business expense any sum used, or intended to be used, in setting up or expanding a business<sup>1</sup>. 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 DMG 27206 11.) and allow as an expense other items that are ongoing regular expenses.

*1 JSA Regs, reg 101(6)(c); IS (Gen) Regs, reg 38(5)(c)*

### **Loss incurred before the beginning of the assessment period**

- 27227 The DM should not allow as a business expense any loss incurred before the beginning of the assessment period<sup>1</sup>.

*1 JSA Regs, reg 101(6)(d); IS (Gen) Regs, reg 38(5)(d)*

27228 - 27229

### **Loss incurred in any other employment**

- 27230 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.

- 27231 Any business loss in one employment should **not** be offset against the earnings of another employment<sup>1</sup>. Also, any loss made by one member of the family should not be offset against the earnings of another member.

*1 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11)*

#### **Example**

Thomas is in receipt of JSA(IB). His wife is a market trader and a S/E music teacher. The market stall runs at a loss. The DM

1. considers that the loss from the market stall is not an allowable expense against the gross receipts from teaching music **and**
2. calculates the net profit from each self-employment separately.

### **Repayment of capital on business loans**

- 27232 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 asset<sup>1</sup> (see DMG 27206 3.).

*1 JSA Regs, reg 101 (6)(e); IS (Gen) Regs, reg 38(5) (e)*

27233 - 27234

## **Business entertainment**

27235 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 expense<sup>1</sup>.

*1 JSA Regs, reg 101(6)(f); IS (Gen) Regs, reg 38(5)(f)*

## **Loss on disposal of a capital asset**

27236 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 27155).

## **Payments into contingency funds**

27237 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.

27238 - 27239

## **Personal drawings**

27240 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**

27241 The DM should not allow any money spent on goods for personal consumption as a business expense.

27242 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.

27243 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.

27244 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.

27245 - 27259



# Calculation of income tax, Social Security contributions and qualifying premium

## Introduction

27260 Having calculated the gross receipts and expenses from self-employment on a cash flow basis, the DM should consider deductions for<sup>1</sup>

1. income tax (see DMG 27270 et seq) **and**
2. Class 2 SS contributions (see DMG 27297 et seq) **and**
3. Class 4 SS contributions (see DMG 27316 et seq) **and**
4. half of any premium for a personal pension scheme (see DMG 27326).

*1 JSA Regs, reg 101(4)(b)&(c); IS (Gen) Regs, reg 38(3)(b)&(c)*

27261 The DM should base deductions for DMG 27260 1. - 3. on the chargeable income for the assessment period.

27262 - 27265

## Chargeable income

27266 The chargeable income<sup>1</sup>, 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 employment<sup>2</sup> **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 expenses<sup>3</sup> **or**
3. in any other case, the person's
  - 3.1 gross receipts of the employment less
  - 3.2 any allowable expenses<sup>4</sup>.

*1 JSA Regs, reg 102(3); IS (Gen) Regs, reg 39(3); 2 JSA Regs, reg 102(3)(b); IS (Gen) Regs, reg 39(3)(b); 3 JSA Regs, reg 101(5); IS (Gen) Regs, reg 38(4); 4 JSA Regs, reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a)*

27267 The calculation at DMG 27266 1. - 3. should not include any deductions for

1. notional income tax **or**
2. SS contributions **or**
3. premiums for a personal pension scheme.

27268 - 27269

## **Deduction for notional income tax**

27270 The DM should use the tax rates and allowances for the year (6 April to 5 April) appropriate to the assessment period which is being used to calculate the earnings.

### **Example**

Andrew makes a claim for IS in June 2009. The DM accepts as evidence of his earnings his cash flow accounts up to the tax year ending the previous April. The tax rates and allowances used to calculate the notional tax deduction are those for the previous tax year.

### **Tax allowances**

27271 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 income tax allowances are in Appendix 1 to this Chapter.

27272 Where the assessment period is before 6 April 2000, the DM should consider whether the married couples allowance or additional personal allowance are appropriate. From 6 April 2000

1. the additional personal allowance was abolished **and**
2. changes to income tax legislation meant that married couples allowances could no longer be taken into account when calculating earnings of S/E earners.

27273 Information about additional personal allowance and married couples allowance are in Appendix 3 to this Chapter.

## Personal allowance

- 27274 All earners whether married or single get a personal allowance. There are three age-related levels of personal allowance (see Appendix 1 to this Chapter), but for JSA and IS purposes only the personal allowance for a person aged under 65 is deducted - even if another personal allowance appears to apply.

## Tax rates

- 27275 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 to this Chapter.

27276 - 27287

## Calculation of deduction

- 27288 To determine the notional amount of income tax to be deducted from a S/E earners chargeable income the DM should<sup>1</sup>

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 (see Appendix 1 to this Chapter)
  - 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 £34,800 (08/09 rates) of the remainder (or, if the assessment period is less than a year, a pro rata amount) by the basic rate of tax (see Appendix 1 to this Chapter)
5. round up where necessary.

**Note:** Prior to 2008/2009 tax year there were 2 rates of tax, a starting rate and a basic rate. (See Example 2 below and Appendix 1 to this Chapter).

*1 JSA Regs, reg 102(1); IS (Gen) Regs, reg 39(1)*

### Example 1

Sam is a married man aged 45. He works P/T as a S/E gardener and claims JSA. The DM determines that the assessment period is for a year and calculates the chargeable income for the assessment period as £15,500.

The DM calculates the notional income tax as follows:

		£	
Chargeable income	-	15,500.00	<b>less</b>
Claimant's personal allowance (08/09 rates)	-	6,035.00	
		<hr/>	
		9,465.00	
£9,465.00 at 20%	=	1,893.00	
Total notional income tax	=	<b>1,893.00</b>	

### Example 2

Angela is S/E. She is in receipt of IS. The assessment period is 13 weeks.

		£	
Chargeable income	-	15,500.00	<b>less</b>
Claimant's personal allowance	-	1,183.00	
		<hr/>	
(£4,745 (04/05 rates) x 91/365)			
	=	14,317.00	
The first £503.62 (£2,020 x 91/365) at 10%	=	50.37	
The remainder (£13,813.38) at 22%	+	3,038.95	
Total notional income tax	=	<b>3,089.32</b>	

27289 - 27296



## Deduction for notional Class 2 SS contributions

- 27297 A Class 2 contribution is a flat rate contribution. The same amount of Class 2 contribution is paid by men and women, although a higher rate is paid by share fishermen. The Class 2 rates are in Appendix 2 to this Chapter.

### Liability for a Class 2 contribution

- 27298 The DM should make a deduction for a notional Class 2 contribution in **all** cases unless the chargeable income is below the small earnings exception level (see DMG Appendix 2).
- 27299 The DM should only consider the chargeable income when deciding if a deduction for Class 2 should be made. If appropriate, a deduction should still be made even if the claimant holds a small earnings exception certificate.

27300 - 27303

### Calculation of the Class 2 contribution

- 27304 The deduction for the notional Class 2 contribution should be based on the rate of Class 2 contributions and small earnings exception level current at the time of the claim only<sup>1</sup>. Take no account of any increases in the contribution rates or small earnings exception level. To calculate the amount of the deduction the DM should
1. establish the chargeable income<sup>2</sup> **and**
  2. determine if a deduction should not be made on the grounds of small earnings **and**
  3. multiply the weekly rate (see Appendix 2 to this Chapter) by the number of weeks in the assessment period.

*1 JSA Regs, reg 102(2)(a); IS (Gen) Regs, reg 39(2)(a);*

*2 JSA Regs, reg 102(3); IS (Gen) Regs, reg 39(3)*

27305 - 27315

## Deduction for notional Class 4 SS contributions

- 27316 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 (see Appendix 2 to this Chapter). These payments are in addition to Class 2 contributions.

27317

## Calculation of Class 4 deduction

27318 The deduction for a notional Class 4 contribution should be based on the percentage rate and lower and upper levels current at the date of claim only<sup>1</sup>. Take no account of any increases in the percentage rate and lower and upper levels. The DM should

1. establish the chargeable income **and**
2. decide the number of weeks in the assessment period (if there are less than 52 weeks in the assessment period the DM should calculate **3.** on a pro rata basis) **and**
3. deduct the LEL from chargeable income up to the UEL **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 to this Chapter.

*1 JSA Regs, reg 102(2)(b); IS (Gen) Regs, reg 39(2)(b)*

### Example 1

Assessment period is 52 weeks

Chargeable income is £7,590.85

Class 4 - Lower level is £4,745 (04/05 rates)  
- Upper level is £31,720

Chargeable income 7,590.85 **less**

lower level 4,745

Profit 2,845.85 x 8% = 227.67

Notional Class 4 contributions for 52 weeks is £227.67.

### Example 2

Assessment period is 39 weeks or  $\frac{273}{365}$  days

Chargeable income for this period is £7,100.00

Class 4 - lower level is  $\frac{4,745 \times 273}{365} = 3,549.00$

Chargeable income 7,100.00 **less**

lower level 3,549.00

Profit 3,551.00 x 8% = 284.08

Notional Class 4 contributions for 39 weeks is £284.08.

27319 - 27324

## Premiums for personal pension schemes

- 27325 When calculating S/E earnings the DM should deduct from the chargeable income half of any premium for a personal pension scheme for the relevant assessment period<sup>1</sup>.

*1 JSA Regs, reg 95; IS (Gen) Regs, reg 30*

### Example

Sanjay is in receipt of IS, his wife Gita runs a small business from home. Her earnings are calculated over a period of a year. Gita makes contributions under a personal pension scheme on a monthly basis. The relevant assessment period is a year.

The DM should calculate the contributions on a yearly basis and deduct half of this sum from the net profit.

## Personal pensions

- 27326 Personal pension schemes<sup>1</sup> are

1. a scheme under certain pension and taxation legislation<sup>2</sup> **or**
2. an annuity contract or trust scheme under certain taxation legislation<sup>3</sup>.

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 JS Act, s 35; IS (Gen) Regs, reg 2(1); 2 Pensions Schemes Act 93, s 1; Income and Corporation Taxes Act 1988, Chapter 4 of Part 14 & Finance Act 2004, Sch 36, para 1(1)(g); 3 Income and Corporation Taxes Act 1988, s 620 or 621; Finance Act 2004, Sch 36, para 1(1)(f) & Income and Corporation Taxes Act 1988, s 622(3)*

27327 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.

27328 - 27349

# Particular forms of self-employment

## Child minders

27350 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.

27351 To calculate a child minder's normal weekly earnings the DM should

1. determine 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 period<sup>1</sup> but make no deductions for business expenses **and**
4. calculate a deduction for
  - 4.1 income tax **and**
  - 4.2 SS contributions **and**
  - 4.3 half of any premium for a personal pension scheme **and**
5. deduct any disregard.

**Note:** See DMG 20466 for the remunerative work rules for childminders.

*1 JSA Regs, reg 102(3)(b); IS (Gen) Regs, reg 39(3)(b)*

### Example

Fleur is a S/E child minder who is in receipt of IS. Her assessment period is 13 weeks. The gross receipts for that period are £1,280.

The DM determines

1. that no expenses should be deducted from the gross receipts **and**
2. that the chargeable income is £426.67 (1/3 of £1,280) **and**
3. the income tax, SS contributions and premiums that are to be deducted from the chargeable income.

27352 - 27360

## Crofts or small holdings

27361 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.

27362 - 27369

## Farmers

27370 A farmer in need of financial assistance may first seek advice from a surveyor, land agent, valuer or some other similar professional to ensure he is taking advantage of any schemes or subsidies, such as those administered by the Department for Environment, Food and Rural Affairs Rural Payments Agency, that may be available.

27371 Department for Environment Food and Rural Affairs are unable to supply opinions about the amount of work involved in particular farms or their likely annual returns. However, DMs may consult the Department for Environment, Food and Rural Affairs website ([www.defra.gov.uk](http://www.defra.gov.uk) - Economics and Statistics page) for information about total farm income for the type of enterprise in question.

27372 - 27379

## Hotels, guest houses, bed and breakfast establishments

27380 The DM should apply the normal remunerative work rules when considering a claim for JSA or IS involving a person running a hotel, guest house, lodging house or bed and breakfast establishment.

27381 The DM should note that payments received for providing BL accommodation (see DMG 27013) are not earnings<sup>1</sup>. These payments are income other than earnings and should be treated as follows

1. if the BL accommodation is provided in the dwelling occupied as the home (see DMG 28181 et seq) **or**
2. if the BL accommodation is not being provided in the dwelling occupied as the home, the payments should be taken into account as income other than earnings subject to a disregard for any income tax paid on that income<sup>2</sup>.

*1 JSA Regs, reg 100(2)(a); IS (Gen) Regs, reg 37(2)(a); 2 JSA Regs, Sch 7, para 1; IS (Gen) Regs, Sch 9, para 1*

## **Bars and restaurants in hotels, guest houses**

27382 Income from bars and restaurants where services are provided that are not included in the BL charge should be treated as earnings from self-employment. The DM should determine the assessment period and calculate the gross receipts and allowable expenses in the normal way.

27383 - 27384

## **Local exchange trading systems**

27385 LETS are associations that allow participants to exchange goods and services with others in the community.

27386 LETS members 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

- bobbins
- brads
- newberries
- beacons
- acorns.

## **Participating in a local exchange trading system scheme**

27387 Participating in a LETS scheme should be regarded as work. The credits obtained are payment for the goods or services provided.

27388 For both JSA and IS, DMs should consider whether a LETS participant is engaged in remunerative work (see DMG Chapter 20).

27389 In a claim for JSA, the DM should also consider whether the labour market tests continue to be satisfied (see DMG Chapter 21).

## **Local exchange trading credits**

27390 Credits can be exchanged for goods and services in participating shops and businesses in much the same way as ordinary currency. Credits are considered taxable income by HMRC.

27391 Credits can be treated as

1. capital **or**
2. earnings

depending on the circumstances of each case. Credits are **not** payments in kind.

27392 If a person

1. undertakes occasional, personal transactions for credits, for example selling an item of furniture, the credits received should be treated as capital **and**
2. is gainfully employed as a S/E earner and receives credits as payment for services provided, those credits should be included in the gross receipts of the business and are subject to the appropriate disregard.

27393 The value of credits is equivalent to the number of credits awarded for the particular goods or services at the relevant exchange rate.

27394 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.

27395 If a sterling equivalent is not available the DM should consider the question based on the circumstances of each case, including

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 LETS economy
5. what the average local rate of pay is for the particular work performed.

27396 - 27399

## Partnerships

27400 Partners are similar to sole traders, except that ownership and control of the business is shared between two or more people.

27401 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 partners<sup>1</sup>.

*1 Partnership Act 1890, s 24*



27402 The conditions under which a partnership is formed, operates or ends, are governed by the terms of a partnership deed or agreement together with the provisions of the Partnership Act 1890. For most purposes, the terms of the deed or agreement prevail over the provisions of the Act. Where a deed or agreement exists, it becomes a legal document and its interpretation is a matter of law.

27403 The legal status of a partnership should not be confused with that of a company, in that a partnership has no legal personality in law. At any one time the assets and liabilities of the partnership are (subject to the partnership deed or agreement and the Partnership Act 1890), the joint and several assets and liabilities of the partners.

**Note:** Scots Law on the legal status of a partnership differs. In Scotland a partnership is a separate legal entity<sup>1</sup>, distinct from the partners who carry out its business. DMs should refer any cases to DMA Leeds if further guidance is needed.

*1 Partnership Act 1890, s 4(2)*

27404 A partnership does not necessarily end when it ceases trading. It must be formally dissolved. The partnership deed or Partnership Act 1890 may continue to impose rights and obligations on the parties following dissolution, providing further time for the winding up of its affairs. Further delays may result from legal challenges concerning the partnership's affairs.

27405 Where a partnership ends and the claimant has finished employment in the business, a reasonable period of time is allowed for the claimant to dispose of any assets before they are regarded as capital for benefit purposes. In considering that period of time, regard should be had to any legal obligations and restrictions imposed by the partnership deed or the Partnership Act 1890.

27406 The sale of assets may sometimes provide an income receipt as opposed to a capital receipt (e.g. the sale of "work in hand" or "stock in trade" might well be considered as resulting in an income receipt and not represent capital). Any such decisions should be based on the principles of commercial accountancy. The decision would need to reflect the approach taken by an accountant or HMRC to such questions.

### **Calculation of a business partner's normal weekly earnings**

27407 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.

27408 To calculate the normal weekly earnings of a business partner<sup>1</sup>, the DM should determine 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"<sup>2</sup>. 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 share<sup>3</sup> if neither 3.1 nor 3.2 apply, for example, if there are four partners, each partner's share is 25% **and**
4. deduct from 3. an amount for
  - 4.1 income tax **and**
  - 4.2 SS contributions
 calculated on the amount at 3. **and**
5. deduct half of any premium for a personal pension scheme **and**
6. deduct any disregard.

*1 JSA Regs, reg 101; IS (Gen) Regs, reg 38; 2 JSA Regs, reg 101(5); IS (Gen) Regs, reg 38(4);  
3 Partnership Act 1890, s 24*

### Example 1

Daniel is one of two partners in a building firm. He is in receipt of JSA. 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 and the appropriate disregard.

## Example 2

Agnes and her brother are partners in a small pottery business. Agnes is in receipt of IS. 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 determines 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, SS contributions and the appropriate disregard. Agnes was not paying premiums for a personal pension scheme.

27409

## Salaried partners

27410 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 earner<sup>1</sup> **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*

27411 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.

27412 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

from the partner's share of the chargeable income.

27413 - 27424

## Renting out property as a business

- 27425 If a person is letting properties that are not the home, the DM needs to consider if this is by way of a business<sup>1</sup>.

*1 R(FC) 2/92*

- 27426 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. See DMG Chapter 28 for the treatment of rental income.

### 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.

After the property has been let for six months Neil claims JSA. The DM determines that Neil is not operating a business. The DM then goes on to consider how to treat the value of the house and the rental income.

- 27427 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.

- 27428 If the DM determines that a person is conducting a business from renting out properties, the income, that is the rent, should not be treated as capital. The income has not been obtained from capital, but from the person's business. The property was used as an asset. 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. All business activity takes 15 hours per week. Michael claims JSA.

The DM determines that Michael is a S/E earner and that all of the properties are business assets that can be disregarded<sup>1</sup>. The DM calculates Michael's earnings, the rental income is regarded as part of the gross receipts.

*1 JSA Regs, Sch 8, para 11; IS (Gen) Regs, Sch 10, para 6*

27429 - 27439

## Seasonally self-employed

27440 If a S/E earner is seasonally S/E the DM should consider if the S/E earner is in remunerative work (see DMG 20339). If not, the DM should

1. consider the guidance at DMG 27020 - 27023 **and**
2. determine if the S/E earner remains gainfully employed as a S/E earner.

### Example

Shaun is S/E as an amusement arcade owner. He made a claim for JSA in October because the summer season had ended. Shaun stated that

1. he and his creditors regarded the business as a going concern. This is because he anticipated that his business would start up again in the following April when the holiday trade would re-commence
2. he was available for and actively seeking alternative employment
3. in April, when the holiday trade would re-commence he intends to start work again in the amusement arcade
4. he still undertakes some activities in the business. He is currently redecorating the arcade. He plans to renovate and maintain the electrics and make minor repairs before April. He also plans to update the alarm system. He is also looking to update some of the machines in the arcade
5. his accountant only submits figures from April to September each year. It is normal for him to only work between April and September each year.

The DM considers the guidance at DMG 27020 - 27023 and decides, in this case, that Shaun remains gainfully employed as a S/E earner. As there had been no

changes that had affected the normal pattern of trading the DM determines that the assessment period for the earnings should be one year.

27441 - 27449

## **Sub-contractors**

27450 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.

27451 If a S/E sub-contractor claims JSA or IS the DM should consider if the S/E earner is in remunerative work. If not, the DM should consider

1. the guidance at DMG 27020 - 27023 **and**
2. if the S/E sub-contractor remains gainfully employed as a S/E earner.

### **Example**

Stephen claims JSA. He is a S/E electrician. He sub-contracts for other contractors. Stephen has claimed JSA because he 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 and his business as a going concern, he has only claimed because he has no work at the moment
2. there are good prospects of work in the future
3. he is advertising for work all of the time and further contracts are in the pipeline
4. there have been other occasions where there has been a break between contracts.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Stephen remains gainfully employed as a S/E earner.

## **Actors and entertainers**

27452 DMs must consider claims from actors and other entertainers in the same way as any other claimants. Each case must be decided on its own merits. The DM should

decide whether a claimant's earnings are from employment as a S/E earner or employment as an employed earner.

- 27453 In general, because of the nature of an actor's or entertainer's employment, the DM may find that their earnings are from employment as a S/E earner. However, it is possible for an entertainer whose general pattern of employment is that of a S/E earner, to have periods of employment as an employed earner at the same time as his overall self-employment.
- 27454 The fact that an actor or entertainer has periods of employment during which class 1 SS contributions are payable is not conclusive when deciding whether that employment is as an employed earner. It is for the DM deciding the claim to IS or JSA to decide whether earnings are from employment as an employed earner or from self-employment. Where an entertainer whose general pattern of employment is that of a S/E earner contends that certain engagements were as an employed earner and that class 1 contributions were paid it will be for the DM to decide whether the claimant was employed under a contract of service or otherwise.

#### **Example 1**

Laura is an actress. She makes a claim for JSA because she has left her partner who was in F/T employment. Her acting engagements are sporadic, and she is not currently working. She continues to look for work and remains on her agent's books. She has been booked for some future engagements, but nothing substantial, and has not worked for several weeks. She says that she could find more substantial acting work at any time, that being the nature of work. In the year prior to the current claim, the claimant has had a number of engagements in advertising and the theatre as well as three separate, short term, engagement with the BBC to appear in three separate dramatic productions. Her most substantial earnings were derived from these engagements with the BBC. She states that she was actually employed by the BBC under a contract of service and says that the fact that she paid class 1 SS contributions supports this contention. As such she argues that her earnings from the BBC should not be included when working out her earnings from self-employment. The DM:

1. decides that the claimant is gainfully employed as a S/E earner (see DMG 27020 - 27023)
2. considers the terms under which the claimant was engaged by the BBC and decides that as she was engaged to perform a specific role on particular occasions for a fixed fee, she was employed under a contract for services and as such the earnings fell to be taken into account with her other earnings from self-employment
3. decides that the sporadic nature of the employment is the normal pattern of the business and calculates her average weekly earnings over the preceding year.

**Example 2**

Craig is a dancer. He is unable to work due to a broken ankle. He states that he is usually S/E, carrying out one-off engagements in the theatre. However, unusually, he was engaged by a dance company for a fixed 26 weeks period during the previous year. He contends that during this period he was engaged as an employed earner, employed under a contract of service, and paid class 1 SS contributions.

The DM decides that Craig's employment with the dance company was under a contract of service for the 26 weeks when he was engaged by the dance company, and as such the earnings from that employment are not included in the calculation of the claimant's earnings as a S/E earner.

27455 - 27469



## Disregard of earnings from self-employment

27470 The following disregards should be applied to the net profit of a S/E earner.

### Earnings from self-employment that has ceased

27471 If a person has been engaged in

1. remunerative work as a S/E earner **or**
2. P/T self-employment

and that employment has ceased, any earnings derived from that employment are fully disregarded unless the earnings are royalties, copyright payments or Public Lending Rights payments (see DMG 27073 - 27081)<sup>1</sup>.

*1 JSA Regs, Sch 6, para 4; IS (Gen) Regs, Sch 8, para 3*

#### Example

James was S/E. He last worked on 11 November. His business has ceased to trade. He received earnings on that day. He claims JSA on 12 November.

The DM determines that James has ceased to be a S/E earner. The earnings received on 11 November are disregarded.

### Earnings payable abroad

27472 Money that is paid to the business in a country outside the UK should be treated as a gross receipt if 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 bank account.

27473 Any gross receipts that are received by 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 applies<sup>1</sup>.

*1 JSA Regs, Sch 6, para 14; IS (Gen) Regs, Sch 8, para 11*

### Example

Derek is S/E on a P/T basis in an import/export business. During the assessment period his business received £1,000 in a country that was, and currently is, prohibiting the transfer of funds to the UK. The DM calculates the earnings as follows

Gross receipts (including the £1,000 received abroad)	=	£5,000
Deductions for allowable expenses, notional income tax and SS contributions and half of a premium for a personal pension	=	£2,500
Net profit	=	£2,500
Divided by the number of weeks in the assessment period (52)	=	£48.07
Normal earnings disregard	=	£5.00 <b>less</b>
Special disregard for earnings abroad (£1,000 divided by 52)	=	£19.23
Earnings taken into account (£48.07 - £5.00 - £19.23).	=	£23.84

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 supersedes the earnings disregard for the year, the amount of the earnings to be taken into account increases to £43.07 (£48.07 - £5.00).

27474

### Earnings paid in a foreign currency

- 27475 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 JSA Regs, Sch 6, para 15; IS (Gen) Regs, Sch 8, para 12*

### Earnings disregard

- 27476 The relevant earnings disregard (see DMG Chapter 26) should be applied.

27477

# Self-employment route

## Definition

27478 Self-employment route means<sup>1</sup> 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 legislation<sup>2</sup>.

*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*

## Receipts - trading whilst on the self-employment route

27479 Gross receipts from trading whilst on any of the schemes or activities falling within the definition of the self-employment route (see DMG 27478) are

1. not earnings, earnings from self-employment or income other than earnings<sup>1</sup>  
**and**
2. paid into a special account<sup>2</sup> (see DMG 27481 - 27483) **and**
3. taken into account in a certain way when working out IS and JSA<sup>3</sup> (see DMG 27478 - 27497).

*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

27480 Gross receipts received after the self-employment route ends are earnings from employment as a S/E earner<sup>1</sup>. This is because a person is no longer treated as not employed after the self-employment 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.

*1 IS (Gen) Regs, reg 37; JSA Regs, reg 100*

## Example

Sinead starts trading from 1 December as a freelance journalist whilst on the self-employment route. She continues to trade after the self-employment route ends on 30 May. She is entitled to JSA from 31 May 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 May **and**
2. the assessment period for working out earnings from that employment starts on 31 May **and**
3. the earnings should be worked out in accordance with DMG 27100 et seq **and**
4. gross receipts from trading whilst on the self-employment route should be worked out in accordance with DMG 27478 - 27497.

## Special account

27481 Gross receipts from trading whilst on the self-employment route are paid into a special account<sup>1</sup>. 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*

27482 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.

27483 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

27484 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 self-employment route. He continues to trade after the self-employment route ends. The self-employment route ends on 25 July. He is not entitled to IS or JSA after the self-employment route ends because he is in remunerative work. Money in the special account at the end of the last day on the self-employment route is due to be paid on 26 July.

### Example 2

Anwara starts trading as a designer of jewellery whilst on the self-employment route. She continues to trade after the self-employment route ends on 19 September 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 self-employment route is due to be paid on 20 September 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 self-employment route. She is entitled to JSA after the self-employment route ends on 28 February 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 April because she is in remunerative work. Money in the special account at the end of the last day on the self-employment route is due to be paid on 1 April because

1. 1 April is the day after entitlement to JSA ends **and**
2. entitlement to JSA ends within the period from 1 March, the day after the self-employment route ends **to** 30 May which is 13 weeks after the self-employment route ends.

### Example 4

Sean starts trading as a windscreen fitter whilst on the self-employment route. He is entitled to JSA after the self-employment route ends on 30 May because he works less than 16 hours a week. Money in the special account at the end of the last day on the self-employment route is due to be paid on 30 August because that is the day immediately after a period of 13 weeks, starting with the day after the self-employment route ends.

## Income - money in the special account

- 27485 Income paid to people who are on the self-employment route 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

- 27486 The date on which payment of money in the special account at the end of the last day on the self-employment route 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 week<sup>1</sup>.

<sup>1</sup> *IS (Gen) Regs, reg 39C(3)(b); JSA Regs, reg 102C(3)(b)*

### Example

Martin has been continuously in receipt of JSA since the self-employment route ended on 5 February. His BWE is Wednesday. Money in the special account is due to be paid on 8 May which is during a benefit week. The payment is treated as paid on Thursday, 7 May, because that is the first day of the benefit week.

27487 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 self-employment route ends by the

1. person **or**
2. partner of the person

who was on the self-employment route<sup>1</sup>. See example at DMG 27486.

*1 IS (Gen) Regs, reg 39C (3)(a)*

27488 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 self-employment route ends by the

1. person **or**
2. partner of the person

who was on the self-employment route<sup>1</sup>.

*1 JSA Regs, reg 102C(3)(a)*

### Example

Ron's wife Pamela was on the self-employment route. The self-employment route ended on 3 June. Payment of money in the special account was due to be paid on 4 June. 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 June; her BWE is Wednesday,

Ron claims JSA on 19 July; his BWE is Thursday,

Ron claims IS on 23 August; his BWE is Monday,

Pamela claims JSA on 13 September; her BWE is Tuesday.

The payment of money in the special account is treated as paid on

- 4 June for the claim made for IS by Pamela on 28 June because 4 June is a Thursday and that day corresponds with the first day of the benefit week for that claim

- 5 June for the claim made for JSA by Ron on 19 July because 5 June is a Friday and that day corresponds with the first day of the benefit week for that claim
- 4 June for the claim made for IS by Ron on 23 August because 4 June is a Thursday and that day corresponds with the first day of the benefit week for the first claim made for IS after the self-employment route ended
- 5 June for the claim made for JSA by Pamela on 13 September because 5 June is a Friday and that day corresponds with the first day of the benefit week for the first claim made for JSA after the self-employment route ended.

## Period payment taken into account

27489 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 self-employment route. The period starts with the date the payment is treated as paid<sup>1</sup>.

*1 IS (Gen) Regs, reg 39C(2); JSA Regs, reg 102C(2)*

### Example

Grace was on the self-employment route from 3 August to and including 29 January, 180 days. The money in the special account is due to be paid on 1 May. Her BWE is Thursday. The payment is treated as paid on 30 April. The payment is taken into account from 30 April to and including 26 October because 26 October is 180 days from 30 April which is the date the period starts.

## Amount taken into account

27490 The amount taken into account is the amount in the account at the end of the last day on the self-employment route less

1. a deduction for income tax **and**
2. certain disregards<sup>1</sup>.

The amount is apportioned equally over the whole of the period the payment is taken into account<sup>2</sup> (see DMG 27489).

*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

27491 Fractions of a penny are rounded up or down depending on whether it is to a person's advantage<sup>1</sup>. 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

- 27492 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 taxed<sup>1</sup>. Chargeable income is the amount in the special account at the end of the last day on the self-employment route<sup>2</sup>.

*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)*

- 27493 A deduction is made from the amount of chargeable income for certain personal allowances under income tax law<sup>1</sup> which are applicable to the person who was on the self-employment route<sup>2</sup>. The rate of tax charged on the chargeable income after deduction for personal allowances is the basic rate<sup>3</sup>.

**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)*

- 27494 Guidance on the personal allowances which can be deducted and on the rate of income tax is at DMG 27260 et seq.

- 27495 The amount

1. for personal allowances **and**
2. tax

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 27489) is less than a year<sup>1</sup>.

*1 IS (Gen) Regs, reg 39C(2) & 39D(2); JSA Regs, reg 102C(2) & 102D(2)*

## Disregards

- 27496 An amount is disregarded from the payment of money in the special account for each benefit week it is taken into account<sup>1</sup>. The amount which is disregarded is the equivalent of certain disregards which apply to earnings<sup>2</sup>.

*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*

- 27497 Guidance on the disregards of earnings is in DMG Chapter 26. DMs should decide which disregard the person who was on the self-employment route is entitled to and deduct that amount.



# Disregards - capital

## Assets of current or future businesses

27498 The DM should disregard any assets acquired

1. by a participant in the self-employment route **and**
2. for the purpose of establishing or carrying on the commercial activity under the self-employment route<sup>1</sup>.

*1 IS (Gen) Regs, Sch 10, para 6; JSA Regs, Sch 8, para 11*

## Capital acquired for current or future business purposes

27499 The DM should disregard any capital acquired

1. by a current or former participant in the self-employment route **and**
2. for the purpose of establishing or carrying on the commercial activity assisted under the self-employment route<sup>1</sup>.

**Note 1:** The disregard applies for a period of 52 weeks from the date on which the sum was acquired.

**Note 2:** This disregard may apply to cash or money held in bank or building society accounts.

*1 IS (Gen) Regs, Sch 10, para 52; JSA Regs, Sch 8, para 47*



# Share fishermen - introduction and additional conditions for payment

## Who is a share fisherman - Jobseeker's Allowance and Income Support

27500 The guidance on who is a share fisherman applies to JSA and IS.

27501 A share fisherman is<sup>1</sup>

1. a person who
  - 1.1 usually works in the fishing industry **and**
  - 1.2 is S/E **and**
  - 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 in 1., but has permanently stopped such work because of age or ill health **and**
  - 2.2 usually works
    - 2.2.a ashore in GB (see DMG 070702 ) **and**
    - 2.2.b as S/E **and**
    - 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 **and**
  - 2.4 has not ceased to usually work as described in 2.2.

**Note:** For IS, the fishing boat must be British<sup>2</sup>.

*1 JSA Regs, reg 156; 2 SS (Mariners' Benefits) Regs, reg 1(2)*

27502 The master and all the members of the crew of a fishing boat are within the definition at DMG 27501 1., 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 boat<sup>1</sup>.

*1 R(U) 10/51*

## Meaning of "fishing boat"

27503 "Fishing boat" means<sup>1</sup> a boat that is used

1. for or in connection with fishing for sea fish **and**
2. in order to make a profit.

Sea fish includes shellfish, salmon and migratory trout.

*1 JSA Regs, reg 156; Merchant Shipping Act 1995, s 313(1)*

## Meaning of "usually works"

27504 A DM can consider 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"

27505 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
  - 1.1 sell the catch themselves (either retail or wholesale) **and**
  - 1.2 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 wage<sup>1</sup>.

*1 CU 495/49(KL)*

27506 - 27508

## Additional condition for payment of Jobseeker's Allowance to share fishermen

- 27509 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period in a benefit week when they have not worked as share fishermen. If they cannot prove this, even if it is just for part of one day in a week, no JSA is payable for the whole of that benefit week<sup>1</sup>. This additional condition does not apply to IS. It does apply to JSA(Cont) and JSA(IB).

*1 JSA Regs, reg 161(1)*

### Meaning of “benefit week” for JSA(Cont)

- 27510 “Benefit week” for JSA(Cont) means<sup>1</sup> a period of seven days beginning with the

1. date of claim **or**
2. day after the last day of the previous benefit week.

*1 JSA Regs, reg 161(4) & 164(3)*

#### Example

Joe Tyler, a share fisherman, makes a claim for JSA(Cont) on Thursday. He does not want to back-date it. His first benefit week will be from the Thursday he has made his claim to the following Wednesday. His second benefit week will run from the next Thursday to the following Wednesday.

### Meaning of "benefit week" for JSA(IB)

- 27511 “Benefit week” for JSA(IB) means<sup>1</sup> 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.

NI No	Day
00 - 19	Monday
20 - 39	Tuesday
40 - 59	Wednesday
60 - 79	Thursday
80 - 99	Friday

*1 JSA Regs, reg 1(3)*

27512

## Meaning of “worked as share fishermen”

27513 This guidance applies when a DM is identifying the period for which a share fisherman has to prove that he has not neglected to avail himself of employment as a share fisherman. Share fishermen do not always have to catch fish to work as share fishermen. They will have worked as share fishermen if they have done any of the following work<sup>1</sup> and they satisfy the conditions in DMG 27514

1. any repairs or maintenance done to the fishing boat or its nets or gear (including running repairs) **or**
2. any work in connection with
  - 2.1 laying up the boat, nets and gear at the end of a fishing season **or**
  - 2.2 preparing the boat, nets and gear for a season's fishing.

But share fishermen will not have worked as share fishermen if they have done work which is not to the fishing boat or its nets or gear<sup>2</sup>.

*1 JSA Regs, reg 161(2)(b); 2 R(U) 33/52*

27514 The work in 27513 1. and 2. is only work as a share fisherman if<sup>1</sup>

1. at the time it is done the work is, or is likely in the near future to become, necessary for the safety or reasonable efficiency of the fishing boat **and**
2. it is the duty of the share fisherman (by agreement, custom, practice or otherwise) to perform it without pay, other than a share in the profits or gross earnings of the fishing boat.

If the work cannot be postponed for as long as two months, then it is likely in the near future to become necessary for the safety or reasonable efficiency of the fishing boat.

*1 JSA Regs, reg 161(2)(a)*

27515 In most cases a share fisherman on board a boat that leaves harbour equipped to fish will have performed work as a share fisherman for that period, even if fishing is stopped or prevented by bad weather or other causes. But if the share fisherman has only done what was reasonably necessary to find out that weather conditions were not suitable for fishing, the fisherman has not performed work as a share fisherman, even if the boat left harbour equipped to fish<sup>1</sup>.

*1 R(U) 1/81*

27516 Examples of work as a share fisherman are

1. scraping and painting a boat, where that work is likely to become necessary for its reasonable efficiency in the near future<sup>1</sup>
2. fishing for bait (even if none is caught) where this has to be done and is normally done before fishing for a catch to sell<sup>2</sup>

3. setting off for the fishing grounds, but returning to dock before reaching them because of an accident to the fishing boat or because the harbour entrance was blocked<sup>3</sup>
4. returning to home port earlier than intended because they are unable to continue fishing alone when their neighbouring boat with whom they were fishing breaks down<sup>4</sup>.

*1 CSU 88/49 (KL); 2 R(U) 22/51; 3 R(U) 9/52; 4 R(U) 9/53*

27517 Examples of work which is not work as a share fisherman are

1. voluntarily helping a harbour master, according to custom, to place a boom across a harbour to protect vessels in the harbour<sup>1</sup>
2. sailing to the entrance to a loch just to check if the weather was suitable for fishing, where that was the only practicable way of checking this<sup>2</sup>.

*1 R(U) 33/52; 2 R(U) 1/81*

## **Neglected a reasonable opportunity of employment as a share fisherman**

27518 Share fishermen have to prove that they have not neglected to avail themselves of a reasonable opportunity of employment as share fishermen for any period they have not worked as share fishermen either catching fish or as defined in 27513 - 27514<sup>1</sup>. Any employment as a share fisherman is covered, including

1. the claimant's usual work as a share fisherman on the claimant's usual boat (including work as defined in 27513 - 27514)
2. employment as a share fisherman on a boat other than the claimant's usual boat (including work as defined in 27513 - 27514).

*1 JSA Regs, reg 161(1) & (2)*

27519 It is **for claimants** to prove that they did not neglect an opportunity of such employment<sup>1</sup>. But DMs should accept that claimants satisfy this condition if there is no evidence to suggest otherwise. Information about work which claimants might have had may come, for example, from an employer or owner of a boat, or from the local fishery officer. If some boats go fishing from a port while others do not, it is difficult for those who stay behind to prove that they have not neglected a reasonable opportunity to fish<sup>2</sup>.

*1 R(U) 28/53; 2 R(U) 1/51*

### **Example 1**

Bill Sears, a share fisherman, is part owner of a crabbing boat manned by himself and a partner. Bill does no work on two days because, in his opinion, fishing is not profitable. Some boats do go fishing. Bill has neglected an opportunity to fish, and

no JSA is payable for the benefit week in which those two days fall. If the days fall in two separate benefit weeks, then JSA would not be payable for those two weeks.

### **Example 2**

A fishing boat fishes with another boat - neither boat can fish alone. One of the boats is under repair for two days, and the crew of the other boat do not go fishing either. But other local boats are available and could have been hired on those days. As the crew of the other boat make no enquiries about these boats, and do not make any attempt to find other work as share fishermen, they have not proved that they did not neglect an opportunity to fish.

- 27520 The guidance at Volume 6, Chapter 34 on the meaning of neglect to avail and reasonable opportunity should be applied when deciding whether a share fisherman has neglected a reasonable opportunity of employment as a share fisherman<sup>1</sup>.

*1 R(U) 9/72*

### **Example**

Fred Finlay, a share fisherman who is a trawler skipper, misses an eight week (benefit weeks) long fishing trip because he arranges with the owners of the boat to take his sick wife on a two week holiday. He would normally have taken his holiday at the end of the eight week trip. Fred has neglected to avail himself of a reasonable opportunity of employment as a share fisherman<sup>1</sup>. JSA is not payable for the eight benefit weeks of the fishing trip.

*1 R(U) 9/72*

- 27521 An opportunity should not be regarded as reasonable if taking it would reduce the share fisherman's chances of going back to fishing with their usual boat.

27522 - 27535



## **Further condition for payment of JSA(Cont) if fishing boat is crew owned**

27536 If share fishermen are masters or members of the crew of fishing boats that are crew owned, they must prove that, for any period in a benefit week when they have not worked as share fishermen, the fishing boat did not put to sea to go fishing because

1. the state of the weather meant the boat could not reasonably have put to sea to go fishing (see DMG 27542 - 27546) **or**
2. it was being repaired or having maintenance work done to it, other than the repairs or maintenance referred to in DMG 27513 - 27514 (see DMG 27551 - 27552) **or**
3. there was an absence of fish in any waters in which the fishing boat could reasonably be expected to operate (see DMG 27560 - 27563) **or**
4. of any other good cause which forced them not to fish (see DMG 27570 - 27584)<sup>1</sup>.

This further condition does not apply to JSA(IB) or IS.

*1 JSA Regs, reg 161(3)*

27537 If the claimant cannot show that one of the reasons at DMG 27536 is met for any period in a benefit week, even if it is just for part of one day in a week, JSA(Cont) is not payable for the whole of that benefit week. This applies to the share fishermen described in DMG 27501 **2.** as well as those who actually go fishing.

### **Meaning of "benefit week"**

27538 Guidance on the meaning of benefit week is at DMG 27511 - 27512.

### **Meaning of "worked as share fishermen"**

27539 Guidance on the meaning of worked as share fishermen is at DMG 27513 - 27517.

### **Meaning of "crew owned"**

27540 If the master or any member of the crew is the owner or part owner of the boat, the boat is crew owned.

## Share fishermen who are no longer masters or members of the crew

- 27541 Share fishermen do not have to satisfy the further condition at DMG 27536 if, although linked to some extent to a particular boat, they can be treated as no longer being a master or member of the crew. They cannot be so treated just because the boat is idle<sup>1</sup>.

*1 R(U) 29/58; R(U) 6/63; R(U) 19/64*

### Example 1

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Tim Jeffries, a share fisherman who works on the boat, but has no share in the ownership of the boat, is not needed and does not work for the two weeks. Tim ceases to be a member of the crew whilst he is not needed and does not have to satisfy the additional condition in DMG 27536.

### Example 2

A fishing boat changes from catching herring to seine net fishing for two weeks and needs a smaller crew. Jimmy Brown, a share fisherman who works on the boat, and has a share in the ownership of the boat, is not needed and does not work for the two weeks. Jimmy does not cease to be a member of the crew whilst he is not needed and does have to satisfy the additional condition in DMG 27536.

### Example 3

The owners of a fishing boat are unable to get a full complement to crew their boat. They decide to go out of business and lay up the vessel for sale. Pat Layton, the master of the boat, who is also a part owner, claims JSA. Pat continues to be a part-owner of the vessel until it is sold, but meanwhile takes employment elsewhere. Pat and the members of the crew ceased to be master and members of the crew at the end of the last fishing trip - all intention of further fishing with the boat had definitely ceased. Pat does not have to satisfy the additional condition in DMG 27536.

### Example 4

Skippers at a particular port decide not to go fishing because there is no economic market for the catch. Colin Forbes, a share fisherman on one of the boats affected, who is not an owner of the boat he works on, is paid off. After six weeks the boats start fishing again and Colin goes back to work on the same boat. He has not ceased to be a member of the crew while the boat was temporarily idle. Colin does have to satisfy the additional condition at DMG 27536.

## Weather

27542 The question whether, because of the state of the weather, the boat could not reasonably have put to sea to go fishing is one of fact which has to be considered by the DM. Each case should be determined on its own particular facts, including the opinion of the local fishery officer where the DM considers it necessary to obtain it.

27543 Usually it is not possible to accept that the weather prevented a particular fishing boat from putting to sea if on the same day other boats from the same port were able to fish. But it may be possible to accept this if, for example, the evidence shows that the weather was not too bad to stop larger boats from fishing, but was too rough for the claimant's boat<sup>1</sup>.

*1 R(U) 15/57; R(U) 2/62*

27544 The use of the word "reasonably" indicates that the test should be applied in a reasonable, and therefore practical, manner. So the claimant does not have to show that the weather was such that the boat could not put to sea throughout the whole day. The claimant only has to show that the boat could not put to sea at all normal and reasonable times for putting to sea on the day and at the port or harbour in question<sup>1</sup>.

*1 R(U) 30/58; R(U) 2/62*

### Example 1

Scott Lewis is a share fisherman. His boat cannot put to sea at the normal early morning time because of bad weather. By 11am the weather has improved sufficiently to allow the boat to go out. But the boat does not go to sea, because it would have had to return on the tide at about 2.30 pm. No other fishing boats leave harbour that day. Scott satisfies the condition at DMG 27536 1..

### Example 2

Pat McIntyre is a crew member of a fishing boat. The crew are ready to go to sea at 3am, but they are prevented by bad weather. At 8am the master decides that fishing will not be possible that day, and he dismisses the crew. The weather improves, and other boats the same size (which on that day could only safely leave or enter the harbour before 7am, or between 11am and 7pm or after 11pm) put to sea and fish successfully. Pat does not satisfy the condition at DMG 27536 1..

27545 A fishing boat is not prevented from putting to sea by the weather if it could have gone

1. to the fishing grounds by a different and more sheltered route, even if it is longer<sup>1</sup> **or**
2. to different fishing grounds.

*1 R(U) 15/57*

27546 A fishing boat cannot go to different fishing grounds if it is not equipped to catch the fish which live there. The boat is not expected to spend money to change gear to be able to catch a different type of fish because there is bad weather on the fishing grounds which it is equipped to fish in.

27547 - 27550

## Repairs

27551 A share fisherman who says that the boat did not go fishing because it was being repaired or having maintenance work done to it must show that the repairs or maintenance were not those described in DMG 27513 - 27514. If the claimant cannot do this, this condition is not satisfied, and JSA (Cont) is not payable.

27552 Repair and maintenance work other than as described in DMG 27513 - 27514 includes the period during which the boat is sailing or being transported to and from the repair yard. This condition is satisfied for those days.

27553 - 27559

## Absence of fish

27560 Absence of fish does not mean that

1. there are no fish at all **or**
2. there is a shortage of fish

in the waters concerned. There will be an absence of fish, and the condition will be satisfied if there is a negligible quantity, that is only very very few fish in the waters concerned<sup>1</sup>.

*1 R(U) 20/58*

27561 The claimant will not satisfy the condition just because

1. the catches are so small that it is not financially worthwhile to continue daily fishing<sup>1</sup> **or**
2. that a particular type of fish are absent if
  - 2.1 other fish are plentiful **and**
  - 2.2 the boat can be easily adapted for the different type of fishing required.

*1 R(U) 20/58*

27562 Sometimes, from the same port, some share fishermen go fishing and some do not. In such cases, it is difficult for those who do not go to prove that there was an absence of fish from the waters<sup>1</sup>.

*1 R(U) 1/51; R(U) 11/58*

### **Example 1**

Robin Stewart, the part-owner of a two man crabbing boat, does no work as a share fisherman for two days because he thinks that fishing is unprofitable due to a lack of fish. But there is nothing different about these two days from the days before and after them, when he does go fishing. Also, some other boats go fishing on the two days. Robin has not proved that there is an absence of fish from the waters. He has not satisfied the further condition, and JSA (Cont) is not payable for the benefit week(s) in which the two days fall.

### **Example 2**

Thomas Lewis, a share fisherman who normally fishes by line, does not fish when it becomes unprofitable. The fish are not taking bait, and his boat is not equipped for net fishing. But the day before he stops fishing, he caught 184 kilos (29 stones) of fish. And other boats successfully fish on the days he does not, using different gear. There is no absence of fish from the waters. Thomas has not satisfied the further condition. JSA (Cont) is not payable for the benefit weeks in which the days he did not fish fall.

### **Evidence**

27563 Whether there is an absence of fish is a question of fact which the DM must determine on the evidence available. This will usually include a statement by the claimant. Where

1. the Jobcentre Plus Office lacks information or technical knowledge on the issues involved **or**
2. it is desirable to obtain some confirmation of the claimant's statement

the DM will usually need the written opinion of the local fishery officer. Sometimes expert opinion from another source will be available<sup>1</sup>.

*1 R(U) 22/59*

### **Example**

Nick Brown, a ripper fisherman, does not fish when there is cloudy water because he does not catch many fish. He says that when the water is cloudy the fish mainly caught by that method of fishing move into deeper waters. Expert opinion from a marine laboratory does not agree with this theory. Nick has not proved that there is an absence of fish from the waters concerned.

27564 - 27569

## Other good cause

27570 Good cause will normally only be shown where share fishermen have been forced not to fish by something<sup>1</sup>

1. imposed on them **and**
2. outside their control **and**
3. about which they had no choice.

*1 CSU 94/50(KL); R(U) 5/56; R(U) 16/57*

### Example 1

The crew of a fishing boat are unable to fish for three days because their licence is suspended by the Sea Fish Industry Authority because they deliberately broke its conditions. The suspension of the licence is not good cause.

### Example 2

Len Stokes, who claims JSA, is master and part-owner of a fishing boat. The boat is put up for sale, and does not go to sea for one week before the sale, so that potential buyers can examine it. This is not good cause.

### Example 3

Dominic Heard, a share fisherman, does not go fishing because

1. he runs out of bait **and**
2. a different method of fishing without bait does not offer any reasonable chance of success because the water is cloudy.

Neither of these reasons is good cause.

27571 The claimant cannot show good cause because as an individual the claimant could not fish because

1. the fishing boat did not put to sea<sup>1</sup> **or**
2. the claimant had to follow the master's decision<sup>2</sup>.

The question of good cause relates to the boat and crew as a whole. To satisfy the condition the claimant must show that **the boat** did not go fishing due to good cause that is, some compelling circumstances over which the crew as a whole had no control<sup>3</sup>.

*1 R(U) 7/55; 2 R(U) 15/57; 3 R(U) 7/55; R(U) 15/57*

27572 It may be that there are circumstances which make it entirely reasonable for the crew as a whole to decide not to go fishing. But this will not automatically mean that this is good cause.

- 27573 It may be reasonable for a boat not to go fishing when it is likely that the trip will be unprofitable. But this, of itself, is not good cause<sup>1</sup>.

*1 R(U) 10/51; R(U) 17/55; R(U) 19/64*

#### **Example 1**

Jerry Price's boat, with others, stays in harbour because the current price for fish is not high enough. This is not good cause.

#### **Example 2**

A fishermen's association make an agreement that, until the market for fish improves, only part of the fishing fleet will go fishing at any one time, in accordance with a fixed rota. Kevin Porter's boat stays in harbour in accordance with the rota. This is not good cause.

#### **Example 3**

The skippers of drift net fishing boats at a particular port decide not to go fishing because there is no economic market for the fish caught. This is not good cause.

The claimants in Example 2 in DMG 27562 and the Example in DMG 27563 do not satisfy this condition either.

27574 - 27575

### **No market for fish**

- 27576 Good cause will be shown if there is no possible market for the potential catch<sup>1</sup>.

*1 R(U) 6/56; R(U) 16/53*

#### **Example**

Keith Roberts, a share fisherman, is under contract to sell to a particular buyer. This buyer cannot take any fish on 26 December. Any fish caught on this day cannot be preserved, and there is no evidence that any one else will buy it. This is good cause for not going fishing.

27577 - 27578

### **Conservation - fishing quotas**

- 27579 Orders made under certain legislation<sup>1</sup> forbid the catching of certain species of fish (mostly herring and mackerel) by certain methods and at certain times. EC law forbids fishing once a set quota has been reached, and forbids fishing in certain areas. Sea fishermen who fish for a species covered by such an order or EC law have good cause for not fishing for that species if the reason is that they are forbidden to do so by the orders or EC law or because the quota has been reached.

*1 Sea Fish (Conservation) Act 1967*

27580 But the DM also needs to consider whether or not the share fishermen have good cause for not fishing for other types of fish, before good cause can be shown and the condition met. In particular the DM should consider if the boats need to be and can be converted to catch other fish that are available. The DM should also take into account the difficulties involved in converting the boats, when compared to the length of time before the share fisherman can go back to catching their usual species of fish.

27581 - 27582

### **Crew members absent**

27583 It will be good cause if a boat does not go to sea because<sup>1</sup>

1. one or more members of the crew are absent through necessity, not through choice **and**
2. no other arrangements to crew the boat, or for it to go out short handed, can reasonably be made.

*1 R(U) 7/55; R(U) 3/57; R(U) 6/58; R(U) 3/64*

#### **Example 1**

A boat does not go to sea for three days because the master and mate are attending to the funeral arrangements of another member of the crew. This is not good cause. The fact that the boat does not go out to sea is within the control of the crew as a whole. Whilst the action taken is reasonable and proper it is not something that has been forced upon them.

#### **Example 2**

Peter Caplan, a share fisherman, reports at 2am that, because of his wife's sudden illness, he is unable to go fishing. No replacement can be found at such short notice and the boat is unable to sail that day. This is good cause.

#### **Example 3**

Ray Smith, a member of the crew of a boat, is absent because of his father's illness. Although a replacement could have been found, the boat does not sail. This is not good cause.

#### **Example 4**

A boat is unable to begin a fishing trip on the day arranged because of the sudden illness of Dave Hirst the skipper. Dave is not expected to be ill for long, and no-one knows of a local substitute. No effort is made to try to find a substitute skipper for



at least a week. This is good cause.

27584 There may be other circumstances in which it is not possible to get sufficient crew for the boat to put to sea. For example, number of men available in the area reduce. This would be good cause<sup>1</sup>.

*1 R(U) 6/63*

27585 - 27599



# Share fishermen - remunerative work

## Introduction

27600 In both JSA and IS, the normal rules on remunerative work (see DMG Chapter 20) apply to share fishermen, with one exception. In JSA(Cont), hours worked as a share fisherman do not count towards the remunerative work exclusion<sup>1</sup>.

*1 JSA Regs, reg 162*

## Calculating hours of work

27601 When calculating the hours of work

1. for JSA(IB) and IS - include all the time spent in work as a share fisherman
2. for JSA(Cont) - ignore all the time spent in work as a share fisherman.

Hours worked in any other occupation, or in work which does not come within the meaning of work as a share fisherman, count towards the remunerative work exclusion in the normal way.

## Work as a share fisherman

27602 Work as a share fisherman is not defined. It will normally fall into two types

1. time spent at sea
2. time spent maintaining the boat and equipment.

DMs may find the guidance at DMG 27513 - 27517 helpful in determining whether work done is work as a share fisherman.

27603 - 27749



# Earnings of share fishermen

## Introduction - Jobseeker's Allowance and Income Support

27750 Some of the rules for calculating the earnings of a share fisherman are different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

The guidance will highlight the differences.

27751 - 27753

## A share fisherman is a self-employed earner - JSA and IS

27754 A share fisherman is a S/E earner. One difference between a

1. share fisherman **and**
2. business partner

is that the share fisherman pays a higher rate of Class 2 contributions (see DMG 27297 and Appendix 2 to this Chapter) to qualify for JSA(Cont). Class 4 liability is the same (see DMG 27316 and Appendix 2 to this Chapter).

27755 Earnings should only be taken into account when a person is a S/E earner. A S/E earner is a person who is gainfully employed

1. in GB **and**
2. in employment that is not employed earner's employment<sup>1</sup>.

**Note:** A share fisherman may also be employed in another occupation as an employed earner. This does not stop the share fisherman being S/E.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(b)*

## Claims from share fishermen - JSA and IS

27756 When considering a claim that includes a share fisherman the DM should decide if that person is in remunerative work. If the share fisherman is in remunerative work JSA or IS is not payable.

**Note:** The JSA(Cont) rules for remunerative work and share fishermen are different to the rules for JSA(IB) and IS (see DMG 27600 et seq).

- 27757 If the share fisherman is not in remunerative work the DM should consider if
1. any other conditions of entitlement are satisfied, for example, in JSA is the claimant available for, and ASE **and**
  2. the person is currently gainfully employed as a share fisherman (see DMG 27020 - 27025) **and**
  3. any earnings are to be taken into account.
- 27758 If the share fisherman has ceased self-employment the DM should consider if
1. there are any capital assets from the business **and**
  2. any capital assets from the business should be disregarded (see DMG 27031 - 27033 and Chapter 29).

## Earnings of a share fisherman - JSA and IS

- 27759 The earnings of a share fisherman are the gross receipts (see DMG 27125) of the employment<sup>1</sup>.
- 1 JSA Regs, reg 100(1); IS (Gen) Regs, reg 37(1)*
- 27760 S/E earnings do not include<sup>1</sup>
1. charges paid to the share fisherman in return for providing BL accommodation (see DMG 27762) **or**
  2. any of the payments in DMG 28380 et seq (fostering allowances).
- 1 JSA Regs reg 100(2), IS (Gen) Regs, reg 37(2)*
- 27761 A share fisherman may be S/E and also have other work as an employed earner. The earnings from each employment should be calculated separately.

## Board and Lodging accommodation

- 27762 BL accommodation is accommodation<sup>1</sup>
1. where the charge for the accommodation includes some cooked or prepared meals that are both
    - 1.1 cooked or prepared by someone who is not
      - 1.1.a the person provided with accommodation **or**
      - 1.1.b a member of the family of the person provided with accommodation **and**
    - 1.2 eaten in that accommodation or associated premises **or**

2. provided to a person in a
  - 2.1 hotel **or**
  - 2.2 guest house **or**
  - 2.3 lodging house (see DMG 27763) **or**
  - 2.4 or similar establishment **or**
3. that is
  - 3.1 not provided by a close relative (see DMG 27764 - 27765) of
    - 3.1.a the person provided with accommodation **or**
    - 3.1.b a member of the family of the person provided with accommodation **or**
  - 3.2 provided on a commercial basis.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

27763 A lodging house

1. is not a private house in which rooms are rented, even if services such as the provision 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.

27764 A close relative is<sup>1</sup>

1. a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, half-brother, sister, half-sister **and**
2. the partner of any of those persons in 1..

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

27765 For the purposes of DMG 27764, a child who is adopted becomes

1. a child of the adoptive parents **and**
2. the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of, the natural parents. Whether an adopted person is a close relative of another person depends upon the **legal relationship** and not the blood relationship<sup>1</sup>.

*1 R(SB) 22/87*

27766 - 27773





## Gainfully employed - Jobseeker's Allowance and Income Support

27774 A S/E earner is someone who is gainfully employed. If a share fisherman is not working, this does not mean that the share fisherman has ceased to be gainfully employed. The DM should consider if a person is gainfully employed **after** the determination regarding remunerative work.

27775 A share fisherman may be a

1. boat owner **or**
2. regular crew member **or**
3. a casual crew member.

27776 Earnings should only be taken into account if the share fisherman is gainfully employed. The DM should consider if the share fisherman is in remunerative work. If not, the DM should

1. consider the guidance at DMG 27020 - 27023 **and**
2. determine if the share fisherman remains gainfully employed as a S/E earner.

### Example 1

Kevin is a share fisherman, he is part owner of a boat. The boat is tied up because of bad weather. He claims JSA. Kevin states that

1. the boat has been tied up before because of bad weather. Stoppages during the winter months are a normal feature of his business. When the weather improves the boat will go back out to sea
2. he and his bank still regard his business as a going concern
3. he is still regarded as S/E by HMRC.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Kevin remains gainfully employed as a S/E earner.

### Example 2

Barry is a share fisherman, he is a regular crew member. The boat is tied up because of extensive damage caused when the boat recently ran aground in bad weather. The boat will be tied up for a long period of time. He claims JSA. Barry states that

1. the boat owner and the bank do not regard the boat as a going concern
2. he will resume work on the boat when it is repaired, however he is unable to work whilst the boat is being repaired

3. he is not regarded as S/E by HMRC.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Barry is not gainfully employed and no earnings should be taken into account.

- 27777 If the share fisherman is gainfully employed the DM should consider what earnings should be taken into account. The JSA(Cont) rules for treatment of earnings (see DMG 27810 - 27961) are different to the rules for JSA(IB) and IS.

27778

- 27779 For the purposes of DMG 27020 **9.**, periods when the boat is confined to harbour, for example, because of

1. bad weather **or**
2. routine repairs and maintenance **or**
3. exhaustion of fishing quotas

would usually be part of the normal pattern of business for a share fisherman.

- 27780 Each case should be considered individually. But where long tie ups occur on a regular basis the DM may consider that they form part of a regular pattern of business.

27781 - 27785

## **Sickness**

- 27786 If a share fisherman is unable to work due to sickness, the DM should

1. consider the guidance at DMG 27020 - 27023 **and**
2. determine if the share fisherman remains gainfully employed as a S/E earner.

- 27787 A share fisherman will experience occasional minor illnesses like anyone else. The DM should regard the periods of minor illness as part of the normal pattern of self-employment.

### **Example 1**

Campbell is a share fisherman, he is a regular crew member. He claims IS as he has been unable to work because he is suffering from flu. He is unable to work for a total of two weeks. During that time Campbell states that

1. he is still regarded as S/E by HMRC
2. the bank still regards his business as a going concern.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that Campbell remains gainfully employed as a S/E earner.

### Example 2

Mitchell is a share fisherman, he is a regular crew member. He claims IS as he has broken his leg and has been advised by his doctor to avoid work for six months.

Mitchell states that

1. his business activity depends entirely on his ability to work and until his leg has healed he cannot undertake any work in connection with his business
2. he and his bank do not consider his business as a going concern
3. he intends to restart work in his business when his leg has healed.

The DM considers the guidance at DMG 27020 - 27023 and determines, in this case, that self-employment has ceased and no earnings fall to be calculated and any business assets can be disregarded<sup>1</sup>.

*1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)*

### Example 3

Nicholas is a share fisherman, he is a part owner of a boat. He claims IS because he has had a serious operation and has been advised by his doctor to avoid work for three months. Nicholas states that

1. the boat continues to go to sea with his day to day management taken over by another part owner of the boat **and**
2. he intends to return to work at the end of the three month period.

The DM considers the guidance of DMG 27020 - 27023 and decides, in this case, that Nicholas remains gainfully employed as a S/E share fisherman. The DM calculates the earnings to be taken into account.

27788 - 27792

## Share fisherman no longer self-employed

27793 If the DM determines that a share fisherman is no longer S/E DMG 27794 - 27797 should be considered.

### Capital

27794 The DM should consider if the person remains the beneficial owner of any business assets. DMG Chapter 29 provides guidance on the valuation of business assets and the disregards that can apply.

### Example

Ivor is a share fisherman who is a boat owner. He decides to sell the boat and ties it up until it is sold. He claims JSA.

The DM determines

1. that Ivor is no longer a S/E share fisherman **and**
2. the value of Ivor's boat and whether it can be disregarded.

## Earnings from self-employment that has ceased

27795 If a person has been engaged in

1. remunerative work as a S/E share fisherman **or**
2. P/T self-employment as a share fisherman

and that employment has ceased, any earnings derived from that employment are fully disregarded<sup>1</sup>.

*1 JSA Regs, Sch 6, para 4; IS (Gen) Regs, Sch 8, para 3*

### Example

James is a share fisherman, he is a regular crew member. Due to health problems he can no longer work as a share fisherman. He last worked on 11.11.02 and received his share of the catch on that day. He claims IS on 12.11.02.

The DM determines that James has ceased to be a S/E share fisherman. The earnings received on 11.11.02 are disregarded.

## Income derived from business when self-employment has ceased

27796 Where a person has ceased to be a share fisherman the assets of the business may continue to produce income. Such income should be regarded as income derived from capital.

27797 The treatment of that income will depend upon how the capital assets are treated. For example

1. income derived from certain disregarded capital remains income (see DMG Chapter 28) **and**
2. in other cases, income derived from capital remains capital (see DMG Chapter 29).

### Example

Christopher is a share fisherman who is a boat owner. He decides that he will no longer work on the boat and puts the boat up for sale. As the owner of the boat he still receives a share of the catch. He claims IS.

The DM considers

1. that Christopher is no longer a S/E share fisherman **and**
2. how to treat the income received from the boat.

27798 - 27809



## Assessment period - Jobseeker's Allowance and Income Support

27810 The normal weekly earnings of a share fisherman should be calculated by using the gross receipts received and expenses incurred or paid out (see DMG 27871 - 27975) during the assessment period. The assessment period is different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

### JSA(Cont)

27811 For JSA(Cont) the assessment period is the share fisherman's benefit week<sup>1</sup>.

*1 JSA Regs, reg 163(3), (101(2))*

27812 A share fisherman is paid JSA(Cont) for complete benefit weeks even if the share fisherman is without work for only part of the benefit week. A share fisherman is not entitled to part-week payments (see DMG Chapter 33).

27813 Any work as a share fisherman does not count towards the remunerative work rule (see DMG 27600 et seq).

### Benefit week

27814 For the JSA(Cont) assessment period, a benefit week is a period of seven days beginning with the

1. date of claim **or**
2. day after the last day of the previous benefit week<sup>1</sup>.

*1 reg 163(3) (101(12)); reg 164(3)*

### Example

Dougal is a share fisherman, he claims JSA on Thursday 24 October. He is entitled to JSA(Cont). His benefit week is Thursday 24 October to Wednesday 30 October. His next benefit week is Thursday 31 October to Wednesday 6 November.

Dougal does some work as a share fisherman on 31 October and 1 November. The DM determines that this work does not count towards the remunerative work rule and considers entitlement to JSA(Cont) for the seven days in benefit week 31 October to 6 November.

## **JSA(IB) and IS**

27815 The DM should refer to the guidance on S/E earners at DMG 27051 et seq to consider the assessment period for JSA(IB) and IS.

27816 - 27819



# Calculation of weekly earnings - Jobseeker's Allowance and Income Support

## Method of calculation

27820 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 in DMG 27826 2.) **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 catch<sup>1</sup> **and**
4. deduct from the figure in 3. amounts for
  - 4.1 notional income tax (see DMG 27270 and 27934) **and**
  - 4.2 notional SS contributions (see DMG 27297 and 27936 et seq) **and**
  - 4.3 half of any premium (see DMG 27325) paid for a personal pension scheme **and**
5. deduct the correct **disregard(s)** (see DMG 27953).

The figure that is left is the earnings that should be taken into account.

*1 JSA Regs, reg 101(1)(b); reg 163(3)(101(3)); IS (Gen) Regs, reg 38(1)(b)*

27821 - 27823

## Evidence

27824 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

27825 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**

- 27826 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
    - 1.1 gross receipts and expenses of the boat during the assessment period  
**and**
    - 1.2 arrangement for sharing the proceeds of the catch **and**
  2. if the boat owner pays the
    - 2.1 employee's portion of any SS contribution **or**
    - 2.2 cost of provisions (such as food) **or**
    - 2.3 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 the payments under **2.** have been made.
- 27827 If the conditions for deducting an expense is met (see DMG 27871 or 27872) the DM should allow as an expense payments in DMG 27826 **2.** 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.
- 27828 If the gross receipts figure is net of any deductions in DMG 27826 **2.** those amounts should be added back to establish the correct gross receipts figure. The DM should then consider the deductions in the normal way.

27829 - 27839

## Gross receipts

27840 Full guidance on gross receipts is at DMG 27125 et seq. The treatment of gross receipts is different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

### JSA(Cont)

27841 For JSA(Cont) purposes, a share fisherman's earnings, that is the gross receipts, are treated as paid in the benefit week in which they are **earned**<sup>1</sup>. This means that a share fisherman who is

1. gainfully employed **and**
2. in receipt of JSA(Cont)

will not have any earnings averaged, unless DMG 27842 - 27845 applies.

*1 JSA Regs, reg 163(3)(101(2))*

### Example

Abraham is a regular crew member, he is in receipt of JSA and he has a Thursday to Wednesday benefit week. He works as a share fisherman on Monday 12 March to Tuesday 12 March but he does not receive his share of the profit until Thursday 14 March.

The DM considers that his earnings from his work as a share fisherman on 11 March to 12 March are treated as paid in benefit week ending 13 March as this is the benefit week in which they are earned.

### Earnings unusually high or low

27842 The DM may calculate earnings over a period that is not the assessment period, which for JSA(Cont) is the benefit week.

27843 The DM should consider calculating earnings over a period greater than the benefit week if<sup>1</sup>

1. the earnings in the benefit week are unusually high or low **and**
2. it is reasonable to do so, having regard to all of the facts of the case.

*1 reg 163(3)(101(11))*

## Determination for earnings unusually high or low

27844 To determine if the earnings are unusually high or low the DM could take one or more of the following steps

1. look at previous weeks in the share fisherman's current claim
2. look at previous claims from the share fisherman
3. look at claims from other share fishermen on a similar boat and in the same circumstances
4. look at the earnings of a similar boat with the same working pattern in the same area
5. make enquiries of the District Fisheries Officer
6. make enquiries of the Harbour Master.

### Example

Gareth is a share fisherman. He has been in receipt of JSA(Cont) since 10.12.02. On 20.2.03 he receives a lump sum payment of compensation. The compensation is paid because Gareth was unable to work as a share fisherman for five weeks in 2001 because of an oil spillage that affected fishing in the area.

The DM determines that

1. the earnings for benefit week ending 24.2.03 are unusually high **and**
2. the payment of compensation should be divided by five (the number of weeks covered by the payment) and included in the earnings for benefit weeks 18.2.03 - 24.3.03.

27845 If the earnings are unusually low because the share fisherman has incurred an unusually high expense, the DM should consider calculating the expense over a period other than the benefit week (see DMG 27890 - 27897).

27846 - 27853

## JSA(IB) and IS

27854 For JSA(IB) and IS purposes, any payment of income received by the share fisherman during the assessment period, **regardless of when it is earned**, should be included as a gross receipt<sup>1</sup>. DMG 27855 provides guidance if a payment is received for a period that is longer than the assessment period.

*1 JSA Regs, reg 101(4); IS (Gen) Regs, reg 38(3)*

### Example

Abraham is a regular crew member, he is in receipt of JSA and has a Thursday to Wednesday benefit week. His assessment period ends on 13 November. He works as a share fisherman on Monday 11 November to Tuesday 12 November but he does not receive his share of the profit until Thursday 14 November.

The DM determines that as his earnings from work as a share fisherman on 11 November to 12 November are not received in the assessment period they cannot be included in the gross receipts. They will be included in the gross receipts in the next assessment period.

### Income for a different period - JSA(IB) and IS

- 27855 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 accurately<sup>1</sup>.

**Note:** The DM should not consider any payment made before or after the assessment period.

*1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)*

- 27856 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

Mark is a share fisherman in receipt of JSA(IB). He receives a payment that is a half yearly payment under a long term contract. The assessment period is 13 weeks.

The DM

1. multiplies the payment by 13 and divides that figure by 26 **and**
2. adds the resulting sum to the other gross receipts.

27857 - 27869



# Expenses

## Conditions for deducting business expenses

27870 The conditions for deducting business expenses are different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

### JSA(Cont)

27871 When calculating the net profit of a share fisherman for JSA(Cont) purposes, the DM should deduct from the gross receipts any business expense that is

1. **incurred** wholly, exclusively and necessarily for the purpose of the business<sup>1</sup> **and**
2. **incurred** during the assessment period, that is the benefit week<sup>2</sup> **and**
3. reasonably incurred<sup>3</sup> (see DMG 27876) **and**
4. an allowable expense (see DMG 27886).

*1 JSA Regs, reg 163(3)(101(6)&(10)(a)); 2 reg 163(3)(101(6)); 3 reg 163(3)(101(9))*

### JSA(IB) and IS

27872 When calculating the net profit of a share fisherman for JSA(IB) and IS purposes, the DM should deduct from the gross receipts any business expenses that

1. was **paid out** wholly and exclusively<sup>1</sup> for the purpose of the business<sup>2</sup> **and**
2. was **paid out** during the assessment period **and**
3. was reasonably incurred<sup>3</sup> see DMG (27876) **and**
4. is an allowable expense (see DMG 27886).

*1 reg 101(4)(a); IS (Gen) Regs, reg 38(3)(a); 2 JSA Regs, reg 101(9)(a); IS (Gen) Regs, reg 38(8)(a); 3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)*

## Wholly and exclusively

27873 An expense is wholly and exclusively

1. incurred - JSA(Cont) or
2. **paid out** - JSA(IB) and IS

when the expense is only for the purpose of the business<sup>1</sup>. Any such payment should be deducted in full if all of the conditions in DMG 27871 or 27872 are satisfied.

**Note:** DMG 27192 - 27195 provide guidance where the expense is for both business and private use.

*1 JSA Regs, reg 101(4)(a) & reg 163(3)(101(6)); IS (Gen) Regs, reg 38(3)(a)*

27874 - 27875

## Reasonably incurred

27876 The term reasonably incurred is not defined in legislation. It should be given its ordinary everyday meaning. To be reasonably incurred an expense must be

1. appropriate for the share fisherman **and**
2. necessary for the share fisherman **and**
3. not excessive.

The DM should consider the level of trading.

27877 To determine what is reasonable the DM should have regard to the circumstances of each individual's case<sup>1</sup>, including the level of the person's earnings<sup>2</sup>.

*1 R(P) 2/54; 2 R(G) 1/56*

27878 If expenditure on a particular item is necessary to enable the share fisherman to run the business the whole of that expenditure may be regarded as a deductible expense, unless there is evidence that it is excessive<sup>1</sup>.

*1 R(G) 7/62*

27879 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.

27880 - 27882

## Shared expenses of share fishermen

27883 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.

If a claim for JSA or IS was made involving Arthur, his share would be 40% of the net profit.

If a claim for JSA or IS was made involving one of the other share fishermen aboard, their share 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.

### 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.

If a claim to JSA or IS was made involving the third sharer, the share would be 13.33% of the gross receipts.

If a claim to JSA or IS was made involving Andrew or his partner, the share would be 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.

27884 - 27885

### Allowable business expenses - JSA and IS

27886 Guidance on allowable business expenses is at DMG 27206 - 27212. DMs should note that for

1. JSA(Cont), the expenses have to be **incurred** in the assessment period, that is the benefit week **and**
2. JSA(IB) and IS, the expenses have to have been **paid out** in the assessment period.

27887 - 27889

### Expenses unusually high or low - JSA(Cont)

27890 The DM may calculate expenditure over a period longer than the benefit week.

27891 The DM should consider calculating expenditure over a period longer than the benefit week if<sup>1</sup>

1. the expenditure in the benefit week is unusually high or low **and**
2. it is reasonable to do so, having regard to all of the facts of the case.

*1 JSA Regs, reg 163(3)(101(11))*

### **Evidence of expenses**

27892 As the assessment period for JSA(Cont) is the benefit week

1. the share fisherman should be asked to provide details of expenses that are not incurred weekly **and**
2. the DM can then convert the expenses into a weekly figure.

This will give a true picture of the share fisherman's expenses.

27893 Evidence of incurred expenses could be

1. receipts **or**
2. invoices **or**
3. accounts for the boat, taking care not to allow personal expenses put through the accounts.

### **Determination for expenses unusually high or low**

27894 If the procedure at DMG 27892 is followed the DM may not have to determine if an expense is unusually high or low. But there may be expenses that the share fisherman may not have been aware of at the start of the claim and declares in a particular benefit week.

27895 To determine if an expense is unusually high or low the DM could take one or more of the following steps

1. look at previous weeks in the share fisherman's current claim
2. look at previous claims from the share fisherman
3. look at claims from other share fishermen on a similar boat and in the same circumstances
4. look at the expenses of a similar boat with the same working pattern in the same area
5. make enquiries of the District Fisheries Officer
6. make enquiries of the Harbour Master.

### Example

Ewan is a share fisherman who is a regular crew member. He claims JSA and is entitled to JSA(Cont), he has a Wednesday benefit week ending.

Ewan declares that in the benefit week Thursday 4 March - Wednesday 10 March an expense is incurred because of essential painting to the boat. This expense makes the expenses of the boat unusually high for the benefit week. Ewan's share of the catch is net of any expenses.

The cost incurred is £300 and the boat has this essential painting done once a quarter. The annual costs of essential painting is £1,200. The DM checks a recent claim from Ewan and finds that the essential painting costs were £300 per quarter.

The DM decides that the expense is wholly, exclusively and necessarily incurred for share fishing and is reasonable in the circumstances. The DM calculates the weekly amount of the expense to be £23.08 (£1,200 divided by 52). An allowable expense of £23.08 is allowed from the gross receipts for each benefit week until the annual cost of essential painting alters.

27896 It is not intended that every expense is assessed individually over a period different to the benefit week. This should be the exception rather than the rule.

27897 Any expense for a period

1. equal or shorter than the benefit week should be assessed over the benefit week **or**
2. longer than the benefit week should be converted into a weekly figure only if the DM determines that<sup>1</sup>
  - 2.1 the expenditure is unusually high or low **and**
  - 2.2 it is reasonable to do so, having regard to all of the facts of the case.

*1 JSA Regs, reg 163(3)(101(11))*

27898 - 27899

### Expenditure for a period different to the assessment period - JSA(IB) and IS

27900 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 accurately<sup>1</sup>.

**Note:** The DM should not deduct an expense paid before or after the assessment period.

*1 JSA Regs, reg 101(11); IS (Gen) Regs, reg 38(10)*

27901 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.

27902 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**

Patrick is a share fisherman. He started working as a share fisherman six months before he claimed JSA. He is entitled to JSA(IB). In that time the annual insurance was paid.

The amount of the insurance should be multiplied by 26 (the length of the assessment period) and divided by 52. The resulting amount should be added to any other deductible expenses.

27903 - 27909

### **Expenses not allowed**

27910 The rules for non-allowable business expenses are different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

#### **JSA(Cont)**

27911 Business expenses that should not be allowed are<sup>1</sup>

1. those expenses where the conditions for deducting a business expense are not met (27871)
2. capital expenditure
3. depreciation of capital assets
4. expenses used, or intended to be used, in setting up or expanding a business
5. repayment of capital on loans except where 27206 3. applies
6. business entertainment expenses
7. losses incurred on the disposal of a capital asset
8. payments into a contingency fund to safeguard against future bad debts<sup>2</sup>

9. personal drawings on income and capital
10. money on goods used for personal consumption.

Full guidance on the above expenses is at DMG 27221 - 27226 and DMG 27232 - 27244.

*1 JSA Regs, reg 163(3)(101(7)); 2 reg 163(101(9))*

## **JSA(IB) and IS**

27912 Business expenses that should not be allowed are<sup>1</sup>

1. those expenses where the conditions for deducting a business expense are not met (see DMG 27872)
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
  - 5.1 before the start of the assessment period **or**
  - 5.2 in any other employment<sup>2</sup>
6. repayment of capital on loans, except where DMG 27206 **3.** 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 debts<sup>3</sup>
10. personal drawings on income and capital
11. money on goods used for personal consumption.

Full guidance on the above expenses is at DMG 27220 - 27244.

*1 reg 101(6); IS (Gen) Regs, reg 38(5); 2 JSA Regs, reg 101(12); IS (Gen) Regs, reg 38(11);  
3 JSA Regs, reg 101(8); IS (Gen) Regs, reg 38(7)*

27913 - 27925



# Calculation of income tax, Social Security contributions and qualifying premium

## General - JSA and IS

27926 Having calculated the share fisherman's gross receipts and expenses on a cash flow basis, the DM should consider deductions for<sup>1</sup>

1. income tax (see DMG 27270 and 27934) **and**
2. Class 2 SS contributions (see DMG 27297 and 27936) **and**
3. Class 4 contributions (see DMG 27316 and 27943) **and**
4. half of any premium for a personal pension. (See DMG 27325).

*1 JSA Regs, reg 101(4)(b) & (c) & 163(3)(101(3)); IS (Gen) Regs, reg 38(3)(b) & (c)*

27927 A share fisherman is entitled to the same tax allowances and tax rates as any other S/E earner (see DMG 27271 - 27276). A share fisherman

1. pays a special rate of Class 2 SS contributions **and**
2. may also have to pay Class 4 contributions.

27928 The rules for deducting income tax and SS contributions are different for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

This is because the assessment periods are different.

## Chargeable income

27929 The DM should base deductions for DMG 27926 1. to 3. on the chargeable income for the assessment period.

27930 A share fisherman's chargeable income is the person's share of<sup>1</sup>

1. the gross receipts of the employment **less**
2. any allowable business expenses.

*1 JSA Regs, reg 101(5) & 163(3)(101)(6)); IS (Gen) Regs, reg 38(4)*

27931 - 27932

## **Income tax, Class 2 and Class 4 contributions - JSA(IB) and IS**

27933 Guidance on notional deductions for

1. income tax **and**
2. Class 2 contributions **and**
3. Class 4 contributions

for JSA(IB) and IS is at DMG 27270 - 27318. The guidance at DMG 27934 - 27944 applies to JSA(Cont) only.

### **Notional Income tax - JSA(Cont)**

27934 As the assessment period is the benefit week the

1. personal allowance **and**
2. tax rate

should be apportioned on a weekly basis<sup>1</sup>. Guidance on personal allowances and tax rates is at DMG 27271 - 27276.

*1 JSA Regs, reg 163(4)*

### **Calculation of deduction**

27935 To determine the deduction for notional income tax from a share fisherman's chargeable income the DM should<sup>1</sup>

1. establish the chargeable income (see DMG 27929)
2. deduct the personal allowance (see Appendix 1 to this Chapter) apportioned on a weekly basis
3. multiply the first £34,800 (08/09 rates) of the remainder by the basic rate of tax (see Appendix 1 to this Chapter)
4. round up where necessary.

*1 JSA Regs, reg 163(4) & 102*



### Example

Gary is a married share fisherman who is receiving JSA(Cont)

	£	
Chargeable income	160.00	<b>less</b>
Claimant's personal allowance (£6,035 (08/09 rates) divided by 52)	<u>116.06</u>	
	=	43.94
The remainder (£43.94) at 20%	<u>8.79</u>	
Total notional tax	=	8.79

### Notional Class 2 contributions - JSA(Cont)

- 27936 As the assessment period is for a benefit week the small earnings exception should be apportioned on a weekly basis according to the benefit week<sup>1</sup>.

*1 JSA Regs, reg 163(4)*

- 27937 If the chargeable income is above the proportion of the small earnings exception the DM should consider if a Class 2 contribution should be deducted. Full guidance on Class 2 contributions is at DMG 27297 et seq.

### Example

Gary is a married share fisherman who is receiving JSA(Cont)

	£	
Chargeable income	-	160.00
Small earnings exception		
(£4, 215 divided by 52)	-	81.06

Gary's chargeable income is more than the small earnings exception. The DM decides that Gary is liable for a Class 2 deduction and deducts a notional Class 2 contribution.

27938 - 27942

## Notional Class 4 contributions - JSA(Cont)

- 27943 As the assessment period is for a benefit week the specified levels should be apportioned on a weekly basis according to the benefit week<sup>1</sup>.

*1 JSA Regs, reg 163(4)*

- 27944 If the chargeable income is above the proportion of the specified level the DM should consider if a Class 4 contribution should be deducted. Full guidance on Class 4 contributions is at DMG 27316 - 27318.

### Example

Gary is a married share fisherman who is receiving JSA(Cont)

	£
Chargeable income	- 160.00
Lower level	
(£4,745 divided by 52)	- 91.25

Gary's chargeable income is more than the proportion of the specified level. The DM decides that Gary is liable for a Class 4 deduction.

The Class 4 deduction is calculated as follows

$$£160.00 - £91.25 = £68.75 \times 8\% = £5.50$$

## Premiums for personal pension schemes - JSA and IS

- 27945 Full guidance on premiums for personal pension schemes is at DMG 27325 - 27327.

27946 - 27952

# Earnings disregard for share fishermen

## General

27953 There are different earnings disregard for a share fisherman's earnings for

1. JSA(Cont) **and**
2. JSA(IB) and IS.

27954 The guidance for

1. JSA(Cont) is at DMG 27955 - 27961 **and**
2. JSA(IB) and IS is at DMG 27470 et seq.

## Earnings disregard for share fishermen - JSA(Cont)

27955 The following disregards should be applied to the weekly earnings of a share fisherman who is entitled to JSA(Cont).

## Earnings from self-employment that has ceased

27956 If a person has been engaged in

1. remunerative work as a share fisherman **or**
2. P/T self-employment as a share fisherman

and that employment has ceased, any earnings derived from that employment are fully disregarded<sup>1</sup>.

*1 JSA Regs, reg 163(3)(101(4)(b)); Sch 6, para 4*

## Example

James is a share fisherman, he is a regular crew member. He ceased work as a share fisherman and last worked on 11 March. He received his share of the catch on that day. He claims JSA on 12 March, he is entitled to JSA(Cont).

The DM determines that James has ceased to be a S/E share fisherman. The earnings received on 11 March are disregarded.

## Earnings disregard

27957 Unless DMG 27958 - 27960 applies, a share fisherman entitled to JSA(Cont) should have £20.00 per week disregarded from any earnings from share fishing<sup>1</sup>.

*1 reg 163(3)(101(4)(a)); SS Amendment Regs 2000, reg 3 and Schedule.*

## Earnings from work that is not work as a share fisherman

27958 If the share fisherman also has earnings from work<sup>1</sup>

1. as
  - 1.1 an auxiliary coastguard for costal rescue services (see DMG Chapter 26) **or**
  - 1.2 a P/T member of a fire brigade maintained under certain legislation (see DMG Chapter 26) **or**
  - 1.3 a P/T worker manning or launching a lifeboat (see DMG Chapter 26) **or**
  - 1.4 member of the territorial army or reserve forces (see DMG Chapter 26) **or**
2. as in 1. and from another job (see DMG Chapter 26) **and**
3. the disregard for that work is £5 (see DMG Chapter 26)

the disregards in DMG 27959 - 27960 should be applied.

*1 JSA Regs, reg 163(3)(101(5))*

27959 If the earnings disregard from work in DMG 27958 is £20, the disregard for earnings as a share fisherman in 27957 should not be applied<sup>1</sup>.

*1 reg 163(3)(101(5)(a))*

### Example

Vince is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from manning a lifeboat.

The DM determines that Vince is entitled to a £20 disregard for the earnings from manning the lifeboat and that he is not entitled to any disregard for the earnings from work as a share fisherman.

27960 If the earnings disregard from work in DMG 27958 is less than £20, the disregard for earnings as a share fisherman will be the difference between

1. the amount disregarded from the earnings in DMG 27958 **and**
2. £20<sup>1</sup>.

*1 reg 163(3)(101(5)(b))*

### Example 1

Neil is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings from helping a friend out in a shop.

The DM determines that Neil is entitled to a £5 disregard for the earnings that he earned from working in a shop and a £15 disregard on the earnings from work as a share fisherman.

### **Example 2**

John is a share fisherman. In one benefit week he declares that he has worked as a share fisherman and that he has received earnings of £8 from work as an auxiliary coastguard.

The DM determines that John is entitled to a £8 disregard for the work as an auxiliary coastguard and that he is entitled to a £12 disregard for the work as a share fisherman.

### **Earnings paid in a foreign currency**

- 27961 Where earnings are paid in a foreign currency, disregard any amount charged for changing them into sterling, for example banking charges and commission<sup>1</sup>.

*1 JSA Regs, reg 163(3)(101(4)(b)); Sch 6, para 15*

27962 - 27971



# JSA(Cont) and JSA(IB) compared for a share fisherman

## Amount of JSA payable

27972 Where a share fisherman satisfies both the JSA(Cont) and JSA(IB) conditions and has income, the amount payable is

1. the difference between the
  - 1.1 applicable amount (see DMG Chapter 23) **and**
  - 1.2 income

if that difference is greater than the personal rate (see DMG Chapter 23) **or**

2. if 1. does not apply, the personal rate<sup>1</sup>.

*1 JS Act 95, s 4(8)*

27973 If using the comparison in DMG 27972, the amount payable is the difference between the income and the applicable amount, JSA(IB) is made up of two elements<sup>1</sup>

1. an amount equal to the personal rate<sup>2</sup> **and**
2. an amount that is the difference between the
  - 2.1 applicable amount less income **and**
  - 2.2 the personal rate<sup>3</sup>.

*1 JS Act 95, s 4(9); 2 s 4(10); 3 s 4(11)*

27974 The calculation at DMG 27973 should be made

1. for each week that a share fisherman satisfies both the JSA(Cont) and JSA(IB) conditions **and**
2. when an award of JSA(IB) is made.

27975 If a share fisherman claims JSA and satisfies both the JSA(Cont) and JSA(IB) conditions the DM should calculate JSA entitlement on a weekly basis until entitlement to JSA(Cont) has exhausted.

### Example

Hamish is a S/E share fisherman. He is a regular crew member. He claims JSA on 13 March. His benefit week is Wednesday 13 March to Tuesday 19 March. Hamish satisfies the qualifying conditions for both JSA(Cont) and JSA(IB).

## Entitlement for BWE 19.3.2002

### To calculate entitlement to JSA(Cont) the DM

1. disregards any hours Hamish spends working as a share fisherman in the benefit week, when considering the remunerative work rule. The DM establishes that Hamish is not in remunerative work
2. determines the age-related amount for Hamish
3. establishes the gross receipts for the assessment period, that is the benefit week. The gross receipts are the earnings **earned** in the benefit week
4. deducts from Hamish's earnings any allowable expenses **incurred** in the assessment period, also a weekly figure for any allowable expenses that are not incurred weekly. The figure that is left is the chargeable income
5. deducts from the chargeable income a weekly amount for notional tax and SS contributions. The DM also deducts half of the premium for Hamish's personal pension
6. disregards £20 from the remaining figure.

The DM deducts Hamish's earnings from the age-related amount and decides that Hamish is entitled to JSA(Cont) of £32.15.

### To calculate entitlement to JSA(IB) the DM

1. considers that Hamish is gainfully employed as a share fisherman
2. determines that Hamish's assessment period is one year
3. establishes the gross receipts for the assessment period, the gross receipts are the earnings **received** in the assessment period
4. determines that Hamish is not in remunerative work
5. determines Hamish's applicable amount
6. averages Hamish's earnings received in the assessment period to obtain a weekly figure
7. deducts from Hamish's earnings any allowable expenses **paid out** in the assessment period. The figure that is left is the chargeable income
8. deducts from the chargeable income notional tax and SS contributions. The DM also averages the amount paid into Hamish's personal pension scheme in the assessment period into a weekly figure and deducts half of that amount
9. disregards £5 from the remaining figure.

The DM deducts Hamish's earnings from his applicable amount and determines that Hamish is entitled to £27.95.

The DM decides that Hamish is entitled to JSA(Cont) of £32.15.



## **Entitlement for BWE 26.3.2002**

In this benefit week Hamish works 15 hours working as a share fisherman.

**To calculate entitlement to JSA(Cont)** the DM follows the same procedure as in BWE 19 March. The DM determines that Hamish is entitled to JSA(Cont) of £14.23.

**To calculate entitlement to JSA(IB)** the DM uses the figure calculated for BWE 19 March. The DM determines that Hamish is entitled to JSA(IB) of £27.95 (as per calculation above).

The DM supersedes the award of JSA because there has been a change of circumstances and awards JSA(IB) of £27.95.

Hamish's award of JSA(IB) is made up of two elements

1. £14.23 which is the amount that is equal to the personal rate **and**
2. £13.72 which is the amount that is the difference between his personal rate and his applicable amount less income.

## **Entitlement for BWE 2.4.02**

In this benefit week Hamish does no work as a share fisherman.

**To calculate entitlement to JSA(Cont)** the DM follows the same procedure as in BWE 19 March. The DM determines that as Hamish has not earned any money as a share fisherman he is entitled to JSA(Cont) of £53.05.

**To calculate entitlement to JSA(IB)** the DM uses the figure calculated for BWE 19 March. The DM determines that Hamish is entitled to JSA(IB) of £27.95 (as per calculation above).

The DM supersedes the award of JSA because there has been a change of circumstances and awards JSA(Cont) of £53.05.

## **Future benefit weeks**

The DM continues with this procedure until Hamish has exhausted his entitlement to JSA(Cont). The DM then considers entitlement to JSA(IB) in the normal way.

27976 - 27999



# Appendix 1

## Notional deductions for income tax

### Main income tax allowances

1. The main income tax allowances are 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
Personal	65-74	6,830	7,040	7,280	7,550	9,030	9,490	9,490	9,940
Personal	75 & over	6,950	7,170	7,420	7,690	9,180	9,640	9,640	10,090
Married couple	under 65	-	-	-	-	-	-	-	-
Married couple	65-74	-	-	-	-	-	-	-	-
Married couple	75 & over	-	-	-	-	-	-	6,995	7,295

## Basic rates of tax

### 2. Income tax is payable on taxable income

	£	
04/05	1 - 2,020	at starting rate of 10%
	2,021 - 31,400	at basic rate of 22%
05/06	1 - 2,090	at starting rate of 10%
	2,091 - 32,400	at basic rate of 22%
06/07	1 - 2,150	at starting rate of 10%
	2,151 - 33,300	at basic rate of 22%
07/08	1 - 2,230	at starting 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

### Class 1 contributions

1. The Class 1 SS contribution for any week or month is based on the percentage rate appropriate to the band in which the estimated gross earnings fall.

2. Earnings Bands 03/04		Earnings limits 03/04
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £77
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	Monthly £334
		<b>UEL</b>
		weekly £595
		monthly £2,579

### Primary threshold

No contributions are payable on weekly earnings of £89.00 or less or monthly earnings of £385.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £89.01 and £595 per week and at 1% for earnings above £595 per week.

3. Earnings Bands 04/05		Earnings Limits 04/05
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £79
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £343
		<b>UEL</b>
		weekly £610
		monthly £2,644

#### **Primary threshold**

No contributions are payable on weekly earnings of £91.00 or less or monthly earnings of £394.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £91.01 and £610 per week and at 1% for earnings above £610 per week.

<b>4. Earnings Bands 05/06</b>		<b>Earnings Limits 05/06</b>
<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
1. up to LEL	NIL	weekly £82
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £356
		<b>UEL</b>
		weekly £630
		monthly £2,730

#### **Primary threshold**

No contributions are payable on weekly earnings of £94.00 or less or monthly earnings of £407.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £94.01 and £630 per week and at 1% for earnings above £630 per week.

<b>5. Earnings Bands 06/07</b>		<b>Earnings Limits 06/07</b>
<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
1. up to LEL	NIL	weekly £84
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £364
		<b>UEL</b>
		weekly £645
		monthly £2,795

#### **Primary threshold**

No contributions are payable on weekly earnings of £97.00 or less or monthly earnings of £420.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £97.01 and £645 per week and at 1% for earnings above £645 per week.

6. Earnings Bands 07/08		Earnings Limits 07/08
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £87
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £377
		UEL
		weekly £670
		monthly £2,904

#### Primary threshold

No contributions are payable on weekly earnings of £100.00 or less or monthly earnings of £435.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £100.01 and £670 per week and at 1% for earnings above £670 per week.

7. Earnings Bands 08/09		Earnings Limits 08/09
Earnings	Percentage rates	LEL
1. up to LEL	NIL	weekly £90
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	monthly £390
		UEL
		weekly £770
		monthly £3,337

#### Primary threshold

No contributions are payable on weekly earnings of £105.00 or less or monthly earnings of £453.00 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £105.01 and £770.00 per week and at 1% for earnings above £770.00 per week.

8. Earnings Bands 09/10		Earnings Limits 09/10
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £95
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	Monthly £412
		<b>UEL</b>
		Weekly £844
		Monthly £3656

#### Primary threshold

No contributions are payable on weekly earnings of £110 or less or monthly earnings of £476 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £110.01 and £844 per week and at 1% for earnings above £844 per week.

9. Earnings Bands 10/11		Earnings Limits 10/11
Earnings	Percentage rates	LEL
1. up to LEL	NIL	Weekly £97
2. LEL to UEL	11% of earnings that exceed LEL up to UEL	Monthly £420
		<b>UEL</b>
		Weekly £844
		Monthly £3656

#### Primary threshold

No contributions are payable on weekly earnings of £110 or less or monthly earnings of £476 or less. Otherwise contributions are still payable at a rate of 11% for earnings between £110.01 and £844 per week and at 1% for earnings above £844 per week.



10.	Earnings Bands 11/12		Earnings Limits 11/12
	<b>Earnings</b>	<b>Percentage rates</b>	<b>LEL</b>
	1. up to LEL	NIL	Weekly £102
	2. LEL to UEL	12% of earnings that exceed LEL up to UEL	Monthly £442
			<b>UEL</b>
			Weekly £817
			Monthly £3540

#### Primary threshold

No contributions are payable on weekly earnings of £139 or less or monthly earnings of £602 or less. Otherwise contributions are still payable at a rate of 12% for earnings between £139.01 and £817 per week and at 2% for earnings above £817 per week.

### Class 2 contributions

11. The weekly rate 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

12. 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

13. 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
Percent age rate	8% of £4,745 to £31,720 per year, 1% above £31,720	8% of £4,895 to £32,760 per year, 1% above £32,760	8% of £5,035 to £33,540 per year, 1% above £33,540	8% of £5,225 to £34,840 per year, 1% above £34,840	8% of £5,435 to £40,040 per year, 1% above £40,040	8% of £5,715 to £43,875 per year, 1% above £43,875	8% of £5,715 to £43,875 per year, 1% above £43,875	9% of £7,225 to £42,475 per year, 2% above £42,475

# Appendix 3

## Other tax allowances

### 1. Married couples allowance (applicable up to 5 April 2000 only)

Up to 5 April 2000, a married man living with his wife received a married couple's allowance as well as a personal allowance. The guidance below is for cases which have an assessment period for S/E earnings which falls before that date.

There were three age-related levels of this allowance (see Appendix 1 to this Chapter), but for JSA and IS purposes only the married couple's allowance for both partners under the age of 65 is deducted - even if any other married couples allowance appears to apply. Only a percentage of the tax relief on the married couple allowance is allowable. The appropriate rates of tax relief for this allowance are reproduced below.

#### Example

Oliver is in receipt of IS, he is aged 67 and is married. He operates a small S/E business from his home. The DM calculates his married couple's allowance as £1,970 (married couple - under 65) even though it appears that £5,125 (married couple 65-74) would apply.

If the husband's earnings are too low and part or all of the married couple's allowance remains unused, the surplus could be transferred to the wife by applying to the inland revenue.

If the marriage took place after the first tax month of the income tax year only part of this allowance is awarded. The amount allowed is one-twelfth of the married couple's allowance for each tax month (or part of a tax month) that they are married.

### 2. Additional personal allowance (applicable up to 5 April 2000 only)

Up to 5 April 2000, an additional personal allowance for a child or young person could be allowed in certain circumstances. The guidance below is for cases which have an assessment period for S/E earnings which falls before that day.

The additional personal allowance for a child or young person can be allowed if

1. the S/E earner
  - 1.1 is a lone parent, widow or widower and entitled to the personal allowance
  - 1.2 or partner is a married man whose wife is unable to look after herself for the whole of the tax year because of
    - 1.2.a permanent illness or

- 1.2.b disablement, but not a married woman whose husband is unable to look after himself **and**
- 2. the child or young person is
  - 2.1 living with the S/E earner **or**
  - 2.2 the S/E earner's or partner's own child or step-child who
    - 2.2.a was legally adopted before the age of 18 by one or both of them **or**
    - 2.2.b is being looked after at the S/E earner's or partner's own expense **and**
- 3. the child or young person is under the age of 18 at the beginning of the tax year.

Only one additional personal allowance can be allowed even though there may be more than one child.

If over the age of 16 at the beginning of the tax year, the young person must be

- 1. receiving FTE at a university, college or school **or**
- 2. training F/T for at least two years for a trade or profession.

Only a percentage of the tax relief on this allowance is allowable. The appropriate rates of tax relief on this allowance are reproduced below.

- 3. Percentage of tax relief allowable on additional personal and married couples allowances

From 6.6.94 only a percentage of the tax relief on the

- 1. additional personal allowance
- 2. married couples allowances

is allowable. The percentage is

97/98 - 15%

89/99 - 15%

99/00 - 10%

# Chapter 28 - Income other than earnings

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# Chapter 28 - Income other than earnings

## General

### Introduction

#### Scope of this chapter

28000 This Chapter deals with the calculation of income other than earnings for IS and JSA(IB). With the exception of occupational and personal pension payments<sup>1</sup>, income other than earnings does not affect the calculation of JSA(Cont).

**Note:** For guidance on the treatment of pension payments in JSA(Cont) see DMG Chapter 23.

*1 JS Act 95, s 4(1)(b)*

#### Meaning of claimant

28001 Claimant means<sup>1</sup> either

1. one person who claims JSA or IS **or**
2. in the case of a joint claim for JSA
  - 2.1 the couple **or**
  - 2.2 each member of the couple, as the context requires.

*1 s 35 (1); IS Gen Regs, reg 2(1)*

#### What is income

28002 Income is not defined in law<sup>1</sup>. It can normally be separated from capital because a payment of income

1. forms part of a series of payments, whether or not they are made regularly **or**
2. is made for a period of time **or**
3. satisfies both the conditions in 1. and 2..

**Note:** Where capital<sup>2</sup> is being paid by instalments each payment will be capital unless DMG 28530 et seq applies.

*1 JS Act 95; SS CB Act 92; 2 Lillystone v. Supplementary Benefits Commission (1982) FLR; Morrell v. Secretary of State for Work and Pensions [2003] EWCA Civ 526*

## How much income should be taken into account

- 28003 **[See DMG Memo IS/JSA 64]** The DM should take into account the gross amount of any income<sup>1</sup>. References in this Chapter to income means income other than earnings. When calculating gross income disregard the sums in DMG 28007 - 28009 and DMG 28150 et seq. No disregards should be made for any other expenses or deductions.

*1 JSA Regs, reg 103(1); IS (Gen) Regs, reg 40(1)*

## Deductions from benefits

- 28004 Where a payment of

1. SS benefit **or**
2. CHB<sup>1</sup>

has a deduction for benefit recovery, the DM should take into account the gross amount of benefit.

*1 JSA Regs, reg 103(3); IS (Gen) Regs, reg 40(3)*

## Reduction due to a failure to attend a work focused interview or a work focused health related assessment

- 28005 Where IB paid to a claimant's partner has been reduced because the partner has failed to attend a Wfl, the amount of IB to be taken into account as income is the full amount that would have been payable before the reduction (see DMG 05380).

- 28006 For a JSA(IB) or IS claimant who is a member of a couple where

1. the partner is in receipt of ESA(Cont) **and**
2. the partner's ESA(Cont) is reduced due to a sanction for a failure to take part in
  - 2.1 a Wfl **or**
  - 2.2 a WFHRA

the amount of ESA(Cont) to take into account for JSA(IB) and IS purposes is the amount of ESA(Cont) before the reduction under **2.** is made<sup>1</sup>.

*1 JSA Regs, reg 103(5B); IS (Gen) Regs, reg 40(6)*

## Overpayment recovery from other income

- 28007 Except where DMG 28004 applies, when income paid to a claimant is reduced because the paying authority is enforcing recovery of an overpayment, the DM should take into account the net amount. This is the amount actually received by the claimant, unless the circumstances in DMG 28008 apply.

### Example

Paul is in receipt of JSA(IB). His partner, Lorna, works and is in receipt of WTC. HMRC has awarded WTC at a rate of £50 per week. However, due to the recovery of an overpayment which occurred on a previous award of WTC, the amount Lorna actually receives is £28 per week. When determining the amount of WTC to take into account on Paul's award of JSA(IB), the DM takes into account Lorna's WTC of £28 per week.

- 28008 If the claimant volunteers to repay an overpayment by offering to have deductions made from his income, the DM should consider whether the claimant has deprived himself of that income (see DMG 28576 et seq).

## Deduction of income tax

- 28009 Any tax actually paid, or due to be paid<sup>1</sup>, should be deducted when calculating any income that is to be

1. taken fully into account **or**
2. disregarded in part<sup>2</sup>.

**Note:** Where the amount of tax due to be paid has been assessed under the HMRC Tax Self Assessment process then DMs should consider revision action if it is shown that there is a tax liability or the actual tax liability differs from the forecast provided by the claimant. DMG Chapter 03 provides guidance on revision.

*1 R(IS) 4/05; 2 JSA Regs, Sch 7, para 1; IS (Gen) Regs, Sch 9, para 1*

### Example

Jack makes a claim for IS on 5 June. His partner has been receiving RP of £106.50 a week since April. Jack provides a forecast tax liability which estimates that his partner will be liable for £79.00 tax under the HMRC Tax Self Assessment process on this year's RP paid to her.

The DM calculates the amount of RP to be taken into account as:

£106.50 a week RP being paid less £1.52 a week tax [ $£79 \div 52$ ] = £104.98. The DM takes £104.98 RP a week into account.

## Questions on the treatment of income

28010 The DM should direct further enquiries if there is any doubt whether income fits into any of the definitions in this Chapter. Enquiries will usually be to the paying authority and should be made before any decision is given.

28011 After deciding whether any disregards apply, the DM should calculate

1. the period over which the income should be taken into account **and**
2. the weekly rate at which the income should be taken into account.

28012 - 28049



# Income taken fully into account

## Types of income taken fully into account

**[See Memo DMG JSA/IS 44] [See DMG Memo IS/JSA 64]**

28050 When calculating income other than earnings for IS and JSA(IB)<sup>1</sup> DMs should take

1. Annuity income
2. BA
3. CA
4. CHB
5. cash in lieu of concessionary coal
6. CTC
7. ESA(Cont)
8. Ministry of Justice ex gratia incapacity allowances (previously paid by the Home Office)
9. IB
10. IIDB
11. JSA(Cont)
12. MA
13. personal pensions
14. PB and MDB scheme
15. refund of income tax
16. RP
17. SDA
18. War orphan's pension
19. WTC
20. WP
21. WC

fully into account. These are most common types of income that DMs deal with although there are other types too. Detailed guidance is given in DMG 28052 et seq.

*1 JSA Regs, reg 103(1); IS (Gen) Regs, reg 40(1)*

28051    Payments of

1.     income from certain disregarded capital
2.     income from insurance policies
3.     income from certain sub-lets
4.     occupational pensions
5.     income for people attending court

are normally taken into account in full.

# Benefits taken fully into account

## Bereavement allowance

- 28052 BA should be taken into account in full. It replaced WP for claimants whose spouse or civil partner has died. It is restricted to payment for not more than 52 weeks.

**Note:** WP may continue to be paid to widows whose husband died before 9.4.01.

## Carer's allowance

- 28053 CA should be taken fully into account. It is payable to people who are unable to work because they are caring for a person receiving AA or DLA.
- 28054 When CA is in payment to a young person who is also a dependant on an IS claim, CA should be taken into account up to the amount of the dependant's personal allowance and any DCP payable for that young person. Any remaining CA should be disregarded.

## Child benefit

**[See DMG Memo IS/JSA 64]**

- 28055 CHB should be taken into account in full. It is payable to people in GB who are responsible for a child.

**Note:** CHB is the income of the adult responsible for a child. It is not the income of the child.

28056

## Child tax credit

**[See DMG Memo IS/JSA 64]**

- 28057 CTC should be taken fully into account. It is paid to the main carer in the family whether they are in or out of work and is paid in arrears, either weekly or four weekly.

28058

## ESA(Cont)

- 28059 ESA(Cont) should be taken fully into account. ESA(Cont) is paid to people who

1. have LCW **and**
2. satisfy the contribution conditions.

28060 - 28062

## Incapacity benefit

28063 IB should be taken fully into account. IB is paid to people who are incapable of work

1. who are not entitled to SSP **or**
2. whose SSP has ended.

28064

## Industrial injuries disablement benefit

28065 IIDB should be taken fully into account. The additional allowances

1. REA **and**
2. US

may also be paid with IIDB. They should be taken fully into account.

**Note:** Unemployability supplement was removed from the scheme on 6.4.87 but may continue in payment to people getting it before that date.

28066 See the guidance on attendance allowances for the treatment of ESDA and CAA paid with IIDB (see DMG 28352).

28067 Disablement gratuity should be treated as capital. But REA paid with it should be taken fully into account as income.

28068 - 28069

## JSA(Cont)

28070 JSA(Cont) received by a partner should be taken fully into account. It is payable to unemployed people who have paid enough SS contributions<sup>1</sup>.

**Note:** Any JSA(Cont) payable to either member of a joint-claim couple forms part of the couple's personal rate<sup>2</sup>.

*1 JS Act 95, s 2; 2 s 4A(10)*

## Maternity allowance

28071 MA should be taken fully into account. It is payable to women who cannot get SMP.

28072 - 28075

## **Retirement pension**

28076 RP should be taken fully into account. It is either

1. contributory (Cat A or B) **or**
2. non-contributory (Cat C or D).

28077 RP may be made up of the following elements

1. a BP
2. an increase of BP for dependant spouses or civil partners, dependant children or women looking after children (but see DMG 28367 if the dependant is not a member of the family for IS or JSA(IB) purposes)
3. an additional pension for people who were in non-contracted out employment
4. Graduated retirement benefit earned between 1961 and 1975 under the graduated pension scheme
5. Increments (of RP) for deferred retirement
6. invalidity and age additions.

28078 A pensioner who has been in employment that was contracted out of SERPS may be entitled to

1. GMP instead of additional pension through an occupational pension scheme **and**
2. increments to an occupational pension and guaranteed minimum pension if retirement was deferred.

The DM should take these payments fully into account as an occupational pension.

## **Severe disablement allowance**

28079 SDA should be taken fully into account. It is a non contributory benefit payable after six months of illness. SDA was abolished in April 2001 but some claimants may continue to receive it in certain circumstances (see DMG Chapter 57).

## **War orphan's pension**

28080 War orphan's pension should be taken into account in full.

## **Widow's benefit (widow's payment, widow's pension)**

- 28081 WPT, which is paid as a lump sum should be treated as capital. In addition WP claimed prior to 9 April 2001 may be paid. The DM should take WP fully into account.

## **Working tax credit**

- 28082 WTC should be taken fully into account. It is paid to employees or to the S/E earner direct to their bank account. Where appropriate WTC includes an element for childcare paid to the main carer.

**Note:** DMG Chapter 25 gives guidance about the date on which WTC is treated as paid and also on circumstances where WTC is incorrectly paid.

## **Workmen's compensation (supplementation) scheme**

- 28083 WC (Supp) which replaced WC for old cases should be taken fully into account. It is paid for industrial injuries and diseases which were caused by employment before the start of the Dis B scheme.
- 28084 Any attendance allowance paid with WC (Supp) should be disregarded. See DMG 28352 et seq for guidance on attendance allowances.

28085 - 28089

# **Pension payments taken fully into account for income support and income based jobseeker's allowance**

## **Occupational pensions**

### **Treatment of occupational pensions in IS and JSA(IB)**

28090 Payments of income from occupational pensions should be taken fully into account. Occupational pension schemes are set up by employers to provide pensions for employees and their dependants. Payments under the

1. British Coal Voluntary Employment Redundancy Scheme **or**
2. British Coal Industrial Death and Retirement Scheme **or**
3. British Coal RMPS

are included. Occupational pension payments do not include discretionary payments from a fund set up to relieve hardship<sup>1</sup>. This type of payment is a charitable or voluntary payment.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

### **Treatment of occupational pensions in JSA(Cont)**

28091 Any occupational pension over £50 per week may be taken into account in the calculation of JSA(Cont)<sup>1</sup>. (See DMG Chapter 23).

*1 JSA Regs, reg 81*

## **Personal pensions**

### **Treatment of personal pensions in IS and JSA(IB)**

28092 Income from personal pension schemes should be fully taken into account. Personal pension schemes provide pensions on retirement for

1. S/E people **or**
2. employees who are not members of occupational pension schemes.

Personal pension schemes may also make payments to dependants following the death of the scheme member.

## **Treatment of personal pensions in JSA(Cont)**

- 28093 Any personal pension (except one arising on death) above £50 per week shall be taken into account when calculating JSA(Cont)<sup>1</sup> (see DMG Chapter 23).

*1 JSA Regs, reg 81*

28094 - 28099



## Other income taken fully into account

- 28100 An annuity is an annual income. The most common type of annuity involves a person paying a lump sum of money to an insurance company. In return the insurance company will pay an agreed sum of money each year until the death of the investor.

### Annuity income

- 28101 Annuity income should be taken fully into account with the following exceptions
1. Home income plans. These are schemes where an annuity is bought with a loan secured on the home. The income is subject to a partial disregard<sup>1</sup>.
  2. Gallantry awards. Income payable because of the award of the
    - 2.1 Victoria Cross **or**
    - 2.2 George Cross **or**
    - 2.3 any similar medal (including foreign honours)should be disregarded in full<sup>2</sup>.

*1 JSA Regs, Sch 7, para 18; IS (Gen) Regs, Sch 9, para 17; 2 JSA Regs, Sch 7, para 11; IS (Gen) Regs, Sch 9, para 10*

### Cash in lieu of concessionary coal

- 28102 The DM should take into account in full<sup>1</sup> cash paid in lieu of concessionary coal to a
1. former employee of British Coal **or**
  2. surviving husband or wife if the employee has died.

Concessionary coal is coal provided free of charge to former employees of British Coal and their dependants by the Department of Energy and Climate Change.

**Note:** The value of any coal provided should be disregarded as income in kind<sup>2</sup>, unless the claimant or a member of the family is involved in a TD.

*1 R(IS) 4/94; 2 JSA Regs, Sch 7, para 22; IS (Gen) Regs, Sch 9, para 21*

### Ministry of Justice ex gratia incapacity allowances

- 28103 These payments should be taken fully into account. But if they are paid as a lump sum they should be treated as capital. These allowances are paid by the Ministry of Justice in England and Wales to compensate people injured in prison workshops or training courses.

28104

## Income from an insurance policy

- 28105 Insurance policy income should be taken fully into account except for income from a mortgage protection policy.

## Credit insurance policies

- 28106 Claimants may receive payments from credit insurance policies. These are policies designed to cover repayments for debts for

1. credit cards
2. catalogue companies
3. personal loans
4. other types of credit arrangements.

## Disregard for credit insurance policies

- 28107 A disregard applies to payments received under an insurance policy taken out to insure against the risk of being unable to maintain repayments on<sup>1</sup>

1. a regulated agreement as defined in legislation<sup>2</sup> **or**
2. a hire purchase agreement as defined in legislation<sup>3</sup> **or**
3. a conditional sale agreement as defined in legislation<sup>4</sup>.

**Note:** The disregard does not apply to insurance policies for qualifying housing costs<sup>5</sup>. The disregard for these policies is explained at DMG 28240 - 28242.

*1 JSA Regs, Sch 7, para 31A; IS (Gen) Regs, Sch 9, para 30ZA; 2 Consumer Credit Act 1974;*

*3 Hire Purchase Act 1964, Part III; 4 Hire Purchase Act 1964, Part III*

*5 JSA Regs, Sch 7, para 31A(1); IS (Gen) Regs, Sch 9, para 30ZA(1)*

- 28108 If an agreement is a regulated agreement under the legislation<sup>1</sup>, the creditor is required by law to state this in the agreement<sup>2</sup>. The DM may conclude that

1. if the agreement states that it is regulated under the legislation, then DMG 28107 1. is satisfied **and**
2. if the agreement **does not** state that it is regulated under the legislation, then DMG 28107 1. is not satisfied.

**Note:** The DM may depart from these conclusions where the evidence clearly supports another decision.

*1 Consumer Credit Act 1974; 2 Consumer Credit (Agreements) Regulations 1983*

- 28109 If an agreement is not regulated by legislation<sup>1</sup>, the DM should decide on the facts whether it falls within DMG 28107 2. or 3..

*1 Consumer Credit Act 1974*

28110 A hire purchase agreement is defined in legislation<sup>1</sup> as an agreement, other than a conditional sale agreement, under which

1. goods are bailed or (in Scotland) hired to a person in return for periodical payments **and**
2. ownership of the goods pass to this person **if**
  - 2.1 the terms with the agreement are complied with **and**
  - 2.2 one or more of the following occurs
    - 2.2.a the person exercises an option to buy **or**
    - 2.2.b an act specified in the agreement is carried out **or**
    - 2.2.c an event specified in the agreement happens.

**Note:** "Bailment" is the transfer of possession of goods by the owner to someone else (the bailee). The bailor (owner) retains ownership for the time being.

*1 Hire-Purchase Act 1964, s 29(1)*

28111 A conditional sale agreement is defined in legislation<sup>1</sup> as an agreement for the sale of goods under which

1. all or part of the purchase price is payable by instalment **and**
2. the seller remains the owner of the goods until the conditions of the agreement are fulfilled.

*1 s 29(1)*

### **Amount of disregard - credit insurance payments made direct to the claimant**

28112 Payments may be disregarded to the extent that they do not exceed the amounts, calculated on a weekly basis, used to

1. maintain the repayments on the agreements in DMG 28107 **and**
2. meet any amount due by way of premiums on the insurance policy itself<sup>1</sup>.

*1 JSA Regs, Sch 7, para 31A(2); IS (Gen) Regs, Sch 9, para 30ZA(2)*

### **Credit insurance payments made to third parties**

28113 The disregard may be applied to notional income that the claimant is treated as possessing under DMG 28114 - 28115<sup>1</sup>.

*1 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)*

## **Credit insurance payments made direct to the creditor**

28114 Payments that are

1. made direct to the creditor **and**
2. available to the claimant upon application

should be treated as income available upon application. (See DMG 28593 et seq).

28115 Payments that are

1. made direct to the creditor **and**
2. not available to the claimant upon application

should be treated as income paid to a third party to the extent that they are used for the items listed in DMG 28669. Payments made for items not listed in DMG 28669 should be fully disregarded.

28116 Payments made directly to the claimant that are immediately transferred to the creditor do not fall under the provisions of DMG 28114 - 28115. They should be treated as payments made directly to the claimant.

## **Income from certain sublets**

28117 Income from subletting parts of the home that are not lived in (for example the garage or garden) should be taken fully into account. See DMG 28190 for subletting parts of the home that are lived in.

**Note:** In this guidance home means the dwelling occupied as the home.

## **Payments for attending court**

28118 Payments to jurors and witnesses for loss of

1. earnings **or**
2. benefits

should be taken fully into account<sup>1</sup>.

*1 JSA Regs, Sch 7, para 43; IS (Gen) Regs, Sch 9, para 43*

28119 - 28120

## Income tax refunds

28121 Income tax refunds shall be taken fully into account as income if

1. in JSA cases, a member of the family **or**
  2. in IS cases, the claimant or a member of the family
- is involved in a TD<sup>1</sup>.

*1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2)*

28122 In IS cases only, income tax refunds should be taken fully into account as income during the 15 days following the end of a TD<sup>1</sup>, when IS continues in payment despite the claimant being back at work.

*1 reg 41(4)*

28123 Refunds of Schedule D or E income tax payments should be treated as capital if the claimant or members of the family are not involved in a TD. DMG Chapter 32 gives full guidance on when income tax refunds should be taken into account as income because of a TD.

## Income from certain disregarded capital

28124 Generally income from capital is not treated as income but as capital and goes towards increasing the amount of a claimant's capital. DMs should, however, take into account, subject to any appropriate income disregards, income derived from the following types of capital for as long as the value of the capital is disregarded<sup>1</sup>

1. trusts set up from money paid because of a personal injury while disregarded (see DMG 28496, 28513, and DMG Chapter 29)
2. assets of a business partly or wholly owned by the claimant while disregarded (see DMG Chapter 29)
3. the dwelling occupied as the home while disregarded - (see DMG Chapter 29) (but not income from boarders or sub-lets which is partially disregarded).

*1 JSA Regs, Sch 7, para 23; IS (Gen) Regs, Sch 9, para 22*

28125 - 28149



# Income disregarded in part

## Income that has £10 a week disregarded

### Types of income that have £10 a week disregarded

28150 The following types of income have the first £10 a week disregarded. Any remainder is taken fully into account, after any income tax has been disregarded

1. Pensions paid to victims of National Socialist persecution
2. WDisP
3. WWP, WMA and WPA
4. Certain payments from the Armed Forces and Reserve Forces Compensation Scheme.

**Note:** WWP includes a pension paid to a surviving civil partner.

### Weekly limit to £5, £10 and £20 disregards

28151 The overall weekly disregard should be limited to £20<sup>1</sup> for the family when more than one of the following types of income are taken into account in the same benefit week

1. more than one payment listed in DMG 28150 **or**
2. covenant income **or**
3. a student loan.

Covenant income has the first £5 disregarded. Student loans have the first £10 disregarded.

**Note:** This rule does not apply where two payments of the same kind are taken into account in the same benefit week<sup>2</sup>. In these cases each payment has its own disregard.

*1 JSA Regs, Sch 7 para 38; IS (Gen) Regs, Sch 9, para 36; 2 JSA Regs, Sch 7, para 39; IS (Gen) Regs, Sch 9, para 37*

28152

## Pensions paid to victims of National Socialist persecution

28153 These pensions should have a £10 disregard<sup>1</sup>. They are made under special provision of the laws of Germany or Austria to victims of Hitler's government.

**Note:** When considering whether a payment qualifies for this disregard could DMS please contact DMA Leeds with full details of the case.

*1 JSA Regs, Sch 7, para 17(c); IS (Gen) Regs, Sch 9, para 16(f)*

## War disablement pensions

28154 WDisP means<sup>1</sup> any

1. retired pay **or**
2. pension **or**
3. allowance

payable to former members of the armed forces or forces nursing services because of medical unfitness prior to 6.4.05 caused or aggravated by service but not necessarily the result of combat. See Appendix 1 to this Chapter for details of the law under which WDisP is paid.

**Note:** For those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05 the War Pension Scheme is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 28158.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28155 WDisP may be made up of<sup>1</sup>

1. wounds pension **and**
2. disablement pension **and**
3. retired pay for a disabled officer.

*1 R(IS) 3/99*

28156 The following payments should have a £10 disregard<sup>1</sup>

1. WDisP **and**
2. a payment to compensate for non payment of WDisP **and**
3. a similar payment made by a foreign government.

*1 JSA Regs, Sch 7, para 17(a) & (b); IS (Gen) Regs, Sch 9, para 16(a) & (b)*



## War widow's or widower's pension

28157 WWP means<sup>1</sup> any pension or allowance paid to a widow, widower or surviving civil partner following a death caused by service or war injury prior to 6.4.05. The DM should disregard £10 from

1. WWP and
2. a payment to compensate for non-payment of WWP and
3. similar payments from a foreign government<sup>2</sup>.

**Note 1:** DMs should take into account in full pensions paid to war orphans or dependants.

**Note 2:** For deaths occurring on or after 6.4.05 WWP is replaced by the Armed Forces and Reserve Forces Compensation Scheme - see DMG 28158.

**Note 3:** See Appendix 1 to this chapter for a definition of war widow's or widower's pension.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 JSA Regs, Sch 7, para 17(a) & (b); IS (Gen) Regs, Sch 9, para 16(a) & (b)*

## Armed forces and reserve forces compensation scheme

28158 The Armed Forces and Reserve Forces Compensation Scheme replaces the War Pensions Scheme for those who suffer injury, ill health or death due to service in the Armed Forces from 6.4.05.

**Note:** The War Pensions Scheme will continue to run parallel to the new scheme for existing beneficiaries and for those who make a new claim for a War Pensions Scheme payment for injury, ill health or a death due to service in the Armed Forces prior to 6.4.05.

### Definitions

28159 The Armed Forces and Reserve Forces Compensation Scheme means<sup>1</sup> the scheme established under specified Armed Forces Legislation<sup>2</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 Armed Forces (Pensions and Compensation) Act 2004, s 1(2)*

28160 A guaranteed income payment means<sup>1</sup> a payment made under specified Armed Forces legislation<sup>2</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 Armed Forces and Reserve Forces (Compensation Scheme) Order 2005, art 12(1)(b) or 18(1)(a)*

## Payments from the armed forces and reserve forces compensation scheme

28161 The following payments should have a £10 disregard

1. a guaranteed income payment<sup>1</sup>
2. a payment to compensate for the non payment of a guaranteed income payment<sup>2</sup> **and**
3. a similar payment made by a foreign government, which is analogous to a guaranteed income payment<sup>3</sup>.

*1 JSA Regs, Sch 7, para 17(aa); IS (Gen) Regs, Sch 9, para 16(cc); 2 JSA Regs, Sch 7, para 17(aa); IS (Gen) Regs, Sch 9, para 16(d); 3 JSA Regs, Sch 7, para 17(b); IS (Gen) Regs, Sch 9, para 16(e)*

28162 Where

1. a claimant is in receipt of a guaranteed income payment **and**
2. that payment has been reduced to less than £10 a week by abatement due to a pension from the Armed Forces Pension Scheme or a payment under the Armed Forces Early Departure Scheme

the claimant can still have a full £10 disregard on the guaranteed income payment and the pension<sup>1</sup>.

**Note:** The Armed Forces Pension Scheme means either the Armed Forces Pension Scheme of 1975 or of 2005.

*1 JSA Regs, Sch 7, para 17(d); IS (Gen) Regs, Sch 9, para 16(cc)*

### Example

Simon is in receipt of JSA(IB). He also receives a guaranteed income payment of £2.50 per week. This is because the payment has been abated by a pension he receives under the Armed Forces Pension Scheme. The DM disregards the guaranteed income payment of £2.50 and also £7.50 of the pension. This gives a total weekly disregard of £10.

## Widowed mother's allowance and widowed parent's allowance

28163 A £10 disregard applies to WMA<sup>1</sup>. For claims from people whose partner died on or after 9.4.01, WMA has been replaced by WPA. It is a new benefit paid to bereaved men and women who care for children. A man with dependant children whose partner has died before 9.4.01 can claim WPA after this date. A £10 disregard is applicable to WPA<sup>2</sup>.

*1 JSA Regs, Sch 7, para 17(d); IS (Gen) Regs, Sch 9, para 16(g); 2 JSA Regs, Sch 7, para 17(e); IS (Gen) Regs, Sch 9, para 16(h)*

28164 - 28169

## Income with partial disregards

28170 Payments of

1. adoption allowances
2. civilian war injury pensions
3. home income plans
4. income from boarders
5. income from subletting
6. living away from home allowances
7. income from certain disregarded capital
8. national lottery sports award
9. residence orders
10. dependant's income (see DMG 28565 et seq)

should be disregarded in part.

### Adoption allowances

28171 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

1. long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**
2. child's prospects of adoption are lowered because of disability.

Each LA has its own scheme. There is usually a rule that ends the allowance when the adopted child or young person stops living with the adopter.

### Adoption allowance paid for members of the family

28172 **[See DMG Memo IS/JSA 64]** If adoption allowance is paid for a child or young person who is a member of the family the DM should

1. disregard adoption allowance in full if the child or young person has capital over £3000 **or**
2. if the child or young person has capital below £3000
  - 2.1 take adoption allowance paid into account up to the level of the child or young person's applicable amount, including any DCP **and**
  - 2.2 disregard any balance<sup>1</sup>.

*1 JSA Regs, Sch 7, para 26(1)(a); IS (Gen) Regs, Sch 9, para 25(1)(a)*

## Example

Lin Ho claims IS. He has adopted a son, Chang.

The LA pays Lin Ho adoption allowance of £80 a week.

The applicable amount in respect of Chang is £79.80 made up of £38.50 for a child aged under eleven and DCP of £41.30.

The DM takes into account £79.80 of the adoption allowance as income. The balance is disregarded.

## Adoption allowances paid other than for a child who is a member of the family

28173 Disregard any payment<sup>1</sup> made under specific legislation<sup>2</sup> in respect of

1. a child who is not a member of the family **or**
2. the claimant or partner.

*1 JSA Regs, Sch 7, para 26(1A); IS (Gen) Regs, Sch 9, para 25(1A);  
2 Adoption and Children Act 2002, s 2(6)(b), 3 & 4*

## Adoption allowances paid in Scotland or Wales for children who are not members of the family

28174 **[See DMG Memo IS/JSA 64]** If adoption allowance is paid in Scotland or Wales for a child or young person who is not treated as a member of the family, for example a child in youth custody, the DM should

1. disregard in full any amount which is spent on the child or young person **and**
2. take into account any amount used by the claimant or a member of the family<sup>1</sup>.

*1 JSA Regs, reg 105(10)(b); IS (Gen) Regs, reg 42(4)(b)*

## Civilian war injury pensions

28175 Civilian war injury pensions have a disregard that is uprated annually<sup>1</sup>.

*1 Sch 9, para 55; JSA Regs, Sch 7, para 54*

## Home income plans

### What is a home income plan

28176 Retired people who own their home may take out a loan secured on the home and use the money to buy an annuity which provides an income. The loan may also be for other expenditure such as building an extension. The gross income from the annuity covers the interest on the loan with any balance being used for personal use.

## What is an annuitant

- 28177 In this guidance an annuitant is a person to whom income from an annuity is payable.

## Payments from home income plans

- 28178 The DM should establish if the following conditions are satisfied
1. the loan was taken out under a scheme under which at least 90% of the proceeds of the part of the loan intended to buy an annuity have been used to buy an annuity<sup>1</sup> **and**
  2. the annuity ends with
    - 2.1 the life of the person to whom the loan was made **or**
    - 2.2 the life of the survivor of two or more annuitants who include the person to whom the loan was made **and**
  3. the interest on the loan is payable by the person to whom the loan was made or by one of the annuitants **and**
  4. at the time the loan was made the person to whom it was made and other annuitant was aged at least 65 **and**
  5. the loan was secured on a dwelling in GB and the person to whom the loan was made or one of the annuitants owns an estate interest in that dwelling **and**
  6. the person to whom the loan was made or one of the annuitants occupies the dwelling on which it was secured as the home at the time the interest was paid.

*1 JSA Regs, Sch 7, para 18; IS (Gen) Regs, Sch 9, para 17*

- 28179 If all the conditions in DMG 28178 are satisfied the DM should disregard the
1. net weekly interest where income tax is deductible **or**
  2. gross amount of interest in other cases.

The balance of the annuity income should be taken fully into account.

## Notional annuity income

- 28180 If the annuity income **is**
1. paid direct to the lender **or**
  2. not paid to the claimant or the lender
- the DM should consider if the claimant is treated as possessing notional income (see DMG 28568 et seq)<sup>1</sup>.

*1 JSA Regs, reg 105(1), (2), (6) & (10); IS (Gen) Regs, reg 42(1), (2), (3) & (4)*



## Income from people living in the claimant's home

28181 The following paragraphs give guidance on the treatment of income from people living in the claimant's home. DMs should not apply the disregard for payments from people who normally live with the claimant to

1. payments for board and lodging **or**
2. payments made by a subtenant under a contract.

### Income from boarders

28182 Where claimants provide BL accommodation within their home the DM should

1. add together all the payments made for BL for the week
2. calculate how much BL income belongs to the claimant (i.e. if the claimant is in partnership only a share of the total payments will be the claimant's income)
3. deduct £20 **and**
4. deduct 50% of any excess over £20

for each person for whom BL is provided<sup>1</sup>.

**Note:** In this paragraph "home" means the dwelling occupied as the home.

*1 JSA Regs, Sch 7, para 21; IS (Gen) Regs, Sch 9, para 20*

### Example

Anita, who claims IS, had two boarders during the week.

1. Boarder 1 paid £55 for a 4 night stay.
2. Boarder 2 paid £12 a night for a five night stay.

The DM calculated the income to be taken into account as follows

#### Boarder 1

Payments for the week	£55
Deduct £20	£20
	£35
Deduct 50% of remainder	£17.50
Income from boarder 1	£17.50

## Boarder 2

Payments for the week	£60
Deduct £20	£20
	£40
Deduct 50% of remainder	£20
Income from boarder 2	£20
<b>Total income</b>	
From boarder 1 and boarder 2	= £37.50

## What is board and lodging accommodation

28183 BL accommodation means<sup>1</sup>

1. accommodation provided for a charge that includes
  - 1.1 providing the accommodation **and**
  - 1.2 some cooked or prepared meals **or**
2. accommodation provided in a hotel, guest house, lodging house (see DMG 28186) or similar establishment.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28184 Accommodation provided

1. by a close relative (see DMG 28187) **or**
2. any other member of the family **or**
3. not on a commercial basis

should not be treated as BL accommodation<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28185 Any meals provided

1. should not be cooked or prepared by the boarder or member of the boarder's family **and**
2. should be eaten in the accommodation or associated premises<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28186 A lodging house

1. is not a private house in which rooms are rented, even if services such as the provision 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.



## What is a close relative

28187 When considering BL accommodation “close relative” means<sup>1</sup> a

1. parent
2. parent in law
3. son
4. son in law
5. daughter
6. daughter in law
7. step parent
8. step son
9. step daughter
10. brother or sister (including half-brother and half-sister)
11. husbands and wives of any of the people mentioned above
12. civil partners and those who are LTACP or LTAHAW with any of the people mentioned above.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); R(SB) 22/87*

28188 For the purposes of DMG 28187, a child who is adopted becomes

1. a child of the adoptive parents **and**
2. the brother or sister of any other child of those parents.

The child stops being the child of, or the brother or sister of any children of the natural parents. Whether an adopted person is a close relative of another person depends upon the legal relationship and not the blood relationship<sup>1</sup>.

*1 R(SB) 22/87*

28189

## Income from subletting

28190 Where a claimant sublets part of the home to another person the DM should

1. add together all payments made for the week by that subtenant and/or a member of the subtenant’s family **and**
2. disregard<sup>1</sup>
  - 2.1 £20 **or**
  - 2.2 the whole of the amount paid where the total is less than £20.

**Note:** In this guidance “home” means the dwelling occupied as the home.

*1 JSA Regs, Sch 7, para 20; IS (Gen) Regs, Sch 9, para 19*

**Example 1**

Sally has a subtenant in her home who is liable under a contract to pay her rent. The weekly rent is £50. The subtenant pays £30 on Tuesday and £20 on Saturday.

The DM

1. adds together the payments in the week  $\text{£}30 + \text{£}20 = \text{£}50$
2. and deducts £20.

The DM takes £30 a week into account.

**Example 2**

Robin has two subtenants in his home. Both subtenants pay £65 a week.

The DM

1. adds together the payments in the week  $\text{£}65 + \text{£}65 = \text{£}130$
2. and deducts £40 (£20 for each subtenant).

The DM takes £90 a week into account.

28191 - 28194

# Other types of income partially disregarded

## Living away from home allowance

- 28195 Living away from home allowance is paid by or on behalf of DWP to people attending training courses. The DM should disregard the full amount of this allowance except any part of it which is equal to rent met by HB for accommodation the claimant does not normally occupy<sup>1</sup>.

*1 JSA Regs, Sch 7, para 14(1)(d); IS (Gen) Regs, Sch 9, para 13(1)(d)*

## Income from certain disregarded capital

- 28196 The DM should
1. take into account as income any payments (including rent) from premises other than the home while the capital value of the premises is disregarded
  2. treat as capital any other income received from premises apart from income from the home. This includes rent from a property that has no value because of the liabilities secured on it.

**Note:** The disregards explained in DMG 28197 do not apply to income from the home.

- 28197 The DM should take income into account in full less
1. any mortgage repayments, including
    - 1.1 both the interest and capital elements of any repayments **and**
    - 1.2 endowment policy premiums where it is a term of the mortgage that there is an endowment policy. The DM should establish the level of endowment required by the lender to cover the mortgage. See DMG 28198 for the calculation of the deduction for the premium **and**
    - 1.3 insurance premiums where it is a term of the mortgage that such insurance be held **and**
  2. Council Tax **and**
  3. water charges

paid for the property producing the income during the period that the income was received for<sup>1</sup>.

*1 JSA Regs, Sch 7, para 23(2); IS (Gen) Regs, Sch 9, para 22(2)*

- 28198 Endowments have both an investment and a life insurance element. The endowment may have been chosen to provide
1. just the level of investment and life assurance required by the lender to ensure repayment of the mortgage, including in the event of death. If the DM establishes that the endowment is this type of endowment, the DM should deduct the amount of the premium **or**
  2. a level of investment and life assurance higher than that required by the lender. The premium for this type of endowment is higher than the endowment in 1.. If the DM establishes that the endowment is this type of endowment the DM should
    - 2.1 establish the level of endowment actually required by the lender to cover the mortgage **and**
    - 2.2 restrict the amount of the deduction to the amount that would buy the level of endowment actually required by the lender. When deciding this amount, the DM may choose to look at the cost of a policy from the same insurance company or a different company.

- 28199 The disregard applies to income from properties whose capital value is disregarded because they are
1. intended to be the claimant's home but have not yet been occupied (see DMG Chapter 29) **or**
  2. occupied wholly or partly by a partner or relative of
    - 2.1 a single claimant **or**
    - 2.2 any other member of the familywho is aged at least 60 or incapacitated (see DMG Chapter 29) **or**
  3. occupied wholly or partly by the claimant's former partner (see DMG Chapter 29) **or**
  4. the former marital home (see DMG Chapter 29) **or**
  5. premises that the claimant is taking reasonable steps to sell (see DMG Chapter 29) **or**
  6. premises the claimant intends to live in and certain steps are being taken to take possession (see DMG Chapter 29) **or**
  7. premises the claimant intends making home but cannot move in until essential repairs and improvements have been completed (see DMG Chapter 29).

## National Lottery Sports Award

### Meaning of sports award

28200 “Sports award” means an award

1. made by one of the Sports Councils named in the National Lottery legislation **and**
2. out of sums allocated to it under that legislation<sup>1</sup>.

*1 IS (Gen) Regs, reg 2(1); JSA Regs, reg 1(3); National Lottery etc Act 1993, s 23(2)*

28201 The Sport Councils named in the National Lottery legislation<sup>1</sup> are the

1. English Sports Council<sup>2</sup>
2. Scottish Sports Council
3. Sports Council for Wales
4. Sports Council for Northern Ireland
5. UK Sports Council<sup>3</sup>.

*1 s 23(2); 2 National Lottery etc Act (Amendment of s 23) Order 1996, art 2; 3 art 2*

### Income other than earnings disregard

28202 Any payments of a sports award should be disregarded except to the extent that the award is made for

1. food **or**
2. ordinary clothing or footwear **or**
3. rent for which HB is payable **or**
4. household fuel **or**
5. housing costs covered by IS or JSA(IB) **or**
6. CT for which the claimant or a family member is liable **or**
7. water rates for which the claimant or a family member is liable<sup>1</sup>.

**Note 1:** “Food” does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the sport for which the sport award was made<sup>2</sup>.

**Note 2:** “Ordinary clothing and footwear” means clothing or footwear for normal daily use. It does not include school uniforms or clothing used solely for sporting activities<sup>3</sup>.

*1 IS (Gen) Regs, Sch 9, para 69(1) & (2); JSA Regs, Sch 7, para 67(1) & (2);*

*2 IS (Gen) Regs, Sch 9, para 69(3); JSA Regs, Sch 7, para 67(3);*

*3 IS (Gen) Regs, Sch 9, para 69(3); JSA Regs, Sch 7, para 67(3)*

## Residence orders

### Northern Ireland Children Order

28203 **[See DMG Memo IS/JSA 64]** Payments made by an authority<sup>1</sup> under specified legislation<sup>2</sup> are subject to a disregard<sup>3</sup>. The amount of the disregard should be calculated as in DMG 28205.

*1 Children (NI) Order 1995, Article 2; 2 Article 15 and Sch 7, para 17;*

*3 IS (Gen) Regs, Sch 9, para 25(1)(d); JSA Regs, Sch 7, para 26(1)(d)*

### Local authority payments for children subject to a residence order

28204 **[See DMG Memo IS/JSA 64]** Payments made by a LA under specified legislation<sup>1</sup> are disregarded<sup>2</sup>. The amount of the disregard should be calculated as in DMG 28205.

*1 Children Act 1975, s 34(6) & 50; Children Act 1989, s 15 & Sch 1, para 15;*

*2 IS (Gen) Regs, Sch 9, para 25(1)(b)(ba) & (c); JSA Regs, Sch 7, para 26(1)(b)(ba) & (c)*

## Disregard

28205 **[See DMG Memo IS/JSA 64]** If a payment is made under a residence order for a child or young person who is a member of the family the DM should

1. if the child or young person has capital over £3000 - disregard it in full **or**
2. if the child or young person has capital below £3000
  - 2.1 take into account the equivalent of the child or young person's applicable amount including any DCP **and**
  - 2.2 disregard any balance **or**
3. if the payment is made as a lump sum - treat it as capital.

If a payment is made up of more than one element the DM should identify the separate amounts and treat them as appropriate in **1.** to **3.**<sup>1</sup>.

*1 JSA Regs, Sch 7, para 26; IS (Gen) Regs, Sch 9, para 25*

28206 Residence orders are paid by LAs in England and Wales as a contribution towards a child's maintenance. LAs do not make payments when the claimant is

1. the parent of the child **or**
2. the husband, wife or civil partner of the parent of the child.

28207 - 28210

# Maternity, paternity, adoption and sick pay

## Statutory maternity pay

- 28211 Statutory maternity pay is payable by employers to female employees as part of or instead of, normal earnings when they have given up work to have a baby. Women who are not employees are not entitled to statutory maternity pay but may claim MA instead.

## Statutory paternity pay

- 28212 Statutory paternity pay is payable to male employees during their paternity leave when they have average weekly earnings of at least the LEL (see DMG Chapter 27, Appendix 2).

## Statutory adoption pay

- 28213 Statutory adoption pay is payable to adopters during their ordinary adoption leave where they have average weekly earnings at least equal to the LEL (see DMG Chapter 27, Appendix 2). It is paid at the same rate as standard statutory maternity pay.

## Statutory sick pay

- 28214 Statutory sick pay is payable by employers to employees as part of or instead of, normal wages for up to 28 weeks in any period of sickness. People who are not employees are not entitled to statutory sick pay but may claim IB or ESA instead.

## Treatment of statutory maternity, paternity, adoption or sick pay

- 28215 The amount the DM should take into account is the gross amount less

1. any income tax paid<sup>1</sup> **and**
2. any employees' SS contributions or Northern Ireland Class 1 contributions<sup>2</sup>  
**and**
3. one half of any contribution paid by the claimant to an occupational or personal pension scheme<sup>3</sup>.

*1 JSA Regs, Sch 7, para 1; IS (Gen) Regs, Sch 9, para 1; 2 JSA Regs, Sch 7, para 4(a) & 5(a); IS (Gen) Regs, Sch 9, para 4(a) & 4A; 3 JSA Regs, Sch 7, para 4(b) & 5(b); IS (Gen) Regs, Sch 9, para 4(b) & 4A(b)*

## **Employer's private maternity, paternity, adoption or sick pay**

- 28216 Maternity, paternity, adoption or sick pay from an employer's private scheme should be treated in the same way as the statutory payments.

## **Lump sum payments of statutory maternity pay**

- 28217 Some employers may pay statutory maternity pay as a lump sum at the start of the maternity pay period. The DM should apply the normal rules when deciding the period statutory maternity pay should be taken into account<sup>1</sup>.

*1 JSA Regs, reg 94(2); IS (Gen) Regs, reg 29(2)*

28218 - 28229



# Payments for housing costs and mortgage protection payments

## Introduction

28230 The following paragraphs explain disregards on payments for housing costs. The type of disregard depends upon the way a payment is made. DMs should make sure that there is sufficient evidence available to decide how to apply the disregards.

## Meanings of terms used

28231 In the following paragraphs references to

1. “home” means “dwelling occupied as the home” which includes

1.1 the dwelling and any

1.1.a garage

1.1.b garden **or**

1.1.c outbuildings

normally occupied by the claimant as the home and

1.2 any buildings or land not occupied as the home which it is not practicable or reasonable to sell separately **and**

1.3 in Scotland, any croft land on which the dwelling is situated.

**Note:** Rooms that are sub let should be treated as part of the dwelling occupied as the home unless it is practicable or reasonable to sell that part of the house separately.

2. “qualifying housing cost” means

2.1 a mortgage or loan which satisfies the conditions of DMG, Chapter 23 **or**

2.2 a home improvement loan which satisfies the conditions of DMG, Chapter 23 **or**

2.3 a housing cost which satisfies the conditions of DMG, Chapter 23.

3. “mortgage protection policy” means an insurance policy taken out to insure against the risk of not being able to maintain repayments on a loan or mortgage

4. “third party” means a person or organization to whom the claimant is liable to make payments for housing or accommodation. This could include a

- 4.1. landlord
- 4.2. building society
- 4.3. insurance company
- 4.4. care home, an Abbeyfield Home or independent hospital (see DMG 28283 - 28285 for the meaning of care home and independent hospital)
- 5. capital repayments include repayments of capital on a “repayment” mortgage or loan as well as payments into
  - 5.1. endowment policies
  - 5.2. individual savings accounts (ISAs)
  - 5.3. personal pension plans
  - 5.4. other investment plans
 that have been taken out to repay a mortgage or loan.

## Payments made direct to a third party when the claimant could not receive the income direct

28232 The DM should take these payments into account but only up to the level of the housing costs included in the applicable amount. Any excess should be ignored<sup>1</sup>. This disregard applies

- 1. to a payment if the claimant could not successfully apply to receive the income direct **and**
- 2. for any period before the claimant could expect to get a payment in a case where the claimant could successfully apply to receive the income direct.

### Example

Asif claims JSA(IB). He has a mortgage protection policy that pays £50 a week.

Under the terms of the mortgage protection policy payments must be made direct to the building society. The money is used to meet Asif's mortgage repayments.

Asif's applicable amount includes £25 a week for mortgage interest.

The DM treats Asif as having income of £25 a week. The balance of £25 is ignored.

**Note:** The disregards in DMG 28233 et seq do not apply to these payments<sup>2</sup>.

*1 JSA Regs, reg 105(10)(a)(ii); IS (Gen) Regs, reg 42(4)(a)(ii); 2 JSA Regs, Sch 7, para 30(1) and 31(1); IS (Gen) Regs, Sch 9, para 29(2) & 30(2)*

## Payments made direct to a third party when the claimant could receive the income direct

28233 The DM should treat payments made direct to a third party as the claimant's income from the date the claimant could expect to get the income<sup>1</sup>

1. if an application was made **and**
2. if the claimant could successfully apply to receive the income direct.

This notional income should be treated as if it is actually received by the claimant<sup>2</sup>.

*1 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2); 2 JSA Regs, reg 103(14); IS (Gen) Regs, reg 42(7)*

## How should the DM decide when the claimant could expect to get the income

28234 The DM should calculate the date the claimant could expect to receive the income by

1. assuming that an application was made on the date the DM first becomes aware of the possible income **and**
2. adding the estimated time it would take for an application to be processed.

## Payments made direct to the claimant

28235 If the claimant

1. receives payments **or**
2. is treated as receiving payments

for housing costs direct the DM should decide if the income comes from a mortgage protection policy.

28236 Where a payment is made from a mortgage protection policy the DM must decide how much of the payment is for a qualifying loan. The DM must then decide under what legislation any disregard for the payment should be made. The DM should always apply any disregard for a mortgage protection policy payment before considering any other disregards<sup>1</sup>.

**Note:** The DM will not automatically obtain a statement from a claimant's lender about housing costs. The DM should normally accept the claimant's own evidence. Corroboration of the claimant's evidence should only be sought if there are grounds to doubt it.

*1 JSA Regs, Sch 7, para 30(1); IS (Gen) Regs, Sch 9, para 29(1)*

28237 - 28239



# Mortgage protection policy payments

## How much mortgage protection policy payment should be disregarded

- 28240 The DM should calculate the weekly amount of a mortgage protection policy payment and disregard the weekly amounts that are **used** to pay
1. the amount of any interest that is in excess of that being met in the applicable amount for a loan that is a qualifying housing cost<sup>1</sup> **and**
  2. any capital repayments on a loan or the part of a loan that is a qualifying housing cost<sup>2</sup> **and**
  3. any amount due on insurance policy premiums for
    - 3.1 the mortgage protection policy itself<sup>3</sup> **and**
    - 3.2 buildings insurance for the claimant's home<sup>4</sup>.

**Note:** If a single premium is paid for an insurance policy which covers the building occupied and other risks, the payment for the whole of the premium should be disregarded if it is not possible to identify the part of the premium that insures the building.

*1 JSA Regs, Sch 7, para 30(1)(a); IS (Gen) Regs, Sch 9, para 29(1)(a); 2 JSA Regs, Sch 7, para 30(1)(b); IS (Gen) Regs, Sch 9, para 29(1)(b); 3 JSA Regs, Sch 7, para 30(1)(c)(i); IS (Gen) Regs, Sch 9, para 29(1)(c)(i); 4 JSA Regs, Sch 7, para 30(1)(c)(ii); IS (Gen) Regs, Sch 9, para 29(1)(c)(ii)*

## What if only part of a mortgage or loan qualifies as a housing cost

- 28241 If only part of a mortgage or loan qualifies as a housing cost the DM should
1. disregard the amount of the mortgage protection policy payment for that part of the loan included in the claimant's housing costs **and**
  2. consider any other disregards that might apply to the balance of the payment, in particular the disregards in DMG 28250 et seq.

## What if the payment from the mortgage protection policy is more than the claimant's housing costs

- 28242 If the amount payable from the mortgage protection policy is more than the total the claimant has to pay to the third party, the balance could be paid direct to the claimant.
1. In cases where the payment made direct to the third party is treated as income available on application the DM should

- 1.1** add the amount received by the claimant to the amount paid direct to the lender and insurance company **and**
  - 1.2** apply any disregards to the total sum.
- 2.** In cases where the payment made direct to the third party is taken into account as notional income because the claimant could not successfully apply for it the DM should
  - 2.1** treat the payment to the claimant as a separate payment<sup>1</sup> **and**
  - 2.2** apply any disregards to the payment received by the claimant<sup>2</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2; 2 JSA Regs, Sch 7, para 30(2) & 31(2);  
IS (Gen) Regs, Sch 9, para 29(2) & 30(2)*

28243 - 28249

# Other payments for housing costs

## Types of payment disregarded

### 28250 Payments of income

1. intended by the claimant, or person making the payment as a contribution towards certain housing and accommodation costs **and**
2. used as a contribution

towards any of the costs in DMG 28253 should be disregarded<sup>1</sup>. This disregard does not apply to payments under an insurance policy to which DMG 28107 applies.

*1 JSA Regs, Sch 7, para 31 (1); IS (Gen) Regs, Sch 9, para 30 (1)*

28251 If the payment is from a mortgage protection policy the DM should consider the disregards explained in DMG 28240 - 28242 before considering this disregard.

28252 If a payment is made from an insurance policy the DM should decide if the policy was taken out to meet housing costs<sup>1</sup>. If the policy was taken out to meet housing costs the DM should consider the disregards at DMG 28240 et seq before any other disregards.

*1 R(IS) 13/01*

28253 Payments for the following housing and accommodation costs should be disregarded

1. any payment on a loan secured on the claimant's home which is not a qualifying housing cost. (If only part of the loan is not a qualifying housing cost this disregard only applies to the amount of the payment for that part<sup>1</sup>)
2. interest payments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount<sup>2</sup>
3. capital repayments for a loan which is a qualifying housing cost where those payments are not met in the applicable amount<sup>3</sup>
4. insurance policy premiums for
  - 4.1 mortgage protection policies if the other payments disregarded under this paragraph come from it<sup>4</sup> **and**
  - 4.2 building insurance policies for the claimant's home<sup>5</sup>
5. other housing costs
  - 5.1 any payment towards
    - 5.1.a service charges **and**
    - 5.1.b ground rent or rent charge **and**

- 5.2** any payment for
  - 5.2.a** a co-ownership scheme **and**
  - 5.2.b** a Crown tenancy **and**
  - 5.2.c** a tent

to the extent that they are not met in the applicable amount<sup>6</sup>

- 6.** rent on the home that is not met by HB<sup>7</sup>
- 7.** accommodation charges<sup>8</sup> but only to the extent that the actual charge exceeds the amount payable by LAs under certain legislation.

**Note 1:** The disregards at **2 and 3** only apply to that part of the loan that is a qualifying housing cost.

**Note 2:** A service charge is a qualifying housing cost if it is payable as a condition of the claimant occupying a property. See DMG Chapter 23 for guidance when a service charge can be met as a housing cost.

*1 JSA Regs, Sch 7, para 31(1)(a); IS (Gen) Regs, Sch 9, para 30(1)(a); 2 JSA Regs, Sch 7, para 31(1)(b); IS (Gen) Regs, Sch 9, para 30(1)(b); 3 JSA Regs, Sch 7, para 31(1)(c); IS (Gen) Regs, Sch 9, para 30(1)(c); 4 JSA Regs, Sch 7, para 31(1)(d)(i); IS (Gen) Regs, Sch 9, para 30(1)(d)(i); 5 JSA Regs, Sch 7, para 31(1)(d)(ii); IS (Gen) Regs, Sch 9, para 30(1)(d)(ii); 6 JSA Regs, Sch 7, para 31(1)(b); IS (Gen) Regs, Sch 9, para 30(1)(b); 7 JSA Regs, Sch 7, para 31(1)(e); IS (Gen) Regs, Sch 9, para 30(1)(e); 8 NA Act 48, Part III*

- 28254 The disregards in DMG 28253 do not apply if the DM decides the payment is an LRP<sup>1</sup>.

*1 JSA Regs, reg 89; IS (Gen) Regs, reg 25*

- 28255 If a payment for a housing cost or part of a housing cost has already been disregarded under DMG 28240 - 28242 the payment for the same cost should not be disregarded again under DMG 28253.

### **How should the DM treat payments for housing costs that also attract other disregards**

- 28256 The DM should include any other disregard that applies to a payment made for housing costs. This includes any
  - 1.** income tax deducted from the payment **and**
  - 2.** disregard that applies to charitable and voluntary payments.

28257 - 28259



## Supersessions and payments for housing costs

28260 Special rules on the supersession of disregards of payments for housing costs apply in JSA<sup>1</sup> and IS<sup>2</sup> cases. The special rules apply to

1. mortgage protection policies **and**
2. other payments for housing costs.

*1 SS & CS (D & A) Regs, reg 6(2) & 7(19); 2 regs 6(2) & 7(15)*

28261 Some disregards on payments for housing costs are based on the interest payable on a loan. If the interest payable alters, the disregard has to be revised or superseded.

28262 A supersession caused by a change in interest payable on

1. a loan that is a qualifying housing cost **or**
2. a loan that is not a qualifying housing cost but is secured on the home

will not be effective until the next appropriate date is reached<sup>1</sup>.

*1 reg 7(20) & 7(16)*

28263 The appropriate date in DMG 28262 is the later of

1. the date when<sup>1</sup>
  - 1.1 new or existing housing costs are awarded in full because the claimant or partner is aged at least 60 **or**
  - 1.2 existing housing costs are awarded at 100% after the claimant has been in continuous receipt of JSA(IB) or IS for 26 weeks **or**
  - 1.3 new housing costs are awarded at 100% after the claimant has been in continuous receipt of JSA(IB) or IS for 39 weeks **or**
2. the date of the next change in standard interest rate<sup>2</sup>.

*1 reg 7(20)(a) & 6(16)(a); 2 reg 7(20)(b) & 6(16)(b)*

### Example

Frank claims JSA on 1 April. He has a mortgage on his home which was taken out before 2.10.95. Frank has a mortgage protection policy which pays the interest and capital repayments on his mortgage.

The DM calculates the amount of the disregard for Frank's mortgage protection policy payments and decides that no income should be taken into account.

On 1 May the interest payable on Frank's mortgage increases. The DM supersedes the disregard of Frank's mortgage protection policy payments but the supersession is not effective until 1 October when his existing housing costs have been awarded at 100%.

28264 The special supersession rules only apply to changes in interest payments caused by interest rate changes. Normal supersession rules apply to all other changes of circumstances including

1. changes in capital repayments on a loan **and**
2. changes in premiums for
  - 2.1 mortgage protection policies **and**
  - 2.2 policies designed to repay the loan **and**
  - 2.3 buildings insurance policies.

**Note:** The amount of premiums for some mortgage protection policies depends on the amount of interest actually payable. Normal supersession rules apply where a change in interest payable causes mortgage protection policy premiums to change.

28265 - 28267

28268 When

1. a change of interest payable is not effective until the next appropriate date is reached **and**
2. a later change occurs that
  - 2.1 affects the amount of interest disregarded **and**
  - 2.2 the special supersession rules do not apply

the amount of interest disregarded because of the second change should be based on the actual interest payable.

### **Example**

Liam has a mortgage protection policy. The interest payable on his loan is £15 a week. He receives £10 a week interest in his applicable amount.

On 1 January the DM disregards £5 a week.

On 1 February the interest payable increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5.

On 1 March the standard interest rate changes. The interest in Liam's applicable amount increases to £12. The actual interest payable remains at £16.

The DM supersedes the amount of the disregard. The disregard is reduced to £4 (£16 - £12).

28269 When

1. a change in interest payable is not effective until the next appropriate date is reached **and**
2. a later change occurs that
  - 2.1 affects disregarded items other than loan interest **and**
  - 2.2 special supersession rules do not apply

there will be no grounds to supersede the disregard of interest. The supersession should be restricted to the items directly affected by the change<sup>1</sup>.

*1 R(IS) 15/93*

### **Example**

Christina receives payments from a mortgage protection policy. The interest payable on her loan is £15 a week. She gets £10 a week in her applicable amount.

From 1 January the DM disregards £5 from the mortgage protection policy payment.

On 1 February the interest on the loan increases to £16 a week. The DM supersedes the interest payable but the supersession is not effective until the next appropriate date is reached. The disregard remains at £5 a week.

On 1 March mortgage protection policy premiums increase. The DM increases the amount of the disregard relating to mortgage protection policy premiums only. The amount of the disregard relating to loan interest is not superseded until the next appropriate date is reached.

28270 - 28280



# Payments for care home, Abbeyfield Home or independent hospital charges

## Introduction

28281 DMG 28282 - 28305 gives guidance on the treatment of payments of income towards accommodation charges for

1. a care home **or**
2. an Abbeyfield Home **or**
3. an independent hospital.

28282 The treatment of the income depends on

1. the type of payment
2. whether the LA has sponsored the claimant in their accommodation.

## Care homes and independent hospitals

28283 In England and Wales a care home means<sup>1</sup> a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for persons who

1. are or have been ill including mental illness **or**
2. are disabled or infirm **or**
3. are or have been dependent on alcohol and drugs.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Care Standards Act 2000, s 3*

28284 In Scotland a care home means<sup>1</sup> a home care service which provides accommodation along with nursing, personal care or personal support but does not include

1. hospitals
2. schools
3. independent health care services.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Regulation of Care (Scotland) Act 2001, s 2(3)*

28285 An independent hospital means<sup>1</sup> in

1. England, a hospital that is not a health service hospital as defined in legislation<sup>2</sup> **or**
2. Wales, a hospital which is not a health service hospital as defined in legislation<sup>3</sup> **or**
3. Scotland, an independent healthcare service as defined in legislation<sup>4</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 National Health Service Act 2006, s 275; 3 Care Standards Act 2000, s 2; 4 Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b)*

## Types of payment

28286 The payments for accommodation may be

1. charitable or voluntary (see DMG 28490 et seq) **or**
2. other payments.

The DM should decide what type of payment is being made.

28287 - 28302

## Payments to claimants not in Local Authority sponsored accommodation

28303 This disregard applies where a claimant is residing in

1. a care home, Abbeyfield Home, or independent hospital **and**
2. accommodation that has not been provided by an LA under certain legislation<sup>1</sup>.

**Note:** This disregard does not apply to charitable or voluntary payments which are fully disregarded - see DMG 28513.

*1 NA Act 48, s 26; SW (Scot) Act 68, s 59*

28304 The DM should disregard from any payment intended and used for accommodation charges the difference between the

1. claimant's applicable amount **and**
2. actual charge made by the home or hospital<sup>1</sup>.

*1 JSA Regs, Sch 7, para 32; IS (Gen) Regs, Sch 9, para 30A*

### Example

Andrew receives IS. He lives in an independent hospital which provides treatment for drug and alcohol dependency. The LA are not sponsoring Andrew under National Assistance legislation. The weekly charge for the hospital is £300. Andrew receives a payment of £250 a week from a Trust Fund towards his accommodation charges.

The DM calculated Andrew's applicable amount as follows

personal allowance	£54.65
DP	£23.30
	£77.95

The difference between £77.95 and the charge by the hospital is the amount of the disregard.

actual charge	£300.00
less	£77.95
The disregard is	£222.05

## Other payments towards accommodation costs.

- 28305 Disregard the amount of the payment intended and used for charges not met by the LA<sup>1</sup> under certain legislation<sup>2</sup>.

**Note:** This would only happen if the charge was greater than the amount allowed by the LA but not if the claimant chose a more expensive home than the LA would allow.

*1 JSA Regs, Sch 7, para 31(1)(e); IS (Gen) Regs, Sch 9, para 30(1)(e); 2 NA Act 48, s 26*

28306 - 28349





# Income fully disregarded

## Types of income fully disregarded

**[See Memo DMG 18/08] [See DMG Memo IS/JSA 64]**

28350 The following incomes should be fully disregarded when calculating income for IS and JSA(IB)

1. any payment from and/or some payments from money that originally came from
  - 1.1 the Macfarlane Trust
  - 1.2 the Macfarlane (Special Payments) Trust
  - 1.3 the Macfarlane (Special Payments) (No. 2) Trust
  - 1.4 the Independent Living Fund (2006)
  - 1.5 the Fund
  - 1.6 the Eileen Trust
  - 1.7 the Skipton Fund
  - 1.8 MFET Limited
2. any payment for a reduction of CT
3. AAs
4. certain payments due to be paid before the date of claim
5. child maintenance
6. Christmas Bonus
7. compensation for loss of HB
8. concessionary payments
9. cost of conversion of foreign money
10. CTB
11. dependant's or non dependant's contributions to accommodation and living costs
12. DLA
13. discretionary housing payments (DHPs)
14. Education maintenance allowance
15. Employment Retention and Advancement (ERA) Scheme payments
16. EZ, self-employed route
17. GA
18. gallantry awards

19. HB
20. income frozen abroad
21. income in kind
22. income tax refunds
23. income treated as capital
24. increases in SS benefits for absent dependants
25. jurors' or witnesses' court attendance allowance
26. Mobility supplement
27. ND IAP, expenses and top-up payments
28. payments for foster children
29. payment for a person temporarily in the care of the claimant
30. payments from an LA in lieu of Community Care Services
31. payment by an employer of employee's expenses
32. payment of expenses to voluntary workers and service users
33. payments to help disabled people get or keep employment
34. payments from the SF under SS legislation
35. payments from the Supporting People programme
36. certain payments made under employment and training law
37. payments made under the Return to Work Credit Scheme
38. payments made under the Repayment of Teacher's Student loans Scheme
39. resettlement benefit
40. special guardianship payments
41. training premium and expenses
42. travelling expenses for training schemes
43. vouchers including child care cheques
44. war widows/widowers, surviving civil partners supplementary pensions
45. welfare foods, NHS supplies, travelling expenses and assisted prison visits.

**Note:** See DMG 28450 et seq for further guidance on the payments listed at 1..

28351 For IS only any income paid to a person to whom DMG 20530 (MIRO) applies should be disregarded<sup>1</sup>.

*1 IS (Gen) Regs, Sch 9, para 74*

# Attendance allowances and disability living allowance

## Attendance allowances

28352 The DM should disregard in full<sup>1</sup> the following payments

1. AA<sup>2</sup>
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%<sup>3</sup>
3. ESDA paid because industrial disablement has been assessed at 100%<sup>4</sup>
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation<sup>5</sup>
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme<sup>6</sup> or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers
7. any payment for attendance which is a part of WDisP. This includes severe disablement occupational allowance paid with CAA.

*1 JSA Regs, Sch 7, para 10; IS (Gen) Regs, Sch 9, para 9; 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 s 104 or 105; 5 Workmen's Compensation Acts 1925 - 1945; 6 Personal Injuries (Civilians) Scheme 83, art 14 - 16 or 44*

## The meaning of attendance allowance

28353 DMs should recognize the difference between

1. the term attendance allowance which is commonly used to describe one particular benefit (abbreviation AA) **and**
2. "attendance allowance" which is defined in legislation<sup>1</sup> and includes all the benefits in DMG 28352 (abbreviation "AA").

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Disability living allowance

28354 The DM should fully disregard

1. DLA mobility component<sup>1</sup> **and**
2. DLA care component<sup>2</sup>.

*1 JSA Regs, Sch 7, para 7; IS (Gen) Regs, Sch 9, para 6; 2 JSA Regs, Sch 7, para 10; IS (Gen) Regs, Sch 9, para 9*

28355 - 28357



# Benefits fully disregarded

## Increase for dependants

28358 Any increase for a dependent child or young person who is a member of the claimant's family paid with

1. CA
2. RP
3. IB
4. SDA
5. WMA
6. WPA

should be fully disregarded for the purposes of calculating the claimant's income<sup>1</sup>.

*1 JSA Regs, Sch 7, para 6B(3); IS (Gen) Regs, Sch 9, para 5B(3)*

28359 The disregard only applies where the claimant or claimant's partner has an award of CTC<sup>1</sup>.

*1 JSA Regs, Sch 7, para 6B(3)(b); IS (Gen) Regs, Sch 9, para 5B(3)(b)*

## Christmas bonus

28360 Christmas bonus should be disregarded in full<sup>1</sup>. It is paid in the week starting with the first Monday in December to people getting the following benefits<sup>2</sup>

1. RP
2. IB
3. WMA, WPA or WP
4. SDA
5. CA
6. IDB
7. AA/DLA
8. US
9. WDisP
10. WWP
11. ESA(Cont)
12. SPC.

*1 JSA Regs, Sch 7, para 35; IS (Gen) Regs, Sch 9, para 33; 2 SS CB Act 92, s 148*

28361

## Compensation for loss of housing benefit

- 28362 The DM should fully disregard any payment made by the Secretary of State to compensate for the total or partial loss of HB<sup>1</sup>.

*1 JSA Regs, Sch 7, para 42; IS (Gen) Regs, Sch 9, para 40*

## Council tax benefit

- 28363 The DM should fully disregard any payment of CTB<sup>1</sup>. CTB usually reduces the bill sent by LAs but some claimants may receive cash payments.

*1 JSA Regs, Sch 7, para 51; IS (Gen) Regs, Sch 9, para 52*

## Discretionary housing payments

- 28364 LAs may make discretionary housing payments to HB/CTB recipients requiring further financial assistance with their housing costs<sup>1</sup>. For IS/JSA purposes discretionary housing payments should be disregarded<sup>2</sup>

*1 Discretionary Financial Assistance Regulations 2001 (S.I. 2001 No. 1167);*

*2 IS (Gen) Regs, Sch 9, para 75; JSA Regs, Sch 7, para 71*

## Guardians allowance

- 28365 The DM should fully disregard any GA<sup>1</sup>. It is payable to a person who is entitled to CHB for a child

1. whose natural parents are dead **or**
2. where one of the natural parents is dead and the other cannot be traced or is serving a long prison sentence.

*1 IS (Gen) Regs, Sch 9, para 5A; JSA Regs, Sch 7, para 6A*

## Housing benefit

- 28366 The DM should fully disregard any payments of HB<sup>1</sup> to which the claimant is entitled. HB may be

1. paid direct to the claimant **or**
2. paid direct to the landlord **or**
3. deducted from the rent payable.

HB is paid by LAs to help people on low incomes pay their rent.

**Note:** See DMG 28181 et seq where the claimant is a landlord and receives HB.

*1 JSA Regs, Sch 7, para 6; IS (Gen) Regs, Sch 9, para 5*

## Increases in Social Security benefits and Service Pensions for absent dependants

28367 The DM should fully disregard any increase in a SS benefit<sup>1</sup> or a service pension<sup>2</sup> for a

1. husband, wife, civil partner or any other adult dependant **or**
2. child

who is not a member of the family for JSA and IS purposes.

**Note:** "Service Pension" in this guidance means a pension or allowance paid in respect of disablement or death due to service in the armed forces.

*1 JSA Regs, Sch 7, para 52(1); IS (Gen) Regs, Sch 9, para 53(1); 2 JSA Regs, Sch 7, para 52(2); IS (Gen) Regs, Sch 9, para 53(2) & The Naval, Military and Air Forces Etc (Disablement and Death) Service Pensions Order 2006, Part 2 or 3*

28368 Dependency increases can be paid as part of the following SS benefits

1. MA
2. SDA
3. RP
4. unemployability supplement paid with Dis B (abolished for new claims in 1987).

Claimants must pay over an amount at least equal to the dependency increase to continue to receive it.

**Note:** CHB for a child who is not a member of the family should be taken into account in full as the income of the CHB claimant.

## Mobility supplement

28369 The DM should fully disregard

1. Mobility supplement **and**
2. War Pensioner's Mobility Supplement<sup>1</sup>.

Any payment to compensate for the non-payment of these benefits should also be disregarded in full.

*1 JSA Regs, Sch 7, para 7 & 9; IS (Gen) Regs, Sch 9, para 6 & 8*

## Resettlement benefit

28370 The DM should fully disregard any resettlement benefit paid to a claimant who has been discharged from hospital<sup>1</sup>.

*1 JSA Regs, Sch 7, para 40; IS (Gen) Regs, Sch 9, para 38*

## Payments from the SF under Social Security legislation

28371 The DM should fully disregard any payment made from the SF<sup>1</sup>.

**Note:** This disregard does not apply to payments from the European Social Fund.

*1 JSA Regs, Sch 7, para 33; IS (Gen) Regs, Sch 9, para 31*



# Concessionary payments

## Types of concessionary payments that should be disregarded

28372 The DM should fully disregard concessionary payments<sup>1</sup> of

1. Attendance allowances
2. DLA mobility component
3. DLA care component
4. JSA(IB)
5. IS
6. ESA(IR).

*1 JSA Regs, Sch 7, para 8; IS (Gen) Regs, Sch 9, para 7*

## What are concessionary payments

28373 Concessionary payments<sup>1</sup> are made by the Secretary of State in place of

1. SS benefits **or**
2. HB **or**
3. tax credits.

They are made when the policy intention to pay benefit cannot be achieved because of a fault in the law. They should be treated in the same way as the benefit they represent.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28374 - 28375



# Payments under the Supporting People programme

## Disregard

28376 Payments may be made under the Supporting People programme. The DM should fully disregard<sup>1</sup>

1. any payment made by
  - 1.1 a LA **or**
  - 1.2 Welsh Ministers
2. to or on behalf of the claimant or partner relating to a service which is
  - 2.1 provided to develop **or**
  - 2.2 sustain the capacity of the claimant or partner to live independently in his accommodation.

*1 JSA Regs, Sch 7, para 72(1); IS (Gen) Regs, Sch 9, para 76(1)*



# Payments for children and people living temporarily with the claimant

## Foster children

28377 The DM should fully disregard payments<sup>1</sup> made by or on behalf of

1. a LA under its duty to provide

1.1 accommodation **and**

1.2 maintenance

for a child it is looking after<sup>2</sup> **or**

2. a voluntary organization under certain legislation<sup>3</sup> **or**

3. a LA<sup>4</sup>

for children who are living with claimants under fostering arrangements.

**Note:** These allowances should not be treated as earnings.

*1 JSA Regs, Sch 7, para 27; IS (Gen) Regs, Sch 9, para 26;*

*2 Children Act 1989, s 23(2)(a); Children (Scotland) Act 1995, s 26;*

*3 Children Act 1989, s 59(1)(a); 4 Looked After Children (Scotland) Regulations 2009, regs 33 or 51*

## Kinship care

28378 In Scotland an LA may place a child with another person in an arrangement often referred to “Kinship care”<sup>1</sup>. Any payment made by the LA to the person providing care should be fully disregarded<sup>2</sup>.

*1 Looked After Children (Scotland) Regulations 2009, reg 10;*

*2 JSA Regs, Sch 7, para 27; IS (Gen) Regs, Sch 9, para 26*

## Payments for the welfare of children

28379 Certain legislation<sup>1</sup> concerning the welfare of children applies in England, Wales and Scotland<sup>2</sup>. This applies to certain children who were being looked after by a LA.

*1 CLC Act 2000; Children (Leaving Care) SS Benefit Regs, reg 1(1);*

*2 Children (Leaving Care) SS Benefits (Scotland) Regs, reg 1*

28380 The DM should fully disregard payments made by LAs under child-care law<sup>1</sup>

1. to promote the welfare of children **and**

2. to prevent people being taken into care

unless the claimant or a member of the family is involved in a TD<sup>2</sup>.

*1 Children (Leaving Care) Act 2000 (Comm No. 2 & Cons Prov) Order, Sch 1, para (c) & Sch 4, para (c);*

*Children Act 1989, s 17, 23B, 23C or 24A; SW (Scot) Act 68, s 12;*

*Children (Scotland) Act 1995, s 22, 29 or 30; 2 JSA Regs, Sch 7, para 29(1); IS (Gen) Regs, Sch 9, para 28(1)*

28381 Where

1. a former child (aged over 18) who was in the claimant's care still lives with the claimant **and**
2. the LA makes payments under certain child care law<sup>1</sup> to the former child in care **and**
3. the former child in care passes the payments on to the claimant

those payments received by the claimant are disregarded unless the claimant or a member of the family is involved in a TD<sup>2</sup>.

*1 Children Act 89, s 23C; Children (Scotland) Act 95, s 22 or 29;  
2 JSA Regs, Sch 7, para 29(2) & (5); IS (Gen) Regs, Sch 9, para 28(2) & (5)*

28382 The DM should take into account the income in full in DMG 28380 or DMG 28381 if

1. the claimant **or**
2. a member of the family

is involved in a TD<sup>1</sup>.

**Note:** These payments may be made to people who were in LA care.

*1 JSA Regs, Sch 7, para 29(4); IS (Gen) Regs, Sch 9, para 28(4); JS Act 95, s 14;  
SS CB Act 92, s 124(1), 126 & 127*

28383

## **Payments for people temporarily in the claimant's care**

28384 The DM should fully disregard payments to a claimant or partner for a person who

1. is not normally a member of the claimant's household **and**
2. is temporarily in the claimant's care<sup>1</sup>

when payments are made by a LA, HA, a voluntary organization, a primary care trust, a Local Health Board or the person concerned under specified legislation<sup>2</sup>.

**Note 1:** This could include payments to a claimant under the Adult Placement or Shared Lives Scheme from a LAs own resources.

**Note 2:** Payments made by a LA does not include payments of HB made in respect of the person concerned.

*1 JSA Regs, Sch 7, para 28; IS (Gen) Regs, Sch 9, para 27  
2 NA Act 48, s 26(3A)*

28385 This type of payment is often made to people providing "respite care". This is short-term care provided to give a disabled person's usual carer a break from their caring responsibilities. People providing respite care should not be treated as

1. engaged in remunerative work **or**
2. receiving earnings from S/E<sup>1</sup>.

*1 JSA Regs, reg 100(2)(b); IS (Gen) Regs, reg 37(2)(b)*

# Payments of expenses

## Payment by an employer of employee's expenses

28386 The DM should fully disregard payments made by an employer for expenses which are

1. wholly **and**
2. exclusively **and**
3. necessarily

incurred by an employee while performing the duties of the employment<sup>1</sup>.

*1 JSA Regs, Sch 7, para 3; IS (Gen) Regs, Sch 9, para 3*

28387 The DM should treat as earnings any payments of expenses

1. above the amount which fits the conditions **or**
2. that do not fit the conditions

described in DMG 28386. Payment of a voluntary worker's expenses.

28388 The DM should fully disregard payments towards expenses incurred and advance payments for expenses to be incurred<sup>1</sup> by a person who

1. does voluntary work for a
  - 1.1 charity **or**
  - 1.2 voluntary organisation **or**
2. is a volunteer.

**Note:** Volunteers do not have to be engaged by a charitable or voluntary organisation. An LA or a public body cannot be a voluntary organisation<sup>2</sup>.

*1 JSA Regs, Sch 7, para 2; IS (Gen) Regs, Sch 9, para 2;*

*2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

28389 The expenses may be

1. incurred in, or for the performance of the work, for example special clothing or equipment **or**
2. for personal incidental expenses resulting from the person being a voluntary worker, for example travelling expenses or child care costs.

28390 This disregard applies provided that the person is not

1. remunerated for their voluntary activity **or**
2. treated as having notional earnings.

See DMG Chapter 26 for guidance on notional earnings.

### **Time-exchange schemes**

28391 Time-exchange schemes are based on the idea that community members donate time to the community using their specific skills, and receive the same amount of time in return from another community member with a skill they require. Participants may believe they are volunteers but for IS/JSA(IB) purposes it is not voluntary work (which is done without remuneration or expectation of remuneration). The hours worked by the customer/partner are “banked” with the organisation and accumulate each time he/she carries out additional work under the “time-exchange” scheme.

28392 Payment of expenses to the customer/partner for participating in a particular activity will be an exception as it is not in the nature of the scheme to use cash as part of the running of the scheme. If exceptionally, expenses are reimbursed they should be treated as other income and taken fully into account in the claim for IS/JSA(IB). This is because participation in “time-exchange” is not volunteering so the treatment of volunteers’ reimbursed expenses (see DMG 28388) is not appropriate here.  
Service users

28393 People participating in a service user group are often called “service users”. A service user group means<sup>1</sup> any group of individuals that is consulted under certain legislation by or **on behalf of**

1. in Scotland a Health Board, Special Health Board or Agency<sup>2</sup> **or**
2. a landlord authority<sup>3</sup> **or**
3. a public authority<sup>4</sup> **or**
4. a best value authority<sup>5</sup> **or**
5. in Scotland an LA landlord or registered social landlord<sup>6</sup> **or**
6. a relevant English or Welsh health body<sup>7</sup> **or**
7. a Local Health Board in Wales<sup>8</sup> **or**
8. the Commission or the Office of the Health Professions Adjudicator<sup>9</sup> **or**



9. the regulator or private registered provider of social housing for tenants and social landlords<sup>10</sup> **or**
10. an LA or public authority in GB as a result of a function provided for under an enactment

for the purposes of monitoring and advising on the policies affecting and services provided to users or potential users of those services.

**Note 1:** A public authority includes any person whose functions include functions of a public nature<sup>11</sup>.

**Note 2:** An enactment includes legislation made in or under an Act of the Scottish Parliament<sup>12</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 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 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1);  
12 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

### 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.

- 28394 Any payment of expenses paid to the claimant as a result of participating in a service user group is fully disregarded<sup>1</sup>.

*1 JSA Regs, Sch 7, para 2A; IS (Gen) Regs, Sch 9, para 2A*

### Example 1

Anton is an out-patient at his local hospital and attends there on a regular basis for treatment. He is in receipt of JSA(IB). Anton has volunteered to take part in a Patients' Forum which discusses the services and care provided by the hospital. In

order to attend the meetings, Anton needs to get a taxi. The expenses for this transport are paid to him by the local Health Trust. The DM decides that the expenses can be disregarded as income when calculating Anton's entitlement to JSA(IB).

### **Example 2**

Donna is in receipt of IS. She has volunteered to take part in a service user group at her local hospital. In order to attend, Donna needs a carer to take her there. The transport expenses that Donna's carer incurs taking her to the service user meeting are reimbursed to Donna by the hospital. The DM disregards these expenses when calculating Donna's entitlement to IS.

## War widow's, widower's or surviving civil partner's supplementary pensions

28395 The DM should fully disregard any

1. supplementary pension paid to a widow, widower or surviving civil partner for the disablement or death of personnel whose service terminated before 31.3.73 or any similar payment made by the Secretary of State for Defence to a person not entitled to a supplementary pension<sup>1</sup> **and**
2. supplementary pension paid to a widow, widower or surviving civil partner under the Personal Injuries (Civilians) Scheme<sup>2</sup> **and**
3. supplementary pension paid to the widow, widower or surviving civil partner of a person
  - 3.1 whose death was caused by service similar to being in the armed forces **and**
  - 3.2 that service ended before 31.3.73 **and**
  - 3.3 the payment is equal to the amount in 1.<sup>3</sup>.

**Note:** See DMG 28157 for guidance on war widows or widowers pensions. See Appendix 1 to this Chapter for details of the law under which war widows or widowers supplementary pensions are paid.

*1 JSA Regs, Sch 7, para 53; IS (Gen) Regs, Sch 9, para 54; 2 JSA Regs, Sch 7, para 54; IS (Gen) Regs, Sch 9, para 55; 3 JSA Regs, Sch 7, para 55; IS (Gen) Regs, Sch 9, para 56*



## Other types of income fully disregarded

### Certain payments due before the date of claim

- 28396 The DM should fully disregard any payment of income that
1. is due to be paid before the date of claim for IS or JSA **and**
  2. under normal rules would be taken into account in the same benefit week as a payment of the same kind from the same source<sup>1</sup>.

*1 JSA Regs, Sch 7, para 37; IS (Gen) Regs, Sch 9, para 35*

### Payments for a reduction in council tax

- 28397 The DM should disregard in full<sup>1</sup> any payment made because of a reduction of CT because of transitional relief<sup>2</sup> when the tax was introduced.

*1 JSA Regs, Sch 7, para 45; IS (Gen) Regs, Sch 9, para 46; 2 LGF Act 92 s 13 or 80*

### Dependant's or non-dependant's contributions to accommodation and living costs

- 28398 The DM should fully disregard payments for living and accommodation costs from people who normally live with the claimant who are not
1. boarders **or**
  2. subtenants<sup>1</sup>.

*1 JSA Regs, Sch 7, para 19; IS (Gen) Regs, Sch 9, para 18*

#### Example

Michael is an IS claimant. His daughter Katy is a non-dependant in his household. She pays him £25 a week as a contribution towards the household bills.

The DM disregards this payment fully as Katy is not a boarder or subtenant.

### Education maintenance allowance

- 28399 The DM should fully disregard<sup>1</sup> any payment paid under prescribed legislation<sup>2</sup> that is
1. education maintenance allowance **or**
  2. the same as an education maintenance allowance

made to support a young person who remains in non-advanced education after the age of 16. It can be paid for up to two years between the ages of 16 and 19. In some cases it may continue to be paid for up to three years until the person reaches the age of 20.

*1 JSA Regs, Sch 7, para 12(1)(a) & (b); IS (Gen) Regs, Sch 9, para 11(1)(a) & (b);  
2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49, 73ZA & 73(f);  
F & HE (Scot) Act 92, s 12(2)(c); Education Act 2002, s 14 & 181*

## **Other payments to assist with non-advanced education**

28400 The DM should fully disregard<sup>1</sup> any payment paid under prescribed legislation<sup>2</sup> in respect of a course of study attended by a

1. child or young person **or**
2. person who is in receipt of an allowance as described at DMG 28399 above.

**Note:** Such payments may include, for example, payments to cover scholarships or school expenses.

*1 JSA Regs, Sch 7, para 12(2); IS (Gen) Regs, Sch 9, para 11(2)  
2 Education Act 1996, s 518; Ed (Scot) Act 80, s 49 & 73ZA;  
F & HE (Scot) Act 92, s 12(2)(c)*

## **Special guardianship payments**

28401 The special guardianship scheme is intended to provide more security for a child than long term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Financial support by the LA may be paid to special guardians in certain circumstances. It is expected the support will normally be made as a single payment to meet a one-off cost. However the LA may make payments in instalments or periodically to meet needs that are likely to be ongoing.

28402 Any special guardianship payment made under specific legislation<sup>1</sup> in respect of a child or young person who is a member of the family should be fully disregarded<sup>2</sup>.

*1 Children Act 1989, s 14F; 2 JSA Regs, Sch 7, para 26(1)(e); IS (Gen) Regs, Sch 9, para 25(1)(e)*

## **Repayment of teacher's student loans scheme**

28403 The pilot of the repayment of teacher's student loans ran for three years until July 2005 although eligible teachers may continue to receive payments under this scheme. It provided financial incentives to newly qualified teachers working in shortage subject areas. In England and Wales student loan debts were waived by gradually reducing the amount of loan outstanding. However, for those who took out student loans while living in Scotland, Northern Ireland or another EEA country and

who took up a post teaching shortage subjects in England and Wales - annual payments were made to the teacher to repay their student loan. There is no time restriction on payments, so as long as the teacher remains eligible, repayments will continue to be made until the loan is repaid.

- 28404 Any payment made to a claimant under specific legislation<sup>1</sup> for the repayment of a teacher's student loan should be fully disregarded<sup>2</sup>.

*1 The Education (Teacher Student Loans) (Repayment etc.) Regs, reg 11(2);*

*2 JSA Regs, Sch 7, para. 12A; IS (Gen) Regs, Sch 9, para. 11A*

28405 - 28409

## Employment retention and advancement scheme

- 28410 The employment retention and advancement (ERA) scheme<sup>1</sup> 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 E & T Act 73, s 2*

## Disregard

- 28411 The DM should fully disregard<sup>1</sup> any ERA payment.

**Note:** The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28427.

*1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13*

## Employment Zones and self-employed route

- 28412 Participants in the second stage of EZ programmes will receive a subsistence allowance from the EZ contractor, calculated so as to leave 50p JSA in payment. A subsistence allowance is defined as an allowance which an EZ contractor has agreed to pay to an EZ programme participant<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

- 28413 If the amount of subsistence allowance paid in a benefit week exceeds the correct amount, the excess is fully disregarded<sup>1</sup>. Any discretionary payment by way of a fee, grant, loan or otherwise made by an EZ contractor to a participant is fully disregarded<sup>2</sup>.

*1 JSA Regs, Sch 7, para 68; IS (Gen) Regs, Sch 9, para 71;*

*2 JSA Regs, Sch 7, para 69; IS (Gen) Regs, Sch 9, para 72*

- 28414 Disregards are available for S/E participants in the ND, EZ and Work Based Learning for Adults. Any payment made to a person who is receiving or who has received assistance under the self-employment route shall be disregarded if it is
1. to meet expenses wholly and necessarily incurred whilst carrying on that activity **or**
  2. used or is intended to be used to maintain repayments on a loan taken out by that person to establish or carry on that activity<sup>1</sup>.

*1 IS (Gen) Regs, Sch 9, para 64(1), JSA Regs, Sch 7, para 62(1).*

## Cost of conversion of foreign money

- 28415 The DM should fully disregard any
1. bank charges **or**
  2. commission
- paid when income paid in foreign currency is converted to sterling<sup>1</sup>.

*1 Sch 7, para 25; IS (Gen) Regs, Sch 9, para 24*

### Example

Klaus claims IS.

He is retired and receives a pension of 500 euros a month from his former employer in Austria.

When Klaus's bank convert the payment into sterling they charge a commission of £2.

The DM disregards the £2 commission from the amount that Klaus receives in sterling.

## Gallantry awards

- 28416 The DM should fully disregard any gallantry awards<sup>1</sup>. These are
1. Victoria Cross annuity **and**
  2. George Cross annuity **and**
  3. any similar award, including
    - 3.1 equivalent awards from foreign countries **or**
    - 3.2 British awards of a lower status than the Victoria Cross or George Cross.

DMs should include awards for gallantry below the highest level when considering awards from foreign countries.

*1 JSA Regs, Sch 7, para 11; IS (Gen) Regs, Sch 9, para 10*



## Income frozen abroad

28417 The DM should fully disregard income which is

1. payable in a foreign country **and**
2. cannot be transferred to the UK

for as long as it is frozen abroad<sup>1</sup>. Income will usually be frozen when the foreign country does not allow its currency to be transferred to the UK.

*1 JSA Regs, Sch 7, para 24; IS (Gen) Regs, Sch 9, para 23*

## Income in kind

28418 The DM should fully disregard any income in kind except

1. support provided to a claimant under specific immigration and asylum law **and**
2. notional income **and**
3. income paid to a claimant or member of the family because of involvement in a TD<sup>1</sup> **and**
4. payments made to a third party in respect of the claimant which are used by the third party to provide benefits in kind to the claimant<sup>2</sup>.

**Note 1:** Credits received from participating in a LETS scheme (see DMG Chapter 27) are not income in kind. Credits should be taken into account in the appropriate way.

**Note 2:** See DMG 28670 **2.** for the treatment of concessionary coal.

*1 JSA Regs, Sch 7, para 22(1); IS (Gen) Regs, Sch 9, para 21(1)*

*2 JSA Regs, Sch 7, para 22(4); IS (Gen) Regs, Sch 9, para 21(4)*

### Example 1

The claimant recently separated from her partner and claimed JSA.

The claimant's mother works in a shop and the shop owner gives the mother £10 of groceries each week for the claimant.

The DM decides the £10 a week is income in kind and should be fully disregarded.

### Example 2

The shop owner (in example 1 above) then changes the arrangement and gives the claimant's mother £10 a week to buy groceries for the claimant.

The claimant's mother uses the £10 to buy food each week for the claimant.

The DM decides the £10 a week cannot be disregarded as income in kind and it should be taken fully into account as notional income.

- 28419 The exceptions at DMG 28418 do not apply<sup>1</sup> when the income in kind comes from
1. the Macfarlane Trust
  2. the Macfarlane (Special Payments) Trust
  3. the Macfarlane (Special Payments) (No. 2) Trust
  4. the Fund
  5. the Eileen Trust
  6. the Independent Living Fund (2006)
  7. MFET Limited **or**
  8. the partner who is subject to immigration control and is receiving support under specific immigration and asylum law and the income in kind is support provided in respect of the essential living needs of the partner of the claimant and his dependants (if any).

*1 JSA Regs, Sch 7, para 22(2) & (3); IS (Gen) Regs, Sch 9, para 21(2) & (3)*

## **Income tax refunds**

### **When should tax refunds be treated as capital**

- 28420 The DM should treat the following types of income tax refund as capital<sup>1</sup>
1. PAYE refunds
  2. refunds of tax deducted from a student's income
  3. refunds of tax on business profits
  4. refunds on tax on interest received on capital or an annuity.

*1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2)*

### **When should tax refunds be treated as income**

- 28421 Income tax refunds may be taken into account in full as income<sup>1</sup> if the claimant or a member of the family
1. is involved in a TD **or**
  2. in IS cases only has
    - 2.1 been involved in a TD **and**
    - 2.2 is entitled to IS after returning to work.

(See DMG Chapter 32 for guidance on TDs).

**Note:** The rule in IS that allows people who are working to receive IS for the first 15 days after a TD does not exist in JSA.

*1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 41(4)*

## Income treated as capital

28422 The DM should fully disregard as income any income that is treated as capital<sup>1</sup>.

*1 JSA Regs, Sch 7, para 34; IS (Gen) Regs, Sch 9, para 32*

## Jurors or witnesses court attendance allowance

28423 The DM should fully disregard any payment to a

1. juror **or**
2. witness

for attending court. But payments for loss of earnings or benefits<sup>1</sup> should not be disregarded.

*1 JSA Regs, Sch 7, para 43; IS (Gen) Regs, Sch 9, para 43*

## Payments in lieu of community care services and payments in lieu of health care

28424 The DM should disregard any payments which are made

1. under relevant legislation<sup>1</sup> **and**
2. in lieu of<sup>2</sup>
  - 2.2 community care services **or**
  - 2.2 health care.

**Note:** These types of payments are sometimes known as “Direct Payments for Health Care” or “Direct Payments for Community Care”.

*1 SW (Scot) Act 68, s 12B; Health and Social Care Act 2001, s 57; National Health Service Act 2006, s 12A - 12D;*

*2 JSA Regs, Sch 7, para 56; IS (Gen) Regs, Sch 9, para 58*

### Example

Agnes is in receipt of IS. She receives money from her LA so that she can pay someone to be her home help. The DM

1. finds out that the money received from the LA is paid under the correct legislation **and**
2. decides that the money received from the LA should be disregarded.

## Payments made under employment and training law

28425 **[Memo DMG JSA/IS 18/08]** DMs should disregard<sup>1</sup> any payment made under employment and training law<sup>2</sup> except any payment<sup>3</sup>

1. made as a substitute for
  - 1.1 IS **or**
  - 1.2 JSA **or**
  - 1.3 IB **or**
  - 1.4 SDA **or**
  - 1.5 ESA
2. of a bridging allowance paid under specific legislation<sup>4</sup>
3. intended to meet the cost of living expenses while a person is participating in
  - 3.1 an education **or**
  - 3.2 training **or**
  - 3.3 other

scheme to enhance employment prospects unless the payment is a Career Development Loan paid under employment and training law and the period of education, training or the scheme, which is supported by the loan, has been completed.
4. made in respect of the cost of living away from home to the extent that the payment relates to rent for which HB is payable in respect of accommodation which is not normally occupied as the home.

*1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13;*

*2 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2;*

*3 JSA Regs, Sch 7, para 14(1); IS (Gen) Regs, Sch 9, para 13(1)*

*4 E & T Act 73, s 2(3); Enterprise and New Towns (Scotland) Act 1990, s 2(5)*

**28426** Payments made under employment and training law<sup>1</sup> include

1. training allowances paid to young people in non-waged work based training (see DMG Chapter 26)
2. bridging allowance (see DMG Chapter 30)
3. ND allowances (see Jobcentre Plus operational guidance)
4. allowances for people on WBLA (Training For Work in Scotland) (see Jobcentre Plus operational guidance)
5. Career Development Loans (see DMG 28542 - 28549)
6. ERA payments (see DMG 28410)
7. return to work credit scheme (see DMG 28429).

This list is not exhaustive and DMs should obtain evidence that a payment is made under employment and training law.

*1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2*

## Living expenses

28427 Living expenses to be taken into account as income are any amount for

1. food
2. ordinary clothing or footwear<sup>1</sup> (see DMG 28671 - 28672)
3. fuel for the claimant's household
4. rent for which HB is payable
5. housing costs included in the applicable amount
6. CT or water charges for which the claimant or member of the family is liable<sup>2</sup>.

*1 JSA Regs Sch 7, para 14(3); IS (Gen) Regs, Sch 9, para 13(3);*

*2 JSA Regs Sch 7, para 14(2); IS (Gen) Regs, Sch 9, para 13(2)*

## Payments to help disabled people get or keep employment

28428 The DM should fully disregard payments made under certain legislation<sup>1</sup> to help disabled people get or keep employment<sup>2</sup>. The payments that qualify for this disregard include

1. the fares to work scheme operated by DWP
2. the business on their own account scheme operated by DWP
3. the personal reader service operated by the Royal National Institute for the Blind on behalf of DWP.

**Note:** Payments to assist disabled persons under employment and training law are included within the disregard explained at DMG 28425 - 28427.

*1 Disabled Persons (Employment) Act 44; 2 JSA Regs, Sch 7, para 50; IS (Gen) Regs, Sch 9, para 51*

## Return to work credit scheme

28429 Any payment made under the return to work credit scheme is fully disregarded<sup>1</sup>. The scheme has been set up under employment and training law<sup>2</sup> for people who stop claiming a specified benefit<sup>3</sup> because they have

1. found work of at least 16 hours a week **and**
2. earnings which do not exceed £15,000 a year.

A return to work credit is a non-taxable payment of £40 a week payable for a maximum of 52 weeks following the end of a person's entitlement to a specified benefit.

**Note:** The disregard for payments made under employment and training law is fully explained at DMG 28425 - 28427.

*1 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13; 2 E & T Act 73, s 2;*

*3 SS (Incapacity Benefit Work-focused Interviews) Regulations 2003, reg 2*

## Discretionary payments for special needs

28430 A payment should be disregarded<sup>1</sup> if it is

1. discretionary **and**
2. made
  - 2.1 under employment and training law<sup>2</sup> **and**
  - 2.2 to meet, or help meet, the special needs of a person who is undertaking a qualifying course.

**Note:** Travelling expenses incurred as a result of the claimant's attendance on the course should not be disregarded under this paragraph if the same expenses have already been disregarded under DMG 30326 (student income).

*1 IS (Gen) Regs, Sch 9, para 13; JSA Regs, Sch 7, para 14; 2 E & T Act 73, s 2*

28431 - 28439

## Vouchers (including child care cheques)

28440 The DM should fully disregard, in accordance with DMG 28418, any vouchers received by the claimant as income in kind. But DMs should consider whether

1. claimants should be treated as having notional income **or**
2. there has been deprivation of income

**before** applying the disregard<sup>1</sup> (See DMG 26093 for vouchers treated as earnings).

*1 JSA Regs, Sch 7, para 22; IS (Gen) Regs, Sch 9, para 21*

28441 The types of vouchers that claimants might receive are

1. education vouchers for four year old children
2. luncheon vouchers
3. child care vouchers
4. child care cheques
5. gift vouchers from shops.

## Welfare foods, NHS supplies, travelling expenses and assisted prison visits

28442 The DM should fully disregard

1. payments made under specific legislation<sup>1</sup> in place of welfare foods including healthy start vouchers, free milk and vitamins<sup>2</sup> **and**
2. refunds for
  - 2.1 NHS glasses **and**
  - 2.2 dental treatment **and**
  - 2.3 patients' travelling expenses made under specific legislation<sup>3</sup> or any similar payments made by the Secretary of State for Health, the Scottish Ministers or the Welsh Ministers<sup>4</sup> **and**
3. payments made by the Secretary of State for Justice or the Scottish Ministers for travel, accommodation and BL costs for assisted prison visits<sup>5</sup>.

*1 SS Act 88, s 13; 2 JSA Regs, Sch 7, para 48; IS (Gen) Regs, Sch 9, para 49;  
3 National Health Service (Travel Expenses and Remission of Charges) Regulations 2003, regs 5, 6 or 12;  
National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007,  
regs 5, 6 or 11; National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No.2)  
Regulations 2003, regs 3, 5 or 11; 4 JSA Regs, Sch 7, para 47; IS (Gen) Regs, Sch 9, para 48;  
5 JSA Regs, Sch 7, para 49; IS (Gen) Regs, Sch 9, para 50*

## The child maintenance disregard

28443 Any income payment of child maintenance paid by or derived from an LR - but not by the claimant or claimant's partner - falls to be fully disregarded as income<sup>1</sup>. LRPs which do not also fall within the meaning of child maintenance should be taken into account as LRPs<sup>2</sup>. DMG 28710 et seq provides guidance on LRPs.

*1 JSA Regs, Sch 7, para 70; IS (Gen) Regs, Sch 9, para 73; 2 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

## Meaning of child maintenance

28444 A payment of child maintenance is<sup>1</sup> any payment

1. towards the maintenance of
  - 1.1 a child **or**
  - 1.2 a young person **and**
2. which is under
  - 2.1 a voluntary agreement **or**
  - 2.2 child support law<sup>2</sup> **or**
  - 2.3 a court order **or**

**2.4** a consent order **or**

**2.5** a maintenance agreement registered with the Scottish courts<sup>3</sup>.

*1 JSA Regs, Sch 7, para 70(2); IS (Gen) Regs, Sch 9, para 73(2);  
2 Child Support Act 1991; Child Support (Northern Ireland) Order 1991;*

*3 Books of Council and Session; Sheriff Court Books*

## **Applying the disregard**

28445 In order for the disregard to apply the payment of child maintenance must be a payment of income

**1.** made by **or**

**2.** derived from

an LR<sup>1</sup>. DMG 28741 provides guidance on who is defined as an LR.

**Note:** For the purposes of the disregard the meaning of an LR does not include a person who has sponsored the claimant or the child if the child has also been sponsored as a condition of their immigration<sup>2</sup>.

*1 JSA Regs, Sch 7, para 70(1); IS (Gen) Regs, Sch 9, para 73(1);*

*2 JSA Regs, Sch 7, para 70(2); IS (Gen) Regs, Sch 9, para 73(2)*

### **Example**

Betty is in receipt of IS and has two children who live with her. Dai is Betty's ex-husband and he has agreed to pay £150 a week towards the maintenance of the children. He pays this money on the last day of each month. The DM decides that none of this money paid by Dai will be taken into account when calculating Betty's entitlement to IS. This is because the payment falls within the meaning of child maintenance and so has to be fully disregarded.

28446 - 28449



# **The Independent Living Fund (2006), the Fund, the Macfarlane Trusts and other specific Trusts**

## **Payments from the Independent Living Fund (2006), the Fund, and other specific Trusts**

### **The Independent Living Fund (2006)**

28450 The original Independent Living Fund ran from 1988 to 1993. It was replaced by the Independent Living (1993) Fund and the Independent Living (Extension) Fund. With effect from 1.10.07 these funds were replaced by the Independent Living Fund (2006).

28451

### **Income from the Independent Living Fund (2006)**

28452 Fully disregard<sup>1</sup> any income from the Independent Living Fund (2006).

**Note:** Income which remains unspent and becomes capital at the end of the period it was paid for is not disregarded.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)*

### **What is the Fund**

28453 The Fund is a scheme run by DH. It makes payments to people who are not haemophiliacs but who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

### **Income from the Fund**

28454 Fully disregard<sup>1</sup>

1. any income from the Fund **and**
2. any income from capital that was received from the Fund.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)*

## **What is the Eileen Trust**

28455 The Eileen Trust is a charitable trust set up on 29.3.93 to give further help to people who are not haemophiliacs but who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

## **Income from the Eileen Trust**

28456 Fully disregard<sup>1</sup>

1. any income from the Eileen Trust **and**
2. any income from capital that was received from the Eileen Trust.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)*

## **What are the Macfarlane Trusts**

28457 The Macfarlane Trusts were set up to provide compensation to haemophiliacs who contracted HIV when receiving NHS

1. blood **or**
2. tissue or organ transfers **or**
3. blood products.

28458 The Macfarlane Trusts are

1. The Macfarlane Trust
2. The Macfarlane (Special Payments) Trust
3. The Macfarlane (Special Payments) (No 2) Trust.

## **Income from the Macfarlane Trusts**

28459 Fully disregard<sup>1</sup>

1. any income from the Macfarlane Trusts **and**
2. any income from capital that was received or derived from the Macfarlane Trusts.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)*

## What is the Skipton Fund

- 28460 The Skipton Fund administers an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C. It includes people infected as a result of NHS blood products and other people eligible for payment in accordance with the scheme's provisions<sup>1</sup>.

**Note:** Payments from the Skipton Fund will be payments of capital (see DMG Chapter 29).

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## The London Bombings Relief Charitable Fund

- 28461 The London Bombings Relief Charitable Fund<sup>1</sup> was set up to relieve the needs of victims, including families or dependants of victims, of the terrorist attacks in London on 7.7.05. Interim payments were made to relieve the immediate needs of victims followed by further lump sum payments. Recipients may receive more than one lump sum payment.

**Note:** Payments made from the London Bombings Relief Charitable Fund will be payments of capital (See DMG Chapter 29).

*1 JSA Regs, reg 1(3); IS (Gen) Regs, Reg 2(1)*

## MFET Limited

- 28462 MFET Limited<sup>1</sup> is an organisation funded by DH. The purpose of MFET Limited is to make payments to people who have acquired HIV as a result of treatment by the NHS with blood or blood products.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Income from MFET Limited

- 28463 Fully disregard<sup>1</sup>

1. any income from MFET Limited **and**
2. any income from capital that was received from MFET Limited.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(1)*

28464 - 28467

## Payments from money which came from the Trusts

### Meaning of the Trusts

28468 "The Trusts"<sup>1</sup> is the term that describes

1. the Macfarlane Trusts **and**
2. the Fund **and**
3. the Eileen Trust **and**
4. the Skipton Fund **and**
5. the London Bombings Relief Charitable Fund **and**
6. MFET Limited.

*1 JSA Regs, Sch 7, para 41(1); IS (Gen) Regs, Sch 9, para 39(7)*

### What payments should be disregarded

28469 Income passed to another person from money from a Trust payment should be disregarded in the cases described in DMG 28470 - 28487. In these cases, the person receiving the income is not the person who qualified for the Trust payment. In any other circumstances, payments of income from a Trust payment should be treated under normal rules.

### Person with HIV

28470 In this guidance the term "person with HIV " is used to describe

1. people with haemophilia **or**
2. other people

who qualify for Trust payments.

### Qualifying person

28471 In this guidance a qualifying person means<sup>1</sup> a person in respect of whom a payment has been made from

1. the Fund **or**
2. the Eileen Trust **or**
3. the Skipton Fund **or**
4. the London Bombings Relief Charitable Fund **or**
5. MFET Limited.

**Note:** A person in respect of whom a payment has been made from the Macfarlane Trust is not included above but is included in the definition at DMG 28470.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## **Payments by a qualifying person or person with HIV to partners, children and young people**

- 28472 Disregard any payment made by or on behalf of a qualifying person or person with HIV from money from a Trust payment made to or for the benefit of
1. their partner or their former partner if they are **not**
    - 1.1 estranged **or**
    - 1.2 divorced **or**
    - 1.3 former civil partners **or**
    - 1.4 estranged, divorced or had their civil partnership dissolved at the date of death if the qualifying person or person with HIV has died<sup>1</sup> **or**
  2. any child or young person who
    - 2.1 is a member of the family of the qualifying person or person with HIV **or**
    - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family<sup>2</sup>.

**Note:** DMG 28479 - 28480 explains for how long the payment is disregarded.

*1 JSA Regs, Sch 7, para 41(2)(a); IS (Gen) Regs, Sch 9, para 39(2)(a);  
2 JSA Regs, Sch 7, para 41(2)(b); IS (Gen) Regs, Sch 9, para 39(2)(b) & (c)*

## **Payments by the partner or former partner of the qualifying person or person with HIV**

- 28473 Fully disregard any payment from a Trust payment made by or on behalf of a partner or former partner of a qualifying person or person with HIV, providing the qualifying person or person with HIV and partner or former partner are **not**
1. estranged **or**
  2. divorced **or**
  3. former civil partners **or**
  4. estranged, divorced or had their civil partnership dissolved at the date of death of either
    - 4.1 the qualifying person or person with HIV **or**
    - 4.2 the partner or former partner.
- 28474 This disregard applies if the payment is made to or for the benefit of
1. the qualifying person or person with HIV<sup>1</sup> **or**
  2. any child or young person<sup>2</sup> who
    - 2.1 is a member of the family of the qualifying person or person with HIV **or**
    - 2.2 was at any time a member of the family of the qualifying person or person with HIV and is now a member of the claimant's family.

**Note:** DMG 28479 - 28480 explains for how long the payment is disregarded.

*1 JSA Regs, Sch 7, para 41(3)(a); IS (Gen) Regs, Sch 9, para 39(3)(a);  
2 JSA Regs, Sch 7, para 41(3)(b); IS (Gen) Regs, Sch 9, para 39(3)(b)*

### **Payments by a qualifying person or person with HIV to parents, step parents or guardians**

28475 Fully disregard any payment from a Trust payment by a qualifying person or person with HIV to their

1. parent **or**
2. step parent<sup>1</sup> **or**
3. guardian<sup>2</sup> if the qualifying person or person with HIV has no parent or step parent and is a
  - 3.1 child **or**
  - 3.2 young person **or**
  - 3.3 student in FTE.

*1 JSA Regs, sch 7, para 41(4)(b)(i); IS (Gen) Regs, Sch 9, para 39(4)(b)(i);  
2 JSA Regs, Sch 7, para 41(4)(b)(ii); IS (Gen) Regs, Sch 9, para 39(4)(b)(ii)*

28476 This disregard applies if the qualifying person or person with HIV

1. has no partner or former partner from whom that person is **not**
  - 1.1 estranged **or**
  - 1.2 divorced **or**
  - 1.3 former civil partners **and**
2. has no child or young person in the family **and**
3. has never had a child or young person in their family<sup>1</sup>.

**Note:** DMG 28481 explains for how long the payment is disregarded.

*1 JSA Regs, Sch 7, para 41(4)(a); IS (Gen) Regs, Sch 9, para 39(4)(a)*

### **Payments from the estate of a qualifying person or person with HIV to a parent, step parent or guardian**

28477 Fully disregard any payment from the estate of a qualifying person or person with HIV to

1. a parent **or**
2. a step parent<sup>1</sup> **or**
3. a guardian<sup>2</sup> if at the date of death the qualifying person or person with HIV had no parent or step parent and was a

- 3.1** child **or**
- 3.2** young person **or**
- 3.3** student in FTE.

*1 JSA Regs, Sch 7, para 41(5)(b)(i); IS (Gen) Regs, Sch 9, para 39(5)(b)(i);  
2 JSA Regs, Sch 7, para 41(5)(b)(ii); IS (Gen) Regs, Sch 9, para 39(5)(b)(ii)*

28478 This disregard applies if at the date of death the qualifying person or person with HIV had

- 1.** no partner or former partner from whom that person is **not**
  - 1.1** estranged **or**
  - 1.2** divorced **or**
  - 1.3** former civil partners **or**
- 2.** no child or young person in the family **and**
- 3.** at no time had a child or young person in the family<sup>1</sup>.

**Note:** DMG 28482 explains for how long the payment is disregarded.

*1 JSA Regs, Sch 7, para 41(5)(a); IS (Gen) Regs, Sch 9, para 39(5)(a)*

## For how long should the payment be disregarded

### Payments to a qualifying person or person with HIV and partners

28479 Disregard payments made to or for the benefit of

- 1.** a qualifying person or person with HIV<sup>1</sup> **or**
- 2.** the partner or former partner of a qualifying person or person with HIV<sup>2</sup>

for the lifetime of the person who received the payment. Breaks in entitlement to IS or JSA(IB) do not alter this disregard.

*1 JSA Regs, Sch 7, 41(3)(a); IS (Gen) Regs, Sch 9, para 39(3)(a)  
2 JSA Regs, Sch 7, para 41(2)(a); IS (Gen) Regs, Sch 9, para 39(2)(a)*

### Payments to children and young people

28480 Disregard payments made to or for the benefit of a child or young person as long as they remain

- 1.** a child or young person **and**
- 2.** in (or they were in) the family of<sup>1</sup>

- 2.1 the qualifying person or person with HIV **or**
  - 2.2 the partner or former partner of the qualifying person or person with HIV **and**
  - 3. a member of the IS or JSA(IB) claimant's family.
- 1 JSA Regs, Sch 7, para 41(2)(b) and 41(3)(b); IS (Gen) Regs, Sch 9, para 39(2)(b) & (c) & 39(3)(b) & (c)*

### **Payments to parents and guardians from a qualifying person or person with HIV**

28481 Disregard payments to a

- 1. parent **or**
- 2. step parent **or**
- 3. guardian

from the date the payment is made until the end of two years after the qualifying person or person with HIV dies<sup>1</sup>.

**Note:** In some cases this disregard may last for the length of the JSA(IB)/IS claim, because the person with HIV may not die whilst the claimant is on JSA(IB)/IS.

*1 JSA Regs, Sch 7, para 41(4); IS (Gen) Regs, Sch 9, para 39(4)*

### **Payments to parents and guardians from the estate of a qualifying person or person with HIV**

28482 Disregard<sup>1</sup> payments to a

- 1. parent **or**
- 2. step parent **or**
- 3. guardian

for a period of two years from the date the qualifying person or person with HIV died.

**Note:** This disregard applies from the date of death not the date the estate makes a payment.

*1 JSA Regs, Sch 7, para 41(5); IS (Gen) Regs, Sch 9, para 39(5)*



## **Deciding if a disregard applies**

28483 Once the claimant has declared any payments made from one of the Trusts the DM should decide

1. if the payment qualifies for a disregard **and**
2. the length of any disregard.

28484 Seek further evidence if there is doubt about the

1. source of the payment **or**
2. relationship of the person receiving the payment with the qualifying person or person with HIV **or**
3. extent that money from the Trust has been kept separately.

## **Trust payments invested with other money**

28485 If a Trust payment is invested with other money to produce an income, disregard only the proportion that came from the trust payment<sup>1</sup>.

*1 JSA Regs, Sch 7, para 41 (6); IS (Gen) Regs, Sch 9, para 39 (6)*

### **Example**

Michael bought an annuity for £5,000. £4,000 came from the Eileen Trust. The balance came from his own savings.

The annuity produces an income of £50 a month.

The DM decides to disregard £40 a month. £10 a month is taken into account as income.

## **Qualifying person or person with HIV's relationship with former partners**

28486 The DM should be satisfied that a former partner or civil partner is not estranged or divorced or had the civil partnership dissolved. Accept the claimant's statement unless it is considered to be improbable or self-contradictory.

### **Example**

Joanne receives a payment of money from the Macfarlane Trust. She is divorced from her former partner Harold, who is a person with HIV.

The DM decides that the payment should not be disregarded.

## Social fund funeral payments

28487 Trust payments will become part of a person's estate upon death. Any assets of a dead person including

1. payments of income from the Trusts including Variant Creutzfeldt-Jakob disease payments **and**
2. payments of income from money that originally came from the Trusts or from Variant Creutzfeldt-Jakob disease payments

are not taken into account as assets of the estate if a claim for a SFFP is made (see DMG Chapter 39).

28488 - 28489

# Payments with special rules

## Charitable and voluntary payments

### What are charitable payments

28490 A charitable payment is a payment made under a charitable trust<sup>1</sup>. A charitable trust must

1. be wholly and exclusively charitable **and**
2. promote a public benefit (that is, it must benefit a sufficient section of the public except where the purpose is the relief of poverty).

Payments from charitable trusts are made at the discretion of the trustees.

*1 R(IS) 4/94; R v. Doncaster Borough Council, Ex Parte Boulton*

28491 Charitable trusts do not have to be

1. registered **or**
2. administered by a registered charity.

The DM should treat payments from registered charities as charitable payments.

28492 Charitable trusts usually provide for

1. the relief of poverty
2. advancement of education
3. advancement of religion
4. other purposes which benefit the community.

### What are voluntary payments

28493 A voluntary payment is a payment that

1. has a benevolent purpose **and**
2. is given without anything being given in return<sup>1</sup>.

**Note:** Voluntary payments should not be confused with payments to volunteers.

Guidance on payments to volunteers is given at DMG 26195 - 26196.

*1 R(IS) 4/94*

28494 A voluntary payment is similar to a charitable payment but it will not usually be made from a charitable trust. Voluntary payments are usually paid for the benefit of an individual. But DMs should recognize that charitable payments may also be made to individuals

1. for the relief of poverty **or**
2. because a wider purpose is involved.

28495 The DM should consider

1. the background to **and**
2. reasons for

the payment when deciding if it is voluntary.

#### **Example 1**

Jim claims JSA. He declares that he gets a payment of £20 a week from his uncle, Peter, towards the cost of running his car.

Peter makes the payment because Jim has been receiving JSA for some time and needs a car to get around.

Peter makes the payment because of family ties and affection for Jim. Peter does not expect or receive anything in return.

The DM decides that the £20 is a voluntary payment.

#### **Example 2**

Frances claims IS. She is retired and receives a payment of £4.50 a week from her former employer in addition to her occupational pension.

The payment of £4.50 is paid to all former employees who worked for the company for over 20 years.

The payments were awarded by the board of directors following criticism by shareholders of the treatment of former employees with long service.

The DM decides the payment is not voluntary. This is because

1. the directors of the company are receiving in return for the payment greater satisfaction from the shareholders
2. the company's image is improved
3. the payments are not made to help needy employees. Many of the people receiving payments are quite well off.

### **Meaning of relevant payment**

28496 A relevant payment<sup>1</sup> for the purposes of the disregard at DMG 28513 means

1. a charitable payment
2. a voluntary payment
3. a payment (other than in 1. or 2.) from a trust whose funds derive from a personal injury award to the claimant (this includes a trust whose funds derive from the Children's Memorial Trust - see DMG 28503)
4. a payment under an annuity purchased as a result of
  - 4.1 any agreement or court order to make payments to the claimant **or**

**4.2** funds that derive from a payment made as a consequence of a personal injury award to the claimant **or**

- 5.** a payment (other than a payment covered by **1. - 4.**) received as a result of any agreement or court order to make payments to the claimant as a consequence of a personal injury award.

**Note:** The agreement referred to in **5.** must be reached **after** the date that the injury occurred<sup>2</sup>.

*1 IS (Gen) Reg, Sch 9, para 15(5A), JSA Regs, Sch 7, Para 15(5A);  
2 Malekout v. Secretary of State for Work & Pensions [2010] EWCA Civ 162*

## Certain types of payments

### Cash in lieu of concessionary coal

28497 Payments originally made by British Coal to

- 1.** retired miners **and**
- 2.** widows of retired miners

in lieu of concessionary coal are not voluntary<sup>1</sup>. The payments were made because of a national agreement between British Coal and the trade unions. The purpose of the agreement was to ensure good labour relations and the willing services of the workforce. Treat these payments as other income with no disregard.

*1 R(IS) 4/94*

### Civil list pensions

28498 Treat civil list pensions as voluntary payments. They are

- 1.** paid at the discretion of the Queen **and**
- 2.** voted annually by Parliament.

28499 They are awarded for distinguished service to the nation in

- 1.** the arts
- 2.** science
- 3.** literature.

### Payments from trust funds

28500 Claimants may receive payments from trust funds. If income from a trust fund is paid at the discretion of the trustees it should be treated as a voluntary payment. Treat a payment from a charitable trust as a charitable payment.

- 28501 Income from any trust fund set up with money from a personal injury award is treated in the same way. DMG 28513 gives guidance on the disregard appropriate to relevant personal injury trust payments.

### **Structured settlements**

- 28502 A structured settlement may include a contingency fund that would be treated in the same way as any other personal injury lump sum award. However most of the award is used to provide an annuity making periodical payments to the claimant. Payments from these annuities are capital treated as income<sup>1</sup> which fall within the definition of relevant payment at DMG 28496.

*1 IS (Gen) Regs, reg 41(7), JSA Regs, reg 104(6)*

### **Children's Memorial Trust**

- 28503 The Children's Memorial Trust was set up as a result of Court action by the parents of deceased children whose organs had been retained by the Alder Hey hospital without parental consent.
- 28504 Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in relation to the Court action, that payment will be made in consequence of a personal injury to **them**. Income from a trust set up with money that derived from the Children's Memorial Trust is a relevant payment. DMG 28513 - 28515 gives guidance on the disregard appropriate to relevant personal injury trust payments.

28505 - 28509

## **Regular charitable or voluntary payments**

### **What are regular payments**

- 28510 Regular charitable or voluntary payments are those that are

1. made regularly **or**
2. due to be made regularly, even if they are not actually made.

**Note:** Voluntary payments should not be confused with payments to volunteers. Guidance on payments to volunteers is given at DMG 26195 - 26196.

- 28511 Regular payments include those paid or due to be paid at recurring intervals such as
1. weekly
  2. monthly
  3. annually (for example every Christmas)
  4. any other pattern.

## When is a payment due to be made

- 28512 A payment is due to be paid where there is a promise or agreement to make a payment.

## Disregard for relevant payments

- 28513 Fully disregard<sup>1</sup> any relevant payment unless one of the exceptions at DMG 28514 - 28515 apply.

*1 JSA Regs, Sch 7, para 15(1); IS (Gen) Regs, Sch 9, para 15(1)*

## Relevant payments that should be taken fully into account

- 28514 The disregard in DMG 28513 does not apply to
1. a person affected by a TD<sup>1</sup> **or**
  2. LRPs<sup>2</sup> **or**
  3. maintenance, that is not an LRP for
    - 3.1 a member of the family **or**
    - 3.2 a former partner **or**
    - 3.3 the childrenof the person making the payment<sup>3</sup> **or**
  4. a student's covenant or grant income<sup>4</sup> **or**
  5. in JSA cases only, any payment made to a member of the family because another member of the family is involved in a TD<sup>5</sup> **or**
  6. in IS cases only, to a person entitled to IS during
    - 6.1 a TD **or**
    - 6.2 the first 15 days after returning to work after a TD<sup>6</sup>.

**Note:** JSA can not be paid to claimants involved in a TD. Special rules apply if a member of the family of a JSA claimant is involved in a TD.

*1 JSA Regs, Sch 7, para 15(3)(b)(i); IS (Gen) Regs, Sch 9, para 15(3)(b); 2 JSA Regs, reg 89 & 90; IS (Gen) Regs, reg 25 & 25A; 3 JSA Regs, Sch 7, para 15(3)(a); IS (Gen) Regs, Sch 9, para 15(3)(a); 4 JSA Regs, reg 134; IS (Gen) Regs, reg 65; 5 JSA Regs, Sch 7, para 15(3)(b)(ii); 6 IS (Gen) Regs, Sch 9, para 15(3)(b)*

## Relevant payments paid in kind

- 28515 Fully disregard relevant payments that are paid in kind<sup>1</sup> unless one of the exceptions at DMG 28418 applies. The exceptions at DMG 28418 do not apply when the income in kind comes from
1. the Macfarlane Trust
  2. the Macfarlane (Special Payments) Trust

3. the Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. the Eileen Trust
6. the Independent Living Fund (2006) **or**
7. MFET Limited.

as explained at DMG 28419.

*1 JSA Regs, Sch 7, para 22; IS (Gen) Regs, Sch 9, para 21*

28516 - 28529



# Capital treated as income

## Capital payable by instalments

28530 Where capital is payable by instalments the DM should decide if the payments should be treated as capital or income. Capital can be payable by instalments in situations where

1. a person lends another person a lump sum of money and the borrower repays that money in regular or irregular payments
2. a person receives payments from an investment bond with a life assurance company.

The above is not exhaustive.

### Example

Susan has an investment bond with a friendly society. The bond is worth £20,000 but is disregarded by the DM because it has a policy of life assurance attached to it (see DMG Chapter 29). The terms of the bond allow Susan to withdraw money on a monthly basis which reduces the surrender value of the bond. The DM decides that the money Susan receives is capital payable by instalments.

28531

## IS cases

28532 In IS cases add<sup>1</sup>

1. the amount of instalments outstanding
  - 1.1 in the case of a claim - at the earlier of
    - 1.1.a the first day for which IS is payable **or**
    - 1.1.b the date the claim is decided **or**
  - 1.2 in the case of a supersession - at the date the supersession of the outcome decision is made **and**
2. the amount of any other capital held by the claimant or partner.

If the total is more than £16,000 treat each instalment received as income. If the total is less than £16,000 each instalment is capital.

*1 IS (Gen) Regs, reg 41(1); 2 IS (Gen) Regs, reg 41 & 45(aa)*

## JSA(IB) cases

28533 In JSA(IB) cases add<sup>1</sup>

1. the amount of instalments outstanding
  - 1.1 in the case of a claim - on the first day for which JSA(IB) is payable **or**
  - 1.2 in the case of a supersession - the date the supersession of the outcome decision is made **and**
2. the amount of any other capital held by the claimant or partner.

If the total is more than £16,000 treat each instalment received as income. If the total is less than £16,000 each instalment is capital.

*1 JSA Regs, reg 104(1); 2 IS (Gen) Regs, reg 41 & 45(aa)*

## Capital instalments payable to children - IS cases

**[See DMG Memo IS/JSA 64]**

28534 If capital is payable by instalments to a child or young person add<sup>1</sup>

1. the amount of outstanding instalments
  - 1.1 in the case of a claim - at the earlier of
    - 1.1.a the first day for which IS is payable **or**
    - 1.1.b the date the claim is decided **or**
  - 1.2 in the case of a supersession - the date the supersession of the outcome decision is made **and**
2. the amount of any other capital held by the child or young person.

If the total is more than £3,000 treat each instalment received as income. If the total is less than £3,000 each instalment is capital.

*1 reg 44(1)*

## Capital instalments payable to children - JSA(IB) cases

**[See DMG Memo IS/JSA 64]**

28535 If capital is payable by instalments to a child or young person add<sup>1</sup>

1. the amount of outstanding instalments
  - 1.1 in the case of a claim - on the first day for which JSA(IB) is payable **or**
  - 1.2 in the case of a revision - the date the revision is made **and**
2. the amount of any other capital held by the child or young person.

If the total is more than £3,000 treat each instalment received as income. If the total is less than £3,000 each instalment is capital.

*1 JSA Regs, reg 106(1)*

## When is an instalment treated as capital

28536 DMs should make the calculations in DMG 28532 - 28535 every time an instalment of capital is paid. Only the outstanding instalments should be treated as income. Any instalments paid before the date of claim or supersession should be taken into account as capital.

## Annuity payments

28537 Treat any payment from an annuity as income<sup>1</sup>. An annuity is an investment which produces an annual sum of money<sup>2</sup>. Payments may be made monthly or quarterly as well as yearly.

*1 reg 104(2); IS (Gen) Regs, reg 41(2); 2 R(IS) 10/01*

## Local authority payments

28538 In certain circumstances capital payments by a LA

1. to promote the welfare of children and prevent children being taken into care  
or
2. to people who were in their care<sup>1</sup>

should be treated as income.

*1 Children Act 89, s 17 & 24; SW (Scot) Act 68, s 12;  
Children (Scotland) Act 95, s 29 or s 30*

28539 **[See DMG Memo IS/JSA 64]** The circumstances in DMG 28538 apply where

1. in IS cases<sup>1</sup> - the claimant or member of the family is
  - 1.1 involved in a TD or
  - 1.2 has returned to work following TD or
2. in JSA(IB) cases<sup>2</sup> - a member of the claimant's family is involved in a TD.

*1 IS (Gen) Regs, reg 41(3); 2 JSA Regs, reg 104(3)*

28540 Payments of income from LAs should be treated as income in the normal way.

28541



# Career development loans

## What is a career development loan

28542 A career development loan is a deferred repayment bank loan which provides a person with initial help to pay for periods of study or training. The amount borrowed can vary between £200 and £8,000. Career development loans are usually paid to cover

1. 80% or 100% of course fees (payment of 100% of course fees depends on the person's circumstances) **and**
2. expenses incurred in connection with the course of study or training course **and**
3. day to day living expenses arising during the course of study or training course.

The DM should regard career development loans as income other than grant income.

## Amount to be disregarded

28543 A career development loan should be treated as income<sup>1</sup>. The DM should disregard any income from a career development loan<sup>2</sup> that is not intended to cover living expenses. The disregard applies for the period of education or training supported by the loan<sup>3</sup>. The DM should take into account as income any amount of the loan that has been applied for, and paid for living expenses (see DMG 28544).

*1 JSA Regs, reg 104(5); IS (Gen) Regs, reg 41(6); 2 E & T Act 73, s 2; 3 JSA Regs, Sch 7, para 14; IS (Gen) Regs, Sch 9, para 13*

**Note:** The main disregard for payments made under employment and training law is explained at DMG 28425 - 28427.

## Living expenses

28544 The living expenses to be taken into account as income are any amount loaned to the claimant or family member for

1. food
2. ordinary clothing and footwear (see DMG 28546)
3. fuel for the claimant's household
4. rent for which HB is payable
5. housing costs included in the applicable amount<sup>1</sup>

**6. CT or water charges for which the claimant or member of the family is liable<sup>2</sup>.**

*1 JSA Regs, reg 83(f) & 84(1)(g); IS (Gen) Regs, reg 17(1)(e) & 18(1)(f);*

*2 JSA Regs, Sch 7, para 14(2); IS (Gen) Regs, Sch 9, para 13(2)*

- 28545 A budget planner is included in the career development loan pack. If this has been completed it may help the DM decide how much of the loan is intended for living expenses. If a budget planner has not been completed the claimant should be asked how much of the loan had been applied for and paid for living expenses.

**Ordinary clothing and footwear**

- 28546 Ordinary clothing and footwear means clothing or footwear for normal daily use. It does not include school uniforms or clothing and footwear used solely for sport, for example football boots<sup>1</sup>.

**Note:** The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

*1 JSA Regs, Sch 7, para 14(3); IS (Gen) Regs, Sch 9, para 13(3)*

**Example**

Ross is in receipt of JSA(IB). His partner, Sue, is a F/T student on an art and design course. Sue has received a career development loan of £4,000 to pay for all of her books and course materials and 80% of the course fees. The rest is a contribution towards her living expenses.

The DM

1. disregards the amount of the loan intended for books, course materials and course fees **and**
2. asks the claimant what amount was intended for living expenses. The DM then decides how much of the career development loan should be taken into account as income and the period over which the income should be taken into account.

**Period over which a career development loan should be taken into account**

- 28547 The DM should take income from a career development loan into account for the period of education or training intended to be supported by the loan<sup>1</sup>. The income from the loan should be taken into account even if the person does not complete the period of education or training.

*1 JSA Regs, reg 94(2B); IS (Gen) Regs, reg 29(2A)*

- 28548 The DM should consider guidance on the calculation of the weekly amount of the income because
1. the period the income is to be taken into account will be more than one week (see DMG Chapter 25) **and**
  2. in some cases, only part of the income will overlap a benefit week (see DMG Chapter 25).
- 28549 The DM should not take income from a career development loan into account after the period of education or training supported by that loan has been completed<sup>1</sup>.

*1 JSA Regs, Sch 7, para 14(1)(c); IS (Gen) Regs, Sch 9, para 13(1)(c)*

### Example 1

Alice is a lone parent in receipt of IS. Her benefit week ends on a Monday. On 29.9.97 she starts a one year course for which she has received a career development loan of £3,000. The course ends on 26.6.98. The DM decides that £1,200 of the loan is intended for living expenses and is to be taken into account for the period 29.9.97 to 26.6.98, a total of 271 days. The loan is taken into account as follows

BWE 29.9.97 £4.43 is taken into account (see DMG Chapter 25). This is because the first day of the course overlaps with this benefit week

$$\frac{£1,200}{271} \times 1 \text{ day} = £4.43$$

BWE 6.10.97 to 22.6.98 £31.00 is taken into account (Chapter 25)

$$\frac{£1,200}{271} \times 7 \text{ days} = £31.00$$

BWE 29.6.98 £17.72 is taken into account (Chapter 25). This is because the last four days of the course overlap with this benefit week

$$\frac{£1,200}{271} \times 4 \text{ days} = £17.72$$

### Example 2

Annie is in receipt of JSA(IB). Her partner, Alistair starts a one year F/T course for which he receives a career development loan. The course starts on 29.9.97 and ends on 26.6.98. The DM decides that the amount of the career development loan intended to cover living expenses should be taken into account as income for the period 29.9.97 to 26.6.98.

On 10.12.97 Alistair decides that he no longer wishes to attend his course. The DM decides that income from the career development loan should still be taken into account until 26.6.98 as this is the period intended to be supported by the loan.

28550 - 28564



# Special rules for income of children and young people

28565 DMs should follow special rules when calculating the income of children and young people

1. do not treat the income of a
  - 1.1 child **or**
  - 1.2 young personwho has capital over £3,000 as the income of the claimant<sup>1</sup>
2. do not treat income of a child or young person that is more than the amount of the child's or young person's
  - 2.1 personal allowance **and**
  - 2.2 any DCP **and**
  - 2.3 any enhanced disability premiumas the income of the claimant<sup>2</sup>
3. disregard any income of a
  - 3.1 child **or**
  - 3.2 young personin the way most favourable for the claimant<sup>3</sup>
4. some children and young people who attend boarding schools should be treated as having notional income (see DMG 28685 et seq).

*1 JSA Regs, reg 106(5); IS (Gen) Regs, reg 44(5); 2 JSA Regs, reg 106(4); IS (Gen) Regs, reg 44(4);*

*3 JSA Regs, reg 106(7); IS (Gen) Regs, reg 44(7)*

## Providing the most favourable result for the claimant

28566 DMs should apply the appropriate disregard to the income of the claimant or partner rather than to a child's or young person's income if a

1. child or young person **and**
  2. the claimant or partner
- both have income subject to a disregard.

28567 Apply any appropriate disregard in the most favourable way if more than one

1. child **or**
2. young person

in the family have incomes subject to a disregard.

### **Example**

Alice is an IS claimant. She has two children, Sam aged 7 and Sarah aged 13. Sam has income of £45.00 and Sarah has income of £40.00. Both of these incomes qualify for a £20.00 disregard.

<b>Child</b>	<b>Personal allowance</b>	<b>Income</b>
Sam aged 7	£38.50	£45.00
Sarah aged 13	£38.50	£40.00

### **Calculation 1**

1. £20 disregard applied to Sam's income leaves £25 to be taken into account.
2. Alice receives £33.50 for Sam ( $£38.50 - £25 = £13.50 + £20$  disregard).
3. Sarah's income is £1.50 more than her personal allowance. £1.50 is disregarded.
4. The total advantage to Alice is  $£33.50 + £1.50 = £35.00$ .

### **Calculation 2**

1. Sam's income is £6.50 more than his personal allowance. £6.50 is disregarded.
2. A £20 disregard applied to Sarah's income leaves £20 to be taken into account.
3. Alice receives £38.50 for Sarah ( $£38.50 - £20 = £18.50 + £20$  disregard = £38.50).
4. The total advantage to Alice is  $£38.50 + £6.50 = £45.00$ .

The DM uses calculation 2 because it is the most favourable for Alice.

# Notional income

## Notional income - general

### What is notional income

28568 A person may be treated as having an income that is not actually received. This type of income is known as notional income and may take a number of different forms.

### Types of notional income

28569 Notional income may be calculated because of

1. deprivation of income
2. income available if applied for (including special rules for personal pensions)
3. income due but not yet paid
4. income for a member of the family paid to a third party
5. income for a third party made to a member of the family
6. a child or young person attending a boarding school.

### Actual and notional income

28570 A person may have actual and notional income. DMs need not consider notional income if a person's actual income on its own is greater than the applicable amount. If income is less than the applicable amount the DM should consider if there is any notional income.

### Treatment of notional income

28571 Calculate notional income in the same way as actual income<sup>1</sup>. Any notional income of a child or young person should be added to their actual income. The total should then be taken into account using normal rules, including applying any appropriate disregard.

*1 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)*

### Notional income - tasters

28572 If a claimant does a taster of a NDYP option for three days or more in a benefit week notional income is not taken into account<sup>1</sup>. This is because a taster is an employment or training programme for which no training allowance is payable<sup>2</sup>.

**Note:** The notional income rules must be considered if the person is participating in a taster for less than three days in any benefit week.

*1 JSA Regs, reg 105(13) & 19(1)(q); IS (Gen) Regs, reg 42(6); 2 JSA Regs, reg 19(3)*

- 28573 Notional income is no longer taken in to account for those claimants or claimant's partners on an employment or training programme, regardless of its duration, providing a training allowance is not payable, or where such an allowance is payable, it is for the sole purpose of reimbursement of travelling or meal expenses to the person participating in the programme.

## **Liable relative payments**

- 28574 The guidance in DMG 28576 - 28709 does not apply to liable relative payments<sup>1</sup>.

*1 JSA Regs, reg 89; IS (Gen) Regs, reg 25*

## **Service users**

- 28575 The rules on notional income do not apply to payments of expenses or earnings paid as a result of a claimant's participation in a service user group<sup>1</sup>. Where a DM might normally consider treating a claimant as possessing income which he doesn't actually have, such as in cases of

1. deprivation of income for the purposes of securing entitlement to benefit or increasing the amount of benefit payable
2. income upon application
3. income due but not paid
4. income paid to or in respect of a third party
5. notional earnings

then this will not apply where the possible income in question is payment arising from participation in a service user group.

*1 JSA Regs, reg 105(15A); IS (Gen) Regs, reg 42(8ZA)*

## Deprivation of income

28576 DMs should treat claimants as receiving income that they have deprived themselves of for the purpose of

1. in JSA cases, gaining entitlement or increasing the amount of JSA(IB) or IS<sup>1</sup>  
**or**
2. in IS cases, gaining entitlement or increasing the amount of IS<sup>2</sup>.

*1 JSA Regs, reg 105(1); 2 IS (Gen) Regs, reg 42(1)*

28577 DMs should bear in mind that a decision that a person has deprived themselves of an income to get or increase IS will usually apply to a subsequent JSA(IB) claim. A fresh decision should be made each time there is a new claim<sup>1</sup>.

*1 SS Act 98, s 17*

28578 Deprivation of income to get or increase JSA(IB) will not apply to a subsequent IS claim. In IS cases the DM must be satisfied that a significant reason for the deprivation was to get or increase IS.

### Example

George is retired. He claims IS but the DM refuses the claim on income grounds because George has an occupational pension.

George claims IS again. The DM finds out that George has arranged for the occupational pension payments to be transferred to another person.

The DM decides that the transfer of the pension was done for the purpose of getting IS and to take into account a notional income equal to the amount of the occupational pension.

## Meaning of deprive

28579 The word deprive is an ordinary English word. Its meaning is not a question of law. It should be given a normal everyday meaning<sup>1</sup>.

*1 R(SB) 38/85*

28580 Claimants will have deprived themselves of income, if, because of their own actions, they no longer have that income. Claimants will still have deprived themselves of income whether or not another income has replaced the original income<sup>1</sup>.

*1 R(SB) 40/85*

28581 Claimants cannot deprive themselves of income that they have already received. If a payment of income is received it is actual income and should be taken into account in the normal way.

28582 A deprivation of income may occur where a claimant's income is reduced to repay an overpaid income. The DM should decide if a significant reason for the reduction is to get or increase the amount of JSA(IB) or IS. DMs should bear in mind that the repayment of a

1. legally enforceable **and**

2. immediately repayable

debt cannot be for the purpose of increasing or getting JSA(IB) or IS<sup>1</sup>.

*1 R(SB) 12/91*

## **Questions for consideration**

28583 The DM should consider the questions in DMG 28584 - 28592 where claimants seem to have deprived themselves of income.

### **Was it the claimant's income**

28584 The DM must decide if an income belongs to the claimant. If there is evidence that a person has been receiving an income (possibly on a previous claim), the DM should presume the income belongs to the claimant.

28585 There may be supporting evidence, such as a letter or document, that shows an income belongs to the claimant. If it is alleged that an income is not the claimant's the claimant must prove the income belongs to someone else.

### **Has a deprivation of income happened**

28586 Deprivation will have happened if a person

1. gives up **or**

2. transfers to another person

an income due to be received.

### **Example**

Suzanne receives JSA(IB). She arranges by a deed of gift to transfer income from an occupational pension to her adult daughter. The DM decides that Suzanne has deprived herself of the income from the occupational pension.

- 28587 The claimant has to prove that an income is no longer received. Once the DM has shown that a claimant was receiving an income it is up to the claimant to prove it is no longer paid. If the claimant cannot do this the DM should decide that the income is still being received. The income should be taken into account as actual income<sup>1</sup>.

*1 R(SB) 38/85*

### **Was the purpose of the deprivation to get or increase the amount of IS or JSA(IB)**

- 28588 There may be more than one reason for a person disposing of an income. Only one of those reasons might be getting or increasing IS or JSA(IB)<sup>1</sup>.

*1 R(SB) 38/85*

- 28589 Getting or increasing IS or JSA(IB) need not be the most important reason for disposing of an income but it must be a significant reason<sup>1</sup>.

*1 R(SB) 40/85*

- 28590 It is unlikely that there will be direct evidence that a deprivation was for the purpose of getting benefit. Decide on a person's reasons for disposing of an income after considering all the facts of the case. These may include

1. the person's explanations
2. the timing of the disposal
3. the claimant's knowledge of the benefit system
4. the likelihood of a benefit claim at the time of the deprivation.

- 28591 When considering claimants' intentions in depriving themselves of income the DM should consider what account of the claimant's intentions best explains the facts of the case. If the best explanation of the deprivation is that a significant reason for the disposal was getting or increasing JSA(IB) or IS the DM should calculate a notional income.

### **Timing of the disposal of income**

- 28592 DMs should carefully consider the timing of a disposal of income as
1. a claim for IS or JSA(IB) made shortly after the disposal of an income may indicate that getting or increasing IS or JSA(IB) was a significant reason for the disposal

2. a claim for IS or JSA(IB) made a long time after the disposal of an income is less likely to indicate that getting or increasing IS or JSA(IB) was a significant reason for the disposal. But if there is evidence that a claimant was considering claiming JSA or IS at a later date, deprivation may still have been for getting or increasing benefit.

**Example**

Rosemary is retired and in poor health.

She transfers a payment from an annuity to her daughter by deed of gift. She goes to live in a care home nine months later and claims IS.

The DM decides that

1. Rosemary deprived herself of the income **and**
2. that the need to claim IS at a later date was an important factor in the deprivation.



# Income available on application

## General

28593 DMs should treat an income that

1. would be paid to a member of the family if applied for **and**
2. has not been applied for<sup>1</sup>

as notional income.

*1 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2)*

## What types of income should not be treated as notional income available on application

### [See Memo DMG JSA/IS 64]

28594 The following payments should not be taken into account as notional income available on application

1. income payable under a discretionary trust fund<sup>1</sup>
2. income from a trust set up using money paid because of a personal injury<sup>2</sup>
3. JSA<sup>3</sup>
4. the increase in CHB that lone parents can receive for their only, elder or eldest child<sup>4</sup>
5. WTC<sup>5</sup>
6. CTC<sup>6</sup>
7. payments from a personal pension, occupational pension, or the Pension Protection Fund when the person is under the qualifying age for SPC (see DMG 77032)<sup>7</sup>
8. an award of damages for personal injury which is administered by the court<sup>8</sup>
9. a rehabilitation allowance made under specified legislation<sup>9</sup>.

*1 JSA Regs, reg 105(2)(a); IS (Gen) Regs, reg 42(2)(a); 2 JSA Regs, reg 105(2)(b); IS (Gen) Regs, reg 42(2)(b); 3 JSA Regs, reg 105(2)(e); IS (Gen) Regs, reg 42(2)(c);*

*4 JSA Regs, reg 105(2)(c) & (2A); IS (Gen) Regs, reg 42(2)(d) & (2D);*

*CHB & SS (Fixing & Adjustment of Rates) Regs 76, reg 2(1)(a); 5 JSA Regs, reg 105(2)(d);*

*IS (Gen) Regs, reg 42(2)(e); 6 JSA Regs, reg 105(2)(d); IS (Gen) Regs, reg 42(2)(f);*

*7 JSA Regs, reg 105(2)(g); IS (Gen) Regs, reg 42(2)(g); 8 JSA Regs, reg 105(2)(h) & Sch 8, para 42(1)(a) or 43(a); IS (Gen) Regs, reg 42(2)(i) & Sch 10, para 44(1)(a) or 45(a);*

*9 Employment and Training Act 1973, s 2; IS (Gen) Regs, reg 42(2)(j); JSA Regs, reg 105(2)(i).*

28595 Apply any appropriate disregards to notional income<sup>1</sup>. Do not take into account any income that would be fully disregarded but has not been applied for.

*1 reg 105(14); IS (Gen) Regs, reg 42(7)*

28596 Only take an income into account if it can be shown beyond doubt that an application or claim for it would succeed. The DM should

1. gather evidence **and**
2. consider all the qualifying conditions for the income.

It should not be assumed that one or more qualifying conditions are satisfied.

#### **Example**

Claudette claims IS. She is sick but has not claimed SDA. The DM decides that there are doubts about whether Claudette satisfies the medical conditions for claiming SDA. SDA is not taken into account as income available upon application.

### **What types of income should be taken into account**

28597 All types of income, except those mentioned in DMG 28594, may be taken into account. Examples of incomes that might be available upon application are

1. SS benefits
2. councillors' attendance allowance
3. personal and occupational pensions for people who are at least 60 years old.

### **Date from which income should be taken into account**

28598 Take into account income available on application from the date it could be expected to be received if an application was made<sup>1</sup>.

*1 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2)*

28599 Calculate the date on which income could be expected to be received by

1. assuming an application was made on the date the DM first became aware of the notional income **and**
2. adding the estimated time it would take for an application to be processed once made.

#### **Example 1**

Mushtaq receives JSA(IB) and has a Mortgage Protection Policy. The DM discovers on 1 November that he has a voluntary arrangement to have payments made direct to the building society.

The insurance company tell the DM that it would take about a month for the payment to be redirected from the building society to Mushtaq.

The DM decides to take into account notional income from the Mortgage Protection Policy from 1 December.

## Example 2

Alastair is aged 61 and receives JSA(IB). On 1 November the DM discovers that Alastair could apply for his occupational pension from a former employer. He has not yet applied because he would get a bigger pension at the age of 65.

Alastair's former employer tells the DM that payment of a pension of £230 a calendar month would have started on 1 December if an application had been made on 1 November.

The DM decides to take into account a weekly notional income of £53.07 from 1 December.

## Income from an unadministered estate

- 28600 The DM may decide that a person should be treated as receiving notional income from the estate of a dead person.
- 28601 A person who is entitled to income from an unadministered estate can
1. enforce their right to the income through the courts if there is a will **or**
  2. take out letters of administration if there is no will.
- 28602 Delays in paying income from an estate are often caused by legal action over debts or problems with the will. The DM must consider this when deciding if
1. an income will become available **and**
  2. when it would be paid if an application was made.
- 28603 If the DM knows that the claimant or a member of the family might receive income from a dead person's estate the case should be referred to DMA Leeds for advice if there is a long delay.
- 28604 Usually the DM should wait for a year after the
1. granting of probate or letters of administration **or**
  2. the deceased person's death if a grant of probate or administration has not been made
- before referring the case to DMA Leeds.
- 28605 If the only reason for the delay in receiving income is a failure of the person to apply for it promptly the DM should calculate notional income.

28606 - 28607



## Notional income - carer's allowance

28608 DMG 28609 - 28616 gives guidance on how to apply the notional income provisions in cases

1. where
  - 1.1 SDP has been withdrawn or reduced because CA is in payment to the carer **and**
  - 1.2 the carer then chooses to give up CA **and**
2. where it appears that a carer may be entitled to CA but CA is not in payment.

## Deprivation of income

28609 If carers do something that means CA stops being paid, this is deprivation of income<sup>1</sup>. This may include

1. telling the DM they no longer wish CA to be paid to them **or**
2. changing their circumstances so they no longer qualify for CA.

Where there has been a deprivation of CA, the purpose of the deprivation should then be considered<sup>2</sup>.

*1 R(SB) 40/85, para 8; 2 JSA Regs, reg 105(1); IS (Gen) Regs, reg 42(1)*

28610 A carer should be treated as possessing income where CA has been given up for the purpose of

1. in JSA cases, gaining entitlement to, or increasing the amount of JSA(IB)<sup>1</sup> **or**
2. in IS cases, gaining entitlement to, or increasing the amount of IS<sup>2</sup>

for the carer, the carer's partner or any other member of the carer's JSA(IB) or IS family (see DMG Chapter 22).

**Note:** The carer does not have to be the JSA or IS claimant.

*1 JSA Regs, reg 105(1); 2 IS (Gen) Regs, reg 42(1)*

28611 Carers should not be treated as possessing CA which they have given up solely to secure or increase JSA(IB) or IS for someone who is **not** a member of the JSA(IB) or IS family. In these circumstances DMs should consider whether DMG 28613 applies.

28612 Guidance on establishing the purpose of a deprivation is at DMG 28586 et seq. DMs should note that it is not enough that securing or increasing JSA(IB) or IS is a natural consequence of giving up CA. A positive intention to secure or increase JSA(IB) or IS has to be shown<sup>1</sup>.

*1 R(SB) 9/91, para 8*

## Income available on application

- 28613 If CA is not to be taken into account under the deprivation rule, the DM should also consider the available on application rule (see DMG 28593 et seq)<sup>1</sup>.

*1 JSA Regs, reg 105(2); IS (Gen) Regs, reg 42(2)*

- 28614 CA may be taken into account using this rule where there is no doubt that

1. a fresh claim **or**
2. an application to the DM for payments to resume

will lead to payments being made to the carer. Guidance on the date from which notional income is assumed under this rule is at DMG 28596 et seq.

## Income due but not paid

- 28615 CA should not be assumed under this rule<sup>1</sup>. CA is an exception (see DMG 28641 4.1)<sup>2</sup>.

*1 JSA Regs, reg 105(6); IS (Gen) Regs, reg 42(3)*

*2 JSA Regs, reg 105(7)(b); IS (Gen) Regs, reg 42(3)(b)*

## Notional income and changes in circumstances

- 28616 After notional CA is taken into account, the carer's circumstances may change. Notional income is calculated as if the income in question is really in payment<sup>1</sup>. This means that notional CA should only stop where the change

1. would have caused CA to stop, had it really been in payment **and**
2. has not been contrived by the carer to secure or increase benefit as in DMG 28610.

**Note:** This applies to notional income under either DMG 28610 or 28614.

*1 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)*

# Personal and occupational pensions

## General

28617 There are rules for calculating income that is

1. available on application from a personal or occupational pension **or**
2. is treated as being available from a personal or occupational pension.

28618 These rules apply to people who have reached the qualifying age for SPC. The DM should ignore potential income from

1. personal pension schemes **or**
2. occupational pension schemes **or**
3. the Board of the Pension Protection Fund

for people under the qualifying age for SPC<sup>1</sup>. The weekly amount of any notional income to be taken into account should be calculated as if it is actual income<sup>2</sup>.

*1 JSA Regs, reg 105(2)(g); IS (Gen) Regs, reg 42(2)(g); 2 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)*

28619

## What is a personal pension

28620 Personal pension scheme means<sup>1</sup>

1. a personal pension scheme as stated in pensions law<sup>2</sup>
2. an annuity contract or trust scheme approved under tax law<sup>3</sup> **and**
3. a personal pension scheme approved under tax law<sup>4</sup>.

*1 JS Act 95, s 35(1); IS (Gen) Regs, reg 2(1); 2 PS Act 93, s 1;  
3 Income and Corporation Taxes Act 1988, s 620, s 621 & s 622(3); Finance Act 2004, Sch 36;  
4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV; Finance Act 2004, Sch 36*

28621

## What is an occupational pension

28622 An occupational pension is any pension or other periodical payment under an occupational pension scheme, but does not include any discretionary payment out of a fund established for relieving hardship in particular cases.

*1 JSA Regs, reg 1(2); IS (Gen) Regs, reg 2(1)*

## **Pension Protection Fund**

- 28623 The Pension Protection Fund Board was set up to compensate members of defined benefit (final salary) occupational pension schemes where the employer goes out of business and the scheme is left with insufficient funds. Compensation may be made as regular payments of income and lump sum payments (just as the former pension scheme would have paid). Payments from the Pension Protection Fund are treated in the same way as payments from occupational pensions schemes.

## **What is a pension fund holder**

- 28624 Where reference is made to a pension fund holder, this means the

1. trustee **or**
2. manager **or**
3. administrator

of a personal or occupational pension scheme<sup>1</sup>.

*1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 2(1)*

## **Who is a person who derives entitlement**

- 28625 The term “person who derives entitlement” is used to describe people who may be paid a pension at the discretion of the pension fund holder. When the original pensioner dies the pension fund holder has discretion to decide what to do with the fund.

People, such as widows, widowers or surviving civil partners of the person who bought the pension, will only have entitlement to payments at the discretion of the pension fund holder.

## **Lump sums on retirement**

- 28626 At the point that

1. an annuity is bought **or**
2. an income is taken

from the personal pension fund a lump sum of up to 25% of the fund may be taken. Treat this payment as capital. Do not take it into account as notional capital available on application<sup>1</sup>.

*1 JSA Regs, reg 113(2)(d); IS (Gen) Regs, reg 51(2)(d)*



## Information and evidence

28627 Pension fund holders must provide the DM with information about

1. the maximum amount of income available from the pension fund **and**
2. the amount of income that would be available if the funds were held in a scheme that produces an income.

This information is based on tables prepared by the Government<sup>1</sup>. DMs must consider evidence from pension fund holders when deciding the amount of notional income<sup>2</sup>. Do not make a decision until the pension fund holder has been given sufficient time to provide evidence.

*1 SS (C&P) Regs, reg 7(6); 2 JSA Regs, reg 105(4) & 105(5); IS (Gen) Regs, regs 42(2B) & 42(2C)*

28628 DMs must consider the evidence of the pension fund holder but are not bound to accept it. Consider all the evidence on the amount of notional income before making a decision. The decision should be based on the most convincing evidence available.

## Notional income - schemes where income withdrawal is allowed

### When should a person be treated as having notional income

28629 Treat a claimant who has reached the qualifying age for SPC as having<sup>1</sup>

1. any income from an occupational pension scheme, a personal pension scheme, or the Board of the Pension Protection Fund which
  - 1.1 has not been claimed **and**
  - 1.2 he might expect to be entitled to if a claim for it was made
2. income from an occupational pension scheme which the claimant has elected to defer.

*1 JSA Regs, reg 105(2B); IS (Gen) Regs, reg 42(2ZA)*

### Amount of notional income

28630 The amount of the notional income is

1. where no income is drawn, the maximum amount of income that may be withdrawn from the fund **or**
2. where some income is drawn, the difference between the maximum amount and the income actually withdrawn.

## From what date should the DM take notional income into account

28631 Take notional income into account from the date that the person could expect to get the income if an application was made<sup>1</sup>. To calculate this date

1. assume that an application was made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take the pension fund holder to process an application for the maximum amount of income.

*1 JSA Regs, reg 105(2B); IS (Gen) Regs, reg 42(2ZA)*

### Example

Bernard receives JSA(IB). He is 61.

On 1 November the DM receives evidence that Bernard is entitled to a personal pension but has not bought an annuity or drawn an income.

The pension fund holder states that Bernard's scheme can provide an income. In Bernard's case the maximum amount of income, based on the Government tables, is £23 a week.

Once an application is made it would take the pension fund holder six weeks to arrange for the maximum income to be paid.

The DM decides that Bernard should be treated as having a notional income of £23 a week from 13 December.

## Notional income - schemes where income withdrawal is not allowed

### When should a person be treated as having notional income

28632 Treat a claimant who has reached the qualifying age for SPC as having income when<sup>1</sup> entitled to money purchase benefits under an occupational or personal pension scheme and he fails to purchase an annuity with the funds available in that scheme where

1. he defers, in whole or part, the payment of any income which would have been payable to him by his pension fund holder **or**
2. he fails to take any necessary action to secure the whole of the income which would be payable to him by his pension fund holder, if he applied for it **or**
3. income withdrawal is not available to him under that scheme.

**Note:** Money purchase benefits has the same meaning as in specific pensions law<sup>2</sup>. This type of scheme does not pay benefits related to a person's final salary. Contributions paid in are invested and the benefits paid depend on how well the investments perform.

*1 JSA Regs, reg 105(3); IS (Gen) Regs, reg 42(2A); 2 PS Act 1993*

## **Amount of notional income**

- 28633 The amount of notional income is the amount that a person could have received, without buying an annuity, if the pension funds were held in a scheme that did allow income withdrawal<sup>1</sup>.

*1 JSA Regs, reg 105(5); IS (Gen) Regs, reg 42(2C)*

28634 - 28635

## **From what date should the DM take notional income into account**

- 28636 Take notional income into account from the date that the person could expect to get the income if an application was possible<sup>1</sup>. To calculate this date

1. assume that an application could be made on the date that there is sufficient evidence to show that a notional income should be calculated **and**
2. add the estimated time it would take a typical pension fund holder who did provide an income from a fund, to process an application for the maximum amount of income.

*1 JSA Regs, reg 105(3); IS (Gen) Regs, reg 42(2A)*

### **Example**

Mark is an IS claimant. His partner Fiona is 61. On 1 November the DM receives evidence that Fiona has a personal pension scheme which does not provide an income.

The pension fund holder provides evidence, based on the Government tables, that Fiona would receive £30 a week if the fund was invested in a pension fund that paid an income.

The DM estimates that it would take six weeks for a typical pension fund holder to arrange for the maximum income to be paid from a fund.

The DM decides that Fiona should be treated as having a notional income of £30 a week from 13 December.

## **Actual income**

28637 Take into account in full in the normal way any income that is

1. paid under an annuity bought with funds from a personal or occupational pension **or**
2. withdrawn from a personal or occupational pension scheme.

28638 - 28639

## Income due but not yet paid

28640 Treat income

1. that is due to a member of the family **and**
2. has not been paid

as belonging to that person<sup>1</sup>. This does not apply to the income listed in DMG 28641.

*1 JSA Regs, reg 105(6); IS (Gen) Regs, reg 42(3)*

## Income that should not be taken into account if due but not paid

28641 Do not take

1. earnings which are due on termination of employment by reason of redundancy<sup>1</sup>
2. income payable under a discretionary trust fund **or**
3. income payable under a trust set up from a payment made because of a personal injury<sup>2</sup> **or**
4. the payments and benefits listed below, including increases for dependants<sup>3</sup>. These are normally recovered from or reduced by the amount of IS or JSA(IB) that has been paid because they have not been paid when they were due

- 4.1 ESA(Cont)
- 4.2 IB
- 4.3 MA
- 4.4 WB
- 4.5 BA and WPA
- 4.6 RP
- 4.7 AA
- 4.8 SDA
- 4.9 CA
- 4.10 DLA
- 4.11 IIDB
- 4.12 REA

**4.13** WDisP and WWP that is not paid as a gratuity and any payment that the DM accepts is similar

**4.14** Training allowance

**4.15** EU benefits **or**

**5.** income from an occupational pension scheme that has not been paid because the trustees or managers of the scheme

**5.1** have suspended or stopped payments because of insufficient resources<sup>4</sup> **or**

**5.2** have insufficient resources to meet in full the scheme's liabilities to its beneficiaries<sup>5</sup>

into account as income if these are not paid even if they may be due to be paid.

**Note:** Any benefit in the form of a grant, gratuity or widows payment should not be taken into account if due but not paid<sup>6</sup>. These payments should normally be treated as capital.

*1 JSA Regs, reg 105(7)(d); IS (Gen) Regs, reg 42(3C);*

*2 JSA Regs, reg 105(7)(c); IS (Gen) Regs, reg 42(3); 3 JSA Regs, reg 105(7)(b); IS (Gen) Regs, reg 42(3)(b);*

*4 JSA Regs, reg 105(8); IS (Gen) Regs, reg 42(3A);*

*5 JSA Regs, reg 105(9); IS (Gen) Regs, reg 42(3B); 6 SS (POR) Regs, reg 8(1)*

28642 - 28644

28645 "Resources" in DMG 28641 means the funds out of which the benefits of the occupational pension scheme are paid. This includes

- 1.** money from an insurance policy **and**
- 2.** an annuity contract

taken out for the purposes of the scheme.

## **Types of income that may be due but not paid**

28646 Examples of income that may be due but not paid include

- 1.** pension payments which have stopped because of a strike by a company's pension section **or**
- 2.** payments of income that have been interrupted because of a postal strike.

## **Evidence required**

28647 The DM should decide if an income is due but not paid. Ask to see written evidence that income has not been paid even though it may be due. Disallow a new claim if the claimant refuses to

1. provide written evidence **or**
2. give permission to the DM to obtain written evidence.

This is because the claimant will have failed to establish entitlement<sup>1</sup>.

*1 R(IS) 4/93*

28648 - 28650





# Employment zones and notional income

## Subsistence allowance

- 28651 Participants in the second stage of EZ programmes receive a subsistence allowance from the EZ contractor so as to leave 50p JSA in payment. A subsistence allowance is defined as an allowance which an EZ contractor has agreed to pay to an EZ programme participant<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

- 28652 Where the amount of subsistence allowance paid in any benefit week is less than the amount of JSA(IB) that the person would have received in that benefit week less 50p, the DM should treat the claimant as possessing the difference between the actual amount of subsistence allowance paid and the correct amount of subsistence allowance payable<sup>1</sup>. This notional income is in addition to the actual amount of subsistence allowance in payment. DMG 28651 provides guidance on the correct amount of subsistence allowance which should be payable.

*1 JSA Regs, reg 105(11A); IS (Gen) Regs, reg 42(5A)*

28653 - 28654



## Payments of income to third parties

28655 **[See Memo DMG JSA/IS 64]** The DM should apply special rules to income paid to a third party<sup>1</sup>. The treatment of third party income<sup>2</sup> depends on whether it is

1. paid to or paid for a member of the family **and**
2. how it is used.

*1 JSA Regs, reg 105(10); IS (Gen) Regs, reg 42(4); 2 R(IS) 4/01*

28656 The special rules in DMG 28659 - 28682 apply

1. when a third party receives a payment for the claimant or a member of the family **or**
2. when a claimant receives a payment for a third party.

**Note:** DMG Chapter 26 gives guidance about Fine Payment Work. The rules in DMG 28655 et seq do not apply to such work. The reduction in the fine which results from such work is purely administrative and there is no payment of income to a third party.

## What is a third party

28657 The term “third party” can include organizations such as LAs’ care homes, Abbeyfield Homes and independent hospitals as well as people. Third parties can be

1. people who are not members of the family
2. claimants and members of the family.

28658 DWP may make payments direct to provide for a person's participation in FND or other Employment Programmes. These payments are not taken into account as notional resources under third party rules. This applies to both income and capital payments<sup>1</sup>. DMG Chapter 34 provides guidance on the meaning of Employment Programmes.

*1 IS (Gen) Regs, reg 42(4ZA)(c) & 51(3A)(b); JSA Regs, reg 105(10A)(c) & 113(3A)(b)*

## Meaning of payment in respect of a person

28659 Payment includes a part of a payment<sup>1</sup>. A payment can be made “in respect” of a person even if it is not made specifically or solely for that person.

*1 reg 1(3); IS (Gen) Regs, reg 2(1)*

### Example

A company decides to sponsor all the children at a local boarding school by paying £5,000 towards their fees.

Half way through the year Simon, whose father receives JSA(IB), starts attending the school.

Even though the payment was not specifically for Simon he is now a member of the group for which it was made.

The payment, therefore, is made for Simon.

- 28660 If pension payments are made to a third party such as a trustee in bankruptcy, the payment is made in respect of<sup>1</sup> the claimant if it is used to assist in maintaining the claimant and reduce the need for him to be supported by income-related benefits.

*1 R(IS) 2/03*

### **Example**

James is an IS claimant. His partner Kathy is 62 and retired. She previously was self employed but was made bankrupt three years ago.

Kathy's pension annuity is being paid to her trustee in bankruptcy under the provisions of the insolvency Act, to reduce her indebtedness.

The pension payments are not made in respect of the claimant's partner because they cannot be used towards her maintenance and do not contribute towards reducing her need for income support.

## **Income paid to one member for another member of the family**

- 28661 **[See DMG Memo IS/JSA 64]** An income paid to one member of the family for another member of the family should be treated as the income of the person it is paid for.

### **Example**

Graham receives JSA(IB). His partner Margaret receives a payment from a trust fund for their daughter Abigail.

The DM treats the payment as being Abigail's income. This is because it is paid to Margaret for Abigail.

## **Income paid to a third party for a member of the family**

### **Benefit paid to a third party**

- 28662 **[See DMG Memo IS/JSA 64]** Benefit for a member of the family may be paid to a third party who is not a member of the family. Treat

1. SS benefits
2. SSP

3. SMP
4. CHB
5. a benefit under the WC(Supp) Scheme
6. a benefit under the PB and MDB Scheme
7. WDisP
8. WWP, War Widower's Pension or Surviving Civil Partner's War Pension
9. a pension paid to a forces widow or surviving civil partner under specific provisions<sup>1</sup> **or**
10. another pension for persons who have been disabled or died as members of the armed forces made under a prerogative of the Queen

as income of the member of the family if the third party pays it to or uses it on behalf of any member of the claimant's family<sup>2</sup>.

*1 Armed Forces (Pensions and Compensation) Act 2004;  
2 JSA Regs, reg 105(10)(a)(i); IS (Gen) Regs, reg 42(4)(a)(i)*

### **Example**

Anna claims IS for herself and her daughter Janet.

Anna is separated from her husband, David. David claims RP, including an increase for Janet.

David pays the RP increase for Janet to Anna.

The DM treats the RP addition as Janet's income.

### **Training and Flexible New Deal payments to third parties**

28663 A payment should not be treated as notional income under the third party payment rule where it is made

1. under certain legislation<sup>1</sup> **and**
2. for a person's participation in a qualifying course<sup>2</sup>.

For JSA(IB) only this includes FND<sup>3</sup>. DMG Chapter 34 provides guidance on training schemes and Employment Programmes.

*1 E & T Act 73, s 2; 2 IS (Gen) Regs, reg 42(4ZA)(c)(iii); JSA Regs, reg 105(10A)(c)(iii); 3 reg 105(10A)(c)(iv)*

### **Income payments to a third party**

28664 **[See DMG Memo IS/JSA 64]** A claimant should not be treated as possessing notional income where a payment is

1. paid
  - 1.1 to a third party **and**

- 1.2 in respect of the claimant or a member of the claimants family **and**
- 1.3 under relevant legislation<sup>1</sup> **and**
- 1.4 in respect of the claimants participation in the IAP **and**
- 2. not used for
  - 2.1 food **or**
  - 2.2 ordinary clothing and footwear **or**
  - 2.3 fuel for the household that the claimant normally occupies **or**
  - 2.4 accommodation costs covered by IS or JSA(IB) **or**
  - 2.5 rent for which HB is payable **or**
  - 2.6 water charges for which the claimant or family member is liable **or**
  - 2.7 CTB for which the claimant or family member is liable<sup>2</sup>.

*1 E & T Act 73, s 2; 2 IS (Gen) Regs, reg 42(4ZA); JSA Regs, reg 105(10A)*

## Other payments to a third party

28665 **[See DMG Memo IS/JSA 64]** Except where DMG 28666 - 28668 apply, a claimant is treated as possessing certain payments paid to a third party in respect of<sup>1</sup> (see DMG 28660) a claimant or a member of the claimant's family. These payments are

- 1. occupational pensions and payments from the Pension Protection Fund
- 2. pensions or any other periodical payments under a personal pension scheme<sup>2</sup>.

*1 R(IS) 2/03; 2 IS (Gen) Regs, reg 42(4)(a)(ia); JSA Regs, reg 105(10)(a)(ia)*

28666 A claimant is not treated as possessing a payment under DMG 28665 where<sup>1</sup>

- 1. they have been made bankrupt before 29.5.00 **and**
- 2. pension payments are paid to the claimant's trustee in bankruptcy and not the claimant.

This is because before 29.5.00 pension payments were included in a bankrupt person's estate that was assigned to the trustee in bankruptcy.

**Note:** From 29.5.00 the law changed to exclude from their estate any rights of a person made bankrupt under approved pension arrangements. This means that such pension payments can be treated as income of a person made bankrupt on or after 29.5.00.

*1 R(IS) 4/02*

28667 **[See DMG Memo IS/JSA 64]** A claimant is not treated as possessing a payment under DMG 28665 where

- 1. the payment is made

- 1.1 for a person in respect of whom a bankruptcy order has been made  
**and**
- 1.2 to the trustee in bankruptcy or any other person acting on behalf of the creditors **and**
2. neither the person for whom the payment has been made nor another member of the family has actual or notional income apart from that payment<sup>1</sup>.

*1 IS (Gen) Regs, reg 42(4ZA)(d); JSA Regs, reg 105(10A)(d)*

28668 **[See DMG Memo IS/JSA 64]** A claimant is also not treated as possessing a payment under DMG 28665 where

1. the estate of the person for whom the payment is made
  - 1.1 is subject to a sequestration order **or**
  - 1.2 has a judicial factor on it **and**
2. the payment is made to a person acting on behalf of the creditors **and**
3. neither the person for whom the payment has been made nor another member of the family has actual or notional income apart from that payment<sup>1</sup>.

*1 IS (Gen) Regs, reg 42(4ZA)(d); JSA Regs, reg 105(10A)(d)*

28669 **[See DMG Memo IS/JSA 64]** Income other than a benefit may be paid to a third party. The DM should treat this type of income as the notional income of the person for whom it is payable, to the extent it is used for that person's<sup>1</sup>

1. food
2. ordinary clothing or footwear
3. fuel, for the household that the claimant normally occupies
4. housing costs covered by IS or JSA(IB)
5. rent for which HB is payable
6. water charges
7. CT.

Ignore any part of the income not used on these items.

**Note:** If the income paid to the third party in the first instance is a payment in kind it would be excluded from this notional income rule.

*1 JSA Regs, reg 105(10)(a)(ii); IS (Gen) Regs, reg 42(4)(a)(ii)*

28670 Disregard the payment to the third party<sup>1</sup>

1. whatever it is used for, if it is made from
  - 1.1 the Macfarlane Trusts **or**
  - 1.2 the Eileen Trust **or**

**1.3** MFET Limited **or**

**1.4** the Fund **or**

**1.5** the Independent Living Fund (2006) **or**

- 2.** if it is for the purchase and supply of concessionary coal under specified legislation<sup>2</sup>. The Department of Energy and Climate Change is now responsible for the purchase and supply of concessionary coal. Coal is purchased through contracts and supplied to ex-coal workers and their families. The payment from the Department of Energy and Climate Change to the contractor is a payment to a third party and is disregarded.

*1 JSA Regs, reg 105(10A)(a); IS (Gen) Regs, reg 42(4ZA)(a);*

*2 The Coal Industry Act 94, s 19(1)(a); JSA Regs, reg 105(10A)(b); IS (Gen) regs, reg 42(4ZA)(b)*

### **Meaning of ordinary clothing or footwear**

28671 The expression “ordinary clothing or footwear” means<sup>1</sup> clothing or footwear for normal daily use. It does not include

**1.** school uniforms **or**

**2.** clothing or footwear used solely for sport, for example football boots.

*1 JSA Regs, reg 105(16); IS (Gen) Regs, reg 42(9)*

28672 The DM should consider the wide needs of all claimants when applying the test of “for normal daily use”.

#### **Example**

Emma receives IS. She has a disabled son, Ben, who needs to wear orthopaedic shoes.

The DM decides that orthopaedic shoes may be normal for Ben but are not normal for children in general. The DM decides that the orthopaedic shoes are not for normal daily use.

28673 - 28675

### **Payments by a third party for care home, Abbeyfield Home or independent hospital charges**

28676 **[See DMG Memo IS/JSA 64]** Treat payments made by a third party, who is not a member of the family, towards the cost of charges for a

**1.** care home **or**

**2.** Abbeyfield Home **or**



3. independent hospital

as the income of the claimant<sup>1</sup>.

*1 JSA Regs, reg 105(11); IS (Gen) Regs, reg 42(4A)*

28677 This rule applies when the

1. claimant lives in or is temporarily absent from a care home, Abbeyfield Home or independent hospital **and**
2. payment is made to the care home, Abbeyfield Home or independent hospital.

The DM should calculate the amount of income and treat it as if it was actual income<sup>1</sup>.

*1 JSA Regs, reg 105(14); IS (Gen) Regs, reg 42(7)*

### **Third party payments for care homes, Abbeyfield Homes or independent hospitals and National Health maintenance**

28678 A payment is disregarded<sup>1</sup> if it is

1. made for
  - 1.1 after-care under specified legislation<sup>2</sup> **or**
  - 1.2 accommodation or welfare services referred to in specified legislation<sup>3</sup> **and**
2. treated as possessed under the notional income rule at DMG 28676<sup>4</sup>.

*1 IS (Gen) Regs, Sch 9, para 66; JSA Regs, Sch 7, para 64; 2 MH Act 83, s 117; MH (C & T) (Scot) Act 03, s 25;  
3 NA Act 48, Part III; SW (Scot) Act 68; 4 IS (Gen) Regs, reg 42(4A)*

28679 Payments that satisfy DMG 28678 include payments or reimbursements by a LA for

1. persons who because of age, illness, disability or other circumstances are in need of care and attention which is not otherwise available to them **or**
2. expectant and nursing mothers<sup>1</sup>.

*1 NHS and Community Care Act 1990, s 42; NA Act 1948, s 21(4)*

### **Income paid to a member of the family for a third party**

28680 **[See DMG Memo IS/JSA 64]** Take into account in full any income paid to a member of the family for a third party who is not a member of the family if

1. the income is kept by **or**
2. is not paid over to the third party by

the person who received it. Ignore any income that is paid over to the third party<sup>1</sup>.

**Note:** CHB is the personal income of the CHB claimant. Even if the child for whom the CHB is paid is not part of the claimant's family for IS or JSA it should be taken into account as the claimant's actual income.

*1 JSA Regs, reg 105(10)(b); IS (Gen) Regs, reg 42(4)(b)*

28681 **[See DMG Memo IS/JSA 64]** Fully disregard any payment from

1. the Macfarlane Trusts
2. the Eileen Trust
3. MFET Limited
4. the Fund
5. the Independent Living Fund (2006)

regardless of who keeps it or how it is used.

28682 **[See DMG Memo IS/JSA 64]** The DM should decide using, available evidence

1. whether **and**
2. how much

income has been kept by a member of the family.

28683 **[See DMG Memo IS/JSA 64]** Treat income as having been kept when

1. there is no intention of
  - 1.1 paying it over to **or**
  - 1.2 using it forthe third party **or**
2. if after having the income for a reasonable period of time the family member has
  - 2.1 not started paying it over **or**
  - 2.2 not started using it for the third party **or**
  - 2.3 has no plans for paying it over or using it for the third party.

28684 The DM should consider

1. the type of income **and**
2. how often the income is paid **and**
3. why the income is paid

when deciding if a reasonable period of time has passed.

**Example 1**

Rodney is a JSA(IB) claimant.

Rodney receives income for his cousin Roland who is a long-term patient in a local hospital.

The income is paid weekly and Rodney has been receiving it for four weeks.

Rodney has no good reason for not having passed the money to Roland.

The DM decides that in the circumstances four weeks was a reasonable period in which to expect that the money would have been handed over to Roland.

Rodney is treated as having the full amount of income.

**Example 2**

Peter receives IS. His partner, Rowena receives an income for her aunt.

She has received three monthly payments but has not passed any money to her aunt because she has been busy looking after an elderly person.

The DM decides that in the circumstances of the case that a reasonable time had passed for Rowena to have handed over the payments.

Rowena is treated as having the full amount of the income.

**Example 3**

Denis claims IS. He receives a weekly income on behalf of his sister Daphne.

Denis and Daphne live 30 km (20 miles) apart. Denis has not paid any money over to Daphne for ten weeks.

Denis has no private transport. He says he has not been well enough to travel by bus or post the money.

The DM decides in the circumstances of the case a reasonable period of time had not passed for Denis to have handed over the money.

He is treated as not having any of the income.



# Child or young person attending boarding school

## When should notional income be considered

**[See DMG Memo JSA/IS 64]**

28685 A child or young person who is

1. a member of the claimant's family **and**
2. attending boarding school

must, in certain circumstances, be treated as having a notional income<sup>1</sup>. Add any notional income to any actual income of the child or young person<sup>2</sup>.

**Note:** A person under the age of 18 who is entitled to IS or JSA(IB) in their own right is not a young person.

*1 JSA Regs, reg 106(2) & (3); IS (Gen) Regs, reg 44(2) & (3); 2 JSA Regs, reg 106(8);  
IS (Gen) Regs, reg 44(8)*

28686 If a person who attends a boarding school claims IS or JSA any payments made to the school should be considered under normal rules for income paid to a third party.

28687 **[See DMG Memo JSA/IS 64]** The DM needs to know the arrangements for maintaining the child or young person in the boarding school to decide if a notional income should be calculated.

## What if the child or young person is maintained in a boarding school by more than one method

28688 **[See DMG Memo JSA/IS 64]** Guidance on the most common types of arrangements is in DMG 28689 - 28700. If a child or young person is maintained in a boarding school by more than one of the methods described, follow the appropriate guidance for each element.

## Fees paid by members of the family from their own money

28689 **[See DMG Memo JSA/IS 64]** Do not calculate a notional income if school fees are paid entirely from the money of a member of the family (for example, from capital).

28690 **[See DMG Memo JSA/IS 64]** The DM should consider if deprivation of capital has occurred in cases where tariff income is taken into account.

## **Fees paid by a member of the family with money from a third party who is not a Local Education Authority**

### **Payments made to the claimant to be used for school fees**

28691 **[See DMG Memo JSA/IS 64]** The DM must decide if a payment made to

1. the claimant **or**
2. a member of the family

by a third party, who is not a member of the family, is intended for school fees<sup>1</sup>.

*1 JSA Regs, reg 106(2)(a); IS (Gen) Regs, reg 44(2)(a)*

28692 **[See DMG Memo JSA/IS 64]** If a payment from a third party is

1. not intended to be used on school fees but the claimant chooses to use it on fees, it should be treated in the normal way **or**
2. intended to be used and is used on school fees, a notional income should be calculated.

28693 **[See DMG Memo JSA/IS 64]** Payments may be made by liable relatives. The DM should decide if the payment is an LRP. If the payment

1. is not an LRP **and**
2. is intended and used for school fees a notional income should be calculated.

## **Calculation of notional income when the person meeting school fees is not the Local Education Authority**

### **Payments made direct to the school other than by a Local Education Authority**

28694 **[See DMG Memo JSA/IS 64]** If a third party makes payments of fees direct to the school a notional income should be calculated. The amount of weekly notional income is

1. the cost of maintenance charged by the school **or**
2. the amount of the payment, if the payment is less than the cost of maintenance.

**Note:** This guidance applies to full-time boarders when they are present at the school. It does not apply to LRPs.

## **Full-time boarders**

28695 **[See memo DMG JSA/IS 64]** If the third party is not a LEA the DM should decide the

1. amount included in the fees for the pupil's maintenance **and**
2. periods during which the pupil is present at the school.

## **What is maintenance**

28696 **[See DMG Memo JSA/IS 64]** Maintenance is the cost of accommodation and food. It does not include

1. tuition fees **or**
2. extras, such as fees for riding lessons.

## **Calculating the maintenance element of fees**

28697 **[See DMG Memo JSA/IS 64]** Some independent schools produce itemised bills that show tuition fees, boarding fees and extras separately.

28698 **[See DMG Memo JSA/IS 64]** If a detailed breakdown of fees is not available the DM should estimate the maintenance element of the fees by subtracting from the total fees

1. the amount of any extras **and**
2. the amount the school would charge a day pupil of the same age.

## **Scholarship awarded by the school**

28699 **[See DMG Memo JSA/IS 64]** Some boarding schools award scholarships towards the cost of fees. The DM should not calculate a notional income if the child or young person's school fees are met in full by a scholarship.

28700 **[See memo DMG JSA/IS 64]** If a scholarship only covers part of the fees the DM must identify what elements it covers. In particular the DM must decide if the balance to be paid includes tuition fees. If a third party is meeting the balance the DM needs to know if any maintenance is included. If maintenance is included in the element met by the third party a notional income should be calculated.

### **Example 1**

Colin attends a boarding school. His mother receives IS.

Colin's grandmother is paying school fees of £1,350 a term.

A bill from the school shows that the fees include extras of £150. No further breakdown was given on the bill.

The school have stated that a day pupil of the same age would be charged £900 a term for tuition only. The term is twelve weeks long.

The DM decides that the fees, not including extras, are £1,200.

£300 is for Colin's maintenance (£1,200 - £900).

£300 is divided by twelve to give a notional income of £25 a week during term time.

### **Example 2**

Angela goes to the same school as Colin. Her mother receives JSA(IB). Angela's fees are also £1,350 a term.

Angela has been awarded a scholarship of £500 a term. The balance of £850 is paid from a local educational charity.

The school has stated that the scholarship covers some of the cost of tuition fees.

The payment from the charity covers the balance of the tuition fees and extras of £150.

The DM decides that the scholarship does not contribute to Angela's maintenance. £300 of the payment from the charity is for her maintenance.

She is also treated as having a notional income of £25 a week.

### **Example 3**

Neal goes to the same school as Colin and Angela. His father receives IS. His fees are also £1,350 a term.

Neal has been awarded a scholarship of £720 a term. This is for 60% of the cost of tuition and maintenance.

The balance of £630 a term, including extras, is paid by a liable relative.

The DM decides that the payment by the liable relative is not an LRP.

The DM decides the payment includes £360 for tuition fees (that is 40% of the fees for a day pupil) and £150 for extras. The remainder of £120 is for Neal's maintenance.

The DM decides that Neal has a notional income of £10 a week during term time.



## Weekly boarders and children returning home during term-time

28701 **[See DMG Memo JSA/IS 64]** Special rules apply when a boarder returns home for any part of a benefit week during term-time. This could happen at half term. These special rules also apply to weekly boarders, for example, boarders who return home every weekend<sup>1</sup>.

*1 JSA Regs, reg 106(2)(b); IS (Gen) Regs, reg 44(2)(b)*

28702 **[See DMG Memo JSA/IS 64]** In these circumstances calculate the child or young person's notional income by

1. multiplying the child's personal allowance any DCP and any EDP by the number of days that the child is present at the school (excluding any nights the child spends with the claimant) **and**
2. dividing the result by seven<sup>1</sup>.

*1 JSA Regs, reg 106(2)(b); IS (Gen) Regs, reg 44(2)(b)*

## Calculation of notional income when the Local Education Authority is meeting school fees or provides a school

28703 **[See DMG Memo JSA/IS 64]** The DM should disregard any sums payable by the LEA under certain legislation<sup>1</sup> for a child or young person attending a course of study<sup>2</sup>.

*1 Education Act 44, s 81; Education Act 62, s 2(1); Education (Scotland) Act 80, s 49;*

*2 JSA Regs, Sch 7, para 12; IS (Gen) Regs, Sch 9, para 11*

28704 **[See DMG Memo JSA/IS 64]** The DM should treat a child or young person<sup>1</sup> as possessing a notional income where<sup>2</sup> the child or young person is

1. resident (see DMG 28705) at a boarding school **and**
2. wholly or partly maintained at the boarding school by the LEA under certain legislation (see DMG 28706)<sup>3</sup>.

*1 CA Barton v CAO 96, R(IS) 11/96 SSRTF 95/1658/B; 2 JSA Regs, reg 106(3)(b); IS (Gen) Regs, reg 44(3)(b);*

*3 Education Act 44, s 8; Education (Scotland) Act 80, s 49 or 50*

28705 **[See DMG Memo JSA/IS 64]** A child or young person need not be resident at a boarding school for 52 weeks a year for this rule to apply. A child or young person may be both resident at home and at a boarding school<sup>1</sup>.

*1 CA Barton v CAO 96, SSRTF 95/1658/B*

28706 **[See DMG Memo JSA/IS 64]** LAs have a duty<sup>1</sup> to provide primary and secondary education for children in their area. The LEA may arrange for a child or young person to attend a boarding school in another county. In these cases the child or young person is still maintained under section 8. It does not matter that the LA uses a power other than section 8 to finance its decision<sup>2</sup>.

*1 Education Act 44, s 8; 2 CA Barton v CAO 96, SSRTF 95/1658/B*

28707 **[See DMG Memo JSA/IS 64]** For each day that the child or young person is resident at a school provided or paid for by an LEA, take into account a notional income equivalent to one seventh of

1. the personal allowance **and**
2. any DCP<sup>1</sup> **and**
3. any EDP.

*1 JSA Regs, reg 106(3); IS (Gen) Regs, reg 44(3)*

28708 **[See DMG Memo JSA/IS 64]** The guidance in DMG 28707 also applies to cases where the LEA makes a payment to the claimant that is intended for school fees.

## **When is a child or young person not present at a boarding school**

28709 **[See DMG Memo JSA/IS 64]** Do not treat a child or young person as present at a boarding school on any day when the night is spent with the

1. claimant **or**
2. a member of the claimant's household<sup>1</sup>.

*1 JSA Regs, reg 106(9); IS (Gen) Regs, reg 44(9)*

### **Example**

Alan is a boarder. His mother, Betty, claims IS.

Alan stays at Betty's home on a Tuesday and Wednesday night. He goes to Betty's home on Tuesday afternoon. He returns to school on Thursday morning.

The DM decides that Alan should not be treated as present at school on Tuesday and Wednesday.

# Liabe relative payments

## Liability to maintain

28710 Certain people are liable to maintain claimants or members of the family under

1. IS<sup>1</sup> **and**
2. JSA<sup>2</sup>

legislation.

*1 SS A Act 92, s 78 (6)-(9) & 105(3); 2 JS Act 95, s 23*

## Husbands, wives and civil partners

28711 Under IS and JSA legislation

1. a man is liable to maintain his wife or civil partner **and**
2. a woman is liable to maintain her husband or civil partner.

These liabilities end on divorce or dissolution of a civil partnership.

## Children

28712 Under IS legislation parents are liable to maintain their children. It does not matter if the parents have never been married. This liability lasts until the child is

1. 16 **or**
2. 20 if the child is in education.

**Note:** under child support legislation the upper child age limit for child support maintenance liability purposes is until the child is 19 if they are in education.

## Sponsored immigrants

28713 A person who on or after 23.5.80, either

1. alone **or**
2. with some other person

has undertaken to be responsible for the maintenance and accommodation of another person under immigration law<sup>1</sup> is liable to maintain that person.

*1 Immigration Act 1971*

28714 - 28719

## **Action by the DM in the courts**

28720 If people who are liable to maintain are not maintaining

1. IS claimants and members of the family **or**
2. JSA(IB) claimants

the DM may apply to a court for a maintenance order<sup>1</sup>. If liabilities are not met the DM has the power to start criminal proceedings against the person who is not paying<sup>2</sup>.

*1 JS Act 95, s 23 (1); JSA Regs, reg 169 (1); SSA Act, s 106 (1);*

*2 JSA Regs, reg 169 (3); SSA Act, s 105 (1)*

28721 - 28723

# Liabe relative payments - general

## Treatment as income

28724 LRPs are payments of income<sup>1</sup> which have to be taken into account (but see DMG 28740).

*1 JSA Regs, reg 118; IS (Gen) Regs, reg 55*

28725 There are special rules for the treatment of LRPs<sup>1</sup>. The normal rules for the treatment of

1. income **and**
2. notional income (including deprivation of income) **and**
3. capital (except for the calculation of the capital limit) **and**
4. student's income

do not apply to LRPs. Follow the guidance in this section when dealing with LRPs.

**Note:** If a payment is not an LRP it should still be considered under the normal income/capital rules.

*1 JSA Regs, reg 89; IS (Gen) Regs, reg 25*

## Meaning of liable relative payment

28726 An LRP<sup>1</sup> is a payment that is

1. a periodical payment made by an LR
2. any other payment made by or derived from an LR.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

## Identification of liable relative payments

28727 An LRP is not restricted to a payment from a person who is liable to maintain under the Acts. In particular a payment to a divorced husband, wife or to a person who has had a civil partnership dissolved is an LRP even though there is no liability to maintain under the Acts. If the DM has doubts whether a payment is an LRP details should be requested from

1. the claimant's solicitor **or**
2. the claimant.

28728 Both income and capital payments can be taken into account as LRPs. If it is decided that a capital payment is an LRP it is treated as income<sup>1</sup>. LRPs may be

1. periodical payments **or**
2. non-periodical payments.

*1 JSA Regs, reg 118(a); IS (Gen) Regs, reg 55(a)*

28729 - 28730

## **Liable relative payments from discretionary trusts**

28731 Payments from discretionary trusts should be taken into account only if they are actually paid.

## **Payments made before the date of claim**

28732 DMs should consider if payments received before the date that IS or JSA(IB) is payable are LRPs. For example, LRPs may have been made to

1. young claimants before they left the parental home **or**
2. people who have separated from their partners.

28733 If a person has recently left their partner or a young claimant has recently left the parental home, decide

1. if any payments have been made **and**
2. if they are LRPs.

28734 If LRPs have been made, decide

1. the period over which they should be taken into account **and**
2. the effect on JSA(IB) or IS.

28735 - 28739

## **When the DM should not take payments into account as income**

28740 The DM may

1. arrange to collect payments if
    - 1.1 IS **or**
    - 1.2 JSA(IB)
- is in payment **and**

2. decide not to treat the payment as the claimant's income.

DMs should disregard these payments when calculating the claimant's income<sup>1</sup>.

*1 JSA Regs, reg 119; IS (Gen) Regs, reg 55A*

## Meaning of liable relative

28741 Liable relative is defined as<sup>1</sup>

1. a husband, wife or civil partner of the
  - 1.1 claimant **or**
  - 1.2 member of the family
2. a former husband, wife or civil partner of the
  - 2.1 claimant **or**
  - 2.2 member of the family
3. a parent of
  - 3.1 a child or young person who is a member of the claimant's family **or**
  - 3.2 a young claimant
4. a person who it is reasonable to treat as the father of a
  - 4.1 child who is a member of the claimant's family **or**
  - 4.2 young person who is a member of the claimant's family **or**
  - 4.3 young claimant

because of contributions towards their maintenance. This applies even though a court has not found the person to be the father
5. a person who has, on or after 23.5.80, agreed to maintain
  - 5.1 the claimant **or**
  - 5.2 a member of the claimant's family

as a condition of their immigration.

**Note:** Not all Liable relatives are people who are liable to maintain under SS or JSA law.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

28742 - 28744

## Meaning of parent

28745 In DMG 28741 references to parents include people who are not the

1. natural **or**
2. adoptive

parents of a child, young person or young claimant.

## People who can be treated as parents

28746 People who have accepted a

1. child **or**
2. young person **or**
3. young claimant

as a member of their family can be treated as parents. An example of this would be a stepfather or stepmother.

28747 A person who is treated as a parent is not liable to maintain a

1. child **or**
2. young person **or**
3. young claimant.

If a person in this position is making payments treat them as a liable relative. Treat any payments made as LRPs. If payments cease the DM will not be able to seek their reinstatement.

## Meaning of young claimant

28748 A young claimant is a person who is aged 16 - 19 years who is an

1. IS **or**
2. JSA(IB)

claimant<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

28749



## **Liable relative payments and income tax**

### **Liable relative payments subject to income tax**

- 28750 The DM should take into account the amount of an LRP after any tax has been deducted by HMRC.

### **What should the DM do if the claimant receives a tax refund**

- 28751 If the claimant receives a tax refund for a
1. periodical LRP **or**
  2. non-periodical LRP
- it should be treated as a periodical or non-periodical LRP as appropriate.
- 28752 Use the date that the claimant received the tax refund when deciding the date the LRP was made. The DM should
1. decide the date the refund was received **and**
  2. then apply the normal rules for deciding the date on which a
    - 2.1 non-periodical LRP **or**
    - 2.2 periodical LRP
- is paid.

28753 - 28759



## **Payments not treated as liable relative payments**

### **Which payments should not be treated as liable relative payments**

28760 When calculating income DMs should not treat

1. certain payments made because of separation, divorce or the dissolution of a civil partnership
2. payments made after the death of a liable relative
3. certain gifts
4. certain payments to or for third parties
5. payments in kind
6. payments for children and young people who are not members of the family
7. certain payments that have already been taken into account
8. certain payments that have been recovered under prevention of duplication of payments rules
9. certain payments that have already been used

as LRPs<sup>1</sup>. Further guidance is given in DMG 28761 et seq.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

### **Payments made because of divorce or separation**

28761 Do not treat as an LRP any payment made because of the rearrangement of the family's property to give each partner a share of assets. For this rule to apply the payment must be made because of

1. an agreement to separate **or**
2. proceedings for judicial separation, divorce, nullity of marriage or dissolution of a civil partnership.

28762 It does not matter if the payment was made before or after the agreement to separate or the court proceedings to end a marriage or civil partnership.

28763 The payment must be part of a chain of events leading from the rearrangement of property<sup>1</sup>. The payment itself must not be the property rearrangement.

*1 R(SB) 1/89*

28764 It is not necessary for an asset to have been sold before the payment is made.  
Examples of this include

1. the setting up of a trust **or**
2. transfer of property, such as a house<sup>1</sup>.

*1 R(SB) 1/89*

28765 If it is decided a payment made because of the rearrangement of property is not an LRP it should be treated as capital or income as appropriate.

28766 - 28769

## **Payments made after the death of a liable relative**

28770 Do not treat as an LRP any payment made after the death of the liable relative.  
These payments should be treated as

1. other income **or**
2. capital

as appropriate.

## **Gifts made by liable relatives**

28771 Do not treat as an LRP the first £250 of a payment made as a gift. These payments should be treated as

1. other income **or**
2. capital

as appropriate.

### **Example**

Rachel is separated from her husband and is in receipt of IS. Her son David receives a gift of money from his father. The gift is less than £250 and is to celebrate David's birthday.

The DM decides that the payment is not an LRP and goes on to consider how to treat the payment under the normal income and capital rules.

## More than one gift made during a 52 week period

28772 If two or more gifts are received during a 52 week period starting on the date that the first payment was made

1. do not treat the first £250 of the total gifts as an LRP **and**
2. treat the excess over £250 as an LRP.

28773 The start of the 52 week period can be before the start of entitlement to IS or JSA(IB). When a 52 week period ends a further 52 week period will begin on the first day of the benefit week in which the next gift payment is made.

28774 - 28775

## Payments made to or for third parties

28776 A payment made

1. to a third party in respect of the claimant or the claimant's partner or made or derived from a person falling within DMG 28741 5. (agreement to maintain as a condition of immigration) **or**
2. to the claimant or claimant's partner in respect of a third party or made or derived from a person falling within DMG 28741 5. (agreement to maintain as a condition of immigration)

is not to be treated as an LRP unless DMG 28777 applies<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

28777 If the payment is in respect of

1. food
2. ordinary clothing or footwear
3. fuel
4. rent
5. housing costs
6. CT
7. water charges

then the payment made to, or in respect of, a third party should be treated as being an LRP.

**Note:** Ordinary clothing and footwear means that worn for normal daily use but does not include school uniform. Housing costs means those costs which may be included as part of the claimant's applicable amount (see DMG Chapter 23)<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

### Example 1

Anna is in receipt of IS. Her ex-partner has agreed to pay £85 a month to the electricity supplier in respect of Anna's fuel bills. This monthly payment is paid direct to the company. The DM decides that the payment is an LRP and takes it into account against Anna's IS entitlement.

### Example 2

Gill is in receipt of JSA(IB). Her young son attends a stage school every Saturday. Gill's ex-husband pays the stage school fees directly to the stage school. The DM decides that the payment is not an LRP.

## Types of payments made to third parties

28778 Liable relatives may make payments direct to a third party rather than to the claimant. The most common types of these payments are

1. payments made direct to a fuel company for the claimant's fuel bills **and**
2. payments for housing costs made direct to
  - 2.1 a building society **or**
  - 2.2 a landlord **and**
3. payments of school fees direct to a school that is not a boarding school **and**
4. payments towards
  - 4.1 hire purchase commitments **or**
  - 4.2 loans.

### What is a third party

28779 A third party is

1. a person **or**
2. a group of people such as a company or some other organization.

Any third party payment must be made to a person or organization.

### Example

Colin is separated from his wife. He receives JSA(IB).

His wife makes payments to Colin of £5 a week. She states the payment is to buy food for Colin's dog.

The DM decides that the payment is made to Colin and is not a payment to a third party as the dog is not a person or organization.

28780 - 28785

## **What should the DM do if a payment to a third party is treated as a liable relative payment**

28786 If the DM decides that a third party payment is an LRP it should be taken into account as a

1. periodical payment **or**
2. non-periodical payment

as appropriate.

## **What should the DM do if a payment to a third party is not treated as a liable relative payment**

28787 If the DM decides that a third party payment is not an LRP the normal rules for payments of income and capital to third parties should be considered.

28788 - 28789

## **Payments made for a third party**

### **Types of payments made for third parties**

28790 Payments may be made to

1. the claimant **or**
2. a member of the family

for a third party. This may happen when a person continues to pay maintenance to a parent for a child or young person who is no longer a member of the family.

### **Should the DM treat a payment for a third party as a liable relative payment**

28791 The DM must decide if a payment received by the claimant or member of the family for someone else should be treated as

1. a payment for the claimant **or**
2. a payment for the third party.

**Note:** Payments for children or young people who are treated as not being members of the claimant's household should not be treated as LRPs<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

28792

## **What should the DM do if the payment is not treated as a liable relative payment**

28793 If the DM decides that the payment should not be treated as an LRP the payment should be considered under normal income and capital rules for payments for third parties.

28794 If the person for whom the claimant receives a payment claims

1. IS **or**
2. JSA(IB)

the DM should not take the payment into account in both assessments.

28795 - 28797

## **Payments in kind**

28798 Do not treat any payment in kind as an LRP. Consider any payment in kind under the normal rules for income and capital.

## **Payments for people who are not members of the household**

28799 Do not treat as an LRP any payment to or for a

1. child **or**
2. young person

who is treated as not being a member of the claimant's household. Consider the guidance for payments of income or capital for third parties (see DMG 28680).

## **Payments already taken into account**

28800 Do not treat as an LRP non-periodical payments that have already been taken into account as income under a previous award or decision for the benefit now being considered.

28801 Non-periodical payments that have been taken into account under a previous

1. IS decision can be treated as LRPs if JSA is being considered **and**
2. JSA decision can be treated as LRPs if IS is being considered.



## Payments being recovered

28802 Do not treat as LRPs non-periodical payments that

1. have been **or**
2. are being

recovered under prevention of duplication of payment rules<sup>1</sup>.

*1 SSA Act 92, s 74(1)*

## Payments that have been used

28803 Do not treat as LRPs non-periodical payments that have been used by the claimant at the time that the DM's decision on the payment is made. This rule does not apply to claimants who have deprived themselves of money from payments to get or increase the amount of the benefit now being considered.

28804 Deprivation for the purposes of getting or increasing

1. IS should not be considered if JSA is the benefit under consideration **or**
2. JSA should not be considered if IS is the benefit under consideration<sup>1</sup>.

*1 JSA Regs, reg 117(h)(iii); IS (Gen) Regs, reg 54(h)(iii)*

28805 - 28809



# Liable relative payments - periodical payments

## Introduction

28810 The way in which an LRP is taken into account depends upon whether it is a periodical payment or a non-periodical payment.

## What is a periodical payment

28811 A periodical payment is

1. a payment made or due to be made at regular intervals **or**
2. a payment that forms part of an established pattern **or**
3. a payment that substitutes or replaces a payment in **1.** and **2.** whether or not it is
  - 3.1 a complete multiple of those payments **or**
  - 3.2 made in advance or arrears **or**
4. any payment that is less than the rate of IS or JSA that would have been payable if it had not been made<sup>1</sup>.

**Note:** DMs must consider entitlement to JSA(Cont) when considering the amount of JSA that would have been payable if the payment had not been made.

28812 A payment that was due to be paid before the first benefit week of the claim but was paid after that benefit week is not a periodical payment.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

28813 Periodical payments are usually made at weekly or monthly intervals under

1. a court order **or**
2. an agreement between the claimant and the person making the payment.

## Calculation of weekly amount

### Periodical payment made at weekly intervals

28814 If a periodical payment is

1. made **or**
2. due to be made

at weekly intervals the weekly amount to be taken into account is the amount of each of the payments<sup>1</sup>.

*1 JSA Regs, reg 122(1); IS (Gen) Regs, reg 58(1)*

### Periodical payment made at monthly intervals

28815 If a periodical payment is made or due to be made at monthly intervals the weekly amount is calculated by

1. multiplying the amount of the payment by twelve **and**
2. dividing the result by 52<sup>1</sup>.

*1 JSA Regs, reg 122(2); IS (Gen) Regs, reg 58(2)*

#### Example

Donna receives IS. She receives LRPs of £120 a month.

The DM calculates the weekly amount by multiplying £120 by 12 and dividing the result by 52.

Calculation

$$\frac{\text{£120} \times \text{£12}}{52} = \text{£27.69}$$

28816 - 28819

### Periodical payments made other than weekly or monthly

28820 If a periodical payment is made or is due to be made at intervals other than

1. weekly **or**
2. monthly

the weekly amount to be taken into account is calculated by dividing the amount of the payment by the number of weeks (including part weeks) in the interval between the payments<sup>1</sup>.

*1 JSA Regs, reg 122(3); IS (Gen) Regs, reg 58(3)*

### Example

Nigel claims JSA(IB). He receives LRPs of £500 on the first day of every third month.

He receives £500 on 1.9.09 and a further £500 on 1.12.09.

The DM decides that the payment for 1.9.09 - 30.11.09 is for 13 weeks.

The weekly amount is calculated as follows

$$\frac{£500}{13} = £38.46$$

The DM decides that the payment for 1.12.09 - 28.2.10 is for twelve weeks and six days.

The weekly amount is calculated as follows

$$\frac{£500}{12 \frac{6}{7}} = £38.88 \quad (\text{twelve weeks and six days})$$

### Payment made up of more than one periodical payment

28821 If a lump sum is received instead of all or part of a series of periodical payments calculate the weekly amount in the same way as the weekly amount of the payments it represents would be calculated<sup>1</sup>. This applies whether or not

1. the payment is a complete multiple of the payments it represents **or**
2. the payments are made in advance or arrears.

*1 JSA Regs, reg 122(4); IS (Gen) Regs, reg 58(4)*

### Example

Marie is an IS claimant. She is due to receive LRPs of £10 a week.

Over a 13 week period she receives two payments of £40 and one payment of £50.

The DM decides that the payments made represent a series of periodical payments.

The weekly amount taken into account is £10.

### Period over which a periodical payment should be taken into account

#### Periodical payments made at regular intervals

28822 If periodical payments are made at regular intervals take each payment into account for a period equal to the length of time between payments<sup>1</sup>.

*1 JSA Regs, reg 120(1)(a); IS (Gen) Regs, reg 56(1)(a)*

## **Periodical payments due to be made regularly but made irregularly**

- 28823 If periodical payments are due to be made at regular intervals but are not being made regularly calculate the number of weeks (including part weeks) by dividing the amount of the payment by the weekly amount of the payment<sup>1</sup>.

*1 JSA Regs, reg 120(1)(b); IS (Gen) Regs, reg 56(1)(b)*

### **Example**

Mario receives JSA(IB).

He is due to receive payments of £15 a week under a court order.

The payments are not made regularly.

He receives a payment for £100.

$$\frac{£100}{£15} = 6\frac{2}{3}$$

It is taken into account over 6  $\frac{2}{3}$  weeks.

28824 - 28829

## **Periodical payments not due to be made regularly**

- 28830 If a periodical payment is not

1. made **or**
2. due to be made

at regular intervals take it into account for one week<sup>1</sup>. This applies to cases where an LR who is not usually making payments makes an occasional payment.

*1 JSA Regs, reg 120(1)(c); IS (Gen) Regs, reg 56(1)(c)*

- 28831 If an occasional payment is more than the amount of IS or JSA in payment, treat it as a non-periodical payment<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

## **When should the period start over which a periodical payment is taken into account**

- 28832 The period over which a periodical payment should be taken into account begins on the date the payment is treated as paid<sup>1</sup>.

*1 JSA Regs, reg 120(2); IS (Gen) Regs, reg 56(2)*

## **On what date should a periodical payment be treated as paid**

### **Periodical payments made before the first benefit week of entitlement to IS or JSA(IB)**

- 28833 Treat periodical payments due to be made before the first benefit week of the claim as paid on the same weekday as the first day of the benefit week<sup>1</sup>. The DM should decide the claimant's benefit week before deciding the date from which the payment should be taken into account.

*1 JSA Regs, reg 123(1)(a); IS (Gen) Regs, reg 59(1)(a)*

#### **Example**

Catriona claims JSA(IB) on 10.12.08. Her BWE day is a Thursday.

She received a periodical payment of £200 for a period of a month on 1.12.08.

The DM decides that Catriona's benefit week starts on a Friday.

The payment is taken into account for a month from 5.12.08, which is the Friday in the week that the periodical payment was received.

### **Periodical payments made during the course of an award of IS or JSA(IB)**

- 28834 Treat a periodical payment made during the course of an award as paid on the first day of the benefit week in which it is due to be paid. If it is not practicable to do this it should be taken into account in the next benefit week<sup>1</sup>. It is not practicable to take a payment into account during the benefit week in which it was received when benefit has already been paid for that week.

*1 JSA Regs, reg 123(1)(b); IS (Gen) Regs, reg 59(1)(b)*

### **Payments under agreements or court orders**

- 28835 Where an agreement or court order is in force decide the date that payments are due to be paid by reference to the agreement or order currently in force. This includes cases where the amount due to be paid under the agreement or court order is varied.

#### **Example 1**

John is due to make payments under a court order of £50 a week to Sue. Sue is in receipt of IS.

During 2009 John has fallen into arrears with his court order.

The court has made a new order requiring the arrears to be paid on 1.1.10.

The DM decides that the due date for the arrears is now 1.1.10 and not the date the arrears were originally due to be paid.

**Example 2**

Corinne is in receipt of IS. Her ex-partner Adam has agreed to pay her £30 a week .

Over the last 2 weeks Adam has not made any payments to Corinne.

After a discussion Corinne and Adam come to a new agreement whereby Adam will pay the £60 arrears by increasing his regular payment of £30 a week to £40 a week starting from 1st June.

The DM decides that the due date for the arrears is now 1st June and not the date the arrears were originally due to be paid.

28836 - 28839



# Liabe relative payments - non-periodical payments

## What is a non-periodical payment

- 28840 Treat any LRP that is not a periodical payment as a non-periodical payment or "other payment"<sup>1</sup>.

*1 JSA Regs, reg 117; IS (Gen) Regs, reg 54*

- 28841 Examples of non-periodical payments include one-off payments for specific items. But if the payment is for less than the amount of the JSA or IS that would otherwise be payable it should be treated as a periodical payment.

### Example 1

Clayton is the father of Amina's child.

He makes a payment of £120 for a baby buggy.

Amina claims IS. The amount of IS that is payable without the payment for the baby buggy is £74.

The DM decides that the payment is a non-periodical payment.

### Example 2

Roger is the father of Linda's child.

He makes a one off payment of £35 for Linda and her child.

Linda claims IS. The amount of IS that is payable without the payment is £40.

The DM decides the payment is a periodical payment.

## Should all of a payment be taken into account as a non-periodical payment

- 28842 DMs should not always take the full amount of a payment into account as a non-periodical payment. In

1. IS cases take into account the amount of the payment less
  - 1.1 any amount that has been taken into account under any previous IS decision **or**
  - 1.2 any amount that has been or is currently being recovered by the DM under prevention of duplication of payment rules<sup>1</sup> **or**
  - 1.3 any amount that the claimant has spent unless that amount was spent for the purpose of getting or increasing IS.

2. JSA cases take into account the amount of the payment less
  - 2.1 any amount that has been taken into account under any previous JSA decision **or**
  - 2.2 any amount that has been or is currently being recovered by the DM under prevention of duplication of payment rules<sup>2</sup> **or**
  - 2.3 any amount that the claimant has spent unless that amount was spent for the purpose of getting or increasing JSA.

*1 SS A Act 92, s 74(1); 2 s 74(1)*

28843 Consider all the circumstances surrounding the payment when calculating the amount of a non-periodical payment. DMs should not take into account as an LRP any part of a payment spent

1. clearing outstanding debts that occurred during the marriage or relationship **or**
2. paying an amount owed to a solicitor.

28844 - 28855

## **Periodical payments and any other payment made by a liable relative**

### **Period over which the non-periodical payment should be taken into account**

28856 Where a liable relative makes a periodical payment and at the same time an additional payment then the DM has to determine whether the weekly periodical payment as calculated in accordance with DMG 28814 - 28821 is less than the total of<sup>1</sup>

1. £2 **and**
2. the amount of IS or JSA(IB) which would have been paid had the periodical payment not been made.

*1 JSA Regs, reg 121(4) & (10); IS (Gen) Regs, reg 57(4) & (10)*

28857 If the periodical payment is less than the total in DMG 28856 then the DM should take the additional payment into account for a period determined by applying the formula<sup>1</sup>

$$\frac{A}{B - C}$$

Where<sup>2</sup>

A = the amount of the non-periodical payment

B = the total of £2 and the amount of IS or JSA(IB) which would have been paid had the periodical payment not been made

C = the weekly amount of the periodical payment

Any fraction has to be treated as a fraction of a week<sup>3</sup>.

*1 JSA Regs, reg 121(5); IS (Gen) Regs, reg 57(5); 2 JSA Regs, reg 121(10); IS (Gen) Regs, reg 57(10);  
3 JSA Regs 121(9); IS (Gen) Regs, reg 57(9)*

### Example

Mary has an applicable amount of £65.45 but receives IS of £40.45 a week because she is in receipt of a periodical LRP of £25 a week. She receives a non-periodical LRP of £500 in addition to the periodical LRP of £25 a week.

The DM determines that the periodical payment of £25 is less than £67.45 (the total of £2 + £65.45).

The DM then has to determine the period for which the additional payment of £500 is to be taken into account. The DM applies the formula in DMG 28857 where:

A = £500

B = £67.45 (£2 + £65.45)

C = £25

This gives an answer of 11.77 (£500 ÷ (£67.45 - £25)). The DM takes the payment into account for 11 weeks at £42.45 and 1 week at £33.05. The weekly amount of the payment in addition to the periodical LRP ends Mary's entitlement to IS.

### The weekly amount of the non-periodical payment

28858 The weekly amount of the non-periodical payment is equal to the divisor used to calculate the period for which it is taken into account<sup>1</sup>. This will be the total of

1. £2 and the amount of IS or JSA(IB) which would have been paid had the periodical payment not been made **less**
2. the weekly amount of the periodical payment in payment.

*1 JSA Regs, reg 122(5); IS (Gen) Regs, reg 58(5)*

### Example

Mary has received a non-periodical payment of £500 as described in the example to DMG 28857 in addition to a periodical payment of £25.

When attributing the non-periodical payment the DM takes a weekly amount of £42.45 into account. This is because £42.45 is the total of

£2 **plus**

£65.45 (the amount of IS which would have been paid had the periodical payment not been paid) **less**

£25 (the periodical payment)

### **When should the DM start taking a non-periodical payment into account**

- 28859 The period during which the non-periodical payment should be taken into account should begin on the date the payment is treated as paid<sup>1</sup>.

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8)*

### **Periodical payments change while a non-periodical payment is being taken into account**

- 28860 If subsequent periodical payments change, the balance (if there is any) of the non-periodical payment has to be taken into account. The number of weeks for which it is taken into account is determined by the formula<sup>1</sup>

$$\frac{D}{B - E}$$

Where<sup>2</sup>

B = the total of £2 and the amount of IS or JSA(IB) which would have been paid had the periodical payment not been made

D = the balance (if any) of the non-periodical payment

E = the weekly amount of any subsequent periodical payment.

*1 JSA Regs, reg 121(7); IS (Gen) Regs, reg 57(2); 2 JSA Regs, reg 121(10); IS (Gen) Regs, reg 57(10)*

### **Example**

Mary has had her award of IS ended in the circumstances explained in the example to DMG 28857. Two weeks later she contacts the DWP to reclaim IS and says that her regular periodical payment of £25 has now changed to just £5.

The DM has to re-determine the period for which the non-periodical payment is to be taken into account. The DM performs the calculation in DMG 28860 where:

$$B = £67.45 (£2 + £65.45)$$

$$D = £415.10 (£500 - (2 \times £42.45))$$

$$E = £5$$

This gives a period of 6.64 weeks (£415.10 ÷ (£67.45 - £5)). The DM therefore continues to take the non-periodical payment into account but for a period running into 7 weeks not 12 as originally determined.

- 28861 The period for which a change is said to occur begins on the first day of the benefit week in which the change took place<sup>1</sup>. However, the day on which the non-periodical payment is treated as paid is still the first day of the benefit week in which it was received (see DMG 28859).

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8)*

### **Periodical payments cease while a non-periodical payment is being taken into account**

- 28862 Where the liable relative stops making periodical payments, the remaining balance (if there is one) of any non-periodical payment has to be taken into account. In order to determine the number of weeks for which the non-periodical payment is taken into account, the DM should divide that remaining balance (if there is one) by<sup>1</sup>

1. £2 and
2. the amount of IS or JSA(IB) which would have been paid had the LRP not been made.

*1 JSA Regs, reg 121(6) & (3); IS (Gen) Regs, reg 57(6) & (3)*

- 28863 The calculation to re-determine the period over which the non-periodical payment is taken into account begins on the first day of the benefit week in which the payment ceased<sup>1</sup>.

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(8)*

### **Example**

Mary has had her IS award ended in the circumstances described in DMG 28857. 2 weeks after her award has ended, Mary informs the DWP that she is no longer in receipt of the periodical payment of £25 and reclaims IS.

The DM has to determine the period for which the non-periodical payment is to be taken into account. The balance of the payment is £415.10. This figure is divided by the aggregate of:

$$£2 + £65.45 = £67.45$$

then

$$£415.10 \div £67.45 = 6.15$$

The DM determines that the non-periodical payment should be taken into account at a rate of £67.45 for a further 6 weeks and the balance of £10.40 (£415.10 - (6 x £67.45)) would be treated as income if Mary reclaims IS in week 7.

28864 - 28865

## Periodical payments not being made when a non-periodical payment is received

### Weekly amount of non-periodical payment

28866 If a non-periodical payment is made and periodical payments are not being made, the amount that should be taken into account each week is<sup>1</sup> the total of

1. £2 and
2. the amount of IS or JSA(IB) which would have been paid had the LRP not been made.

*1 JSA Regs, reg 122(5) & 121(3); IS (Gen) Regs, reg 58(5) & 57(3)*

28867

### Period over which a non-periodical payment is taken into account

28868 If a non-periodical payment is made<sup>1</sup> then it is taken into account for the number of weeks obtained by dividing the payment by the total of<sup>2</sup>

1. £2 and
2. the amount of IS or JSA(IB) which would have been paid had the LRP not been made.

Any fraction is to be treated as a fraction of a week<sup>3</sup>.

*1 JSA Regs, reg 121(1); IS (Gen) Regs, reg 57(1); 2 JSA Regs, reg 121(2) & (3); IS (Gen) Regs, reg 57(2) & (3);  
3 JSA Regs, reg 121(9); IS (Gen) Regs, reg 57(9)*

### Example

Jess is currently in receipt of IS of £35 a week. She receives a payment from her ex-partner of £120. The DM determines that this is a non-periodical payment and to decide the period over which it is taken into account the DM divides £120 by

1. £2 plus
2. £35.

The payment of £120 is therefore divided by £37 (£2 + £35 ).

This gives 3.24 (£120 ÷ £37). The DM takes the payment for the first 3 weeks at a weekly rate of £37.00. The balance of £9 is taken into account in the fourth week. If Jess becomes re-entitled to IS in week 4, the DM will have to take into account the balance of £9.

28869

## **When should the DM start to take the non-periodical payment into account**

- 28870 The period over which the non-periodical payment should be taken into account begins on the date the payment is treated as paid<sup>1</sup>.

*1 JSA Regs, reg 121(8); IS (Gen) Regs, reg 57(48)*

28871 - 28874

## **Date a non-periodical payment is treated as paid**

### **Non-periodical payment made before the first benefit week of the claim**

- 28875 If a non-periodical payment is made before the first benefit week of the claim treat it as paid on the day in the week in which it is paid that corresponds to the first day of the benefit week<sup>1</sup>. This rule does not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

*1 JSA Regs, reg 123(2)(a); IS (Gen) Regs, reg 59(2)(a)*

### **Non-periodical payment made during the course of an award of IS or JSA(IB)**

- 28876 If a non-periodical payment is made during the period of an award it should be treated as paid on the first day of

1. the benefit week in which it was paid **or**
2. a subsequent benefit week if it is not practicable to take the payment into account straight away<sup>1</sup>.

Consider the method of payment of JSA or IS when deciding if it is not practicable to take a payment into account straight away. See DMG 28834 for an example.

These rules do not apply if the payment is made during a period in which a previous non-periodical payment is being taken into account.

*1 JSA Regs, reg 123(2)(b); IS (Gen) Regs, reg 59(2)(b)*

### **Non-periodical payment made during a period where a previous non-periodical payment is already being taken into account**

- 28877 If a non-periodical payment is made during the period in which a previous non-periodical payment is being taken into account treat it as paid on the first day following that period<sup>1</sup>.

*1 JSA Regs, reg 123(3); IS (Gen) Regs, reg 59(3)*

28878 - 28999





# Appendix 1

## Definitions of war pensions for IS & JSA

### War widow's, war widower's or surviving civil partner's supplementary pensions

- 1 Any
  1. supplementary pension paid under article 23(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **or**
  2. similar payment made by the Secretary of State for Defence to a person not entitled to a pension under the Order in **1.**
- 2 A pension awarded at the supplementary rate under article 27(3) of the Personal Injuries (Civilians) Scheme 1983.
- 3 Any payment made to a widow, widower or surviving civil partner of a person
  1. whose death was connected to service similar to service as a member of the armed forces **and**
  2. which is equal to a payment made under article 23(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (pensions to widows, widowers or surviving civil partners) **and**
  3. whose service ended before 31.3.73  
under the following Dispensing Instruments
    - 3.1 The Order in Council of 19th December 1881
    - 3.2 The Royal Warrant of 27 October 1884
    - 3.3 The Order by His Majesty of 14th January 1922.

### War disablement pension, war widow's pension and war widower's pension

The following instruments are specified<sup>1</sup> for the meaning of war disablement pension, war widow's pension and war widower's pension.

- 1 Defence (Local Defence Volunteers) Regulations 1940.
- 2 War Pensions (Coastguards) Scheme 1944.
- 3 War Pensions (Naval Auxiliary Personnel) Scheme 1964.
- 4 Pensions (Polish Forces) Scheme 1964.

- 5 War Pensions (Mercantile Marine) Scheme 1964.
- 6 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard.
- 7 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Home Guard after 27.4.52.
- 8 Order by Her Majesty concerning pensions and other grants in respect of disablement or death due to service in the Ulster Defence Regiment.
- 9 Personal Injuries (Civilians) Scheme 1983.
- 10 Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); Income Tax (Earnings and Pensions) Act 2003, s639(2)*

# Chapter 29 - Capital

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# Chapter 29 - Capital

## Introduction

### About the guidance

29000 This Chapter gives guidance on capital and its effect on JSA(IB) and IS. The JSA(Cont) claimants can get is not affected by their capital.

29001 The guidance applies to both JSA(IB) and IS, unless otherwise stated.

29002 - 29004

### Flowcharts

29005 Flowcharts at Appendix 1 to this Chapter show how to decide the amount of the capital of a

1. claimant and partner **and**
2. child or young person

and its effect on benefit.

29006 - 29014

### The law

29015 **[See DMG Memo JSA/IS 64]** The law says

1. how capital is worked out<sup>1</sup>
2. when people can be treated as having capital they do not have<sup>2</sup>
3. when capital people have can be disregarded<sup>3</sup>
4. when income can be treated as capital<sup>4</sup>
5. when capital can be treated as income<sup>5</sup>
6. claimants cannot get benefit if their capital is above £16,000<sup>6</sup>
7. capital of a
  - 7.1 partner is treated as the capital of the claimant **and**
  - 7.2 child or young person is not treated as the capital of the claimant if the claimant is a member of a family<sup>7</sup>

8. when the total of capital is above a certain limit, the claimant is treated as having income<sup>8</sup>. The point at which this takes effect depends on the claimant's circumstances. Usually it starts with capital of £6,000 or more, but it starts with capital of £10,000 if they are a person, of any age, living in specific accommodation (see DMG 29771)<sup>9</sup>.

*1 JS Act 95, s 12(1); JSA Regs, Part VIII; SS CB Act 92, s 136(3); IS (Gen) Regs, Part V; 2 JS Act 95, s 12(4)(a); JSA Regs, reg 113 & 115; SS CB Act 92, s 136(5)(a); IS (Gen) Regs, reg 51 & 52; 3 JS Act 95, s 12(4)(b); JSA Regs, reg 108(2) & 115, Sch 8; SS CB Act 92, s 136(5)(b); IS (Gen) Regs, reg 46(2) & 52, Sch 10; 4 JS Act 95, s 12(4)(c); JSA Regs, reg 110; SS CB Act 92, s 136(5)(c); IS (Gen) Regs, reg 48; 5 JS Act 95, s 12(4)(d); JSA Regs, reg 104; SS CB Act 92, s 136(5)(d); IS (Gen) Regs, reg 41; 6 JS Act 95, s 13(1); JSA Regs, reg 107; SS CB Act 92, s 134(1); IS (Gen) Regs, reg 45; 7 JS Act 95, s 13(2); JSA Regs, reg 88 & 109; SS CB Act 92, s 136(1); IS (Gen) Regs, reg 23 & 47; 8 JS Act 95, s 13(3); JSA Regs, reg 116; SS CB Act 92, s 136(2); IS (Gen) Regs, reg 53; 9 JSA Regs, reg 116(1B), IS (Gen) Regs, reg 53(1B)*

29016 **[See DMG Memo JSA/IS 64]** The law says

1. the personal allowance and any DCP for a child or young person is not included when working out the claimant's applicable amount **and**
2. the income of a child or young person is not included when working out the claimant's income<sup>1</sup>

if the capital of a child or young person is more than £3,000.

*1 JSA Regs, reg 83(b), 106(5) & Sch 1, para 16(a); IS (Gen) Regs, reg 17(b), reg 44(5) & Sch 2, para 14(a)*

29017 - 29019

# Is the resource capital

## What is capital

29020 Capital is

1. savings from income such as money held in
  - cash
  - a bank or building society account
  - a save as you earn scheme
2. a lump-sum or one-off payment such as
  - compensation for a personal injury
  - money which has been borrowed
  - one made by an employer to a person who is made redundant and the payment is not earnings
  - one made by the HO to people on the Refugee Resettlement Programme
  - one made to recompense people who have incorrectly had to pay care charges in the past
3. investments such as
  - businesses
  - capital and income bonds
  - individual savings accounts (ISAs)
  - national savings certificates
  - personal equity plans (PEPs)
  - personal pension schemes
  - premium bonds
  - stocks and shares
  - unit trusts
4. real property or in Scotland heritable property, that is land and anything that has its foundations in the land such as a house **and**
5. a beneficial interest in the capital of a trust.

29021 A payment is capital if it is

1. not made or due to be made regularly **and**
2. made without reference to a period.

The payment is income if this does not apply.

29022 - 29034

### **Rights to capital**

29035 People have a right to capital that is due to them now or in the future. That right can be sold unless there is something that says they cannot sell it.

29036 They also have a right to sue, which means go to Court, if

1. the capital is not paid to them when due **and**
2. there is no other way they can get the capital.

In England and Wales this is sometimes called “a chose in action”. In Scotland the action is sometimes called “accounting”.

29037 Such rights are capital because they can be sold<sup>1</sup>.

*1 R(SB) 31/83*

### **Example**

On 1.3.02 Sonia agreed to sell her house to her brother Norman for £55,000. Norman could not afford to pay his sister the full amount so Sonia agreed that he could pay £20,000 on 1.3.02 and the remaining £35,000 on 1.3.07. On 8.3.07 Sonia makes a claim for IS. She states she has no capital but that she is owed £35,000 as Norman did not pay her as agreed. The DM decides that Sonia has rights to capital.

**Note:** See DMG 29647 for guidance on how to get an expert valuation of rights to capital.

29038 - 29049

### **When income becomes capital**

29050 Income other than earnings becomes capital after the end of the period it is payable for<sup>1</sup>.

*1 R(IS) 3/93*

29051 Earnings become capital after

1. all liabilities such as income tax have been deducted<sup>1</sup> **and**
2. the end of the period they are payable for<sup>2</sup>.

**Note:** DMG 29051 does not apply to earnings from self-employment because they are calculated as average weekly earnings over a period of normally a year, which are then taken into account for an equivalent period in the future. Earnings from self-employment should be treated as capital as soon as they are received. See DMG 29520 et seq for the disregard of the value of assets of a business.

*1 R(SB) 35/83; 2 R(IS) 3/93*

- 29052 The period income and earnings are payable for starts with the day they are due to be paid.
- 29053 The amount of income is reduced when money is withdrawn from a fund such as a bank account which includes income and capital. The amount of capital is reduced if there is evidence to show the money withdrawn is from capital.

**Example**

On 2 February Pearl makes a claim for JSA. She has £7,550 in a bank account. This includes a month's P/T earnings of £250 which Pearl received on 30 January. The DM decides that Pearl has capital of £7,300 because her P/T earnings of £250 has not become capital. On 16 February Pearl, withdraws £320 from her bank account to pay her car insurance. There is no evidence of any other withdrawals since 2 February. The DM decides that Pearl has spent her P/T earnings of £250 and that her capital has reduced by £70 to £7,230.

29054 - 29069



# Does the person own the capital

## General

### Ownership of capital

- 29070 Only the capital where people are the beneficial owners is included when working out what capital they have.
- 29071 People are beneficial owners of capital if they have a beneficial interest in it. A person is the joint beneficial owner of capital if more than one person has a beneficial interest in the same capital.
- 29072 A person whose name the capital is in is called the legal owner. A person is the joint legal owner of capital if more than one person is the legal owner of the same capital.
- 29073 People who are the beneficial owners of capital are usually the legal owners. People who are the legal and beneficial owners of capital hold that capital for themselves and can use it as they wish.
- 29074 Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners<sup>1</sup>. They cannot use the capital for themselves. It should be used for the beneficial owners.

*1 R(SB) 23/85*

- 29075 Legal owners can hold capital which
1. they **and**
  2. other people who are not the legal owners
- are the beneficial owners of. In that case the legal owners are holding the capital on trust for themselves and the other beneficial owners. The legal owners can use for themselves only the capital which they are the beneficial owners of. The remaining capital should be used for the other beneficial owners.

- 29076 Only the legal owners of capital can withdraw or sell it.

### Ownership of capital of a child or young person

- 29077 A child or young person can be the beneficial owner of capital.

29078 Children and young people may not be the legal owners of the capital of which they are the beneficial owners. This is because businesses, such as banks, will not enter into a contract with them. If they are the beneficial owners and not the legal owners, their capital will be held on trust by another person.

29079 Children and young people become the legal owners of their capital when the terms of the trust say they can have the capital. In England and Wales this may be when they are 18 years old and in Scotland when they are 16.

29080 A child or young person cannot be the legal owner of

1. real or heritable property (see DMG 29020 4.) **or**
2. shares.

Sometimes a mistake is made and a child or young person is shown as the legal owner. If the child or young person is the sole or joint beneficial owner of the property or shares, include them when working out the child's or young person's capital.

### **How a person gets a beneficial interest in capital**

29081 People can get a beneficial interest in capital by

1. saving up their income such as money in a bank account
2. using their money to buy capital such as premium bonds
3. using money which has been lent to them, such as a mortgage, to buy capital<sup>1</sup>
4. being given capital such as a lump-sum payment of compensation
5. having a beneficial interest in a trust.

*1 R(IS) 8/92*

29082 - 29089

### **How to work out if a person is the beneficial owner of capital**

#### **The person is the legal owner**

29090 If people are the legal owners of capital, assume that they are the beneficial owners unless

1. there is written evidence such as a Deed of Trust which says who has a beneficial interest in the capital **or**
2. the legal owners say they have



**2.1** no beneficial interest **or**

**2.2** only a share in the beneficial interest.

**Note:** It is the responsibility of the legal owners of capital to establish that they are not the beneficial owners.

### **Written evidence**

29091 If there is written evidence naming who has a beneficial interest in the capital the people named in the evidence are the beneficial owners.

### **No beneficial interest in the capital or only a share in it**

29092 If the legal owners say they have no beneficial interest in the capital or only a share in it the DM has to decide who has a beneficial interest in the capital in order to decide who the beneficial owners are.

29093 To decide who has a beneficial interest the DM needs to know

1. whose capital it is **and**
2. what the person whose capital it is says it has to be used for.

To decide whose capital it is the DM needs to know whose money was used to get the capital.

### **The legal owners use their money to get capital**

29094 Legal owners who use their money to get capital have a beneficial interest in that capital and are beneficial owners of it.

29095 A legal owner of a bank account is the

1. sole beneficial owner of the account if only the legal owner's money is paid into the account **and**
2. joint beneficial owner if there is more than one legal owner and one or more of the legal owners pays money into the account.

29096 If the legal owners

1. use their money to get capital **and**
2. they say they cannot use the capital because they have set it aside for another person

the legal owners are the beneficial owners of the capital unless they have actually created a trust<sup>1</sup>.

### Example

Hugh has some money in a building society account. The account is in his name so he is the legal owner of the money. He says that the money in the account, which he alone deposited, is not his because it is used to pay his grandchild's school fees. The DM decides that Hugh is the beneficial owner of all the money in the account. This is because he is the only person who has put money into the account and there is no evidence of a clear indication that his intention was to create a trust.

*1 R(IS) 1/90*

### The legal owners do not use their money to get the capital

29097 If the legal owners

1. do not use their own money to get the capital **and**
2. the person whose money has been used says the money has been
  - 2.1 lent **or**
  - 2.2 givento the legal owners

the legal owners are the beneficial owners of the capital.

29098 A legal owner of a bank account is the beneficial owner of any money in the account which has been lent or given to the legal owner by another person.

29099 If the legal owners

1. do not use their own money to get capital **and**
2. the money which has been used belongs to
  - 2.1 a child or young person **or**
  - 2.2 some other people and they say
    - 2.2.a it is their capital **and**
    - 2.2.b who the capital is to be used for

the legal owners are not the beneficial owners of the capital because they are holding it on trust.

### Example

Pradeep has a building society account. It is in her name so she is the legal owner of the money in that account. However, she says that the money in the account belongs to her sister Leena who is working abroad. On the day the account was opened £20,000 was put into it. Nothing has been paid into the account except interest and no money has been taken out. The DM has evidence from Leena that

she gave £20,000 to Pradeep to save for her whilst she was working abroad and she wants it, and the interest, back when she returns. The DM decides that Pradeep is not the beneficial owner of the money in the building society account because she is holding it on trust for Leena.

### **More guidance**

29100    DMG 29120 - 29339 gives guidance on how to work out the beneficial interest a person has in capital in certain types of cases.

29101 - 29119



# Beneficial ownership in particular cases

## About the guidance

- 29120 This part gives guidance on how to work out if a person is the beneficial owner of capital in certain types of cases.
- 29121 The guidance in this part involves principles of law. The law in England and Wales can be different from the law in Scotland but the outcome may be the same. If the outcome is different, the guidance will be distinguished.

29122 - 29129

## Businesses and limited companies

### Businesses

- 29130 A person who is the only owner of a business is the beneficial owner of all of the capital of the business.
- 29131 A person who owns a business with others has an equal share of the beneficial interest in the capital of the business unless the owners agree the shares should not be equal<sup>1</sup>. The agreement between the owners does not have to be in writing. A person who has a share in the beneficial interest is a joint beneficial owner.

*1 Partnership Act 1924, s 24(1)*

### Limited companies

- 29132 A company's capital is owned by the company. Directors of the company are not the beneficial owners of the capital of the company.
- 29133 If a director has lent capital to the company the loan is included in the capital of the company. The director's rights to the capital that has been lent are included when working out the director's capital.
- 29134 If a director
1. has shares in the company **and**
  2. is the sole or joint beneficial owner of those shares
- the shares will be included when working out the director's capital.

## Bank, post office and building society accounts

- 29135 A bank, PO or building society account can be more than one asset in certain circumstances. This applies if evidence clearly shows that there is a separate part of a jointly owned bank or similar account where a claimant has
1. no beneficial interest **or**

**2.** a sole beneficial interest.

If **1.** applies, the claimant is only treated as possessing an equal share of the amount where the beneficial interest is shared.

If **2.** applies, the claimant is treated as possessing the whole amount that is solely owned and an equal share of the amount where the beneficial interest is shared.

If neither **1.** or **2.** apply the claimant is treated as beneficially owning the whole account in equal shares with the other joint owners.

### **Example**

On 8 March Andrew makes a claim for JSA. He has a joint bank account with his mother, Hilda, who is in a care home. There is no dispute that Andrew and Hilda are the joint legal owners of the account in which, on 8 March, there is the sum of £12,400. Andrew provides evidence that he received a legacy of £2,000 which he paid into the account and that Hilda has made all other deposits. The only withdrawals have been made to pay Hilda's care home fees. The DM decides that Andrew has capital of £2,000, the amount of his beneficial interest in the account.

29136 - 29139

## **Capital held by a solicitor**

29140 People are the beneficial owners of capital, such as a payment of damages for personal injury, if it is held by their solicitor<sup>1</sup> unless

- 1.** in England and Wales the amount to be repaid to the Legal Services Commission has not been worked out (see DMG 29141 - 29142) **or**
- 2.** in Scotland
  - 2.1** the amount to be repaid to the Scotland Legal Aid Board has not been recovered **and**
  - 2.2** a discharge has not been granted (see DMG 29143 - 29144).

*1 R(SB) 17/87*

29141 In England and Wales the Legal Services Commission provides funding to help people take or defend legal proceedings. A person may have to repay all or some of their legal costs out of money or property they have gained or kept as a result of the proceedings. In such cases, the funding provided by the Legal Services Commission can act as a loan.

29142 Where DMG 29141 applies the Legal Services Commission work out a fair and reasonable amount of the costs to be repaid. Until the Legal Services Commission do this, money or property gained or kept is held by a person's solicitor. A person is not the beneficial owner of any such money or property until after the amount to be repaid to the Legal Services Commission has been worked out.

### Example

Alison was awarded the sum of £25,000 as payment of damages following a road traffic accident. This money is being held by Alison's solicitor. Alison received funding from the Legal Services Commission. Alison is not the beneficial owner of the sum she was awarded until the Legal Services Commission work out the amount to be repaid.

- 29143 In Scotland the Scottish Legal Aid Board provides funding to help certain people take or defend legal proceedings. The Board is able to recoup their expenditure out of any property recovered or preserved for the person granted legal aid. The Board is also able to recoup their expenditure where there is a settlement to avoid proceedings or bring them to an end. In such cases, the funding provided by the Scottish Legal Aid Board can act as a loan.
- 29144 Where DMG 29143 applies the money or property gained or preserved is usually paid to the Scottish Legal Aid Board. However, the money or property may be held by a person's solicitor and the amount to be repaid worked out by the Scottish Legal Aid Board. The person's solicitor cannot dispose of the money or property or use it in any way until the Board has recovered the amount due and granted the person a discharge. A person is not the beneficial owner of such money or property until
1. the amount to be repaid to the Scottish Legal Aid Board has been recovered  
**and**
  2. a discharge has been granted.

29145 - 29149

### Gifts

- 29150 A person who is given capital is the beneficial owner of that capital. In England and Wales it can be assumed a gift has been made if the people involved are related in certain recognised ways. This is called presumption of advancement.
- 29151 It can be assumed a child has been given the beneficial ownership of capital if
1. the parent of **or**
  2. a man who has assumed financial responsibility for
- the child gives legal ownership of the capital to that child.
- 29152 It can be assumed wives have been given the beneficial ownership of capital if the husband has given legal ownership of the capital to them. This also applies to women who are given legal ownership of capital by the man they are going to marry.

29153 It has been held that the presumption of advancement does not have the force that it had in the past. Accordingly it is easier for circumstances to show that the transfer of capital from husband to wife is not a gift<sup>1</sup>. The DM should not therefore assume that beneficial ownership has been given away if there is evidence to show that an outright gift was not made.

*1 R(IS) 2/93*

29154 - 29168

## **Interest in the estate of a person who has died**

29169 When people die the capital they have is called the estate.

29170 People have died

1. testate if they have left a will which says who gets the capital **or**
2. intestate if they have not left a will.

29171 An estate is administered or distributed by

1. executors if there is a will **or**
2. if there is not a will
  - 2.1 in England or Wales administrators
  - 2.2 in Scotland executors dative.

They hold the dead person's estate on trust and may also be beneficiaries of the estate.

29172 It may take a long time before the executors, administrators or executors dative can administer or distribute the estate. The administration or distribution is usually complete when

1. all the dead person's
  - 1.1 capital is accounted for **and**
  - 1.2 debts are paid **and**
2. any dispute is settled.

29173 An executor, administrator or executor dative does not have to administer an estate<sup>1</sup> until

1. in England and Wales one year after the date of death **or**
2. in Scotland six months after the date of death **or**
3. a longer period if the estate is complex.

*1 R(SB) 5/85(T)*



29174 The people named in a will or the relatives of a person who has died intestate have no interest in specific property in the estate until the executors, administrators or executors dative

1. are in a position to distribute the estate **or**
2. would be in a position to complete the administration of the estate if they had acted properly.

**Note:** This does not apply to property specifically bequeathed in a will. Such property belongs to the person who inherits the property from the date of death of the person whose estate is being administered and is actual capital. This is subject only to the right of the executors or executors dative to resort to the asset if the remainder of the estate is insufficient to meet the outstanding debts of the deceased<sup>1</sup>.

*1 R(IS) 1/01*

29175 Pending the completion of the administration, a beneficiary without a specific bequest (a residuary beneficiary) has valuable rights in the form of a chose in action (see DMG 29036). This can be valued (DMG 29647) and should be taken into account as actual capital. If the residuary beneficiary gives away his interest by a deed of variation before administration is complete then this may amount to deprivation and the DM should consider DMG 29815 et seq.

29176 At the end of the period in DMG 29173 the people named in a will or the relatives of a person who has died have a right to the capital that is due to them from the estate (see DMG 29035). A person's rights to capital are included when working out that person's capital.

29177 Separate guidance sets out cases where DMs may require expert valuation of rights to capital (see DMG 29641 et seq).

29178 People only have a beneficial interest in the capital assets of the estate when ownership of those assets has been transferred to them.

29179

## **Interest in a trust**

### **When there is a trust**

29180 There is a trust when a person

1. gives capital to another person to hold **and**
2. says for whom that capital has to be used.

- 29181 The person
1. giving the capital in England and Wales is the donor or in Scotland the truster
  2. holding the capital is the trustee and is the legal owner of the capital
  3. who the capital has to be used for is the donee and is the beneficial owner.

29182 People for whom the capital has to be used can include the trustee.

29183 - 29184

## Trustees

29185 A trustee can be any person or body such as

1. a relative
2. solicitor
3. bank
4. in England and Wales the
  - 4.1 donor
  - 4.2 Court of Protection
  - 4.3 Public Trustees
5. in Scotland the truster.

29186 A trustee has to do what the terms of the trust and the law says<sup>1</sup>.

*1 Trustee Act 1925; Trusts (Scotland) Act 1921 as amended by Trusts (Scotland) Act 1961*

29187 - 29189

## Terms of a trust

29190 The terms of a trust say

1. what is being held on trust **and**
2. who the donees are.

29191 The terms do not have to be written down provided the trust property is not land, but if they are they may be in a

1. will **or**
2. deed of trust **or**
3. deed of settlement.

**Note:** In Scotland the DM must check that the creation of the trust satisfies Scottish law<sup>1</sup> to prove the existence of a trust.

*1 Requirements of Writing (Scotland) Act 1995, s 1(2), (3) and (4); R(IS) 10/99*

29192 - 29194

## Interest in a trust

29195 DMG 29205 - 29243 gives guidance on

1. some interests people can have in a trust **and**
2. when they get their interest.

29196 A person's rights to capital under a trust are included when working out what capital a person has.

29197 More than one person can have an interest in a trust. If more than one person has an interest in a trust the person is not a joint beneficial owner. Each person's interest belongs to that person. It is not shared with the other people having an interest in the trust.

29198 The expenses of the trustees will be deducted before any payments are made out of the trust.

29199 - 29204

## Contingent interest

29205 Persons have a contingent interest in a trust if they have to do something or something has to happen before they can get the interest.

29206 For example, if the terms of the trust say a person can have £10,000 if the person lives to the age of 21 the interest is a contingent interest. If the person lives to the age of 21 the person gets £10,000. If the person does not live to the age of 21 the person gets nothing.

29207 Trustees pay the income earned on a contingent interest to the people who have the interest if the

1. terms of the trust do not say who gets the income **and**
2. people with the interest have
  - 2.1 reached the age of maturity, which in England and Wales is 18 years old and in Scotland 16 **and**
  - 2.2 not yet been required to meet the contingency<sup>1</sup>.

Any income which is paid is taken into account as income. The DM should decide if people have notional income if they are due income from a trust and it is not paid.

*1 Trustee Act 1925, s 31(1)(ii); Trusts (Scotland) Act 1961, s 5*

29208 For example, in England and Wales if the terms of the trust say a person can have £10,000 if that person lives to the age of 21 the trustees can pay the person the income earned on the £10,000 from the age of 18 because the person

1. has reached the age of majority **and**

2. has not yet been required to meet the contingency as the person has not lived to the age of 21.

29209 - 29214

### **Life interest or life rent**

29215 In England and Wales people have a life interest or in Scotland a life rent in a trust if they have an interest for the duration of their life. A person may have a life interest or a life rent in the

1. capital **or**
2. real or heritable property (see DMG 29020 4.), such as a house or a trust.

People will receive the income from capital if they have a life interest or life rent in it.

29216 For example, a person has a life interest or a life rent in the

1. income if the terms of a trust say a person can have the interest paid on the funds of the trust for life **or**
2. property if the terms say a person has the right to live in it for life.

29217 People keep the right to live in the property even if they do not live in it. But the trustees may decide to sell the property if the person no longer needs it to live in for example when a person goes permanently into residential care.

29218 If the property is sold the person will have a right to

1. the income from the money the trustees get from selling the property **or**
2. be paid a lump sum from the money equal to the value of the person's remaining life interest or life rent.

29219 Rights under a life interest or life rent end with the death of the person who has the life interest. The assets of the trust fund do not form part of their estate.

29220 - 29224

### **Reversionary interest**

29225 In England and Wales an interest in a trust is reversionary if the possession or enjoyment of it is postponed to the prior interest of another person in the same capital.

29226 For example, George has a reversionary interest in a house if the terms of the trust say

1. Edith has a life interest in that house **and**

2. George gets the house on the death of Edith.

George's interest in the house is reversionary until he takes possession of the house. George takes possession of the house when Edith dies.

- 29227 A reversionary interest is not the same as a contingent interest because people with a reversionary interest already have an interest in a trust. They do not have to do something or wait for something to happen before they get an interest in a trust but a person with a contingent interest does.
- 29228 If people with a reversionary interest die before they take possession of their interest the reversionary interest is included in their estate.

### **Vested interest**

- 29229 Children or young people have a vested interest in capital which
1. they are the beneficial owners of **and**
  2. is being held for them until they reach the age of majority, which in England and Wales is 18 years old and in Scotland 16.
- 29230 A vested interest is not the same as a contingent or reversionary interest because the capital already belongs to the child or young person. A child or young person may have a contingent or reversionary interest in a trust which has been set up with another person's capital.
- 29231 If children and young people with a vested interest die before they get their interest the interest is included in their estate.
- 29232 In England and Wales trustees may decide to pay the income earned on a vested interest to the parent or guardian of the child or young person who has the interest<sup>1</sup>. If the trustees make a payment of income it is income which is treated as capital. The trustees cannot be made to pay over the income.

*1 Trustee Act 1925, s 31(1)(i)*

29233 - 29235

### **Discretionary trusts**

- 29236 A discretionary trust is one where the trustees have the discretion to make payments to certain people. Such people have an interest and in England and Wales are called discretionary objects.
- 29237 Many trusts let the trustees invest the capital of a trust at their absolute discretion. This means the trustees have a choice in how the capital is invested. This does not mean the trust is a discretionary trust. There has to be something else in the terms of the trust to show it is a discretionary trust.
- 29238 The trustees of a discretionary trust may or may not make payments to the people with an interest. The trustees cannot be made to make payments to those people.

- 29239 If the trustees make a payment it is a voluntary payment. If the payment is
1. made regularly, it is taken in account as income other than earnings (see DMG 28513) **or**
  2. not made regularly, it is capital.

If the trust has been set up by a liable relative the DM has to decide if payments from the trust are LRPs.

**Note:** Some voluntary payments of capital may be disregarded - see DMG 29729.

29240

### **Charitable trusts**

- 29241 A charitable trust is a trust which is set up for
1. the relief of poverty **or**
  2. the advancement of education or religion **or**
  3. any other purpose which benefits the community.
- 29242 Trustees of a charitable trust have discretion to make payments to people who satisfy the terms of the trust. They may or may not make payments. They cannot be made to make payments.
- 29243 If the trustees make a payment it is a charitable payment. If the payment is
1. made regularly, it is taken into account as income **or**
  2. not made regularly, it is capital.

### **Jointly-owned capital**

#### **Real or heritable property**

- 29244 In England and Wales, when two or more people jointly own real property (see DMG 29020 4.) they do so as
1. joint-tenants **or**
  2. tenants in common.
- 29245 When people jointly own real property as joint-tenants each person owns the whole asset jointly and they have no separate and distinct shares. If a joint-tenant dies the asset passes to the surviving joint-tenant or joint-tenants. However when people jointly own real property as tenants in common each person's interest in the asset is their own share. The shares of tenants in common may be equal or unequal. If a

tenant in common dies their share of the asset does not pass automatically to the surviving tenant or tenants in common.

- 29246 The terms joint-tenants and tenants in common are legal terms appropriate to joint ownership of real property in England and Wales. DMs should not confuse them with tenancies that arise when people rent land or premises.
- 29247 In Scotland, when two or more people own heritable property (see DMG 29020 4.) they do so as
1. joint owners **or**
  2. common owners.
- 29248 When two or more people own heritable property as joint owners they do not have individual rights in the property which would allow them to deal with the property as individuals. Joint owners cannot dispose of their share of the property. If a person stops being a joint owner their share of the property goes to the other joint owners.
- 29249 Where two or more people own property as common owners, each has a separate share in the property which they can dispose of independently of the other common owners.
- 29250 If a claimant beneficially owns a capital asset with one or more persons the DM will have to decide whether those people own the asset as
1. joint-tenants or, in Scotland, joint owners **or**
  2. tenants in common or, in Scotland, common owners.

### **How to decide ownership of jointly-owned capital**

- 29251 In England and Wales, when two or more people buy real property they should be asked
1. whether they wish to be
    - 1.1 joint-tenants **or**
    - 1.2 tenants in common **and**
  2. if 1.2 applies the share of the property each person wishes to own.

#### **Example**

Mick and his civil partner George decide to buy a house in Bedford. When asked, George wants to leave his share of the property to his children Neil and Sophie. Mick and George therefore agree to be tenants in common. Mick provided 75% of the purchase price and George the other 25%. They therefore agree that Mick should own 75% of the property and George should own 25%.

29252 In Scotland, when two or more people buy heritable property they will decide whether to be joint owners or common owners. The common owners should decide the share of the property each person wishes to own.

**Example**

Frazer and his wife Morag decide to buy a house in Dundee. They decide to be common owners. Frazer and Morag both wish to have an equal share of the property. Therefore they decide that they should both own 50% of the property.

**Other ways to become tenants in common or common owners**

29253 As well as making a decision when real or heritable property is bought, there are other ways in which people can become tenants in common or common owners. These include

- being left real or heritable property under the terms of a will
- contributing to the purchase price of real or heritable property, for example under the right to buy scheme (see DMG 29309 et seq)
- changing from joint-tenants or joint owners to tenants in common or common owners.

**Example 1**

Sue and Melinda are sisters who inherited their mother's house. The terms of their mother's will specified that Sue should own 60% of the house and Melinda 40% of the house as tenants in common.

**Example 2**

Cecilia bought her council house under the right to buy scheme. She obtained a statutory discount of £8,000. Her son Ross provided the other £32,000 necessary for her to buy the house. The statutory discount obtained by Cecilia is her contribution to the purchase price of the property. There is no evidence that Cecilia and Ross wanted to own different shares in the house. Therefore Cecilia owns 20% of the property and Ross 80%.

**Example 3**

When Alan and Lynnette were married they bought a house as joint-tenants. However, when they divorced Alan gave notice to Lynnette that he wished to put an end to his 50% interest in the property. Alan did this so that in the event of his death the house would not automatically pass under the rules of survivorship to Lynnette. The effect of this notice is that the joint-tenancy is changed into a tenancy in common which gives both Alan and Lynnette separate and distinct shares in the property.



29254 When one person uses their money to buy real or heritable property in the name of another person there is a presumption of a resulting trust (see DMG 29308). If that other person also contributes to the purchase of the property the two people will be tenants in common unless there is evidence of a contrary intention. However, DMs should note DMG 29308 1. and the rule of presumption of advancement (see DMG 29150 et seq).

29255 A person who is a tenant in common or common owner does not necessarily own an exact percentage of a property. For example, one person could own 36.71% of a house and another person the other 63.29%.

29256 After it has been agreed between tenants in common or common owners what share each person owns it is possible for the agreed shares to be varied. This may happen where a tenant in common or common owner

1. pays
  - 1.1 the mortgage **or**
  - 1.2 a greater share of the mortgage on a property **or**
2. spends money on improvements to a property.

#### **Example**

Shahid and his brother Saleem bought a house together as tenants in common. They agreed that each of them should own 50% of the property and pay half the mortgage. Shahid takes unpaid leave from his job to travel abroad so he is not able to make repayments on his share of the mortgage. Saleem therefore agrees to pay all of the mortgage on the property. Saleem's share of the property increases in proportion to the extra payments he makes. Shahid's share of the property decreases by the same amount.

29257 If a claimant reduces his share of a jointly-owned property the DM should consider the rules on deprivation of capital see DMG 29805 et seq.

#### **Evidence of joint-ownership**

29258 Evidence of the type of joint-ownership of real or heritable property and if appropriate the share each person owns can be obtained from

1. the deeds to the property **or**
2. information on the file of the solicitor acting for the people buying the property **or**
3. a definitive agreement between the people buying the property.

29259 When a claimant states that he owns a share of real or heritable property as a tenant in common or common owner the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the property. If the claimant is unable to provide evidence of unequal shares in the property, the DM should decide on the balance of probability (see DMG 01340 et seq) that the shares are equal.

### **Other assets**

29260 Two or more people may jointly own other assets such as bank accounts (see DMG 29135) and shares. When a claimant states that he has a separate right of ownership of an asset the DM should obtain evidence of this. The DM should also obtain evidence of the claimant's share of the asset.

#### **Example**

Kathy and her father have a joint building society account. The account is in both their names so they are joint legal owners of the account. There is £15,000 in the account on the date of Kathy's claim for IS. Kathy provides evidence that both she and her father paid money into the account but no evidence of the amount paid by each of them. The DM decides that Kathy is treated as having a half share in the account (£7,500).

29261 A person does not have a joint beneficial interest in a trust if more than one person has an interest in that trust. Each person's interest belongs to that person. It is not shared with other people having an interest in the trust.

### **Jointly-owned capital outside the United Kingdom**

29262 To decide the type of joint ownership of a capital asset outside the UK the DM should consider

1. the law of the country where the asset is held **and**
2. the basis on which the asset is held.

The DM should obtain evidence of joint ownership. If the DM is satisfied that the law of the country where the asset is held is not different, the guidance at DMG 29244 et seq should be followed. DMs should send cases of doubt to DMA Leeds for advice.

### **Valuation of jointly-owned capital**

29263 See DMG 29635 - 29653 for guidance on how to value a claimant's share of jointly-owned capital.

29264 - 29265

## **Couples who are separated, divorced or whose civil partnership has been dissolved**

- 29266 People who are married or civil partners and have separated are the beneficial owners of capital if they were the owners before the breakdown of the marriage or civil partnership. That capital is included when working out what capital a person has.
- 29267 After they have separated, divorced or dissolved their civil partnership a couple may
1. ask a Court to **or**
  2. on the advice of their solicitors **or**
  3. themselves
- decide which one of them gets the capital. The proceedings in Court are called ancillary proceedings.
- 29268 A Court will take into account
1. the ages of the couple
  2. their state of health
  3. whether they are able to work and if so what earnings they can get
  4. how long they have been married or in a civil partnership or, in Scotland, how long each party has been economically dependent on the other
  5. each person's needs
  6. what one of them is able to give to the other
- before issuing an order which will say what capital each of them gets.
- 29269 A Court may decide that the house in which they used to live
1. cannot be sold until a future date if children of the marriage or civil partnership are still living in it **or**
  2. can be given to the one who the children are living with and the other one gets
    - 2.1 money immediately or in the future **or**
    - 2.2 no money.
- 29270 People will be the beneficial owners of any capital the Court awards them outright<sup>1</sup>.
- 1 R(IS) 4/96*
- 29271 If the couple do not go to Court and share up the capital
1. in the way their solicitors say **or**
  2. between themselves

a person will be the beneficial owner of the capital the person is left with. If **2.** applies and there is clear evidence that capital has been given away so the person can get benefit or more benefit the DM should decide whether the person has notional capital.

29272 A person may seek an order for financial provision and property adjustment which occurs<sup>1</sup>

1. on the granting of a decree of
  - 1.1 a divorce or dissolution of civil partnership **or**
  - 1.2 nullity of marriage or civil partnership **or**
  - 1.3 separation **or**
2. at any time after any of the events in 1..

*1 Matrimonial Causes Act 1973*

29273 A person does not have a beneficial interest in any capital they are seeking unless and until a property adjustment order is made<sup>1</sup>.

*1 R(IS) 1/03*

29274 - 29275

## **Mentally sick or disabled persons**

### **Beneficial interest**

29276 People who are

1. mentally sick or disabled **and**
2. unable to deal with their capital

do not lose their beneficial interest in capital<sup>1</sup>. Another person may be appointed to deal with it.

*1 R(IS) 9/04*

### **Court of Protection**

29277 In England and Wales the Court of Protection

1. protects **and**
2. deals with

the capital of a mentally sick or disabled person<sup>1</sup>.

*1 Mental Health Act 1983*

29278 The Court may appoint another person to deal with the capital. A person appointed by the Court is called a Deputy. The Court will issue an order which says what

1. money the Deputy can deal with **and**

2. the Deputy has to do with the money.

The Deputies have to go back to Court if they want more money or to do something else with the money.

29279 The Court may take some time to reach a decision. The Court can issue interim certificates if mentally sick or disabled people need money immediately to pay for their day to day needs such as nursing home fees. The certificate will say what and how much money can be used by a person to pay for those needs.

29280 Capital held by the Court or Deputies is held on trust.

## **The Courts in Scotland**

29281 In Scotland the Sheriff Court has powers similar to the Court of Protection in England and Wales. A person appointed<sup>1</sup> by the Sheriff Court to deal with the capital of a mentally sick or disabled person is called a guardian.

*1 Adults with Incapacity (Scotland) Act 2000*

## **Power of Attorney**

29282 People who give another person power of attorney authorize that person to deal with

1. all of their money if they give the person unlimited power **or**
2. some of their money if they give them restricted power.

29283 People who give another person power of attorney remain the beneficial owners of their capital.

29284 In England and Wales people with power of attorney are not authorized if the person who gave them power

1. becomes mentally sick or disabled **and**
2. the power has not been registered with the Court of Protection.

## **Appointees**

29285 A person appointed by the DM to act, for SS purposes only, on behalf of another person is called an appointee.

29286 These appointees cannot deal with the capital of a mentally sick or disabled person unless they have been appointed

1. in England and Wales the Deputy by the Court of Protection **or**
2. in Scotland the guardians by the Sheriff Court.

## Person not appointed or authorized

29287 A person who has not been

1. appointed **or**
2. authorized

who is holding capital of a mentally sick or disabled person is holding it on trust.

## Misuse of capital

29288 In England and Wales mentally sick or disabled people have rights to capital if the person who is

1. appointed or authorized to deal with their capital **or**
2. not appointed or authorized

misuses the capital. For example, if they use the capital for themselves or give it away. In such circumstances the beneficial owner has a chose in action to recover the capital that has been misused (see DMG 29036). The value of the chose in action is actual, not notional capital<sup>1</sup>.

*1 R(IS) 17/98*

29289 However, a person who has power of attorney for another person can make gifts that are not unreasonable<sup>1</sup>. Examples of gifts that are not unreasonable to make are normal birthday, wedding or seasonal (for example Christmas) gifts. Where gifts that have been made by a person with power of attorney are unreasonable DMG 29288 applies but where they are not unreasonable DMG 29805 et seq should be considered<sup>2</sup>.

### Example

Helen has power of attorney for her mother, Barbara, who is in receipt of IS. Helen's daughter, Kaitlan, celebrates her eighteenth birthday. Barbara had told Helen that she would buy Kaitlan a car for her eighteenth birthday. Helen therefore gives Kaitlan £2,000 of Barbara's money so she can buy a car. The DM decides that the gift is not unreasonable. The DM also considers whether the rules on notional capital apply.

*1 Enduring Powers of Attorney Act 1985, s 3; 2 R(IS) 17/98*

29290 - 29299

## Real or heritable property

### Ownership of real or heritable property

29300 The legal owner of real or heritable property (see DMG 29020 4.) is also the beneficial owner unless there is

1. something in writing such as a conveyance that
    - 1.1 dates from the time the person gets the property **and**
    - 1.2 says who has a beneficial interest in the property **or**
  2. a mistake is made **and**
    - 2.1 nothing is put in writing **or**
    - 2.2 what is put in writing is wrong **or**
  3. a fraud which shows the person got the property dishonestly **or**
  4. a resulting trust (see DMG 29308).
- 29301 An attendance note or other information in the file of the solicitor acting for the legal owner when the property is bought may show a mistake has been made. For example, there is
1. an attendance note which says the legal owners told the solicitor who they wanted the beneficial owners to be **or**
  2. evidence which says another person put up all or some of the money to buy the property and had not made a gift of it to the legal owners.
- 29302 Accept what the legal owners say if
1. they say they have no beneficial interest in the property or only a share in it **and**
  2. there is evidence from the solicitor which agrees with what the legal owners say.
- 29303 Accept people named as the actual owners are the legal and beneficial owners of the property if there is evidence which says
1. those claiming to own the property got it dishonestly **and**
  2. who the actual owners of the property are.
- 29304 If there is no evidence of a mistake or a fraud the DM has to decide who has a beneficial interest in the property.
- 29305 It is very difficult to get a beneficial interest in real property after it has been bought. However people can be given a beneficial interest, for example by a deed gift.
- 29306 People do not necessarily get a beneficial interest in property just because they
1. pay the legal owner's mortgage on the property **or**
  2. spend money on the property, for example paying for central heating to be installed.

Such people may have a charge on the property. The amount of the charge is equal to the amount of money they have spent. Such a charge is sometimes called a lien.

- 29307 The partner of the legal owner of a property can get a beneficial interest in that property if they pay the mortgage because the legal owner can no longer afford to do so.

### **Resulting trust**

- 29308 Legal owners are holding property on a resulting trust if another person puts up the money to buy the property and
1. there is no evidence to say the other person has given the money or the property to the legal owners **and**
  2. the rule of presumption of advancement (see DMG 29150 - 29153) does not apply<sup>1</sup>.

*1 R(SB) 49/83; R(SB) 1/85*

### **Right to buy scheme**

- 29309 The right to buy scheme lets some LA tenants buy the property they are tenants of at a discounted price. The amount of the discount is based on the number of years the person has been a tenant.
- 29310 People who buy property under the right to buy scheme have a beneficial interest in the property because of the discount they get. They are
1. the legal and beneficial owners of the property if they use their money or raise money to pay all of the balance of the purchase price **or**
  2. the joint legal and joint beneficial owners if
    - 2.1 another person uses their money or raises money to pay all of the balance **and**
    - 2.2 the person at 2.1 is one of the legal owners **or**
  3. holding the property on trust for themselves and another person if that other person
    - 3.1 uses their money or raises money to pay all of the balance **and**
    - 3.2 is not a legal owner.
- 29311 Under the scheme the people buying the property have to pay back some of the discount if the property is sold within three years of it being bought.

29312 - 29329

## **When a person is not the beneficial owner of capital**

### **Bankruptcy**

- 29330 When a person is made bankrupt
1. in England and Wales a Receiver in Bankruptcy **or**
  2. in Scotland an interim trustee



is appointed. Then a Trustee in Bankruptcy is appointed. The Receiver in Bankruptcy or the interim trustee may be the same person as the Trustee in Bankruptcy.

- 29331 People who have been made bankrupt have no power to deal with their property except with the approval of the court once the bankruptcy order is made. This being so, they should normally be treated as having no beneficial interest in their capital from the date of the order. It may be some time after this that a trustee in bankruptcy is appointed<sup>1</sup>.

*1 KS v SSWP (JSA) [2009] UKUT 122 (AAC); [2010] AACR 3*

- 29332 If the bankrupt person is the joint beneficial owner of capital the other beneficial owners still have a beneficial interest in the capital unless they are also bankrupt.

### **Court orders**

- 29333 In England and Wales a Court can make an order such as a restraint order which stops people withdrawing or selling their capital.
- 29334 The order will list the capital involved.
- 29335 During the period of the order the people named in the order remain the beneficial owners of the capital. The restraint order restricts a person from dealing with the property listed in the order so that they are unable to do anything with it that is not permitted under the order. The practical effect of this is that while a person will be the beneficial owner of the property, the value of such property is shown as nil for benefit purposes.
- 29336 The period starts with the date of the order and ends on the date
1. given in the order **or**
  2. the Court withdraws the order.
- 29337 The order may let people withdraw a fixed sum of money each week from their capital to pay for living expenses. If money is withdrawn it should be treated as the person's capital. If the claimant spends the amount he is allowed to withdraw then this will have no effect on his benefit.
- 29338 In Scotland an arrestment has a similar effect.

### **Liability to repay capital**

- 29339 People have a beneficial interest in capital that has been given to them even if it has to be repaid. However, people no longer have a beneficial interest in capital they have been given if they are under a certain and immediate liability to repay it<sup>1</sup>. People are no longer the beneficial owners of the capital from the date the certain and immediate liability arises.

*1 R(IS) 5/99*

29340 - 29350



# Can capital be disregarded

## The law

29351 The law allows for all capital to be included unless it can be disregarded<sup>1</sup>.

*1 JSA Regs, reg 108 & Sch 8; IS (Gen) Regs, reg 46 & Sch 10*

## Onus of proof

29352 The claimant has to show that the capital can be disregarded. If there is no evidence to show capital can be disregarded, it is included when working out the amount of capital a claimant has.

## What the DM decides

29353 The DM decides if capital can be disregarded

1. at the date of claim or revision **and**
2. before it is valued.

The DM does not have to know the value of capital to decide if it can be disregarded.

29354 The DM decides all of the disregards which apply to each item of capital. This is because income from capital is taken into account as income and not capital if certain disregards apply. DMs should note that this also applies if the capital is worth nothing.

29355 For certain disregards the DM has to decide if it is reasonable to disregard capital for a longer period. Capital is disregarded

1. indefinitely **or**
2. up to two years **or**
3. 52 weeks **or**
4. 26 weeks or more if it is reasonable **or**
5. 26 weeks
6. for a prescribed period.

29356 - 29359



# Capital disregarded indefinitely

## Adoption allowance

29360 LAs and other adoption agencies may pay adoption allowance to help people who might otherwise not be able to afford to adopt children. It may be paid where a

1. long-term foster parent wishes to adopt but cannot afford to lose their boarding out allowance **or**
2. child's prospects of adoption are lowered because of disability.

Each LA has its own scheme. There is usually a rule that ends the allowance when the adopted child or young person stops living with the adopter.

29361 Payments of adoption allowances made under specific legislation<sup>1</sup> are disregarded indefinitely<sup>2</sup>.

*1 Adoption and Children Act 2002, s 2(6)(b) 3 or 4; 2 JSA Regs, Sch 8, para 61; IS (Gen) Regs, Sch 10, para 68*

## Special guardianship payments

29362 Special guardianship payments are made in England and Wales to provide more security for a child than long-term fostering but without the complete severance from a child's birth family that would happen with an adoption order. Any special guardianship payment made to the claimant under specific legislation<sup>1</sup> is fully disregarded indefinitely<sup>2</sup>. In order to find out if the payments are made under the specified legislation, the DM can make enquiries of the paying body.

*1 Children Act 1989, s 14F; 2 JSA Regs, Sch 8, para 61A; IS (Gen) Regs, Sch 10, para 68A*

## Annuities

29363 An annuity is a fixed sum payable at specified intervals in return for a premium paid either by instalments or in a single payment. An annuity is normally taken out to provide an income in retirement. Both the right to receive income from an annuity and the surrender value of the annuity are disregarded indefinitely<sup>1</sup>. Payments made under an annuity are capital which is treated as income.

*1 JSA Regs, Sch 8, para 16; IS (Gen) Regs, Sch 10, para 11*

## Business assets

### The law

29364 The assets of a business are disregarded indefinitely if

1. the person owns all or some of the assets and works in the business as a S/E earner<sup>1</sup> **or**
2. the assets have been acquired by a person receiving assistance under the S/E Employment Option of the ND (see DMG 14132) for the purpose of establishing or carrying out the commercial activity for which the assistance is being received<sup>2</sup>.

*1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);*

*2 JSA Regs, Sch 8, para 11(3); IS (Gen) Regs, Sch 10, para 6(3)*

29365 The assets of a business are disregarded for a reasonable period to allow them to be sold if the person

1. owns all or some of the business assets and has stopped working in the business as a S/E earner<sup>1</sup> **or**
2. was receiving assistance under the S/E Employment Option of the ND (see DMG 14132) and has ceased carrying on the commercial activity in respect of which such assistance was being received<sup>2</sup>.

### **Example**

John owns an amusement arcade in Bournemouth. He stopped working in the arcade as a S/E earner on 31 October and claimed JSA on 3 November. The assets of the business are a lease on the building, gaming machines and tools used to repair the machines. John states the value of these assets is £45,000. John also states that he is not going to sell the assets because he needs them when he opens the arcade again in the following April. The DM decides that the assets of the business cannot be disregarded.

**Note:** A different disregard applies if persons are not able to work in the business because they are ill or physically or mentally disabled and are going to start or return to work in the business (see DMG 29520 - 29523).

*1 JSA Regs, Sch 8, para 11(1); IS (Gen) Regs, Sch 10, para 6(1);*

*2 JSA Regs, Sch 8, para 11(4); IS (Gen) Regs Sch 10, para 6(4)*

### **Meaning of business assets**

29366 Business assets include standard items such as machinery, vehicles, fixtures and cash held in the bank (including money held following the sale of assets). They may also include items such as customer lists and contacts, current and future contracts and goodwill.

29367 In the event of their sale, assets may result in an income or capital receipt. A sale of an asset such as "work in hand" may result in an income receipt and so would be appropriate for inclusion in the profit and loss account. Where doubt exists as to whether a particular asset would represent a capital or income receipt upon its sale,

the principles of commercial accounting must be applied i.e. the approach that would be taken by an accountant or the HMRC to such a receipt or holding.

### Meaning of “reasonable period”

29368 When determining what represents a reasonable period for the sale or disposal of an asset, the DM should have regard to

1. the date that the duty to dispose of the asset arose
2. the nature of the asset and the period within which that particular type of asset would normally be expected to be sold or disposed
3. any legal obligations and restrictions existing that could affect both the sale **and** disposal of any assets (e.g. in a partnership situation, the provisions of the partnership deed and the Partnership Act 1890. These provisions could place restrictions and subsequent delays on both the sale of assets, and the disposal of any cash assets resulting from the sale).

### Meaning of self-employed earner

29369 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**
2. whose employment is not the same as that of an employed earner<sup>1</sup>.

*1 SS CB Act 92, s 2(1)(b);*

29370 People can be S/E earners even if they have another job as an employed earner. An employed earner is a person who is gainfully employed in GB

1. under a contract of service **or**
2. in an office, including an elective office, with general earnings<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); SS CB Act 92, s 2(1)(a)*

### When people are working in the business

29371 People are working in the business if they do some work for the business in a practical sense. There is no set definition of the type and amount of work that has to be done for the person to be classed as a S/E earner and the DM must decide each case on its merits<sup>1</sup>.

*1 R(IS) 14/98*

29372 A partner in a business managed and worked exclusively by others is not working in the business. Even if that person receives a share of the profits of the business he is not a S/E earner<sup>1</sup>.

*1 R(IS) 14/98*

## Capital administered by the court

29373 Certain capital is disregarded indefinitely if it is administered on behalf of a person by

1. in England and Wales, under certain rules the High Court, County Court or the Court<sup>1</sup> of Protection (see DMG 29277) and any such sum can only be disposed of by order or direction
  - 1.1 of any such court **or**
  - 1.2 where the person concerned is under age 18, prior to that person reaching age 18 **or**
2. in Scotland, the Court of Session or Sheriff Court under certain rules<sup>2</sup>.

*1 Civil Procedure Rules 1998, rule 21.11(1); 2 Children (Scotland) Act 1995, s 13*

29374 The disregard in DMG 29375 applies to capital derived from

1. an award of damages for personal injury to the person whose capital is being administered by the court<sup>1</sup> **or**
2. compensation for the death of one or both parents where the person concerned is under the age of 18<sup>2</sup>.

**Note:** The disregard in DMG 29376 2. ceases to apply when the person concerned reaches the age of 18.

*1 JSA Regs, Sch 8 para 42(a) & 43(a); IS (Gen) Regs, Sch 10, para 44(1)(a) & 45(a);  
2 JSA Regs, Sch 8 para 42(b) & 43(b); IS (Gen) Regs, Sch 10, para 44(b) & 45(b)*

## Capital paid by instalments

29375 The value of the right to receive any outstanding instalments is disregarded indefinitely if capital is due to be paid by instalments<sup>1</sup>.

**Note:** Depending on the circumstances payments of instalments can be taken into account as capital or income (see DMG 29380 - 29381).

*1 JSA Regs, Sch 8, para 21; IS (Gen) Regs, Sch 10, para 16*

## Capital which is not sterling

29376 Bank charges and commission which are payable when changing capital which is not sterling into sterling are disregarded indefinitely<sup>1</sup>. For example, if people get capital of 3,000 Canadian dollars they will have to pay commission when the dollars are changed into British money, so the commission is disregarded.

*1 JSA Regs, Sch 8, para 26; IS (Gen) Regs, Sch 10, para 21*



## **Capital which is treated as income**

**[See DMG Memo JSA/IS 64]**

### **The law**

29377 Capital treated as income<sup>1</sup> is disregarded as capital indefinitely<sup>2</sup>.

*1 JSA Regs, reg 104, 106(1) & 136; IS (Gen) Regs, reg 41, 44(1) & 66A; 2 JSA Regs, Sch 8, para 25;  
IS (Gen) Regs, Sch 10, para 20*

### **Capital paid by instalments - claimant and partner**

29378 For claimants and partners capital which is paid by instalments is treated as income if

1. for JSA on the
  - 1.1 first day JSA(IB) is payable **or**
  - 1.2 date of supersession **or**
2. for IS on the date of
  - 2.1 the first day in respect of which IS is payable or date of decision, whichever is earlier **or**
  - 2.2 in the case of a supersession, the date of that supersession

the total of the amount of the instalments outstanding and the amount of a person's other capital is more than £16,000<sup>1</sup>.

*1 JSA Regs, reg 104(1); IS (Gen) Regs, reg 41(1);*

### **Capital paid by instalments - child or young person**

**[See DMG Memo JSA/IS 64]**

29379 For a child or young person, capital that is paid by instalments, is treated as income when

1. for JSA on the
  - 1.1 first day JSA(IB) is payable **or**
  - 1.2 date of supersession **or**
2. for IS on the date of
  - 2.1 the first day in respect of which IS is payable or date of decision, whichever is earlier **or**
  - 2.2 in the case of a supersession, the date of that supersession

the total of the amount of the instalments outstanding and the amount of the child's or young person's other capital is more than £3,000<sup>1</sup>.

*1 JSA Regs, reg 106(1); IS (Gen) Regs, reg 44(1)*

## **Payment made under an annuity contract**

29380 Payments made under an annuity contract<sup>1</sup> are treated as income.

*1 JSA Regs, reg 104(2); IS (Gen) Regs, reg 41(2)*

## **Payment made by local authority**

29381 Payments of capital made by the LA under child care law<sup>1</sup> are treated as income if

1. for JSA it is paid to a member of the claimant's family who is involved in a TD<sup>2</sup>  
**or**
2. for IS it is paid
  - 2.1 to a claimant or partner who is involved in a TD **or**
  - 2.2 during the first 15 days to a claimant or partner who has returned to work after being involved in a TD<sup>3</sup>.

*1 Children Act 1989, s 17, 23B, 23C & 24A; Children Leaving Care Act 2000; Social Work (Scotland) Act 1968, s 12; Children (Scotland) Act 1995, s 29 & 30; 2 JSA Regs, reg 104(3); 3 IS (Gen) Regs, reg 41(3)*

## **Earnings**

29382 Earnings which are not income are treated as income<sup>1</sup>.

*1 JSA Regs, reg 104(4); IS (Gen) Regs, reg 41(5)*

## **Career development loan**

29383 A Career Development loan paid under certain legislation<sup>1</sup> is treated as income<sup>2</sup>.

*1 E&T Act 73, s 2; 2 JSA Regs, reg 104(5); IS (Gen) Regs, reg 41(6)*

## **Personal injury payments**

29384 Any periodical payments (but not any payments treated as capital) received by the claimant as a result of an agreement or court order are treated as income if the payments are a consequence of any personal injury sustained by the claimant<sup>1</sup>.

*1 JSA Regs, reg 104(6); IS (Gen) Regs, reg 41(7)*

## **Tax refunds**

29385 For IS a refund of tax under tax law<sup>1</sup> which is deducted from earnings under the PAYE scheme is treated as income if paid during the first 15 days to a claimant or partner who has returned to work after being involved in a TD<sup>2</sup>.

*1 Income and Corporation Taxes Act 1988, s 203; Income Tax (Earnings and Pensions) Act 2003, s 684;  
2 IS (Gen) Regs, reg 41(4)*

## **Student loans**

29386 A student loan paid under education law<sup>1</sup> is treated as income<sup>2</sup>.

*1 Education (Student Loans) Act 1990, s 1; Teaching and Higher Education Act 1998, s 22; Education (Student Loans) (Northern Ireland) Order 1990, art 3; 2 JSA Regs, reg 136; IS (Gen) Regs, reg 66A*

## Dwelling occupied as the home

### The law

- 29387 The dwelling occupied as the home is disregarded indefinitely. Only one dwelling can be disregarded<sup>1</sup>. However in some circumstances, more than one property can be the dwelling occupied as the home<sup>2</sup> (see DMG 29397 et seq).

*1 JSA Regs, Sch 8, para 1; IS (Gen) Regs, Sch 10, para 1; 2 Secretary of State v. Miah; R(JSA) 9/03*

### Meaning of dwelling

- 29388 For IS, dwelling means a place where a person lives. The place can be

1. all or part of a building **and**
2. separate and self-contained or not separate and not self-contained<sup>1</sup>.

*1 SS CB Act 92, s 137(1)*

### Meaning of dwelling occupied as the home

- 29389 Dwelling occupied as the home means

1. the place lived in as the home and any
  - 1.1 garage
  - 1.2 garden
  - 1.3 outbuildings **and**
2. any part not lived in as the home which
  - 2.1 cannot be sold separately **or**
  - 2.2 would not be reasonable to sell separately

for example in Scotland any croft land on which the place lived in stands<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

### Onus of proof

- 29390 The person owning the property has to show what part of the property is occupied as the home.

- 29391 The DM has to show

1. what part of the property can be sold separately **and**
2. if it is reasonable for it to be sold separately<sup>1</sup>.

### Example

Jack makes a claim for JSA(IB). He lives with his civil partner, Kevin, in a house with a garden and paddock. The paddock can be sold separately but Jack says it is not reasonable for it to be sold separately. He provides medical evidence that Kevin

suffers from depression and walking in the paddock is a therapeutic benefit for him. The DM therefore decides that the paddock is part of the dwelling occupied as the home because it is not reasonable for it to be sold separately.

*1 R(SB) 27/84*

- 29392 The DM may need expert advice, for example from a surveyor, to show the part can be sold separately. Separate guidance sets out those cases where DMs may require such expert advice (see DMG 29646).
- 29393 The DM does not need to get expert advice if
1. there is evidence which shows the part cannot be sold separately even if it has a separate value, for example if the deeds of the property say it has to be sold as one unit the part would be the dwelling occupied as the home **or**
  2. the DM decides it is not reasonable for the part to be sold separately.

### **Dwelling which has not been occupied as the home**

- 29394 A dwelling which
1. has been bought **and**
  2. has not been lived in as the home by the claimant or any member of the claimant's family cannot be disregarded<sup>1</sup> as the dwelling occupied as the home.

*1 R(SB) 27/84*

### **Dwelling not occupied as the home for a time**

- 29395 A dwelling which is usually occupied as the home is disregarded if
1. it is not occupied for a time **and**
  2. the intention is to return to live in the dwelling as the home.

For example, if a person goes into residential care on a temporary basis and intends to return to the house which the person usually occupies as the home, the house is disregarded.

### **Small-holdings**

- 29396 A small-holding is disregarded as the dwelling occupied as the home if it is like croft land in Scotland<sup>1</sup>. A small-holding is like croft land if
1. it is no bigger than 30.375 hectares **and**
  2. there is a perpetual tenancy agreement which says the agreement ends
    - 2.1 if the small-holder gives one year's notice and the holders are paid for any improvements they have made to the house or outbuildings, otherwise

- 2.2** only if the tenant has broken the terms of the tenancy **and**
- 3.** the tenant cannot sub-let all or part of the small-holding to anyone else.

*1 R(SB) 13/84*

### **More than one property owned**

29397 If a claimant owns more than one property, the DM will have to decide whether each property can be disregarded as the dwelling occupied as the home. Where a claimant has only one home that is spread over two physical buildings the DM should decide that each is the dwelling occupied as the home if each is normally occupied by the claimant.

29398 Factors the DM should consider when deciding whether the claimant has only one home are

- 1.** the proximity of the properties, the closer properties are to each other the more likely they are to be one home
- 2.** who lives in each property, for example whether
  - 2.1** each property is occupied by members of the claimant's family (see DMG Chapter 22) **or**
  - 2.2** one of the properties is occupied solely by non-dependants
- 3.** the reason for the purchase of more than one property, for example whether it was
  - 3.1** to avoid statutory overcrowding<sup>1</sup> **or**
  - 3.2** an investment opportunity **or**
  - 3.3** to have a
    - 3.3.a** weekend retreat **or**
    - 3.3.b** country cottage.

If **2.2**, **3.2** or **3.3** apply, the DM should decide that the claimant **does not** have only one home and therefore only one property would be disregarded as the dwelling occupied as the home.

*1 Housing Act 1985, s 325 & 326; Secretary of State v. Miah; R(JSA) 9/03*

29399 When considering whether the claimant normally occupies more than one property as his home, the DM should decide that the claimant's home is the place where he

- 1.** lives
- 2.** eats
- 3.** sleeps
- 4.** bathes
- 5.** relaxes
- 6.** enjoys with his family.

**Example 1**

Keith and Elma have eleven children, eight of whom are at school and three of whom are in work. They all lived in a three bedroomed house. When Keith and Elma are advised of the rules of statutory overcrowding they purchase another three bedroomed house in the same street. There are two other properties between the houses Keith and Elma own. Elma and the five youngest children continue to live in the original house and the other children go to live in the newly purchased house. Keith lives, sleeps, eats, bathes, relaxes and enjoys with his family the original house four days a week and the newly purchased house three days a week. Keith is made redundant and claims JSA. The DM decides that Keith normally occupies both houses. The DM also decides that both houses are disregarded as the dwelling occupied as the home.

**Example 2**

Carys lives in Cambridge and is in receipt of IS. She inherits a cottage in Wales. Carys has relatives who live in Wales. She therefore decides to keep the cottage for her use when she visits her relatives. The DM decides that the cottage in Wales is not disregarded as the dwelling occupied as the home.

**Example 3**

Bruce owns a house in London. He gets a job in Manchester and buys a flat there to live in during the week. He spends the weekends at his house in London. Bruce loses his job and returns to London to claim JSA. He states he will live in London but will visit his flat once a month in order to maintain it and possibly look for work in Manchester. The DM decides that Bruce does not normally occupy the flat in Manchester. The DM also decides that the flat in Manchester is not disregarded as the dwelling occupied as the home.

**Example 4**

Adam is single. He lives at 25 Station Road which is a semi-detached house. The house adjoining his, 27 Station Road, comes on the market after being uninhabited for two years. It is in a derelict condition. Adam buys it cheaply. He sometimes sleeps and eats at 27 Station Road while he undertakes the necessary repairs in order to let or sell it but he spends most of his time at 25 Station Road. Adam then suffers an injury at work and claims IS. The DM decides that as Adam purchased 27 Station Road as an investment it is not disregarded as the dwelling occupied as the home.

### Example 5

Wasim and his wife Ruksana live in a four bedroomed house. They have twelve children. To avoid statutory overcrowding, Wasim and Ruksana buy another house in the street where they live. Their four eldest children, all of whom are aged over 21 live in this other house and Wasim, Ruksana and their other children do not spend any time there. Wasim is made redundant and makes a claim for JSA. The DM decides that only the house where Wasim and Ruksana live can be disregarded as the dwelling occupied as the home.

## Future interests in capital

29400 A future interest in capital is disregarded indefinitely. This does not apply to an interest in real or heritable property (see DMG 29020 4.) on which a person has given another person a continuing

1. lease or sub-lease **or**
2. tenancy or sub-tenancy<sup>1</sup>.

*1 JSA Regs, Sch 8, para 10; IS (Gen) Regs Sch 10, para 5*

29401 For example

1. a person's contingent or reversionary interest in a trust is disregarded up to the time the person gets the interest because a contingent or reversionary interest is a future interest
2. capital which is due now and which has not been paid is not disregarded because a person has current rights to that capital and so it is not a future interest
3. a house which a person owns and has leased to another person is not disregarded because the disregard does not apply to real or heritable property that is let.

29402 For IS, DMG 29400 only applies from 2.10.95. Before 2.10.95 the law said any reversionary interest is disregarded. On 20.5.93 a tribunal of Commissioners decided that a reversionary interest included real property on which a tenancy had been given<sup>1</sup>. The decision was upheld by the Court of Appeal. Before the tribunal of Commissioners gave its decision such property was dealt with in the same way as in DMG 29400 and was not disregarded.

*1 R(IS) 26/95*

## Health in pregnancy grant

29403 The health in pregnancy grant will be payable to every woman from the 25th week of pregnancy after they have had the appropriate health advice from a health professional. It is a non-taxable payment and should be disregarded when calculating the capital of the claimant<sup>1</sup>.

*1 JSA Regs, Sch 8, para 37A; IS (Gen) Regs, Sch 10, para 39A*

## Income payable in a country outside of the United Kingdom

29404 The value of the right to receive earnings from employment or income is disregarded indefinitely if they are

1. payable in a country outside of the UK (see DMG 070880) **and**
2. disregarded when working out the amount of earnings or income because they cannot be transferred to the UK from that country due to a ban<sup>1</sup>.

*1 JSA Regs, Sch 8, para 19; IS (Gen) Regs, Sch 10, para 14*

## Life insurance policies

### The law

29405 The surrender value of a life insurance policy still in force is disregarded indefinitely<sup>1</sup>.

*1 JSA Regs, Sch 8, para 20; IS (Gen) Regs, Sch 10, para 15*

### Meaning of life insurance policy

29406 Life insurance policy means a written document which says a payment of money is made

1. on death (but not one which says payment is made only if the death is accidental) **or**
2. if death happens
  - 2.1 in certain circumstances **or**
  - 2.2 during the period a person has agreed to pay premiums<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

### Investments which include life insurance

29407 Investments which include some life insurance are disregarded indefinitely if the agreement states how payment on death is worked out. It does not matter whether the amount paid on death is

1. more than **or**
2. equal to **or**
3. less than

the amount the person would get if the investment is surrendered the day before the date of death<sup>1</sup>.

*1 R(IS) 7/98*



## Life interest or life rent

29408 The value of the right to receive income

1. under a life interest **or**
2. from a life rent

is disregarded indefinitely<sup>1</sup>.

**Note:** Payments of income under a life interest or from a life rent are taken into account as income.

*1 JSA Regs, Sch 8, para 18; IS (Gen) Regs, Sch 10, para 13*

## Money deposited with a housing association

29409 Money deposited with a housing association is disregarded indefinitely if

1. the money has to be deposited as a condition of living in the home **and**
2. the housing association comes under housing association law<sup>1</sup>.

**Note:** A different disregard applies if the money deposited is to be used to buy another home (see DMG 29532 - 29534).

*1 Housing Associations Act 1985, s 1(1); JSA Regs, Sch 8, para 14(a); IS (Gen) Regs, Sch 10, para 9(a)*

## Occupational pensions

### The law

29410 The value of the right to receive an occupational pension is disregarded indefinitely<sup>1</sup>.

*1 JSA Regs, Sch 8, para 28; IS (Gen) Regs, Sch 10, para 23*

## Meaning of occupational pension

29411 Occupational pension means a

1. pension **or**
2. periodical payment

under an occupational pension scheme. But it does not include discretionary payments made from a fund which is for the relief of hardship in certain circumstances<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Payment for attending court

29412 A payment made to a juror or witness for attending court is disregarded indefinitely but not if the payment is compensation for

1. loss of earnings **or**
2. benefit payable under social security law<sup>1</sup>.

*1 JSA Regs, Sch 8, para 34; IS (Gen) Regs, Sch 10, para 34; JS Act 95; SS CB Act 92*

## Payment for loss of housing benefit

29413 A payment made by the DM to compensate for the loss of all or some of the HB a person can get is disregarded indefinitely<sup>1</sup>.

*1 JSA Regs, Sch 8, para 33; IS (Gen) Regs, Sch 10, para 31*

## Payment for personal injury

### The law

29414 The value of

1. a payment made because of a personal injury if held on trust **and**
2. the right to receive payment from the trust

are disregarded indefinitely where the payment is made as a result of an injury to either the claimant or partner<sup>1</sup>. For example, the value of a payment made by the Criminal Injuries Compensation Authority is disregarded if held on trust and so is the value of the right to receive payment from the trust. A trust exists if there is a separation of legal ownership and beneficial ownership of the payment. The disregard can apply even if there is no written trust document.

**Note 1:** Payments of income from the trust are income from capital and are taken into account as income and not capital. (See DMG Chapter 28 for how to treat such payments).

**Note 2:** This disregard does not apply if the injury was to a claimant's deceased partner<sup>2</sup>.

**Note 3:** A payment made in relation to the costs of care associated with an unwanted child in a "wrongful birth" case is a payment made because of a personal injury, for instance in the case of a failed sterilisation or vasectomy.

*1 JSA Regs, Sch 8, para 17; IS (Gen) Regs, Sch 10, para 12; 2 R(IS) 3/03*

29415

29416 Payments can only come within this disregard where the claimant or partner for whom the payment was made themselves suffered a physical and/or psychological injury. If there is any doubt as to what the payment was awarded for, then the DM should request sight of the papers awarding the amount. These should specify on what basis the award was made.

#### **Example 1**

Peter's wife was killed in a road traffic accident and he was awarded £36,000 which covered loss of earnings. As the award was not due to Peter suffering any injury to himself, then this amount would be taken in account when calculating his capital.

#### **Example 2**

Fiona received £100,000 as the result of an assault on her partner which resulted in his death. The award was for the psychological injury to Fiona arising from her witnessing the attack. As the amount was awarded for the injury to Fiona, the amount is disregarded in calculating her capital.

### **The Children's Memorial Trust**

29417 The Children's Memorial Trust was set up as a result of Court action taken by parents of deceased children whose organs were retained by Alder Hey hospital without agreement. Payments are made from the Children's Memorial Trust to the parents in respect of each child. Where people can show that they have received a payment from the Children's Memorial Trust under the "Heads of Agreement" in relation to the Court action, the payment will be made in consequence of a personal injury to **them**. The value of a payment made by the Children's Memorial Trust is disregarded indefinitely if held on trust. The value of the right to receive payment from the Children's Memorial Trust is also disregarded indefinitely.

### **Payment in kind**

29418 A payment in kind is disregarded indefinitely if made by

1. a charity
2. the Macfarlane (Special Payments) Trust (see DMG 29459)
3. the Macfarlane (Special Payments) (No. 2) Trust (see DMG 29460)
4. the Fund (see DMG 29461)
5. the Independent Living (1993) Fund (see DMG 29447) **and**  
for JSA only the
6. Macfarlane Trust (see DMG 29458)

7. Eileen Trust (see DMG 29462)
8. Independent Living Fund (see DMG 29445)
9. Independent Living (Extension) Fund (see DMG 29446)<sup>1</sup>.

*1 JSA Regs, Sch 8, para 31; IS (Gen) Regs, Sch 10, para 29*

## Payment made by local authority under child care law

29419 A payment of capital made by the LA under child care law<sup>1</sup> is disregarded indefinitely where DMG 29420 below applies<sup>2</sup>. This does not apply if

1. for JSA it is paid to a member of the claimant's family who is involved in a TD  
**or**
2. for IS it is paid
  - 2.1 to a claimant or partner who is involved in a TD **or**
  - 2.2 during the first 15 days to a claimant or partner who has returned to work after being involved in a TD<sup>3</sup>.

**Note:** The capital is treated as income if **1.** or **2.** applies (see DMG 29383).

*1 Children Act 1989, s 17, 23B, 23C & 24A; Children (Leaving Care) Act 2000; Social Work (Scotland) Act 1968, s 12; Children (Scotland) Act 1995, s 29 & 30; 2 JSA Regs, Sch 8, para 22; 3 IS (Gen) Regs, Sch 10, para 17*

29420 Where

1. a former child (aged 18+) who was in the claimant's care still lives with the claimant **and**
2. the LA make a lump sum payment under certain child care law to the former child in care **and**
3. the former child in care passes the payment on to the claimant

that sum received by the claimant is disregarded indefinitely<sup>1</sup> when calculating the claimant's capital.

*1 JSA Regs Sch 8, para 22; IS (Gen) Regs, Sch 10, para 17*

## Payment made to disabled persons to get or keep employment

### The law

29421 A payment made by the Secretary of State or some other person under the law governing the employment of disabled people<sup>1</sup> to help disabled people get or keep employment despite their disability is disregarded indefinitely<sup>2</sup>.

**Note:** See DMG 29503 for guidance on payments made to disabled people under employment and training law.

*1 Disabled Persons (Employment) Act 1944; 2 JSA Regs, Sch 8, para 40; IS (Gen) Regs, Sch 10, para 42*

## **Schemes which help disabled people get or keep employment**

29422 There are three special schemes which help disabled people get or keep employment. These are the

- business on own account scheme that helps a disabled person set up in business if they cannot get any other type of work
- personal reader service scheme that helps a blind person employ a reader
- fares to work scheme that helps certain disabled people who cannot use public transport to get to work.

## **Payment made to holders of the Victoria Cross or George Cross**

29423 Any payment made to people because they hold the

1. Victoria Cross **or**
2. George Cross

is disregarded indefinitely<sup>1</sup>. For IS, this applies only from 8.4.96.

*1 JSA Regs, Sch 8, para 44; IS (Gen) Regs, Sch 10, para 46*

## **Payment made to homeworkers under the Blind Homeworkers Scheme**

29424 A payment made by the LA under disabled persons' law<sup>1</sup> to homeworkers who are helped under the Blind Homeworker's Scheme is disregarded indefinitely<sup>2</sup>.

*1 Disabled Persons (Employment) Act 1958, s 3; 2 JSA Regs, Sch 8, para 41;  
IS (Gen) Regs, Sch 10, para 43*

## **Payments from a local authority in lieu of community care services or health care**

29425 Payments received from a LA which are in lieu of

1. community care services<sup>1</sup> **or**
2. health care<sup>2</sup>

are disregarded indefinitely<sup>3</sup>.

*1 Community Care (Direct Payments) Act 1996; Health and Social Care Act 2001, s 57; Social Work (Scotland) Act 1968, s 12B; 2 National Health Service Act 2006, s 12A - 12D;  
3 JSA Regs, Sch 8, para 60; IS (Gen) Regs, Sch 10, para 67*

## Payments under the Supporting People programme

29426 Payments under the Supporting People programme are disregarded indefinitely<sup>1</sup>.  
The disregard applies

1. in respect of any payment made by
  - 1.1 a LA **or**
  - 1.2 the National Assembly for Wales
2. to or on behalf of the claimant or partner relating to a service which is
  - 2.1 provided to develop **or**
  - 2.2 to sustain the capacity of

the claimant or partner to live independently in his accommodation.

*1 JSA Regs, Sch 8, para 59; IS (Gen) Regs, Sch 10, para 66*

## Personal pensions

### The law

29427 The value of

1. the right to receive a personal pension **and**
2. any funds held under a personal pension scheme or retirement annuity contract

is disregarded indefinitely<sup>1</sup>.

*1 JSA Regs, Sch 8, para 28 & Sch 8, para 29; IS (Gen) Regs Sch 10, para 23 & Sch 10, para 23A*

## Meaning of personal pension scheme

29428 "Personal pension scheme" means<sup>1</sup>

1. a personal pension scheme as stated in pensions law<sup>2</sup>
2. an annuity contract or trust scheme approved under tax law<sup>3</sup> **and**
3. a personal pension scheme approved under tax law<sup>4</sup>.

*1 JSA Act 95, s 35(1); IS (Gen) Regs, reg 2(1); 2 Pension Schemes Act 1993, s 1;  
3 Income and Corporation Taxes Act 1988, Part XIV, Chapter III; Finance Act 2004, Sch 36;  
4 Income and Corporation Taxes Act 1988, Part XIV, Chapter IV; Finance Act 2004, Sch 36*

29429 - 29430

## Personal possessions

- 29431 Personal possessions such as clothing, jewellery, and cars are disregarded indefinitely<sup>1</sup>.

*1 JSA Regs, Sch 8, para 15; IS (Gen) Regs, Sch 10, para 10*

- 29432 For JSA personal possessions are not disregarded if people buy them to reduce the amount of capital so they can get JSA or IS or more JSA or IS<sup>1</sup>. For IS personal possessions are not disregarded if people buy them to reduce the amount of capital so they can get IS or more IS<sup>2</sup> (see DMG 29807).

*1 JSA Regs, Sch 8, para 15; 2 IS (Gen) Regs, Sch 10, para 10*

## Premises lived in by a partner or relative

### The law

- 29433 Premises such as a house are disregarded indefinitely if they are occupied as the home in whole or in part by a
1. partner or relative of a single claimant or any member of the family **and** the partner or relative
    - 1.1 has reached the qualifying age for SPC **or**
    - 1.2 is incapacitated**or**
  2. former partner of the claimant **and** the claimant and former partner are not estranged, divorced or former civil partners whose partnership has been dissolved<sup>1</sup>.

*1 Sch 10 para 4; JSA Regs, Sch 8, para 4*

**Note:** A claimant and former partner who are separated are not necessarily estranged.

### Example

Tony is in receipt of IS. He goes into residential care and his wife Julie remains in their marital home. Julie visits Tony on a regular basis. The DM decides that Tony and Julie are not estranged.

## Meaning of relative

29434 Relative means a

1. parent including an adoptive parent<sup>1</sup>
2. parent-in-law
3. son
4. son-in-law
5. daughter
6. daughter-in-law
7. step-parent
8. step-son
9. step-daughter
10. brother
11. sister
12. grand-parent
13. grand-child
14. uncle
15. aunt
16. nephew
17. niece
18. the wife, husband or civil partner of any of the persons at **1.** to **11.** who lives in the same household as that person
19. a person who lives together with any of the persons listed at **1.** to **11.** as their wife, husband or civil partner<sup>2</sup>.

*1 R(SB) 22/87; 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

29435 A person included under DMG 29434 **18.** and **19.** ceases to be a relative if the wife, husband or civil partner they live with together dies.

## Meaning of single claimant

29436 Single claimant means claimants who do not have a

1. partner **or**
2. child or young person living in their household for whom they are responsible<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*



## Is the person incapacitated

29437 The law does not say what incapacitated means. The DM has to decide if partners or relatives are incapacitated and may decide they are where they

1. are receiving
  - 1.1 AA
  - 1.2 CAA
  - 1.3 DLA
  - 1.4 disability element of WTC
  - 1.5 IB
  - 1.6 SDA
  - 1.7 SSP
  - 1.8 a benefit similar to the ones at 1. to 7. **or**
2. are not receiving any of the benefits at 1. but they qualify for any one of them because of the illness or disability they have.

## What the DM decides if only part of the premises are occupied as the home

29438 The DM has to decide if

1. any part of the premises can be sold separately **and**
2. it is reasonable for it to be sold separately

if the partner or relative only lives in part of the premises as the home. For example, when a relative lives in the farmhouse as the home and the premises are the farmhouse and farm land.

## Rent

29439 The value of the right to receive rent is disregarded indefinitely but not when a person has a reversionary interest in the property for which the rent is due<sup>1</sup>.

**Note:** For IS the law applies from 2.10.95. Before 2.10.95 the law said the right to receive any rent is disregarded. This includes the right to receive rent from property when a person has a reversionary interest in the property.

*1 JSA Regs, Sch 8, para 30; IS (Gen) Regs, Sch 10, para 24*

29440 For example, under the terms of Ernest's will

1. Charlotte is left for the duration of her life the right to the rents from a cottage which is leased **and**
2. Percy is left the
  - 2.1 cottage subject to the lease **and**
  - 2.2 right to the rents from the cottage subject to Charlotte's right to those rents for the duration of her life.

Charlotte has a life interest in the cottage because of her right to the rents for the duration of her life. Percy has a reversionary interest in the cottage because it is leased. The value of Charlotte's right to the rents is disregarded until she dies because her interest in the cottage is not reversionary. When Charlotte dies the value of Percy's right to the rents is not disregarded because his interest in the cottage is reversionary.

## Social fund payments

29441 A SF payment made under social security law<sup>1</sup> is disregarded indefinitely<sup>2</sup>. This does not apply to a payment made from the European Social Fund.

*1 SS CB Act 92, Part VIII; 2 JSA Regs, Sch 8, para 23; IS (Gen) Regs, Sch 10, para 18*

## Tax refunds

29442 A refund of tax which is deducted under tax law<sup>1</sup> from the interest on a loan is disregarded indefinitely if the loan is used to

1. buy the dwelling which is lived in as the home **or**
2. pay for repairs and improvements to such a home<sup>2</sup>.

*1 Income and Corporation Taxes Act 1988, s 369; 2 JSA Regs, Sch 8, para 24; IS (Gen) Regs, Sch 10, para 19*

## The Independent Living Fund (2006)

### The law

29443 One-off payments made from the Independent Living Fund (2006) are disregarded indefinitely<sup>1</sup>.

**Note:** If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

*1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1)*

## Meaning of the Independent Living Fund (2006)

- 29444 The Independent Living Fund (2006) was set up on 10.4.06 between the Secretary of State on the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin on the other part<sup>1</sup>.

*1 JSA Regs, reg 1(2); IS (Gen) Regs, reg 2(1)*

29445 - 29447

## Payment included with other capital

- 29448 If the payment is included with other capital the disregard does not apply to the other capital.
- 29449 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

## Payments in kind

- 29450 If payment is made in kind see DMG 29419.

29451 - 29452

## The Macfarlane Trusts, the Fund, the Eileen Trust, MFET Limited, the Skipton Fund or the London Bombings Relief Charitable Fund

### The law

- 29453 One-off payments made from the Trusts (see DMG 29457) are disregarded indefinitely<sup>1</sup>.

**Note:** If the payments are made regularly they are income and the DM should decide if they can be disregarded before working out the amount of income.

*1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1)*

- 29454 A payment from money which a person gets from the Trusts is disregarded indefinitely if the payment is made
1. by or on behalf of the person who got the money from the Trusts and that person
    - 1.1 has haemophilia or is a qualifying person **or**
    - 1.2 had haemophilia or was a qualifying person if the person has died **and**
  2. to or for the benefit of

- 2.1** a partner or former partner of the person who got the money from the Trusts and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **or**
- 2.2** a child or young person who
  - 2.2.a** is a member of the family of the person who got the money from the Trusts **or**
  - 2.2.b** was a member of that person's family and is a member of the claimant's family<sup>1</sup>.

The disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

*1 JSA Regs, Sch 8, para 27(2); IS (Gen) Regs, Sch 10, para 22(2)*

29455 A payment from money which a partner or former partner gets from the Trusts is disregarded indefinitely if the payment is made

- 1.** by or on behalf of a partner or former partner of a person who
  - 1.1** has haemophilia or is a qualifying person **or**
  - 1.2** had haemophilia or was a qualifying person if the person has died and they are not estranged, divorced or part of a dissolved civil partnership or were not if the person has died **and**
- 2.** to or for the benefit of
  - 2.1** a person who has haemophilia or is a qualifying person **or**
  - 2.2** a child or young person who
    - 2.2.a** is a member of the person's at **2.1** family **or**
    - 2.2.b** was a member of that person's family and is a member of the claimant's family<sup>1</sup>.

This disregard does not apply if the person to whom or for whose benefit the payment is made is a child or young person and that person is no longer a child or young person.

*1 JSA Regs, Sch 8, para 27(3); IS (Gen) Regs, Sch 10, para 22(3)*

29456 Any capital the person gets from the income or capital of the payment

- 1.** from the Trusts **or**
- 2.** at DMG 29450

is disregarded indefinitely<sup>1</sup>.

#### **Example**

Virginia is in receipt of IS. On 5 March she gets a one-off payment of £15,000 from the Fund. She opens a building society account with the money. She has no other

capital. The DM decides that the money in the building society account is disregarded. On 1 April Virginia withdraws all the money and the interest it has made and buys some shares. The DM decides that the value of the shares is disregarded indefinitely.

*1 JSA Regs, Sch 8, para 27(6); IS (Gen) Regs, Sch 10, para 22(6)*

## **The Trusts**

29457 The Trusts means the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust
4. the Fund
5. Eileen Trust
6. MFET Limited
7. Skipton Fund **and**
8. London Bombings Relief Charitable Fund<sup>1</sup>.

*1 JSA Regs, Sch 8, para 27(1); IS (Gen) Regs, Sch 10, para 22(1) & para 22(7)*

## **The Macfarlane Trust**

29458 The Macfarlane Trust is the name of a charitable trust set up with part of the money being given by the Secretary of State to the Haemophilia Society for the relief of poverty or distress among those suffering from haemophilia<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1) & Sch 10, para 22(1)*

## **The Macfarlane (Special Payments) Trust**

29459 The Macfarlane (Special Payments) Trust is the name of a discretionary trust set up on 29.1.90 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## **The Macfarlane (Special Payments) (No. 2) Trust**

29460 The Macfarlane (Special Payments) (No. 2) Trust is the name of a discretionary trust set up on 3.5.91 with part of the money being given by the Secretary of State for the benefit of certain people who are affected by haemophilia and other people<sup>1</sup>. The other people are people who

1. have become infected with HIV **or**
2. were at risk of infection

because of contact with haemophiliacs.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## The Fund

- 29461 The Fund is money made available from time to time by the Secretary of State for the benefit of people who satisfy the terms of the scheme which was set up Scotland on 10.4.92 and elsewhere on 24.4.92<sup>1</sup>. It benefits non-haemophiliacs who were infected with HIV whilst undergoing treatment by NHS blood or tissue transfer or blood products. It makes one-off payments.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## The Eileen Trust

- 29462 The Eileen Trust is the name of a charitable trust set up on 29.3.93 with money given by the Secretary of State for the benefit of persons who satisfy the terms of the trust<sup>1</sup>. It further benefits non-haemophiliacs who benefit under the Fund. It makes payment for occasional or continuing need.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## MFET Limited

- 29463 The Department of Health funds an organisation called MFET Limited<sup>1</sup> to provide financial help to people who have been infected with HIV as a result of treatment with NHS blood or blood products.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## The Skipton Fund

- 29464 The Skipton Fund is the Skipton Fund Limited which was incorporated on 25.3.04 to administer an ex-gratia payment scheme for the benefit of people suffering from Hepatitis C and other people eligible for payment in accordance with the scheme's provisions<sup>1</sup>. The ex-gratia payments will be a

1. lump sum payment of £20,000 to people infected with Hepatitis C and
2. further payment of £25,000 to people who develop advanced liver disease.

**Note 1:** No payments will be made in respect of people who died before 29.8.03 or recover from Hepatitis C naturally.

**Note 2:** Where a person who is entitled to an ex-gratia payment dies on or after 29.8.03 but before a payment can be made, the payment will be made to that person's dependants.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## The London Bombings Relief Charitable Fund

- 29465 The London Bombings Relief Charitable Fund was established on 11.7.05 following the terrorist attacks carried out in London on 7.7.05. People who were bereaved, or

who suffered injury, may receive lump sum payments from the London Bombings Relief Charitable Fund ranging between £3,000 and £25,000.

Further lump sum payments of a similar amount may also be made to the same beneficiaries.

### **Qualifying person**

- 29466 Qualifying person means a person for whom a payment has been made from the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

### **Evidence**

- 29467 The Secretary of State has agreed the payments from the

1. Macfarlane Trust
2. Macfarlane (Special Payments) Trust
3. Macfarlane (Special Payments) (No. 2) Trust
4. Fund
5. Eileen Trust
6. Skipton Fund
7. London Bombings Relief Charitable Fund

do not have to be declared if they are kept separate from any other capital the person has. The person getting the payment is told of this.

- 29468 Benefit Delivery Specialist Operations Team will get information about payments from those trusts or fund if it is needed. The trustees and DH should not be contacted.

### **Payment included with other capital**

- 29469 If the payment is included with other capital the disregard does not apply to the other capital.
- 29470 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

## **Other payments which are disregarded**

29471 Other payments are disregarded. If the payment is made

1. in kind, see DMG 29419 **or**
2. to or for the benefit of some other person, see DMG 29485 - 29489.

## **Payments to persons imprisoned or interned by the Japanese during the Second World War**

29472 An ex-gratia payment of £10,000 made by the Secretary of State on or after 1.2.01 in consequence of the imprisonment or internment of

1. the claimant **or**
2. the claimant's partner **or**
3. the claimant's deceased spouse or civil partner **or**
4. the claimant's partner's deceased spouse or civil partner

by the Japanese during the Second World War is disregarded indefinitely<sup>1</sup>.

### **Example**

Jim is receiving JSA. His civil partner Albert, has capital of £2,300. Albert receives a payment of £10,000 because he was interned by the Japanese during the Second World War. The DM decides that the payment of £10,000 received by Albert is disregarded indefinitely.

*1 JSA Regs, Sch 8, para 56; IS (Gen) Regs, Sch 10, para 61*

## **Payments made to sufferers of variant Creutzfeldt-Jakob disease and their partners**

### **Meaning of “the relevant trust”**

29473 The relevant trust means the trust established out of funds provided by the Secretary of State in respect of persons who have suffered or are suffering from variant Creutzfeldt - Jakob disease and their families. Trustees have discretion to pay compensation from the fund to those eligible<sup>1</sup>.

*1 JSA Regs, Sch 8, para 57(6); IS (Gen) Regs, Sch 10, para 64(6)*

### **Meaning of “diagnosed person”**

29474 Diagnosed person means a person who has been diagnosed as suffering from or who after his death, has been diagnosed as having suffered from variant Creutzfeldt-Jakob disease<sup>1</sup>.

*1 JSA Regs, Sch 8, para 57(6); IS (Gen) Regs, Sch 10, para 64(6)*



29475 Any payments made from the relevant trust to

1. the diagnosed person **or**
2. the partner of the diagnosed person **or**
3. the person who was the diagnosed person's partner at the date of the diagnosed person's death

is disregarded from the date on which the payment is made until the date on which that person dies<sup>1</sup>.

**Example**

Thomas died of variant Creutzfeldt-Jakob disease on 25.11.06. His widow, Helga, makes a claim for IS. On 5.5.07 she receives a payment of £25,000 from the relevant trust. The DM decides that this payment is disregarded for Helga's lifetime.

**Note:** The reference to the surviving partner of the diagnosed person includes someone who would have been the partner but for the diagnosed person being in a care home on the date they died<sup>2</sup>.

*1 JSA Regs, Sch 8, para 57; IS (Gen) Regs, Sch 10, para 64; 2 JSA Regs, Sch 8, para 57(5); IS (Gen) Regs, Sch 10, para 64(5)*

29476 Where a payment is made

1. by a person to whom a payment from the relevant trust has been made or from the estate of such a person **or**
2. to
  - 2.1 the partner of the diagnosed person **or**
  - 2.2 the person who was the diagnosed person's partner on the date the diagnosed person died

the payment is disregarded indefinitely<sup>1</sup>.

**Example**

Melanie is diagnosed as suffering from variant Creutzfeldt-Jakob disease and on 29.8.05 she receives a payment of £30,000 from the relevant trust. Melanie dies on 6.7.06 and her husband, David, inherits the payment which has been invested. On 2.2.07 David claims JSA(IB). He declares that he has capital of £31,210 which is the original payment of £30,000 plus £1,210 interest from investing that money. The DM decides that the £30,000 trust payment is disregarded for David's lifetime but the interest obtained for investing that payment cannot be disregarded.

**Note:** The disregard only applies to the extent that the total payments made do not exceed the total of any payments made from the relevant trust.

*1 JSA Regs, Sch 8, para 57(3); IS (Gen) Regs, Sch 10, para 64(3)*

29477 Trust payments may be made to other relatives of a person diagnosed with variant Creutzfeldt-Jakob disease. See

1. DMG 29490 if the payment is made to a parent of the diagnosed person
2. DMG 29492 if the payment is made to a dependant child or young person who is a member of the diagnosed person's family.

## Second World War compensation payments

29478 The amount of a payment, other than a war pension, to compensate for the fact that during the Second World War the person

1. was a slave labourer or a forced labourer **or**
2. suffered property loss or suffered personal injury **or**
3. was a parent of a child who died

is disregarded indefinitely.

**Note:** Lump sum gratuities paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1983 do not fall within the definition of a war pension. Such payments would be disregarded indefinitely

29479 The disregard in DMG 29478 applies where the payment is made in respect of the

1. claimant **or**
2. claimant's partner **or**
3. claimant's deceased spouse or civil partner **or**
4. claimant's partner's deceased spouse or civil partner<sup>1</sup>.

*1 JSA Regs, Sch 8, para 58; IS (Gen) Regs; Sch 10 para 65*

## Age related payments

29480 One-off age-related payments are payments of capital. DMs should not take them into account for IS purposes<sup>1</sup>.

*1 Age-Related Payments Act 2004, s 6(b)*

## Education maintenance allowance payments

29481 Any education maintenance allowance payable under prescribed legislation as

1. education maintenance allowance<sup>1</sup> **or**
2. the same as education maintenance allowance<sup>2</sup>

is disregarded indefinitely<sup>2</sup>.

*1 Education Act 1996, s 518; Education (Scotland) Act 1980 s 49 and 73(f);  
Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & 21; 2 Education Act 2002, s 14 and 181;  
JSA Regs, Sch 8, para 52(1); IS (Gen) Regs, Sch 10, para 63(1)*

29482 In addition to the disregard at DMG 29481 any payment made under prescribed legislation<sup>1</sup> in respect of a course of study attended by a

1. child or young person **or**
2. person who is receiving an education maintenance allowance as in DMG 29481 above

is also disregarded indefinitely<sup>2</sup>.

*1 Education Act 1996, s 518; Education (Scotland) Act 1980 s 49; Further and Higher Education (Scotland) Act 1992, s 12(2)(c) & 21; 2 JSA Regs, Sch 8, para 52(2); IS (Gen) Regs, Sch 10, para 63(2)*

29483 - 29484



## Capital disregarded for up to two years

### The Macfarlane Trusts, the Fund, the Eileen Trust, the Skipton Fund or the London Bombings Relief Charitable Fund

#### The law

29485 A payment from money which a person gets from the Trusts is disregarded from the date of payment until two years after the date of death of the person who gets the money from the Trust if the payment is made

1. by or on behalf of the person who got the money from the Trusts and that person
  - 1.1 has haemophilia or is a qualifying person **and**
  - 1.2 has no
    - 1.2.a partner or former partner from whom the person is not estranged, divorced or part of a dissolved civil partnership **or**
    - 1.2.b child or young person who is or has been a member of the person's family **and**
2. to the person's
  - 2.1 parent or step-parent **or**
  - 2.2 guardian if the person does not have a parent or step-parent and at the date of the payment the person is a
    - 2.2.a child **or**
    - 2.2.b young person **or** in FTE<sup>1</sup>.

*1 JSA Regs, Sch 8, para 27(4); IS (Gen) Regs, Sch 10, para 22(4)*

29486 A payment from money which a person who has died got from the Trusts is disregarded for two years from the date of death if the payment is made

1. out of the estate of a person who
  - 1.1 had haemophilia or was a qualifying person **and**
  - 1.2 at the date of death the person had no
    - 1.2.a partner or former partner from whom the person was not estranged, divorced or part of a dissolved civil partnership **or**
    - 1.2.b child or young person who was or had been a member of the person's family **and**
2. to the person's

- 2.1** parent or step-parent **or**
- 2.2** guardian if the person did not have a parent or step-parent and at the date of death the person was a
  - 2.2.a** child **or**
  - 2.2.b** young person **or**
  - 2.2.c** student who had not finished FTE<sup>1</sup>.

*1 JSA Regs, Sch 8, para 27(5); IS (Gen) Regs, Sch 10, para 22(5)*

**Note:** Step-parent includes relationships arising through civil partnerships<sup>1</sup>.

*1 Civil Partnership Act 2004, s 246*

- 29487 Any capital which a person gets from the income or capital of the payment at DMG 29485 - 29486 is also disregarded<sup>1</sup>.

#### **Example**

Edward has haemophilia. His former partner was pregnant when they separated and on 21.10.06 she has a son. On 28.10.06 Edward gives his father, Leonard, £5,000 from the money he gets from the Macfarlane (Special Payments)(No. 2) Trust. Leonard puts the money in a building society account which had £2,000 in it. On 15.01.07 Leonard makes a claim for IS. The DM decides that the £5,000 given to Leonard by Edward is disregarded whilst Edward is alive and for two years after Edward dies. On 30.4.07 Leonard uses the money he received from Edward to buy National Savings Bonds. The DM decides that the value of the Bonds is disregarded whilst Edward is alive and for two years after Edward dies.

*1 JSA Regs, Sch 8, para 27(6); IS (Gen) Regs, Sch 10, para 22(6)*

#### **Payment included with other capital**

- 29488 If the payment is included with other capital the disregard does not apply to the other capital.
- 29489 If money is withdrawn from an account which includes the payment and other capital accept the money withdrawn is from the other capital and not the payment. If there is evidence to show the money withdrawn is from the payment and not the other capital accept that evidence.

### **Payments to certain relatives of a person suffering from variant Creutzfeldt-Jakob disease**

#### **Payments to a parent**

- 29490 Any payments made from the relevant trust (see DMG 29473) to
- 1.** a parent of a person diagnosed as suffering from variant Creutzfeldt-Jakob disease **or**

2. to a person acting in the place of a parent of the person diagnosed as suffering from variant Creutzfeldt-Jakob disease **or**
3. to a person who was acting in the place of a parent at the time of the diagnosed person's death

is disregarded from the date on which the payment is made until two years after that date<sup>1</sup>.

**Note:** The reference to a person acting in place of a parent at the time of the diagnosed person's death includes someone who would have been such a person but for the diagnosed person being in residential accommodation, a residential care home or nursing home on that date<sup>2</sup>.

*1 JSA Regs, Sch 8, para 57; IS (Gen) Regs, Sch 10, para 64;  
2 JSA Regs, Sch 8, para 57(5); IS (Gen) Regs, Sch 10 para 64(5)*

29491 Where a payment is made

1. by a person to whom a payment from the relevant trust (see DMG 29473) has been made or from the estate of such a person
  2. to a
    - 2.1 parent of the diagnosed person (see DMG 29474) **or**
    - 2.2 person acting in the place of a parent of the diagnosed person **or**
    - 2.3 a person who would be acting in the place of a parent of the diagnosed person were it not for the diagnosed person being in
      - 2.3.a a care home **or**
      - 2.3.b an Abbeyfield home **or**
      - 2.3.c an independent hospital
- on the date the diagnosed person died

the payment is disregard for a period of two years from the date on which it is made<sup>1</sup>.

**Note:** The disregard only applies to the extent that the total payments made do not exceed the total of any payments from the relevant trust.

*1 JSA Regs, Sch 8, para 57(3); IS (Gen) Regs, Sch 10 para 64(3)*

## Definitions

29492 The definition of<sup>1</sup>

1. a care home is
  - 1.1 in England and Wales, a place providing accommodation, together with nursing or personal care, for people who

- 1.1.a are or have been ill **or**
- 1.1.b have or have had a mental disorder **or**
- 1.1.c are disabled or infirm **or**
- 1.2.d are or have been dependent on alcohol or drugs<sup>2</sup>.
- 1.2 in Scotland, accommodation in which a care home service is provided<sup>3</sup>.  
That is, a service that provides accommodation, together with nursing, personal care, or personal support for people by reason of their vulnerability or need.
- 2. an Abbeyfield home is an establishment run by the Abbeyfield Society or any other body affiliated to that Society
- 3. an independent hospital is
  - 3.1 in England, a hospital that is not a health service hospital as defined in legislation<sup>4</sup>
  - 3.2 in Wales, a hospital that is not a health service hospital as defined in legislation<sup>5</sup>
  - 3.3 in Scotland, an independent healthcare service as defined in legislation<sup>6</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 Care Standards Act 2000, s 3;  
3 Regulation of Care (Scotland) Act 2001, s 2; 4 National Health Service Act 2006, s 275;  
5 Care Standards Act 2000, s 2; 6 Regulation of Care (Scotland) Act 2001, s 2(5)(a) & (b)*

## **Payments to a dependant child or qualifying young person**

29493 Any payments made from the relevant trust (see DMG 29473) to a dependant child, young person or qualifying young person who is a member of the family of a person diagnosed as suffering from variant Creutzfeldt-Jakob disease or was a member of the family<sup>1</sup> at the date of the diagnosed person's death is disregarded until the date

- 1. two years after the date of the payment **or**
- 2. the child or qualifying young person ceases FTE **or**
- 3. the child or qualifying young person reaches the age of 20

whichever is the latest<sup>2</sup>. The disregard will therefore be for a minimum of two years.

*1 JSA Regs, Sch 8, para 57(1)(d) & 57(5)(b); IS (Gen) Regs, Sch 10, para 64(1)(d) & 64(5)(b);  
2 JSA Regs, Sch 8, para 57(2)(c); IS (Gen) Regs, Sch 10, para 64(2)(c)*

29494 Where a payment is made

- 1. by a person to whom a payment from the relevant trust (see DMG 29473) has been made or from the estate of such a person
- 2. to a member of the family of the diagnosed person (see DMG 29474) who is a person in FTE or under the age of 20



the payment is disregarded for the appropriate period in DMG 29493 but only to the extent that such payments do not exceed the total amount of any trust payment to the diagnosed person<sup>1</sup>.

### **Example**

Stephen is diagnosed as suffering from variant Creutzfeldt-Jakob disease and receives a payment of £35,000 from the relevant trust on 30.4.06. Stephen dies on 29.8.06 and leaves £10,000 of the trust payment to his son Craig, who was born on 5.3.88. Craig leaves FTE on 30.6.06 and makes a claim for JSA(IB) on 11.9.06. The DM decides that the £10,000 Craig inherited is disregarded until 4.3.08.

**Note:** In DMG 29493 and DMG 29494 **2.** family includes someone who would have been a member of the diagnosed person's family were it not for the diagnosed person being in a care home, an Abbeyfield Home or an independent hospital on that date.

*1 JSA Regs, Sch 8 para 57(3)(c), 57(4)(c) & 57(5)(b); IS (Gen) Regs Sch 10 para 64(3)(c), 64(4)(c) & 64(5)(b)*



# Capital disregarded for 52 weeks

[See Memo DMG 18/08]

## Arrears of allowances and benefits

### The law

29495 [See Memo DMG 16/11] Arrears of certain allowances and benefits are disregarded for 52 weeks from the date the payment of arrears is received<sup>1</sup> (but see DMG 29510 if the arrears and any concessionary payment total £5000 or more). The disregard applies to arrears of

1. AA<sup>2</sup>
2. CAA which is paid with a disablement pension because disablement has been assessed at 100%<sup>3</sup>
3. ESDA paid because industrial disablement has been assessed at 100%<sup>4</sup>
4. CAA and ESDA paid because the claimant is entitled to workmen's compensation<sup>4</sup>
5. an attendance allowance paid under the PB and MDB scheme
6. payments for attendance under the Civilian's Personal Injury Scheme<sup>5</sup> or any similar payment. These payments are made to people who receive a DP because of war injuries suffered as civilians or civil defence volunteers
7. any payment for attendance which is part of a WDisP. This includes severe disablement occupational allowance paid with CAA
8. the care component of DLA
9. the mobility component of DLA
10. Mobility Supplement
11. Mobility Allowance which people could get under repealed social security law<sup>6</sup>
12. CTB
13. IS
14. for JSA only - JSA(IB)
15. for IS only - JSA(IB)
16. discretionary housing payment
17. CTC
18. WTC
19. ESA(IR)

The disregard also applies to a concessionary payment which is made to compensate for arrears of those benefits or allowances. The disregard applies from the date the concessionary payment is received<sup>1</sup>.

**Note:** The disregard at **16.** will not apply after 28.3.04.

*1 JSA Regs, Sch 8, para 12; IS (Gen) Regs, Sch 10, para 7; 2 SS CB Act 92, s 64; 3 s 104 or 105; 4 Workmen's Compensation Acts 1925 to 1945; 5 Personal Injuries (Civilians) Scheme 1983, Art 14, 15, 16, 43 or 44; 6 SS Act 75, s 37A*

## Meaning of concessionary payment

29496 Concessionary payment means a payment made under arrangements made by the Secretary of State with the consent of the Treasury which is charged to

1. the NI Fund **or**
2. a Departmental Expenditure Vote to which payments of benefit under SS law<sup>1</sup> are charged<sup>2</sup>.

*1 JS Act 95; SS CB Act 92; 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Arrears of payments to certain war widows or surviving civil partners

29497 Payments to certain war widows and surviving civil partners are disregarded for 52 weeks from the date the payment of arrears is received. The disregard applies to arrears of

1. a supplementary pension paid to a widow or surviving civil partner, or where a person is not entitled to such a payment but to whom the Secretary of State has made a similar payment, for
  - 1.1 the disablement **or**
  - 1.2 deathof service personnel before 1973
2. a supplementary pension paid to a widow or surviving civil partner under the Personal Injuries (Civilians) Scheme **and**
3. a supplementary pension paid to the widow or surviving civil partner of a person
  - 3.1 whose death was caused by service similar to being in the armed forces **and**
  - 3.2 that service ended before 31.3.73 **and**
  - 3.3 the payment is equal to the amount in 1. above<sup>1</sup>.

*1 JSA Regs, Sch 8, para 39; IS (Gen) Regs, Sch 10, para 41*

## Payment for certain travel costs and National Health Service charges

29498 Payments and repayments of certain travel costs and NHS charges are disregarded for 52 weeks from the date the payment or repayment is received. The disregard applies to

1. a payment or repayment for
  - 1.1 travel costs to and from hospital for treatment as an in-patient or out-patient
  - 1.2 prescription charges
  - 1.3 sight tests
  - 1.4 glasses
  - 1.5 dental treatment
  - 1.6 wigs
  - 1.7 fabric supportsunder NHS law<sup>1</sup> **and**
2. a payment or repayment made by the
  - 2.1 Secretary of State for Health **or**
  - 2.2 Secretary of State for Scotland **or**
  - 2.3 Secretary of State for Waleswhich is like those at 1.<sup>2</sup>.

*1 National Health Service (Travel Expenses and Remission Charges) Regulations 2003, regs 3, 4 & Part IV; National Health Service (Travelling Expenses and Remission Charges) (Wales) Regulations 2007, regs 5, 6 & Part IV; National Health Service (Travelling Expenses and Remission Charges) (Scotland) (No. 2) Regulations 2003, regs 3, 5 & 8; 2 JSA Regs, Sch 8, para 36; IS (Gen) Regs, Sch 10, para 38*

## Payment made in place of milk or vitamin tokens

29499 A payment made under welfare food law<sup>1</sup> in place of

1. milk tokens **or**
2. vitamins **or**
3. healthy start vouchers

is disregarded for 52 weeks from the date the payment is received<sup>2</sup>.

*1 Welfare Food Regulations 1996; Health Start and Welfare Food (Amendment) Regulations 2005, reg 3;  
2 JSA Regs, Sch 8, para 37; IS (Gen) Regs, Sch 10, para 39*

## Payment to visit a person in custody

29500 A payment made to a person by the

1. Secretary of State for Justice **or**
2. Secretary of State for Scotland

to pay for a visit to see someone who is in custody is disregarded for 52 weeks from the date the payment is received<sup>1</sup>.

*1 JSA Regs, Sch 8, para 38; IS (Gen) Regs, Sch 10, para 40*

## Reduction of community charge or council tax benefit

29501 A payment made because of the reduction of council tax under local government or domestic rates law<sup>1</sup> is disregarded for 52 weeks from the date the payment is received<sup>2</sup>.

**Note:** The amount of council tax a person has to pay is normally reduced if the person can get a reduction. The disregard does not apply in that case. It only applies if a payment is made instead.

*1 Local Government Finance Act 1992, s 13, 13A, 80 & Part 2;*

*2 JSA Regs, Sch 8, para 35; IS (Gen) Regs, Sch 10, para 36*

29502

## Payments made under employment and training law

29503 **[See Memo DMG 18/08]** Certain payments made under employment and training law<sup>1</sup> that are payments of capital are disregarded for a period of 52 weeks beginning on the date of receipt of the payment<sup>2</sup>.

**Note:** See DMG Chapter 28 for guidance on the types of payments made under employment and training law.

*1 E & T Act 73, s 2; Enterprise and New Towns (Scotland) Act 1990, s 2;*

*2 JSA Regs, Sch 8, para 32; IS (Gen) Regs, Sch 10, para 30*

29504 - 29505

## **Payments to participants in New Deal and Employment Zone programmes**

### **Capital acquired under the self-employment route**

29506 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 received<sup>1</sup>.

*1 JSA Regs, Sch 8, para 47; IS (Gen) Regs, Sch 10, para 52*

### **Payments made by an Employment Zone contractor**

29507 See DMG 28412 - 28414 for the treatment of payments made by an EZ contractor.#

## **Payments to participants in the Mandatory Work Activity Scheme**

29508 Any payment made to the claimant for

1. travel **or**
2. other expenses

incurred or to be incurred by the claimant as a result of taking part in the MWA Scheme, are disregarded for a period of 52 weeks beginning with the date of receipt of the payment<sup>1</sup>.

*1 JSA Regs, Sch 8, para A2*

### **Payment for personal injury**

29509 Any lump sum payment made because of a personal injury to the claimant or partner and not placed in trust is disregarded for a period

1. beginning with the first date of receipt by the claimant or partner of such a payment **and**
2. ending when
  - 2.1 the claimant or partner no longer has any part of the payment remaining (including where the claimant or partner has used any part of the payment to buy an asset) **or**

## 2.2 52 weeks have elapsed

whichever is the sooner<sup>1</sup>.

*1 JSA Regs, Sch 8, para 17A; IS (Gen) Regs, Sch 10, para 12A*

29510 This 52 week disregard does not apply to

1. any subsequent lump sum payments made as a result of the same injury in DMG 29508 above, whether it is made by the same person or another<sup>1</sup> (but the remainder of the existing 52 week period could still be applied) **or**
2. lump sum payments made from a trust where the funds of that trust come from a personal injury payment to the claimant or partner<sup>2</sup>.

*1 JSA Regs, Sch 8, para 17A(2)(b); IS (Gen) Regs, Sch 10, para 12A(2)(b);*

*2 JSA Regs, Sch 8, para 17A(2)(d); IS (Gen) Regs, Sch 10, para 12A(2)(d)*

### Example

Howard is in receipt of IS and on 27.11.06 he receives a payment of £10,000 for an injury to his leg caused when it was crushed in a machine at work some ten months previously. The DM decides that this amount can be disregarded for 52 weeks, until 25.11.07. On 24.9.07, Howard receives a further payment of £5,000 in respect of the same injury. The DM decides that this payment can only be disregarded for the remainder of the original 52 week period i.e. from 24.9.07 to 25.11.07.

## Arrears and concessionary payments of £5,000 or more

### When the disregard applies

29511 The disregard applies where

1. the claimant receives arrears of one of the benefits, allowances or payments listed in DMG 29495 and, if appropriate, any concessionary payment to compensate for the late payment of that benefit **and**
2. the total of the arrears and any concessionary payment ("the relevant sum") is £5,000 or more **and**
3. the relevant sum is paid to rectify or compensate for an official error (see DMG 03256) **and**
4. the relevant sum is received in full by the claimant on or after 14.10.01<sup>1</sup>.

*1 JSA Regs, Sch 8, para 12(2)(a) & (b); IS (Gen) Regs, Sch 10, para 7(2)(a) & (b)*



## Period of the disregard

29512 The period of the disregard is

1. 52 weeks from the date the relevant sum is received **or**
2. if it is received in its entirety during an award for the remaining period of the award of IS, ESA(IR) or JSA(IB) to which DMG 29512 applies

whichever is the longer period<sup>1</sup>.

*1 JSA Regs, Sch 8, para 12(2); IS Regs, Sch 10 para 7(2)*

29513 For the purposes of DMG 29511 **2.** the remaining period of the award of IS, ESA(IR) or JSA(IB) means

1. the award of IS, ESA(IR) or JSA(IB) in which
  - 1.1 the relevant sum is received **or**
  - 1.2 the first part of the relevant sum is received if it is paid in more than one instalment **and**
2. any further award either of IS, ESA(IR) or JSA(IB), until the end of the last such further award if
  - 2.1 the further award follows the award at **1. and**
  - 2.2 the further award begins immediately after the end of the previous award **and**
  - 2.3 the claimant
    - 2.3.a is the person who received the relevant sum **or**
    - 2.3.b is the partner of the person who received the relevant sum **or**
    - 2.3.c was the partner at the date of death of the person who received the relevant sum **or**
    - 2.3.d is a joint-claim couple for a joint-claim jobseekers allowance and either member, or both members of that joint-claim couple received the relevant sum<sup>1</sup>.

*1 JSA Regs, Sch 8, para 12(3); IS (Gen) Regs, Sch 10, para 7(3)*

### Example 1

Winston receives JSA(IB) from 8.8.05 to 8.1.06. He then receives IS from 9.1.06 to 29.1.06. On 30.1.06 he reclaims JSA(IB) which is paid for the period 30.1.06 to 30.10.06. On 17.10.05 Winston received £6,995 arrears of JSA(IB) and on 24.4.06 he receives a concessionary payment of £310 because of an official error. Winston starts remunerative work on 31.10.06 but he loses his job and makes a further claim for JSA(IB) on 1.4.07. The DM decides that the arrears and the concessionary

payment can be disregarded from the date they were received to the end of Winston's previous JSA(IB) claim.

Additionally the concessionary payment received on 24.4.06 can be disregarded for 52 weeks to 22.4.07 because this is a longer period than the remainder of the JSA(IB) award of 30.1.06.

**Example 2**

Hannalore is in receipt of IS. On 1.2.07 she receives arrears of £4,950 and on 17.3.07 she receives a concessionary payment of £150 because of an official error. The DM decides that the arrears of £4,950 are disregarded for 52 weeks from 1.2.07 to 30.1.08 and from 17.3.07 the concessionary payment and any of the remaining payment of arrears are disregarded for either 52 weeks or the duration of Hannalore's IS claim, whichever is the longer period.

**Example 3**

Rhys receives JSA(IB) until 31.8.06. On 15.10.06 he receives a concessionary payment of £15,000 because of an official error. Rhys then has an accident and on 3.11.06 claims IS. The DM decides that the concessionary payment can be disregarded for no more than 52 weeks from 15.10.06.

29514 - 29519

# Capital disregarded for 26 weeks or longer

## Business assets

### The law

29520 The assets of a business are disregarded to give a person time to start or return to work in the business if the person

1. owns all of some of the assets **and**
2. is not working as a S/E earner in the business because the person is
  - 2.1 ill **or**
  - 2.2 physically or mentally disabled **and**
3. is going to start work or return to work in the business as a S/E earner when the person is fit enough or able to.

The period of disregard is 26 weeks, or longer if it is reasonable, from the date the claim for benefit is made or treated as made<sup>1</sup>.

*1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)*

**Note:** The DM has to decide whether the business is ready to open if the person has not started working in the business as a S/E earner. If the business is not ready to open the disregard does not apply.

*1 JSA Regs, Sch 8, para 11(2); IS (Gen) Regs, Sch 10, para 6(2)*

### Meaning of self-employed earner

29521 S/E earner means a person

1. who is gainfully employed in GB (see DMG 070702) **and**
2. whose employment is not the same as that of an employed earner<sup>1</sup>.

Contrast with an employed earner who is a person who is gainfully employed in GB under a contract of service or in an office, including an elective office, with general earnings<sup>2</sup>.

*1 SS CB Act 92, s 2(1)(b); JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 2 SS CB Act 92, s 2(1)(a)*

### Deciding if it is reasonable to disregard for a longer period

29522 The DM may decide it is

1. reasonable to disregard the assets for a longer period if the person is still ill or disabled and can do the work when fit and able **or**

2. not reasonable if there is evidence, such as medical evidence, which says the person will not be able to do the work when fit and able.

### **Other disregards**

29523 Business assets can also be disregarded if the person

1. is working in the business as a S/E earner **or**
2. has ceased trading

see DMG 29371 - 29374.

### **Dwelling left because of estrangement divorce or dissolution of civil partnership**

#### **The law**

29524 The dwelling in which a person lived as the home is disregarded if the person stopped living in the dwelling because of estrangement, divorce or the dissolution of a civil partnership. The period of the disregard is for

1. 26 weeks from the date the person stopped living in the dwelling **or**
2. as long as it is occupied if
  - 2.1 it is occupied by the former partner **and**
  - 2.2 the former partner is a lone parent<sup>1</sup>.

*1 JSA Regs, Sch 8, para 5; IS (Gen) Regs, Sch 10, para 25*

#### **Meaning of dwelling**

29525 For IS, dwelling means a place where a person lives. The place can be

1. all or part of a building **and**
2. separate and self-contained or not separate and not self-contained<sup>1</sup>.

*1 SS CB Act 92, s 137(1)*

#### **Meaning of dwelling occupied as the home**

29526 Dwelling occupied as the home means

1. the place lived in as the home and any
  - 1.1 garage
  - 1.2 garden
  - 1.3 outbuildings **and**
2. any part not lived in as the home which

**2.1** cannot be sold separately **or**

**2.2** would not be reasonable to sell separately

for example in Scotland any croft land on which the place lived in stands<sup>1</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Meaning of lone parent

29527 Lone parent means<sup>1</sup> a person who

**1.** has no partner **and**

**2.** is

**2.1** responsible for **and**

**2.2** a member of the same household as

a child or young person.

*1 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

## Meaning of child

29528 A child is a person under the age of 16<sup>1</sup>.

*1 JSA Act 95, s 35(1); SS CB Act 137(1)*

## Meaning of young person

29529 A young person is a person aged 16 or over but under 20 years of age who is treated as a child for the purposes of CHB (see DMG Chapter 22)<sup>1</sup>.

*1 JSA Regs, reg 76(1); IS (Gen) Regs, reg 14*

## Grants made to buy, repair or alter premises

### The law

29530 A grant made to a person by a local housing authority or LA under housing law<sup>1</sup> which has to be used to

**1.** buy premises **or**

**2.** repair or alter premises to make them fit to live in as the home

is disregarded to give the person time to buy, repair or alter the premises and to move in. The period of disregard is 26 weeks or longer if it is reasonable from the date the grant is received<sup>2</sup>.

*1 Housing Act 1988, s 129; Housing (Scotland) Act 1988, s 66; 2 JSA Regs, Sch 8, para 9;  
IS (Gen) Regs, Sch 10, para 37*

## Deciding if it is reasonable to disregard for a longer period

- 29531 The DM may decide it is reasonable to disregard the grant for a longer period if
1. people have tried but not found premises which are suitable for their or a member of their family's needs (in particular, if one of them is disabled and needs a certain type of accommodation)
  2. the person has found premises and the
    - 2.1 sale has not been completed **or**
    - 2.2 seller later decides not to sell
  3. the repairs and alterations will take more than 26 weeks.

## Money deposited with a housing association

### The law

- 29532 Money which was deposited with a housing association and the
1. money was deposited as a condition of living in the home **and**
  2. housing association comes under housing association law<sup>1</sup> **and**
  3. money is to be used to buy another home

is disregarded to give the person time to buy another home. The period of disregard is 26 weeks or longer if it is reasonable<sup>2</sup>.

*1 Housing Associations Act 1985, s (1); 2 JSA Regs, Sch 8, para 14(b); IS (Gen) Regs, Sch 10, para 9(b)*

**Note:** A different disregard applies to money which is on deposit with a housing association as a condition of living in the home (see DMG 29408).

### Date the disregard starts

- 29533 The period of disregard starts on the date when the money is no longer held by the housing association.

## Deciding if it is reasonable to disregard for a longer period

- 29534 The DM may decide it is reasonable to disregard the money for a longer period if people have
1. tried but not found another home which is suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation
  2. found a home and the

**2.1** sale has not been completed **or**

**2.2** seller later decides not to sell.

## **Money from the sale of premises which were lived in as the home**

### **The law**

29535 Money from the sale of premises which were lived in as the home is disregarded to give a person time to buy other premises if the person is going to

- 1.** use the money to buy premises **and**
- 2.** live in those premises as the home.

The period of disregard is 26 weeks or longer if it is reasonable from the date of sale<sup>1</sup>.

*1 JSA Regs, Sch 8, para 3; IS (Gen) Regs, Sch 10, para 3*

### **The money**

29536 Money includes a payment made to a tenant or lessee by a landlord to buy back a tenancy or lease<sup>1</sup>.

*1 R(IS) 6/95*

### **Applying the disregard**

29537 For the disregard to apply people should show

- 1.** they intend to use the money to buy premises to live in as the home **and**
- 2.** it is reasonably certain that they will in fact do so within 26 weeks or longer if it is reasonable from the sale of premises which were lived in as the home<sup>1</sup>.

*1 R(IS) 7/01*

### **Example**

Nigel receives £50,000 from the sale of his previous home. He moves to another area and claims JSA(IB). He states that he intends to use the £50,000 to buy a new house but he didn't want to do so straightaway in case he did not like the new area. The DM decides that the disregard does not apply because it is not reasonably certain that Nigel will use the money to buy another home within 26 weeks or any extended period.

29538 Evidence of an intention to use money to buy premises to live in as the home may include a

1. binding agreement to buy premises **or**
2. firm agreement from which a person would not be expected to withdraw, such as one which is subject to contract.

29539 Money does not include payment from the sale of premises which

1. were bought with money from the sale of the previous home and those premises have not been lived in as the home **or**
2. a person was not the beneficial owner of at the time of sale.

#### **Example 1**

Rozma sells her home and moves into a rented flat. She uses the money from the sale of her home to buy a holiday home. She uses that home just for holidays. The money she gets when she sells the holiday home is not disregarded.

#### **Example 2**

The executors of Norma's estate sell her home. Norma's daughter Juliet inherits the money from the sale. The disregard does not apply because Juliet is not the beneficial owner of the house when it is sold; even if the house was Juliet's home.

29540 If the premises sold include a part which was not lived in as the home, such as a business with living accommodation, the disregard does not apply to the money from the sale of that part. The DM will need to get expert advice if the DM cannot work out how much of the money from the sale is for the part which was lived in as the home<sup>1</sup>. Separate guidance sets out those cases where DMs may require such expert advice.

*1 R(SB) 18/82*

29541 The disregard does not apply to any money which a person

1. gets from selling the home **and**
2. is not going to use to buy another home.

#### **Example**

A man and wife are going to buy another home using £60,000 of the £100,000 they got from selling their previous home. The disregard does not apply to £40,000 because it is not going to be used to buy another home. It does apply to £60,000.

#### **The premises**

29542 The disregard applies if the person is going to

1. use money from the sale of the previous home to
  - 1.1 buy a plot of land **and**
  - 1.2 pay for premises such as a house to be built on the land **and**



2. live in the premises as the home when they are built.

### **The date of sale**

- 29543 The money is disregarded from the date of sale. The date of sale is the date the sale is completed and may not be the date the person gets the money from the sale.

### **Period of disregard**

- 29544 The period of disregard is 26 weeks or longer if it is reasonable. If the person has not bought another home within 26 weeks the DM has to decide if it is reasonable to disregard the money for a longer period.
- 29545 The DM may decide to disregard the money for a longer period if people have
1. tried but not found premises which are suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation **or**
  2. found premises and the
    - 2.1 sale has not been completed **or**
    - 2.2 seller later decides not to sell.

### **Money paid for damage to or loss of the home or personal possessions**

#### **The law**

- 29546 Money, such as a payment from an insurance company following a fire, which
1. a person gets because of damage to or loss of
    - 1.1 the home **or**
    - 1.2 personal possessions **and**
  2. has to be used for the repair or replacement of the home or personal possessions

is disregarded to give the person time to have the home or personal possessions repaired or replaced. The period of disregard is 26 weeks or longer if it is reasonable from the date the money is paid<sup>1</sup>.

**Note:** The disregard does not apply to money which a person gets when a landlord buys back a tenancy or lease<sup>2</sup>.

*1 JSA Regs, Sch 8, para 13(a); IS (Gen) Regs, Sch 10, para 8(a); 2 R(IS) 6/95*

## Deciding if it is reasonable to disregard for a longer period

29547 The DM may decide it is reasonable to disregard the money for a longer period if

1. the repairs will take more than 26 weeks
2. people have tried but not found another home which is suitable for their or a member of their family's needs, in particular, if one of them is disabled and needs a certain type of accommodation
3. the person has found a home and the
  - 3.1 sale has not been completed **or**
  - 3.2 seller later decides not to sell
4. the replacement of personal possessions will take more than 26 weeks.

### Example

Sally has a burglary at her home. Some items of jewellery are stolen and she receives £7,500 from her insurance company which she intends to use to replace the stolen items. However, Sally uses only £4,000 of that money within 26 weeks. She states that she has not been able to find suitable items to replace some of her stolen jewellery but she hopes to do so in another six weeks. The DM decides that it is reasonable to disregard the remaining £3,500 for a period longer than 26 weeks.

## Money which a person gets to repair or improve the home

### The law

29548 Money which a person gets to pay for essential repairs to or to improve the home is disregarded to give time for the work to be done if

1. as a condition of getting the money it has to be used to pay for those repairs and improvements **and**
2. the person is going to use the money to pay for that work.

The period of disregard is 26 weeks or longer if it is reasonable from the date the money is paid<sup>1</sup>.

**Note:** The money can be a loan, grant or gift. The condition that it has to be used for the repairs and improvements does not have to be in writing.

*1 JSA Regs, Sch 8, para 13(b); IS (Gen) Regs, Sch 10, para 8(b)*

## Essential repairs and improvements

- 29549 Essential repairs and improvements are those which are needed to make the home fit to live in by the person or a member of the person's family. For example, if the roof of the home is letting in water it is essential to repair the roof to make the home fit to live in.

## Deciding if it is reasonable to disregard for a longer period

- 29550 The DM may decide it is
1. reasonable to disregard the money for a longer period if the work will take more than 26 weeks **and**
  2. not reasonable to disregard the money for a longer period if the money is being spent on something else.

## Premises a person does not possess or occupy

### The law

- 29551 The value of any premises which the claimant has acquired with the intention of living in as their home within 26 weeks of the date of acquisition should be disregarded. Where the claimant intends to live in the premises but it will be later than 26 weeks from acquisition, then a longer period can be considered where it is reasonable to enable the claimant to obtain possession and begin occupation<sup>1</sup>.

*1 JSA Regs, Sch 8, para 2; IS (Gen) Regs, Sch 10, para 2*

### The premises

- 29552 The premises must be capable of being a dwelling which can be lived in as the home<sup>1</sup>. Land on which a person intends to build premises to live in as the home is included. Any part of the premises which a person is not going to live in as the home is not included if the DM decides the part
1. can be sold separately **and**
  2. it is reasonable for it to be sold separately.

*1 R(IS) 3/96*

## **Acquiring premises**

- 29553 People can acquire premises if they buy, are given or inherit them.
- 29554 If the premises which have been acquired are going to be lived in as the home the disregard applies if the person acquiring the premises
1. is not in possession of them **or**
  2. cannot move in.

## **Possession of premises**

- 29555 The legal owners of premises own them but do not have vacant possession of them if a tenant or leasee lives in them. During the period of a tenancy or lease the tenant or lessee is legally in possession of the premises and the owner remains the legal owner. At the end of a tenancy or lease the right to vacant possession should return to the owner.
- 29556 If the tenancy or lease ends within 26 weeks of the date the owner acquired the premises the disregard applies. If it does not the DM has to decide if it is reasonable for the disregard to apply for a longer period. The DM may decide the premises cannot be disregarded for a longer period if a lease has several years to run.
- 29557 The owner has to do something to get back possession of the premises if
1. someone is living in the premises illegally such as a squatter **or**
  2. a tenant or leasee does not leave the premises at the end of the tenancy or lease.
- 29558 If the owner is going to do something to get back possession the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises cannot be disregarded for a longer period if the owner has done nothing to get back possession.
- 29559 A different disregard applies if the owner has asked for legal advice about getting or started legal proceedings to get back possession (see DMG 29563 - 29569).

## **Moving into the premises**

- 29560 If the legal owner of the premises has recovered them and has not moved into them the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises can be disregarded for a longer period if they
1. were acquired by a person to move into when the person comes out of hospital and the person is still in hospital **or**

2. are land on which a person is going to build premises to live in as the home because 26 weeks is not long enough for

**2.1** the premises to be built **and**

**2.2** the person to move into them.

29561 If

1. the premises need to be repaired or altered before the person can move in **and**

2. the owner is going to do something to get the repairs or alterations done

the disregard applies for 26 weeks from the date the owner acquired the premises or longer if the DM decides it is reasonable. The DM may decide the premises cannot be disregarded for a longer period if the owner has done nothing to get the premises repaired or altered.

29562 A different disregard applies from the date the owner first takes steps to have the premises repaired or altered (see DMG 29571 - 29578).

## **Premises which a person is taking steps to get possession of**

### **The law**

29563 Premises which people are taking steps to get possession of are disregarded to give them time to get possession and to start living in the premises if they

1. are going to live in the premises as the home **and**

2. have

**2.1** asked for legal advice about getting **or**

**2.2** started legal proceedings to get

possession.

The period of disregard is for 26 weeks or longer if it is reasonable from the earliest of the first date the person asked for legal advice or started legal proceedings<sup>1</sup>.

*1 JSA Regs, Sch 8, para 7; IS (Gen) Regs, Sch 10, para 27*

## The premises

29564 The premises must be capable of being a dwelling which can be lived in as the home. The disregard does not apply to

1. premises which are land even if persons say they are going to build a house on the land to live in as the home **and**
2. any part of the premises which a person is not going to live in as the home if the DM decides it
  - 2.1 can be sold separately **and**
  - 2.2 is reasonable for it to be sold separately.

## The date a person first asked for legal advice or started legal proceedings

29565 The first date is the date or the first time the person

1. asked for legal advice the first time the person asked for such advice **or**
2. started legal proceedings the first time such proceedings were started.

If both **1.** and **2.** apply the first date is the first of those dates.

29566 The first date does not change. So if a person has asked for legal advice several times the first date is the date the person first asked for such advice.

## When legal proceedings usually start

29567 In England and Wales legal proceedings usually start in the

1. High Court on the issue of a writ or other originating process
2. County Court on the issue by the Court of a summons or originating application.

The issue of a notice to quit under the terms of a tenancy agreement is **not** starting legal proceedings.

**Note:** DMs should send cases of doubt to DMA Leeds for advice.

29568 In Scotland legal proceedings usually start in the

1. Court of Session on service of the summons or petition on the defender or respondent
2. Sheriff Court on service of the summons or initial writ on the defender.

## Period of disregard

29569 The period of disregard is 26 weeks or longer if it is reasonable. A person should be able to get possession and start living in the premises within 26 weeks of asking for legal advice or starting legal proceedings. If not the DM has to decide if it is reasonable to disregard the premises for a longer period.

29570 The DM may decide

1. to disregard the premises for a longer period if
  - 1.1 legal proceeding are still being taken **or**
  - 1.2 people have got possession and there is a good reason why they have not started to live in the premises
2. not to disregard the premises for a longer period if people have
  - 2.1 asked for legal advice and not followed it **or**
  - 2.2 got possession and there is no good reason why they have not moved into the premises.

## Premises which are to be repaired or altered

### The law

29571 Premises which need essential repairs or alterations to make them fit for people to live in them as the home are disregarded to give time for

1. the repairs or alterations to be done **and**
2. the people to start living in the premises

if they are going to live in the premises as the home. The period of disregard is 26 weeks or longer if it is reasonable from the date the person first takes steps to get the premises repaired or altered<sup>1</sup>.

*1 JSA Regs, Sch 8, para 8; IS (Gen) Regs, Sch 10, para 28*

### The premises

29572 The premises must be capable of being a dwelling which can be lived in as the home. The disregard does not apply to

1. premises which are land even if people say they are making alterations to the land by building a house on the land to live in as the home **and**
2. any part of the premises which a person is not going to live in as the home if the DM decides it

**2.1** can be sold separately **and**

**2.2** is reasonable for it to be sold separately.

### **Essential repairs or alterations**

29573 Essential repairs or alterations are those which are needed to make the premises fit to live in as the home by the person or a member of the person's family. For example, if the person is in a wheelchair and the doorways in the house are not wide enough for the wheelchair to pass through the essential alterations are the widening of the doorways so the person can move into the premises.

### **The steps**

29574 The steps are what a person must do to get the premises repaired or altered and can include

1. getting a grant or loan to pay for them
2. employing an architect
3. getting planning permission
4. finding someone to do the work.

### **The date a person first takes steps to get the premises repaired or altered**

29575 The date a person first takes steps to get the premises repaired or altered is the first date the person does something to get the work done and can include the date a person first

1. asks about a
  - 1.1 grant
  - 1.2 loan **or**
  - 1.3 planning permission
2. contacts
  - 2.1 an architect **or**
  - 2.2 someone to do the work.

29576 The first date does not change. So if a person contacts several persons to do the work the first date is the date the first person is contacted.



## **Period of disregard**

29577 The period of disregard is 26 weeks or longer if it is reasonable. The repairs and alterations may not be done in 26 weeks if there is a lot of work to do. If the person has not moved into the premises within 26 weeks the DM has to decide if it is reasonable to disregard the premises for a longer period.

29578 The DM may decide

1. to disregard the premises for a longer period if the
  - 1.1 person is still waiting for a grant, loan, or planning permission
  - 1.2 work will take longer than 26 weeks
  - 1.3 work has been delayed and there is a good reason for the delay **or**
  - 1.4 work has been done and there is a good reason why the person has not moved in
2. not to disregard the premises for a longer period if
  - 2.1 the person has not taken all the steps needed to get the work done, such as a person who has got a grant but has not arranged for the work to be done **or**
  - 2.2 there is no good reason for the delay in getting the work done or for the person not moving in.

## **Premises which are to be disposed of**

### **The law**

29579 Premises which a person is trying to dispose of are disregarded if the person is taking reasonable steps to dispose of them. The period of disregard is for 26 weeks or longer if it is reasonable from the date the person first took such steps<sup>1</sup>.

*1 JSA Regs, Sch 8, para 6; IS (Gen) Regs, Sch 10, para 26*

### **The premises**

29580 Premises includes

1. land, such as a field
2. buildings, such as a house
3. a lease on the land or buildings
4. any premises in which a person has a time-share.

## Who can dispose of premises

29581 Only the legal owner of premises can dispose of them. If a person is

1. the beneficial owner or joint beneficial owner of the premises **and**
2. not the legal owner or joint legal owner

the disregard does not apply.

**Note:** This applies when a person has given away premises to get benefit or more benefit.

## Reasonable steps

29582 Reasonable steps are what a person must do to dispose of the premises and can include

1. advertising the premises for sale
2. getting an estate agent
3. taking legal action to
  - 3.1 force the sale of premises when the other legal owners do not want to sell **or**
  - 3.2 get possession of the premises
4. taking action to appoint another person to act for the legal owner if
  - 4.1 the owner is mentally sick or disabled **and**
  - 4.2 the premises are going to be sold after someone has been appointed.

29583 In deciding if reasonable steps are being taken the DM should determine the specific steps the person is taking to dispose of the premises. This applies whether or not the steps being taken are part of ancillary proceedings following the breakdown of marriage.

### Example

Sanath makes a claim for JSA(IB). He owns a house with his brother Muthiah. Neither of them lives in the house. Sanath asks Muthiah if he is prepared to sell the house. Muthiah says no because the house was left to them by their father and he would have wanted them to keep it. Sanath does not pursue the matter further. The DM decides that Sanath is not taking reasonable steps to dispose of the house.

## The date a person first takes reasonable steps

29584 The date a person first takes reasonable steps is usually the first date a person does something to dispose of the premises and can include the date

1. the premises were first advertised for sale
2. a person first contacts an estate agent
3. a person first sees a solicitor if legal action has to be taken to force a sale or get possession of the premises
4. action is started to appoint someone to act for the legal owner which may include the first date a person sees a solicitor if legal advice is needed.

29585 The first date does not normally change. So if a person has tried several times to dispose of the premises the date is the first date the person did something reasonable to dispose of the premises the first time. However, there may be exceptional circumstances where the first date may change due to a break in attempts to market the property.

### **Example**

In March 2010 Simon's father dies leaving him a house. Simon places the house on the market in August 2010. There is some interest in the house but due to ongoing work on a large civil engineering project close to the property, potential buyers are not making offers on the house due to the unknown effects that this project will have on the house. Simon's estate agent advises him to take the house off the market until the situation regarding the civil engineering project is clear. In February 2011, the works are completed and there is no effect to the property so Simon decides to put the house back on the market on 20 February 2011. He makes a claim for JSA at the same time. The DM considers the circumstances and decides that due to the reason for the break in the marketing the property for sale being exceptional and something over which the claimant had no control, the date from which the 26 week disregard will be calculated will be the second attempt to sell the house, i.e. 20 February 2011.

### **Period of disregard**

29586 The period of disregard is 26 weeks or longer if it is reasonable. If the person has not disposed of the premises within 26 weeks of first doing something to dispose of them the DM has to decide if it is reasonable to disregard the premises for a longer period.

29587 The DM may decide to disregard the premises for a longer period if

1. people have done all they have to do to sell the premises and the asking price is no more than the premises are worth **or**
2. action is still being taken to

**2.1** force a sale **or**

**2.2** get possession of the premises **or**

**2.3** appoint someone to act for the legal owner.

29588 The DM may need expert advice to find out what the premises are worth. Benefit  
Delivery Specialist Operations Team issues guidance on how to get such advice.

29589 - 29600

# Capital disregarded for 26 weeks

## Payment of a sports award

29601 A payment of a sports award<sup>1</sup> is disregarded for a period of 26 weeks from the date on which the payment was received<sup>2</sup>. However the disregard does not apply to any amount paid for

1. food **or**
2. ordinary clothing or footwear **or**
3. rent for which HB is payable **or**
4. household fuel **or**
5. housing costs of the claimant or a member of his family that are covered by IS or JSA(IB) **or**
6. CT for which the claimant or a member of his family is liable **or**
7. water charges for which the claimant or a member of his family is liable<sup>3</sup>.

**Note 1:** "Food" does not include vitamins, minerals or other special dietary supplements intended to enhance the performance of the person in the sport in respect of which the sport award was made<sup>4</sup>.

**Note 2:** "Ordinary clothing and footwear" means clothing or footwear for normal daily use. It does not include school uniforms or clothing used solely for sporting activities<sup>5</sup>.

*1 JSA Regs, reg 1(3); IS (Gen) Regs reg 2(1); 2 JSA Regs, Sch 8, para 51(1); IS (Gen) Regs, Sch 10, para 56(1);  
3 JSA Regs, Sch 8, para 51(2); IS (Gen) Regs, Sch 10, para 56(2); 4 JSA Regs, Sch 8, para 51(3);  
IS (Gen) Regs, Sch 10, para 56(3); 5 JSA Regs, Sch 8, para 51(3); IS (Gen) Regs, Sch 10, para 56(3)*

29602 - 29604



## **Capital disregarded for a prescribed period**

### **Mortgage interest run-on**

29605 For IS purposes only, when a person satisfies the conditions of paragraph DMG 20530, any capital should be disregarded in full<sup>1</sup>.

*1 IS (Gen) Regs, Sch 10, para 62*

29606 - 29609





# What is the value of capital

## General

- 29610 All of the capital a person has, is included when working out the amount of capital but not capital which is disregarded<sup>1</sup>.

*1 JSA Regs, reg 108(1); IS (Gen) Regs, reg 46(1)*

## Capital in the UK

- 29611 The value of capital which a person has in the UK (see DMG 070880), is its current market or surrender value less

1. 10% of the value if there are costs of sale **and**
2. the amount of any incumbrance secured on the capital<sup>1</sup>.

*1 JSA Regs, reg 111; IS (Gen) Regs, reg 49*

29612 - 29613

## Capital outside of the UK

- 29614 The value of capital which a person has outside of the UK (see DMG 070880) is

1. its current market or surrender value in the country outside of the UK if people can transfer the money they get for the capital to the UK **or**
2. the price people get for it if sold to a willing buyer in the UK if the country will not let them transfer money to the UK

less 10% of the market or surrender value or price if there are costs of sale and the amount of any incumbrance secured on the capital<sup>1</sup>.

*1 JSA Regs, reg 112; IS (Gen) Regs, reg 50*

## Current market value

- 29615 Current market value means the price a willing buyer will pay a willing seller in that market on the relevant date<sup>1</sup>. The market is the market for what is for sale. So if a house is for sale it is the property market. The relevant date is the date of claim or date of revision.

*1 R (SB) 6/84*

- 29616 DMs work out the current market value

1. themselves **or**
2. from evidence given by the claimant or person whose capital it is **or**
3. from evidence from an expert valuer.

## Current surrender value

- 29617 Current surrender value means the money people would get if
1. they withdraw their capital on the date of claim or revision **and**
  2. that date is before the date a person gets the capital under the terms of the agreement **and**
  3. the terms of the agreement lets a person withdraw the capital before the agreed date.
- 29618 The DM accepts the money people would get on the date of claim or revision as the value. If the agreement does not let a person withdraw capital before the agreed date the value of the capital is its current market value.

## Capital with more than one value

- 29619 DMs have to decide which value to accept if capital has more than one value, such as when capital has a current market and surrender value<sup>1</sup>.

*1 R(SB) 6/84*

## Costs of sale

- 29620 10% of the current market or surrender value or price is only deducted if there are costs when a person sells capital. 10% of the value or price is deducted even if the actual costs are more or less than that amount.
- 29621 There are normally costs of sale if a person
1. uses another person to sell the capital, such as
    - 1.1 an estate agent
    - 1.2 a broker
    - 1.3 an auctioneer **or**
  2. needs the services of another person before the capital can be sold , such as
    - 2.1 a solicitor **or**
    - 2.2 an accountant.
- 29622 There are always costs of sale if the capital is real or heritable property (see DMG 29020 4.)<sup>1</sup>.

*1 R(IS) 21/93*

- 29623 Costs of sale do not include the cost of
1. postage, such as when a person applies in writing to withdraw premium bonds **or**
  2. travelling expenses such as bus fares when a person visits a building society to withdraw money.

29624 DMs work out 10% of the current market or surrender value or price if there are costs of sale. Costs of sale are worked out before a deduction is made for any incumbrances secured on the capital.

## **Incumbrances secured on capital**

29625 An incumbrance is secured on capital when a person is owed money and has a right

1. to the capital **or**
2. to stop it being sold

until the money owed is paid back. Such a debt is a legal charge or mortgage and is deducted from the value of capital. A debt which is not secured is not deducted<sup>1</sup>.

*1 R(IS) 21/93*

29626 The amount of the incumbrance which is deducted is the amount of money owed on the date of claim or revision. The amount is deducted from the capital which the debt is secured on. If the debt is secured on more than one item of capital it is deducted from

1. the total of the values of the capital on which it is secured **and**
2. the total of the values of the capital which
  - 2.1 is not disregarded **and**
  - 2.2 on which it is secured

if any of the capital on which it is secured is disregarded when working out what capital a person has<sup>1</sup>.

### **Example**

On 29 January Anwar makes a claim for JSA(IB). His capital consists of 20,000 shares and two houses. He lives in one of the houses, the other is unoccupied. Anwar has a mortgage which he used to buy the house he lives in. However, the mortgage is secured on his other house. He is in debt to his bank. The bank is holding the share certificates and has a charge on the two houses as security for the debt. On 29 January the current market value of the shares is £50,000 and that of the unoccupied house is £72,000. The amount outstanding on the mortgage is £45,000 and the debt to the bank is £62,000.

The DM decides that the value of the unoccupied house, less 10% for costs of sale and the mortgage which is secured on it, is £19,800. The DM also decides that the value of the shares, less 10% for costs of sale, is £45,000. Finally, the DM decides that the value of the unoccupied house and shares, less the debt to the bank which is secured on them, is £2,800 (£19,800 + £45,000 - £62,000 = £2,800).

*1 R(IS) 21/93*

29627 The DM needs to know the amount of money owed on an incumbrance secured on capital at the date of claim or revision. The person whose capital it is has to

1. provide evidence of the amount owed **or**
2. give permission for someone else to get the information.

The amount owed is deducted from the current market or surrender value or price.

29628 The DM should not make a deduction if there is no evidence of the amount owed or permission is not given to get the information and the DM cannot work out the amount owed from the available evidence.

29629 - 29634

## **Jointly-owned capital**

### **The law**

29635 It was assumed that the jointly-owned capital rule applied to all types of joint ownership. However on 15.10.01 the Commissioner decided that the jointly-owned capital rule did not apply to real property (see DMG 29020 4.) which two or more people beneficially own as tenants in common<sup>1</sup>. The Commissioner's decision was upheld by the Court of Appeal.

*1 R(IS) 4/03*

29636 DMs should note that the rules on how to value jointly-owned capital have changed in the past. Guidance on the previous rules is at Appendix 4 to this Chapter.

29637 See DMG 29244 et seq for guidance on how to decide whether a claimant owns a capital asset with one or more persons as a

1. joint-tenant or, in Scotland, joint owner **or**
2. tenant in common or, in Scotland, common owner.

### **Joint-tenant or joint owner**

29638 Where the claimant's interest in jointly-owned capital is as a joint-tenant or a joint owner the DM should

1. treat the claimant and the other beneficial owners as having equal shares in the asset<sup>1</sup> **and**
2. value the claimant's deemed share itself, under the normal rules.

*1 JSA Regs, reg 115; IS (Gen) Regs, reg 52*

29639 The DM should not assume that

1. the market value in all cases is the market value of the whole asset divided by the number of beneficial owners **or**

2. in the case of a dwelling, any joint-owners who live in the property do not live there.

### **Tenant in common or common owner**

- 29640 Where the claimant has an interest in an asset as a tenant in common or a common owner the DM should value the claimant's actual share<sup>1</sup>.

*1 R(IS) 4/03*

#### **Example 1**

Cecilia and her son Ross own a house as tenants in common. Cecilia owns 20% of the property and Ross owns 80% but he does not live in it. Cecilia goes into a care home and makes a claim for IS. The DM decides that the value of Cecilia's share of the house cannot be disregarded. The DM also decides to take the value of Cecilia's 20% share of the house into account.

#### **Example 2**

Sue and Melinda own a house as tenants in common. Sue owns 60% of the property and Melinda 40%. Sue and Melinda both go into a care home and claim IS. The DM decides that their share of the value of the house cannot be disregarded. When deciding Sue's claim for IS, the DM takes the value of her 60% share of the property into account. When deciding Melinda's claim for IS, the DM takes the value of her 40% share of the property into account.

### **Capital asset in the UK**

- 29641 Where a claimant is a joint-tenant or joint owner, the DM should establish the market value of the deemed share. Where a claimant is a tenant in common or a common owner, the DM should establish the market value of the actual share (see **Examples** at DMG 29640). The market value is the price that a willing buyer would pay a willing seller<sup>1</sup> for the share the claimant is deemed to possess or actually possesses.

*1 R(SB) 6/84*

### **Land or premises**

- 29642 In the case of land or premises the DM should obtain an expert opinion of the market value of the deemed or actual share. In either case the DM should ensure that the expert has taken into account
1. that the claimant is assumed to be a willing seller **and**
  2. whether the other owners would be willing and able to buy the share **and**
  3. whether the other owners would agree to the sale of the asset as a whole **and**

4. in a case where the other owners would not buy the share or agree to a sale of the asset as a whole
  - 4.1 whether on the facts of the claimant's particular case the courts would order
    - 4.1.a the sale of the property as a whole **or**
    - 4.1.b the partition of the property **and**
  - 4.2 the length of time a purchaser may have to wait before obtaining possession **and**
  - 4.3 the legal costs a buyer may have to pay if an application to the courts for an order for sale and/or partition was pursued (this includes both the buyer and the other parties costs) **and**
5. the rights of occupation of the other owners **and**
6. whether any of the other owners are occupying the property and whether they would be willing to vacate the property **and**
7. any rights of occupation possessed by any occupants who are not owners (e.g. tenants) **and**
8. any incumbrances secured on the asset being valued **and**
9. any legal protection available to a potential purchaser **and**
10. any risk that the legal owners may
  - 10.1 sell the property and keep the proceeds for themselves **or**
  - 10.2 encumber the property with secured debts **or**
  - 10.3 lease the property **and**
11. whether there are planning or other restrictions on the property **and**
12. whether there is a current market for the claimant's share of the property or whether one might develop in the future.

**Note 1:** The valuer should consider whether and to what extent each of the above factors would encourage or discourage a potential purchaser.

**Note 2:** For the purposes of DMG 29642 4.1 the valuer should not simply assume that an order will be granted. The specific facts of the case and the relevant law should be considered. This is because the purpose for which joint-ownership was established will need to be scrutinized in order to assess whether a court would order a sale<sup>1</sup>.

**Note 3:** For the purposes of DMG 29642 5. a person can fall within the term "excluded occupier" if they share the living space of the property with the claimant. However, this does not give the person any rights against eviction. For a person to

acquire rights against eviction the nature of any licence to remain should be such that it can be determined by giving reasonable notice.

**Note: 4:** This is not an exhaustive list of the factors relevant to the value of a deemed or actual share. In order to reach an opinion on the value of a particular share, a valuer may have to take additional factors into account.

*1 R(IS) 1/01*

**Note 5:** Scottish valuations are made on a different basis from those undertaken in the rest of Britain. In particular they do not involve a discount for factors such as delayed right to possession.

29643 The DM should also ensure that the expert has explained

1. whether on the facts of the case there is any market for the deemed or actual share and where that market lies **and**
2. how the market value has been calculated including factors relevant to that calculation and how they affect it **and**
3. either
  - 3.1 what comparables have been relied on **or**
  - 3.2 how the valuation has been arrived at without using comparables **and**
4. whether the valuer has any experience or knowledge of the sale of an undivided share in the circumstances of the claimant's case **and**
5. how location, size and condition of a property affect its value **and**
6. if the property is leasehold, details of the length of the lease and any special terms in it.

**Note 1:** A valuation arrived at simply by dividing the value of the property as a whole by the number of owners and then giving a single discount to reflect the restricted demand for a deemed or actual share does not meet the requirements of the regulations.

**Note 2:** The expert may have to make assumptions because the information is not available. If this is the case, the DM should ensure that the expert has stated what information is missing and the assumptions that have been made<sup>1</sup>.

*1 R(JSA)1/02*

29644 The DM should accept a valuation that satisfies DMG 29641 and DMG 29642 and not accept one that does not. If provided with more than one valuation that satisfies DMG 29641 and DMG 29642 the DM should decide between them according to which presents the stronger evidence and arguments.

29645 The value of a deemed or actual share in a capital asset is

1. the market value of the deemed or actual share less

2. 10% if there would be any expenses of sale<sup>1</sup>.

**Note:** The amount of any incumbrances secured on the asset should not be deducted from the market value of the deemed or actual share in these cases. The incumbrances should be taken into account by the valuer when establishing the market value<sup>1</sup>.

*1 JSA Regs, reg 111; IS (Gen) Regs, reg 49*

29646 Administrative procedures for obtaining expert opinions on the value of deemed or actual shares in capital assets have been set up (see DMG 29647). If an opinion under these procedures is challenged on appeal

1. the instructions and evidence given to the valuer should be included in the evidence put to the tribunal **and**
2. obtain a written report from the valuer
3. the valuer may be called as a witness if necessary.

29647 Benefit Delivery Specialist Operations Team issue guidance<sup>1</sup> on how to get an expert valuation of

1. real or heritable property (see DMG 29020 4.)
2. the assets of a business
3. investments
4. shares which are not quoted on the Stock Exchange, such as shares in a private company
5. an interest in a trust
6. current rights to capital
7. capital which is outside the UK.

*1 Valuation of Capital Assets Handbook*

### **Bank, post office and building society accounts**

29648 To calculate the value of a deemed share in a bank, post office or building society account the DM should establish

1. the amount that is jointly owned by the claimant and the other beneficial owners (see DMG 29135) **and**
2. the value of the deemed share by dividing the amount jointly held by the number of beneficial owners.

**Note:** If the account is with an institution that is in financial difficulty, an expert valuation of the value of the deemed share should be obtained.



## Other assets

29649 An expert opinion should be obtained as to what a willing buyer would in reality be prepared to pay to a willing seller for the deemed or actual share. The DM should then deduct

1. 10% if there would be any expenses of sale **and**
2. the amount of any incumbrances secured on the asset<sup>1</sup>.

*1 JSA Regs, reg 111; IS (Gen) Regs, reg 49*

## Value of a deemed or actual share in a capital asset outside the UK

29650 The value of a deemed or actual share in a capital asset outside the UK (see DMG 070880) depends on whether or not the country will allow money to be transferred to the UK.

29651 If money can be transferred to the UK the value of the deemed or actual share of the capital asset is

1. the market value of the deemed or actual share less
2. 10% if there would be expenses of sale.

**Note:** In most cases an expert valuation of the value of the deemed share will be needed.

29652 If the country will not allow the transfer of money to the UK the value of the deemed or actual share will be the price the owner of the deemed or actual share would get from a willing buyer in the UK. DMs work out the price from evidence

1. given by the claimant or person whose capital it is **or**
2. from an expert valuer.

**Note:** Most cases will need an expert valuation.

29653 The onus is on the claimant to provide a letter from a bank of the country where the asset is held, or a letter from the Embassy of the country concerned. If there are difficulties getting this information, Benefit Delivery Specialist Operations Team will take expert advice from the Valuations Office in London.

29654

## Business assets

29655 Business assets are the things which are risked and used in the business. Business assets can include

1. capital which may be in a bank or building society account, some other investment, or cash

2. money owed to the business, which is a current right to capital
3. business premises, including the lease on such premises
4. machinery and equipment such as
  - 4.1 cars and vans
  - 4.2 sewing and gaming machines
  - 4.3 work benches and display cabinets
  - 4.4 refrigerators and freezers
  - 4.5 computer equipment and facsimile machines
  - 4.6 desks and chairs
5. stock, including livestock such as cows and horses.

### **Value of business assets**

29656 The current market or surrender value or price of each business asset is needed. So if there are 30 sewing machines the DM has to decide the current market value or price of each machine.

### **Incumbrances secured on business assets**

29657 Only debts which are an incumbrance secured on the business asset are deducted. So if suppliers are owed money and their debt is not secured on any of the business assets no deduction is made.

29658 A bank may have a floating charge on the business assets if the business has an overdraft. A floating charge is an incumbrance secured on each business asset. The amount to deduct from the total value of all the business assets is the amount overdrawn on the date of claim or revision.

### **Funds held by the Court of Protection**

29659 When a mentally sick or disabled person has funds held by the Court of Protection (see DMG 29277 et seq), those funds should be valued in accordance with DMG 29611 - 29614. The person's incapacity does not affect this<sup>1</sup>.

*1 R(IS) 9/04*

### **Example**

Veronica lives in a care home and makes a claim for IS. She has capital of £82,000 which was inherited from her father and is held by the Court of Protection.

Veronica's brother, Henry, is her Deputy. Henry states that Veronica's capital has negligible value because of her incapacity. However, the DM decides that Veronica is not entitled to IS because the value of her capital exceeds £16,000.

## Personal equity plans

29660 A personal equity plan was an investment. People could invest up to a certain amount of money in one in each tax year if they were

1. 18 or over **and**
2. liable to pay UK tax (see DMG Chapter 07).

The value of a personal equity plan is what people would get if they withdrew their investment on the date of claim or supersession. Any income which is paid out of a personal equity plan is income from capital.

29661 A personal equity plan mortgage is not a mortgage. It is a personal equity plan and should be valued as such even if people say they are going to use their investment to pay off their mortgage. Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. The mortgage is not likely to be an incumbrance secured on the personal equity plan.

**Note:** A personal equity plan was replaced by an individual savings account in April 1999. From that date people could no longer invest in their personal equity plan or open a new one.

## Individual savings account

29662 An individual savings account is an investment. People can invest up to a certain amount of money in one in each tax year if they are

1. 16 or over **and**
2. resident or ordinarily resident in the UK for tax purposes.

The value of an individual savings account is what people would get if they withdrew their investment on the date of claim or supersession. Any income, which is paid out of an individual savings account, is income from capital.

29663 Normally, a mortgage is an incumbrance secured on the property bought with the mortgage. If someone says they are using an individual savings account to pay off their mortgage this is not likely to be an incumbrance secured on the individual savings account and it should be valued as such.

29664 It is a requirement of the regulations that the individual savings account remain in the beneficial ownership of the investor<sup>1</sup>.

*1 The Individual Savings Account Regulations 1998 para 4(6)*

**Note:** If there is evidence that the individual savings account or personal equity plan was taken out at the same time as the mortgage and it can be shown that the lender had an equitable charge over the individual savings account or personal equity plan then it may constitute an equitable charge and they should be valued taking that into account.

## Stocks and shares quoted on the London Stock Exchange

### Value of stocks and shares

- 29665 The value of stocks and shares can be obtained from the financial pages in a newspaper which is dated the same date as the date of claim or supersession. A newspaper gives the price for most of the stocks and shares quoted on the London Stock Exchange. A valuation using the price given in a newspaper is not an exact valuation.
- 29666 To decide if an exact valuation is needed, first work out the value of the stocks and shares using the price given in a newspaper. An exact valuation is always needed if the price of a stock or share is not given in a newspaper.
- 29667 To work out the value of stocks and shares from the price given in a newspaper
1. find the price of the stock or share in a newspaper which is dated the same date as the date of claim or application for supersession **and**
  2. multiply the figure at **1.** by the number of that stock or share the person has.
- 29668 An exact valuation is needed if the value of the stocks or shares are close to the lower or upper capital limits or there is a change to the amount of tariff income when the value is added to any other capital
1. the claimant and partner has **or**
  2. a child or young person has<sup>1</sup>.
- 1 R(IS) 18/95*
- 29669 To work out the exact value of stocks and shares
1. use the Shares Wizard tool available on the DWP/Jobcentre Plus/Pension Service Intranet A-Z to find the highest and lowest price for the day before the date of claim or supersession **and**
  2. deduct the lowest price from the highest price **and**
  3. divide the figure at **2.** by four **and**
  4. add the figure at **3.** to the lowest price **and**
  5. multiply the figure at **4.** by the number of that stock or share the person has.
- 29670 Once the share value has been calculated as in DMG 29669, deduct 10% costs of sale as per DMG 29611, rounding down in the claimant's favour at the last stage in the calculation.

### Example

Roy has 250 Marks and Spencer shares. The highest and lowest share prices for the day before the date of claim is £4.1750 and £4.1250 respectively.

Deduct the lowest from the highest price ( $£4.1750 - £4.1250$ ) = £0.05

Divide £0.05 by 4 = £0.0125

Add £0.0125 to the lowest share price ( $£0.0125 + £4.1250$ ) = £4.1375

Multiply £4.1375 by the number of share (250) = £1034.3750

Deduct 10% expense of sale = £930.93.

29671

## Incumbrances secured on stocks and shares

29672 Stockbrokers have an incumbrance secured on stocks or shares if the person they have bought the stocks or shares for has not paid

1. the broker for them **or**
2. the broker's commission<sup>1</sup>.

*1 R(IS) 18/95*

The incumbrance is secured only on the stocks and shares which have not been paid for or on which commission has not been paid. The incumbrance is not secured on any other stocks and shares which the stockbroker buys for the person.

29673 The amount of the incumbrance is the amount owed to the stockbroker.

## Government securities

29674 Government Securities are stocks issued by the British Government. They are sold in £100 units but re-investments can be for different amounts. Government Securities include

1. consolidated stock
2. conversion loan
3. exchequer stock
4. funding stock
5. Treasury stock
6. 3½% War Loan.

29675 The value of Government Securities should be worked out in the same way as for stocks and shares (see DMG 29665 et seq).

29676 The Shares Wizard tool available on the DWP/Jobcentre Plus/Pension Service Intranet A-Z will provide DMs with a value provided the stock has not reached the date when the capital invested is repayable. If that date has been reached, the claimant should be advised to write to the Historic Price Service, London Stock Exchange, Old Broad Street, London EC2N 1HP. Any cost imposed by this service would be payable by the claimant. Information can be obtained from the London Stock Exchange website. However, this only holds data from 1999 onwards.

29677 - 29679

## **Unit trusts**

### **Value of unit trusts**

29680 To work out the value of a unit in a unit trust

1. find the bid price for a unit in the trust in a newspaper which is dated the same date as the date of claim or application for supersession **and**
2. multiply the figure at 1. by the number of units a person has.

### **Costs of sale**

29681 Persons apply to the manager of the trust to withdraw their money so there are no costs of sale. This applies even if persons use an agent, such as a stockbroker.

29682 - 29684

## **Value of capital in certain cases**

### **Bank and building society accounts**

29685 A person who has money in a bank or building society account has a right to capital. The value of the rights to capital is the balance in the account on the date of claim or application for supersession because it is assumed the bank or building society will be able to pay out the money when asked.

29686 An expert valuation of a right to capital is needed if there is something which stops people getting their money out of a bank or building society account, such as the

1. person is the beneficial owner of the money in the account and not the legal owner and the legal owner will not withdraw the money **or**
2. bank or building society has gone into liquidation.

## Right to receive income

29687 An expert valuation is needed of the value of the right to receive an income if the income can be signed over to another person.

29688 Income which cannot be signed over to another person is

1. periodical maintenance payments
2. public service pensions, such as a civil service pension
3. SS benefits and allowances, such as CHB.

## Shares in a private company

29689 Shares in a private company are not quoted on the London Stock Exchange so an expert valuation is needed.

29690 The value of the shares is not worked out by dividing the value of all the shares in the company by the number of shares a person has<sup>1</sup>. If the company's auditors say what a fair value is the expert valuation cannot be more than this figure and is more likely to be less<sup>2</sup>.

*1 R(SB) 18/83; 2 R(IS) 2/90*

29691 The expert valuation should take into account

1. anything in the articles of association which restricts the sale of the shares, such as the shares can only be sold
  - 1.1 to the other shareholders and the shareholders will not buy them **or**
  - 1.2 if the directors agree and they do not agree **and**
2. whether the person's shares in the company are a minority, equal or controlling interest.

## Vested interest in a trust - child or young person

29692 In England and Wales the value of a child's or young person's vested interest in a trust (see DMG 29232) is

1. half the value of the child's or young person's interest **and**
2. the value of the child's or young person's right to sue the trustees for the other half when the child or young person is 18<sup>1</sup>.

*1 Trustee Act 1925, s 32*

29693 The trustees should be able to say what the value of the interest held on trust is. If not, an expert valuation is needed. If the trustees provide evidence which shows the child's or young person's half share in the interest is more than £3,000 an expert valuation is not needed.

29694 In Scotland an expert valuation of a child or young person's vested interest in a trust is needed in all cases.

29695 - 29719



## Total amount of capital

### How to work out the total amount of actual capital

29720 For each person add together the value of each item of capital the person has. The total for each person is the total amount of actual capital the person has.

29721 - 29724

### Income which is treated as capital

29725 Certain types of income are treated as capital<sup>1</sup>. The DM has to decide the amount of income which

1. each person has **and**
2. is treated as capital.

The total amount of income which is treated as capital for each person is added to the total amount of actual capital that person has.

*1 JSA Regs, reg 110; IS (Gen) Regs, reg 48*

### Advance of earnings or loan from employer

29726 An advance of earnings or a loan from an employer is income which is treated as capital if the person is an employed earner<sup>1</sup>, but not if the person

1. for JSA is a member of the claimant's family who is involved in a TD **or**
2. for IS is the claimant or partner and that person
  - 2.1 is involved in a TD **or**
  - 2.2 has returned to work after being involved in a TD and the advance or loan is made during the first 15 days after returning to work<sup>2</sup>.

*1 JSA Regs, reg 110(5); IS (Gen) Regs, reg 48(5); 2 JSA Regs, reg 110(6); IS (Gen) Regs, reg 48(6)*

29727 An employed earner is a person who is gainfully employed in GB (see DMG 070702)

1. under a contract of service **or**
2. in an office, including an elective office, and the fee or salary the person gets is taxed under the PAYE scheme<sup>1</sup>.

### Example

Nigel is in receipt of IS. On 19 January his wife, Anne, starts P/T work. She receives her first wage on 30 January. Anne's wage is £50 a week but her first wage slip shows a deduction of £20 for an advance of pay and £10 repayment of a loan. Nigel says that Anne received an advance of her wage on 23 January and a loan of £300 from her employer on 26 January and that Anne has to repay the loan at £10 a

week. The DM decides that the £20 advance of Anne's wage and the £300 loan are treated as capital and are taken into account as capital on the day they are received.

*1 SS CB Act 92, s 2(1)(a)*

## **Bounty payments**

29728 A bounty payment from certain work is income which is treated as capital if it is paid yearly or at intervals of longer than a year<sup>1</sup>. This applies to work as

1. a P/T member of a fire brigade which is kept under fire services law<sup>2</sup> **or**
2. an auxiliary coast guard and the work is coast rescue **or**
3. a P/T member of a lifeboat crew and the work is manning or launching the lifeboat **or**
4. a member of a territorial or reserve force which comes under SS law<sup>3</sup>.

*1 JSA Regs, reg 110(1); IS (Gen) Regs, reg 48(1); 2 Fire Services Acts 1947 to 1959;*

*3 Social Security (Contributions) Regulations 1979, Part I, Sch 3*

## **Charitable or voluntary payments**

29729 **[See DMG Memo JSA/IS 64]** A charitable or voluntary payment which is not made or due to be made regularly is income which is treated as capital<sup>1</sup> but not if

1. it is paid
  - 1.1 for JSA to a member of the claimant's family who is involved in a TD<sup>2</sup> **or**
  - 1.2 for IS to the claimant or partner and that person
    - 1.2.a is involved in a TD **or**
    - 1.2.b has returned to work after being involved in a TD and the charitable or voluntary payment is made during the first 15 days after returning to work<sup>3</sup> **or**
  - 1.3 for IS to a member of a claimant's or partner's family and 1.2 applies to the claimant or partner<sup>3</sup> **or**
2. it is a payment made to an educational establishment for the maintenance of a child or young person and the child or young person is
  - 2.1 living at the establishment **and**
  - 2.2 receiving relevant education at that establishment<sup>4</sup> **or**
3. it is a payment from the
  - 3.1 Macfarlane Trust (see DMG 29458) **or**
  - 3.2 Macfarlane (Special Payments) Trust (see DMG 29459) **or**
  - 3.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29460) **or**

- 3.4** Fund (see DMG 29461) **or**
- 3.5** Eileen Trust (see DMG 29462) **or**
- 3.6** MFET Limited (see DMG 29463) **or**
- 3.7** Independent Living Funds (see DMG 29444)<sup>5</sup>.

*1 JSA Regs, reg 110(9); IS (Gen) Regs, reg 48(9); 2 JSA Regs, reg 110(10)(a); 3 IS (Gen) Regs, reg 48(10)(a); 4 JSA Regs, reg 110(10)(b); IS (Gen) Regs, reg 48(10)(b); 5 JSA Regs, reg 110(10)(c); IS (Gen) Regs, reg 48(10)(c)*

29730 - 29731

## **Discharge grant paid to prisoners**

- 29732 A discharge grant paid to prisoners under prison law<sup>1</sup> is income treated as capital<sup>2</sup>.

*1 Prison Act 1952, s 30; for JSA Prisons (Scotland) Act 1989, s 17; for IS Prisons (Scotland) Act 1952, s 17; 2 JSA Regs, reg 110(7); IS (Gen) Regs, reg 48(7)*

## **Holiday pay**

- 29733 Holiday pay which is payable more than four weeks after a person has left a job or has stopped work because of an interruption is income which is treated as capital but not if it is payable

- 1.** for JSA, a member of the claimant's family who is involved in a TD **or**
- 2.** for IS, a claimant or a partner and that person
  - 2.1** is involved in a TD **or**
  - 2.2** has returned to work after being involved in a TD and the holiday pay is payable during the first 15 days after returning to work<sup>1</sup>.

*1 JSA Regs, reg 110(3); IS (Gen) Regs, reg 48(3)*

- 29734 Holiday pay is normally payable on the last working day and would not be income which is treated as capital. So if holiday pay is paid more than four weeks later the DM should check that it is payable on the date paid. Holiday pay may be payable more than four weeks later if the

- 1.** person has left the job without giving notice **and**
- 2.** employer will not pay the holiday pay until the date it is payable.

### **Example**

On 29 December Alfred makes a claim for JSA(IB). He says he last worked on 31 October but did not receive his two weeks holiday pay until 19 December. The DM checks with Alfred's former employer. The former employer confirms that Alfred last worked on 31 October but as he left without giving notice, the holiday pay was not paid until it was due to be paid on 19 December when the firm closed down for Christmas. The DM decides that the holiday pay is treated as capital.

## Income from capital

29735 Income from capital is income which is treated as capital but not if the capital is disregarded because it is

1. the dwelling occupied as the home<sup>1</sup> **or**
2. premises acquired for occupation by the claimant as his home<sup>2</sup> **or**
3. premises which are occupied by
  - 3.1 a partner **or**
  - 3.2 a relative of the claimant or of any member of the family who is aged 60 or over or is incapacitated<sup>3</sup> **or**
  - 3.3 the former partner of the claimant as his home, unless the former partner is estranged or divorced from, or a former civil partner of, the claimant
4. the dwelling which a person has left because of estrangement, divorce or dissolved civil partnership, from the former partner<sup>4</sup> **or**
5. premises which the person is taking steps to dispose of<sup>5</sup> **or**
6. premises which the person is taking legal action or legal proceedings to get possession of<sup>6</sup> **or**
7. premises which need essential repairs or improvements<sup>7</sup> **or**
8. business assets and the person
  - 8.1 works in the business as a S/E earner **or**
  - 8.2 has stopped trading **or**
  - 8.3 has stopped working or not started work in the business because the person is
    - 8.3.a ill or physically or mentally disabled **and**
    - 8.3.b is going to work in the business as a S/E earner when fit or able<sup>8</sup> **or**
9. the funds of a trust and the funds are a payment of compensation for a personal injury to the claimant or partner<sup>9</sup>.

The income from capital is treated as capital from the date it is due to be paid<sup>10</sup>.

*1 JSA Regs, Sch 8, para 1; IS (Gen) Regs, Sch 10, para 1; 2 JSA Regs, Sch 8, para 2; IS (Gen) Regs, Sch 10, para 2;  
3 JSA Regs, Sch 8, para 4; IS (Gen) Regs, Sch 10, para 4; 4 JSA Regs, Sch 8, para 5; IS (Gen) Regs, Sch 10, para 25;  
5 JSA Regs, Sch 8, para 6; IS (Gen) Regs, Sch 10, para 26; 6 JSA Regs, Sch 8, para 7; IS (Gen) Regs, Sch 10, para 27;  
7 JSA Regs, Sch 8, para 8; IS (Gen) Regs, Sch 10, para 28; 8 JSA Regs, Sch 8, para 11; IS (Gen) Regs, Sch 10, para 6;  
9 JSA Regs, Sch 8, para 17 & 17A; IS (Gen) Regs, Sch 10, para 12 & 12A; 10 JSA Regs, reg 110(4);  
IS (Gen) Regs, reg 48(4)*

29736 Income from capital includes

1. interest on an investment, such as a building society account
2. dividends on shares **or**
3. rent from real or heritable property (see DMG 29020 4.).

29737 The income from capital is treated as capital for the period it is payable even if the income is spent in that period. The period starts with the date the income is due to be paid. At the end of the period if there is any of the income left it is capital and not income which is treated as capital.

#### **Example 1**

On 13 April Paul makes a claim for JSA(IB). Paul lives with his parents but rents out a house which he owns. The value of this house with a sitting tenant is £40,000. Paul has a mortgage which is secured on this house and the amount outstanding is £38,500. The rent is £320 a calendar month and Paul uses this to pay the mortgage and other outgoings on the house. The rent is due to be paid on the first day of the month. The DM decides that the £320 rental income is treated as capital. The DM also decides that this amount will be treated as capital for one month even though Paul uses it to pay his mortgage and other outgoings on his house.

#### **Example 2**

Eric is in receipt of IS. He was seriously injured and is awarded £1.5 million damages and this is administered by the Court of Protection. The Court authorizes payment of £5,000 a month to Eric's mother who uses the money to pay for Eric's care. The DM decides that each payment of £5,000 is treated as capital for a month even though it is used for Eric's care.

29738 The DM has to decide if people have deprived themselves of capital if any of the income is spent in the period it is treated as capital.

### **Local Authority payments for children - IS**

29739 **[See DMG Memo JSA/IS 64]** Arrears of payments made by a LA under specified legislation<sup>1</sup> are treated as capital<sup>2</sup>.

*1 Children Act 1975, s 34(6) and 50; Children Act 1989, Sch 1, para 15; 2 IS (Gen) Regs, reg 48(8)*

### **Local Authority payments for children - JSA**

#### **[See DMG Memo JSA/IS 64]**

29740 Arrears of payments made by a LA under specified legislation<sup>1</sup> are treated as capital<sup>2</sup>.

*1 Children Act 1975, s 50; Children Act 1989, Sch 1, para 15; 2 JSA Regs, reg 110(8)*

## Payments under the Northern Ireland Children Order - IS and JSA

### [See DMG Memo JSA/IS 64]

- 29741 Arrears of payments made by an authority<sup>1</sup> under specified legislation<sup>2</sup> are treated as capital<sup>3</sup>.

*1 Children (NI) Order 1995, Article 2; 2 Children (NI) Order 1995, Article 15 & Sch 1 para 17; 3 JSA Regs, reg 110(8); IS (Gen) Regs, reg 48(8A)*

### **Tax refunds**

- 29742 A refund of tax which has been paid under Schedule D or Schedule E is income which is treated as capital but not a refund of tax if paid to

1. for JSA, a member of the claimant's family who is involved in a TD **or**
2. for IS, a claimant or partner and that person
  - 2.1 is involved in a TD **or**
  - 2.2 has returned to work after being involved in a TD and the refund is paid during the first 15 days after returning to work<sup>1</sup>.

For IS a tax refund paid during the first 15 days after returning to work to a claimant or partner who has been involved in a TD is capital which is treated as income<sup>2</sup>.

*1 JSA Regs, reg 110(2); IS (Gen) Regs, reg 48(2); 2 IS (Gen) Regs, reg 41(4)*

- 29743 A person pays tax under

1. Schedule D if the person is S/E **and**
2. Schedule E if the person pays tax under the PAYE scheme.

### **Example**

Michael is in receipt of JSA(IB). His wife, Hazel, works P/T and her earnings, after deductions for tax and NI are £65 a week. On 5 March Hazel receives a wage of £175 which includes £110 refund of tax paid under the PAYE scheme. The DM decides that the £110 tax refund is treated as capital.

29744

## How to work out the total amount of capital

29745 For each person add together the total of

1. actual capital **and**
2. income which is treated as capital **and**
3. notional capital.

The total of **1.** and **2.** and **3.** is the total amount of capital each person has.

29746 The total amount of capital a claimant has is the total amount of

1. the claimant's capital if the claimant does not have a partner **or**
2. the claimant's and the partner's capital if the claimant has a partner<sup>1</sup>.

*1 JSA Regs, reg 88; IS (Gen) Regs, reg 23*

29747 The total amount of capital a child or young person has is the total amount for that child or young person. Do not add the total amount of capital of a

1. child to the total amount of capital of another child or a young person **or**
2. young person to the total amount of capital of a child or another young person **or**
3. child or young person to the capital of the claimant<sup>1</sup>.

*1 JSA Regs, reg 109; IS (Gen) Regs, reg 47*

### Notional capital

29748 The DM has to decide if a person has notional capital if the total of actual capital and income which is treated as capital is

1. £16,000 or less<sup>1</sup> **or**
2. for a child or young person, £3,000 or less.

*1 R(SB) 45/83*

29749 The total amount of notional capital for each person is the total of the value of each item of notional capital that person has.

## Fractions

29750 A fraction of a penny is disregarded<sup>1</sup> if

1. the value of any item of actual or notional capital **or**
2. any item of income which is treated as capital

ends in a fraction.

*1 JSA Regs, reg 92; IS (Gen) Regs, reg 27*

29751 - 29759



# Effect of capital on benefit

## Effect of capital on benefit - claimant

### When claimant cannot get benefit

29760 Claimants cannot get benefit if the total amount of capital is more than £16,000<sup>1</sup>.

*1 JSA Regs, reg 107; IS (Gen) Regs, reg 45*

### When claimant is treated as having an income

29761 Claimants are treated as having an income if the total amount of capital is more than

1. £6,000 but not more than £16,000<sup>1</sup> **or**
2. £10,000 but not more than £16,000 if DMG 29770 applies<sup>2</sup>.

The income they are treated as having is called tariff income.

*1 JSA Regs, reg 116(1); IS (Gen) Regs, reg 53(1); 2 JSA Regs, reg 116(1A); IS (Gen) Regs, reg 53(1A)*

29762 Claimants are treated as having tariff income of £1 a week for each complete £250 of capital over

1. £6,000 up to and including £16,000
2. £10,000 up to and including £16,000 if DMG 29770 applies.

They are also treated as having tariff income of £1 a week for any capital which is left and which is not a complete £250<sup>1</sup>. See Appendix 3 to this Chapter, for a table which shows how to work out tariff income.

*1 JSA Regs, reg 116; IS (Gen) Regs, reg 53*

### When capital does not affect benefit

29763 Capital does not affect what benefit claimants can get if their capital is

1. £6,000 or less **or**
2. £10,000 or less if DMG 29770 applies.

29764 - 29767

### When the higher capital limits apply

29768 Higher capital limits apply once a claimant, lives in certain specific accommodation<sup>1</sup>.

*1 JSA Regs, reg 116(1B); IS (Gen) Regs, reg 53(1B)*

29769

## Claimants in specific accommodation

- 29770 Where the claimant lives, or is treated as living permanently in specific accommodation<sup>1</sup>, they will not be able to get benefit if their capital is more than £16,000. For IS, this applies only from 8.4.96.

*1 JSA Regs, reg 116(1B); IS (Gen) Regs, reg 53(1B)*

## Specific accommodation

- 29771 Specific accommodation is

1. a care home<sup>1</sup>, which in England and Wales, means a home, other than a hospital, an independent clinic or children's home, which provides accommodation along with nursing or personal care for any of the following
  - 1.1 persons who are or have been ill including mental illness
  - 1.2 persons who are disabled or infirm
  - 1.3 persons who are or have been dependent on alcohol and drugs **or**
2. an independent hospital (see DMG 29492)<sup>2</sup> which is not a health service hospital **or**
3. an Abbeyfield Home (see DMG 29492)<sup>3</sup> **or**
4. the Ilford Park Polish Home<sup>4</sup> if the claimant requires personal care and it is provided by that home.

*1 JSA Regs, reg 116(1B)(a); IS (Gen) Regs, reg 53(1B)(a); Care Standards Act 2000, s 3;*

*2 JSA Regs reg 116 (1B)(a); IS (Gen) Regs, reg 53(1B)(a); Care Standards Act 2000, s 2(2);*

*3 JSA Regs, reg 116 (1B)(b); IS (Gen) Regs, reg 53(1B)(b);*

*4 JSA Regs, reg 116(1B)(c); IS (Gen) Regs, reg 53(1B)(c)*

- 29772 In Scotland "care home" means a care home service<sup>1</sup> which provides accommodation along with nursing, personal care or personal support for vulnerable person but does not include

1. hospitals
2. schools
3. independent health care services.

*1 Regulation of Care (Scotland) Act 2001, s 2(3)*

- 29773 In Scotland legislation<sup>1</sup> defines an independent health care service. For the purposes of IS and JSA an "independent health care service"<sup>2</sup> means an independent hospital or private psychiatric hospital.

*1 s 2(5); 2 s 2(5)(a) & (b)*

## Meaning of personal care

29774 Personal care in DMG 29771 **4.** means care

1. by reason of old age or disablement **or**
2. for past or present
  - 2.1 dependence on alcohol or drugs **or**
  - 2.2 mental disorder
3. for a terminal illness.

The care includes assistance with bodily functions if such assistance is needed<sup>1</sup>.

*1 JSA Regs, reg 116(1B)(c); IS (Gen) Regs, reg 53(1B)(c)*

29775

## When a person is treated as living permanently in specific accommodation

29776 For IS, claimants are treated as living permanently in specific accommodation if they are

1. absent from accommodation at DMG 29771 **1. 2. or 3.** and DMG 29772 for 52 weeks or less **and**
2. over pension age<sup>1</sup>.

*1 reg 53(1C)(a)(i)*

29777 Claimants are also treated as living permanently in specific accommodation if

1. DMG 29776 does not apply **and**
2. they are absent from accommodation at DMG 29771 **1. 2. or 3.** and DMG 29772 for 13 weeks or less<sup>1</sup>.

*1 JSA Regs, reg 116(1C)(a); IS (Gen) Regs, reg 53(1C)(a)(ii)*

29778 Claimants are treated as living permanently in specific accommodation if they

1. are absent from accommodation at DMG 29771 **4.** and the manager of that home has agreed they can return to the home **and**
2. intend to return to the home<sup>1</sup>.

*1 JSA Regs, reg 116(1C)(b); IS (Gen) Regs, reg 53(1C)(b)*

29779 - 29784

## Effect of capital on benefit - child or young person

### When capital affects benefit

29785 **[See DMG Memo JSA/IS 64]** If the child's or young person's capital is more than £3,000 do not include the

1. personal allowance and any

1.1 EDP **or**

1.2 DCP

for the child or young person when working out the claimant's applicable amount<sup>1</sup> **or**

2. income of the child or young person when working out the claimant's income<sup>2</sup>.

*1 JSA Regs, reg 83(b) & Sch 1, para 15A(2)(a) & 16(a); IS (Gen) Regs, reg 17(1)(b) & Sch 2, para 13A(2)(a) & 14(a); 2 JSA Regs, Reg 106(5); IS (Gen) Regs, reg 44(5)*

### When capital does not affect benefit [See DMG Memo JSA/IS 64]

29786 Capital does not affect benefit if a child's or young person's capital is £3,000 or less.

29787 - 29794

# Notional capital

## The law

- 29795 The law says people are treated as having capital they do not have if
1. they deprive themselves of capital to get benefit or more benefit **or**
  2. they can get capital if they apply for it **or**
  3. it is paid to a third party **or**
  4. they have shares in a company and are treated as a
    - 4.1 sole owner **or**
    - 4.2 partnerin the business of that company<sup>1</sup>.

*1 JSA Regs, reg 113; IS (Gen) Regs, reg 51*

- 29796 The capital people are treated as having is called notional capital.

## What the DM decides

- 29797 The DM decides if a person has notional capital if the total of
1. the claimant's actual capital and income which is treated as capital is £16,000 or less **or**
  2. a child's or young person's actual capital and income which is treated as capital is £3,000 or less.

29798 - 29804



# Deprivation of capital

## General

### The law

29805 The law says people are treated as having capital they do not have if they deprive themselves of their capital for the purpose of getting

1. for JSA
  - 1.1 JSA or IS **or**
  - 1.2 more JSA or IS<sup>1</sup> **or**
2. for IS
  - 2.1 IS **or**
  - 2.2 more IS<sup>2</sup>.

*1 JSA Regs, reg 113(1); 2 IS (Gen) Regs, reg 51(1)*

29806 People are not treated as having capital of which they have deprived themselves if

1. the capital is a payment made because of a personal injury to them (including payments from the Children's Memorial Trust - see DMG 29418) **and**
2. the payment is held on trust for their benefit<sup>1</sup>.

They are also not treated as having the amount by which notional capital is reduced under the diminishing notional capital rule<sup>2</sup>.

*1 JSA Regs, reg 113(1)(a); IS (Gen) Regs, reg 51(1)(a); 2 JSA Regs, reg 113(1)(b) & 114; IS (Gen) Regs, reg 51(1)(B) 51A*

29807 The law applies if claimants use their capital to buy personal possessions, such as a car, and they bought them to get

1. for JSA
  - 1.1 JSA or IS **or**
  - 1.2 more JSA or IS **or**
2. for IS
  - 2.1 IS or Supp B **or**
  - 2.2 more IS or Supp B.

The personal possessions are not disregarded if this applies<sup>1</sup>.

**Note:** See DMG 29895 for guidance on the value of personal possessions if this applies.

*1 JSA Regs, Sch 8, para 15; IS (Gen) Regs, Sch 10, para 10*

## Who the law applies to

29808 The law applies only to a claimant and partner. It does not apply to a

1. child **or**
2. young person

even if a child's or young person's capital has been disposed of.

29809 The law applies to claimants and partners only if they were the beneficial owner or joint beneficial owners of the capital. So if a claimant is the joint beneficial owner of a building society account which has £10,000 in it and the claimant's share is £4,000 the law

1. applies if the claimant spends or gives away that £4,000 or any part of it for the purpose of getting benefit or more benefit **and**
2. does not apply if the other £6,000 or any part of it is spent or given away.

29810 The law does not apply to claimants and partners if another person, such as

1. an appointee appointed by the DM to act for the claimant **or**
2. someone with power of attorney (unless DMG 29289 applies)

deprives claimants of their capital. DMG 29288 gives guidance on how to treat claimants capital in these circumstances.

29811 DMs should decide the question of deprivation each time benefit is claimed because

1. a decision on a claim is final **and**
2. any fact found or determination made in connection with that decision cannot be carried forward to decide the next claim<sup>1</sup>.

*1 SS Act 98, s 17*

29812 - 29814

## Have people deprived themselves of capital

### Meaning of deprive

29815 The meaning of deprive is not a question of law and should be given its normal every day meaning<sup>1</sup>. So claimants have deprived themselves of capital if they no longer have it even if they use it to

1. get
  - 1.1 other capital<sup>2</sup> **or**
  - 1.2 personal possessions **or**



2. pay debts.

*1 R(SB) 40/85; 2 R(SB) 40/85*

### **Onus of proof**

- 29816 People have to show they no longer have capital<sup>1</sup>.

*1 R(SB) 38/85*

### **Evidence that people no longer have capital**

- 29817 Evidence that people no longer have capital can include

1. a conveyance which shows ownership of real or heritable property (see DMG 29020 4.), such as a house, has been transferred to another person **or**
2. a deed, such as a deed of
  - 2.1 gift **or**
  - 2.2 trust **or**
  - 2.3 settlementwhich shows capital has been given to another person **or**
3. receipts which show
  - 3.1 what the capital has been spent on **or**
  - 3.2 which debts have been paid out of the capital.

### **What the DM decides**

- 29818 The DM decides if claimants or partners have

1. the capital **or**
2. deprived themselves of it.

DMs do not have to decide if claimants or partners have deprived themselves of capital for the purpose of getting benefit or more benefit if they decide claimants or partners still have the capital. Such capital is included when working out what actual capital the claimant or partner has.

- 29819 DMs should decide claimants or partners have actual capital if

1. there is evidence to show claimants or partners had the capital **and**
2. claimants or partners cannot show they no longer have it<sup>1</sup>.

*1 R(SB) 38/85*

## **Evidence which may show people had capital**

29820 Evidence which may show people had capital can include information

1. given when benefit was claimed or claimed previously, such as when claimants have said they
  - 1.1 had capital and do not say they have capital now **or**
  - 1.2 owned the house in which they used to live and do not say what has happened to the house when they move into accommodation they do not own **or**
2. information from another source, such as from the former employer, which shows claimants have got a one-off payment.

29821 - 29824

## **Have people deprived themselves of capital for the purpose of getting benefit or more benefit**

### **Onus of proof**

29825 DMs have to show the claimant's or partner's purpose was to get benefit or more benefit if they decide claimants or partners have deprived themselves of capital. Getting benefit or more benefit may not be the claimant's or partner's predominant purpose but it must be a significant one<sup>1</sup>. So when claimants give away all their capital to a relative just before claiming benefit their

1. main, or predominant, purpose may be to benefit the relative **and**
2. intention, or significant purpose, may be to reduce their capital so they can get benefit or more benefit.

*1 R(SB) 40/85*

### **What the DM decides**

29826 DMs have to decide if the claimant's or partner's significant purpose was to get benefit or more benefit. The DM has to make such a decision each time claimants or partners deprive themselves of capital. So if claimants have spent their capital on several things the DM has to decide the claimant's purpose for each act of deprivation.

29827 Normally there is no direct evidence to show the claimant's or partner's purpose was to get benefit or more benefit. So the DM has to consider all the facts of each case when making the decision<sup>1</sup>.

*1 R(SB) 9/91*

29828 - 29829

## Facts which the DM should consider

### Were people mentally capable when they deprived themselves of capital

- 29830 Claimants or partners who are not mentally capable have not deprived themselves of capital for the purpose of getting benefit or more benefit if they were not mentally capable at the time they deprived themselves of capital.
- 29831 Such claimants or partners have actual capital if they gave their capital to another person because the gift is not valid. The person who has been given the capital is holding it on trust for the claimant or partner.

### Did claimants have a choice when they deprived themselves of capital

- 29832 The DM has to decide why claimants or partners chose to deprive themselves of capital when they did if they had a choice in the matter<sup>1</sup>. The fact that claimants had a choice does not mean their purpose was to get benefit or more benefit. It is a fact which the DM should take into account when deciding the claimant's or partner's purpose.

*1 R(SB) 12/91*

- 29833 Claimants or partners have no choice if they use their capital to pay

1. for the necessities of life, such as food and fuel **or**
2. debts which are
  - 2.1 immediately repayable **and**
  - 2.2 legal debts capable of enforcement<sup>1</sup> **or**
3. the Department to repay an overpayment.

Claimants or partners who had no choice have not deprived themselves of capital to get benefit or more benefit.

*1 R(SB) 12/91*

- 29834 Claimants or partners have a choice if they

1. give their capital away
2. spend their capital extravagantly or imprudently even if they say they have used it to pay for the necessities of life
3. pay back a debt before the agreed date, such as when they pay off their mortgage and the agreement says it is not due to be paid back for another 15 years<sup>1</sup>

4. pay more than the amount due on a debt, such as when they pay more than the minimum payment on a credit card debt, unless the payment has been made to remove the threat of high interest payments and the DM decides it was reasonable for the claimant to act in the way that they did.
5. pay back a debt which is not a legal debt capable of enforcement.
6. make payments to a flexible current account mortgage which reduce the outstanding balance on the mortgage.

**Note:** See DMG 29339 if a person has a certain and immediate liability to repay capital that has been given to them.

*1 R(SB) 12/91*

29835 In England and Wales a legal debt capable of enforcement is one which is recognized in law as having legal effect. It can be created in a variety of ways, such as

- by judgement of a court
- an instrument under seal
- a deed
- a contract to pay.

29836 A contract is made if

1. there is a binding agreement, which does not have to be in writing **and**
2. some consideration passes between the people who have entered into the agreement, such as a mutual promise to lend and to repay money **and**
3. there is an intention to create legal relations.

29837 Legal relations are created if the parties to the agreement intend that the agreement should be binding and of legal effect. This means the interests of all the parties can be protected by legal action if necessary, such as when a lender asks for a debt to be repaid before the agreed date. It does not mean that the parties have agreed how the contract will be enforced if the debt is not paid back by the agreed date.

29838 In Scotland any debt is legal and so capable of enforcement. This applies even if

1. the debt has not been acknowledged **or**
2. there is no written contract **or**
3. no consideration has passed between the parties involved.

29839 DMs should decide if a debt paid by claimants or partners is a legal debt capable of enforcement. Some of the things which the DM will need to take into account when making the decision are

1. the size and importance of the debt
2. the circumstances under which the loan was made

3. any written or other contemporaneous evidence
4. the relationship of the parties involved.

**Did people know capital affects the amount of benefit they can get**

29840 Claimants or partners have not deprived themselves of capital for the purpose of getting benefit or more benefit if they did not know that the capital they have deprived themselves of would affect the amount of benefit they could get<sup>1</sup>.

*1 R(SB) 12/91*

29841 DMs have to show claimants or partners did have such knowledge if they are to decide the purpose was to get benefit or more benefit. Facts which the DM should consider include

1. previous claims for benefit which may show claimants or partners
  - 1.1 did not get benefit, or got a reduced amount, because of the capital they had **or**
  - 1.2 have been told about the effect of capital on benefit
2. official forms and leaflets which claimants or partners have been given when claiming benefit<sup>1</sup> **and**
3. the claimant's or partner's educational standing<sup>2</sup>.

*1 R(SB) 12/91; 2 R(SB) 12/91*

29842 For IS the DM has to show claimants or partners had a knowledge of the

1. IS scheme **and**
2. effect of capital on IS

if they deprived themselves of capital before 11.4.88<sup>1</sup>.

*1 R(IS) 14/93*

**Did people say what they were going to do with their capital**

29843 Claimants or partners have not deprived themselves of capital for the purpose of getting benefit or more benefit if they

1. say exactly what they are going to do with their capital **and**
2. are told by an officer of DWP it **will not** affect the amount of benefit they can get **and**
3. do what they said they were going to do with their capital.

29844 However, DMs should consider whether claimants or partners have deprived themselves of capital for the purpose of getting benefit or more benefit if they

1. say exactly what they are going to do with their capital **and**

2. are told by an officer of DWP it **will** affect the amount of benefit they can get  
**and**
3. do what they said they were going to do with their capital.

### **When did people deprive themselves of capital**

29845 The DM should consider the date claimants or partners deprived themselves of capital. Such a fact is more relevant if deprivation is near to the date of the claim or the date the claimant's circumstances change<sup>1</sup>.

#### **Example**

Ruth has been in receipt of IS since 1991. On 25.2.04 she transfers legal and beneficial ownership of her house to her daughters and goes to live with her sister. Ruth says that she transferred ownership of her home to her daughters so they still had somewhere to live when she went to live with her sister. The DM decides that there are grounds to revise or supersede the decision awarding IS to Ruth. The DM also decides that, although her predominant motive was to provide a home for her daughters, a significant purpose was to receive IS. The DM therefore decides that Ruth deprived herself of the value of her house in order to receive IS.

*1 R(SB) 9/91*

### **What are people going to live on after they have deprived themselves of capital**

29846 The DM should consider what claimants or partners say they are going to live on after they have deprived themselves of capital. Such a fact is more relevant if they have no other capital or income to live on<sup>1</sup>.

*1 R(SB) 9/91*

29847 The DM cannot decide the purpose of the deprivation was to get benefit or more benefit if the only fact is that after depriving themselves of capital

1. claimants or partners should have realized **or**
  2. the effect of it would be
- they would need benefit<sup>1</sup>.

*1 R(SB) 40/85*

29848 - 29854

# Capital available on application

## The law

29855 The law says people are treated as having capital which they could get if

1. they applied for it **and**
2. it is available to them if they apply for it.

They are treated as having the capital from the date they could be expected to get it if they applied for it<sup>1</sup>.

*1 JSA Regs, reg 113(2); IS (Gen) Regs, reg 51(2)*

29856 This does not apply to capital people could get from

1. a discretionary trust<sup>1</sup> **or**
2. a trust and the funds of the trust are a payment which was made because of a personal injury to them<sup>2</sup> (including payments from the Children's Memorial Trust - see DMG 29418) **or**
3. getting a loan
  - 3.1 which is secured on capital **and**
  - 3.2 the capital is disregarded when working out what capital they have, such as the dwelling occupied as the home<sup>3</sup> **or**
4. a personal pension scheme<sup>4</sup> **or**
5. an occupational pension scheme or a payment made by the Board of the Pension Protection Fund where the claimant has not yet attained the qualifying age for SPC<sup>5</sup>.
6. capital administered by the Court which derives from personal injury<sup>6</sup>.

*1 JSA Regs, reg 113(2)(a); IS (Gen) Regs, reg 51(2)(a); 2 JSA Regs, reg 113(2)(b); IS (Gen) Regs, reg 51(2)(b);*

*3 JSA Regs, reg 113(2)(c); IS (Gen) Regs, reg 51(2)(c); 4 JSA Regs, reg 113(2)(d); IS (Gen) Regs, reg 51(2)(d);*

*5 JSA Regs, reg 113(2)(da); IS (Gen) Regs, reg 51(2)(da); 6 JSA Regs, reg 113(2)(da) & (e);*

*IS (Gen) Regs, reg 51(2)(da) & (e)*

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## Capital which is available

29857 Capital which is available on application is capital which people could have if they applied for it, such as

1. an unclaimed win on the premium bonds **or**
2. money which the person
  - 2.1 has paid under the terms of a contract **and**
  - 2.2 can get back if the terms of the contract lets them or the law specifically allows them to get their money back<sup>1</sup>

such as an agreement for credit under which people have paid a deposit and they can withdraw from the agreement within a certain period of time and get their deposit back.

*1 Consumer Credit Act 1978, s 68*

- 29858 Capital which is not included is actual capital which has already been taken into account when working out what capital people have. This applies even if they have to apply to get their money. For example, a man who has £2,000 invested in premium bonds will have £2,000 actual capital but would have to apply to withdraw his investment in the bonds if he wanted the money.

### **What the DM decides**

- 29859 The DM decides if people could get capital if they applied for it. If so, the DM decides if the capital is available to them if they applied for it. If so, the DM treats them as having capital from the date they could expect to get it if they applied for it.



## Capital paid to or for a third party

### Capital paid to a third party for the claimant or a member of the claimant's family

29860 **[See DMG Memo JSA/IS 64]** The law states that a claimant or a member of a claimant's family is treated as having capital which is paid to a third party if the payment

1. is for that
  - 1.1 claimant **or**
  - 1.2 member of the claimant's family **and**
2. is made under social security law<sup>1</sup> or is a
  - 2.1 WDisP **or**
  - 2.2 WWP **or**
  - 2.3 a pension paid to a forces widow or surviving civil partner under specific provisions<sup>2</sup> or any other pension for persons who have been disabled or died as members of the armed forces **or**
  - 2.4 War Widower's Pension<sup>3</sup>
  - 2.5 Surviving Civil Partner's War Pension
3. for JSA would normally have been paid to that
  - 3.1 claimant **or**
  - 3.2 member of the claimant's family<sup>4</sup>.

For IS this does not apply if the payment is made to a third party and it is for a member of the third party's family<sup>5</sup>.

*1 WR Act 07; JS Act 95; SS CB Act 92; 2 Armed Forces (Pensions and Compensation) Act 2004; Naval, Military and Airforces etc (Disablement and Death) Service Pensions Order 83 made under the Naval and Marine Pay and Pensions Act 1865 or the Pension and Yeomanry Pay Act 1884; SS (Misc Prov) Act 77;*

*3 SS (Miscellaneous Amendment) Regs 2002, regs 2 & 3; 4 JSA Regs, reg 113(3)(a)(i); IS (Gen) Regs, reg 51(3)(a)(i); 5 reg 51(3)(a)(i)*

29861 **[See Memo DMG 16/11]** The law says the claimant or a member of a claimant's family is treated as having a certain amount of capital which is paid to a third party if the payment is

1. not a payment under SS law<sup>1</sup> **and**
2. not a payment of a
  - 2.1 WDisP **or**
  - 2.2 WWP **or**
  - 2.3 War Widower's Pension<sup>2</sup>
  - 2.4 Surviving Civil Partner's War Pension
3. not a payment<sup>3</sup> made under the

- 3.1 Macfarlane Trust (see DMG 29458) **or**
- 3.2 Macfarlane (Special Payments) Trust (see DMG 29459) **or**
- 3.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29460) **or**
- 3.4 Fund (see DMG 29461) **or**
- 3.5 Eileen Trust (see DMG 29462) **or**
- 3.6 MFET Limited (see DMG 29463) **or**
- 3.7 Independent Living Funds (see DMG 29443) **or**
- 3.8 Skipton Fund (see DMG 29464) **or**
- 3.9 London Bombings Relief Charitable Fund (DMG 29465) **and**
- 4. not a payment<sup>4</sup> under relevant legislation<sup>5</sup> in respect of participation in
  - 4.1 a specified employment programme<sup>6</sup> **or**
  - 4.2 a specified training scheme<sup>7</sup> **or**
  - 4.3 the Intensive Activity Period<sup>8</sup> or Intensive Activity Period for ND 50+ **or**
  - 4.4 Flexible New Deal<sup>9</sup> **or**
  - 4.5 a specified employment-related course<sup>10</sup> **or**
  - 4.6 the MWA Scheme<sup>11</sup> **and**
- 5. for that
  - 5.1 claimant **or**
  - 5.2 member of the claimant's family **and**
- 6. used to pay for
  - 6.1 food **or**
  - 6.2 ordinary clothing or footwear **or**
  - 6.3 household fuel **or**
  - 6.4 rent for which housing benefit is payable **or**
  - 6.5 housing costs which are included when working out the claimant's applicable amount **or**
  - 6.6 CT or water charges which the claimant or member of the claimant's family has to pay **and**

the amount of capital that claimant or member of the claimant's family is treated as having is the amount paid out under 5.<sup>12</sup>. For IS this does not apply if the payment is made to a third party and it is for a member of the third party's family<sup>13</sup>.

**Note:** “Ordinary clothing or footwear” means clothing or footwear for normal daily use. It does not include school uniforms or clothing or footwear used solely for sporting activities<sup>14</sup>.

*1 WR Act 07; JS Act 1995; SS CB Act 92; 2 SS (Miscellaneous Amendments) Regs 2002, regs 2 & 3;  
3 JSA Regs, reg 113(3A)(a); IS (Gen) Regs, reg 51 (3A) (a); 4 JSA Regs, reg 113(3A)(b);  
IS (Gen) Regs, reg 51(3A)(b); 5 E&T Act 73, s 2; 6 JSA Regs, reg 75(1)(a)(ii); 7 reg 75(1)(b)(ii);  
8 reg 75(1)(a)(iv); 9 reg 75(1)(b)(v); 10 reg 17A(7); 11 reg 113(3A)(bb); 12 reg 113(3)(a)(ii); IS (Gen) Regs, reg 51(3)(a)(ii);  
13 reg 51(3)(a); 14 JSA Regs, reg 113(8); IS (Gen) Regs, reg 51(8)*

## **Capital paid to a claimant or a member of the claimant’s family for a third party**

29862 **[See Memo DMG 16/11]** The law states that a claimant or a member of the claimant’s family is treated as having a certain amount of capital if a payment is

1. made
  - 1.1 to that claimant or member of the claimant’s family **and**
  - 1.2 for a third party<sup>1</sup> **and**
2. not made<sup>2</sup> under the
  - 2.1 Macfarlane Trust (see DMG 29458) **or**
  - 2.2 Macfarlane (Special Payments) Trust (see DMG 29459) **or**
  - 2.3 Macfarlane (Special Payments) (No. 2) Trust (see DMG 29460) **or**
  - 2.4 Fund (see DMG 29461) **or**
  - 2.5 Eileen Trust (see DMG 29462) **or**
  - 2.6 MFET Limited (see DMG 29463) **or**
  - 2.7 Independent Living Funds (see DMG 29443) **or**
  - 2.8 Skipton Fund (see DMG 29464) **or**
  - 2.9 London Bombings Relief Charitable Fund (see DMG 29465)
3. not a payment<sup>3</sup> under relevant legislation<sup>4</sup> in respect of participation in
  - 3.1 a specified employment programme<sup>5</sup> **or**
  - 3.2 a specified training scheme<sup>6</sup> **or**
  - 3.3 the Intensive Activity Period<sup>7</sup> or Intensive Activity Period for ND 50+ **or**
  - 3.4 Flexible New Deal<sup>8</sup> **or**
  - 3.4 a specified employment-related course<sup>9</sup> **or**
  - 3.5 the MWA Scheme<sup>10</sup>
4. not a payment of
  - 4.1 an occupational pension<sup>11</sup> **or**
  - 4.2 a pension or any other periodical payment under a personal pension scheme<sup>12</sup> **or**

**4.3** a payment made by the Board of the Pension Protection Fund  
where DMG 29870 applies<sup>13</sup>.

**Note:** See DMG 23846 - 23849 for the definition of “personal pension scheme” and  
DMG 23854 - 23855 for the definition of “periodical payment”.

*1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b); 2 JSA Regs, reg 113(3A)(a); IS (Gen) Regs, reg 51(3A)(a);  
3 JSA Regs, reg 113(3A)(b); IS (Gen) Regs, 51(3A)(b); 4 E&T Act 73, s 2; 5 JSA Regs, reg 75(1)(a)(ii);  
6 reg 75(1)(b)(ii); 7 reg 75(1)(a)(iv); 8 reg 75(1)(a)(v); 9 reg 17A(7); 10 reg 113(3A)(bb); 11 reg 1(3); IS (Gen) Regs, reg 2(1);  
12 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 13 JSA Regs, reg 113(3A)(c); IS (Gen) Regs, reg 51(3A)(c)*

29863 DMG 29862 does not apply to a payment of capital made to

1. claimants which is for a member of their family **or**
2. a member of a claimant's family which is for
  - 2.1 that claimant **or**
  - 2.2 another member of that family<sup>1</sup>.

*1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b)*

29864 The amount of capital that the claimant or member of the claimant's family is treated  
as having is the amount

1. kept by that
  - 1.1 claimant **or**
  - 1.2 member of the claimant's family **or**
2. used by that
  - 2.1 claimant **or**
  - 2.2 member of the claimant's family **or**
  - 2.3 claimant for any member of that claimant's family **or**
  - 2.4 member of the claimant's family for that claimant or any other member  
of that family<sup>1</sup>.

*1 JSA Regs, reg 113(3)(b); IS (Gen) Regs, reg 51(3)(b)*

### **Third party**

29865 Third party includes a public body, such as a LA.

### **Meaning of ordinary clothing or footwear**

29866 Ordinary clothing or footwear means clothing or footwear for normal daily use but  
not

1. school uniforms **or**
2. clothing or footwear used only for sporting activities<sup>1</sup>.

*1 JSA Regs, reg 113(8); IS (Gen) Regs, reg 51(8)*

29867 Ordinary clothing or footwear for normal daily use is what people in general wear on a daily basis. So it does not include clothing or footwear which

1. people in general do not wear, such as orthopaedic shoes which a disabled person might wear **or**
2. is not worn on a daily basis, such as wellington boots.

### **What the DM decides**

29868 The DM decides

1. whether a claimant or a member of the claimant's family should be treated as having capital which has been paid to or for a third party **and**
2. if so the amount of capital that claimant or member of the claimant's family is treated as having **and**
3. DMG 29860 - 29861 does **not** apply when payments are made to a third party rather than the claimant at the claimant's own request.

### **Occupational and personal pensions**

29869 A claimant is treated<sup>1</sup> as possessing payments made to a third party

1. in respect of the
  - 1.1 claimant **or**
  - 1.2 a member of the claimant's family **and**
2. where the payment is
  - 2.1 an occupational pension<sup>2</sup> **or**
  - 2.2 a pension or any other periodical payment under a personal pension scheme<sup>3</sup> **or**
  - 2.3 a payment made by the Board of the Pension Protection Fund.

**Note:** See DMG 23846 - 23849 for the definition of "personal pension scheme" and DMG 23854 - 23855 for the definition of "periodical payment".

*1 JSA Regs, reg 113(3)(a)(ia); IS (Gen) Regs, reg 51(3)(a)(ia); 2 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1); 3 JSA Regs, reg 1(3); IS (Gen) Regs, reg 2(1)*

29870 A claimant is not treated as possessing a payment under DMG 29869 if

1. the payment is made
  - 1.1 for a person in respect of whom a bankruptcy order has been made **or**
  - 1.2 where in Scotland, the estate of that person is subject to sequestration or has a judicial factor appointed on it **and**

2. it is paid to a trustee in bankruptcy or any other person acting on behalf of the creditors **and**
3. neither the person in respect of whom the payment has been made nor another member of the family has actual or notional capital apart from that payment<sup>1</sup>.

*1 JSA Regs, reg 113(3A)(c); IS (Gen) Regs, reg 51(3A)(c)*

29871 - 29874

# Person treated as sole owner or partner in a company

## The law

29875 The law says a person who has shares in a company is treated as the sole owner or a partner in the business of that company if the person is like a sole owner or partner in the business of the company. If this applies to the person the law says the

1. value of the person's shares in the company is disregarded when working out what capital the person has **and**
2. person is treated as having capital which is equal to
  - 2.1 the value of the capital of that company if the person is treated as the sole owner **or**
  - 2.2 the person's share of the value of the capital of that company if the person is treated as a partner<sup>1</sup>.

If the person is undertaking activities in the course of the business of that company the capital the person is treated as having at **2.** is disregarded<sup>2</sup>.

*1 JSA Regs, reg 113(4); IS (Gen) Regs, reg 51(4); 2 JSA Regs, reg 113(5); IS (Gen) Regs, reg 51(5)*

## Like a sole owner or partner

29876 Whether a person who has shares in a company is like a sole owner or partner in the business of that company is a question of fact in each case<sup>1</sup>. A person who does not work for the company can be like a sole owner or partner<sup>2</sup>.

*1 R(IS) 8/92; 2 R(IS) 8/92*

29877 The sole owner of a business has total influence over the day to day running of the business. When a business is jointly owned the number of partners is normally small and the influence a partner has over the day to day running of the business will depend on the terms of the partnership agreement. So for a person to be like a

1. sole owner in the business of the company that person should have total influence over the day to day running of the company, such as when a person owns 99% of the shares in a company<sup>1</sup> **and**
2. partner in the business of the company the
  - 2.1 number of shareholders in the company should be small **and**
  - 2.2 person should have some meaningful influence over the day to day running of the company<sup>2</sup>.

*1 R(IS) 13/93; 2 R(IS) 8/92*

29878 A person who has some shares in a company which has a large number of shareholders, such as ICI, is an investor because such a person has no influence over the day to day running of the company<sup>1</sup>.

*1 R(IS) 8/92*

### **Undertaking activities in the course of the business**

29879 A person who is a shareholder in a company is undertaking activities in the course of the business of the company if that person is doing some work, no matter how little, for that company. So a person who takes telephone messages and receives mail for the company is undertaking activities in the course of the business of that company<sup>1</sup>.

*1 R(IS) 13/93*

### **What the DM decides**

29880 The DM decides whether a person who has shares in a company is treated as a sole owner or partner in the business of the company. If so the DM

1. disregards the value of the person's shares in the company **and**
2. decides whether the value of the capital the person is treated as having is disregarded because the person is undertaking activities in the course of the business of the company.

If the value at **2.** cannot be disregarded the DM decides the value of the capital the person is treated as having.

29881 - 29884



# What is the amount of notional capital

## How to work out the amount of notional capital

### The law

- 29885 The law says the amount of notional capital is worked out in the same way as if the person has the capital<sup>1</sup>.

*1 JSA Regs, reg 113(6); IS (Gen) Regs, reg 51(6)*

### What the DM decides

- 29886 The DM decides

1. what notional capital can be disregarded (see DMG 29351 - 29606) **and**
2. the value of notional capital which cannot be disregarded (see DMG 29610 - 29694).

## Disregards

### Capital of a company

- 29887 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**
2. partner

in the business of the company the person is also treated as having the value of the capital of the company unless it is disregarded.

- 29888 The value of the capital of a company is disregarded if the person is undertaking activities in the course of the business of the company.

### Premises which are to be sold

- 29889 Premises which are to be sold are normally disregarded. But they are not disregarded if people are treated as having them because they transferred legal ownership to another person to get benefit or more benefit. A person who is not the legal owner of premises cannot take any steps to dispose of them so the disregard does not apply.

## Shares

29890 The value of a person's shares in a company is not normally disregarded. But the value of a person's shares in a company is disregarded if the person is treated as a

1. sole owner **or**
2. partner

in the business of the company.

## Value

### Capital of a company

29891 Normally a person has no beneficial interest in the capital of a company. But if a person who has shares in a company is treated as a

1. sole owner **or**
2. partner

in the business of the company the person is also treated as having the value or a share of the value of the capital of the company if it is not disregarded.

29892 The value of the capital of the company is the net value of the capital of that company. The net value is the difference between

1. the total value of the capital of the company **and**
2. the amount of any liabilities the company has<sup>1</sup>.

It is not the value of some of the capital of the company<sup>2</sup>.

**Note:** An expert valuation will be needed if the company's auditors do not provide evidence of the net value of the capital of the company.

*1 R(IS) 13/93; 2 R(IS) 13/93*

29893 The value the person is treated as possessing is

1. all the value if the person is treated as a sole owner **and**
2. a share of the value if the person is treated as a partner.

The share at **2.** is the same fraction as the fraction of shares the person has in the company. So a person who has 40 out of a 100 shares in a company has a two fifth's share of the value.

## Capital paid to or for a third party

29894 The amount of capital a person is treated as having if capital is paid to a

1. third party for a claimant or a member of the claimant's family **or**
2. claimant or a member of the claimant's family for a third party

is not always the full amount of the capital paid. See DMG 29860 - 29867 which says what capital the person is treated as having.

## Capital spent on a resource which is not worth as much

29895 If claimants or partners have deprived themselves of capital to get benefit or more benefit and they spent their capital on a resource which is not worth as much as the capital spent, the value of notional capital is the difference between the value of the

1. capital spent **and**
2. resource which was bought<sup>1</sup>.

**Note:** This may apply when a person has spent capital on personal possessions to get benefit or more benefit because personal possessions are not normally worth as much as a person paid for them. The DM should **not** consider any further increase in the difference between the amount paid for a personal possession and its current market value<sup>2</sup>.

### Example

Jens makes a claim for JSA(IB). Two weeks before making his claim, Jens buys a car for £7,250. The DM decides that Jens bought the car to get benefit. When Jens makes his claim the value of the car is £6,500. The DM decides that Jens has actual capital of £6,500 and notional capital of £750. Although the value of the car reduces, the DM does not make an increase in the amount of notional capital.

*1 R (SB) 38/85; 2 R(IS) 8/04*

## Capital which people have deprived themselves of

29896 If claimants or partners deprive themselves of capital to get benefit or more benefit the value of the capital they are treated as having is the difference between

1. its value on the date of claim or revision **and**
2. the amount of any reduction under the diminishing notional capital rule<sup>1</sup>.

*1 JSA Regs, reg 113(1)(b); IS (Gen) Regs, reg 51(1)(b)*

29897 - 29899

## Diminishing notional capital rule

### The law

29900 The law says

1. when the amount of notional capital should be reduced **and**
2. how the amount of the reduction is worked out<sup>1</sup>.

**Note:** For IS the law applies fr 1.10.90. Send any IS case which includes a period before 1.10.90 to DMA Leeds for advice.

*1 JSA Regs, reg 114; IS (Gen) Regs, reg 51A*

### What the DM decides

29901 The DM decides

1. when the capital a claimant is treated as having because of deprivation should be reduced **and**
2. the amount of the reduction.

### The diminishing notional capital rule

29902 The diminishing notional capital rule gives two ways for reducing the amount of capital the claimant is treated as having because of deprivation. If the claimant

1. is getting benefit capital is reduced as in DMG 29915 - 29917
2. is not getting benefit it is reduced as in DMG 29925 - 29928.

29903 - 29904

### Meaning of benefit week

29905 For JSA benefit week means<sup>1</sup> a period of seven days ending with day determined by the last two digits of their NINO as is shown in the following table unless the Secretary of State arranges otherwise.

NI No.	Pay day
00 – 19	Monday
20 – 39	Tuesday
40 – 59	Wednesday
60 – 79	Thursday
80 – 99	Friday

*1 JSA Regs, reg 1(3)*

29906 For IS benefit week in this guidance means a

1. a week which is the same as the week a claimant is paid

- 1.1 IB

- 1.2 RP

- 1.3 SDA

- 1.4 WB

- 1.5 bereavement benefits

if the claimant can get it or could get it if the claimant satisfied the contribution conditions **or**

2. if 1. does not apply a period of seven days which begins or ends on a day decided by the DM<sup>1</sup>.

*1 IS (Gen) Regs, reg 2(1)*

### **Meaning of part-week**

29907 In this guidance part-week means any period of less than a week when the claimant gets benefit<sup>1</sup>.

*1 JSA Regs, reg 114(7)(a) & 150(3); SS CB Act 92, s 124(5); IS (Gen) Regs, reg 51A(7)(a)*

### **Meaning of relevant week**

29908 For JSA relevant week in this guidance means

1. the first benefit week or first part-week when the capital the claimant is treated as having because of deprivation is taken into account to decide what JSA or IS the claimant can get **or**
2. any benefit week or part-week after the one at 1. when the capital is taken into account to revise or supersede what JSA or IS the claimant can get and it is decided the claimant can
  - 2.1 start getting JSA or IS **or**
  - 2.2 no longer get JSA or IS.

If more than one benefit week or part-week is identified after applying 1. and 2. the relevant week is the latest benefit week or the latest part-week<sup>1</sup>.

*1 JSA Regs, reg 114(7)(b)*

29909 For IS relevant week in this guidance means

1. the first benefit week or first part-week when the capital the claimant is treated as having because of deprivation is taken into account to decide what IS the claimant can get **or**
2. any benefit week of part-week after the one at 1. when the capital is taken into account to revise or supersede what IS the claimant can get and it is decided the claimant can
  - 2.1 start getting IS **or**
  - 2.2 no longer get IS.

If more than one benefit week or part-week is identified after applying 1. and 2. the relevant week is the latest benefit week or latest part-week<sup>1</sup>.

#### **Example 1**

On 12.3.07 Freda makes a claim for IS. Her first BWE is Wednesday 14.3.07. Two days before making her claim Freda deprived herself of £8,500 and the DM decides she did so in order to get IS. The period from 12.3.07 to 14.3.07 at the start of Freda's claim is a part-week. It is the first part-week she is treated as having because notional capital is taken into account. The DM therefore decides that the part-week is the relevant week.

#### **Example 2**

On 11.12.06 Hamish makes a claim for IS. His BWE is Thursday. The DM decides that on 4.12.06 he deprived himself of £9,200 in order to get IS. On 23.4.07 Hamish makes another claim for IS. The DM decides that on 4.12.06 Hamish deprived himself of capital to get IS and he should be treated as having £7,685.70. Hamish has no other income or capital so the DM decides that Hamish is now entitled to IS. The DM also decides that the part-week from 23.4.07 to 26.4.07 is the relevant week.

*1 IS (Gen) Regs, reg 51A(7)(b)*

### **Meaning of relevant subsequent week**

29910 In this guidance relevant subsequent week means

1. the benefit week or part-week which includes
  - 1.1 the day when a further claim for benefit is made **or**
  - 1.2 where more than one further claim for benefit is made the day the last such claim is made **and**

2. the further claim for benefit is made 26 weeks or more after
  - 2.1 the date of the claim when the claimant is first treated as having capital because of deprivation **or**
  - 2.2 the date of the claim when the amount of the reduction to capital is last changed (see DMG 29935 - 29940) **or**
  - 2.3 the date the claimant stopped getting benefit **and**

if more than one date is identified after applying 2.1 to 2.3 the date is the latest date **and**
3. the claimant would get benefit if he were not treated as having capital because of deprivation<sup>1</sup>.

### Example

On 13.6.06 Patrick makes a claim for JSA(IB). His BWE is Monday. The DM decides that he cannot get JSA(IB) because he should be treated as having capital of £35,000 because of deprivation. On 10.4.07 Patrick makes a further claim for JSA(IB). The DM decides that the amount of notional capital Patrick is treated as having because of deprivation has reduced to £31,934.10. The DM also decides that the relevant subsequent week is from 10.4.07 to 16.4.07.

*1 JSA Regs, reg 114(4)(5) & (7)(c); IS (Gen) Regs, reg 51A(4)(5) & (7)(c)*

29911 - 29914

### How to work out and apply the reduction - claimant getting benefit

- 29915 The amount of the reduction is the extra benefit claimants would get if they are not treated as having capital because of deprivation<sup>1</sup>.

*1 JSA Regs, reg 114(1)(a) & (2); IS (Gen) Regs, reg 51A(1)(a) & (2)*

- 29916 The reduction is made if

1. in the relevant week or any week after that week claimants are getting benefit, **and**
2. they would get more benefit if they are not treated as having the capital<sup>1</sup>.

*1 JSA Regs, reg 114(1)(a) & (2); IS (Gen) Regs, reg 51A(1)(a) & (2)*

29917 The reduction is made from the week after the relevant week and any week after that<sup>1</sup>.

### Example

On 5 March Mohammed makes a claim for JSA(IB). He is single and has no income or capital but the DM decides he is treated as having capital of £7,150 because of deprivation. The DM therefore decides that Mohammed is entitled to JSA(IB) of £51.20 a week. Mohammed would get £56.20 a week if he had not been treated as having capital because of deprivation. The DM also decides that the reduction in Mohammed's notional capital is £5 a week.

*1 JSA Regs, reg 114(1)(a); IS (Gen) Regs, reg 51A(1)(a)*

29918 - 29924

## How to work out and apply the reduction - claimant not getting benefit

29925 The amount of the reduction is

1. the benefit claimants get in the relevant week if they are not treated as having capital because of deprivation, see also DMG 29926 **and**
2. the difference between
  - 2.1 the maximum amount of
    - 2.1.a HB
    - 2.1.b CTB **and**
    - 2.1.c for IS community charge benefitclaimants can get **and**
  - 2.2 the amount of that benefit claimants are getting for
    - 2.2.a a period of seven consecutive days starting on a Monday and ending on Sunday **and**
    - 2.2.b the period includes the last day of the relevant week<sup>1</sup>.

**Note:** The amount of the reduction can be changed (see DMG 29935 - 29940).

*1 JSA Regs, reg 114(1)(b) & (3); IS (Gen) Regs, reg 51A(1)(b) & (3)*



29926 If the relevant week is a part-week the benefit claimants get should be worked out by

1. dividing the amount of benefit they would get if they are not treated as having capital for the part-week by the number of days in the part-week **and**
2. multiplying the figure at 1. by 7<sup>1</sup>.

*1 JSA Regs, reg 114(3)(a); IS (Gen) Regs, reg 51A(3)(a)*

29927 The reduction is made if in the relevant week claimants can get benefit if they are not treated as having capital because of deprivation<sup>1</sup>.

*1 JSA Regs, reg 114(1)(b) & (3); IS (Gen) Regs, reg 51A(1)(b) & (3)*

29928 The reduction is made from the week after the relevant week and any week after that week<sup>1</sup>.

### **Example**

On 9.5.05 Ben makes a claim for IS. His BWE is Monday. He has a partner and has no income or capital but the DM decides he is treated as having capital of £18,000 because of deprivation. The DM therefore decides that Ben is not entitled to IS. Ben would get £88.15 a week if he had not been treated as having capital because of deprivation. Ben is not getting any HB or CTB but the maximum amount of those benefits he could get is £65.50 a week. The DM also decides that the reduction in Ben's notional capital is £153.65 a week and the first week of the reduction is from 10.5.05 to 16.5.05.

*1 JSA Regs, reg 114(1)(b); IS (Gen) Regs, reg 51A(1)(b)*

29929 - 29934

### **When to change the amount of the reduction in DMG 29925**

29935 The amount of the reduction in DMG 29925 can be changed if

1. another claim for benefit is made<sup>1</sup> (see DMG 29936) **and**
2. claimants can get benefit in the relevant subsequent week if they are not treated as having capital because of deprivation<sup>2</sup>.

*1 JSA Regs, reg 114(4); IS (Gen) Regs, reg 51A(4); 2 JSA Regs, reg 114(5); IS (Gen) Regs, reg 51A(5)*

29936 The claim for benefit must be made 26 weeks or more after

1. the date of the claim when the claimant is first treated as having capital because of deprivation **or**
2. the date of the claim when the amount of the reduction is last changed under DMG 29935 **or**
3. the last date the claimant stopped getting benefit.

If more than one date is identified after applying **1.** to **3.** the date is the latest date<sup>1</sup>.

#### **Example**

On 1.9.04 Sabrina makes a claim for JSA(IB). She is single and has no income or capital but the DM decides she is treated as having capital of £21,300 because of deprivation. Sabrina would get JSA(IB) of £55.65 if she had not been treated as having capital because of deprivation. She is not entitled to HB or CTB. The DM therefore decides that the reduction in Sabrina's notional capital is £55.65 a week.

On 10.5.05 Sabrina makes another claim for JSA(IB). Her circumstances have not changed and the DM decides that she is treated as having capital of £19,496.55 because of deprivation. Sabrina would now get JSA(IB) of £56.20 a week if she had not been treated as having capital because of deprivation.

The DM therefore decides that the reduction in Sabrina's notional capital is changed to £56.20 a week.

**Note:** See DMG 29940 for guidance on when the new amount of the reduction begins.

*1 JSA Regs, reg 114(5); IS (Gen) Regs, reg 51A(5)*

### **How to work out and apply the new amount of the reduction**

29937 The amount of the reduction is

1. the benefit claimants would get in the relevant subsequent week if they are not treated as having capital because of deprivation (see also DMG 29938) **and**
2. the difference between
  - 2.1 the maximum amount of
    - 2.1.a HB
    - 2.1.b CTB **and**

**2.1.c** for IS community charge benefit

claimants can get **and**

**2.2** the amount of benefit claimants are getting for

**2.2.a** a period of seven consecutive days starting on a Monday and ending on Sunday **and**

**2.2.b** for JSA the period includes the last day of the relevant subsequent week **or**

**2.2.c** for IS for HB and community charge benefit the period includes the last day of the relevant subsequent week **or**

**2.2.d** for IS for CTB the period includes the last day of the relevant week<sup>1</sup>.

*1 JSA Regs, reg 114(1)(b), (3) & (4); IS (Gen) Regs, reg 51A(1)(b), (3) & (4)*

29938 If the relevant subsequent week is a part-week the benefit claimants get should be worked out by

1. dividing the amount of benefit they would get if they were not treated as having capital for the part-week by the number of days in the part-week **and**
2. multiplying the figure at 1. by seven<sup>1</sup>.

*1 JSA Regs, reg 114(3)(a) & (4); IS (Gen) Regs, reg 51A(3)(a) & (4)*

29939 If the amount of the reduction as in DMG 29937 is less than the one before use the one before<sup>1</sup>.

*1 JSA Regs, reg 114(6); IS (Gen) Regs, reg 51A(6)*

29940 The new amount of the reduction is made from the week after the relevant subsequent week and any week after that<sup>1</sup>.

*1 JSA Regs, reg 114(4)(b); IS (Gen) Regs, reg 51A(4)(b)*

29941 - 29999

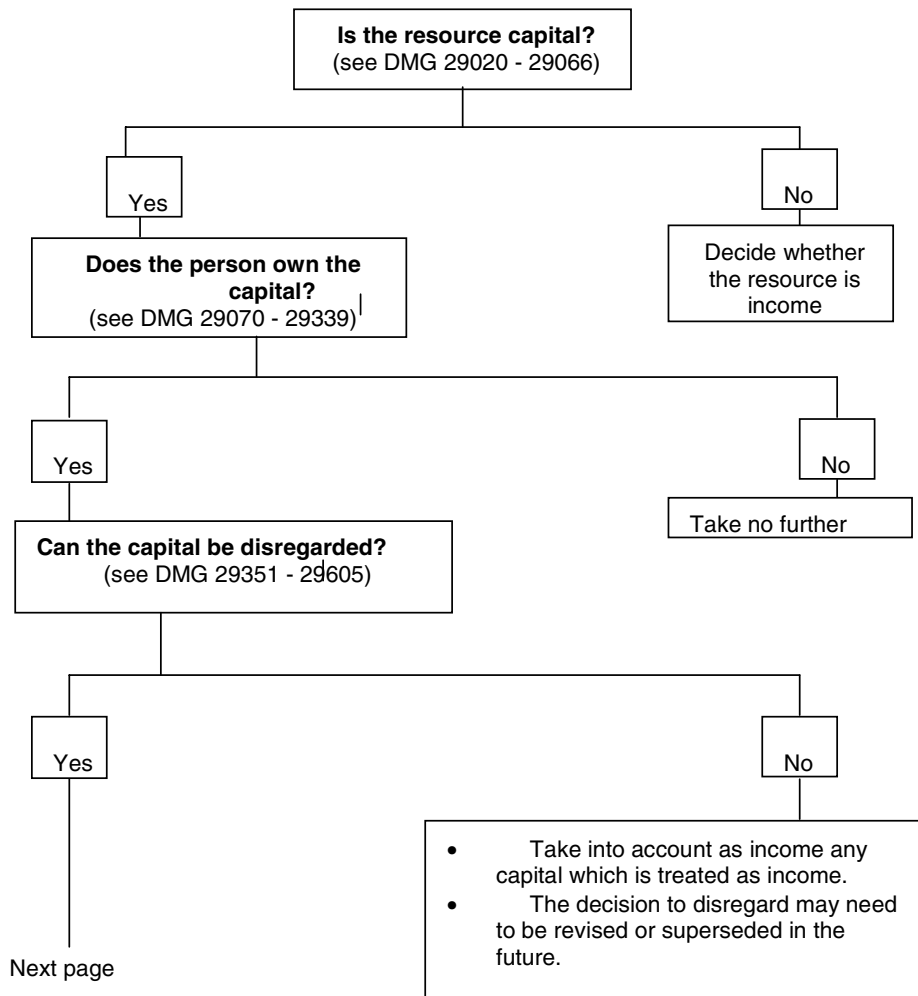


# Appendix 1

## Flowcharts

Flowchart 1

How to work out the amount of capital of a claimant and partner and its effect on benefit



**What is the value of the capital (see DMG 29610 – 29694) and its effect on benefit (see DMG 29760 - 29786)**

1. Work out the value of the capital
2. Add together
  - 2.1 the value of each item of capital belonging to the claimant and partner **and**
  - 2.2 any income of the claimant and partner which has to be treated as capital
3. If the total is

**£16,000 or less has the person any notional capital? (see DMG 29795 – 29880).**

More than £16,000, the claimant cannot get benefit (see DMG 29760).

No

Yes

**Is the total more than £6,000 but not more than £16,000, or more than £10,000 but not more than £16,000 if DMG 29770 applies?**

Yes

No

Work out the amount of tariff income. (see DMG 29761 - 29762).

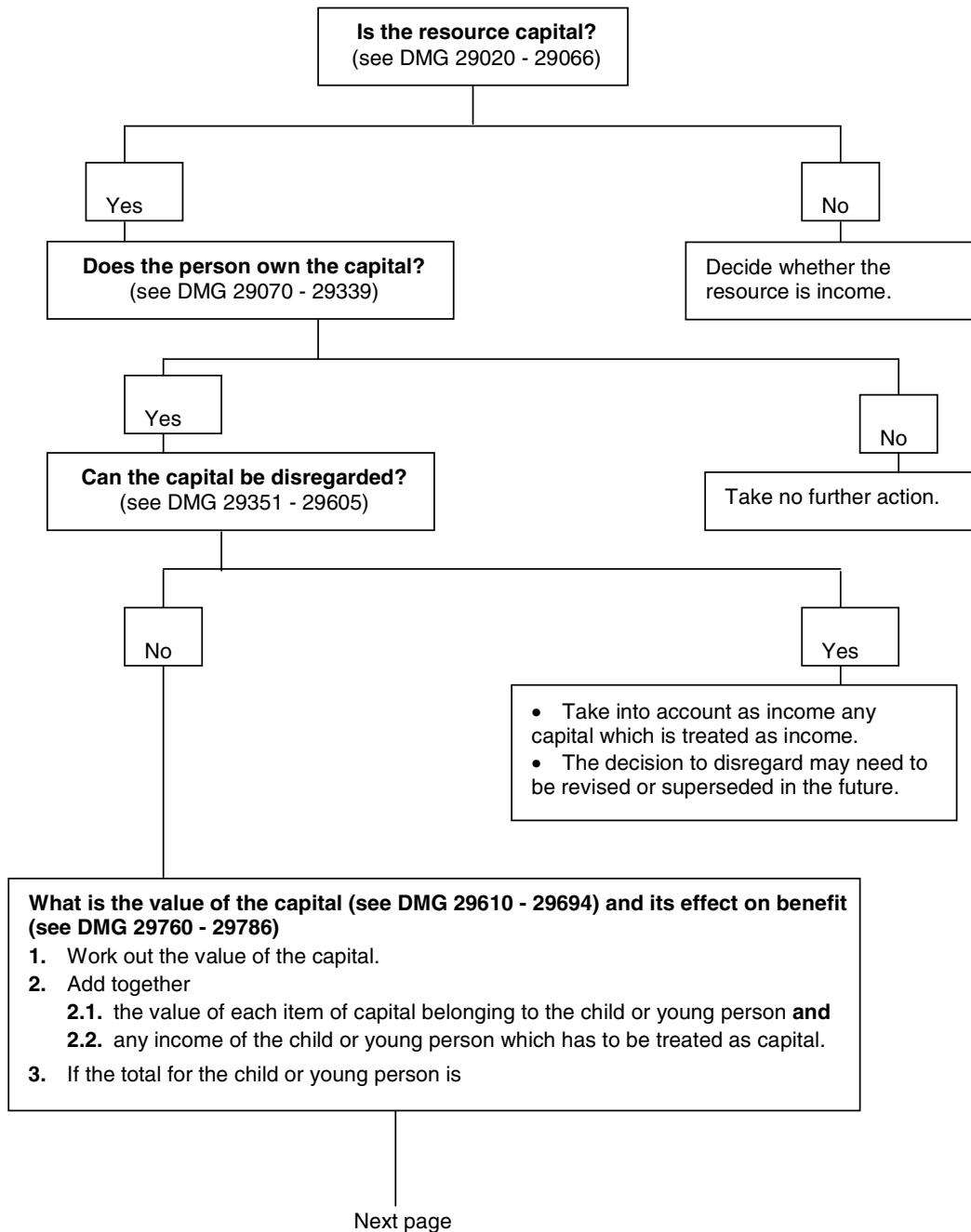
Take no further action.

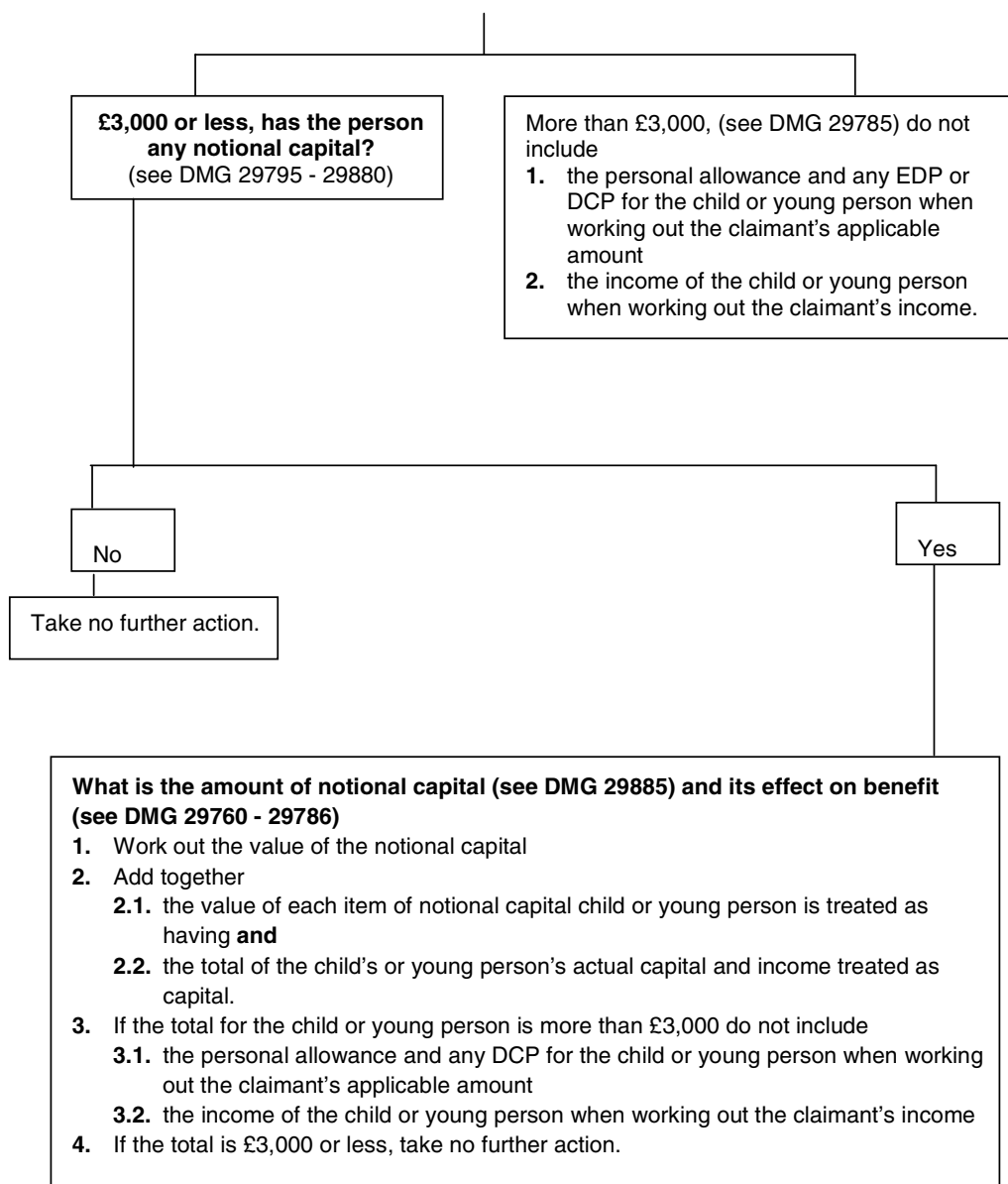
**What is the amount of notional capital (see DMG 29885) and its effect on benefit (see DMG 29760 - 29786)?**

1. Work out the value of the notional capital.
2. Add together
  - 2.1 The value of each item of capital belonging to the claimant and partner **and**
  - 2.2 The total of their actual capital and income treated as capital
3. If the total is
  - 3.1 more than £16,000, the claimant cannot get benefit
  - 3.2 more than £6,000 but not more than £16,000, or more than £10,000 but not more than £16,000 if DMG 29770 applies, work out the amount of tariff income
  - 3.3 £6,000 or less, take no further action.

## Flowchart 2

**How to work out the amount of capital of a claimant and partner and its effect on benefit**







## **Appendix 2**

### **Spare**



## Appendix 3

### How to work out tariff income

**Table 1 - DMG 29770 does not apply to the claimant**

Total capital		Tariff income £
From £	To £	
NIL	6,000.00	NIL
6,000.01	6,250.00	1
6,250.01	6,500.00	2
6,500.01	6,750.00	3
6,750.01	7,000.00	4
7,000.01	7,250.00	5
7,250.01	7,500.00	6
7,500.01	7,750.00	7
7,750.01	8,000.00	8
8,000.01	8,250.00	9
8,250.01	8,500.00	10
8,500.01	8,750.00	11
8,750.01	9,000.00	12
9,000.01	9,250.00	13
9,250.01	9,500.00	14
9,500.01	9,750.00	15
9,750.01	10,000.00	16
10,000.01	10,250.00	17
10,250.01	10,500.00	18
10,500.01	10,750.00	19
10,750.01	11,000.00	20
11,000.01	11,250.00	21
11,250.01	11,500.00	22
11,500.01	11,750.00	23
11,750.01	12,000.00	24
12,000.01	12,250.00	25

Total capital		Tariff income £
From £	To £	
12,250.01	12,500.00	26
12,500.01	12,750.00	27
12,750.01	13,000.00	28
13,000.01	13,250.00	29
13,250.01	13,500.00	30
13,501.00	13,750.00	31
13,750.01	14,000.00	32
14,000.01	14,250.00	33
14,250.01	14,500.00	34
14,500.01	14,750.00	35
14,750.01	15,000.00	36
15,000.01	15,250.00	37
15,250.01	15,500.00	38
15,500.01	15,750.00	39
15,750.01	16,000.00	40
16,000.01	and over	claimant cannot get benefit

**Table 2 – DMG 29770 does apply to the claimant**

Total capital		Tariff income £
From £	To £	
NIL	10,000.00	NIL
10,000.01	10,250.00	1
10,250.01	10,500.00	2
10,500.01	10,750.00	3
10,750.01	11,000.00	4
11,000.01	11,250.00	5
11,250.01	11,500.00	6
11,500.01	11,750.00	7
11,750.01	12,000.00	8
12,000.01	12,250.00	9
12,250.01	12,500.00	10
12,500.01	12,750.00	11
12,750.01	13,000.00	12
13,000.01	13,250.00	13
13,250.01	13,500.00	14
13,500.01	13,750.00	15
13,750.01	14,000.00	16
14,000.01	14,250.00	17
14,250.01	14,500.00	18
14,500.01	14,750.00	19
14,750.01	15,000.00	20
15,000.01	15,250.00	21
15,250.01	15,500.00	22
15,500.01	15,750.00	23
15,750.01	16,000.00	24
16,000.01	and over	claimant cannot get benefit



## Appendix 4

### Jointly-owned capital - previous rules and guidance

1. The following guidance explains the changes to the rules on jointly-owned capital before 15.10.01. The changes refer to the value of a claimant's share of jointly-owned capital.
2. The rules that apply from 16.10.01 onwards are at DMG 29635 et seq.
3. Before 20.5.93 a claimant was treated as having an equal share in capital in which he had a joint beneficial interest. The value of a claimant's share was obtained by dividing the value of the property as a whole by the number of joint-owners.
4. On 20.5.93 a Tribunal of Commissioners decided that the value of a share a person is treated as possessing is not an equal share of the value of the capital as a whole. It is the value of the share itself<sup>1</sup>. The Tribunal of Commissioners' decision was upheld by the Court of Appeal. So if a person has a  $\frac{1}{4}$  share in capital and another person has a  $\frac{3}{4}$  share in it, each is treated as having a  $\frac{1}{2}$  share. It is the value of that  $\frac{1}{2}$  share that the DM needs to determine, which is not the value of the capital as a whole divided by 2.

*1 R(IS) 26/95*

5. Before 2.10.95 the value of the share a person is treated as having in any case which the Tribunal of commissioners' decision applied was nil if
  - 5.1 the claimant is the joint beneficial owner of real property (see DMG 29020 4.) and there is a continuing purpose to the trust for sale **and**
  - 5.2 the property is not in Scotland.

A continuing purpose to the trust for sale normally means that one or more of the joint owners has continuing rights of occupation of the property.

6. The regulations were then amended as from 2.10.95 with the effect that the value of the claimant's share would be obtained by dividing the value of the property as a whole by the number of joint-owners. However following a Commissioner's decision made in relation to the regulations as they stood following the October 1995 amendment, the relevant provisions in IS and JSA were further amended on 12.10.98 to restore the position as it existed prior to 2.10.95. This is because the Commissioner decided that the change in 1995 was *ultra vires* and in effect should be treated as not having been made.

**Note:** Since JSA was not introduced until October 1996 the provision in the JSA Regulations dealing with jointly-owned capital in JSA was not affected by the

October 1995 amendment. The DM should nonetheless treat the regulation as not containing the words that require deemed shares to be valued in a special way.

7. The effect of the commissioner's decision in 1998 and the subsequent amendment in 1998 was to allow capital assets to be valued in a way that was more closely related to their actual value than the previous method allowed.